

# Commissioning Policy for Individual Funded Care



<b>Please complete the table below:</b>	
<i>To be added by corporate team once policy approved and before placing on website</i>	
<b>Policy ref no:</b>	71
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<b>Date Approved:</b>	1 April 2022
<b>Approved by:</b>	Governing Body
<b>Date of next review:</b>	1 April 2023

### Policy Review Checklist

	<b>Yes/ No/NA</b>	<b>Supporting information</b>
Has an Equality Impact Assessment Screening been completed?	Yes	
Has the review taken account of latest Guidance/Legislation?	Yes	14/1/2022 – Final review by Bevan Brittan.
Has legal advice been sought?	Yes	14/1/2022 – Final review by Bevan Brittan.
Has HR been consulted?	N/A	
Have training issues been addressed?	Yes	The policy is a refresh of an existing policy. Changes are minimal but will be conveyed to all staff.
Are there other HR related issues that need to be considered?	N/A	
Has the policy been reviewed by Staff Partnership Forum?	N/A	
Are there financial issues and have they been addressed?	N/A	

	Yes/ No/NA	Supporting information
What engagement has there been with patients/members of the public in preparing this policy?	N/A	There has not been any public engagement as part of this review of the existing policy.
Are there linked policies and procedures?	Yes	CHC Adults Operating Protocol (in review)  CYPCC Operational Policy  Personal Health Budgets Policy
Has the lead Executive Director approved the policy?	Yes	
Which Committees have assured the policy?		Previous policy was approved by Governing Body in May 2019.  Revised version approved by BNSSG CCG Quality Committee on 17 February 2022
Has an implementation plan been provided?	N/A	Not required. This is a review of the existing policy.
How will the policy be shared with	Yes	The revised policy will be added to the CCG's website.  New CHC and CYPCC eligible cases will be signposted to the policy at the point of eligibility.
Will an audit trail demonstrating receipt of policy by staff be required; how will this be done?	N/A	
Has a DPIA been considered in regards to this policy?	N/A	
Have Data Protection implications have been considered?	N/A	

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# Commissioning Policy for Individual Funded Care

## 1 Introduction

This policy sets out the process that Bristol, North Somerset and South Gloucestershire (“**BNSSG**”) Clinical Commissioning Group (“**CCG**”) will follow to commission and make provision for equitable, safe and effective care, for individuals who have been assessed as eligible for fully funded NHS Continuing Healthcare (“**CHC**”) or Children and Young People’s Continuing Care (“**CYPCC**”).

The NHS is committed to giving people more choice and control over their healthcare, but must balance this with its financial obligations to the whole population. CCGs also must consider their financial responsibilities when making decisions about whether they will pay for specific care or treatment.

BNSSG CCG will commission healthcare in a manner that reflects the choice and preferences of individuals, whilst ensuring a balance between choice, safety and the effective use of finite NHS resources.

### 1.1 BNSSG CCG Values

This policy contributes to the values of the organisation by ensuring that the CCG meets its responsibilities around CHC and CYPCC. The policy will support the CCG to act with integrity, strive for excellence, and ensure we do the right thing in commissioning care and support for the people of Bristol, North Somerset and South Gloucestershire.

## 2 Purpose and scope

The purpose of this policy is to set out BNSSG CCG’s process for commissioning care and ensure that commissioning is person centred, balances equity, equality and risk, and enables the CCG to demonstrate the effective use of finite NHS resources.

This policy is applicable to individuals deemed to be eligible for CHC or CYPCC funding. The eligibility process for CHC and CYPCC is not within the scope of this document.

For adults identified as eligible for a jointly commissioned package of care between the CCG and a Local Authority the Joint Funding Protocol will be followed, which is available on the CCG’s website. The CCG will apply the core principles outlined in section 6 of this policy when making decisions around joint funded care packages.

### **3 Duties – legal framework for this policy**

This policy should be read in conjunction with:

- National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care 2018
- National Framework for Children and Young People’s Continuing Care 2016
- The National Health Service Act 2006
- The Health and Social Care Act 2012
- The Care Act 2014
- Mental Capacity Act 2005
- The Human Rights Act 1998
- The Equality Act 2010
- BNSSG CCG’s Mental Capacity Act and Deprivation of Liberty Safeguards Policy
- BNSSG CCG Personal Health Budgets Policy

With the passage of the Health and Care Bill currently before Parliament the CCG will become an Integrated Care Board and references to the CCG shall be read as meaning the BNSSG Integrated Care Board. It is anticipated this will be on 1 July 2022

### **4 Responsibilities and Accountabilities**

#### **4.1 BNSSG CCG**

BNSSG CCG is responsible and accountable for system leadership for CHC and CYPCC including commissioning arrangements, both on a strategic and an individual basis.

