

## Equality Analysis:

### Functions of the NHS Commissioning Board Special Health Authority



# Equality Analysis

## *Functions of the NHS Commissioning Board Special Health Authority*

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# Introduction

1. The Health and Social Care Bill 2011 will enable the Government to fully implement its long-term vision for the future of the NHS as outlined in ‘Equity and excellence: Liberating the NHS’. One of the main aims of the Bill is to change how NHS care is commissioned through the greater involvement of clinicians via clinical commissioning groups (CCGs) and the creation of an independent and accountable NHS Commissioning Board.
2. The NHS Commissioning Board (NHS CB) will provide overall leadership, ensuring the new arrangements are fit for purpose, and focus on improving outcomes for patients. Subject to the passage of the Bill through Parliament, the NHS CB will be established as an executive non-departmental public body by October 2012 and take on its full responsibilities and accountabilities by April 2013. The NHS Commissioning Board Authority – a special health authority (SpHA) – was created on 31<sup>st</sup> October 2011 with the primary purpose of setting up the essential processes and designing the functions of the NHS CB. This preparatory body will ensure that at the time the NHS CB is established, it is focused and fully able to deliver its functions.<sup>1</sup>

**Figure 1: The evolving status of the NHS Commissioning Board**

October 2011 – July/October 2012		July/October 2012 – April 2013		April 2013 onwards
<b>Stage 1: NHS Commissioning Board Authority (SpHA)</b>			<b>Stage 2: NHS Commissioning Board (ENDPB)</b>	
Stage 1(a): Prior to Royal Assent	Stage 1(b): After Royal Assent	Stage 2(a): Before the abolition of PCTs and SHAs		Stage 2(b): From the abolition of PCTs and SHAs

3. The SpHA will initially have very limited powers, functions and directly employed staff.<sup>2</sup> However, as a statutory body listed under schedule 19 of the Equality Act 2010<sup>3</sup> and schedule 1 of its regulations<sup>4</sup>, it must be fully compliant with the Public Sector Equality Duty from the outset. The principal aim of this equality analysis is to ensure that the SpHA is compliant with its equality duties by demonstrating due regard to the need to:

- eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act

<sup>1</sup> The NHS Commissioning Board Authority Regulations 2011 can be found at <http://www.legislation.gov.uk/uksi/2011/2250/contents/made>

<sup>2</sup> When a Bill has completed all its parliamentary stages in both Houses, it must have Royal Assent before it can become an Act of Parliament (Source: [www.parliament.gov.uk](http://www.parliament.gov.uk))

<sup>3</sup> As stated in section 149 of the Equality Act 2010

<sup>4</sup> The Equality Act 2010 (Specific Duties) Regulations 2011

- advance equality of opportunity between groups who share a protected characteristic<sup>5</sup> and those who do not share it
- foster good relations between groups who share a protected characteristic and those who do not share it

in the execution of its policies and functions.

4. This analysis will also contribute to and inform the legal requirement to publish information to demonstrate compliance with the Public Sector Equality Duty by 31<sup>st</sup> January 2012, and prepare and publish equality objectives by 6 April 2012.
5. In January 2011, an equality analysis was published on the proposals within the Health and Social Care Bill 2011, which was refreshed in September 2011 after amendments to the Bill.<sup>6</sup> This report builds on that analysis and draws from its detailed assessment and evidence base.

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<sup>5</sup> Protected characteristics include age, disability, gender reassignment, pregnancy and maternity, race or ethnicity, religion or belief, sex, sexual orientation and marriage and civil partnership (only with regard to eliminating discrimination)

<sup>6</sup> Department of Health (2011) Health and Social Care Bill 2011 Equality Analyses - <http://www.parliament.uk/documents/impact-assessments/IA11-039.pdf>

# Scope

6. This equality analysis will cover the limited functions of the NHS Commissioning Board Authority (SpHA) as they stand on publication of this document. The functions can be grouped under three broad headings:

Function	Summary
Establishment and Running of the SpHA	Day to day functions such as recruitment and human resources management, estates and facilities management, finance and procurement, information and communication technology (ICT) and data and information management.
Patient Safety	Elements of the National Patient Safety Agency functions, such as national policy and guidance and delivering the National Reporting and Learning Service (although the service itself will be hosted elsewhere). These functions are due to be transferred to the SpHA by April 2012.
Design of NHS CB Functions	The SpHA will undertake preparatory work for the NHS CB, such as establishing the NHS CB business model, agreeing the design and discharge of functions and agreeing sub national arrangements.

