



**DRAFT CONTINUING HEALTHCARE (CHC)
CHOICE & EQUITY POLICY**

Version 2

Subject and version number of document:	Continuing Healthcare (CHC) and Funded Nursing Care (FNC) Choice and Equity Policy
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Author:	Judith Johnston East Lancashire CCG Iain Fletcher Blackburn with Darwen CCG On behalf of Lancashire CCGs' Individual Patient Activity Board
Review date:	<i>12 months from the date of adoption</i>
For action by:	The Choice and Equity Policy is aimed at all CCG, CSU and NHS provider services staff involved in continuing health care
Policy statement:	<p>This policy describes the way in which the Midlands and Lancashire Commissioning Support Unit Continuing Healthcare teams (CHC) on behalf of CCGs will provide care for people who have been assessed as eligible for fully funded NHS Continuing Healthcare. The policy describes the way in which the CHC team will commission care in a manner which reflects the choice and preferences of individuals but balances the need for the Clinical Commissioning Groups (CCGs) to commission care that is safe and effective and makes the best use of available resources.</p> <p>This should be read in conjunction with the Statement of Principles for commissioning of health care</p>
Responsibility for dissemination to new staff:	Line managers within the CHC / Funded Nursing Care team.
Methods for dissemination:	All new and updated policies are published on the CCG website.
Training implications:	Reference to this policy should be included in induction and refresher training for relevant staff
Resource implications:	There are no resource implications in relation to implementation of this policy.

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Approved by:	
Date approved:	

TABLE OF CONTENTS	Page
Foreword	5
1. Introduction	5
2. National Framework For NHS Continuing Healthcare And NHS Funded Nursing Care November 2012 (Revised)	5
3. Context	6
4. The Provision Of Services For People Who Are Eligible For NHS Continuing Healthcare	6
5. Continuing Healthcare Funded Care Home Placements	7
6. Continuing Healthcare Funded Packages Of Care At Home	8
7. Risk Assessment Of Packages Of Care At Home	10
8. Exceptional Circumstances	12
9. Personal Health Budgets	12
10. Memorandum Of Understanding For Care At Home And Personal Health Budgets	13
11. Capacity	14
12. Review	14
13. Guidance	16

FOREWORD

Clinical Commissioning Groups (CCGs) assumed statutory responsibility for NHS Continuing Healthcare from 1 April 2013. The Continuing Healthcare teams (CHC) for the CCGs are subcontracted to the Midlands and Lancashire Commissioning Support Unit CSU. This policy will be ratified by the following CCGs:

Blackburn with Darwen
Chorley and South Ribble
East Lancashire
Fylde and Wyre

Greater Preston
Lancashire North
West Lancashire

1. INTRODUCTION

- 1.1 This policy describes the way in which the CSU Continuing Healthcare Team (CHC) on behalf of the CCGs will implement this policy to provide care for people who have been assessed as eligible for NHS Continuing Healthcare. The policy describes the way in which the CHC team will commission care in a manner which reflects the choice and preferences of individuals but balances the need for the CCGs to commission care that is safe and effective and makes the best use of available resources.

2. NATIONAL FRAMEWORK FOR NHS CONTINUING HEALTHCARE AND NHS FUNDED NURSING CARE NOVEMBER 2012 (REVISED)

- 2.1 The National Framework says:

“Where an individual is eligible for NHS continuing healthcare, the CCG is responsible for care planning, commissioning services and for case management. It is the responsibility of the CCG to plan strategically, specify outcomes and procure services, to manage demand and provider performance for all services that are required to meet the needs of all individuals who qualify for NHS continuing healthcare, and for the healthcare part of a joint care package. The services commissioned must include ongoing case management for all those entitled to NHS continuing healthcare, as well as for the NHS elements of joint packages, including review and/or reassessment of the individual’s needs.” (Paragraph 108)

“Where a person qualifies for NHS Continuing Healthcare, the package to be provided is that which the CCG assesses is appropriate for the individual’s needs. Although the CCG is not bound by the views of the LA (*local authority*) on what services the individual needs, the Local Authority’s (LA) assessment under Section 47 of the National Health Service and Community Care Act 1990, or its contribution to a joint assessment, will be important in identifying the individual’s needs and, in some cases, the options available for meeting them” (paragraph 167)

3. CONTEXT

- 3.1 “NHS Continuing Healthcare” means a package of continuing care arranged and funded solely by the NHS where the individual has been found to have a ‘primary health need’ as set out in the National Framework. The actual services provided as part of that package should be seen in the wider context of best practice and service development for each client group. Eligibility places no limits on the settings in which the package of support can be offered or on the type of service delivery.
- 3.2 The Secretary of State has developed the concept of a ‘primary health need’. Where a person’s primary need is a health need, the NHS is regarded as responsible for providing for all their needs, including accommodation, if that is part of the overall assessed need, and so they are eligible for NHS Continuing Healthcare.

