

# **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.

Please refer to the EHRIA [guidance](#) before completing this form. If you need any further information about undertaking and completing the assessment, 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>	Charging for social care and support
<b>Department and section:</b>	Adults & Communities
<b>Name of lead officer/ job title and others completing this assessment:</b>	Tracy Ward – Assistant Director Alison French – Service Manager Mike Ellison – Team Manager
<b>Contact telephone numbers:</b>	57563 58368 59036
<b>Name of officer/s responsible for implementing this policy:</b>	Alison French – Service Manager Mike Ellison – Team Manager
<b>Date EHRIA assessment started:</b>	N/A
<b>Date EHRIA assessment completed:</b>	N/A

# Section 1: Defining the policy

## Section 1: Defining the policy

You should begin this assessment by defining and outlining the scope of the 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>What is new or changed in the policy? <i>What has changed and why?</i></p> <p>The Council is making a formal decision, in Cabinet, to adopt the statutory amounts for the Minimum Income Guarantee (MIG) and the Personal Expenses Allowance (PEA) which are set out by Central Government for its charging policy for 2022-2023. These are the minimum amounts allowed under the legislation. These amounts will be revised each April in line with changes to the Regulations under the powers delegated to the Director for this purpose and to achieve transparency this will be accompanied each year by an Executive Decision Record published on the Council's website. The council is required to make its own decision with a clear and transparent process and a recorded judgment of its decision.</p> <p>The Council is maintaining its current policy of applying the Care and Support (Charging and Assessment of Resources) Regulations in relation to earned and unearned income taken into account and disregarded in a financial assessment for chargeable adult care and support services. The Council is obliged to review its charging policy following the decision in SH, R (On the Application Of) v Norfolk County Council &amp; Anor [2020] EWHC 3436, although the judgement is not binding on any other council. The Council has, via the National Association of Financial Assessment Officers (NAFAO), obtained legal advice on the implications of the Norfolk judgement and that the case is wrongly decided. The Council has also had regard to Department of Health &amp; Social Care's guidance (LAC(DHSC)(2021)1) that, 'All local authorities should continue to act in accordance with the relevant legislation and guidance.'</p> <p>The Council is acknowledging the increasing cost of energy and the package of support introduced by Central Government. The policy is being amended to disregard the £150 energy rebate to ensure people retain the full benefit of the payment. The standard amounts allowed for energy costs in residential assessments are being increased by the increase in Ofgem's Energy price cap (54%) rather than the Consumer Price Index for September 2021 (3.1%). Under paragraph 8.2 of the Care and Support Statutory Guidance the council must, 'ensure that people are not charged more than it is reasonably practicable for them to pay.'</p> <p>The policy is being amended to disregard payments made to compensating victims of historical institutional child abuse and from the Windrush Compensation Scheme. If these payments were not disregarded as income and capital in the financial assessment there would be a risk of the recipients having to pay a higher contribution towards the cost of their care and support services as a direct result of receiving their compensation.</p>
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2	<p>Does this relate to any other policy within your department, the Council or with other partner organisations? If yes, please reference the relevant policy or EHRIA. If unknown, further investigation may be required.</p> <p>No</p>			
3	<p>Who are the people/ groups (target groups) affected and what is the intended change or outcome for them?</p> <p>Adults in receipt of chargeable care and support services under the Care Act 2014.</p> <p>The MIG/PEA will increase from their 2015 levels, thereby reducing what a persons assessed contribution would otherwise have been. However, Central Government has increased the statutory amounts for 2022-23 by 3% whilst most social security benefits will increase by 3.1%. As a result, most people will experience a slight increase in their assessed contributions.</p> <p>Retaining the approach to income taken into account and disregarded as set out in the regulations will meet the principles set out in the Care and Support Statutory Guidance to:</p> <ul style="list-style-type: none"> <li>• ensure that people are not charged more than it is reasonably practicable for them to pay.</li> <li>• be comprehensive, to reduce variation in the way people are assessed and charged.</li> <li>• be clear and transparent, so people know what they will be charged.</li> <li>• promote wellbeing, social inclusion, and support the vision of personalisation, independence, choice and control.</li> <li>• support carers to look after their own health and wellbeing and to care effectively and safely.</li> <li>• be person-focused, reflecting the variety of care and caring journeys and the variety of options available to meet their needs.</li> <li>• apply the charging rules equally so those with similar needs or services are treated the same and minimise anomalies between different care settings.</li> <li>• encourage and enable those who wish to stay in or take up employment, education or training or plan for the future costs of meeting their needs to do so.</li> <li>• be sustainable for local authorities in the long-term.</li> </ul> <p>People in receipt of the £150 energy rebate will retain the full benefit of the payment.</p> <p>People in receipt of payments made to compensating victims of historical institutional child abuse and from the Windrush Compensation Scheme will retain the full benefit of their payments</p>			
4	<p>Will the 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></p>			
		Yes	No	How?
	Eliminate unlawful discrimination, harassment and victimisation	Y		The Council will make a formal, recorded decision which complies with the Care Act 2014, the associated regulations and statutory guidance. The policy provides for

