

# **Equality & Human Rights Impact Assessment (EHRIA)**

This Equality and Human Rights Impact Assessment (EHRIA) will enable you to assess the **new, proposed or significantly changed** policy/ practice/ procedure/ function/ service\*\* for equality and human rights implications.

Undertaking this assessment will help you to identify whether or not this policy/ practice/ procedure/ function/ service\*\* may have an adverse impact on a particular community or group of people. It will ultimately ensure that as an Authority we do not discriminate and we are able to promote equality, diversity and human rights.

Before completing this form please refer to the EHRIA [guidance](#), for further information about undertaking and completing the assessment. For further advice and guidance, please contact your [Departmental Equalities Group](#) or [equality@leics.gov.uk](mailto:equality@leics.gov.uk)

*\*\*Please note: The term 'policy' will be used throughout this assessment as shorthand for policy, practice, procedure, function or service.*

<b>Key Details</b>	
<b>Name of policy being assessed:</b>	Fee review project for Residential and Nursing Care Providers
<b>Department and section:</b>	Adults & Communities Department - Strategy & Commissioning
<b>Name of lead officer/ job title and others completing this assessment:</b>	Dave Pruden – Lead Commissioner Katie Joondan - Strategic Lead, Equalities
<b>Contact telephone numbers:</b>	DP 0116 3058123 CH 0116 3057832
<b>Name of officer/s responsible for implementing this policy:</b>	Sandy McMillan
<b>Date EHRIA assessment started:</b>	
<b>Date EHRIA assessment completed:</b>	

# Section 1: Defining the policy

## Section 1: Defining the policy

You should begin this assessment by defining and outlining the scope of this policy. You should consider the impact or likely impact of the policy in relation to all areas of equality, diversity and human rights, as outlined in Leicestershire County Council's Equality Strategy.

1	<p><b>What is new or changed in this policy? <i>What has changed and why?</i></b></p> <p>In recent years the fees paid to providers of <b>residential and nursing care homes</b> have been reviewed and uplifted annually in order to keep pace with increases in the National Minimum Wage (NMW) and more recently the National Living Wage. (NLW) EHRIAs have been undertaken to enable the Departmental Equality Group (DEG) to monitor those annual reviews and provide information to the Fee Panel, which has delegated authority to agree increases via the annual reviews.</p> <p>However, it has been acknowledged for some time that a dedicated project is required to undertake a fundamental review of how the fees are made up as well as the processes to support it.</p> <p>A project commenced in April 2018, that would entail staff and provider engagement, a two stage consultation process and is expected to be completed in June 2019, with the fees agreed back dated to be effective from April 2019. This EHRIA will be used by the DEG to monitor that project and provide information to Cabinet, which will agree the new arrangements. Initially this screening questionnaire will be completed to highlight the key issues, with a full review completed ahead of project completion in June 2019.</p> <p>The key issues to consider are:</p> <ul style="list-style-type: none"><li>• The use of a different pricing mechanism for the placement of older people (Bands) and working age adults (CFC)</li><li>• The impact on service users that have a supplementary needs allowance payment where the needs of the service user are currently greater than those catered for in the banded rate.</li><li>• The impact on service users that use of top-up payments to facilitate choice.</li><li>• The impact on service users that are subject to charging, in particular self funders that use the Deferred Payment Scheme. This allows people to delay selling their home in their lifetime to pay for their care. By entering into a DPA a person can delay paying for their care and support until a later date (often after their death).</li></ul>
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2	<p><b>Does this relate to any other policy within your department, the Council or with other partner organisations?</b> <i>If yes, please reference the relevant policy or EHRIA. If unknown, further investigation may be required.</i></p> <p>Service users in receipt of residential or nursing care services are likely to have been in receipt of other council services prior to their admission to a care home. All service users would have received an assessment of their needs in accordance with the Cost Effective Care Policy, and where required would also have had access to assistance such as advocacy, support and translation services.</p> <p>These related services and policies have been subject to EHRIA assessments, either at a point at which they have been substantially altered or during a periodic review. The Adults and Communities Department's completed EHRIs can be found in the relevant policies. Strategies relating to Accommodation for Older People and Working Age Adults, Workforce Development and Assistive Technology are also relevant to this EHRIA.</p>
3	<p><b>Who are the people/ groups (target groups) affected and what is the intended change or outcome for them?</b></p> <p>Anyone in receipt of residential or nursing care services from providers in Leicestershire and out of county providers contracted by Leicestershire County Council (LCC), their carers, family and representatives are potentially affected by the review.</p> <p>Providers are affected by the resulting level of remuneration. There is frequent dispute between providers and the council concerning the actual costs of care, It is accepted practice to establish fee levels locally, based on local conditions, national guidance and in accordance with the market shaping requirements of the Care Act. There is no prescribed mechanism for calculating fee levels, although models do exist that may be referred to. However, many LAs use a banding for older adult placements and the national CFC for younger adults with more complex needs. Consultation and engagement with providers is an important element of the process (see paras 5-8, below).</p> <p>Fees must be set at levels to ensure that an appropriate standard of care can be provided to meet the assessed needs of individual service users. This means that considerations such as remuneration for care workers, at least meeting legal minimum and living wage requirements, form an essential element of the calculation. Taking account of the interests of all parties from those receiving care through to all involved in providing it is therefore integral to the outcome.</p> <p>As well as ensuring that providers can meet the assessed needs of individual services users, the objectives of the review are ensure that the Council shape the market in line with its responsibilities under the Care Act. That is to ensure that a diverse range of care services can continue to be provided at a high standard, that market capacity is maintained at the required level to meet demand efficiently, and effective working relations are maintained between LCC and private, independent and voluntary care providers.</p>

