09 June 2022

on the day BRIEFING

NHS Providers

On the day briefing: EHRC - Experiences from health and social care: the treatment of lower-paid ethnic minority workers

Introduction

On 9 June, the Equality and Human Rights Commission (EHRC) published the final report on their inquiry into the experiences of lower-paid ethnic minority staff in health and social care. The inquiry was launched in 2020 due to the disproportionate impact of COVID-19 on ethnic minority and lower-paid staff in frontline roles. The report is broad in its coverage, looking at health and social care across England, Wales and Scotland.

The report defines lower-paid healthcare workers as those working in Agenda for Change (AfC) bands 1 – 3, which includes, domestic assistants, catering assistants and portering staff. For 'ethnic minority', this review mainly uses the UK government definition, which is "all ethnic groups except the white British group" – however, the review team have adapted this so the definition also excludes the white Irish group. Utilising the data available, the EHRC suggests ethnic minorities represent 17.8% of the lower-paid workforce (sector wide) in England and that 71,000 NHS staff (excluding outsourced staff) identify as being from an ethnic minority.

The review team have utilised a mixture of quantitative and qualitative data to compile this report, accessing workforce data, where available, as well as holding interviews and focus groups with over 90 lower-paid health and social care staff. Additionally, further information was collected via an online call for evidence.

This report adds to a wealth of recent data and research that highlights similar themes around workforce experience and race inequality, including the NHS staff survey and the Workforce Race Equality Standard (WRES). The 'Leadership for a collaborative and inclusive future' report, also published this week, sees equality, diversity and inclusion (EDI) as a central pillar to be supported by staff across all levels and makes clear recommendations around equipping leaders and managers to further support their teams. It is clear that culture and inclusive leadership are critical to this mission.

In this briefing, we have focused on summarising the key findings and recommendations relevant to trusts in England. The remaining recommendations are directed towards the UK and devolved governments, while there are a number of key findings relating to the social care and independent sectors also contained within the report.

Recommendations for trusts

In Recommendation 5, the report calls for trusts (alongside local authorities and within integrated care systems (ICSs)) to 'take account' of racial inequalities experienced by lower-paid ethnic minority staff, including those who are working in outsourced roles. This should include improving data collection and working with staff to increase disclosure rates while ensuring there is psychological safety to do so.

Recommendation 9 focuses on outsourced staff. It calls on trusts (alongside local authority partners and within ICSs) to take ownership of public sector equality duties (PSED) when making decisions on workforce outsourcing. This should involve completing and making publicly available equality impact assessments (EIAs) that consider the impact of outsourcing decisions on staff with protected characteristics. This recommendation also calls for trusts to work with contractors to ensure the provision of required workforce data and to create a procurement strategy that is equality impact assessed. As part of this, trusts should also work to assess how existing procurement policies and duties can be utilised to improve compliance with the general duty of the PSED.

Finally, in Recommendation 17, the report considers staff ability to raise concerns. The review recommends that trusts (alongside local authority partners and within ICSs), and specifically trust leaders, should create working cultures that instil confidence in staff to speak up about their concerns. This includes making EDI a priority. The report also calls on trusts to work with trade unions and employer bodies to ensure lower-paid staff (including outsourced roles) are able to share concerns and feedback, take part in workplace surveys and join staff networks, if not already in place. The review also recommends that trusts remove any barriers that may prevent lower-paid ethnic minority and migrant staff from openly speaking up.

Data and outsourcing

Overall, this report notes that workforce data is typically more robust and readily available within the NHS in England, particularly regarding ethnicity, and points to the NHS staff survey and WRES. The report also flags plans by the UK government to expand WRES to include social care. The review team do note, however, that there are limitations to both the staff survey and WRES in that the former is

not open to outsourced staff and that the latter does not account for outsourced, bank or agency staff. With regard to data, the report points to Recommendation 5, as set out above

The EHRC also examines the use of outsourcing in healthcare settings, as well as commissioning in social care, finding that outsourcing is most common in healthcare settings in England. It notes that a lack of data makes understanding the scale of this difficult. The report does positively highlight that there is evidence that some trusts are bringing outsourced staff back in-house. In this section, the report suggests that the transition of services to an NHS subsidiary company allows for deviation from NHS terms and conditions. Regarding outsourcing, the report points to Recommendation 9.

Experience at work

The report shares concerning findings from the review team's engagement with lower-paid ethnic minority staff, particularly around bullying, abuse and harassment. As part of this inquiry, the EHRC commissioned a team at the University of Kent to review the 2019 NHS staff survey findings in this area. This commissioned research found 18% of ethnic minority staff experienced discrimination from a patient or member of the public, compared to 4.6% of white staff. 14.5% of ethnic minority staff reported experiencing discrimination from a manager or colleague compared to 6% of white staff and 82% of ethnic minority staff who had experienced these behaviours from colleagues or patients felt these incidents were a direct result of their ethnicity, compared to 22% of white staff.

