

Governing Board Development: Equality & Inclusion 2015

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at North Staffs CCG: 5 August 2015
1 hour 10 mins annual session
supporting senior decision makers

OVERVIEW

Risk: Transparency alert to governing body re E&I business risk

Challenging Equality Analysis - 'due regard' focus on outcomes for protected groups

Equality Delivery System 2 – NHS equality performance framework

E&I Strategy & Annual E&I Publication both to GB Nov 2015

Health inequalities - improvements focus on local protected groups

Indirect links & correlations – how much do you know about PGs? (look at local demographics)

Can GB members **identify 3 things** they would want the organisation to deliver for E&I?

Outcome: GB members have an enhanced sense of E&I insight, awareness & challenge to feedback received eg via Papers to GB. Also relevance between GP role to wider CCG E&I responsibilities



A large, semi-transparent graphic of three interlocking rings is centered in the background of the slide. The rings are rendered in a light teal color, matching the overall theme of the slide. They are arranged in a triangular pattern, with each ring overlapping the other two.

Transparency alert to governing body re E&I business risk

Evidence recognising & managing
equality business risk



Transparency alert to governing body re E&I business risk

- **EDS 4.1** required Outcome: Boards and senior leaders routinely demonstrate their commitment to promoting equality within and beyond their organisation
- **EDS 4.2** required Outcome: Papers that come before the Board and other major Committees identify equality related impacts including risks, and say how these risks are to be managed
- **WRES reporting & scrutiny** for improvement (Workplace Race Equality Standard)
- **EA challenge for robust evidence** for CCG giving 'due regard' to protected groups re Board Papers received and appropriate challenge to feedback received via Equality Analysis
- **Transparent approach** to CCG's equality performance and improvement
- **Governance arrangements** for E&I eg performance and progress reporting

Outcome: E&I checks and balances in place eg (1) Brown Principles applied (2) FREDA (Human Rights scrutiny in our planning & decision making)



Relevance: Human Rights SCREENING Flow Chart

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Will the policy/decision or refusal to treat result in the death of a person

If yes consider

– the right to life in this instance is absolute - in a life threatening situation treatment cannot be refused regardless of immigration status else it will breach human rights (right to Life)

Will the policy/decision lead to degrading or inhuman treatment

If yes consider

The right not to be tortured or treated in a inhumane or degrading way in health and social care is an absolute right and policy/decisions will need to be changed.

Will the policy/decision limit a person's liberty?

If yes consider

1. Is it necessary to limit a persons liberty?
2. Is it proportionate – what will be left if you do?
3. Is it lawful
4. accountable – is it for a legitimate reason

Will the policy/decision interfere with a person's right to respect for private and family life?

If yes consider

1. Is it necessary?
2. Is it proportionate – what will be left if you do?
3. Is it lawful
4. accountable – is it for a legitimate reason

Will the policy/decision result in unlawful discrimination?

If yes consider

This covers gender, gender identity, colour, race, language, religion, political or other opinion, national or social status, association with a national minority, property, birth or other status.

Will the policy/decision limit a person's right to security?

If yes consider

We are all entitled to security and where there is a risk to life there is a duty on public authorities to protect us – ask 4 questions above

Will the policy/decision breach the positive obligation to protect human rights?

If yes consider

Public Authorities such as the NHS have a duty to intervene and protect human rights – Human Rights Act 1998 and NHS Constitution

Will the policy/decision interfere with person's right to participate in life?

If yes consider

This means a right to found a family, marry, practice any religion or belief and a right to life as a lesbian, gay or bisexual person – ask 4 questions above

If you have answered NO all along then your decision has passed the Human rights screening



Judicial Review

What is judicial review?

