

Public Sector Equality Duty for CCG's

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About the Equality and Human Rights Commission (EHRC)

- Set up in October 2007.
- Merged the three previous equality commissions: the Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and the Equal Opportunities Commission (EOC).
- The Commission has about 180 staff and has offices in England, Scotland and Wales



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The Commissioners

- Baroness Onora O'Neill - Chair of the Commission - is a cross-bench peer in the House of Lords who holds the title of Honorary Professor of Philosophy, Emeritus, University of Cambridge and is highly regarded as a specialist on human rights.

There are a further eight Commissioners, including a Wales Commissioner, Scotland Commissioner and Disability Commissioner who bring experience from the business , public and voluntary sector.

Our mandate

Parliament gave the Commission the mandate to challenge discrimination, and to protect and promote human rights.

Our mission

A catalyst for change and improvement on equality and human rights

Our roles

- Outcomes-focused strategic regulator
- Promoter of standards and good practice
- Authoritative centre of intelligence and innovation
- Trusted partner

EHRC's statutory duties

- Equality Act 2006
- Equality Act section 8 – promote understanding of equality and diversity; encourage good practice; promote understanding of the law; work towards eliminating unlawful discrimination and harassment
- Sole responsibility for monitoring and enforcing s149 Equality Act 2010 the public sector equality duty
- Monitor the effectiveness of equality and human rights law and advise government (s11)
- Monitor relevant changes in society and report regularly (s12)
- Human rights s9 – promote understanding of importance of human rights; encourage good practice; promote awareness, understanding and protection of human rights; encourage public authorities to comply with s6 HRA (compliance with Convention rights)
- National Human Rights Institution

Strategic Priority 1

To promote fair access to public services, autonomy and dignity in service delivery

- Ensure the specific public sector equality duties are understood and used to deliver better policies, improved service delivery, better outcomes and experiences.
- Promote dignity and autonomy in the delivery of health and social care services by the range of providers.
- Encourage, monitor and report on Britain's progress and compliance with international equality and human rights conventions.
- Build the capacity of the voluntary sector to improve equality and human rights performance across all their functions.

Public Sector Equality Duty – what is it's purpose?

- Broad aim is to integrate consideration of the advancement of equality into the day-to-day business of all bodies subject to the duty.
- Two interlinked parts to the PSED – ‘general’ duty and ‘specific’ duties.
- General equality duty purpose - accelerate progress towards equality for all, by placing a responsibility on organisations subject to the duty to consider how they can work to tackle systemic discrimination and disadvantage affecting people with particular protected characteristics.
- General equality duty shifts the responsibility for upholding the law on to organisations rather than individuals having to enforce the law themselves

Genesis and summary of the PSED

- Equality Act 2010 consolidated the Race Equality Duty, Disability Equality Duty and Gender Equality Duty into a single PSED, covering all protected characteristics, using 'due regard' model, as for the former duties
- PSED came into effect April 2011
- PSED applies to **all** functions of public authorities that are listed in Schedule 19 Equality Act 2010 – includes CCG's!
- PSED general duty also applies to other organisations when performing public functions (e.g. private companies running prisons and private or third sector care companies when carrying out public functions)



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How the PSED works

General duty – section 149 Equality Act 2010

In exercising their functions, public authorities must have due regard to the need to:

Eliminate unlawful discrimination, harassment and victimisation

Advance equality of opportunity between people sharing a protected characteristic, and others

Foster good relations between people sharing a protected characteristic, and others

Protected Characteristics – protected by the Equality Act

Age

Disability

Gender reassignment

Race

Religion or belief

Sex

Sexual orientation

Marriage and civil partnership

Pregnancy and maternity



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How the PSED works: Specific duties

Listed public authorities (Schedule 19 Equality Act):

- Must publish information on people affected by their policies and practices – i.e. service users and their employees (if 150 staff or more)
- Must prepare and publish one or more specific and measurable equality objectives
- Information and objectives must be published so as to be accessible to the public

PSED specific duties for Clinical Commissioning Groups - dates

- CCGs required to publish equality information by 31st January 2014 and by that date annually thereafter.
- CCGs required to publish equality objectives by 13th October 2013 and are then required to review them within 4 years from that date (unlike most other public authorities which were required to publish by 6th April 2012).



