

Individual Package of Care Policy

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NHS organisations involved:

Northern, Eastern and Western Devon Clinical Commissioning Group
South Devon and Torbay Clinical Commissioning Group

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Linked strategies, policies and other documents	Joint CCG decision making framework
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1. Introduction

1.1 The NHS is committed to giving people more choice and control over their healthcare (person-centred approach), but must balance this with its financial obligations to the whole population. Clinical Commissioning Groups (CCGs) also have to consider their financial responsibilities when making decisions about whether they will pay for specific care or treatment. They must also comply with the following policies and legal frameworks:

- Joint CCG decision making framework
- [National Framework for NHS Continuing Healthcare](#)
- Human Rights Act 1998
- Equality Act 2010
- NHS Act 2006 (as amended by the Health and Social Care Act 2012).

1.2 This Policy sets out the principles that the NHS Northern Eastern and Western (NEW) Devon Clinical Commissioning Group will follow when making decisions about paying for people's care in certain circumstances (See section 2).

1.3 This Policy has been developed with the purpose of:

- balancing the CCGs responsibility to arrange safe, good quality care that meet the needs of the person and make the best use of available resources
- promoting the choice and preference of people where possible
- promoting consistent and equitable decision making
- ensuring value for money
- helping the CCG to share limited resources fairly
- work with local authorities and other providers of care for the benefit of the person and family
- allowing decision making to be transparent by being well recorded

1.4 This policy has been developed with the assistance of NEW Devon CCG's legal advisors, on the basis of current laws and guidance.

1.5 In applying this policy, the CCG will follow the Nolan principles of public life.¹

¹ <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

2. Scope

2.1 This Policy applies when people have NHS funded care which is the responsibility of NEW Devon CCG, including but not limited to:

- NHS Continuing Healthcare (including children)
- Intermediate care
- Individual Patient Placements (IPP)
- Section 117 aftercare arrangements²
- Jointly funded packages of care

2.2 This policy will not apply to

- people receiving Funded Nursing Care.³ The registered nursing care contribution is nationally agreed by the Department of Health.

2.3 This Policy will be applied when:

- a person receives NHS funded care for the first time from NEW Devon; or
- a person's care is reviewed, whether that is planned or unplanned; or
- there is a significant increase in the cost of care

3. Key Principles

3.1 When the CCG is responsible for paying for a person's care, it will do so in a manner that is appropriate to meet the person's assessed needs in full. Where the person is eligible for NHS Continuing Healthcare, the CCG will meet both physical and mental health and associated social care needs.

3.2 Needs will be met through universal services where these are available. If needs cannot be met through this route, specially commissioned services will be considered.

3.3 The CCG will commission services using models that promote personalisation⁴, choice and control.

3.4 Any care paid for by the CCG must be practicable, safe and sustainable. The CCG will consider quality and safety alongside individual choice and preferences. The CCG recognises that making a choice may involve some risk. The CCG will aim to agree with the person what level of risk is considered acceptable.

² When care funded under section 117 is joint funded with a local authority, their funding policy will also apply

³ <https://www.gov.uk/government/publications/nhs-continuing-healthcare-and-nhs-funded-nursing-care-public-information-leaflet>

⁴ <https://www.england.nhs.uk/personalised-health-and-care/>

- 3.5 Where there is more than one way of arranging care that would meet a person's needs, the CCG will consider with the person the total cost of each care package, whether it is safe, has an acceptable level of risk, is cost-effective and good value for money.
- 3.6 The CCG must also consider financial sustainability and equitable/fair use of resources. The CCG does not have an unlimited budget. Spending decisions in one area of healthcare affect the CCGs ability to afford healthcare in other areas.
- 3.7 When deciding whether to pay for care that is not the most cost effective option, the CCG will consider the person's preferences and individual circumstances. There is no set limit on the amount that the CCG will spend. If the person or their carers prefer a more expensive option, the CCG will consider each request according to their duties and responsibilities toward the person and their carers as well as their duties to the whole population.
- 3.8 The CCG will specifically consider its equality duties and obligations under the Human Rights Act including whether a decision not to pay for a more expensive option would be reasonable balancing the overall cost with the likely effect on the person, taking into account their home and family situation.
- 3.9 There will be regular reviews of the person's needs and eligibility for NHS funded care. Decisions about funding will be reviewed when circumstances change

