NHS
Somerset
Clinical Commissioning Group

CHOICE AND EQUITY POLICY

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Name of Originator/Author:	Phoebe Sherry-Watt
Name of Responsible Committee/Individual:	Sandra Corry
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Policy for the Provision of NHS Continuing Healthcare:
Choice and Equity for Patients of Somerset Clinical Commissioning Group

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POLICY FOR THE PROVISION OF NHS CONTINUING HEALTHCARE: CHOICE AND EQUITY FOR PATIENTS OF SOMERSET CLINICAL COMMISSIONING GROUP

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Sponsoring Director:	Sandra Corry; Director of Quality and Nursing
Author(s):	Phoebe Sherry-Watt; Associate Director of CHC Services

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CHOICE AND EQUITY POLICY

1 INTRODUCTION

1.1 This policy sets out the process NHS Somerset Clinical Commissioning Group (CCG) will follow to commission and make provision for equitable, safe and effective care, for individuals who have been assessed as eligible for fully funded NHS Continuing Healthcare (CHC). For clarity purposes although this policy refers primarily to adults the commissioning principles laid down are also applicable to children and young people funded under the NHS National Framework for Children and Young Peoples Continuing Care (CC). Where this document refers to CHC this relates to adults over the age of 18 and where this document refers to CC this relates to children and young people under the age of 18.

1.2 The policy describes the ways in which Somerset CCG will commission care in a manner that reflects the choice and preferences of individuals whilst ensuring a balance between choice, safety and effective use of resources available to the CCG. In the delivery of CHC and CC, the CCG have to ensure consistency and fairness in the application of the National Frameworks; whilst implementing and maintaining good practice and ensuring quality standards are met and sustained, in line with commissioning for value.

1.3 This policy should be read in conjunction with:

- National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care October 2018 (Revised);
- National Framework for Children and Young Peoples Continuing Care 2016;
- Somerset CCG Policies and Procedures for Safeguarding;
- The Care Act 2014 (and Regulations and Statutory Guidance;
- Mental Capacity Act 2005 and Code of Practice;
- Human Rights Act 1998;
- The National Health Service Act 2006 (and Regulations and Statutory Guidance)
- Equality Act 2010 (and Regulations and Statutory Guidance)
- Somerset CCG Continuing Healthcare Operational Policy;
- Somerset CCG Personal Health Budget Policy;
- Somerset CCG policies and procedures for Safeguarding

2 PURPOSE AND SCOPE

2.1 The purpose of this policy is to provide clarity regarding the commissioning processes undertaken in relation to CHC and CC provision, ensuring that the process is person centred; that equity, equality and risk is managed and that the CCG are able to demonstrate the most effective use of NHS

resources. The CHC or CC eligibility process is not within the scope of this document.

2.2 This policy is applicable to individuals deemed to be eligible for CHC or CC funding, including where a personal health budget has been requested, in line with the principles listed below:

- Fully funded CHC describes a package of ongoing care arranged and funded solely by the NHS for the period the individual is found to be eligible. CC funding supports a package of care in most cases funded jointly by health, social care and education to meet a young person's assessed health and care needs.
- The CCG has a duty to meet the assessed health and associated social care needs of an individual, whilst also considering the best use of resources for the population it serves. Care options will be considered to meet the assessed and identified health and social care needs of an individual who is eligible for CHC or CC and the CCG will always consider the most cost-effective option to meet the individual's assessed needs in line with CCG commissioning and contract arrangements along with any alternative options preferred by the individual. However there is no legal obligation for the CCG to provide a package of care greater than the individual's assessed health and associated social care needs. The CCG have a responsibility to ensure that all commissioned services are safe, equitable and any identified risks are appropriately and reasonably managed.

2.3 The NHS Constitution states that individuals have the right to make choices about their NHS funded healthcare and receive appropriate information to make these choices. The CCG are fully committed to delivering the Integrated Personalised Commissioning (IPC) agenda and as such, are keen to ensure that an individual's views and preferences are always obtained and considered. However, there may be occasions when an individual's preferred choice cannot be agreed. In these situations the reasons for this decision will be fully explained to the individual.

2.4 All CCG decisions will be made in accordance with its duties and obligations under the NHS Act 2006, the Equality Act 2010 and the Human Rights Act 1998.

3 CCG ROLES AND RESPONSIBILITIES

3.1 The CCG is responsible and accountable for system leadership for CHC and CC within its local health and social care economy.

3.2 The CCG has an ongoing responsibility to fund the care for individuals outside hospital settings where the individual has been assessed to have a 'primary health need' as set out in the National Framework. Anybody can qualify for CHC as long as their assessed needs meet the eligibility criteria. This care can be provided in a variety setting and can include, for example, funding for assessed nursing and medical care and, if within a care home, reasonable accommodation costs. The CCG holds responsibility and accountability for making the final decision on CHC eligibility. The CCG

will establish within a commissioning and contracting framework the costs for these services which will be subject to an annual review.

3.3 The CCG is responsible for ensuring that the assessment for eligibility for CHC and CC is undertaken using the Decision Support Tool in accordance with the National Frameworks.

3.4 The CCG is responsible for ensuring that the assessment process and Decision Support Tool are multi-disciplinary assessments of the patient's health care needs.

3.5 The CCG is responsible for ensuring the delivery of best possible health and wellbeing outcomes for those eligible for funding, as well as working to promote equality and patient choice and achieving this with the best use of available resources.

4 THE PROVISION OF SERVICES FOR PEOPLE WHO ARE ELIGIBLE FOR CHC OR CC FUNDING

4.1 The CCG have a duty to commission services that offer quality, efficiency and value for the whole population they serve. For individuals eligible for NHS funding, the CCG are only obliged to commission services reasonably required to meet the individual's current assessed health and in the case of adults, social care needs

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

"The process of assessment of eligibility and decision making should be person-centred. This means placing the individual, at the heart of the assessment and care-planning process. When commissioning the care package, the individual's wishes and expectations of how and where the care is delivered should be documented and taken into account, along with the risks of different types of provision and fairness of access to resources."

4.3 In light of the need to balance individual preference alongside safety and value for money, the CCG has developed this policy to support consistent decision making, for equitable distribution of resources and to provide transparency.

