

Monitoring for equality and diversity: what healthcare employers need to know and do

NHS organisations need to know who their patients and staff are, and understand their needs, in order to improve services and employee experiences. A systematic approach to collecting and analysing the right information is the first step to achieving this. As the largest employer in Europe, the NHS should also be leading the field in terms of good employment practice in this area.

This *Briefing* looks at some of the issues around monitoring for equality and diversity in the workforce and what NHS organisations need to do, not merely to comply with legislation but to make sure that their equality strategies are actually making a difference.

Key points

- By law, employers must monitor their workforce on key employment indicators by ethnicity, disability status and gender to ensure that there is no discrimination against any of these groups.
- They must also publish the results of this monitoring, together with other related material including an annual progress report.
- With the Equality Act expected this year and a strong business case for promoting equality and diversity in the workplace, employers should consider extending these activities to embrace age, religion or belief and sexual orientation.
- Employers face a range of challenges, barriers and issues when attempting to record and analyse personal attributes of staff, and handle this data securely.
- Information will be given more freely, and will be more comprehensive and accurate, where employers encourage a culture of openness, honesty and transparency about the reasons for collecting it.

Background

All public organisations, including NHS trusts, should already be collecting data on the ethnicity of their employees, as well as data relating to gender and disability, in line with legislative and regulatory requirements.

In 2009, the Equality Bill will be ratified to consolidate and simplify existing discrimination law by bringing it into one piece of legislation. It will also address continuing pay inequality and increase the possibility of positive action to promote equality at work.

Spot checks from the Healthcare Commission in late 2006 and

2007 on the online publication of race, gender and disability data, revealed that compliance in the NHS could be better. Failure to publish this data puts trusts at risk of not meeting standard C7e of the regulator's annual health check.

Labour market demands and changing demographics have also recently increased the focus on workforce planning. This highlights the need for NHS trusts to take a long-term, strategic approach that is driven by good employment practice and underpinned with robust diversity data.

A growing number of organisations are also searching for data to support benchmarking exercises and standards to assess how well they deal with equality and diversity issues within the workplace.

Finally, effective monitoring of diversity practice can also play a part in the drive for efficiency and best value that is central to the NHS Next Stage Review and 2009/10 Operating Framework.

NHS Employers is encouraging all NHS organisations to create a comprehensive, coherent and effective monitoring and reporting strategy that will support them in meeting and exceeding equality and diversity

requirements, both now and in the future.

What the law requires

As public authorities, NHS trusts are bound by duties that require them to examine the impact of their policies and functions on equality, and to demonstrate how they are promoting equality as an employer, policy-maker and service provider.

The Race Relations (Amendment) Act 2000, the Disability Discrimination Act 2005 and the Equality Act 2006, have imposed on all public bodies a general statutory duty to promote race, gender and disability equality and specific duties to enable the general duty to be carried out.

General duty:

- to eliminate unlawful discrimination and harassment on the grounds of race, disability and gender
- to promote equality of opportunity for disabled people, race equality and equality between men and women
- to promote good relations between diverse people, and to eliminate any disadvantage experienced in employment because of race/ethnicity

- to promote positive attitudes towards employment of disabled people, and to recognise the impact of gender on women's and men's employment opportunities.

Specific duty:

- to monitor employment to ensure equality of opportunity ie. the diversity of staff in post, applications for employment, training and promotion outcomes
- to monitor the diversity of the workforce and analyse the subsequent results from performance assessment/ appraisal, grievance and discipline, staff leaving employment and dismissals
- to take action on findings and publish the results of diversity monitoring.

For a detailed overview of what information and data needs to be collected see www.nhsemployers.org/legislation

The regulator's view

As part of the annual health check, the Healthcare Commission asks all NHS trusts to assess their performance against the Government's core standards for NHS healthcare. This role will now fall with the Care Quality Commission.

The following standards apply to diversity monitoring:

Standard C7e – healthcare organisations challenge discrimination, promote equality and respect human rights.

Standard C8b – healthcare organisations support their staff through organisational and personal development programmes which recognise the contribution and value of staff, and address, where appropriate, under-representation of minority groups.

Standard C11a – healthcare organisations must ensure that staff concerned with all aspects of the provision of healthcare are appropriately recruited, trained and qualified for the work they undertake.

Standard C11c – healthcare organisations ensure that staff concerned with all aspects of the provision of healthcare participate in further professional and occupational development commensurate with their work throughout their working lives.

Minimum requirements – the healthcare organisation monitors compliance on publishing information required by law, in line with duties for public bodies (see What the law requires section above).

At the end of 2007, the Healthcare Commission

undertook a spot-check audit of all NHS trusts' websites to determine the degree to which they complied with the requirement to publish monitoring data and other material on race and disability. Although there had been improvements over a previous audit in 2006, there was still more work to be done.

