The NHS Long Term Plan

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NHS

THE NHS LONG TERM PLAN –

EQUALITY AND HEALTH INEQUALITIES IMPACT ASSESSMENT

A: Introduction

The purpose of this Equality and Health Inequalities Impact Assessment

NHS England is subject to legal duties to give due regard or regard to addressing health inequalities and advancing equality of opportunity. These separate duties are the Public Sector Equality Duty (PSED), section 149 (1) of the Equality Act 2010 and the health inequalities duties set out as section 13G of the National Health Service Act 2006 as amended.[1] This Equality and Health Inequalities Impact Assessment (EHIA) explains how NHS England has considered and addressed these 'equality duties' in developing the NHS Long Term Plan. This EHIA has assisted, and will assist, decision-makers to make informed decisions about the NHS Long Term Plan and these legal obligations. The Long Term Plan is over 130 pages in length so this EHIA provides a narrative summary assessment to provide evidence of the consideration given to the legal duties. This EHIA will also assist readers to understand how NHS England has addressed the PSED and the health inequalities duties in developing the NHS Long Term Plan.

The structure of this EHIA

Part B of this EHIA overviews the basic legal framework, explains some key terms, summarises the obligations associated with the 'equality' duties and provides the wording of the duties. Additional information is provided in the four tables located at the end of part B of this EHIA. Part C of this EHIA explains NHS England's EHIA framework and how it has drawn on the Technical Guidance on the PSED published by the Equality and Human Rights Commission (EHRC).

Appendix 1 sets out section 149 of the Equality Act 2010. Appendix 2 sets out key health inequalities duties placed on the Secretary of State, NHS England's Board and Clinical Commissioning Groups (CCGs). However, this EHIA is not meant to provide a detailed guide to the Equality Act 2010, the PSED or the health inequalities duties. Readers who need more detailed information on the PSED may wish to access resources published by the EHRC or others.[2] Readers who need more information on health inequalities and/or the health inequalities duties, may wish to access other resources published by NHS England and/or Public Health England.[3] Annex 1 assesses the Long Term Plan and comments on how consideration has been given to equality and health inequalities.

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[1] The health inequalities duties were introduced by the health and Social Care Act 2012 which amended the National Health Service Act 2006.

[2] Equality Act 2010: Technical Guidance on the Public Sector Equality Duty: England, EHRC, 2014
The Public Sector Equality Duty and Equality Impact Assessments, House of Commons Briefing Paper Number 06591, December 2017

[3] Guidance for NHS Commissioners on equality and health inequalities legal duties, NHS England, 2015
Challenging Health Inequalities: Support for CCGs, NHS England, 2015
Health profile for England: 2018, Chapter 5, Health Inequalities, PHE, September 2018

B: The legislative context, the PSED and the health inequalities duties

Understanding the legal framework and the PSED

Addressing the Public Sector Equality Duty means considering how to eliminate conduct that is unlawful under the Equality Act 2010. The General Equality Duty refers to the legislative provisions set out in primary legislation in section 149 (1) of the Equality Act 2010, see box A. The General Equality Duty is supported by secondary legislation, non-statutory Technical Guidance, published by the Equality and Human Rights Commission (EHRC) and other non-statutory guidance also issued by the EHRC.

Box A: The Public Sector Equality Duty (PSED)

The PSED is section 149 (1) of the Equality Act 2010. This duty states that 'A public authority must, in the exercise of its functions, **have due regard** to the need to'—

a. 'eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;' **[First equality aim]**
b. 'advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;' **[Second equality aim]**
c. 'foster good relations between persons who share a relevant protected characteristic and persons who do not share it.' **[Third equality aim]**

The PSED's three equality aims[4]

The three elements of the General Equality Duty are often called equality aims and that term is used in this EHIA.[5] The EHRC advises that due regard should be given to all three equality aims:

- Equality aim 1: Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.[6]
- Equality aim 2: Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Equality aim 3: Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it.

To address the first equality aim consideration needs to be given to who is protected by the Equality Act 2010 and how to eliminate unlawful or prohibited conduct. Table

[4] See table 3 for exemptions in relation to the PSED and the protected characteristic of age.
[5] The term 'equality aim' is not used in the Equality Act 2010,
[6] In relation to the PSED and marriage and civil partnership, only the first equality aim needs to be considered. Equality Act 2010, section 149 (7) and the EHRC's Technical Guidance on the PSED, paragraph 2.9.

1 provides a list of types of conduct that are unlawful under the Equality Act 2010. Table 2 sets out the Equality Act's nine protected characteristics or to put it simply who/which characteristics or groups are protected by the 2010 Act's provisions.

