BPAS Fertility investigation: NHS-funded fertility care for female same-sex couples

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About BPAS

BPAS is a charity which sees almost 100,000 patients a year for reproductive healthcare services including pregnancy counselling, abortion care, miscarriage management and contraception at clinics across Britain. We support and advocate for reproductive choice. BPAS also runs the Centre for Reproductive Research and Communication, which seeks to develop and deliver a research agenda that furthers access to evidence-based reproductive healthcare, driven by an understanding of patient perspectives and needs.

In 2021 BPAS will launch a not-for-profit fertility service, BPAS Fertility, to provide ethical, evidence-based, person-centred care that supports patients. We intend to only charge what it costs to provide a safe, high-quality, and accessible service to patients who may be unable to access NHS-funded care.

Background

Fertility services in the UK

Fertility services in the UK, including in vitro fertilisation (IVF), are provided by a mixture of NHS and private services. The availability of NHS funding for fertility treatments varies significantly between countries and regions, depending on local commissioning policy. The latest data from the Human Fertilisation and Embryology Authority (HFEA) show that the proportion of IVF cycles funded by the NHS is highest in Scotland (62% of all cycles) and lowest in England at (32%) (HFEA, 2021b).

NHS fertility services are commissioned at the national level in Scotland, Wales and Northern Ireland. In England, commissioning is undertaken by Clinical Commissioning Groups (CCGs), which were created following the 2012 Health and Social Act (replacing Primary Care Trusts). CCGs are independent, statutory NHS bodies and accountable to the Secretary of State for Health and Social Care via NHS England. At present there are 106 CCGs in England (following a recent restructure in which several were merged).

Guidance for how fertility services should be commissioned and provided in the UK is issued by the National Institute for Health and Care Excellence (NICE). Recommendations are made by NICE on the basis of both clinical and cost effectiveness (McCabe et al., 2008). CCGs do not have a statutory obligation to comply with NICE clinical guidelines (unlike NICE technology appraisals which must be implemented), but nonetheless test cases have confirmed that CCGs should not disregard NICE guidelines unless there is a clear clinical case for doing so (NICE, 2014a).

The most recent NICE clinical guideline for fertility treatment was issued in 2013, stating that three cycles of IVF should be offered to female patients under 40, and IVF is cost effective for female patients up to age 43 (NICE, 2013b; Kmietowicz, 2012). This assessment was made following an economic analysis that considered quality adjusted life years (QALYs), cumulative success rates across clinical settings, single and double embryo transfers, and a background chance of conceiving naturally (Kmietowicz, 2012).

However, the extent to which this guidance is followed varies between nations and regions of the UK. In Scotland, all clinically eligible patients receive three NHS-funded cycles of IVF, in line with NICE guidance. In Wales, two NHS-funded cycles are provided, and clinically eligible patients in Northern Ireland only receive one. In England, differences between CCGs' policies has led to the emergence of significant regional variation in fertility funding, dubbed the "IVF postcode lottery", which has been criticised by campaigners, professional bodies, the media, and even the current Health and Social Care Secretary, Matt Hancock MP (NICE, 2014b; BioNews, 2016; RCOG, 2017; British Fertility Society, 2017; BBC News, 2017; Fertility Fairness, 2018; Fertility Network, 2019; Evening Standard, 2019; Metro, 2019; inews, 2020; Huffpost, 2020; HSJ, 2020).

Fertility services for female same-sex couples

Data from the HFEA show that the number of IVF cycles provided to female same-sex couples has risen rapidly in the last decade, increasing fourfold from 489 cycles in 2009 (1% of all cycles) to 2,435 cycles in 2019 (4%) (HFEA, 2021b). However, previous research has found that female same-sex couples

may face additional barriers to accessing NHS-funded fertility care compared to heterosexual couples (BPAS Fertility, 2020). In particular, the requirement that female same-sex couples must establish their "fertility status" by self-funding several rounds of artificial insemination (AI) presents a financial barrier to care, which has been criticised by patient advocates (HuffPost UK Life, 2021).

