

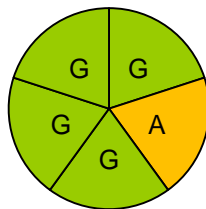
# Internal Audit



## Equality and Diversity

August 2017

### Report Assessment



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## Introduction

All health boards across NHSScotland are required to comply with the Public Sector General Duty, Equality Act 2010 and Specific Duties (Scotland) Regulations 2012. The implementation of these legal duties is monitored by the Equality & Human Rights Commission (EHRC) in Scotland. NHS Lothian is also required to adhere to additional legislation such as the Board Diversity and the Public Sector Equality Duty and the Augmentative and Alternative Communication Act.

The Equality Act 2010 cites 9 'protected characteristics.' These are: age; disability; gender; gender reassignment; pregnancy and maternity; marriage and civil partnership; race and ethnicity; religion and belief, and sexual orientation. To ensure that all public bodies mainstream equality into their day-to-day business, the Equality Act 2010 includes Public Sector Equality Duty, which list three aims proactively advancing equality, encouraging good community relations and addressing discrimination.

The current duty requires equality to be considered in relation to key health board functions including the development of internal and external policies, decision making processes, procurement, workforce support, service delivery and improving outcomes for patients/service users. NHS Lothian is required to follow a number of specific duties in its delivery of the general equality duty, including:

- Report biennially on progress on mainstreaming the public sector equality duty;
- Publish equality outcomes and report progress; and
- Assess and review policies and practices.

In April 2013 NHS Lothian published its Equality and Rights Outcomes report 2013-2017. The document set out how NHS Lothian had worked towards equality, diversity, and Human & Children's Rights from 2013 to 2017. There are 14 equality & rights outcomes under five equity standards. Each outcome corresponds to actions required to demonstrate compliance.

NHS Lothian's Lead on Outcomes and Human Rights brought together an update on behalf of the Board on progress against the outcomes, which was published in May 2017. Executive responsibility for Equalities and Human Rights sits with the Director of Public Health at NHS Lothian.

NHS Lothian is required to assess the likely impact of all its services, policies and strategies on groups who face discrimination. The process used to carry out this assessment is called Integrated Impact Assessment (IIA) and has been developed jointly with local authorities.

## Scope

The audit reviewed NHS Lothian's control framework for equality and diversity. Internal Audit also liaised with the Lead on Outcomes and Human Rights in assessing the work carried out in updating NHS Lothian's Equality and Rights Outcomes.

## Acknowledgements

We would like to thank all staff consulted during this review, for their assistance and cooperation.

## Executive Summary

### Conclusion

Overall there is a reasonable framework of control in place to support staff and direct them in applying the principles of equality and diversity throughout NHS Lothian. Significant work has been carried out in the review and reporting of the Board's progress in mainstreaming equality and diversity, which has identified the need to identify and implement of a new set of equality and diversity outcomes. In the meantime staff are being trained on all aspects of equality and diversity.

### Summary of Findings

The table below summarises our assessment of the adequacy and effectiveness of the controls in place to meet each of the objectives agreed for this audit. Definitions of the ratings applied to each action are set out in Appendix 1.

No.	Control Objective	Control objective assessment	Number of actions by action rating			
			Critical	Significant	Important	Minor
1	NHS Lothian's policies and procedures governing equality and diversity are up-to-date and comply with all relevant legislation.	Green	-	1	-	-
2	Staff receive appropriate training and instruction in ensuring equality and diversity requirements are being adhered to.	Amber	-	1	2	-
3	NHS Lothian has carried out its assessment on progress against its Equality and Rights Outcomes.	Green	-	-	-	1
4	Actions required in ensuring compliance with the Equality and Rights Outcomes are complete and evidenced.	Green	-	-	1	-
5	Reporting on all aspects of equality and diversity is made throughout NHS Lothian, including at Board Committee level.	Green	-	-	-	-

## Control Objective Ratings

Action Ratings	Definition
<b>Red</b>	Fundamental absence or failure of controls requiring immediate attention (60 points and above)
<b>Amber</b>	Control objective not achieved - controls in place are inadequate or ineffective (21 – 59 points)
<b>Green</b>	Control objective achieved – no major weaknesses in controls but may be scope for improvement (20 points or less)

## Main findings

An Equality and Diversity Strategy is in place and sets out NHS Lothian's commitment to promoting health and ensure that the provision of healthcare and employment opportunities are equitable to all. Elsewhere, the Equality, Diversity and Human Rights Policy sets out NHS Lothian's commitment to the principles of equality, diversity and human rights in employment and sets out the approach to be followed in order to ensure that such principles are met.

