Guide to Equality and Inclusion in NHS Contract Monitoring and Procurement 2019 - 20

Legal and Mandated Duties

Produced by the MLCSU Equality and Inclusion team
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1.0 Purpose of guidance

The purpose of this guidance is to:

- Provide information and guidance for commissioners and providers to help prepare Invitation to Tenders (ITT) and ensure that best practice is followed in terms of equality related issues
- Provide information on what CCGs should be monitoring in terms of equality legislation and contract compliance

2.0 Legislation and mandated requirements

There are a number of legal responsibilities for both commissioning and provider organisations. These provide a range of equality and health inequality legal responsibilities to providers and their commissioners. These are contained in:

- Equality Act 2010
- Public Sector Equality Duty (PSED)
- The Health and Social Care Act 2012
- Human Rights Act 1998
- Modern Slavery Act 2015
- Homelessness Reduction Act 2017

Additional requirements (both mandatory and non-mandatory) are made through the NHS Standard Contract. There is variation of compliance depending on long and short version contracts.

NHS England (NHSE) mandated equality standards include:

- Equality Delivery System 2 (EDS)
- Workforce Race Equality Standard (WRES)
- Accessible Information Standard (AIS)
- Sexual Orientation Monitoring (SOM)
- Workforce Disability Equality Standard (WDES)

Further information on these are found in section 4 - tables 1 and 2

Specific service conditions relating to equality are found in section 8.0.

3.0 Support available from the MLCSU Equality and Inclusion team

The MLCSU Equality and Inclusion team is able to support Contract Leads and Commissioning Leads with advice and guidance on:

- Monitoring contracts in terms of equality / human rights requirements
- Robust assurances of the proportionate compliance of their provider partner organisations
- Robust requirements such as reporting agreements in place for providers to give assurance that they are meeting mandated and legal duties
4.0 What CCGs need to monitor to meet compliance:

The following table shows what evidence can be reviewed by CCGs to monitor compliance. The evidence sources such as reports, annual audits and contract monitoring meetings may form part of the quality indicators and reporting agreements with individual providers.

Some of the requirements can be collectively monitored through desk top audits.

4.1 Table 1 showing what CCGs need to monitor to meet equality legislation compliance:

<table>
<thead>
<tr>
<th>Evidence for meeting compliance</th>
<th>Legislation and Monitoring requirements</th>
<th>Long Version contract</th>
<th>Short Version Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equality Policy Annual Audit of compliance across providers</td>
<td>Equality Act 2010: Compliance to how the provider will provide protection for those with protected characteristics. An example of this is a current Equality Policy providing information of processes in place to ensure patients and workforce are free from discrimination.</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>4 Year Equality Strategy</td>
<td>PSED – specific duty: Measurable and clear equality objectives - every 4 years In relation to the long version contract NHS SC SC13.4: In consultation with the Co-ordinating Commissioner, and on reasonable request, the provider must provide a plan setting out how it will comply with its obligations under SC13.3. If the provider has already produced such a plan in order to comply with the law, the provider may submit that plan to the co-ordinating commissioner in order to comply with this SC13.4. An example of this is an Equality Strategy.</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Annual Equality Report</td>
<td>PSED – specific duty: Publish information on how providers will meet their PSED duties. An example of this is an annual Equality Report.</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Providers should publish a Modern Slavery Act statement on webpage.</td>
<td>Modern Slavery Act 2015: The act requires any UK commercial organisation that supplies goods and services with an annual turnover in excess of £36 million, to annually produce a slavery and human-trafficking statement for each financial year showing intent and compliance, and a supporting action plan.</td>
<td>✓</td>
<td>N/A</td>
</tr>
</tbody>
</table>
Assurance that provider has process in place via policy
Homelessness Reduction Act 2017: Where a “specified public authority” considers that someone they are working with is or may be homeless or threatened with homelessness, they must refer that person’s details to a local housing authority (if the person agrees to the notification being made).

See section 9 for further information on service conditions wording.

