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Title	Disrupting the status quo? Discrimination in academic promotions
Author(s)	Quinlivan, Shivaun
Publication Date	2017
Publication Information	Quinlivan, Shivaun. (2017). Disrupting the status quo? Discrimination in academic promotions. <i>Irish Employment Law Journal</i> , 14(3), 68-75.
Publisher	Thomson Round Hall
Link to publisher's version	<a href="https://www.roundhall.ie/navigateToUrl.do?idOfMenuItemToHighlight=catalogue&amp;actionToInvoke=/displayProductDetails.do&amp;productId=30795470&amp;unitId=30795470">https://www.roundhall.ie/navigateToUrl.do?idOfMenuItemToHighlight=catalogue&amp;actionToInvoke=/displayProductDetails.do&amp;productId=30795470&amp;unitId=30795470</a>
Item record	<a href="http://hdl.handle.net/10379/15756">http://hdl.handle.net/10379/15756</a>

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# Disrupting the *Status Quo*? Discrimination in Academic Promotions.

Dr Shivaun Quinlivan

## Introduction

In June 2016 the HEA *Report of the Expert Group: HEA National Review of Gender Equality in Higher Education Institutions* (Gender Equality Review)<sup>1</sup> reported and stated that there was a need for “radical action”<sup>2</sup> without which they could not guarantee that Higher Education Institutes (HEIs) would “ever be free of gender inequality.”<sup>3</sup> This report was commissioned in the aftermath of the now high profile case of *Sheehy-Skeffington v National University of Ireland Galway*<sup>4</sup> (hereinafter NUI Galway) and the controversy surrounding this decision. This paper addresses the decision in *Sheehy-Skeffington v NUI Galway*, the fall out from that decision and the recommendations of the HEA’s Gender Equality Review as regards recruitment and promotion. In particular this paper looks at that recommendation considered most radical, yet also considered necessary namely the introduction of mandatory gender quotas. This paper seeks to assess why it was deemed necessary for the Expert Review Group to recommend the introduction of mandatory quotas and to posit the question – what happens if the HEI’s do not comply with that recommendation?

## *Sheehy-Skeffington v NUI Galway*

In 2014 the Equality Tribunal found in two separate actions that NUI Galway had been guilty of gender discrimination.<sup>5</sup> The focus of this paper is on the second of those two cases that of *Sheehy-Skeffington v NUI Galway* where the Equality Tribunal held that NUIG had directly and indirectly discriminated against a female lecturer in respect of access to promotion.<sup>6</sup>

The respondent institution, NUI Galway, operates a competitive senior lecturer promotion system where candidates for promotion compete for a limited number of places. The findings of this case relate to the 2008/09 promotional round where seventeen candidates were promoted only one of whom was female. In total there were

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<sup>1</sup> Higher Education Authority, ‘Report of the Expert Group: HEA National Review of Gender Equality in Irish Higher Education Institutions’ (June 2016).

<sup>2</sup> *ibid* 11.

<sup>3</sup> *ibid*.

<sup>4</sup> *Sheehy-Skeffington v National University of Ireland Galway* [DEC-E2014-078].

<sup>5</sup> *Dempsey v National University of Ireland Galway* [DEC-E2014-039] In this case it was held that Mary Dempsey had been subjected to gender discrimination and was awarded the maximum compensation after a finding, amongst other things, that ‘she was asked to work during pregnancy-related sick leave and also during maternity leave.’

<sup>6</sup> *Sheehy-Skeffington v National University of Ireland Galway* (n 4).

forty-seven applications of which thirty-two were from male applicants and fifteen from female applicants. Twenty-three male applicants were shortlisted and sixteen appointed to senior lecturer. Seven female applicants were shortlisted and only one applicant was appointed. Dr Sheehy-Skeffington the applicant in this action was one of the six female applicants shortlisted but not appointed in this round. Significantly the remaining five women who were shortlisted but not appointed during this round are all involved in ongoing litigation in respect of this promotion round in NUI Galway. It is also of note that NUI Galway recognised that this promotion round was problematic in advance of the *Sheehy-Skeffington decision* and had commissioned a report into career advancement in NUI Galway.<sup>7</sup>

