



South, Central and West
Commissioning Support Unit

Equality Impact Assessment Workshop

ESBT Alliance

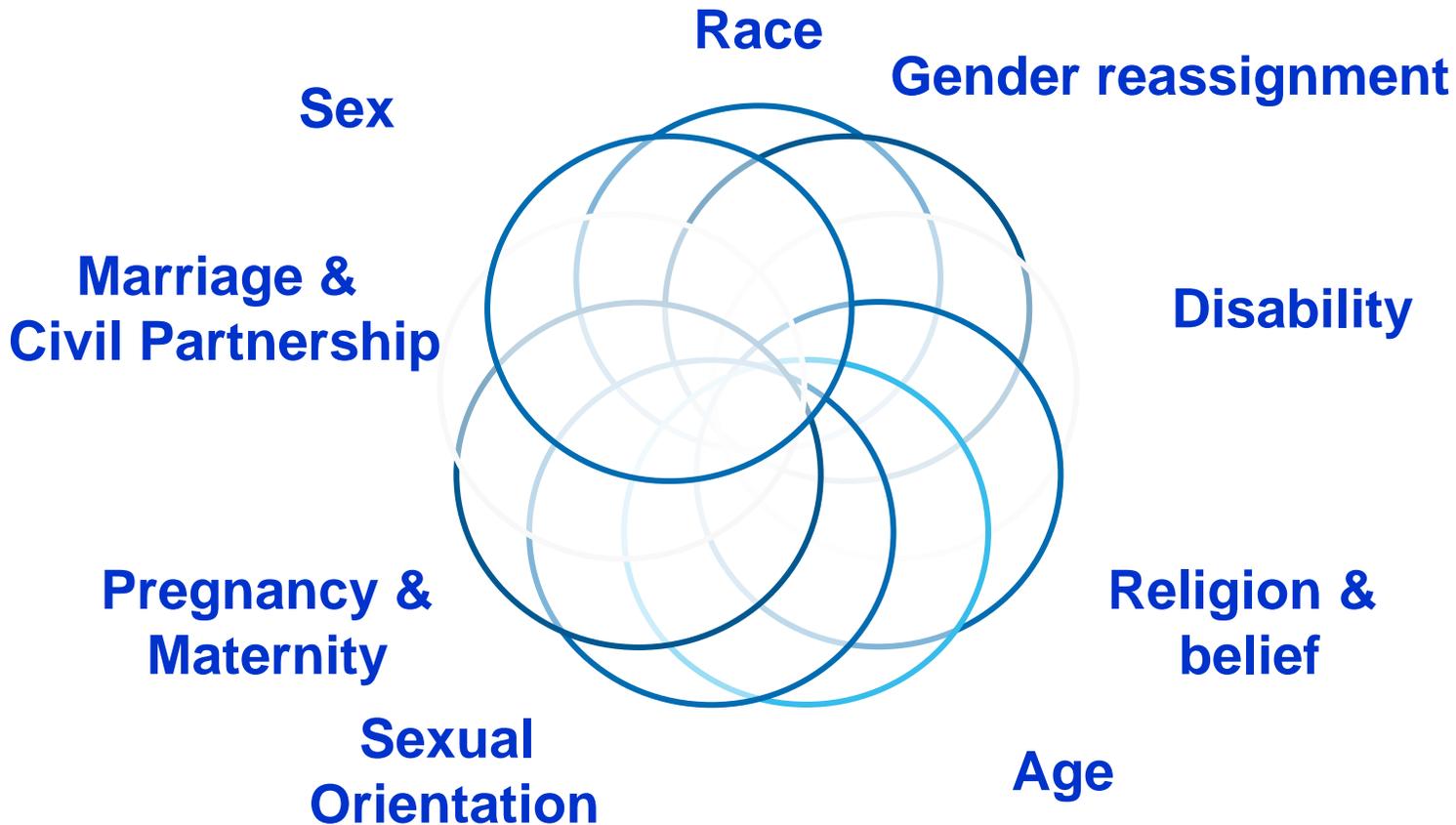
National Inclusion Week

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Protected characteristics



Who are the NHS “inclusion Groups

People who are:

- Homeless
- Live in poverty
- Long term unemployed
- Are in a stigmatised profession (e.g. sex workers)
- Misuse drugs
- Are geographically isolated

Bearing in mind needs of these groups helps to deliver on duty to reduce health inequalities

Workshop aims

This workshop aims to:

- Remind us about the Equality Act 2010 and the Public Sector Equality Duty
- Review the Equality Impact Assessment (EIA) process in relation to a policy, proposal, project, re-procurement exercise, etc.
 - What is it about?
 - Who is using/benefitting from it?
 - What is the impact on different protected groups?
 - So what?
- Summarise key principles about EIAs emerging from judicial reviews



A bit about the law ...