4.4 Application of this policy will ensure that decisions about care will:

- be person-centred;
- be robust, fair, consistent and transparent;
- be based on objective assessment of the individual's care needs, safety and best interests;
- have regard for the safety and appropriateness of care to the individual and those involved in care delivery;
- involve the individual and their appointed representative wherever this is possible and appropriate;
- take into account the need for the CCG to allocate their financial resources in the most cost effective way;

- support individual choice to the greatest extent possible in the light of the above factors.

4.5 This policy will also help to support consistent decision making taking into account:

- Clinical safety and quality;
- The obligations of the CCG to commission and fund packages of care for the assessed needs of eligible individuals;
- Individual choice and preferences;
- The duty of the CCG to effectively commission and ensure value for money.

4.6 At the heart of the National Frameworks is the process for deciding whether an individual is eligible for funding based on assessed care needs. The diagnosis of a particular disease or condition is not in itself a determinant of eligibility.

4.7 The CCG operates an assessment process that is carried out by a multi-disciplinary team and is in line with the core values and principles set out within the National Frameworks.

4.8 The CCG has a duty to provide a care package which reasonably meets the assessed care needs of the individual as assessed by the relevant multi-disciplinary professionals. Whilst the CCG will always strive to offer individuals a choice of care packages which meet their assessed needs and take into account any important individual circumstances, the CCG is also required to take into account its responsibility to provide care equitably for their entire population.

4.9 In instances where more than one suitable care option is available, the CCG will need to balance consideration of the individual's circumstances with their responsibility to provide care equitably for their entire population. In particular the CCG will need to identify and assess each package for cost effectiveness and consider this alongside the psychological and social care needs of the individual and the impact of each package on their home and family life as well as the individual's care needs. In doing so, the CCG will also need to take into account their public sector equality duty under the Equality Act 2010 and obligations under the Human Rights Act 1998 and Article 8 of the European Convention on Human Rights.

4.10 The setting in which NHS funded care is provided is ultimately a decision for Somerset CCG; however the CCG will take into account reasonable requests from the individual and their representative(s) in relation to particular settings as far as it is able and reasonable to do so in line with this policy.

4.11 Where a care package requested by an individual is more expensive than the option(s) offered by the CCG, then the care package should be referred to the CCG High Cost Panel for detailed consideration.

4.12 Where possible all individuals will have their care reviewed at three months and thereafter at least annually or sooner if their care needs indicate that this is necessary. Individuals with palliative care needs will have their care

reviewed more frequently in response to their medical condition. The review may result in either an increase or decrease in support offered and will be based in the assessed needs of the individual at that time.

4.13 The individual's condition may have improved or stabilised to such an extent that they no longer meet the criteria for NHS funding. In these circumstances please see the section of this policy entitled 'Change of Circumstances' for further information as to how the CCG will approach this.

5 CONSENT AND CAPACITY TO MAKE DECISIONS

5.1 The CCG will support individuals to make a decision about where they wish to receive their care. If an individual is considered not to have the mental capacity (in line with the Mental Capacity Act 2005) to make this decision then a mental capacity act assessment will be undertaken and the CCG will act in accordance with that individual's best interests in line with that legislation (see below).

5.2 Consent is vitally important in the provision of CHC packages of care and before any care is provided consent is required from the individual who is to receive it. Consent can be either written, verbal or non-verbal. For an individual to be able to give consent to care, either at home or in a registered care home, they must be:

- Given enough relevant information to make a decision;
- Able to fully understand and retain this information to be able to take a decision in line with the Mental Capacity Act (2005) Code of Practice. They must also be able to weigh up the relevant information provided to reach a decision and be able to communicate that decision by any means possible (including non-verbally) in line with the Mental Capacity Act (2005) Code of Practice;
- Acting of their own free will and not under the undue influence of another;
- Fully informed regarding what is involved, including the type of care that will be provided, what risks and benefits there are and what might happen if they refuse any aspect of treatment or care.

5.3 A third party cannot give or refuse consent for treatment or care on behalf of an individual unless that right has been legally conferred. It may need to be explained to husbands, wives, partners or other close relatives that they are not able to give consent for the individual unless the individual does not have capacity and those family members have a valid and applicable Lasting Power of Attorney (LPA) specifically including health and welfare rights (which provides them with authority to act in these circumstances), or they have been appointed as a welfare Deputy by Court Order in the Court of Protection. The CCG will request copies of relevant documentation (the LPA or Court Order) to verify an individual's authority to act on behalf of an individual who is eligible for CHC.

The five key principles of the Mental Capacity Act 2005 will be applied by the CCG when working with individuals eligible for CHC:

(i) Every adult has the right to make his or her own decisions and must be assumed to have capacity to make them unless it is proved otherwise.

(ii) An individual must be given all practicable help before anyone treats them as not being able to make their own decisions.

(iii) Just because an individual makes what might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision.

(iv) Anything done or any decision made on behalf of an individual who lacks capacity must be done in their best interests.

(v) Anything done for or on behalf of an individual who lacks capacity should be the least restrictive option with regards to their basic rights and freedoms.

5.4 Individuals Who Have Mental Capacity to Make Decisions About Care

5.4.1 An individual can accept or decline NHS Continuing Healthcare. However, in making this decision the potential risks must be assessed and the implications fully explained to them, particularly if care has been declined or may cease as a result of the individual's decision. Provided that the individual has mental capacity to make the decision, the individual is entitled to choose to take risks, even if professionals or other parties consider the decision to be unwise. The CCG will ensure that any risks involved are explained fully to the individual and set out in writing and not to make generalised assumptions about these.

5.4.2 If an individual makes an informed decision to decline/refuse care, or the decision they make results in the cessation of care, this decision and its outcome must be comprehensively documented in the individual's records.

5.4.3 It should be noted that whilst individuals can decline or accept care, they cannot demand care outside of the assessed need or demand care delivered in such a way that us unavailable to them.

5.5 Individuals Who May Not Have Mental Capacity to Make Decisions About Care

5.5.1 If it is identified that an individual may not have the mental capacity to make an informed choice; a Mental Capacity Assessment will be undertaken under the provisions of the Mental Capacity Act 2005.

