

Classification: Official

Publication approval reference: PAR1588



# NHS England and NHS Improvement's Equality Objectives for 2022/23 – 2023/24

Version 1, 19 May 2022

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# Foreword

In developing the equality objectives for NHS England and NHS Improvement for the next two years (2022/23 and 2023/24) we have reflected on some momentous changes since 2018 and considered how to deal with the fact that further change is to come. Since we last reviewed our equality objectives and targets in 2018, we have seen the publication of the NHS Long Term Plan early in 2019 which set out the strategic direction and priorities for the NHS for the next 5 to 10 years. However, since 2020, the COVID-19 pandemic has shone a harsh spotlight on the nature and extent of the equality challenges faced by the NHS, including profound health inequalities that persist in our society.

The pandemic and the key lessons are informing a refresh of the NHS Long Term Plan and have brought fresh impetus for the NHS to take action to address inequalities and advance equality of opportunity. Also, since 2018, there have been significant changes to the structure and landscape of the NHS and our own operations and functions. With the implementation of the changes set out in the Health and Care Act 2022, we will see further extensive changes to the structure and landscape of the NHS and our own operations and functions.

The final Ockenden Report demands changes to services for people with the protected characteristic of pregnancy and maternity. The NHS response to this report over the coming months will have a clear focus on what can be achieved within the powers provided by the Equality Act 2010 and associated regulations to improve the situation for people with this protected characteristic.

In designing the new equality objectives, in addition to reflecting on key changes since 2018, we have also reflected on the relevance of the founding principles of the NHS and the NHS Constitution and on the purpose of the Public Sector Equality Duty and equality objectives. We have also considered and explained why it is not currently possible to bring together the separate reporting requirements and the performance assessment frameworks provided by the Equality Act 2010 and set out in the Health and Care Act 2022.

The key founding principle of the NHS and of the NHS Constitution is the provision of a comprehensive service available to everyone underpinned by anti-discrimination provisions and a wider social duty to promote equality through the

services it provides.<sup>1</sup> This founding principle builds directly on the Equality Act 2010 and the Public Sector Equality Duty. The Equality Act 2010, through the Public Sector Equality Duty, places a duty on NHS England and NHS Improvement to seriously consider how to drive systemic and demonstrable improvement in equality considering the protected characteristics set out in the Equality Act 2010. This is greater than merely ‘removing discrimination’ – the law, and the NHS Constitution, require more and we are committed to promoting positive change and advancing equality in all aspects of our work and, in the language of the 2010 Act, in the exercise of all of our functions. The Specific Equality Duties (SEDs) require the publication of focused equality objectives to drive change at least every four years. The requirement to publish equality information annually is designed to enable our organisation and others to assess how we are delivering on these equality commitments.

We fully recognise the importance of the National Health Service Act 2006’s health inequalities duties; the current health inequalities duties came into force in 2012. The health inequalities duties provide the central and major legislative driver for addressing health inequalities. However, the Health and Care Act 2022 will significantly change the statutory framework for health inequalities. It will also introduce provisions for a new statutory performance and reporting framework including health inequalities and other important areas. Once the Health and Care Act 2022 comes into force we will be able to fully consider whether we can bring together the statutory requirements to develop equality objectives every four years and produce equality information annually together with the planned separate statutory requirements on health inequalities. Any such consideration would need to ensure that such an approach would not undermine compliance with either the statutory obligation under the Public Sector Equality Duty or those in relation to health inequalities.

This document sets out how we propose to review and revise our equality objectives in this evolving context, building on an assessment of what has worked previously. It also sets out our early thinking on how we can reach out to the people and communities we serve and the stakeholders across the system landscape, so we can build on a wide range of experience to make our new equality objectives as effective as possible focusing on the challenges faced by people by reference to protected characteristics.

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<sup>1</sup> Principle 1 of the NHS Constitution (Mar 2022) <https://www.gov.uk/government/publications/the-nhs-constitution-for-england/the-nhs-constitution-for-england#the-nhs-provides-a-comprehensive-service-available-to-all>

# 1. Overview

## 1.1 The purpose of this report

This report sets out how NHS England<sup>2</sup> and NHS Improvement<sup>3</sup> has reviewed our existing equality objectives and developed new equality objectives for 2022/23 and 2023/24 and targets for 2022/23. Our aim is to drive strategic and demonstrable equality improvements by reference to the nine protected characteristics in the Equality Act 2010 for the people we serve, the people that we employ and in the exercise of our broader activities and functions.

In developing our equality objectives and targets, as we have already explained, we have made a conscious decision to ensure that we focus on the requirements of the Equality Act 2010 and Public Sector Equality Duty as the Specific Equality Duties require. We have, however, incorporated current health inequalities targets where these naturally align with our equality objectives and equality targets and doing so would neither undermine compliance with our existing equality duties nor the existing or forthcoming health inequalities duties, powers or responsibilities.

## 1.2 Meeting our obligations under the PSED/SEDs and the health inequalities duties

This report demonstrates how we are meeting the obligation set out in the Equality Act 2010, the Public Sector Equality Duty (PSED)<sup>4</sup> and the Specific Equality Duties (SEDs).<sup>5</sup> These duties require NHS England and NHS Improvement to publish one or more equality objectives, at intervals of not more than four years since the previous objectives were published, which address one or more of the three equality aims in the PSED.<sup>6</sup>

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<sup>2</sup> Note: The statutory name of NHS England is currently the NHS Commissioning Board. Once the relevant provisions in the Health and Care Act 2022 come into force, NHS England's statutory name will become NHS England, and Monitor and the NHS Trust Development Authority will be de-established and will become part of NHS England.

