

Equality Impact Assessment Guidance version 1

9th October 2020

It is a key part of the CCG's decision-making governance that decisions are subject to Equality Impact Assessment (EIA), this is also a legal requirement and key to making robust informed decisions that have the greatest possible benefit for those affected by the decision. In particular the CCG must ensure that vulnerable groups are considered properly, reasonable adjustments are made and that exception planning is in place.

It is a key part of the CCGs approach that EIAs are conducted proportionately and only carried out when required. To facilitate this decision making a 2 stage process is in place with the initial phase a scoping stage to determine when an assessment is required. This is tied to the CCG's legal duties under the Equality Act 2010, Public Sector Equality duty, Human Rights Act and Health and Social Care act. Further detail can be found on the CCG's equality page and in later sections and the appendix of this guidance.

The Equality Act 2010 outlaws direct and indirect discrimination, including less favourable treatment, harassment and victimisation of people based upon their protected characteristics. The Act applies to all individuals, providers of services and employers.

Direct discrimination means less favourable treatment of a person compared with another person because of a protected characteristic.

Indirect discrimination means the use of an apparently neutral practice, provision or criterion which puts people with a particular protected characteristic at a disadvantage compared with others who do not share that characteristic, and applying the practice, provision or criterion cannot be objectively justified.

Stage 1: Do I need to complete an EIA? (scoping)

Examples of documents that would be expected to include an EIA are:

- policy review or policy development
- Service Specification
- business case
- business plan
- project initiation
- decision to implement a service
- decision to decommission a service.

An EIA is not required in the following circumstances:

- The paper does not represent a decision, i.e. it has been provided for information
- The decision is not being made by the CCG (examples include where NHS England or a Provider of services is making the decision) or is acting under direction from another organisation (In this case the CCG would have no local discretion.) In such a case it would be wrong to complete an EIA since the CCG is not in a position to influence either the decision or its implementation, meaning that no adjustments could be made. In such a case an EIA would give a false sense of security since any resulting recommendations could not be made.
- The decision has no impact on staff or patients. This is quite an unusual circumstance but is possible when re issuing the same contract and terms and changing back office functions without impacting staff. **Care should be taken in using this rationale as a reason not to complete an EIA.** In particular it is very unlikely that the following statements will be true for all patients...
 - This decision affects all patients equally
 - The service is accessible to all

statements like those above have featured heavily in successful legal challenges by organisations and individuals against public bodies. In general services that are considered one size fits all are suitable for a large proportion of patients but fail to meet the needs of key groups.

If you are unsure on whether to do an EIA the following principles may be of help.

- Does the decision affect patients / communities or staff significantly?
- Will there be a risk of unhappiness with the decision?
- Is a likelihood of legal challenge?
- Does the service see inequalities in access, experience and or outcomes

If you aren't sure it may be better to conduct one but advice can be sought from the Equality Team.

It is also important to remember the CCG has a legal duty to understand and reduce the health inequalities that affect local populations. Within an EIA the key impacts should be identified.

The factors that you must consider are listed below but there may be others that need considering for a specific project.

Stage 2 Completing a full EIA

When completing, it is vital that you consider in your response, the impact on the following when doing the EIA:

- Human Rights
- The Public Sector Equality Duty (This gives the CCG positive proactive duties to support equity of opportunity and outcome)
- Health and social Care duty to reduce Health inequalities

Advice on different types of EIA

Service Change

The level of change will be key, you should be looking at how the current pattern of use will be changed, especially positive impacts. Are there some patients who need to be able to use the current approach? How will any geographical changes in locations impact patients, especially with the Lincolnshire geography in mind.

With the requirement on CCGs to understand and reduce local health inequalities it is vital that the EIA shows evidence of these considerations.

HR Policy

Changes to these policies will primarily impact staff and are often made on the basis of national guidance. The key focus is how vulnerable groups will be affected. Examples of principles for consideration are:

- Disabled staff
 - Travel
 - Access to buildings
- Carers
 - Travel
 - Working Hours

Generally these policies have less impact but it is vital that exceptions are managed.

Decommissioning

Where a service is decommissioned it is vital that the EIA shows how the current patient cohort will be supported and the needs of vulnerable patients are met.

Restricting Clinical Procedures

Sometimes a procedure will be identified as of limited clinical value and either restricted or removed from availability. The impact on patients is key but there may also be an impact on staff as well. It should be noted that Individual Funding requests are not normally a suitable mitigation for patients who with a disability for example. The CCG must consider how to appropriately meet the needs of a patient whose protected characteristics require individual consideration. For example a disabled patient maybe be unable to make use of non surgical interventions so must be considered for an alternative option.

