NHS
West Cheshire
Clinical Commissioning Group

COMMISSIONING DECISION POLICY

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Author(s) Contact(s) for further information about this document	Laura Marsh Director of Commissioning
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Bengali

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Cantonese

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Gujarati

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Polish

ਜੇਕਰ ਇਸ ਜਾਣਕਾਰੀ ਦੇ ਬਾਰੇ ਤੁਹਾਡੇ ਕੋਈ ਸੁਆਲ ਹਨ ਜਾਂ ਕੋਈ ਟਿੱਪਣੀ ਹੋ ਜਾਂ ਤੁਸੀਂ ਇਸ ਦਾ ਤਰਜਮਾ ਆਪਣੀ ਭਾਸ਼ਾ ਵਿਚ ਕਰਵਾਉਣਾ ਚਾਹੁੰਦੇ ਹੋ ਤਾਂ ਕਿਰਪਾ ਕਰਕੇ 01244 650368 'ਤੇ ਟੇਲੀਫੋਨ ਕਰੋ। ਕਿਰਪਾ ਕਰਕੇ ਆਪਣੀ ਭਾਸ਼ਾ ਦਾ ਨਾਂ ਆਪਣੇ ਟੇਲੀਫੋਨ ਨੰਬਰ ਦੇ ਨਾਲ ਤਿੰਨ ਵਾਰ ਲਵੋ। ਅਸੀਂ ਟੇਲੀਫੋਨ ਦੁਭਾਸ਼ੀਏ ਵੱਲੋਂ ਤੁਹਾਨੂੰ ਫੋਨ ਕਰਵਾਉਣ ਦੀ ਵਿਵਸਥਾ ਕਰਾਂਗੇ।

Punjabi

اگر اس معلومات سے متعلق آپ کے سوالات ہیں یا آپ کی کوئی رائے ہے یا آپ اس کا اپنی زبان میں ترجمہ کروانا چاہتے ہیں تو براہ کرم ہمیں 01244 650368 پر ٹیلی فون کریں۔ اپنی زبان کا نام اپنے ٹیلی فون نمبر کے ساتھ تین بار کہیں۔ ہم ٹیلی فون مترجم کے ذریعہ آپ کو ٹیلی فون کروانے کا انتظام کریں گے۔

Urdu

NHS West Cheshire Clinical Commissioning Group

Commissioning Decision Policy:

Ethical framework for priority setting and resource allocation

POLICY STATEMENT

1. This policy outlines the principles, approach and process to be followed by NHS West Cheshire Clinical Commissioning Group and its associated committees with delegated authority, to support commissioning decisions. In particular it should be the basis for decision making in the development of strategic plans for health services and making investment and disinvestment decisions.

2. The purpose of setting out the principles and considerations to guide priority setting is to:
   - provide a coherent framework for decision making
   - promote fairness and consistency in decision making
   - ensure that the reasons behind decisions that have been taken are clear and comprehensive.
   - ensure public money is utilised effectively, to meet the needs of West Cheshire patients in the most efficient way, and to explore new models of care to meet the changing needs of the population.

EQUALITY STATEMENT

3. NHS West Cheshire Clinical Commissioning Group has a duty to have regard to the need to reduce health inequalities in access to health services and health outcomes achieved as enshrined in the Health and Social Care Act 2012. NHS West Cheshire Clinical Commissioning Group is committed to ensuring equality of access and non-discrimination, irrespective of age, gender, disability (including learning disability), gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation. In carrying out its functions, NHS West Cheshire Clinical Commissioning Group will have due regard to the different needs of protected equality groups, in line with the Equality Act 2010. This document is compliant with the NHS Constitution and the Human Rights Act 1998. This applies to all activities for which they are responsible, including policy development, review and implementation.

CONTEXT

4. NHS West Cheshire Clinical Commissioning Group receives an annual budget and has specific areas in which it is required to directly commission healthcare for specified groups of NHS patients.

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5. NHS West Cheshire Clinical Commissioning Group has a duty that is to provide a comprehensive healthcare service. Within that duty the NHS must meet all reasonable requirements for healthcare, subject to the duty to live within its allocated resources. NHS West Cheshire Clinical Commissioning Group has a responsibility to commission appropriate healthcare to meet the clinical needs of individual patients within the areas of its responsibilities and within its overall budget.

6. Directly commissioned services include those provided through primary and secondary care NHS providers, the independent sector, voluntary sector and independent NHS contractors.

