

NHS England Board meeting

Paper Title: Specific Equality Duties: NHS England review report 2022/23; the future report 2023/24 & 2024/25; and the engagement report

Agenda item: 8 (Public session)

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Paper type: For approval

Organisation Objective:

NHS Mandate from Government	<input type="checkbox"/>	Statutory item	<input checked="" type="checkbox"/>
NHS Long Term Plan	<input type="checkbox"/>	Governance	<input checked="" type="checkbox"/>
NHS People Plan	<input type="checkbox"/>		

Executive summary:

To meet our statutory requirements under the Equality Act 2010's Public Sector Equality Duty (PSED) and the associated Specific Equality Duties (SED), NHS England is required to publish equality information annually. We are also required to publish one or more equality objective(s) at intervals of not more than four years since the previous equality objectives were published.

In line with these legislative requirements, the Board of NHS England are being asked to consider three reports. The first report includes equality information together with a review of performance against our eight existing equality objectives over 2022/23. The engagement report explains the external consultation and engagement activities undertaken during 2022/23 to inform the development of new equality objectives. The third report sets out our proposed equality objectives for 2023/24 and 2024/25.

Action required:

The Board is being asked to consider the proposed approach to compliance in line with their statutory obligations.

Background

1. In order to meet the statutory requirements set out in the [Public Sector Equality Duty](#) (PSED) (under the Equality Act 2010, s149) and the publication requirements in the associated [Specific Equality Duties](#) (SEDs), NHS England is required to review and publish equality objectives.
2. Our aim, and legal obligation under the PSED, 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.

3. Three detailed reports have been produced, the Review Report, the Engagement Report and the Future Objectives Report. These three reports explain how NHS England has met and is meeting the requirements of the Public Sector Equality Duty (Equality Act 2010, section 149) and the Specific Equality Duties. The purpose of each of the three reports is described below. Appendix 1 includes the structure of each of the reports to facilitate access to, and an understanding of them.
4. The Review Report meets the SED requirement to publish equality information annually for 2022/23. It assesses key progress made against the equality objectives and targets that we set for 2022/23 and provides wider equality information, as required by the SEDs, as at March 2023. It also addresses the SED reporting requirements placed on NHSI between April and June 2022 before its dissolution. This review informed the revision of our equality objectives and targets for 2023/24 and 2024/25.
5. The Engagement Report reflects on the consultation and engagement carried out by NHS England during 2022/23 to inform the development of the equality objectives and targets for 2023/24 and 2024/25. Some of the wider feedback fell outside the scope of the PSED, the SEDs and the publication of equality objectives and equality information. We have made a record of these wider issues and have passed, or will pass these, onto the most appropriate team(s) within NHS England during 2023/24.
6. The Future Objectives Report proposes equality objectives and targets for NHS England for 2023/24 and 2024/25. It also demonstrates how we intend to continue to meet our obligations under the Equality Act 2010, the PSED and the SEDs. These objectives must address one or more of the three equality aims in the Public Sector Equality Duty and one or more of [the protected characteristics set out in the Equality Act 2010](#).
7. In accordance with the statutory implementation timetable for the Health and Care Act 2022, the new NHS England incorporated NHS Improvement and NHS Digital in 2022/23. Health Education England (HEE) was incorporated in April 2023. As a result of these mergers, the new NHS England is exercising or will exercise functions previously exercised in part or in full by NHS Improvement, NHS Digital and HEE. The three SED reports do not address the 2022/23 PSED/SED reporting requirements placed on either NHS Digital or HEE. The merger with NHS Digital came too late in 2022/23 to allow for meaningful reporting, including on employment matters, and the statutory merger of NHS England and HEE took place after 2022/23.
8. The two-year timeframe for the equality objectives and targets (2023/24 and 2024/25) takes account of the system and organisational changes resulting from the Health and Care Act 2022. We plan to conduct an engagement and consultation process during 2023/24 to ensure that the functions, previously exercised in part or in full by NHS Digital and HEE, are considered and, if

necessary, inform any updated equality objectives and equality targets for the new NHS England. This approach is designed to meet the statutory requirements set out in the PSED and the publication requirements in the SEDs.

Recommendations

9. The Board is asked to approve the recommendations endorsed by the Strategic Delivery Committee and the NHS Executive Group. The Board is asked to approve:
 - a) the inclusion of employment data for NHS England as at 31/12/22 (see paragraphs 12 and 13 and Review Report, part 4)
 - b) the content of the Review Report and the Engagement Report for 2022/23;
 - c) the design principles for our equality objectives and targets and rationale for adopting equality objectives and targets for two years (Future Report: Part 2.2)
 - d) the eight equality objectives and targets for 2023/24 and 2024/25 (Future Report: Part 3)
 - e) the proposed approach for moving forward (Future Report: Part 4)

