

Commissioning Policy for All Age Continuing Care

Policy ref no:	71
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Date Approved:	16 th January 2025
Approved by:	BNSSG ICB Board
Date of next review:	January 2028

Policy Review Checklist

	Yes/No/NA	Supporting information
Has an Equality Impact Assessment Screening been completed?	Yes	Included with supporting docs
Has the review taken account of latest Guidance/Legislation?	Yes	No significant legislative changes impacting on Funded Care since the previous version was published.
Has legal advice been sought?	Yes	Policy has been reviewed by Bevan Brittan
Has HR been consulted?	Yes	HR input through CPRG though no impact on staff
Have training issues been addressed?	Yes	Internal staff training requirement is addressed in the policy.
Are there other HR related issues that need to be considered?	No	
Has the policy been reviewed by Staff Partnership Forum?	N/A	
Are there financial issues and have they been addressed?	No	There are no immediate financial implications from publishing this revised policy.
What engagement has there been with patients/members of the public in preparing this policy?		<p>The policy has been informed by:</p> <ul style="list-style-type: none"> -Direct feedback provided by individuals in receipt of Funded Care and their families since the previous version of the policy was published. -Information gathered from Brokerage Team patient engagement process – which is an ongoing process the involves contacting all people in receipt of a domiciliary package of care within 2 weeks of the package commencing. -Outcome of investigations into complaints received by the Funded Care Team -Analysis of care provider-related incidents reported on Datix.
Are there linked policies and procedures?	Yes	These are listed in the policy

	Yes/No/NA	Supporting information
Has the lead Executive Director approved the policy?	Yes	Chief Nurse approved
Which Committees have assured the policy?	Yes	Quality, Outcomes and Performance Committee
Has an implementation plan been provided?	Yes	Included in this policy
How will the policy be shared with staff	Yes	Included in this policy
Will an audit trail demonstrating receipt of policy by staff be required; how will this be done?	N/A	
Has a DPIA been considered in regards to this policy?	N/A	
Have Data Protection implications have been considered?	Yes	Through input at the CPRG

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Commissioning Policy for All Age Continuing Care

1 Introduction

This policy outlines the process by which NHS Bristol, North Somerset and South Gloucestershire (**BNSSG**) Integrated Care Board (**the ICB**) will commission and provide equitable, safe and effective care, for individuals who have been assessed as eligible for NHS-funded care. NHS-funded care includes the following:

- Packages of care arranged by the ICB under NHS Continuing Healthcare for adults (**CHC**);
- Packages of care arranged by the ICB under Children and Young People's Continuing Care (**CYPCC**) (which in most cases will be jointly funded with the Local Authority who have separate responsibilities under the Children Act 1989); and
- Joint packages of care where an adult has an identified assessed health need that is beyond the power of the local authority to provide (**Joint Packages of Care**).

CHC, CYPCC and Joint Packages of Care are together referred to as **"NHS-Funded Care"**.

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 for whom it is responsible. ICBs also must consider the wider effect of its decisions and its financial responsibilities when making decisions about whether they will pay for specific care or treatment.

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

1.1 BNSSG ICB Values

This policy contributes to the values of the organisation by ensuring that the ICB meets its responsibilities to those individuals found to be eligible for NHS-Funded Care. The policy will support the ICB to act with integrity, strive for excellence, and ensure we do the right thing in commissioning care and support for the people of Bristol, North Somerset and South Gloucestershire.

2 Purpose and scope

The purpose of this policy is to set out the ICB's process for commissioning individual care, ensuring that it is person centred, balances equity, equality and risk, and allows the ICB to facilitate the effective use of finite NHS resources.

This policy is applicable to individuals deemed to be eligible for CHC and CYPCC under the NHS National Frameworks for Adult Continuing Healthcare and Children and Young People

Continuing Care. The process to determine eligibility for NHS Funded Care is not within the scope of this document. Links to the policy documents that set out the relevant processes are included in section 28 of this policy.

This policy is also applicable to adults who are eligible for a Joint Package of Care. For adults who may be eligible for a Joint Package of Care, the Joint Funding Protocol will be followed. The ICB will apply the core principles outlined in section 6 of this policy when making decisions around joint funded care packages.

For the avoidance of doubt, commissioning arrangements for people eligible for aftercare mental health services under Section 117 of the Mental Health Act 1983 fall outside the scope of this policy, save as to the extent the individual is also eligible for NHS-Funded Care.

For individuals who are to receive services outside the local ICB area, but where the ICB is the responsible commissioner, the principles outlined in this policy will apply.