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Commission's role as PSED regulator

Commission's regulatory role has several interlinked elements:

Informing - providing information/guidance on the PSED

Promoting best practice in complying with the PSED

Monitoring implementation and compliance, including through research

Enforcing - where appropriate, taking pre-enforcement/ enforcement action

Assessing the effectiveness of the legislation (including enforcement powers)

Tackling non-compliance through enforcement action

Preferable for EHRC to *work with* public authority to agree a programme of action to ensure compliance

If there is evidence of problems within a sector, EHRC may collaborate with relevant government department, umbrella body or regulator/inspector.

Formal legal approaches are a last resort:

- Assessments of compliance with general duty e.g. Job Centre Plus re staffing and HM Treasury re 2010 budget.
- Issuing compliance notices (general or specific duties)
- Formal inquiry e.g. our Home Care Inquiry, Disability Harassment Inquiry and current Inquiry into non-natural deaths in detention of adults with mental health conditions.
- Agreement with a public body to comply with PSED
- Judicial review brought in Commission's own name
- Interventions in PSED cases brought by individuals e.g. R (McDonald) v Royal Borough of Kensington and Chelsea and Bracking v S.O.S for Work and Pensions.



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Benefits of compliance with the PSED for your organisations and patients

- Better-informed decision making and policy development
- Clearer understanding of the needs of service users, resulting in better quality services which meet varied needs.
- More effective targeting of policy and resources.
- Better results and greater confidence in, and satisfaction with, services.
- More effective use of talent in the workforce
- Reduction in instances of discrimination and resulting claims.
- Transparency of CCG activity to address equality
- Avoidance of enforcement action by EHRC

What are the benefits of compliance with the PSED for patients and for your organisations?

Case study: NHS Hillingdon CCG analysed cancer death data. They found that a large proportion of cancer deaths were due to bowel cancer and that the highest death rates were in a part of the borough with a high Asian population. The CCG's public health team launched an awareness campaign in the South of the borough.

They found that members of the Asian community had more limited awareness of the symptoms of bowel cancer.

The CCG took the following actions:

- Distributed leaflets about bowel cancer in English and relevant Asian languages.
- Organised workshops through community groups and charities particularly targeting Asian communities or religious centres.
- Displayed campaign posters on buses and in tube stations.
- Promoted messages via an Asian radio network.

Outcome: Awareness of the main symptoms of bowel cancer increased among people who had seen or heard at least one element of the awareness campaign.

Case study: The Royal Marsden NHS FT analysed equality information on people who did not attend diabetic eye screening appointments. They found that the highest non-attendance rate (40%) was in the 22-31 age group.

To improve accessibility for patients of working age the screening service started to provide weekend clinics and enabled patients to make and change appointments by email so busy patients no longer had to call during working hours.

Outcome: These initiatives contributed to reducing the overall non-attendance rate, from 21.2 percent in 2011/12 to 15 percent in 2012/13. This represents a significant financial saving for the trust and should over time lead to reduction in sight loss among patients of working age.

Equality information also suggested that White and Asian females and African males had higher non-attendance rates when compared with other ethnicities. However, the service cautioned against drawing conclusions due to the quality of this data. They have amended the data collection process for primary care providers. This will provide a more complete ethnicity profile for the population in future and will be used to re-audit service uptake in 2014/15.

Case study: NHS Peterborough -Truth about TB Campaign,

Following significant increases of TB cases in Peterborough the PCT undertook a wide ranging consultation to ascertain levels of awareness of TB and how best to communicate key messages about services and support available.

The Truth about TB Campaign targeted children and adults from the Pakistani community to help change behaviours through raising awareness and by maximising engagement with the community and clinicians.

NHS Peterborough developed a pilot scheme 'TB or not TB' to establish training programmes for clinicians working in the community with high risk groups.

Outcome:

- Improved awareness of TB symptoms within Pakistani community
- Translated appointment letters improved access
- Improved care pathways for TB referrals



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What do CCGs need to do to comply with the PSED?



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What do CCGs need to do to ensure compliance with the PSED general equality duty? (1)

CCGs will find the following principles useful in deciding what action they need to take to ensure they are complying with the general equality duty:

- knowledge of the duty
- timeliness
- real consideration
- sufficient information
- non-delegable
- review, and
- evidence of consideration



What do CCG's need to do to ensure compliance with the PSED general duty? (2)

- Ensure CCG decision makers understand the duty
- Ensure sufficient equality evidence is taken into account throughout the decision-making process (could include information published to meet specific duty)
- Give due weight to the equality aims in making decisions

Which CCG functions are relevant to the general equality duty?

