

Options Appraisal for the Introduction of a Workforce Disability Equality Standard

1. Background

At its meeting in July 2015, the Equality and Diversity Council (EDC) considered the research carried out by Middlesex and Bedfordshire Universities about the experience of disabled staff in the NHS workforce. The EDC asked that a task and finish group be established to consider a range of the (already considered by EDC) options for introducing a Workforce Disability Equality Standard to improve the experience of disabled staff in the NHS.

The Workforce Disability Task and Finish Group met three times during September and October. Membership comprised NHS England, Public Health England, the Trust Development Authority, NHS Employers, NHS Leadership Academy, Care Quality Commission, Trades' Union partners, Disability Rights UK, and Middlesex and Bedfordshire Universities. The group was co-chaired by NHS Leadership Academy and NHS England.

Between meetings group members were asked to engage as widely as possible with their own networks to help inform the options appraisal. The time frame meant that engagement was limited, but the group was able to engage with 25 organisations through the NHS Equality Partners' Programme, and with a small number of disabled staff.

A report was submitted to the Leadership and Workforce Group (LWG) on 29 September. The views of both the Task and Finish Group, and the LWG are reflected in the recommendations in section 5 below.

2. Desired Impact

In considering what options are available it is helpful to think about what we would like to see differently in five years' time, in the context of an NHS where disability is seen as an asset and disabled staff help shape and inform service planning and delivery. The NHS aspires to be an organisation where:

- The numbers of staff declaring they have a disability on the staff survey is comparable to those who have confidence to declare their disability on the Electronic Staff Record (ESR) System;

- Disabled staff have the same, or higher levels of support in the workplace as their non-disabled counterparts staff with and without disabilities;
- There is no difference in the appraisal rates, or the experience and quality of appraisals between staff with and without disabilities;
- Disabled staff have the same experience of and access to training (both mandatory and non-mandatory) as non-disabled staff;
- Reasonable adjustments for disabled staff take place routinely, are regularly reviewed and make a difference to the experience of the NHS as a work place;
- Job satisfaction is the same for disabled staff as non-disabled staff;
- Representation of disabled staff at all levels within the NHS workforce is proportionate to the local working age population;
- Staff who become disabled during the course of their employment are supported, and this is recorded on the ESR system;
- Data of disabled staff is recorded by type of disability, and not just as 'disabled' or 'non-disabled'.
- There is no difference in bullying and harassment levels between disabled and non-disabled staff, in an environment where there is a zero tolerance approach to all bullying and harassment.

3. Options considered

The Task and Finish Group looked at five options for improving the experience of disabled staff. These were:

1. Create a standalone Workforce Disability Equality Standard (WDES) to be mandated in the standard NHS Contract;
2. Introduce a standalone WDES as the next stage for the development of a generic Workforce Equality Standard, this being the second tranche;
3. Include a WDES in the already mandated Equality Delivery System (EDS2);
4. Introduce a voluntary WDES;
5. Carry out a national engagement campaign to prepare the way for the WDES consultation and action learning process with key disability stakeholder groups with a view to building a consensus for best ways forwards including identifying and overcoming any perceived barriers and obstacles.

Two analyses of these options have been carried out by the Task and Finish Group, one covering strengths, weaknesses, opportunities and threats, and a second

considering the decision making framework. The decision making framework was identified as:

- Strategic fit: the extent to which the option complements/enhances other strategic workforce initiatives happening across health and social care
- Assurance: good governance, providing evidence that legal duties are being met, and promoting business and moral imperatives.
- Ownership: the extent to which the option will promote and encourage ownership of the issue amongst the workforce
- Cost: an estimate of the potential cost of each option
- Legality: the extent to which the option will improve the legal compliance of organisations

As a result of the conversations not all options were deemed possible and the discussion focussed on those which were practical, and delivered the impact sought. Annex A provides some information on the options considered, together with the initial feedback from the limited engagement undertaken.

4. Broader Context

All of the above options need to be considered within the broader context of what is happening in the disability arena at the moment.

Nationally, there has recently been a call for evidence from the House of Lords Select Committee on the Equality Act 2010 and Disability: <http://www.parliament.uk/business/committees/committees-a-z/lords-select/equality-act-2010-and-disability/news-parliament-2015/call-for-evidence/>. The purpose of this is to assess how effective the legislation has been in addressing discrimination against disabled people. The Committee is scheduled to report on its findings by March 2016.

On a more operational front, the Government – through the Department for Work and Pensions – has recently re-launched / refreshed the Disability Confident campaign: <https://www.gov.uk/government/collections/disability-confident-campaign>. This is an initiative designed to increase the level of confidence amongst employers to employ and engage with disabled people. NHS England and NHS Employers are working closely with the DWP to cascade and promulgate this message out to the service. In addition, we are seeking clarification on the future plans and funding for both Access to Work and the Two Ticks scheme.