<sup>3</sup> Note: References to NHS Improvement refer to the statutory bodies that make up NHS Improvement that are subject to the PSED and SEDs. The names of these statutory bodies are the NHS Trust Development Authority and Monitor.

<sup>4</sup> The wording of the PSED is provided in Appendix B

<sup>5</sup> The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017  
<https://www.legislation.gov.uk/uksi/2017/353/contents/made>

<sup>6</sup> See appendices C and D for our existing and proposed equality objectives.

The PSED and the SEDs provide the statutory performance framework to drive focused and meaningful change to address the requirements of the Equality Act 2010 and the PSED. Publishing equality objectives and equality information are key building blocks to ensure that equality considerations are integrated throughout and inform the day-to-day business of each and every one of our teams and the organisations and structures we have oversight of.

Our planned approach to consultation and engagement will actively explore if / how best to bring together the separate statutory equalities reporting frameworks and any future health inequalities reporting requirement. Despite the separate legislative frameworks and scope, we recognise the importance, where possible, of aligning action on health inequalities with action on equalities so that our legal obligations and work in these two areas can complement and reinforce each other. We want to explore what is possible but we must get this right, ensuring that we meet our current and developing legal obligations. We understand that consideration of further integration will only be possible once the new legislation, being introduced by the 2022 Act is settled. The legislative frameworks and the shape of things to come are explained in Appendix B.

### 1.3 Reviewing our equality objectives and targets

This report reviews the equality objectives and updated targets for NHS England and NHS Improvement published in June 2018.<sup>7</sup> Six equality objectives were first approved in 2016/17 for April 2016 to March 2020. It is important to note that in March 2020 the Equality and Human Rights Commission (EHRC) suspended the reporting requirement in the SEDs for all public bodies. The reporting requirements were reinstated for NHS organisations, including NHS England and NHS Improvement, in October 2021.

We did not review and develop new targets to support the existing six equality objectives for 2020/21 or 2021/22 because: a) of the suspension of the SED statutory reporting requirements; b) of the pandemic; and c) we planned to undertake the substantive review described in this document. Nevertheless, the Boards of NHS England and NHS Improvement agreed to extend the existing six equality objectives for 2020/21 and 2021/22. The Boards also approved a new

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<sup>7</sup> NHS England response to the specific equality duties of the Equality Act 2010  
NHS England's equality objectives and equality information - February 2017 – March 2018  
<https://www.england.nhs.uk/wp-content/uploads/2018/06/nhse-response-to-specific-equality-duties-of-the-equality-act-2010.pdf>

COVID-19 focused equality objective initially for 2020/21 and then for 2021/22.<sup>8</sup> In approving the seventh equality objective, our Boards recognised the far reaching and adverse nature of the COVID-19 pandemic's impact on equalities and health inequalities and the need to take appropriate action. Our last SED report was published in February 2022 (it was delayed because of the level 4 national incident which remained in place in March 2022).<sup>9</sup>

## 1.4 Organisations covered by this report

This report covers NHS England and NHS Improvement. NHS Improvement is made up of Monitor and the NHS Trust Development Authority (NHS TDA). Though statutorily separate legal entities, NHS England and NHS Improvement have been working together for a number of years and have agreed joint equality objectives since 2019/20.<sup>10</sup> The Health and Care Act 2022 will introduce changes that will create a substantially new statutory body renamed NHS England. It will incorporate NHS England and NHS Improvement, Health Education England (HEE) and NHS Digital.

We understand that HEE and NHS Digital will remain as separate legal entities during 2022/23, so they will be responsible for complying with the PSED and SEDs. Once the new functions, duties and powers to be exercised by the new NHS England are settled and clear, we will review the proposed equality objectives to ensure they consider all of the functions of the 'new' NHS England, especially in 2023/24 when the new legal entity should be created. Similarly, once the legislation is settled it will be clear whether we have given sufficient consideration, in the development of our equality objectives, to our oversight role with the new Integrated Care Boards (ICBs). We do not envisage that external consultation will be able to take place earlier than the summer 2022 because we need to be clear about the key changes being brought in by the Health and Care Act 2022.

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<sup>8</sup> NHS England Annual Report and Accounts 2019/20, Appendix 3: Meeting our Public Sector Equality Duty, January 2021, <https://www.england.nhs.uk/wp-content/uploads/2021/01/nhs-england-annual-report-2019-20-full.pdf>

NHS Improvement annual report and accounts 2019/20, Appendix 2: Meeting our Public Sector Equality Duty, January 2021, <https://www.england.nhs.uk/publication/nhs-improvement-annual-report-and-accounts-2019-20/>

<sup>9</sup> NHS England's and NHS Improvement's equality objectives for 2020/21 and 2021/22, February 2022, <https://www.england.nhs.uk/about/equality/equality-objectives-for-20-21-and-21-22/>

<sup>10</sup> NHS England's and NHS Improvement's equality objectives for 2020/21 and 2021/22, February 2022, <https://www.england.nhs.uk/about/equality/equality-objectives-for-20-21-and-21-22/>



# 2. Updating our equality objectives for 2022/23 and 2023/24

## 2.1 Principles and approach

A director level Oversight Group agreed a set of design principles to guide future development.<sup>11</sup> These principles build on the previous objectives while embracing the changing context to ensure that the revised objectives are as effective as possible. After an assessment of key information, including the EHRC's Technical Guidance, the original design principles, identified by an officer level Steering Group and approved by the director level Oversight Group, were:

