

**Equality and Diversity Council  
30 October 2017**

**Workforce Disability Equality Standard – Update and progress  
report**

## **1. Introduction**

The Workforce Disability Equality Standard (WDES) seeks to provide a self-assessment framework for providers to understand the specific challenges they face in ensuring all disabled staff are treated equally and are supported to fulfil their full potential. Its aim is to help address inequalities related to disability in employment. It also seeks to advance disability equality in employment.

Over the past eighteen months NHS England, Disability Rights UK and NHS Employers have led work with a range of stakeholders to develop the WDES metrics (see Appendix 1). We are now at a strategically significant stage in a number of areas, as set out below.

## **2. Key areas**

This paper summarises the current position in relation to:

- piloting the WDES draft metrics;
- consulting with Disabled Staff Networks and equivalent trade unions;
- consulting with NHS trusts in 2018;
- two bids to the Health and Wellbeing Alliance that are designed to support the roll-out of the WDES;
- complying with burden assessment requirements;
- considerations in relation to the Workforce Race Equality Standard;
- proposed changes to the NHS Standard Contract in relation to the WDES to accommodate any potential revisions to the timetable.

Key issues are set out in part 4 of this report.

## **3. Current position**

### **i. Piloting**

NHS England is testing the draft metrics with up to seventeen NHS Trusts and 3 Arms-Length Bodies (ALBs).<sup>1</sup> The NHS Trusts involved include a range of different providers from different locations across the country, with some being part of the NHS Employers' Disability Pioneers Group. Thirteen of the Trusts have adopted the DWP's Disability Confident Scheme.

<sup>1</sup> The Care Quality Commission (CQC), the Health Education England (HEE) and NHS Blood and Transplant (NHSBT).

The piloting process will test the clarity, availability and collectability of the information required by the draft metrics. Like the WRES, for the pilot, Trusts will check the pre-populated data and secure other key information. Respondents will also be asked to send comments via an online questionnaire on their views about the draft metrics and identify any other pertinent issues.

## **ii. Consultation**

Consultation with Disabled Staff Networks has informed the development of the draft WDES Metrics. Further engagement with Disabled Staff and the equivalent Networks within trade unions is central to the development of the final metrics. The consultation during October/November will take the form of an online survey sent to all seventeen of the Disabled Staff Networks identified to date in NHS Trusts. In addition, we have consulted with the Trade Unions and we have agreed that the Unison and MiP will also consult with their Networks of NHS Disabled lay members.

By early December, we aim to have assessed the feedback from the pilots and consultative activities involving NHS Trusts, ALBs, Disabled Staff Networks and relevant Trade-union Networks of lay Disabled Members. In mid-December, we aim to hold a workshop with members of the WDES Strategic Advisory Group (SAG), the WDES Technical Advisory Group (TAG) and the WDES Subgroup that involves representation from the SAG, TAG, trade unions and HEE. The workshop will discuss any proposed amendments to the draft metrics and future WDES governance arrangements.

We currently plan to launch an online questionnaire and hold six regional consultation events in January and February 2018 to seek views on the revised WDES metrics, key elements of the technical guidance and the timetable for launching the WDES. This timetable will allow us to be informed of the results of the piloting consultation and burden assessment requirements.

## **iii. Tools to support delivery**

In addition to supporting the roll-out of the WDES with technical guidance, we have recognised the need to provide tools and practical support to NHS Trusts and NHS organisations more broadly. Two proposals have been developed working in partnership with Public Health England and the Voluntary, Community and Social Enterprise (VCSE) Health and Wellbeing Alliance. The Department of Health, Public Health England and NHS England launched the Alliance in April 2017 to facilitate integrated working between the voluntary and statutory sectors, promote equality, address health inequalities and bring the VCSE sector's voice and expertise into national policy making. The two proposals, developed jointly between NHS England and PHE, are designed to support the roll-out of the WDES. Both proposals have received internal sign-off and both proposals are to be submitted for Ministerial approval during this month (October 2017). A summary of the proposals is attached as appendix 2.

