

# Equality Impact and Risk Assessment Stage 2 for Policies

East Midlands Affiliated Commissioning Committee (EMACC)  
Commissioning Policy for Gamete and Embryo Cryopreservation



**Equality & Inclusion Team, Corporate Affairs**  
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**EQUALITY IMPACT AND RISK ASSESSMENT STAGE 2**
**ALL SECTIONS MUST BE COMPLETED**

Guidance is provided in appendix 3

**SECTION 1 – DETAILS OF POLICY**
**Organisation:** Leicestershire CCGs (leading on behalf of EMACC – East Midlands Affiliated Commissioning Committee)

**Policy Assessment Lead and Contact Details:** Andy Roylance, NHS Nottingham West CCG, (0115) 883 7909 Email: [andy.roylance@nhs.net](mailto:andy.roylance@nhs.net)
**Directorate/Team:** Planned Care / EMACC

**Responsible Director / CCG Board Member for the assessment:** N/A

**Policy implementation Date:** TBC

**Who is involved in undertaking this assessment?**

Andy Roylance, Planned Care, NHS Nottingham West CCG (EMACC)

Sabrina Richards, Equality and Inclusion, NHS Midlands and Lancashire CSU

**Date of commencing the assessment:** 1 May 2019

**Date for completing the assessment:** TBC

**EQUALITY IMPACT ASSESSMENT**
**Section 1**

Please tick which group(s) this policy will or may impact upon?	Yes	No	Indirectly
Patients, Service Users	Y		
Carers or Family	Y		
General Public	Y		
Staff	Y		
Partner Organisations	Y		

**How was the need for the policy identified? (is it part of a workstream / strategy?)**

East Midlands Affiliated Commissioning Committee (EMACC) has been established as a joint committee of the nineteen East Midlands CCGs to enable the CCGs to work

collaboratively on the development and maintenance of:

- Policies for services which CCGs have responsibility for commissioning; and
- New policies identified as being appropriate for identical implementation on a regional scale.

EMACC has delegated authority from each of the member CCGs in accordance with section 14Z3 of the NHS Act 2006 to make binding decisions on clinical policies delegated by the participating CCGs.

When EMACC was created it was agreed that this should be one of the policies on the work programme. Some of the 19 East Midlands CCGs had an existing policy at that time, whilst many others did not. It was felt that this was a policy area which would benefit from a collaborative approach to avoid duplication of work, but more importantly to ensure that there was a consistent approach adopted across the region for the benefit of patients.

Recently NHS England have issued guidance to CCGs advising them that they should consider in their policies for Gamete and Embryo Cryopreservation all patient groups who may have their fertility compromised as a result of their medical treatment, including patients who are on the NHS pathway of care for gender dysphoria and who are due to undergo treatment. Previously some CCGs only funded Gamete and Embryo Cryopreservation for cancer patients.

#### **What are the aims and objectives of the policy?**

The purpose of this policy is to confirm the commissioning arrangements regarding NHS-funded gamete or embryo cryopreservation services for patients who are the responsibility of CCGs in the East Midlands.

#### **What evidence have you considered as part of the Equality Impact Assessment?**

- **All research evidence base references including NICE guidance and publication– please give full reference**
- **Bring over comments from Stage 1 and prior learning (please append any documents to support this)**

A comprehensive evidence review has been undertaken (appended) to inform this policy. This includes NICE guidelines – Clinical Guideline 156 – ‘Fertility problems: assessment and treatment’ (February 2013), which recommends that people preparing to have treatment for cancer that is likely to result in fertility problems are given the option to preserve (freeze and store) their eggs or sperm for possible use in the future. The evidence review undertaken by NICE to support the guideline development only considered evidence in relation to patients with cancer who could benefit from gamete and embryo cryopreservation, however the development group advised that its recommendations could be applied to other conditions and the focus on cancer patients should not preclude the commissioning of these services for non-cancer patients. Recent NHS England guidance outlined above recommended that CCGs should consider other patient groups rather than solely cancer patients.



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## SECTION 2

### In this section you will need to consider:

What activities you currently do that help you to comply with the Public-Sector Equality Duty (three aims).

Will your policy affect your ability to meet the Public-Sector Equality Duty?

How you will mitigate any adverse impact?

- Eliminate, unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not;
- Foster good relations between people who share a protected characteristic and those who do not.

Please answer 'Yes' or 'No' and explain your answer

Yes

No

**Does the policy provide an opportunity to eliminate discrimination, harassment and victimisation?**

Y

What do we mean?

Unlawful discrimination takes place when people are treated 'less favourably' as a result of having a protected characteristic.

Harassment is unwanted conduct (including a wide range of behaviours) because of or connected to a protected characteristic.

Victimisation is where one-person subjects another to a detriment because they have acted to protect someone under the act. (e.g. bullied for reporting discrimination / harassment for a work colleague with a protected characteristic)

**Explanation:**

Some CCGs in the East Midlands previously had policies which did not explicitly include patients who had their fertility compromised as a result of treatment for gender dysphoria. Others did not have formal policies but did not approve funding requests for gamete and embryo cryopreservation for non-cancer patients.

