

## THE SHREWSBURY AND TELFORD HOSPITAL NHS TRUST

## TRUST BOARD – JUNE 2011

## THE EQUALITY ACT 2010 AND THE NHS EQUALITY DELIVERY SYSTEM

<b>EXECUTIVE RESPONSIBLE</b>	Vicky Morris Director of Quality and Safety, Chief Nurse
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<b>CORPORATE OBJECTIVE</b>	D: Learning and Growth
<b>GOAL</b>	D6: Adopt behaviours that match our core values
<b>EXECUTIVE SUMMARY</b>	<p>This paper introduces the Equality Delivery System (EDS) as an NHS-wide performance and quality assurance framework. Its adoption by individual Trusts is intended to assist NHS organisations to improve equality performance in service delivery and workforce. It is intended to help organisations to meet the evidential requirements of the statutory public sector equality duty contained within the Equality Act (2010), and the statutory duty to consult and involve patients (NHS Act 2006). It is also intended to assist organisations to meet the registration requirements of the Care Quality Commission.</p> <p>The EDS performance framework is intended to be used annually to analyse organisational performance in conjunction with local interests (e.g. Local Involvement Networks (LINKs)/ Health Watch). A rating is given on the Red Amber Green scale and an Annual Improvement Plan is adopted. The LINKs then share this information with the Local Authority Overview &amp; Scrutiny Committees and Health &amp; Wellbeing Boards, before forwarding it to the NHS Commissioning Board or Care Quality Commission.</p> <p>The grading outcome will be published by the NHS Commissioning Board. Where there are concerns about an organisation's performance related to improved patient outcomes, improved patient safety and access and experience, the Care Quality Commission will consider these in line with a provider's registration requirements.</p> <p>It is expected that all NHS organisations will have adopted EDS and prepared and published their Equality Objectives (including their priority actions for 2012/13) by April 2012. The first Annual Improvement Plans based on annual assessment and grading are expected to be completed by May 2012.</p> <p>There are no direct financial implications arising from this new framework; some financial implications would have arisen anyway as SaTH moves to meet the requirements of the Equality Act and Public Sector Equality Duty. However the experience of another Trust within the West Midlands has demonstrated a hidden financial implication where a service was advertised to protected an under-represented groups, subsequently causing an increase in service demand.</p>
<b>RECOMMENDATION(S)</b>	<p>The Trust Board is asked to</p> <ol style="list-style-type: none"> <li>1. <b>APPROVE</b> the recommendation that Director of Quality &amp; Safety and Chief Nurse acts as Executive Lead for EDS implementation; and</li> <li>2. <b>APPROVE</b> the recommendation that SaTH adopts the Equality Delivery System from April 1st 2011, with a view to incorporating it into existing systems and structures and publishing Equality Objectives by April 2012.</li> </ol>

## THE EQUALITY ACT 2010 AND THE NHS EQUALITY DELIVERY SYSTEM

### Contribution to Inspection, Registration, Performance and Delivery

<b>Risks and Assurance</b>	The Risk Register does not hold any risks directly attributable to equality and diversity at this time.
<b>Contribution to Key Performance Indicators</b>	The EDS is designed as a performance and quality assurance system to assist NHS organisations to improve their performance on the equality and diversity agenda. At this time the Trust's Integrated Performance Report does not report directly on equality and diversity matters but these are enshrined within improvements in quality and improved patient and workforce experience.
<b>Compliance with Clinical and other Governance Requirements</b>	The EDS rating will be shared with the Local Authority Overview & Scrutiny Committees and Health & Wellbeing Boards, the NHS Commissioning Board and Care Quality Commission. The grading outcome will be published by the NHS Commissioning Board. Where there are concerns about an organisation's performance related to improved patient outcomes, improved patient safety and access and experience, the Care Quality Commission will consider these in line with a provider's registration requirements.

