

## Research Assessment Exercise 2008 and Equality

### Sample case studies: Equality issues in deciding who to submit to the RAE

#### RAE Equality & Diversity Case Studies

Read the following case studies, and for each one consider the following questions:

- What, if any, employment legislation might be relevant?
  - What are the issues around the decision to submit the individual in the forthcoming RAE?
  - If you were to submit him/her, what if any, accompanying comments would you make?
  - Is there anything that could have been done differently in the past?
  - What advice if any would you want to give the Head of Department (Head of Group?) now?
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#### Case 1: Jo

- a) Jo is an academic with 3 small children. Jo works a hard and effective 9-5.30 day but because of childcare commitments is unable to work evenings or weekends. In contrast many of Jo's colleagues work a regular 60-hour week or more; consequently they have a very much higher publication rate. All concerned agree that Jo has 3 high quality papers but the fourth is more questionable.
- b) Sam works in the same department has no children and works a similar work pattern and has a similar output to Jo. Do you treat this case differently?
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#### Case 2: Rebecca

Rebecca was appointed to a lectureship in December 2001. She has had two, six-month periods of maternity leave since appointment, and will have two high-quality papers published during the assessment period, with more in preparation. She clearly has the capacity for high quality research, but her research momentum has taken a hit and after each leave period she has had to get back up to speed on teaching and admin as well.

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### **Case 3: Emma and Jon**

Emma and Jon are probationary lecturers in the same Department; both were appointed in 2004. Emma was appointed after less than one year of post-doctoral work, while Jon has ten years of post-PhD research under his belt. Both will have four publications before the cut-off date. All of John's papers are based on work from his earlier projects and are strong, while all of Emma's have been squeezed out of her PhD and short post-doctoral project. As a result, the quality of two of Emma's papers is a bit shaky.

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### **Case 4: Maria**

Maria returned from maternity leave and asked to work part-time to allow her to spend time with her child. Her Head of Department at the time (since retired) desperately needed a Director of Studies to set up a new masters programme in Spain. Maria speaks Spanish. The Head of Department did a deal that Maria could go part-time if she took over the Director of Studies role. Unsurprisingly the masters programme took up a huge amount of time and energy. Maria made a great job of it but her research suffered. The programme is now up and running smoothly, Maria has handed it over to a colleague and has picked up her research again but she only has one publication of sufficient quality. You also know that Maria's Head of Department told her that doing a good job as Director of Studies would help in a bid for promotion to Senior Lecturer.

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### **Case 5: An**

An is a research-active lecturer with 16 years' experience in her field and numerous publications in internationally respected journals. She is a popular conference speaker with a long list of high-profile keynote addresses to her name. However, in preparing the department's RAE submission, the Head of Department deems that An's work is not of the required standard. You know that An is expecting to be put forward. An is from a minority ethnic background.

How do you know whether this is discrimination? How would you ensure that you can defend your decision in the event that An is not put forward and challenges the decision?

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**Case 6: Tariq**

Tariq is from Saudi Arabia. He arrived with great references and an impressive list of journal articles. He has great ideas and does excellent research. But in the three years he's been at XX his publication rate has really slowed down. For example, in the last six months he has had 4 papers returned (some with encouraging noises made by the reviewers but with requests for major revisions); this is the second time one paper has been returned. His Head of Group reports that he is a likeable, confident chap whose spoken English is OK but that his writing tends to be dense and unstructured. There is no doubt about the quality of his research when he does get things published, but he has had nothing published since June 2003

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**Case 7: Phyllis**

Phyllis has just celebrated her 64<sup>th</sup> birthday. An eminent Professor with an excellent record, she seems to have taken her foot off the pedal since the last RAE. Since she returned from sick leave - occasioned by a short bout of depression - her Head of Department says she seems distracted by the purchase of a holiday home in France, uncharacteristically not turning up to meetings with students and tending to rambling conversations which she then ends rather abruptly. She missed a major deadline for a potentially large collaborative research grant. When asked if there are any problems she has just brushed the query aside saying she was pre-occupied with the French legal system over boundary issues. She also said in passing "Great news about the new Age Discrimination legislation, means I'll be able to keep working till I'm 75".