4	Will this policy meet the Equality Act 2010 requirements to have due regard to the need to meet any of the following aspects? <b>(Please tick and explain how)</b>			
		Yes	No	How?
	Eliminate unlawful discrimination, harassment and victimisation	X		The protected groups who are of principal concern in this review are older age groups and people with a range of physical and mental health problems. Others may also be affected (see section 2, below). Appropriate fee setting and the use of Special Needs Allowances (SNAs) for the varying conditions of vulnerability will ensure that the legal protections are observed.
	Advance equality of opportunity between different groups	X		Ensuring fairness across the range referred to above assists in meeting this requirement.
	Foster good relations between different groups	X		Success in achieving the aims set out in the above two responses will assist in meeting this requirement.

## Section 2: Equality and Human Rights Impact Assessment (EHRIA) Screening

### Section 2: Equality and Human Rights Impact Assessment Screening

The purpose of this section of the assessment is to help you decide if a full EHRIA is required.

If you have already identified that a full EHRIA is needed for this policy/ practice/ procedure/ function/ service, either via service planning processes or other means, then please go straight to [Section 3](#) on Page 7 of this document.

### Section 2

#### A: Research and Consultation

<b>5.</b>	Have the target groups been consulted about the following?  a) their current needs and aspirations and what is important to them;  b) any potential impact of this change on them (positive and negative, intended and unintended);  c) potential barriers they may face	<b>Yes</b>	<b>No*</b>
			X
			X
			X

6.	If the target groups have not been consulted directly, have representatives been consulted or research explored (e.g. Equality Mapping)?		X
7.	Have other stakeholder groups/ secondary groups (e.g. carers of service users) been explored in terms of potential unintended impacts?		X
8.	<p>*If you answered 'no' to the question above, please use the space below to outline what consultation you are planning to undertake, or why you do not consider it to be necessary.</p> <p>Individual needs are met via assessment and review taking account of The Care Act criteria. Discussions with the Provider Reference Group (PRG) are an essential element in determining the appropriate level of fees required to meet assessed need. LCC's market shaping responsibility under The Care Act provides a further opportunity to gauge appropriate fee levels via the annual fee review.</p> <p>With regard to para 7, consultation with carers, relatives, or service users is not a statutory requirement for the fee setting process. LCC, in this instance, regards its role as representing the interests of these groups in the course of establishing a specific commercial agreement with providers.</p> <p>However, for this review LCC will seek the views of Healthwatch and advocacy organisations in Leicestershire.</p>		

## Section 2

### B: Monitoring Impact

9.	Are there systems set up to:	Yes	No
	a) monitor impact (positive and negative, intended and unintended) for different groups;	X	
	b) enable open feedback and suggestions from different communities	X	

**Note: If no to Question 9, you will need to ensure that monitoring systems are established to check for impact on the protected characteristics.**

Care plans are subject to review to ensure that service users assessed needs are met.

The Contract Compliance Team responds to concerns, complaints and alerts about care and safeguarding standards.

Independent appraisal of care provider national standards and practices is conducted by the Care Quality Commission.

The full EHRIA will include an improvement plan which will be subject to review.

