

**Care Quality Commission: Equality and human rights duties impact analysis
(decision making and policies)**

Equality Act 2010
Human Rights Act 1998

For advice on completion from the Involvement and EDHR team, please use the Ask regulatory development mailbox: askregulatorydevelopment@ccq.org.uk

1.

Identifying Name (name of project, policy, work, or decision)	CQC Investigation of Deaths Review
Intended outcomes (include outline of objectives or aims)	<ul style="list-style-type: none"> • To understand what the current practice is in NHS acute, community and mental health trusts in relation to identifying, reporting and investigating deaths. The review will look at all deaths but will shine a particular spotlight on deaths of people with a mental health condition or learning disability. • In doing this, we aim to respond to the Secretary of State's question of whether Southern Health NHS Foundation Trust is in fact an outlier or whether similar deficiencies exist in other trusts nationwide in relation to the findings from the review commissioned by NHS England¹. • To identify and highlight good practice in relation to identifying, reporting and investigating deaths that offer learning opportunities to inform improvement. • To make recommendations which will assist system partners in improving practice in this area. • To enable CQC to strengthen its own approach to assessing trust processes to reporting and investigating deaths as well as the processes for learning following investigations.
Who will be affected? (People who use services, CQC staff, the wider community)	People who use services, health and social care professionals, CQC staff and families, friends and carers of those who use services.

2.

For the record	
Who carried out the analysis	Natalie Bostock
Current Version number	1.0
Date analysis completed:	18/07/2016
Name of responsible	Victoria Bleazard

¹ Mazars (2015); Independent review of deaths of people with a Learning Disability or Mental Health problem in contact with Southern Health NHS Foundation Trust. <https://www.england.nhs.uk/south/wp-content/uploads/sites/6/2015/12/mazars-rep.pdf>

Director/Head	
Date analysis was signed off by Director/Head:	19/12/2016
Involvement & EDHR sign-off name	Lucy Wilkinson
Date of EDHR sign-off	13/12/2016

3.

<ul style="list-style-type: none"> Does the work affect people who use services, employees or the wider community? (This is not only refers to the number of those affected but also by the significance of the impact on them) 	Yes
<ul style="list-style-type: none"> Is it a major piece of work, significantly affecting how functions are delivered? 	Yes
<ul style="list-style-type: none"> Will it have a significant effect on how other organisations deliver their functions in terms of equality or human rights? 	Yes
<ul style="list-style-type: none"> Does it relate to functions that previous engagement has identified as being important to particular protected groups or human rights? 	Yes
<ul style="list-style-type: none"> Does or could it affect different protected groups differently? 	Yes
<ul style="list-style-type: none"> Does it relate to an area with known inequalities or breaches of human rights? 	Yes
<ul style="list-style-type: none"> Does it relate to an area where equality objectives have been set by CQC? 	Yes
<ul style="list-style-type: none"> Does or could it impact upon personal privacy? For example by: <ul style="list-style-type: none"> Using personal data (information about identifiable individuals) in new or significantly changed ways, or for new purposes. Collecting new identifiers (i.e. information which identifies people, such as name, D.O.B., NHS number, postcode etc). Combining anonymised data sources in such a way as to risk identifying individuals? Disclosure or publication of personal data or identifiers. New or additional information technologies with substantial potential for privacy intrusion (e.g. surveillance, image or video recording of individuals, tracking or monitoring of individual). Observing or monitoring with potential for privacy intrusion (e.g. observing intimate personal care). 	No. However, recommendations may have impacts on privacy in relation to information sharing and publication. If so, a privacy impact analysis will be carried out

If the work does or could impact upon personal privacy, explain how (for example: what additional information is being collected, used or shared?)
If there is no anticipated impact upon personal privacy, skip this box and continue below.

N/A

4.

Do the answers above indicate that this work is relevant to equality or human rights?
 If yes skip this box and continue below.
 If no, document the reasons below and forward this EHRDIA to Involvement & EDHR team for sign-off

(Include details of evidence analysed to support this decision)

5.

Engagement and involvement

- Have you involved people who use services, staff and other stakeholders?
 - What are the key findings of your engagement relating to equality and human rights?
- Include known representation across the characteristics protected in the Equality Act: age, disability, gender, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion and belief, and sexual orientation.

