NHS
Bedfordshire, Luton and Milton Keynes
Integrated Care Board

Defining the Boundaries Between NHS and Private Healthcare Policy

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Document Control	
Document Owner:	Chief Primary Care Officer
Document Author(s):	East of England Prescribing Advisory Committee document adopted by BLMK ICB Planned Care AD
Directorate:	Primary Care
Approved By:	The Operational Group on behalf of the Integrated Care Board Executive Team
Date of Approval:	06-07-2022
Date of Next Review:	06-07-2024
Effective Date:	06-07-2022

Version Control			
Version	**Date**	**Reviewer(s)**	**Revision Description**
v1.0	06-07-2022		

Implementation Plan

Development and Consultation:	The following individuals were consulted and involved in the development of this document: ▪ The East of England Priorities Advisory Committee Members
Dissemination:	Staff can access this document via the website and will be notified of new / revised versions via the staff briefing. This document will be included in the organisation's Publication Scheme in compliance with the Freedom of Information Act 2000.
Training:	The following training will be provided to make sure compliance with this document is understood: ▪ No training currently
Monitoring:	Monitoring and compliance of this document will be carried out via: ▪ Occasional audit
Review:	The Document Owner will ensure this document is reviewed in accordance with the review date on page 2.
Equality, Diversity and Privacy:	Appendix 1 - Equality Impact Assessment Appendix 2 - Data Protection Impact Assessment
Associated Documents:	The following documents must be read in conjunction with this document: ▪ N/A
References:	The following articles were accessed and used to inform the development of this document: ▪ The National Health Service Act 2006. Available from: http://www.legislation.gov.uk/ukpga/2006/41/contents ▪ World Class Commissioning Assurance Handbook (June 2008). Available from: https://webarchive.nationalarchives.gov.uk/20130123193846/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085148

	▪ The NHS Constitution for England 2021. Available from: https://www.gov.uk/government/publications/the-nhs-constitution-for-england ▪ National Prescribing Centre and Department of Health. Defining guiding principles for processes supporting local decision-making about medicines (January 2009). Available from: https://webarchive.nationalarchives.gov.uk/20130123195613/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_093413 ▪ NHS Confederation Priority setting: an overview. (2007): https://www.nhsconfed.org/publications/priority-setting-overview ▪ NHS Confederation. Priority setting: managing new treatments. (2008). Available from: https://www.nhsconfed.org/resources/2008/02/priority-setting-managing-new-treatments ▪ NHS Confederation. Priority setting: managing individual funding requests. (2008). Available from: https://www.nhsconfed.org/resources/2008/12/priority-setting-managing-individual-funding-requests ▪ NHS Confederation. Priority setting: legal considerations. (2008). Available from: https://www.nhsconfed.org/resources/2008/12/priority-setting-legal-considerations ▪ NHS Confederation. Priority setting: strategic planning. (2008). Available from: https://www.nhsconfed.org/resources/2008/12/priority-setting-strategic-planning ▪ Department of Health's 2004 Code of Conduct for Private Practice. Available from: https://www.nhsemployers.org/~/media/Employers/Documents/Pay%20and%20reward/DH_085195.pdf ▪ Improving access to medicines for NHS patients. A report for the Secretary of State for Health by Professor Mike Richards CBE. (November 2008). Available from: https://webarchive.nationalarchives.gov.uk/20130105184538/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_089927 ▪ Department of Health's Consultation Document: Guidance on NHS patients who wish to pay for additional private care. Available from: https://www.gov.uk/government/publications/nhs-patients-who-wish-to-pay-for-additional-private-care ▪ Department of Health Guidance on NHS patients who wish to pay for additional private care. Gateway reference 11512. 23rd March 2009. Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/404423/patients-add-priv-care.pdf ▪ Commissioning Policy: Defining the boundaries between NHS and Private Healthcare (Interim Policy), Reference: NHSCB/CP/12, NHS Commissioning Board, April 2013. Available from https://webarchive.nationalarchives.gov.uk/20170504173034/https://www.england.nhs.uk/commissioning/spec-services/key-docs/ ▪ PrescQIPP Bulletin 238: Prescribing on the NHS following a private consultation. Available from: https://www.prescqipp.info/our-resources/bulletins/bulletin-238-prescribing-on-the-nhs-following-a-private-consultation/

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1.0 Introduction

1.1 NHS Bedfordshire, Luton, and Milton Keynes Integrated Care Board (ICB) aims to ensure robust governance through its formal written procedural documents, such as this document, which communicate standard organisational ways of working. These documents help clarify operational requirements and consistency within day-to-day practice. They can improve the quality of work, increase the successful achievement of objectives and support patient safety, quality, and experience. The ICB aims to ensure its procedural documents are user friendly, up-to-date, and easily accessible.

