



**Nottingham and
Nottinghamshire**
Integrated Care Board

Ethical Decision-Making Framework

July 2022 - July 2025

CONTROL RECORD			
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			Team Commissioning
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1. Introduction

- 1.1. NHS Nottingham and Nottinghamshire Integrated Care Board (ICB) has developed this Ethical Framework for Decision Making to describe the principles that will underpin how commissioning decisions are made. These include decisions for our population and decisions for individuals, with a conscious intent to avoid discrimination.
- 1.2. Our finite resources, and the legal obligation to stay within our budget, mean that we need to have an approach that strikes the right balance between commissioning healthcare that meets the needs of our population overall and taking account of the differing needs of particular individuals. We try to ensure that our resources are used to provide the greatest benefit to the largest number of people. We cannot fund all types of healthcare that might be requested for our population and, as a result, difficult decisions have to be taken to determine priorities. The fact that we may take a decision not to commission a service to meet a specific healthcare need because our resources are limited does not mean, therefore, that we have failed to fulfil our statutory obligations.
- 1.3. This framework is not a decision-making tool nor is it the process for decision-making. The principles should not be used as a checklist or criteria to be met before a decision can be made.

2. Purpose of the Ethical Framework

- 2.1. The purpose of the ethical framework is to support and underpin the decision-making processes of constituent organisations and their Committees to support consistent commissioning policy through:
 - Making commissioning decisions on behalf of and with its population;
 - Making it clear to the public that we have a framework within which we make decisions;
 - Providing a coherent structure for discussion, ensuring all important aspects of each issue are considered;
 - Promoting fairness and consistency in decision making from meeting to meeting and with regard to different clinical topics, reducing the potential for inequity and considering the implications of the Human Rights Act;
 - Providing a means of expressing and recording the reasons behind the decisions made; and
 - Reducing risk of judicial review by implementation of robust decision-making processes that are based on evidence of clinical and cost effectiveness and an ethical framework.

2.2. Formulating policy recommendations regarding health care priorities involves the exercise of judgement and discretion and there will be room for disagreement both within and out with the Committees. Although there is no objective or infallible measure by which such decisions can be based, the Ethical Framework enables decisions to be made within a consistent setting which respects the needs of individuals and the community. The Committees recognise that their discretion may be affected by National Service Frameworks, National Institute for Health and Clinical Excellence (NICE) technology appraisal guidance and Secretary of State Directions to the NHS.

3. How 'Ethics' have been used to establish the Principles

3.1. We have taken into account ethical considerations in deciding the principles that we have included in this framework:

- Helping people to make their own decision (for example, by providing important and relevant information) and respect those decisions noting that this does not require us to fund a specific treatment;
- The moral importance of 'doing good' to others;
- Seeking not to harm people;
- Time and resources do not allow every person to have the 'best possible' treatment or service. People in similar situations should normally have access to similar health care. When deciding what level of health care should be available for one group, we need to take into account the effect that will have on other groups.

4. Evidence of Clinical and Cost Effectiveness

4.1. The Committees will seek to obtain the best available evidence of clinical and cost effectiveness using robust and reproducible methods. Methods to assess clinical and cost effectiveness are well established. The key success factors are the need to search effectively and systematically for relevant evidence, and then to extract, analyse, and present this in a consistent way to support the work of the Committees. Choice of appropriate clinically and patient-defined outcome needs to be given careful consideration, and where possible quality of life measures and cost utility analysis should be considered.

5. Equity

- 5.1. The Committees believe that people should have access to health care on the basis of need. There may also be times when some categories of care are given priority in order to address health inequalities in the community. However, the Committees will not discriminate on grounds of personal characteristics, such as age, disability, gender identity (trans, non-binary), marriage or civil partnership status, pregnancy or maternity, race, religion or belief, sexual orientation, lifestyle, social position, family or financial status, intelligence, physical or cognitive functioning. However, in some circumstances, these factors may be relevant to the clinical effectiveness of an intervention and the capacity of an individual, or group of individuals, to benefit from treatment.

6. Health Care Need and Capacity to Benefit

- 6.1. Health care should be allocated justly and fairly according to need and capacity to benefit, such that the health of the population is maximised within the resources available. The Committees will consider the health needs of people and populations according to their capacity to benefit from health care interventions. So far as possible, it will respect the wishes of patients to choose between different clinically and cost-effective treatment options, subject to the support of the clinical evidence. This approach leads to a number of key principles (see section 7).

7. Principles for Decision-Making

- 7.1. Each of the principles will be considered equally and will be given fair consideration. This means that all the principles will be considered and all principles have equal 'weight'. There is the requirement to balance the needs of the individual with the needs of the wider community, to consider public health issues, and to encourage preventative care and health promotion measures.

Principle 1: Rational

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

- Being logical in the way reason is applied to reach a decision;
- Ensuring that the decision is based on evidence of clinical effectiveness;
- Making a realistic appraisal of the likely benefits to patients;
- Weighing up all relevant factors, including risks and costs to all relevant organisations and also to the people that we serve;
- Ensuring individuals involved in decision-making are appropriately skilled and trained.