Estate changes

When the CCG or contracted organisations make changes to their premises this impacts on the staff working there. Particular consideration must be made to the impact of travel and reasonable adjustments.

Patients are also likely to be affected if the service moved is public facing.

Consideration must be made to the impacts of such change and mitigations put in place. These will need to be reasonable and proportionate.

Socio Economic factors (poverty and deprivation)

While not directly listed in the Equality Act, these considerations have considerable interdependency and are highly likely to be linked to health inequalities. As such it is recommended that EIAs refer to these where relevant. These can be included in the section "other impacts."

1) Evidence Used

A key aspect in completing the EIA is to show how you came to your decision, in this box you should record the types of evidence you have reviewed. Some examples are given but any qualitative or quantitative evidence should be noted. There is a proportionality to this, a large service change would be expected to use a broader evidence portfolio than that for a minor change. Internal HR policies may not have any direct evidence depending on subject.

2) Impact of Decision

2.1 Age

Describe age-related impact and evidence. This can include safeguarding, consent and welfare issues. It is likely that impacts of a change will not be constant. Older patients may find travel more difficult and challenging for example.

2.2 Disability

Describe disability-related impact and evidence. This can include attitudinal, physical, communication and social barriers as well as mental health/learning disabilities, cognitive impairments.

The impact of travel and service access are key. Communication is also key since the principles of the Accessible Information Standard apply and services should ensure appropriate communication of changes to patients.

2.3 Gender reassignment (including all non cis gender such as non binary)

Describe any impact and evidence in relation to such groups. This can include issues such as privacy of data and harassment. When referring to this aspect in EIAs caution should be used on language chosen and if in doubt advice sought.

2.4 Marriage and civil partnership

Describe any impact and evidence in relation to marriage and civil partnership. This can include working arrangements, part time working and caring responsibilities.

2.5 Pregnancy and maternity

Describe any impact and evidence in relation to marriage and civil partnership. This can include working arrangements, part time working and caring responsibilities.

This section also provides an opportunity to include considerations of the impact of a decision on those looking after young children. Times of appointments, access and travel time are likely to be key. For staff the impact of being on maternity / paternity leave during any change is key.

2.6 Race

Describe race-related impact and evidence. This can include information on different ethnic groups, Roma gypsies, Irish travellers, nationalities, cultures and language barriers.

The service should be setting out how changes will be communicated to those whose first language isn't English. Evidence suggests that considerable health inequalities exist in access to services for these groups.

2.7 Religion or belief

Describe any impact and evidence in relation to religion, belief or no belief on service delivery or patient experience. This can include dietary needs, consent and end of life issues.

2.8 Sex (often referred to as gender)

Describe any impact and evidence in relation to the impact on men and or women. This could include access to services and employment. Consideration should be given to being mindful of section 2.3 in responding to this section.

2.9 Sexual orientation

Describe any impact and evidence in relation to heterosexual people as well as lesbian, gay and bisexual people. This could include access to services and employment, attitudinal and social barriers.

2.10 Carers

Describe any impact and evidence in relation to part-time working, shift-patterns, general caring responsibilities. (Not a legal requirement but a CCG priority and best practice)

2.11 Other disadvantaged groups

Describe any impact and evidence in relation to groups experiencing disadvantage and barriers to access and outcomes. This can include socio-economic status, resident status (migrants, asylum seekers), homeless people, looked after children, single parent households, victims of domestic abuse, victims of drug/alcohol abuse. This list is not finite. This supports the CCG in meeting its legal duties to identify and reduce health inequalities.

A key impact for this group is the need to register with a GP practice, which is the gateway to many services. Where appropriate the service should identify alternative routes.

Consideration should also be given to the impact of Geographical isolation in rural areas.

3. Human Rights Act

It is important that the CCG ensures that its decision making takes account of the Human Rights Act.

