Getting Your Equality Impact Assessment Right

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Housekeeping

- Questions and comments
- Speaker view/gallery view
- Hand up – reactions at bottom of screen
- Chat – button at bottom of screen
- Breakout rooms (ask for help button at bottom of screen)
- Any particular things you were hoping for – please ask as we go.

What we will be Covering

- What are they?
- Background
- Why we do them?
- Who should do them?
- When should you do them?
- Screening
- How do you carry out an EqIA?
- Legal cases

Confidentiality

What is an Equality Impact Assessment?

The main purpose of an equality impact assessment is simply to ensure that proposed strategies, policies, projects and decisions do not affect some groups unfavourably/disproportionately, or that if they do it is with intent and mitigating action can be taken.

Assessment leading to Action

Background

- Murder of Stephen Lawrence 1993
- Macpherson Report 1999 –defined institutional racism as:

"The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people".

Background ...(cont'd)

Race equality duty



Gender and Disability equality duties



Equality Act 2010: Public Sector Equality Duty

Public Sector Equality Duty

Wide-ranging legal duty requiring ***all*** public authorities – and those bodies carrying out public functions - to give '**Due Regard**' to

1. Eliminate unlawful discrimination, harassment and victimisation.
2. Advance Equality of Opportunity.
3. Foster good relations.

In the performance of ***all*** their functions

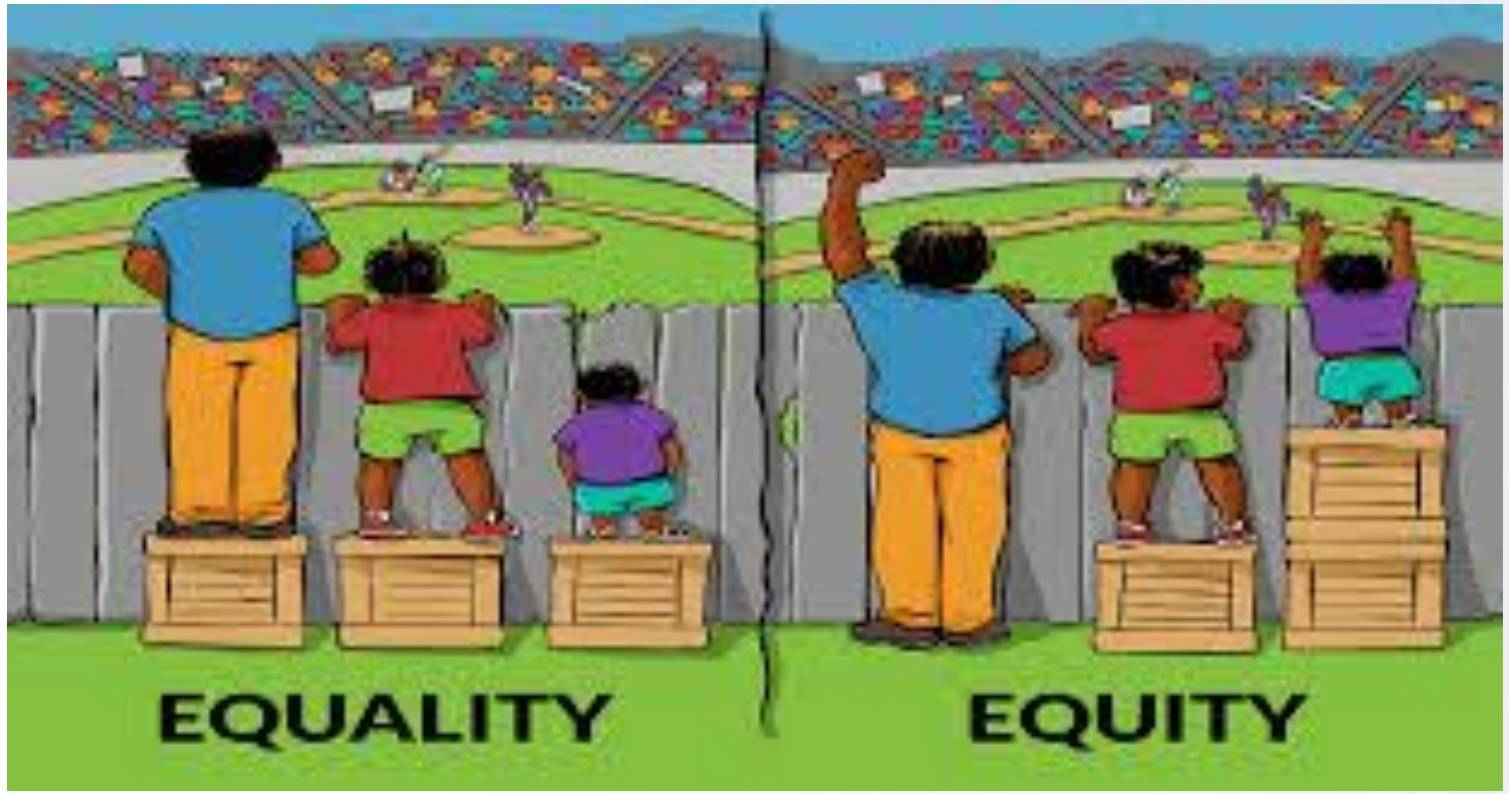
Public Sector Equality Duty ...(cont'd)

