

Primary Care Commissioning Committee (PCCC)

Date: Tuesday 27 November 2018

Time: 9.00-10.50am

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

Agenda number: 7

Report title: Ethical Framework for Decision-Making - update

Report Author: Adwoa Webber, Head of Clinical Effectiveness

Report Sponsor: Peter Brindle, Medical Director – Clinical Effectiveness

1. Purpose

To update Primary Care Commissioning Committee on the development of the BNSSG CCG Ethical Framework for Decision-Making.

2. Recommendations

Primary Care Commissioning Committee is asked to note the progress that has been made and the future involvement on Governing Body and Primary Care Commissioning Committee in developing, approving and implementing the BNSSG CCG Ethical Framework for Decision-Making.

3. Executive Summary

The BNSSG CCG Ethical Framework for Decision-Making will describe the principles that we will use when making commissioning decisions. It is important that the framework is owned by Governing Body and by the Primary Care Commissioning Committee in order for it to truly fulfil its purpose. The draft framework has been developed through a process of co-design to this point. A workshop with members of Governing Body in July 2018 and with members of Commissioning Executive in September 2018 was part of this co-design.

The framework will not be a decision-making tool nor the process for decision-making. The principles should not be used as a checklist or criteria to be met before a decision can be made.

We have developed the draft framework by looking at the frameworks used by other CCGs and we will be taking advice from legal, public health and ethics experts. We will be engaging with stakeholders, including community and voluntary sector representatives, on the draft during November and early December 2018.

The latest draft version is included at Appendix 1 of the report.

4. Financial resource implications

There is a small financial cost to some of the engagement work with community and service user representatives for venue hire.

5. Legal implications

The Ethical Framework for Decision-Making will support BNSSG CCG to deliver its duties under the Health and Social Care Act 2012.

6. Risk implications

The absence of an Ethical Framework for Decision-Making may increase the risk of BNSSG CCG being perceived to be not enacting its value of being open and transparent. It may also make it more difficult for the CCG to demonstrate the robustness with which it has made decisions. An Ethical Framework for Decision-Making and actions to ensure that it is implemented will help to mitigate these risks.

7. Implications for health inequalities

There is an opportunity for the principles described in the Ethical Framework for Decision-Making to include making decisions in a way that supports equality of opportunity of access to healthcare. It can also be explicit in stating that there may be times when it is appropriate to target some demographic groups of health issues in order to reduce inequalities in health outcomes and promote the wellbeing of the community as a whole.

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

The assessment and any mitigating actions will be informed by the engagement process which will explicitly ask for feedback from stakeholders on how the draft principles can support the CCG in fulfilling its duties to:

- reduce inequalities and;
- have due regard to the need to eliminate discrimination and advice equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

9. Implications for Public Involvement

Community and voluntary sector representatives will be engaged on the draft Ethical Framework for Decision-Making in order to explain its purpose and gain their feedback on the principles. This engagement will take place during November and early December 2018.

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1. Background

In carrying out its responsibility to plan and buy health and care services for the population of Bristol, North Somerset and South Gloucestershire (BNSSG), BNSSG Clinical Commissioning Group (CCG) will inevitably have to make difficult decisions. The reasons that some decisions are difficult include:

- Demand for healthcare exceeds the NHS's ability to supply services
- The CCG has a legal duty to break even
- There are competing specialties
- There are competing populations / health needs
- Decision making is complex due to local need, available resources, funding opportunities, need for savings, sources of information, national policy, available evidence
- We often have imperfect information about our existing populations; services and; the evidence about the outcomes of interventions or services

BNSSG CCG is developing an Ethical Framework for Decision Making which will describe the principles that we will use when making commissioning decisions. It is important that the framework is owned by Governing Body and by the Primary Care Commissioning Committee in order for it to truly fulfil its purpose. The draft framework has been developed through a process of co-design to this point. A workshop with members of Governing Body in July 2018 and with members of Commissioning Executive in September 2018 was part of this co-design.

Each of the principles in the framework will be considered fully and equally in each case. The framework will not be a decision-making tool nor the process for decision-making. The principles should not be used as a checklist or criteria to be met before a decision can be made.

2. Development process

The draft Ethical Framework for Decision-Making is being developed by:

- Looking at Ethical Frameworks that other CCGs have in place
- Taking advice from legal, public health and ethics experts

The latest version of the draft is included at Appendix 1.