4. THE PROVISION OF SERVICES FOR PEOPLE WHO ARE ELIGIBLE FOR NHS CONTINUING HEALTHCARE

- 4.1 This policy has been developed in light of the need to balance personal choice alongside safety, clinical effectiveness and appropriate use of finite resources. It is also necessary to have a policy which supports decisions that are consistent, equitable and compliant with the CCG’s obligations under equality legislation. These decisions need to provide transparency and fairness in the allocation of resources.
- 4.2 Application of this policy will ensure that decisions about care will:
- Be robust, fair, consistent and transparent
 - Be based on the objective assessment of the person’s clinical need, safety and (where a person lacks mental capacity to make decisions about their care) their best interests
 - Have regard for the safety and appropriateness of care to the individual and staff involved in the delivery
 - Involve the person and their family/representative wherever possible
 - Take into account the need for the CCG to allocate its financial resources in the most cost effective way;
 - Support choice to the greatest extent possible in view of the above factors.
 - comply with the duty to pay due regard to the equality duties as set out in case law *Brown vs Department of Work and Pensions (DWP)*
- 4.3 The CCG has a duty to provide care to a person with continuing healthcare needs in order to meet those assessed needs. An individual or their family/representative cannot make a financial contribution to the cost of the care identified by the CCG as required to meet the individual’s needs. An individual however, has the right to decline NHS services and make their own private arrangements. The level of need is determined upon a comprehensive, multi-disciplinary assessment of the totality of health and social care needs that contribute to the decision-making process of eligibility for NHS funded healthcare.

4.4 Access to NHS services depends upon clinical need, not ability to pay. The CCG will not charge a fee or require a co-payment from any NHS patient in relation to the assessed needs. The principle that NHS services remain free at the point of delivery has not changed and remains the statutory position under the NHS Act 2006. The CCG is not able to allow personal 'top up' payments into the package of health care services, where the additional payment relates to core services assessed as meeting the needs of the individual and covered by the fee negotiated with the service provider (for example, the care home) as part of its contract with the CCG.

4.5 However, where service providers offer additional services which are unrelated to the person's needs as assessed under the NHS CHC framework, the person may choose to use personal funds to take advantage of these services.

4.6 Examples of such services which will in most cases fall outside NHS provision as they are unrelated to the person's primary healthcare needs include hairdressing, a bigger room or a better view. Any such additional services will not be funded by the CCG as these are services over and above those which the service user has been assessed as requiring, and the NHS could not therefore reasonably be expected to fund those elements.

4.7 In instances where more than one suitable care option is available (such as a nursing home placement and a domiciliary care package) the total cost of each package will be identified and assessed for the overall cost effectiveness. While there is no set upper limit on the cost of care, the expectation is that the most cost effective option will be commissioned that meets the individual's needs.

4.8 Any assessment of a care option will include the psychological and social care needs and the impact on the home and family life as well as the individual's care needs. The outcome of this assessment will be taken into account in arriving at a decision.

4.9 The setting in which CHC is commissioned is ultimately a matter for a decision by the CCG who is determined to be the Responsible Commissioner for the individual, pursuant to the DH guidance "Who Pays?". However the CCG will carefully consider the views of the individual, their family or others as appropriate and act on all reasonable requests to the best of their ability, including working with the relevant Local Authority to keep couples together where practically possible.

5. CONTINUING HEALTHCARE FUNDED CARE HOME PLACEMENTS

5.1 Where a person has been assessed as needing a placement within a care home, the CHC team operates a provider framework list and the expectation is that individuals requiring placement will have their needs met in one of these homes. Within this policy the term "care home" includes care home, nursing home and specialist setting.