7. It is important to note that this document does not analyse the functions of the NHS Commissioning Board itself, which are still in the process of being designed, but does examine how the promotion of equality and reduction of health inequalities will be embedded in the *design* of the NHS CB functions.
8. As health services will continue to be commissioned by Primary Care Trusts until April 2013, the establishment of the SpHA is likely to have a minimal impact on patients and the public. With respect to people working for the SpHA, the individuals most likely to be affected by its establishment will be those directly employed by the SpHA, and those seconded from the Department of Health (DH) and NHS organisations (or on NHS IMAS<sup>7</sup> assignments) to the SpHA.

<sup>7</sup> NHS Interim Management and Support - <http://www.nhsimas.nhs.uk/>

# Summary of Stakeholder Feedback

9. In July 2011, the Department of Health (DH) sought the views of bodies representing staff that may be transferred to the NHS Commissioning Board Authority - Unison, The Royal College of Nursing and the Departmental Trade Union Side. Responses were received from the Social Partnership Forum staff side, the Hospital Consultants & Specialists Association and the British Medical Association.<sup>8</sup>
10. Although there were references to the abolition of the National Patient Safety Agency (some functions of which will transfer to the SpHA) and effective consultation with staff transferring to the SpHA, there were no specific comments on equality issues or potential inequalities that the SpHA should address.
11. During the NHS Listening Exercise<sup>9</sup>, a specific event was held on equality. Jointly chaired by the Chief Executive of National Voices (a member of the Future Forum) and the DH Director of Health Inequalities and Partnerships, the event brought together a range of stakeholders to explore equality issues arising from the proposed health reforms. Stakeholders raised a number of concerns regarding the possible exacerbation of existing inequalities experienced by some groups and communities, such as people with learning disabilities and mental illness, homeless people, older people, black and minority ethnic communities and children.
12. It was pointed out that the NHS Constitution contained within it the principal rights and responsibilities for both the public and staff and highlighted the importance of providing an equally comprehensive service to all individuals while ensuring that the health disparities between communities are not overlooked. The Future Forum recommended that a duty should be placed on NHS commissioners to actively promote the NHS Constitution. The Bill was subsequently amended to reflect this recommendation, subject to Parliamentary approval.
13. The Forum recognised that the NHS Equality Delivery System<sup>10</sup> (EDS) is an important tool and recommended that it is utilised by NHS organisations under the new commissioning arrangements to “ensure they are reaching all members of their community and providing fair, accessible services”.<sup>11,12</sup>
14. In 2010, the Equality and Human Rights Commission (EHRC) undertook an assessment of the performance of a sample of Strategic Health Authorities (SHAs) and Primary Care Trusts (PCTs) in England on how they are meeting their duties under the Equality Act 2010. The assessment looked specifically at how SHAs and PCTs had used the duties to improve equality outcomes, rather than focussing on whether they had the necessary processes in

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<sup>8</sup> The consultation letter can be found at

[http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_128875.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_128875.pdf)

<sup>9</sup> On 6 April 2011, the Secretary of State announced the start of a Listening Exercise, to pause, listen, reflect on and improve the Government's proposals for modernising the NHS. The NHS Future Forum, an independent and diverse advisory group chaired by Professor Steve Field, led the listening exercise.

<sup>10</sup> The NHS Equality Delivery System can be found at <http://www.eastmidlands.nhs.uk/about-us/inclusion/eds/>

<sup>11</sup> NHS Future Forum (2011) Patient Involvement and Public Accountability. A report from the NHS Future Forum - [http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_127544.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_127544.pdf)

<sup>12</sup> NHS Future Forum (2012) Summary Report – second phase.

[http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_132085.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_132085.pdf)

place.<sup>13</sup> Key findings and recommended actions emerging from this review were collated and updated to reflect the health reforms and the new Public Sector Equality Duty.<sup>14</sup>

15. The EHRC suggested that in order to meet the new equalities duties, future NHS organisations needed to improve the quality of their equality information and ensure it is routinely used in policy development, commissioning and service delivery; make information more accessible, about both what they are doing and what they are achieving; commission services based on needs assessments that cover all protected characteristics and move away from process-based objectives to ones that are outcome-focused and measurable.

16. In developing the new commissioning arrangements, the EHRC therefore urged that the system must:

- **Have equality at its heart:** Equality needs to be more effectively integrated into new arrangements.
- **Commission for equality:** Equality is not consistently considered in commissioning plans, with certain protected groups being routinely overlooked. This needs to be tackled in both the design of the commissioning system and in local commissioning decisions.
- **Demonstrate performance through evidence and outcomes:** This should include a focus on achieving priority outcomes and measuring success through disaggregated data.

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<sup>13</sup> Equality and Human Rights Commission (2011) The performance of the health sector in meeting the Public Sector Equality Duties: moving towards effective equality outcomes.