1.2 The ICB must design and implement procedural documents that meet the diverse needs of our service and workforce, ensuring that none is placed at a disadvantage over others, in accordance with the Equality Act 2010.The Equality Impact Assessment initial screening, which was used to determine the potential impact this policy might have with respect to the individual protected characteristics is incorporated at Appendix 1.

1.3 A Data Protection Impact Assessment is a process which helps assess privacy risks to individuals in the collection, use and disclosure of personal information. The Data Protection Impact Assessment initial screening, which was used to determine the potential impact this policy might have with respect to an individual's privacy is incorporated at Appendix 2.

1.4 This document defines the boundaries between NHS and Private Healthcare for Integrated Care Boards (ICBs). It considers joint NHS and private funding and NHS continuation of funding of care commenced on a private basis (including clinical trials and compassionate use programmes).

2.0 Scope

2.1 This policy **applies** to all ICB staff members, including Ordinary Members of the Board of the ICB, involved in policy-making processes, whether permanent, temporary or contracted-in under a contract for service (either as an individual or through a third-party supplier).

2.2 This policy applies, as appropriate, to any patient in circumstances where the ICB is the responsible commissioner for their NHS care.

3.0 Definitions

3.1 This section provides staff members with an explanation of terms used within this policy.

Private patients are patients whose care is provided under a contract with their healthcare provider, either through a private insurance scheme or on a pay as you go basis. The healthcare provider could be an NHS Trust, a private hospital, or an individual doctor. The healthcare may include treatment that would be available to the patient as part of NHS care, or it may be healthcare that is not normally commissioned by their local ICB. Patients attending the private wing of an NHS Provider Trust pursuant to an agreement to provide privately funded healthcare are private patients and not NHS patients.

NHS commissioned care is healthcare for patients which is funded by their Primary Care Organisation. ICBs will have policies that define the elements of healthcare which the ICB is, and is not prepared to commission, and Individual Funding Request processes to consider commissioning care for individual patients outside of these policies.

Co-payment is where the Government has passed Regulations that require patients to make a financial contribution to the overall cost of NHS commissioned care.

Co-funding is the term used to describe proposals that have been made by doctors and patient pressure groups which seek to permit patients to pay for some elements of their care and for the NHS to provide other elements of care within the same episode of care. Co-funding is currently against Department of Health policy and PAC recommend that it should not be permitted by member ICBs, as set out in the policy below.

Top-up funding is the same thing as co-funding.

An episode of care is a period of engagement between an NHS commissioned healthcare intervention and the patient in which NHS commissioned care is provided to the patient. The following are examples of episodes of care:

- A single visit to the GP
- An outpatient appointment
- A series of diagnostic tests relating to the same person at an NHS hospital on the same day
- A day case operation with all the supporting clinical activity before and after the operation on that day.
- The initial assessment and prescription of a cancer drug. If the drug is required to be given at a series of outpatient appointments, then each attendance will be a separate episode of care.

Attributable costs are to be considered when privately funded treatment is provided within an NHS setting. Attributable costs mean all costs which would not have been incurred by the NHS had the patient not sought private treatment. If an NHS patient has also gone to a private provider to buy a drug not available as part of the NHS care package, then they are expected to pay for any additional monitoring needed for the

drug (blood tests, CT scans, etc.) and for the treatment of predictable complications of receiving the drug. If a patient chooses to seek private healthcare for a treatment that is not normally commissioned by the NHS, the patient is expected to pay all attributable costs. It is not acceptable, for example, to 'piggyback' a private monitoring test onto routine monitoring the patient might be having in parallel within the NHS.

4.0 Policy Statement

4.1 ICBs have legal responsibility for NHS healthcare budgets and their primary duty is to live within the budget allocated to them.

4.2 Commissioners have a responsibility to make rational decisions in the way in which they allocate resources and to act fairly between patients.

4.3 The budgets of ICBs are for the exclusive use of NHS patients. There can be no subsidisation of private patients, directly or indirectly.

