

Equality Impact Assessment – PSA Rulemaking guidance project

1. Activity

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| Title of activity | Rulemaking guidance project | Date of ELT | 2 September |
| Service area | Standards and Policy | EIA lead officer | Dinah Godfree |
| Approved by | Executive Leadership Team | Date of approval | 2.9.24 |
| Description of activity This is a project to develop principles and guidance for regulators to take a best practice approach to the use of their new rulemaking powers, following the roll out of reformed legislation. | | | |

2. Relevance Test

| Relevance statements | Yes | No |
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| 1. The outcomes of the activity directly and significantly impact on people e.g. staff, board, regulators. | X | |
| 2. The activity could/does affect one or more groups of people who share protected characteristics. | X | |

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| 3. The activity could/does affect groups who share protected characteristics differently. | X | |
| 4. People who share one or multiple protected characteristics could be disadvantaged, adversely affected or are at risk of discrimination as a result of the activity. | | X |
| 5. The activity relates to an area where there are known inequalities. | | X |
| 6. The activity sets out proposals for significant changes to policies. | X | |
| 7. The activity relates to one or more of the three parts of PSA's equality duty. | X | |
| 8. The activity relates to PSA's strategic plan objectives, is a significant activity and/or presents a high risk to PSA's public reputation. | X | |
| 9. The activity relates to the Welsh Language Standard (standards 21 and 42-50) | X | |
| A. An equality impact assessment of this activity is required. | X | |
| B. An equality impact assessment is not required. This activity has no relevance to the Professional Standards Authority's duty to eliminate unlawful discrimination, harassment and victimisation; to advance equality of opportunity; and to foster good relations. • | | |
| Explanation why an equality impact assessment is not needed. | | |

3. Scope of EIA

| Who is impacted? | |
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| Who is/will be impacted by the activity's aims, application and outcomes? | The guidance will impact the professional regulators that we oversee and seeks to positively influence their approach to using their new rulemaking powers following the roll out of the reforms to professional regulation. |

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| Which groups of people with protected characteristics are likely to/will be affected? | <p>The primary impact of the guidance will be on regulators in seeking to influence their approach to rulemaking – this should support them in taking appropriate account of impact on protected groups as part of the rule development process in line with their existing obligations under equalities legislation.</p> <p>The intention is for the guidance to reinforce the need for regulators to carefully consider the impact of their rules and processes on protected groups alongside other considerations and seek to address or mitigate any negative impacts as far as possible.</p> <p>The guidance may therefore indirectly impact on groups of registrants or members of the public who share protected characteristics through influencing the approach regulators take to the rulemaking process (involvement of stakeholders etc) and content of rules which may place particular requirements on registrants, where certain groups may be more or less impacted.</p> <p>We are aware based on available analysis of data by regulators that regulatory processes (including fitness to practise, revalidation and education and training requirements/attainment level) can have a disproportionate impact on groups who share protected characteristics – research to date suggests that impacts are largely on categories of characteristics including race/ethnicity, sex and age.</p> |
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| General Equality Duty | |
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| Which part(s) of the general equality duty are the aims and outcomes of the activity relevant to? | |
| Eliminate discrimination, harassment and victimisation | Yes |
| Advance equality of opportunity | Yes |
| Foster good relations | No |

| Welsh Language Scheme | |
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| How are the Welsh Language Standards relevant? | <p>We ran a full public consultation on our draft rulemaking guidance in both Welsh and English. The consultation document, draft guidance, and online survey were all available in Welsh, and responses in Welsh were welcomed. This provided all individuals in Wales with the opportunity to respond to our proposals in Welsh. This accords with our requirements under The Welsh Language Standards (No. 8) Regulations 2022 and the corresponding Compliance Notice issued to us by the Welsh Language Commissioner under Section 44 of the Welsh Language (Wales) Measure 2011. The relevant Standard engaged in respect of the consultation was Standard 21: <i>'If you produce a document (but not a form) for one or more individuals, you must produce it in Welsh— (a) if the subject matter of the document suggests that it should be produced in Welsh, or (b) if the anticipated audience in Wales, and their expectations, suggests that the document should be produced in Welsh.'</i></p> <p>In addition, in line with the requirements under Standards 42-47 of our compliance notice, we have considered the effects of our guidance on (a) opportunities for persons to use the Welsh language, and (b) treating the Welsh language no less favourably than the English language. This has included considering how the guidance could be formulated to have positive effects on the above and avoid adverse effects. We have not identified any effects, either positive or adverse, of our guidance in terms of the Welsh language and neither have we identified any changes required in order to meet the Standards.</p> <p>The regulators at which this guidance is aimed will need to consider their own requirements under the Welsh Language standards.</p> |

| Human Rights Act | |
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| Which Article(s) of the Human Rights Act are relevant? | Article 14 – protection from discrimination. |

