

Decision Making Framework

1. Introduction

Clinical Commissioning Groups (CCGs) have a primary responsibility to commission care for the local population. In doing so, we have a range of statutory, legal and ethical duties, including a responsibility to make good use of public resources. We have a statutory duty not to exceed our annual financial allocations, while we also need to make substantial savings in order to continue to meet increasing demand. We are therefore faced with difficult decisions about which services to provide for our local populations, prioritising within finite resources.

Decision making involves the exercise of judgement and discretion. The purpose of this framework is to support clear, consistent, equitable and well-communicated decision making within limited resources.

This framework is slim and broken into three discreet areas:

1. Scope – the kinds of decisions the framework applies to.
2. Considerations – the list of substantive principles to be applied.
3. Process – the standards that should be applied to decision making.

2. Scope of framework

The Decision Making Framework is available to assist NHS Kernow when taking commissioning decisions, particularly those which may have a significant impact. It is not mandatory and is not a stand-alone document. It forms part of a suite of policies, procedures and templates the CCG is able to use to inform its decision-making, for example in:

Commissioning

The development of strategic plans for individual services:

- Making investment and disinvestment decisions during the annual commissioning cycle.
- Making in-year decisions about service developments or disinvestments.
- Whole service reconfigurations, contract extensions, decisions made under call-off agreements or where specifications are determined by NHS England.
- Significant individual cases.
- The management of individual funding requests.

Procurement

- Design of pre-procurement processes and specifications.
- Decisions (within the context of current procurement legal requirements).

This framework can be followed by all the CCG employees and staff on temporary or honorary contracts, and representatives acting on behalf of the CCGs, including staff from member practices, and could apply to any external organisations acting on behalf of the CCG including other CCGs and the South, Central and West Commissioning Support Unit (SCW CSU).

3. Consideration

Fair use of public resources, balancing competing claims and promoting equality, while staying true to our common NHS values, should be achieved through considering and balancing the following:

- **Need** - the CCGs should consider the health needs of people and populations, including: capacity to benefit¹ from health care interventions; exceptional need and health inequalities.
- **Equity** - seeking to ensure equity of provision, access and consideration. Access to services should be governed, as far as practicable, by the principle of equal access for equal clinical need. We will not discriminate on the grounds of personal or protected characteristics. CCGs should not, therefore, agree to fund treatment for one patient which cannot be afforded for, and openly offered to all patients with similar clinical circumstances and needs.
- **Effectiveness** – we will consider the strength of evidence of the effectiveness of care and where there is no evidence to support a treatment or provision of a service, the CCGs will be under no obligation to commission or continue a service.
- **Patient, public and staff viewpoints** – the NHS Constitution, the Health and Social Care Act 2012 and relevant national policy guidelines set out duties to enable, listen, engage with and demonstrate how these views have informed decisions.
- **Quality of care** – the CCGs must ensure the best possible quality of care is commissioned.
- **Cost effectiveness** - the CCGs should ensure that the decisions it takes demonstrate value for money and an appropriate use of NHS funding.

¹ The potential improvement in health an individual or group might achieve through the use of health services.

- **Environment** – the CCGs recognise their responsibility to carry out their activities in an environmentally responsible manner and we will incorporate environmental considerations into our decision making.
- **Financial** - CCGs are duty bound not to exceed their budgets. This is significant because investing in one area of health care inevitably diverts resources from other areas of service, care or treatment.
- **Legal duties** – including a range of relevant primary and secondary legislation.²
- **Other stakeholders and partners** - including national and local policymakers, other public bodies, NHS England and others. CCGs decisions can impact on the operation and effectiveness of other service providers and organisations in the wider environment.
- **Social value** - the CCGs recognise the impact of its purchasing and procurement decisions on the regional economy and the positive contribution it can make to economic and social regeneration, securing wider social, economic and environmental benefits through our decision-making.
- **Sustainability** – recognising the importance of prevention and balancing the needs of current and future populations as decisions taken today can have implications for future provision and long-term health of the population.

4. Process

Clarity and consistency in decision making is achieved through a process that should:

- Be well structured, inclusive and timely.
- Pay due regard to the considerations above.
- Be recorded and well communicated to all relevant parties throughout.
- Use appropriate qualitative and quantitative information and evidence.
- Involve people with appropriate skills, knowledge and experience.
- Evidence compliance with legal duties – see footnote 1 above.
- Be clear and justifiable to the public and other stakeholders, such as other public bodies. In line with the NHS Constitution, full reasons for funding decisions should be given so that patients and other interested parties can understand the basis on which these decisions have been made.
- Manage actual and potential conflicts of interest, demonstrating the integrity of the wider NHS commissioning system and protecting CCGs and others from any perceptions of wrong-doing.

² Such as a Direction made by the Secretary of State, the Equality Act 2010, the Health and Social Care Act 2012, the Public Contracts Regulations 2015, the Public Services (Social Value) Act 2012, NHS Procurement, Patient Choice and Competition Regulations 2013, NHS Constitution

Appendix 1: A list of key Acts and statutory guidance informing this framework

Legal duties

This section considers a range of legal duties under which health and care commissioners operate, with regard to equality, social considerations and so forth.

The Health and Social Care Act 2012

The Health and Social Care Act 2012 introduced the first legal duties about health inequalities. It included specific duties for health bodies including the Department of Health, Public Health England, Clinical Commissioning Groups, and NHS England. It requires bodies to have due regard to reducing health inequalities between the people of England. The Act also brought in changes for local authorities on public health functions.