BNSSG CCG has a responsibility to ensure that all commissioned services are safe, equitable, and any identified risks are appropriately and reasonably managed.

#### **4.2 Executive Management Team**

It is the role of the CCG Executive Management Team to define CCG policy in respect of CHC and CYPCC, considering legislative and NHS requirements. The Executive Management Team is also responsible for ensuring that sufficient resources are provided to support the requirements of the policy.

#### **4.3 The Funded Care Team**

The Funded Care Team is based within the Nursing and Quality Directorate in the CCG and is responsible for the assessment, case management, review and arranging care and support for individuals in receipt of CHC and CYPCC.

The Funded Care Team’s core responsibilities in respect of PHBs include:

- Assessing eligibility for CHC and CYPCC

- Providing Eligible Persons with information, advice and support to assist them in making decisions about onward care and support
- Undertaking clinical and financial reviews of care and support arrangements
- Managing the appeals process where the individual or their family/carer/representative disagrees with (a) the care options that the CCG has identified; or (b) the decision made by the relevant Complex Case Panel to decline an alternative care option suggested by the individual, or their family/carer/representative.

### **4.4 CHC and CYPCC Nurse Assessors**

CHC and CYPCC Nurse Assessors work within the Funded Care Team and have a primary responsibility for assessing eligibility for CHC and CYPCC and providing care coordination for individuals found eligible.

### **4.5 Funding Panels**

Depending on the complexity of a proposed care package it may be necessary to seek authorisation via a funding panel e.g. Complex Case Panel, or Children and Young People's Complex Care panel.

A funding panel is responsible for ensuring that the CCG is giving due consideration to the balance of complexity, risk and cost in potentially highly complex care arrangements.

### **4.6 Brokerage Team**

BNSSG CCG utilises two brokerage teams, one based within the CCG serving the Bristol and South Gloucestershire population, and one based within North Somerset Council serving the North Somerset population.

Brokers working within these team liaise closely with nurse assessors, individuals eligible for CHC/CYPCC and their family/carer/representative, and care providers to identify care packages and placements that can meet assessed needs.

## **5 Definitions/explanations of terms used**

### **Clinical Commissioning Group**

Clinical Commissioning Groups (CCG) are clinically-led statutory NHS bodies responsible for the planning and commissioning of healthcare services for their local area. From 1 July 2022 the NHS Funded Care functions of the CCG will transfer into the BNSSG Integrated Care Board.

### **NHS Continuing Healthcare**

NHS Continuing Healthcare means a package of ongoing care that is arranged and funded solely by the National Health Service (“**NHS**”) specifically for those individuals



who are found to have a 'primary health need'. Further information on the Primary Health need test is to be found in the National Framework for CHC.

### Children and Young People's Continuing Care

Children and Young People's Continuing Care is part of a package of care which is arranged and funded by a relevant body for a person aged 17 or under to meet needs which have arisen as a result of a disability, accident or illness where these cannot be met from existing universal or specialist health services alone.

### Decision Support Tool

The Decision Support Tool ("**DST**") is a national tool which has been developed by the Department of Health and Social Care to aid consistent decision making. The DST supports practitioners in identifying the individual's needs. This, combined with the practitioners' skills, knowledge and professional judgement, should enable them to apply the primary health need test in practice.

### Fast Track Pathway Tool

Individuals with a rapidly deteriorating condition that may be entering a terminal phase, may require 'fast tracking' for immediate provision of CHC. A completed Fast Track Pathway Tool, with clear reasons why the individual fulfils the criteria, and which clearly evidences that an individual is both rapidly deteriorating and may be entering terminal phase, is in itself sufficient to establish eligibility with no requirement to complete a DST.

### NHS-funded Nursing Care

For individuals in care homes with nursing, registered nurses are usually employed by the care home itself. To fund the provision of such nursing care by a registered nurse, the NHS makes a payment direct to the care home. This is called 'NHS-funded Nursing Care' ("**FNC**") and is a standard rate contribution towards the cost of providing registered nursing care for those individuals who are eligible.

### Multidisciplinary Team

In the context of assessing eligibility for CHC, a Multidisciplinary Team ("**MDT**") is a team of at least two professionals, usually from both the health and the social care disciplines.