The Equality Tribunal held that the entire interview process was “ramshackle.”<sup>8</sup> Amongst the issues raised by the Tribunal was the failure to provide training for interviewers, the lack of an agreed marking scheme, no pre-meeting of the interview board, no questions agreed in advance of interview, no individual marks retained, the external interviewer’s suggestions were ignored, in short though on paper the scheme appeared fair the “implementation fell short of best practice in recruitment.”<sup>9</sup> Moreover ineligible applicants were shortlisted, and in one instance, an ineligible applicant was promoted. In addition to the failings of the actual recruitment process there were shortcomings highlighted in respect of the internal appeal process. It was noted that the Registrar sat on the interview board and was also involved in hearing Dr Sheehy-Skeffington’s appeal, the Tribunal stated “it would have been preferable if somebody independent of the interview process heard the appeal.”<sup>10</sup> From the above information it is clear that the procedure was flawed, that on its own is not necessarily evidence of discrimination but evidence of poor practice. In addition to the procedural failings some assessment discrepancies became apparent.

Candidates for promotion to senior lecturer were assessed on three criteria: Research and Scholarly Standing; Teaching and Examining; Contribution to School, University and Community.<sup>11</sup> The Equality Tribunal held that complainant had established a *prima facie* case of discrimination on the basis of a number of marking discrepancies. Those marking discrepancies related to teaching, supervision of PhD students and Contribution. Without wishing to revisit all of the marking discrepancies that were raised it is instructive to look at some examples of those marking discrepancies. The criteria for promotion stated that applicants should teach a minimum of 150 undergraduate and postgraduate contact hours per annum over the previous three years. The applicant met this criterion yet three of the successful male applicants did not. In fact some had significantly less than the minimum requirement with one of the successful candidates

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<sup>7</sup> Liz Doherty and Aoife Cooke, ‘The Report of the Working Group on Academic Career Advancement in NUI Galway’ (May 2011).

<sup>8</sup> *Sheehy-Skeffington v National University of Ireland Galway* (n 4) [4.3].

<sup>9</sup> *ibid.*

<sup>10</sup> *ibid.*

<sup>11</sup> Short-listed candidates were interviewed by one of two interview boards depending on the person’s discipline *ibid* [2.6].

only teaching 67 hours per annum. While it is concerning that three applicants who did not meet the minimum criteria were short listed and promoted, what is perhaps more surprising is that all three candidates were awarded a higher score for teaching than the applicant who met this minimum criteria.<sup>12</sup>

On the issue of Contribution a number of marking discrepancies were noted including the fact that of all the applicants only two candidates had served on a statutory body, specifically the Heritage Council, the candidate who ranked first in this competition and the complainant to the action. The candidate who ranked first in the promotion scheme had, four months previously, been appointed as the Chairperson of the Heritage Council. In contrast the complainant to the action had served for five years on the Heritage Council as well as being the Chairperson of the Wildlife Committee. In the assessment of this contribution the applicant was awarded 80 marks, whereas the successful male candidate was awarded 92 marks for his service. The Equality Tribunal stated that the difference in marks “seems a disproportionate difference between the two under this heading.”<sup>13</sup>

Having raised a *prima facie* case of discrimination it was for the respondent to rebut that presumption, this they failed to do. The Equality Officer addressed each point of rebuttal in turn and noted that the “most significant frailty to the respondent’s rebuttal is the statistical evidence.”<sup>14</sup> It was shown that men accounted for 40% of the Lecturer Above the Bar grade, but, significantly, that statistic was almost “inverted when it comes to the next promotional grade - 61% of Senior Lecturers are men.”<sup>15</sup> Male applicants had a one in two chance of being promoted while women had less than a one in three chance of the same promotion. In addition the minimum requirements for promotion were ignored “in relation to some of the successful candidates all of whom were men. The only woman empaneled more than met the minimum criteria.”<sup>16</sup> The respondent also put significant emphasis on the high standard of applicants yet as the Equality Tribunal pointed out the candidate who ranked first did not possess a PhD whereas all the female applicants did. As a consequence it was held that the complainant was directly discriminated against in respect of her access to promotion.

