

Equality analysis:

NHS Standard Contract
2014/15



Equality analysis

First published: December 2013

Introduction

The public sector equality duty that is set out in the Equality Act 2010 requires public authorities, in the exercise of their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

These are sometimes referred to as the three aims of the general equality duty. The Act explains that having **due regard** for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

Equality analysis

Title: NHS Standard Contract 2014/15

What are the intended outcomes of this work?

Publication of the 2014/15 NHS Standard Contract.

Who will be affected by this work?

Commissioners, Providers.

Evidence

What evidence have you considered? List the main sources of data, research and other sources of evidence (including full references) reviewed to determine impact on each equality group (protected characteristic). This can include national research, surveys, reports, research interviews, focus groups, pilot activity evaluations or other Equality Analyses. If there are gaps in evidence, state what you will do to mitigate them in the Evidence based decision making section on the last page of this template.

Age Consider and detail age related evidence. This can include safeguarding, consent and welfare issues.

Disability Consider and detail disability related evidence. This can include attitudinal, physical and social barriers as well as mental health/ learning disabilities.

Gender reassignment (including transgender) Consider and detail evidence on transgender people. This can include issues such as privacy of data and harassment.

Marriage and civil partnership Consider and detail evidence on marriage and civil partnership. This can include working arrangements, part-time working, caring responsibilities.

Pregnancy and maternity Consider and detail evidence on pregnancy and maternity. This can include working arrangements, part-time working, caring responsibilities.

Race Consider and detail race related evidence. This can include information on difference ethnic groups, Roma gypsies, Irish travellers, nationalities, cultures, and language barriers.

Religion or belief Consider and detail evidence on people with different religions, beliefs or no belief. This can include consent and end of life issues.

Sex Consider and detail evidence on men and women. This could include access to services and employment.

Sexual orientation Consider and detail evidence on heterosexual people as well as lesbian, gay and bisexual people. This could include access to services and employment, attitudinal and social barriers.

Carers Consider and detail evidence on part-time working, shift-patterns, general caring responsibilities.

Other identified groups Consider and detail evidence on groups experiencing disadvantage and barriers to access and outcomes. This can include different socio-economic groups, geographical area inequality, income, resident status (migrants, asylum seekers).

The [EIA](#) for the 2013/14 NHS Standard Contract was reviewed and actions from it noted as being complete.

The NHS Standard Contract is a contractual document rather than a policy or procedure. It is used by Commissioners to enter into a contractual relationship with Providers of NHS services.

The NHS Standard Contract prohibits discrimination on the basis of the nine protected characteristics of the Equality Act 2010 s4 (9), and this is a mutual obligation on both commissioner and provider. The relevant clause (NHS Standard Contract Service Conditions 13) is:

SC13 Equity of Access, Equality and Non-Discrimination

- 13.1 *The Parties must not discriminate between or against Service Users, Carers or Legal Guardians on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics, except as permitted by the Law.*
- 13.2 *The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, Carers and Legal Guardians who do not speak, read or write English or who have communication difficulties (including hearing, oral or learning impairments). The Provider must carry out an annual audit of its compliance with this obligation and must demonstrate at Review Meetings the extent to which Service improvements have been made as a result.*
- 13.3 *In performing this Contract the Provider must comply with the obligations contained in section 149 of the Equality Act 2010 and section 6 of the Human Rights Act 1998. This obligation will apply whether or not the Provider is a public authority for the purposes of those sections.*
- 13.4 *In consultation with the Co-ordinating Commissioner, and on reasonable request, the Provider must provide a plan or plans setting out how it will comply with its obligations under Service Condition 13.3. If the Provider has already produced such a plan in order to comply with the Law, the Provider may submit that plan to the Co-ordinating Commissioner in order to comply with this Service Condition 13.4.*

The NHS Standard Contract also places a positive obligation on commissioners and on providers to promote the NHS Constitution. The relevant clause is:

- SC1.3 *The Parties must abide by and promote awareness of the NHS Constitution, including the rights and pledges set out in it. The Provider must ensure that all Sub-contractors and all Staff abide by the NHS Constitution.*

The NHS Standard Contract also places an obligation on providers with regard to safeguarding. The relevant clause is:

SC32 Safeguarding

- 32.1 *The Provider has adopted and must comply with the Safeguarding Policies.*
- 32.2 *The Safeguarding Policies must be amended from time to time to comply with the local multi-agency policies and any Commissioner safeguarding requirements.*
- 32.3 *At the reasonable written request of the Co-ordinating Commissioner, and by no later than 10 Operational Days following receipt of that request, the Provider must provide evidence to the*

Co-ordinating Commissioner that it is addressing any safeguarding concerns raised through the relevant multi-agency reporting systems.

