

**Redundancies and Restructures – Equality Impact Assessments (EIA) Guidance Document**

 This briefing provides staff in LJMU with a practical understanding of how to carry out equality impact assessments (EIAs) in relation to restructuring or redundancy activities. This document models the one prepared by Equality Challenge Unit (Now Advance HE), aimed at staff working in senior management roles, strategy teams, People and Organisational Department/Human Resources and equality and diversity in HEIs.

In the current economic situation, restructuring and other organisational changes are leading to voluntary, and may well lead to compulsory redundancies, which may have equality-related consequences, and may raise compliance issues for HEI.

**1 What then is EIA?**

The Higher Education Funding Council for England (HEFCE) describes an EIA as:

‘…the thorough and systematic analysis of a policy or practice to determine whether it has a differential impact on a particular group. It can be seen as a quality control mechanism by which HEIs can evaluate their activities and best meet the needs of their stakeholders…’ [**www.hefce.ac.uk/pubs/hefce/2004/04\_37**](http://www.hefce.ac.uk/pubs/hefce/2004/04_37)

* The Equality and Human Rights Commission (EHRC) has left it to public bodies to develop their own EIA methodology to fully reflect the precise nature of their business and ensure consistency.
* EIAs will require investment of staff time to carry out data analysis, consultation exercises and so forth. In the long-term, however, this investment will reduce the costs incurred in responding to difficulties, complaints of discrimination or legal challenges that may arise if equality issues are not properly considered in a redundancy or restructuring process.

**2 Why are EIAs necessary?**

According to ECU, there are three main reasons for organisations to carry out equality impact assessments –

* to ensure fairness,
* ensure compliance with legislation,
* to improve organisational effectiveness.
* EIAs can help to ensure that restructuring or redundancy procedures are implemented fairly. Particular groups of staff may experience barriers to participating in, and engaging with, a restructuring or redundancy procedure. For example, disabled staff or staff on maternity leave may face particular practical issues in engaging with aspects of the process. An EIA will help an institution to think through potential barriers for staff and respond effectively to concerns raised in formal consultations.

Public sector equality duty covers – age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Under the public sector duty, HEIs are required to have due regard to:

* eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
* advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it
* foster good relations between people who share a relevant protected characteristic and people who do not share it.

With the introduction of the Equality Act 2010, HEIs will need to conduct EIAs and also demonstrate the outcome.

**3 EIAs and Redundancy Procedures**

If an HEI has ad hoc arrangements for making staff redundant, ECU (Advance HE) recommends that the HEI prepares a formal policy or agreement as ad hoc arrangements are more likely to result in inadvertent discrimination and may require more EIAs. An impact assessment may need to be conducted on the procedure and the selection criteria each time a redundancy or set of redundancies are made.

If an HEI has a policy or agreement in place which has not undergone impact assessment, Advance HE recommends that an EIA is conducted before it is applied to further redundancy situations. Where a formal redundancy policy or agreement that has previously undergone an EIA is revised, Advance HE recommends that we review the original EIA and, following consideration of current data and information, update the EIA report. An EIA on a formal redundancy policy or agreement should include:

* An analysis of the impact of the policy or agreement on the HEI’s ability to meet the general requirements of the equality duties. For example, how will disabled staff, BME staff and men and women be represented or involved in the redundancy process through trade unions, staff networks or open consultation?
* Will information on the redundancy process be available in accessible formats?
* Is it clear that disabled staff who are redeployed will be entitled to different reasonable adjustments if required?
* If different reasonable adjustments are required and the staff member concerned is on a trial period, will the trial period be extended to enable them time to get used to the new adjustments?
* How will staff on maternity leave be informed about and represented during the redundancy process?

**4 Selection Criteria Used for Redundancy**

Following the implementation of a redundancy procedure, an HEI will need to conduct a separate EIA on the selection criteria used for redundancy, whether voluntary or compulsory. This will assist HEIs in ensuring that the selection criteria do not unintentionally identify a disproportionate number of individuals with one or more protected characteristic. For example, if absence records were to be used as a selection criterion for redundancy, institutions would need to ensure that records clearly identify disability related absence and that redundancy decisions based on absence do not take disability-related absence into consideration.

**5 Fixed Term Staff and Redundancy**

It is important to include fixed-term staff in redundancy procedures. If an HEI decides that it will not renew fixed-term contracts, it will need to assess the equality impact of this decision to ensure that groups of staff are not inadvertently discriminated against and that a particular division or service is not unintentionally affected. For example, Advance HE statistical report shows that BME staff members are more likely to be on fixed-term contracts than permanent contracts. In addition, BME staff members are most highly represented in the following occupational groups: library assistants, clerks and general administrative assistants, laboratory, engineering, building, information technology and medical technicians (including nurses).

**6 EIAs and Restructuring Processes**

As each restructuring exercise will be different – HEIs may develop procedures for restructuring on an ad hoc basis, building on their experience of previous restructuring exercises – an EIA will need to be carried out during the development of each restructuring exercise. If an HEI has a procedure that it applies to all restructuring exercises, Advance HE recommends that an EIA is conducted on the procedure.

A restructuring EIA needs to explore the impact on an HEI’s ability to meet the general requirements of the equality duty in the event that any functional departments, such as estates, student services or library services, are restructured or closed. For example, will the support available to disabled staff or students be affected? Workforce composition in the areas that are likely to be included in restructuring should be analysed to establish whether certain groups of staff will be disproportionately affected by the proposals and if so, whether alternative options are viable.