## 6 Core principles for decision making

In view of the need to balance individual preference alongside safety, sustainability, and value for money, BNSSG CCG has developed this policy to support consistent, transparent decision making, and an equitable distribution of NHS resources.

Application of this policy will ensure that decisions about care will:

- be person-centred;
- be robust, fair, consistent and transparent;
- be based on an objective assessment of the individual's clinical need(s), safety and best interests;
- have regard for the safety, sustainability and appropriateness of care to the individual and those involved in care delivery;
- involve the individual and their appointed representative wherever this is possible and appropriate;
- take into account the need for the CCG to allocate its financial resources in the most cost effective way; and
- support individual choice to the greatest extent possible in the light of the above factors.

In instances where more than one suitable care option is available, the Funded Care Team will need to balance consideration of the individual's circumstances with the CCG's responsibility to provide care equitably for its entire population.

Many individuals wish to be cared for in their own homes rather than in a registered care home. Choice of care setting should be taken into account, but there is no automatic right to a package of care at home.

Individuals who are eligible for CHC/CYPCC funding have a complexity, intensity, frequency and/or unpredictability in their overall care needs which means it is often difficult for care to be safely delivered at home on a sustainable basis. Although individual circumstances will be considered, it must be understood that it is usually not possible to replicate support services that are available within in-patient NHS settings and registered care facilities, (e.g. 24-hour nursing care) and if this level of support is required it would usually not be possible to care for the individual at home.

The Funded Care Team will need to identify and assess each care option for cost effectiveness and consider this alongside the psychological and social care needs of the individual and the impact on their home and family life as well as the individual's care needs. In doing so the Funded Care Team will take into account BNSSG CCG's Public Sector Equality Duty under the Equality Act, and obligations under the Human Rights Act and Article 8 of the European Convention on Human Rights.

Further guidance on how the Public Sector Equality Duty, Human Rights Act and Article 8 of the European Convention on Human Rights apply to this policy is included in Appendix 1.

## **7 Consent and capacity to make decisions**

The Funded Care Team will support an individual to play a full role in shaping a personalised approach to meeting their care needs. If an individual has been formally assessed as not having the mental capacity to make a decision the Funded

Care Team will act in accordance with that individual's best interests in line with the Mental Capacity Act 2005 and the BNSSG CCG Mental Capacity Act & Deprivation of Liberty Safeguards Policy, which can be found on the CCG's website<sup>1</sup>.

Where the individual has appointed someone to act on their behalf through a lasting power of attorney, or the court has appointed a deputy to act on their behalf the Funded Care Team will work with the individual appointed.

### 8 Safeguarding

BNSSG CCG will adhere to the statutory functions for safeguarding adults under the Care Act 2014 and safeguarding children under section 11 of the Children Act 2004.

An adult is defined as anyone over 18yrs; all adults have the potential to be at risk of abuse or neglect.

The safeguarding of individuals is integral to the commissioning, quality assurance, clinical governance, performance management and finance audit arrangements. When commissioning CHC/CYPCC packages of care the Funded Care Team will take all possible measures to ensure that the safeguarding of both children and adults is evidenced within contracts and that any arrangements minimises the risks of harm and promotes the wellbeing of that individual.

The BNSSG CCG Safeguarding Policy can be found on the CCG's website.<sup>2</sup>

### 9 Personal Health Budgets

For all individuals in receipt of CHC/CYPCC who live at home the default offer will be to have a Personal Health Budget (PHB) to meet their assessed care needs.

A PHB can be managed in three ways, or a combination of these:

- **Notional budget** – BNSSG CCG is responsible for holding the budget and using it to arrange and secure the agreed care and support.
- **Third party budget** – an organisation independent of both the individual and the CCG (for example an independent user trust or a voluntary organisation) is responsible for and manages the budget on the person's behalf and arranges support by purchasing services in line with the agreed care and support.

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<sup>1</sup> <https://bnssgCCG.nhs.uk/library/mental-capacity-act-and-deprivation-liberty-safeguards-policy/>

<sup>2</sup> <https://bnssgCCG.nhs.uk/library/adults-and-childrens-safeguarding-policy/>

- **Direct payment** for healthcare – the PHB holder or their representative, has the budget on a prepaid card or paid into a dedicated bank account and takes responsibility for purchasing the agreed care and support.

Individuals will not be forced to take on more control over their care than they feel comfortable in taking, and support will be provided to help people work through the options available to them.