- The new objectives need to reflect the substantial change in the NHS environment since the last full review of the objectives was carried out in 2018.
- Each equality objective should enable progress to be made across relevant protected characteristics.
- The targets underpinning each equality objective should provide the focus for specific action, including where required for individual protected characteristics.
- Use of targets also meets the requirement in the legislation and the EHRC technical guidance that equality objectives should be specific and measurable.
- We need to consider how to prepare for and address key changes being introduced by the Health and Care Act 2022:
  - two process equality objectives should focus respectively on NHS England and ICBs
  - the aim should be to ensure that an equality focus is maintained as the new system infrastructure and landscape develop

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<sup>11</sup> The Patient Equalities Team (PET) is working in partnership with the Healthcare Inequalities Improvement Team (HIIT), the People Directorate's Equality and Diversity (EDI) Team and the Human Resources and Organisational Development (HR&OD) Team. An officer level steering group and Director level oversight group have been established which includes the three Directorates.

- Equality objectives should be either patient or workforce-focused unless separation would be impractical or make no sense.
- Equality objectives need to be as specific and measurable as possible.

Drawing on an analysis of key changes in the NHS infrastructure and the proposals contained in the Health and Care Act 2022, the director level Oversight Group also agreed a number of other important considerations:

- Given the range of changes associated with the Health and Care Act 2022, equality objectives should be set for two years (2022/23 and 2023/24) rather than four years.
- Setting limited focused equality targets for 2022/23 should allow for some refinement of the targets for 2022/23 and 2023/24, and future years will be informed by the consultation and engagement process.
- An assessment of the context within which we are working in combined with the legislative changes that are coming has led us to believe that the most effective approach is to set out an initial set of objectives and then consult with the wider public in a more meaningful way.
- We aim to engage externally and meaningfully from July 2022 onwards.
- It will make more sense to consult and engage once the issues identified in Appendix B are clearer.

The evaluation and review process described below was considered by the director level Oversight Group and informed the development of the proposed equality objectives and targets. The director level Oversight Group was informed of the feedback from the evaluation and review process and took it into account when considering and approving revisions to the proposed equality objectives and targets.

## 2.2 The evaluation and review process

The process for updating NHS England and NHS Improvement's equality objectives for 2022/23 and 2023/24 and targets for 2022/23 was carried out in two stages:

1. Detailed evaluation of the equality objectives in place between 2018/19 and 2021/22.

2. Internal rapid review with targeted NHS England and NHS Improvement stakeholders.

A detailed evaluation of the equality objectives was completed between January and March 2022. Its purpose was to assess our performance against the equality objectives during 2020/21 and 2021/22. Detailed consideration has also been given to the changing landscape that will be introduced by the Health and Care Act 2022 (see Appendix B). The detailed evaluation involved:

- a progress update from objective owners against the objectives for 2020/21 and 2021/22 (see the *NHS England and NHS Improvement: Equality objectives and information as at 31 March 2022 report*)
- review of these equality objectives against EHRC technical guidance<sup>12</sup>
- review of alignment to the NHS Long Term Plan<sup>13</sup> and current NHS Mandate<sup>14</sup>
- consideration of the equality objectives published by a small number of other public sector bodies subject to the PSED and the SEDs.

The findings from the detailed evaluation were used to develop a set of proposed equality objectives which formed the basis of the subsequent rapid review with targeted internal stakeholders from NHS England and NHS Improvement. This rapid review took place in February and March 2022, enabling these stakeholders to feed back on the proposed objectives and targets and to shape the requirements for future consultation. We also began the engagement process with the NHS Citizen Advisory Group which will inform patient focused engagement as we move forward.

To assist readers to understand how the proposed new equality objectives build on the existing ones in place between 2018/19 and 2021/22, detailed information is provided in Appendix D. In each case, Appendix D also summarises the rationale for the proposed equality objective for 2022/23 and 2023/24.

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<sup>12</sup> EHRC, Technical Guidance on the Public Sector Equality Duty: England (2021): <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>

<sup>13</sup> NHS Long Term Plan (2019): <https://www.longtermplan.nhs.uk/publication/nhs-long-term-plan/>

<sup>14</sup> Department of Health and Social Care, NHS Mandate 2021 to 2022 (2021):

<https://www.gov.uk/government/publications/nhs-mandate-2021-to-2022>

NHS mandate 2022 to 2023, <https://www.gov.uk/government/publications/nhs-mandate-2022-to-2023>

# 3. Consultation and engagement in 2022/23

## 3.1 Introduction

We are committed to meaningful consultation and engagement in 2022/23 including reaching out to those groups who are often not engaged with. This is particularly important given that wide external consultation and engagement on equality objectives has not taken place since 2018, and also given that the enactment of the proposals in the Health and Care Act 2022<sup>15</sup> will result in significant changes to NHS England, including accountability for additional statutory functions.

We recognise the importance of reaching out to a broad range of people, groups and organisations, including patients, patient forums and carers, carer forums and those groups with whom we may not engage with typically. Given the constraints on us and the broader NHS as a result of the COVID-19 pandemic, consultation and engagement prior to publication was inevitably limited to a rapid review, internal engagement and beginning to identify how to work with the NHS Citizen Advisory Group. However, we have identified a number of key principles that will inform consultation and engagement from July 2022.

