

Meeting of BNSSG CCG Governing Body

Date: Tuesday 7th May 2019

Time: 1.30pm

Location: The Vassall Centre, Gill Avenue, Downend, Bristol, BS16 2QQ

Agenda number: 8.4

Report title: Adult Continuing Healthcare Commissioning Policy

Report Author: Jo Kapp & Lee Colwill

Report Sponsor: Janet Baptiste-Grant

1. Purpose

The purpose of the paper is to seek Governing Body approval of the BNSSG Adult Continuing Healthcare Commissioning policy.

2. Recommendations

The Governing Body is asked to approve the attached policy which has been approved by Quality Committee.

3. Executive Summary

BNSSG Adult Continuing Healthcare Commissioning Summary

This policy will replace the current CHC Commissioning Policy, which was previously approved by the legacy CCG's through their respective governance arrangements.

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).

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 have to 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.

Rationale for revising the policy

The CCG's previous policy was challenged by the European Human Rights Council. Legal advice from Bevan Brittan resulted in significant amendments to the sections on the Human Rights Act and the Public Sector Equality Duty.

The policy was reviewed and approved with amendments by BNSSG CCG Quality Committee on 24 January 2019, but further changes were requested by Governing Body on 5th February 2019. The revised policy was agreed by Quality Committee on 25th April 2019.

The attached policy has now been thoroughly revised to ensure that the processes followed by the CCG are much clearer.

4. Financial resource implications

The policy sets out that while there is no set upper limit on CHC expenditure, the principle remains that care provision will not be agreed where costs are unjustifiably higher than the most effective package that has been assessed as able to meet an individual's needs. Funding decisions relating to such circumstances will be clearly documented and discussed with the CHC eligible individual or their representative.

5. Legal implications

The policy has been thoroughly reviewed and approved by Bevan Brittan.

6. Risk implications

The main risk associated with the policy is challenge from individuals who disagree with the care option presented by the CCG. In balancing the needs of a CHC eligible individual vs. the needs of the wider population, the CCG has to ensure that commissioned care is equitable and represents value for money for the NHS.

As an example, an occasional challenge to commissioning CHC care is a family's wish for a person to be cared for at home, when the CCG has identified that an equivalent, or superior level of care can be achieved within an alternative provision.

In any case such as this it will always be necessary for the CCG to give serious consideration to the potential impact on an individual, and the policy sets out the process that the CCG will follow to ensure that any decisions are robust, fair, and provide people with a route of appeal should they wish to challenge a decision.

7. Implications for health inequalities

The policy will ensure that there is an equitable approach to the commissioning of care for those eligible for CHC funding

8. Implications for equalities (Black and Other Minority Ethnic/Disability/Age Issues)

An Equality Impact Assessment has been completed. The policy will affect the approach to commissioning CHC, which due to its nature primarily effects an older population, and individuals living with complex disabilities. There may be positive and negative impacts on these groups. The CCG has ensured that the policy reflects a consistent and fair approach in the application of the National Framework for NHS Continuing Healthcare and NHS-Funded Nursing Care; whilst implementing and maintaining good practice and ensuring quality standards are met.

9. Implications for Public Involvement

There are no currently implications for public involvement at this time.

Commissioning Policy for Adult Continuing Healthcare



Please complete the table below:

To be added by corporate team once policy approved and before placing on website

Policy ref no:	
Responsible Executive Director:	Janet Baptiste-Grant, Interim Director of Nursing and Quality
Author and Job Title:	Jo Kapp, Associate Director for Quality Lee Colwill, Head of Adult Continuing Healthcare
Date Approved:	
Approved by:	
Date of next review:	

Policy Review Checklist

	Yes/ No/NA	Supporting information
Has an Equality Impact Assessment Screening been completed?	Yes	
Has the review taken account of latest Guidance/Legislation?	Yes	
Has legal advice been sought?	Yes	
Has HR been consulted?	No	
Have training issues been addressed?	Yes	
Are there other HR related issues that need to be considered?	No	

