NHS England

Guidance for NHS commissioners on equality and health inequalities legal duties

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Guidance for NHS commissioners on equality and health inequalities legal duties

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The National Health Service Commissioning Board was established on 1 October 2012 as an executive non-departmental public body. Since 1 April 2013, the National Health Service Commissioning Board has used the name NHS England for operational purposes.

1 Contents

1 Policy statement

Promoting equality and addressing health inequalities are at the heart of NHS England's values. Throughout the development of the policies and processes cited in this document, we have:

- Given due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it; and
- Given regard to the need to reduce inequalities between patients in access to, and outcomes from healthcare services and to ensure services are provided in an integrated way where this might reduce health inequalities.

2 Introduction

This guidance has been updated in December 2015 to reflect changes since the original publication in 2014. It is to support Clinical Commissioning Groups (CCGs) and NHS England in meeting their legal duties in respect of equality and health inequalities. The original guidance was developed in consultation with the NHS Commissioning Assembly health inequalities sub-group and the Department of Health.

CCGs and NHS England play key roles in addressing equality and health inequalities; as commissioners, as employers and as local and national system leaders, in creating high quality care for all.

CCGs and NHS England have two separate key duties, one on equality and one on health inequalities. Both require informed consideration by decision makers, but it is important to appreciate that they are two distinct duties.

These duties come from:

- The Equality Act 2010
- The National Health Service Act 2006 as amended by the Health and Social Care Act 2012

This document is therefore divided into two parts. Section one contains the guidance in relation to the Equality Act 2010. Section two is the guidance in relation to the health inequalities duties in the National Health Service Act 2006.

3 Scope

This guidance may be used by CCGs and NHS England as well as other relevant partners to help them understand:

- the legal duties in relation to equality and to reducing health inequalities, as set out in the relevant legislation; and
- how to fulfil these duties in their work to improve health outcomes and the experiences of patients, communities and the workforce.

4 Section one: Equality

All public authorities are required to have due regard to the aims of the Public Sector Equality Duty (PSED) of the Equality Act 2010 in exercising their functions, such as when making decisions and when setting policies.

Publishing guidance or policies, or making decisions without demonstrating how you have paid due regard to the PSED leaves the organisation open to legal challenge.

This means CCGs and NHS England should understand the potential effect of policies and practices on people with characteristics that have been given protection under the Equality Act, especially in relation to their health outcomes and the experiences of patients, communities and the workforce. This will help the organisation to consider whether the policy or practice will be effective for all people.

This section provides background and guidance on taking account of equality issues when making decisions and setting policies in relation to the Equality Act. There is also other legislation that has obligations related to equality including:

- the Public Services (Social Value) Act 2012;
- the Autism Act 2009; and
- the Children's Act 2004.

4.1 Legal compliance

All listed public authorities (including CCGs and NHS England) have legal obligations relating to:

- Section 149 of the Equality Act 2010 (the Public Sector Equality Duty), and
- The Equality Act 2010 (Specific Duties) Regulations 2011.

In summary this means that CCGs and NHS England have legal obligations 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 often referred to as the three aims of the Public Sector Equality Duty (PSED) and apply to the following protected characteristics:

- Age
- Disability
- Gender
- Gender reassignment
- Pregnancy and maternity

- Race
- Religion or belief
- Sexual orientation
- Marriage and civil partnership (but only in regards to the first aim - eliminating discrimination and harassment)

To demonstrate compliance with the Equality Act 2010 CCGs and NHS England are required to meet specific duties of publishing equality information and setting and publishing equality objectives, as required under the 2011 regulations.

4.2 Coverage

The PSED applies to the "exercise of functions" by CCGs and NHS England. This includes, for instance, any decision made, any policy developed, any programme implemented and any practices driving activity. It also applies to functions and services provided by others on behalf of the organisation. Both new policies and decisions and existing policies and decisions, when reviewed, come within the PSED.

The overall aim of the PSED is to make sure that public authorities take equality into account as part of their decision making process. It is not possible to consider equality issues retrospectively and comply with the PSED.

Taking action, for example, deciding a policy or publishing something, without demonstrating how you have paid due regard to the PSED leaves the organisation open to legal challenge.

4.3 "Having due regard"

Having "due regard" to the PSED simply involves considering the aims of the Duty in a way that is proportionate to the issue at hand.