Within the health and social care sector itself, there has recently been a big push (initiated by the EDC) to increase the employment opportunities for people with learning disabilities: <http://www.nhsemployers.org/your-workforce/plan/building-a-diverse-workforce/need-to-know/creating-a-diverse-workforce-learning-disability>. This work has included a pledge campaign in which individual health and social care

organisations have been encouraged to sign up to positively participating in this initiative and to increase their numbers of employees with learning disabilities.

5. Recommendations

After careful consideration the Workforce Disability Task and Finish Group is making the following recommendations:

- a. Undertake wider engagement and a campaign of service action, with a view to implementing a mandated standalone WDES from April 2017, (giving the opportunity to learn lessons from the implementation of the Workforce Race Equality Standard WRES). This initiative would consider the broader policy context for employing disabled people detailed above, and would include liaison with the Department for Work and Pensions (DWP), and the Disability Confident campaign.
- b. Use the campaign and engagement exercise as an opportunity to consolidate and refine the draft metrics for a WDES;
- c. If 5a and 5b are progressed, at a future point the EDC may wish to consider the accumulated impact of several separate equality standards upon the system and upon other agents of change, including EDS2.

**Workforce Disability Task and Finish Group
October 2015**

Annex A

Option 1: Create a standalone Workforce Disability Standard (WDES) to be mandated into the NHS Standard contract.				
Strengths	Weaknesses	Opportunities	Threats	
<p>Mandating this would give the WDES the same kudos as the already mandated Workforce Race Equality Standard (WRES).</p> <p>-This would be seen as a positive response to the WRES consultation for which feedback indicated a desire for work taking place which promoted other protected groups to the same level that the WRES does for BME people.</p> <p>-The standard would include qualitative and quantitative metrics to try to ensure a “hearts and minds” change as well as better availability of data.</p>	<p>Introducing a new standard for organisations to adopt may be seen as overly bureaucratic when there are already two mandatory equality elements within the standard NHS Contract.</p> <p>-CCGs may not have the skills or experience to ensure robust assurance of the standard.</p> <p>-A third standard may only result in more data being published. There would need to be penalties for no progress which may be seen as overly punitive</p>	<p>Links in well with wider current government initiatives to increase the employment of people with disabilities (aligned to the welfare reform programme)</p> <p>Links in well with the refreshed Disability Confident campaign currently underway</p>	<p>Potentially creates a “tick box” culture</p> <p>Will not have had the opportunity to learn lessons from the WRES yet</p>	
Feedback from engagement: Feedback needed on implementing WRES.				
Strategic Fit	Assurance	Ownership	Cost	Legality
Medium – could create tensions between WRES and WDES	High Mandatory proposal fits with the already mandated Workforce Race Equality Standard (WRES) within the NHS - fits with current DWP and other government policies encouraging	Medium depends on how standard is promoted and perceived and on the extent to which other policies encourage ownership, including how well people with disabilities and their	Medium Guidance and associated templates will need to be developed – alongside workshops etc	High Mandated stand-alone standard would fit with the Equality Act which allows for positive discrimination in relation to employing disabled people

	employment of people with disabilities	organisations engage with efforts to meet the standard		
--	--	--	--	--

Option 2: Introducing a stand-alone Workforce Disability Equality Standard as the next stage for development of a generic Workforce Equality Standard (WES), this being the second tranche

Strengths	Weaknesses	Opportunities	Threats
-Part of an already mandated standard. -Positive response to the WRES consultation. -Part of continuous development of WRES - Helps evidence compliance with Public Sector Equality Duty	May be seen as overly bureaucratic CCGs may not have the skills or experience to ensure robust assurance of the standard. No decision to develop a generic WES from EDC No evaluation as to impact and effectiveness of WRES	Links in well with wider current government initiatives to increase the employment of people with disabilities (aligned to the welfare reform programme) Opportunity to develop a standard to include more protected groups over time	May create a 'hierarchy of disadvantage' for other protected groups not included in a WES at this point in time .Will not have had the opportunity to learn lessons from the WRES yet

Feedback from engagement: Some support for this option.

Strategic Fit	Assurance	Ownership	Cost	Legality
High Allows time for aligning with other strategic initiatives	High Part of standard NHS contract. Working towards mandated standard for other protected groups	Medium Depends on how standard is promoted and perceived and on the extent to which other policies encourage ownership, including how well people with disabilities and their organisations engage with efforts to meet the standard	High Guidance and associated templates will need to be developed – alongside workshops etc	Medium Potentially signals “less priority” for disability issues, and lower priority for other protected groups.