Throughout the process of developing a PHB the same process for developing and agreeing care options will be used, which is outlined below in section 10.

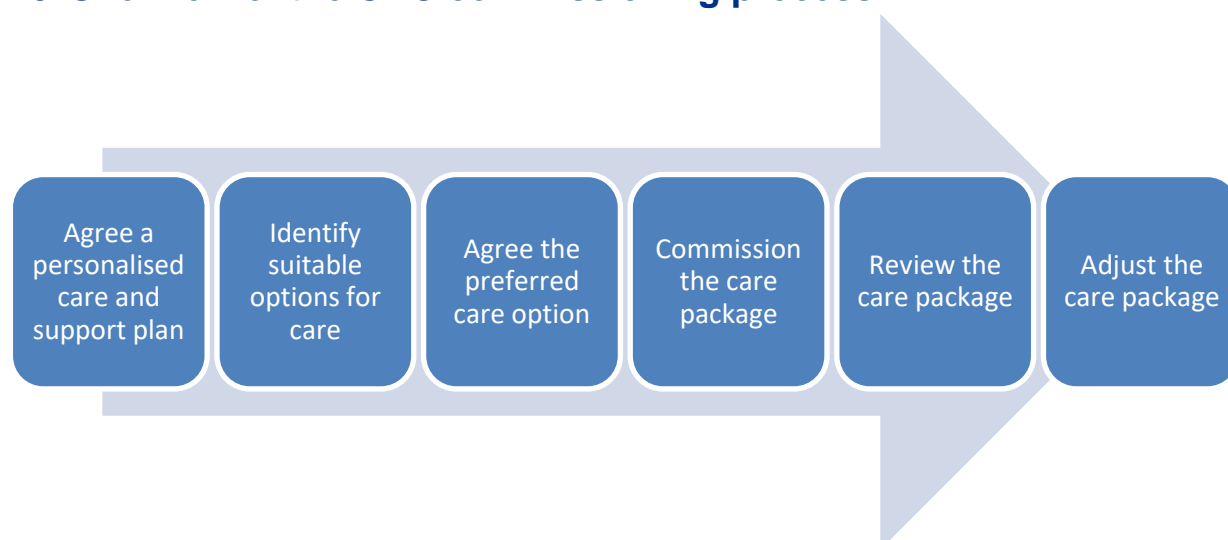
Where an individual is considered not to have the mental capacity to make key decisions in their life the Funded Care Team will act in accordance with that individual's best interests in line with the Mental Capacity Act 2005. In such circumstances it may be more appropriate for the CCG to deliver the care package at home as a notional, or a third-party budget.

Where an individual has a rapidly deteriorating condition that may be entering a terminal phase and is eligible for CHC via the Fast Track Pathway it may be more appropriate to deliver the package as a notional PHB to ensure that care arrangements can be made without delay.

If a PHB is set up and subsequently becomes untenable for any reason, then a traditional package of care at home, or placement within a registered care home or will need to be considered in order to meet the individual's assessed needs.

Further detail on how the CCG operates PHBs can be found within the BNSSG CCG Personal Health Budget Policy which is available on the CCG's website.<sup>3</sup>

## 10 Overview of the CHC commissioning process



<sup>3</sup> Insert PHB policy link to website once it is published

## 11 Developing options for care

Once eligibility for CHC/CYPCC has been determined a nurse assessor will work with an individual or family/carer/representative to explore how care could be provided to meet their assessed needs. The discussions will help to clarify the individual's main wishes for their care and the outcomes that the person wants to achieve. This will be captured in a personalised care and support plan, or care prescription.

The nurse assessor will then work with the relevant Brokerage Team to use the information to identify suitable care options.

An adult who lacks mental capacity to make decisions about their care will still be included in discussions as far as they are able to be, and the nurse assessor will also discuss care options with others involved in the care of the individual, according to the principles of the Mental Capacity Act 2005 and the BNSSG CCG Mental Capacity Act and Deprivation of Liberty Safeguards Policy.