**Section 2****C: Potential Impact**

<b>10.</b>	Use the table below to specify if any individuals or community groups who identify with any of the ' <a href="#">protected characteristics</a> ' may <u>potentially</u> be affected by this policy and describe any positive and negative impacts, including any barriers.			
		<b>Yes</b>	<b>No</b>	<b>Comments</b>
	<b>Age</b>	<b>X</b>		<p>The majority of people in receipt of residential or nursing care services will be in older age groups. In addition, Leicestershire is predicted to have a significant rise in the population of older people in the coming years, greater than the national trend. Ensuring that remuneration meets the assessed needs of this group is therefore crucial to protecting their current and future safety and wellbeing.</p> <p>For Older Adults, it is proposed that a two band system is used to set the weekly fee for care, and where appropriate a Supplementary Needs Allowance will be paid.</p> <p>For Working Age Adults, the Care Funding Calculator will be used to set the weekly fee paid to providers.</p> <p>Though the administration of the fee differs for each age group, both methods entail a person centred assessment to ensure that the needs can be met within the agreed fee.</p>
	<b>Disability</b>	<b>X</b>		<p>There are a wide range of health conditions that may give rise to care needs. The expertise and specialisms required to meet these needs are acknowledged in care home registration procedures. Fee levels (supported by SNAs where</p>

				appropriate) must be set at levels to ensure that appropriate skills and facilities are available.
	<b>Gender Reassignment</b>		X	Nothing identified for this group.
	<b>Marriage and Civil Partnership</b>		X	Nothing identified for this group.
	<b>Pregnancy and Maternity</b>		X	Nothing identified for this group.
	<b>Race</b>	X		Attention must be paid to provision of culturally appropriate services. If required, SNA payment would be used to enable providers to meet cultural needs.
	<b>Religion or Belief</b>		X	Although services should be designed and delivered in such a way as to allow service users to observe their faith, this is not known to impact on the costs of provision. The comments for Race may also apply here.
	<b>Sex</b>	X		As a greater number of older women than men are in receipt of services from Adult Social Care, there is disproportionately high impact in the outcome of the fees review.
	<b>Sexual Orientation</b>		X	Nothing identified for this group.
	<b>Other groups e.g. rural isolation, deprivation, health inequality, carers, asylum seeker and refugee communities, looked after children, deprived or disadvantaged communities</b>	X		Carers are naturally concerned that remuneration should be sufficient to meet the needs of service users.
	<b>Community Cohesion</b>		X	
<b>11.</b>	<p>Are the human rights of individuals <u>potentially</u> affected by this proposal? Could there be an impact on human rights for any of the protected characteristics? (Please tick)</p> <p>Explain why you consider that any particular <a href="#">article in the Human Rights Act</a> may</p>			

apply to your policy/ practice/ function or procedure and how the human rights of individuals are likely to be affected below: [NB. Include positive and negative impacts as well as barriers in benefiting from the above proposal]			
	<b>Yes</b>	<b>No</b>	<b>Comments</b>
Part 1: The Convention- Rights and Freedoms			
<b>Article 2: Right to life</b>	<b>X</b>		This article imposes a positive obligation on councils to take steps to safeguard life, applicable in circumstances where decisions may have a negative impact on life expectancy. Provision of care to particularly frail and vulnerable people highlights the requirement to observe Article 2 rights.
<b>Article 3: Right not to be tortured or treated in an inhuman or degrading way</b>	<b>X</b>		It is well established through the courts that care provision must not fall below acceptable standards. To do so is likely to amount to inhumane treatment under Article 3
<b>Article 4: Right not to be subjected to slavery/ forced labour</b>		<b>X</b>	
<b>Article 5: Right to liberty and security</b>	<b>X</b>		Security, particularly in care homes, should not restrict physical movement unduly or be achieved via excessive restraint
<b>Article 6: Right to a fair trial</b>		<b>X</b>	
<b>Article 7: No punishment without law</b>		<b>X</b>	
<b>Article 8: Right to respect for private and family life</b>	<b>X</b>		Provision of personal care has the potential to be intrusive. A residential care service is the provision of an alternative home. Such services must respect Article 8 rights by being sensitive to privacy at the same time as providing the protection and safety that will always be required.
<b>Article 9: Right to freedom of thought, conscience and religion</b>		<b>X</b>	
<b>Article 10: Right to freedom of expression</b>		<b>X</b>	
<b>Article 11: Right to freedom of assembly and association</b>		<b>X</b>	
<b>Article 12: Right to marry</b>		<b>X</b>	