32.4 If requested by the Co-ordinating Commissioner, the Provider must participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

32.5 The Provider must nominate a Safeguarding and Prevent Lead and must ensure that the Commissioner is kept informed at all times of the identity of the Safeguarding and Prevent Lead.

32.6 To the extent applicable to the Services, the Provider must comply with the principles contained in:

32.6.1 Prevent; and

32.6.2 the Prevent Guidance and Toolkit, including in relation to Healthwrap.

Engagement and involvement

How have you engaged stakeholders with an interest in protected characteristics in gathering evidence or testing the evidence available?

The NHS Standard Contract Team has engaged with the NHS England Equality and Health Inequalities Team on drafting this EIA.

How have you engaged stakeholders in testing the policy or programme proposals?

Since April 2013, the NHS England Standard Contract team has undertaken a process of engagement with external and internal stakeholders to inform the development of the Contract for 2014/15. The stakeholder engagement has included extensive engagement with a range of providers and provider representative organisations (including the voluntary and independent sectors).

For each engagement activity, please state who was involved, how and when they were engaged, and the key outputs:

Who: NHS Standard Contract Team, NHS England directorates, Department of Health, CQC, Healthwatch, Monitor, CSUs, NHS England Regional Teams, NHS England Area Teams, CCGs, providers, provider groups.

How:

- By direct approach by the NHS Standard Contract Team
- Via consultation documents ([Review of the NHS Standard Contract for 2014/15](#); and [Review of rewards, incentives and sanctions](#))

When: April 2013 – December 2013

Key outputs:

- [A letter from Paul Baumann and Ros Roughton](#) providing feedback on the direction of travel of the NHS Standard Contract, CQUINs and the Quality Premium, to provide feedback on our stakeholder engagement, and to invite comments on the Contract.

- [Review of incentives, rewards and sanctions discussion paper for stakeholders](#) – Summary of feedback received August 2013

Summary of Analysis Considering the evidence and engagement activity you listed above, please summarise the impact of your work. Consider whether the evidence shows potential for differential impacts, if so state whether adverse or positive and for which groups and/or individuals. How you will mitigate any negative impacts? How you will include certain protected groups in services or expand their participation in public life?

Now consider and detail below how the proposals impact on elimination of discrimination, harassment and victimisation, advance the equality of opportunity and promote good relations between groups.

Eliminate discrimination, harassment and victimisation Where there is evidence, address each protected characteristic (age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sexual orientation).

Advance equality of opportunity Where there is evidence, address each protected characteristic (age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sexual orientation).

Promote good relations between groups Where there is evidence, address each protected characteristic (age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sexual orientation).

Discrimination on the basis of the nine protected characteristics of the Equality Act 2010 s4 (9) is prohibited under the NHS Standard Contract. The contract also places a positive requirement on providers to carry out what actions the provider has taken to provide appropriate assistance and make reasonable adjustments for Service Users, Carers and Legal Guardians who do not speak, read or write English or who have communication difficulties (including hearing, oral or learning impairments), and to report on this in the Review Meetings held with commissioners.

The contract also places a requirement on the provider to provide a plan setting out how it will comply with its obligations contained in section 149 of the Equality Act 2010 and section 6 of the Human Rights Act 1998, and to provide this plan to the commissioner.

Evidence based decision-making

Please give an outline of what you are going to do based on the gaps, challenges and opportunities you have identified in the summary of analysis section. This might include action(s) to eliminate discrimination issues, partnership working with stakeholders and data gaps that need to be addressed through further consultation or research.

For the NHS Standard Contract 2015/16, the NHS Standard Contract team shall:

- Monitor and develop the 2014/15 NHS Standard Contract, using feedback from internal and external stakeholders, and subject to legal input;
- Undertake stakeholder engagement as required to develop the 2015/16 Contract;
- Engage with NHS England Senior Equality Manager to ensure that Service Condition 13 (above) is kept up to date in line with new legislation and best practice.

How will you share the findings of the Equality analysis? This can include corporate governance, other directorates, partner organisations and the public.

The EIA will be published on the NHS England website with the NHS Standard Contract in

December 2013.

For your records

Name of person(s) who carried out this analysis: Michelle Coleman, NHS Standard Contract Manager and Stakeholder Lead
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Name of Sponsor Director: Ben Dyson, Director of Commissioning Policy and Primary Care

Date analysis was completed: 06/12/13
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Review date: November 2014