3 Duties – legal framework for this policy

This policy should be read in conjunction with:

- National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care 2022 (Revised)
- National Framework for Children and Young People's Continuing Care 2016
- The National Health Service Act 2006
- The Health and Social Care Act 2012
- The Care Act 2014
- Mental Capacity Act 2005
- The Human Rights Act 1998
- The Equality Act 2010
- BNSSG ICB Mental Capacity Act and Deprivation of Liberty Safeguards Policy
- BNSSG ICB All Age Continuing Care Operational Policy
- BNSSG ICB Personal Health Budgets Policy

4 Responsibilities and Accountabilities

4.1 BNSSG ICB

The ICB holds system leadership accountability for arranging care under statutory frameworks like CHC and CYPCC, encompassing strategic and individual commissioning arrangements. It is also responsible for ensuring that all commissioned services are safe, equitable, and that any identified risks are appropriately and reasonably managed.

The ICB has an ongoing responsibility to fund the care for individuals outside of hospital settings, where the individual has been assessed as eligible for NHS-Funded Care. This care can be provided in a variety of settings and in a manner that reflects the choice and preference of individuals, however there is no legal obligation for the ICB to provide a

package of care greater than the individuals assessed health need (and in the case of CHC, associated social care needs).

4.2 Chief Nursing Officer

The ICB Chief Nursing Officer is responsible for establishing and maintaining governance arrangements NHS-Funded Care and ensuring that the Funded Care Team delivers in accordance with this policy and the supporting national guidance and legislation. They are also tasked with ensuring the provision of sufficient resources to meet policy requirements.

4.3 The Funded Care Team

The Funded Care Team is responsible for the assessment, case management, review and arranging care and support for individuals in receipt of NHS-Funded Care support and packages of care.

The Funded Care Team is also responsible for managing the appeals process where the individual or their family/carer/representative disagrees with (a) the care options that the ICB has identified; or (b) the decision made by the relevant panel to decline an alternative care option suggested by the individual, or their family/carer/representative.

4.4 CHC and CYPCC Assessors

Assessors work within the Funded Care Team and have a primary responsibility for assessing eligibility for CHC and CYPCC.

4.5 Care Coordinator / Case Managers

The Care Coordinator/Case Managers' roles are in some cases separate from the assessment role performed by the CHC and CYPCC Assessors. These roles, not exclusive to nursing professionals, may include registered or allied health professionals.

4.6 Funding Authorisation Panels

Individuals who meet eligibility for NHS-Funded Care have care needs that vary in the level of complexity and associated risks. There is a process for approval and authorisation of all care packages based on complexity. Where there is a high level of complexity, risk, and/or cost it will be necessary to seek authorisation via the appropriate funding panel (see section 13). Funding panels are responsible for ensuring that the ICB duly considers the balance between individual choice, complexity, risk, and equitable distribution of NHS resources in potentially intricate care arrangements.

4.7 Brokerage Team

The ICB utilises two brokerage teams; an internal team servicing the Bristol and South Gloucestershire population, and the other within North Somerset Council serving the North Somerset population. Brokers within these teams work closely with CHC and CYPCC Assessors, care coordinators, individuals eligible for NHS-Funded Care and, where appropriate, their family/carer/representative, and care providers, to identify care packages and placements that can meet assessed needs.

4.8 Individuals eligible for NHS-Funded Care

An individual found eligible for NHS-Funded Care is encouraged to play an integral role in shaping a personalised approach to meeting their care needs, working with an Assessor or care coordinator to explore how care could be provided to meet the individual's assessed needs, and identifying the outcomes that the person wants to achieve.

Further detail on how the ICB will work with people assessed as lacking capacity is included in section 7 of this policy.

5 Definitions/explanations of terms used

5.1 Integrated Care Board

ICBs replaced Clinical Commissioning Groups (“**CCGs**”) in England with effect from 1 July 2022. ICBs are statutory NHS organisations that are responsible for planning health services to meet the needs of their local population. ICBs also, manage the local NHS budget. ICBs are part of Integrated Care Systems (“**ICSs**”), which are local partnerships that bring health and care organisations together to develop shared plans and joined-up services. They are formed by NHS organisations and upper-tier local authorities and also include the voluntary sector, social care providers and other partners with a role in improving local health and wellbeing.

5.2 NHS Continuing Healthcare

NHS CHC means a package of ongoing care that is arranged and funded solely by the National Health Service (“**NHS**”) specifically for those individuals in England aged 18 or over who are found to have a ‘primary health need’. Such care is provided to meet health and associated social care needs that have arisen as a result of disability, accident or illness. Further information on the Primary Health need test is to be found in the National Framework for CHC¹.