4.4 All NHS commissioned care should be provided as a result of a specific policy or decision to support the proposed treatment.

4.5 A third party has no mandate to pre-commit resources from ICB budgets unless directed by the Secretary of State.

4.6 New treatments should be assessed for funding according to the basic principles of clinical effectiveness, safety and cost-effectiveness within an ethical framework that supports consistent and equitable decision making.

4.7 If treatment is provided within the NHS, which has not been commissioned in advance by an ICB, the responsibility for ensuring ongoing access to that treatment lies with the clinician or other person who initiated treatment.

5.0 Roles and Responsibilities

5.1 The following have specific responsibilities in relation to this policy.

- ICB Commissioned Providers and Member Practices
- ICB IFR Team/Panel/Appeals Panel
- ICB Medicines Optimisation Team
- ICB Contracting Teams

5.2 **The Board**
Overall accountability

5.6 **Line Managers**
New staff are made aware of ICB policies

5.7 **All Staff**

To have an individual responsibility to be aware of ICB policies and where to access them.

6.0 Processes and Procedures

6.1 Entitlement to NHS care

6.1.1 NHS care is made available to patients in accordance with the policies of the ICB. However individual patients are entitled to choose not to access NHS care and/or to pay for their own healthcare through a private arrangement with doctors and other healthcare professionals. Save as set out in this policy, a patient's entitlement to access NHS care should not be affected by a decision by a patient to fund part or all of their healthcare needs privately.

6.1.2 An individual who is having treatment which would have been commissioned by the ICB is entitled to commence that treatment on a private basis but can at any stage request to transfer to complete the treatment in the NHS. In this event the patient is entitled, as far as possible, to be provided with the same treatment as the patient would have received if the patient had had NHS treatment throughout. This cannot be used as a justification to provide care that is not available to other NHS patients and may mean the patient having to wait for the continuation of treatment, to put that patient in the same position as any other NHS patient.

6.1.3 Patients are entitled to seek provision for part of their treatment for a condition by a private healthcare arrangement and part of the treatment to be commissioned by ICB, provided the NHS care is delivered in episodes of care which are clearly differentiated from any privately funded care. However, the NHS commissioned treatment provided to a patient is always subject to the clinical supervision of the treating clinician. There may be times when an NHS clinician declines to provide NHS treatment if he or she considers that any other treatment given, whether as a result of privately funded treatment or for any other reason, makes the proposed NHS treatment clinically inappropriate.

6.1.4 An individual, who has chosen to pay privately for an element of their care such as a diagnostic test, is entitled to access other elements of care through the NHS, provided the patient meets NHS commissioning criteria for that treatment. However, at the point that the patient seeks to transfer back to NHS care, the patient should:

- Be reassessed by the NHS clinician.
- Not be given any preferential treatment by virtue of having accessed part of their care privately.
- Be subject to standard NHS waiting times.

6.1.5 A patient, whose private consultant has recommended treatment with a medication normally available as part of NHS commissioned care in the patient's clinical circumstances, can ask his or her NHS GP to prescribe the treatment as long as:

- The GP considers it to be medically appropriate in the exercise of the GP's clinical discretion.
- The drug is listed on ICB's drug formulary, or the drug is normally funded by the ICB.
- The GP is willing to accept clinical responsibility for prescribing the medication.

6.1.6 There may be cases where a patient's private consultant has recommended treatment with a medication which is specialised in nature and the patient's GP is not prepared to accept clinical responsibility for the prescribing decision recommended by another doctor. If the GP does not feel it is appropriate to accept clinical responsibility for the medication, the GP should consider whether to offer a referral to an NHS consultant who can consider whether to prescribe the medication for the patient as part of NHS funded treatment. In all cases there should be proper communication between the consultant and the GP about the diagnosis or other reason for the proposed plan of management, including any proposed medication.

6.1.7 Medication recommended by private consultants may be more expensive than the medication options prescribed for the same clinical situation as part of NHS treatment. This may be due to the fact that a particular choice of treatment may have been deemed not to be clinically effective and/or cost-effective and consequently is not included in local formularies. In such circumstances, the NHS GP should follow local prescribing advice from the ICB. This advice should be explained to the patient who will retain the option of purchasing the more expensive drug via the private consultant. Further guidance on prescribing can be found in PrescQIPP Bulletin 238: Prescribing on the NHS following a private consultation.