Target Group	Summary of Involvement
People who use services	<p>Throughout the project we are striving to be as open and transparent as possible. This includes engagement with families and carers of those who use services. We are holding two separate events for families and carers – participants have been invited to attend based on selection criteria to ensure that we hear from those with a cross range of experiences – including those whose relatives have a mental health condition and / or a learning disability.</p> <p>One of the intended outcomes of the review is to evidence whether or not people with a mental health condition and / or learning disability are less likely to have their death investigated by NHS hospital trusts, as was found at Southern Health NHS Foundation Trust in the review commissioned by NHS England. Without investigations taking place, it is less likely that learning will take place following these deaths, therefore families and carers are less likely to get answers about the circumstances of their loved one’s death.</p> <p>In addition to the two face-to-face events we have also provided a specific share your experience webform to enable families and carers can get in touch online to tell us about their experiences of the investigation process. This survey was promoted both via traditional CQC channels as well as specialist organisations and campaigners who have experience of working with people with mental health conditions and / or learning disabilities. We also held telephone interviews with bereaved relatives to gather their experiences, and gathered feedback via Twitter.</p>
Staff	We have engaged with all NHS trust providers via the specially designed provider survey which was sent out to all acute, mental health and community NHS trusts.

	<p>Through our fieldwork we will engage with NHS hospital staff working at different levels of each trust we visit – we aim to speak with approximately 150 members of staff through our visits to NHS trusts.</p> <p>We have also engaged with health professionals by via our online communities and holding a twitter chat with mental health and learning disability nurses through the ‘WeCommunity’ platform.</p>
Other stakeholders	<p>We are actively engaging with relevant Arms Length Bodies and partner organisations to gauge what work they are doing in this area and to hear about their experiences of working with service users, families and carers who may be affected by the issues raised in the review. By engaging early with these bodies we are aiming to ensure that the review has buy-in from external partners in ensure recommendations will be acted upon. These organisations include specialist charities that work with people with mental health problems and / or learning disabilities, and their families.</p> <p>We are also holding regular Expert Advisory Group meetings to bring together experts from across different sectors to test our methodology for the review and to test early findings and recommendations from the review. The Equality and Human Rights Commission sit on the advisory group, as well as organisations with specific interests in equality – for example those interested in deaths of black and minority ethnic people in custody, including those detained under the Mental Health Act.</p>

6.

<p>Evidence List the main sources of data, research and other sources of evidence reviewed to determine impact on each protected characteristic, human rights or privacy. If there are gaps in evidence, state what you will do to close them in the Log of Equality & Human Rights Actions</p>	
<p>Age: (include younger as well as older people, safeguarding, consent and child welfare)</p>	<p>The NHS England commissioned report showed that patients over 65 using mental health services are less likely to have their death investigated – the report identified that only 30% of deaths were investigated for older people versus 94% of adult deaths under 65.</p>
<p>Carers: (impact of part-time working, shift-patterns, general caring responsibilities)</p>	<p>We are engaging with families and carers of people who have died within NHS settings and will be using our engagement with this group as part of the evidence for the review.</p>
<p>Disability: (include attitudinal, physical and social barriers)</p>	<p>The Mazars report presented clear evidence that patients of Southern Health NHS Foundation trust with a learning disability and / or mental health condition were less likely to have their death investigated by the NHS during the review period. This finding is the basis for placing emphasis on patients with a learning disability.</p> <p>We have an Expert Advisory Group for the review which includes organisations that represent the interests of people with a disability. These include:</p> <ul style="list-style-type: none"> • Challenging Behaviour Foundation • Council for Disabled Children • Disability Rights UK • Foundation of people with learning disabilities • Generate (Opportunities Ltd) • Mental Health Foundation • Mental Health Network • Rethink Mental Illness • Scope
<p>Gender: (men and women)</p>	<p>This information is not being captured in this review</p>
<p>Gender Reassignment: (transgender and transsexual people, issues such as privacy of data and harassment):</p>	<p>Gender reassignment data is not routinely being collected by trusts in relation to deaths</p>
<p>Pregnancy and maternity: (impact of working arrangements, part-time working, infant caring responsibilities and breastfeeding)</p>	<p>This information is not being captured in this review.</p>
<p>Race: (include differences between ethnic groups, nationalities, gypsies and travellers,</p>	<p>There has been concern from some organisations, such as INQUEST about the disproportionate number of Black and minority ethnic people who die in custody, including psychiatric detention. INQUEST has found this through their casework.</p>

language barriers)	<p>However, ethnicity data is not routinely being collected by trusts in relation to deaths. This is in contrast to other forms of detention such as prisons and police custody where ethnicity data is collected.</p> <p>INQUEST is concerned that institutional racism is a contributory factor in the high number of BME people who die in custody.</p>
Religion or belief: (include different religions, beliefs and no belief)	Religion data is not routinely being collected by trusts in relation to deaths
Sexual Orientation: (include impact on heterosexual people as well as lesbian, gay and bisexual people)	Sexual orientation data is not routinely being collected by trusts in relation to deaths
Human Rights (refer to Guidance for examples, includes privacy)	The review will highlight the current level of reporting and investigating of deaths in relation to people with a mental health condition or a learning disability.

