Equality and human rights impact assessment (EHRIA)

Part one: Screening tool

| Name of the policy or methodology: | Judgement framework and determining our regulatory response |

1. Identify the policy or methodology aims

What are the main aims, purpose and outcomes of the policy or methodology?

The Judgement framework is written for staff of the Care Quality Commission to help them reach judgements about the compliance of a provider or manager with the essential standards. It also helps staff to decide their regulatory response when they identify non-compliance. The framework promotes consistency in judgements and provides transparency to providers about the methods we use to reach our judgements. It is not a substitute for the professional judgement of our staff, and the individual circumstances of the provider or manager will always be taken into account.

Does it relate to our role as a regulator and/or an employer?

Regulator.

2. How does it impact on people’s human rights and equality?

Could people’s human rights be impacted negatively? Could the policy or methodology result in inequality or discrimination?

The Judgement framework helps staff at CQC to reach judgements about a provider or manager’s compliance with essential standards and to decide on the regulatory response if judged as non-compliant. It is unlikely to have an adverse impact on pregnancy and maternity, marriage and civil partnership, race, disability, gender, sexual orientation, religion or belief and age equality for providers or people who use services.

We have produced guidance for inspectors on equality, diversity and human rights (EDHR), highlighting what they should be looking for in relation to EDHR issues for each essential standard. This will help to ensure that we consider the diverse needs of people who use services (and other people, as applicable in some of the regulations).
However, this assessment has highlighted two areas of importance:

1. Whether there is potential for some EDHR issues not being recognised, leading to a provider or manager being judged compliant with the regulations when there is non-compliance with the EDHR aspects of the regulations. To ensure an appropriate response to any human rights and equality issues that are identified when assessing compliance with essential standards, CQC will explore the possibility of enhancing its quality assurance process of compliance decisions (please see monitoring and review section). This would help to ensure that we make appropriate judgements of either compliance or non-compliance.

2. In the previous Judgement framework, there was the ability to issue ‘improvement actions’ where there was ‘compliance but with some concerns’. The new framework no longer uses ‘improvement actions’, rather a provider is either judged as compliant with the regulations or not compliant. Equality and human rights elements of the regulations often rely on qualitative evidence about people’s experiences of receiving care, where judgements of compliance may be less clear cut. This means that inspectors may be more likely to be use improvement actions when they have identified some need for improvement, but that does not meet the threshold for a decision of non-compliance. The impact of removing improvement actions means there is no reporting on areas of ‘compliance but with some concerns’.

However, our inspectors will take the opportunity to make comments that would be useful to the provider and the public about minor improvements that could be made. This information would be made public and inspectors would report on any action that was taken in response to our comments in the provider’s next inspection report. To mitigate against the removal of improvement actions, CQC will explore the possibility of enhancing its quality assurance process of compliance decisions to establish any issues or trends (please see monitoring and review section).

Could this policy or methodology result in positive impacts on people’s human rights or equality? Could it present opportunities to promote equality?

The Judgement framework helps CQC’s inspectors to reach judgements about a provider or manager’s compliance with essential standards and to decide on the regulatory response if judged as non-compliant. As the essential standards were assessed as having a potential positive impact (because they have been based on a firm foundation of human rights, equality and diversity) the aim of this framework – to judge compliance with the standards – should have a positive impact.

Any areas of non-compliance with these essential standards (where a provider has not taken reasonably practicable and proportionate steps) will result in a regulatory response. This will lead to changes being implemented and therefore compliance with the regulations. This Judgement framework helps staff at CQC to reach judgements about compliance.

The framework considers how a regulation is not being met and, in particular, is clear on the part of the regulation that is not being met for all instances of non-compliance, so that the impact of non-compliance on people who use the service (and other people, as applicable in some of the regulations) can be determined accurately.

It gives consideration to people using the service and their circumstances, and provides specific examples of where people’s diverse needs are considered, with examples of:

- **Capacity** - A lack of staff having an understanding of, and being able to apply, the Mental Capacity Act would have more of an impact on a service providing care to people with dementia than it would in a health screening service that primarily deals with fit, healthy adults.

- **Diversity** - Failing to have information already available through audio recordings or Braille would have more of an impact on people using a service that specialises in care to those with impaired
vision than a service that doesn’t (although all services should be able to produce information in accessible formats in response to specific requests if this is reasonable and proportionate).

- **Vulnerability** - A poor and uncomfortable environment would have more of an impact on people who are detained or staying in a service long-term due to chronic illness, than for people using an outpatient clinic.

Inspectors are supported by the guidance on equality, diversity and human rights (EDHR), which highlights what they should be looking for in relation to EDHR issues.

To further support the Judgement framework, sector-specific case studies describing minor, moderate and major impacts on people using the service will include examples relating to equality, diversity and human rights issues, helping CQC staff to take the appropriate regulatory response.

The Learning and Development team, with support from the Equality, Diversity and Human Rights (EDHR) team is undertaking a training needs analysis to identify the level and type of training that CQC staff need in relation to equality, diversity and human rights.

