

NHS COMMISSIONING BOARD AUTHORITY

Title: MEETING THE PUBLIC SECTOR EQUALITY DUTY

Clearance: Bill McCarthy, NHS Commissioning Board - Managing Director

Purpose of Paper:

The purpose of this paper is to:

- briefly summarise the statutory duties of the NHS Commissioning Board Authority under the Equality Act 2010; and
- outline the initial action undertaken to ensure that the NHS Commissioning Board Authority is compliant with these duties in the exercise of its functions.

Key Issues and Recommendations:

As a statutory body listed under schedule 19 of the Equality Act 2010 and schedule 1 of its regulations, the Authority must be fully compliant with both the general and specific Public Sector Equality Duties from the outset.

Work has already begun to embed equality in our activities. An equality analysis has been undertaken to assess the equality impact of the Authority's functions and identify key actions required to ensure compliance.

We recommend that the board:

- receives a copy of the published equality analysis for information at its next meeting; and
- receives a draft response to the equality analysis for consideration at its next meeting.

Actions Required by Board Members:

1. Note the general and specific equality duties, including the requirements to:
 - publish sufficient information to demonstrate compliance with the general equality duty across its functions by 31 January 2012; and
 - prepare and publish equality objectives by 6 April 2012.

2. Note the work underway to ensure compliance.

MEETING THE PUBLIC SECTOR EQUALITY DUTY

The Legal Context

1. As a statutory body listed under schedule 19 of the Equality Act 2010, the NHS Commissioning Board Authority must be fully compliant with both the general and specific equality public sector equality duties in exercising its functions.
2. The general duty is set out in the Equality Act 2010 itself and requires the Authority to have due regard to the need to:
 - (a) Eliminate discrimination harassment and victimisation and other conduct prohibited by the Act;
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not;
 - (c) Foster good relations between people who share a protected characteristic and those who do not.
3. Under the Act, protected characteristics include age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation and – for the discrimination element of the duty only – marriage and civil partnership.
4. The specific duties, set out in The Equality Act 2010 (Specific Duties) Regulations 2011, help public bodies to comply with the general duty by improving the focus and transparency of their activities to meet the duty. In summary, the Authority will be required to:
 - (a) **Publish sufficient information to demonstrate its compliance with the general duty across all its functions.** Information must be published by 31 January 2012 and annually thereafter, and should include:
 - Information on the effect that its policies and functions have had on its employees, patients and others affected by its practices
 - Analysis undertaken to determine whether its policies and practices have furthered the three elements of the general equality duty
 - Details of the information used in carrying out the analysis
 - Details of engagement it undertook with people with an interest in its equality performance

As the Authority currently has fewer than 150 employees, it is not required to publish data on the effects its functions have on its employees. However, it will need to publish any equality analysis undertaken on employment policies and practices and the information used in that analysis.

- (b) **Prepare and publish equality objectives it thinks it should achieve to meet one or more aims of the general duty.** The objectives must

be specific and measurable (detailing *how* they will be measured), informed by the information previously published and include details of the engagement undertaken to develop the objectives. Initial objectives must be published by 6 April 2012 and then at least every four years thereafter.

Action To Date

5. In order to meet its legal duty, the Authority needs to promote equality across all of its business, strategically and systematically. To support this work, the Authority has appointed an official to lead this work.
6. One of the first tasks of this role was to undertake an equality analysis of the Authority's initial functions. Building on the comprehensive equality analysis of 'Liberating the NHS: commissioning for patients', the analysis considered the possible impacts of the Authority's functions on protected groups, identifying the key actions required to ensure compliance.
7. In addition, the role also focuses on embedding equality in the programme management arrangements for NHS Commissioning Board development and implementation, to ensure that the Authority is systematically considering how the promotion of equality is incorporated into the design of each function. Promoting equality is one of the quality criteria for function design; the detail behind this criterion is currently being developed alongside the scoping of the programme. In addition, equality and reducing health inequalities is one of the four 'lenses' through which we view the design of the NHS Commissioning Board. This means that the promotion of equality should be 'hard wired' into the Commissioning Board's relationships, processes and structures.

Next Steps

8. The equality analysis is in the process of being finalised for publication before 31 January 2012. A note will be sent to Board members prior to its publication.
9. A draft of the official response to the analysis will be brought to the next Board meeting for the Board's consideration.

Resources:

- Equality Act 2010
http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf
- Equality Act 2010 (Specific Duties) Regulations 2011
http://www.legislation.gov.uk/ukdsi/2011/9780111512951/pdfs/ukdsi_9780111512951_en.pdf
- Equality and Human Rights Commission (2011) The essential guide to the public sector equality duty.
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/essential_guide_guidance.pdf