

## Council of Governors meeting- 18<sup>th</sup> July 2017

**F**

### Transactions Policy

#### Situation

The Significant Transactions policy was approved by the Council of Governors and Board of Directors at their respective March 2014 meetings.

In line with the Trust's policy management process, this policy was scheduled to be reviewed and readopted by 31st March 2017. An updated policy was presented to the March 2017 Council of Governors and Board of Directors meeting.

This updated policy had been reviewed and subject to minor revisions endorsed by:

- The Finance, Planning & Performance sub group at its 19<sup>th</sup> January 2017 meeting
- The Membership & Governance sub group at its 10<sup>th</sup> February 2017 meeting

The Council of Governors endorsed the updated policy at its March 2017 meeting. Following discussion at the March 2017 Board of Directors meeting, it was agreed that further comments on the policy should be considered and therefore it was also agreed via the Chair of Membership & Governance and Lead Governor that the existing policy should remain in place to 31<sup>st</sup> July 2017.

A revised policy, incorporating Board of Directors comments was reviewed and supported by the Membership & Governance sub group Chair and Lead Governor on behalf of the Membership & Governance sub group.

The purpose of this paper is to present the final draft updated policy following further consideration by Board members to the Council of Governors for consideration and endorsement. Subject to the Council of Governors approval of the policy, the policy will also be presented for endorsement at the July 2017 Council Board of Directors meeting.

#### Background

In essence, the policy describes how, and over what, the Board of Directors will discuss and consult with the Council of Governors about 'transactions' that are within the description set out in this policy.

The Membership and Governance sub group received a report at its December 2015 meeting which sought to provide assurance regarding the application of the existing Significant Transactions Policy within the Trust since its introduction and to identify areas for further development. The sub group concluded having reviewed this report that it was assured that there was good evidence that

governors are appropriately engaged/briefed in key transactions the trust is pursuing. It also agreed that going forward that particular focus on how transactions should be reported to governors and more explicit reference to financial values (within the constraints of commercial confidentiality) could be explored.

## Assessment

The proposed changes to the draft policy presented to the March 2017 Council of Governors and Board of Directors meetings principally relate to matters of clarification and presentation, namely:

- The renaming of the policy to reflect it covers a range of transactions not just those that meet the Significant definition
- Examples of what consists a Transaction
- The inclusion of Appendix 1 which is designed to provide an easy reference guide
- The inclusion of Appendix 2 which provides a couple of worked examples
- Reference to the concept of aggregation now mentioned in paragraph 5

## Recommendations

The Council of Governors is asked to

- Consider and endorse the draft revised policy
- Note that subject to Council of Governors approval, the policy will also be presented for endorsement at the Board of Directors' July 2017 meetings

Paul Martin

Director of Corporate Governance

July 2017

# TRANSACTIONS POLICY

<b>Policy Details</b>	
NHFT document reference	FFP007
Version	V.3
Date Ratified	
Ratified by	Board of Directors and Council of Governors
Implementation Date	1 <sup>st</sup> August 2017
Responsible Director	Director HR and OD
Review Date	31 <sup>st</sup> March 2020
Related Policies & other documents	None
Freedom of Information category	Policy

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## 1. DOCUMENT CONTROL SUMMARY

<b>Document Title</b>	Transactions Policy
<b>Document Purpose (executive brief)</b>	The Trust's Constitution states that "the Trust shall have a policy for the Board of Directors to consult the Council of Governors about transactions that are within the description of significant transaction set out within the Significant Transactions Policy".
<b>Status: - New / Update/ Review</b>	Update
<b>Areas affected by the policy</b>	Trustwide
<b>Policy originators/authors</b>	Director of HR and OD and Deputy Director, Corporate Affairs
<b>Consultation and Communication with Stakeholders including public and patient group involvement</b>	Finance, Planning and Performance sub group 19.1.17 Membership and Governance Sub Group 10.2.17 Executive Board 20.2.17 Council of Governors 8.3.17 Board of Directors 29.3.17  Council of Governors 18.7.17 Board of Directors 27.7.17
<b>MArchiving Arrangements and register of documents</b>	The Trust Policy Lead is responsible for the archiving of this policy and will hold archived copies on a central register
<b>Equality Analysis (including Mental Capacity Act 2007)</b>	See Appendix 3
<b>Training Needs Analysis</b>	See section 10
<b>Monitoring Compliance and Effectiveness</b>	See section 11
<b>Meets national criteria with regard to</b>	
<b>NHSLA</b>	-
<b>NICE</b>	-
<b>NSF</b>	-
<b>Mental Health Act</b>	-
<b>CQC</b>	-
<b>Other</b>	The NHS Act 2006 as amended by the Health & Social Care Act 2012
<b>Further comments to be considered at the time of ratification for this policy (i.e. national policy, commissioning)</b>	
<b>If this policy requires Trust Board ratification please provide specific details of</b>	
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<i>Transactions Policy</i>	3 of 17      Implementation Date: 1 . 8 . 17