### Impact Assessment

<b>Quality</b>	Adoption of the EDS is intended to enshrine equality and diversity in the treatment of patients and management of the workforce in order to improve quality, satisfaction and experience.
<b>Financial</b>	There are no direct financial implications of adopting the EDS; however there are likely to be indirect financial implications. There may be financial implications of meeting the requirements of the Equality Act 2010.
<b>Workforce</b>	Adoption of the EDS is intended to embed the principles of equality and diversity in the management of the workforce through training, direct changes in management action and revised HR policies.
<b>Legislation and Policy</b>	The EDS is being introduced to the NHS to assist in meeting the requirements of the Equality Act (2010), the statutory public sector equality duty and the statutory duty to consult and involve patients (NHS Act 2006).
<b>Equality and Diversity</b>	Adoption of the EDS will alter the Trust's management of equality and diversity matters in patient care and management of the workforce.
<b>Communication and Marketing</b>	There are communications, involvement and marketing implications of adoption of the EDS to staff, local interests and commissioning bodies. Success in EDS can be used to market the Trust as an exemplar organisation and an employer of choice.

### Engagement and Decision-Making Process

<p>This report has been considered at the Clinical Quality Review Meeting on 8<sup>th</sup> June, the Quality and Safety Committee on 23<sup>rd</sup> June prior to Trust Board on 30<sup>th</sup> June.</p> <p>The overall NHS EDS has been designed for the NHS by the NHS. It is based on the views of 700 people covering patient, staff and other interests at 35 engagement events in 2010 and early 2011. When the EDS regional consultation events have concluded it is estimated that over 2,200 people will have contributed to the design of the EDS.</p>
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## **Introduction**

This paper introduces the Equality Delivery System (EDS) as an NHS-wide performance and quality assurance framework. Its adoption by individual Trusts is intended to assist NHS organisations to improve equality performance in service delivery and workforce. It is intended to help organisations to meet the evidential requirements of the statutory public sector equality duty contained within the Equality Act (2010), and the statutory duty to consult and involve patients (NHS Act 2006). It is also intended to assist organisations to meet the registration requirements of the Care Quality Commission.

## **Purpose**

The purpose of this paper is to introduce the Equality Delivery System (EDS) as an NHS-wide framework to:

1. Improve the equality performance of the NHS, embedding equality into the mainstream business of NHS organisations, both commissioners and providers;
2. Help NHS organisations to meet the evidential requirements of the statutory public sector equality duty, contained within the Equality Act (2010) (the employment law context is summarised at Appendix 1) and the statutory duty to consult and involve patients (NHS Act 2006);
3. Help NHS organisations to meet the registration requirements of the Care Quality Commission.

## **Background**

The Equality and Diversity Council was formed in 2009 with representatives from the Department of Health, NHS and other interests. It is chaired by Sir David Nicholson and reports to the NHS Management Board. The Council supports the NHS to deliver services that are fair, personal and diverse to promote continuous improvement. It commissioned the development of the EDS to underpin NHS delivery on the equality and diversity agenda.

The EDS is designed for use as a performance and quality assurance mechanism. It requires NHS organisations to integrate EDS processes into mainstream business planning, forming part of the annual business planning cycle and helping to guide investment. Organisations are expected to set clearly defined equality objectives supported by an action plan. Performance against the objectives should be assessed annually in collaboration with local interests. A performance grading will be made available as a basis for improving performance. The EDS performance framework is included at Appendix 2.

The EDS is intended to be about real people making real improvements that can be sustained over time, focusing on the things that matter the most for patients, communities and staff. It emphasises genuine and ongoing engagement, transparency and the effective use of evidence.

SaTH already has a Single Equality Scheme in place and there is good practice in the area of recruitment. This historic good practice will be complimentary to the EDS and will aid its implementation.

## **Drivers**

There are a number of important EDS drivers to note:

- The EDS is referenced within the Operating Framework for 2011/12 with the expectation that NHS commissioners and providers use the EDS to report on local equality, diversity and human rights work as matter of routine; and
- The PCT cluster implementation guidance makes clear that SHAs should ensure that clusters are able to take on the requirements for promoting the EDS. It adds that SHAs and clusters should also ensure that all statutory equality duties are handled clearly, explicitly and effectively through the new arrangements. This includes paying due regard to the provisions of the Equality Act 2010, which aims to ensure that all public bodies within the health service comply with principles of equality; and
- It is currently intended that the implementation of the EDS will be a requirement for both FT and GP authorisation processes, and will be built into other parts of the new system architecture.