What does this mean?

Any policy or activity must be assessed to see if it impacts differently on different protected characteristic groups

Policies and programmes can impact differently on different protected characteristics.

Eg: Cutting a youth service, Writing a policy on hot desking, closing a library, working from home Etc.


EQUALITY
EQUITY

Equality v Equity

Equality	Equity
Equality of Opportunity	Equality of outcome
"Service is open to everyone"	Assumption of barriers
Treat everyone the same	Treat people differently to overcome barriers

Equality Impact Assessment from perspective of equity

A Few Examples of Barriers

- **Physical**: Steps for wheelchair users, difficulty of getting to a location
- **Communication**: different languages, complicated language (organisationalese), no sign language,
- **Attitudes**: Patronising, dismissive, stereotyping, bias, not acknowledging difference

Protected Characteristics

Protected characteristics identified by the Equality Act 2010

Age

Disability

Sex

Gender reassignment

Sexual orientation

Religion or belief

Race

Pregnancy and Maternity

Marriage and Civil partnership

Socio-economic status (by law in Wales and Scotland)

These are characteristics/groups normally considered in an EQIA.

Other considerations can be included eg :

literacy;

Future Generations and Welsh language in Wales

Benefits of assessing impact

- Framework to help you do what you want to do
- Improving understanding of the needs of residents and how they can be best met
- Ensuring needs of most vulnerable groups are met
- Ensuring services are more accessible
- Identifying gaps in current provision (and being aware of those gaps even if you can't fill them for the moment).

Benefits of assessing impact ...(cont'd)

- Identify any adverse or positive impact before resources are committed
- Providing a focus for engagement with particular groups
- Promoting community cohesion
- Ensuring employees can flourish
- Demonstrating commitment to promote equality and fairness
- Fulfilling legal requirements.

Consequences When EqIAs not carried out! (1)

- Closure of Public Toilets in a Town Centre
- Local Authority undertook a very cursory EQIA internally
- No external engagement
- Many of the older locals and mothers with babies/toddlers found shopping and socialising more difficult
- Local supermarket only a few stops further along bus route - had café, toilets, baby clothes, cards, flat aisles and all things under one roof etc.
- High street card shop, café, baby clothes, pram shop all closed within year as reduced footfall hit their revenue.

Consequences when EqIAs not carried out! (2)

Go back to square one. Eg:

- Budget cuts
- Library closures

- Service not used eg: Where you place bus shelters, accessibility

- Impacts people unfairly, some not able to access

Group Activity 1 - Personal barriers

In your breakout groups, take about 1 minute each to go round and talk about a time that you encountered a barrier to a service or product

It may be a service or product provided by the private, public or voluntary sector