## 3.2 Principles that will guide our approach

Although the Specific Equality Duties do not specifically require consultation and engagement, our approach will be informed by the principles which are drawn from NHS England's 2017 Policy on Public Participation. We are also actively seeking feedback from colleagues on what good consultation and engagement should look like. During 2022/23, we propose to engage and consult with people and communities, internal and external stakeholders and system partners to review the proposed equality objectives and targets focusing on changes to be introduced during 2023/24 and beyond. Our planned engagement and consultation will probably run during quarters two and three of 2022/23 so we are likely to finalise this assessment towards the end of 2022/23.

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<sup>15</sup> UK Parliament, Health and Care Act 2022: <https://bills.parliament.uk/bills/3022>

The planned consultation and engagement activities will also take account of, and reflect on, the substantial changes to the system landscape set out in the Health and Care Act 2022. With this work we propose to:

- review the proposed Equality Objectives for 2022/23 and 2023/24 to ensure they are fit for the new system landscape
- explore options for stakeholders to develop and co-design targets for 2023/24 and beyond
- establish a sustainable and proportionate review framework because equality objectives need to be reviewed at least every four years.

### 3.3 Who are we proposing to consult with

This work is likely to include, but is not limited to, those listed below:

Internal	Incoming organisations	External
<ul style="list-style-type: none"> <li>• Existing directorates and regions within NHS England and NHS Improvement</li> <li>• NHS Equality and Diversity Council</li> <li>• Staff networks within NHS England and NHS Improvement</li> <li>• Staff side (trade unions)</li> <li>• Designated engagement and participation fora (inc. NHS Citizen and the VCSE Health and Well-being Alliance)</li> </ul>	<ul style="list-style-type: none"> <li>• Designated stakeholders from newly integrated organisations</li> </ul>	<ul style="list-style-type: none"> <li>• Patients and patient forums</li> <li>• Public engagement</li> <li>• Carers and carer forums</li> <li>• Healthwatch</li> <li>• Local Government Association (LGA) /Local authorities</li> <li>• NHS Confederation and NHS Employers</li> <li>• NHS organisations – Integrated Care Boards (ICBs) and others</li> <li>• NHS system partners including the Care Quality Commission (CQC)</li> <li>• NHS trade unions</li> <li>• Royal Colleges</li> <li>• Voluntary, community and social enterprise organisations</li> </ul> <p>[Consultation and engagement will be both national and regional]</p>

## 3.4. Key themes emerging for consultation and engagement

The internal engagement, including with the Quality and Innovation Committees, has identified a number of key themes and questions to be explored in the wider consultation and engagement programme, and central issues and questions on the objectives:

- Should there be a new commissioning objective?
- Equality objective 3 (information): Should we include mapping data for health inequalities in addition to equalities?
- All patient focused equality objectives: Should the equality objective and target development process also address health inequalities and the health inequalities duties and associated regulations?
- Should we replace the term NHS with health and care?

The final Ockenden Report demands changes to services for people with the protected characteristic of Pregnancy and Maternity. The NHS response to this report over the coming months must, and will, have a clear focus on what can be achieved within the powers provided by the Equality Act 2010 and associated regulations to improve the situation for people with this protected characteristic.

The initial engagement activities have identified the importance of targets under equality objective 5, access and communication in the following areas: community languages and translation; long Covid; pregnancy and maternity; and mental health. We will be liaising closely with relevant teams, directorates and external stakeholders during the broader consultation and engagement phase to identify whether new equality focused targets should be added for either 2022/23 or 2023/24. Any target on maternity will consider key equality lessons from the [final Ockenden Report](#) published at the end of March 2022.

A number of key questions about the detail of targets, measurement and engagement have also been raised:

- How should we measure meaningful change – and how can this be reflected in the objectives and targets and any associated performance framework?
- For each equality objective and associated targets, which metrics will best enable us to drive change?

- How should we ensure that the targets support an improvement approach with a greater focus on measuring "how much", "by when", the metrics and the frequency of measurement and how should this be fed back and to whom?
- How should we be held to account for the achievement of the equality objectives and targets?
- How do we ensure that the scope of the process includes those who are often not engaged with the NHS?

Internal engagement has also underlined the continued importance of meaningful engagement with patients, service users, carers and patient and carer forums including reaching out to those groups who are often not engaged with. We will explore these issues and others raised by stakeholders during the consultation and engagement process.

# Appendix A: Acronyms used in this report

BME	Black and Minority Ethnic
EHRC	Equality and Human Rights Commission
ICBs	Integrated Care Boards
LGBT+	Lesbian, Gay, Bisexual and Transgender plus <sup>16</sup>
PSED	Public sector equality duty
SEDs	Specific equality duties

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<sup>16</sup> LGBT+: LGBT stands for lesbian, gay, bisexual and transgender/transsexual people. However, it is recognised that those four letters do not necessarily include all those whose sexuality is not heterosexual, or whose gender identity is not based on a traditional gender binary, Council of Europe, <https://www.coe.int/en/web/gender-matters/lgbt-#:~:text=LGBT%20stands%20for%20lesbian%2C%20gay,on%20a%20traditional%20gender%20binary>



# Appendix B: Equality legislation, the general and specific public sector equality duties

## 1 The Public Sector Equality Duty

NHS England and NHS Improvement are subject to the Public Sector Equality Duty (PSED) which is set out in the Equality Act 2010.<sup>17</sup> The PSED is made up of a general equality duty and is supported by Specific Equality Duties (SEDs) as set out in secondary legislation. In addition, compliance is supported by Technical Guidance issued by the EHRC.

