

Understanding Equality Analysis

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Briefing and associated templates based on NHS England Standard
Requirements

What is Equality Analysis?

An Equality Analysis (EA), formally Equality Impact Assessment, is a thorough and systemic analysis of the effects (impacts) of our policies, practices and procedures on different groups of people.

It is an anticipatory process that allows institutions to predict possible barriers faced by those likely to face discrimination and disadvantage and to take appropriate actions to have a more positive impact – especially groups with protected characteristics.

So, while discrimination may never be intended, EA tests out the possibility that this may be a consequence of changes that we make.

EA is not an end in itself – it is a way of tackling barriers and including people who have been traditionally excluded from the mainstream. It's also a way of ensuring and showing due regard has been paid to our duties not to discriminate.

'Equality Analysis is not only about addressing discrimination or adverse impact. They are about positive promotion of equality of opportunity, improving access, participation in public life and good relations.'

Understanding Discrimination

Discrimination is where someone is treated less favourably or put at a disadvantage because of certain personal characteristics, such as their gender or race, or maybe because they have a disability.

The Equality Act (2010) unites and replaces previous anti-discrimination legislation. It ensures consistency in what you need to do to make the workplace a fair environment in order to comply with the law.

The Equality Act covers the same groups of individuals that were protected by the previous legislation – these are now known as protected characteristics – but there are some changes. As a result you may need to review and change policies and practices.

Protected characteristics

To comply with legal obligations (and best practice), we need to assess the impact on individuals with protected characteristics. These include:

Age

Where this is referred to, it refers to a person belonging to a particular age (e.g. 32 year olds) or a range of ages (e.g. 18 - 30 year olds).

Disability

A person has a disability (by law) if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.

Gender reassignment

The process whereby a person's physical sexual characteristics are changed by means of medical procedures. A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process).

Gender Identity

Describes the gender that a person sees themselves as. It is not outlined explicitly as one of the protected characteristics in the Equality Act. However, should also be considered to ensure people are not disadvantaged by their gender identity, which could include (but is not limited to), gender-queer, non-binary, or agender.

Marriage and civil partnership

The relationship between two people who are husband and wife, or a similar relationship between people of the same sex (as newly defined by Marriage (Same Sex Couples) Act 2013). Civil partners must be treated the same as married couples on a wide range of legal matters.

Pregnancy and maternity (adoption is covered within this)

Pregnancy - being pregnant or expecting a baby. Maternity and adoption - the period after the birth or adoption and is linked to maternity and adoption leave in the employment context.

Race

It refers to a group of people defined by their race, colour and nationality (including citizenship) ethnic or national origins.

Religion and belief

Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.

Sex

This is defined as a person's legal sex – i.e. man or a woman.

Sexual orientation

Refers to a persons' orientation or attraction towards; the same sex, opposite sex or to both sexes.

'The social model of disability says that disability is caused by the way society is organised, rather than by a person's impairment or difference. It looks at ways of removing barriers that restrict life choices for disabled people.'

When do I need to complete an Equality Analysis?

CCGs are required to embed equality and diversity so that it becomes an integral part of our culture and planning processes. EA should be considered early alongside risk, budget, and health and safety management.

An EA should be started when you are first looking at:

- creating new methods of service delivery
- creating new policies or practices
- developing business plans, strategies and projects
- reviewing or amending existing policies, practices or methods of service delivery
- considering a change management process or organisational review, particularly those that could involve relocating staff or rationalisation of posts
- any major communications or Information and Communication Technology (ICT) project
- introducing online services
- reviewing or introducing forms, leaflets, guidance, codes of practice or websites.

To gain maximum benefit an EA should be begun at the very earliest stages of developing policies, practices and services.

EAs should be an integral part of policy development and review, not a one-off or separate exercise.

The test for relevance would be if you can say whether there will be an effect on people with one of the protected characteristics or not (positive or negative).

It may be decided quite early on that an EA is not relevant. In this case the conclusion still needs to be documented using the Equalities and Inequalities Screening Toolkit to outline why.

The proposal could have a positive impact, negative impact, or no impact.

Try to involve relevant stakeholders in the EA process, if possible, to gauge their views from the beginning and get a wide range of perspectives.

NHS Organisations have a duty to involve patients, carers, communities and staff covered by the protected characteristics, in any decision-making where relevant.

It is quite possible that some policies, practices or services will be more relevant to one protected characteristic than another

Completing an Equality Analysis

Identifying what is to be assessed

It is important to identify who owns the policy or function which means the person who has the authority or responsibility for updating, agreement and the timescale. Consider who else needs to be involved, this can include internal and external stakeholders but it is important to involve those most likely to be affected if possible. Identify who is going to carry out the assessment, this will need to be someone who knows the issues well, it does not always have to be the owner of the policy.