5.5.2 If the Mental Capacity Act assessment identifies that an individual does not have the capacity to make an informed choice the CCG will act in the individual's best interests. 'Best Interests' are wider than best medical interests and will include factors such as the previous wishes and beliefs of the individual when competent, their current wishes, their general well-being and their spiritual and religious welfare.

5.5.3 If an individual does not have the mental capacity to make a decision about their package of care, the CHC team will commission a care package based on an assessment of the individual's best interests and in consideration of the factors outlined with this policy. This will be carried out in consultation with any Lasting Power of Attorney for health and welfare, an appointed welfare Deputy of the Court of Protection, a relevant family member or other person who should be consulted under the terms of the Mental Capacity Act 2005 and the associated code of practice. The CCG will consider whether there is a requirement for a deprivation of liberty authorisation in relation to the placement.

5.5.4 Where the individual does not have the capacity to understand the particular decision then the CCG will consider whether it is appropriate to involve an independent advocate if the CCG considers that there is no one else willing and able to be consulted or that appointing an independent advocate will benefit the individual.

5.5.5 The CCG are legally obliged to meet an individual's best interests in the delivery of any NHS CHC care package and must balance this with safety and cost effective use of finite resources at all times. Where there is a dispute with regards to an individual's best interests which cannot be resolved in some circumstances, an application may need to be made to the Court of Protection for decisions to be made. In the interim, the CCG must take steps to meet that individual's best interests in line with the Mental Capacity Act 2005 as far as possible and may utilise an interim placement or package of care to keep the individual safe in line with their assessed needs whilst any Court process is being undertaken. Consideration should also be given to whether any safeguarding referral will need to be made.

6 SAFEGUARDING

6.1 The CCG will adhere to the statutory functions for safeguarding adults under the Care Act 2014 and safeguarding children under section 11 of the Children Act 2004. An adult is defined as anyone over 18 years; all adults have the potential to be at risk of abuse or neglect. The safeguarding of individuals is integral to the CCG commissioning, quality assurance, clinical governance, performance management and finance audit arrangements. When commissioning NHS funded packages of care the CCG will take all possible measures to ensure that the safeguarding of both children and adults is evidenced within contracts and that any arrangements minimises the risks of harm and promotes the wellbeing of the individual.

6.2 The CCG’s safeguarding processes and policies must be referenced if a situation arises during the commissioning or delivery of a CHC package which places an individual at risk of harm.

7 HUMAN RIGHTS ACT

7.1 In adopting this policy, the CCG has taken into account the issue of human rights and specifically the right to respect for an individual's private and family life provided by Article 8 of the European Convention of Human Rights (ECHR).

7.2 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.

7.3 When making decisions under this policy regarding an individual, the CCG will need to consider the individual's circumstances and the impact of any care package on the individual's Article 8 rights. Any impact identified should be documented.

7.4 The Human Rights Act 1998 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 CCG will consider whether the interference is necessary, reasonable and proportionate taking into account the individuals circumstances and personal choice; the clinical appropriateness, safety and sustainability of the proposed care package and other alternatives; and the CCGs finite resources and its obligations to the wider population of Somerset.

7.5 Where an individual is already receiving care in their own home and a move to other accommodation is being considered, the CCG will need to assess the impact on the individual's needs (including physical, psychological and emotional needs) that a move to a different care setting may have

7.6 Article 8 may also be engaged in the context of an ability to maintain family and social links. If the CCGs proposed solution would be more remote from the individual's family, this will need to be taken into account in any decision making process. For example, if an individual is active within their local community and has many friends and family in the local area, a move to accommodation in a different geographical area is likely to have a material impact on the individual's Article 8 rights. Given the impact on this individual's Article 8 rights, the CCG may consider it is appropriate to commission a more expensive care option closer to the individual's community to minimise the impact on the individual's Article 8 rights. In contrast, if an individual has limited interaction within their community and has no friends or family locally, the CCG may take the view that the impact on the individual's Article 8 rights of a move to a different community area is proportionate, reasonable and necessary given the CCG 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.

8 PUBLIC SECTOR EQUALITY DUTY

8.1 The Equality Act 2010 introduced the public sector equality duty. In relation to implementation of the individual package of care policy, Somerset CCG has a duty to have regard to the need to:

- Advance equality of opportunity between people who share a protected characteristic and people who do not share it;
- Remove or minimise disadvantages suffered by people due to their protected characteristics; and
- Meet the needs of people with protected characteristics (e.g. where the needs of a disabled person may be different from those of non-disabled person).

8.2 Protected characteristics include age, disability, gender reassignment, pregnancy and maternity, race (including ethnic or national origins, colour or nationality, religion or belief (including lack of belief), sex and sexual orientation.

8.3 In making decisions regarding care options, the CCG must consider whether the person affected by the decision has any protected characteristics and if so, whether any reasonable adjustments should be made available, which are proportionate in the circumstances.

8.4 Decisions about proportionality of adjustments can take into account the CCG obligations to its entire population; however, decisions must be taken on the individual circumstances of each situation considering whether it would be reasonable to make additional resources available in each case.

9 FUNDED REGISTERED CARE HOME PLACEMENTS

9.1 A suitable placement will be identified through discussion with the individual or their representatives and the CCGs CHC team. The CCG will offer care homes that can meet the individual's assessed care needs and are under the NHS contract. Responsibility for authorising the placement sits with the CCG. Where an individual is assessed as requiring a registered care home placement the CCG will aim to offer a reasonable choice of care homes and care providers.

9.2 The following principles apply to all potential placements:

- The appropriateness of the package to meet the individual's assessed needs will be considered.
- Individual circumstances, choice and preference will be taken into account.
- Where possible an individual will be offered the choice of more than one care home/ care provider. Fewer placements may be offered where there is limited availability of appropriate care homes/ care providers.
- Any impact upon the individual's human rights will be identified and

considered.

