

Equality Analysis (Equality Impact Assessment) managers' guidance

NO DECISION SHOULD BE MADE WITHOUT AN IMPACT ANALYSIS

Context

The Equality Act 2010 has provided Public Sector bodies including the NHS with a new cross cutting legislative framework which has updated, simplified and strengthened the previous legislation to protect individuals from unfair treatment and to promote a fair and more equal society. The Primary provisions of the Act came into force on the 1st October 2010. The Act brought together nine separate pieces of equality legislation including the Equal Pay Act 1970, the Sex Discrimination Act 1975, The Race Relations Act 1976 and the Disability Discrimination Act 1995. The Equality Act also introduced new general and public sector equality duties from 5th April 2011 which will ensure that public authorities tackle discrimination, harassment and victimisation.

The Equality Act 2010 extended the original 6 equality strands and now protects people from discrimination on the basis of nine protected characteristics (protected groups) which are as follows :-

- Age
- Disability
- Race
- Religion or belief
- Gender
- Sexual Orientation
- Gender reassignment
- Pregnancy and maternity
- Marriage and Civil Partnership

Reducing health inequality is an integral part of our EA – and the local demographic data must be used in the analysis to address specific areas.

Equality analysis processes



1. The scope of the equality analysis should be agreed right at the outset- e.g. what it should cover and what is not within the scope.
2. It imperative that relevant data based on protected characteristics are gathered from reliable sources including the local Strategic Needs Analysis (JSNA), service providers and/or national sources.
3. Engagement of stakeholders must include patients or their representatives and clinical leads and commissioners, where appropriate.
4. Impact analysis should look at the likely impact of the service/policy of protected and vulnerable groups and Human Rights. Based on the analysis, develop mitigating actions.
5. **All equality analysis must be signed off by a senior manager/director in the CCG. It's recommended that a brief summary of the equality analysis is included in the Governing Body or Committee report cover page under 'equality impact assessment'.** A copy of the final version should be sent to the Equality, Diversity and Inclusion Team (emdad.hague@nhs.net)

What do we mean by Equality and Diversity?

- Equality is a legal framework to protect against discrimination and promote equality of opportunity to people and groups on the grounds of their race, gender, disability, religion or belief, sexual orientation, pregnancy and maternity, marriage and civil partnership, gender reassignment and age.
- Diversity is the valuing of our individual differences and talents, and creating a culture where everyone can participate, thrive and contribute.

What is an Equality Analysis (Equality Impact Assessment)?

An Equality Analysis (EA) is a tool aimed at improving the quality of local health services by ensuring that individuals and teams think carefully about the likely impact of their work on different communities or groups. It involves anticipating the consequences of the CCG's policies and functions on different communities and making sure that any negative consequences are eliminated or minimised and opportunities for promoting equality are maximised.

Equality Analysis consists of two main parts

- **An initial screening process (existing policy/service)**- to test the relevance to the equality duty and the likely impact on protected groups. This should be done by asking two questions (a) Is this policy/service patient or staff facing? (b) Will this policy/service directly or indirectly introduce, change or modify any patient or staff entitlements to services or benefits? If either of these questions are yes then an EqIA must be carried out by using the standard template.
- **New policy/service or transformational change:** If the test of relevance identifies that service/policy is relevant then a **full assessment** should be carried out. It may be carried out in two stages: pre consultation (initial) and post consultation (final).

A negative or adverse impact is an impact that could disadvantage one or more equality groups or communities. This disadvantage may be differential, where the negative impact on one particular group is likely to be greater than on another.

Why should we carry out an EA?

We carry out EA because:

We need to

If we are to appropriately serve our diverse local community, and ensure health services are provided equitably and are genuinely accessible to all.

We have to

The CCG must show their policies and functions, either in relation to the workforce or commissioning, as set out in equalities legislation show due regard to the equality duty.

We want to

EAs actively support the practical delivery of policies and strategies, helping us meet the Healthcare Commission's Standards for Better Health (please double check it's still relevant!) and contribute towards other inspection regimes and partnership arrangements.

When should I carry out an Equality Analysis?

An EA should be carried out when:

- Developing a new policy, strategy, service or function
- Reviewing existing policies, strategies, services or functions

What areas should the impact assessment cover?