Decision makers should ensure that they give real consideration to these aims and think about the impact of policies with rigour and with an open mind, in such a way that might influence the final decision. They should do this before and during policy formation and when a decision is taken. Addressing equality in this way should be considered business as usual, not an exceptional activity.

Case law has established that what is important is not the preparation of a particular document, but that officials give proper, informed consideration to equality issues at the right time and that they keep a record of that consideration.

Equality analyses / equality impact assessments are just one of many ways of demonstrating compliance with the PSED.

It is important that any conclusions arising from your equality analyses are able to influence your policies and practices.

4.4 Evidence of having due regard

In order to demonstrate compliance with equalities legislation and, specifically, the PSED, you will need to provide any evidence you have that demonstrates the impact or potential impact your work may have on people sharing protected characteristics.

This evidence could be in the form of policy papers, project documentation or background research that takes into account what you know about the equality implications of your work. The important thing is that any conclusions arising from your equality analysis are able to influence your work and the material produced. You may also have evidence from earlier consultations and stakeholder engagement.

Carrying out an equality impact analysis can produce valuable evidence to develop new approaches that can be used in other settings. , from talking to stakeholders, primary research conducted where gaps are identified, or even where data sets have been matched by analysts

4.5 The Equality Delivery System for the NHS – EDS2

The Equality Delivery System – EDS2 may help CCGs and NHS England:

- improve the services they provide for their local communities;
- improve the experiences of people using the services;
- consider reducing health inequalities in their locality; and
- provide better working environments, free of discrimination, for those who work in the NHS.

At the heart of EDS2 is a set of outcomes covering patient care, access and experience, working environments and leadership. NHS commissioners may analyse their performance against these outcomes for each group afforded protection under the Equality Act 2010, plus Inclusion Health groups (i.e. refugees, asylum seekers, homeless, and sex industry workers). Ideally this should be done in discussion with local stakeholders including patients, communities and staff, and using the best available evidence.

As a result of this analysis, organisations with local stakeholders are able to select their equality priorities.

This analysis can go a long way to providing the information required by law to demonstrate compliance with the Public Sector Equality Duty.

Further information on EDS2 can be found on the NHS England website.

4.6 CCG Assurance

The CCG assurance process has been designed to provide confidence to internal and external stakeholders and the wider public that CCGs are operating effectively to commission safe, high-quality and sustainable services within their resources, delivering on their statutory duties and driving continuous improvement in the quality of services and outcomes achieved for patients.

The 2015-16 CCG assurance framework assesses whether a CCG has effective systems in place to ensure compliance with its statutory functions. In addition, there are particular statutory functions for which NHS England will require more detailed focus as part of the assurance process in a particular year. This includes equality.

The CCG assurance operating manual sets out that NHS England will want to be assured that CCGs can demonstrate:

- due regard to the metrics contained in the Workforce Race Equality Standard to help improve workplace experiences and representation at all levels for black and minority ethnic staff;
- robust implementation of EDS2 to help meet the Public Sector Equality Duty and to improve their performance for people with characteristics protected by the Equality Act 2010; and
- comprehensive insight into their local population's diverse health needs and assets; be able to describe how, through all their own commissioning and wider collaboration through health and wellbeing boards, they are meeting the reducing inequality challenge for their population.

5 Section two: Health inequalities

5.1 Why address health inequalities?

Avoidable health inequalities are – by definition - unfair and socially unjust. A person's chance of enjoying good health and a longer life is determined by the social and economic conditions in which they are born, grow, work, live and age. These conditions also affect the way in which people look after their own health and use services throughout their life. Addressing such avoidable inequalities and moving towards a fairer distribution of good health requires a life course approach and action to be taken across the whole of society.

The NHS Five Year Forward View sets out the need to address the health and wellbeing gap, preventing any further widening of health inequalities. To do so requires a move towards greater investment in health and health care where the level of deprivation is higher.

The World Health Organisation (WHO) defines health inequalities as "differences in health status or in the distribution of health determinants between different population groups"[1]. 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, improving the quality of services and the experiences of people. It is also core to the NHS Constitution and the values and purpose of the NHS.