On the issue of indirect discrimination the complainant alleged that “men spend more time on research than women; women care more about student welfare than men; women are given the biggest teaching burden and that men get management roles on a ‘nod and wink’ basis.”<sup>17</sup> The Equality Tribunal did not find that the complainant made this case and suggested that “deeper research” was required. The Equality Tribunal did however observe that there was one apparently neutral provision that put women in this competition at a particular disadvantage and that related to periods of leave. Applicants

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<sup>12</sup> *ibid* [4.3].

<sup>13</sup> *ibid*.

<sup>14</sup> *ibid* [4.4].

<sup>15</sup> *ibid*.

<sup>16</sup> *ibid* [44].

<sup>17</sup> *ibid* [4.5].

were invited to indicate periods of protected leave such as maternity leave or other unpaid leave. The male applicants left this blank. The female applicants including the complainant indicated various leave periods from caring leave, adoptive leave, maternity leave and job-sharing. It was noted that of “the seven female shortlisted candidates three did not make any reference to caring responsibilities – candidate 17 (only successful female) Candidate 19 and Candidate 21 – all of whom were the highest placed women in the competition.”<sup>18</sup> While the question was legitimate in that it was intended to make appropriate allowances for times the employee was not available for work. The impact in practice was that it was discriminatory. The Equality Officer stated, “I cannot escape the conclusion that the majority of female applicants drawing attention to their caring responsibilities outside the workplace disadvantaged them against the male applicants.”<sup>19</sup> As a consequence it was held that the respondent had indirectly discriminated on the ground of gender in relation to this issue.

This decision was undoubtedly important for the complainant – the Equality Tribunal required that Dr Sheehy-Skeffington be promoted to Senior Lecturer and that promotion and all the necessary adjustments to her salary be backdated to July 1<sup>st</sup> 2009, moreover she was awarded significant compensation totalling €70,000.<sup>20</sup> It would however be a mistake to confine the impact of this decision to Dr Sheehy-Skeffington, the fallout from this decision is significantly more far reaching.

### **Reverberations from the *Sheehy-Skeffington* decision**

As a direct consequence of this decision the five female applicants to the promotion round of 2008/09 who were short listed with Dr. Sheehy-Skeffington but not promoted have instigated litigation. There are two separate actions. The first action relates to the top ranked female applicant who was not promoted. There were seventeen applicants promoted, two applicants jointly held eighteenth position, one male and one female. This case relates to the fact that one of the successful candidates was not eligible to apply for the competition but was in fact promoted. The Equality Tribunal stated of this fact:

Worryingly, one candidate (male) promoted was not even eligible for the competition. I do not accept the respondent’s contention (Paragraph 3.8) that this was gender-neutral. All female applicants short-listed met the requirement of having enough service. Clearly all men did not. ... This had serious implications for the other candidates. He took up a place in the panel which could have gone to either a man or a woman.<sup>21</sup>

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<sup>18</sup> *ibid* [4.6].

<sup>19</sup> *ibid*.

<sup>20</sup> *ibid* [5.2]; See also for a discussion of compensation awards Marguerite Bolger and others, *Employment Equality Law* (Round Hall Ltd 2012) 478.

<sup>21</sup> *Sheehy-Skeffington v National University of Ireland Galway* (n 4) [4.3].

This case is currently before the Labour Court. It is somewhat incomprehensible, to this author, that this applicant has had to resort to litigation the Equality Tribunal clearly stated that the discriminatory nature of the promotion round “had serious implications for other candidates.” The Equality Tribunal went so far as to state by appointing an ineligible candidate another person lost out on a promotion, the ineligible candidate “took up a place” which should have gone to another person. Thus the discrimination in this round negatively impacted more than the complainant to this action. This case is ongoing.