## **iv. Burden assessment**

Three key linked burden assessment compliance processes have been identified. These are the assessment systems/processes adopted by the Data Co-ordination Board,

the Burden Advice and Assessment Service and the Workforce Information Strategy Group.<sup>2</sup>

Discussions with NHS Digital's lead officer suggest that the WDES should be considered by the Burden Assessment and Advice Service (BAAS) and the Workforce Information Strategy Group (WISG). We will formally commence the BAAS process now and have built in a 12 week clearance process, which would see this process completed by the end of January 2018. A paper will be submitted to the WISG for consideration by them on 14<sup>th</sup> November. We are currently exploring whether we can run both assessment processes side by side with our proposed piloting and consultative activities. However, until we have formally received feedback in relation to both the BAAS and WISG processes, it will not be clear what actions must be taken, or what the impact will be on our timetable.

#### **v. Possible impact on the WRES, EHIU's comments and mitigating actions**

The WRES Team has identified three potential risks, first that introducing a workforce equality standard, soon after the roll-out of the WRES, may lead to organisations to divert their focus away from the WRES.<sup>3</sup> Second that this could endanger WRES implementation progress made to date by NHS organisations. Third, there is a risk that the new workforce standard would not benefit from the independent evaluation of the WRES which has just commenced. The WRES Team notes that taking learning from the findings of the WRES evaluation will, in time, help to make the WDES both robust and fit-for-purpose.

We believe that the WRES has laid a firm foundation for the introduction of the WDES. The WRES has introduced systems and processes, with which organisations have become familiar. EHIU have taken, and are taking, the following mitigating actions:

- the issue of identifying any burdens is explicitly being considered as part of the piloting process;
- EHIU will liaise with the WRES Team to agree how the WRES evaluation will address the risks identified and when the evaluation report is due;
- EHIU has sought to reduce the additional workload on NHS organisations by building on the WRES framework and using existing data sets where possible (see Appendix 1);
- relevant issues will be considered as part of the independent burden assessment processes conducted by the BAAS and the WISG described in subsection iv;
- EHIU will build in relevant questions in to the wider consultation process, planned for January/February 2018.

<sup>2</sup> On 1 April 2017, the DCB took over responsibility for the approval of standards from SCCI. DCB is a sub-group of the Digital Delivery Board (DDB). [<http://content.digital.nhs.uk/isce>]. BAAS offers advice, guidance and support for the health and social care system (both nationally and locally) on minimising the burden and bureaucracy of data collection, freeing up staff time to care. The Health and Social Care Act 2012 places burden assessment requirements on NHS Digital [<http://content.digital.nhs.uk/baas>]. The WISG, co-ordinated by HEE, plays an ongoing role in ensuring a joined-up approach to workforce data collection, and analysis across the health and social care system.

<sup>3</sup> The WRES was launched in April 2015. In July 2016, after discussing the potential impact of the WDES on the WRES, the EDC recommended that NHS England mandate the WDES as part of the NHS Standard Contract from April 2018. NHS England subsequently agreed to mandate the WDES as part of the NHS Standard Contract from April 2018.

## vi. Changes to the NHS Standard Contract

The NHS Standard Contract for 2017/18 and 2018/19 stated that 2017/18 would be a preparatory year for the WDES and that NHS providers were required *‘to implement the WDES from 1st April 2018 ... and submit a report... by 31st March 2019.’*<sup>4</sup> Given we are still awaiting feedback from the piloting, the requirement to take the WDES metrics through NHS Digital burden assessment process and potential impact on delivery of the WRES, we are not able to commit to a firm timetable at this stage. We have therefore reviewed and made some changes to the wording in the Contract, and these are set out in the Variation Notice published for consultation on the 10 October.