4. Considering options for care

- 4.1 When a decision has been made that a person's care will be funded by the NHS or at the point of review (whether planned or unplanned), their case manager will discuss with the person options of how this could be provided. If the person lacks mental capacity to make decisions about their care, the care manager will also discuss this with others involved in the care of the person according to the principles of the Mental Capacity Act 2005.
- 4.2 Throughout the policy, wherever "the person" is mentioned, if the person in question lacks capacity to make decisions about their care, discussions will include anyone identified as being appropriate to consult on their behalf. The person themselves will still be included in discussions as far as they are able.
- 4.3 There may be several options appropriate to meet a person's needs. These are likely to take two main forms:
 - Care provided in a person's own home or

- A registered care setting (such as a nursing home, residential home or an independent hospital)
- 4.4 Where there is availability, the CCG will aim to offer a reasonable choice of providers.
- 4.5 When considering the options, the case manager will discuss the following with the person. A written record should be kept of this discussion (Appendix 3).
- Any options the CCG may be unable to offer due to concerns about CQC registration, enforcement action or suspension, or lack of contract with the CCG
 - If receiving a Personal Health Budget, the specific requirements of the CCG's Personal Health Budget Policy
 - Whether each option would be safe for the person and their carers and would meet the person's needs in an effective and appropriate way
 - The risks and benefits of the different options
 - What risks that are acceptable to the person and what plans can be agreed by everyone to reduce the risks
 - The willingness of family/informal carers to provide care. There is no obligation for family members to provide care, but where an offer is made, the CCG may take this into account as an integral part of the care package.
 - Any concerns about sustainability and contingency plans, that is, any reasons to think the arrangement might break down and a plan about what would happen if the arrangement did break down for any reason.
 - If the option is some distance from where the person lives, any concerns about the ability of family or others to visit
 - The cost of each option and any concerns about value for money and affordability for the CCG
 - The person's preference (see 4.2 above)
- 4.6 Where family members or informal carers are providing support to maintain a package of care at home, the CCG will arrange ongoing assessments to ensure that the person is receiving the appropriate level of care. The case manager can offer to make a referral to the local authority for a carers assessment.
- 4.7 Should informal carers stop providing support or the needs of the individual change so that the informal carers are no longer able to provide the requisite level of care; the CCG will need to review the arrangement.

- 4.8 When the CCG pays for care in a person'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 CCG will keep the arrangement under review to make sure that it is still safe, sustainable and affordable.

5. Considering requests for more expensive care

- 5.1 When the person's preferred care would cost significantly (i.e. greater than 10% more) more than the most cost-effective option the CCG will need to carefully consider the request. The case manager must make an application to the CCG following the scheme of delegation (see appendix 4).
- 5.2 The decision-maker will take into account the factors listed in 4.5 above and any information about
- Whether the care is available (including appropriately trained carers)
 - The availability of necessary equipment
 - Whether the care meets the person's assessed needs
 - Whether care can be delivered safely, or where risks are considered to be reasonable and proportionate, what mitigating factors and risk management plans are in place
 - Any risks to those involved in the delivery of care
 - Plans for what would happen if the arrangement broke down
 - The person's circumstances
 - The extent to which the preferred option might contribute to the person's wellbeing, or offer a significant health benefit⁵.
 - Any impact on the person's human rights (see section 11)
 - The CCGs duties under the Equality Act 2010 (see section 11)
 - whether a decision not to pay for a more expensive option would be reasonable balancing the overall cost with the likely effect on the person, taking into account their home and family situation
- 5.3 This process also applies to requests for temporary increases in care, for example, to cover carer illness where the proposed cost is significantly greater (i.e. greater than 10% more) than any appropriate alternative package of care which is available (e.g. respite care). In these cases, decision-makers will also consider how long the arrangements are likely to last and the impact on any informal carer.
- 5.4 Detailed guidance for decision makers regarding human rights legislation and the Equality Act 2010 is available in the Appendices

• ⁵ This could include a wide range of benefits for example pain management, reduction in anxiety or agitation

- 5.5 Guidance for case managers making the application to decision makers is available in the Appendices. It is expected that Appendix 3 is completed and discussed with the individual/their representative if more than one option is available.

6. Top up payments

- 6.1 Tops ups cannot be used to fund any element of care that is set out in the person's care plan. This is due to rules about NHS care. If a person or their carer want to make arrangements directly with a provider for additional services that are not in the care plan, they should first notify the CCG (through the case manager). The CCG 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.
- 6.2 The person arranging the extra services must make sure that the service provider knows that they are paying for them separately from the care that is funded by the CCG and that the service would need to stop if the person could no longer pay.

7. Refusal of Service

- 7.1 If a person who has mental capacity to make decisions about their care refuses to accept any of the options offered by the CCG, the CCG will consider that it has fulfilled its legal duty toward the person. The CCG will inform the person 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 person's care record.
- 7.2 If the CCG 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 local authority.
- 7.3 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 CCG, the CCG will proceed according to the requirements of the Mental Capacity Act 2005 being mindful of the deprivation of liberty safeguards, where appropriate.

