

Scottish Borders Health and Social Care Partnership Integration Joint Board

15 March 2023

EVIDENCING COMPLIANCE WITH THE EQUALITY, HUMAN RIGHTS AND FAIRER SCOTLAND DUTIES

Report by Chris Myers, Chief Officer



1. PURPOSE AND SUMMARY

1.1. To appraise the Integration Joint Board of the actions being taken to provide the IJB with assurance that it will be able to demonstrate its compliance with the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (The Regulations) to the satisfaction of the Scottish Parliaments' equality and human rights regulator, the Equality and Human Rights Commission.

1.2. The Regulations require the Scottish Borders Integration Joint Board and the Scottish Borders Health and Social Care Partnership to:

- Report on mainstreaming the equality duty
- Publish equality outcomes and report on progress
- Review and assess policies and practices
- Gather and use employee information
- Publish gender pay gap information
- Publish information on equal pay etc
- Embed the equality duty into the IJB's procurement processes
- Publish in an accessible manner
- Consider matters as prescribed by Scottish Ministers

1.3. This report and the recommendations contained will enable the IJB to:

- Report on mainstreaming the equality duty for the period 2018 to 2023
- Publish equality outcomes for the period 2023 to 2025
- Agree a Governance and Performance Framework to give assurance that the IJB is complying with its legal duties for the period 2023 to 2025
- Provide a public platform on which all activities relating The Regulations are published in an accessible manner

2. RECOMMENDATIONS

2.1. **The Scottish Borders Health and Social Care Integration Joint Board (IJB) is asked to:-**

- a) Consider and approve for implementation the Scottish Borders IJB Equalities and Human Rights (E&HR) Governance and Performance Framework (Appendix 1)
- b) Approve the update on progress against the 2019 to 2023 Mainstreaming Equality Outcomes report for publication on the HSCP Equality and Human Rights Webpage (Appendix 2)
- c) Consider and approve for the Scottish Borders IJB Equality Outcomes and Mainstreaming Framework for the period 2023 to 2025 (Appendix 3)

- d) Agree to take progress reports from the Equality and Human Rights sub group over six consecutive IJB Audit Committees with effect from April 2023 to review progress against the Equality Outcome and Mainstreaming Framework 2023/2025

3. ALIGNMENT TO STRATEGIC OBJECTIVES AND WAYS OF WORKING

3.1. It is expected that the proposal will impact on the Health and Social Care Strategic Framework Objectives and Ways of Working below:

Alignment to our strategic objectives					
Rising to the workforce challenge	Improving access	Focusing on early intervention and prevention	Supporting unpaid carers	Improving our effectiveness and thinking differently to meet need with less	Reducing poverty and inequalities
X	X	X	X	X	X

Alignment to our ways of working					
People at the heart of everything we do	Good agile teamwork and ways of working – Team Borders approach	Delivering quality, sustainable, seamless services	Dignity and respect	Care and compassion	Inclusive co-productive and fair with openness, honesty and responsibility
X	X	X	X	X	x

4. INTEGRATION JOINT BOARD DIRECTION

4.1. A Direction is not required.

5. BACKGROUND

- 5.1. On 10 June 2022, the Scottish Parliament's Regulator of the Public Sector, the Equality and Human Rights Commission ('the Commission') wrote to the IJB's Chief Officer to advise that they had recently considered the extent to which IJBs had been meeting their equality duties. This was subsequently considered by the IJB's Audit Committee on 20 June 2022¹.
- 5.2. In the letter the Commission advised that an examination of the Scottish Borders Health and Social Care IJB's website found that:
- The IJB had failed to report on the mainstreaming of the equality duty
 - The IJB had failed to develop and publish a set of equality outcomes for the period 2021 to 2025
- 5.3. The Commission have advised, that whilst they could take enforcement action, they would rather work with Chief Officers to improve practice in relation to equality across the IJB sector. This was seen as the most effective way to drive up performance and achieve real change for people choosing to use adult health and social care services.
- 5.4. To support IJBs evidence their compliance, the Commission ran two development sessions for Equality Leads. This led to the Scottish Borders HSCP and Glasgow City HSCP's Equality Leads establishing a national Equality Peer Support Network for Scottish Integration Joint Boards and Health and Social Care Partnerships. This group supports Integration Joint Boards across Scotland with the implementation of the Public Sector Equality Duty and associated areas of work.
- 5.5. In response to concerns raised by IJB Equality Leads across the country, the Commission agreed to an extension to the date that IJBs must evidence their compliance with the improvements required.
- 5.6. This report outlines the actions undertaken to ensure the IJB are compliant with the equality duty by the 31 March 2023.