The NHS Constitution[2] states that the NHS has a duty to "…pay particular attention to groups or sections of society where improvements in health and life expectancy are not keeping pace with the rest of the population". This is reflected in the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012), which introduced for the first time legal duties to reduce health inequalities, with specific duties on CCGs and NHS England.

5.2 Legal duties

The Health and Social Care Act 2012 introduced the first legal duties on health inequalities, with specific duties on NHS England and CCGs, as well as duties on the Secretary of State for Health (covering the Department of Health and executive agencies Annex A) and Monitor. These duties took effect from 1 April 2013.

[1] World Health Organisation (2014) *Health Impact Assessment Glossary of Terms Used* [Online] Available at: http://www.who.int/hia/about/glos/en/index1.html

[2] NHS Constitution for England (2012) [Online] Available at: https://www.gov.uk/government/publications/the-nhs-constitution-for-england

5.2.1 CCGs have duties to:

- Have regard to the need to reduce inequalities between patients in access to health services and the outcomes achieved (s.14T);
- Exercise their functions with a view to securing that health services are provided in an integrated way, and are integrated with health-related and social care services, where they consider that this would improve quality, reduce inequalities in access to those services or reduce inequalities in the outcomes achieved (s.14Z1);
- Include in an annual commissioning plan an explanation of how they propose to discharge their duty to have regard to the need to reduce inequalities (s. 14Z11);
- Include in an annual report an assessment of how effectively they discharged their duty to have regard to the need to reduce inequalities (s. 14Z15).

5.2.2 NHS England has duties to:

- Have regard to the need to reduce inequalities between patients in access to health services and the outcomes achieved (s. 13G);
- Exercise its functions with a view to securing that health services are provided in an integrated way, and are integrated with health-related and social care services, where it considers that this would improve quality, reduce inequalities in access to those services or reduce inequalities in the outcomes achieved (s.13N);
- 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);
- 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);
- 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).

5.2.3 What is meant by "…have regard to…" in the duties?

- Lawyers advise that "have regard to the need to reduce" means health inequalities must be properly and seriously taken into account when making decisions or exercising functions, including balancing that need against any countervailing factors.
- Part of "having regard" includes accurate record keeping of how the need to reduce health inequalities has been taken into account when making decisions or exercising functions.
- The duty must be exercised with rigour and an open mind and should not materialise as an afterthought in the process of reaching a decision.

The body/person subject to the duty must be able to demonstrate that:

- they are fully aware of the duty;
- the duty was considered during the appropriate stages of work, from the beginning of the decision making process and throughout;
- the appropriate amount of weight has been given to factors which would reduce health inequalities in the decision making process;

- they have actively considered whether integration would reduce inequalities and act with a view to securing such integration where it would do so;
- accurate records have been kept to show that the need to reduce health inequalities was taken into account throughout decision making processes.

5.2.4 Which groups are covered by the legal duties on health inequalities?

The Act does not define a list of groups impacted by the duties. Any group experiencing health inequalities is covered. The duties therefore take a whole population approach. This means that CCGs and NHS England must consider the whole of the population for which they are responsible, and identify inequalities within that population group.

5.2.5 Failure to meet the legal duties

CCGs and NHS England could be challenged in several ways on whether the duties have been complied with, including through Judicial Review.

A Judicial Review will test whether a decision was lawful and give a judgement on whether the duty has been complied with. It is likely to rely on evidence including primary documentation, effective governance processes and risk management when reaching a decision.

Robust processes and documentation of compliance with the duty mitigates the risk of challenge.

As the health inequality duties are new legal duties there is currently no reported case law. However, principles emerging from a challenge to the Public Sector Equality Duty (PSED), the 'Brown principles', are also relevant to the health inequalities duties. These are set out in Annex B.

5.3 Putting duties into practice

5.3.1 Who do the duties apply to?

As organisations, CCGs and NHS England are corporately responsible for complying with the duties. In order to discharge these duties, it is important that all employees, officers, members and agents acting on their behalf contribute towards meeting the organisations' legal obligations in the course of their work.

5.3.2 What do the duties mean in practice?

To be compliant with the legislation, CCGs and NHS England should consistently have regard to the need to reduce inequalities when exercising their functions. This is likely to require considering:

- the impact on inequalities as part of all decision making processes, and keeping a record of such processes;
- which dimensions of inequality are relevant to their work, and taking account of how inequalities could be reduced;

- strategically the potential impact on health inequalities and the application of the duty to their functions.