8. Timeliness of decisions about acceptance/refusal of services

- 8.1 Once the CCG has decided what care options will be offered, people will usually be asked to make a decision on their first choice within 48 hours. If the person does not make a decision during this time, and no extension is mutually agreed, the CCG will offer a temporary service to make sure that the person is safe and their needs are met while they are making a decision.
- 8.2 Temporary arrangements may also be needed if the preferred option for care at home or the first choice of care home is not available. The arrangement will always be one that meets the person's assessed needs, but may not be the person's preferred choice. This may be necessary, for example, if a person is medically ready to leave hospital but the preferred care provider is not immediately available.
- 8.3 Where a person declines all of the options initially proposed by the CCG, they can suggest a different arrangement (including alternate temporary arrangements), as long as the provider is available within an agreed time period and willing to enter into the NHS standard contract (unless funded by direct payment/PHB). The CCG decision-maker will consider these requests as described in section 4 and 5 above.

9. Review of decisions made through this policy

- 9.1 If the person or those acting on their behalf are unhappy with decisions made according to this policy, they can ask for a review of the decision. They should do this in writing to the CCG.

Email address: D-CCG.complexcarenewdevon@nhs.net

Post to: Patient Safety and Quality, Nursing Directorate, Second Floor Annexe, County Hall, Topsham Road, EX2 4PS.

- 9.2 The review will be considered by a panel. This process does not consider new evidence but reviews how the decision was made and how the policy was applied.
- 9.3 The review panel will be able to reach one of two decisions:
1. Uphold the original decision, or
 2. Refer the case back to the decision maker(s) based on one of the following:
 - The decision makers did not give due consideration or weight to the original evidence provided
 - The decision makers considered evidence that was irrelevant

- The decision makers came to a decision that no reasonable decision makers would reach
 - The decision makers did not act in accordance with this policy
- 9.4 If new evidence is available which was not originally submitted for consideration, the case will be referred back to the normal decision makers for reconsideration.
- 9.5 This process does not affect the person's right to complain to the CCG.

10. Temporary care arrangements while decisions are being reviewed

- 10.1 If a request for the review of a decision is made, a temporary care arrangement will be offered until the review is decided. If the person refuses the offer, they may temporarily arrange and fund their own care.
- 10.2 If the person lacks mental capacity to decide whether to accept the temporary care arrangement offered by the CCG, the CCG will proceed according to the requirements of the Mental Capacity Act 2005. This may include privately funded care on a temporary basis as long as it is agreed by all parties that this would be in the best interest of the person until the review has been decided.
- 10.3 If the review panel refers the case back to the original decision makers, the temporary arrangements (either those offered by the CCG or any private arrangements) will continue until the situation has been considered again. If there is no change to the original decision, section 7 of this policy will apply.
- 10.5 If the person or those acting on their behalf are still unhappy with the decision, they may use the CCG complaints process.

11. Human rights and Equality

- 11.1 The CCG recognises that decisions made under this policy may affect a person's right to respect for private and family life.
- 11.2 In making decisions under this policy, NEW Devon CCG will carefully consider each person's individual circumstances and the impact on the person and their carers of any proposed change to their care. It will seek to ensure that decisions are fair and justified in the circumstances. It will ensure that any impact on the person is proportionate considering the financial cost of alternative or preferred care options.
- 11.3 The CCG is aware of its obligations under the Public Sector Equality Duty both in developing and implementing this policy.
- 11.4 Decision-makers will consider whether people have protected characteristics under the Equality Act 2010 and whether there are any steps that could

reasonably be taken to promote equality of opportunity and to uphold Human Rights.

- 11.5 The CCG will seek to balance its obligations under the Human Rights Act and the Equality Act with its wider financial and legal obligations.
- 11.6 Further information on how the Human Rights Act and Public Sector Equality Duty apply to this policy for case managers and decision makers are included in appendix 1 and appendix 2.

Appendix 1: Guidance for Case Managers on human rights and equality duty

Consideration of human rights and public equality duty

This guidance is intended to support those making applications to the CCG which will be considered under the individual package of care policy.

CCG decision-makers have duties and obligations under the Human Rights Act and the Equality Act. In order to exercise these duties, they rely on information provided to them by practitioners submitting applications. It is therefore important that practitioners understand how these Acts impact on decisions made in this context so that they can provide the necessary information for each application.