Judicial review is a procedure by which a person who has been affected by a particular decision, action or failure to act of a public authority may make an application to the High Court, which may provide a remedy if it decides that the authority has acted unlawfully. **Judicial review is concerned not with the merits of the decision, but whether the public body has acted lawfully.**

The Equality & Human Rights Commission (EHRC) has a power to institute judicial review proceedings in matters of relevance to its functions including where a public authority has breached the general equality duty. **Judicial review cases in respect of equality duties (i.e. the existing equality duty or previous duties) concern whether or not a public authority has paid / had due regard to the general equality duty when: making a decision, acting or failing to act.** The key question tends to be the weight given to the duty when the decision was made, or the act or failure to act occurred.

Example of past cases:

- cuts in funding to services targeted at ethnic minority groups
- restricting adult care services

A large, faint, light-colored version of the interlocking rings logo is centered in the background of the slide.

Recognising & managing business risk using EI&RA process



A large, semi-transparent, light orange ampersand graphic is centered in the background of the slide. It is composed of several overlapping, slightly offset versions of the ampersand symbol, creating a layered effect.

Challenging Equality Impact & Risk Assessment - 'due regard' focus on outcomes for protected groups



Equality Impact & Risk Assessment: What do Board members need to know?

- EI&RA scrutiny should be carried out by CCG at earliest stages of consideration
- Timely engagement with reps from the 9 local protected groups – CCG require feedback
- Mitigate where possible in response to feedback
- Focus on achieving improved outcomes for local protected groups
- CCG and local communities of interest re-shaping healthcare services to be more inclusive

Board members should routinely ask when Papers presented for a decision / approval:

- Has an **Equality Impact & Risk Assessment** been completed?
- *If not, why not?*
- *What in essence did feedback received say?*
- What improved outcomes resulted for local protected groups? This is along the lines of 'You said. We did'

Equality Impact & Risk Assessment Toolkit Rationale

The EI&RA Toolkit has been designed to support our CCGs & M&LCSU in **ensuring all commissioning decisions**, Project Initiation Documents (PIDs) and any other business plans / strategies / policies **are evaluated for their impact** on Privacy, Equality, Human Rights and the NHS Constitution.

The Toolkit is there to provide guidance and support you as an enabler in meeting the healthcare needs of our local diverse communities.



Challenging Equality Impact & Risk Assessment scrutiny for 'due regard' - focus on improved outcomes for PGs

WHAT

EI&RA Toolkit provides a measuring of outcomes to identify the potential impact of an NHS organisation's policies, services or functions on those community groups or individuals affected by such changes ie its patients, carers and staff.

WHY

Understand how to evidence giving 'due regard' to local protected groups in CCG planning & decision making
Assess / manage business risk for key healthcare changes & provide assurance to CCG of legal compliance re:
Equality; Human Rights; Privacy Impact; NHS Constitution – using the latest Pre PEAR Assessment Toolkit (including 3 checklists).

WHEN

3 interactive 1.5 hour workshops delivered each year, by E&I team at CCG

HOW DOES EI&RA BENEFIT CCG

A snap shot in time showing how inclusive our services are to protected characteristic groups in our local communities.

A way of CCG evidencing how it gives 'due regard' to vulnerable people from local protected characteristic groups, in all its planning and decision making process, and from the earliest stages of consideration.

EI&RA should deliver robust equality outcomes which ultimately drive commissioned services to more closely reflect patient and staff need.

Sound, equitable, inclusive decision making that is prepared for legal challenge of our equality compliance eg possible Judicial Review claims

We are currently delivering a targeted training programme for nominated commissioners and are developing an annual rolling programme of priority EI&RAs for completion.

Be part of a CCG network of trained commissioners using an approved EI&RA process for planning & decision making re healthcare changes

Unique Benefits of EI&RA to CCGs & M&LCSU

- Process which audit trails 'due regard'
- Establishes 'relevance'
- A robust process providing legal compliance assurance
- Opportunity for commissioners to develop EDS 2 evidence
- how do people from local protected groups *fare* compared to people in general [in healthcare]?