5.3 Children and Young People's Continuing Care

CYPCC will be required when a child or young person (aged 17 or under) has needs which have arisen as a result of a disability, accident or illness that cannot be met from existing universal or specialist health services alone.

For children and young people who are eligible for CYPCC, the ICB works collaboratively with the local authority to ensure a holistic approach is adopted to meet the health and care needs of the child or young person. These cases are usually subject to joint funding arrangements with the local authorities.

5.4 Joint Funding

For adults, a Joint Package of Care may be agreed where an individual has a particular identified health need which cannot be met through existing commissioned care (for example if they are not eligible for CHC but they have an assessed health need that is beyond the power of the local authority to meet on its own). In such cases the Joint Funding

¹ [National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care - July 2022 \(Revised\) - corrected May 2023 \(publishing.service.gov.uk\)](#)

Protocol will be followed, which is available on the ICB's website. Care needs will be identified within an assessment and be part of an individual's care plan. It may also be applicable to those who are found to be no longer eligible for CHC or CYPCC.

5.5 Multidisciplinary Team

In the context of assessing eligibility for CHC a Multidisciplinary Team (“**MDT**”) is a team of at least:

- two professionals who are from different healthcare professions; or
- One professional who is from a healthcare profession and one person who is responsible for assessing an adult's needs for care and support under section 9 of the Care Act 2014.

5.6 Decision Support Tool

The Decision Support Tool (“**DST**”) is a national tool used as part of the process to determine eligibility for adults who are being assessed for CHC and children and young people being assessed for CYPCC. It 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 (for CHC) and make decisions in respect of eligibility for CYPCC.

5.7 Fast Track Pathway Tool

Adults with a rapidly deteriorating condition that may be entering a terminal phase, may require 'fast tracking' for immediate provision of CHC. A Fast Track Pathway Tool (completed by the appropriate clinician), with clear reasons why the individual fulfils the criteria, and which clearly evidences that an individual is both rapidly deteriorating and may be entering terminal phase, is sufficient to establish eligibility with no requirement to complete a DST. If approved the individual will then be on the fast track for the immediate provision of CHC (the “**Fast Track**”).

5.8 NHS-funded Nursing Care

For individuals in care homes with nursing, registered nurses are usually directly employed by the care home. To fund the provision of such nursing care by a registered nurse, the NHS makes a payment direct to the care home in respect of individuals who have an assessed need for nursing. 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.

5.9 Children in Care

A child who has been in the care of their local authority for more than 24 hours is known as a child in care (“**CIC**”). Children in care are likely to be living with foster parents, in a residential children's home, or in residential settings like schools or secure units.

5.10 Care Leavers

A care leaver is a young adult between the ages of 18-25 who has previously been a child in the care of their local authority.

5.11 Special Educational Need and/or Disability (SEND)

A child or young person who has a special educational need and/or disability (“SEND”) may have an education, health and care (“EHC”) plan that identifies specific unmet health needs requiring ICB funding to address.

6 Core principles for decision making

In an effort to balance safety, sustainability, and value for money, the ICB has developed this policy to facilitate consistent, transparent decision-making and to assist with equitable distribution of NHS resources.

Application of this policy will help to make sure that care decisions:

- give due consideration to individuals’ wishes around care and support;
- are person-centred;
- are robust, fair, consistent, and transparent;
- are based on an objective assessment of the individual’s need(s), safety and best interests;
- consider the safety, sustainability, and appropriateness of care to the individual and those involved in care delivery;
- involve the individual and their appointed representative whenever possible and appropriate;
- account for the need for the ICB to allocate its financial resources in the most cost-effective and equitable way; and
- support individual choice to the greatest extent possible considering the above factors.

In instances where more than one suitable care option is available, the Funded Care Team will need to balance the individual's circumstances (taking into account all relevant factors) with the ICB’s responsibility to provide care equitably across its entire population.

Many individuals prefer being cared for in their own homes rather than in a registered care home. Although the choice of care setting will be taken into account, there is no automatic right to a home-based care package.

It can, in some circumstances, be difficult to deliver care at home on a sustainable and safe basis. For example, it can often not be possible to replicate support services available within in-patient NHS settings and registered care facilities (e.g., 24-hour nursing care) at home. The Funded Care Team will consider individual circumstances and all relevant factors when considering whether a home care package is a feasible option.

The Funded Care Team will need to identify and assess each care option for cost-effectiveness and consider this alongside the psychological and social care needs of the individual and the impact on their home and family life as well as the individual’s care

needs. In doing so, the Funded Care Team will take into account the ICB's Public Sector Equality Duty under the Equality Act, and obligations under the Human Rights Act and Article 8 of the European Convention on Human Rights.