Collecting existing sources of information or identifying gaps in information

Start the process by gathering information.

Information can be sought from internal and external sources and this stage should assist you in reaching a judgement on the impact that a change may have on different groups of people, for example:

- workforce/population profiles
- statistics
- staff/patient, service user and carer surveys
- focus groups
- complaints analysis
- feedback

If there are gaps in information that makes it difficult to form an opinion or information does not exist, you can identify what additional information needs to be collected or other areas that could be explored.

How to analyse and act on your findings

Completing an EA is about making comparisons between groups of employees and service users. You will need to analyse the information you have gathered and assess the likely impacts of your proposals (both positive and negative). You will also need to consider whether your proposals promote equality of opportunity or whether more work could be done to promote this.

Differential impact

It is usual to discover differences. Instead, look for bias – that is, significant or disproportionate differences between groups of people in the way a policy practice or service has impacted on them. Consider each protected characteristic for relevance and both positive and negative impact.

Ask the question ‘why?’ and investigate further

Questions to consider in identifying any possible adverse impacts include:

- Is there a lower participation rate for some groups rather than others?
- Do eligibility criteria appear to disadvantage certain groups?
- Is access to services and benefits reduced or denied in comparison with other groups?
- Does a group face increased difficulty as a result of a policy, practice or change to a service?

Where a differential adverse impact is identified you will need to consider whether we are acting within the law, appropriate steps must be taken and outlined, this might involve additional consultation.

Mitigating adverse impact

If you have found a significant difference in how you're treating people or negative impact, or you have missed an opportunity to promote equality of opportunity, you need to provide further details of the actions that can be taken to remedy this. You can:

Decide to **stop** the policy or practice at some point because the data shows bias towards one or more groups.

Change or **mitigate** the policy or practice in a way which you think will eliminate the bias.

Justify it – for example if the data shows the policy operates against a particular group, but you cannot see an alternative. You've looked at the policy or practice from every angle, considered all options carefully and there still seems to be no other proportionate way to achieve the aim of the policy or practice. Then you are going to continue with this policy or practice in the knowledge it will favour some people less than others.

Action

In most cases where disproportionate disadvantage is found by carrying out an EA, policies and practices are changed or adapted. This is a positive feature, demonstrating fairness by removing barriers to both staff and service users.

Making objective justifications

An EA asks you to carefully consider whether the impacts identified in the initial assessment can be justified and, if not, to think about ways of

delivering the same outcomes by making adjustments to the proposals. You should ask yourself:

- Why do we want to do this?
- Can we set out the reason clearly on paper?
- Do we have evidence to support this reason?
- Are we certain that this is real hard evidence and not just based on assumptions?
- Is there an alternative less or non-discriminatory way of achieving the same result?

Question

Have you sought a second opinion from other key managers and recorded how the decision was made in case it is reviewed in the future?

Further involvement and consultation

When major impacts or missed opportunities to promote equality of opportunity have been identified, you will often need to seek advice or views from relevant stakeholders on what to do next. Further consultation may therefore be necessary at this stage. You will need to decide what the most relevant and proportionate means of consultation will be. Informal dialogue with interested parties may be more appropriate than formal, written, public consultation.

Equality Analysis must be objective and must use evidence in deciding impact. Value judgements will not do!

Involvement and consultation

A lack of evidence should not prevent an EA from being undertaken. In cases where something is being introduced for the first time there may be little experience to draw on or other material evidence. In such cases you should make a judgment that is as reliable as possible.

Consultation is one way of strengthening judgments by building a consensus view that can avoid obvious prejudices or assumptions – this can be supported by involving a diverse range of people.

Consultation is very important but it also needs to be proportionate and relevant so that a small policy is not over-consulted on and a more important policy inadequately consulted on.

It is imperative to hear the views of a cross section of those who may be affected by the change. It is important to consult especially with any groups for whom you have identified a potential negative impact.

Different methods of consulting with people are more effective for some groups than others and consideration needs to be given as to when and where consultation will take place.

Saving and publishing findings

EAs should be completed using language that we can all understand. The findings should be written in plain English, free from jargon.

An initial screening should be part of our day-to-day decision making processes.

Where adverse impact has been found a more thorough EA may need to be considered to include evidence of additional consultation about the impacts identified and decisions made as a result.

If you need advice and guidance on completing an EA, contact the CCG Equality Lead.

When you have completed your EA and it has been signed off, please save it alongside your proposal or project documentation. Bear in mind that you may be asked how you considered Equality and Diversity when developing your proposal.

The Equality Lead may contact you to ask for a copy of your EA, and it may be published to enable knowledge and good practice to be shared externally and across CWHHE CCGs

Equality Analysis Process Map