5.2 The person may wish to move into a home outside of the provider framework list or their family/representative may wish to place the individual in a home

outside of the provider framework list. As long as the fee for the bed is comparable to the fee agreed with the provider framework and the home can meet the patient's care needs the CHC team will consider this option. It is unlikely that anticipated cost of more than 10% higher than the CCG's available preferred accommodation will be accepted as comparable.

- 5.3 If the fee is higher than the fee charged by a care home on the provider framework list the CHC team would anticipate subject to clarification that the extra fees are for services or facilities unrelated to the person's primary health care need. The provider will only be able to invoice the CCG for the care and reasonable accommodation costs associated with the person's primary healthcare needs and will have to invoice the client separately for any services unrelated to those needs. The invoices will detail what the CCG and client is being charged for.
- 5.4 If the provider refuses to do this the CCG will not be able to purchase the care at this home and the client or their family as appropriate will be advised that they will need to consider other homes, including those on the CCG's framework.
- 5.5 If an individual is already resident in a care home, that is not on the framework, when they become CHC eligible or where the costs exceed framework price, the CCG will take due consideration of all relevant factors prior to a decision being made.

6 CONTINUING HEALTHCARE FUNDED PACKAGES OF CARE AT HOME

- 6.1 People who are eligible for continuing healthcare funding have a complexity, intensity, frequency and unpredictability of health needs which can present challenges to the safe delivery of care in their own homes. The CCG does not have the resources or facilities to provide a hospital at home service where the cost of providing those services safely and effectively significantly exceeds the equivalent costs of a residential placement.
- 6.2 The CCG will take account of the following issues when considering whether or not to commission a care package at home:
 - The psychological, social and physical impact on the person
 - Care can be delivered safely and without undue risk to the person, the staff or other members of the household (including children)
 - Safety will be determined by a written assessment of risk undertaken by an appropriately qualified professional in consultation with the person or their family. 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
 - The acceptance by the CCG and each person involved in the person's care of any identified risks in providing care and the person's acceptance of the risks and potential consequences of receiving care at home
 - Where an identified risk to the care providers or the person can be minimised through actions by the person or their family and carers, those individuals agree to comply and confirm in writing their agreement with the

steps required to minimise such identified risk.

- The person's GP agrees to provide primary care medical support
- The suitability and availability of alternative care options
- The cost of providing the care at home in the context of cost effectiveness
- The relative costs of providing the package of choice considered against the relative benefit to the person
- 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 persons to the care plan.

- 6.3 Many people wish to be cared for in their own homes rather than in a care home, especially people who are in the terminal stages of illness. The CCG will carefully consider a person's preference about their care setting but it cannot be guaranteed that the CCG will commission a package of care at home. The option of a package of care at home will be considered, even if discounted, with documented reasons.
- 6.4 Home care packages in excess of eight hours per day would indicate a high level of need which may be more appropriately met within a care home placement. These cases would be carefully considered and a full risk assessment undertaken.
- 6.5 It is likely to be easier to provide waking night care to a person in a care home placement. The need for waking night care indicates a high level of support day and night.
- 6.6 Care home placements may be more appropriate for persons who have complex and high levels of need. Care home placements benefit from direct oversight by registered professionals and the 24 hour monitoring of residents.
- 6.7 If the individual's clinical need is for direct supervision or intervention of a registered nurse throughout 24 hours, the care would often be expected to be provided within a home placement. This would include the requirement for 1-2 hourly intervention/monitoring for turning, continence management, medication, feeding, manual handling or for the management of significant cognitive impairment.
- 6.8 There are specific conditions or interventions that it would not generally be appropriate to manage in a home care setting. These would include but not be restricted to: the requirement for sub-cutaneous fluids, continual invasive or non-invasive ventilation or the management of grade 4 pressure areas.
- 6.9 Safety of the package will be determined by a formal assessment of risk undertaken by appropriately qualified professionals. The risk assessment will include the availability of equipment, the appropriateness of the physical environment and availability of appropriately trained carers and/or staff to deliver care whenever it is required.
- 6.10 The resilience of the package will be assessed and contingency arrangements will need to be put in place for each component of the package in case any component of the package fails.