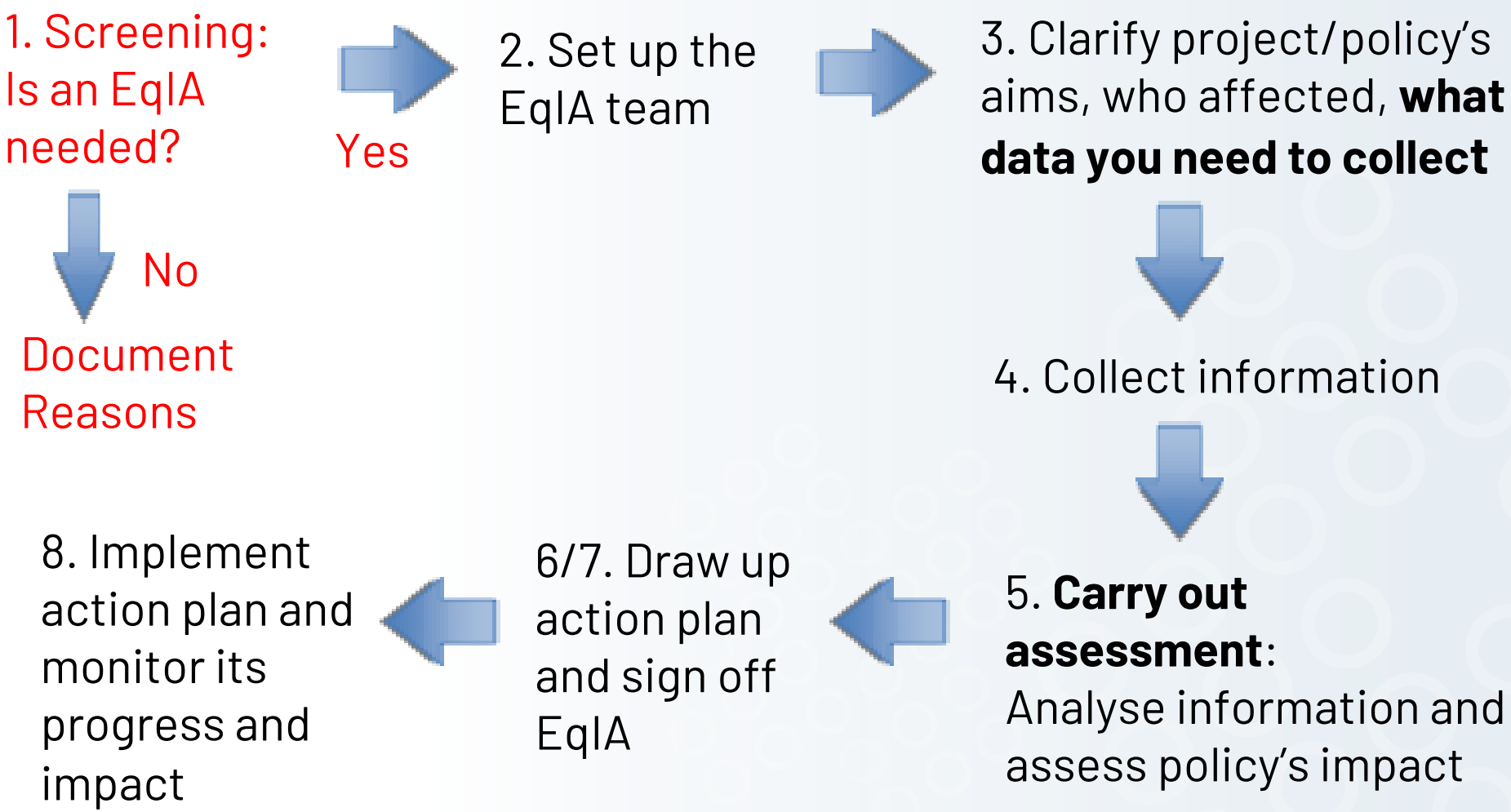
Please feed back one example to the whole group when we come back

5 minutes

When to assess impact

- From the outset whenever something new is being introduced or existing policy or activity being reviewed or changed
- Should be integral to the development and review of policies, practices and projects
- Monitor the actual impact of a policy/project as it is implemented, and
- Revisit the assessment of impact on protected groups as part of any review.

Stages in carrying out an EqIA



1. Screening – Example Questions

- Fairly quick process
- Does policy affect service users or wider community (more likely to have effect on protected groups)? Eg: ASB, allocations, repairs, maintenance, housing quality standards, adaptations to disabled people's houses, grant making;
- Is it a major policy, significantly affecting how functions are delivered in terms of protected groups?
- Will the policy/activity change the way services are delivered?