The new policy is clear that patients receiving treatment for gender dysphoria will be eligible provided they meet the policy's eligibility criteria. Therefore the new policy aims to eliminate any possible discrimination against people who are in the process of transitioning from one gender to another, one of the nine recognised protected characteristics.

Please answer 'Yes' or 'No' and explain your answer	Yes	No
<p><b>Does the policy provide an opportunity to advance equality of opportunity between people who share a protected group and those who don't share it?</b></p> <p>What do we mean?</p> <p>Equality of opportunity is about making sure that people are treated fairly and given equal access to opportunities and resources. Promoting is about:</p> <ul style="list-style-type: none"> <li>• Encouraging people/services to make specific arrangements</li> <li>• Take action to widen participation</li> <li>• Marketing services effectively</li> <li>• Remove or minimise disadvantages</li> <li>• Take steps to meet different needs</li> </ul> <p>Securing special resources for those who may need them</p>	Y	
<p><b>Explanation:</b></p> <p>As outlined in the section above, the new policy will advance equality of opportunity by ensuring that people who are in the process of transitioning from one gender to another are not treated unfairly and that they have equal access to the opportunity of storing their gametes or embryos.</p>		
Please answer 'Yes' or 'No' and explain your answer	Yes	No
<p><b>Does the policy provide an opportunity to Foster Good Relations between people who share a protected characteristic and those who don't share it?</b></p> <p>What do we mean?</p> <p>Foster Good Relations between people: This is about bringing people from</p>	Y	

- Encouraging people/services to make specific arrangements
- Take action to widen participation
- Marketing services effectively
- Remove or minimise disadvantages
- Take steps to meet different needs

**Explanation:**

As outlined in the section above, the new policy will advance equality of opportunity by ensuring that people who are in the process of transitioning from one gender to another are not treated unfairly and that they have equal access to the opportunity of storing their gametes or embryos.

Please answer 'Yes' or 'No' and explain your answer	Yes	No
<p><b>Does the policy provide an opportunity to Foster Good Relations between people who share a protected characteristic and those who don't share it?</b></p> <p>What do we mean?</p> <p>Foster Good Relations between people: This is about bringing people from</p>	Y	

<p>different backgrounds together by trying to create a cohesive and inclusive environment for all. This often includes tackling prejudice and promoting understanding of difference.</p> <ul style="list-style-type: none"> <li>• Tackle prejudice</li> <li>• Promote understanding</li> <li>• Could the policy create any issues for Community cohesion (will it impact certain communities compared to others and how this be managed?)</li> </ul>		
<p><b>Explanation:</b></p> <p>The new policy has the potential to foster good relations in relation to the gender reassignment protected characteristic. Their inclusion has the potential to tackle prejudice by increasing the level of understanding about people who are transitioning amongst those who do not share this protected characteristic.</p>		
<p>Please answer 'Yes' or 'No' and explain your answer</p>	<p>Yes</p>	<p>No</p>
<p>Has engagement/involvement or consultation been carried out with people who will be affected by the policy?</p>	<p><b>Y</b></p>	<p><b>N</b></p>
<p><b>Explanation:</b></p> <p>[There are plans to meet with representatives of the lesbian, gay, bisexual, and transgender community in Leicestershire to share the new policy with them and receive useful feedback which will inform the final version of the policy. A meeting is also to be arranged with representatives of Healthwatch. The CCGs and EMACC also plan to co-ordinate a 4 week East Midlands-wide public consultation in order to gain the views of patients, the public, community groups, and relevant healthcare providers]</p>		
<p>Please answer 'Yes' or 'No' and explain your answer</p>	<p>Yes</p>	<p>No</p>
<p>Has the engagement/involvement or consultation highlighted any inequalities?</p>	<p><b>Y</b></p>	<p><b>N</b></p>

**Explanation:**

[Following the engagement activity outlined above and any other organised activity within the East Midlands arranged by CCGs, all of the comments and feedback will be reviewed by the sub group in Leicester who developed the draft policy. The sub group will note every comment received and consider whether any change should be made to the policy based on each. The EMACC committee will review this before signing off the final policy on behalf of member CCGs.]

Please answer 'Yes' or 'No' and explain your answer	Yes	No
<p><b>Have you added an Equality Statement to the Policy?</b> Example statement: Promoting equality and addressing health inequalities are at the heart of NHS England's values. Throughout the development of the policies and processes cited in this document, we have given regard to the need to</p> <ul style="list-style-type: none"> <li>• eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it; and</li> <li>• reduce inequalities between patients in access to, and outcomes from healthcare services and to ensure services are provided in an integrated way where this might reduce health inequalities</li> <li>• make reasonable adjustments when necessary</li> </ul>	Y	

**Explanation:**

The following equality statement is in the policy:

“EMACC and its participating CCGs aim to create policy documents that meet the diverse needs of the populations to be served and the NHS workforce has a duty to have regard to the need to reduce health inequalities in access to health services and health outcomes achieved as enshrined in the Health and Social Care Act 2012.