- Geographical proximity of identified registered care homes to family and friends will be consideration.
- The likely length of the proposed placement will be considered.
- All placements offered must meet the requirements of this policy and be in line with the CCG CHC commissioning approach and be contracted under the NHS Contract. Where individuals request an out of county placement and the provider is not yet contracted with the CCG, a pre placement checklist will be undertaken to provide assurance that the provider can meet the individual's needs. Where these placements are likely to be long term then the CCG will apply the NHS Contract.
- All care homes/ care providers offered must be registered with the Care Quality Commission and will not be subject to any current enforcement action or under suspension by a Local Authority.
- Only single rooms will be commissioned unless there is an identified health need for a shared room which has been agreed by a clinician.
- The CCG will not normally fund a placement where the requested care home can only safely or resiliently meet the individual's identified care needs with additional staffing at significant extra cost to the CCG.

9.3 In circumstances when individuals or their representative identify a preference for a different care home placement the CCG may agree to fund it if it can meet the individual's assessed health needs and is in line with the principles listed above. Where a different care home requested by an individual is more expensive than the options offered by the CCG, the decision should be referred to the CCG High Cost Panel for detailed consideration. In some cases the overall cost of the more expensive placement may include optional additional services, which are outside the core/assessed care package. Section 24 below provides further detail around individuals funding additional services in a care home.

9.4 If the CCG considers that a more expensive package of care should be supported on balance of benefits to the individual against the CCGs duty to provide resources to its entire population then the CCG may approve up to 10% increase in costs above the cost of an equivalent package to meet the individual's needs to support individual choice. Packages of care of 10% or more above the costs of an equivalent package to meet and individual's needs should be referred to the CCG High Cost Panel for detailed consideration.

9.5 Where the placement of preference among those offered is not immediately available, but the individual's move from their current setting should not be delayed, (e.g. if currently in hospital there is a risk of increasing dependency or exposure to infection), a provisional placement will be offered. A provisional placement in this context is defined as one that is suitable to meet the individual's assessed needs short-term and can be provided whilst waiting for a preferred choice among those offered to become available.

9.6 The CCG will, in discussion with the individual and or their representative, make a reasonable effort to take individual choices, preferences and circumstances into account when offering any placement. However there may be circumstances where the preferred provider is not suitable (for example where the preferred provider is unable to meet the individual's care needs). The CCG will not normally fund a residential placement where the requested care home is not the most suitable place for the provision of care.

9.7 If the individual and or their representative indicate that they are unwilling to accept any of the provision offered by the CCG, the CCG shall apply the process set out in this policy.

10 FUNDED PACKAGES OF CARE AT HOME

10.1 Many individuals wish to be cared for in their own homes rather than in a registered care home. Choice of care setting should be taken into account, but there is no automatic right to a package of care at home.

10.2 Individuals who are eligible for funding have a complexity, intensity, frequency and/or unpredictability in their overall care needs which means it is often difficult for care to be safely delivered at home on a sustainable basis. Although individual circumstances will be considered, it must be understood that it is usually not possible to replicate support services that are available within in-patient NHS settings and registered care or nursing home facilities, (e.g. 24 hour nursing care) and if this level of support is required it would usually not be possible to care for the individual at home.

10.3 When working within an individual's own home, care workers do not have access to the full range of support services that are available within a hospital or a registered nursing home environment and in most cases care workers will be working in isolation. If an individual care package at home is agreed, this must be acknowledged and any implications identified and fully understood, with contingency plans put in place where required.

10.4 The CCG will consider if care can be delivered safely and sustainably. Safety will be determined by a written assessment of risk undertaken by an appropriately qualified professional. The risk assessment will include the availability of equipment, the appropriateness of the physical environment and the availability of appropriately trained care staff and/or other staff to deliver the care at the intensity and frequency required.

10.5 In cases where it is agreed to provide care in the individual's own home, the individual and his/her family need to be aware that a time may come when it may no longer be appropriate or safe to provide care at home, for example if a deterioration in the individual's condition requires clinical oversight and twenty-four hour monitoring.

10.6 The CCG supports the use of 'care at home' packages where appropriate and recognises the importance of patient choice. However there may be situations where the CCG cannot provide the individual's choice of having a 'care at home' package either because of the risks associated with the package or due to the effect of the cost of the package on the CCGs duty to provide resources for its entire population. The CCG is clear that packages

which require a high level of clinical input will usually be more appropriately and safely met in another care setting.

10.7 Where a package of care at home is requested by an individual but is more expensive than the options offered by the CCG, the decision should be referred to the CCG High Cost Panel for detailed consideration.

10.8 If the CCG considers that a more expensive package of care should be supported on balance of benefits to the individual against the CCGs duty to provide resources to its entire population then the CCG may approve up to 10% increase in costs above the costs of an equivalent package to meet the individual's needs and support choice. Packages of care 10% or more above an equivalent package to meet the individuals needs should be referred the CCG High Cost Panel for detailed consideration.

10.9 The CCG' duty to fund services does not extend to funding for the wide variety of different, non-health related and non-personal care related services that may be necessary to maintain a person in their home environment. Should the CCG identify that such basic needs are not going to be (or have not been) properly met, the CCG may determine that a 'care at home' package is not or is no longer appropriate. Whether a particular service should be provided by the CCG will be dependent on the assessment by the CCG of whether that particular service is required in order to meet the individual's assessed health or personal needs in line with the National Framework.

11 DETERMINING SUITABILITY FOR CARE AT HOME

11.1 The following factors may be relevant in the considerations by the CCG to support the commissioning of a package of care in the individual's own home:

- The extent of the individual's current and likely future needs and the individual's circumstances, choice and preference.
- Whether the proposed care package meets the individual's assessed needs.
- The psychological, social and physical impact of the care package on the individual.
- The safety and quality of the proposed package of care.
- The assessed sustainability and feasibility of a home package of care.
- Any impact upon the person's human rights and any other family members / carers will be identified and considered.
- Where appropriate the views of other residents in the home
- The individual's GP agreement to provide primary care medical support.
- Whether the proposed care package is consistent with the terms of any tenancy at the property.