In practice all functions of a CCG related to patient care are likely to be highly relevant to one or more aims of the general equality duty because of their direct impact on the lives of individuals.



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Ensuring a sound evidence base (1)

- To give proper consideration to the aims set out in the general duty, a CCG will need to have enough evidence of the impact its policies and practices are having, or are likely to have, on people with different protected characteristics.
- Adequate and accurate equality evidence, properly understood and analysed, is at the root of effective compliance with the general duty. Without it, an organisation subject to the duty would be unlikely to be able to have due regard to its aims. (N.B. Link to specific duty)

Ensuring a sound evidence base (2)

Benefits of a reliable evidence base:

- understand the effect of its policies, practices and decisions
- consider whether further research or engagement is necessary
- consider whether there are ways of mitigating any adverse impact identified
- decide whether to modify, or reconsider a policy, practice or decision
- identify equality priorities; for listed authorities this includes developing equality objectives
- monitor their progress against these objectives.



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Giving due weight to the equality aims in making decisions – principles

The courts have established the following principles which an organisation subject to the duty should take into account in making decisions to which the duty applies:

- The duty means that the potential impact of a decision on people with different protected characteristics is always taken into account by a body subject to the duty as a mandatory relevant consideration.
- Where large numbers of people in vulnerable situations– very many of whom share a relevant protected characteristic – are affected consideration of the matters set out in the duty must be very high.
- However even if the number of people affected by a particular decision may be small, for example a decision which affects transsexual people, the seriousness or extent of discrimination and harassment might be great. The weight given to the aims of the duty is not necessarily less when the number of people affected is small.

Ensuring due regard to the PSED in decision making

- Having ‘due regard’ means that in making decisions and in its other day-to-day activities a CCG must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations.
- How much regard is ‘due’ will depend on the circumstances and in particular on the relevance of the aims in the general equality duty to the decision or function in question.
- The greater the relevance and potential impact, the higher the regard required by the duty.
- E.g. compared to the purchase of stationery, the decisions a CCG makes about the commissioning of secondary health care will have greater potential impact and more relevance to the aims of the duty and so will need a higher degree of regard.

Ensuring due regard to the PSED in decision making

- Lots of cases in which the courts have considered whether an organisation has paid due regard.

- In *R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158 the court considered what a relevant body has to do to fulfil its obligation to have due regard to the aims set out in the general equality duty.

- The six 'Brown principles' it set out have been accepted by courts in later cases.

- *R (Stuart Bracking & Others) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 reaffirmed the Brown principles

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Engagement

Engagement with people likely to be affected by a CCG's decisions may help compliance with the general equality duty.

The information and insights that can be gained from engagement will help a CCG to understand the actual or potential impacts of its policies and practices.

Engagement in practice

In deciding how to carry out engagement in practice, a CCG could ask itself:

Are there existing mechanisms in place and are they accessible to and used by people with different protected characteristics?

Are people with certain protected characteristics currently under-represented?

What steps could be taken to address any under-representation?

Can it work with other bodies on any engagement exercises to maximise the use of resources and to reduce 'engagement fatigue'? (e.g. local authority and local health trusts)

How it will reflect the outcome of any engagement?



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Case study: Patient and public engagement in commissioning, NHS Leicester City

To improve patient and public engagement in commissioning decisions, NHS Leicester City has trained 10 lay patient representatives to sit on commissioning panels to support the PCT with investment and disinvestment decisions. The aims and objectives of the panel are:

- To involve patients and the public in the Commissioning Cycle
- To engage more proactively with patients and the public to make sure the services procured truly match the requirements of the people of Leicester
- To help the PCT to decide the best providers, from a patients perspective
- To have a patient panel representative of the population of Leicester
- To run two patient panels: diabetes services and renewal of 4 GP contracts plus one new GP contract in the City.



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Relevant EHRC guidance

Equality Act 2010: Technical Guidance on the Public Sector Equality Duty: England (currently being updated)

Mainstreaming equality considerations in procurement: A guide for public authorities in England.

<http://www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/guidance-procurement>

Engagement and the equality duty: A guide for public authorities.

http://www.equalityhumanrights.com/sites/default/files/documents/EqualityAct/PSED/ehrc_psed_engagement_web.pdf



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