Department of Health

Hard Truths

The Journey to Putting Patients First

Equality Analysis

November 2013

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Equality Analysis

Presented to Parliament
by the Secretary of State for Health
by Command of Her Majesty

November 2013

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Hard Truths: The Journey to Putting Patients First Equality Analysis

Introduction

1. People want to have confidence that the care they need now, or will need in the future, can support a diversity of needs and aspirations. This means we need to consider the needs of all people, especially those who might traditionally be excluded or who find it difficult to access services and support.

Responsibility of the Department of Health to tackle inequality

2. The Department of Health is committed to promoting equality, diversity and human rights and reducing inequalities in health. In its role, it seeks to be an effective champion for all, by:

- setting national direction and supporting delivery in ways that promote equality and tackle inequalities in health that arise from disadvantage and discrimination;
- taking action to support people to maximise their health, wellbeing, independence, choice and control; and
- supporting all the people who work in the health and care system and in the Department to deliver these goals, recognising the value of their differences in the contribution they make.

3. The Equality Act 2010 encourages public bodies to understand how different people will be affected by their activities so that policies and services are appropriate and accessible to all and meet different people's needs. By understanding the effect of their activities on different people, and how inclusive public services can support and open up people's opportunities, public bodies are better placed to deliver policies and services that are efficient and effective.

4. In order for the Department to be compliant with equalities legislation, the Department needs to demonstrate how it has paid due regard to section 149 of the Act and the three aims of the public sector Equality Duty, which are to:

- eliminate discrimination and other conduct prohibited under the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and people who do not; and
- foster good relations between people who share a relevant characteristic and those who do not.

5. The Duty covers the following protected characteristics: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

6. The Health and Social Care Act 2012 creates a legal duty on the Secretary of State for Health, NHS England and clinical commissioning groups (clinical commissioning groups) to have regard to the need to reduce health inequalities; this complements the existing Public Sector Equality Duty (Equality Act 2010) which NHS England and clinical commissioning groups are also subject to.

7. The Department of Health has considered the impact of each of the key areas of *Hard Truths: The Journey to Putting Patients First* on people sharing protected characteristics as part of the policy development process. We have considered the totality of the impact in each area on equality groups and outlined how we have sought to mitigate against disadvantage where appropriate according to each characteristic.

Hard Truths: The Journey to Putting Patients First

8. *Patients First and Foremost*,[1] published in March 2013, set out the initial response of England's health and social care system to the Public Inquiry into the events at Mid Staffordshire NHS Foundation Trust. It detailed key actions that the health and care system would take to ensure that 'patients are the first and foremost consideration of the system and everyone who works in it' and to restore the NHS to its core values.

9. *Hard Truths: The Journey to Putting Patients First*[2] builds on this and sets out the system's full response to the Inquiry, including a response to each of the 290 recommendations.

10. Everybody – be they patient, service user, carer, health and care professional or somebody who has never yet accessed the health and care system – should be affected by the aims of this response.

11. This document sets out our assessment of the impact that we expect that the measures outlined in the response might have on people who share protected characteristics and the opportunities that are offered to advance both equality of access and equality of opportunity.

Evidence and engagement

12. Following the publication of *Patients First and Foremost*,[3] a programme of engagement and communication was run by the Department of Health. This was in order to:

- disseminate the messages of the response;
- explain how the new measures will form a coherent package;
- listen to what people were saying; and
- gather information and evidence to inform both the impact assessment and the equality assessment.

1 Department of Health (2013) *Patients First and Foremost: The Initial Government Response to the report of the Mid Staffordshire NHS Foundation Trust Public.*

2 Department of Health (2013) *Hard Truths: The Journey to Putting Patients First. The Government Response to the Mid Staffordshire NHS Foundation Trust Public Inquiry.*

3 Department of Health (2013) *Patients First and Foremost*: *The Initial Government Response to the report of the Mid Staffordshire NHS Foundation Trust Public Inquiry.*

13. As part of this process, a series of regional engagement events were held. Invitations to the events were purposefully kept 'open' to allow as many people working in different roles in both health and social care to attend. The events were advertised through repeat notices sent out to the NHS and social care providers through Care Quality Commission (CQC) and NHS England weekly newsletters. In order to engage the voluntary and community sector, the Department of Health used existing email lists. The events were also publicised on the Department of Health website.