- The suitability and availability of alternative care options and the suitability of the environment to provide the requisite care at the required level.
- Whether the care can be delivered safely and the level of risk to the individual, staff or other members of the household (including children) is acceptable to the CCG.
- Consideration will be given to the cost effectiveness of the package and the CCGs ability to meet its obligations in respect of patient care for others.
- The cost of suitable alternative packages of care that the CCG reasonably considers would meet the individuals assessed needs.
- The CCG will identify 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.
- Whether the level of risk and potential consequences are accepted by the CCG and each person involved in the person's care. This includes the acceptance by the individual and family to use any equipment required by CCG in order to mitigate any identified risks. Likewise, where an identified risk to the care providers or individual can be minimised through actions by the person or their family and carers, those individuals have agreed to comply with the steps required to minimise such identified risks.
- The willingness and ability of family, friends or informal carers to provide elements of care where this is part of the care plan and the agreement of those individuals to the care plan and associated risk assessments.

11.2 Many individuals wish to be cared for in their own homes rather than in residential care. The individual’s choice of care setting will be taken into account but there is no automatic right to a package of care at home. If requested, the option of a package of care at home will be considered, even if discounted, with documented reasons.

11.3 The CCG as commissioner has responsibility for ensuring that the commissioned package of care is and remains safe, effective and appropriate to support the individual's assessed needs and agreed outcomes. Wherever possible this will involve partnership and co-operation with the individual and their family. However, as indicated, there may be situations where the CCG cannot provide the individual's choice of having a care at home package because of the risks or costs associated with the package and/or the ability to deliver the package safely.

12 WHAT HAPPENS WHILE PACKAGES ARE BEING SET UP?

12.1 By their very nature care at home packages can take a while to set up. It is not appropriate for the individual to remain in hospital during this time, as there is an increased risk of developing dependency, increased exposure to infection and a reduction in bed availability for patients requiring acute hospital treatment and care.

12.2 Therefore when an individual has been declared medically fit for discharge from hospital they will, with agreement, is transferred to another clinically appropriate facility or environment whilst arrangements for their NHS funded 'care at home' package are being made. This may also be arranged as a ‘step down’ in the healthcare input for the individual between the acute hospital and care arranged in their own home.

12.3 Transitional support either in the hospital or home setting may be arranged, for example; for any complex care package requiring specialist input, during recruitment and training of staff, or for young people moving to adult services.

13 WHAT HAPPENS IF THE HOME CARE PACKAGE BREAKS DOWN?

13.1 The CCG will ensure that there is an agreed contingency plan should the care package break down. These arrangements would usually require an alternative commissioned service to be sourced, or a rapid admission to a registered care home or respite setting which should be agreed with the individual and or their representatives and should be entered on the care plan.

13.2 If subsequently, the individual, and or their representatives do not allow the agreed alternative care package to be put in place should care break down, the CCG will follow the safeguarding policy to ensure the welfare and/or best interests of the individual are maintained.

13.3 Where a package of care at home has broken down, (i.e. the care agency/provider is unable to deliver appropriate care to meet the individual's needs for reasons of difficulty with, for example, the individual, his or her family, location, finding appropriate carers or managing clinical risk); provided that the conditions of this policy can still be met the CCG will commission a replacement care package from a second/alternative Provider. At this point, the CCG will give written notice to the individual and or their representative that should the second care package break down, the individual will be moved to an appropriate ‘back-up’ registered care home or other appropriate place of safety that meets both the individuals needs and satisfies the CCG criteria as set out in this policy. Where possible, this ‘back-up’ placement will be identified by the CCG in advance and detailed within the individuals care/support plan.

14 WHEN NURSING HOME CARE MAY BE MORE SUITABLE

14.1 The CCG considers that in some circumstances an individual’s needs may most appropriately be met within a care home setting. The general principles are set out below; however the CCG will take into consideration

all relevant circumstances to the individual to establish whether any of these principles can be displaced, or if any other factors are relevant.

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

14.2 There are specific conditions or interventions that may not be appropriate to manage at home. These may include (but are not limited to) the requirement for sub-cutaneous fluids, intravenous fluids, total parenteral nutrition (TNP), continual invasive or non-invasive ventilation or the management of grade 4 pressure injury. In each case a comprehensive risk assessment would be completed to help determine the most appropriate place for care to be provided.

14.3 The CCG will generally only support a clinically safe and sustainable package of care within an individual's own home where the costs of doing so are in line with this policy. The above issues in each case will be considered by the CCG Complex Case Commissioning Panels.

15 HEALTH, SAFETY AND THE HOME ENVIRONMENT

15.1 The health and safety of the individual, care workers, family and other carers is extremely important. The CCG policies will be applicable to all staff as will the policies of care agencies/providers to their staff.

15.2 Any equipment required to care for the individual must be able to be accommodated in the home before a CHC package can be commenced. If not already undertaken, a home environment visit and occupational therapist involvement is required before a home care package may be recommended by the CCG and before a package of care at home is pursued. The NHS and/or Social Services Department (as relevant) are responsible for ensuring equipment provided is operational and properly maintained. The care provider must inform the CCG of any concerns with assigned equipment, whether provided by the CCG or previously in place in the care environment

15.3 The care provider shall ensure all care workers conform to any health and safety requirements when using the equipment, including compliance with any manual handling arrangements specified in the individual's moving and handling plan. The care provider shall also ensure that all staff are up to date with all required training and are deemed to be competent to use any equipment required. In instances where an individual is in receipt of a direct payment Personal Health Budget, the budget holder will be responsible for ensuring all staff conform to any health and safety requirements. The householder will be responsible for ensuring the environment is safe and for taking care of any loaned equipment. This will

include:

- Relevant fire precautions, fire escape routes and working smoke detectors;
- Removing trip hazards;
- Removal of pets from the care environment;
- Ensuring the facilities is clean.

15.4 In many cases care workers will be working alone with the individual or alongside his or her family and other carers, so the premises must be made secure and the lone care worker must feel safe.

15.5 It is recognised that violent and potentially violent incidents can happen. If such incidents occur, they must be reported to the CCG which will instigate an investigation which may involve safeguarding procedures and if necessary the police and/or any required legal proceedings as needed.

15.6 Such incidents may jeopardise the ability of the CCG to provide packages of care at home, although in some situations risk assessments, appropriate support plans and behaviour contracts may be put in place for individuals whose care or behaviour presents a high risk to other individuals. Consideration will also be given as to whether any specific training or use of particular equipment may help to mitigate risks to an acceptable level.