We are engaging with the following people and organisations during November and December 2018 to explain why we are putting an Ethical Framework for Decision-Making in place and to get their feedback on the draft so that we can further refine it before taking it through our governance process, i.e. Commissioning Executive and then Governing Body in January 2019 (see paragraph 3):

- CCG staff including Clinical Leads

- Member practices
- Community and service user representatives
- Acute hospital services providers including Avon and Wiltshire Mental Health Partnership and organisations providing NHS commissioned services as an Any Qualified Provider
- Public health colleagues from Bristol City Council, North Somerset Council and South Gloucestershire Council
- Clinical Cabinet
- STP Sponsoring Board

3. Governing Body and Primary Care Commissioning Committee involvement

There was a session at the Governing Body development day in July 2018 that explained the concept of and reasons for an Ethical Framework for Decision-Making therefore some members of Primary Care Commissioning Committee received this. This paper and the draft Ethical Framework for Decision-Making will inform and update those members of Primary Care Commissioning Committee who are not members of Governing Body. The next steps are as follows:

- A session at Governing Body seminar on 4 December 2018 to discuss the latest draft of the Ethical Framework for Decision-Making
- Final draft of the Ethical Framework for Decision-Making considered at Commissioning Executive on 13 December 2018 for recommending to Governing Body
- Final draft of the Ethical Framework for Decision-Making considered for approval at Governing Body meeting on 8 January 2018
- We suggest a session at a Governing Body seminar in February 2018 to discuss and agree how the Governing Body will put the Ethical Framework for Decision-Making into practice.

4. Financial resource implications

There is a small financial cost to some of the engagement work with community and service user representatives for venue hire. In addition, we have instructed a specialist solicitor to review the Ethical Framework for Decision-Making and there is a financial cost to this.

5. Legal implications

The Ethical Framework for Decision-Making will support BNSSG CCG to deliver its duties under the Health and Social Care Act 2012.

6. Risk implications

The absence of an Ethical Framework for Decision-Making may increase the risk of BNSSG CCG being perceived to be not enacting its value of being open and transparent. It may also make it more difficult for the CCG to demonstrate the robustness with which it makes decisions. An Ethical Framework for Decision-Making and actions to ensure that it is implemented will help to mitigate these risks.

7. Implications for health inequalities

There is an opportunity for the principles described in the Ethical Framework for Decision-Making to include making decisions through a non-discriminatory process reinforcing equality of opportunity of access to healthcare and being explicit that there may be times when it is appropriate to target some demographic groups of health issues in order to reduce inequalities in health outcomes and promote the wellbeing of the community as a whole.

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

The draft Ethical Framework for Decision making will be screened as part of the Equality Impact Assessment process. The assessment and any mitigating actions will be informed by the engagement process which will explicitly ask for feedback from relevant stakeholders on how the draft principles can support the CCG in fulfilling its duty to:

- reduce inequalities and;
- have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and person who do not share it.

9. Consultation and Communication including Public Involvement

Table 1 below details the engagement activities that have taken place and future plans.

Table 1

Stakeholder	Progress
BNSSG CCG staff including Clinical Leads	Staff have been informed that an Ethical Framework for Decision Making is being developed and why and some members of staff have already given some views. Staff are being encouraged and enabled to give feedback on the draft in a variety of ways, e.g. team meeting with their executive directors, the staff intranet (The Hub), staff newsletter, etc. The CCG Communications Team are leading this work.
Member GP practices	The Ethical Framework was sent to practices in early November 2018 and they have had the opportunity to discuss it at their member meetings on 13 and 14 November 2018.
Community and voluntary sector representatives	Event planned for 5 December 2018 in addition to other ways in which we can engage with them
Acute hospital service providers including mental health and those providing NHS commissioned services under Any Qualified Provider	The Ethical Framework for Decision Making was sent to Avon & Wiltshire Mental Health Partnership NHS Trust, Weston Area Health NHS Trust, North Bristol NHS Trust and University Hospitals Bristol NHS Foundation Trust, Sirona, Bristol Community Health, North Somerset Community Partnership and Any Qualified Providers in early November 2018 and they have been invited to provide feedback.
Healthier Together Sponsoring	The Ethical Framework will be raised at the Healthier Together

Board	Sponsoring Board on 26 November 2018
Clinical Cabinet	Clinical Cabinet were made aware our intention to have an Ethical Framework in October 2018 and were asked for their advice on how to engage with their organisations. Feedback will be discussed at their meeting on 21 November 2018.
Public Health in Bristol, North Somerset and South Gloucestershire	Public health colleagues have already provided helpful information about the Ethical Framework and their support. They have been sent the draft and asked for feedback.