## 2 Understanding the general equality duty

The general equality duty<sup>18</sup> states that a public body must, in the exercise of its functions, have due regard to the need to address these equality aims:

- 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.

The EHRC, who have responsibility for the promotion and enforcement of the Equality Act 2010 and other equality and anti-discrimination laws, refer to the equality aims as the three aims of the general equality duty. The Equality Act 2010 lists the relevant protected characteristics which the three equality aims apply to as:<sup>19</sup>

- age
- disability

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<sup>17</sup> Equality Act 2010, Section 149(1): <https://www.legislation.gov.uk/ukpga/2010/15/section/149>

<sup>18</sup> Equality Act 2010, Section 149(1): <https://www.legislation.gov.uk/ukpga/2010/15/section/149>

<sup>19</sup> Equality Act 2010, Section 149(7): <https://www.legislation.gov.uk/ukpga/2010/15/section/149>

- gender reassignment
- pregnancy and maternity
- race (including colour, nationality, and ethnic or national origins)
- religion or belief
- sex
- sexual orientation.

Marriage and civil partnership is also a protected characteristic in the Equality Act 2010. However, it is only partially covered by the general equality duty. For this protected characteristic, public bodies are required to give due regard to the first equality aim (elimination of discrimination, harassment, victimisation, and any other conduct prohibited by the Equality Act 2010), and only in relation to work as other functions covered by the Act do not apply.<sup>20</sup>

The general equality duty means that NHS England and NHS Improvement must properly consider all three equality aims in all the functions or activities that we undertake including: employing staff, commissioning, procurement, planning services, and fulfilling statutory and legal obligations.

### 3 Areas covered by the Equality Act 2010

The coverage of the Equality Act 2010 and therefore the general equality duty is broader than the health inequalities duties and the general duty is intended to inform the exercise of all of the functions exercised by NHS England and NHS Improvement. The areas covered by the Equality Act 2010 are:

- Socio- economic inequalities which the Government has not brought into force in England
- Equality key concepts (part 2) which defines what is unlawful under the 2010 Act
- Services and public functions (part 3)
- Premises (part 4)
- Work (part 5)
- Education (part 6)
- Associations (part 7)

<sup>20</sup> EHRC, Technical Guidance on the Public Sector Equality Duty: England (2021): <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>

- Prohibited conduct (part 8)
- Enforcement (part 9)
- Contracts (part 10)
- Advancement of equality (part 11) – this part contains the general equality duty
- Disabled person’s transport (part 12).

## 4. Understanding the specific equality duties

The Equality Act 2010 provided Ministers with the power to ‘impose’ duties to enable ‘the better performance’ of the three equality aims set out in the general duty.<sup>21</sup> The first SEDs were agreed in parliament and published in 2011.<sup>22</sup> The current regulations that apply to NHS England and NHS Improvement were published in 2017.<sup>23</sup> These statutory regulations require NHS England and NHS Improvement to:

- publish gender pay gap reporting information annually (regulation 3)
- publish ‘information to demonstrate compliance’ with the PSED annually (regulation 4)
- ensure that the equality information published annually includes ‘information relating to persons who share a relevant protected characteristic’ who are a) ‘its employees’ and b) ‘other persons affected by its policies and practices’ (regulation 4)
- prepare and publish one or more objective to be achieved in order to address one or more of the three equality aims set out in the PSED, at intervals of not more than four years since the previous objectives were published (regulation 5).

These provisions apply to most public bodies and to organisations that exercise public functions.

<sup>21</sup> Equality Act 2010, section 153(1): <https://www.legislation.gov.uk/ukpga/2010/15/section/153>

<sup>22</sup> The Equality Act 2010 (Specific Duties) Regulations 2011: <https://www.legislation.gov.uk/uksi/2011/2260/schedule/2/made>

<sup>23</sup> The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017: <https://www.legislation.gov.uk/uksi/2017/353/contents/made>

## 5. The existing health inequalities duties and shape of things to come

The health inequalities duty placed on NHS England under the National Health Service Act 2006 is called the 'Duty as to reducing inequalities'.<sup>24</sup> This duty states that: 'The 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.'<sup>25</sup>

As at March 2022, there is no regulatory framework that supports or requires reporting on compliance with the health inequalities duties. Furthermore, the health inequalities duties apply to a very narrow range of organisations especially when compared to the PSED. The Health and Care 2022 Act will make significant amendments to the National Health Service Act 2006 with respect to health inequalities. Key changes include:

- Changing the health inequalities duty, and the new duty states:
  - The Board must, in the exercise of its functions, have regard to the need to— (a) reduce inequalities between persons 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 (including the outcomes described in section 13 (E(3))<sup>26</sup>.
- Introducing a new requirement in relation to wider decision making by a host of NHS organisations, including NHS trusts and foundation trusts, and healthcare providers to consider health inequalities when taking decisions.
- Placing a new quality of service duty on ICBs which includes addressing health inequalities. Also placing duties on ICBs in a number of areas which require consideration of health inequalities, including in making wider decisions, planning, performance reporting, publishing certain reports and plans, annual reports and forward planning.
- Introducing a performance assessment framework for ICBs that will require NHS England to 'conduct a performance assessment annually' of each ICB which must include an assessment of how each ICB has discharged

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<sup>24</sup> National Health Service Act 2006, section 13G

<sup>25</sup> National Health Service Act 2006, section 13G

<sup>26</sup> Note: Red text signifies the changed wording for the health inequalities duties

its functions across a range of matters including reducing inequalities, improving quality of service and public involvement and consultation.