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**Case 8: Josh**

Josh is a bright young lecturer who was on a trajectory to be promoted to Reader. But then he became increasingly erratic. Strong words were written to him via his Head of Department. Five months on his progress was poor. Following an email exchange with his Head of Department about his progress, Josh had a total breakdown and was admitted to hospital and diagnosed with a bipolar disorder. He's been off for 6 months and according to Occupational Health is not likely to be back for at least another 3 months. He is rumoured to be keen to return but his Head of Department does not want to have him back (says he is too disruptive), is keen that HR terminate the contract on grounds of lack of capability. And she does not want to enter him in the RAE.

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**Case 9: Bob**

Bob is a senior lecturer who had a really bad year in 2005. His daughter was ill, initially with what appeared to be a fairly short-term illness but she then had complications. Neither Bob nor his Head of Department thought it worth arranging for any formal leave. Bob had finished his teaching for the year and said he would work at home. He completed all his marking but his research was abandoned. He was able to continue most of his teaching in the autumn but didn't pick up his research again until early 2006 by which time his daughter had made a good recovery. His research record would be good except for the gap.

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**Case 10: Natasha**

Natasha is a lecturer whose research concerns lesbian images in European film, and she herself is in a same-sex relationship. Her output is good, with two journal papers, a book and a significant contribution to a major television documentary within the assessment period. Her Head of Department, who has taken over the post since Natasha was appointed, does not want to submit her for RAE2008, because he feels the subject area does not fit well with Department's broader research profile.

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## Comments on RAE Equality & Diversity Case Studies

Why would non-submission to the RAE constitute “detriment” and therefore trigger protection under anti-discrimination legislation? Although there is no direct link between RAE submission and promotion, submission is an indication of progress and research standing. Non-submission could therefore seriously compromise an individual’s future career. See also the University’s ‘no detriment’ statement regarding RAE submissions.

Not submitting someone on the grounds of race, part-time status, fixed term contract status, disability, religion, belief, or sexual orientation could be deemed to be discriminatory and is not good strategy for the RAE. Staff may be omitted for strategic reasons, but the reasons for the decision must be transparent.

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### Case 1: Jo and Sam

*Relevant legislation:*

*Employment Act (2002) (family friendly legislation with right to request flexible working)*  
*Sex Discrimination Act*  
*Working Time Regulations*

The case study is careful not to specify gender for Jo or Sam.

We don’t know whether Sam does have any caring responsibilities. We know he or she has no children but he/she may have caring responsibilities for a partner or elderly parents, or health issues?

The problem here is that it looks like Jo’s ability to work limited hours has been allowed to affect his/her research. It’s not clear whether it has had a similar effect on the admin/management and teaching elements of the job, but it would be typical if he/she had a “normal” teaching and admin load and was expected to do research with his/her remaining time.

In terms of the RAE as it stands neither Jo nor Sam can be submitted with 3 publications.

However, had Jo (or Sam if appropriate) sought to work more flexibly eg worked part-time (due to family commitments or health reasons) then they could have been submitted with reduced volume and an accompanying explanation.

BUT with part-time working it is important to ensure that the balance of activities (research-teaching- administration) is maintained.

This case also raises questions about the long hours culture of academia. Can a full 9.00 - 5.30 week really be part time? Academics with no defined working hours are deemed to have opted out of the Working Time Directive (which limits a normal working week to 48-hours). There is a tension here: in order for this to be truly optional people have to be able to work less than 48 hours, but how do you reward those who do work longer hours without discriminating against those who for reasons of caring responsibility, disability, or even other out-of-work interests, are unable to work such long hours? If “full time” is not defined, how would you know what “part-time” looks like?

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### Sample case studies

There may also be an issue of being clear about the standards of input (working hours) and output (workload) across the department/University.

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### **Case 2: Rebecca**

*Relevant legislation:*

*Sex Discrimination Act*

There is clearly a case to be made that Rebecca's maternity leave legitimately reduced her research output, so it may be possible to submit her with two outputs. However, different panels are taking different views on how much reduction can be justified. Some are pro-rating, so that Rebecca would be viewed as being absent for less than a quarter of the assessment period – should she therefore be allowed even a quarter reduction in output? Others consider any absence of 6 months or more as equivalent to one output.

