



North East and North Cumbria

Our Reference North East and North Cumbria
ICB\FOI ICB719

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08 February 2024

By Email

Dear Applicant

Freedom of Information Act 2000 – Request for Information – NHS North East and North Cumbria Integrated Care Board (NENC ICB)

Thank you for your request received by North of England Commissioning Support (NECS) on 19 January 2024 for information held by NHS North East and North Cumbria Integrated Care Board (NENC ICB) under the provisions of the Freedom of Information Act 2000.

NENC ICB covers the areas of County Durham, Gateshead, Newcastle, North Cumbria, North Tyneside, Northumberland, South Tyneside, Sunderland, and Tees Valley (which covers the 5 councils that make it up – Darlington, Hartlepool, Middlesbrough, Redcar & Cleveland and Stockton-on-Tees).

Please find the information you requested on behalf of the ICB as follows.

Your Request

The current policy of the North East and North Cumbria Integrated Care System (NENCICS) imposes on same-sex couples a discriminatory requirement to undergo self-funded fertility treatment before becoming eligible for NHS funding. Imposing this requirement places the NENCICS in contravention of the Equality Act 2010. In 2022, the government committed to forcing ICBs to remove that discriminatory requirement, and there has been confirmation that the NICE guidance will be updated this year (2024). On 24 October 2023, the matter was discussed in Parliament and it was noted that it is unacceptable that the financial barrier is still imposed by certain ICBs, of which the NENCICS is one (see Hansard Volume 738). Please confirm:

1. When the NENCICS's policy will be revised to remove the discriminatory requirement for self-funded treatments before NHS funding is granted. Is the case

that the change will take effect as soon as the updated NICE guidance is published this year, in 2024? If not, please confirm when the change will take effect.

2. Please confirm why the NENCICS is not taking action to revise its policy immediately, in circumstances where it can choose to end this discriminatory practice before it is forced to do so by law.
3. Please provide information showing the NENCICS has complied with its duties under Section 149 of the Equality Act 2010 with respect to the requirements for same-sex female couples to self-fund their access to fertility treatment, namely evidence that the NENCICS has reviewed and monitored the actual impact of its policy since the Government's announcement in 2022.

Our Response

We can confirm, as per Section 1(1) of the Freedom of Information Act 2000, the ICB does hold the information requested.

1. *The ICB understands that this national work is ongoing and as such we are awaiting further guidance from NHS England and NICE (National Institute for Health and Care Excellence) prior to making any amendments to the current VBCC Policy. It is expected that this work will conclude late in 2024 but we will consider the guidance as soon as it is released.*
2. *The ICB have decided that it will only consider changing the policy to NHS funding for cycles of IUI (Intrauterine insemination or artificial insemination), once it has received the NICE Guidance. This will provide the ICB with an opportunity to understand the guidance, whilst applying some due diligence, prior to making any changes to the current policy. This appears to be in line with the vast majority of ICB's as the latest analysis undertaken revealed that only 4 ICBs (out of 42) had changed their policy to NHS funded IUI.*
3. *To enable the ICB to fulfil its commissioning responsibility in line with the available resources, a Value Based Clinical Commissioning Policy (VBCCP) is published annually (and reviewed at regular intervals) which details the procedures which are not routinely funded and those which are funded, but only in specific circumstances. The policy is developed based on the most up to date clinical evidence which is provided by a team of clinicians and Public Health experts. This process is undertaken at our monthly VBCC Steering Group. We can confirm that the issue of self-funding of IUI for same sex female couples was discussed at this meeting in November and December 2022, where it was decided to await NICE guidance to further inform potential policy changes.*

In accordance with the Information Commissioner's directive on the disclosure of information under the Freedom of Information Act 2000 your request will form part of our disclosure log. Therefore, a version of our response which will protect your anonymity will be posted on the NHS ICB website <https://northeastnorthcumbria.nhs.uk/>.

If you have any queries or wish to discuss the information supplied, please do not hesitate to contact me on the above telephone number or at the above address.

If you are unhappy with the service you have received in relation to your request and wish to request a review of our decision, you should write to the Senior Governance Manager using the contact details at the top of this letter quoting the appropriate reference number.

If you are not content with the outcome your review, you do have the right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information

Act 2000. Generally, the Information Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by the North of England Commissioning Support Unit.

The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

www.ico.org.uk

Any information we provide following your request under the Freedom of Information Act will not confer an automatic right for you to re-use that information, for example to publish it. If you wish to re-use the information that we provide and you do not specify this in your initial application for information then you must make a further request for its re-use as per the Re-Use of Public Sector Information Regulations 2015 www.legislation.gov.uk . This will not affect your initial information request.

Yours sincerely

Pamela Coxon

Pamela Coxon
Information Governance Officer