## 2. PURPOSE OF THE POLICY

This policy sets out how the Board of Directors will engage with the Council of Governors over transactions as defined within this policy. Monitor's Risk Assessment Framework provides examples of what constitutes a transaction. These include:

- contracts to provide services
- non statutory mergers, acquisitions
- joint ventures
- Other organisational forms initially developed as new care models.

Transactions for the purposes of this policy are defined as either 'Significant', 'Material' or 'Other'.

Appendix 1 is designed to provide an easy reference guide to the policy outlining definitions and associated actions relating to transactions covered by this policy.

Appendix 2 provides examples of the application of the policy.

## 3. SIGNIFICANT TRANSACTIONS

### 3.1 Introduction

The NHS Act 2006, as amended by the Health and Social Care Act 2012, requires a Foundation Trust to seek the approval of its Council of Governors if it proposes to enter into a Significant transaction, as defined in its constitution. Northamptonshire Healthcare NHS Foundation Trust (the "Trust") has decided not to include a definition of "Significant transaction" in its Constitution and therefore this approval role of the Council of Governors is not applicable. However, the Trust has instead included the following provision in its Constitution:

*"The Trust shall have a policy for the Board of Directors to consult the Council of Governors about transactions that are within the description of Significant transaction set out in the policy."*

The Board of Directors will, therefore, consult the Council of Governors when considering whether the Trust should enter into any Significant transaction, as defined in this policy.

Through this policy the Board of Directors can also assure the Council of Governors that it has identified key risks relating to Significant transactions and taken steps to eliminate or appropriately mitigate any key risks that it has identified. Key risks may include:

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- Making investments which are inconsistent with the overall corporate strategy
- Making investments that offer prospects of attractive returns, but have significant risk (strategic, reputational, operational, governance or financial)

### 3.2 Legal Framework

The Trust is a public benefit corporation that is authorised and constituted in accordance with Part 2, Chapter 5 and Schedule 7 of the National Health Service Act 2006 (the NHSA) as amended by the Health and Social Care Act 2012 (the HSCA).

Section 51A of the NHSA provides as follows about Significant transactions:

- (1) An NHS foundation trust may enter into a Significant transaction only if more than half of the members of the council of governors of the trust voting approve entering into the transaction.
- (2) “Significant transaction” means a transaction or arrangement of such description as may be specified in the trust’s constitution.
- (3) If an NHS foundation trust does not wish to specify any descriptions of transaction or arrangement for the purposes of subsection (2), the constitution of the trust must specify that it contains no such descriptions.

Clause 42 of the Trust’s constitution provides about significant transactions:

- 42.1 This constitution does not contain any descriptions of transaction or arrangement for the purposes of section 51A(2) of the 2006 Act.
- 42.2 The Trust shall have a policy for the Board of Directors to consult the Council of Governors about transactions that are within the description of Significant transaction set out in the policy.
- 42.3 The Trust shall have a policy for the Board of Directors to consult the Council of Governors about transactions that are within the description of Significant transaction set out in the policy.

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### 3.3 Definition of Significant transaction for the purpose of this Policy

For the purpose of this policy, the Trust has adopted the definition of “Significant transaction” that is a variation on that used by Monitor, the sector regulator for health services in England, in the Risk Assessment Framework published by Monitor in August 2013 (updated August 2015).

