Equity in implementing organisational change

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This guidance, produced by NHS Employers, provides an overview of the issues that organisations should be addressing to maintain and enhance their ability to deliver the equality and diversity agenda as the NHS moves into a period of significant organisational change.

Organisational change brings a difficult period for many NHS staff, and some staff from minority or disadvantaged groups may feel even more vulnerable at this time. Previous experience of change exercises across the NHS shows how particular care must be taken to avoid any adverse or disproportionate impact during the process, particularly (but not exclusively) in respect of race issues.

**Current organisational change**

Commissioning a patient-led NHS (CPLNHS) issued in July 2005 and Taking healthcare to the patient: transforming NHS ambulance services (THPTNAS) issued in June 2005, both call for a reconfiguration of NHS organisations. These proposed reconfigurations’ aims are to support and develop a service where patients have a greater range of choices and where NHS organisations are better at understanding, and are more responsive to, patients’ needs.

Such change processes run the risk of having a discriminatory impact if processes are not followed fairly and in accordance with existing employment legislation. The scale of the change in the NHS today presents an opportunity for employers to demonstrate their ongoing commitment to diversity throughout the workforce. For example, the human resource (HR) frameworks for CPLNHS and THPTNAS, produced in partnership by NHS Employers, the Department of Health and national NHS trade unions, identify the main features of these change programmes relating to equity in implementation.

**Current employment law implementation**

Current UK and EU employment law covers many aspects of discrimination, both direct and indirect. Senior managers must ensure that all staff responsible for managing change processes are fully trained and up to date on all relevant legislation and have access to best practice equality and diversity (E&D) guidance. NHS Employers’ guidance on E&D in the workplace provides detailed information and guidance for NHS organisations and is available on NHS Employers’ website at: www.nhsemployers.org/excellence/equality-diversity.cfm
Guidance

Key principles

1. Employers in the NHS should adhere to the following key principles:
   - No employee should receive less favourable treatment on grounds of age, gender, marital status, race, religion, creed, sexual orientation, colour, disability, working patterns, or on the grounds of trade union membership; and
   - All decisions on appointment and selection procedures, identification of ‘at risk’ staff and redundancy criteria must be seen to be fair and transparent and must meet the requirements both of equal opportunities legislation and best practice.

Relevant legislation

2. Appointments to new organisations, identification and selection of ‘at risk’ staff or redundancy criteria, and the future structure of new organisations must comply with existing legislation, which includes:
An equality scheme is a description of the key issues, which are current for organisations around race and disability, together with an action plan for tackling these issues.

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- Sex Discrimination (Gender Reassignment) Regulations 1999 www.opsi.gov.uk/si/si1999/19991102.htm

3. There is also future or developing legislation which organisations should be aware of, including:

- Equality Bill (which contains proposals to introduce a new gender equality duty from April 2007) – www.parliament.the-stationery-office.co.uk/pa/ld200506/ldbills/029/06029.i-iv.html

Equality Impact Assessment (EQIA)

4. It is a legal responsibility for public authorities to have an equality scheme\(^1\) in areas of race and disability. It is also their responsibility to ensure that no groups in the community are disadvantaged as a result of an organisation’s policies and procedures. This involves all aspects of diversity (including age, religion/beliefs, sexual orientation, as well as race and disability).

5. An EQIA will enable the consideration of the effect of the organisation’s policies and procedures on services to patients and the employment of staff. Indeed, the CPLNHS and THPTNAS HR frameworks require each reconfiguring organisation to conduct an EQIA.

6. Where the EQIA identifies an adverse impact, this should lead to a review of the policy in a way which better achieves the promotion of equality of opportunity. This might, for example, include the use of positive action provisions (as provided for within existing equalities legislation) to encourage applications from under represented groups to leadership positions within the new structures.

7. Wandsworth PCT recently produced a very useful example of an NHS-targeted impact assessment and details are available at www.wandsworth-pct.nhs.uk/about/equality/EIA.asp

8. NHS Employers has produced a briefing note, Equality and diversity through service reconfiguration, examining the issues facing PCTs within the E&D agenda www.nhsemployers.org/excellence/excellence-772.cfm

9. Additionally, more general guidance on how to conduct a race equality impact assessment can be found on the Commission for Racial Equality’s website at www.cre.gov.uk/duty/reia/index.html

\(^1\) An equality scheme is a description of the key issues, which are current for organisations around race and disability, together with an action plan for tackling these issues.
Equalities in appointment and selection processes

10. The NHS workforce, during and following change processes, needs to reflect the community it serves. Advertising and filling posts should take into account the specific identified needs of women, people with disabilities and minority ethnic applicants. For example, there should be a facility for applicants with disabilities, who are short-listed for interview, to indicate whether they have any specific requirements for the interview, or require any adjustments in connection with the position. Further information can be found at the Disability Rights Commission website: www.drc-gb.org

Fixed term employees

11. Care should also be taken to make sure that staff on temporary or fixed-term contracts are treated equitably, as required by the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. The Regulations transpose the EC Directive on Fixed Term Work into UK legislation. The Regulations prevent fixed term employees being treated less favourably than similar permanent employees, and limit the use of successive fixed term contracts.

12. In general, employees on fixed-term contracts have the right not to be treated less favourably than comparable permanent employees. There can be many types of temporary or fixed-term contracts and many reasons for the existence of such a contract, so the entitlement of such a contract holder will be dependent on individual circumstances, e.g. length of service. Therefore legal advice should be sought as appropriate.