The training will help CQC staff to understand what they need to do to ensure their ways of working fully integrate equality, diversity and human rights. For example, staff should be aware of and respect different cultural requirements and be familiar with legislation on human rights.

The EDHR team is planning an evaluation of inspection reports looking at whether EDHR issues have been considered, what these are and what may be preventing the reporting of these issues. The outcome of the analysis will inform training and support for CQC staff to ensure EDHR is considered.

### 3. Recommendations

**Is a full EHRIA recommended? If not, give reasons**

The Judgement Framework is unlikely to have an adverse impact on pregnancy and maternity, marriage and civil partnership, race, disability, gender, sexual orientation, religion or belief and age equality for providers or people who use services.

However, due to the two areas highlighted above under ‘potential negative impacts’, we will explore additional monitoring to ensure the impact of this policy can be monitored in relation to EDHR. We will also explore our ability to monitor the expected positive impacts.

### 4. Publication of EHRIA

**Give details of where screening tool or the full EHRIA will be published and when this will take place**

We will publish this EHRIA at the same time as we publish our Judgement framework.
Actions and outcomes

5. Monitoring and review of the EHRIA

Give details of the monitoring arrangements. How will the impact of the policy or methodology be monitored, who will do this and when?

Current quality assurance and monitoring

Any judgements made are reviewed as part of inspectors’ performance reviews.

The ability to monitor the following is to be explored:

1. CQC will explore the possibility of enhancing its quality assurance process of compliance decisions. The proposed monitoring will evaluate whether there is any potential negative impact against any of the protected characteristics.

2. CQC will explore the ability to monitor where non-compliance is judged against one or more regulations. The proposed monitoring will evaluate whether there is positive impact against any of the protected characteristics (due to either enforcement or compliance actions imposed on providers, leading to improvements in practice and therefore compliance with the regulations).

Examples of where non-compliance could be monitored:

a) Non-compliance with Outcome 1: Respecting and involving people who use services.

For example, in relation to providers explaining to people who use services the risks and benefits of options for care, treatment and support in a way that they can understand and that allows them to make informed decisions. In addition, having staff who are aware of, understand and recognise the person’s social and cultural diversity, values and beliefs that may influence their decisions and how they want to receive care, treatment and support.

b) Non-compliance with Outcome 4: Care and welfare of people who use services.

For example, in relation to personalised care.

c) Non-compliance with Outcome 5: Meeting nutritional needs.

For example, food and hydration that meet any reasonable requirements arising from a person’s religious or cultural background.

d) Non compliance with Outcome 7: Safeguarding. For example, in relation to protecting human rights through compliance with safeguarding and restraint requirements and how safeguarding prevents discrimination and harassment on the grounds of race, gender, disability, sexual orientation, age, religion and belief and gender reassignment.

e) Non-compliance with Outcome 10: Safety and suitability of premises.

For example, ensuring that premises are suitably designed.

Review date

Any judgements made are reviewed as part of inspectors’ performance reviews.
## 6. Action plan and outcome report

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<thead>
<tr>
<th>Action</th>
<th>Lead</th>
<th>Time scale</th>
<th>Success measure</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monitoring</td>
<td>Equality, Diversity and Human Rights team</td>
<td>March 2012</td>
<td>Enhancement of quality assurance process has been explored.</td>
<td>Proposed monitoring will evaluate whether there is any potential negative impact against any of the protected characteristics.</td>
</tr>
<tr>
<td>Explore the ability to monitor where non-compliance is judged against one or more regulations to see whether the areas relate to EDHR.</td>
<td>Intelligence directorate and Equality, Diversity and Human Rights team</td>
<td>Sept 2012</td>
<td>Monitoring of non-compliance is explored and non-compliance is monitored</td>
<td>Will show evidence whether the Judgement Framework has a positive impact, as non-compliance will lead to either enforcement or compliance actions imposed on providers/managers, resulting in improvements in practice.</td>
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<tr>
<td>Training</td>
<td>Learning and Development.</td>
<td>Complete</td>
<td>Training needs analysis undertaken and appropriate intervention identified</td>
<td>Training will help CQC staff understand what they need to do to ensure their ways of working fully integrate equality, diversity and human rights. For example, staff</td>
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should be aware of and respect different cultural requirements and be familiar with legislation on human rights.

<table>
<thead>
<tr>
<th>Reporting</th>
<th>Equality, Diversity and Human Rights team.</th>
<th>March 2012</th>
<th>Analysis of inspection reports</th>
<th>The outcome of the analysis would inform training and guidance for CQC staff to ensure the EDHR issues are considered.</th>
<th>X</th>
<th>X</th>
<th>X</th>
<th>X</th>
<th>X</th>
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<tbody>
<tr>
<td>Including EDHR issues within the Quality and Risk Profile (which is reviewed by inspectors).</td>
<td>Intelligence Directorate</td>
<td>Ongoing</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
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March 2012

Analysis of inspection reports

The outcome of the analysis would inform training and guidance for CQC staff to ensure the EDHR issues are considered.