7. Investment and disinvestment decisions are guided by a range of processes. NHS West Cheshire Clinical Commissioning Group undertakes strategic planning which leads to decisions made in its annual commissioning round. All decision-making within NHS West Cheshire Clinical Commissioning Group should be underpinned by this ethical framework. NHS West Cheshire Clinical Commissioning Group seeks to take decisions about which services to commission through a systematic approach which is centred around the needs of the local population but which fairly distributes services across different patient groups. It can only do so if all decision-making is based on clearly defined criteria and follows clear ethical principles.

8. Given resource constraints, NHS West Cheshire Clinical Commissioning Group has to prioritise how it meets the health care needs of its population. NHS West Cheshire Clinical Commissioning Group may take a decision not to commission a service to meet a specific healthcare need due to resource constraints. This does not indicate that NHS West Cheshire Clinical Commissioning Group is breaching its statutory obligations. The Cheshire Commissioning Policy details West Cheshire Clinical Commissioning Groups position on procedures of limited clinical priority. These are procedures that are not routinely commissioned due to a lack of clinical evidence.

9. This ethical framework should underpin and be applied to priority setting processes carried out by NHS West Cheshire Clinical Commissioning Group and its associated committees. In particular it should be the basis for decision-making in:
   - the development of strategic plans for individual services
   - making investment and disinvestment decisions during the annual commissioning cycle
   - making in-year decisions about service developments or decommissioning
   - the management of individual funding requests.

10. The purpose of setting out the principles and considerations to guide priority setting is to:
   - provide a coherent framework for decision-making

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- promote fairness and consistency in decision-making
- provide clear and comprehensive reasons behind decisions that have been taken.

11. The ethical framework has two parts: Core Principles and Factors which are taken into account when prioritising competing needs for healthcare.

COMMISSIONING CYCLE

12 The need to take commissioning decisions is integral throughout the commissioning cycle (diagram 1).

Diagram 1

13. As part of this commissioning cycle, all services to be commissioned by the clinical commissioning group will be reviewed in terms of alignment to the strategic plan, national and regional planning priorities, quality outcomes and efficiency.

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CORE PRINCIPLES FOR COMMISSONING DECISIONS

14. These are the principles that should guide all decision making by NHS West Cheshire Clinical Commissioning Group. As with all NHS West Cheshire Clinical Commissioning Group policies, this policy will be reviewed at regular intervals. However, these core principles should guide all decision making unless and until NHS West Cheshire Clinical Commissioning Group decides to amend this policy.

15. The core principles should be applied when dealing with individual funding requests, in conjunction with other general or treatment-specific commissioning policies, which might be relevant to the case.

16. Five important themes can be found within the above principles:
    i. As budget holder for a defined population and a range of clinical services, NHS West Cheshire Clinical Commissioning Group and its committees should ensure that all decisions are framed and considered in such a way that all options for investments are considered. This means that there should not be a parallel system operating, which allows individual treatments or patients to bypass prioritisation. This principle prevents patients, patient groups or services who lobby being given undue priority.
    ii. A commissioner should not give preferential treatment to an individual patient who is one of a group of patients with the same clinical needs. Either a treatment or service is funded in order to create the opportunity for all patients with equal need to be treated or, if this cannot be afforded, it should not be commissioned as part of NHS treatment for any patients. NHS West Cheshire Clinical Commissioning Group considers that if funding for a treatment/service cannot be justified as an investment for all patients in a particular cohort, the treatment/service should not be offered to only some of the patients, unless it is possible to differentiate between groups of patients on clinical grounds. A decision to treat some patients but not others has the potential to be unfair, arbitrary and possibly discriminatory. A treatment/service policy should therefore not be approved unless NHS West Cheshire Clinical Commissioning Group has made funds available to allow all patients within the clinical group identified in the policy to have equal access to treatment/service. Individual patients may be considered for funding through the individual funding request process if their clinician can demonstrate that the patient is clinically exceptional.
    iii. The need to demonstrate clinical effectiveness and value for money is only the first stage in assessing priority. Effectiveness and value for money are minimum requirements to enable prioritisation for funding, but are not the sole criteria that must be met for funding to be agreed.
    iv. Commissioners are frequently asked to take on funding commitments made by another statutory body or other type of organisation (including pharmaceutical companies, research bodies or acute trusts) or indeed an individual who has funded the treatment themselves. NHS West Cheshire

Clinical Commissioning Group, like any other organisation, cannot assume responsibility for a funding decision in which it played no part unless there is a legal requirement to do so.

v. Related to theme (iv) is the issue of financial support provided to research and development. Commissioner support for research and development is highly desirable but it needs to be placed within appropriate constraints. These constraints should protect high priority treatments and services of established value.