	<b>Article 14: Right not to be discriminated against</b>	<b>X</b>		The safeguards outlined in comments under Articles 2,3,5 and 8 above should ensure that no discrimination occurs within each context, and any related policy revisions should bear this in mind.
	Part 2: The First Protocol			
	<b>Article 1: Protection of property/ peaceful enjoyment</b>		<b>X</b>	
	<b>Article 2: Right to education</b>		<b>X</b>	
	<b>Article 3: Right to free elections</b>		<b>X</b>	

Section 2					
D: Decision					
12.	Is there evidence or any other reason to suggest that:		<b>Yes</b>	<b>No</b>	<b>Unknown</b>
	a) this policy could have a different affect or adverse impact on any section of the community;			<b>X</b>	
	b) any section of the community may face barriers in benefiting from the proposal			<b>X</b>	
13.	Based on the answers to the questions above, what is the likely impact of this policy				
	No Impact <input type="checkbox"/>	Positive Impact <input type="checkbox"/>	Neutral Impact <input checked="" type="checkbox"/>	Negative Impact or Impact Unknown <input type="checkbox"/>	
<b>Note: If the decision is 'Negative Impact' or 'Impact Not Known' an EHRIA Report is required.</b>					
14.	Is an EHRIA report required?		Yes <input type="checkbox"/>	No <input type="checkbox"/>	

**Section 3:**  
**F: Equality and human rights improvement plan**

Please list all the equality objectives, actions and targets that result from the Equality and Human Rights Impact Assessment (EHRIA) (continue on separate sheets as necessary). These now need to be included in the relevant service plan for mainstreaming and performance management purposes.

<b>Equality Objective</b>	<b>Action</b>	<b>Target</b>	<b>Officer Responsible</b>	<b>By when</b>
Ensure that good quality care is available to all age and disability groups, is not unduly restricted by financial means, and supports Article 3 and 14 rights under the Human Rights Act (HRA).	<p>Fee levels to be set paying due regard to the actual cost of care.</p> <p>Negotiations with providers for each individual placement do not factor in top up payments as a prerequisite to meeting assessed needs.</p> <p>Develop guidance material as necessary.</p>	<p>Due regard is paid to the Equality and Human Rights considerations for affected protected groups throughout all steps involved in fee setting,</p> <p>Service delivery meets the stated objectives of providing consistently good quality care.</p> <p>Minimise the incidence of disruptive and potentially harmful moves between homes arising from inappropriate or ill-advised top up agreements.</p>		
Ensure that choice of geographical location of care homes is not unduly restricted because of	Collect robust data to reflect patterns of top up payments across the county.	Localities where there are concerns about availability of appropriate care are identified and addressed in		

<p>financial means for vulnerable people protected by age and disability characteristics, and supports Article 8 and 14 rights under HRA.</p> <p>.</p>	<p>Lead Practitioners take responsibility for ensuring a fair and consistent approach to placement arrangements.</p> <p>Develop guidance material as necessary.</p>	<p>Market Shaping.</p> <p>People moving into residential settings are able to preserve their family relationships and community contacts as far as is reasonably possible, and in accordance with their wishes.</p>		
<p>Ensure that assessed needs arising from health conditions associated with age and disability are adequately addressed by appropriate use of SNAs.</p>	<p>Appropriate use of SNAs is well understood by practitioners, with Lead Practitioners holding responsibility for management and training to maintain standards.</p> <p>The level of SNA payments is calculated to ensure that they can adequately cover additional needs.</p> <p>The incidence of SNA use is recorded and mapped to support appropriate practice and inform future Fees Reviews and policy.</p>	<p>The interests of vulnerable people with additional needs are addressed appropriately, resulting in safe and successful placements.</p>		

## Section 4: Sign off and scrutiny

Upon completion, the Lead Officer completing this assessment is required to sign the document in the section below.

It is required that this Equality and Human Rights Impact Assessment (EHRIA) is scrutinised by your [Departmental Equalities Group](#) and signed off by the Chair of the Group.

Once scrutiny and sign off has taken place, a depersonalised version of this EHRIA should be published on Leicestershire County Council's website. Please send a copy of this form to [louisa.jordan@leics.gov.uk](mailto:louisa.jordan@leics.gov.uk), Members Secretariat, in the Chief Executive's department for publishing.

### Section 4

#### A: Sign Off and Scrutiny

Confirm, as appropriate, which elements of the EHRIA have been completed and are required for sign off and scrutiny.

**Equality and Human Rights Assessment Screening** ☒

**Equality and Human Rights Assessment Report** ☐

1<sup>st</sup> Authorised Signature (EHRIA Lead Officer): .....

Date: .....

2<sup>nd</sup> Authorised Signature (DEG Chair):

Date: 22/02/2017