	Yes/ No/NA	Supporting information
Has the policy been reviewed by JCC?	No	
Are there financial issues and have they been addressed?	Yes	
What engagement has there been with patients/members of the public in preparing this policy?	Yes	
Are there linked policies and procedures?	Yes	See section 1
Has the lead Executive Director approved the policy?	Yes	
Which Committees have assured the policy?	Yes	Quality Committee 25/04/2019
Has an implementation plan been provided?	Yes	
How will the policy be shared with	Yes	Via CCG website, print version available on request
Will an audit trail demonstrating receipt of policy by staff be required; how will this be done?	No	

Version Control <i>please remove this box once approved and finalised</i>		
Version	Date	Consultation
1	October 2018	Amendment to policy following legal advice received from Bevan Brittan on October 2018.
2	December 2018 Commissioning Policy Group Submission	Deferred by commissioning policy group advised to be presented at Quality Committee

3	January 2019	Amendment to include BNSSG Safeguarding policy approved by Governing Body
4	January 2019	Submission to Quality Committee for approval
5	24 January 2019	Approved by Quality Committee
6	February 2019	Submission to Governing Body for approval

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Commissioning Policy for Adult Continuing Healthcare

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).

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 have to 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.

This policy should be read in conjunction with:

- National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care 2018
- 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 policies for Safeguarding, Mental Capacity Act and Personal Health Budgets

2 Purpose and scope

The purpose of this policy is to set out the BNSSG CCG process for commissioning CHC 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 funding. The CHC eligibility process is not within the scope of this document.

3 Duties and responsibilities

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

BNSSG CCG has an ongoing responsibility to fund the care for individuals outside hospital settings, where the individual has been assessed as eligible for CHC. This care can be provided in a variety of settings and in a manner that reflects the choice and preferences of individuals, however there is no legal obligation for the CCG to provide a package of care greater than the individual's assessed health and associated social care needs.

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

4 Definitions/explanations of terms used

NHS Continuing Healthcare

NHS Continuing Healthcare (CHC) 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.

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.

NHS-funded Nursing Care

For individuals in care homes with nursing, registered nurses are usually employed by the care home itself. In order 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.

Clinical Commissioning Group

Clinical Commissioning Groups (CCGs) are clinically-led statutory NHS bodies responsible for the planning and commissioning of healthcare services for their local area.

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.

5 Core principles for decision making

In view of the need to balance individual preference alongside safety 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 objective assessment of the individual's clinical need, safety and best interests;
- have regard for the safety 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;
- 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, BNSSG CCG 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 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 or nursing home 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.

BNSSG CCG 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 BNSSG CCG will take into account its 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.

6 Consent and capacity to make decisions

BNSSG CCG will support an individual to play a full role in shaping a personalised approach to meeting their care needs, however if an individual is considered not to have the mental capacity to make key decisions in their life the CCG will act in accordance with that individual's best interests in line with the Mental Capacity Act and the BNSSG CCG Mental Capacity Act & Deprivation of Liberty Safeguards Policy, which can be found at the following link:

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

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 CCG will work with the individual appointed.

7 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 CHC commissioning, quality assurance, clinical governance, performance management and finance audit arrangements. When commissioning CHC packages of care BNSSG CCG 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 at the following link:

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

8 Personal Health Budgets

All individuals in receipt of CHC who live at home will 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 money and arranging 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 holds the money on the person's behalf.
- Direct payment for healthcare – The PHB holder or their representative has the money on a prepaid card or into a 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.

Where an individual is considered not to have the mental capacity to make key decisions in their life the CCG will act in accordance with that individual's best interests in line with the Mental Capacity Act. 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.

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.

9 Overview of the CHC commissioning process



10 Developing options for care

Once eligibility for CHC has been determined a nurse assessor will work with an individual 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.

The nurse assessor will then work with the CCG's commissioning team to use the personalised care and support plan to identify suitable care options.

A person 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.