7.

<p>Analysis Considering the evidence and engagement activity, set out below the actual or likely effect of the policy, project or work under each of the general duties of the Equality Act. CQC must have due regard to the general duties in the exercise of all of its functions</p>	
<p>Effect on eliminating discrimination, harassment and victimisation (includes unlawful discrimination because of marriage or civil partnership status, as well as other protected characteristics)</p>	<p>The review will make the case for parity of esteem for people with mental health issues or people with a learning disability in terms of how their deaths are investigated, and how Boards and national bodies assess this and act upon it.</p>
<p>Effect on advancing equality of opportunity (includes removing or minimising disadvantages, taking steps to meet the needs, and encouraging participation in public life of people from protected groups)</p>	<p>Not known</p>
<p>Effect on promoting good relations between protected groups</p>	<p>We have chosen to focus specifically on people with mental health conditions or a learning disability as opposed to the other protected characteristics as these were the areas of focus in the NHS England commissioned report, and areas of significant concern re: premature mortality rates.</p> <p>However, the review has also been careful to collect evidence from other groups with protected characteristics – for example we have ensured that we have BME representation on the External Advisory Group.</p>
<p>Effect on compliance with Human Rights Act 1998</p>	<p>The review will make the case for parity of esteem for people with mental health issues or people with a learning disability in terms of how their deaths are investigated. It will thus assist Trusts to respect, protect and fulfil people’s human rights in relation to both Article 2 of the ECHR (Right to life) and Article 14 (right to non-discrimination)</p>
<p>Privacy impact (Includes assessment of risks to personal privacy. Privacy issues will be reviewed by the Information Governance Group who may require further privacy impact assessment work)</p>	<p>Not known</p>

8. Log of Equality and Human Rights actions

Give an outline of the key actions based on any information gaps, risks, challenges and opportunities identified during engagement and evidence analysis. Include any action required to address specific equality, human rights or privacy issues where the work may need adjusting to remove barriers or better advance equality as well as actions to mitigate any potential negative effects of the policy on particular groups. Include how the actual impact on equality and human rights will be reviewed after implementation of the policy or project. Add more rows if required. Refer to Guidance for more information

Action (If using a project plan this should be a new deliverable or new task within an existing deliverable)	Start date	End date	Action Owner	Outcome (relate back to analysis section – which equality or human rights issues will be addressed through this action)	Success measure	Actual Completion Date
To recommend improved data gathering on deaths whilst in receipt of NHS services; including identification of mental health and learning disability if appropriate (as well as other actions which will not impact on equality and human rights)	April 2016	Dec 2016	ET	Report to be delivered to secretary of state	1) Department of Health accepts recommendation 2) Implementation	
Monitoring equality and human rights in operation:	April 2017	tbc	MH Policy	Implementation progress check	Milestones met	
Reviewing equality and human rights in operation:	tbc	tbc	MH Policy	Subsequent review likely to be required to check progress against later milestones	Milestones all met/ new processes embedded	

Guidance:

How to complete Equality and human rights duties impact analysis (decision making and policies) - EHRDIA

The purpose of an EHRDIA is to ensure that the Care Quality Commission integrates consideration of equality and human rights into its day to day business. The Equality Act 2010 requires organisations to consider how they could positively contribute to the advancement of equality and good relations in everything they do. The Human Rights Act 1998 also requires us to be compliant with the Act in the way we carry out our work.

EHRDIAs are not just about identifying discrimination but also about identifying opportunities for promoting equality, and promoting good relations for people with protected characteristics. Details of positive impacts help to demonstrate how the piece of work contributes to equality and inclusion, especially for groups protected by equality legislation.

It is not sufficient to say that the policy is intended to benefit everyone and will advance equality across all the groups. An effective equality analysis will help ensure that particular needs are taken into account, whether there are varying degrees of benefit, and any wider effects of the policy.