### 4.2. Table 2 showing what CCGs need to monitor to meet equality requirements within the NHS Standard Contract:

<table>
<thead>
<tr>
<th>Evidence for meeting compliance</th>
<th>Contract Monitoring requirements</th>
<th>Long Version contract</th>
<th>Short Version Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>AIS Assurance through monitoring reports / annual report / info on websites</td>
<td>In relation to the long version contract NHS SC12.3 and short version NHS SC12.1, the provider must comply with the Accessible Information Standard. Implemented on 1st August 2016, and applies to all health and social care providers including NHS Trusts, Foundation Trusts and GP Practices.</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>WRES report Check report and Action Plan is published on provider website. Report presented to lead commissioner. Could be done in annual audit.</td>
<td>In relation to long version contract NHS SC13.6, organisations to complete WRES report – implemented on 1st September 2018 and annually thereafter. <strong>NHSE Mandated duties: SC 13.6 WRES apply to NHS Trusts and Foundation Trusts</strong> and all types of providers of non-primary healthcare services operating under the full length version of the NHS Standard Contract, and so is applicable to NHS providers, independent sector providers, and voluntary sector providers. The WRES data report and the action plan (showing continuous progress) should be: • shared with the board, staff and other local interests • submitted centrally via SDCS (applies to NHS providers only, and with regard to the WRES data report only) • presented to the lead commissioner (for NHS providers) • published on the organisations websites Consideration to the issue of publishing small numbers is highlighted in section 5.2 of the guidance. <a href="https://www.england.nhs.uk/wp-">https://www.england.nhs.uk/wp-</a>.</td>
<td>✓</td>
<td>N/A</td>
</tr>
<tr>
<td>Requirement</td>
<td>Details</td>
<td></td>
<td></td>
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| EDS2 report and action plan | In relation to NHS SC13.5, organisations to carry out EDS.  
*Note: NHSE Mandated duties: SC13.5 EDS2 apply to NHS Trusts and Foundation Trusts only.* |
| WDES report and confirmation of check publication | In relation to NHS SC13.7.1 and 13.7.2 to carry out WDES. Reporting due August 2019 using 2018 data, and annually thereafter. Display on provider webpage.  
*Note: The WDES will be extended after 2018 consultation beyond a current requirement for NHS Trusts and Foundation Trusts in the first year.* |
| Non mandated NHSE Equality Standard | **SOM**  
Assurance through monitoring reports / annual report  
Non mandated NHSE Equality Standard  
Annual updated status for provider implementation and compliance required.  
Organisations which must have regard to this standard are defined within the Health and Social Care Act, 2012 and can be found here: [http://www.legislation.gov.uk/ukpga/2012/7/contents](http://www.legislation.gov.uk/ukpga/2012/7/contents)  
This information standard provides the mechanism for recording the sexual orientation of all patients/service users aged 16 years and over.  
*Note: The provider decides whether they will monitor for SOM as appropriate to their service.* |
| Assurance through agreed monitoring processes such as policy | Additional assurance should be requested in regard to the long version contract: SC14.1 and SC14.2 in which the provider must take account of the spiritual, religious, pastoral and cultural needs of Service Users and have regard to NHS Chaplaincy Guidelines. SC14.2 only applies to NHS Trusts / FTs. |

CCGs must ensure that compliance checks on all providers are carried out regularly. The frequency of checks will depend on arrangements between commissioners and providers.
If monitoring highlights non-compliance, this should be reported to responsible commissioners in order to put in place remedial action within agreed timeframes.

Repeated and continual non-compliance should be dealt with through a non-compliance notice. Advice from the Equality and Inclusion team can be sought.

**5.0 Contract review 2019/20**


Changes within equality requirements are summarised below.

**5.1 Draft Long version NHS Standard Contract 2019/20**

There are no differences within the service conditions for long version NHS Standard contract with regards to service conditions 12.3, 13.1, 13.2, 13.3, 13.4, 13.5, 13.6 and 13.7.

**Within the long version, the draft version has an additional requirement:**

13.8 In performing its obligations under this contract, the provider must use all reasonable endeavours to support the commissioners in carrying out their duties under the Health and Social Care Act 2012 in respect of the reduction of inequalities in access to health services and in the outcomes achieved from the delivery of health services.

**5.2 Draft Short version NHS Standard Contract 2019/20**

There are no differences within the service conditions for short version NHS Standard Contract with regards to service conditions 12.1, 13.1 and 13.2.

This guidance will be updated accordingly when new version contracts are introduced – April 2019.


**6.0 Procurement process and equality**

The following questions have been developed between the MLCSU Procurement Team and Equality and Inclusion Team. They provide a list of questions for the Invitation To Tender (ITT) process to ensure that potential providers / goods meet the basic equality compliance / understanding.

These questions can be used as a guide and can be adapted for specific services / goods

| Question 1 | Please advise how you will involve service users, carers and diverse groups to shape your service to ensure it will be delivered to the widest range of service users? |
| Question 2 | Please provide a copy of your process / policy / example or template of an equality impact assessment relevant to the scope of the services which demonstrate how equality and diversity shall be embedded and monitored by your organisation in terms of service delivery (i.e. service users) and for internal operations (i.e. workforce).

Your process / policy should include a commitment to current equality legislation which may include:


Evidence may include:

- Equality and Diversity Policy and Human Rights Policy
- Mandatory and additional Equality and Diversity Training
- Equality Impact Assessment process
- Performance tool to demonstrate annual compliance to the equality legislation where applicable (e.g. Equality Delivery System)

The Bidder has evidenced they have appropriate policies in place – Pass

If the Bidder does not have appropriate policies in place – Fail |

| Question 3 | Please tell us how you will evidence any service improvements and reasonable adjustments for people protected under the Equality Act 2010 and other vulnerable groups.

Examples may include lessons learned, service users and carers feedback, embedded processes, ongoing monitoring or other approaches. Or an example where a reasonable adjustment has been made. |

| Question 4 | In the last three years has any finding of unlawful discrimination been made against your organisation by any court: This includes Employment Tribunal for cases of discrimination in employee relations, County Court for cases of discrimination in service provision, or Judicial Review / Human Rights formal challenges.