NICE's guideline on fertility states that treatment should be considered for female same-sex couples instead of vaginal intercourse (NICE, 2013b):

> "1.9.1.1 Consider unstimulated intrauterine insemination as a treatment option in the following groups as an alternative to vaginal sexual intercourse: […]
> • people in same-sex relationships. [new 2013]"

In 2016, NICE experts undertook two equality impact assessments (EIAs) as part of a guidance development process (NICE, 2016a; NICE, 2016b). The committee raised concerns that female same-sex couples were often disadvantaged in practice by requirements to self-fund their own artificial insemination (NICE, 2016a), but they subsequently concluded that the issue was adequately addressed by recommendation 1.9.1.1 (quoted above):

> "The committee felt that provision of fertility treatment to same-sex couples was adequately covered in recommendation 1.9.1.1. This recommendation covers that unstimulated IUI may be considered in the following groups as an alternative to vaginal sexual intercourse: people who are unable to, or would find it very difficult to, have vaginal intercourse, people with conditions that require specific consideration in relation to methods of conception and people in same-sex relationships."

Despite this decision, it would appear that commissioning bodies continue to place additional restrictions and financial burdens on female same-sex couples who need fertility care. This report investigates the extent to which NHS commissioning bodies across the UK provide fertility care for female same-sex couples, and the conditions of access imposed upon these patients, including additional financial burdens.

Method

Freedom of information requests were submitted to CCGs in England in April 2021, worded as follows:

> Re: Access to fertility services for female same-sex couples
> **1.** Please disclose:
> a. Whether or not your CCG funds IVF services for female same-sex couples?
> b. If so, how many cycles of IVF per couple does the CCG fund per couple?
> **2.** If the answer to (1a) is yes, please disclose:
> a. Under your CCG's current policy, how many cycles of artificial insemination must be undertaken by a female same-sex couple in order to become eligible to access NHS-funded IVF?
> b. How many of the abovementioned cycles of artificial insemination must be self-funded by the couple?
> **3.** Please disclose whether or not your CCG funds:
> a. Procedures using donor sperm
> b. The donor sperm itself to be used in those procedures

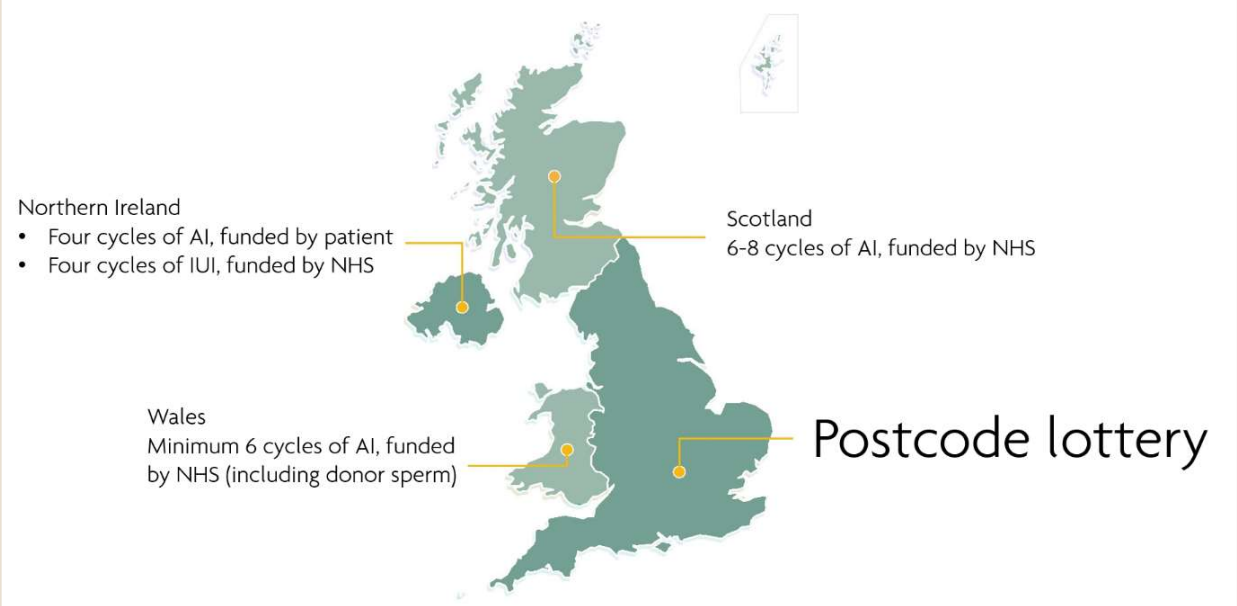
Answers were compiled into a Microsoft Excel spreadsheet and clarifications sought where necessary. In cases where CCGs had multiple policies in place for different geographical areas (usually as a result of a recent merger), the range of answers was noted in the spreadsheet.