The Equality Act 2010

Section 149(1) of the Equality Act 2010 puts various requirements on NHS organisations when exercising their functions. The general duty requires NHS organisations to have due regard to:

- Eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The NHS Constitution

The NHS Constitution sets out rights for patients, public and staff. It outlines NHS commitments to patients and staff, and the responsibilities that the public, patients and staff owe to one another to ensure that the NHS operates fairly and effectively. All NHS bodies and private and third sector providers supplying NHS services are required by law to take account of the Constitution in their decisions and actions. The NHS Constitution sets out seven key principles for the NHS including a commitment that the NHS provides a comprehensive service, available to all (available to all irrespective of gender, race, disability, age, sexual orientation, religion, belief, gender reassignment, pregnancy and maternity or marital or civil partnership status.)

Access to NHS services is based on clinical need, not an individual's ability to pay. These principles are underpinned by the NHS values, which include Everyone counts – to maximise resources for the benefit of the whole community, and make sure nobody is excluded, discriminated against or left behind.

Best value

The Local Government Act of 1999 sets out a general Duty of Best Value for specified local government organisations to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.” Under the Duty of Best Value local authorities should consider overall value, including economic, environmental and social value, when reviewing service provision.

In March 2015, the Department for Communities and Local Government (DCLG) issued revised Best Value Statutory Guidance which said: ‘Authorities can however apply the concept of social value more widely and this Guidance recommends that authorities consider social value for other contracts (for example below the threshold or for good and works) where it is relevant to the subject matter of the contract and deemed to be beneficial to do so.’

The Social Value Act

The Public Services (Social Value) Act came into force on 31 January 2013. This Act requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. The term ‘social value’ refers to approaches that seek to maximise the impact of expenditure and the additional benefit to the community from the commissioning or procurement process over and above the delivery of the actual service.

The power of the Act is restricted in that it only stipulates a requirement to “consider” how what is being procured might improve the well-being of the relevant area and how the procurement process might act with a view to achieving that improvement. Nevertheless, this would need to be demonstrated, should an objection be raised.

The Act requires authorities to make the following considerations at the pre-procurement stage: how what is proposed to be procured might improve the economic, social and environmental well-being of the “relevant area” how in conducting a procurement process it might act with a view to securing that improvement whether to undertake a consultation on these matters. The Act defines “relevant area” as being the area in which the authority (or authorities) primarily exercise their functions within the United Kingdom.

Public Procurement Notices (PPNs)

PPNs are guidance issued periodically by central government. For instance, the PPN which deals with the Social Value Act³ says:

- The Act applies to the pre - procurement stage of contracts for services.
- Commissioners should consider social value before the procurement starts.
- Commissioners and procurers should be taking a value for money approach - not lowest cost - to assessing contracts.
- The Act requires commissioners and procurers at the pre-procurement stage to consider how what is to be procured may improve social, environmental and economic wellbeing of the relevant area, how they might secure any such improvement and to consider the need to consult.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79273/Public_Services_Social_Value_Act_2012_PPN.pdf

Appendix 2: Frequently Asked Questions (FAQ)

What is the purpose behind the Decision Making Framework?

Some CCGs have recognised the need to develop a practical decision making framework that reflects the values of the NHS and which could be used to support commissioning decisions in a consistent manner. In addition, we wanted an approach that offered a source of reassurance for partners, patients and the public.

We know making commissioning decisions is rarely a straightforward activity and can involve balancing competing tensions such as opposing viewpoints and differing needs. The outcomes (or decisions) agreed will not necessarily satisfy all those involved. Therefore, importance was placed on making this a transparent process which involved listening to, acknowledging and balancing potential competing views.

Why have the CCGs decided to develop a joint framework?

Patients and the public think of the NHS as one organisation; not multiple organisations some of whom provide services and others who commission those services.

The principles contained within the Framework are capable of transcending organisation boundaries. Our aim is to create greater consistency in the way we approach commissioning decisions in the Southwest. The framework is intended to support clear, consistent, equitable and well-communicated decision making within limited resources.

Does this replace the existing ethical frameworks and if so, what's the difference?

Yes it does. In 2016 each CCG implemented its own ethical framework. In developing the joint framework it was argued the term 'ethical' was value laden and open to misinterpretation owing to the range and diversity of ethical positions that could be held with regard to healthcare. As a consequence we opted to adopt the title 'decision making framework' instead.

Does this cover all CCG decisions?

The intention is the Decision Making Framework will be used to support commissioning decisions. It is not a standalone document and will be used in conjunction with each CCG's appropriate policies and procedures. A template encompassing the 12 principles is attached to the Framework.

Can you explain what “capacity to benefit” means?

In the UK, the NHS often defines need as a “capacity to benefit”. It depends on the potential of preventive or treatment services to remedy health problems. Capacity to benefit” is also an established health economics term which refers to the potential improvement in health of an individual (or group) having had access to a specific health service

How does the framework link to quality and equality impact assessments?

The Decision Making Framework is not a stand-alone document. It should be used alongside other CCG policies to support and provide confidence in the legitimacy of decisions. It is considered complementary to impact assessments.

How will the framework be implemented?

Each organisation will adopt the Framework and rely on its own governance arrangements to evidence its use in decision making.

What practical steps do I need to take when I’m making a decision?

Determine which key policies or procedures are relevant to the decision being made. Review the 12 principles contained within the Framework, completing the attached template and using the documented answers to inform the decision making process.

Who do I contact if I have any further queries?

Contact NHS Kernow’s Corporate Governance team in person or email them at: kccg.corporategovernance@nhs.net