6.2 Joint NHS and private funding

6.2.1 NHS care is free of charge to patients unless Regulations have been brought into effect to provide for a contribution towards the cost of care being met by the patient. Such charges, known as co-payment, include prescription charges and some clinical activity undertaken by opticians and dentists. These charges are not "co-funding" (as defined above) but are specific NHS charges set by Regulations, which have always been part of the NHS.

6.2.2 Co-funding, which involves both private and NHS funding for a single episode of care, is not permitted for NHS care. ICBs will not consider any funding requests of this nature.

6.2.3 Patients are entitled to request NHS Acute Trusts to provide privately funded patient care as part of their overall treatment. It is a matter for NHS Trusts as to whether and

how they agree to provide such privately funded care. However, NHS Trusts must ensure that private and NHS care are kept as clearly separate as possible. Any privately funded care must be provided by an NHS Trust at a different time and place to NHS commissioned care. ICBs will not commission any privately funded care within the same episode of care as NHS commissioned care. In particular:

- Each visit by a patient to a hospital can be an "episode of care" (as defined above). This means that private and NHS funded care cannot be provided to a patient in a single visit to an NHS hospital.
- If a patient is an in-patient at an NHS hospital, any privately funded care must be delivered for the patient in a separate building or separate part of the hospital, with a clear division between the privately funded and NHS funded elements of the care, unless separation would pose overriding concerns of patient safety.
- A patient is not entitled to "pick and mix" elements of NHS and private care in the same treatment, and so is unable to have privately funded and NHS funded drugs provided as part of the same care episode.

6.2.4 Private prescriptions may not be issued during an NHS consultation except where allowed by Regulations e.g. GPs may prescribe limited (black) list drugs or drugs on the Selected List Scheme (where patients do not comply with the criteria for NHS funding) privately.

6.2.5 If a patient is advised to be treated with a combination of drugs, some of which are not routinely available as part of NHS commissioned treatment, the patient is entitled to access the NHS funded drugs and can attend a clinician separately (in a separate episode of care) for those drugs which are not commissioned by the NHS. If the combination of drugs are required to be administered at the same time or within the same episode of care, and there are no patient safety issues, the patient must fund all of the drugs provided and the other costs associated with the proposed treatment. In such circumstances, patients or clinicians may approach the ICB to apply for NHS funding for the whole of the treatment via an Individual Funding Request. However, treatment outside of drugs and other treatments usually provided as part of NHS care can only be provided on grounds of exceptionality. The fact that a patient is prepared to fund part of their own treatment is not a proper ground to support a claim for exceptional circumstances.

6.2.6 When a patient wishes to pay privately for a treatment not normally funded by the ICB, the patient will be required to pay all costs associated with the privately funded episode of care. The costs of all medical services and care associated with the treatment include accommodation, assessment, inpatient and outpatient attendances, tests, rehabilitation and management of side-effects. The ICB will not make any contribution to the privately funded care to cover treatment or associated costs that the patient could have accessed via the NHS. However, the patient remains entitled to revert to NHS care at any stage and will, at that point, be entitled to be provided with any drugs or other treatment which would have been provided to an NHS patient in the same clinical situation.

6.2.7 Further guidance on prescribing can be found in PrescQIPP Bulletin 238: Prescribing on the NHS following a private consultation.

6.2.8 Any privately funded arrangement, which is agreed between a patient and a healthcare provider (whether an NHS Trust or otherwise), is a commercial matter between those parties.

6.3 NHS continuation of funding of privately commenced care

6.3.1 ICB policies define which treatment the ICB will and thus, by implication, will not fund. Accordingly, if a patient commences a course of treatment that the ICB would not normally fund, the ICB will not usually pick up the costs of treatment if, for example, through the course of treatment;

- An individual cannot afford ongoing private treatment costs; or
- Private healthcare insurance does not cover the full treatment costs; or
- The patient requests the NHS to pick up the costs on the grounds that the treatment is clinically effective; or
- Revision of a procedure/ intervention carried out in the private sector initially.

6.3.2 A patient is entitled to request funding on an individual case based on exceptionality. However, where the ICB has decided not to fund a treatment routinely, the fact that the patient has demonstrated a benefit from the treatment to date (in the absence of any other evidence of exceptionality) would not be a proper basis for the ICB to agree to change its policy. Such an approach would result in the ICB approving funding differently for persons who could afford to fund part of their own treatment. It is the responsibility of the Private Healthcare Provider to ensure that the patient is fully informed of the ICBs position relating to ongoing funding before commencing the private treatment.