The second case relates to the remaining four women who were short-listed but not promoted in that now discredited promotion round. In this action the four litigants allege both direct and indirect discrimination in respect of their access to promotion. Evidently the applicants to this case will be relying on similar facts to those presented in the action of *Sheehy-Skeffington v NUI Galway*. This case has the potential to be particularly significant in legal terms. The applicants instigated their action after the decision of *Sheehy-Skeffington v NUI Galway*. As a result the applicants were out of time to instigate an action before the Equality Tribunal so they instigated a common law action before the High Court relying on section 21 of the Employment Equality Acts 1998-2011, which states:

If and so far as the terms of a contract of employment do not include (expressly or by reference to a collective agreement or otherwise) a gender equality clause, they shall be taken to include one.<sup>22</sup>

The four women allege that this provision implies into their employment contracts an equality clause: in effect allowing them a cause of action in common law. This element of their cause of action has been contested and the High Court has agreed to allow a preliminary hearing on this element of the case.<sup>23</sup> This case is ongoing.

Also in response to the *Sheehy-Skeffington v NUI Galway* decision SIPTU members launched an equality campaign, the focus of this campaign was the appointment of an independent external expert to conduct an independent equality review of all aspects of the University’s activities.<sup>24</sup> Additional to this equality campaign was another high profile campaign known as “Michelines Three Conditions”<sup>25</sup> which advocates and fundraises on behalf of the five women litigating against NUI Galway. NUI Galway also responded to the decision in *Sheehy-Skeffington v NUI Galway* and introduced a Task Force on gender

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<sup>22</sup> Employment Equality Acts 1998-2015 (Ireland|IE), s 21(1) a similar provision isSection 30 contains a similar provision in respect of a non-discrimination equality clause. .

<sup>23</sup> *Lannegrand & ors v National University of Ireland Galway* [2016] IEHC 518.

<sup>24</sup> Lorna Siggins, ‘SIPTU Calls for External Audit of Equality at NUI Galway’, *The Irish Times* (8 January 2015).

<sup>25</sup> ‘Michelines Three Conditions’ <<https://michelinesthreeconditions.wordpress.com/about/>>.

equality, while there was some controversy around this Task Force,<sup>26</sup> it did report and forms the basis of NUI Galway's current equality strategy.<sup>27</sup>

Coincidentally, at this time the Athena Swan Charter was launched in Ireland (2015), supported by the Higher Education Authority (HEA). The Athena Swan Charter was established to “encourage and recognise commitment to advancing the careers of women in science, technology, engineering, maths and medicine (STEMM) employment in higher education and research.”<sup>28</sup> Athena Swan accreditation demonstrates that an institution has demonstrated a commitment to advancing gender equality. All seven Universities have committed to achieving Athena Swan awards.<sup>29</sup>

As a consequence of all of the foregoing the issue of gender discrimination was a particularly live topic in NUI Galway, but the issue is not confined to NUI Galway as the HEA statistics establish. The fact that this is a sectoral problem should not offer any comfort to the management of HEIs in Ireland instead it should require them to redouble their efforts to address the prevalence of gender discrimination in the Irish Higher Education sector. It was in the context of this almost perfect storm of pressure, the high profile nature of *Sheehy-Skeffington v NUI Galway* and the surrounding controversy caused the Higher Education Authority (HEA) to commission the Gender Equality Review.

## HEA Report

The report states that extensive “organisational and cultural shift”<sup>30</sup> is needed throughout the Irish Higher Education Institutes (HEIs) to realise gender equality. It is apparent from the report that the Expert Review Group found that the issue of gender inequality within the HEI sector was more significant than anticipated, and it caused them to state that they had “developed recommendations which they themselves would not have believed necessary at the beginning of this process.”<sup>31</sup> It is clear that the purpose of the recommendations is to be disruptive of the *status quo* to force the pace of change.

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<sup>26</sup> Lorna Siggins, ‘Expert Declines “mudflap” Role on Gender Equality Taskforce’, *The Irish Times* (15 May 2015); Lorna Siggins, ‘SIPTU Members Told to Boycott NUI Gender Equality Taskforce’, *The Irish Times* (24 March 2015).

<sup>27</sup> ‘Report of the Gender Equality Task Force, NUI Galway’ (May 2016).

<sup>28</sup> <http://www.ecu.ac.uk/equality-charters/athena-swan/athena-swan-ireland/> last accessed on 12 July 2017.