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

7 Consent and capacity to make decisions

The Funded Care Team will support individuals in playing an integral role in shaping a personalised approach to meeting their care needs. In situations where an individual has been formally assessed as lacking the mental capacity to make a decision and falls within the remit of the Mental Capacity Act 2005, the Funded Care Team will act in accordance with that individual's best interests. This will be in line with the Mental Capacity Act 2005 and the ICB'S Mental Capacity Act & Deprivation of Liberty Safeguards Policy, available on the ICB's website and is also included in the references section of this policy.

For CYPCC, the consent of the child or young person (or their parents where necessary) to be considered for continuing care should be sought. Where there are concerns that an individual may have significant ongoing needs, and that the level of appropriate support could be affected by their decision not to give consent, the Funded Care Team should discuss with the local authority the implications of this.

Where the individual is under 16 and lacks the mental capacity to make a decision, someone with parental responsibility can give consent for them, provided that person has capacity to give consent. If one person with parental responsibility gives consent and the other does not, the Funded Care Team will consider whether it can accept the consent of one parent, based on the specific facts and circumstances.

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

8 Safeguarding

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

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

The safeguarding of individuals is integral to the commissioning, quality assurance, clinical governance, performance management and finance audit arrangements.

The ICB's Safeguarding Policy can be found on the ICB's website².

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

9 Personal Health Budgets

All individuals in receipt of CHC and CYPCC who live at home will be offered a Personal Health Budget (“**PHB**”) to meet their assessed care needs.

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

- **Notional budget:** the ICB is responsible for holding the budget and using it to arrange and secure the agreed care and support
- **Third party budget:** an organisation independent of both the individual and the ICB (for example an independent user trust or a voluntary organisation) is responsible for and manages the budget on the person’s behalf and arranges support by purchasing services in line with the agreed care and support
- **Direct payment:** the PHB holder or their representative has the budget on a prepaid card or paid into a dedicated bank account and takes responsibility for purchasing the agreed care and support.

A notional PHB may be the most appropriate option for some individuals eligible for CHC/CYPCC should they wish to have a PHB, as this functions similarly to a traditional home care package, however this will depend on the circumstances of each case.

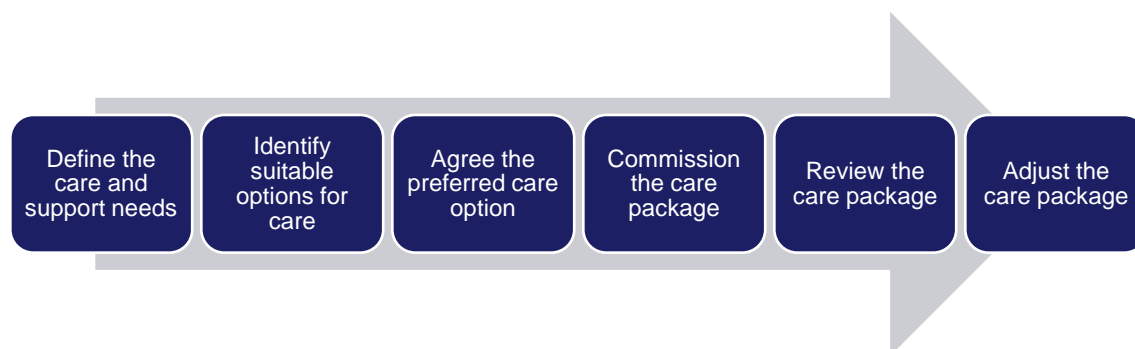
Individuals in receipt of a Joint Package of Care can also be offered a PHB although there is no automatic entitlement to one. The ICB will consider all facts and circumstances when deciding whether to offer a PHB for Joint Packages of Care.

Developing the PHB care plan will follow the steps outlined in the BNSSG PHB Policy and the following sections, however further information on the ICB’s approach to PHBs is available in the BNSSG PHB Policy, which can be found on the ICB’s website and is also included in the references section of this policy.

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 individuals work through the options available to them.

10 Overview of the commissioning process

A high-level overview of the commissioning process is set out below. This is described below and is built into this policy.



11 Developing options for care

Once eligibility for NHS-Funded Care for an individual has been determined an Assessor or care coordinator will continue to work with the individual and / or family/carer/representative to explore how care could be provided to meet the individual's assessed needs. The discussions will help to clarify the individual's care needs and the outcomes that the person wants to achieve.