7. RISK ASSESSMENT OF PACKAGES OF CARE AT HOME

7.1 Environmental Risk Assessment

The risk assessment must consider all risks that could potentially cause harm to the individual and their representatives and the staff. Where an identified risk to the care providers or the individual can be minimised through actions by the individual or their representatives, they must agree to comply with the steps required to minimise such identified risk. Where the individual requires any particular equipment then this must be able to be suitably accommodated within the home.

7.2 The CCG is not responsible for any alterations required to a property to enable a home care package to be provided. For the avoidance of doubt, where an individual or their representatives has made alterations to the home but the CCG has declined to fund the package, the CCG will not provide any compensation for those alterations. Included in the risk assessment will be a robust Safeguarding Adult Assessment in order to assess whether there are any actual or potential risks to the individual. Funding for adaptations to the home environment may be available from the local authority subject to their local criteria.

7.3 Clinical Assessment

When considering whether a package of care is suitable, the CCG will request support and involvement from the District Nurse to undertake a clinical assessment of the individual's needs and the extent to which that clinician considers that the proposed domiciliary care package meets those needs. The clinical assessment will consider the benefits of a 'Care at Home' package against the benefits of a care home placement.

7.4 A nurse and the individual's GP will be asked to consider the proposed arrangements in order to determine whether it is the most appropriate care package. This will include current and likely future clinical needs and psychological needs. Where part of the package is based on care being provided by the individual's representatives it will also include consideration of how needs will be met in the event that the carer is temporarily unable to provide the care.

7.5 Staffing Assessment

The CCG will assess the care need and the input required by the individual to meet those needs. The CCG shall consider the qualification of any required staff and the sustainable availability of appropriately qualified staff including appropriate contingency arrangements.

7.6 The CCG has a duty to its staff to assess any potential harm and take steps to prevent it. This covers both physical risks and any potential psychological risks that may arise. The commissioned provider is responsible for assessing the environment and the care required in line with their organisations Health and Safety policies and procedures will apply. This includes Manual Handling policies and Lone Worker policies.

7.7 The individual and their representatives are responsible for ensuring that the

environment is safe for the provision of the care package. Where the safety assessment identifies a potential risk associated with the home, the individual is responsible for remedying that. The individual and their representatives are also responsible for ensuring that the environment is appropriate for the provision of the care package by staff. This includes ensuring staff are able to have access to toilet, bathroom and kitchen areas and such areas are kept in a clean state and ensuring that staff are treated with dignity and respect.

- 7.8 When working within an individual's own home, staff do not have access to the full range of support services that are available within a hospital or nursing home environment, and in most cases staff will be working in isolation. This issue needs to be acknowledged and the implications of not having such support services needs to be identified, fully understood and Contingency plans put in place. It needs to be understood that it is not possible to replicate support services that are available within the NHS and nursing home facilities and if this level of support is required it may not be possible to care for the patient at home.

- 7.9 Due to the nature of the individual's condition, their high health needs and the care necessary, the NHS is required to ensure only appropriately trained staff are employed to care for patients and that those staff have the specialist skills they need to meet the patients individual needs. The CCG is responsible for commissioning care staff from a preferred provider in the first instances in accordance with agreed care specification in relation to the skill level of the staff required. Community Health Services are responsible for liaising and agreeing with the commissioned domiciliary provider

- 7.10 The Provider will ensure that any necessary specialist training is given to staff and that staff employed on the package of care are confident at working without the support services normally available in hospital or nursing home environments. Training must also be given by the provider in the use of all necessary equipment. Where the individual's representatives wish to assist in the care of the patient, they will have to be trained and deemed competent to carry out agreed tasks safely.

- 7.11 In any circumstance where the CCG considers that the safety of its staff or its agents/contractors are at risk it shall take such action as it considers appropriate in order to remove that risk. Where this relates to the conduct of the individual or the home environment it shall request that the individual and their representatives take the necessary action to remove the risk.

- 7.12 Where a review identifies, or the CCG otherwise becomes aware that an action to reduce an identified risk to either the people involved providing care to the individual or to the individual has not been observed and such failure may put those individuals providing care at risk or may significantly increase the cost of the package then the CCG will take the necessary steps to protect the individual and their representatives and staff involved with a view to ensuring the safety of all concerned. Harassment or bullying of care workers by the individual and their representatives will not be accepted and the CCG will take any action considered necessary to protect their staff and contractors in line with the NHS stand on Zero Tolerance.