				consideration of disability-related expenditure and continues to provide a right of review and a right of appeal in addition to the statutory complaints procedure.
	Advance equality of opportunity between different groups	Y		Increasing the MIG/PEA amounts, disregarding the £150 Energy rebate, increasing the amounts allowed for gas and electricity costs in residential assessments will have a positive impact on poorer sections of society who are more likely to be in receipt of local authority care and support services. Disregarding the 'Windrush' compensation payments will have a positive impact on service users in receipt of the payments, who are predominately black service users.
	Foster good relations between different groups	N		

## 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 a 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

5.	Have the target groups been consulted about the following?	Yes	No*
	a) their current needs and aspirations and what is important to them;		X
	b) any potential impact of this change on them (positive and negative, intended and unintended);		X
	c) potential barriers they may face		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 questions above, please use the space below to outline either what consultation you are planning to undertake or why you do not consider it to be necessary.</p> <p>The impact of the proposed policy is positive, compared with the current policy.</p> <p>The Council is maintaining its current policy of applying the Care and Support (Charging and Assessment of Resources) Regulations in relation to earned and unearned income. The Council has, via the National Association of Financial Assessment Officers (NAFAO), obtained legal advice on the implications of the Norfolk judgement and that the case is wrongly decided. The Council has also had regard to Department of Health &amp; Social Care's guidance (LAC(DHSC)(2021)1) that, 'All local authorities should continue to act in accordance with the relevant legislation and guidance.'</p> <p>In September 2021, the Government published its proposals to transform the funding of social care. The proposals will require a more fundamental review of the Council's charging policy covering the lifetime cap on the amount anyone in England will need to spend on their personal care, alongside a more generous means-test for local authority financial support which will apply from October 2023. This is planned to be undertaken in the next financial year, in conjunction with the other workstreams on the wider adult social care reforms and will include consultation and an equalities and human rights impact assessment pursuant to the Council's public sector equality duty under the Equality Act 2010.</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.**

## Section 2

### C: Potential Impact

10.	Use the table below to specify if any individuals or community groups who identify with any of the ' <a href="#">protected characteristics</a> ' may <b>potentially</b> be affected by the policy and describe any positive and negative impacts, including any barriers.		
		Yes	No
		Comments	

	<b>Age</b>	X		<p>The MIG amounts used in financial assessments are partly based on age criteria such as under 25 years old, 25 years to pension age and pension age and above.</p> <p>All service users on an assessed contribution towards the cost of their care and support services will benefit from the increases to the MIG amounts</p>
	<b>Disability</b>	X		<p>The policy addresses the needs of people with eligible care and support needs.</p> <p>Where disability-related benefits are taken into account such as, Attendance Allowance and the daily Living Component of Personal Independence Payment, the policy continues to allow for necessary disability-related expenses linked to a person's disability.</p>
	<b>Gender Reassignment</b>		X	
	<b>Marriage and Civil Partnership</b>	X		The policy allows for consideration to ensure any partner or spouse (including cohabitants) are left with a basic level of income.
	<b>Pregnancy and Maternity</b>		X	
	<b>Race</b>	X		Disregarding the 'Windrush' compensation payments will have a positive impact on service users in receipt of the payments, who are predominately black service users.
	<b>Religion or Belief</b>		X	
	<b>Sex</b>		X	
	<b>Sexual Orientation</b>		X	