For the purpose of this policy, a “Significant transaction” is a transaction where:

The income attributable to the assets or the contract associated with the transaction, divided by the income of the trust is greater than 15%;

By way of clarification, the Trust’s ‘baseline’ contract for services i.e. that which is subject to annual/bi-annual contract negotiation process agreed with Commissioners (e.g. Clinical Commissioning Groups, NHS England, Northamptonshire County Council) is not, for the purposes of this Policy, to be defined as a Significant or any Other transaction.

As part of the consultation process on Significant transactions, the Board of Directors will outline the length of time to which the transaction applies.

The Board of Directors will also consult with the Council of Governors on Trust activities which do not relate to the provision of goods and services for the purposes of the health services of England (the “Principal Purpose”) as detailed in the Trust’s Constitution.

### 3.4 Identification of the requirement for Significant transactions consultation

The **Director of HR and OD** will identify those transactions which meet the definition of a Significant transaction using the thresholds described in Section 3.3 above. The Director will ensure that the appropriate consultation process described in Section 3.5 below is adhered to.

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### 3.5 The consultation process for Significant transactions

The Board of Directors shall consult with the Council of Governors about any Significant transaction:

- Before submitting a tender or other offer in relation to a proposed Significant transaction; and
- Before legal and financial closure in relation to a Significant transaction

This consultation will entail representatives of the Board of Directors attending a scheduled meeting(s) of the Council of Governors unless the timescale or project plan for any Significant transaction would render such timescales impracticable and/or inappropriate, in which case the Chairman and Deputy Director, Corporate Affairs shall agree with the Lead Governor appropriate alternative timings/methods for such consultation. This may include the possibility of calling an additional meeting of the Council of Governors.

#### 3.5.1 Directors' Assurance to the Governors

The Board of Directors shall provide assurance to the Governors by reporting information to the Council of Governors about any Significant transaction. The precise nature of the information to be reported by the Board of Directors to the Council of Governors may vary depending on the specific nature of any given Significant transaction. However, it is likely to comprise some or all of the information below which demonstrates that the Board of Directors has:

- Carried out an appropriate level of financial and market due diligence relating to the proposed investment or divestment;
- Considered the implications of the proposed investment or divestment on the Trust's risk assessment and risk ratings, having taken full account of reasonable downside sensitivities;
- Conducted appropriate inquiry about the probity of any partners involved in the proposed investment or divestment, taking into account the nature of the services provided and likely reputational risk;
- Conducted an appropriate assessment of the nature of services being undertaken as a result of the investment or divestment and any implications for reputational risk arising from these;

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- Received appropriate external advice from independent professional advisers with relevant experience and qualifications;
- Taken into account the best practice advice in the guidance “*Risk Evaluation for Investment Decisions*” (REID) published by Monitor or commented by exception where this is not the case;
- Resolved any accounting issues relating to the investment or divestment and its proposed treatment;
- Addressed any legal issues associated with the transfer of staff (either via an acquisition, divestment or fixed term contract);
- Complied with any consultation requirements;
- Established the organisational and management capacity and skills to deliver the planned benefits of the proposed investment or divestment;
- Involved senior clinicians at the appropriate level in the decision-making process and received confirmation from them that there are no material clinical concerns in proceeding with the investment or divestment, including consideration of the subsequent configuration of clinical services;
- In the case of a contract of a specified period, ensured appropriate legal protection in relation to staff, including on termination of the contract;
- Ensured relevant commercial risks are understood
- Prepared a post-transaction implementation and benefits realisation plan
- Prepared plans for applying appropriate quality governance arrangements

### 3.5. 2 Governors’ Input into a Significant transaction

The Council of Governors may express a view or views about the Trust entering into any Significant transaction but it does not have a power to approve or veto the Trust entering into any such transaction. The Board of Directors shall have regard to any view or views that the Council of Governors express. If the Board of Directors disagrees with the view or views of the Council of Governors, then it shall explain why it disagrees.