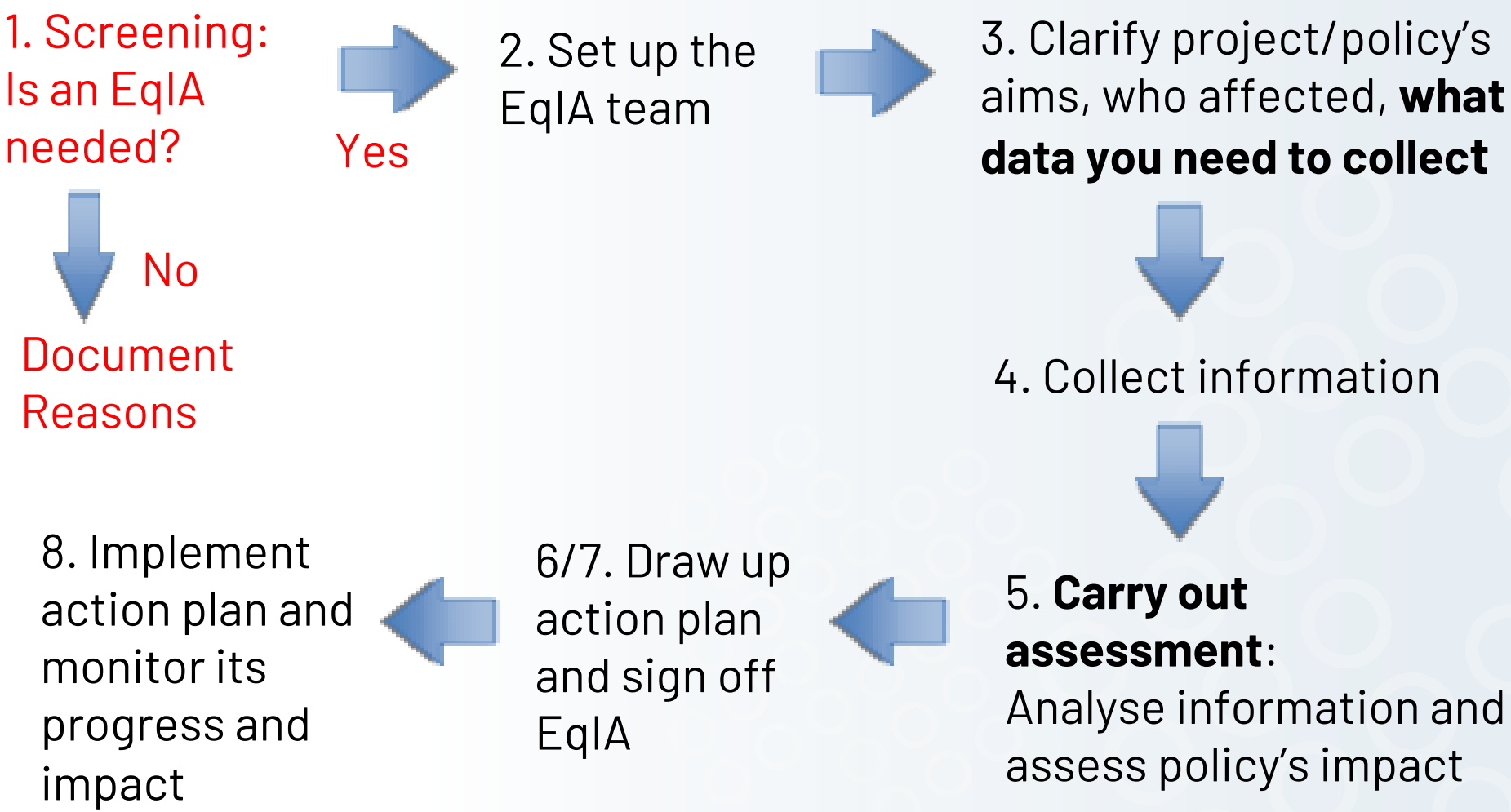
1. Screening - Example Questions ...(cont'd)

- Does policy/activity affect employees? Eg: recruitment, pay policy, gender pay gap, hybrid working, hotdesking
- Does it relate to an area where there are known inequalities? (eg: accessible housing, disabled people's access to public transport; gender pay gap; racist bullying in schools)
- Does it relate to a strategic budgetary decision or to the organisation's equality objectives?
- **If no EqIA document reasons**

So you have done the screening and decided an EqIA is needed

What next?

Stages in carrying out an EqIA



2. Set up the EqIA team

Who do you need on the team? People who:-

- have a detailed understanding of the policy area
- have a range of experience and expertise
- useful to have the input of someone with expertise on diversity and inclusion issues
- may include residents or partner organisations
- are in a position to ensure that required changes can be made.