- In addition, NHS England will have to publish a statement about inequalities and how relevant powers will be exercised.

In addition to health inequalities changes, other important changes have positive implications for equalities and will need to be considered once the legislation is settled. A few of the important changes include:

- a duty being placed on the Secretary of State to announce spending on mental health annually
- the NHS mandate to include cancer outcome targets and for these targets to be treated by NHS England as having priority over any other objectives relating specifically to cancer
- widening the public involvement duty to include carers and their representatives
- a duty to promote the NHS Constitution being placed on ICBs
- placing responsibilities on NHS bodies (e.g., hospitals with respect to carers and safe discharge from hospital)
- introducing new provisions for information standards which could have equality implications
- a new requirement related to Learning Disability and Autism training.

## 6. The interface between the Public Sector Equality Duty and health inequalities and the Health and Care Act 2022

NHS England and NHS Improvement are subject to both the Equality Act 2010 (which includes the PSED and SEDs) and the National Health Service Act 2006, as amended by the Health and Social Care Act 2012, contains the health inequalities duties. It is important to understand some of the key differences between these two legislative frameworks and associated requirements laid on public sector bodies:

- The PSED is concerned with the nine protected characteristics defined by the Act and all of the areas covered by the Equality Act 2010. By contrast, the health inequalities duties are not linked automatically to protected characteristics as defined by the Equality Act 2010 but consider a broader range of access and outcomes inequalities.

- While people with certain protected characteristics (e.g., Disability and Race) disproportionately experience health inequalities, the focus and reach of health inequalities (particularly the Core20PLUS5 programme<sup>27</sup>) goes beyond this, bringing in deprivation and inclusion health groups as priority areas.
- The Equality Act 2010 applies to most public bodies and the exercise of a wide range of public functions (e.g. services, public functions, premises, work, education, associations, and contracts, and exercise of all those activities and functions in those areas). By contrast, the current health inequalities duties apply to a much narrower range of public bodies, predominantly in the health sector.
- The PSED draws on the provisions of the Equality Act 2010 to define what is unlawful conduct. This means that there is an extensive legislative framework that needs to be considered to inform thinking on the PSED and SEDs and therefore equality objectives. By contrast, the existing health inequalities duties are much less prescriptive and do not draw on equivalent defined legal duties and rights as provided by the Equality Act.
- The SEDs provide a statutory regulatory framework requiring the publication of equality objectives at intervals of not more than four years since the previous objectives were published, and the publication of equality information annually. Prior to the implementation of the Health and Care 2022, there is no equivalent statutory regulatory framework for health inequalities. The provisions in the Health and Care Act 2022 will introduce a significant regulatory, reporting and performance assessment framework across a range of matters including health inequalities.
- By contrast, the health inequalities duties as currently drafted apply only to patients and their ability to access services and the outcomes from the provision of health services.<sup>28</sup> Therefore, the scope and duties of the two legislative frameworks are fundamentally different and apply to different sets of organisations.

The extent and complexity of the changes proposed on health inequalities mean that it will be essential to properly understand the new legislative framework to identify how best to bring together the statutory PSED/SED and health inequalities regimes. Key provisions in the new Health and Care Act 2022 will come into force from July 2022.

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<sup>27</sup> <https://www.england.nhs.uk/about/equality/equality-hub/core20plus5/>

<sup>28</sup> Note: Equivalent health inequalities duty and duties will apply to Integrated Care Boards.

# Appendix C: NHS England and NHS Improvement equality objectives for 2018/19 to 2021/22

The equality objectives for NHS England for 2018/19 to 2021/22 addressed the role of the NHS as a system leader, commissioner and employer. The seven objectives are:

1. To improve the capability of NHS England's commissioners, policy staff and others to understand and address the legal obligations under the PSED and duties to reduce health inequalities set out in the Health and Social Care Act 2012.
2. To improve disabled staff representation, treatment and experience in the NHS and their employment opportunities within the NHS.
3. To improve the experience of LGBT patients and improve LGBT staff representation.
4. To reduce language barriers experienced by individuals and specific groups of people who engage with the NHS, with specific reference to identifying how to address issues in relation to health inequalities and patient safety.
5. To improve the mapping, quality and extent of equality information in order to better facilitate compliance with the PSED in relation to patients, service-users and service delivery.
6. To improve the recruitment, retention, progression, development and experience of the people employed by NHS England to enable the organisation to become an inclusive employer of choice.
7. To ensure that the equality and health inequality impacts of COVID-19 are fully considered and that clear strategies are developed and implemented for the NHS workforce and patients. To ensure that the proposed NHS People Plan and patient focused strategies reflect this and make an effective contribution to advancing equality for all protected characteristics and to reducing associated health inequalities (added April 2020).

# Appendix D: NHS England and NHS Improvement proposed equality objectives for 2022/23 and 2023/24

## Updated Equality Objective 1 [COVID-19]

### **Existing equality objective 2021/22**

To ensure that the equality and health inequality impacts of COVID-19 are fully considered and that clear strategies are developed and implemented for the NHS workforce and patients. To ensure that the proposed NHS People Plan and patient focused strategies reflect this and make an effective contribution to advancing equality for all protected characteristics and to reducing associated health inequalities.

### **Rationale for retention and amendment**

COVID-19 remains a key driver of inequalities by reference to protected characteristics and health inequalities.<sup>29</sup> It is essential, as we move towards recovery, that key lessons are learned and continue to influence policy and strategy development and implementation.