6.3.3 If a patient commences treatment privately for a drug or other medical intervention that the ICB routinely agrees to fund, provided the patient's clinical circumstances are within those defined in the ICB's commissioning policy, the patient is entitled to transfer to NHS funded treatment at any stage. However, the ICB will not reimburse the patient for any treatment privately funded before a request is made for NHS funded treatment. If a patient seeks funding for a drug or other treatment that is not routinely funded and this application is approved on the grounds of exceptionality, the ICB will not normally reimburse the costs of any prior privately funded treatment. The ICB is under no obligation to meet such costs but may do so at its discretion. Each case will be considered on its own merits, via the ICB's Individual Funding Request Policy route.

6.3.4 Individual patients who have been recommended treatment by an NHS consultant that is not routinely commissioned by the ICB under its existing policies are entitled to ask their GP to be referred for a second opinion from a different NHS consultant concerning

their treatment options. However, a second opinion supporting treatment that is not routinely commissioned by the ICB does not create any entitlement to NHS funding for that treatment. The fact that two NHS consultants have recommended a treatment would not normally, in itself, amount to exceptional circumstances.

6.3.5 NHS patients are entitled to make a complaint about any refusal by the ICB to agree to fund care in their individual case, whether the care has been previously privately funded or not. If such a complaint is made, the ICB will investigate the patient's concerns as quickly as possible using the ICB's complaints procedure and will assess the decisions made against this policy and the relevant ICB commissioning policies. There is no legal or policy requirement for an ICB to take over funding responsibility for treatment which has been commenced outside the NHS and which is not routinely commissioned by the NHS. ICB commissioners have a responsibility to make rational decisions in the way in which they allocate resources and to act fairly between patients. ICBs make prioritisation decisions each year which determine how resources are to be allocated. In addition, ICBs are prepared to consider in-year service developments and exceptional individual cases.

6.3.6 Patients or clinicians who wish to persuade an ICB to pick up funding for treatments that are not routinely commissioned can:

- Make an individual application for funding for their case on the grounds of exceptionality, or
- Request the ICB to treat the application as a service development so that the requested treatment will be made available to all NHS patients in defined clinical conditions, or
- Request that the treatment be included as part of the ICB's annual plan and, if approved, be funded from the commencement of the coming financial year.

6.3.7 Continuation funding for treatment that has been commenced on a private basis will not be approved in any other circumstances.

6.3.8 It follows therefore that, in instances where an ICB has not yet agreed to fund a particular treatment, the ICB will not normally pick up the costs of ongoing treatment. This approach includes the following situations:

- Ongoing funding of treatment for patients leaving clinical trials carried out in the private sector. The responsibility for ongoing care rests with the sponsors of the trial – usually the pharmaceutical industry and the Provider initiating treatment.
- Ongoing funding of treatment for patients who have been started on a treatment through drug company sponsorship (frequently known as compassionate use funding). The responsibility for ongoing care rests with the drug company and the Provider Trust initiating treatment.
- Ongoing funding for patients who have opted for private treatment and who can no longer afford private treatment.

6.3.9 Note: Different funding rules apply to the continuation of treatments initiated under NHS sponsored clinical trials, but these are not expected to be initiated in the private sector.

6.3.10 Patients can access treatment on the NHS if and when the treatment is made available to all patients and/or where the ICBs services and the patient's clinical needs meet the ICBs commissioning policies for that particular treatment.

6.3.11 If a patient develops a non-emergency complication as a result of a private procedure/intervention, the private healthcare provider will normally treat these; the patient will be expected to meet these costs which would not be funded by the ICB. An example of this would be revision surgery of procedures originally performed in the private sector. If the cause of the complication is unclear or is an emergency, the NHS will treat the patient and, in this situation, the patient will not be expected to pay for the treatment

Appendix 1 - Equality Impact Assessment Initial Screening

Please answer the questions against each of the protected characteristic and inclusion health groups. If there are significant impacts and issues identified a full Equality / Quality Impact Assessment (EQIA) must be undertaken. It is against the law to discriminate against someone because of these protected characteristics. For support and advice on undertaking EQIAs please contact: agcsu.equalities@nhs.net