14. The events were attended by a range of organisations representing people with protected characteristics, including:

- Carers Trust
- Age UK
- Voluntary Organisations Disability Group
- FaithAction
- AgeCare

15. The only equality-related issue that was raised as part of the process concerned how families and carers are engaged in decisions relating to the treatment of those for whom they care. We have considered this issue as part of the equality assessment.

16. In order to further inform this analysis, we have reviewed and considered a range of relevant research available online (see footnotes and related documents on page 9).

Equality assessment

17. *Hard Truths: The Journey to Putting Patients First*[4] has been designed with the specific aim of ensuring that it includes a balanced set of outcomes across the breadth of NHS and social care treatment responsibilities, including the specific needs of different groups. All of the measures strive to improve outcomes for all.

18. The implications of the measures in the response for staff, patients and the public and the expected positive impact on health outcomes are intended to be consistent with the provisions of the Equality Act 2010 as well as the new duties as to reducing health inequalities set out in the Health and Social Care Act 2012.

19. In developing the policy underpinning the response, we have had regard to the public sector Equality Duty from the outset and have examined each measure to consider the impact on individuals with protected characteristics and on health inequalities. In most cases, we expect that the measures will improve and strengthen people's entitlement, promote equality and help to tackle inequalities.

20. The response makes it clear that patients should be involved in discussions and decisions about their health and care and that services should be co-ordinated around their particular needs. Furthermore, it emphasises the importance of patients, along with their

4 Department of Health (2013) *Hard Truths: The Journey to Putting Patients First. The Government Response to the Mid Staffordshire NHS Foundation Trust Public Inquiry.*

carers and families, being treated with compassion, dignity and respect. The intention is to make clear that services must be tailored to the needs of individuals, in the way they access services and receive treatment.

21. We know that certain groups face discrimination when using health services. Most organisations recognise that embedding equality in every part of the NHS needs strong leadership and positive engagement with staff. NHS Employers has already taken action to encourage this through the *Personal, Fair and Diverse* campaign, which highlights the small things that individual 'champions' can do as part of their day job to help to deliver a more inclusive workplace environment and services for patients.[5]

22. The Department of Health is revising the registration requirements that all providers must meet, so that they incorporate new fundamental standards of care. One of the proposed new standards is that 'I will be protected from abuse and discrimination'. This focus will assist the Care Quality Commission in having due regard to the elimination of discrimination, provided that the new standards continue to enable it to take regulatory action where there is unlawful discrimination or where a provider has failed to have due regard to meeting the needs of people who use services on equality grounds.

23. In June 2013, the Care Quality Commission launched a consultation on its proposals around fundamental standards along with an assessment of the impact that the proposals would have on equality and human rights.[6] The new model is expected to assist the Care Quality Commission in having due regard to the advancement of equality of opportunity. There are opportunities in the development of the new model for more in-depth and specialist inspections, which could have an impact on advancing equality of opportunity, provided this is embedded into the new model.

24. There is little evidence to show that the vulnerability faced by different groups actually leads to an increased risk of harm. However, there are particular groups who may be more vulnerable in a healthcare setting, and it is thought that vulnerability could well result in a less safe service being delivered to them.[7] Following Professor Berwick's review of safety in the NHS, measures will be introduced to ensure clear clinical responsibility for individual patients during their stay in hospital to ensure safe and effective care, which will be central to addressing this.

25. This document will now highlight the equality issues that have been identified relating to each of the protected characteristics.

