



NHS Standard Contracts
2016/17
Equality impact analysis

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NHS Standard Contracts 2016/17

Equality impact analysis

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Equality and Health Inequalities Analysis

Title: NHS Standard Contracts 2016/17

The NHS Standard Contract is mandated by NHS England for use by NHS commissioners to contract for all healthcare services other than primary care.

For the first time, for use for commissioning services with effect from 1 April 2016, NHS England is publishing a shorter-form version of the NHS Standard Contract, for use in defined circumstances. This will complement the full-length version of the Contract.

What are the intended outcomes of this work?

The outcome of this work is to update the NHS Standard Contract from the 2015/16 version to the 2016/17 version, and to launch the NHS Standard Contract shorter-form Contract. We undertook stakeholder engagement in August – September 2015 and in February – March 2016, and used the outcomes of this to inform changes to the Contract, and to develop the short-form Contract. Changes to the Contract keep it up-to-date and relevant, for example: to ensure it correctly relates to new legislation; to ensure it reflects significant new policies that have already been published over the last year; and to deliver technical improvements.

Who will be affected by this work?

Parties to the NHS Standard Contract will be directly affected (NHS commissioners, NHS England specialised commissioners, NHS providers, independent sector providers, third sector providers), in addition to local populations, service users, and staff.

Equality and health inequalities implications

- The NHS Standard Contract 2016/17 relates to all health care services (other than primary care) for the population of England. It therefore relates to all groups with 'protected characteristics' under the [Equality Act 2010](#) (age, disability, ethnicity, gender reassignment, marriage and civil partnership, religion or belief, pregnancy and maternity, sex (gender) and sexual orientation). The Contract is aligned to the principles and duties of the Equality Act. Under the [National Health Service Act 2006](#) as amended by the [Health and Social Care Act 2012](#), CCGs and NHS England have duties in relation to health inequalities in the following areas:
 - Have regard to the need to reduce inequalities between patients in access to health services and the outcomes achieved (s.13G and s.14T);

- Exercise their functions with a view to securing that health services are provided in an integrated way, and are integrated with health-related and social care services, where they consider that this would improve quality and reduce inequalities in access to those services or the outcomes achieved (s13N and s.14Z1);

It should be noted that health inequalities can occur across a range of social and demographic indicators, including socio-economic status, occupation, geographical locations and the nine protected characteristics of the Equality Act 2010.

The NHS Standard Contract prohibits discrimination on the basis of the nine protected characteristics set out in the Equality act 2010, this being a mutual obligation on the commissioner and on the provider. Service Condition 13 of the NHS Standard Contract 2016/17 relates specifically to 'Equality of Access, Equality and Non-Discrimination' and states:

SC13 *Equity of Access, Equality and Non-Discrimination*

- 13.1 *The Parties must not discriminate between or against Service Users, Carers or Legal Guardians on the grounds of age, disability, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation, gender reassignment, or any other non-medical characteristics, except as permitted by Law.*
- 13.2 *The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, Carers and Legal Guardians who do not speak, read or write English or who have communication difficulties (including hearing, oral or learning impairments). The Provider must carry out an annual audit of its compliance with this obligation and must demonstrate at Review Meetings the extent to which Service improvements have been made as a result.*
- 13.3 *In performing its obligations under this Contract the Provider must comply with the obligations contained in section 149 of the Equality Act 2010, the Equality Act 2010 (Specific Duties) Regulations and section 6 of the HRA. If the Provider is not a public authority for the purposes of those sections it must comply with them as if it were.*
- 13.4 *In consultation with the Co-ordinating Commissioner, and on reasonable request, the Provider must provide a plan setting out how it will comply with its obligations under SC13.3. If the Provider has already produced such a plan in order to comply with the Law, the Provider may submit that plan to the Co-ordinating Commissioner in order to comply with this SC13.4.*
- 13.5 *The Provider must implement EDS2.*
- 13.6 *The Provider must implement the National Workforce Race Equality Standard and submit an annual report to the Co-ordinating Commissioner on its*

progress in implementing that standard.

In addition, the NHS Standard Contract 2016/17 places an obligation on NHS Trusts and on Foundation Trusts to implement the Equality Delivery System for the NHS (EDS2), and on all providers to implement the NHS Workforce Race Equality Standard (WRES).