The outcome of these discussions will be captured in a care needs document, which will aid the relevant Brokerage Team in identifying available care options.

An individual who lacks the mental capacity to make decisions about their care will still be included in discussions as much as they are capable of participating. The assessor will also discuss care options with others involved in the individual's care, in accordance with the principles of the Mental Capacity Act 2005 and the ICB's Mental Capacity Act and Deprivation of Liberty Safeguards Policy.

There may be several suitable options to meet an individual's needs. These typically involve care at home or in a registered care setting such as a nursing home, residential home/school, or an independent hospital. In identifying appropriate options for individuals eligible for NHS-Funded Care, the Funded Care Team will consider factors such as:

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

Where the ICB funds care in an individual's home, it is important to understand that a time may come when it is no longer appropriate for care to continue within the home environment. The Funded Care Team will periodically review the arrangement to ensure it remains safe, sustainable, and affordable and continues to meet the individual's needs.

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

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

Certain conditions or interventions may not be suitable for home management. These may include, but are not limited to, the requirement for subcutaneous fluids, intravenous fluids, complex polypharmacy, enteral feeding, continual invasive or non-invasive ventilation, or the management of grade 4 pressure injury.

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

12 Agreeing a preferred care option

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

Once the Funded Care Team has confirmed the available care options individuals or their family/carer/representative will be asked in most cases to make a decision on their first choice within 48 hours, however more time can be requested to make the decision if required. Depending on the availability of residential/nursing home support or a domiciliary package of care at home, it is not always possible to find a suite of options that can meet the need of the individual which are aligned to the responsibility of the ICB to make equitable decisions. The Funded Care Team will make the necessary arrangements with the individual and the care provider to confirm for a suitable start date.

The Fast Track pathway (for adult CHC) requires an adapted approach so that needs can be met in a timely way. For those at home and whose care needs have changed and can

no longer be met safely or sustainably at home, the ICB may only be able to offer one option for the place of care if it is not able to locate any other options taking into account the general urgency of the Fast Track pathway. If this location of care is not the preferred place for the individual or the family, the ICB will endeavour, as soon as practical, to find a suitable alternative place of care.

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

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

13 ICB Authorisation

Authorisation to commission an agreed care package is granted in line with the ICB's Standing Financial Instructions ("SFIs")³. SFIs detail the financial responsibilities, policies and procedures adopted by the ICB.

The formal authorisation to procure packages of care is delegated as follows (values represent weekly costs of packages of care, inclusive of VAT where applicable) and will follow an escalation process:

Level 1

Care home placement up to £2,000 per week

Domiciliary care package up to £1,500 per week

- Care packages and placements being made at existing agreed rates can be authorised by:
 - CHC Clinical Lead and Lead for CHC Operations (for adults) or Lead for Complex Cases;
 - CYP Nurse and Head of CYP (CYP CC).
- Any care home placement requiring enhanced care will move to level 2 for authorisation.
- Where the proposed care agency or care home standard fees are different to those already agreed by the ICB, for example where a care home placement has been approved at under £2,000 per week but the provider later increases its core rates, the case will move to level 2 for authorisation.

³ <https://bnssg.icb.nhs.uk/about-us/governance-handbook/>

Level 2 – Complex Care Panel

Care home (CH) placement between £2,001 and £5,000 per week

Dom care (DC) package between £1,501 and £3,500 per week

- Care packages and placements require authorisation by the ICB Complex Care Panel.
- Any care home placement requiring 24 hour enhanced care or greater will be referred to the ICB High-Cost Panel.

Level 3 – High Cost Panel

Care home (CH) placement between £5,001 and £10,000 per week

Dom care (DC) package between £3,501 and £10,000 per week

- Care packages and placements must be authorised by the ICB High-Cost Panel.

Level 4 – Extraordinary High Cost Panel

Any care package or placement between £10,001 and £15,000 per week

- Care packages and placements will require authorisation by an extraordinary High-Cost Panel including the members of High Cost panel plus the Director of Nursing.

Level 5

Any care package or placement between £15,001 and £20,000 per week

- Panel will include the Chief Nursing Officer, and Chief Finance Officer **or** Chief Executive Officer.

Level 6

Any care package or placement above £20,001 per week

- Care packages and placements will require authorisation by a specially convened panel including Chief Nursing Officer, Chief Finance Officer, Chief Executive and a Non-Executive member.

14 Considering alternative requests for care

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

Where a care option is requested by an individual, the costs and risks will need to be considered by the Funded Care Team before a decision can be made to arrange the care. The request will be taken through the relevant authorisation process detailed in section 13.