[http://www.equalityhumanrights.com/uploaded\\_files/research/psed\\_health.pdf](http://www.equalityhumanrights.com/uploaded_files/research/psed_health.pdf)

<sup>14</sup> Equality and Human Rights Commission (2011) The Public Sector Equality Duty: A way forward for the health sector. [http://www.equalityhumanrights.com/uploaded\\_files/EqualityAct/PSED/health\\_policy\\_web.pdf](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/health_policy_web.pdf)



# Potential Equality Impacts and Issues

## Establishment and Running of SpHA

17. **Annex A** considers the possible impacts of the establishment and day to day functions of the SpHA by protected characteristic, with action for mitigating potential negative impacts or opportunities to advance equality.
18. The SpHA will be an entirely new organisation. As such, a number of its functions are still in the process of being finalised, which has presented challenges in assessing impacts at this stage. This has been reflected in the comments on actions and mitigations, where appropriate.
19. Resources have been identified and secured to support equality assurance. This role will involve assuring the SpHA Board that the organisation is meeting the Public Sector Equality Duty in exercising its policies and functions.

## Patient Safety

20. The equality impacts of transferring patient safety functions from the National Patient Safety Agency (NPSA) to the NHS CB were assessed in the equality analysis of the arm's length bodies (ALB) review.<sup>15,16</sup>
21. The analysis concluded that there was unlikely to be a negative impact on patients and members of the public with protected characteristics. It was suggested that the transfer could potentially have a positive impact, as patient safety would be at the centre of the system, rather than at arm's length.
22. Concerning staff, individuals transferring to the SpHA will do so on the same NHS terms and conditions, so the impact is likely to be minimal. That said, the analysis recommended that any equality and diversity policies and practices put in place by the NHS CB should be to at least the same standard as policies previously developed by the NPSA.
23. Prior to the transfer of functions in April 2012, the NPSA plans to:
  - Undertake equality analyses on the current functions of capturing data (patient safety incidents), analysis of data and feedback/outputs from the data
  - Ensure that the service level agreement for the NRLS (National Learning and Reporting Database) includes equality and health inequalities requirements.
  - Once designed and agreed, undertake an equality analysis of the new patient safety function of the NHS CB.

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<sup>15</sup> Department of health (2010) Liberating the NHS: Report of the arms-length bodies review - [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_117691](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_117691)

<sup>16</sup> Department of Health (2011) Health and Social Care Bill 2011 Equality Analyses - <http://www.parliament.uk/documents/impact-assessments/IA11-039.pdf>

## Design of NHS CB functions

24. This is arguably the most important function of the SpHA, as it sets the framework for how the NHS CB will operate in the future. With respect to equality and the reduction of health inequalities, there are two principal tasks:

(a) **Designing the ‘end state’ equality and health inequalities functions of the NHS Commissioning Board:** Designing functions that give the NHS CB the capacity, capability and resources required to exercise its statutory duties and policy aims effectively with respect to equality and health inequalities.

(b) **Embedding the promotion of equality and reduction of health inequalities into NHS CB programme and its individual work programmes:** Ensuring that the NHS CB Development and Implementation Programme work programmes are systematically considering how the promotion of equality and reduction of health inequalities are incorporated into the design of each function.

25. The Senior Responsible Owner (SRO) of the DH Transition Programme’s cross-cutting Reducing Health Inequalities and Promoting Equality workstream has been charged with taking forward these areas of work. The workstream’s remit covers the entire DH Commissioning Development Programme, including work that contributes to the establishment of clinical commissioning groups, commissioning support organisations and the NHS Commissioning Board.

26. Key roles of the workstream include:

- Leadership across the DH Transition Programme for promoting equality and the reduction of health inequalities
- Alignment of policy and guidance, e.g. People Transition Policy, PCT Cluster Shared Operating Model, Information and Intelligence documents, Developing Commissioning Support guidance
- Recruitment advice to ensure fair and accessible policies
- HR issues covering values and behaviours, inclusive culture, flexible working, health and well-being
- Engagement with the Equality and Diversity Council.<sup>17</sup>

27. The SpHA has also secured additional internal support to ensure that the SpHA is meeting its duties and a public body and to embed equality and reducing health inequalities in the programme management processes for NHS CB development and implementation. This role will include working with DH and the Equality Delivery System (EDS) Support Team to consider how the SpHA can meaningfully utilise the EDS to develop its equality objectives.

28. Robust quality assurance is central to the programme management approach, both across the NHS CB programme as a whole and in the design of each function. The programme will embed equality and reducing health inequalities by including them as two of the 11 quality

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<sup>17</sup> The NHS Equality and Diversity Council (EDC), established in 2009, is a sub-committee of the NHS Management Board. The NHS EDC has a strategic role to support the NHS to deliver better outcomes for patients, complying with the Equality Act 2010, ensuring services and work places are personal, fair and diverse with equality of opportunity and treatment for all.

standards necessary for effective function design. The specifications for each standard are currently being developed alongside the scoping of the programme.