15.7 Any incidences of harassment or bullying, verbal or physical abuse of care workers by the individual or their family and other carers will not be condoned or accepted and the CCG will take any action necessary to protect their staff and contractors. This may include, where necessary, the immediate withdrawal of services. Where in those extreme circumstances it is necessary to withdraw services, the CCG will urgently consider how else (if at all) services can be offered.

16 ROLE OF THE FAMILY OR CARER

16.1 Carers and family members may be expected to continue to be involved in the care of the individual if safe to do so, in accordance with the adopted care plan;

16.2 Caring for an individual at home who requires a significant amount of healthcare intervention and may be disruptive to the household, the following considerations should be considered:

- The NHS should consider a referral to the Local Authority so that a carer's assessment can be considered and offered to those undertaking the care in line with the Care Act 2014;
- Having strangers in the house for long periods of time can place considerable pressure on carers and family members as well as the care workers themselves; and
- Communication between carers, family and care workers/providers and the CCG is essential to maintain good relationships. However, there may be situations when it is not safe for commissioned care

workers to communicate information to family/carers, such as when a complex potential safeguarding issue is identified.

16.3 Carers and family members may be expected to take part in training in the specific care of the individual so that any support is provided safely.

16.4 Care workers will need to have access to areas of the household other than the immediate care area. This will include access to toilet and bathroom areas and access to the kitchen to make refreshments and where required prepare their own hot meals. In situations where waking nights are commissioned access to such areas will still need to be maintained.

16.5 Care workers should not be requested to undertake household tasks such as laundry and cleaning that do not directly pertain to the individual they are caring for.

16.6 Adequate supplies of clean linen, clothing, towels etc. must be available.

16.7 The environment temperature must be maintained at an adequate level and there must also be suitable ventilation as required. Appropriate seating arrangements will also need to be available.

17 WORKFORCE

17.1 The individual's needs will be assessed by an NHS healthcare professional and multi-disciplinary team where indicated and approved by the CCG. The care the individual receives will be provided by a care provider under contract with the CCG or via a Personal Health Budget.

18 INDIVIDUALS WHO LIVE ALONE

18.1 The fact that an individual lives at home alone is not sufficient to determine that he or she should not be provided with a package of care at home. However, an individual who is eligible for NHS CHC generally has needs that are complex, unpredictable and intense in nature and it may be difficult to meet those assessed needs without the support of live-in family care in addition to any possible package of care at home. The full range of options for care should be explored with the individual who lives on their own (in the same way as with any other individual), in the context of his or her preferences and the requirements of this policy

19 PERSONAL HEALTH BUDGETS

19.1 Since the 1st April 2014 it has been possible for the NHS to offer Personal Health Budgets to individuals in receipt of CHC funding. This includes the NHS making direct payments to individuals or their families to purchase their own care to meet their assessed care needs.

19.2 This policy should be read in conjunction with the CCGs Personal Health Budget policy and where the CCG or an individual wish to commission their care by way of a Personal Health Budget, then the CCG policy on Personal Health Budgets shall apply.

19.3 The use of Personal Health Budgets as a means of arranging care for

individuals living within their own home should be considered as an option for all clinically assessed suitable packages, in line with the CCGs Personal Health Budget Policy and through the application of this policy.

19.4 Where a Personal Health Budget requested by an individual is more expensive than the options offered by the CCG, then the decision should be referred to the CCG High Cost Panel for detailed consideration.

19.5 If a Personal Health Budget is set up and subsequently becomes untenable for any reason, then alternative placement within a registered care home or a package of care at home will be considered in line with this policy.

20 PERIOD OF NOTICE

20.1 If there is a breakdown in the relationship between the care provider or their staff and the individual, the CCG will attempt to accommodate this as far as is reasonable. However, care packages, particularly live-in care, take time to set up and so reasonable time must be allowed to make alternative arrangements, if possible.

20.2 The CCG has an agreed notice period by which the provider and commissioner are expected to give a minimum of 28 day notice

20.3 A notice period of discharge from care will be given by the CCG to care agencies/providers, or by an individual who holds a Personal Health Budget and employs their own Personal Assistants. Details will be held within the NHS contract supplied to the care provider or Personal Health Budget agreement held by the individual.

21 EXCEPTIONAL FUNDING OF CARE PACKAGES

21.1 The CCGs duty is to provide a care package to meet the reasonable assessed care needs of the individual. The CCG aims to offer individual's a choice of care packages, which meet their assessed needs. Consequently the CCG will seek to take account of the wishes expressed by individuals and or their representatives when making decisions as to the location(s) and type of care packages/placements to be offered to satisfy the obligations of the CCG to provide NHS CHC and individual choice.

21.2 The CCG has a duty to consider an effective, efficient and equitable use of their resources. When determining cost effectiveness the CCG will consider the genuine cost of each possible care package taking into consideration the individual circumstances including, in relation to care at home packages, possible assistive technology and family input.

21.3 Where a package of care is requested by an individual but is more expensive than the options offered by the CCG, the decision should be referred to the CCG High Cost Panel for detailed consideration.

21.4 If the CCG considers that a more expensive package of care should be supported on balance of benefits to the individual against the CCG's duty to provide resources to its entire population then the CCG may approve up

to 10% above the cost of an equivalent package to meet the individual's needs and to support individual choice. Package of care of 10% or above the cost of an equivalent package to meet the individuals needs will be referred to the CCGs High Cost Panel for detailed consideration.

21.5 The CCG High Cost Panel will take into account the factors identified at Sections 9.2 and 11.1 and the terms of reference are laid out in Appendix 1. Care packages outside of the CCGs normal commissioning and contract arrangements will not be agreed to unless they have been ratified by the CCG High Cost Panel.

21.6 CCG outcomes of funding decisions considered by the CCG High Cost Panel will be clearly documented and shared with the eligible individual or their representative.

21.7 All outcomes of funding decisions considered by the CCG High Cost Panel will require Deputy Director level or nominated deputy authorisation.

