

## Briefing 49

# Equality impact assessments in the NHS – a guide for employers

Under the Race Relations Act (2000), Disability Discrimination Act (2005) and Equality Act (2006), all public sector organisations need to undertake race, disability and gender impact assessments on new and existing policies and procedures. The assessments should be done when an organisation is planning to change or introduce new services.

The Government is committed to extending this duty to sexual orientation, religion or belief and age – probably by 2010. In line with this, organisations should consider all the diversity strands as part of their Equality Impact Assessment (EqIA), to ensure compliance as soon as the changes are introduced.

This *Briefing* will help employers carry out EqIAs. In addition to meeting their legal obligations, the assessments help trusts to deliver their business objectives and achieve equal outcomes for staff, the local community and service users. More importantly, in line with good practice, they help organisations identify and prevent potential diversity issues through a more proactive approach.

### Key points

- EqIAs help an organisation fulfil its legal obligations under equality legislation.
- EqIAs ensure an organisation's activities and services do not discriminate.
- EqIAs should help an organisation to promote equal opportunities.
- Assessments are needed for new or existing services, strategies, policies, procedures and projects.
- They help organisations see if certain groups are, or could be, disadvantaged by a policy.
- EqIAs identify where changes to policies may be required to promote equality and eliminate inequality.
- EqIAs have to be reported publicly and reviewed regularly.

### What should an EqIA cover?

For the purposes of this *Briefing*, we will refer to EqIAs but these can be applied to all the strands of diversity. An EqIA should:

- identify the policy aims and list the main activities of the functions (or the main policy areas for strategies)
- identify the key stakeholders including local trade union representatives
- identify who is responsible for implementing the policy
- state how progress will be measured

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- identify any data that will help inform the assessment, identify gaps in the information and reasons for those gaps
- note whether additional information is needed and if so, what this is
- note whether the policy has any influence over one of the equality strands in promoting or achieving equality, or eliminating discrimination, and whether it could have a negative impact on any of the groups
- note whether it is lawful in terms of discrimination, if it is intended, and can you minimise any negative impact
- note whether changes could be made to the policy and/or if it could be implemented in a different way
- indicate whether a different policy could achieve the aims, avoiding any adverse impact
- explain what consultation has happened or is planned, and note any gaps in the consultation
- involve the trade union representative in the process, to harness their knowledge and expertise on staff involvement
- estimate the risk of the policy's effect on equality and the potential for benefit
- say how the assessment results will be published
- explain the monitoring arrangements

- include an action plan.

### How do I carry out an EqlA?

EqlAs are a process that helps an organisation to examine its functions and policies, to see whether they have the potential to affect people differently. Their purpose is to identify and address real or potential inequalities resulting from policy, practice and service development.

There are nine important steps to the EqlA process:

#### Step one: identify your policy aims

EqlAs should focus on how important the function or policy in question is to achieving equity and the likely outcomes if the policy is effective in supporting equity.

You should consider the following questions:

- how does the function or policy fit into the organisation's wider aims?
- how will it be put into practice and who will be responsible for it?
- what outcomes do you want to achieve?
- how will you measure progress towards and/or achievement of, those outcomes?
- who are the key stakeholders?
- how does it relate to other NHS policies in this area?
- how does your organisation connect to other bodies in relation to the implementation

of this function or policy?

- how will you measure the effectiveness of your EqlA?

#### Step two: consider the data and research

Available data and relevant research should inform your EqlA. This will help you to understand the implications of a function or policy on equality and diversity. For example, data may show that a certain group of people are not accessing a service.

Data can be gathered from statistical information from formal audits, consultation exercises (with the public and staff) and surveys. Qualitative and quantitative data can be used, but must be used in the right context – for example, ward level information gathered by the council is likely to be useful but national statistics may not be specific enough. Examples of useful data include service activity, workforce profiles, information of the local population and census data.

#### Step three: analysis of the function or policy

It is important to consider any influence the policy is having, or could potentially have, on the individual strands of equality. The function or policy should be examined for its effectiveness in:

- promoting equality
- eliminating discrimination
- achieving equity.