29. In addition, the design of the NHS CB is underpinned by four 'lenses': quality and safety, clinical leadership, patient and public voice, and equality and reducing health inequalities. These lenses allow the SpHA to take a step back from the detailed design of NHS CB functions and gain a panoramic view of how these elements are being strategically woven into the NHS CB's development to achieve improved patient outcomes. Each lens has a senior champion who will challenge design leads on the strength of their plans for delivery against each lens. This horizontal and vertical embedding across the programme means that the promotion of equality should be hard wired into the Board's relationships, processes and structures.

### Recommendations from Existing Equality Analyses

30. The revised equality analysis carried out for the Health and Social Care Bill in September 2011 contained a number of recommendations for action, informed by a detailed evidence base and a significant level of stakeholder engagement.

31. Once scoping of the NHS CB programme is complete, the relevant recommendations from this equality analysis need to be owned by the appropriate programme leads and incorporated into function design or if cross cutting, embedded into the programme management approach. **Annex B** lists the actions from this earlier equality analysis, and the suggested organisations best placed to take each action forward.

32. In addition, the EHRC report, 'The Public Sector Equality Duty: a way forward for the health sector'<sup>18</sup> includes a number of recommended actions for the NHS CB. These will be 'unpacked' to pinpoint any actions that need to be taken at this stage of NHS CB development.

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<sup>18</sup> Equality and Human Rights Commission (2011) The Public Sector Equality Duty: A way forward for the health sector. [http://www.equalityhumanrights.com/uploaded\\_files/EqualityAct/PSED/health\\_policy\\_web.pdf](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/health_policy_web.pdf)

# Assessment of Impact

33. From this analysis of NHS Commissioning Board Authority functions, the establishment of the SpHA appears unlikely to have a negative impact on any groups sharing a protected characteristic. This takes into account the fact that some of the day-to-day functions of the SpHA are still to be finalised. There are excellent opportunities, through designing the functions of the NHS CB, for the SpHA to have a direct and positive impact on equality and reducing health inequalities in how healthcare services are commissioned in the future.

# Governance and Review

34. The Board of the SpHA is responsible for ensuring that as an organisation, it is compliant with the Equality Act 2010 and meets the Public Sector Equality Duty. The NHS CB Future Design Group, the programme board for the NHS CB Development and Implementation programme, oversees progress on embedding equality in the design of the NHS CB functions. This group is chaired by Sir David Nicholson, Chief Executive of the SpHA and NHS Chief Executive. Bill McCarthy, Managing Director of the SpHA, is the programme's Senior Responsible Owner (SRO).

35. The overarching Department of Health (DH) Transition Programme, managed through its Integrated Programme Office, is responsible for equality assuring the individual transition programmes, of which the NHS CB programme is one. The Transition Equality Assurance programme reports to the Department's Equalities and Human Rights Assurance Group (EHRAG), which assures the Department's compliance with its duties on behalf of the DH Management Board.

36. This equality analysis will be reviewed at key points during the evolution of the NHS CB:

- Between July and October 2012, when the SpHA is disestablished, and the NHS CB is set up as an Executive Non-Departmental Public Body, taking on new powers and functions, such as the authorisation of clinical commissioning groups
- Prior to 1 April 2013, when the NHS CB takes on its full responsibilities and accountabilities

37. In addition to the above review points, the SpHA will be required to produce measurable equality objectives by 6 April 2012<sup>19</sup>, which will identify actions that need to be taken to ensure compliance with the Equality Act 2010. This would also be a timely opportunity to revisit and update the actions emerging from this analysis.

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<sup>19</sup> As part of the Public Sector Equality Duty

# Action Plan

38. The high-level actions for the NHS Commissioning Board Authority emerging from this equality analysis are as follows:

Ref	Action	By When
EA1	Identify and unpack relevant actions from the equality analysis of the Health and Social Care Bill and the EHRC report, 'The Public Sector Equality Duty: A way forward for the health sector' (see Annex B)	January 2011
EA2	Finalise and begin implementation of the NHS CB development and implementation programme approach to embedding equality and reducing health inequalities (i.e. lenses and quality standards)	January 2011
EA3	Publish information to demonstrate SpHA compliance with the public sector equality duty	31 January 2012
EA4	Work with DH and the Equality Deliver System (EDS) Support Team to consider how the SpHA can utilise the EDS to develop its equality objectives	February 2012
EA5	Agree and publish equality objectives that need to be achieved in order for the SpHA to carry out its public sector duty	6 April 2012
EA6	Design the 'end state' equality and health inequalities functions of the NHS Commissioning Board	March 2012
EA7	Review this equality analysis prior to the SpHA closing and the NHS CB being established as an Executive Non-Departmental Public Body	October 2012
EA8	Review this equality analysis prior to the Executive Non Departmental Public Body taking on its full responsibilities as the NHS Commissioning Board <sup>20</sup>	March 2013