21.8 The CCG High Cost Panels will aim to be convened within 10 working days in most cases.

22 INDIVIDUALS IN RECIEPT OF EXISTING CARE PACKAGES WHO BECOME ELIGIBLE FOR CHC

22.1 If an individual is currently self-funding a home care package, or a care home placement at a rate which is in excess of what the CCG would expect to fund, the individual must be informed that the CCG will only continue to fund at the higher rate following a decision from the CCG High Cost Panel.

22.2 If the individual decides to proceed with the NHS CHC assessment process and is subsequently deemed eligible, but the CCG High Cost Panel does not approve the relevant funding, the CCG will:

- Apply the existing contract rates or renegotiate fees with the current provider if a contract is not in place which are consistent with the associated CCG commissioning approach, but if unsuccessful;
- Consider alternative home care providers, or registered care homes which can meet the individual's assessed needs within the requirements of this policy including the Equality Act 2010 and the Human Rights Act 1998 and the associated CCG commissioning approach;
- If in these circumstances, alternative providers or placement/s are offered to and rejected by the individual and or their representative the CCG will follow the process set out in this policy.

23 ENHANCED CARE AND ADDITIONAL NEEDS

23.1 The CCG will exercise firm financial control, accountability and quality assurance in respect of requests for enhanced care ensuring that all decisions are made in the best interest of individuals in a manner that is equitable, safe and effective and makes best use of the resources available to the CCG in respect of enhanced care of individuals eligible for CHC.

23.2 Where an enhancement to a care package is requested by an individual, the CCG may agree to fund. Funding decisions relating to such circumstances need be supported by evidence demonstrating the assessed need and risk assessments undertaken.

23.3 Requests for enhanced care will be made by a care provider or CHC assessor on behalf of a Personal Health Budget holder. All requests must be provided with clinical evidence to support the request, as well as all appropriate risk assessments, behaviour charts, evidence of communication with the individual and or their representative, a proposed step down plan and any other relevant evidence deemed helpful to support the request.

23.4 Requests for enhanced care will be considered by the relevant Team Leader or if the enhanced care is more than 10% of the package of care cost at the CCG High Cost Panel.

23.5 Decisions will be made within two working days. If the request is declined, a justification for this decision will be given and shared with the individual and or their representative.

23.6 For approved requests the care provider will need to complete behaviour charts hourly for the times of enhanced care provision and a stepdown plan will need to be evidenced.

23.7 Individuals will have their enhanced care reviewed by the CCG with the care provider and individual/representative and will be documented. Frequency of reviews will be determined on a case by case basis depending on the individual's specific needs.

23.8 The review may result in either an increase or a decrease in provision of enhanced care and will be based on the assessed need of the individual at that time. All decisions will be discussed with the individual and communicated to the individual and or their representative.

24 FUNDING ADDITIONAL SERVICES

24.1 The CCG are only obliged to provide services that meet the assessed needs and reasonable requirements of an individual. An individual does however, have the right to decline NHS services and make their own private arrangements.

24.2 Where an individual is found eligible for NHS CHC, the CCG must provide any services that it is required to provide based on the individual's assessed needs. These services, whether delivered within a registered

care home, or at home must be free of charge to the individual. In the context of care home placements this is limited to the cost of providing accommodation, care and support reasonably necessary to meet the assessed needs of the individual. This assessed package of care is known as the core package.

24.3 The CCG is not able to allow personal payments into the package of healthcare services under NHS CHC, where the additional payment relates to the core package assessed as meeting the CHC needs of the individual and covered by the fee negotiated with the service provider, (e.g. the care home), as part of the contract. This is because joint funding arrangements for patients with a primary health need are not lawful. Consequently where an individual wishes to augment any CHC funded care package to meet their individual preferences they are at liberty to do so. However, this is provided that it does not constitute a subsidy to the core package of care identified by the CCG.

24.4 Where service providers offer additional services which are unrelated to the person's health and social care needs as assessed under the National Framework, the individual may choose to use personal funds to take advantage of these optional services.

24.5 As a general rule individuals can make a contribution to their care package where the additional services are optional, non-essential services which an individual has chosen (but was not obliged) to include in their care package. Examples include a more spacious bedroom, hairdressing, massage, reflexology and beauty therapies.

24.6 Furthermore, personal contributions cannot be used to fund any of the care which is set out in the care plan which remains the responsibility of the CCG. Any personal contributions arrangements proposed must be made directly by the individual, or on their behalf, to the service provider and only after first being notified to the CCG, so that it can ensure that if additional care is purchased as part of the proposed arrangements, such care does not replace or conflict with any element of the services to be funded by the CCG as set out in the care plan. A placement that involves an element of additional fees will not be supported by the CCG if a care home is unwilling, or unable to provide a clear breakdown of the NHS-funded costs vs optional additional fees.

24.7 All such personal contribution arrangements will be separate from the care packages funded by the CCG and it is the responsibility of the individual and or their representative to ensure that all providers of top-up care or facilities are aware that the top–up funding arrangement is separate from the CCG funded package of care and should be invoiced to the individual separately. If an individual, who has agreed with a provider to purchase additional services, becomes unable to meet the ongoing costs, the CCG will not take on the funding responsibility. If a provider is unwilling to accept the continuation of the care home placement, or the care at home package, without additional fees the CCG will identify a suitable alternative.

24.8 In the event that at any time for any reason the individual or their family or advocate decide that they no longer wish to or are no longer able to fund

any top-up care or facilities, the CCG will not subsidise or assume the responsibility of funding such care or facilities previously funded by the top-up payment.

24.9 Further detail around additional services and top-ups can be found in the National Framework.

25 REVIEW

25.1 Individuals and their carers/representatives must be aware that there may be times where it will no longer be appropriate to provide care in line with the individual's preferred choice based on safety concerns, sustainability or cost.

25.2 The care package will be reviewed initially at 3 months and then annually as a minimum (alongside the NHS CHC review) to ensure that the individual's needs are being met, that the package of care remains appropriate to meet the individual's assessed needs and outcomes, is clinically safe, sustainable.

25.3 It is important to recognise that the review may result in either an increase or decreases in support and will be based on the assessed needs of the individual at that time.