<sup>29</sup> At the time of writing five of the seven Universities have been awarded the bronze award Higher Education Authority, ‘Prestigious Athena SWAN Charter Awards Announced for Irish Higher Education Institutions’ (*Higher Education Authority*, 15 April 2017) <<http://hea.ie/2017/04/15/prestigious-athena-swan-charter-awards-announced-for-irish-higher-education-institutions/>>.

<sup>30</sup> Higher Education Authority, ‘Report of the Expert Group: HEA National Review of Gender Equality in Irish Higher Education Institutions’ (n 1) 11.

<sup>31</sup> *ibid* 9.

The Gender Equality Review speaks to all stakeholders within the HEI sector, the institutes themselves, the Higher Education Authority,<sup>32</sup> Irish research funding agencies<sup>33</sup> and other relevant bodies. The Gender Equality Review sets out the data context – which establishes the relevant staff statistics disaggregated on the grounds of gender. This data is provided in respect of the leadership, governance, academic and non-academic staff in the Higher Education institutions. The data highlights the disparity of power and position that is evident throughout the HEI sector.<sup>34</sup> The Review sets out a series of “objectives, recommendations, proposed timing and key performance indicators, for each of the stakeholders.”<sup>35</sup> Additionally the Review provides a comprehensive range of approaches for all the relevant stakeholders to assist them to achieve the objectives set out in this report. For the purposes of this paper the focus will be on the recommendations in respect of recruitment and promotion practices addressed to the Higher education institutions with a particular focus on the University sector.

It is important to put this discussion in context. The relevant figures show that women account for 52% of entry level positions, whereas they account for only 19% of professorial positions across the seven universities: however, in some institutions that figure is as low as 13%, and in one women account for 31% of professorial positions.<sup>36</sup> The most damning information relates to the most senior role within the Irish University sector - the President. No woman has ever been appointed to the top job in an Irish University in 425 years! It is hard to draw any conclusion other than the fact that gender discrimination is systemic throughout Irish universities. In effect there are structural “barriers in the organisation and culture within institutions means that talent alone is not always enough to guarantee success.”<sup>37</sup>

The Expert Group concluded that current HEI “recruitment and promotion practices lead to excellence in women being ignored or undervalued.”<sup>38</sup> In order to address this fact there are three recommendations that specifically address promotion and recruitment. The first recommendation requires all HEIs to gender-proof recruitment, selection and promotion procedures and practices this involves reviewing all existing

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<sup>32</sup> The HEA have linked future funding to agreed targets with HEI bodies Higher Education Authority, ‘Higher Education Institutions Will Risk Funding Penalties If They Fail to Address Gender Inequality’ (*Higher Education Authority*, 27 June 2016) <<http://hea.ie/2016/06/27/higher-education-institutions-will-risk-funding-penalties-if-they-fail-to-address-gender-inequality/>>.

<sup>33</sup> Three of Ireland’s research funding agencies announced a plan to make gender equality accreditation (Athena Swan) in higher education institutions a condition of funding by the end of 2019. Higher Education Authority, ‘Only Colleges Addressing Gender Inequality Will Get Funding in New Move by Irish Agencies’ (12 December 2016) <<http://hea.ie/2016/12/12/only-colleges-addressing-gender-inequality-will-get-funding-in-new-move-by-irish-agencies/>>.

<sup>34</sup> Higher Education Authority, ‘Report of the Expert Group: HEA National Review of Gender Equality in Irish Higher Education Institutions’ (n 1) 24–38.

<sup>35</sup> *ibid* 11.

<sup>36</sup> See Higher Education Authority, ‘Higher Educational Institutional Staff Profiles by Gender’ (June 2016) 6–13 for an institutional breakdown of staff numbers by gender.

<sup>37</sup> Chairperson of the Expert Review Group on the launch of the Report Higher Education Authority, ‘Higher education institutions will risk funding penalties if they fail to address gender inequality’ (n 32).