Unique Benefits of EI&RA to CCGs & M&LCSU

- Provides an EI&RA Tool + 3 scrutiny Checklists for completion
- Scrutiny of significant healthcare changes under early consideration by CCG
- Provides a process to engage & involve
- Re-shape services to be more inclusive of PGs
- Audit trail of CCG's planning & decision making



Equality Delivery System 2 – NHS equality performance framework



EDS: The NHS equality performance framework

- 4 Goals; 18 required Outcomes; over a 4 year delivery cycle
- Mandated by NHS England from April 2014
- Applies to all commissioning organisations & 'larger providers'
- Applies to all organisations which provide NHS funded healthcare services are subject to requirements of the NHS Standard Contract (not primary care)
- Applies to all NHS providers and non NHS providers (including private & voluntary sector)
- Asks for annual evidence from CCG (and providers) – **how do local people from protected groups fare compared to people in general [in healthcare]?**
- Annual public grading of evidence by volunteer local stakeholder reps from local protected groups & local communities of interest
- Public grading should be representative of locality & protected group reps
- Transparent grading dashboard displayed annually on CCG website
- The vulnerable patient voice helping CCG to shape services to be more inclusive

EDS v2 – mandated by NHS England from Apr 2015

Legal compliance assurance to CCG re 'due regard' to the PSED (public sector equality duty)

- NHS wide equality performance framework
- Mandated for all NHS commissioning organisations & their larger provider partners ie over £200K combined annual contract value with the lead commissioner
- **4 Goals / 18 required Outcomes**
- Gather & publicly deliver evidence over 4 year period

Annual public grading of evidence by local communities of interest / 'EDS stakeholder group', or by workforce group (Goal 3)

EDS grading report and summary dashboard displayed on CCG EDS webpage

Evidence must show for each of the 9 protected groups:

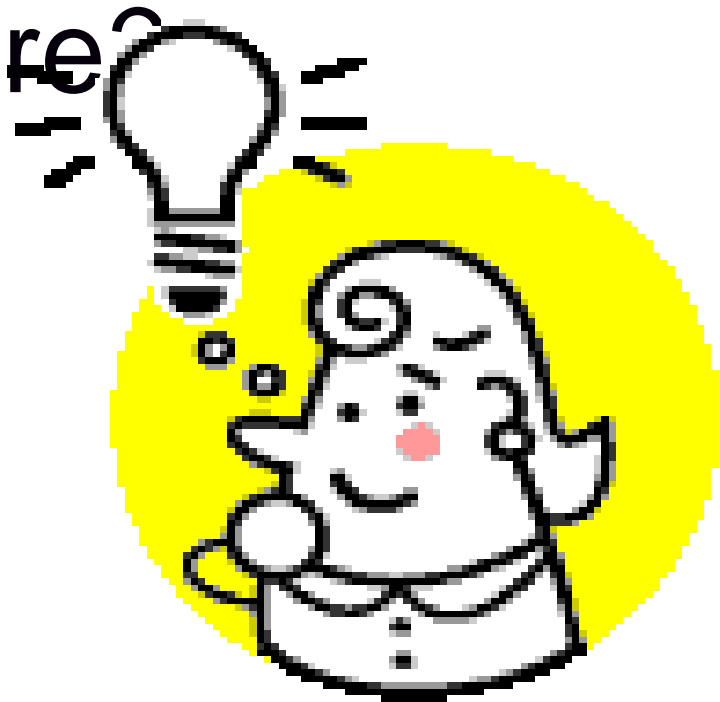
How do local people from protected groups fare compared to people in general [in healthcare]?

How do local people from protected groups *fare* compared to people in general [in healthcare]?

Grading	Underdeveloped	Developing	Achieving	Excelling
	People from all protected groups fare poorly compared with people overall OR evidence is not available	People from only some (2 or less) protected groups fare as well as people overall	People from most (3 to 5) protected groups fare as well as people overall	People from all (9) protected groups fare as well as people overall

Protected Groups (Equality Act 2010)

How many Protected
Groups are there?