### **Proposed equality objective for 2022/23 and 2023/24**

To ensure that the equality and health inequality impacts of COVID-19 and key lessons learnt are fully considered and that clear strategies are developed and implemented for the NHS workforce and patients of all ages as the NHS moves into and beyond the recovery phase. To ensure that patient and workforce focused strategies reflect this and make an effective contribution to advancing equality for

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<sup>29</sup> See [NHS England and NHS Improvement: Equality objectives and information as at 31 March 2022](#)



people of all ages by reference to protected characteristics and to reducing associated health inequalities.

### **Targets**

- a) To ensure that operational, planning and associated guidance to systems considers how to address and reduce the adverse equality impacts of COVID-19 and provides strategic guidance to the NHS.
- b) To work to ensure that key NHS England and NHS Improvement patient and workforce strategies consider the lessons learned from COVID-19 and how to address and reduce the adverse equality impacts of COVID-19.
- c) To continue to develop and implement strategies in elective recovery including people of all ages to reduce the adverse equality impacts of COVID-19 as the NHS moves into the recovery phase.

## **Updated Equality Objective 2 [Capability]**

### **Existing equality objective 2021/22**

To improve the capability of NHS England's commissioners, policy staff and others to understand and address the legal obligations under the PSED and duties to reduce health inequalities set out in the Health and Social Care Act 2012.

### **Rationale for retention and amendment**

The primary purpose remains for staff to understand these legal obligations and actively address them as part of decision-making. Experience suggests that it makes sense to provide information on the PSED/SED responsibilities alongside the health inequalities duties. Consideration will have to be given to the development of new resources given the complex changes being introduced in the Health and Care Act 2022.

### **Proposed equality objective for 2022/23 and 2023/24**

To improve the capability of NHS England's and NHS Improvement's teams to understand and address the PSED's legal obligations and the separate health inequalities duties and associated requirements as they develop.

#### **Targets**

- a) To improve and develop the in-house capability programme for NHS England and NHS Improvement staff.
- b) To respond to the priorities identified by NHS England's and NHS Improvement's Boards to address patient equalities and associated health inequalities.

## **Updated Equality Objective 3 [Information]**

### **Existing equality objective 2021/22**

To improve the mapping, quality and extent of equality information to better facilitate compliance with the PSED in relation to patients, service-users and service delivery.

#### **Rationale for retention and amendment**

The pandemic has demonstrated why having equality related information for health related reasons is important. The work undertaken over recent years has explored both patient and workforce datasets and the wording changes reflect this and the need to add NHS service-users. Further work in this area was commissioned by the DHSC and a key programme is the Unified Information Standard for Protected Characteristics (UISPC).

### **Proposed equality objective for 2022/23 and 2023/24**

To improve the mapping, quality and extent of equality information to better facilitate compliance with the PSED in relation to patients and NHS service-users of all ages, NHS service delivery, and the NHS workforce.

## Targets

- a) To establish a Unified Information Standard for Protected Characteristics (UISPC) Publication Steering Group<sup>30</sup> to identify which of the UISPC's recommendations should be taken forward.
- b) To work with the UISPC Publications Steering Group to identify how best to carry forward and oversee the work of the UISPC Project.
- c) To identify what options there are for the UISPC programme to inform how to undertake mapping by reference to health inequalities.

## Updated Equality Objective 4 [Internal workforce]

### Existing equality objective 2021/22

To improve the recruitment, retention, progression, development and experience of the people employed by NHS England to enable the organisation to become an inclusive employer of choice.

### Existing equality objective 2021/22

To improve the experience of LGBT patients and improve LGBT staff representation.

### Rationale for retention and amendment

There was an overlap between the two existing equality objectives. Rather than having a broad ranging LGBT+ focused equality objective, it is more appropriate to retain the generic objective and develop targets in relation to each relevant protected characteristic or protected characteristics more broadly. This would also enable consideration of intersectionality issues.

### Proposed equality objective for 2022/23 and 2023/24

To improve, by reference to protected characteristics, the recruitment, retention, progression, development, and experience of the people employed by NHS

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<sup>30</sup> UISPC: Unified Information Standard for Protected Characteristics

England and NHS Improvement to enable the organisations to become inclusive employers of choice.

### **Targets**

- a) To maintain the 19% aspirational target of BME representation at all levels of our organisation.
- b) To continue increasing declaration rates of under-represented groups in our workforce including disabled colleagues.
- c) To undertake a change programme on our recruitment and promotion, further enabling the organisation to become an employer of choice and a workforce that reflects the communities we serve.
- d) To reset our EDI strategy, for the new NHS England, creating opportunities to refresh our targets to ensure they are reflective of our EDI values, local labour markets and accommodating the rapid growth of a merged workforce.

## **Updated Equality Objective 5 [Patient access and communication]**

### **Existing equality objective 2021/22**

To reduce language barriers experienced by individuals and specific groups of people who engage with the NHS, with specific reference to identifying how to address issues in relation to health inequalities and patient safety.

### **Existing equality objective 2021/22**

To improve the experience of LGBT patients and improve LGBT staff representation.

### **Rationale for retention and amendment**

This equality objective has been rewritten to be more inclusive. The original two equality objectives did not clearly reference the issue of access to services or that wider barriers exist which reduce access to services or the fact that some people cannot access the services that they need or services that are appropriate to their needs.

### **Proposed equality objective for 2022/23 and 2023/24**

To improve access and reduce communication barriers experienced by individuals and groups of people of all ages, by reference to protected characteristics, who need NHS services.