An EA must cover the nine equality dimensions as covered by current legislation. The analysis needs to establish how the CCG will have due regard to equality in relation to different protected groups:

Age

Disability

Ethnicity and Race

Religion of belief

Gender

Sexual orientation, Gender reassignment

Pregnancy and maternity

Marriage and civil partnership

Do we need to assess both existing and new services and policies?

Yes. All current policies and services – both new and existing – must be monitored and regularly reviewed for relevance and checked for their impact. However, when deciding what existing policies or services to review, the CCG should take a proportionate approach – assessing the equalities impact of the policy or service should be proportionate to the likely impact of the policy itself. Issues for consideration should include the number of people likely to be affected, the financial and human resources involved, the extent of the proposed change and the wider public policy implications.

How do EA relate to the CCG's existing equality objectives?

The CCG are legally required to demonstrate due regard to the public sector equality duty (PSED). Conducting equality impact assessments ensures that we are showing due regard to the equality duty by actively considering the impact on equality.

Who is responsible for conducting EA?

The policy writer or manager responsible for the service under consideration is the person responsible for ensuring that an EA is carried out.

The CCG is ultimately accountable for ensuring that EAs are completed and published, where appropriate. When business cases are submitted a sub/Committee or Board for consideration, they will expect to see a completed EqIA.

Questions to consider when carrying out an Equality Analysis

The following questions are to help team leaders and managers consider as wide a range of issues as possible when conducting an Equality Analysis.

Remember that your EA report should demonstrate what you do (or will do) to make sure that your service/policy is accessible to different people and communities, not just that it can – in theory – be used by anyone.

Age

If your service is open to people of all ages, how will you make sure it is used by people of all ages? You might find the following prompts useful though you will also have actions that are particular to your service:

- Is it easy for someone of any age to find out about your service and to use your service?
- Does your service make assumptions about people simply because of their age?
- Does your service give out positive messages about all ages in the leaflets and posters that it uses?
- When you are recruiting staff, have you thought about age and how you can recruit from a wide range of age backgrounds?
- Do younger and older people in your staff team feel equally valued?
- Do you monitor age to make sure that you are serving a representative sample of the population (or representative within your relevant age group)?
- Do any eligibility criteria for your service discriminate against older or younger people without just cause?
- What actions will you take to make sure that your staff treats people of all ages with dignity and respect?
- Have you considered including age equality into staff objectives and appraisal?
- How will you mainstream these actions into the core objectives of your service?

Disability

What will you do to make sure that people with disability are using and benefiting from your services/policy? This includes people with a learning disability, people with long-term conditions and mental health problems, and people with physical and sensory impairments. You might find the following prompts useful though you will also have actions that are particular to your service:

- How do people with disabilities find out about the service?
- Does your printed information take account of communication needs of people with various disabilities and is it easy to understand?
- Have you decided what core information you need available in large print, audio tape or Braille?
- Is your service physically accessible to people with mobility problems or who use a wheelchair?
- Do your staff members know how to access a sign language interpreter, or an interpreting service for deaf and hearing impaired people, or how to use an induction loop and where to get advice on material in different formats?
- Do you routinely record the communication needs of patients with a disability for referring to when sending out appointments etc?
- Have you put in place a procedure to record the uptake for sign language interpreters, appointment letters/leaflets in Braille etc?
- Do you currently monitor whether or not patients have a disability so that you know how well your service is being used by people with a disability?
- What actions will you undertake to ensure that your staff members are treating people with disabilities with respect and dignity?
- Is your service religiously and culturally sensitive to meet the needs of disabled people from minority ethnic groups? If not what approaches would you develop to approach this?
- Have your staff members received Disability Awareness Training in general and more specifically in meeting the needs of patients with a learning disability, people with mental health difficulties or people with hearing or sight impairment? How they are planning to implement this in their work setting?
- Have you thought about your assessment materials and methods and made sure that they are relevant to people with disabilities?
- Have you considered incorporating disability equality objectives into staff appraisal?
- How will you mainstream these actions into the core objectives of your service?