Staff are able to become familiar with legislation and their rights and responsibilities through the Equality and Diversity LearnPro module, with one-to-one training given to staff without access to eLearning.

Integrated Impact Assessments are in place and used when reviewing the likely impact on equality & diversity as a result of changes to strategies and policies, or following service redesign.

The remit for the Healthcare Governance Committee records that the Head of Equality and Diversity is routinely invited to attend committee meetings for discussion of any particular agenda items. The Committee meets every two months and seeks assurance through any papers presented that equality and diversity has been considered through the completion of impact assessments

We identified two significant and three important issues during this review:

- NHA Lothian's Equality, Diversity & Human Rights Policy, and Equality & Diversity Strategy have passed their review dates.
- The number of Integrated Impact Assessments (IIA) completed has reduced significantly.
- Documentation used for monitoring and recording completion of IIA actions is incomplete.
- Completion of Learnpro modules is below NHS Lothian targets.
- A new strategy for the delivery of Equalities & Rights Outcomes is required.
- Actions to achieve Equalities & Rights Outcomes are not effectively monitored.

Further details of these points and one additional minor point are set out in the Management Action Plan.

## Management Action Plan

<b>Control Objective 1: NHS Lothian's policies and procedures governing equality and diversity are up-to-date and comply with all relevant legislation</b>	
<b>1.1 NHS Lothian's Equality, Diversity &amp; Human Rights Policy, and Equality &amp; Diversity Strategy have passed their review dates</b>	<b>Significant</b>
<p><b>Observation and Risk:</b></p> <p>Employees are able to access through the HR Online intranet site the NHS Lothian Equality, Diversity &amp; Human Rights Policy. This policy forms part of the suite of Employment Policies and Procedures and sets out NHS Lothian's commitment to the principles of equality, diversity and human rights in employment, setting out an approach to be followed in order to ensure that such principles are consistently met.</p> <p>Elsewhere, there are a number of equality and diversity documents available through NHS Lothian's external intranet site, including the Equality and Diversity Strategy. The Strategy has been designed to set out the Board's commitment to promoting health and ensuring the provision of healthcare services that are accessible, user friendly and equitable to all.</p> <p>However, while NHS Lothian continues to comply with the legislative framework, the Equality, Diversity &amp; Human Rights Policy has passed its review date of August 2016 with no review carried out or yet scheduled. Also, the Equality &amp; Diversity Strategy is dated 2007 and makes reference to legislative documentation that is out-of-date or no longer valid. While the Equality, Diversity &amp; Human Rights Policy makes reference to current legislation and national policy, such as the Equality Act 2010 and the Equality Act 2010 (Specific Duties (Scotland) Regulations 2012), there is no mention of this legislation in the Equality and Diversity Strategy.</p> <p>Also, there is no formal control framework in place to monitor new or amended legislation and review NHS Lothian's policies and guidance against this, making updates where necessary.</p> <p>Without an up-to-date policy, there is a risk that staff may be unclear of their rights and responsibilities around equality and diversity. Also, as it is now some years out-of-date, the Strategy does not reflect the Board's current and future approach to equality and diversity, including the actions required to achieve specific strategic objectives.</p>	
<p><b>Recommendation:</b></p> <p>Management should review and update where necessary the Board's Equality, Diversity &amp; Human Rights Policy and Equality &amp; Diversity Strategy. Once done a process for the biennial review of these documents should be established, including comparison against current practice. Reviews should also be carried out following the release of new or updated legislation.</p> <p>Also, management should report their review and reissue of these documents within such publications as the Team Brief. Links to strategic and policy documents within the LearnPro equality and diversity eLearning module should also direct staff to the up-to-date</p>	



documentation.

**Management Response:**

Management have accepted this recommendation.

**Management Action:**

Management will review and update where necessary the Board's Equality, Diversity & Human Rights Policy and Equality & Diversity Strategy to ensure that they comply with current legislation and the Board's strategic direction. This exercise will involve relevant Board Committees, with progress also reported to them. A formal review process, with timescales, will be agreed and will follow the monitoring and review arrangements recorded in both the Policy and Strategy.

**Responsibility:** Lead on Equality & Human Rights

**Target date:** 31 October 2017

**Control Objective 2: Staff receive appropriate training and instruction in ensuring equality and diversity requirements are being adhered to**

**2.1 The number of Integrated Impact Assessments completed has reduced significantly**

**Significant**

**Observation and Risk:**

Integrated Impact Assessments (IIAs) are carried out to enable NHS Lothian to meet its legal duties when considering equality and human rights in planning decisions. IIA is a mechanism which enables NHS Lothian to consider the needs of different groups when developing strategies, policies and procedures, making financial decisions, or when carrying out service redesign.