For example, analysis of sickness absence might show that one group of staff is away from work more than others – this would suggest a problem that needs to be investigated further and may point to inequity in the policy. A good employer would also look at information about staff taking grievance procedures. Feedback from service users is another useful analysis tool – what do different types of users say about a service?

Analysis must be done with the strategic objectives of the organisation in mind and the questions should reflect legal requirements, local plans and population needs. When examining the policy, remember that analysis questions may need to be different for each diversity strand. This is because the measures for equality and diversity are determined by law or by the barriers faced by a particular group. There is more about this on NHS Employers website in the sections on diversity strands at [www.nhsemployers.org](http://www.nhsemployers.org)

#### **Lewisham PCT's assessment process**

Lewisham PCT worked closely with Lewisham Council and Middlesbrough PCT, to develop and implement a simple but robust equality impact assessment process. Managers now have a clear framework for assessing the likely impact of existing and new policies or services, on its local community.

For more details see our online knowledge base at [www.nhsemployers.org](http://www.nhsemployers.org)

#### **Step four: assess the likely impact on equality**

It is important to remember that the impact of a policy or function can be positive, negative, intentional or secondary, and the objectives for the service or function could be driven by legislative requirements, local commitments or good practice.

Use the following questions to help you to understand the potential impact on equality:

- is there an impact on any particular group?
- could the way the policy is carried out harm equality of opportunity or good relations between different groups?
- does the policy promote equality of opportunity and good relations?
- is the policy directly or indirectly discriminatory and can the latter be justified?
- is the policy intended to increase equality of opportunity by permitting positive action or reasonable adjustment to redress disadvantages? If so, is this lawful?
- is further research or consultation necessary?

#### **Step five: consider alternative policies**

If the analysis shows a potential adverse impact on equality, or unlawful discrimination, the policy or function should be investigated and any problem areas tackled. It may be that you need to consider alternative ways to achieve the objectives.

Before making a decision, it is important to make sure that reducing the adverse impact on one particular group does not create an adverse impact on another. If this is unavoidable, you will have to show that it can be justified on non-discriminatory grounds. It may be necessary to seek legal advice.

Use the following questions to help you in considering alternatives:

- can changes be made to the function or policy?
- can the function or policy be implemented in different ways?
- would a different function or policy still achieve the same aims and objectives but avoid any adverse impact on equality?

#### **Step six: involve and consult relevant stakeholders**

You can use any existing mechanisms for consulting stakeholders but you need to ensure that it is fully representative. Some duties require more in depth involvement from stakeholders and you should aim to reach people with a range of impairments and from a range of diverse backgrounds, taking into consideration age, race, gender, sexual orientation and religious belief. People with long-term health conditions should also be involved. Consider using advocates if they can help you engage with stakeholders.

To involve and consult stakeholders, you could organise

events, patient fora, workshops and one to one interviews. Staff opinions can also be sought using network groups, trade unions and staff surveys. Partnership working with other organisations, such as local authorities, social services departments and voluntary sector organisations, may assist the process and this networking may lead to the involvement of a much wider range of people.

To be effective, involvement needs:

- a clear focus on where the organisation can realistically make changes and clarity about what resources you can use
- involvement processes which are fully accessible to a wide range of people from diverse backgrounds
- a proportionate approach which takes into account the size of the organisation
- open reporting on the outcomes of any involvement and any changes which have been made as a result.

### Step seven: make a decision on the policy

Summarise the findings and give an overview on whether the policy will promote equality and diversity as a component part of delivery. This will enable you to decide on the effectiveness of the policy. The decision should be based on the aims and objectives of the policy, the results of the data gathered and the results of the consultation and involvement with stakeholders. For example, if the assessment shows:

- direct discrimination in any of the areas – this would be unlawful and the policy should be rejected
- indirect discrimination in any of the areas – it should be rejected, unless it can be justified under the legislation, for example:
  - it was necessary to the organisation carrying out its functions effectively
  - the organisation was unable to find another way of achieving the aims and objectives that had a less discriminatory effect

- the organisation considers that the means it employed to achieve its aims and objectives were proportionate, necessary and appropriate
- that the policy may not promote equality of opportunity or good relations – alternatives should be considered that would lessen the negative impact and increase the likelihood of endorsement.