Considering financial cost

In order to meet its responsibilities under human rights legislation (including article 8 right to respect for private and family life) and the equality duty, the CCG decision-makers need to balance any impact of their decision on the person with their wider financial responsibilities toward the whole population. It is acceptable for them to take their financial responsibilities into account.

They need to consider each application on its own merits. This will involve weighing the actual cost of available alternatives which would promote equality and reduce impact on human rights against the effect on the person of declining to fund the alternative care. The CCG decision-maker should use this information to provide a rationale for decisions in each case. The decision-makers will appreciate the support of practitioners to make these difficult judgments. It is important that information is accurate, up to date and presents a balanced account of alternative options – see Appendix 3.

Public Sector Equality Duty

The Equality Act 2010 introduced the public sector equality duty. In relation to implementation of the individual package of care policy, the CCG has a duty 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 for this purpose include sex, age, disability, gender reassignment, pregnancy/ maternity, race (including ethnic or national origins, colour or nationality, religion or belief (including lack of belief), and sexual orientation.

As a starting point, all applications should include information about whether the person (or anyone affected by the decision) has any protected characteristics. If so, further information should be included about any needs arising from these. For CHC funding, this should focus not only on health needs, but on social care needs and the person's social circumstances. An application for additional resources could be made to the CCG on the basis that the person could benefit from reasonable adjustments and how the person would be affected if these resources were not available.

Human Rights Act

Information about how the Human Rights Act applies to clinical practice can be found at <https://www.bih.org.uk/nursinghumanrights>

A decision under the individual package of care policy to offer a person care in an institution rather than their home environment is likely to impact upon their right to private and family life. Family life should be interpreted widely to include any relationship that attracts protection under this right. That is, two people may have a right to family life although they are not related or married, depending on the circumstances of their relationship. Information about relationships that could be affected by decisions of the CCG should be included with the application.

If a decision of the CCG would impact on a person's autonomy or family life, this should be described in the application. It is not sufficient to merely note the issue. In order to make an informed decision, the decision-maker will need information about the person's wishes and preferences in relation to their care, the available

options and what impact each option would have on the person. The decision-maker will also need information about how any impacts could be reduced (for example, how people could be supported to stay in touch with family if distance from home will be a factor).

Appendix 2: Guidance for Decision-makers

Human rights, equality and cost decisions

1. Purpose of the briefing

1.1 Making legally sound decisions on behalf of the CCG involves consideration of a range of legal frameworks, powers and obligations. This summary addresses how the Human Rights Act and the Equality Duty should be taken into account when making decisions under the individual package of care policy.

This should be read in conjunction with the policy.

2. General Principles of decision-making

2.1 Every decision should be made on its individual merits.

2.2 Decisions must be reasonable

2.3 Decision-makers should be aware of their responsibilities/powers/remit

2.4 Rationale should be recorded in sufficient detail, at the time of the decision, to show that all relevant matters were considered and the reasons relied upon.

3. Public Sector Equality Duty⁶

3.1 Decision-makers must be aware of the public sector equality duty when making policy and when implementing that policy. In relation to implementation of the individual package of care policy, this would include the duty 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

⁶

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85041/equality-duty.pdf

- 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).
- 3.2 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
- 3.3 Decision-makers 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.
- 3.4 Decisions about proportionality of adjustments can take into account the CCGs financial obligations to the whole 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.

4. Human Rights⁷

- 4.1 The Human Rights Act applies to people of all ages. The Act requires that public bodies take steps to **protect life** and **prevent inhumane or degrading treatment**. These are absolute rights and cannot be interfered with under any circumstances.
- 4.2 Public bodies must also take steps to ensure that deprivation of **liberty** (at any age) and in any setting is in accordance with a lawful procedure (e.g. detention under the MHA or DoLS). For further information, see the CCG Mental Capacity Act and Deprivation of Liberty policy.

⁷ <https://www.equalityhumanrights.com/en/human-rights/human-rights-act>

- 4.3 The Act further requires that any interference with a person's **right to privacy, autonomy or family life** must be necessary, reasonable and proportionate (even in the context of safeguarding).
- 4.4 These **rights must be upheld without discrimination**. Those with one or more protected characteristics may require reasonable adjustments to ensure they are able to enjoy these rights on an equal basis as others.
- 4.5 Where decisions are made which involve a person receiving care or treatment in a place other than their own home, this is likely to impact on their right to private and family life. A variety of close relationships may attract protection under the right to family life. This should not be understood narrowly as applying only to biological family or married partners. Decision-makers should consider the impact on family life such as whether the distance of the placement is likely to be a barrier to friends and family visiting the person.
- 4.6 Where decisions impact on a person's right to private and family life, decision-makers must consider whether the impact on the person is proportionate given the CCGs financial obligations to its population. A careful balancing of these factors should be made for each decision, based on all relevant factors of the individual circumstances. The rationale for this decision should be recorded.
- 4.7 Decision-makers should avoid too narrow a focus on meeting health needs at the expense of consideration of social factors. This is not only due to responsibilities under the Human Right Act but also the responsibility to identify and meet associated social needs as part of continuing healthcare provision.