Name of Policy:	Defining the boundaries between NHS and private healthcare
Date of assessment:	10-03-2022
Screening undertaken by:	Richard Jones

Protected characteristic and inclusion health groups. Find out more about the Equality Act 2010, which provides the legal framework to tackle disadvantage and discrimination: https://www.equalityhumanrights.com/en/equality-act/protected-characteristics	Could the policy create a disadvantage for some groups in application or access? (Give brief summary)	If Yes - are there any mechanisms already in place to mitigate the potential adverse impacts identified? If not, please detail additional actions that could help. If this is not possible, please explain why
Age A person belonging to a particular age (for example 32-year-olds) or range of ages (for example 18 to 30 year olds).		No
Disability A person has a disability if she or he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.		No
Gender reassignment The process of transitioning from one gender to another.		No
Marriage and civil partnership Marriage is a union between a man and a woman or between a same-sex couple. Same-sex couples can also have their relationships legally recognised as 'civil partnerships'.		No
Pregnancy and maternity Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.		No

Race Refers to the protected characteristic of race. It refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.		No
Religion or belief Religion refers to any religion, including a lack of religion. Belief refers to any religious or philosophical belief and includes a lack of belief. Generally, a belief should affect your life choices or the way you live for it to be included in the definition.		No
Sex A man or a woman.		No
Sexual orientation Whether a person's sexual attraction is towards their own sex, the opposite sex, to both sexes or none.		No
Carers Individuals within the ICB which may have carer responsibilities.		No
Please summarise the improvements which this policy offers compared to the previous version or position.		
The policy is an EoE Prescribing Advisory Committee document that was primarily taken from the latest Bedfordshire and Luton Clinical Commissioning Group (CCG) version. There were no significant changes made as part of the planned review.		
Has potential disadvantage for some groups been identified which require mitigation?		
No		

Appendix 2 - Data Protection Impact Assessment Initial Screening

Data protection is the fair and proper use of information about people. Before completing this form, please refer to the Data Protection Impact Assessment (DPIA) Guidance in the Information Governance (IG) section on the staff Intranet or contact the Data Protection Officer for support via blmkICB.ig@nhs.net

A DPIA is a process to help you identify and minimise the data protection risks. You must do a DPIA for processing that is likely to result in a high risk to individuals. You can use our screening checklist below to help you decide when to do one. If you have answered 'Yes' to any of the 10 screening questions, you must then carry out a full DPIA using the Stage 2 form, which is also available on the Intranet in the IG section.

Name of Policy:	Defining the boundaries between NHS and private healthcare
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Stage 1 – DPIA form **please answer 'Yes' or 'No'**

1.	**Will the policy result in the processing of personal identifiable information / data?** This includes information about living or deceased individuals, including their name, address postcode, email address, telephone number, payroll number etc.	No
2.	**Will the policy result in the processing of sensitive information / data?** This includes for living or deceased individuals, including their physical health, mental health, sexuality, sexual orientation, religious belief, National Insurance No., political interest etc.	No
3.	**Will the policy involve the sharing of identifiers which are unique to an individual or household?** e.g., Hospital Number, NHS Number, National Insurance Number, Payroll Number etc.	No
4.	**Will the policy result in the processing of pseudonymised information by organisations who have the key / ability to reidentify the information?** **Pseudonymised data -** where all identifiers have been removed and replaced with alternative identifiers that do not identify any individual. Re-identification can only be achieved with knowledge of the re-identification key. **Anonymised data -** data where all identifiers have been removed and data left does not identify any patients. Re-identification is remotely possible, but very unlikely.	No
5.	**Will the policy result in organisations or people having access to information they do not currently have access to?**	No
6.	**Will the policy result in an organisation using information it already holds or has access to, but for a different purpose?**	No
7.	**Does the policy result in the use of technology which might be perceived as being privacy intruding?** e.g., biometrics, facial recognition, CCTV, audio recording etc.	No
8.	**Will the policy result in decisions being made or action being taken against individuals in ways which could have a significant impact on them?** Including profiling and automated decision making. (This is automated processing of personal data to evaluate certain things about an individual i.e., diagnosis and then making a decision solely by automated means - without any human involvement)	No
9.	**Will the policy result in the collection of additional information about individuals in addition to what is already collected / held?**	No
10.	**Will the policy require individuals to be contacted in ways which they may not be aware of and may find intrusive?** e.g., personal email, text message etc.	No