- [Article 2: Right to life](#)
- [Article 3: Freedom from torture and inhuman or degrading treatment](#)
- [Article 4: Freedom from slavery and forced labour](#)
- [Article 5: Right to liberty and security](#)
- [Article 6: Right to a fair trial](#)
- [Article 7: No punishment without law](#)
- [Article 8: Respect for your private and family life, home and correspondence](#)
- [Article 9: Freedom of thought, belief and religion](#)
- [Article 10: Freedom of expression](#)
- [Article 11: Freedom of assembly and association](#)
- [Article 12: Right to marry and start a family](#)
- [Article 14: Protection from discrimination in respect of these rights and freedoms](#)
- [Protocol 1, Article 1: Right to peaceful enjoyment of your property](#)
- [Protocol 1, Article 2: Right to education](#)
- [Protocol 1, Article 3: Right to participate in free elections](#)
- [Protocol 13, Article 1: Abolition of the death penalty](#)

<https://www.equalityhumanrights.com/en/human-rights/human-rights-act>

In terms of completing the EIA you are asked to ensure that the decision does not impact on those rights or where for example in the case for example of the deprivation of liberty standards that impact is measured and lawful. This may require mitigations or actions to be put in place and where required these should be detailed.

The Human Rights act requirements can be summarised by the FREDA principles.

- Fairness
- Respect
- Equality
- Dignity
- Autonomy

In cases where there is no impact N/A should be put.

4. Health Inequalities

The Health and Social Care Act 2012 established the first specific legal duties on CCGs to have regard to the need to reduce inequalities between patients in **access** to, and **outcomes** from, healthcare services and in securing that services are provided in an integrated way. These duties had legal effect from April 1st 2013.

This duty requires a CCG to properly and seriously take into account inequalities when making decisions or exercising functions. Furthermore, the CCG must have evidence of compliance with the duties, whilst also assessing how well commissioned providers have discharged their legal duties on health inequalities.

What is meant by "...have regard to..." in the duties?

- Case Law (Brown principles) shows that "having regard to the need to reduce" means health inequalities must be properly and seriously taken into account when making decisions or exercising functions, including balancing that need against any alternative factors.
- Part of having due regard includes accurate record keeping of how the need to reduce health inequalities have been taken into account. (The EIA form is the primary record but depending on the case further evidence may be necessary)

It is really important that this section is completed as this is a key focus of national concern at the moment. In particular, while there may be some areas for which Health Inequalities are not applicable, a clear rationale should be given as to why that is the case.

In making a decision, particularly one impacting on patients / commissioning, you will need to show that you understand the current state of play and where some groups may not be accessing services.

The following embedded document may be of value.



Health Inequalities
- Lincs v4.5.pdf

5. Engagement

This section is used to record the evidence that staff / patients' views have been sought. This is the most effective way of understanding the nuances of any impact and what assistance is required to provide equity of access. It is recognised that any engagement must be proportionate and that there is a risk of consultation fatigue, so use must be made of planned engagement where possible.

Engagement should be targeted to the groups most affected rather than carried out more generally. A key challenge in any engagement is that the most likely to respond are those who are affluent and articulate. You should consider how you will reach those groups who may be more vulnerable and maybe experiencing the most challenges.

The published population summaries for the Lincolnshire population have been included as an embedded document, these can also be found on the CCG's website.



Population
Summary for Lincoln

The Law

This section gives information on the legal compliance and should be used as an aid and reminder when filling in the form.

Public Sector Equality Duty

The equality duty was developed in order to harmonise the equality duties and to extend it across the protected characteristics. It consists of a general equality duty, supported by specific duties which are imposed by secondary legislation. In summary, those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and 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.

These are sometimes referred to as the three aims or arms of the general equality duty. The Act explains that having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

The Act states that meeting different needs involves taking steps to take account of disabled people's disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It states that compliance with the duty may involve treating some people more favourably than others.

The equality duty covers the nine protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Public authorities also need to have due regard to the need to eliminate unlawful discrimination against someone because of their marriage or civil partnership status. This means that the first aim of the duty applies to this characteristic but that the other aims (advancing equality and fostering good relations) do not apply.

Advancing equality of opportunity involves:

- Removing or minimising disadvantage experienced by people due to their personal characteristics
- Meeting the needs of people with protected characteristics
- Encouraging people with protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

Fostering good relations involves:

- Tackling prejudice, with relevant information and reducing stigma, and
- Promoting understanding between people who share a protected characteristic and others who do not.

Due Regard:

Having due regard entails considering the above three aims of the PSED in all the decision making as in:-

- How we act as an employer
- Developing, reviewing and evaluating policies
- Designing, delivering and reviewing services
- Procuring and commissioning
- Providing equitable access to services

The legislation acknowledges that in some circumstances compliance with the PSED may involve treating some persons more favourably than others, but not where this would be prohibited by other provisions of the Act.