CCGs are committed to ensuring equality of access and non-discrimination, irrespective of age, disability (including learning disability), gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation.

This policy takes into account current UK legislative requirements, including the Equality Act 2010 and the Human Rights Act 1998, and promotes equality of opportunity for all. This document has been designed to ensure that no-one receives less favourable treatment owing to their personal circumstances.”

### SECTION 3

#### Does the 'policy' have the potential to:

- Have a positive impact (benefit) on any of the equality groups?
- Have a negative impact / exclude / discriminate against any person or equality groups?
- Have a neutral / potential indirect effect on any equality groups?
- Explain how this was identified? Evidence/Consultation?
- Who is most likely to be affected by the proposal and how (think about barriers, access, effects, outcomes etc.)

Guidance document available on Equality Groups and their issues. This document may help and support your thinking around barriers for the equality groups.

Equality Group / Protected Group	Positive effect	Negative effect	Neutral or indirect effect
<b>Age</b>			<b>X</b>

#### Explanation:

The age related eligibility criteria within the new policy are no more restrictive than that contained in any of the previous policies belonging to CCGs in the East Midlands. Indeed in a few cases the new policy will have a positive impact in terms of access. The age criteria in the new policy are based on evidence regarding the number and quality of eggs and sperm (i.e. women have a higher number and healthier eggs the younger they are; and men have more active and better quality sperm the younger they are). The age criteria for women reflects latest NICE guidelines for fertility treatment and evidence showing the diminishing likelihood of pregnancy beyond a certain age. The age criteria for men reflects evidence demonstrating lower sperm quality beyond a certain age and how this affects fertility. However, male fertility decline is known to be less significant and dramatic than for women.

Equality Group / Protected Group	Positive effect	Negative effect	Neutral or indirect effect
<b>Disability</b>	<b>X</b>		



**Explanation:**

The Disability Discrimination Act (DDA) was originally written in 1995 and was last updated in December 2005. This Act was in place to end discrimination against disabled people. It aimed to make sure people weren't treated differently or less well because they have a disability.

In 2010, the Equality Act replaced previous anti-discrimination laws, combining them under one piece of legislation. This includes the DDA. The Disability Equality Duty in the DDA continues to apply. This Act applies to people with cancer or those who have had cancer in the past. All cancers are included. And people are protected by the Act from the time they are diagnosed with cancer.

The new policy therefore will have a positive impact on people with this form of disability who are eligible to receive NHS funded gamete and embryo storage.

Equality Group / Protected Group	Positive effect	Negative effect	Neutral or indirect effect
<b>Sexual Orientation</b>			<b>X</b>

**Explanation:**

The new policy will have a neutral impact on individuals based on their sexual orientation.

Equality Group / Protected Group	Positive effect	Negative effect	Neutral or indirect effect
<b>Gender Reassignment</b>	<b>X</b>		

**Explanation:**

As outlined above, the new policy will have a positive impact as it will improve access for those people who are transitioning and about to undergo treatment on the gender dysphoria pathway.

Equality Group / Protected Group	Positive effect	Negative effect	Neutral or indirect effect
<b>Sex (Gender)</b>			<b>X</b>

**Explanation:**

The new policy will have a neutral impact on individuals based on their gender. Though the policy has some differences for males/females concerning age, these are based on clinical evidence of effectiveness.

Eligible females are normally able to store eggs or embryos for a maximum period of 10 years (based on Human Fertilisation & Embryology Authority guidelines) or until they reach the age of 43 years old, whichever is sooner. This upper age limit is in line with East Midlands' CCGs IVF/ICSI policies and based on NICE's Fertility guidelines.

Eligible males are normally able to store sperm for a maximum period of 10 years (based on HFEA guidelines) or until they reach the age of 56 years old, whichever is sooner. This upper age limit is also based on HFEA guidelines. There is no upper age limit in the East Midlands' CCGs IVF/ICSI policies, or advised within NICE's Fertility guidelines.

Equality Group / Protected Group	Positive effect	Negative effect	Neutral or indirect effect
<b>Race</b>			<b>X</b>

**Explanation:**

The new policy will have a neutral impact on individuals based on their race.

Equality Group / Protected Group	Positive effect	Negative effect	Neutral or indirect effect
<b>Religion or Belief</b>			<b>X</b>
<p><b>Explanation:</b></p> <p>The new policy will likely have a neutral or minimal impact on individuals based on their religion or beliefs. There are some religions that do not support the creation of embryos that are subsequently not used or are destroyed. Although most embryos survive the freeze thaw process, some may not survive. Also, in some cases excess embryos can be created. Some couples may store embryos which are never later used. Though many Christians support the practice of embryo cryopreservation provided patient consent is provided, there are some who believe that embryos should not be destroyed as they are potential human beings and/or because they believe that life begins at conception. The Roman Catholic Church for example teaches that embryos have “the right to be respected as a person from the moment of conception” (Roman Catholic Catechism 2378).</p>			
Equality Group / Protected Group	Positive effect	Negative effect	Neutral or indirect effect
<b>Pregnancy and Maternity</b>			<b>X</b>
<p><b>Explanation:</b></p> <p>The new policy will have a neutral impact on individuals within this protected group.</p> <p>Having an existing child / children does not have any impact on whether gamete or embryo cryopreservation will be funded in accordance with the policy.</p>			
Equality Group / Protected Group	Positive effect	Negative effect	Neutral or indirect effect
<b>Marriage and Civil Partnership</b>			<b>X</b>

**Explanation:**

The new policy will have a neutral impact on individuals based on their marital status or whether they are in a civil partnership.