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### 3.6 Equality Analysis

Where a Significant transaction will have a Significant effect on service delivery or staff an Equality Analysis will be undertaken to ensure no unlawful discrimination will take place and appropriate mitigation is identified.

## 4. MATERIAL AND OTHER TRANSACTIONS WHICH WILL BE DISCUSSED WITH THE COUNCIL OF GOVERNORS

### 4.1 Definition of a Material transaction for the purpose of this Policy

Material transactions are of a lower financial value than Significant transactions.

In addition to *consulting* with the Council of Governors on Significant transactions, the Trust will also *discuss* with the Council of Governors any planned transaction which meets the description of a “Material transaction”. A Material transaction for the purposes of this Policy is a variation on that used within Monitor’s Risk Assessment Framework. The definition of a Material transaction for the purposes of this Policy is the income attributable to the assets or the contract associated with the transaction, divided by the income of the trust is greater than 5%.

### 4.2 Definition of Other transactions for the purpose of this Policy

The Trust will also discuss with the Council of Governors, either directly or via a relevant delegated sub group, O t h e r transactions which meet one or more of the following criteria:

- Proposals to establish/enter into new organisational models e.g. joint ventures, community interest companies
- Additions of new services to the Trust’s existing service portfolio
- Removal of services from Trust’s existing service portfolio
- Establishment or expansion of any service which is beyond the county boundaries of Northamptonshire

These discussions may be informed/contextualized by bids and tender activity and wider market intelligence/environment analysis.

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### 4.3 Identification of the requirement for discussion of Material and Other transactions

The Director of HR and OD will identify those transactions which meet the definition of a Material or Other transaction using the definition described in sections 4.1 and 4.2 above. The Director will ensure that the appropriate discussion process described in 6.4 below is adhered to.

### 4.4 The discussion process for Material and Other transactions

Transactions that meet the discussion threshold set out in section 4.1 will be discussed at a Council of Governors' meeting either in public or private session depending on the degree of commercial confidentiality.

Transactions that meet the discussion threshold set out in section 4.2 will be discussed at a Council of Governors meeting or at a relevant delegated sub group. In the event these transactions are discussed at sub group level, the sub group may provide a summary to full Council as part of its regular sub group report. Notwithstanding this arrangement the full Council will be directly briefed on transactions relating to new organisational models.

In the event that Council of Governors' meeting schedules preclude such discussions taking place in a timely manner, the Council of Governors' Finance, Planning and Performance or Chairs Sub Group will be used as an alternative forum, with the outcome from the Sub Group being reported to the next Council of Governors' meeting. If this alternative option does not permit timely discussion, the mechanism for engaging with Governors will be agreed with the Lead Governor.

The Chairman will report to the Board of Directors key issues arising from the Council of Governors' discussions on Material and Other transactions as appropriate.

## 5. AGGREGATION

The thresholds pertaining to Significant and Material transactions are set on a 'single' transaction basis. However, if it is known or highly probable that the threshold for a Significant or Material transaction will be triggered through multiple phases relating to the same transaction within a 12 month period, this will be deemed as having met the transaction definition.

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## 6. TRAINING

### 6.1 Mandatory Training

There is no mandatory training associated with this policy.

### 6.2 Specific Training not covered by Mandatory Training

Not applicable to this document

## 7. MONITORING COMPLIANCE WITH THIS DOCUMENT

The table below outlines the Trusts' monitoring arrangements for this document. The Trust reserves the right to commission additional work or change the monitoring arrangements to meet organisational needs.

Aspect of compliance or effectiveness being monitored	Method of monitoring	Individual responsible for the monitoring	Monitoring frequency	Group or committee who receive the findings or report	Group or committee or individual responsible for completing any actions
Duties	To be addressed by the monitoring activities below.				
Transactions that fall under this policy are accurately and consistently identified	Review of relevant Board and Committee reports	Director of HR and OD	Bi-Annually	Performance Committee and Membership & Governance Governor Sub Group	Director of HR and OD
Consultation process described in the policy is adhered to	Review of Board of Directors/ Council of Governors'/s sub groups meetings minutes	Director of HR and OD	Bi-Annually	Performance Committee Membership & Governance Governor Sub Group	Director of HR and OD
An interim compliance assurance report will be presented to Membership & Governance sub group on an annual basis,					

Where a lack of compliance is found, the identified group, committee or individual will identify required actions, allocate responsible leads, target completion dates and ensure an assurance report is represented showing how any gaps have been addressed

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**8. REFERENCES AND BIBLIOGRAPHY**

There are no references or bibliography associated with this document.