The number of impact assessments being done in NHS Lothian has dropped significantly in the last few years. In 2013 there were 75 impact assessments submitted, in 2014 this number was 47 and in 2015 and 2016 it had dropped further to 18 and 12 respectively. It is the responsibility of leads developing new plans, policies or strategies to carry out IIAs.

In June 2015, Directors were asked to identify appropriate individuals who could lead IIAs. Although about 20 individuals were identified, directorates varied in the number of facilitators. Towards the end of 2015, the IIA steering group completed a training needs assessment among people identified as facilitators and then developed training for them, which was delivered in June 2016. The training evaluated very positively and the group has plans to repeat the training at intervals depending on demand.

NHS Lothian has a legislative requirement to ensure it offers equality of opportunity and avoids discrimination against people with protected characteristics. This is a particular risk at a time when difficult decisions may have to be made to improve efficiency and productivity of NHS Lothian services. It is important that these decisions do not inadvertently disadvantage people who have protected characteristics and/or are otherwise vulnerable. If IIAs are not carried out routinely, there is a risk of adverse outcomes for patients and staff, and potential legal challenge.

**Recommendation:**

It is recommended that Management continue to support the use of Integrated Impact Assessment for new policies, plans, strategies and service redesign. They should also identify ways to improve the number of NHS Lothian plans, policies and strategies that are subjected to impact assessment.

**Management Response:**

Management have accepted this recommendation.

**Management Action:**

A plan to improve the quality and number of IIAs being carried out is under development, with parts, including the training of 30 new facilitators, already completed.

<p><b>Responsibility:</b> Consultant in Public Health, and Lead on Equality &amp; Human Rights</p>	<p><b>Target date:</b> 30 September 2017  (Anticipate year on year improvements in numbers of IIAs thereafter)</p>
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<b>2.2 Documentation used for monitoring and recording completion of IIA actions is incomplete</b>	<b>Important</b>
<p><b>Observation and Risk:</b></p> <p>A spreadsheet is used by staff within Public Health to record all IIAs carried out and the corrective actions required from each assessment, along with a follow-up review date, lead names and the status of improvement actions (outstanding or complete).</p> <p>However it was noted from review of the spreadsheet that some sections are out of date and in some cases, actions have remained outstanding sometime after the completion of the impact assessment. For example, of the eight actions required from the impact assessment of the Provision of Adult Eye Services from the Princess Alexandra Eye Pavilion (dated 25/02/2016) all are outstanding according to the spreadsheet, despite there being contact with the lead individual in October 2016.</p> <p>Unless the spreadsheet is regularly reviewed and updated, there is a risk that actions required to meet legislative requirements are not being carried out within a reasonable timeframe.</p>	
<p><b>Recommendation:</b></p> <p>Staff within Public Health should regularly review the spreadsheet, updating where necessary actions that have been completed and evidence provided. Where actions have been outstanding for a considerable length of time, this should be escalated to senior management and reported to the Healthcare Governance Committee.</p>	
<p><b>Management Response:</b></p> <p>Management have accepted this recommendation.</p> <p><b>Management Action:</b></p> <p>A procedure for the monthly review of the spreadsheet, including update and escalation of outstanding actions will be put in place.</p>	
<p><b>Responsibility:</b> Consultant in Public Health, and/or Lead on Equality &amp; Human Rights</p>	<p><b>Target date:</b> 31 August 2017</p>