The business case

The business case for workforce diversity as a whole looks at three main drivers:

- the demographics of the workforce and the local community
- legal compliance
- recruitment, retention and performance.

Monitoring underpins these – knowing the current position and being transparent about it is the first step to improvement. The legal and regulatory requirement to collect and publish equalities monitoring information also supports the idea that organisations should be using such indicators to inform their strategic approach. It can then be used to demonstrate progress and feed into planning activities.

Economies of scale can also be achieved from using the same procedures to capture, analyse

and publish material across all of the equality strands because most staff and patients will fall into most, if not several, of these categories.

With increasing emphasis on equality in services, as well as in employment, commissioners may soon be looking for evidence of a provider's compliance with the law and good practice, as part of their contractual agreements.

Overcoming the challenges

Monitoring for equality and diversity will only bring real benefits when it is perceived by both employers and staff as worthwhile, rather than a burden. NHS organisations report several challenges to the collection and monitoring of diversity data.

Legacy personnel systems are unlikely to be able to provide the required data, broken down by 'diversity strand' at the touch of a button. Typically the required information, where held, will be spread over several systems. A blend of automated and manual processes will need to be employed to generate the complete statistical picture required.

In the future, electronic staff record (ESR) will automatically

give trusts data on the three mandatory areas of disability, race and gender, with the option to customise the system further to get information on the remaining diversity strands.

NHS Jobs, the NHS e-recruitment service managed by NHS Employers, already enables trusts to access data on gender, disability, ethnicity, age, religion or belief, and sexual orientation. This can be done at application, short-listing and appointment stages. Trusts can also opt for vacancy and application data to be transferred between NHS Jobs and ESR.

For trusts, there is also the challenge of what to ask, when to ask and how to ask staff about their personal attributes, many of which may be considered sensitive information. People often have misconceptions about why this kind of information is being sought and recorded, and the very act of making the enquiry can be seen as an intrusion into personal life.

Overcoming this requires an atmosphere of openness and honesty within the organisation and clear communication of the purpose for which the information is required.

- **Age** is usually not a problem because pension schemes

are required to record dates of birth.

- **Gender** is usually freely acknowledged. However transgender status presents a specific set of issues. Transgender campaign group Press for Change advises: "There are some occasions when monitoring for trans people should never be undertaken, such as during the recruitment process. Even after a decision on employment is taken, any monitoring data should remain anonymous... There is a high danger of contravening s22 of the Gender Recognition Act 2004 if subjects are identifiable".¹
- **Ethnicity**, when recorded, is a reflection of what the individual views his or her ethnicity to be, albeit usually through choosing from a range of options (typically the 2001 census classifications), including 'other'.
- **Disabilities** are often not declared by staff members who feel that they might be disadvantaged as a result, even though the intention of the law is specifically to prevent this.
- Enquiring about **religion or belief** can sometimes raise sensitivities among staff who

feel that they might be bullied or harassed by colleagues, or who consider religious views to be personal and private.

- **Sexual orientation** is possibly the most sensitive area of enquiry and is still rarely included in equal opportunities monitoring procedures. The lobbying group Stonewall is broadly in favour of monitoring the sexual orientation of staff but warns that 'sexual orientation monitoring is not appropriate for an organisation which has not previously engaged with lesbian, gay or bisexual staff, or developed initiatives to eradicate homophobia from the workplace.'

Staff training on diversity issues; support and commitment from senior staff; and clear and decisive action on discrimination, harassment or bullying; will all contribute to creating an atmosphere of openness and acceptance. In this environment, more staff will feel confident that the information is being collected for positive reasons and that providing the information will be beneficial for them.

When linked to individuals, data such as gender, age and ethnicity become 'personal data', the handling and safe-keeping of which is

governed by the Data Protection Act.

For general monitoring and analysis this data can be separated from personal identifiers, making the information anonymous. However, the inadvertent identification of staff through the combination of 'small number' data is a risk. For example, analysing the entire workforce by ethnicity is unlikely to identify a single individual, but analysis by ethnicity and grade might do so where there are small numbers of individuals with a particular ethnicity at certain grades. In general, all data which is associated with an individual must be kept secure and handled carefully, even if it has subsequently been anonymised or pseudonymised.