## **Contribution to reducing health inequalities**

Social class, poverty and deprivation are often closely related to the incidence of ill-health and the take-up of treatment. In addition, many people with characteristics afforded protection under the Equality Act 2010 are challenged by these factors, and as result experience difficulties in accessing, using and working in the NHS. For this reason, work in support of protected groups is best located in work to address health inequalities in general with a focus on improving performance

across the board and reducing gaps between groups and communities. This approach has two implications for organisations when using the EDS:

- When analysing the EDS outcomes, it is recommended in the EDS guidance that organisations and local interests should consider extending the analysis beyond the protected groups to other groups and communities who face stigma, and difficulties in accessing and using the NHS. It is up to local organisations and interests to decide whether or not to take this approach; and if they do, which groups and communities to consider depending upon local needs and circumstances. Work on “Inclusion health” (DH, 2010) points to people who are homeless, sex workers and people who use drugs as potential targets.
- When working on Equality Objectives and priority actions, it is recommended in the EDS guidance that organisations should locate work in support of both protected groups and other groups facing stigma within their mainstream work on tackling health inequalities with regard to health conditions, health promotion, general issues of patient access, safety and experience, or workforce development.

### **Application of EDS**

The EDS applies to both NHS commissioners and NHS providers (Foundation Trusts and non-Foundation Trusts) – both in the current NHS and the new NHS as set out in the White Paper and Health & Social Care Bill. It may also be applied to all those healthcare organisations that are not a part of the NHS, but which may work to contracts issued by NHS commissioners.

### **Annual Assessment Process**

NHS organisations are required, in conjunction with local interests, to analyse their performance on an annual basis against the outcomes for each group afforded protected status (directly or by association) by the Equality Act. The guidance expressly states that this is **not** self-assessment, but assessment in partnership; where there are disagreements, it is proposed that the view of the local interests prevails, rather than that of the NHS body.

Local Involvement Networks (LINKs), and their successors Health Watch are intended to help NHS organisations to engage with local interests. It is intended that LINKs will share Annual Improvement Plans and grades with the Local Authority Overview & Scrutiny Committees and Health & Wellbeing Boards, before forwarding them to the NHS Commissioning Board or Care Quality Commission.

The grading outcome will be published by the NHS Commissioning Board in the form of a Red Amber Green rating. For NHS providers, agreement has been reached with the Care Quality Commission so that where concerns are raised about an NHS providers’ performance on those goals which relate to improved patient outcomes, improved patient safety and access and experience these will be considered in line with a provider’s registration requirements.

For further detail on the definition of local interests and grading structure, please refer to Appendix 3.

### **Timescale**

It is expected that all NHS organisations will have adopted EDS, prepared and published their Equality Objectives (including their priority actions for 2012/13) by April 2012. The first Annual Improvement Plans based on annual assessment and grading are expected to be completed by May 2012.

### **Financial implications**

There are no direct financial implications arising from this new framework. As SaTH is legally required to meet the requirements of the Equality Act and Public Sector Equality Duty, some financial implications would have been incurred in any case. As examples, ongoing financial implications may be incurred as a result of:

- Developing and implementing an ongoing community engagement exercise around developing equality objectives and prioritised actions and assessing organisational performance against these.
- Participating in a regional cluster of NHS Trusts to share good practice and peer support
- Reducing barriers to accessing primary care services should improve early diagnosis and intervention, potentially moving NHS expenditure more “upstream”.

Experience of other Trusts has indicated that there are hidden financial implications in matters such as advertising services to protected and under-represented groups, which subsequently causes an increase in service demand.

**Recommendation**

It is recommended that:

1. The Director of Quality & Safety and Chief Nurse acts as Executive Lead for EDS implementation; and
2. SaTH adopts the Equality Delivery System from April 1st 2011, with a view to incorporating it into existing systems and structures and publishing Equality Objectives by April 2012.