An internal analysis template document is available to help NHS England staff consider the implications of their work on equality and addressing health inequalities. This aims to help ensure that the action they are taking has the best chance of achieving improvements in the health outcomes and the experiences of people; reducing health inequalities; advancing equality of opportunity; whilst capturing the evidence of doing so.

This approach should support NHS England in meeting its separate legal duties on equality and health inequalities. Section one of the document contains the equality analysis and section two the health inequalities analysis.

If a CCG would like a copy of this NHS England analysis template document please contact england.eandhi@nhs.net.

Other issues that CCGs and NHS England may consider include:

- How local communities' experiences of the NHS influences future action?
- Has action been taken to ensure all staff are aware of the duties?
- Is there clear accountability at a sufficiently senior level?
- Is there clear communication to ensure the duties are being applied?
- Is the approach being taken evidence-based?
- Are inequalities in access and outcomes being routinely monitored?
- Have records and evidence of compliance with the duty been kept?

Using The Equality Delivery System – EDS2 is also likely to support organisations to deliver on aspects of their health inequalities work.

Commissioning and health inequalities duties

5.3.3 Primary care co-commissioning

NHS England has invited CCGs to take on greater responsibility for commissioning primary medical services (i.e. GP services). There are three co-commissioning models:

- Greater involvement in primary care decision making;
- Joint commissioning arrangements; and
- Delegated commissioning arrangements.

Under greater involvement, NHS England and CCGs work more closely together to commission primary medical services. However, NHS England retains the legal responsibility for commissioning the services and the duties relating to equality and health inequalities.

Under joint commissioning arrangements, NHS England and CCGs establish joint committees to make decisions about primary medical services together. Both NHS England and CCGs will need to make their own arrangements to ensure their duties relating to equality and health inequalities are met, though a joint exercise will usually be appropriate.

Under delegated commissioning arrangements, NHS England delegates full responsibility and funding for the commissioning of primary medical services to CCGs. CCGs are primarily responsible for making arrangements to meet the equality and health inequalities duties. While NHS England retains ultimate liability for the exercise of all of its functions, including those delegated to CCGs, the Delegation Agreement and Terms of Reference make clear that these duties should be exercised by the CCG. However, NHS England will require assurance that these duties are being discharged effectively by the CCG via the CCG assurance process.

5.3.4 Delegation

NHS England may delegate legal responsibility and funding for commissioning services to other organisations other than through co-commissioning, for example through. local improvement schemes.

The extent to which NHS England retains responsibility for making arrangements to involve the public will depend upon the model for delegation used in each instance. However, for so long as NHS England retains ultimate responsibility for commissioning services, even where such functions are delegated, it will still need to be satisfied that appropriate arrangements are in place to involve the public. This is, even if it does not make those arrangements directly and relies on another organisation to do so.

5.3.5 Devolution

In the Queen's Speech 2015, plans were announced to introduce legislation to provide for the devolution of powers to cities with metro elected mayors. Work has already started to achieve the delegation and ultimate devolution of health and social care responsibilities in Greater Manchester.

The extent to which NHS England retains responsibility for making arrangements to involve the public will depend upon the model for devolution used in each instance.

However, for so long as NHS England retains ultimate responsibility for commissioning services, even where such functions are delegated, it will still need to be satisfied that appropriate arrangements are in place to involve the public. This is, even if it does not make those arrangements directly and relies on another organisation to do so.

5.3.6 CCGs

CCGs have a duty to have regard to the need to reduce inequalities between patients in access to services that they commission. This involves:

- Knowing the local population and local needs, commissioning through the use of joint strategic needs assessments (JSNAs) and additional supporting data and evidence, such as local health profiles and qualitative sources.
- Identifying the local health inequalities and commissioning for all of the population in the area, not just relying on General Practice registrations.
- Identifying evidence of what has previously worked in reducing inequalities and evaluating good practice, whilst also considering the 'clustering' of risk factors in some groups. Universal services should aim to reduce inequalities by being progressively aimed at those who need them the most.
- Carrying out evidence-based service reviews.

This requires considering whether:

- services are universal and should reach all members of society, which may be achieved by explicitly targeting specific population groups;
- services are commissioned on the basis of need, which may be achieved by ensuring the quantity and quality of services in deprived areas is adequate.