<sup>20</sup> This is an action for the forthcoming Executive Non Departmental Public Body and will therefore need to be ratified by its Board

# Annex A: Establishment and Running of the SpHA - Potential Equality Issues and Impacts

Protected Characteristic	Potential Issues Identified	Actions to Mitigate / Opportunities to Promote
Age	The SpHA headquarters is in Leeds, with an office in London. This may involve travelling longer distances for some staff, which could have a negative impact on individuals who care for elderly relatives.	<ul style="list-style-type: none"> <li>• Staff are able to use communications technology, e.g. teleconferencing, videoconferencing for meetings with colleagues in Leeds, London and elsewhere</li> <li>• The SpHA uses NHS Mail, which allows staff to access emails online from any computer, enabling remote working when necessary</li> <li>• The SpHA actively encourages flexible working arrangements, e.g. working from home on certain days, condensed hours etc.</li> <li>• Telephone equipment is being installed to enable staff to divert their calls to anywhere in the two main offices, to their mobile or to home. Mobile phones and laptops can also be made available to facilitate flexible working.</li> </ul>
	Using electronic media (websites, email) to communicate with the wider public may exclude older people who are less likely to have access to the Internet <sup>21</sup>	<ul style="list-style-type: none"> <li>• The communications function and strategy of the SpHA are still in development. However, this allows the organisation to embed best practice in engaging patients and the public in an inclusive</li> </ul>

<sup>21</sup> Berry R (2011) Older people and the internet: Towards a 'system map' of digital exclusion. London: The International Longevity Centre – UK [http://www.ilcuk.org.uk/files/pdf\\_pdf\\_181.pdf](http://www.ilcuk.org.uk/files/pdf_pdf_181.pdf)

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Protected Characteristic	Potential Issues Identified	Actions to Mitigate / Opportunities to Promote
Disability	The SpHA headquarters is in Leeds, with an office in London. This may involve travelling longer distances for some staff, which could have a negative impact on individuals who care for disabled relatives or disabled staff with carers	<p>way from the beginning.</p> <ul style="list-style-type: none"> <li>• Staff are able to use communications technology, e.g. teleconferencing, videoconferencing for meetings with colleagues in Leeds, London and elsewhere</li> <li>• The SpHA uses NHS Mail, which allows staff to access emails online from any computer, enabling remote working when necessary</li> <li>• The SpHA actively encourages flexible working arrangements, e.g. working from home on certain days, condensed hours etc.</li> <li>• Telephone equipment is being installed to enable staff to divert their calls to anywhere in the two main offices, to their mobile or to home. Mobile phones and laptops can also be made available to facilitate flexible working.</li> </ul>
	The new headquarters need to be fully accessible to people with both physical and sensory disabilities and learning difficulties	<ul style="list-style-type: none"> <li>• Adjustments have been made to the new premises to improve accessibility, for example installing and amending ramps and doorways, layout, wall colour and contrast.</li> <li>• Processes are in place for staff with a disability or impairment to request specialist office equipment to enable them to work effectively. Some specialist equipment has already been provided.</li> <li>• There are lifts to all floors and disabled WCs in both buildings.</li> </ul>

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Protected Characteristic	Potential Issues Identified	Actions to Mitigate / Opportunities to Promote
	The needs of those with specialist equipment connected with a disability may be overlooked when considering hot-desking or home working	<ul style="list-style-type: none"> <li>Processes are in place for staff with a disability or impairment to request specialist office equipment to enable them to work effectively</li> </ul>
	Communications with patients and the wider public should be available in a range of formats for people with sensory and learning disabilities, e.g. Braille, audio, video, Easy Read	<ul style="list-style-type: none"> <li>The communications function and strategy of the SpHA are still in development. However, this allows the organisation to embed best practice in engaging patients and the public in an inclusive way from the beginning.</li> </ul>
Gender reassignment	No specific equality issues identified	-
Pregnancy and Maternity	The SpHA headquarters in Leeds, with an office in London, which may involve travelling longer distances for some staff. This could have a negative impact on women in the latter stages of pregnancy or returning to work after maternity leave, who may require flexible working arrangements.	<ul style="list-style-type: none"> <li>Staff are able to use communications technology, e.g. teleconferencing, videoconferencing for meetings with colleagues in Leeds, London and elsewhere</li> <li>The SpHA uses NHS Mail, which allows staff to access emails online from any computer, enabling remote working when necessary</li> <li>The SpHA actively encourages flexible working arrangements, e.g. working from home on certain days, condensed hours etc.</li> <li>There is a nursery attached to Quarry House which can be used by staff working for the SpHA</li> </ul>
Race or ethnicity	Black and minority ethnic groups continue to be underrepresented at higher grades and at Board level within the NHS and DH. This trend may continue with the establishment of the SpHA and in future, the NHS Commissioning Board	<ul style="list-style-type: none"> <li>The National Leadership Council's Leadership for Equality workstream has provided guidance on best practice on embedding equality into the recruitment and selection process for the SpHA/NHS CB</li> <li>Guidance will be issued to panels recruiting</li> </ul>