5 www.nhsemployers.org/employmentpolicyandpractice/equalityAndDiversity/CreatingPFDNHS/Pages/Signuptoday.aspx

6 Care Quality Commission (June 2013) *A New Start: Consultation on changes to the way CQC regulates, inspects and monitors care services – Equality and human rights duties impact analysis*.

7 Department of Health (December 2010) *The NHS Outcomes Framework 2011-12: Equality impact assessment*.

Disability

26. People with disabilities use health and care services more than people who are not disabled. However, they routinely struggle to access appropriate care and support; because of this, many disabled people experience negative health inequalities. Some groups of disabled people also experience inequalities or discrimination in healthcare, including universal healthcare services, such as acute hospitals.[8] These entrenched problems are a matter of significant concern.

27. It is important that all patients, their carers and their families are listened to and that their views are considered and responded to. Many families of people with a learning disability report that there is poor communication between themselves and hospital staff, and report the difficulties they face in getting health professionals to take crucial information about the needs of the person with a learning disability into account.[9]

28. The measures outlined in the response have the potential to make significant improvements to the way that patients are engaged in their care and the way that care is provided. It is expected that this will have a positive impact on equality for people with disabilities. However, this will only be achieved if the barriers to participation that particular groups face are properly addressed. Information, advice and support need to be provided in a format that is accessible to the patient. This may involve considering alternative forms of information. The NHS Constitution already includes a commitment to offering easily accessible, reliable and relevant information to enable patients to participate fully in their healthcare decisions and to support them in making choices.[10]

29. In addition, in September 2013, NHS England published guidance for clinical commissioning groups and other commissioners of health and care services to involve patients and carers in decisions relating to care and treatment and the public in commissioning processes and decisions.[11] The guide includes information on communicating with people as individuals rather than homogeneous groups, taking into account their specific needs and preferences.

Sex

30. Men and women share many health risks; however, the pattern of use of health services is different for men and women. For example, we know that there are more women using social care services than men.[12]

31. No particular equality issues have been identified relating to the measures in the response. The measures are expected to have a positive impact on all patients and service users, which may, in turn, mean that women benefit as a result.

8 Michael, J. (2008) *Healthcare for All: Report of the independent inquiry into access to healthcare for people with learning disabilities*.

9 Mencap (February 2012) *Death by Indifference: 74 deaths and counting*.

10 Section 2a of the NHS Constitution.

11 NHS England (September 2013) *Transforming Participation in Health and Care*.

12 Care Quality Commission (2013) *Equality Matters: Equality information for CQC in 2012*.

Race

32. Some groups experience significantly higher levels of ill health than the rest of the population and, as a result, make more use of health services. There are also some groups who have low levels of health and wellbeing, notably gypsies and travellers, asylum seekers and refugees.[13] Communication is often cited as a barrier for individuals from minority ethnic groups, with people not being given the time during consultations, or being dismissed out of hand.[14]

33. The measures outlined in the response have the potential to make significant improvements to the way that patients are engaged in their care and the way that care is provided. It is expected that this will have a positive impact on equality for people from different groups, but this will only be achieved if the barriers to participation that particular groups face are properly addressed. This might involve the use of alternative communication, such as translator services.

Sexual orientation

34. In 2008, two in five lesbian and bisexual women said that in the last year healthcare workers had assumed they were heterosexual. One in five felt there was no opportunity to discuss their sexuality.[15] Engaging with, listening to and responding to patients will be a critical element of the compassionate healthcare system. The measures outlined in the response to ensure that patients are treated as partners are expected to have a positive impact on the experiences of this group.

35. Research has found that gay staff in the NHS continue to experience hostility and discrimination at work. This makes it harder for them to perform well in their jobs.[16] Staff who can be open about their sexual orientation at work are more likely to enjoy going to work, be more confident and, ultimately, be more productive.