EDS2 is designed to help local NHS organisations, in discussion with local partners including patients, communities and NHS staff, to review and improve their performance for people with the characteristics given protection under the Equality Act 2010. Implementing EDS2 can support organisations to deliver on aspects of their health inequalities work. By using EDS2, NHS organisations can also be helped to deliver on the public sector Equality Duty.

The Workforce Race Equality Standard requires providers to demonstrate progress against a number of indicators of workforce equality, including a specific indicator to address the low levels of Black and Minority Ethnic representation at senior management and Board levels.

For 2016/17, the NHS Standard Contract 2016/17 [Technical Guidance](#) strongly encourages providers to report on their WRES progress, using the WRES report template, and to publish this on their websites on an annual basis. Providers are also strongly encouraged to use the EDS2 report template and to publish this on their websites.

The NHS Standard Contract also places a positive obligation on commissioners and on providers to promote the NHS Constitution, and its values and pledges (Service Condition 1.3.) The Contract also places an obligation on providers with regard to safeguarding (Service Condition 32) and on ensuring that the providers' staff are aware of and respect equality and human rights of colleagues, Service Users, Carers and of the public (Service Condition 5.3.5).

Evidence

The NHS Standard Contract relates to all health care services (other than primary care) for the population of England; it therefore impacts upon all people and groups with 'protected characteristics' under the Equality Act 2010 (s4 (9)).

The main types of data and information that evidence inequalities relate to:

- patient access to services, experience and health outcomes
- workforce experience
- the correlation between staff satisfaction and patient experience

The list of data and research referred below provides some examples of the evidence that relate to inequalities and is not exhaustive.

Patient access to services, experience and outcomes:

- The 2013 National Audit of Cardiac Rehabilitation (NACR) demonstrated that **women** are under-represented in cardiac rehabilitation. It is mainly older women who are under-represented in cardiac rehabilitation; women over the age of 80 are less likely to take part than men of the same age.¹
- Between 25-50% of **adult mental health** disorders are potentially preventable with treatment during childhood or adolescence.² People with mental health problems have much higher rates of physical illness, with a range of factors contributing to greater prevalence of, and premature mortality from: coronary heart disease, stroke, diabetes, infections and respiratory disease.³
- It is estimated that 40% of **lesbian, gay and bisexual** people have a clinically recognised mental health problem, whereas 25% of the general population will experience some kind of mental health problem in the course of a year. Over 1 in 12 lesbian and bisexual women aged between 50 and 79 have been diagnosed with breast cancer. In 2011, 70% of all sexually transmitted infection (STI) clinic attendees received an HIV test; with the highest coverage among men who have sex with men (83%).⁴
- Findings from the 2013 Confidential Inquiry into premature deaths of people with **learning disabilities** found that men die 13 years sooner than men without a learning disability, and women with learning disabilities tend to die 20 years sooner than those without. They are likely to find it more difficult than others to communicate their symptoms. It has also been found that people with learning disabilities have reduced access to generic preventative screening and health promotion procedures, such as breast or cervical screening.⁵
- Some health care professionals think that lesbians do not require cervical smear tests, yet 10% of lesbians have abnormal smears – this includes 5% of lesbians who have never had penetrative sex with a man.⁶ **Lesbian and bisexual women** are up to 10 times less likely to have had a test in the past three years but lesbians and bisexual women have often been invisible patients within health services and their needs are poorly understood.⁷
- The health care system in England is key to many **transgender** people managing to fulfil their lives. For the majority the interaction with the NHS will be on the receiving end of help, including the care they receive in the process of obtaining gender reassignment surgery, or other relevant services.

¹ <http://www.cardiacrehabilitation.org.uk/docs/2013.pdf>

² www.cabinetoffice.gov.uk/media/.../inclusion-health-evidencepack.pdf

³ Friedli. L., *Mental health, resilience and inequalities*, 2009, WHO Europe and Mental Health Foundation

⁴ <http://www.lgf.org.uk/evidence-exchange>

⁵ <http://www.bristol.ac.uk/cipold/>

⁶ In the Pink Providing Excellent Care for Lesbian, Gay and Bisexual People: A practical guide for GPs and Other Health Practitioners, 2010 NHS Sheffield citing Stonewall/Cancerbackup

⁷ Fish J., *Cervical screening in lesbian and bisexual women: a review of the worldwide literature using systematic methods*, 2009, De Montford University.