3. (Clarify project/policy's aims) and what data you need to collect

- Not always clear how it will impact differently on different groups, so....
- Need evidence for impacts/barriers.
- Quantitative and qualitative data

- ***Quantitative***: For example, *Demographic evidence, Service-level monitoring data, consultancy, inspection reports, research*

3. (Clarify project/policy's aims) and what data you need to collect ...(cont'd)

- ***Qualitative**:* For example,
- *Previous feedback* from residents' groups and individual residents, surveys etc.
- *Anecdotal from front line staff:* may be aware of particular issues facing some tenants
- *Tenancy support staff* to capture views of tenants they work with, particularly vulnerable tenants.

3. What data do you need to collect - Data Gathering and Community Engagement

Information from representative groups

- Which communities and groups to engage in the development of the policy?
- Utilise existing structures eg: disability groups, youth panels, those involved in community development projects to gain any feedback
- Opportunity to build relationships with groups and communities

3. What data you need to collect? What don't we know? Where can we find out?

- What quantitative data do we not have?
- What qualitative data are we missing?
- Plan where to find what we are missing?

No information? Complete EqIA based on the evidence you have, engagement and external research BUT include an action to put systems in place to collect the information you need.

Group Activity 2 – Scoping and Planning

10 minutes to Read the ASB policy

As you go through, think about what data you would need to find out in order to do EqIA and where you would get that data from

Group Activity 2 – Scoping and Planning ...(cont'd)

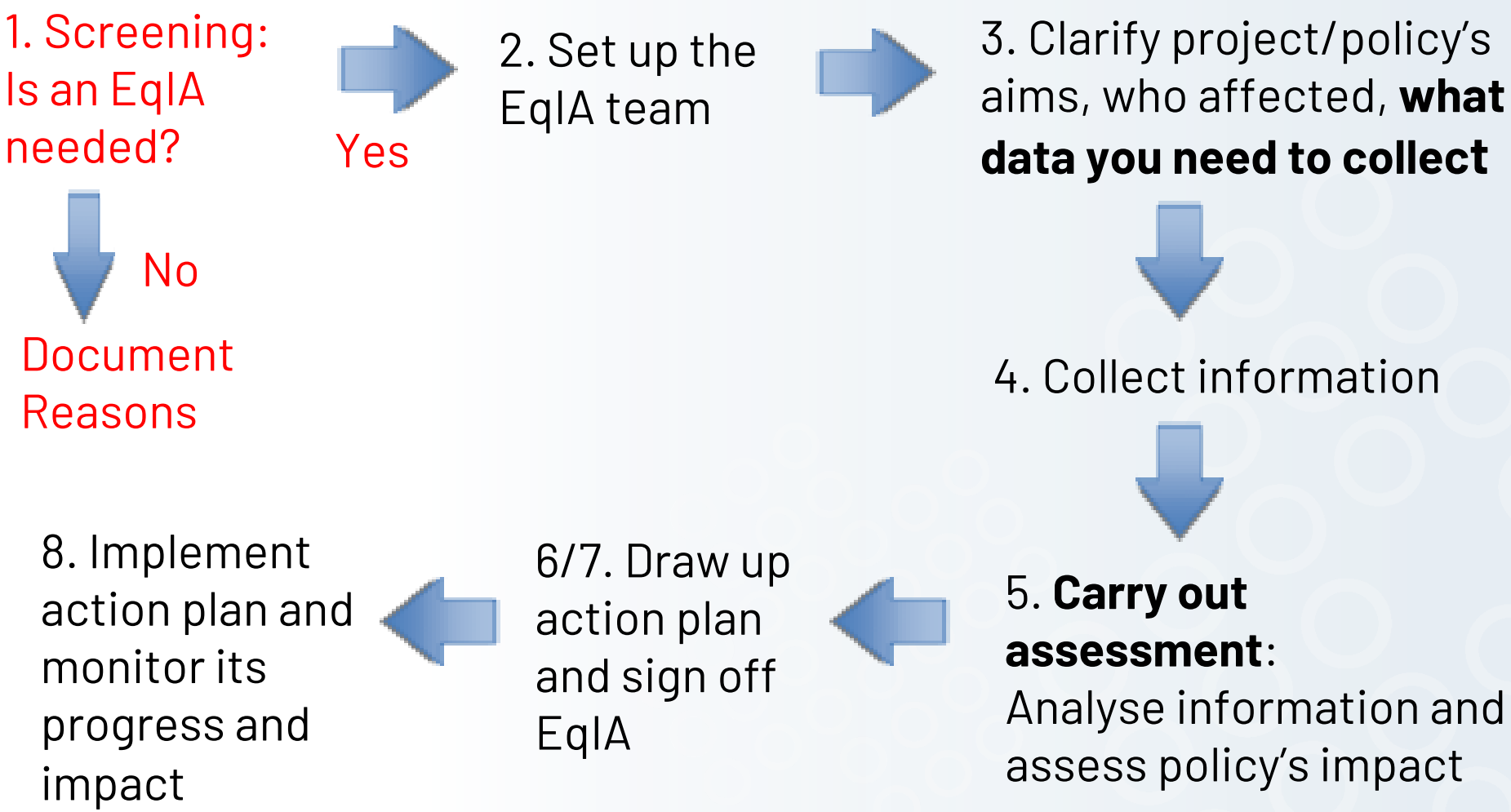
You are reviewing and updating your organisation's Anti-social Behaviour policy