This process will take into account the core principles for decision making set out in section 6, and the key considerations for developing care options listed in section 11. In addition the process will consider whether a decision not to pay for a more expensive option would

be reasonable and proportionate given the potential effect on the individual and their family/carers/representative and their rights.

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

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

15 Appealing the ICB's decision

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

- Email address: bnssg.chc@nhs.net
- Post to: Funded Care Team, NHS Bristol, North Somerset & South Gloucestershire ICB, Floor 2, North Wing, 100 Temple Street, Bristol, BS1 6AG It will be important that an individual appealing provides a clear rationale as to why the decision should be reviewed.

In such cases the decision of the relevant authorising body will be reviewed by the next higher level of authorisation, as set out in section 13. For example, an appeal of a decision by the Complex Case Panel at level 3, would be considered by the ICB High Cost Panel at level 4.

The review of the decision will be clearly documented and shared with the individual or the representative/advocate acting on their behalf.

If an individual is dissatisfied with the decision they will have the opportunity to make a complaint, and details as to how to do so will be included within the decision response.

16 Refusing care

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

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

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

17 Individuals with existing care arrangements

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

If an individual's existing care package is not identified by the Funded Care Team as a suitable care option, or is more expensive than the personalised options offered by the ICB, then the case will be presented to the relevant authorising body for a decision following the process set out above in section 14. As part of this process the ICB will consider if there are reasons in each specific case why it should meet the cost of the existing package.

In situations where this process identifies that carers are employed at rates of pay in excess of those deemed appropriate by the ICB for the tasks being undertaken, which may be in cases where an individual has either self-funded care arrangements, or used a social care Direct Payment, the ICB will expect pay rates to be brought in line with its guide price for personal assistants, which is broadly in line with Agenda for Change and set out in a Pay vs Task Tool. Any changes will be made in compliance with applicable employment legislation at the time of the change. The ICB will provide HR support as required to facilitate this.

18 Enhanced care

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

Requests for enhanced care will be considered at the relevant authorising level as set out at paragraph 13 and subject to review. This process applies where the request is made as part of the CHC or CYPCC annual review, or in response to a change in need. The Funded Care Team will operate a streamlined authorisation process where risk and safety concerns around a request for enhanced care require a prompt decision.

19 Additional private care

The ICB is obliged to provide services that meet the assessed needs and reasonable requirements of the individual eligible for NHS-Funded Care. These services, whether

delivered within a registered care setting, or at home must be free of charge to the individual.

In the case of adult CHC, the package of care which the Funded Care Team has assessed as being reasonably required to meet the individual's assessed needs is known as the core package. The ICB 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 top-up arrangements for CHC provision are unlawful.

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

Detailed guidance on this issue can be found in the National Framework for Continuing Healthcare and Funded Nursing Care.

20 Respite

Respite is an interim short-term arrangement for carers which provides relief from their caring duties. Respite requirements will be assessed on an individual case by case basis and included with the care and support plan.

In the event that the ICB receives a request from an individual (and/or his/her representative/s) to fund a period of respite (which is not already provided for within the care plan), the ICB will review the individual case with the aim of determining whether there are any circumstances which would warrant the approval of additional funding over and above the agreed package of care.

The amount of respite care that the ICB will fund will be considered on a case by case basis and will be based on individual circumstances. The panel decision as to whether to fund additional respite care will be clearly documented, shared with the individual or the representative/advocate acting on their behalf and details will be provided about how the person may appeal the decision.

Where the individual package of care is joint funded with the local authority, requests for respite will be considered jointly between the ICB and the local authority. Responsibility to fund the respite will depend on the specific circumstances.

Please refer to the PHB Policy in respect of how respite care is commissioned when a PHB has been agreed.

Guidance around ICB contributions to respite for children who are eligible for CYPCC is set out in a Standard Operating Procedure, which is available on the ICB's website.

The ICB will consider a request for joint funding of a respite care package for a child where there is a clear health need and all other respite options have been explored. Respite care

should deliver a mix of health care and social care where health needs can be met but also leisure and pleasure activities are provided or accessed.

Where the provision of emergency health care interventions is required to keep the child well and safe then the ICB will consider funding towards a short break. Cases will be considered on an individual basis depending on assessed needs and clinical interventions.

Consideration will be given to the following factors:

- the care requires the carers to be appropriately trained and competent in meeting the clinical need. i.e., a child that requires airway management via mechanical ventilation, effective suction or administration of medication.
- the purpose of the care or part of the care is to deal with continuing medical needs which if not met will give rise to urgent or immediate medical needs.
- In exceptional circumstances the care must be provided by a qualified nurse.