Equality Group / Protected Group	Positive effect	Negative effect	Neutral or indirect effect
<b>Carers</b>			<b>X</b>

**Explanation:**

The new policy will have a neutral impact on individuals within this protected group.

Equality Group / Protected Group	Positive effect	Negative effect	Neutral or indirect effect
<b>Deprived Communities</b>	<b>X</b>		

**Explanation:**

The new policy will have a positive impact as it widens access to some patient groups. Previously some patients within these groups would have wished to store their gametes or embryos privately but would have been prevented from doing so on economic grounds.

Equality Group / Protected Group	Positive effect	Negative effect	Neutral or indirect effect
<b>Vulnerable Groups e.g. Asylum Seekers, Homeless, Sex Workers, Military Veterans, Rural communities</b>			<b>X</b>

**Explanation:**

The new policy will have a neutral impact on individuals within this protected group.

### SECTION 4: EQUALITY IMPACT AND RISK ASSESSMENT CHECKLIST

Please use the checklist in Appendix 2 to ensure and reflect that you have included all the relevant information

### SECTION 5: HUMAN RIGHTS ASSESSMENT

How does this policy affect the rights of patients set out in the NHS Constitution or their Human Rights?

**If the Stage 1 Equality Impact and Risk Assessment highlighted that you are required to complete a full Human Rights Assessment, please request and complete a Stage 2 Human Right Assessment from the Equality and Inclusion Team.**

### SECTION 6: RISK ASSESSMENT

See guidance and table of risks in appendix 3 section 6 for step by step guidance for this section

#### RISK MATRIX

Consequence level	Risk level				
	RARE 1	UNLIKELY 2	POSSIBLE 3	LIKELY 4	VERY LIKELY 5
1. Negligible	1	2	3	4	5
2. Minor	2	4	6	8	10
3. Moderate	3	6	9	12	15
4. Major	4	8	12	16	20
5. Catastrophic	5	10	15	20	25

**Consequence Score: 2 (Minor)**

**Likelihood Score: 4 (Likely)**

**Risk score = consequence x likelihood = 2x4 = 8**

# 8

- **Unlawful Discrimination, Victimisation and Harassment** - The policy has some documented factors to meet the needs of people with a protected characteristic e.g. people who are in the process of transitioning from one gender to another.
- **Promoting Equality of Opportunity** - The policy identifies some areas of how different needs of protected groups can be met. In addition, there

<p>are plans to consult with the public, patient groups, and providers who will have the opportunity to influence decisions taken in relation to the final agreed version of the policy.</p> <ul style="list-style-type: none"> <li>• <b>Foster Good Relations Between People</b> - The policy has some evidence of demonstrating that it is inclusive and meeting different needs and promoting understanding of different equality groups, supporting this objective.</li> <li>• <b>Human Rights Legislation</b> - Those involved in developing the new policy recognise that without addressing these there is potential for a challenge / formal complaint / bad publicity etc.</li> <li>• <b>Mitigating Actions</b> - Concerns / areas of disadvantage identified will be considered and if possible mitigated against. All policies are reviewed periodically or if a particular issue is raised which wasn't considered when the policy was developed.</li> </ul>	
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**Example:** risk of not consulting patients leading to legal challenge:  
 Consequence score of 5 and Likelihood score of 4

20

**Any comments / records of different risk scores over time (e.g. reason for any change in scores over time):**

**Important:** If you have a risk score of 9 and above you should escalate to the organisations risk management procedures.

### EQUALITY IMPACT AND RISK ASSESSMENT AND ACTION PLAN

Risk identified	Actions required to reduce / eliminate the negative impact	Resources required *(see guidance below)	Who will lead on the action?	Target date
N/A				

**'Resources required'** is asking for a summary of the costs that are needed to implement the

**changes to mitigate the negative impacts identified**

### **SECTION 7 – EQUALITY DELIVERY SYSTEM 2 (EDS2)**

Please go to Appendix 1 of the EIRA and tick the box appropriate EDS2 outcome(s) which this policy relates to. This will support your organisation with evidence for the Equality and Inclusion annual equality progress plan and provide supporting evidence for the annual Equality Delivery System 2 Grading

### **SECTION 8 – ONGOING MONITORING AND REVIEW OF EQUALITY IMPACT RISK ASSESSMENT AND ACTION PLAN**

**Please describe briefly, how the equality action plans will be monitored through internal governance processes?**

For review by individual member CCGs.