4. Evidence, data, information and consultation

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| <p>What evidence have you used to assess the impact on equality?</p> | <p>Although the primary impact is intended to be on regulators in influencing their approach to rulemaking there may also be an indirect impact on patients and registrants in protected groups depending on the ultimate impact on regulator rules and processes.</p> <p>Although regulators themselves will be required to carry out EIAs for specific changes to rules and processes, we have sought to identify evidence highlighting the potential for disproportionate impacts arising from regulatory processes to underpin the need for robust consideration of equality impacts when developing rules. Evidence includes:</p> <ul style="list-style-type: none">• In terms of registrant groups, evidence shows that certain groups who share protected characteristics are likely to be disproportionately impacted by the regulatory process. This includes GMC research demonstrating disproportionate rates of referral of black and ethnic minority staff into disciplinary processes within the NHS as well into the fitness to practise process - https://www.gmc-uk.org/-/media/documents/fair-to-refer-report_pdf-79011677.pdf• The NMC has also commissioned research demonstrating that as well as disproportionate referral rates and fitness to practise outcomes for certain groups, men, people over 65, black and minority groups, and disabled nurses and midwives may find it more difficult to fulfil the requirements of their revalidation process - https://www.nmc.org.uk/globalassets/sitedocuments/other-publications/bme-nurses--midwives-ftp-research-report.pdf• Analysis by the GPhC which shows overrepresentation of certain groups who share protected characteristics (including ethnicity, age and sex) at different stages of the fitness to practise process including concerns received and investigation stage and within final fitness to practise outcomes - Protected characteristics of pharmacists involved in fitness to practise (pharmacyregulation.org)• General Dental Council data which shows an overrepresentation of certain groups who share protected characteristics amongst fitness to practise concerns raised (covering age, sex and ethnicity) - https://www.gdc-uk.org/docs/default-source/annual-reports/gdc-ftp-statistical-report-22-23-v3_a.pdf |
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| | <ul style="list-style-type: none"> • Analysis of data from Social Work England show an overrepresentation within their fitness to practise referrals and cases referred to a hearing by age (40+), gender identity (male) and ethnicity (Black / African / Caribbean / Black British) - Social Work England's fitness to practise process: an initial analysis of diversity data - Social Work England • GOC data analysis which shows overrepresentation by sex (male) and ethnicity (Asian) within the fitness to practise process - see EDI report, paper C38(23): public-council-meeting-27-september-2023-meeting-papers_redacted.pdf • GOC public perception survey findings indicate that people from an ethnic minority background were less likely to have considered complaining about an experience at an opticians/optometrists practice whereas those with a disability were more likely to say something went wrong and to have complained - see EDI report, paper C38(23): public-council-meeting-27-september-2023-meeting-papers_redacted.pdf • Parliamentary and Health Service Ombudsman, 2015, Breaking down the barriers - Older people and complaints about health care. Available at: https://www.ombudsman.org.uk/sites/default/files/Breaking_down_the_barriers_report.pdf • Perspectives on discriminatory behaviour in health and care - https://www.professionalstandards.org.uk/publications/detail/perspectives-on-discriminatory-behaviours-in-health-and-care |
| What consultation or stakeholder engagement have you carried out to identify the impact on equality? | The draft guidance was subject to a full 12 week public consultation. The consultation sought views on how the guidance might impact on people who share protected characteristics, and how any adverse impacts could be mitigated. |
| What does this evidence tell you about groups of people who share protected characteristics and other disadvantaged groups? | <p>The evidence demonstrated that currently groups of registrants who share protected characteristics are affected in different ways by regulatory processes – this includes disproportionate impact of fitness to practise processes on certain groups and for some regulators greater impact of other regulatory requirements such as revalidation.</p> <p>In terms of patients and service users the evidence is more limited. As we note in <i>Safer care for all</i> demographic data on complainants is limited. We know that regulators are looking to gather more information on who is raising concerns but this is largely unavailable at the moment.</p> |