25.4 If the weekly cost of the care increases beyond 10% of alternative suitable acceptable available options at that time, it will be reviewed and other options considered and explored in line with this policy. This principle will be applied to both care at home packages and care home placements. It will not apply however in situations involving a single period of four weeks to cover either an acute episode, or for end of life care to prevent a hospital admission.

26 CHANGE OF CIRCUMSTANCES

26.1 At any time, following a review of the individual's needs and eligibility, the individual’s condition has improved or stabilised to such an extent that they no longer meet the eligibility criteria for CHC, the CCG will no longer be required to fund the identified care.

26.2 The CCG will give 28 days’ written notice of cessation of funding to the individual and 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 which will be applied by the relevant Local Authority and not the CCG. Alternatively the cost of any ongoing package of care may need to be met by the individual themselves. The transition of care should be seamless and will be coordinated by the CCG before transferring to a Local Authority representative.

26.3 The individual and/or their representative will be notified of the proposed changes to funding and involved by the organisations as appropriate.

26.4 In the event that an individual becomes eligible for NHS funded care, who were previously funded by social services, the CCG will apply the same principles as for all other individuals in line with this policy.

27 REFUSAL OF NHS SERVICES

27.1 An individual has the right to decline NHS funding and make private arrangements. If the individual and or their representative refuse to consider or accept any of the options offered, the CCG will determine that it has fulfilled its statutory duty to provide CHC.

27.2 Where there appears to be a refusal, the CCG will write to the individual and or their representative with a final offer letter setting out the care options the CCG is willing to consider and the consequences of refusal. In this letter the CCG will provide a period of no less than 14 days for confirmation of acceptance of the CHC care package.

27.3 Upon receipt of confirmation of refusal, or if no response is received within 14 days the CCG will confirm in writing that the individual and or their representative will need to make their own arrangements to meet the individual's ongoing care needs within 28 days. The letter will explain the risks of this choice and the right to challenge the CCGs decision. The risks will also be documented in the individual's notes.

27.4 Where an individual has refused NHS services, a move from the current setting should not be delayed, (e.g. if currently in hospital there is a risk of increasing dependency or exposure to infection), a provisional placement will be offered. A provisional placement in this context is defined as one that is suitable to meet the individual's assessed needs short-term and can be provided whilst an alternative solution is developed.

27.5 If during the period of the notice the individual and or their representative choose to accept the care offered by the CCG, the offer will be reinstated. If after the 28-day period the individual and or their representative want to access NHS services they remain entitled to do so and can re-enter the CHC process at a later time, subject to eligibility.

27.6 If the individual is considered at risk of abuse or there are safeguarding concerns the CCG will follow safeguarding procedures and may make an appropriate referral to Adult Social Care in the Local Authority in line with this.

27.7 An individual has the right to decline NHS funding and make private arrangements although for the avoidance of doubt, in the event that an individual has been assessed and found to be eligible for NHS CHC they will no longer be able to receive funding from the Local Authority towards

27.8 If an individual lacks the mental capacity to make a decision about a home care provider, or a registered care home placement and they or their representative refuse to accept any of the placements offered, the CCG will progress this matter in accordance with the procedures under the Mental Capacity Act 2005 and the related Code of Practice in line with that individual's best interests.

28 APPEALS REGARDING CCG DECISIONS

28.1 An individual or their representative, that wishes to appeal the decision of the CCG in respect of care provision, should confirm this in writing to the CCG within 4 weeks of the decision letter.

28.2 The CCG will convene a High Cost Panel which will be independent from the first High Cost Panel, to review and where appropriate reconsider the decision.

28.3 If the decision is upheld by the CCG, the individual and or their representative will be advised of this and of their right to formally complain, through the CCG complaints process.

28.4 If the complaint cannot be resolved locally the individual and or their representative will be directed to the Parliamentary & Health Service Ombudsman.

29 EQUALITY IMPACT ASSESSMENT

29.1 To ensure compliance with the CCG 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.

30 COUNTER FRAUD

30.1 Any service user found to be misrepresenting their clinical needs will be referred by the appropriate commissioning team to NHS Counter Fraud for investigation.

APPENDIX 1

TERMS OF REFERENCE
CCG HIGH COST PANEL

1.1 The purpose of the High Cost Panel is to make due consideration and provide transparency in the decisions on whether the CCG can commission packages of care that falls outside of the CCGs normal commissioning and contracting arrangements taking into account Article 8 and the CCGs public sector equality duty.

Composition of Panel

1.2 The panel will consist of the following professionals of which 2 members are required to be quorate (excludes CHC assessor):

- Deputy Director or nominated Deputy as Chair
- CHC Assessor to present application (not a decision maker)
- CHC Contract and Commissioning Manager
- Senior Clinician

Panel Process

1.3 Where applicable, individuals and or their representatives will be invited to submit additional supporting information within 5 working day of the panel date.

1.4 Members will review the file to assess whether all the appropriate information is available and discussions will focus on:

- The individual's circumstances
- The extent to which the preferred option might contribute to the person's wellbeing, or offer a significant health benefit against the impact on the CCGs ability to meet its obligations in respect of patient care for others and its duty to effectively commission and ensure value for money.
- Any impact on the individual's Article 8 rights
- The CCG' duties under the Equality Act 2010
- Whether a decision not to pay for a more expensive option would be reasonable and proportionate given the likely effect on the individual
- Other care options available to meet the individual assessed needs

1.5 The panel will address these areas of focus through a balance of interest exercise.

1.6 Where an individual has expressed a choice of a package of care (whether

at home or at a care home) that is 10% or more of the costs of an equivalent package to meet the individual needs (high cost funding) the panel will need to review the case and make a decision. The panel will need to determine whether there are any circumstances to justify funding the high cost package of care.

1.7 Where the refusal of high cost funding interferes with an individual's right to a family and private life, the panel will need to be satisfied that the interference is necessary and proportionate taking into account the individuals circumstances and the impact of the CCGs ability to meet other obligations on it in respect of patient care for others.

1.8 The individual and or their representative will be informed in writing of the decision within 14 working days. This letter will include the following information:

- the decision made by the panel
- the evidence considered by the panel
- the rationale for the decision based on the evidence presented
- The benefits balance sheet
- information on how to appeal against the decision