**Date of the next review of the Equality Impact Risk Assessment section and action plan?**

**SECTION 9**  
**FINAL SECTION**

<b>Date completed:</b>
<b>Date received for quality check:</b>
<b>Signature of person completing the assessment:</b>
<b>Date reviewed by Equality and Inclusion Team:</b>
<b>Signature and Date quality check completed by Equality and Inclusion Team:</b>
<b>Date signed off by EMACC Committee:</b>

This is the end of the Equality Impact and Risk Assessment process: By now you should be able to clearly demonstrate and evidence your thinking and decision(s).

Save this document for your own records, once this is signed off by your organisation you should published on your website.

- For those organisations using U Assure upload this evidence to the assessment process started
- For those organisations not using U Assure - Send this document and copies of your completed Stage 2 Human Rights Screening document to the Equality & Inclusion Team [equality.inclusion@nhs.net](mailto:equality.inclusion@nhs.net)



**Appendix 1: Equality Delivery System 2:**

<b>APPENDIX 1: The Goals and Outcomes of the Equality Delivery System</b>			<b>Tick box(s) below</b>
<b>Objective</b>	<b>Narrative</b>	<b>Outcome</b>	
<b>1.</b> Better health outcomes	The NHS should achieve improvements in patient health, public health and patient safety for all, based on comprehensive evidence of needs and results	<b>1.1</b> Services are commissioned, procured, designed and delivered to meet the health needs of local communities	
		<b>1.2</b> Individual people's health needs are assessed and met in appropriate and effective ways	
		<b>1.3</b> Transitions from one service to another, for people on care pathways, are made smoothly with everyone well-informed	
		<b>1.4</b> When people use NHS services their safety is prioritised and they are free from mistakes, mistreatment and abuse	
		<b>1.5</b> Screening, vaccination and other health promotion services reach and benefit all local communities	
<b>2.</b> Improved patient access and experience	The NHS should improve accessibility and information, and deliver the right services that are targeted, useful, useable and used in order to improve patient experience	<b>2.1</b> People, carers and communities can readily access hospital, community health or primary care services and should not be denied access on unreasonable grounds	
		<b>2.2</b> People are informed and supported to be as involved as they wish to be in decisions about their care	
		<b>2.3</b> People report positive experiences of the NHS	
		<b>2.4</b> People's complaints about services are handled respectfully and efficiently	
<b>3.</b> A representative and supported workforce	The NHS should increase the diversity and quality of the working lives of the paid	<b>3.1</b> Fair NHS recruitment and selection processes lead to a more representative workforce at all levels	
		<b>3.2</b> The NHS is committed to equal pay for work of equal value and expects employers to use equal pay audits to help fulfil their legal	

	and non-paid workforce, supporting all staff to better respond to patients' and communities' needs	obligations	
		<b>3.3</b> Training and development opportunities are taken up and positively evaluated by all staff	
		<b>3.4</b> When at work, staff are free from abuse, harassment, bullying and violence from any source	
		<b>3.5</b> Flexible working options are available to all staff consistent with the needs of the service and the way people lead their lives	
		<b>3.6</b> Staff report positive experiences of their membership of the workforce	
<b>4.</b> Inclusive leadership	NHS organisations should ensure that equality is everyone's business, and everyone is expected to take an active part, supported by the work of specialist equality leaders and champions	<b>4.1</b> Boards and senior leaders routinely demonstrate their commitment to promoting equality within and beyond their organisations	
		<b>4.2</b> Papers that come before the Board and other major Committees identify equality-related impacts including risks, and say how these risks are managed	
		<b>4.3</b> Middle managers and other line managers support their staff to work in culturally competent ways within a work environment free from discrimination	

**Appendix 2: Checklist for ensuring you have considered public sector equality duty and included all relevant information as part of the EIRA.**

Equality Impact and Risk Assessment Checklist	
Scope	Yes/No
Have I made the reader aware of the full scope of the proposal and do I understand the current situation and what changes may occur?	Y
Legal	
Have I made the reader aware of our organisations legal duties with regard to Equality & Diversity and are they documented?	Y
Has the relevance of these duties pertaining to this item been outlined explicitly and documented?	Y
Have I explained how in this area we currently meet our Public Sector Equality Duties and how any change may affect this?	Y

<b>Information</b>	
Have I seen sufficient research and consultation to consider the issues for equality groups? (this may be national and local; demographic, numbers of users, numbers affected, community needs, comparative costs etc)	<b>TBC</b>
Have I carried out specific consultation with affected groups prior to a final decision being made?	<b>TBC</b>
Has consultation been carried out over a reasonable period of time i.e. no less than six weeks leading up to this item?	<b>TBC</b>
Have I provided evidence that a range of options or alternatives have been explored?	<b>TBC</b>
<b>Impact</b>	
Do I understand the positive and negative impact this decision may have on all equality groups?	<b>Y</b>
Am I confident that we have done all we can to mitigate or at least minimise negative impact for all equality groups?	<b>Y</b>
Am I confident that where applicable we considered treating disabled people more favourably in order to avoid negative impact (Disability Equality Duty)?	<b>N/A</b>
Am I confident that where applicable we allowed an exception to permit different treatment ( i.e. a criteria or condition) to support positive action	<b>N/A</b>
Have I considered the balance between; proposals that have a moderate impact on a large number of people against any severe impact on a smaller group.	<b>N/A</b>
<b>*Wider Budgetary Impact (where applicable)</b>	
Within the wider context of budgetary decisions did I consider whether an alternative would have less direct impact on equality groups?	<b>N</b>
Within the wider context of budgetary decisions did I consider whether particular groups would be unduly affected by cumulative effects/impact?	<b>Y</b>
<b>Transparency of decisions</b>	
Will there be an accurate dated record of the considerations and decisions made and what arrangements have been made to publish them?	<b>Y</b>
<b>Due regard</b>	
Did I consider all of the above before I made a recommendation/decision?	<b>Y</b>