- 7.13 Where safety of the individual and/or those people involved in providing care is likely to be compromised without such action and the individual or

representative does not take the required action then the CCG may write formally to the individual. Where there is a threat to the safety of CCG Staff or agents then the CCG retains the right to take any action it considers necessary to remove the threat including the immediate withdrawal of the care provision.

- 7.14 Where the individual is in receipt of a Home Care Package and an assessment determines that this is no longer appropriate for any reason (including increase in care needs, inability for the individual's representatives to provide agreed care or identified risk) then an alternative package will be discussed and agreed. If this is not agreed the following the CCG will undertake the following steps.

8. EXCEPTIONAL CIRCUMSTANCES

- 8.1 The CCG will seek to take account of the wishes expressed by individuals and their families when making decisions as to the location of care packages and care home placements to be offered to satisfy the obligations of the CCG to provide continuing healthcare. The CCG accepts that many people with complex medical conditions wish to remain in their own homes and to continue to live with their families, with a package of support provided. Where an individual or their family expresses such a desire the CCG will investigate to determine whether it is clinically feasible, safe and cost effective to provide a sustainable package of continuing care for a person in their own home or whether a care home is the only safe and realistic option.
- 8.2 Packages of care in a individual's own home are bespoke in nature and thus can often be considerably more expensive for the CCG than delivery of an equivalent package of services for a person in a care home. Such packages have the benefit of keeping the individual in familiar surroundings and/or enable a family to stay together. However the CCG needs to act fairly to balance the resources spent on an individual with those available to fund services to the population it serves.
- 8.3 The CCG has resolved that, in an exceptional case and in an attempt to balance these different interests it will be prepared to support a clinically sustainable package of care which keeps a person in their own home provided the anticipated cost to the CCG does not significantly exceed the anticipated cost of a care package delivered in an alternative appropriate location such as a care home. The CCG will generally not fund a home care package where its costs are more than 10% higher than care in an alternative appropriate location such as a care home.
- 8.4 Exceptionality would be determined on a case by case basis. Decisions will be made by the CCG's *Commissioning Decision Group* and be documented with reasons.

9. PERSONAL HEALTH BUDGETS

- 9.1 The authorisation for the commissioning and funding of packages of care at home lies with the CCG. There will be a process for the authorisation of eligibility and the authorisation of care packages and placements.
- 9.2 From October 2014, individuals who are eligible for NHS Continuing Healthcare have the right to ask for a personal health budget.
- 9.3 Personal health budgets will be calculated on the basis of what the CCG would usually pay to commission the package and will reflect the principles in paragraph 7.3. This money will then be offered to the patient/their representative.
- 9.4 A personal health budget is an amount of money to support a person's identified health and wellbeing needs, planned and agreed between the individual and their local NHS team.
CCGs are encouraged to use personal health budgets where appropriate. A personal health budget helps people to get the services they need to achieve their health outcomes, by allowing them control over how money is spent on their care/support as is appropriate.
- 9.5 Personal health budgets can work in a number of ways, including:
- a notional budget held by the CCG commissioner
 - a budget managed on the individual's behalf by a third party, and
 - a cash payment to the individual (a 'healthcare direct payment').
- 9.6 Further information is available from the CHC assessor and

www.personalhealthbudgets.england.nhs.uk

Decisions in respect of the award of a Personal Health Budget will be made in accordance with the CCG PHB Policy

- 9.7 The CCG will work closely together with the relevant Local Authority with regard to the personalisation of care and support in order to share expertise and develop arrangements that provide for smooth transfers of care where necessary

10. MEMORANDUM OF UNDERSTANDING FOR CARE AT HOME AND PERSONAL HEALTH BUDGETS

- 10.1 Where the CCG agrees to fund a 'care at home' package or meet assessed need by way of a personal health budget, the individual (if appropriate) and/or representatives may be required to enter into a Memorandum of Understanding ("Memorandum") confirming that they accept the terms on which any care is provided.
- 10.2 This Memorandum will set out what the CCG will provide and what the individual and representatives have agreed to provide.
- 10.3 This Memorandum will also confirm that the individual and representatives understand that the care package or Personal Health Budget is agreed on the basis of the assessed health and personal care needs and the required input

as at the date of the Memorandum. Where the cost of meeting the assessed care needs increases for any reason, or the assessed needs change such that the individual is no longer eligible to CHC or care can no longer safely be delivered at home, the individual and representatives acknowledge that it may no longer be appropriate for the CCG to provide and they will work with the CCG and where relevant the Local Authority, to agree an alternative care package.