- In your organisation, what might you already know?
- What don't you know?
- How would you find out what you don't know?
- Which internal and external groups would you talk to?
- Who else from your organisation would you involve in carrying out the EqIA

Come back with a short summary of the key points in your answers

15 minutes

Stages in carrying out an EqIA



5. Analyse the information and assess the policy's impact

- Set out aims of the policy/service and how they relate to equality
- To which of the protected groups is the policy relevant? (consider each protected group)
- Does evidence indicate that there is a different impact on particular groups?
- Is this impact disproportionately negative?

5. Analyse the information and assess the policy's impact ...(cont'd)

Having worked out to the best you can what the impacts are:

- What are you going to do with these impacts?
- Carry on? Mitigating action?
- Are some of those impacts acceptable to you? If so you will need to **objectively justify** why you are accepting them

"a proportionate means of achieving a legitimate aim"

5. Balancing exercise - proportionality

- Was the **aim** sufficiently important? Cases have asked "Is the objective sufficiently important to justify limiting a fundamental right?"
- Could this aim of the employer etc have been achieved by **alternative, less discriminatory means**, including but not limited to possible reasonable adjustments?
- **Does the aim outweigh the discriminatory effects** on the claimant? The disadvantage to the claimant must not be disproportionate to the aims

Group Activity 3 – Assessing Differential Impact

- For each of the 3 case studies
- For each of the Protected Characteristics, socioeconomic status and literacy

- Consider differential impacts and what might you do to mitigate the effect
- Are there any positive impacts?

20 Minutes

Please come back ready to feedback up to 5 impacts & what you might do to mitigate them

5. Analyse information and assess impact

1. Eliminate unlawful discrimination

- Is there evidence that the policy may result in any of the forms of discrimination ie:-
  - Direct discrimination
  - Indirect discrimination
  - Harassment
  - Victimisation
  - Failure to make reasonable adjustments and discrimination arising from disability
- *objective justification: the organisation must show that its policy is 'a proportionate means of achieving a legitimate aim'*

5. Analyse information and assess impact

2. Advance Equality of Opportunity

Will the policy:-

- Remove or minimise disadvantages;
- Take steps to meet the needs of people from protected groups; and
- Encourage people from protected groups to participate in public life or other activities where their participation is low.

5. Analyse information and assess impact

3. Fostering good relations

Will the policy affect good relations? Will it help to:-

- **Tackle prejudice**
- **Promote understanding**

Eg: Putting on multicultural events

Make decision & Draw up action plan

After considering potential or actual impact:-

Option1: No major change

Option 2: Adjust the policy/activity (remove or adjust aspects; introduce additional measures to reduce impact "mitigating actions")

Option 3: Continue policy/activity (despite adverse impact: provide justification & how decision reached)

Option 4: Stop and remove the policy (if adverse impact cannot be justified – consider; if unlawful discrimination – must be removed or changed)

Group Activity 4 – Mock Equality Impact Assessment

Using the Anti Social behaviour policy and data supplied, assess the impact of that policy on Protected Characteristics and note down:

Any potentially negative impacts
Any mitigating actions
Any potentially positive impacts
What changes you would make to policy