Protected Groups (Equality Act 2010)

Age

Disability

Sex

Race

Religion or
Belief

Sexual
Orientation

Marriage
and Civil
Partnership

Pregnancy and
Maternity

Gender
Reassignment

Draft E&I Strategy includes proposed
new Equality Objectives

Provides a range of assurance benefits to
CCGs and M&LCSU



E&I Strategy pointers – evidence of CCG taking ‘due regard’

Service Delivery issues

- FAIR ACCESS: EDS – Equality Delivery System
- RISK: Equality Analysis using agreed process / Pre PEAR Assessment Tool-kit
- Annual E&I Report – GB approved & on CCG website by 31 January
- Remaining delivery cycle for CCGs until 13 Oct 2017 – set by NHS England

Workforce issues

- FAIR REPRESENTATION AT ALL LEVELS: WRES – Workplace Race Equality Standard
- More protected group standards likely to follow for disability; gender; sexual orientation

E&I Strategy* 2015 to 2017 proposed new Equality Objectives*

Objective 1:

Embed equality, diversity and human rights considerations into our commissioning decisions and the culture of the CCG

Objective 2:

Ensure senior leadership is fully understanding of equality, diversity and human rights and effective in ensuring awareness and delivery of the Equality and Inclusion agenda across the CCG

Objective 3:

Ensure that health inequalities as they affect protected groups are measurably reduced

(* Out to electronic consultation with local communities of interest July to October 2015)



Health inequalities
improvements focus on local
protected groups





Why address health inequalities? CCG have duties to:

- Have regard to the need to reduce inequalities between patients in access to health services & the outcomes achieved
- Exercise their functions with a view to securing that health services are provided in an integrated way
- Include in an annual commissioning plan an explanation of how they propose to discharge their duty to have regard to the need to reduce inequalities
- Include in an annual report an assessment of how effectively they discharged their duty to have regard to the need to reduce inequalities

Lawyers advise that having due regard to the need to reduce means health inequalities must be properly and seriously taken into account when making decision or exercising functions, including balancing that need against any countervailing factors

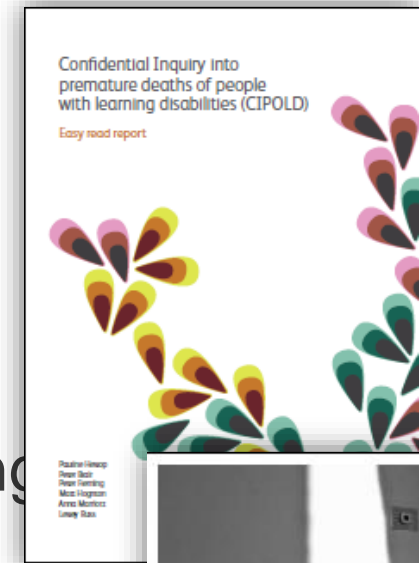
Having due regard includes accurate record keeping of how the need to reduce health inequalities has been taken in to account in CCG planning & decision making

The duty must be exercised with rigour & an open mind and should not materialise as an afterthought in the process of reaching a decision.

Source: Health & Social Care Act 2012

LD: What do we know?

- People with learning disabilities die, on average 16 years sooner than people without learning disabilities
- For every ONE person in the general population who dies from an avoidable cause of death TWO people with learning disabilities will do so
- For every ONE person in the general population who dies from a cause of death that could be prevented by good quality care THREE people with learning disabilities will do so





LD Health Inequalities

- Consistent evidence from *research* of
 - Shorter life expectancy
 - More sensory & physical impairments
 - Poorer physical health
 - Poorer mental health

Health inequalities improvements focus on local protected groups

- ❖ **Short on-line film:** [An inclusive patient journey](http://www.tamesideandglossopccg.org/about/equality-diversity-and-human-rights-meeting-our-public-sector-equality-duty/essential-information/an-inclusive-patient-journey-short-film/articles/an-inclusive-patient-journey-short-film) (9 mins)

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- ❖ **Indirect links & correlations** – how much do you know about PGs?
(look at local demographics interactive quiz)

- ❖ Can GB members **identify 3 things** they would want the organisation to deliver for E&I?



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Thank you