21 Transport

The ICB's general position is that transport for individuals to attend health appointments will be reimbursed only if specific circumstances are met. These circumstances are set out in the NHS (Travel Expenses and Remission of Charges) Regulations 2003 (as amended) ("**HTCS**"). Broadly and as per the HTCS, the ICB will reimburse travel expenses incurred in obtaining certain NHS services commissioned under the NHS Act 2006 for individuals who are in receipt of certain state benefits or who are on a low income. In line with the scheme, the ICB will also arrange for those same individuals to be exempt from the payment of certain NHS charges which would otherwise be payable.

Where the circumstances set out in the HTCS are not applicable, routine transport costs will not be funded as a part of a package of care apart from in exceptional circumstances and these will be considered on a case-by-case basis via the funding panel authorisation process.

The ICB recognises that travel may form part of a package of care as an assessed health and social care need and where this is the case, it is expected that this would be included in the individual's care plan and would therefore be agreed as part of the overall package.

The ICB is not therefore required to pay / reimburse the travel costs associated with the Respite Travel, Educational Travel or Family Travel, however it will consider each application on a case by case basis.

In relation to Educational Travel, the ICB will not usually fund travel to educational settings as it is noted that local authorities have a number of duties in this regard.

In relation to Family Travel (i.e. travel expenses incurred by family members to visit individuals placed out of area that are funded by CHC), the ICB will consider funding travel to facilitate family contact on a case-by-case basis where exceptional needs are identified. Visits out of the area will usually mean visits outside of the ICB's area, however this can also mean visits within the ICB's area if an individual is placed in a different part of the ICB area which is far away from their family. In order to review a request for funding to facilitate family contact, the ICB will expect to see evidence of a clear best interests need for the

individual to be visited by family members (which includes clinical, emotional, psychological and wider needs).

22 Funding requests for interventions not routinely commissioned

Requests for funding for treatments, drugs and devices (collectively referred to as interventions) that the ICB does not routinely fund will be managed via the Exceptional Funding Request (“**EFR**”) process.

There are two situations where the ICB does not routinely commission an intervention. These are where:

- the ICB does not commission the intervention for anyone with this condition; and/or
- the patient does not meet the criteria set out in the commissioning policy for this intervention.

To be eligible for consideration as an EFR, a case needs to be made by an individual's referring clinician on medical grounds, being deemed either sufficiently rare, or clinically exceptional.

Clinical exceptionality is defined as being (a) an individual is significantly different in some clinical manner from the cohort of patients with the same condition at the same stage of progression for whom the ICB does not fund the intervention and (b) the individual is likely to gain significantly more clinical benefit from the intervention than that cohort.

Further information on EFRs is available on the ICB's website and the address is included in the references section of this policy.

23 Review

Care packages for individuals eligible for NHS-Funded Care will be subject to review, initially at 3 months and then annually, to ensure that care needs and personalised outcomes are being met and that the care package remains clinically safe, sustainable and within cost limits.

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

It is important to recognise that the review may result in either an increase or decrease in support and will be based on the assessed needs of the individual at that time. If it is clear that an individual's needs have changed it may be necessary to re-consider the care options available, following the process set out in sections 11 and 12 of this policy.

Individuals and their carers/representatives must be aware that there may be times where it will no longer be appropriate to provide care in line with the individual's existing arrangements or preferred choice based on safety concerns, sustainability or cost. Any decision to provide care in a different way will take account of all relevant factors set out in section 11 of this policy.

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

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

24 Training requirements

In order for this policy to operate effectively an understanding of its contents is required for ICB staff, specifically the staff members in roles included in section 4 of this policy. Refresher training will be delivered to all staff within the Funded Care Team within 1 month of publication.

25 Equality Impact Assessment

To ensure compliance with the ICB'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.

The key policy rationale for the National Frameworks for adult and children's CHC is to ensure that there is a consistent method to undertake the assessment for NHS CHC throughout the NHS. The purpose of the assessment process is to assess an individual's needs across a range of domains to establish whether they have a "primary health need".

Eligibility for NHS CHC is not based on condition, or diagnosis. The core purpose of the National Framework is based on eligibility by needs only regardless of someone's age, disability gender or race etc. and the framework is therefore inclusive in its principles with no individual being treated differently on the basis of any specific protected characteristic.

This commissioning policy supports the delivery of the National Frameworks for adult and children's CHC, aiming to ensure that the ICB effectively commissions care and support in a person-centred way, with a high degree of personalisation.