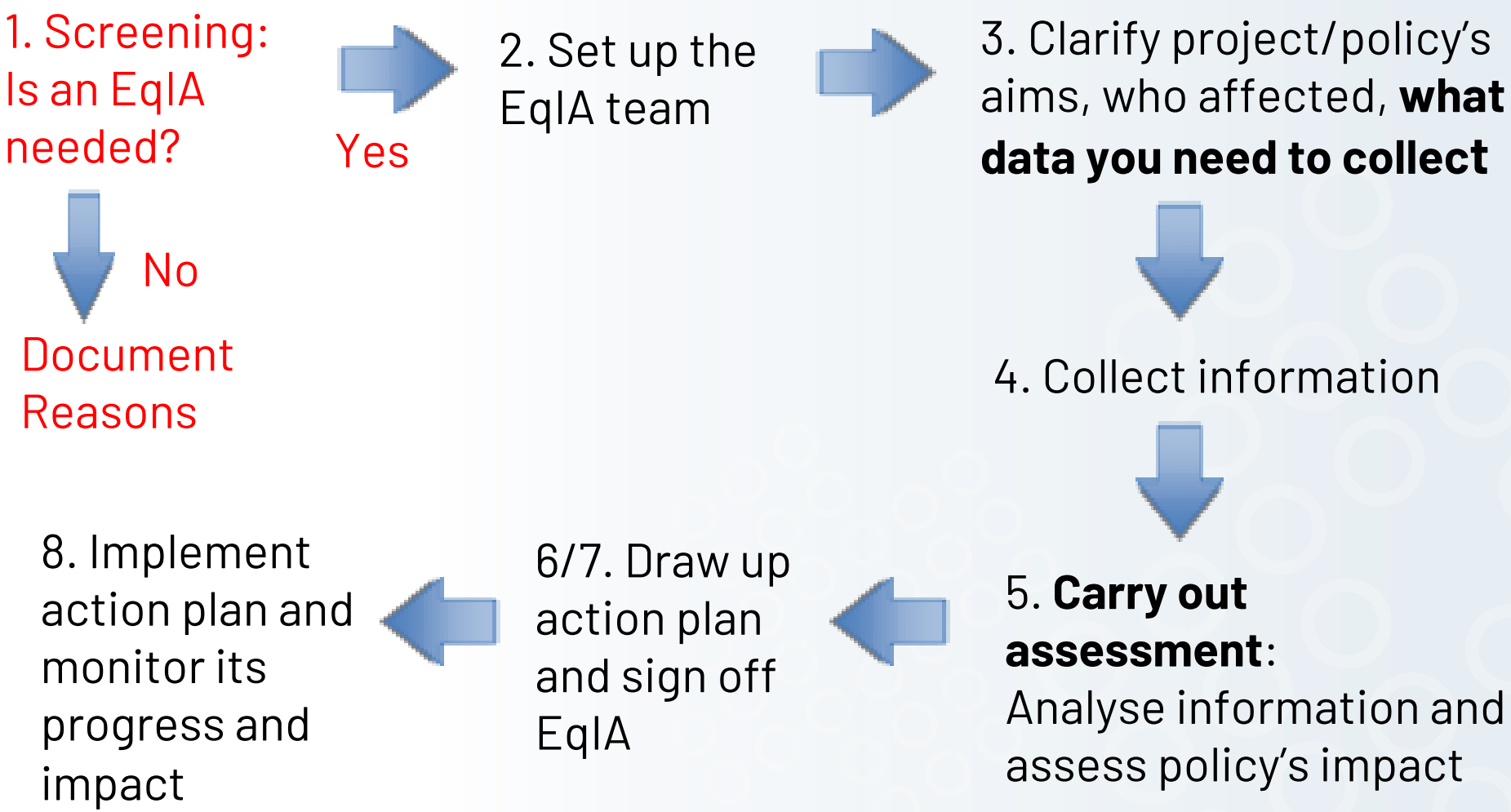
for next 25 minutes

Come back with a short summary of the key points in your answers

Document the Assessment

- Action Plan
- Document and record the assessment
- Provide explanations for conclusions
- What positive impacts have you found and how can you highlight these?
- Publicise the assessment – transparency and accountability
- Get approval/authorisation

Stages in carrying out an EqIA



Monitoring Action Plan

- Monitor, evaluate, review
- Have relevant actions been implemented?
- Does actual impact match anticipated impact

Case Law Example - Atherton v DWP(2019)

- DWP's refusal to communicate by email (policy not to send confidential information by email)
- Atherton because of medical condition (Chronic Fatigue Syndrome) not knowing where he will be (friends/hospital) or whether he will be able to travel to Jobcentre.