13. Additional guidance is available at www.dti.gov.uk/er/fixed/index.htm

Monitoring the change process

14. Organisations need to oversee the successful implementation of change programmes from an equality perspective, through good quality monitoring information and analysis.

15. Organisations going through change processes, including CPLNHS and THPTNAS, should check the impact of the process on particular groups through systematic monitoring of all of the processes. This is outlined in section 6 of the HR frameworks for CPLNHS and THPTNAS. Particular attention needs to be paid to:
   • recruitment to new posts, including applications received, those short-listed and those selected
   • voluntary redundancy or early retirement applications.

16. As a minimum, monitoring should be done on the basis of gender, age, ethnicity and disability.
**Ethnicity**

17. It is recognised that black and minority ethnic (BME) people remain under-represented in senior management. This needs to change to reflect the communities that we serve. Change processes provide an opportunity to review the situation. The Race Relations (Amendment) Act 2000 requires public bodies to impact-assess proposed policies and address any disproportionate disadvantage to this section of the population. The Act also places a positive duty on public authorities to promote race equality. It is therefore essential that steps are taken to ensure that the reorganisation is not perceived as running counter to this.

18. By now, all NHS organisations should have produced established race equality schemes setting out local issues around race equality and proposals to address them. It will therefore be essential to ensure that the changes to support the proposed reorganisation recognise the features of those schemes.

19. The Commission for Racial Equality (CRE) has recently published its new statutory code of practice on racial equality in employment which is available at www.cre.gov.uk/gdpract/employmentcode2005.html. The code is a set of recommendations and guidance for employers on how to avoid unlawful racial discrimination and harassment. It outlines employers' legal obligations and contains general advice on the policies they will need to safeguard against discrimination and harassment. The code takes legal effect on 6 April 2006 and replaces the CRE's earlier 1984 code of practice.

20. NHS Employers, in conjunction with the Department of Health and the Health and Social Care Information Centre has produced practical guidance on ethnic monitoring which is available at www.dh.gov.uk/assetRoot/04/11/68/43/04116843.pdf

**Age**

21. Age discrimination legislation is expected to come into force in October 2006, following a lengthy period of public consultation. The purpose of this is to ensure that it will be illegal to discriminate on the basis of age in employment and vocational training. Organisations must ensure that relevant staff are trained on this legislation and how to avoid discrimination in implementing local HR policies.

22. Age discrimination legislation will have a key impact on redundancy, severance and early retirement schemes. NHS organisations must ensure that, at the end of the change processes, the right people are in the right jobs, regardless of age. It is important to retain staff with the necessary skills and experience to provide key service continuity. This means that early retirement options should not be viewed as an easy option and should only be viewed as another tool, rather than as a first resort.
23. Details are now available on NHS Employers’ website – www.nhsemployers.org/excellence/excellence-376.cfm – on the direction in which the new age legislation is headed, including recruitment and selection processes. Implementing the new legislation fairly and transparently is likely to produce positive results for any organisation.

24. There are discussions currently taking place across the public sector about the new duties which are likely to be introduced late 2006 or early 2007 in respect of gender and disability. These duties will be similar to those introduced in respect of race in the Race Relations (Amendment) Act 2000 and will require public bodies to actively promote the equality agenda for women and disabled staff. NHS employers will need to ensure that staff are trained and aware of this new duty as it comes into effect.

**Recommended action for NHS organisations**

25. The full checklist provided below is designed to outline the recommended action NHS employers should take to ensure there is no direct or indirect discrimination against any particular individual or group through organisational change.

**Employers’ checklist – equity issues**

- Conduct equality impact assessment at outset to consider effect of organisational changes on service needs and employment of staff.
- Ensure all decision makers, including senior managers, have received appropriate and up-to-date training in diversity issues, including new age legislation.
- Consider joint briefings with trade union or staff representatives.
- Ensure compliance with all relevant employment and equal opportunities legislation.
- Decisions on appointments, promotion, identification of ‘at risk’ staff and selection for redundancy must be demonstrably fair and transparent.
- All actions must be taken in accordance with justifiable and objective criteria that meet current legislation and best practice; appointments should be based on competencies required and made on merit.
- Keep records of all decisions relating to gender, ethnicity, disability and age.
- Monitor these records to ensure no discrimination (direct or indirect).
- Ensure that there is a consistent and non-discriminatory approach to contractual conditions and remuneration for all staff, including those in the proposed new employing organisations.
Further information and guidance on E&D in the workplace is available on the NHS Employers website at www.nhsemployers.org/excellence/equality-diversity.cfm

The NHS Employers Equalities and Diversity team can also provide further information on request. Please email your comments and enquiries to paul.deemer@nhsemployers.org

Further information and guidance specific to Commissioning a patient-led NHS is available on the NHS Employers website at www.nhsemployers.org/cplnhs or you can email cplnhs@nhsemployers.org

Further information and guidance specific to Taking healthcare to the patient: transforming NHS ambulance services is available on the NHS Employers website at www.nhsemployers.org/nhsas or you can email nhsas@nhsemployers.org
NHS Employers

NHS Employers is the employers’ organisation for the NHS in England. Our aim is to help employers improve the working lives of staff who work in the NHS and, through them, to provide better care for patients. NHS Employers is part of the NHS Confederation but we have our own director, policy board and assembly. In striving to make the NHS an employer of excellence, we have four key roles:

• negotiating on behalf of employers
• representing employers
• supporting employers
• promoting the NHS as an employer.

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