Regaining research momentum after an absence is a key management issue: a returner should not be expected to perform at the same level as when they left. Departments should think carefully about the support they can offer returning staff during the "spin-up" period.

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### **Case 3: Emma and Jon**

There is no obviously relevant legislation here. In RAE terms, Jon can be submitted without problem. Emma should probably be submitted as an early-career researcher, with her two best outputs and a supporting explanation.

There are broader issues here about managing probationary lecturers. Has Emma been or felt herself to be pressured into writing four papers, even though her previous research probably couldn't support it and there was no short-term need? Could she more usefully have spent the time developing her research portfolio for the future, and is she receiving useful support to do that? Similarly, is it established that Jon's momentum is going to carry forward, or is he being left alone on the assumption that with that experience behind him he's bound to be all right? Would the forthcoming Age Discrimination legislation be applicable here?

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### **Case 4: Maria**

*Relevant Legislation:*

*Sex Discrimination Act,*

*Part-time Workers (prevention of less favourable treatment) Regulations*

The University is now faced with a problem. Only part of Maria's reduced volume of research can really be interpreted as due to her part-time status; it was the balance of work assigned (teaching/admin-dominated) that caused most of the problem (although this in itself might be challenged as due to her part-time status).

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Heads of Department need to take care that workloads for part-time staff are proportionate in terms of balance of research, teaching and admin/management to that of their full-time colleagues.

In this case, by giving Maria a major admin/management role, the University has made it more difficult for her to research than her full-time colleagues. This will have a negative effect on her future promotion prospects. This could be interpreted as indirect sex discrimination (as more women than men work part-time) and discrimination on the basis of part-time status.

The current University promotion criteria allow for promotion to Senior Lecturer with excellent contributions in teaching and management/leadership and an effective contribution to research. For promotion to professor an excellent research record is needed. So by making it more difficult to do research, the University is affecting Maria's long term career prospects if not her immediate promotion prospects and hence could be seen as discriminating.

If Maria has the potential for excellent research then some re-balancing in terms of workloads is now called for.

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### **Case 5: An**

*Relevant legislation:*

*Race Relations Act*

*Employment Equality (Religion or Belief) Act*

*Sex Discrimination Act*

The panel needs to be clear that standards are being applied consistently and to keep good records of decisions.

Bear in mind that discrimination where it occurs can be unintended; people are not always aware of their own prejudices and stereotyping.

If An is not submitted then that leaves the problem of An's expectations; there has been a lack of clarity of standards. If An is not researching at the required level then she needs to know that and to have been given support to help her improve.

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### **Case 6: Tariq**

*Relevant legislation:*

*Race Relations Act*

*Disability Discrimination Act*

Choosing not to submit Tariq may be perceived as discrimination, but it could just be a lack of performance management.

There may be a number of reasons for this drop in publication rate:

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1. Health problems
2. Personal problems, including problems resulting from changing country.
3. It might be that in the past someone has ghost-written his work for him and this is no longer available, indicating a possible training need OR
4. It could be that he eg has dyslexia and has had support or help with writing in the past which is no longer available (if so then DDA applies and there is a need to look at support and adjustments).

This is where an open (non-punishing) discussion of standards is important to understand the apparent change in behaviour and offer support as appropriate.

Staff who have not worked in HE in the UK (or in a research intensive UK university) may need more support in understanding the department's expectations of them.

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### **Case 7: Phyllis**

*Relevant legislation:*

*Age Discrimination Regulations  
Disability Discrimination Act*

Here the Head of Department has tried rather unsuccessfully to discuss the change in performance. As written this could be that Phyllis is not giving the work 100% or it could be due to stress or health problems. If the latter, then the denial could also be part of the health issue (as for example in early dementia). In order for the University to provide appropriate support, staff need to be open about problems, which requires a culture of trust.