This is not a tick-box exercise. This EHRDIA should be used to document how equality, diversity and human rights have been considered in every part of the process. Even the decision as to whether an EHRDIA is required, requires the exercise of judgement. This in turn highlights the necessity for involvement and engagement of those people who will or may be affected.

Engagement and involvement

CQC is committed to involving people who use services in our work. We are also required by legislation to engage with people who have an interest in our equality performance. Involvement should start from the very beginning and before important decisions have been made.

Evidence

The Equality Act 2010 requires CQC to consider not only information it already holds, both qualitative and quantitative, but also to identify any information gaps, and take steps to fill those gaps. Local, regional and national research can be used. Evidence includes information learnt during engagement and involvement.

Case law has established that CQC should keep an accurate, dated, written record of the steps taken to analyse the impact on equality.

Human Rights

Most human rights can be captured under the headings of FREDa: fairness, respect, equality, dignity and autonomy, except for Article 2: the right to life. However the equality element of human rights is best analysed separately, looking at the impact on each protected characteristic under the Equality Act.

The Human Rights Act includes the right to privacy. CQC must only interfere with this right where it is proportionate and in the public interest to do so for the purpose of protecting health or public safety, or for the prevention of crime, or for the protection of the rights and freedoms of others. It is therefore necessary to assess the potential impact of any proposed change upon the privacy of individuals.

Log of Equality and Human Rights Actions

In addition to any other items that might be appropriate, the log should be used to record and monitor:

- any steps needed to reduce information gaps
- any changes to the policy or project required that relate to equality and human rights as a result of engagement and involvement, or analysis of evidence. This includes changes to :
 - remove barriers to equality
 - advance equality or human rights
 - mitigate any potential negative effects on a particular group.
 - It is lawful under the Equality Act to treat people differently in some circumstances, for example taking positive action or putting in place single-sex provision where there is a need for it.
 - It is both lawful and a requirement of the general equality duty to consider if there is a need to treat disabled people differently, including more favourable treatment where necessary.
 - The policy must be stopped or removed if the EHRDIA indicates that it will result in unlawful discrimination. Removal should also be considered if it will result in adverse effects on equality that cannot be justified or mitigated.
- How you will review the actual impact of the policy or project on equality and human rights after implementation
- This log should be monitored as part of the overall project plan monitoring.
- Where a formal project plan is being used, it is recommended that actions in the log are added to the deliverables or tasks in the overall project plan – so that they are integrated into the project work

Privacy impact assessments

Privacy impact assessments (PIAs) are recommended best practice for compliance with the Data Protection Act 1998. The Information Commissioner has indicated that he is more likely to take enforcement action in cases of data protection breaches where a PIA has not been completed. Completion of PIAs is also a government requirement for gateway reviews of major projects and programmes, or for accreditation of new information systems. We have incorporated this into our Equality and Human Rights Act Impact assessment. Privacy is a human right and having a combined form will be the most streamlined and effective method for checking that we meet specific privacy requirements without duplicating work for staff completing these assessments

Where a proposal has a potential impact upon personal privacy, the analysis will be reviewed by the CQC Information Rights Manager, and must be signed off by the Senior Information Risk Owner (SIRO).

Where the SIRO consider that the potential privacy impact may not be fully understood, or where privacy risks may be particularly significant, they may require you to undertake a further privacy impact assessment (PIA) in accordance with the Privacy Impact Assessment Process. This will usually be required for very significant change programmes with privacy implications, but may be required for proposals of any type or size.

The process allows for scalability of the PIA, commensurate with the size of the programme or project.

For most proposals, a further PIA will not be required, providing that this issue has been given reasonable consideration as part of the EHRDIA. You should read the [PIA process/guidance](#) before completing relevant sections of the form.

Publication

Each EHRDIA should be published on the internet, intranet and/or together with the main publication document whatever is most appropriate. You may wish to remove your name and contact details prior to publication.

Governance

All EHRDIAs must be authorised by a Director of Business or Head of Function. Each completed EHRDIA must be signed-off by a member of the Involvement and EDHR team prior to publication.

To contact the Involvement and EDHR team, please use the Ask regulatory development mailbox

After implementation

We are required to demonstrate the impact of our policies and methodology on employees, people who use services and others from protected groups. Consider the timescale of the implementation and delivery when deciding on monitoring and review dates. The monitoring activities should form part of the Action Plan and relate to the success measures and outcomes.

Further information about statutory duties

- [Equality and human rights](#) on our intranet
- [Guidance on the public sector equality duty](#) from the Equality and Human rights commission