- Type 2 diabetes is 3.5 times more prevalent in **South Asians** than European populations.⁸
- NHS In Patient Surveys indicate that certain **ethnic minority** patients are less likely to give a positive response to the question “*Overall, did you feel you were treated with respect and dignity while you were in the hospital?*” when compared to the White British group. Similar patterns emerge from a question regarding Emergency Departments.⁹

Gypsies and Travellers are known to have low child immunisation levels, higher prevalence of anxiety and depression, chronic cough or bronchitis (even after smoking is taken into account), asthma, chest pain and diabetes, as compared with the general population.¹⁰

Workforce experience:

- With regard to age distribution by Agenda for Change (AfC) bandings for posts within the NHS, the **age** distribution across the AfC bandings varies. As is seen in most professions, promotions within the NHS appear to be gained, and responsibility increases, with age.
- The 2013 NHS Staff Survey indicates that **Disabled** NHS staff are more likely to report bullying and harassment from members of public. Thirty-four per cent have reported such an incident while the national average is 28%. In addition, 13% of disabled staff have experienced discrimination by managers - while the national average is 7%.¹¹
- With regard to **ethnicity**, in the 2013 NHS Staff Survey, 39% of Black staff compared to 63% of White staff felt that their organisation acted fairly with regards to career progression and promotion. The survey findings also showed that 29% of non-White staff and 34% of Black African staff have experienced harassment and bullying from members of public. In 2014, ‘*The snowy white peaks of the NHS*’ report found that the BME population is largely excluded from senior positions both as NHS managers and as NHS Trust Board members in London.¹²

The NHS workforce in England comprises 22% black & minority ethnic (BME) staff; however, only 7% of the workforce in senior manager roles is of BME origin. Twenty-four per cent of NHS consultant doctors are of Asian or Asian British origin, yet the proportion of BME Board-level Medical Directors is less than 3%.

⁸ *Diabetes in the UK 2010*, Diabetes UK

⁹ <http://www.nhssurveys.org/>

¹⁰ *Department for Communities and Local Government, 2012*

¹¹ <http://www.nhsstaffsurveys.com/Page/1006/Latest-Results/2013-Results/>

¹² http://www.mdx.ac.uk/data/assets/pdf_file/0012/59799/The-snowy-white-peaks-of-the-NHS.pdf.pdf

- The 2013 NHS Staff Survey shows variation in staff experience by **religion or belief**. 37% per cent of people identifying their religion or belief as 'any other religion' have experienced harassment and bullying or abuse from members of the public in the last 12 months, compared with the overall figure of 28% for all staff.¹³
- The composition of the working age population in England, by **sex**, is 51% women and 49% men. According to HSCIC data, 81% of non-medical and 45% of medical staff are women. However, despite making up the significant majority (81%) of the NHS workforce, women remain under-represented in NHS leadership roles.
- With regard to the 2013 NHS Staff Survey, 36% of **gay** and 34% of **lesbian** staff have experienced harassment or bullying from members of the public compared to a national average of 28%. Gay men are close to 3-times more likely to experience discrimination from patients, at 15% compared to a national average of 6%.¹⁴
- Data on workforce composition or experience within the work environment by pregnancy and maternity, and by marriage and civil partnership are not readily available.

The correlation between staff satisfaction and patient experience:

- In 2009, the Aston Business School explored whether staff satisfaction and patient experience were linked. They used the NHS staff and patients surveys in 2007 to identify possible pairs of variables, and then narrowed down pairs to the relationships that appeared most substantial. It is important to note that no inference about causality can be drawn from the analysis. Findings included:
 - Prevalence of **discrimination against staff** is related to several areas of patient experience, particularly their perceptions of nursing staff.
 - High levels of **bullying, harassment and abuse against staff** by outsiders relates to many negative patient experiences.¹⁵

¹³ <http://www.nhsstaffsurveys.com/Page/1006/Latest-Results/2013-Results/>

¹⁴ [ibid](#)

¹⁵ Dawson J., *Does the experience of staff working in the NHS link to the patient experience of care? An analysis of links between the 2007 acute trust inpatient and NHS staff surveys*, July 2009, Institute for Health Services Effectiveness, Aston Business School.

Engagement and involvement

The NHS Standard Contract Team has engaged with NHS England's Equality and Health Inequalities Team and the WRES Implementation Team on drafting this Analysis.