National commissioning policies for fertility services in Wales, Scotland and Northern Ireland were accessed online (NHS Scotland, 2013; WHSSC, 2017; Belfast Health & Social Care Trust, 2019).

Key findings

Comparison of UK nations

In Northern Ireland, female same-sex couples are eligible for HSC-funded fertility care, but only if they first self-fund four rounds of artificial insemination. They are then referred for four rounds of HSC-funded intra-uterine insemination (IUI), followed by IVF if needed. In both Wales and Scotland, artificial insemination is funded by the NHS: female same-sex couples are not required to self-fund any treatments in order to qualify for care. In England, the rules are subject to a postcode lottery. CCG policies are analysed below.



Analysis of CCG policies in England

Multiple CCGs were found to impose restrictions or eligibility criteria that are likely to have disproportionate impact on female same-sex couples.

Restrictions on the use of donated gametes

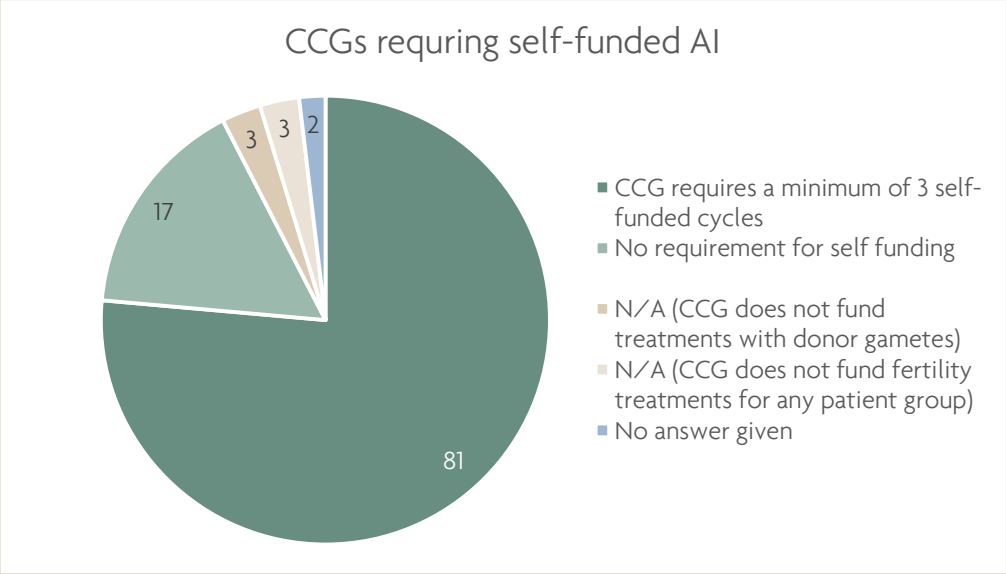
Three CCGs (NHS Brighton and Hove CCG, NHS East Sussex CCG and NHS West Sussex CCG) do not fund procedures involving donor genetic materials for any patient group. The stated rationale for this decision is that the provision of fertility treatments involving donated genetic materials is unaffordable in the context of local health priorities.

These restrictions will not only affect same-sex couples. Donor insemination is clinically indicated for heterosexual couples where a male has little or no sperm in his semen or if there is the possibility of

passing on a genetic disorder (NICE, 2013a). However, a blanket restriction on the use of donated gametes is likely to have a disproportionate impact on female same-sex couples, since in effect it bans them from accessing NHS-funded care. They are left with no option but to access private services, if they can afford it.

Criteria for establishing "subfertility"

Only 17 CCGs (16%) provide NHS-funded AI as an alternative to vaginal intercourse for female same-sex couples. Over three quarters of CCGs (76%) require a minimum of three cycles of AI to be self-funded in order for patients to prove their "fertility status", with 29 CCGs (27%) requiring between 10 and 12 cycles of self-funded AI.



According to the NHS website, IUI with donor sperm can cost up to around £1,600 per cycle (NHS, 2020), but some private clinics charge significantly more than this for a single round of insemination. A quick search online revealed that many private clinics charge well over £2,000 per cycle once the costs of donor sperm and medication have been factored in. This means that female same-sex couples may be required to spend around £20,000 before gaining access to NHS fertility care, depending on where they live.