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Protected Characteristic	Potential Issues Identified	Actions to Mitigate / Opportunities to Promote
		<p>senior managers and board members on building equality, diversity and inclusion into the SpHA/NHS CB selection process.</p> <ul style="list-style-type: none"> <li>• Corporate responsibility for equality and diversity has also been written into the job descriptions and personal specifications of all director-level roles.</li> </ul>
	<p>The SpHA headquarters is in Leeds, with an office in London, which may involve travelling longer distances for some staff. This could have a negative impact on BME employees who have caring responsibilities, as evidence suggests that a greater proportion of BME carers are of working age.<sup>22</sup></p>	<ul style="list-style-type: none"> <li>• Staff are able to use communications technology, e.g. teleconferencing, videoconferencing for meetings with colleagues in Leeds, London and elsewhere</li> <li>• The SpHA uses NHS Mail, which allows staff to access emails online from any computer, enabling remote working when necessary</li> <li>• The SpHA actively encourages flexible working arrangements, e.g. working from home on certain days, condensed hours etc.</li> <li>• Telephone equipment is being installed to enable staff to divert their calls to anywhere in the two main offices, to their mobile or to home. Mobile phones and laptops can also be made available to facilitate flexible working.</li> </ul>
	<p>Communications with patients and the wider public should be available in community languages if required</p>	<ul style="list-style-type: none"> <li>• The communications function and strategy of the SpHA are still in development. However, this allows the organisation to embed best practice in</li> </ul>

<sup>22</sup> Yeandle S, Bennett C, Buckner L, Fry G and Price C (2007) Diversity in Caring: towards equality for carers. *Carers, Employment and Services Report Series*. No.3. London: Carers UK

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Protected Characteristic	Potential Issues Identified	Actions to Mitigate / Opportunities to Promote
		<p>engaging patients and the public in an inclusive way from the beginning.</p>
Religion or belief	<p>Staff with particular religious beliefs may need a quiet place for prayer during the working day</p>	<ul style="list-style-type: none"> <li>• There are multifaith prayer rooms in the Leeds headquarters and London office</li> </ul>
Sex	<p>Women are often underrepresented at senior levels within the NHS and DH. This trend may continue with the establishment of the SpHA and in future, the NHS Commissioning Board</p>	<ul style="list-style-type: none"> <li>• The National Leadership Council’s Leadership for Equality workstream has provided guidance on best practice on embedding equality into the recruitment and selection process for the SpHA/NHS CB</li> <li>• Guidance will be issued to panels recruiting senior managers and board members on building equality, diversity and inclusion into the SpHA/NHS CB selection process.</li> <li>• Corporate responsibility for equality and diversity has also been written into the job descriptions and personal specifications of all director-level roles.</li> </ul>
	<p>The SpHA headquarters will be in Leeds, with an office in London, which may involve travelling longer distances for some staff. This could have a negative impact on women, as evidence suggests they are more likely to have caring responsibilities.<sup>23</sup></p>	<ul style="list-style-type: none"> <li>• The SpHA has a central London office that can be used by staff who are closer to the capital</li> <li>• Staff will be able to use communications technology, e.g. teleconferencing, videoconferencing for meetings with colleagues in Leeds, London and elsewhere</li> <li>• The SpHA uses NHS Mail, which allows staff to access emails online from any computer, enabling remote working when necessary</li> </ul>

<sup>23</sup> Yeandle S and Buckner L (2007) Valuing carers – calculating the value of unpaid care. London: Carers UK