The revised proposed wording in relation to the WDES says: *‘With effect from 1 January 2018, Service Condition 13.7 is deleted and replaced by the following:*

- *13.7 In accordance with the timescale and guidance to be published by NHS England, the Provider must:*
  - a. *13.7.1 implement the National Workforce Disability Equality Standard; and*
  - b. *13.7.2 report to the Co-ordinating Commissioner on its progress.’*<sup>5</sup> *With respect to the reporting timetable the following wording is proposed:*
- *‘National Workforce Disability Equality Standard. National timescales for reporting by providers on compliance with this new Standard are being revised, meaning that the current reference in the Contract – which requires providers to report on their progress by 31 March 2019 – is no longer appropriate. NHS England will publish revised guidance on reporting timescales in due course, and the draft National Variation amends the Contract to reflect this (Service Condition 13.7 and definitions).’* [Paragraph 4.6 of the consultation document, page 9]

If accepted, the proposed changes to the NHS Standard Contract will enable us to take the time required to consider the results of the piloting, consultative activities, address any feedback and any burden assessment requirements and consider the potential implications for implementing the WDES.

## 4. Key issues

EDC is asked to consider the issues set out in this paper, and specifically if EDC:

- has any comments on the draft metrics;
- would wish to formally feed into the consultation process (and if so whether it would be helpful to hold a special workshop with EDC members either in December or after the regional consultation events in early March 2018), or whether the results from the consultation exercises and other activity should be substantive items on the agendas for the next two EDC meetings in January and March 2018;
- has any comments on the revised wording for the Standard Contract;
- has any views on the timetabling of the WDES.

<sup>4</sup> ‘The Provider must implement the National Workforce Disability Equality Standard from 1 April 2018 and must submit a report by 31 March 2019 and then annually to the Co-ordinating Commissioner on its progress in implementing that standard.’ NHS Standard Contract, 2017/18 & 2018/19, clause 13.7

<sup>5</sup> National Workforce Disability Equality Standard, of the consultation document, page 15.

## Appendix 1: Draft WDES Metrics for piloting in October 2017

### Explanatory Notes

#### Understanding the metrics

- a. These explanatory notes are not part of the draft metrics but provide useful information that may assist those piloting the metrics to understand the draft metrics.
- b. As part of the process of developing the WDES Metrics criteria have been developed.
- c. In order to assist the parties testing the metrics, information is provided on the criteria that have shaped the draft metrics, the data source for the metrics, how we have sought to minimise the data collection burden, which of the metrics compare the position of Disabled people and Non-disabled people.
- d. Where relevant a note specific to the draft metric or metric is provided at the end of the draft metric; this note is not part of the draft metric.
- e. Once finalised the metrics should identify whether there are unwarranted differences between the position/experiences of disabled staff compared to non-disabled staff. Where such differences exist, the evidence should inform the development of a plan to reduce unwarranted variations.

#### The criteria that have informed the draft WDES metrics

- a. Criterion 1 – clear evidence base: Each metric must have a clear evidence base.
- b. Criterion 2 – positive impact: There is an intended positive impact associated with collecting data for the metric.
- c. Criterion 3 - collectability: The data can be collected for the metric and the statistics are meaningful. The exemption to this rule is where the evidence strongly supports collection and the information should be collected in furtherance for example of compliance with existing legislative obligations provided by the Equality Act 2010.
- d. Criterion 4 – consistency: Where possible the metrics should follow the same format as the metrics developed for the Workforce Race Equality Standard (WRES). [Metrics 1, 2, 4, 5, 10 mirror or largely mirror the WRES Metrics 1, 2, 5 & 9 as at April 2016.]