What due regard means, key principles and expectations

According to the EHRC's Technical Guidance on the PSED, to 'have due regard' means that in making decisions and in its day-to-day activities a body subject to the duty must consciously consider the need to do the things set out in the general equality duty namely to eliminate discrimination, advance equality of opportunity and foster good relations.

The EHRC's Technical Guidance highlights seven key principles: i) knowledge of the duty; ii) timeliness; iii) real consideration; iv) sufficient information; v) that the duty is non-delegable; vi) review; vii) evidence of consideration. In relation to complying with the General Equality Duty[7], the EHRC's Technical Guidance also highlights the importance of: i) a sound evidence base and equality information; ii) engagement; iii) considering relevant evidence; iv) documenting the process and evidence of compliance; v) commissioning and procurement. [8] These considerations have informed the development of NHS England's EHIA framework (see Part C).

Understanding health inequalities and the health inequalities duties

The World Health Organisation (WHO) defines health inequities or health inequalities as 'avoidable inequalities in health between groups of people within countries and between countries.' Such inequities arise from inequalities within and between societies. According to the WHO 'social and economic conditions and their effects on people's lives determine their risk of illness and the actions taken to prevent them becoming ill or treat illness when it occurs.' Legislative amendments to the National Health Service Act 2006, introduced by the Health and Social Care Act 2012, placed a duty on NHS England's Board in relation to considering how to reduce health inequalities in access to health care and outcomes (see box B). Duties were also placed on the Secretary of State and Clinical Commissioning Groups (see table 4).

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[7] The General Equality Duty is section 149 (1) of the Equality Act 2010

[8] Note: There is no settled assessment, informed by case law of what 'regard ' means in relation to the health inequalities duties but we have sought to address health inequalities.

Box B: Reducing health inequalities

The duty placed on NHS England's Board by the National Health Service Act 2006 (section 13 G) states that NHS England's 'Board must, in the exercise of its functions, **have regard** to the need to:

a. reduce inequalities between patients with respect to their ability to access health services, and
b. reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

Health inequalities can cut across a range of social and demographic indicators including socio economic status, occupation, geographical location and protected characteristics. There is clear evidence that reducing health inequalities improves life expectancy and reduces disability across the social gradient. Tackling health inequalities is therefore core to improving access to services, health outcomes and improving the quality of services and the experiences of people. Reducing health inequalities is also core to the NHS Constitution and the values and purpose of the NHS. Unlike the nine protected characteristics in the Equality Act 2010, there is no list of groups enshrined in the National Health Service Act 2006 in relation to the duties on reducing health inequalities. However, research has identified that a range of groups and communities are at greater risk of poorer access to health care and poorer health outcomes (see table 2).

Table 1: Prohibited conduct under the Equality Act 2010 [9]

Type of conduct that is prohibited	Section
▪ Direct discrimination	s.13
▪ Discrimination arising from disability	s.15
▪ Gender reassignment discrimination involving absence from work	s.16
▪ Pregnancy and maternity discrimination in both work and non-work situations	s.17/18
▪ Indirect discrimination	s.19
▪ Failure to make reasonable adjustments for disabled persons	s.21
▪ Harassment	s.26
▪ Victimisation	s.27
▪ Enquiries about disability and health before the offer of a job is made	s.60
▪ Breach of non-discrimination rule	s.61
▪ Breach of an equality clause	s.66
▪ Breach of an equality rule	s.67
▪ Breach of maternity equality clause	s.73

[9] Appendix B: Prohibited conduct, Equality Act 2010, Technical Guidance on the Public Sector Equality Duty: England, EHRC 2014

▪ Breach of maternity equality rule	s.75
▪ Discrimination and harassment in relation to relationships which have ended	s.108
▪ Unlawful acts by agents or employees	s.110
▪ Instructing, causing or inducing discrimination	s.111
▪ Aiding contraventions.	s.112

Table 2: Protected characteristics and health inequalities	
Protected characteristics	**Health inequalities**
• **Age:** any age group, for example this includes older people; middle years; early years; children and young people. • **Gender**: men; women; • **Gender reassignment:** See note. [10] • **Disability: includes** physical impairments; learning disability; sensory impairment; mental health conditions; long-term medical conditions. • **Marriage and civil partnership:** people who are married, unmarried or in a civil partnership. • **Pregnancy and maternity**: women before and after childbirth; breastfeeding. • **Race and ethnicity: people from different ethnic groups**.[11]	Others who face health inequalities: • Looked after and accommodated children and young people. • Carers: paid/unpaid, family members. • Homeless people or those who experience homelessness: people on the street; those staying temporarily with friends/family; those in hostels/B&Bs. • Those involved in the criminal justice system: offenders in prison/on probation, ex-offenders. • People with addictions and substance misuse problems. • People who have low incomes. • People who have poor literacy. • People living in deprived areas. • People living in remote, rural and island locations. • People in other groups who face health inequalities.