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Protected Characteristic	Potential Issues Identified	Actions to Mitigate / Opportunities to Promote
		<ul style="list-style-type: none"> <li>• The SpHA actively encourages flexible working arrangements, e.g. working from home on certain days, condensed hours etc.</li> <li>• Telephone equipment is being installed to enable staff to divert their calls to anywhere in the two main offices, to their mobile or to home. Mobile phones and laptops can also be made available to facilitate flexible working.</li> </ul>
Sexual orientation	No specific equality issues identified	-
Marriage and civil partnership	No specific equality issues identified	-
Cross-cutting issues	<p><b>Human Resources:</b> The public sector equality duty requires public bodies with over 150 staff to publish specific information on the effect their policies and practices have on employees. The SpHA will have very few directly employed staff before the Health and Social Care Bill receives Royal Assent, the majority being secondees or NHS IMAS assignments.</p>	<ul style="list-style-type: none"> <li>• The equality analysis of the Bill stressed the importance of monitoring workforce statistics throughout the transition period to monitor and mitigate any disproportionately negative impacts. Although not yet legally required to publish this information, the SpHA will ensure that appropriate systems are in place to collect it.</li> <li>• The Equality Act 2010 prohibits discrimination by employers against a wide range of workers. For the purposes of discrimination, secondees are regarded as contract workers, i.e. workers supplied by their employer to do work for another party, known as the 'principal'. In this situation, the SpHA would be the principal.<sup>24</sup> Managers will be made aware of their legal duties toward</li> </ul>

<sup>24</sup> Section 41 of the Equality Act sets out provisions on discrimination by a principal against a contract worker.

Equality Analysis – Functions of the NHS Commissioning Board Special Health Authority

Protected Characteristic	Potential Issues Identified	Actions to Mitigate / Opportunities to Promote
		<p>seconded and assignments under the Act.</p>
	<p><b>Human Resources:</b> The SpHA needs to ensure that there is fairness across protected groups in the way appointments are made, particularly for roles that will eventually be transferred to the NHS CB. There is a risk that the diversity of the NHS workforce may decrease if equality of opportunity is not a priority in the transition to the new commissioning system.</p>	<ul style="list-style-type: none"> <li>The NHS Commissioning Board People Transition Policy (PTP) has stressed the importance of NHS CB being a fair and inclusive employer, which values difference and supports diversity within its workforce at all levels. The PTP also recognises the link between an engaged and valued workforce and patient outcomes.</li> </ul>
	<p><b>Corporate Governance and Accountability:</b> SpHA Board is ultimately accountable for the organisation’s compliance with the Equality Act 2010 and the public sector equality duties. This also includes evidencing that it has given due regard to the possible equality impacts of their corporate decisions.</p>	<ul style="list-style-type: none"> <li>The SpHA board will consider this equality analysis at one of its early meetings and will develop and publish a response.</li> <li>It will be important that the management dashboard includes equality and diversity indicators both for SpHA staffing and operations and for commissioning outcomes (in the longer-term), as the SpHA board will use this to inform its decision-making</li> </ul>
	<p><b>Shared services:</b> The SpHA needs to ensure that in carrying out its shared services functions, the NHS Business Services Authority meets the general equality duty</p>	<ul style="list-style-type: none"> <li>As a body listed under schedule 1 of the Equality Act 2010 (Specific Duties) Regulations 2011, the NHS BSA is already obliged to meet both the general and specific equality duties in carrying out its functions.</li> </ul>
	<p><b>Finance and Procurement:</b> The SpHA should utilise existing good practice and guidance on</p>	<ul style="list-style-type: none"> <li>Procurement will be carried out by the NHS Business Services Authority under a shared</li> </ul>

Equality Analysis – Functions of the NHS Commissioning Board Special Health Authority

Protected Characteristic	Potential Issues Identified	Actions to Mitigate / Opportunities to Promote
	embedding equality in its procurement processes. <sup>25</sup>	services agreement, however the SpHA should make NHSBSA aware of relevant guidance that may further promote equality in carrying out this function.
	<b>Legal and DH Interface:</b> The SpHA must also assure the overarching Transition Programme that it has robust arrangements in place for ensuring that NHS CB will be able to meet its general and specific duties under the Equalities Act 2010.	<ul style="list-style-type: none"> <li>• The Promoting Equality and Reducing Health Inequalities Workstream and the SpHA Equality Lead work closely with Transition equality assurance lead to keep the programme office fully informed of progress on equality and diversity. The office will receive a copy of the equality analysis, including the steps that will be taken to ensure equality is built into the design of NHS CB functions.</li> </ul>
	<b>Legal and DH Interface:</b> Although there are separate duties for equality (Equality Act 2010) and reducing health inequalities (Health and Social Care Bill 2011), there is a close relationship between the two. It is important that in developing these functions, the SpHA minimises the possibility of duplication and divergence	<ul style="list-style-type: none"> <li>• The Promoting Equality and Reducing Health Inequalities workstream brings together both elements into one cross cutting working group. This ensures that the equality and health inequalities functions are strategically and operationally aligned, in order to maximise equitable improvements in access to healthcare services and health outcomes</li> </ul>
	<b>ICT, Information and Informatics:</b> The SpHA should ensure that data relating to services and staff is collected in a way that enables compliance with the specific public sector duties.	<ul style="list-style-type: none"> <li>• Under a shared services agreement, the NHS Business Services Authority will hold the Electronic Staff Record on behalf of the SpHA. Data collection will be in line with guidance</li> </ul>