36. The response recognises that staff wellbeing has an impact on outcomes for patients and service users. Organisations not only need to have the right policies, but also need to demonstrate the right behaviour to make it clear that those policies are genuinely meant to be followed through and are monitored. Boards need to be open and focused on learning, and need to ask searching questions of their organisations and of themselves. They need to draw on multiple sources of intelligence, and this must include direct engagement with patients and staff. While the measures in the response are expected to have a positive impact on the wellbeing of these individuals, this will need to be monitored. NHS Employers will take equality issues into account when developing its programme of work, to ensure that employers are better equipped to support the emotional wellbeing and engagement of their staff.

13 Department of Health (December 2010) *The NHS Outcomes Framework 2011-12: Equality impact assessment*.

14 Department of Health (November 2012) *The Mandate: Equality analysis*.

15 Stonewall (2008) *Prescription for Change*, www.stonewall.org.uk/documents/prescription_for_change_1.pdf

16 Stonewall. *Sexual Orientation: A guide for the NHS*, www.healthylives.stonewall.org.uk/for-organisations/a-guide-for-the-nhs.aspx

Age

Children and young people

37. Children, young people and their families really struggle to get their voices heard and to be involved in decisions about their own health. This makes it difficult for them to take responsibility for their treatment and care.[17] In addition, many clinical staff have inadequate training in paediatrics and child health.[18] Some have training only in adult healthcare, while others do not have sufficient training in physical and mental health to be able to undertake their work with children and young people safely and well. This is one of the most important reasons why children and young people's health outcomes are poor in so many areas.

38. Following the publication of the *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry,*[19] the Secretary of State for Health asked the Children and Young People's Health Outcomes Forum to assist in addressing the broad issues raised in the Inquiry's report as they relate to children and young people. The Forum's response to the Inquiry includes new recommendations aimed variously at the Department of Health, NHS England, Health Education England, Healthwatch and local service commissioners and providers. The Department welcomes the Forum's work in this area, and its recommendations will help to inform our work as we move forward in light of the Public Inquiry's conclusions. The Department of Health has welcomed the report and will work closely with key partners to consider the recommendations.

Older people

39. Older people are more likely to use health and social care services than the rest of the population.[20] They can be particularly vulnerable because they often have co-morbidities; they are physically frailer; their treatment usually depends on taking medication; and their personal autonomy can be severely reduced in an unfamiliar setting.

40. Changes to the way that health and social care services are regulated may have an impact on equality and human rights for older people, and have the potential to make a positive impact if learning from experience of regulation to date is incorporated into the new model. It is important that the standards used continue to enable the Care Quality Commission to take action on equality on the basis of age. It is also important that the regulatory model, including the surveillance model and ratings, will enable the standards to be utilised to promote equality for all.

41. Older people, particularly those suffering from cognitive or hearing problems, frequently report feeling patronised by hospital staff.[21] Loss of confidence and autonomy could mean

17 Children and Young People's Health Outcomes Forum (July 2012) *Report of the Children and Young People's Health Outcomes Forum*.

18 Kennedy, I. (2010) *Getting It Right for Children and Young People: Overcoming cultural barriers in the NHS so as to meet their needs*.

19 The Mid Staffordshire NHS Foundation Trust Public Inquiry (2013). *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry*.

20 Care Quality Commission (2013) *Equality Matters: Equality information for CQC in 2012.*

21 Age UK (September 2010) *Healthcare Workforce Skills and Competencies for an Ageing Society*.

that older people are less able to identify the things they can do to mitigate harm being caused to them.[22]

42. The Public Inquiry's report included a chapter on hospital care for older people. The Government agrees that the link between culture and compassionate care for older patients is fundamental across all health and care settings. A range of actions are being taken forward to improve care for older people.

43. For example the measures being introduced to ensure that staff are supported and well trained will be central to addressing this and to ensuring good outcomes for older people. Health Education England will consider equality issues when working with stakeholders to develop the 'Care Certificate'.