2.3 Completion of Learnpro modules is below NHS Lothian targets	Important
<p><b>Observation and Risk:</b></p> <p>The Equality, Diversity &amp; Human Rights Policy states that it is the responsibility of NHS Lothian to ensure that it delivers the appropriate training for all staff in equality, diversity and human rights, both during induction and thereafter during the course of their employment, and also that this should be regularly monitored. To achieve this, equality and diversity features within staff induction and is a core mandatory training module within LearnPro, with staff required to complete the module every three years.</p> <p>Overall, 86.3% of NHS Lothian staff are up-to-date with their equality and diversity training. This figure includes the completion of LearnPro modules and any face-to-face training events, such as toolbox talks. This figure is above the 80% Board target for mandatory training.</p> <p>However there are some areas within NHS Lothian where this has fallen below 80%, including:</p> <ul style="list-style-type: none"> <li>• Facilities and Consort – Facilities Management (59%)</li> <li>• Edinburgh Partnership, General Medical Services (59%)</li> <li>• Research &amp; Development Trials – R&amp;D Surgery (67%)</li> <li>• West Lothian Health and Social Care Partnership. General Medical Services (6%) - Although it is recognised that NHS Lothian has no mandate with General Medical Services and therefore can only advise on the completion of training.</li> </ul> <p>Without being adequately trained, staff may not be completely aware of their roles and responsibilities around equality and diversity and how to ensure that the rights of those individuals with protected characteristics are being considered.</p>	
<p><b>Recommendation:</b></p> <p>A review and monitoring process should be introduced to ensure that all staff have completed equality and diversity training. Frequency of refresher training should be agreed with management and included in the monitoring process.</p>	
<p><b>Management Response:</b></p> <p>Management accept the recommendation and notes that some of the completion rates are below Board requirements.</p> <p><b>Management Action:</b></p> <p>The content of the LearnPro module is under active review, with a new version ready for testing. Meanwhile a process for the monitoring of LearnPro training will be agreed and implemented. Where completion rates are identified as being below Board targets the relevant areas will be contacted and reminded of the requirement to undertake refresher</p>	

training.

**Responsibility:** Lead on Equalities & Human Rights

**Target date:** 31 October 2017

<b>Control Objective 3: NHS Lothian has carried out its assessment on progress against its Equality and Rights Outcomes</b>	
<b>3.1 A new strategy for the delivery of Equalities &amp; Rights Outcomes is required</b>	<b>Minor</b>
<p><b>Observation and Risk:</b></p> <p>During April 2017, the NHS Lothian Lead on Equalities and Human Rights carried out an exercise to assess the work carried out to date by NHS Lothian in progressing the five International Standards for Equity of Healthcare. Fourteen Equality and Rights Outcomes were identified by NHS Lothian in 2013 to support the Standards, and enquiries were made specifically around how the outcomes are being applied in practice. The outcomes include:</p> <ul style="list-style-type: none"> <li>• All healthcare developments, policies and plans take account of the diversity of needs and characteristics of patients and the community;</li> <li>• Access to health services is more equitable for people with protected characteristics; and</li> <li>• Staff are better equipped to deliver health care that takes into account patients' protected characteristics, health literacy needs and dignity.</li> </ul> <p>In carrying out the assessment, a number of departments and clinical areas were contacted and three questions asked:</p> <ul style="list-style-type: none"> <li>• Where were we in 2013?</li> <li>• What good work have we done and where has it got us to now?</li> <li>• What have we learned?</li> </ul> <p>Responses have been received from several sources, including Estates, Community Health, Human Resources, the Additional Needs &amp; Diversity Information Task Force and other specific clinical areas (including cancer, diabetes and midwifery).</p> <p>While it is noted from the exercise that NHS Lothian continues to comply with the fundamentals of the 2013 outcomes, and that they remain relevant for 2017/18, it has been identified from this exercise that the environment that NHS Lothian is working in has changed significantly since 2013. The previous approach to rights and equalities had a strong reliance on specific 'lead' staff members, and performance-based compliance approaches to meeting the statutory requirements. It is recognised now that neither of these methods has proved sustainable or particularly effective.</p> <p>While there is a risk that the Scottish Human Rights Commission and/or the Equalities Human Rights Commission will challenge NHS Lothian for not meeting its statutory requirement to progress all of the outcomes identified in 2013, the likelihood of this happening is low. However, it is clear that a more effective approach is required to identify new Equalities and Rights Outcomes that align with a revised strategy in taking equality and diversity forward throughout NHS Lothian.</p>	

<p><b>Recommendation:</b></p> <p>Management should review the current set of Equalities and Rights Outcomes when developing a new strategy which supports their implementation and compliance. Any new Outcomes should adhere to the Board's statutory requirements around equality and diversity in addition to identifying priority areas within NHS Lothian for specific action.</p>	
<p><b>Management Response:</b></p> <p>Management agree with this recommendation. The existing Outcomes remain largely relevant and certainly appropriate for 2017/18. NHS Lothian has agreed to use the next 12 months to engage local communities and staff in devising a new strategy and approach. It makes sense that any new outcomes will be developed in tandem with that work.</p> <p><b>Management Action:</b></p> <p>See above.</p>	
<p><b>Responsibility:</b> Lead for Equalities &amp; Human Rights</p>	<p><b>Target dates:</b></p> <p>28 February 2018 (engagement of staff and committees)</p> <p>31 May 2018 (new outcomes agreed)</p>



**Control Objective 4: Actions required to ensure compliance with the Equalities and Rights Outcomes are complete and evidenced**

**4.1 Actions required to achieve Equalities & Rights Outcomes are not effectively monitored**

**Important**

**Observation and Risk:**

An Equalities & Rights Action Plan has been created to record the actions needed for NHS Lothian to demonstrate compliance with its Equalities & Rights Outcomes.