Equality Act 2010 and the PSED

- For service providers and employers, the Act **prohibits discrimination**, harassment, etc...
- ...on the basis of **9 protected characteristics**
- For public bodies, the Act also imposes the **public sector equality duty**:
 - there is a **general duty** and some **specific duties**
 - one of the specific duties is a duty to **analyse the impact** of your activities



The general duty

The duty applies to NHS bodies, commissioners, service providers/ contractors.

When exercising your functions, you must have due regard to the need to:

- **Eliminate** unlawful discrimination, harassment, victimisation, etc.
- **Advance** equality of opportunity
- **Foster** good relations between different groups



What is meant by “Due Regard”

To '*have due regard*' means that in making decisions and in its other day-to-day activities a body subject to the duty must consciously consider the need to do the things set out in the general *equality* duty: eliminate discrimination, advance *equality* of opportunity and foster good *relations*.

How much regard is “due regard”?

- It depends on circumstances and
- Relevance of the needs of the general equality duty to the decision in question

For example

Decision to buy stationery v decision to buy services for people with Long Term conditions

The decision to buy services for people with Long Term conditions will have greater impact and more relevance to the needs of the duty and so will need a higher degree of regard. The three needs of the duty may be more relevant to some protected characteristics than others e.g.

Policy on homeworking has direct impact on staff with different protected characteristics e.g. people with disabilities than policy on waste re-cycling

Principles of due regard have been established through case law

How to advance equality of opportunity

Consider the need to:

- Remove or minimise disadvantage
- Take steps to meet people's different needs
- Encourage participation in public life by people from underrepresented groups



Specific duties

A public authority must publish the following information:

- **Evidence of analysis** that they have undertaken to establish whether their policies and practices would further the aims of the general equality duty.
- Details of the **information** that they considered in carrying out this analysis.
- Details of **engagement** that they undertook with people whom they considered to have an interest in furthering the aims of the general equality duty.



Where do we start with an EIA.....

EIA – SUMMARY GUIDE

Four questions which an EIA is trying to answer:

- What is the policy/proposal/project about?
- Who is using/benefitting from it?
- What is the impact on different protected groups?
- So what?

What is it about?

- What decision needs to be made?
- Who is making the decision?
- To what extent is the output of the EIA capable of influencing this decision?
 - Are you considering the implications prior to decision making?

Who is using it?

This is about **evidence gathering**, consultation and engagement:

- Who are the current and future intended beneficiaries of the policy/proposal/project (by protected characteristics)?
- How have you engaged with relevant stakeholders (e.g. patients, service users, staff)?
- Who is missing? Be open about any gaps which you might need to fill.

Possible sources of information

- Joint Strategic Needs Analysis
- Health inequalities strategies
- Office for National Statistics
- Public Health Observatories
- Public Health England
- NHS England
- National Surveys
- National Research papers on specific conditions e.g. COPD and national equality analysis
- Local Authority population data/Healthwatch/local organisations e.g. Age Concern
- Specific engagement events with different stakeholders
- University research papers and tools e.g. York University's work on how to measure progress on health inequalities

Equality Impact (actual or potential)

- The impact could be **positive** or **negative** or **neutral**
- Sometimes a policy or service might be targeted to meet the needs of a specific group (positive action)
- No group is homogenous: e.g. older people will possess other protected characteristics such as sex, disability, ethnicity etc.
- Is the actual or potential impact on different protected characteristics stated clearly?
- If an impact is **adverse**, could it also be **discriminatory**?

SO WHAT?

Are the following clear to the decision-maker?

- Outcome(s) of the equality analysis (has the author of the EIA recommended actions to minimise adverse impacts and maximise positive impacts?)
- Issues that need to be taken into account
- Risks of not addressing the findings
- Risks of continuing health and workplace inequalities

Brown Principles

R(Brown) v Secretary of State for Work and Pensions (2008) established in case law certain conditions to ensure application of the PSED in relation to decision-making:

- Knowledge
- Making an explicit reference to paying due regard to the PSED
- Timeliness (EIA completed before the decision is made)
- Analysis must be rigorous (there must be meaningful consultation and engagement with interested parties – it is not a question of ticking boxes)
- Non-delegation
- Continuing duty
- Record keeping

Any further questions?

Thank you and feedback





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