10. Recommendations

Primary care Commissioning Committee is asked to note the progress that has been made and the next steps in developing, approving and implementing the BNSSG CCG Ethical Framework for Decision-Making.

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Appendices

Appendix 1 – Draft Ethical Framework for Decision-Making v0.4

Glossary of terms and abbreviations

Specialities	Branches or fields of medicine
Any Qualified Provider	Provider that meet NHS service quality requirements, prices and normal contractual obligations.
Healthier Together	Healthier Together represents a commitment to work together on improving health and care in Bristol, North Somerset and South Gloucestershire. The Partnership is about tackling the issues that matter most and finding ways to continue providing safe, high-quality care for generations to come.
Healthier Together Sponsoring Board	The Sponsoring Board is responsible for the strategic leadership and direction setting for Healthier Together. Membership includes all the partner organisations and also representatives from Public Health, Healthwatch and NHS England.
Health and Social Care Act 2012	Act of Parliament that provided for the reorganisation of the structure of the National Health Service in England

DRAFT Ethical Framework for Decision-Making v0.4



Introduction

Bristol, North Somerset and South Gloucestershire Clinical Commissioning Group (BNSSG CCG) wants to demonstrate that the way it makes commissioning decisions is consistent across all levels of commissioning. These include decisions for our population and decisions for individuals. We have developed this Ethical Framework for Decision-Making to describe the principles that will underpin how commissioning decisions are made.

This framework is not a decision-making tool nor is it the process for decision making. The principles should not be used as a checklist or criteria to be met before a decision can be made.

Context

BNSSG CCG is responsible for commissioning (identifying and understanding need, planning and buying services) healthcare on behalf of our population. We receive a fixed budget from the government to do this and have a legal duty to stay within our budget. We commission services that are provided by primary, secondary and tertiary care organisations and; the independent sector and voluntary and community services. We also commission some services jointly with other CCGs and Bristol City Council, North Somerset Council and South Gloucestershire Council.

Our limited resources, and the legal requirement to stay within our budget, mean that we need to have an approach that strikes the right balance between commissioning healthcare that meets the needs of our population whilst balancing this with the differing needs of individuals. We cannot fund all types of healthcare that might be requested for our population. The fact that we may take a decision not to commission a service to meet a specific healthcare need due to our limited resources does not indicate that we are breaching our statutory obligations.

Purpose

The purpose of the Ethical Framework for Decision-Making is to describe the principles that will guide how BNSSG CCG:

- Makes commissioning decisions on behalf of and with its population
- Is consistent across all levels of commissioning from strategic planning through to deciding on individual funding requests and meeting the requirements on the NHS Constitution
- Makes it clear to the public the processes for prioritising and allocating the resources that we have

Establishing the principles

The principles described in this framework reflect our values as set out in our constitution and agreed by our member practices.

Bristol, North Somerset and South Gloucestershire CCG's Values

- Put people's needs at the heart of our decision-making
- Ensure the voice of local people shapes what we do
- Be open and transparent, doing what we say we will
- Work as good partners and system leaders
- Value our staff
- Seek best value in application of our resources

Principles for decision making

Each of the principles will be considered equally and each of the principles will be given fair consideration.

Principle 1 – Rational

Decision-making is rational and based upon a process of reasoning which involves:

- Being logical in the way reason is applied to reach a decision
- Ensuring that the decision is based on evidence of clinical effectiveness
- Making a realistic appraisal of the likely benefits to patients and service users
- Weighing up all relevant factors, including (particularly) risks and costs
- Ensuring that the decision is based on thoughtful consideration of the available evidence
- Taking account of the wider political, legal and policy context
- Ensuring individuals involved in decision-making are appropriately skilled and trained

Decisions should be made on the basis of a reasonable evaluation of the available evidence, including evidence of efficacy, safety and clinical effectiveness. The people involved have an obligation to seek out (the best) evidence to inform their decisions. Where available, existing national standards and guidelines should be considered together with local factors and the way in which care is currently provided.

The approach to assessing the validity and credibility of evidence should be broad but maintain high standards of critical appraisal. Both qualitative and quantitative evidence should be taken into account and given appropriate weight. Expert opinion should be sought where appropriate.