Restrictions on the funding of donor gametes

31 CCGs (29%) said they do not fund the cost of donor sperm to be used in IVF treatments for same-sex couples, even if the couple has previously met the eligibility criteria by self-funding the required number of rounds of AI. In some cases, couples were responsible for sourcing their own donor sperm, in addition to funding it. This represents an additional financial burden to the cost of the AI that has already been undertaken. Again, this burden is likely to have a disproportionate impact female same-sex couples.

Other postcode-dependent restrictions

Aside from these restrictions and barriers, female same-sex couples are subject to the same postcode lottery as all other fertility patients. Three CCGs do not fund fertility treatment at all, for any patient group. The overwhelming majority of remaining CCGs fund fewer cycles of treatment than recommended by NICE: our analysis found that only 21 CCGs fund up to three cycles of IVF, while 60 CCGs (57%) fund a maximum of one cycle.

Previous research by BPAS Fertility has highlighted other postcode-dependent criteria, including female age (with some CCGs restricting female patients over the age of 35), BMI, and the fact that a patient's partner has a child from a previous relationship (BPAS Fertility, 2020).

Discussion

The majority of CCGs place a significant financial burden on female same-sex couples, who have to self-fund multiple rounds of AI in order to become eligible for NHS care, which may cost around £20,000. This financial challenge is likely to be insurmountable for many couples, who simply cannot raise the funds. Those who can afford to go through this process may still need to cover the cost of their donor sperm, even if they meet the requirements for NHS fertility care.

In practice, these requirements are likely to mean that only wealthy patients can access NHS-funded fertility treatment, effectively creating a two-tier system of care. This outcome is antithetical to the most fundamental principle of the NHS, that care should be provided according to need and not ability to pay. This principle is enshrined in the NHS constitution (NHS, 2015), but sadly not manifested in the provision of fertility services.

The withholding of fertility services has consequences, both for patients and the health service. Patients who cannot access NHS care for financial reasons may be tempted to source a private sperm donor online, but these donors are not regulated and there are potential dangers. Sperm obtained in this way is not checked for quality or screened for health conditions, including infectious diseases such as HIV or heritable conditions. There are also problems with legal parenthood, since the sperm donor will become a legal parent when the child is born (HFEA, 2021a). A recent survey of women who had sourced a private sperm donor online found that 40% had encountered "dishonest donors" (Jadva et al., 2018).

Moreover, it is well known that patients who cannot access fertility care on the NHS travel abroad for care. This is associated with higher multiple birth rates, which are the single biggest risk of IVF to both mothers and babies, and sadly associated with higher rates of neonatal death (ONS, 2012; HFEA, n.d.; NICE, 2014c). In addition to the tragedy of this, it is relevant to cost effectiveness assessments, since complications related to multiple pregnancies are costly for the NHS to address later.

CCG policies that disproportionately impact same-sex couples, such as those documented here, may breach equality law, since sexual orientation is a protected characteristic under the Equality Act 2010. In 2017, a couple who had been required to undergo AI at a private clinic began legal action against their CCG, claiming that the policy amounted to unlawful direct discrimination under the Equality Act (Leigh Day, 2017). The CCG capitulated and reviewed its policy, but this research shows that countless similar policies remain in force across the country.

Lastly, the personal impact of being denied fertility care can be devastating. Earlier in 2021, a patient in a lesbian relationship contacted BPAS Fertility, having been denied care on the NHS due to her CCG's commissioning policy. She summed up the impact this had on her and her partner:

"The requirement of our CCG to self-fund 12 attempts to conceive means that we have ruled this out as an viable option. We would likely have spent tens of thousands of pounds and be a few years down the line by the point we are eligible for support. Our heterosexual friends who have required fertility support from the NHS have had a very different experience.

"It has made me and my partner feel unsupported and discriminated against by the National Health Service for which we both work, and at times had made us seriously consider whether we will be able to start a family at all. This has inevitably put our relationship under pressure. I generally feel quite comfortable with my sexuality, but the fertility process is the first time in my life that I have felt deep sadness at being gay.

"Thankfully we are in a position to be able to consider different self-funded options (though the uncertainty, variety of options and cost has put an emotional and financial strain on us), but I hate to think of the extra challenge lesbian couples who don't have other options. The process of 'shopping' around private clinics with their vastly different approaches, advice, and prices (and often heteronormative approaches and lack of appropriate support and advice) sadly has taken any of the joy out of this for us."

ENDS

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