- 10.4 The Memorandum will set out the agreed alternative arrangements should the care package breakdown.

11. CAPACITY

- 11.1 If a person does not have the mental capacity to make a decision about the location of their commissioned care package and suitable placement, the CCG will commission the most cost effective, safe care available based on an assessment of the person's best interests. This will be carried out in consultation with the following so far as is reasonably practicable:-

- (i) Any appointed advocate
- (ii) Any attorney under a Lasting Power of Attorney which does not authorise the attorney to make a decision by themselves as to where the person should live (see further 8.3 below)
- (iii) A Court Appointed Deputy whose terms of appointment do not authorise them to make a decision by themselves as to where the person should live (see further 8.3 below)
- (iv) Family members
- (iv) Any other person who must / may be consulted under the terms of the Mental Capacity Act 2005.

- 11.2 If there is a significant dispute between any of those referred to in the preceding paragraph about where the person should live, the CCG shall take advice as to whether the matter must/may be referred to the Court of Protection.

- Alternatively, if the terms of a Lasting Power of Attorney or Deputyship grant authority for the Attorney/Deputy to make decisions about where a person lives, the CCG will advise the Attorney/Deputy as to what they consider to be the most appropriate placement. The Attorney/Deputy will then decide whether to accept that placement as being in the person's best interests.
- 11.3

12. REVIEW

- 12.1 Individuals and their families need to be aware that there may be times where it will no longer be appropriate to provide care at home. For example, deterioration in the person's condition may result in the need for clinical oversight and 24 hour monitoring that can only be provided in a care home setting.

- 12.2 The care package will be reviewed after the first three months and then annually as a minimum requirement alongside the continuing healthcare eligibility review to ensure that it is still meeting the person's needs at that time. The package

will also be reviewed if the person's needs change significantly at any point.

- 12.3 If the weekly cost of the care increases, apart from a single period of up to two weeks to cover either an acute episode or for end of life care, the care package will be reviewed and other options (for example a nursing home placement) will be explored following consideration of the issues outlined in paragraph 6.2.

- 12.4 Any decision to withdraw CHC from an individual will not normally be a unilateral decision. If there is a possibility the CCG will be withdrawing funding it will consult with the individual and local authority before removing any package. Following a review, as described in section 11, the individual's condition may have improved to an extent that they are no longer eligible for CHC funding. In these circumstances, the CCG is obliged to cease funding. In these cases the CCG will carry out a joint review with the local authority.

- 12.5 The individual will be notified they may no longer be eligible for CHC; at this point the local authority has 28 days to review the individual's requirements. In suitable cases, CCG funding for an individual's care may be continued for 28 days where a local authority is undertaking such a review. The CCG may contribute to further packages of care according to need.

- 12.6 Should the individual or their family/representative on their behalf be unhappy with a decision about eligibility for NHC Continuing Healthcare then they may request a local review of that decision in line with the CCGs Continuing Healthcare Local Review Policy.

- 12.7 Where there are disputes between the CCG and the Local Authority on care provision, the CCG will follow the Dispute Resolution protocol agreed with the Local Authority.

- 12.8 It may be appropriate for the CCG to remove CHC services where the situation presents a risk of danger, violence to or harassment of care staff who are delivering the package. In these circumstances urgent discussions shall be held with the local authority to arrange for interim care arrangements to ensure that there is not a shortfall in the individual's care package.

- 12.9 The CCG may also withdraw CHC where the clinical risks become too high; this can be identified through, or independently of the review process. Where CHC clinical risk has become too high in a home care setting, the CCG will offer CHC in a care home or specialist setting.

13. GUIDANCE

The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care - 2012 (revised)
The NHS Continuing Healthcare (Responsibilities) Directions 2012
Human Rights Act 1998
Who Pays? Establishing the Responsible Commissioner (revised 2013)
Care Act 2014
Statutory guidance to support Local Authorities to implement the Care Act 2014
The Care and Support and After Care (Choice of Accommodation) Regulations 2014