Case Law Example - Atherton v DWP(2019) ...(cont'd)

- Atherton claimed that insisting on postal – rather than email – communication amounted to a breach of its PSED.
- Also claimed breach of duty to make reasonable adjustments to accommodate his disability.
- Claim successful – DWP had done only a cursory EqIA on this policy.

Case Law Example - London & Quadrant Housing Trust v Patrick

- Tenant whose behaviour was frequently aggressive and unpredictable.
- Trust applied successfully for an injunction.
- When injunction failed to prevent anti-social behaviour, Trust brought possession proceedings.
- Two days before possession, tenant's lawyer served medical evidence that tenant suffered from mental health problems, including schizophrenia.
- Argued that possession proceedings should not be successful as landlord failed to comply with their public sector equality duty.

Case Law - London & Quadrant Housing Trust v Patrick

- Court set out need for landlords to carry out a sufficiently rigorous consideration of their duty to have due regard to eliminate discrimination.
- Trust had considered the medical evidence and deemed it proportionate to continue with the possession proceedings.
- Case established that, as long as landlord has considered PSED and satisfied that duty, court must not substitute its view over that of landlord.
- Courts looking favourably on public sector landlords who have shown a clear recognition of PSED when factors relating to this duty arise in possession proceedings.

Case Study - Rent Arrears and Legal Action

- Cross referenced profiling information with information from other service areas
- 74% court orders issued against tenants between aged 16 and 34 (overall tenant population in this age group is 21%)
- 17% court orders in period were issued to BAME tenants (overall tenant population is 10%) - but younger age profile
- More proactive approach towards younger tenants (16 - 34)
- eg: post-tenancy contact followed up at six weekly 'settling in' visit where debt and rent arrears or any other personal financial issues discussed.

Birmingham City Council case

- National guidance ("Fair Access to Care Services" or "FACS") - needs assessed as low, moderate, substantial or critical.

- Previously, BCC provided support for people assessed as substantial or critical

- Decision made to reduce adult social care budget by funding only critical needs.

Birmingham City Council case: Judgement

- BCC had not focused on the likely impact of moving to provision for critical needs only.

- "due regard" should have involved some attempt at assessing the practical impact on those whose needs in a particular respect fell into the "substantial" band but not into the "critical" band.

- As a result of these failings both the budget and the resulting cuts to adult social care were unlawful.

Remedies and sanctions

- Individuals cannot claim damages for a breach of equality duties
- Members of the public can seek a **judicial review** through the High Court of a decision made by a public body in breach of the *general* duty
- EHRC can issue compliance notices for the breach of the *general* and *specific* duties.

Top Tips

- Weave EqIA into development or review process
- Have a number of people involved in the EqIA
- Use firm data (quantitative and qualitative) to support EqIA's findings
- Consult with actual or potential users
- Take action to address gaps found
- Highlight when positive impact
- Monitor action plan
- Particularly for major policies/activities.

Group Activity 5
Getting EqIAs done in the Organisation

Having the process is all very well.....

..... Now how do we persuade/ influence people to actually do them....

.....at the right time and properly?

What are the barriers?

What have people tried?

What worked?

Come back with examples of what has worked

How to Get them done in the Organisation

- No easy answers (sorry!)
- Support from top
- Top team and board trained in what to expect and what to look for
- See them like a financial assessment and risk assessment – business as usual
- Senior team/board don't accept papers without accompanying EqIA.

How to Get them done in the Organisation ...(cont'd)

- All policies/projects have to go through person responsible for equality before going for approval
- As simple a process as possible
- Sold as being in people's interest (carrot)
- Consequences for not doing them (stick).

Best Practice Group

- May 15

- Philippa Ibe : Measuring the impact of your diversity inclusion to influence change

HQN resources

- Equality Impact Assessments briefing
- Toolkit: Embedding equality and diversity

- Many other toolkits, briefings and blogs on HQN website in the network documents section.

We will be sending slides and examples of answers

and

We Will be in touch to get Feedback