While web publishing is a cheap and convenient way of meeting statutory duties to publish diversity data, several things need to be considered. These include whether the information is easily accessible, understanding what information is legally required and whether there is a process to ensure information is kept up to date. The Healthcare Commission allows 30 minutes for its website audits which check what information trusts are providing, so material that is inconsistently labelled, poorly sign-posted

Case study: Overcoming the challenge of collecting equality and diversity monitoring data

Halton and St Helens Primary Care Trust recognised that an effective equality and diversity approach needed reliable employment monitoring data, to enable detailed analysis of the workforce and the impact of its equality and diversity policies. The trust developed the following approach:

- Communicating its intention to staff – this aimed to explain to staff and managers:
 - why the trust was collecting the data
 - the trust's legal responsibilities
 - what they needed to do in practical terms to provide the trust with any additional information required
 - what the outcome of this work may be
 - key support contacts at the trust.
- Using existing data sources – the trust's first step was an audit of existing staff data and its accuracy to assess whether existing data sources could be used or developed. This data was then sent to staff to verify.
- Adverse impact – to comply with legislation, the trust then analysed the data to see if there were any patterns of inequality across the diversity strands.

Acting on the results, the analysis revealed justification for 'positive action' to promote equality of opportunity around training and recruitment, for both disabled and ethnic minority staff.

Results and next steps

- Legal compliance and legal risks were addressed.
- Key messages communicated across the organisation on the legislative requirement for fair employment practices and a diverse workforce that reflects the community it serves.
- Identified gaps in practices around recruitment and retention and subsequent action undertaken.

and/or separated over several web pages could be missed.

The interpretation of the legal requirement, and the nature and level of information needed to support it, can also prove problematic. Employers need to consider good practice and establish what they feel to be a reasonable interpretation of

each requirement, before seeking to provide suitable evidence to support it.

Finally, employers need to be prepared for the consequences of revealing issues that previously were not in the public domain. This potential for things to appear to 'get worse before they get better' can have a negative

impact. This should be dealt with head-on, on the understanding that as actions are taken to deal with the issues the overall picture will begin to improve.

See NHS Employers' ten top tips for diversity monitoring and a checklist of legal requirements at www.nhsemployers.org/monitoring

Case study: Diversity monitoring and benchmarking

Royal Liverpool and Broadgreen University Hospitals NHS Trust compared key headline data from its trust workforce profile with benchmarking information on other employers that could be obtained within the North West region.

Equality data	Benchmarking data % comparators				
	Royal Liverpool	Local education college	City Council	Sefton Council	Public Health Intelligence
BME	12.26	9	6.8	1.8	6
Disabled	0.93	6.4	6.4	2.39	–
Christianity	22.22	–	–	–	79.5
LGB	0.31	–	–	–	–
Male	26.89	–	36.5	–	48

The data revealed that the overall trust representation in terms of black and minority ethnic people (BME) was excellent compared with the other partners. However, this was not reflected at all levels and all occupational groups in the trust.

The benchmarking exercise helped the trust to recognise its lack of disability status data in comparison with others and to set a new target for disclosure at 40 per cent of staff. Similarly, the trust has used the comparator data to set targets for staff recruitment, which are 6 per cent BME, 48 per cent male, 2 per cent lesbian, gay, bisexual and transgender (LGBT) and 20 per cent non-Christian. This information will be used to underpin its single equality and human rights schemes.

NHS Employers viewpoint

Monitoring enables employers to examine the make-up of their workforce in line with changing demographics and to identify potential discrimination. But monitoring is about more than just meeting legislative responsibilities. It is also about highlighting differences between groups – such as minority groups or staff from particular teams or grades – in terms of productivity, satisfaction and progression, and taking appropriate action.

To a large extent, it is managerial common sense to put in place mechanisms to measure and monitor progress in a particular strategic direction. Baselines need to be established to provide a starting point from which to judge progress. Management processes need to take account of indicators so that improvement (or otherwise) can be charted with confidence in its accuracy and validity.

For example, to establish whether an organisation is 'representative' of the community it serves, two things need to be established:

- the demographic profile of the workforce
- the demographic profile of the local community.

Trusts might also want to include the demographic profile of the country or region, as an additional comparator.

Employers should seek to collect and analyse as much information as they can across the diversity strands, to provide evidence that they are fair employers and do not discriminate against groups of staff. They should aim to reach a position to make informed judgements on whether they are treating their staff and patients fairly.

Measuring progress should be done as an integral part of the process itself rather than

as an add-on, which would be likely to require additional effort and resources. The information gathering should, wherever possible, also be brought into an organisation's day-to-day operational procedures.

The strategic, business and staff benefits of applying a consistent approach to all diversity strands are increasingly being recognised. NHS organisations will become more successful at monitoring as they continue to engender a culture of openness, honesty, transparency, receptiveness and security among staff.

References

1. 'Trans equality Monitoring', Press for Change, available at www.pfc.org.uk/node/1408

Further reading

How to monitor sexual orientation in the workplace, Stonewall, 2006.

Statutory code of practice on the duty to promote race equality, Commission for Racial Equality, 2002.

The duty to promote disability equality: statutory code of practice, Disability Rights Commission, 2005.

Gender equality duty: code of practice, England and Wales, Equal Opportunities Commission, 2006.

Audit of equalities publications, Healthcare Commission, 2007.

NHS Employers

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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.

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