**9. RELATED TRUST POLICY**

There are no Trust related policies associated with this document.

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**APPENDIX 1- SYNOPSIS OF TRANSACTION DEFINITIONS AND RELATED ACTIONS**

Transaction Type	Financial Threshold	Threshold Definition	Related actions
Significant	>15%	Where income attributable to the assets or contract associated with the transaction is more than 15% of the Trust's total income.	<ul style="list-style-type: none"> <li>The Board will consult at key stages with the Council of Governors having regard to the views that the Council of Governors express.</li> <li>The Board will provide assurance to the Council that it has undertaken appropriate due diligence processes</li> </ul>
Material	> 5% (<15%)	Where income attributable to the assets or contract associated with the transaction is more than 5% but less than 15% of the Trust's total income	<ul style="list-style-type: none"> <li>The Board will discuss with the Council of Governors any planned transaction having regard to the views that the Council of Governors express</li> </ul>
Other	Not applicable	<ul style="list-style-type: none"> <li>Proposals to establish new organizational models e.g. joint ventures</li> <li>Additions of new services to the Trust's existing service portfolio</li> <li>Removal of services from the Trust's existing service portfolio</li> <li>Establishment or expansion of services beyond the Northamptonshire county boundary</li> </ul>	<ul style="list-style-type: none"> <li>The Board will proactively discuss transactions relating to new organisational models with the full Council</li> <li>'Other' transactions not relating to new organisational models will be discussed by Board directors at either full Council or a relevant delegated sub group</li> </ul>

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**APPENDIX 2 – APPLICATION OF THE POLICY: EXAMPLES**

Scenario	Definition
<p>The Trust is proposing to submit a competitive tender bid for a new service. The anticipated value of the tender bid is £90 million over 3 years. The annual value of this transaction is £30 million which is more than 15% of the Trust's total income (i.e. £180 million X 15% = £27 million).</p>	<p>Significant</p>
<p>The Trust decides to enter into a joint venture arrangement with an investment by the Trust of £0.5 million. Whilst this financial value does not meet the financial threshold for either a Significant or Material Transaction, as this is a new organisational model, the transaction, irrespective of financial value is covered by this policy.</p>	<p>Other</p>

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### APPENDIX 3 – EQUALITY ANALYSIS REPORT

<b>Equality Analysis Report</b>									
<b>Name of function:</b>	Transactions Policy								
<b>Date:</b>	20 <sup>th</sup> August 2013								
<b>Assessing officers:</b>	Paul Martin, Deputy Director, Corporate Affairs								
<b>Description of policy including the aims and objectives of proposed: (service review/resign, strategy, procedure, project, programme, budget, or work being undertaken):</b>									
<p>This policy sets out how the Board of Directors will consult the Council of Governors about transactions that are within the description of Significant transactions as set out in the policy.</p> <p>Through this policy, the Board of Directors can also assure the Council of Governors that it has identified key risks relating to Significant transactions and taken steps to eliminate or appropriately mitigate any key risks that it has identified.</p> <p>Our aim is to ensure the application of this Policy is consistent with Equality Act 2010 and Human Rights Act 1998.</p>									
<b>Evidence and Impact – provide details data community, service data, workforce information and data relating specific protected groups. Include details consultation and engagement with protected groups.</b>									
<p><b>Evidence base:</b></p> <ul style="list-style-type: none"> <li>• NHFT Equality Information Report August 2012</li> <li>• Northampton County Council: Northamptonshire Results: 2011 Census Data Summary</li> </ul>									
	<b>Corby</b>	<b>Daventry</b>	<b>East Northants</b>	<b>Kettering</b>	<b>Northampton</b>	<b>South Northants</b>	<b>Wellingborough</b>	<b>Northants</b>	<b>England</b>
2001	53,400	72,100	76,600	82,200	194,200	79,400	72,500	630,400	49,449,700
2011	61,100	77,700	86,800	93,500	212,100	85,200	75,400	691,900	53,012,500
<b>% rise</b>	14.4%	7.8%	13.3%	13.7%	9.2%	7.3%	4.0%	9.8%	7.2%
<ul style="list-style-type: none"> <li>• Ethnicity: 85.7% (White) and 14.3% (BME )- 1.75% (dual heritage); 4.01% (Asian); 2.5%(Black including British, African and Caribbean) ; 0.85 % (Chinese) ; 6.05 % (white other EEA, polish, Gypsy &amp; Traveller)</li> <li>• Gender: 49.6% males; 50.4% females (including 1% transgender)</li> <li>• Disabled people: 19% (including 3.5 % &lt; aged under 18)</li> <li>• Faith communities: 71% Christian; 29% minority faith: (includes Hindu, Muslim, Sikh, atheists, non-belief)</li> <li>• Sexual orientation (gay, lesbian or bisexual): 5 - 7% (Stonewall estimate)</li> </ul>									