17. Core principles are therefore:

- **Principle 1**
  The values and principles driving priority setting at all levels of decision-making must be consistent.
- **Principle 2**
  NHS West Cheshire Clinical Commissioning Group has a duty to provide a comprehensive healthcare service. Within that duty the NHS must meet all reasonable requirements for healthcare, subject to the duty to operate within its allocated resources.
- **Principle 3**
  NHS West Cheshire Clinical Commissioning Group has a responsibility to make rational decisions in determining the way it allocates resources to the services it directly commissions. It must act fairly in balancing competing claims on resources between different patient groups and individuals.
- **Principle 4**
  Competing needs of patients and services within the areas of responsibility of NHS West Cheshire Clinical Commissioning Group should have an equal chance of being considered, subject to the capacity of NHS West Cheshire Clinical Commissioning Group to conduct the necessary healthcare needs and services assessments. As far as is practicable, all potential calls on new and existing funds should be considered as part of a priority setting process. Services, clinicians and individual patients should not be allowed to bypass normal priority setting processes.
- **Principle 5**
  Access to services should be governed, as far as practical, by the principle of equal access for equal clinical need. Individual patients or groups should not be unjustifiably advantaged or disadvantaged on the basis of age, gender, sexuality, race, religion, lifestyle, occupation, social position, financial status, family status (including responsibility for dependants), intellectual / cognitive function or physical functions.
  There are proven links between social equality and equality in health, health needs and access to healthcare. In making commissioning decisions, priority may be given to health services targeting the needs of sub-groups of the population who currently have poorer than average

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health outcomes (including morbidity and mortality) or poorer access to services.

- **Principle 6**
  NHS West Cheshire Clinical Commissioning Group should only invest in treatments and services which are of proven effectiveness unless it does so in the context of well designed and properly conducted clinical trials that will enable the NHS to assess the effectiveness and/or value for money of a treatment/service or other healthcare intervention.
- **Principle 7**
  New treatments should be assessed for funding on a similar basis to decisions to continue to fund existing treatments/services, namely according to the principles of clinical effectiveness, safety, cost-effectiveness and then prioritised in a way which supports consistent and affordable decision-making.
- **Principle 8**
  NHS West Cheshire Clinical Commissioning Group must ensure that the decisions it takes demonstrate value for money and an appropriate use of NHS funding based on the needs of the population it serves.
- **Principle 9**
  All NHS commissioned care should be provided as a result of a decision by NHS West Cheshire Clinical Commissioning Group. No other body or individual, other than those authorised/delegated to take decisions under the policies of NHS West Cheshire Clinical Commissioning Group, has a mandate to commit NHS West Cheshire Clinical Commissioning Group to fund any healthcare intervention unless directed to do so by the Secretary of State for Health.
- **Principle 10**
  Interventions of proven effectiveness and cost-effectiveness should be prioritised above funding research and evaluation unless there are sound reasons for not doing so.
- **Principle 11**
  Because the capacity of the NHS to fund research is limited, requests for funding to support research on matters relevant to the health service have to be subject to normal prioritisation processes.
- **Principle 12**
  Patients participating in clinical trials are entitled to be informed about the outcome of the trial and to share any benefits resulting from having been in the trial. They should be fully informed of the arrangements for continuation of treatment after the trial has ended. The responsibility for this lies with the party initiating and funding the trial and not NHS West Cheshire Clinical Commissioning Group unless NHS West Cheshire Clinical Commissioning Group has either funded the trial itself or agreed in advance to fund aftercare for patients entering the trial.
- **Principle 13**
  Unless the requested treatment is approved under existing policies of NHS West Cheshire Clinical Commissioning Group, in general it will not, except

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in exceptional circumstances, commission a continuation of privately funded treatment/services even if that treatment/service has been shown to have clinical benefit for the individual patient.