<sup>38</sup> Higher Education Authority, ‘Report of the Expert Group: HEA National Review of Gender Equality in Irish Higher Education Institutions’ (n 1) 71.

procedures to ensure that they are gender sensitive. This process should have commenced in 2016. The second recommendation involves the introduction of positive action measures, namely mandatory gender quotas, to force the pace of change. Recommendation 1.17 states:

Each HEI will introduce mandatory quotas for academic promotion, based on the flexible cascade model where the proportion of women and men to be promoted/recruited is based on the proportion of each gender at the grade immediately below.<sup>39</sup>

The report specifically stated that it was for each HEI to determine how to implement this flexible cascade model. The only caveat to that was that the targets should address the key principle of consistency with the grade below. Therefore if there was a promotion to a senior position such as senior lecturer or professor the promotions should reflect the gender balance in the grade below. For example, if the grade below consisted of 60% women and 40% men then any promotion should ensure that 60% of those promoted are women.

The relevant timeline for the introduction of this affirmative action measure was 2016. Importantly, the recommendations contained in the *The Report of the Gender Equality Task Force, NUI Galway* also concluded that there was a necessity to introduce “gender quotas based on the flexible cascade model is appropriate and necessary.”<sup>40</sup> Two reviews carried out within a year of one another, and independent of one another, one that reviewed a specific institution, the other which reviewed the HEI sector as a whole both concluded that there was a necessity to introduce mandatory gender quotas to ensure gender equality within that system.

The final recommendation on the topic of recruitment and promotion was the recommendation 1.18 which must be achieved by 2024 recommends that all HEIs hire a “minimum of 40% women and 40% men to be full professors, at the appropriate pay scale.”<sup>41</sup> It is self evident that this target cannot be achieved without a more balanced gender spread within the grade below – generally the senior lecturer grade. Currently across the seven universities women account for 35% of all senior lecturers and again that figure varies between institutions. The Gender Equality Review have stated that the existing evidence does not support the view that senior academic positions will reach a natural gender balance with time.<sup>42</sup> This is further supported by the *She Figures 2015* which observed that for the period of 2010-2013 there was no evidence of change “that would indicate a significant amount of progress towards rectifying the gender gap

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<sup>39</sup> Higher Education Authority, ‘Report of the Expert Group: HEA National Review of Gender Equality in Irish Higher Education Institutions’ (n 1).

<sup>40</sup> ‘Report of the Gender Equality Task Force, NUI Galway’ (n 27) 24.

<sup>41</sup> Higher Education Authority, ‘Report of the Expert Group: HEA National Review of Gender Equality in Irish Higher Education Institutions’ (n 1) 72.

<sup>42</sup> *ibid* 70.

observed in the proportion of women [in professorial positions].”<sup>43</sup> Additionally it is evident from the facts in the decision in *Sheehy-Skeffington v NUI Galway* and from the HEA figures<sup>44</sup> that for academic female staff the impact of gender discrimination or the glass ceiling effect is most keenly experienced at that transition from lecturer to senior lecturer. The introduction of a flexible cascading quota is designed to be disruptive to the *status quo* and to act as a hammer to smash that glass ceiling. As women and men are equally represented at lecturer grade, the practical impact of introducing the cascading quota is that the University would promote equal numbers of men and women. So while the introduction of a mandatory quota has attracted a lot of media attention,<sup>45</sup> the actual impact is quite modest – promote equal numbers of men and women. It begs the question – why is there such resistance to this recommendation?

This resistance is evident in the sample quotes provided in the Gender Equality Review. One respondent described as “Female, management, full-time permanent/multi annual” stated: “As a woman I want to get a job/role/promotion because I am the best candidate and not because some quota requires that I do so – in fact I find that idea more insulting and demeaning than any potential gender inequality that I could experience.”<sup>46</sup> Another respondent described quotas as a “blunt force measure that will not help.”<sup>47</sup> The Gender Equality Review noted that a concern was expressed that quotas would compromise the “meritocratic nature of higher education and research and hence compromise excellence.”<sup>48</sup> Curt Rice has also referred to the fact that academics are strongly wedded to the view that progress through the academic structures is meritocratic.<sup>49</sup> There is a perception that hiring or promoting academics is based on objective criteria such as the number and quality of publications, citations, teaching assessments and research funding. However it is evident from decisions such as *Sheehy-Skeffington* and an increasing body of research that all of these “objective” factors are often subject to gender bias.<sup>50</sup> Shen

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<sup>43</sup> European Commission, ‘She Figures 2015’ (2015) 130.