NHS England undertook initial consultation on the Contract during August and September 2015, and engaged directly with internal and external stakeholders. The stakeholder engagement has included extensive engagement with a range of commissioners, providers and provider representative organisations – including the voluntary and independent sectors that represent the spread of protected characteristics.

In February 2016, NHS England published a [response to consultation document](#) providing a summary of stakeholder feedback and outlining proposed changes to the NHS Standard Contract for 2016/17. A final consultation was carried out in February – March 2016 prior to publication of the Contract in March 2016. The Short Form Contract was published in March 2016.

Details of those that have been engaged with are presented below:

Who:

NHS Standard Contract Team, NHS England directorates, Department of Health, CQC, Healthwatch, Monitor, HSCIC, CSUs, NHS England Regional Teams, NHS England Area Teams, CCGs, providers, provider groups.

How:

- By direct approach by the NHS Standard Contract Team
- Via consultation undertaken in August – September 2015 and in February – March 2016

When:

August – September 2015 and February – March 2016

Key outputs:

- NHS Standard Contract 2016/17 (full-length) (draft for consultation)
- Draft full-length NHS Standard Contract for 2016/17: A consultation

- NHS Standard Contract 2016/17 (shorter-form) (draft for consultation)
- Draft shorter-form NHS Standard Contract for 2016/17: A consultation

- NHS Standard Contract (full-length) 2016/17
- NHS Standard Contract 2016/17 Technical Guidance

- NHS Standard Contract (shorter-form) 2016/17
- NHS Standard Contract (shorter-form) 2016/17 User Guide

Summary of Analysis

Eliminating discrimination, harassment and victimisation
Advancing equality of opportunity
Promoting good relations between groups

The NHS Standard Contract prohibits discrimination on the basis of the nine characteristics given protection under the Equality Act 2010 s4(9); this being a mutual obligation on both the commissioner and the Provider. The Contract also places a positive requirement on NHS Providers to make reasonable adjustments for Service Users, Carers and Legal Guardians who do not speak, read or write English or who have communication difficulties (including hearing, oral or learning impairments), and to report on this in the Review Meetings held with commissioners.

The Contract includes an obligation on NHS Trusts and Foundation Trusts to implement the Equality Delivery System (EDS2); this tool is designed to help organisations to improve their equality performance for patients and the NHS workforce across all nine protected characteristics (and other disadvantaged groups), and help the organisation to meet the three elements of the Public Sector Equality Duty: eliminate discrimination, harassment and victimisation; advance equality of opportunity and promote good relations between groups that share and do not share a protected characteristic. Implementing EDS2 can also be used to support organisations to deliver on aspects of their health inequalities work.

Providers are also obliged to implement the Workforce Race Equality Standard and submit an annual report to the Co-ordinating Commissioner on its progress in implementation and subsequent reduction in workplace discrimination on the basis of ethnicity.

Providers are also strongly encouraged to use the EDS2 and WRES reporting templates and to publish these on their websites.

The Contract also places a requirement on the Provider to provide a plan setting out how it will comply with its obligations contained in section 149 of the Equality Act 2010 and section 6 of the Human Rights Act 1998, and to provide this plan to the commissioner.

It is expected that each NHS organisation will have its own local strategic and operational plans that will demonstrate how the needs of people with characteristics given protection under the Equality Act 2010 will be met, ensuring equitable access to, and experiences of, NHS services.

Guidance supporting Clinical Commissioning Groups (CCGs) in meeting their legal duties in respect of equality and health inequalities can be found at:
<http://www.england.nhs.uk/wp-content/uploads/2014/12/hlth-inqual-guid-comms.pdf>

Evidence Based Decision-Making and Sharing this Analysis

For the NHS Standard Contract 2017/18, NHS England will continue to:

- Monitor and develop the NHS Standard Contract and shorter-form Contract, using feedback from internal and external stakeholders, and subject to legal input;
- Undertake stakeholder engagement as required to develop the 2016/17 Contract;
- Engage with NHS England's Equality & Health Inequalities Team to ensure that the relevant contract terms are kept up to date in line with new legislation and best practice.

This Equality & Health Inequalities Analysis will be published alongside the NHS Standard Contract 2016/17 on the NHS Standard Contract [webpage](#).