Considerations

10. 2022/23 has been a year of major change for the NHS with the passage and implementation of the Health and Care Act 2022, the establishment of ICBs, the creation of the new NHS England and the end of a number of separate NHS statutory bodies. There was significant complexity during 2022/23 which has continued into 2023/24. These changes have had an impact on how NHS England addresses its responsibilities under the PSED and the SEDs as these refer to “the exercise of [an organisation’s] functions.”
11. Until the new NHS England’s transformation programme has been fully completed, it will not be possible to reflect properly and fully on which functions, inherited from NHS Digital or HEE, should be addressed by our equality objectives or targets. The implications will need to be considered during 2023/24 and 2024/25. The Board should note that the Equality and Human Rights Commission’s (EHRC’s) Technical Guidance is clear that organisations must prioritise which functions and issues should inform their equality objectives (see Review Report Appendix 1, page 51).
12. The Review Report identified the need to take appropriate and lawful proactive measures to reduce the potential adverse impact on BME representation in the new NHS England resulting from the incoming organisations having less diverse BME representation (Review Report: part 2.5). For example, compared to NHS England, NHS Digital’s employment data (as at 30/9/22), published in January 2023, identifies a less diverse workforce and lower declaration rates by reference to ethnicity and other protected characteristics. This is likely to make the 19% aspirational target more challenging to achieve. The actions we take now, on organisational change, declaration rates and associated matters, will impact on the position for the next annual report.

13. The Review Report provides employment data for NHS England staff as at 31/12/22 as this is the most complete data available (part 4). The data does not include NHS Digital Employees who joined NHS England on 1/2/23 because NHS England and NHS Digital were on separate NHS ESR databases and these databases are being merged.
14. In February 2023, the EHRC's Chief Regulator wrote to all ICB Chief Executives. The letter identified EHRC priorities and set out some aspects of the EHRC's regulatory approach (Review Report, EO7, page 24/25) & (Future Report, 4.2 pages 16/17). In April 2023, the EHRC updated its [Technical Guidance on the PSED](#) (Review Report, Appendix 1, page 51).
15. On 4 May 2023, the EHRC published its [business plan for 2023 - 2024](#) with important commitments on 'Upholding rights and equality in health and social care.' In addition to matters raised in the EHRC's February 2023 letter, their plan includes a commitment to working with 'the NHS and health regulators to identify potential interventions to address the disproportionate number of deaths of people with certain protected characteristics in maternity services.'
16. The EHRC's February 2023 letter to ICBs, its updated Technical Guidance and its 2023/24 business plan make it clear that the EHRC will use its regulatory and enforcement powers if it deems it to be necessary. The business plan specifically states that the EHRC will identify opportunities to take legal action to: a) 'promote rights regarding the treatment of people in health and social care institutions'; b) 'tackle inequalities in access to health and services, and challenge breaches of rights in health and social care institutions, in both acute and community settings.'
17. The proposals under Equality Objective 7 are important ways for NHS England to continue to work positively and proactively with the EHRC to support ICBs and NHS England more broadly to address the issues raised by the EHRC (Future Objectives, EO7, pages 13/14). Consideration is also being given to whether any further action is needed (Future Report, 4.2, page 17). This approach should reduce the risk of regulatory action whilst also advancing equality.

Appendix 1: Navigating the three reports

The Review Report 2022/23

- Explains the changing context within which the new NHS England is now functioning and what reporting is covered by this report (part 1)
- Provides a summary assessment of our performance against our eight equality objectives and the associated targets set for 2022/23 (part 2)
- Provides broader equality information looking at NHS England's 2022/23 business plan priorities and key national equality programmes (part 3)
- Provides key employment statistics for 2022/23 for NHS England looking at the protected characteristics on which employment data is gathered on the NHS Electronic Staff Record (ESR) (part 4)
- Provides key employment statistics for April to June 2022 for NHSI looking at the protected characteristics on which employment data is gathered on ESR (part 5)

The Engagement Report, report 2

- Overview: This explains the purpose of the report, explains how this report builds on the last report to the Board on Engagement and explains with whom NHS England engaged (part 1).
- Key themes from the engagement and how we are addressing these (part 2)
- Annex A identifies overall feedback on the equality objectives and targets and some wider issues and questions beyond the scope of the PSED/SED
- Annex B analyses the feedback received via a questionnaire sent to Equalities and Health Inequalities Network (EHIN), a network hosted on the NHS Future website. This also provides information on the respondents.
- Annex C provides a condensed version of the rich feedback we received from the NHS England patient and engagement forums

The Future Objectives Report, report 3

- Part one overviews the report and explains the purpose of this report. It also explains how this report builds on the first two SED reports.
- Part two considers key factors that informed the development of the proposed equality objectives and targets for 2023/24 and 2024/25. These are the objectives and targets which the Board is being asked to consider and approve. Key factors were: i) the creation of the new NHS England and the impact on our equality objectives, ii) design principles that inform our equality objectives and targets; and iii) key themes from our consultation and engagement during 2022/23.
- Part three sets out **the proposed eight equality objectives and targets for 2023/24 and for 2024/25**: i) COVID 19 and recovery; ii) capability; iii) information; iv) internal workforce; v) patient access and communication; vi) system workforce; vii) ICBs; viii) system landscape which addresses the development of the new NHS England.
- Part 4.2 identifies a number of key themes that will be explored further during 2023/24: i) community languages; ii) digital; iii) education, training and capability; iv) key issues raised by the EHRC; v) Black Maternal Health and issues raised by the Women and Equalities Select Committee; vi) Specialised commissioning, public health commissioning and vaccinations
- Appendix 1 sets out the **previous** equality objectives and targets, for NHS England and NHS Improvement, for 2023/23 and 2023/24