There may be several options appropriate to meet an individual's needs, but these are likely to be either care at home, or a registered care setting such as a nursing home, residential home/school or an independent hospital. When identifying suitable options for eligible individuals the Funded Care Team will consider the following:

- The individual's preference about where care is delivered, e.g. at home, or in a care home;
- The effectiveness of proposed care options in meeting the individual's assessed health and social care needs;
- The safety, quality, sustainability and feasibility of proposed care options;
- The potential impact on the individual's human rights;
- Whether the individual has a protected characteristic under the Equality Act 2010 and whether there are any steps that could reasonably be taken to promote equality of opportunity for that individual;
- Communication needs and requirements;
- The Care Quality Commission ("**CQC**") registration status of potential care providers and whether there are any open suspensions or enforcement actions by the CCG, Local Authority or CQC;
- The overall cost of proposed care options and any concerns about value for money or affordability for the CCG;
- Presence of informal carers to provide care. There is no obligation for family members to provide care for an adult, but where an offer is made, the Funded Care Team may take this into account as an integral part of the care package. In such circumstances the Funded Care Team will consider a referral to the Local Authority so that a carer's assessment can be considered and offered in line with the Care Act 2014;
- Parent's role as informal carers; and

- Any concerns about contingency plans in terms of the support that may be required if a care option breaks down.

When the CCG pays for care in an individual's home it is important for everyone to be aware that a time may come when it will no longer be appropriate or safe for this to continue. The Funded Care Team will keep the arrangement under review to make sure that it is still safe, sustainable and affordable.

BNSSG CCG considers that in some circumstances an individual's needs may be more appropriately met within a registered care setting. The general principles are set out below; however the Funded Care Team will take into consideration all relevant circumstances to the individual to establish whether any of these principles can be displaced, or if any other factor is relevant.

- a package in excess of eight (8) hours a day would indicate a high level of need which may more appropriately be met by a registered care / nursing home placement;
- individuals who need waking night care would generally be more appropriately cared for in a care / nursing home. The need for waking night care indicates a high level of supervision at night; and
- individuals who may benefit from direct oversight by registered clinical professionals and 24-hour monitoring.

There are specific conditions or interventions that may not be appropriate to manage at home. These may include (but are not limited to) the requirement for sub-cutaneous fluids, intravenous fluids, complex polypharmacy, enteral feeding, continual invasive or non-invasive ventilation or the management of grade 4 pressure injury.

BNSSG CCG will generally only support a clinically safe and sustainable package of care within an individual's own home where the costs of doing so are in line with this policy. In assessing the comparative costs of different packages the Funded Care Team will use the costs of care in accordance with the personalised care needs of the individual and not a generalised cost of the type of care.

## 12 Agreeing a preferred care option

Care options identified by the Funded Care Team will be provided to the individual or family/carer/representative. The Funded Care Team will endeavour to offer a choice, although this may not be possible where there is limited availability of appropriate care provision.

Once the Funded Care Team has confirmed the available care options individuals or their family/carer/representative will be asked to make a decision on their first choice within 48 hours. The Funded Care Team will then make the necessary arrangements with the individual and the care provider to confirm for a suitable start date. In



circumstances where an individual is eligible for CHC via the Fast Track Pathway the Funded Care Team may ask for a decision sooner than 48 hours to ensure that care arrangements can be made without delay to manage the rapidly deteriorating condition.

The Funded Care Team may make additional time available for decisions to be reached by an individual or family/representatives where there are exceptional circumstances, but in such circumstances it may be necessary for the Funded Care Team to offer a temporary service to make sure that the individual is safe and their needs are met while they are making a decision.

Temporary arrangements may also be needed if the preferred option for care at home or the first choice of care home is unavailable, or in the event that an existing care arrangement breaks down. The temporary arrangement will always be one that meets the individual's assessed needs, but may not be the person's preferred choice. This may be necessary, for example, if an individual is medically ready to leave hospital but the preferred care provider is not immediately available.

### 13 CCG Authorisation

Authorisation to commission an agreed care option is granted in line with BNSSG CCG Standing Financial Instructions ("**SFIs**").

SFIs detail the financial responsibilities, policies and procedures adopted by BNSSG CCG. They are designed to ensure that the CCG's financial transactions are carried out in accordance with the law, generally accepted accounting practices and with Government policy in order to achieve probity, accuracy, economy, efficiency and effectiveness.

Care options exceeding £1400 per week (domiciliary care) and £2000 per week (care home) will require authorisation via a Complex Case Panel. The CCG operates a CHC Complex Case Panel Process for consideration for adults and the Children and Young People's Complex Case Panel for CYPCC cases.

Care options that are expected to exceed £3000 per week (domiciliary care) and £5000 per week (care home) will require authorisation via an extraordinary Complex Case Panel. The extraordinary panel will be chaired by the Director of Nursing and Quality and include the Director of Commissioning or a delegate, Deputy Director of Finance and a Non Executive Director.