[10] Under the Equality Act 2010, gender reassignment covers a person who has proposed, started or completed a process to change their sex. The explanatory notes to the 2010 Act state that a transsexual person has the protected characteristic of gender reassignment.
[11] All people have an ethnicity. People from Black and other minority ethnic groups include non-English speakers, Gypsies, Roma and Travellers, refugees and asylum seekers and migrant workers. In looking at inequalities it is important to identify any group that faces discrimination or inequalities White working communities also face extreme health inequalities.

Table 2: Protected characteristics and health inequalities	
Protected characteristics	**Health inequalities**
• **Religion and belief:** people with different religions or beliefs, or none. • **Sexual orientation:** lesbian; gay; bisexual; heterosexual.	

Table 3: Exceptions to the general equality duty and age
The general equality duty as it relates to the protected characteristic of age does not apply to the exercise of the following functions: ‘(a) the provision of education to pupils in schools; (b) the provision of benefits, facilities or services to pupils in schools; (c) the provision of accommodation, benefits, facilities or services in community homes pursuant to section 53(1) of the Children Act 1989; (d) the provision of accommodation, benefits, facilities or services pursuant to arrangements under section 82(5) of that Act (arrangements by the Secretary of State relating to the accommodation of children).’ [12]

Table 4: Key legal duties on reducing health inequalities and the National Health Service Act 2006 as amended
Duty as to reducing inequalities (s.1C). In exercising functions in relation to the health service, the Secretary of State must have regard to the need to reduce inequalities between the people of England with respect to the benefits that they can obtain from the health service.”
Duty as to reducing inequalities s. 13G: The [NHS England] Board must, in the exercise of its functions, have regard to the need to: (a) reduce inequalities between patients with respect to their ability to access health services, and (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.
Duty as to promoting integration s.13N (1).The Board must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would— (a) improve the quality of those services (including the outcomes that are achieved from their provision), (b) reduce inequalities between persons with respect to their ability to access those services, or

[12] Equality Act 2010, Sch. 18, para 1,

Table 4: Key legal duties on reducing health inequalities and the National Health Service Act 2006 as amended
(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
Duties as to reducing inequalities (s. 14T) Each clinical commissioning group must, in the exercise of its functions, have regard to the need to— (a) reduce inequalities between patients with respect to their ability to access health services, and (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.
NHS England's Board has a number of related duties in relation to health inequalities, key duties are summarised below. a. To exercise its functions with a view to securing that the provision of health services is integrated with the provision of health related services or social care services where this would improve the quality of services and reduce inequalities (s13N). b. To include in an annual business plan an explanation of how it proposes to discharge its duty to have regard to the need to reduce inequalities (s. 13T). c. To include in an annual report an assessment of how effectively it discharged its duty to have regard to the need to reduce inequalities (s. 13U). d. To conduct an annual assessment of CCGs, including an assessment of how well each CCG has discharged their duty to have regard to the need to reduce inequalities, and publish a summary of the result (s. 14Z16).

C: The EHIA framework for the NHS Long Term Plan

Commitment from NHS England and NHS Improvement's Boards to addressing health inequalities and equalities

Before the main work commenced on the NHS Long Term Plan, NHS England and NHs Improvement's Boards considered strategic developments in relation to health inequalities and agreed that 'a longer-term perspective on narrowing health inequalities would be included in the forthcoming NHS Plan.'

Workstreams' briefs on equalities and health inequalities

An inclusive process was developed led by a number of working groups whose brief included reducing inequalities as a cross cutting theme. This brief included examining how to reduce inequalities by reference to protected characteristics. The workstreams also committed to reviewing evidence and engaging with the VCSE Health and Wellbeing Alliance and more broadly with relevant stakeholders.

Working groups included participation from the VCSE Health and Wellbeing Alliance and other stakeholders working with and/or representing community groups and/or those facing health inequalities. This engagement informed the development of initial policy proposals.

Wide and diverse engagement and consultation

In developing the Long Term Plan, our priority was to engage as widely as possible. Our public consultation received over 2,500 responses from individuals and organisations representing the views of over 3.5 million people. These engagement activities reached out to a wide and diverse range of stakeholders using partners including the Voluntary Community and Social Enterprise Health and Wellbeing Alliance (VCSE HWA) including the National Council for Voluntary Organisations (NCVO). Through this partnership work, and other activities, we engaged with stakeholders working directly with, and/or representing communities that face some of the greatest health inequalities.