#### **Targets**

- a) To complete the review of the Accessible Information Standard (AIS) and publish the revised standard together with guidance to support compliance.
- b) To ensure that the expectations placed on key stakeholders are clear and processes are in place to assure compliance with the AIS at a local and provider level.
- c) To ensure relevant NHS England and NHS Improvement policies use language that is inclusive of LGBT+ people.

## **Updated Equality Objective 6 [System workforce]**

### **Existing equality objective 2021/22**

To improve disabled staff representation, treatment and experience in the NHS and their employment opportunities within the NHS.

### **Existing equality objective 2021/22**

To improve the experience of LGBT patients and improve LGBT staff representation.

### **Rationale for retention and amendment**

The Workforce Disability Equality Standard (WDES) was still being developed when the equality objectives were last reviewed in 2018/19, however it is now in place and provides a driver for change. The annual reporting process has led to the identification of a specific target (target b). The NHS Long Term Plan identified the employment of people with a learning disability and autistic people as a priority given the extreme nature of their exclusion from the NHS workforce. Target d will support the NHS to make meaningful change to employ people with a learning

disability and autistic people. Volunteers play a key role in supporting the NHS workforce and their role has been explored by a national taskforce. To meet the needs of our communities it is important that the pool of volunteers is diverse when monitored by reference to protected and other characteristics. The role of volunteers has proved crucial during the pandemic.<sup>31</sup> The target set is a commitment to monitoring the number of volunteers across the NHS by reference to protected characteristics. This is a first step towards understanding key equality-related barriers to being a volunteer within the NHS. This target has been set by the NHS Volunteering Task Force which was established in 2021/22.

### **Proposed equality objective for 2022/23 and 2023/24**

To improve, by reference to protected characteristics, the recruitment, retention, progression, development and experience of staff in the NHS workforce.

#### **Targets**

- a) To increase the proportion of staff in senior leadership roles who a) are from a BME background b) are women c) disabled, in line with the NHS Long Term Plan commitments.
- b) To publish a workforce EDI strategy for NHS staff, including LGBT+ staff, aimed at establishing areas of focus for systems and organisations to improve the experience of LGBT+ staff in their workplace.
- c) To increase the representation of disabled people on NHS trust and NHS foundation trust boards, in line with the NHS Long Term Plan commitments.
- d) To continue the rollout of the six high impact actions to progress inclusive recruitment and promotion practices across the NHS.
- e) To launch 38 new supported internship programmes during 2022/23 and 2023/24 with NHS organisations offering between 304 to 380 new supported internship places for young people aged 18 to 24 as part of the DFN Project SEARCH programme funded by NHS England and NHS Improvement and Health Education England.

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<sup>31</sup> Government and NHS announce ambition to recruit tens of thousands of volunteers to help get jobs into arms. December 2021, <https://www.gov.uk/government/news/prime-minister-and-head-of-the-nhs-call-for-volunteers-to-support-national-booster-effort>

- f) To implement a framework for monitoring the number of volunteers across the NHS by reference to protected characteristics and any other relevant characteristics.

## New Equality Objective 7 [Integrated Care Boards]

### Existing equality objective 2021/22

None

### Short rationale for introduction

The Health and Care Act 2022 will amend the National Health Service Act 2006 and create Integrated Care Boards (ICBs). Supporting ICBs to address the requirements of the PSED and the SEDs is an important priority. This is primarily a process objective because that is what is appropriate at this stage. It is anticipated that this objective and the associated targets will be developed and amended as more information is available and once it has been possible to meaningfully engage with ICBs and other stakeholders.

### Proposed equality objective for 2022/23 and 2023/24

To work with Integrated Care Boards (ICBs) to support their, and their systems, compliance with the Equality Act 2010's Public Sector Equality Duty (PSED) and the associated Specific Equality Duties (SEDs).

### Targets

- a) To publish guidance on compliance with the PSED and the SEDs.
- b) Working in partnership with the National Healthcare Inequalities Improvement Team to identify a named Executive Board level lead with oversight for meeting the requirements of the PSED and the SEDs.
- c) To deliver a programme for ICBs to support PSED compliance using the Equality Delivery System and other relevant tools, as part of a wider offer from NHS England and NHS Improvement.

## New Equality Objective 8 [System landscape]

### Existing equality objective 2021/22

None

### Short rationale for introduction

The Health and Care Act 2022 will amend the National Health Service Act 2022 and create a new statutory body called NHS England. Given that the new NHS England will exercise new duties, functions and powers to meet the requirements of the PSED it will be essential to reconsider the equality objectives once the legislation is settled. This is primarily a process objective because that is what is appropriate at this stage. It is anticipated that this objective and the associated targets will be amended as more information is available and once it has been possible to meaningfully engage with ICBs and other stakeholders. This will involve using both internal and external consultation and engagement to explore how focused, meaningful and impactful targets can be developed.

### Proposed equality objective for 2022/23 and 2023/24

To ensure that the equality objectives for NHS England and NHS Improvement address the relevant statutory functions, duties, powers and responsibilities of NHS England created by the Health and Care Act 2022.

### Targets:

- a) To identify the existing arrangements within HEE and NHS Digital for securing compliance with the PSED and the SEDs and agree how to harmonise the differing arrangements.
- b) To establish a process for reviewing whether the equality objectives developed for NHS England and NHS Improvement for 2022/23 and 2023/24 appropriately address the overall statutory functions of the new NHS England.



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Publishing approval reference: PAR1588