**7 Seven Stages of Impact Assessment**

**Step 1: Prioritising Restructuring and Redundancy Policies for EIA**

Conducting an assessment of our policies to determine which ones will likely have an impact on equality and diversity. These policies should be prioritised for EIA.

HEIs are advised by Advance HE to prioritise restructuring and redundancy policies for full and immediate EIA. Given that this procedure could have potential effect on everyone including those covered under the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, marriage and civil partnership.

**Step 2**:  **Collection and Analysis of Data**

Collect and analyse quantitative and qualitative data to assist with understanding more about the impact of the redundancy policy on equality. For example, would the application of a particular redundancy selection criteria result in a high proportion of disabled staff being made redundant?

Data for analysis could be collected through the information gathering and consultation exercises. Sometimes HEIs will not have sufficient data to identify the likely impact of a policy, in which case research and external data can be used. Where no information is available, HEIs should closely monitor the implementation of the policy.

**Step 3: Revision or Justification**

Where the policy is found to have either a positive or negative impact on a particular group it will need to be revised or justified within the permits of the law. For example, would it be possible to use redundancy selection criteria that do not result in a high proportion of disabled staff being made redundant? If not, can the use of the original selection criteria and their impact on disabled staff be justified within the permits of the law?

**Step 4: Further Consultation and Involvement**

Where the policy revisions are proposed to enhance or mitigate impact, relevant groups will need to be consulted or involved to ensure that the revised policy is fit for purpose. For example, if the HEI does not proceed with the original redundancy selection criteria, it will need to ensure that the application of the new criteria will not result in disabled staff or another group of staff being inadvertently discriminated against.

**Step 5: Need to Consult on Final Policy**

After all the necessary changes to the restructuring and redundancy policies and procedures, there should be a consultation with relevant groups before implementation.

**Step 6: Transparency of the EIA and action plan**

The results of the impact assessment and an action plan will need to be something that can be made available to the public if necessary. This ensures transparency.

The action plan should outline the actions that will be taken to mitigate adverse impact and state the staff members responsible for the implementation of actions. For example, if disabled staff members are to be redeployed, the HEI will need to ensure that existing reasonable adjustments are reviewed in relation to their new role.

**Step 7: Monitoring**

Once the revised or new policy has been implemented, it should be monitored and periodically reviewed to ensure that it has the intended impact and is still appropriate.

**8 The Scope of an EIA**

 EIAs would need to cover all protected characteristics. For example:

**Disability -** including disabled people and their carers.

**Gender -** including trans men and women

**Pregnancy and Maternity -** related issues of pregnancy and maternity and childcare, bearing in mind that women are more likely to work part-time than men.

**Race -** including colour, nationality, national origin and ethnic origin. Many HEIs have also chosen to assess the impact of their policies, practices and procedures on **sexual orientation**, **religion and belief** and **age** to help them better meet the needs of their staff and students and prepare for the introduction of the Public Sector Equality Duty (PSED) 2010.

**9 Other Areas of Considerations**

It is important to note that the equality implications of a restructuring or redundancy procedure can stretch far beyond the staff members concerned. Such procedures will often have significant learning and teaching implications and in turn can impact upon the student experience. For example, if staffing resources are reduced in student services, consideration will need to be given to the capacity of the department to respond effectively to the requirements of groups of students with specific needs and support requirements such as disabled students or students with childcare responsibilities. An EIA will need to consider these broader implications.

**10 Positive and Negative Impacts**

An EIA should help to identify positive and negative outcomes of a restructuring or redundancy procedure for a particular group of staff and other groups such as students and visitors. Most importantly, it can help to ascertain where outcomes can be prevented or justified within the permits of the law or, where the impact is positive, extended to other staff.

Given their nature, restructuring and redundancy procedures are more likely to have negative rather than positive impacts on equality. For example, more men than women may come forward to request voluntary redundancy, or a compulsory redundancy process may result in a higher proportion of BME staff being made redundant than might be expected given the staff population of the area under review. In addition, planned closure of a loss-making academic department, which typically attracts female academics, may result in more women being affected by a restructuring exercise than men.

Where a particular policy or procedure is found to have a negative impact on any of the equality groups for example, race, disability or gender equality, HEIs are required to **explore alternative procedures and ensure that there are no other steps that can be taken to mitigate the impact.** For example, where a department is making a loss and its closure would result in a high proportion of women being made redundant, would other restructuring plans have a lesser impact on this department? Have alternative sources of funding been explored? If other restructuring plans and alternative funding are not feasible, what other steps, such as redeployment could be taken to reduce the number of women made redundant? Where changes are made to proposed policies or procedures, affected groups will need to be consulted or involved in informing the changes made to ensure that they are fit for purpose. If changes cannot be made to the policy, the decision to proceed will need to be justified within the permits of law.

HEIs need to record any steps that have been taken to change the policy or mitigate the impact to ensure that any negative impact does not constitute unlawful discrimination and can be justified to a third party. The justification for decisions, as well as any actions that will be taken to mitigate impact, would need to be recorded in the EIA report, which can assist HEIs in ensuring that actions are implemented. This evidence will be needed if a legal challenge is made.

**Useful Links**

[**www.hefce.ac.uk/pubs/hefce/2004/04\_37**](http://www.hefce.ac.uk/pubs/hefce/2004/04_37)

[**http://www.ecu.ac.uk/wp-content/uploads/external/equality-in-restructuring-and-redundancy.pdf**](http://www.ecu.ac.uk/wp-content/uploads/external/equality-in-restructuring-and-redundancy.pdf)

[**https://www.ecu.ac.uk/publications/equality-in-restructuring-and-redundancy/**](https://www.ecu.ac.uk/publications/equality-in-restructuring-and-redundancy/)

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