Whatever the reason behind the change, Phyllis needs to be clear about the implications of her reduced performance (including presumably omission from the RAE). It is also important to be clear that support is available if she needs it.

In terms of retirement, Phyllis will have the right to *request* to continue working beyond 65 but the University does not have to agree. Clarity of performance standards will help frame a response to a request, and any agreement would be subject to an annual performance review.

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### **Case 8: Josh**

*Relevant legislation:*

*Disability Discrimination Act*

Providing Josh's earlier work is of the required standard he can be entered if his subsequent reduced output is due to ill health. Not to do so could be interpreted as discriminatory (mental health is covered by the DDA).

In terms of his longer-term prospects and return to work, there is a balance here to be struck between the needs of the University to continue one of its core activities of research

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and the requirements of the DDA to support his return to work and make reasonable adjustments. This case will require close collaborations between HR, Occupational Health and Josh's Head of Department (and if appropriate Head of Group).

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### **Case 9: Bob**

*Relevant legislation:*

*Employment Act 2002 (family friendly legislation)*

If Bob is the main carer of a child under 6 or a disabled child under 18, then it may have been better for him to formally seek some flexible working arrangement (eg reduced hours) but again there is a need to keep the different aspects of the job in balance, eg use the money saved on reducing his hours to support some of his teaching.

Alternatively it may have been appropriate to arrange initially some compassionate leave, followed by a period of unpaid leave. Again this should be negotiated with the relevant personnel officer.

Although some record of formal agreements would be needed for protection under the law, there is no reason why Bob shouldn't be submitted in the RAE with an explanation of the reasons behind his reduced output.

The Head of Department would also need to be sensitive to any indications that other staff were feeling resentful of Bob's ability to continue only part of his job on full salary, although this would more likely arise if Bob had also handed over some teaching and admin/management.

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### **Case 10: Natasha**

*Relevant legislation:*

*Employment Equality (Sexual Orientation) Regulations*

This case hints at possible conscious or unconscious homophobia. Natasha's research themes and plans were known about when she was appointed, so it seems odd that the new Head of Department would feel they were incompatible with the Department's direction. However, the new Head may have a strategic vision which does not include Natasha's line of work. It would have to be argued persuasively that there is any strategic advantage in not submitting for the RAE a staff member with good output.

[A 2001 study found that 30% of lesbian academics felt they had suffered discrimination, and 42% felt they had been harassed. In 72% of cases, the homophobia was committed by other, usually senior, members of academic staff.]

## Common themes, concluding thoughts

Discrimination happens in UK Higher Education, along with many other sectors and industries. In many cases, it is unconscious and could be avoided by thoughtful management.

- Avoiding discrimination is about treating people fairly, not necessarily equally
- People have differing needs if they are to perform to their potential
- Transparency (of expectations and decision-making) is crucial
- The law is complex, ever-changing and rarely provides simple answers

The Employment Act (2002) is intended to promote family-friendly working by allowing for staff to request to work flexibly. The University can turn down a request but it needs a strong business case. The inability to balance demands of work with family life is one of the major reasons for women leaving academia.

The majority of child care in this country is carried out by women. A refusal to allow flexible working has been interpreted as sex discrimination. Treating people *equally* is not necessarily treating people *fairly*.

There is evidence that the better a country's approach to flexible working the more likely women are to have children and to return to work. For Universities, this means retaining talented academics to contribute to the institution's performance. For the country, it helps to guarantee a future generation to pay for this generation's pensions. Women who return to work have a positive effect on the economy now. Losing highly trained women from the academic community because they have children is a waste of the country's investment and their talent.

Similarly losing experienced staff due to disabilities may not be the best option for the business.

There are also questions about the long hours culture of academia. Academics with no defined working hours are deemed to have opted out of the Working Time Directive (which limits a normal working week to 48-hours). There is a tension here: in order for this to be truly optional people have to be able to work less than 48 hours, but how do you reward those who do work longer hours without discriminating against those who for reasons of caring responsibility, disability or any other reason are unable to work such long hours?

If the University could be clearer about the standards it expects of its academics at different career points, there would be much clearer distinction between performance management issues and sources of potential discrimination.

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