Option 3: Include a WDES in the already mandated Equality Delivery System (EDS2) (See note below)				
Strengths	Weaknesses	Opportunities	Threats	
<p>-EDS2 has already been mandated, and allows for one area to be selected for focus at any given time.</p> <p>-There would be no need to change the standard NHS contract to include this, as there is already the ability to ask for a specific focus.</p> <p>-EDS2 is contingent upon stakeholder engagement, thus organisations would have to adopt a co-production approach with their disabled workforce and Trades' Unions to focus on the disabled workforce and improve their experience.</p>	<p>-There has been a lack of consistency in approach to EDS2 and it may be difficult to measure the success of a standard as a result of this.</p> <p>-If a different focus were to be included in a subsequent year, the work done to improve the experience of disabled staff may lose its impetus, or get lost entirely.</p>	<p>Promotes an “inclusive culture” approach</p>	<p>Inconsistency in approach may make measurement difficult.</p>	
<p>Feedback from engagement: Disabled staff like the EDS2 focus on workforce and patient outcomes and experience as they have said they are often patients themselves. Implementers feel that this would be a manageable option.</p>				
Strategic Fit	Assurance	Ownership	Cost	Legality
<p>Medium</p> <p>Fits with EDS2, but allows for only one area to be selected for focus at any given time. If successful can be asked to continue focus on disability whilst focussing on other</p>	<p>High</p> <p>Already mandated in standard NHS contract and over 95% of NHS organisations using EDS2</p>	<p>High</p> <p>Consultation already undertaken indicates that there is ownership of EDS2, and an appetite to include this. Disabled people themselves like the focus of EDS2 on</p>	<p>Low</p> <p>EDS2 already mandated and tools and guidance available. More would need to be produced but this would not be as expensive as standalone materials</p>	<p>High</p> <p>Would fit with the Equality Act Covers all protected groups with both patient and workforce focus.</p>

areas as well as a regular of part of EDS2		patients and workforce as they are often patients themselves.		
--	--	---	--	--

NB: The EDS2 guidance allows for this when it states: 'Each year ... (The EDC and) NHS England will identify one EDS2 outcome where it believes concerted national effort is required in order for the NHS to improve its equality performance. Guidance and support will be provided for delivery on this outcome, and good practice will be shared.' Including a focus on disability as part of Goal Three, 'a representative and supported workforce' would fall within this remit.

Option 4: Introduction of a voluntary WDES and encouraging organisations to adopt it				
Strengths	Weaknesses	Opportunities	Threats	
-Organisations which adopted the standard would be fully committed to its success, and it would be likely to realise a 'hearts and mind' change -This option would mean less additional bureaucracy for the service Fits with the Learning Disabilities (LD) work which asks for a voluntary pledge and commitment	-A voluntary standard may result in good practice organisations improving the experience of disabled people in the work place, and poorer organisations lagging behind, thus resulting in inconsistency across the NHS in England.	Creates opportunity and time for trusts to focus on training and development and creating an inclusive culture	Minimal systems impact due to voluntary nature	
Feedback from engagement: No specific feedback received on this option				
Strategic Fit	Assurance	Ownership	Cost	Legality
High Fits with 'light touch assurance' regime	Low Research indicates voluntary standards are not as effective.	High Organisations adopting this would be pursuing the moral case for improving disabled peoples' employment, but wouldn't be adopted across the board.	Low allows providers to determine 'affordability' Would still need to produce tools and guidance	Low likely to be inconsistent and to provide a poor evidence base

Option 5: Carry out jointly led by the Leadership and Workforce Sub-Group, a national consultation with a view to identifying and overcoming barriers and obstacles of a WDES.				
Strengths	Weaknesses	Opportunities	Threats	
-Clearly builds on the previous Disability Rights UK and Middlesex University work in a logical fashion. -Allows more time for us to refine interventions, learn the lessons from the WRES and develop some truly meaningful solutions with the disabled staff community	-Delays the imposition of any standards or targets specific to disability	-Builds into a significant story / case study / rhetoric for us to publicise and promote both internally (within the NHS) and externally (with other sectors) Would be owned by the wider system and those charged with implementing it	-Might be seen by some as a delaying tactic / avoiding the issue	
Feedback from engagement: Positive – would allow input from a variety of groups and would be seen as an inclusive approach.				
Strategic Fit	Assurance	Ownership	Cost	Legality
Medium Not consistent with WRES and EDS2 Consistent with recommendations from research for disability standard content relating to engagement of people with disabilities and their organisations	Medium Would delay introduction. A standard would be implemented but it would be longer before an evidence base was established.	High Consultation with all interested parties, including disabled employees, and those charged with implementing any standard.	Medium Could be high depending on extent of consultation	Medium Potentially signals “less priority” for disability issues, and lower priority for other protected groups.