Race

How will you make sure that people from a wide range of ethnic backgrounds use your service? (NB you may find it helpful to look at this section alongside the section on Religion and Belief as the actions are closely related). You might find the following prompts useful though you will also have actions that are particular to your service:

- How do people from minority ethnic backgrounds find out about your service? Does your printed information take account of different languages and cultures and is it easy to understand?

- Have you publicised your service among minority ethnic communities by making it available at different appropriate venues as well as visiting them and talking about your service?
- Have you decided what core information you need available in other languages?
- Do your staff members know how to access an interpreter for booking appointments or how to access telephone interpreting (in situations where it may not be possible to arrange an appropriate interpreter)? Also, where to get advice on material in other languages and formats?
- Do you routinely record the language that a person speaks so that you can send them letters in the right language or ring them instead if they can't read?
- Have you put in place a procedure to record the uptake of interpreting and translated material?
- Have you thought about your assessment materials and methods and made sure that they are relevant to people from different cultures?
- Do you currently record the ethnicity of patients so that you know how well your service is being used by people from minority ethnic backgrounds?
- What actions would you undertake to ensure that your staff members are treating people from a minority ethnic background with respect and dignity?
- Have you identified any specific dietary or any religious needs of patients or any other specific requirements that you need to be sensitive to?
- Have you considered incorporating race equality objectives in staff appraisal?
- How will you mainstream these actions into the core business of your services?

Religion or Belief

How will you welcome people from all religious backgrounds? You might find the following prompts useful though you will also have actions that are particular to your service:

- How do people from different religious backgrounds find out about your service? Is your printed information religiously appropriate/sensitive?
- Have you publicised your service among various religious communities and groups by making it available at different appropriate venues as well as visiting them and talking about your service?
- Do you currently record patients' religion in order to assist you in identifying users and non users of your services from various religious backgrounds?
- What actions would you undertake to ensure that your staff members are treating people from different religions/beliefs/no beliefs with respect and dignity?
- Is your service religiously and culturally sensitive to meet the needs of people from various religious backgrounds? If not what approaches would you develop to address this?
- Have you identified any specific dietary or other needs related to a person's religion which you need to be sensitive to?
- Are there any other religious sensitivities you need to bear in mind e.g. when visiting patients at home?

- If you are running an inpatient or residential service, have you thought about the prayer needs or the need for a quiet space for your patients/residents?
- Have you considered obtaining a list of various festivals to be made available to your staff members to avoid arranging appointments/visits etc on any particular religious festivals/days/times?
- Have your staff members received training on religion and belief and how they are planning to implement this in their work setting?
- Have you considered incorporating religion and belief equality objectives in staff appraisal?
- How will you mainstream these actions into the core objectives of your service?

Gender

If your service is for men and women, what will you do to make sure that both benefit? You might find the following prompts useful though you will also have actions that are particular to your service:

- Is it easier for either men or women to find out about and use your service, for example because of where you display leaflets or your opening times?
- If your service is for men and women do you routinely monitor the uptake of your service with gender breakdown and take appropriate action? For example:
 - if you find that men are not assessing your services then you may consider improving the way these services are provided to men, possibly by targeting men and providing drop in clinics at sporting events or workplaces
 - similarly you may consider adopting sensitive approaches to target women from different backgrounds as the services may not be appropriate for some women from particularly minority communities.
- Have your staff members received Gender Equality Training and how they are planning to implement this in their work setting?
- Have you considered incorporating gender equality objectives in staff appraisal?
- How would you mainstream these actions into the core business of your service?

Sexual orientation and gender reassignment

How will you give positive messages and a positive reception to people who are gay, lesbian, bisexual or transgender? You might find the following prompts useful though you will also have actions that are particular to your service:

- Does information about your service use visual images that could be people from any background or are the images mainly heterosexual couples?
- Does the language you use in your literature include reference to gay, lesbian and bisexual people?
- When carrying out assessments, do you make it easy for someone to talk about their sexuality if it is relevant, or do you assume that they are heterosexual?

- Would staff in your workplace feel comfortable about being 'out' or would the office culture make them feel that this might not be a good idea?
- Have your staff had training in Sexual Orientation and Equality and how will they put what they have learnt into practice?
- How will you make sure that staff treat lesbian, gay and bisexual people with dignity and respect?
- Have you included this area of equality in staff objectives and appraisal?
- How would you mainstream these actions into the core business of your service?