## Employment Law Context

### **Equality Act 2010**

The Equality Act came into effect on 1<sup>st</sup> October 2010. It brings together all the previous individual strands of equality legislation into one, making discrimination on the grounds of any of the following nine protected characteristics unlawful:

1. Age
2. Disability
3. Gender reassignment
4. Marriage and civil partnership
5. Pregnancy and maternity
6. Race
7. Religion and belief
8. Sex
9. Sexual orientation

The Act also redefines and expands upon the original concepts and definitions of discrimination, harassment and victimisation, meaning that rather than an amendment to previous legislation this is almost a completely new piece of legislation.

### **Public Sector Equality Duty**

On 5 April 2011 the Public Sector Equality Duty (PSED) came into force. This is contained within the Equality Act and is a duty on public bodies and others carrying out public functions (including private bodies or voluntary organisations carrying out functions on behalf of a public body). The PSED sets out a general duty for a public body to have due regard\* to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the act;
- Advance equality of opportunity\*\* between people who share a protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.

There are clear definitions of 'due regard' and 'advancing equality of opportunity' as follows:

\* *Due regard* is defined as consciously thinking about the three aims as part of the process of decision making. Consideration of equality issues must influence the decisions reached in terms of how we:

- act as an employer;
- develop, evaluate and review policy;
- design, deliver and evaluate services; and
- commission and procure from others.

\*\* *Advancing equality of opportunity* involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected group where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

## EDS – Performance Framework

Objectives Menu	Narrative	Outcome
1. Better health outcomes for all	Achieve improvements in patient health, public health and patient safety for all, based on comprehensive evidence of needs and results	1.1 Services and care pathways are commissioned or decommissioned, designed or re-designed, procured, provided and contractually monitored so that they meet the needs of patients, carers and local communities
		1.2 Public health outcomes are measurable, substantive and are developed through evidence-based strategies, developed with the involvement of patients, carers and local communities
		1.3 Patient safety outcomes are demonstrating measurable increases across all equality target groups, with the active participation of staff and managers engaging with patient groups and involving local communities
2. Improved patient access and experience	Improve accessibility and information, and deliver the right services that are targeted, useful, useable and used in order to improve patient experience	2.1 Patients, carers and communities are effectively accessing services, taking into account barriers that historically hinder equality of access
		2.2 Patients, carers and communities are provided with appropriate communications support and information about services, so that they can make informed choices and be assured of diagnoses and treatments tailored to their needs
		2.3 Patients and carers report positive experiences of the NHS, where they are listened to and respected, and the services they receive are safe, effective and personalised to their specific needs
3. Empowered, engaged and well-supported staff	Increase the diversity and quality of the working lives of the paid and non-paid workforce, supporting all staff to better respond to patients' and communities' needs	3.1 A workforce that is diverse within all occupations and grade levels through fair and flexible recruitment, development, and retention practices
		3.2 The workforce is supported to remain healthy, with a focus on addressing major health and lifestyle issues that affect individual staff and the wider population
		3.3 The workforce is confident, competent and feels empowered to deliver appropriate and, accessible services, and improved patient experience for all communities
		3.4 The workplace is free from actual and potential discrimination - from recruitment to retirement - and all staff are able to fully realise their potential
4. Inclusive leadership at all levels	Ensure that throughout the organisation, equality is everyone's business, and everyone is expected to take an active part, supported by the work of specialist equality leaders and champions	4.1 Corporate leadership demonstrates the commitment and knowledge to assure equality outcomes within the organisation and the local health economy
		4.2 The organisation develops and supports equality leaders and champions within the workforce to the standards of capability defined by the NHS Competency Framework for Equality and Diversity Leadership

## Local Interests and Grading Structure

### Local Interests

For the purposes of the EDS, local interests comprise but are not restricted to:

- Patients and those local groups that represent them;
- Communities and the public in general;
- NHS staff and Staff Side;
- Voluntary and community organisations.

Local Involvement Networks (LINKs), and their successors Health Watch will help NHS organisations to engage with local interests. LINKs will share Annual Improvement Plans and grades with the Local Authority Overview & Scrutiny Committees and Health & Wellbeing Boards, before forwarding them to the NHS Commissioning Board or CQC.

### Grading Structure

Based on transparency and evidence, NHS organisations and local interests should agree one of four grades for each outcome.