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Equality Analysis Report	
Name of function:	Significant Transactions Policy
Date:	20 <sup>th</sup> August 2013
<p><b>Service Information: provide any relevant service data or information to inform the Equality Analysis including service user feedback, external consultation and engagements or research.</b></p> <p>None.</p>	
Protected Groups (Equality Act 2010)	<p><b>STAGE 3: Consider the effect of our actions on people in terms of their protected status?</b></p> <p>The law requires us to take active steps to consider the need to:</p> <ul style="list-style-type: none"> <li>• Eliminate unlawful discrimination, harassment and victimisation.</li> <li>• Advance equality of opportunity</li> <li>• Foster good relations with people with and with protected characteristic</li> </ul> <p>Identify the specific adverse impacts that may occur due to this policy, project or strategy on different groups of people. Provide an explanation for your given response.</p>
Age	No adverse effect identified, however where a Significant transaction will affect services users or staff based on their age an Equality Analysis will be undertaken to mitigate.
Disability	No adverse effect identified, however where a Significant transaction will affect services users or staff based on their disability an Equality Analysis will be undertaken to mitigate.
Gender (male, female and transsexual, inclu. Pregnancy and maternity)	No adverse effect identified, however where a Significant transaction will affect services users or staff based on their sex / gender identity an Equality Analysis will be undertaken to mitigate any negative impacts.
Gender reassignment	No adverse effect identified, however where a Significant transaction will affect services users or staff based on their gender reassignment an Equality Analysis will be undertaken to mitigate any negative impacts.
Sexual Orientation (incl. Marriage & civil partnerships)	No adverse effect identified, however where a major transaction will affect services users or staff based on their sexual orientation an Equality Analysis will be undertaken to mitigate any negative impacts.
Race	No adverse effect identified, however where a major transaction will affect services users or staff based on their race an Equality Analysis will be undertaken to mitigate any negative impacts.
Religion or Belief (including non belief)	No adverse effect identified, however where a major transaction will affect services users or staff based on their religion or belief an Equality Analysis will be undertaken to mitigate any negative impacts.

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Equality Analysis Report			
<b>Name of function:</b>	Significant Transactions Policy		
<b>Date:</b>	20 <sup>th</sup> August 2013		
<b>Equality Analysis outcome: Having considered the potential or actual effect of your project, policy etc, what changes will take place?</b>			
<p>The following addition to Section 5 of the Significant Transactions Policy has been made:</p> <p>Where a Significant transaction will have a Significant effect on service delivery or staff an Equality Analysis will be undertaken to ensure no unlawful discrimination will take place and appropriate mitigation is identified.</p>			
Action Plan			
Issue to be addressed	Action	Who	Date to be completed
None.			
<b>Ratification – a completed copy of the Equality Analysis form must be sent to Equality and Inclusion Officer to be approved.</b>			
<b>Approving Officers</b>	Tendai Ndongwe, Equality and Inclusion Officer		
<b>Date of completion:</b>	23 August 2013		

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