<sup>44</sup> Higher Education Authority, ‘Higher Educational Institutional Staff Profiles by Gender’ (n 36); Higher Education Authority, ‘Report of the Expert Group: HEA National Review of Gender Equality in Irish Higher Education Institutions’ (n 1).

<sup>45</sup> See for example Lorna Siggins, ‘Mandatory Gender Quotas Will “Not Resolve” Issues at NUIG - Siptu’, *The Irish Times* (17 May 2016); Evelyn Ring, ‘Report Says Gender Inequality Still Exists at Third-Level Institutions’, *Irish Examiner* (28 June 2016); ‘3rd Level Institutions Threatened with Funding Cuts to Improve Gender Equality’, *Irish Examiner* (27 June 2016); ‘NUIG Welcome Recommendations to Implement Mandatory Gender Quotas’, *Irish Independent* (11 July 2017).

<sup>46</sup> Higher Education Authority, ‘Report of the Expert Group: HEA National Review of Gender Equality in Irish Higher Education Institutions’ (n 1) 68.

<sup>47</sup> *ibid.*

<sup>48</sup> *ibid.* 70.

<sup>49</sup> Curt Rice, ‘Quotas, Microaggression and Meritocracy’ (*Curt Rice/Science in balance*, no date) <<http://curt-rice.com/quotas-microaggression-and-meritocracy/>>.

<sup>50</sup> There is evidence of gender bias in assessment of CVs, grant applications, teaching evaluations see Helen Shen, ‘Mind the Gender Gap’ (2013) 495 *Nature* 24; Isabelle Vernos, ‘Quotas Are Questionable’ (2013) 495 *Nature* 39; Athene Donald, ‘Gender Issues in European Academic Science’ (*Athene Donald’s Blog*, 21 June 2013) <<http://occamstypewriter.org/athenedonald/2013/06/21/gender-issues-in-european-academic-science/>>; LSE Impact Blog, ‘Student Evaluations of Teaching Are Not Only Unreliable, They Are Significantly Biased against Female Instructors.’ (4 February 2016) <<http://blogs.lse.ac.uk/impactofsocialsciences/2016/02/04/student-evaluations-of-teaching-gender-bias/>>.

referred to an experiment conducted by Yale academic, Jo Handelsman, where 127 professors of biology, chemistry and physics were asked to evaluate two fictitious CVs for a job as a laboratory manager. The CVs were identical except for the name of the applicants' one being John the other Jennifer. The result of that experiment was that the professors said they would offer Jennifer the position for a starting salary of US\$3,730 less per annum than they would offer the same position to John.<sup>51</sup> There is evidence of gender bias in the awarding of grants<sup>52</sup> teaching assessments<sup>53</sup> and citations.<sup>54</sup> Gender bias is evident throughout the so-called objective assessment criteria – and if that research is accurate then it is not a meritocratic system in the first instance.

The introduction of quotas does not occur where a system is fair; they are a response to unfairness within a system. This was perhaps best captured by one of the respondents to the Gender Equality Review described as “Female, research, full-time fixed term contract” stated “Quotas are controversial, but unless you accept that men are cleverer than women we already have a tacit quota, or else how come so many men are in those senior jobs. It cannot be purely on ability!” Additionally a recent study by Sweden’s Research Institute of Industrial Economics examined the effect of quotas on lists of political parties.<sup>55</sup> The authors conclude, contrary to common misperceptions, the impact of the quota was to increase the competence of applicants not to decrease it. The tangible impact of the quota was that more qualified women applied and it reduced applications from the “mediocre” man. This result has been replicated in another study – which highlighted that gender quotas encouraged highly qualified women to apply while simultaneously discouraging less qualified men.<sup>56</sup> Therefore for a sector that prides itself on excellence – it is arguable that quotas are exactly what that system requires to promote excellence. Much of those views are now academic, the Gender Equality Review concluded that “radical action” was necessary in order to change the organisation and culture prevalent within the HEI sector and as a result it has recommended the use of mandatory quotas.

