



NHS Employers submission to the consultation 'Equality Act 2010: The public sector Equality Duty: Reducing Bureaucracy'

Prepared for the Government's Equalities Office
April 2011

NHS Employers key messages on the policy review paper

- NHS Employers welcomes the Government's Equality Act and its aims of simplifying, harmonising and strengthening the law on equality.
- NHS Employers also welcomes the extension of responsibilities as enacted from 5 April 2011 in the form of the new public sector Equality Duty (PSED).
- NHS Employers is aware that many NHS organisations are disappointed and concerned by the fact that whilst the general duty relating to the PSED has been enacted, the Government has delayed the implementation of the specific duties and proposed further changes in this policy review paper. In some cases this has led to time and resources being where briefing documents and training materials have been prepared and will now have to be revised. At a time of unprecedented change within the wider NHS, respondents stated that such delay and confusion was ill timed. For ourselves, a further consultation has used vital resources.
- NHS Employers recognises that the Government wishes to ensure that the legislation is fit for purpose and appreciates the opportunity for employers to input into the revised proposals. In this respect, we will continue to work closely and constructively with the Government's Equalities Office and the Equality and Human Rights Commission on the specific duties and the associated Codes of Practice and non statutory guidance.
- This submission is provided in confidence and we request that the Government Equalities Office do not seek to publish any of the material without the NHS Employers permission.

Paul Deemer
Equality and Diversity Team, NHS Employers
Paul.deemer@nhsemployers.org

The NHS Employers organisation

About us

NHS Employers represents trusts in England on workforce issues and helps employers to ensure that the NHS is a place where people want to work. We work with employers to reflect their views and act on their behalf in areas including pay and pension negotiations, recruitment and planning the workforce, productive and healthy workplaces, and employment policy and practice. We help employers to make sense of workplace equality and diversity and embed it into the day-to-day work of their organisations.

NHS Employers is part of the NHS Confederation.

Background

NHS Employers has been actively involved in the formulation, development and construction of the Equality Act 2010 on behalf of NHS organisations. This has included:

- responding to various consultation documents
- participation in a range of senior stakeholder and roundtable meetings convened by the Government Equalities Office and the Equality and Human Rights Commission. Meetings have taken place between January 2009 to date in connection with various aspects of the Act and its implementation.

NHS Employers set up and promoted an online survey to gather feedback from NHS organisations. The survey asked three key questions (see below). We also attended a listening / round table event on 12 April 2011 convened by the Government Equalities Office. It is the responses to the aforementioned survey that form the main basis of this response.

Broader context

NHS Employers ensures that NHS organisations are kept up to date with the latest information and developments in relation to the Equality Act. This has been done through:

- regular articles in our NHS Workforce Bulletin which is sent to over 3200 contacts
- specific focus at our 2009 and 2010 annual equality, diversity and human rights conferences (which attracted over 600 delegates from across the NHS)

- issuing a Briefing document in October 2010 entitled 'The Equality Act: employment implications for the NHS'
- holding a dedicated 'Equality Act' webinar in December 2010 where a panel of experts answered key questions from the service
- holding regional seminars and workshops in partnership with Strategic Health Authorities (SHA)
- regular updates on our website: www.nhsemployers.org which receives over 120, 000 hits per month
- reference to the Equality Act in associated briefing papers issued to the service on diversity monitoring and the business case for diversity.

NHS Employers is also committed to sourcing and sharing the many examples of good work taking place across the NHS in the field of equality and diversity. We will be working closely with our NHS Equality and Diversity Partners¹ and their respective SHAs throughout 2011/12 to develop and share this good practice across the wider NHS.

¹ NHS organisations are awarded Partner status after demonstrating that they are delivering against measurable criteria.

Consultation response

We received 61 responses to our online survey. .

Responses to question 1

Do you think the changes to the specific duties will enable the public to better challenge and hold to account your organisation and allow your organisation to “publish the right information and deliver the right results”?

We received 57 responses to this question

- 30 (52.6%) answered 'Yes'
- 27 (47.4%) answered 'No'
- We also received 33 further comments

There were concerns expressed about several aspects of the proposed wording including:

- whether “the public” would have the knowledge and capability to know what the “right information” was
- whether the lack of prescribed information would lead to an increase in the number of Freedom of Information requests
- whether the lack of a prescribed list of indicators / measures would lead to inconsistency between organisations, making it difficult to benchmark

Responses to question 2

Do you think the proposed changes to the wording of the specific duties relating to the publishing of information will assist your organisation to better meet these duties?

We received 58 responses to this question

- 30 (51.7%) answered 'Yes'
- 28 (48.3%) answered 'No'
- We also received 37 further comments

There was a general concern amongst respondents that the revised provisions would lead to a reduction in the consultation and engagement work undertaken by NHS organisations.

Responses to question 3

Do you think the proposed changes to the requirements in relation to equality objectives will assist your organisation to better meet the specific duties?

We received 58 responses to this question

- 28 (48.3%) answered 'Yes'
- 30 (51.7%) answered 'No'
- We also received 36 further comments

The comments to this question expressed concern that the removal of the requirement to set out how progress will be measured would actually reduce transparency rather than increase it and slow down the progress made in recent years in terms of reducing health inequalities for under represented groups. However, an equal number of comments supported the revised approach and the fact that they would be allowed to decide for themselves how best to meet the duties.

General comments

Whilst we can understand, and indeed support, the desire of Government to reduce bureaucracy, the dilution of the specific duties is so great that the impact of these provisions may be so limited that they become insignificant.

Our considered view is that a better approach might be to scrap the specific duties altogether and assimilate them into the general duty, and enhance said general duties accordingly. This would both strengthen the PSED, and also simplify it for all public sector bodies.

Whatever the outcome of this review, we would also strongly urge the Government to consider commissioning the Equality and Human Rights Commission (EHRC) to work with the Department of Health (DH) and NHS Employers to produce sector specific guidance and good practice, linked in to the Equality Delivery System that is being developed by the DH.