CCGs also have a duty to have regard to the need to reduce inequalities between patients in outcomes from services they commission. This involves:

- Effective monitoring and evaluation that identifies health inequalities and to support action to overcome inappropriate variations in outcomes for all people.
- Looking at how the outcome is distributed across society by area of deprivation and by different groups, rather than focusing on average outcomes for all people.
- Considering how services can be commissioned to reduce inequalities and prevent undesirable outcomes. For example, targeting life-style factors in health and compliance with treatment, and developing key provider indicators with health inequality outcomes.

Many changes to address health inequalities will have a long-term impact on health outcomes, so their effectiveness may not be visible on an annual reporting basis. This should not detract from implementing such changes, if they are based upon robust evidence supporting the reduction in health inequalities.

CCGs already work closely with their local health and wellbeing board (HWB) and public health teams in local authorities (LAs). Particularly on the use and development of the JSNAs and implementing the joint health and wellbeing strategy (JHWS).

LAs are mandated to provide public health support to the NHS. They are a source of expertise in using health related data sets to inform commissioning, reduce inappropriate variation in the local area, identify vulnerable populations and marginalised groups, and support commissioning to meet their needs. Part of this involves awareness of and joint discussions around the wider determinants of health.

CCGs may contribute to addressing the wider underlying causes in partnership with the HWB, including identifying where the integration of services would improve quality and reduce inequalities, and developing commissioning pathways to support such integration.

5.3.7 NHS England

NHS England has a duty to have regard to the need to reduce inequalities between patients in access to services commissioned through its direct commissioning functions. This may involve:

- Identifying health inequalities, evaluating how such inequalities might impact on people's ability to access services, and commissioning for all of the population and all needs.
- Identifying evidence of what has previously worked in reducing inequalities in access to services and evaluating notable practice.

NHS England may also consider whether:

- services are universal and should reach all members of society, which may be achieved by explicitly targeting specific population groups;
- services are commissioned on the basis of need, which may be achieved by ensuring the quantity and quality of services in deprived areas is adequate.

NHS England also has a duty to have regard to the need to reduce inequalities between patients in outcomes from services commissioned through its direct commissioning functions. This involves:

- Effective monitoring and evaluation that identifies health inequalities and to support action to overcome inappropriate variations in outcomes for all people.
- Looking at how the outcome is distributed across society by area of deprivation and by different groups, rather than focusing on average outcomes for all people.
- Considering how services can be commissioned to reduce inequalities and prevent undesirable outcomes. For example, targeting life-style factors in health and compliance with treatment, and developing key provider indicators with health inequality outcomes.

Many changes to address health inequalities will have a long-term impact on health outcomes, so their effectiveness may not be visible on an annual reporting basis. This should not detract from implementing such changes, if they are based upon robust evidence supporting the reduction in health inequalities.

5.4 Reporting requirements

5.4.1 Reporting requirements for Clinical Commissioning Groups

To fulfil its legal duties a CCG will need to set out:

- in an annual commissioning plan an explanation of how it proposes to discharge its duty to have regard to the need to reduce inequalities; and
- in an annual report an assessment of how effectively it discharged its duty to have regard to the need to reduce inequalities.

Each annual report must be published and a meeting held to present the report to members of the public. In preparing their annual report on how they have discharged their function, a CCG should consult with their relevant health and wellbeing board.

CCGs may wish to consider using:

- the analysis template document developed by and for NHS England; and
- the Equality Delivery System 2 may help to assure that equalities and health inequalities are being effectively addressed throughout the work of the organisation

Key steps to consider based on Brown's principles (Annex B):

- Understanding and awareness of the duties
- Inequalities taken into account before and whilst decision is being considered
- Sound evidence and information underpins decision making
- Duty is considered continuously throughout the decision making process
- Keep sound record and evidence that the duty has been considered

5.4.2 NHS England Annual Report

NHS England is required as part of its annual reporting to set out:

- an assessment of how effectively it discharged its duties to have regard to the need to reduce inequalities;
- an assessment of how well CCGs have discharged their duty to have regard to the need to reduce inequalities.

The Secretary of State for Health will respond with an assessment of how well NHS England has fulfilled these legal duties.