Pregnancy and Maternity

- Does the service/policy or function impact on pregnant women or mothers?

[Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding)

- What could be done to minimise any unintended consequence of negative impact, if any?
- Is there anything the CCG should/could do to advance equality for pregnant women and mothers?
- If the service/policy is relevant to this group then has the CCG consulted with them on this?
- If staff are on maternity leave then has the CCG considered contacting them about the service/policy?

Marriage and civil partnership

How does the service/policy impact on marriage and civil partnership?

(for marriage and civil partnership a body subject to the duty only needs to comply with the first aim of the duty)

Human Rights

Explain how the service/policy will impact on patients Human Rights. Follow the FREDA principles: (https://www.cqc.org.uk/sites/default/files/20140406_our_human_rights_approach_public_consultation_final.pdf)

Fairness

Respect

Equality

Dignity

Autonomy

Socio-economic groups

Health inequalities exist in our localities. There are groups that enjoy a healthier life-style due to their socio-economic circumstance and therefore live longer- while other groups with low income and fewer social opportunities may not enjoy good health outcomes. The local

Joint Strategic Needs Analysis (JSNA) provides a good picture on local demography and socio-economic groups.

National links:

<https://publications.parliament.uk/pa/cm200809/cmselect/cmhealth/286/28605.htm>

<https://www.parliament.uk/documents/post/postpn276.pdf>

Case laws

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Brown -v- DWP

One of the leading cases, Brown -v- Secretary of State for Work and Pensions (2008) set out some general principles.

Mrs Brown was disabled and lived with her husband in Sussex. She could not stand or walk for long periods without acute pain. In late 2007, she discovered that the government was proposing to shut down a number of post offices in Sussex, including the branch in her village. Because of her disability, this would make it very difficult for her to access another post office further away.

In a legal challenge to the decision, Mrs Brown claimed that the government had failed to comply with its duties under the Disability Discrimination Act 2005, in particular its duty to pay due regard to the equality duties as it had not carried out a disability equality impact assessment of the closure proposal. She was unsuccessful.

The court set out the following principles:

- Those responsible for the duty to have due regard must consciously bring it to mind when considering the duty. If they don't or if their appreciation of the duty is incomplete or mistaken, the courts will deem that due regard has not been applied.
- The due regard duty must be fulfilled before and at the time that a particular service/policy is being considered. Compliance with the duty should not be treated as a rear-guard action after a decision to implement the policy or to commission the service in question.
- It must be exercised with rigour and with an open mind. Due regard involves more than a tick box exercise. The "substance and reasoning" of the decision must be examined. However, a failure to make explicit reference to the relevant positive equality duty will not, of itself, be fatal to a decision.
- It is good practice for public authorities to keep an adequate record showing that they had actually considered their equality duties and pondered relevant questions.
- The due regard duty cannot be delegated to a third party by the public authority charged with it.
- The duty is ongoing.
- When applying the "due regard" test, the public authority must take into account whatever countervailing factors are relevant in the circumstances.

Kaur -v- London Borough of Ealing

This case dealt with the issue of whether a race impact assessment should have been carried out before the council decided to cut funding to a voluntary organisation, Southall Black Sisters (SBS). It provided services to Asian and Afro-Caribbean women who experience domestic abuse.

In 2007-2008 they were partly funded by Ealing Borough Council. The council decided in September 2007 that it would only fund borough-wide services provided to everyone experiencing domestic violence irrespective of gender, sexual orientation, race, faith, age, or disability.

SBS said that this would have a disproportionate adverse impact on black and minority ethnic (BME) women and pointed out that the council had not done a race equality impact assessment.

The council then undertook a “draft equality impact assessment”, which indicated that the impact on BME women would be monitored when the new arrangements were in place. However, it did not carry out a full equality impact assessment. A few months later, the council confirmed its earlier decision to fund a single borough-wide service provider. The claimants, service users of SBS, successfully applied to judicially review this decision. The court quashed the council’s decision and reiterated the importance of under-taking an equality impact assessment, and also the importance of carrying out an impact assessment before formulating policy.

Further information:

<http://www.equalityhumanrights.com>

Aligning Equality Analysis with Commissioning