5. Conflicting duties/ Cost

5.1 There is no clear hierarchy of rights and obligations to assist with determining the best course of action in each case. Where there is an apparent conflict, for example between the right to respect for private and family life and the CCGs wider financial responsibilities toward the whole population, it is important to acknowledge the conflict and clearly record the rationale for the decision. This should include why the decision was considered reasonable and proportionate in the circumstances. There should always be explicit consideration of whether there are measures available that would mitigate any impact on the person's rights.

Appendix 3: Record of discussion (Part 1) and Option appraisal tool (Part 2)

IPOC Record of Discussion

Part 1. The following is intended as a record of the discussion between the case manager and the person or their representative relating to available care options. If the person in question lacks capacity to make decisions about their care, discussions will include anyone identified as being appropriate to consult on their behalf. The person themselves should still be included as they are able.

Name of Case Manager:.....

Date of Discussion:.....

Names of those present:.....

Is there more than one way of arranging the person's care? What are they? (note all possible options including those put forward by the person or their representative)	Option 1: Option 2: Option 3:
Are there any options the CCG may be unable to offer due to concerns about CQC registration, enforcement action or suspension, or lack of contract with the CCG?	
Any specific requirements arising from the CCG Personal Health Budget Policy?	
Will any options be ruled out based on these concerns?	

For the remaining options consider: (record any difference of opinion)

	Option 1	Option 2	Option 3
Does it meet the person's needs?			
Are there any risks, including safety, to the person or others?			
Are these risks acceptable to the person and what plans can be made to reduce the risks?			
Are there any other benefits?			
Are family or informal carers planning to provide some of the care?			
Are there concerns about sustainability? What would happen if the arrangement did break down for any reason?			
Costs of each option			
Has value for money and affordability for the CCG been discussed?			
If the option is some distance from where the person lives, any concerns about the ability of family or others to visit?			

Considering the above, what is the person's preference? If the person lacks capacity, what is the	
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preference of family/others?	
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Part 2: Option appraisal tool to aid decision makers.

- ✓ Is there enough information?
- ✓ Review the record of discussion

	Option 1	Option 2	Option 3
Are there any other health or social care issues that need consideration?			
Is there an overall contribution to well-being, above meeting health or social care needs?			
Are there any risks, including safety, to the person or others?			
How can these risks be mitigated, and are there additional costs to this?			
Is this optional sustainable? What would happen if the package breaks down?			
Impact on right to respect for private and family life?			
Are there measures that could reasonably be taken to address these?			
Cost of these measures?			
Is there an impact on informal carers?			
Are there measures to reduce this impact?			

Cost of those measures?			
What is the total cost of the package?			
Is it affordable and good value for money?			

Public Sector Equality Duty

<p>Does the person have any protected characteristics?</p> <ul style="list-style-type: none"> ○ age ○ disability ○ gender reassignment ○ pregnancy and maternity, ○ race (including ethnic or national origins, colour or nationality, ○ religion or belief (including lack of belief), ○ sex ○ sexual orientation 	
Are there any needs arising from these?	
Measures that could reasonably taken to address these	
Cost of proposed steps	
How would the person benefit?	
Effect on the person of declining to fund these measures	

N.B. Decisions should take into account the CCGs financial responsibilities and obligations to the whole population. Consider whether it would be reasonable to make additional resources available in each case and whether the impact on the person of declining the preferred option is proportionate given the additional cost.

Appendix 4: Financial Scheme of Delegation

This policy relates to who has the authority to make decisions about spending for the CCG and how much each person or committee can agree to spend. The following is a summary of the part of the financial delegation policy that relates to decisions about individual packages of care.

Decisions regarding individual packages of care

Up to £1000 per week - Quality assurance (QA) lead or commissioning manager

£1001 to £1,500 /week - 2 QA leads or 1 QA lead and commissioning manager

£1,501 to £5,000 /week - Individual Package of Care panel (or if not quorate¹ Chief Nursing Officer)

Above £5,001 per week - CFO or CO, CNO or COO or Director of Commissioning

¹ If the correct people are not present at a panel meeting to make the necessary decisions.