#### Minimising the collection burden and the benefits of pre-populating data

- a. Where the data source is the NHS Staff Survey or the ESR, NHS England will pre-populate an Excel file that will be provided to NHS Trusts for checking purposes.
- b. This pre-population approach, adopted by the WRES Team, has the advantage of reducing the potential additional collection burden on trusts, making more effective use of data already collected, verifying key equality data and enabling NHS Trusts to strategically plan and better meet their legal obligations under the Equality Act 2010.
- c. Trusts are only asked to collect new data for the metrics that are not currently collected. Most of the draft metrics, 7 of the 10, (Metrics 1, 4, 5, 6, 7, 8 & 10) utilise existing data sources, the annual National Staff Survey or the Electronic Staff Record (ESR). In due course, sufficient information may also be collated on the ESR on metrics 2 and 3.
- d. The data source is specified on the far right hand column of the draft WDES metrics.

#### Metrics that compare Disabled staff to non-disabled staff

- a. Most of the draft metrics, 8 of the 10 draft metrics (1, 2, 3, 4, 5, 7 & 10) compare the position of disabled staff or personnel with that of non-disabled staff or personnel.
- b. Metric 8 considers disabled staff only when it asks about adequate adjustments made.
- c. Metric 9 focuses on Disabled Staff and the networks that represent them. Two options have been provided for comments. We are explicitly seeking thoughts on how to improve this metric.

## Appendix 1: Draft WDES Metrics for piloting in October 2017

Draft metric	Data source
<p>1. Percentage of staff in each AfC Band cluster 1-4, 5-7, 8-9 and VSM (including Executive Board members) and Medical and Dental subgroups compared with the percentage of staff in the overall workforce disaggregated by:</p> <ul style="list-style-type: none"> <li>– Non – clinical staff;</li> <li>– Clinical staff – of which               <ul style="list-style-type: none"> <li>○ (non –medical staff);</li> <li>○ Medical and dental staff.</li> </ul> </li> </ul> <p><b>Note:</b> Definitions for these categories are based on ESR occupation codes with the exception of Medical and Dental staff, which are based on grade codes. This metric mirrors the WRES.</p>	<p>ESR</p> <p>NHS Staff Survey q29 provides information on occupational groups.</p>
<p>2. Relative likelihood of staff being appointed from shortlisting across all posts.</p> <p><b>Note:</b> Like the WRES, this metric refers to both external and internal posts. This metric mirrors the WRES.</p>	<p>Recruitment Dataset</p>
<p>3. Relative likelihood of staff entering the formal capability or sickness procedures.</p> <p>a) Relative likelihood of disabled staff entering the formal capability procedure, compared to non-disabled staff, as measured by entry into the formal capability procedure.</p> <p>b) Relatively likelihood of disabled staff entering the formal sickness absence procedure, compared to non-disabled staff, as measured by entry into the formal sickness procedure.</p> <p><b>Note:</b> The metric will be based on data from a two year rolling average of the current year and the previous year.</p>	<p>Trust data because insufficient data held on ESR</p>
<p>4. a) Percentage of staff experiencing harassment, bullying or abuse from: i) managers in the last 12 months; ii) other staff in last 12 months.</p> <p>b) The last time you experienced harassment, bullying or abuse at work, did you or a colleague report it?</p> <p><b>Note:</b> Part a largely mirrors the WRES. Part b, an existing Staff Survey question, has been added to examine whether staff felt able to report harassment, bullying or abuse.</p>	<p>NHS Staff Survey Q15b, c &amp; d</p>
<p>5. Percentage of staff believing that the Trust provides equal opportunities for career progression or promotion.</p> <p><b>Note:</b> This metric mirrors the WRES.</p>	<p>NHS Staff Survey Q16.</p>
<p>6. In the last 3 months have you felt pressure from your manager to come to work despite not feeling well enough to perform your duties?</p>	<p>NHS Staff Survey Q9c</p>