	<b>Other groups</b> e.g. rural isolation, deprivation, health inequality, carers, asylum seeker and refugee communities, looked after children, deprived or disadvantaged communities	X		<b>Carers</b> Carer's services continue to be non-chargeable under the proposed policy.  <b>People on lower incomes</b> The financial assessment adjusts for people on lower incomes including requiring no contribution towards the cost of care and support services.
	<b>Community Cohesion</b>		X	
11.	<p>Are the human rights of individuals <b><i>potentially</i></b> affected by this proposal? Could there be an impact on human rights for any of the protected characteristics? <b>(Please tick)</b></p> <p>Explain why you consider that any particular <a href="#">article in the Human Rights Act</a> may apply to the 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]</p>			
		Yes	No	Comments
	<b>Part 1: The Convention- Rights and Freedoms</b>			
	Article 2: Right to life	N		
	Article 3: Right not to be tortured or treated in an inhuman or degrading way	N		
	Article 4: Right not to be subjected to slavery/ forced labour	N		
	Article 5: Right to liberty and security	N		
	Article 6: Right to a fair trial	N		
	Article 7: No punishment without law	N		
	Article 8: Right to respect for private and family life	N		
	Article 9: Right to freedom of thought, conscience and religion	N		
	Article 10: Right to freedom of expression	N		

	<b>Article 11: Right to freedom of assembly and association</b>	N		
	<b>Article 12: Right to marry</b>	N		
	<b>Article 14: Right not to be discriminated against</b>	Y		<p>In the Norfolk judgement the Judge held that the differential impact on a "severely disabled" (without earnings) was not proportionate or justified, with the result that the council was held to have infringed Article 14 of the ECHR, and thus also to have breached its duties under the Human Rights Act 1998.</p> <p>Counsel's advice is that this reasoning is incorrect as;</p> <ul style="list-style-type: none"> <li>any differential impact is the result of the terms of the Charging Regulations,</li> <li>persons who have earnings and those who do not are not in an analogous position,</li> <li>any differential impact can be justified as proportionate,</li> <li>the judge misunderstood the nature and effect of paragraph 8.47 of the statutory guidance and the purpose of disability benefits,</li> <li>if there is no breach of Article 14 then there is no breach of the Equality Act either.</li> </ul>
	<b>Part 2: The First Protocol</b>			
	<b>Article 1: Protection of property/ peaceful enjoyment</b>	N		
<b>Section 2</b>	<b>Article 2: Right to education</b>	N		
	<b>Article 3: Right to free elections</b>	N		
	<b>D: Decision</b>			
	<b>13.</b> Is there evidence or any other reason to suggest that:			
		<b>Yes</b>	<b>No</b>	<b>Unknown</b>
	a) the policy could have a different affect or adverse impact on any section of the community;		X	



	b) any section of the community may face barriers in benefiting from the proposal		X	
13.	Based on the answers to the questions above, what is the likely impact of the policy			
	No Impact <input type="checkbox"/>	Positive Impact <input checked="" type="checkbox"/>	Neutral Impact <input 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 checked="" type="checkbox"/>	

## Section 2: Completion of EHRIA Screening

Upon completion of the screening section of this assessment, you should have identified whether an EHRIA Report is required for further investigation of the impacts of this policy.

**Option 1:** If you identified that an EHRIA Report *is required*, continue to Section 3 on Page 7 of this document.

**Option 2:** If there are no equality, diversity or human rights impacts identified and an EHRIA report *is not required*, continue to Section 4 on Page 14 of this document.

## Section 3: Equality and Human Rights Impact Assessment (EHRIA) Report

### Section 3: Equality and Human Rights Impact Assessment Report

This part of the assessment will help you to think *thoroughly* about the impact of the policy and to critically examine whether it is *likely* to have a positive or negative impact on different groups within our diverse communities. It should also identify any barriers

that may adversely affect under-represented communities or groups that may be disadvantaged by the way in which we carry out our business.

Using the information gathered either within the EHRIA Screening or independently of this process, this EHRIA Report should be used to 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.

### Section 3

#### A: Research and Consultation

When considering the target groups, it is important to think about whether new data needs to be collected or whether there is any existing research that can be utilised.

**15.** Based on the gaps identified either in the EHRIA Screening or independently of this process, **how** have you now explored the following and **what** does this information/ data tell you about each of the diverse groups?

- a) current needs and aspirations and what is important to individuals and community groups (including human rights);
- b) likely impacts (positive and negative, intended and unintended) to individuals and community groups (including human rights);
- c) likely barriers that individuals and community groups may face (including human rights)

**16.** Is any further research, data collection or evidence required to fill any gaps in your understanding of the potential or known affects of the policy on target groups?

**When considering who is affected by this proposed policy, it is important to think about consulting with and involving a range of service users, staff or other stakeholders who may be affected as part of the proposal.**

**17.** Based on the gaps identified either in the EHRIA Screening or independently of this process, **how** have you further consulted with those affected on the likely impact and **what** does this consultation tell you about each of the diverse groups?

<b>18.</b>	Is any further consultation required to fill any gaps in your understanding of the potential or known effects of the policy on target groups?