By the nature of the healthcare provided, there is a tendency for recipients of NHS Funded Care to be older and/or disabled in some way. The core values and principles of this policy are aimed at providing consistency and so improving access to funded care for these groups.

Effective commissioning of care and support has a positive impact on equality and diversity across most protective characteristics. By commissioning care in a person-centred way,

with a high degree of personalisation, the ICB can support people to live fulfilled lives within their communities.

26 Information Governance, Confidentiality and Data Security

Accurate, timely and relevant information is essential to deliver the highest quality health care, and it is the responsibility of all ICB staff to ensure and promote the quality of information and to actively use information in decision making processes. The ICB's Information Governance Policy sets out how the ICB will ensure that information is held securely and confidentially, obtained fairly and efficiently, recorded accurately and reliably, used effectively and ethically, and shared appropriately and lawfully⁴.

The BNSSG ICB Confidentiality and Security of Information Policy details how the ICB will meet its legal obligations and NHS requirements concerning confidentiality, information security standards, ensuring that confidential information sent to or from the organisation is handled in such a way as to minimise the risk of inappropriate access or disclosure⁵.

27 Implementation and Monitoring Compliance and Effectiveness

This policy will be audited as part of the Funded Care Team audit programme to demonstrate that the ICB is being effective at ensuring equity in the delivery of care to individuals across Bristol, North Somerset and South Gloucestershire. Exceptional reports on delivery of equity and choice in Funded Care will be taken to Funded Care Delivery Group, Funded Care Risk, Audit and Governance Group, Outcomes, Quality and Performance Committee, Finance Estates and Digital Committee.

28 Countering Fraud, Bribery and Corruption

The ICB is committed to reducing and preventing fraud, bribery and corruption in the NHS and ensuring that funds stolen by these means are put back into patient care. During the development of this policy document, we have given consideration to how fraud, bribery or corruption may occur in this area. We have ensured that our processes will assist in preventing, detecting and deterring fraud, bribery and corruption and considered what our responses to allegation of incidents of any such acts would be.

In the event that fraud, bribery or corruption is reasonably suspected, and in accordance with the Local Counter Fraud, Bribery and Corruption Policy, the Funded Care Team will refer the matter to the ICB's Local Counter Fraud Specialist for investigation and reserve the right to prosecute where fraud, bribery or corruption is suspected to have taken place. In cases involving any type of loss (financial or other), the ICB will take action to recover those losses by working with law enforcement agencies and investigators in both criminal and/or civil courts.

⁴ <https://bnssg.icb.nhs.uk/library/information-governance-policy1/>

⁵ <https://bnssg.icb.nhs.uk/library/confidentiality-and-security-information-policy/>

29 References, acknowledgements and associated documents

BNSSG ICB Mental Capacity Act & Deprivation of Liberty Safeguards Policy

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

The BNSSG ICB Safeguarding Policy

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

BNSSG Personal Health Budgets Policy

<https://bnssg.icb.nhs.uk/library/personal-health-budgets-policy/>

Policy on the management of Compliments, PALs enquiries and Complaints

https://media.bnssgICB.nhs.uk/attachments/bnssg_complaints_policy_c7Y4GQB.pdf

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

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

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

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/499611/children s continuing care Fe 16.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/499611/children_s_continuing_care_Fe_16.pdf)

BNSSG ICB Exceptional Funding

<https://bnssg.icb.nhs.uk/about-us/governance/interventions-not-normally-funded-innf/exceptional-funding/>

BNSSG Information Governance Policy

<https://bnssg.icb.nhs.uk/library/information-governance-policy1/>

BNSSG ICB Confidentiality and Security of information Policy

<https://bnssg.icb.nhs.uk/library/confidentiality-and-security-information-policy/>

30 Appendices

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

Human Rights Act

In adopting this policy the ICB 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, the ICB 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, the ICB 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 ICB 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 ICB 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 ICB 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, the ICB 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 ICB's duty to provide resources for its entire population.

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

Public Sector Equality Duty

The Equality Act 2010 introduced the public sector equality duty. In relation to implementation of this policy, the ICB 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, the ICB 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 the ICB's obligations to its entire population; however, decisions must be taken on the individual circumstances of each situation considering whether it would be reasonable to make additional resources available in each case.

Appendix 2 – Implementation Plan

Target Group	Implementation or Training objective	Method	Lead	Target start date	Target End date	Resources Required
Staff	Funded Care Team awareness and understanding of the revised policy	Refresher training to be delivered over a one-month period post publication of the policy.	DW	Jan 25	Feb 25	N/A
Public	Publication of the policy	Policy to be added to the ICB website.	LC	Jan 25	Jan 25	N/A