In line with CCG SFIs, care options expected to exceed an annual value of £500k (c.£9600 per week) will require Chief Executive authorisation and will be referred to the Chief Executive following discussion at the extraordinary Complex Case Panel.

## 14 Considering alternative requests for care

Where a person declines all of the options initially proposed by the Funded Care Team they can suggest a different arrangement (including alternate temporary arrangements), as long as the care option meets the requirements and considerations outlined in section 11 above.

Where a care option is requested by an individual, the costs and risks will need to be considered by the Funded Care Team before a decision can be made to arrange the care. The request will be taken through the relevant Complex Case Panel.

The relevant Complex Case Panel Process will take into account the core principles for decision making set out in section 6, and the key considerations for developing care options listed in section 11. In addition the relevant Complex Case Panel will consider whether a decision not to pay for a more expensive option would be reasonable and proportionate given the potential effect on the individual and their family/carers/representative and their rights.

Individuals and their family/carers/representative will be fully informed of the process to be followed and given the opportunity to submit a rationale as to why a more expensive care option should be funded by BNSSG CCG. The panel decision will be clearly documented, shared with the individual or the representative/advocate acting on their behalf and details will be provided about how the person may appeal the decision.

Where an individual is eligible for CHC via the Fast Track Pathway a streamlined CHC Complex Case Panel process may be used to ensure that a prompt decision can be made and care arrangements progressed with minimal delay.

## 15 Appealing the CCG's decision

An individual, or carer/family/advocate acting on that individual's behalf, wishing to appeal the decision of the relevant Complex Case Panel will need to confirm this in writing to the Funded Care Team via either of the below addresses:

- Email address: [bnssg.chc@nhs.net](mailto:bnssg.chc@nhs.net)
- Post to: Funded Care Team, NHS Bristol, North Somerset & South Gloucestershire CCG, 5th Floor, 360 Bristol – Three Six Zero, Marlborough Street, Bristol, BS1 3NX

It will be important that an individual appealing provides a clear rationale as to why the decision should be reviewed.

In such cases the decision of the relevant Complex Case Panel will be reviewed by a panel including senior CCG Funded Care and Finance managers. The review of the relevant Complex Case Panel decision will be clearly documented and shared with the individual or the representative/advocate acting on their behalf.



## **16 Refusing CHC care**

If an individual who has mental capacity to make decisions about their care refuses to accept any of the options offered by the Funded Care Team, the CCG will consider that it has fulfilled its legal duty towards the person. The Funded Care Team will inform the individual in writing that they will need to make their own arrangements for ongoing care within 28 days of the date of the letter. The letter will explain the risks of refusing the care and advise who they can contact if they change their mind in the future. The risks will also be documented in the individual's care record.

If the Funded Care Team is worried about serious risk to the person because they have refused care, it will consider whether it would be appropriate to follow adult safeguarding procedures including consideration of a referral to the relevant local authority.

If the person lacks mental capacity to make decisions about their care and they or those involved in their care refuse to accept any options offered by the Funded Care Team, the process will continue according to the requirements of the Mental Capacity Act 2005 being mindful of the deprivation of liberty safeguards, where appropriate.

## **17 Individuals with existing care arrangements**

Where an individual with an existing home care package, or care home placement, becomes eligible for CHC/CYPCC, the Funded Care Team will follow the process for identifying care options set out in section 11 of this policy. This will involve a comparison of the current care package or placement against alternative care options, to ensure that the CHC/CYPCC care option meets the individual's reasonable assessed needs and correctly balances safety, quality, sustainability, risk and cost.

If an individual's existing care package is not identified by the Funded Care Team as a suitable care option, or is more expensive than the personalised options offered by the CCG, then the case will be presented to the relevant Complex Case Panel for a decision following the process set out above in section 14.

## **18 Enhanced care**

BNSSG CCG will exercise firm financial control, accountability and quality assurance in respect of requests for enhanced care. Where an enhancement to a care package or care placement is requested, the Funded Care Team will require clinical evidence to support the request, as well as all appropriate risk assessments, behaviour charts, evidence of communication with the individual/relative, a proposed step down plan and any other relevant evidence deemed helpful to support the request.

Requests for enhanced care will be considered at the relevant Complex Case Panel and subject to review. The Funded Care Team will operate a streamlined authorisation process where risk and safety concerns around a request for enhanced care require a prompt decision.

