

Equality analysis *NHS Standard Contract 2013/14*

Introduction

The general equality duty that is set out in the Equality Act 2010 requires public authorities, in the exercise of their functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not;
- foster good relations between people who share a protected characteristic and those who do not.

The general equality duty does not specify how public authorities should analyse the effect of their existing and new policies and practices on equality - it is for each organisation to choose the most effective approach - but doing so is an important part of complying with the general equality duty. The Department of Health (DH) produced and acted upon a comprehensive Equality Analysis of the NHS Standard Contract 2012/13.

This Equality Analysis builds upon that work and addresses:

- the progress made against the 2012/13 action plan (Appendix A);
- the change in commissioning landscape arising from the introduction of clinical commissioning groups (CCGs) and the NHS Commissioning Board (NHS CB);
- legislation that has been published since the Equality Analysis of the NHS Standard Contract 2012/13 was produced and how this has impacted on the 2013/14 Contract;
- an action plan to address 2013/14 issues.(Appendix B).

There has been wide stakeholder engagement throughout the development of the 2013/14 Contract. This has included extensive engagement with a range of providers and provider representative organisations (including the voluntary and independent sectors) to help ensure that there is no discrimination between types of providers.

Note: This analysis does not seek to reiterate the Equality Analysis of the NHS Standard Contract 2012/13 but to confirm its relevance and add value.

Progress against the 2012/13 action plan

All of the actions in the 2012/13 action plan have been completed to time or are ongoing and to plan as set out in Appendix A. Actions still to be completed have been carried forward to the action plan for 2013/14 (Appendix B).

The change in commissioning landscape

From 1 April 2013 PCTs will cease to exist and responsibility for commissioning NHS healthcare services will pass to CCGs and the NHS CB. The Equality Analysis of the NHS Standard Contract 2012/13 took into account that in 2013/14 the focus of contracting would be based on the service requirements and outcomes defined and negotiated by CCGs and the NHS CB.

Legislation that has been published since the Equality Analysis of the NHS Standard Contract 2012/13 and how this will impact on the 2013/14 Contract

The Health and Social Care Act 2012 creates legal duties for the Secretary of State for Health, NHS CB and CCGs to have regard to the need to reduce health inequalities. These duties complement the existing Public Sector Equality Duty (Equality Act 2010) to which the NHS CB and CCGs will also be subject.

As part of these duties, the NHS CB will set out in its business plan how it intends to exercise its duty to have regard to the need to reduce health inequalities, reporting in its annual report on how effectively it has done so.

Meeting these objectives and reporting yearly on progress will be a powerful force for tackling inequalities and improving the health of the most vulnerable through the commissioning system.

The NHS CB is subject to the Public Sector Equality Duty, which requires public bodies to have due regard to the need to:

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

Ban on age discrimination

From 1 October 2012, the Government fully implemented the ban on age discrimination enshrined in the Equality Act 2010, giving protection against age discrimination in services, clubs and associations and in the exercise of public functions. This is one of the last parts of the Act to come into force in England, Wales and Scotland. The NHS CB has promoted the briefing on the ban prepared by the DH for those who plan, commission or provide NHS services, whether in the NHS, voluntary or private sectors.

From 1 October 2012, it has been unlawful for service providers and commissioners to discriminate, victimise, or harass a person because of age. A person will be

protected when requesting, and during the course of being provided with, goods facilities and services. If a member of the public aged 18 or over believes that they have been treated less favourably because of age, they will be able to take organisations or individuals to Court – and may be awarded compensation. A case could be taken against health organisations (such as hospitals or commissioning bodies), individual clinicians (e.g. consultants, GPs or allied health professionals) or others working in the health sector (such as managers).

In order to address this part of the Act, the NHS Standard Contract for 2013/14 includes this reference to age discrimination in the Equity of Access, Equality and Non-Discrimination clause stating “The parties must not discriminate between or against Service Users, Carers or Legal Guardians on the grounds of age, disability , gender reassignment, marriage or civil partnership, pregnancy or maternity, race religion or belief, sexual orientation or any other non-medical characteristics, except as permitted by the Law”.

The mandate

Under the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012), the Government must set objectives for the NHS CB in a ‘mandate’. The mandate is a multi-year document setting rolling objectives, but refreshed annually following consultation. The first mandate between the Government and the NHS CB setting out the ambitions for the health service for the next two years was published on 13 November 2012. The mandate provides democratic legitimacy for the work of the Board. It will be updated annually and laid before Parliament. The Government has indicated that it will strive to keep changes between mandates to the minimum necessary. In this way, the mandate will help provide greater stability for the NHS to plan ahead, innovate and thrive.