5.4.3 Duties on NHS England to assess how effectively CCGs have complied with their duty to reduce health inequalities

The CCG assurance process has been designed to provide confidence to internal and external stakeholders and the wider public that CCGs are operating effectively to commission safe, high-quality and sustainable services within their resources, delivering on their statutory duties and driving continuous improvement in the quality of services and outcomes achieved for patients.

The 2015-16 CCG assurance framework assesses whether a CCG has effective systems in place to ensure compliance with its statutory functions. In addition, there are particular statutory functions for which NHS England will require more detailed focus as part of the assurance process in a particular year. This includes reducing

health inequalities. The CCG assurance operating manual sets out that NHS England will want to be assured that CCGs can demonstrate:

- due regard to the metrics contained in the Workforce Race Equality Standard to help improve workplace experiences and representation at all levels for black and minority ethnic staff;
- robust implementation of EDS2 to help meet the Public Sector Equality Duty and to improve their performance for people with characteristics protected by the Equality Act 2010; and
- comprehensive insight into their local population's diverse health needs and assets and be able to describe how, through all their own commissioning and wider collaboration through health and wellbeing boards, they are meeting the reducing inequality challenge for their population.

5.5 Related legal duties and responsibilities

The legal duties for CCGs and NHS England to address health inequalities are standalone duties. However, this does not mean that addressing them should be done in isolation, nor is this realistic. There are several other legal duties and responsibilities on commissioners which are complementary and provide a means through which to implement the health inequalities legal duties. These include, but are not exclusive to, the following:

1. Individual Participation Duties
2. Public Participation Duties
3. Duties to have regard to JSNAs and JHWS (CCGs)
4. Integrated Care
5. Quality of Care
6. Improving Patient Outcomes

5.6 Useful resources

There are many resources available online to support staff in NHS England, CCGs and in partner organisations to work to reduce health inequalities. These have been produced by expert bodies and include, but are not limited to, local analytical tools, commissioning guidelines and academic literature.

Should you have any enquiries please get in touch with the Equality and Health Inequalities Unit: england.eandhi@nhs.net

6 Annex A - other health inequalities duties

The Secretary of State for Health has an overarching duty to:

- have regard to the need to reduce inequalities between the people of England with respect to the benefits that may be obtained by them from the health service.

This duty covers all of the Secretary of State for Health's NHS and public health functions, and relates to the whole population of England including those not registered with general practice, or who are not patients. The duty encompasses all health inequalities dimensions, not just income or socio-economic inequalities.

The Secretary of State for Health also has duties to:

- include in his annual report on the performance of the health service in England, an assessment of how effectively he has discharged his duty to have regard to the need to reduce inequalities; and
- set out in a letter to NHS England, which is published and laid before Parliament, his assessment of how it has discharged its duty to have regard to the need to reduce health inequalities, based on NHS England's annual report.

The Secretary of State for Health's duties on health inequalities covers the following bodies:

- Public Health England
- Health Education England
- NHS Trust Development Authority
- Medicines and Healthcare Regulatory Agency
- NHS Blood & Transplant Authority
- NHS Business Services Authority
- NHS Litigation Authority
- Health Research Authority

The Secretary of State for Health's duties on health inequalities do not cover the following bodies:

- Care Quality Commission
- Monitor
- NHS England
- NICE
- Health and Social Care Information Centre
- Human Fertilisation and Embryology Authority
- Human Tissue Authority
- Council for Healthcare Regulatory Excellence

Note: Sponsors of bodies not covered by the Secretary of State for Health duties will still have to act consistently with the duties when fulfilling their sponsorship responsibilities. These sponsors should also be aware of any duties that the Arm's Length Body has.

7 Annex B – Brown's principles

In response to a legal challenge, Brown -v- Secretary of State for Work and Pensions (2008) [3]), about the public sector equality duty, the court set out a set of principles which are also relevant to the health inequalities duty. These are:

1. Decision maker must be aware of his/her duty to have "due regard";

2. "Due regard" must be fulfilled before and at the time a particular decision is considered;

3. The duty must be exercised in substance, with rigour and an open mind;

4. The duty is non-delegable;

5. The duty is a continuing one; and

6. It is good practice to keep an adequate record showing the duty had been considered.

[3] See http://www.moray.gov.uk/downloads/file89347.pdf