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| | <p>Existing data from the wider health sector suggest that those from a lower socio-economic background, older people as well as those who share other protected characteristics may be less likely to complain or raise concerns about care.</p> <p>We know from our own concerns work that people who share protected characteristics may find navigating regulator complaints processes and regulatory mechanisms more difficult. There is also some evidence that this applies more widely within the health and care service which suggests that those who share protected characteristics may find engagement with regulatory processes more challenging or have a disproportionately negative experience. In more general terms we comment in <i>Safer care for all</i> on the difficulties for patients in navigating the complex patient safety landscape including complaints mechanisms – this includes the different regulatory approaches in use across the 10 professional regulators under our oversight.</p> <p>We know that in general patients and patient organisations will find engaging in regulator consultations/engagement activities more challenging either due to resource or capacity constraints.</p> |
| What further evidence do you need to fill any gaps in your understanding of the potential or known effects of the activity? | We have gathered additional evidence through the consultation, and taken this into account. We may gather further evidence through our performance reviews, which will consider the implementation of the legislation and how regulators are assuring themselves that the way they develop rules is supporting compliance with equalities legislation. |

5. Impact by characteristic

| Characteristic | Equality impact | | | Explanation of potential/actual impact | What actions to mitigate adverse impact can/have been taken? |
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| | Positive | Adverse | None | | |
| Cross-cutting | Yes | | | As regulatory processes may have a disproportionately negative impact on those who share protected characteristics and/or be more difficult for those in particular groups to engage with consultations and engagement on | |

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| | | | | policy and rule changes we envisage that the guidance (which will encourage regulators to robustly assess the impact of rule changes, consult and mitigate effects as appropriate) should have a positive impact on incorporation of EDI impacts into the rule development process. | |
| Age | Yes | | | There is evidence to suggest that older people are disproportionately represented in some regulators' fitness to practise processes and impacted by revalidation requirements, therefore the guidance should encourage this to be considered and addressed as part of the rulemaking process. | |
| Disability | Yes | | | | |
| Gender reassignment | Yes | | | | |
| Pregnancy and maternity | Yes | | | | |
| Race | Yes | | | There is evidence to suggest that certain ethnic groups are disproportionately represented in some regulators fitness to practise processes and affected by differential attainment within education and training leading to registration, therefore the guidance should encourage this to be considered and addressed as part of the rulemaking process. | |

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| Religion or belief | Yes | | | | |
| Sex | Yes | | | There is evidence to suggest that men are disproportionately represented in some regulators' fitness to practise processes, therefore the guidance should encourage this to be considered and addressed as part of the rulemaking process. | |
| Sexual orientation | Yes | | | | |
| Marriage / civil partnership NI: Marital status | Yes | | | | |
| Neurodiversity | Yes | | | | |
| Intersectionality | Yes | | | | |
| Other: Low income, carers NI: person with dependants | Yes | | | | |
| NI: Political opinion | Yes | | | | |

6. Commissioned services

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| What measures will be included in contracts to help meet the three parts of the general equality duty? | N/A |
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| What steps will be taken throughout the commissioning cycle to meet the different needs of people who share protected characteristics? | N/A |
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7. Actions

| What will be done? | What will be the (measurable) outcome? | By when? | By who? |
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8. EIA Findings

| Concluding decision | | Summary and findings |
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| | | In preparing this report, due consideration has been given to the Professional Standards Authority's statutory equality duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations (Section 149(1) of the Equality Act 2010); to promote equality of opportunity and promote good relations (Section 75 of the Northern Ireland Act 1998); and the Welsh Language Standards Regulations 2022. |
| No change required to the activity | x | Whilst regulatory processes may impose differential impacts on different groups, the intention of the guidance is to support regulators in identifying and addressing EDI impacts as they arise through the rulemaking process, therefore it is our assessment that the impact of the guidance should be positive. In response to the feedback at consultation, we have strengthened parts of the guidance to encourage regulators to take EDI considerations into account. |
| Adjustments required to the activity | | |
| Justification to continue the activity | | |
| Stop the activity | | |

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| Review date | |
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Document Control

Version Control

| Version | Description of Version | Date Completed |
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| 1.0 | EIA Template | May 2023 |
| 1.1 | Additional Welsh Language Standard added | June 2023 |
| 2.0 | EIA template – final | September 2024 |

Associated documentation

| Version | Description of documentation |
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| 1.0 | EIA Template Notes |
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