### **19 Additional private care**

BNSSG CCG is obliged to provide services that meet the assessed needs and reasonable requirements of an adult eligible for CHC. These services, whether delivered within a registered care setting, or at home must be free of charge to the individual.

The package of care which the Funded Care Team has assessed as being reasonably required to meet the individual's assessed needs is known as the core package. BNSSG CCG is not able to allow personal top-up payments into the CHC package of healthcare services, where the additional payment relates to the core package. This is because joint funding arrangements for CHC provision are not lawful.

If an individual or their carer want to make arrangements directly with a provider for additional services that are not within the CCG's core package, they should first notify the Funded Care Team (through the case manager). The Funded Care Team must make sure that the additional services do not replace or conflict with the care arranged by the NHS. Examples of permitted arrangements may include hairdressing, massage, reflexology, beauty therapies, and preference for a specific room or some sitting services.

Further guidance on this issue can be found in the National Framework for Continuing Healthcare and Funded Nursing Care.<sup>4</sup>

### **20 Review**

Care packages for individuals eligible for CHC/CYPCC will be reviewed initially at 3 months and then annually as a minimum thereafter to ensure that care needs and personalised outcomes are being met and that the care package remains clinically safe, sustainable and within cost limits.

Care packages for individuals eligible for CHC via the Fast track Pathway may require more frequent review to ensure that the care remains effective in meeting the assessed needs and/or where an individual's care needs change.

It is important to recognise that the review may result in either an increase or decrease in support and will be based on the assessed needs of the individual at

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<sup>4</sup> <https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>

that time. If it is clear that an individual's needs have changed it may be necessary to re-consider the care options available, following the process set out in sections 11 and 12 of this policy.

Individuals and their carers/representatives must be aware that there may be times where it will no longer be appropriate to provide care in line with the individual's preferred choice based on safety concerns, sustainability or cost.

A care review may indicate that a full CHC/CYPCC assessment is required to confirm if the individual remains eligible. The Funded Care Team will make any decision about reviewing eligibility in a Fast Track case with sensitivity. Where an individual is no longer eligible for CHC/CYPCC, BNSSG CCG will no longer be required to fund the identified care.

The Funded Care Team will give 28 days' written notice of cessation of funding to the individual or their representative and the relevant Local Authority. Any ongoing package of care may qualify for funding by social services, subject to any Local Authority assessment criteria. Alternatively the cost of any ongoing package of care may need to be met by the individual themselves. The transition of care should be seamless and will be coordinated by the Funded Care Team before transferring to a Local Authority representative. The individual and/or their representative will be notified of the proposed changes to funding and involved by the organisations as appropriate.

## 21 Training requirements

In order for this policy to operate an understanding of its contents is required for CCG and Local Authority staff. The revised policy will be circulated to partner organisations.

## 22 Equality Impact Assessment

To ensure compliance with BNSSG CCG's public sector equality duty, an Equality Impact Assessment has been undertaken to support this policy development, and to identify any potential negative implications of the implementation on particular groups, and any mitigation required. It is summarised as follows:

- **Patient Safety:** There is no negative expected impact on patient safety as a result of implementing this policy. There is potential to improve patient safety by improving the commissioning process for CHC/CYPCC care provision.
- **Clinical Effectiveness:** There is no negative expected impact on clinical effectiveness as a result of implementing this plan. There is potential to improve clinical effectiveness of CHC/CYPCC provision by ensuring individuals receive care in the most appropriate setting, and by increasing the level of scrutiny given to complex and challenging cases.

- **Patient Experience:** The implementation of the CHC/CYPCC Commissioning Policy may impact on patient choice around access to services. There may be an impact on the service user experience where the CCG is unable to support choice around the location of care provision. Mitigations to minimise negative impact in patient experience are set out in section 14.

### **23 Implementation Monitoring Compliance and Effectiveness**

This policy is already in operation, having been approved by Governing Body in May 2019. This revised version will replace the existing version following sign off.

This policy will be audited to demonstrate that BNSSG CCG is being effective at ensuring choice and equity in the delivery of Funded Care to individuals across Bristol, North Somerset and South Gloucestershire. Exceptional reports on delivery of equity and choice in Funded Care will be taken to the BNSSG CCG Quality Committee.

### **24 Countering Fraud**

The CCG is committed to reducing fraud in the NHS to a minimum, keeping it at that level and putting funds stolen through fraud back into patient care. Therefore, we have given consideration to fraud and corruption that may occur in this area and our responses to these acts during the development of this policy document.