## APPENDIX 3

### Guidance for Equality Impact and Risk Assessment Stage 2 for Policies

#### Section 1: Details:

You need to enter details about the proposal. This can be copied from stage 1 or from service specification / business case.

#### Section 2: Equality Impact Assessment:

Complete background questions.

Will your policy affect your ability to meet the Public Sector Equality Duty?

How you will mitigate any adverse impact?

- Eliminate, unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not;
- Foster good relations between people who share a protected characteristic and those who do not.

#### Section 3: Impact section:

As you complete this section think about if the 'policy' have the potential to:

- Have a positive impact (benefit) on any of the equality groups?
- Have a negative impact / exclude / discriminate against any person or equality groups?
- Explain how this was identified? Evidence/Consultation?
- Who is most likely to be affected by the proposal and how (think about barriers, access, effects, outcomes etc.)

#### Section 4: Checklist for EIRA:

Look at the checklist to ensure you have considered relevant equality issues

#### Section 5: Human Rights:

NHS organisations must ensure that none of their services, policies, strategies or procedures infringes on the human rights of patients or staff. You should analyse your document using the questions provided to determine the impact on human rights. Using human rights principles of fairness, respect, equality, dignity and autonomy as flags or areas to consider is often useful in

identifying whether human rights are a concern. This section also directly links to Safeguarding evidence.

You can access a useful briefing on human rights and the NHS Constitution by following the links below:

[http://www.nhsemployers.org/Aboutus/Publications/Documents/NHSE\\_briefing69\\_180110.pdf](http://www.nhsemployers.org/Aboutus/Publications/Documents/NHSE_briefing69_180110.pdf)  
<https://www.gov.uk/government/publications/the-nhs-constitution-for-england/the-nhs-constitution-for-england>

## Section 6: Equality Risk Assessment:

### Context:

Risk management is the recognition and effective management of all threats and opportunities that may have an impact on a project or your organisations reputation, its ability to deliver its statutory responsibilities and the achievement of its objectives and values.

The EI&RA is a risk assessment relating to the risks directly associated with equality issues for policy development or policy review.

Interpretation within the risk matrix needs to be qualified as consequence of risk could be interpreted differently. For example, the risk could be a consequence for the policy or relating to your organisation. In some cases, the risk could imply a consequence for both policy and the organisation.

Risk can be seen in a number of ways, ethical, financial and legal. All can have consequences to the reputation of your organisation and impact on the effective delivery of services.

The risk assessment table within this guidance shows a range of different risks (matched against consequence) that policy development / review may exhibit. Without acknowledging risks and mitigating against them the project could lead to a formal complaint or legal challenge – Judicial review. Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body.

### How to do the risk assessment:

This can be used for policies that:

- are under review
- being developed
- proposed for withdrawal

### To generate a risk score:

1. The Risk Assessment Table of example risks shows a range of example risks relating to Policy Development / Policy Review to help navigate you through deciding the potential consequence. These can be applied at developmental stage or review stage.
2. The purpose of the risk assessment is to generate a risk score for the worst case risk/consequence from the policy being implemented without change. The table of example risks helps see a range of different scenarios. It is not exhaustive and gives a general guide to help you assess the consequence level for concerns.

3. Once you have identified an adverse risk you can find its corresponding consequence score. (For example – if the policy would directly discriminate – we can give this a Risk Level Consequence Score of 5 as this is likely to lead to a legal challenge.)
4. Once you have your Risk Level Consequence Score, think about the likelihood of this happening. Use the likelihood descriptors (table 1) to find best fit score. (For example, in its current state you may judge this will be 'possible' with a corresponding score of 3)
5. Work out the risk score by using the following – Consequence score x Likelihood. (e.g. 5x3=15)
6. Use the risk matrix table to find where this scores sits on the table. Our example score of 15 is rag rated as a red score.
7. The action plan / future actions will be needed to reduce the risk to an acceptable level or the organisation will need to make the decision to tolerate the level of risk if it is to remain red/amber. In either case **any amber and red ragged risks need to be escalated** to the designated person who oversees the risk register within the organisation.
8. You can use this process for each risk identified. Therefore each identified risk will have a separate risk score.
9. You may need to revisit risk assessment score if you gather additional information on existing controls to reduce potential risk. Once a risk is identified, decision makers may clarify how this can be reduced and lead to a revised risk score. This can be recorded with a note stating it is a revised score following amendments to the policy. **All risks** identified need to be discussed with decision makers / project lead and the person designed as Risk Manager for the organisation.