44. By April 2015, it is intended that every person with a long-term condition will have a personalised care plan that is digitally accessible. Over 60% of 70–79-year-olds and 75% of those over 80 never use computers.[23] For older people, we know that the preferred method of receiving information is face to face.[24] Because of this, there is a risk that older people will not benefit from digital access to information to the same degree as the rest of the population. The plans will, however, also be available in printed form, meaning that they should be accessible to older people.

Gender reassignment (including transgender)

45. Data on health outcomes for transgender and transsexual people is poor. It is, therefore, difficult to determine whether the measures in the response will have a specific impact on this group. However, there is some limited evidence to suggest that trans people avoid accessing routine healthcare because of anticipated prejudicial treatment from healthcare professionals. People feel that being trans adversely affects the way that they are treated by healthcare professionals and that clinicians often lack information to treat trans people effectively.[25]

46. The measures being introduced to ensure that staff are supported and well trained will be central to addressing this and to ensuring good outcomes for trans people. Health Education England will consider this further as it develops the proposals to support improvements to continuous development and appraisals.

Religion or belief

47. Health inequalities for people of different religions or beliefs are not well understood, but some minority ethnic groups consistently report lower satisfaction with health and social care

22 Department of Health (December 2010) *The NHS Outcomes Framework 2011-12: Equality impact assessment*.

23 Office for National Statistics (August 2010) *Internet Access 2010: Households and individuals*.

24 Raynes, N. (2003) The provision of information and advice for older people: what more do they want? *Quality in Ageing: Policy, Practice and Research* 4(3).

25 Whittle, S., Turner, L., Combs, R., Rhodes, S. (2008) *Transgender Euro Study: Legal survey and focus on transgender experience of healthcare*.

services than the rest of the population.[26] In recruitment terms, it is important that the ethnic composition of Trusts' workforces reflects the communities they serve. All staff should receive diversity training that includes knowledge that enables them to develop an empathy with the religions and beliefs of people who may need care.

48. We know that certain groups face considerable access issues, which can lead to poorer health outcomes. For instance, older Muslim and Sikh women, particularly those with poor English language skills, appear to suffer heavy burdens of ill health, disability and also caring responsibilities. These women are also often in a weak position to negotiate religiously appropriate support from statutory services.[27]

49. This needs to be addressed by improving information and targeting support to people who historically struggle to access services that meet their needs and preferences. We believe that the measures outlined in the response should advance equality and improve patient experience for people of all faiths. For example, evidence from the personal health budgets pilots highlighted the benefit to people of buying religiously appropriate services.[28] An evaluation was undertaken of the pilot of the personal health budgets programme, which found that personal health budgets can benefit everybody, regardless of background. There was no strong evidence to suggest that people from specific backgrounds experienced worse outcomes than the general population as a result.[29]

Pregnancy and maternity

50. A longstanding problem with maternity services has been concerns about disrespectful behaviour experienced by patients, in particular by ethnic minorities.[30]

51. The measures to ensure that patients are engaged with and properly listened to will apply to all services, including maternity services. It is expected that this will have a positive impact on the experiences of those using maternity services.

Other identified groups

52. Health outcomes for people living in the most deprived areas are poor compared with other areas. Men and women in these areas face the highest rates of avoidable deaths and mortality for all its component causes.[31] High levels of unemployment contribute significantly to conditions in areas of deprivation. Often the NHS is a major employer in such areas. Health

26 Care Quality Commission (2013) *A New Start: Consultation on changes to the way CQC regulates, inspects and monitors care services – Equality and human rights duties impact analysis*.

27 Centre for Health and Social Care Research (2010) *Life and Health: An evidence review and synthesis for the EHRC's triennial review 2010*. Sheffield Hallam University.

28 Department of Health (2010) *Personal Health Budgets: Equality impact assessment*.

29 Department of Health (2010) *Personal Health Budgets: Equality impact assessment*.

30 Centre for Health and Social Care Research (2010) *Life and Health: An evidence review and synthesis for the EHRC's triennial review 2010*. Sheffield Hallam University.