Use the following questions to help you decide whether or not to introduce the function or policy:

- has any adverse impact been identified?
- what are the main consultation findings and what influence do they have?
- are there any alternative measures that could be taken which would achieve the desired aim without the adverse impact identified?
- can the adverse impact or indirect discrimination be justified, for example, can it be argued that the policy objectives were essential and justifiable to the organisation and that the means they have been achieved by, were appropriate and necessary?

### Step eight: reporting results

Under the specific duties set out in the relevant legislation, the results of the EqIAs must be published. This shows commitment to promoting

#### Bradford Teaching Hospitals NHS Foundation Trust assesses its car parking policy

Bradford Foundation Trust's estates department proactively addressed equality and diversity issues on its car parking policy, following an equality impact assessment (EqIA). The plan tackles a number of areas such as ensuring that service users with potential access issues, such as the elderly or disabled, are able to use parking as close to the hospital as possible. The plan followed a six week consultation with local key stakeholders to capture their views.

For more details see our online knowledge base at [www.nhsemployers.org](http://www.nhsemployers.org)

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equality and demonstrates that the organisation is carrying out the specific duties of assessing, involving, consulting and monitoring. In the case of new functions and policies, you must show how you intend to publish the results of the EqlA and information on the impact that the policies are likely to have on promoting equality. Any reports that are published should be in a format that is accessible and include action plans to address any issues identified by the process.

You should consider publishing:

- a description of the policy, together with a brief account of how possible affects have been assessed
- a summary of the results of the EqlA, including the likely impact on promoting equality
- details of the involvement and consultation processes and its results
- a review of the proposal in the light of the assessment, particularly about any adverse impact on promoting equality
- reasons behind the decisions made
- recommendations needed to ensure an effective and fair implementation of the policy
- any additional arrangements such as training and regular monitoring post-implementation
- a statement of future action.

### **Plymouth Hospitals NHS Trust promotes EqlA work**

Plymouth Hospitals publishes all of its completed EqlAs on its website. The forms are posted under a range of headings, for example 'infection control', 'theatres', 'human resources', 'clinical governance' and 'medical and dental'. These provide good examples of issues that need to be addressed. For example the EqlA on visitors to the operating theatre notes that the dress code and uniform policy has an adverse impact because it does not take account of different cultural or religious needs, but because infection control considerations are paramount, the adverse impact will not be addressed.

The forms are clear and allow the patients, public and the staff to see how decisions have been made.

### **Step nine: monitoring and review**

Existing monitoring arrangements should be reviewed and revised if necessary, to make sure that they are suitable for monitoring EqlAs. Monitoring of EqlAs should become part of the normal business processes, for example being included in regular performance reports and statistical analyses. EqlAs should not be a one-off exercise – the actual impact of a policy will only be realised when it has

been put into practice, so a review should be planned after implementation to see how the function or policy is working in practice.

When the EqlA(s) reach their review date, organisations should have an amalgamation of EqlA results to support the review of the scheme(s). This should include data collection and information at the point where staff and service users interface with the organisation.

You should consider the following questions when planning arrangements for monitoring a function or policy:

- should this be piloted before full implementation to check for any adverse impact?
- how will it be monitored after full implementation?
- are there planned reviews? If so, how often and who will be responsible?
- will a further EqlA and consultation be required to check for adverse impact? If so, when is this likely?

### **Further information**

A template for EqlAs is available on our website at [www.nhsemployers.org](http://www.nhsemployers.org) together with case studies on what other trusts have done to implement assessments.

For more information please email [paul.deemer@nhsemployers.org](mailto:paul.deemer@nhsemployers.org)

## NHS Employers supporting • promoting • representing

NHS Employers represents trusts in England on workforce issues and helps employers to ensure the NHS is a place where people want to work. The NHS workforce is at the heart of quality patient care and we believe that employers must drive the workforce agenda. We work with employers to reflect their views and act on their behalf in four priority areas:

- pay and negotiations
- recruitment and planning the workforce
- healthy and productive workplaces
- employment policy and practice.

NHS Employers is part of the NHS Confederation.

## Contact us

For more information on how to become involved in our work, email [getinvolved@nhsemployers.org](mailto:getinvolved@nhsemployers.org)

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