Any individual eligible for CHC/CYPCC found to be misrepresenting their clinical needs, or misusing a PHB will be referred by BNSSG CCG to NHS Counter Fraud for investigation.

### **25 References, acknowledgements and associated documents**

BNSSG CCG Mental Capacity Act & Deprivation of Liberty Safeguards Policy

<https://bnssgCCG.nhs.uk/library/mental-capacity-act-and-deprivation-liberty-safeguards-policy/>

The BNSSG CCG Safeguarding Policy

<https://bnssgCCG.nhs.uk/library/adults-and-childrens-safeguarding-policy/>

BNSSG Personal Health Budgets Policy

Link to be added once published

Policy on the management of Compliments, PALs enquiries and Complaints

[https://media.bnssgccg.nhs.uk/attachments/bnssg\\_complaints\\_policy\\_c7Y4GQB.pdf](https://media.bnssgccg.nhs.uk/attachments/bnssg_complaints_policy_c7Y4GQB.pdf)

National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care - October 2018 (Revised)

<https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>

National Framework for Children and Young People's Continuing Care 2016

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/499611/children\\_s\\_continuing\\_care\\_Fe\\_16.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/499611/children_s_continuing_care_Fe_16.pdf)

## **26 Appendices**

26.1 Appendix 1. Additional Guidance on the Human Rights Act and Public Sector Equality Duty

## **Appendix 1 – Additional Guidance on the Human Rights Act and Public Sector Equality Duty**

### **Human Rights Act**

In adopting this policy BNSSG CCG has taken into account the issue of human rights, and specifically the right to respect for an individual's private and family life provided by Article 8 of the European Convention of Human Rights (ECHR).

There is an obligation under Article 8 to respect an individual's private and family life, home and correspondence. Family life should be interpreted widely and may include persons who are not related or married, depending on the circumstances.

When making decisions under this policy regarding an individual, BNSSG CCG will need to consider the individual's circumstances and the impact of any care package on the individual's Article 8 rights. Any impact identified should be documented.

The Human Rights Act requires that any interference with an individual's Article 8 rights must be necessary, reasonable and proportionate. Where a decision regarding a care option is likely to impact on an individual's right to private and family life, BNSSG CCG will consider whether any adverse impact on the individual is necessary, reasonable and proportionate given their circumstances; the clinical appropriateness, safety and sustainability of the proposed care package and other alternatives; and, also their obligations to their entire population.

Where an individual is already receiving care in their own home and a move to other accommodation is being considered, the BNSSG CC will need to assess the impact on the individual's needs (including physical, psychological and emotional needs) that a move to a different care setting may have.

Article 8 may also be engaged in the context of an ability to maintain family and social links. If the BNSSG CC proposed solution would be more remote from the individual's family, this will need to be taken into account in any decision making process. For example, if an individual is active within their local community and has many friends and family in the local area, a move to accommodation in a different geographical area is likely to have a material impact on the individual's Article 8 rights. Given the impact on this individual's Article 8 rights, the CCG may consider it is appropriate to commission a more expensive care option closer to the individual's community to minimise the impact on the individual's Article 8 rights.

In contrast, if an individual has limited interaction within their community and has no friends or family locally, BNSSG CC may take the view that the impact on the individual's Article 8 rights of a move to a different community area is proportionate, reasonable and necessary given the CCG/ICB's duty to provide resources for its entire population.

The above examples are provided for illustration purposes only. Each case will need to be decided upon its individual circumstances in line with this policy.

### **Public Sector Equality Duty**

The Equality Act 2010 introduced the public sector equality duty. In relation to implementation of this policy, BNSSG CCG has a duty to have regard to the need to:

- advance equality of opportunity between people who share a protected characteristic and people who do not share it;
- remove or minimise disadvantages suffered by people due to their protected characteristics; and
- meet the needs of people with protected characteristics (e.g. where the needs of a disabled person may be different from those of non-disabled person).

Protected characteristics include age, disability, gender reassignment, pregnancy and maternity, race (including ethnic or national origins, colour or nationality, religion or belief (including lack of belief), sex, and sexual orientation

In making decisions regarding care options, BNSSG CCG must consider whether the person affected by the decision has any protected characteristics and if so, whether any reasonable adjustments should be made available, which are proportionate in the circumstances.

Decisions about proportionality of adjustments can take into account BNSSG CCG's obligations to its entire population; however, decisions must be taken on the individual circumstances of each situation considering whether it would be reasonable to make additional resources available in each case.