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 or an independent hospital. When identifying suitable options for eligible CHC individuals BNSSG CCG 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.
- The Care Quality Commission registration status of potential care providers and whether there are any open suspensions or enforcement actions by the CCG or a Local Authority.
- 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, but where an offer is made, the CCG may take this into account as an integral part of the care package. In such circumstances the CCG 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.
- 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. BNSSG CCG 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 most appropriately be met within a care home setting. The general principles are set out below; however BNSSG CCG 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 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.
- 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, total parenteral nutrition (TNP), 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 CCG 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.

11 Agreeing a preferred care option

Care options identified by BNSSG CCG will be provided to the individual or family/carer/representative and the CCG will endeavour to offer a choice of more than one care option, although this may not be possible where there is limited availability of appropriate care provision.

Once the CCG has confirmed the available care options individuals will usually be asked to make a decision on their first choice within 48 hours. The CCG will then make the necessary arrangements with the individual and the care provider to confirm for a suitable start date.

BNSSG CCG 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 CCG 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.

12 Considering alternative requests for care

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 care option meets the requirements and considerations outlined in section 10 above.

Where a care option is requested by an individual, but is more expensive than the options offered by the CCG, the decision as to whether the CCG will fund the care option will be referred to the CHC Complex Case Panel for detailed consideration.

The CHC Complex Case Panel will take into account the core principles for decision making set out in section 5, and the key considerations for developing care options listed in section 10. In addition the CCG 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.

Individuals will be 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.

13 Appealing the CCG's decision

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

- Email address: bnssg.chc@nhs.net
- Post to: CHC Team, NHS Bristol, North Somerset & South Gloucestershire CCG, 5th Floor, South Plaza, 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 CHC Complex Case Panel will be reviewed by the CCG's Associate Director for Quality, and either the Director of Nursing or Director of Commissioning. The review of the CHC Complex Case Panel decision will be clearly

documented and shared with the individual or the representative/advocate acting on their behalf.

The option remains for any individual remaining unhappy with the decision to raise a formal complaint with BNSSG CCG Customer Services team via either of the following addresses:

- Email address: bnssg.customerservice@nhs.net
- Post to: BNSSG Customer Services, NHS Bristol, North Somerset & South Gloucestershire CCG, South Plaza, Bristol, BS1 3NX

14 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 CCG, the CCG will consider that it has fulfilled its legal duty toward the person. The CCG 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 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.

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.

15 Individuals with existing care arrangements

Where an individual with an existing home care package, or care home placement, becomes eligible for CHC, BNSSG CCG will follow the process for identifying care options set out in section 10 of this policy. This will involve a comparison of the current care package or placement against alternative care options, to ensure that the CHC 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 CCG 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 CHC Complex Case Panel for a decision following the process set out above in section 12.

16 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 CCG 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 CHC Complex Case Commissioning Panel and subject to review.

17 Additional private care

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

The package of care which BNSSG 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 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.

Further guidance on this issue can be found in the National Framework for Continuing Healthcare and Funded Nursing Care at the following link:

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

18 Review

The care package will be reviewed initially at 3 months and then annually as a minimum to ensure that the individual's needs and personalised outcomes are being met and that it remains clinically safe, sustainable and within cost limits.

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

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 10 and 11 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 assessment is required to confirm if the individual remains CHC eligible. Where an individual is no longer eligible for CHC BNSSG CCG will no longer be required to fund the identified care.

BNSSG CCG 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 CCG 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.

19 Monitoring compliance

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

20 Training requirements

In order for this policy to operate an understanding of its contents will be required for CCG, provider and Local Authority staff.

21 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 expected impact on patient safety as a result of implementing this plan.
- **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 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 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 12.

22 Implementation

The policy will be immediately implemented following BNSSG CCG Governing Body sign off.

23 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 found to be misrepresenting their clinical needs, or misusing a PHB will be referred by BNSSG CCG to NHS Counter Fraud for investigation.

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 CCG 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 CCG 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 CCG 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'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 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.