Equality and Health Inequalities Impact Assessments

There was engagement about addressing equality and health inequalities as proposals were developed. This EHIA was produced to support the decision-making process in relation to the Long Term Plan. The NHS Long Term Plan includes a wide range of proposals across a wide range of protected characteristics and health inequalities (see annex 1). This represents a broad and determined effort to ensure the Plan improves and reduces inequalities over the next 10 years

The Long Term Plan and reducing health inequalities

Some groups, including people with a learning disability, people with severe mental health illnesses, Gypsies, Roma and Travellers, homeless people, migrants, refugees and asylum seekers and Transgender people continue to experience some of the most significant barriers to accessing health care and poor health outcomes. In developing the Long Term Plan, consideration has been given to those groups who experience the greatest health inequalities.

The Plan contains a range of measures to reduce these profound health inequalities (see the Plan and annex 1). However, this process also identified that in some areas the evidence base was weaker or less robust both for these groups[13] and for Lesbian, Gay and Bisexual people. The implementation of the Long Term Plan will be supported by:

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[13] People with a learning disability, people with or severe mental health illnesses, including Gypsies, Roma and Travellers, homeless people, migrants, refugees and asylum seekers and Transgender people

- increased partnership working, especially with the Voluntary, Community and Social Enterprise Sector requested by NCVO and the VCSE HWA;
- research and other programmes in order to better understand and reduce these inequalities where necessary;
- building on our annual reports explaining key steps taken to address the requirements of the PSED;[14]
- reviewing and updating the NHS England's equality objectives and targets in light of the Long Term Plan;
- identifying key lessons from the implementation of the NHS Sexual Orientation Monitoring Standard and securing more robust equality data, work is currently in hand to consider what action should be taken by the Department of Health and Social Care working in partnership with NHS Digital and NHS England;
- continuing to liaise with the EHRC and exploring whether a joint programme to support the implementation of the Long Term Plan would be practical and beneficial.
- ICS plans will have to reflect the diverse needs of their population.

Appendix I: The PSED [Section 149] [15]

149 (1) A public authority must, in the exercise of its functions, have **due regard** to the
need to—

a. **eliminate** discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
b. **advance equality of opportunity** between persons who share a relevant protected characteristic and persons who do not share it;
c. **foster good relations** between persons who share a relevant protected characteristic and persons who do not share it.

[14] Note: NHS England's current equality objectives for 2016-2020 are due to be refreshed in 2019 to create the new equality objectives for the next four years 2020/2021 to 2023/2024.
[15] See Schedule 5, paragraph 182 of Health and Social Care Act 2012.

149 (2) A person who is not a public authority but who exercises public functions[16] must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
149 (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to: a. remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; b. take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; c. encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
149 (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
149 (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to: a) tackle prejudice; and b)promote understanding.
149 (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
149 (7) The relevant protected characteristics are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
149 (8) A reference to conduct that is prohibited by or under this Act includes a reference to: (a) a breach of an equality clause or rule; (b) a breach of a non-discrimination rule.
149 (9) Schedule 18 (exceptions) has effect.

Appendix 2: Key legal duties in relation to reducing health inequalities placed on NHS England – the National Health Service Act 2006 as amended

Duty as to reducing inequalities s. 13G: The Board must, in the exercise of its functions, have regard to the need to:

[16] 'A public function is a function that is a function of a public nature for the purpose of the Human Rights Act 1998.' Equality Act 2010, Section 150.

Appendix 2: Key legal duties in relation to reducing health inequalities placed on NHS England – the National Health Service Act 2006 as amended
(a) reduce inequalities between patients with respect to their ability to access health services, and (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.
Duty as to promoting integration s.13N (1).The Board must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would— (a) improve the quality of those services (including the outcomes that are achieved from their provision), (b) reduce inequalities between persons with respect to their ability to access those services, or (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
Duty as to promoting integration (s.13N) (2) The Board must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health related services or social care services where it considers that this would— (a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services), (b) reduce inequalities between persons with respect to their ability to access those services, or (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
Duty as to promoting integration s.13N3:The Board must encourage clinical commissioning groups to enter into arrangements with local authorities in pursuance of regulations under section 75 where it considers that this would secure— (a) that health services are provided in an integrated way and that this would have any of the effects mentioned in subsection (1)(a) to (c), or (b) that the provision of health services is integrated with the provision of health-related services or social care services and that this would have any of the effects mentioned in subsection (2)(a) to (c).

Appendix 2: Key legal duties in relation to reducing health inequalities placed on NHS England – the National Health Service Act 2006 as amended

NHS England's Board has a number of related duties which are summarised below.

e. To include in an annual business plan an explanation of how it proposes to discharge its duty to have regard to the need to reduce inequalities (s.13T).
f. To include in an annual report an assessment of how effectively it discharged its duty to have regard to the need to reduce inequalities (s.13U).
g. To conduct an annual assessment of CCGs, including an assessment of how well each CCG has discharged their duty to have regard to the need to reduce inequalities, and publish a summary of the result (s.14Z16).