The Action Plan is based on the International Standards for Equity of Healthcare and records the five Equity Standards and 14 Equalities & Rights Outcomes. Alongside each outcome a number of actions had been identified, along with the evidence/output, delivery date(s), leads and updates.

However, the action plan has not been fully updated to confirm that all actions had been completed by their due dates, which vary between March 2014 and March 2017. Also, a number of the actions recorded had been assigned to “Equality Leads”, a role which has over time become less relevant, with staff assumed to have this role difficult to identify.

Without a clear action plan, effectively supporting the Outcomes with actions, measurable output, realistic timescales and appropriate leads, there is a risk that the actions required to mainstream the Equalities & Rights Outcomes will not be achieved, along with the Board’s legislative requirements.

**Recommendation:**

Once a new set of Equality & Rights Outcomes have been identified and agreed, a revised action plan should be produced to record the outcomes and the actions necessary in achieving them. Clear and measurable output for each action should be agreed, along with appropriate lead officers and completion dates. Once done, the action plan should be regularly reviewed, updated and progress reported to the Healthcare Governance Committee.

**Management Response:**

While our report of April 2017 indicates that we will pause in our pursuit of the Equalities & Rights Outcomes and seek to embed a new approach, an Improvement Plan has been prepared setting out immediate actions required to address issues arising from the report, and to cover the period of development of the new strategic approach.

The Implementation Plan does not seek to represent or list all of the current work relevant to the Outcomes, but does nominate five key areas we propose to work on over the coming year.

**Management Action:**

Until such time that a revised strategy and new set of Equalities & Rights Outcomes has been established, with a supporting action plan, management will continue to monitor the

actions identified in the Improvement Plan.

Once a revised strategy and new set of Equalities & Rights Outcomes have been agreed, a revised equality outcomes action plan will be produced to ensure that gaps in services, information and evidence are addressed. A process for the regular review of the action plan will also be set up.

**Responsibility:** Lead for Equalities & Human Rights

**Target date:** 31 August 2018

**Control Objective 5: Reporting on all aspects of equality and diversity is made throughout NHS Lothian, including at Board Committee level**

We identified no significant weaknesses in relation to this control objective.

At its meeting on 17 January 2017 the Healthcare Governance Committee agreed its remit, which includes providing assurance to the Board that it is meeting its relevant statutory equality duties.

The remit also states that the Healthcare Governance Committee shall seek assurance from the Staff Governance Committee on any staff governance issues that are pertinent to the discharge of the remit of the Healthcare Governance Committee. The minutes of Staff Governance Committee meeting confirm that NHS Lothian's Lead on Equalities and Human Rights attends Staff Governance Committee meetings and provides updates on the progress in implementing the Equality & Rights Outcomes, in addition to any other equality and diversity issues.

NHS Lothian's Head of Equality & Diversity is routinely invited to attend the Healthcare Governance Committee meetings for discussion of any particular agenda items.

All reports presented to the Healthcare Governance Committee follow an established structure, which includes the reporting on any impact on health inequalities, identified through the completion of Integrated Impact Assessments.

At its meeting of 9 May 2017, the Healthcare Governance Committee was presented with the Equalities and Rights Outcomes Mainstreaming Report, which it was recommended to approve and endorse the actions identified in establishing a revised strategy and new equality outcomes.

## Appendix 1 - Definition of Ratings

### Management Action Ratings

Action Ratings	Definition
<b>Critical</b>	The issue has a material effect upon the wider organisation – 60 points
<b>Significant</b>	The issue is material for the subject under review – 20 points
<b>Important</b>	The issue is relevant for the subject under review – 10 points
<b>Minor</b>	This issue is a housekeeping point for the subject under review – 5 points

### Control Objective Ratings

Action Ratings	Definition
<b>Red</b>	Fundamental absence or failure of controls requiring immediate attention (60 points and above)
<b>Amber</b>	Control objective not achieved - controls in place are inadequate or ineffective (21 – 59 points)
<b>Green</b>	Control objective achieved – no major weaknesses in controls but may be scope for improvement (20 points or less)