The question this raises is what happens if the institutions do not comply? The flexible cascade model requires the proportion of men and women in the grade immediately below to dictate the quota for promotion/recruitment. Since the introduction of this recommendation a number of promotion rounds have taken place across the Irish

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<sup>51</sup> Helen Shen, ‘Mind the Gender Gap’ (2013) 495 *Nature* 24; Bias is evident in many contexts see Curt Rice, ‘What the World’s Best Orchestras Can Teach Us about Gender Discrimination’ (*Curt Rice/Science in balance*, 1 October 2013) <<http://curt-rice.com/2013/10/01/what-the-worlds-best-orchestras-can-teach-us-about-gender-discrimination/>> which highlights that where auditions for the orchestra were ‘blind’ then women were significantly more likely to be hired.

<sup>52</sup> European Research Council, ‘Annual Report on the ERC Activities and Achievements in 2012’ (2013); Donald (n 50); Shen (n 50); Vernos (n 50).

<sup>53</sup> LSE Impact Blog (n 50).

<sup>54</sup> Curt Rice, ‘The Great Citation Hoax: Proof that Women Are Worse Researchers than Men’ (*Curt Rice/Science in balance*, 19 October 2013).

<sup>55</sup> Timothy Besley and others, ‘Gender Quotas and the Crisis of the Mediocre Man: Theory and Evidence from Sweden.’ (2014) IFN Working Paper No. 985 SSRN 63.

<sup>56</sup> Oded Stark and Walter Hyll, ‘Socially Gainful Gender Quotas’ (2014) 105.

University sector, it is clear that one institution, Dublin City University, has specifically adopted the cascade quota in their recent promotion round.<sup>57</sup> Others have not.<sup>58</sup> Ultimately the recommendations contained in the Gender Equality Review will only be radical when they do disrupt the *status quo* across all HEI bodies and progress on gender equality becomes real and evident. Therefore implementation of the recommendations is the real challenge.

At present the HEA negotiates compacts with HEIs, these compacts consist of key performance indicators and targets under various themes. The Review recommends the introduction of a new theme “promoting excellence through gender equality.”<sup>59</sup> As a consequence each HEI will as part of their negotiations with the HEA have to agree key performance indicators and targets in respect of gender equality and funding will be linked to the institutions performance under these targets. Moreover implementation plans will include a “robust system of follow up evaluation and performance monitoring linked to funding.”<sup>60</sup> Amongst the implementation strategies are the requirement for annual review of HEI progress on gender equality, a process of strategic dialogue with the HEA, and a full review at the end of three years. This later review provides that “HEIs will be at risk of funding being withheld, if they are not addressing gender inequality sufficiently.”<sup>61</sup> While the recommendations set out in the Gender Equality Review have timelines attached to them it is not clear if those timelines will form part of the compacts, or if each HEI can negotiate their own targets and timelines for implementation of the recommendations.

## Conclusion

It is clear that gender discrimination is systemic throughout the HEI sector. The now landmark case of *Sheehy-Skeffington v NUI Galway* has had repercussions far beyond the actual decision. The future of the Irish education system may be about to change as a result of that case. This is all, however, dependent on the implementation of the Gender Equality Review. It is undoubted that the review is in many respects radical, it clearly shines a light on the extent and the pervasive nature of gender discrimination in HEIs – but without implementation it is merely a report gathering dust on the shelves. We await the first review due in two years time with interest.

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<sup>57</sup> Email from Human Resources DCU, ‘Promotion to Senior Lecturer 2017’ (30 January 2017).

<sup>58</sup> NUI Galway introduced a gender quota ensuring that 40% of all applicants promoted must be women. However women occupy 54% of the grade immediately below, therefore if this were the flexible cascade model 54% of those promoted should be women. There are 33 places on offer, therefore in real terms if the flexible cascade model were introduced 18 of those positions should go to women, but with the model suggested 13 of the places will go to women. This is a quota yes, but not the one recommended by the HEA. See Email from Registrar and Deputy President, ‘Senior Lecturer Promotion Scheme 2017 - Now Open for Applications’ (5 March 2017).

<sup>59</sup> Higher Education Authority, ‘Report of the Expert Group: HEA National Review of Gender Equality in Irish Higher Education Institutions’ (n 1) 79.

<sup>60</sup> *ibid.*

<sup>61</sup> *ibid.*