The most recent staff survey data from 2021 shows 17% of ethnic minority staff reported experiencing discrimination from their manager or colleague, while 29.2% of ethnic minority staff reported bullying, abuse or harassment from a patient or the public. These findings demonstrate there is still significant work to be done to eradicate these unacceptable behaviours.

The EHRC report found evidence of concern at the level of support provided by line managers, particularly with regard to tackling racist abuse from patients or the public and cites research, conducted by Unison and the Nursing Times in 2019, which found that 52% of survey respondents who identified as having a management role did not feel they had sufficient training to tackle racism against staff in the workplace. The recently published 'Leadership for a collaborative and inclusive future' report recommends that tailored and nationally standardised training modules should be co-produced with management and leaders, with a specific focus on EDI, which will help to address this gap.

As seen in WRES data, the EHRC also finds that ethnic minority staff are still more likely to enter a formal disciplinary process compared to white staff, while the review notes reports of "excessive criticism and reproach for mistakes" by managers. This again links to findings in the 'Leadership for a collaborative and inclusive future' report that places a central importance on openness and transparency and a learning culture free of blame. The EHRC report further found evidence of staff feeling they are treated differently when allocated hours and leave, as well as in access to training and progression opportunities.

This report flags the number of very senior manager (VSM) positions held by ethnic minority staff, noting data from 2017 (5.3%) and 2020 (6.8%). The most recent WRES data does show improvements year-on-year, with 9.2% of VSMs from ethnic minority backgrounds in 2021. However, as the EHRC notes, this is still significantly below the 19% target. The report finds that many ethnic minority workers are often overqualified for lower-paid positions, especially in the case of migrant workers who might face barriers to getting their international qualifications recognised.

The framing of this inquiry cited the disproportionate impact of the pandemic on lower-paid and ethnic minority groups and, as such, the report considers workplace risk during the pandemic. A survey in collaboration with Unison found between March and December 2020 67% of Black staff in AfC bands 1 and 2 reported working in COVID-19 wards compared to 51% of white staff in the same bands. The report does note that directly employed NHS staff were risk assessed and redeployed, however it also highlights evidence that many outsourced staff reported not completing a risk assessment due to a lack of clarity as to who was responsible for conducting these. Those interviewed by the EHRC team reported sometimes feeling risk assessments were a 'tick box' exercise that resulted in their concerns not being adequately responded to.

Employment rights and raising concerns

This report found that outsourcing roles can reduce the understanding of employment rights amongst those workers, and evidence from those with lived experience highlights that some outsourced staff had difficultly accessing information about their employment, often due to the lack of an NHS email address. Evidence was also found that information about employment rights is not always available in accessible language or as a translation, which can create barriers for migrant workers.

The report also explores the experience of lower-paid ethnic minority staff when raising concerns, with evidence that those on zero-hour contracts or in other insecure roles are concerned about job

loss as a result of sharing their concerns, or have a fear of victimisation. The report does note that the NHS offers staff an opportunity to raise their concerns via the staff survey, but in addition to an earlier observation about the groups invited to partake, the report suggests the survey would benefit from providing definitions of harassment and discrimination and to explain jargon to aid accessibility. The report does note NHS England plans to include outsourced workers in the staff survey in the future.

This report highlights the existence of staff networks and cites evidence that these groups can improve workplace culture, however they require adequate resourcing and staff should be actively encouraged to participate to ensure their success. On Freedom to Speak Up (FTSU), this report found there is variation in the success of this initiative across organisations, but notes that the National Guardian's Office is working to improve this system and to remove any barriers that prevent staff speaking up. Recommendations for trusts regarding speaking up are referenced in Recommendation 17.

NHS Providers' view

"Nobody should be a victim of racism, bullying or harassment at work. It's utterly unacceptable and stamping out such behaviour is a priority for NHS trust leaders.

"As the country's biggest employer of Black, Asian and minority ethnic people, communities disproportionately affected by COVID-19, confronting discrimination and prejudice is a priority for NHS trusts.

"The EHRC report underlines the importance of equality, diversity, and inclusion - as outlined in the review by Sir Gordon Messenger and Dame Linda Pollard - to creating a culture across the NHS where leaders feel equipped to deal with racism, bullying and harassment.

"NHS Providers is committed to supporting trusts to bring about meaningful change. Our report Race 2.0 Time for Real Change shows the size of the challenge to acknowledge structural racism and to improve race equality across the NHS. To drive real change our race equality programme will focus on supporting trusts by increasing confidence and capability.

"Better data too from NHS partners and suppliers will help leaders to understand better the experiences of lower paid ethnic minority staff who contribute so much, and help to bolster local action.

"With the NHS already severely understaffed, it's vital that the world of health and care is a fair and safe place to work for everyone."