## Appendix 1: Draft WDES Metrics for piloting in October 2017

Draft metric	Data source
7. How satisfied are you with the extent to which your organisation values your work?	NHS Staff Survey Q5f
8. Has your employer made adequate adjustments to enable you to carry out your work?  <b>Note:</b> This is the same wording as used in the relevant question in the NHS Staff Survey. We will be examining whether this language should be changed to 'reasonable' adjustments in future NHS Staff Surveys.	NHS Staff Survey Q27b
9. <b>Option a</b> Does your trust have a disabled staff network and, if yes, what stage has it reached to contribute to executive decision-making? <ul style="list-style-type: none"> <li>– Does the Network meet regularly, at least every three months</li> <li>– Does the Network have an elected Chair who is released at least 2 days per month to support this</li> <li>– Does the Network have representation at key Governance meetings</li> <li>– Is a board member also a member of the Network?</li> </ul> <b>Option b</b> i) Does your trust have a disabled staff network or another relevant network designed to give disabled people a voice? ii) How effective is this or are these networks on a scale of 1 to 5.  The scale is: 1=Very ineffective; 2= Ineffective; 3 = Average; 4= Effective 5= Very effective  <b>Note:</b> Options a and b are alternatives. The aim is develop a metric that assesses whether the principle of "Nothing About Us without Us" is informing how disabled staff are effectively contribute to shaping positive employment developments for disabled staff. Comments are welcomed on the comparative strengths or weaknesses of options a and b and/or on an alternative stronger metric.	Trust Information  The views of people with disabilities will shape this metric.
10. Percentage difference between the organisation's VSM (Very Senior Managers) and Board voting membership and its overall workforce.  <b>Note:</b> This metric compares Disabled and Non-disabled personnel. This metric mirrors the WRES.	ESR

## Appendix 2: The joint proposals from NHS England and Public Health England to the VCSE Health and Well Being Alliance (HWA)<sup>6</sup>

### Proposal 1: Developing third sector and employer narrative to support transition into work for young people with mental health problems and people with a learning disability and/or autism.

The aim is to support the transition into work of young people experiencing common and severe mental health problems and people with a learning disability and/or autism. The HWA will produce a number of key products as online and downloadable resources. These products will support employers, especially public sector organisations, particularly NHS Trusts, to improve the employment opportunities, outcomes and support for the target groups. The products will be accessible to all businesses free of charge. Five key products should be produced together with proposed next steps for 2018/19:

- a. a business case;
- b. a narrative;
- c. examples of good practice and case studies;
- d. a review and assessment of, and links to, key resources and toolkits and recommendations for any new resources;
- e. information for organisations on key organisations, sources of support and brokerage services.

### Disability As An Asset, Disabled Staff Networks, equivalent networks and arrangements, Disability Confident and supporting the WDES

The aim is to identify how key initiatives can support the employment and retention of disabled staff by NHS Trusts, advance partnership working between disabled staff, disabled organisations and NHS Trusts and support the implementation of the WDES. The key initiatives are Disability as an Asset, Disabled Staff Networks/Lived Experience Networks, other arrangements designed to give voice to disabled people in the NHS, the Disability Confident Scheme and Access to Work. Five key products should be produced together with proposed next steps for 2018/19:

- a. a narrative;
- b. research and information on disabled staff networks, lived experience networks and other arrangements designed to give voice to disabled staff across NHS Trusts in England;
- c. research and information on NHS Trusts and the DWP's Disability Confident Scheme;
- d. a review of resources which signpost NHS organisations to key sources of guidance and good practice including on Access to Work and other support available to facilitate the employment of disabled staff;
- e. a review and assessment of, and links to, key information and resources that provide support on the development of Disability as an Asset by NHS organisations as well as information on organisations that can provide support to NHS organisations.

**Bid update:** Both bids are supported by our DWP colleagues and secured first stage approval and HWA members submitted high quality bids to deliver both proposals. The proposals will be submitted for Ministerial consideration this month. If successful, both bids will support both the WDES and the Learning Disability Employment Programme.

<sup>6</sup> The products should be designed as online and downloadable resources.