The mandate, in conjunction with the NHS Outcomes Framework, is one of the main formal accountability documents setting objectives for the NHS CB. It is one part of a broader relationship through which the Secretary of State for Health will hold the NHS CB to account for its performance. The NHS CB will also operate to standard Government accountability features such as framework agreements setting out working relationships and a limited number of financial directions. In addition, the 2006 Act (as amended by the 2012 Act) and associated regulations set out the services that the NHS CB is required to commission itself and impose requirements on the NHS CB in relation to its commissioning functions.

The key objectives in the mandate include:

- improving standards of care and not just treatment, especially for older people;
- better diagnosis, treatment and care for people with dementia;
- better care for women during pregnancy, including a named midwife responsible for ensuring personalised, one-to-one care throughout pregnancy, childbirth and the postnatal period;
- giving every patient the ability to give feedback on the quality of their care through the Friends and Family Test starting from April 2013, so that patients will be able to tell which wards, A&E departments, maternity units and hospitals are providing the best care;
- enabling everyone by 2015 to be able to book their GP appointments online, order a repeat prescription online and talk to their GP online;

- putting mental health on an equal footing with physical health – this means everyone who needs mental health services having timely access to the best available treatment;
- preventing premature deaths from the biggest killers;
- enabling everyone by 2015 to be able to find out how well their local NHS is providing the care they need, with the publication of the results it achieves for all major services.

The NHS CB will oversee the way that over £95 billion of taxpayers' money is spent to secure NHS services for the people of England. It will need to ensure that working to achieve equitable outcomes is built into all aspects of its functions so that this money is used effectively.

The DH published an Equality Analysis of the mandate to the NHS CB for the period April 2013 to March 2015) in November 2012. The Equality Analysis (EA) undertaken to assess the potential impact that the mandate may have on people sharing protected characteristics as outlined in the Public Sector Equality Duty produced the following summary:

- the Mandate sets the foundation for the NHS CB to meet its duties to advance equality and reduce health inequalities;
- in order for the NHS CB to meet its objectives and improve outcomes for all, it is vital that it considers the health needs of people who share protected characteristics;
- making health information more accessible to the public could potentially impact on people who have been in abusive relationships or people from the lesbian, gay, bisexual and transgender community;
- DH fully expects the mandate to help reduce inequalities and improve outcomes for all and this will remain an active consideration in the production of future mandates.

The EA Action Plan gave the following list of actions for improvement:

- greater emphasis placed on the need to reduce inequalities in the NHS Act 2006, as amended by the Health and Social Care Act 2012;
- focus on outcomes via the NHS Outcomes Framework; and
- framework agreements setting out working relationships between the DH and NHS CB.

The Mandate will be reviewed annually following engagement with key stakeholders and comprehensive feedback on the NHS CB's performance, which will include an examination of the work the NHS CB has done to reduce inequalities and advance equality.

The NHS Standard Contract for 2013/14 includes a new Duty of Candour clause. This means that NHS organisations will be required to tell patients if their safety has been compromised, apologise, and ensure that lessons are learned to prevent them from being repeated. Although all NHS organisations have been expected to be open about mistakes, there has previously been no contractual duty to hold them to account when this does not happen.

The Equality Delivery System for the NHS

The Equality Delivery System (EDS), first published in November 2011 and amended in January 2012, is designed to help NHS organisations improve equality performance, embed equality into mainstream NHS business and is one of the key products to come out of [the Equality and Diversity Council \(EDC\)](#).

The EDS is designed for the NHS by the NHS. Commissioners, in discussion with providers, should play a part in promoting equality throughout the local health system. Through their contracts, they should confirm providers are aware of their duty under the Equality Act, and they can encourage them to adopt the EDS if they have not already done so.

The 2013/14 Contract Guidance recommends that commissioners' service specifications should clearly set out requirements for protected groups where there is a need to do so. Contracts and service specifications may also encourage providers to recruit, retain and develop a workforce with the appropriate skills and competencies to deliver what is required, in support of the Care Quality Commission's essential standards. Through their contract monitoring, commissioners can ensure that providers are working towards better health outcomes for all and improved patient access and experience. The EDS can provide a tool to flag issues of concern that can be dealt with through the contract monitoring process.

Where there is agreement from all parties, providers may also share EDS grades and equality objectives with NHS commissioners, for comment and possible action. Providers should use the contracting process as a means of reporting their grades and equality objectives to their commissioners or in other agreed ways.