The relevant protected groups are as follows: age, disability, sex (gender), sexual orientation, gender reassignment, race, religion or belief, pregnancy and maternity, marriage and civil partnership and other groups under current equality and human rights legislation.

The Bidder should respond:

If you respond ‘Yes’ to this question, please provide full details of the remedial actions undertaken.

The Bidder should respond:

Yes - we have had a finding of unlawful discrimination made against our Organisation and we have not carried out appropriate remedial actions – Fail |
Yes - we have had a finding of unlawful discrimination made against our Organisation and we have carried out appropriate remedial actions which are detailed in our response – Pass
No - we have not had a finding of unlawful discrimination made against our organisation in the last three years – Pass

7.0 Glossary of terms

AIS  Accessible Information Standard
CCGs  Clinical Commissioning Groups
EDS  Equality Delivery System
EIRA Equality Impact and Risk Assessment
FTs  Foundation Trusts
HRA  Human Rights Act
ITT  Invitation to tender
NHSE NHS England
PSED Public Sector Equality Duty (2011)
SC  Service Conditions
SOM Sexual Orientation Monitoring Standard
WDES Workforce Disability Equality Standard
WRES Workforce Race Equality Standard

8.0 Service Conditions wording

Short version NHS SC12.1:

The Provider must ensure that all communications about a Service User’s care with that Service User (and, where appropriate, their Carer and/or Legal Guardian), their GP and other providers are clear and timely. The Provider must comply with the Accessible Information Standard.

NHS SC13.1:

In relation to the long and short contract: NHS SC13.1   The Parties must not discriminate between or against Service Users, Carers or Legal Guardians on the grounds of age, disability, gender reassignment; marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation, or any other non-medical characteristics, except as permitted by law.

NHS SC 13.2:

Long and short contract: SC13.2   The provider must provide appropriate assistance and make reasonable adjustments for service users, carers and legal guardians who do not speak, read or write English or who have communication difficulties (including hearing, oral or learning impairments).
Long version NHS SC 13.3:

In performing its obligations under this contract the provider must comply with the obligations contained in section 149 of the Equality Act 2010, the Equality Act 2010 (specific duties) regulations and section 6 of the HRA. If the provider is not a public authority for the purposes of those sections, it must comply with them as if it were.

Long form contract includes additional requirement: The provider must carry out an annual audit of its compliance with this obligation and must demonstrate at review meetings the extent to which service improvements have been made as a result.

Long version NHS SC13.5:

Organisations to provide confirmation to the lead commissioning CCG that completed annual summary report / template submission to NHSE

- Supporting EDS action plan is displayed on the equality provider webpage.
- Information should include evidence of involvement from external stakeholders within the public grading exercise regarding goals 1, 2 and 4.
- Information should include evidence of involvement from staff within the grading of goal 3.

*Note: NHSE Mandated duties: SC13.5 EDS2 apply to NHS Trusts and Foundation Trusts only.

Long version contract NHS SC13.6:

Organisations to complete WRES report - due 1st September annually and provide confirmation to the lead commissioning CCG that your annual WRES report template and supporting action plan are displayed on the equality provider webpage.

*NHSE Mandated duties: SC 13.6 WRES apply applies to all types of providers of non-primary healthcare services operating under the full length version of the NHS Standard Contract, and so is applicable to NHS providers, independent sector providers, and voluntary sector providers.

NHS SC13.7.1 and 13.7.2:

Organisations to provide a copy of WDES report (in future to be in line with WRES reporting timetable) due 1st August 2019 using 2018 data, and annually thereafter.

Display on provider webpage.

*Note: The WDES will be extended after 2018 consultation, beyond this current requirement for NHS Trusts and Foundation Trusts in the first year.

Long version contract NHS SC14.1:

The provider must take account of the spiritual, religious, pastoral and cultural needs of service users.

Long version contract NHS SC14.2:

The provider must have regard to NHS Chaplaincy Guidelines. SC14.2 only applies to NHS Trusts / FTs.

9.0 Further information
NHS Standard Contract 2019/20:
https://www.england.nhs.uk/nhs-standard-contract/19-20/

NHSE Standard Contract 2018/19:

NHS Equality Delivery System:
https://www.england.nhs.uk/about/equality/equality-hub/eds/

NHS Work Race Equality Standard:
https://www.england.nhs.uk/about/equality/equality-hub/equality-standard/

NHS Disability Workforce Equality Standard:
https://www.england.nhs.uk/about/equality/equality-hub/wdes/

Accessible Information Standard:
https://www.england.nhs.uk/ourwork/accessibleinfo/

Sexual Orientation Monitoring:

Equality Act and PSED:
https://www.england.nhs.uk/about/equality/

Human Rights Act 1998

Health and Social Care Act:


Modern Slavery Act 2015:
http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted

Homelessness Reduction Act 2017 (implemented April 2018)