31 Mitchell, R., Shaw, M., Dorling, D. (2000) *Inequalities in Life and Death: What if Britain were more equal?* Joseph Rowntree Foundation.

Education England is working with schools to improve access to NHS careers and is working to increase the number of apprenticeships available to younger people in particular.

53. There is some evidence to suggest that, by virtue of their education, articulacy and general self-confidence, those who are better off may be better at explaining their problems and persuading clinicians that their conditions require treatment or further investigation.[32]

54. While the measures outlined in the response have the potential to make significant improvements to the way that patients are engaged with, this will only be achieved if barriers to participation are addressed. Information, advice and support need to be provided in a format that is accessible to the patient. In September 2013, NHS England published guidance for clinical commissioning groups and other commissioners of health and care services to involve patients and carers in decisions relating to care and treatment and the public in commissioning processes and decisions.[33] The guide includes information on communicating with people as individuals rather than homogeneous groups, taking into account their specific needs and preferences.

Next steps

55. Analysis of potential adverse impacts, evidence and mitigations will need to be further considered as the policy develops, involving engagement with key stakeholders and people who use services. The organisations taking forward each of the measures will pay due regard to equality issues as part of the development process, and action will then be taken to improve any areas of concern that are identified.

56. The table in Annex A highlights the measures where further analysis of the impact on equalities will be required as the policy develops.

Related documents

- *A Consultation on Strengthening the NHS Constitution*
- *Consultation on Strengthening the NHS Constitution: Government response*
- *Personal Health Budgets: Equalities impact assessment*
- *The Mandate: Equality analysis*
- *Refreshing the Mandate to NHS England 2014-2015: Interim coordinating equality and impact statement*
- *A New Start: Consultation on changes to the way CQC regulates, inspects and monitors care services – Equality and human rights duties impact analysis*

32 Centre for Health Economics (2008) *Quality in and Equality of Access to Healthcare Services in England*.

33 NHS England (September 2013) *Transforming Participation in Health and Care*.

ANNEX A: FURTHER ANALYSIS OF THE IMPACT ON EQUALITIES

Measure	Further equality work
PREVENTING PROBLEMS	
The Care Quality Commission will include patient involvement in its rating of hospitals.	The Care Quality Commission to consider how seldom-heard groups will be involved in this.
The Care Quality Commission will work closely with Healthwatch England and local Healthwatch to ensure that inspections and ratings processes take account of the views of service users and the public.	The Care Quality Commission and Healthwatch to consider how seldom-heard service users can be involved in inspections and ratings.
The Department of Health and NHS England will work together to publish data on patient safety in the key areas that matter most in terms of risk of harm.	The Department of Health and NHS England to consider whether equality data could and should be collated as part of this.
NHS Employers will develop support and resources for employers to support the engagement, health and wellbeing of their staff.	NHS Employers to consider the needs of staff with protected characteristics.
Health Education England is introducing a process to ensure that all students entering NHS-funded clinical education programmes are assessed against the values set out in the NHS Constitution. This process will also support NHS organisations in implementing an evidence-based approach to recruiting for values for NHS employees.	Consider how equalities issues are considered as part of recruitment.
DETECTING PROBLEMS QUICKLY	
The Chief Inspector of Hospitals issued a 'call to action' to draw patients and clinicians into expert inspection teams.	Consider how patients with protected characteristics can be included in the expert inspection teams.
The Care Quality Commission is developing fundamental standards.	The Care Quality Commission to continue to consider the impact on equalities in the development of this work.
ENSURING THAT STAFF ARE TRAINED AND MOTIVATED	
The Social Partnership Forum will produce guidance on good staff engagement.	Consider the needs of staff with protected characteristics.
Health Education England, Skills for Care and Skills for Health will consider how the 'Care Certificate' can be introduced into regulated health and care settings.	Consider how the needs of different groups of people are considered.