<sup>25</sup> For example: Department of Health (2007) Beyond procurement: Connecting procurement practice to patients - [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_075724](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_075724)

Equality Analysis – Functions of the NHS Commissioning Board Special Health Authority

Protected Characteristic	Potential Issues Identified	Actions to Mitigate / Opportunities to Promote
		<p>issued by the Equality and Human Rights Commission and Government Equalities Office.</p> <ul style="list-style-type: none"> <li>• A management dashboard is in the early stages of development, which will enable the Board to see how the system is performing against key performance indicators. This provides an opportunity for the SpHA to build in indicators to measure progress on equality and reducing health inequalities.</li> </ul>

# Annex B: Recommendations from Existing Equality Analyses

## **Liberating the NHS: Commissioning for patients - Health and Social Care Bill 2011 Equality Analyses (Department of Health, September 2011)**

Department of Health:

- Consider the effect of (a) areas of high deprivation and poor health outcomes and (b) impacts on health outcomes due to third party improvements in the determinants of health in implementing the proposal for payments in respect of performance.
- As part of the forthcoming Information Strategy, develop a consistent approach to the collection of equalities data in line with forthcoming guidance on public sector equalities duties.
- Ensure that future research on CCGs includes an analysis of the approaches taken to reduce health inequalities and advance equality.
- Work with health and wellbeing board early implementers and CCG pathfinders to consider and share the lessons on how their work can contribute to reducing inequalities and promoting equality.
- Seek to ensure that the final guidance that may be published by the NHS Commissioning Board on the form and content of CCG proposed constitutions is available to patients and the public, and clearly explains the provision CCGs may wish to make to guard against conflicts of interest.
- Ensure that the mandate for the NHS Commissioning Board sets out clear expectations on equality.

NHS Organisations and health and well-being boards:

- Consider developing appropriate equality training and support for prospective CCGs, linking it clearly to their role as commissioners. [NHS Commissioning Board] and prospective CCGs to consider their development needs in this area and how these will be met [CCGs].
- Where possible, align the NHS Equality Delivery System with the existing Equality Framework for Local Government, to facilitate partnership working on equality and diversity, and the development of joint equality outcomes where appropriate. [NHS Commissioning Board]<sup>26</sup>

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<sup>26</sup> This action has been completed by the Equality and Diversity Council through existing NHS Equality Delivery System guidance.

- Utilise community development expertise within the third sector to build trust and develop links with local communities, in order to facilitate their involvement in shaping and influencing commissioning decisions [CCGs]
- Consider practical ways of supporting local third sector advocacy groups working with marginalised or seldom heard communities. [Local HealthWatch, working with health & wellbeing boards]
- Monitor NHS workforce statistics throughout the transition period in order to highlight and mitigate any negative impacts on NHS staff from protected groups. [Initially Primary Care Trusts & Strategic Health Authorities; later NHS Commissioning Board & CCGs]
- Work with local partners, including Local HealthWatch and advocacy groups, to promote choice among protected groups and disadvantaged communities. [CCGs]
- Work with local partners, including Local HealthWatch and advocacy groups, to identify ways of providing more integrated delivery of health and social care. [CCGs]

### **The Public Sector Equality Duty: A way forward for the health sector (Equality and Human Rights Commission, July 2011)**

Nationally:

- The Department of Health should ensure a strong national evidence base across all the protected characteristics, identifying any key information gaps and taking action to fill them. This will ensure they can take a lead in using a sound evidence-based approach that can be used by all the different components of the sector, both at a national and local level.
- The Department of Health should ensure that the health sector, including new bodies, have timely and appropriate guidance on the Public Sector Equality Duty, focused on the main equality challenges.
- The Pathfinder GP Commissioning sites should be evaluated on the extent to which they are able to successfully commission based on clear and evidence based needs assessments, across all protected characteristics.
- The NHS Commissioning Board, once established, should ensure that equality considerations are included in commissioning criteria and guidance for local commissioners, and that specialised health needs provided nationally, such as access to gender reassignment services, are fit for purpose. This will be essential to ensuring consistent standards.

Locally<sup>27</sup>:

- Commissioners need to improve their evidence base, across all protected characteristics and ensure they routinely use equality data in order to have due regard in their

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<sup>27</sup> These local actions may also be relevant to the Commissioning Board's direct commissioning role.



commissioning decisions and to put equality at the heart of the value for money considerations in these decisions.

- Listed health bodies will need to have a clear evidence base from which they can determine and set clear and measurable equality objectives – the Commission expects the objectives to address the most significant equality issues and health needs of their local population.

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