**Table 1: Likelihood**

Likelihood	Likelihood descriptors and score				
Descriptor	Rare: 1	Unlikely: 2	Possible: 3	Likely: 4	Very Likely: 5
Frequency / How likely is it to happen?	This probably will never happen/recur	Do not expect it to happen/recur, but it is possible it may do so	Might happen or recur occasionally	Will probably happen/recur, but is not a persisting issue or circumstance	Very likely to happen/recur; possibly frequently
	Not expected to occur for years	Expected to occur annually	Expected to occur monthly	Expected to occur weekly	Expected to occur daily
Probability	<1%	1.5%	6-20%	21-50%	>50%
	Will only occur in exceptional circumstances	Unlikely to occur	Reasonable chance of occurring	Likely to occur	More likely to occur than not occur

**EQUALITY RISK ASSESSMENT – table of example risks relating to policy development**

Use the following possible scenarios to identify any possible risk for the policy / Clinical Commissioning Group if the project is implemented without amendment. All risks should be monitored for trends and provided to the project author when the project is due to be reviewed.

Areas for risk	Risk Levels – Consequence Score				
	Negligible 1	Minor 2	Moderate 3	Major 4	Catastrophic 5
<b>Unlawful discrimination, victimisation and harassment</b>	<p>There is no evidence of factors relating to unlawful discrimination, victimisation and harassment. No negative impact on people with protected characteristics.</p> <p>Policy is well documented for factors relating to meeting needs of people with protected characteristics.</p>	<p>Evidence of potential factor that could cause indirect discrimination and potentially impact negatively on people with protected characteristics being treated unfavourably.</p> <p>Policy has some documented factors to meet needs of people with protected characteristics.</p> <p>Without mitigating potential risk there could be risk of formal complaint or legal challenge through Judicial review and bad publicity.</p>	<p>Evidence of repeated factors / concern that could cause discrimination and impact negatively on people with protected characteristics.</p> <p>Policy has very few documented factors relating to addressing unlawful discrimination. Needs of people with protected characteristics not fully understood.</p> <p>Without mitigating potential risk there could be risk of formal complaint or legal challenge through Judicial review. This could give rise to bad publicity and rise for financial loss.</p>	<p>Evidence of ongoing concern that policy may cause direct discrimination or indirect discrimination that may result in less favourable treatment of people with protected characteristics.</p> <p>Policy has evidence of factors leading to discrimination or there is insufficient information to demonstrate the needs of people with protected characteristics are understood.</p> <p>High risk of formal complaint and legal challenge through Judicial review. This could give rise to bad publicity and lack of confidence as well as financial loss.</p>	<p>Evidence that policy will cause direct discrimination (less favourable treatment 'because of' a protected characteristic).</p> <p>Direct discrimination is totally unacceptable unless unfavourable treatment is due to age.</p> <p>Policy has evidence of causing direct discrimination or there is no information to demonstrate understanding of the needs equality groups.</p> <p>High risk of formal complaint and legal challenge through Judicial review. This could give rise to bad publicity and lack of confidence and financial loss.</p>
<b>Promoting Equality of Opportunity</b>	<p>Evidence of people being treated fairly, given equal access to opportunities and access.</p> <p>Staff and patient groups are widely consulted and involved in decision making. Equality and inclusion are given</p>	<p>There is some documented evidence of how policy meets the differing needs of people with protected characteristics. Some consultation and involvement of people with decision making.</p> <p>Policy identifies some areas of</p>	<p>There is little evidence of people being treated fairly. There is very little consultation or involvement from people in decision making.</p> <p>Policy identifies low number of areas where different needs of people with protected</p>	<p>Evidence that people will not be treated fairly and given opportunities to access services. No mitigating actions in place to address concerns.</p> <p>Policy makes very little and inadequate reference to removing or minimising disadvantage</p>	<p>Gross failure to treat people fairly and give them access to services. No regard given to equality groups. No mitigating actions.</p> <p>Policy contains no reference to addressing the needs of different equality groups.</p> <p>No groups have</p>