6. LEGAL CONTEXT

- 6.1. The public sector equality duty was created by the Equality Act 2010 and replaces the previous race, disability and gender equalities. Coming into force in April 2011, the new Act replaced the previous equality strands with 9 protected characteristics. These are:
1. Age
 2. Disability (e.g., physical, mental health, learning difficulty)
 3. Gender Reassignment
 4. Pregnancy and Maternity
 5. Race
 6. Religion and belief (including on belief)
 7. Sex (Gender)
 8. Sexual Orientation
 9. Marriage and Civil Partnership (discrimination only)

¹ Letter available from Monday 20 June 2022 Scottish Borders Health and Social Care IJB Audit Committee papers: <https://scottishborders.moderngov.co.uk/ieListDocuments.aspx?CId=336&MId=6359&Ver=4>

- 6.2. The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 came into force on the 27 May 2012 and were amended in 2015 to bring additional listed authorities including Integration Joint Boards / Health and Social Care Partnerships within their scope.
- 6.3. The Scottish Specific Public Sector Equality Duties 2012 (SSPSED) requires the Integration Joint Board as a listed authority to:
1. Report on mainstreaming the equality duty
 2. Publish equality outcomes and report on progress
 3. Review and assess policies and practices
 4. Gather and use employee information
 5. Publish gender pay gap information
 6. Publish information on equal pay etc
 7. Embed in procurement processes
 8. Publish in an accessible manner
 9. Consider matters as prescribed by Scottish Ministers
- 6.4. In 2018, the Fairer Scotland Duty (Part 1 of the Equality Act 2010 and formally known as the socio-economic duty) was brought into legislation. This duty requires the IJB to actively consider ('pay due regard' to) how the IJB can reduce inequalities of outcome, including addressing the adverse outcomes caused by socio-economic disadvantage when making strategic decisions.
- 6.5. Appendix 1 outlines the approach undertaken by the IJB to ensure an appropriate E&HR Governance and Performance Framework which has been developed to support the IJB to meet its legal duties on a prospective basis.
- 6.6. To enable the Integration Joint Board to evidence compliance with the Fairer Scotland Duties, the Equality and Human Rights Impact Assessment documentation, approved by the Health and Social Care Partnership's Strategic Planning Group in December 2022 incorporates the requirements of the Fairer Scotland Act 2018 and the Equality and Human Rights Commission's Equality Measurement Framework.

7. EQUALITY MAINSTREAMING REPORT 2018 TO 2023 (APPENDIX 2)

- 7.1 The Scottish Specific Public Sector Equality Duty 1 requires the Partnership to report on Mainstreaming the equality duty. The Equality and Human Rights Commission describes mainstreaming as the following:

"Mainstreaming equality simply means integrating the general equality duty into the day-to-day working of an organisation. It is for the organisation themselves to determine how best to mainstream equality in their day-to-day functions.

Source Equality and Human Rights Commission

- 7.2 The Scottish Borders Integration Joint Board's second progress report on the Equality Outcomes 2016 to 2020 is attached as appendix 1.
- 7.3 Prior to publication on the Partnership's website the report will be further update to include progress made against NHS Borders Equality Outcomes 2, 6, and 7 and Scottish Borders Council's Equality Outcomes 1, 2, 5 and 6. Both reports are currently in development as both NHS Borders and Scottish Borders Council have a different deliverable date to the IJB.

8. EQUALITY OUTCOMES AND MAINSTREAMING FRAMEWORK 2023 to 2025 (APPENDIX 3)

- 8.1 Scottish Specific Public Sector Equality Duty 2 requires the Partnership to publish equality outcomes every 4 years and to report progress being made against these.
- 8.2 To support the Partnership, continue to embed a culture of equality and human rights across Partnership services, and meet the requirements of SSPSED Duty 2, an Equality Outcomes and Mainstreaming Framework for the period 2023 to 2025 has been developed.
- 8.3 Co-produced by members of the Strategic Planning Group Equalities & Human Rights Foundation Group; in conjunction with relevant communities of interest and senior NHS Borders and Scottish Borders Council staff, the framework for 2023 to 2025 links directly to the Health and Social Care Strategic Framework 2023 to 2026 and key Partnership workplans.
- 8.4 The benefit of such an approach is the assignment of a Strategic Lead Officer or Strategic Group to report on progress being made to the SPG Equality and Human Rights Subgroup who in turn will provide the Audit Committee, Strategic Planning Group and the IJB with assurance that they can evidence compliance with the Equality Duty.