Applicant CCGs were required as part of the authorisation process to make declarations of compliance with the public sector equality duty. The NHS CB advised applicant CCGs to use the EDS (or equivalent) to help demonstrate compliance and ensure good equality performance. In May 2012, the NHS CB published information sheets on equality to support prospective CCGs in their development and in their preparations for authorisation.

Summary

The NHS Standard Contract is mandated for all relevant NHS funded services and is updated annually. The 2013/14 Standard Contract reflects key equality objectives within the Government's mandate to the NHS CB, including contractual requirements in relation to preventing age discrimination and implementing the new duty of candour.

The Action Plan for 2012/13 was completed and where there were ongoing actions these have been carried forward into the Action Plan for 2013/14.

References

Equality Analysis of the Mandate

<https://www.wp.dh.gov.uk/publications/files/2012/11/Full-EA-Mandate-v11.pdf>

Implementing a ban on age discrimination in the NHS – making effective, appropriate decisions

<https://www.wp.dh.gov.uk/publications/files/2012/09/ban-on-age-discrimination.pdf>

Equality Analysis – NHS Standard Contract 2012-13

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_132123.pdf

The Government's Mandate to the NHS Commissioning Board: April 2013 to March 2015

<http://mandate.dh.gov.uk/>

Appendix A

Category	Actions	Target date	Person responsible and their Directorate	Complete/Other at 4 December 2012
Involvement and consultation	Stakeholder engagement in developing the drafting for the 2013/14 Contract.	From March 2012	Richard Dodds (CSM-Provider Policy)	Complete
Data collection and evidencing	Ernst and Young were externally commissioned to review current PCT contracts, the project is known as Deep Dive. As well as collecting hard data concerning contract numbers and values, the review also includes 'soft' data gathering from contract managers at the test sites covering performance management issues. Ongoing in 2012/13.	Completion of transfer of responsibilities from PCTs to new Commissioning Authorities	Richard Dodds (CSM-Provider Policy)	Complete
Analysis of evidence and assessment	We will commit to look at the results and information from the 'Deep Dive' work and consider whether there are any implications to be investigated when undertaking the development of contracts for 2012/13. Update in December 2011 – Action completed via David Flory letter issued on 10 November 2011 to SHA and PCT Cluster chief executives.	Completion of transfer of responsibilities from PCTs to new Commissioning Authorities	Richard Dodds (CSM-Provider Policy)	Complete
Monitoring, evaluating and reviewing	The responsibility for the future evaluation and review of the NHS standard contract from 2013/14 onwards will lie with the NHS Commissioning Board. The exact process for monitoring the development is yet to be determined.	Developed during quarter 3 and quarter 4 2012/13	Richard Dodds (CSM-Provider Policy)	Ongoing
Transparency (including publication)	PCTs are required to publish redacted copies of new tenders and contracts over the value of £10,000 in line with the Government's commitment to increase transparency. Clause 60.7 of the 2012/13 Contract enforces this, establishing a contractual right for the contracts to be published subject to the provisions of the Freedom of Information Act.	Ongoing	Commissioners	Ongoing
Guidance being published for the 2012/13 NHS standard contract	The 2012/13 Contract will be supported by guidance to assist commissioners with the implementation of the Contract. Supporting templates will accompany the Contract's guidance as additional support.	End Dec 2012	Richard Dodds (CSM-Provider Policy)	Complete

Appendix B

Category	Actions	Target date	Person responsible and their Directorate
Involvement and consultation	Stakeholder engagement in developing the 2014/15 Contract.	From April 2013	Ben Dyson NHSCB Commissioning Development Directorate
Data collection and evidencing	Focus on outcomes via the NHS Outcomes Framework. Information reasonably required by Commissioners to monitor equity of access to the Services and fulfil their obligations under the Law. This is an additional new requirement in the Information schedule.	Ongoing	Ben Dyson NHSCB Commissioning Development Directorate
Analysis of evidence and assessment	The NHS CB will undertake a review of levers and incentives during 2013/14. This will need to include an assessment of how levers and incentives can support delivery of equality objectives.	End November 2013	Ben Dyson NHSCB Commissioning Development Directorate
Monitoring, evaluating and reviewing	The responsibility for future evaluation and review of the NHS standard contract will lie with the NHS CB. The exact process for monitoring the development is yet to be determined.	End September 2013	Ben Dyson NHSCB Commissioning Development Directorate
Transparency (including publication)	PCTs are required to publish redacted copies of new tenders and contracts over the value of £10,000 in line with the Government's commitment to increase transparency. Clause 60.7 of the 2012/13 Contract enforces this, establishing a contractual right for the contracts to be published subject to the provisions of the Freedom of Information Act	Ongoing	Commissioners