	<p>high level of importance.</p> <p>Policy fully identifies relevant actions that demonstrate CCG is considering the differing needs of equality groups and their views are fully embedded into decision making processes.</p>	<p>how different needs of protected groups can be met. Some participation of groups in decision making processes.</p> <p>Without mitigating potential risk there could be risk of formal complaint or legal challenge through Judicial review. This could give rise to bad publicity.</p>	<p>characteristics will be met.</p> <p>Without mitigating potential risk there could be risk of formal complaint or legal challenge through Judicial review.</p> <p>This could give rise to bad publicity and financial loss.</p>	<p>experienced by equality groups.</p> <p>High risk of formal complaint and legal challenge through Judicial review.</p> <p>This could give rise to bad publicity and lack of confidence and financial loss.</p>	<p>been involved in consultation or decision making processes.</p> <p>High risk of formal complaint and legal challenge through Judicial review.</p> <p>This could give rise to bad publicity and lack of confidence and financial loss.</p>
<b>Foster Good Relations Between People</b>	<p>The policy demonstrates inclusive service meeting different needs and promoting understanding of the needs of different equality groups.</p>	<p>The policy has some evidence of demonstrating that it is inclusive and meeting different needs and promoting understanding of different equality groups. Potential for complaint if all needs of protected groups will not be met. This could give rise to bad publicity.</p>	<p>Policy shows little evidence of inclusive practice and little evidence for promoting understanding of different equality groups.</p> <p>Potential for complaint or legal challenge. This could give rise to bad publicity and financial loss.</p>	<p>Policy shows no evidence of inclusive practice and no evidence for promoting understanding of different equality groups.</p> <p>High risk of formal complaint and legal challenge through Judicial review. This could give rise to bad publicity and lack of confidence.</p>	<p>Policy shows gross failure to foster good relations between people.</p> <p>Understanding between different groups excluded and prejudice not tackled.</p> <p>High risk of formal complaint and legal challenge through Judicial review. This could give rise to bad publicity, lack of confidence and financial loss.</p>
<b>Human Rights Legislation</b>	<p>The policy fully acknowledges human rights legislation and there is no expected negative impact on the human rights for patients and staff. The service is underpinned by NHS Constitution.</p>	<p>The policy provides some acknowledgement to human rights. Service is underpinned by NHS Constitution.</p> <p>Any identified Human Right issues are addressed.</p> <p>Without addressing these, there is potential for formal complaint and bad publicity.</p>	<p>There is little acknowledgement of human rights and NHS Constitution. As a result the service could result in a breach of human rights. There is insufficient mitigation to address potential breaches and therefore giving rise to formal complaints or legal challenge through court. This could potentially lead to bad publicity and financial loss.</p>	<p>The policy will potentially result in degrading or inhuman treatment, limit a person's liberty, and interfere with a person's right to respect for private and family life.</p> <p>Policy shows very limited consideration of human rights legislation. Not underpinned by NHS Constitution.</p> <p>Open to formal complaint and legal challenge through court. This potentially leading to financial costs and mandatory order as well as bad publicity.</p>	<p>Policy will potentially result in a breach of human rights.</p> <p>There is gross failure to consider human rights legislation and not underpinned by NHS Constitution.</p> <p>Open to formal complaint and legal challenge through court. This could potentially lead to financial costs and mandatory order. Also leading to bad publicity.</p>
<b>Mitigating</b>	Any concerns / identified areas of	Most concerns and identified	Some concerns and identified	There are insufficient	No mitigating actions provided to



<b>actions</b>	disadvantage are fully understood and fully mitigated with planned monitoring and review.	<p>areas of disadvantage are mitigated against and there is some monitoring and review planned.</p> <p>Without addressing these, there is potential for formal complaint and bad publicity.</p>	<p>areas are mitigated. There is insufficient monitoring of concerns.</p> <p>This could lead to potential Freedom of Information (Fol) requests, formal complaints and legal challenge. This could lead to bad publicity and financial loss.</p>	<p>mitigating actions to address concerns / disadvantage. No planned review or monitoring of concerns.</p> <p>High risk of Fol, legal challenge through Judicial review. This could give rise to bad publicity, lack of confidence and financial loss.</p>	<p>address concerns / disadvantage. No review or monitoring planned. Without planned action policy poses unacceptable risk to patients / staff.</p> <p>High risk of Fol and legal challenge through Judicial review. This could give rise to bad publicity, lack of confidence and financial loss.</p>
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## Section 7 Equality Delivery System 2

The policy may help provide evidence for goals and outcomes matched against the Equality Delivery System 2. Appendix 1 contains a table of outcomes that you can tick against if applicable to the proposal.

## Section 8 Monitoring arrangements

No service, functions and policy remains fixed. The impacts that were anticipated through your analysis may not transpire to be a reality, and in some instances you may discover emerging impacts that you hadn't anticipated. Ensuring equality is embedded within our practice is an on-going process.

It is therefore wise to monitor the impacts that you have anticipated and to plan and document when the service, function and policy will be reviewed. It will not be necessary to repeat a full equality impact and risk assessment process at these review points, but these will be opportunities to test your anticipated impacts.

Where these prove not to have been accurate, this will allow you to focus your analysis on the emerging impacts and to propose alternative responses. Use a range of information to make an informed decision on if the proposal will have positive, negative or indirect effect on people with protected characteristics.

## Section 9 Final section

Nearly at the end... complete this section and send to Equality and Inclusion Team for quality assurance check and then it is ready to send on to your CCG Committee for formal acceptance. This formal acceptance effectively demonstrates that the Governing Board accepts ownership for the accuracy and appropriateness of the document's contents.

The Equality and Inclusion Team are available to advise you and assist you in undertaking your equality impact and risk assessment.

For further support or advice, contact The Equality and Inclusion Team:  
[equality.inclusion@nhs.net](mailto:equality.inclusion@nhs.net)

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