9. STRATEGIC PLANNING GROUP EQUALITY AND HUMAN RIGHTS SUBGROUP

- 9.1 It is proposed that the Equality and Human Rights Foundation Group, having developed the responses to the Equality and Human Rights Commission’s recent findings, will now develop into the Strategic Planning Group’s Equality and Human Rights Subgroup.
- 9.2 To enable the Scottish Borders Health and Social Care Partnership to address stigma and inequality in the quality of life outcomes for people, membership if the group is expanding to include people and organisations representing each of the 9 protected characteristics as defined by the Equality Act 2010, people with lived experience and communities/groups experiencing inequality including health inequalities.
- 9.3 To further support this, membership will remain flexible, to ensure that participation is fluid and reflective of current, new and emerging strategic workstreams, policy development and practice evaluation.
- 9.4 Invitations to join the subgroup has been extended to staff in both the NHS Borders and Scottish Borders Council.
- 9.5 The Partnership’s commitment to working in an inclusive, co-productive and fair way with openness, honesty and responsibly, is evidenced by the formation of the Equality and Human Rights Subgroup.
- 9.6 A Terms of Reference, supporting this way of working, will be coproduced with subgroup members and presented to the Strategic Planning Group for approval.

10 IMPACTS

Community Health and Wellbeing Outcomes

- 10.1 It is expected that the proposal will impact on the National Health and Wellbeing Outcomes below:

N	Outcome description	Increase / Decrease / No
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		impact
1	People are able to look after and improve their own health and wellbeing and live in good health for longer.	Increase
2	People, including those with disabilities or long term conditions, or who are frail, are able to live, as far as reasonably practicable, independently and at home or in a homely setting in their community.	Increase
3	People who use health and social care services have positive experiences of those services, and have their dignity respected.	Increase
4	Health and social care services are centred on helping to maintain or improve the quality of life of people who use those services.	Increase
5	Health and social care services contribute to reducing health inequalities.	Increase
6	People who provide unpaid care are supported to look after their own health and wellbeing, including to reduce any negative impact of their caring role on their own health and well-being.	Increase
7	People who use health and social care services are safe from harm.	Increase
8	People who work in health and social care services feel engaged with the work they do and are supported to continuously improve the information, support, care and treatment they provide.	Increase
9	Resources are used effectively and efficiently in the provision of health and social care services.	Increase

Financial impacts

- 10.2 There may be additional cost requirements associated with this proposal despite the formation of the network Equality and Human Rights Service Specialists being established from existing staff structures, it is anticipated that there will be costs associated with initial and continuous professional development of each of the specialists.
- 10.3 There may also be additional costs in relation to Stage 2 of the Impact Assessment process in terms of venue hire and other expenses related to the impact assessment consultation process.
- 10.4 Both need to be considered in terms of past costs associated with legal challenge both in the Scottish Borders and other parts of Scotland and the UK.

Equality, Human Rights and Fairer Scotland Duty

- 10.5 This report is directly linked to the public sector general equality duty which requires listed public authorities to pay due regard to the need to eliminate unlawful discrimination, victimisation and harassment; advance equality of opportunity; and foster good relations. Significant work will be undertaken throughout the implementation of these outcomes to have a positive impact on equality and will subject to reporting every 6 months.

Legislative considerations

- 10.6 Adopting the proposed SBHSCP Governance and Performance Framework, Equality Outcomes and Mainstreaming Framework and Integrated Impact Assessment Documentation will support the IJB evidence its compliance with:
- Human Rights Act 1998
 - Equality Act 2010
 - The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012
 - Fairer Scotland Duty 2018

Climate Change and Sustainability

10.7 At this point in time none identified as relevant.

Risk and Mitigations

10.8 The risks associated with not implementing the recommendations include:

- Failure to address the areas of non-compliance identified by the Scottish Parliament's appointed Equality and Human Rights Regulator's Audit, detailed in their letter sent December 2022.
- Regulatory/enforcement action in April 2023
- The potential for poorer outcomes for people in the Scottish Borders

11 CONSULTATION

Communities consulted

- 11.1 The Equality and Human Rights Foundation Group, formed to develop the response to the Equality and Human Rights Commissioner's findings, membership consists of statutory, third sector, and independent sector representatives.
- 11.2 The recently formed Integrated Workforce Plan's Implementation Board were consulted on the workforce related outcomes. The board membership consists of statutory, third sector, independent sector or primary care partners. Each member is a member of a wider network or forum.
- 11.3 The outcomes and associated mainstreaming framework evidences the consideration given to the Integration Planning and Delivery Principles as listed at <https://www.gov.scot/publications/guidance-principles-planning-delivering-integrated-health-social-care/pages/1/>

Integration Joint Board Officers consulted

- 11.4 The IJB Chief Officer has been consulted, and all comments and suggestions received have been incorporated into the final report.
- 11.5 Linda Jackson, LGBTQ+ Forum and Jenny Smith, Borders Care Voice are founding members of the Equality and Human Rights Foundation Group.

Approved by: Chris Myers, Chief Officer

Author: Wendy Henderson, Equalities Lead

Previous Minute Reference:

- Monday 20 June 2022 Scottish Borders Health and Social Care IJB Audit Committee Item 6e: <https://scottishborders.moderngov.co.uk/ieListDocuments.aspx?Cid=336&Mid=6359&Ver=4>

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