- 7.3. The NHS is committed to evidence-based healthcare. Decisions are, therefore, made on the basis of a reasonable evaluation of the available evidence of clinical effectiveness. Those involved in decision-making have an obligation to seek out the best evidence of clinical effectiveness to inform their decisions. Where available, existing national standards and authoritative guidelines must be considered. Local factors and existing care provision must also be considered.
- 7.4. The approach to assessing the validity and credibility of evidence should be broad but maintain high standards of critical appraisal. Both qualitative and quantitative studies will be taken into consideration, with evidence from sources other than large scale randomised clinical trials given appropriate weight. Expert opinion should be sought where appropriate.
- 7.5. Outcome measures should be considered in terms of their importance to the patients. This is particularly significant in the treatment of illness where no cure can be expected, in palliative care, and the care of people who are terminally ill. Rational decisions will weigh up likely outcomes, the wider contexts in which treatments can be provided, the implications for service delivery, clinical pathways, and the scale and nature of benefits, costs and risks.

Principle 2: Inclusive

- 7.6. Decisions should be arrived at through a fair and non-discriminatory process. The term 'inclusive' may be interpreted as covering:
- Equal opportunity of access to healthcare;
 - Patient involvement in decision-making;
 - Respect for individual needs.
- 7.7. Decisions about health policy should be arrived at through a fair and non-discriminatory process and should reinforce the concept of equal opportunity in access to healthcare. Policies should not discriminate on characteristics, such as race, religion or social status, which are irrelevant to health conditions and the efficacy of treatment.
- 7.8. The aim is to achieve consistent and equitable resource allocation, between individuals and groups in society, and to avoid the kind of arbitrary discrimination sometimes referred to with the term 'postcode' as in 'postcode lottery' (of health service provision).
- 7.9. Policies should work in favour of patient choice at the individual level, respecting the individual's preferences. In particular, the ethical framework calls for sensitivity to the patient's perspective and the individual nature of choices based on quality of life.

- 7.10. Patient choice considerations may be particularly important in end-of-life circumstances. Decisions should also take account of local and societal sensitivities. There should be an active attempt to engage patients, carers and the wider public in the decision-making process to ensure that the perspectives of both healthcare providers and consumers are fully taken into account.

Principle 3: Take account of economic factors and the value we will get

- 7.11. Resources are finite and must be managed responsibly. The cost of treatment must be considered. Investment in one area of healthcare will divert resources away from other areas of potential investment. Decisions should be based on careful consideration of the trade-offs between costs and benefits, both in the short and longer term, but also recognise that complex trade-offs cannot necessarily be reduced to simple cost-benefit calculations.
- 7.12. The ICB will consider the extent to which the individual or patient group will gain a benefit from the treatment. The ICB will also balance the needs of each individual against the benefit which could be gained by alternative investment possibilities to meet the needs of the community.
- 7.13. In general, low-cost treatments with high effectiveness will be preferred, whereas high-cost treatments with low effectiveness are to be discouraged.

Principle 4: Clear and open to scrutiny

- 7.14. Decisions and the way they are made should be transparent, consistent and easy to understand, and open to public scrutiny.
- 7.15. The formal process sets out for the identification, prioritisation and review of policy issues has been designed with the need for clarity and scrutiny in mind. However, members of the Committee and sub-groups undertaking this process do have a responsibility to work towards achieving these goals.
- 7.16. The information provided to decisions-makers will be fully documented. The process of decision-taking will also be documented, to show that it has conformed to the agreed process and to record the degree of consensus.

Principle 5: Promote health for both individuals and the community

- 7.17. Policies which promote health and avoid people becoming ill are considered alongside curative Ethical Framework for decision-making treatments and other interventions.
- 7.18. There may be times when it is appropriate to target some demographic groups or health issues in order to reduce inequalities and promote the well-being of the community as a whole.

8. How will we make decisions?

- 8.1. The ICB will make our most significant decisions by 'consensus'. We recognise that there will be reasonable disagreement about how we should allocate resources with a finite budget among those who are responsible for understanding the problem, want to find a just and fair solution and responsible for making a decision. This framework will help us to treat disagreements respectfully so that those affected can sign up to decisions made.

What is consensus decision-making?

- 8.2. It is a way of reaching agreement between all members of a group. Instead of simply voting for an item and having the majority of the group 'getting their way', a group using consensus is committed to finding solutions that everyone actively supports, or at least can live with. This is done by ensuring that all opinions, ideas and concerns are taken into account. The assumption is that every member of the group has a voice worth hearing and that all concerns are reasonable, and this is crucial to making good decisions. If a proposal is deeply troubling to even one person, that concern is respected; if it is ignored, the group is likely to make a mistake.
- 8.3. It requires everyone in the group to be committed to common goals that are clearly understood, and to be able to tell the difference between their personal preferences and what will help the group achieve its goals.
- 8.4. Decisions reached by consensus reflect the thoughts and feelings of the group as a whole, rather than just the majority. Effective consensus building results in decisions that have been thoughtfully considered and take into account diverse experience and views.

Why use consensus decision-making?

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

When will we use consensus decision-making?

- 8.6. A full consensus decision-making process may be most appropriate for:

- Strategic decisions;
- Decisions where "the stakes are high";
- Decisions for which a strong, united front is important.

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

- Operational or tactical decisions;
- Decisions which have relatively minor impact, or which affect relatively few people.

8.8. A committee or group should consider and decide whether to use this process in advance of the discussion about a proposal at a meeting. Any member of the committee or group can suggest using consensus decision-making.