<b>Section 3</b>															
<b>B: Recognised Impact</b>															
<b>19.</b>	Based on any evidence and findings, use the table below to specify if any individuals or community groups who identify with any 'protected characteristics' are <b>likely</b> to be affected by this policy. Describe any positive and negative impacts, including what barriers these individuals or groups may face.														
	<table> <tr> <th></th><th>Comments</th></tr> <tr> <td>Age</td><td></td></tr> <tr> <td>Disability</td><td></td></tr> <tr> <td>Gender Reassignment</td><td></td></tr> <tr> <td>Marriage and Civil Partnership</td><td></td></tr> <tr> <td>Pregnancy and Maternity</td><td></td></tr> <tr> <td>Race</td><td></td></tr> </table>		Comments	Age		Disability		Gender Reassignment		Marriage and Civil Partnership		Pregnancy and Maternity		Race	
	Comments														
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	<b>Religion or Belief</b>	
	<b>Sex</b>	
	<b>Sexual Orientation</b>	
	<b>Other groups</b> e.g. rural isolation, deprivation, health inequality, carers, asylum seeker and refugee communities, looked after children, deprived or disadvantaged communities	
	<b>Community Cohesion</b>	

<b>20.</b>	Based on any evidence and findings, use the table below to specify if any particular Articles in the Human Rights Act are <b>likely</b> to apply to the policy. Are the human rights of any individuals or community groups affected by this proposal? Is there an impact on human rights for any of the protected characteristics?	
		<b>Comments</b>
	<b>Part 1: The Convention- Rights and Freedoms</b>	
	<b>Article 2: Right to life</b>	
	<b>Article 3: Right not to be tortured or treated in an inhuman or degrading way</b>	
	<b>Article 4: Right not to be subjected to slavery/ forced labour</b>	
	<b>Article 5: Right to liberty and security</b>	
	<b>Article 6: Right to a fair trial</b>	
	<b>Article 7: No punishment without law</b>	
	<b>Article 8: Right to respect for private and family life</b>	

	<b>Article 9: Right to freedom of thought, conscience and religion</b>	
	<b>Article 10: Right to freedom of expression</b>	
	<b>Article 11: Right to freedom of assembly and association</b>	
	<b>Article 12: Right to marry</b>	
	<b>Article 14: Right not to be discriminated against</b>	
	<b>Part 2: The First Protocol</b>	
	<b>Article 1: Protection of property/ peaceful enjoyment</b>	
	<b>Article 2: Right to education</b>	
	<b>Article 3: Right to free elections</b>	

### Section 3

#### C: Mitigating and Assessing the Impact

Taking into account the research, data, consultation and information you have reviewed and/ or carried out as part of this EHRIA, it is now essential to assess the impact of the policy.

- 21.** If you consider there to be actual or potential adverse impact or discrimination, please outline this below. State whether it is justifiable or legitimate and give reasons.

NB:

i) If you have identified adverse impact or discrimination that is **illegal**, you are required to take action to remedy this immediately.

ii) If you have identified adverse impact or discrimination that is **justifiable or legitimate**, you will need to consider what actions can be taken to mitigate its effect on those groups of people.

- 22.** Where there are potential barriers, negative impacts identified and/ or barriers or impacts are unknown, please outline how you propose to minimise all negative impact or discrimination.
- a) include any relevant research and consultation findings which highlight the best way in which to minimise negative impact or discrimination
  - b) consider what barriers you can remove, whether reasonable adjustments may be necessary and how any unmet needs that you have identified can be addressed
  - c) if you are not addressing any negative impacts (including human rights) or potential barriers identified for a particular group, please explain why

### Section 3

#### D: Making a decision

<b>23.</b>	Summarise your findings and give an overview as to whether the policy will meet Leicestershire County Council's responsibilities in relation to equality, diversity, community cohesion and human rights.

### Section 3

#### E: Monitoring, evaluation & review of the policy

<b>24.</b>	Are there processes in place to review the findings of this EHRIA and make appropriate changes? In particular, how will you monitor potential barriers and any positive/ negative impact?
<b>25.</b>	How will the recommendations of this assessment be built into wider planning and review processes? <i>e.g. policy reviews, annual plans and use of performance management systems</i>

**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.

Equality Objective	Action	Target	Officer Responsible	By when



## 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 the Digital Services Team via [web@leics.gov.uk](mailto:web@leics.gov.uk) 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): .....  
21 March 2022  
Date: .....  
  
Nigel Thomas

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