Outcome measures should be considered in terms of their importance to patients. This is significant in the treatment of illness where no cure can be expected and in palliative care. Rational decisions will weigh up likely outcomes, the wider contexts in which treatments can be provided, the implications for service delivery, clinical pathways and the scale and nature of benefits, costs and risk.

Decisions should be made on careful consideration of the trade-offs between costs and benefits, both in the short and long term.

Principle 2 – Inclusive

Decisions should be arrived at through a fair and non-discriminatory process that:

- Reinforces the concept of equality of opportunity of access to healthcare
- Ensures patient and public engagement in decision-making
- Balances the rights of individuals with the rights of the wider community

Decision-making should not discriminate on characteristics which are irrelevant to health conditions and the how effective a treatment is.

Decisions should take account of local and societal sensitivities. There should be active attempts to engage patients and service users, carers and the wider public in the decision making process to ensure that the perspectives of both health care providers and people who use services are taken into account.

Principle 3 – Take account of the value we will get

We have limited resources and they must be managed responsibly. Investment in one area of healthcare will inevitably mean that resources will have to move away from other areas of healthcare. Decisions should be based on careful consideration of the trade-offs between cost and benefit, both short and long term. These decisions will recognise that complex trade-offs cannot necessarily be reduced to simple cost benefit calculations. We need to balance the impact of cost against other factors such as the impact on the population's health.

Decisions will take account of the outcomes we will achieve (for example population health, survival rate, extent of recovery, people's experience, safety) for the resources that we use (for example the amount we pay for a service, salaries, investment in equipment and buildings). This is what we call "value".

Principle 4 – Clear and open to scrutiny

Decisions and the way they are made should be transparent and easily understood. The information provided to decision makers should be fully documented together with the process followed and the degree of consensus reached.

Principle 5 - Promote health for both individuals and the community

Decisions about things that promote health and avoid people becoming ill will be considered alongside things that will cure illness and other interventions. There may be times when it is appropriate to target some demographic groups of health issues in order to reduce inequalities in health outcomes and promote the wellbeing of the community as a whole.

How will we make decisions?

We will make our most significant decisions by "consensus".



What is consensus decision-making?

It is a way of reaching agreement between all members of a group. Instead of simply voting for an item and having the majority of the group “getting their way”, a group using consensus is committed to finding solutions that everyone actively supports, or at least can live with. This is done by ensuring that all opinions, ideas and concerns are taken into account. The assumption is that every member of the group has a voice worth hearing and that all concerns are reasonable and this is crucial to making good decisions. If a proposal is deeply troubling to even one person, that concern is respected; if it is ignored, the group is likely to make a mistake.

It requires everyone in the group to be committed to common goals that are clearly understood, and to be able to tell the difference between their personal preferences and what will help the group achieve its goals.

Decisions reached by consensus reflect the thoughts and feelings of the group as a whole, rather than just the majority. Effective consensus building results in decisions that have been thoughtfully considered and take into account diverse experience and views.

Why use consensus decision-making?

Consensus involves looking for ‘win-win’ solutions that are acceptable to all. It aims to weave together everyone's best ideas and key concerns – a process that often results in surprising and creative solutions, inspiring both the individual and the group as whole.

When will we use consensus decision-making?

A full consensus decision-making process will be most appropriate for:

- Strategic decisions
- Decisions where “the stakes are high”
- Decisions for which a strong, united front is important

A full consensus-building approach may be unnecessary or less appropriate for:

- Operational or tactical decisions
- Decisions which have relatively minor impact and affect relatively few

The consensus decision-making process

The basic process will be:

1. Hearing or generating a proposal
2. Identifying ideas and concerns from each person in the group
3. Changing the proposal, if necessary, to address people’s key concerns and get as much agreement as possible

When the group is ready to make a decision on a proposal at the end of the steps described above, there are four possible responses that an individual in the group could have:

- Agreement: “I support the proposal and am willing to implement it.”
- Reservations: “I still have some problems with the proposal, but I'll go along with it.”
- Stand-aside: “I can't support this proposal because... but I don't want to stop the group, so I'll let the decision happen without me and I won't be part of implementing it.”
- Block: “I have a fundamental disagreement with the core of the proposal that has not been resolved. We need to look for a new proposal.”

Blocking should only be used where an individual thinks that a proposal:

- Goes against the core values, aims and principles of the group
- Will seriously endanger the organisation

Blocking should never be based on individual preferences nor where a proposal goes against an individual's interests or ethics.

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