FACTORS TAKEN INTO ACCOUNT WHEN PRIORITISING COMPETING NEEDS FOR HEALTHCARE

18. NHS West Cheshire Clinical Commissioning Group has an obligation to provide a fair system for deciding which treatments/services to commission, recognising that NHS West Cheshire Clinical Commissioning Group does not have the budget to fulfil all the needs of all patients within its areas of responsibility.

19. This means that the key task of priority setting is to choose between competing claims on the budget. This requires NHS West Cheshire Clinical Commissioning Group to adopt policies that allow potential and existing demands on funds to be ranked, preferentially in the context of a strategic plan for the service. However NHS West Cheshire Clinical Commissioning Group recognises that its internal resources will not allow every service to be assessed and ranked within every annual commissioning round. NHS West Cheshire Clinical Commissioning Group will therefore have to allocate its own resources to decide which services to assess and rank each year as part of the annual commissioning round, in conjunction with national and regional guidance. In undertaking this work NHS West Cheshire Clinical Commissioning Group will decide which factors to take into account to decide which services to focus upon and which work to undertake to help define the relative priority of a service development.

20. When prioritising both within and across healthcare programmes a commissioner has to make complex assessments and trade-offs. Section 2 sets outs the common factors which are taken into account when making these decisions. This list is not exhaustive. NHS West Cheshire Clinical Commissioning Group will seek, within the resources available to it, to take rational decisions about which services to commission. As part of that process, NHS West Cheshire Clinical Commissioning Group is committed to examining existing services and reserves the right to withdraw funding from existing services which are do not demonstrate value for money, since this will release resources to fund other services which have a higher ranking.

21. Key factors that will be taken into account when assessing the relative priorities of competing needs for healthcare:
    - Whether there is a Direction made by the Secretary of State or other legal requirement which mandates NHS West Cheshire Clinical Commissioning Group to fund a particular proposed service development or an element of any proposed service development, including having due regard to the Equality Act 2010.
    - Whether or not the proposed service development and/or the benefits anticipated to be derived from the proposed service development have

been identified as a priority within the strategic plan for that service. This includes the extent to which the proposed service development supports the delivery of the NHS West Cheshire Clinical Commissioning Group Operational Plan.

- The anticipated effectiveness and specific nature of the health outcome of the proposed service development, particularly in reference to patient-oriented outcomes.
- The anticipated impact and potential impact on the population affected by the proposed service development.
- The level of confidence NHS West Cheshire Clinical Commissioning Group has in the evidence and case for change, underpinning the proposal for the service development or the individual funding request (i.e. the quality of the evidence).
- The anticipated budgetary impact of the proposed service development including:
  - an assessment of the total budgetary impact of funding the proposed service development; and
  - whether the proposed service development is cost saving in the short, medium or long term or cash releasing
- Any anticipated risks related to the proposed service development.
- Whether the proposed service development will improve access to healthcare and for whom.
- The effect of the proposed service development on patient choice.
- Whether or not extraordinary circumstances exist which would justify variance from any original funding plan (e.g. the management of a major outbreak)

GOVERNANCE & PROCESS FOR COMMISSIONING DECISIONS

22 Governance arrangements for commissioning decisions will comply with the Clinical Commissioning Group's constitution and scheme of reservation & delegation. All commissioning decisions are to be made within the following legal & policy frameworks:

a. The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 (2013 No.257) – Section 75 of Health and Social Care Act 2012

b. The Public Contracts Regulations 2015, SI 2015 No.102. Feb 2015

c. Managing Conflicts of Interest: Revised Statutory Guidance for CCGs 2017

23 It is important that the evidence for commissioning decisions undertaken by the Clinical Commissioning Group is robust. The Programme Management

Office (PMO) Gateway Approval Process (Appendix 1) sets out the process for undertaking all commissioning activity. This includes commissioning, re-commissioning, decommissioning, quality improvement schemes and financial recovery schemes. The Gateway Approval Process is aligned to the Clinical Commissioning Groups Governance Structure (Appendix 2), as such all commissioning activity is channelled through the delegated Programme Delivery Group (PDG), Finance, Performance and Commissioning Committee (FPCC) and Governing Body.

24 It is important to ensure that each commissioning decision is considered in terms of whether it supports the Clinical Commissioning Group in complying with its legal duties imposed under the NHS Act 2006. This includes the duty to promote the NHS Constitution, delivery of quality services and promote patient participation in decision making and their constitutional right to choice.

25. To enable consistent objective decisions, all existing commissioned services will undergo service contract reviews on a regular basis. The Clinical Commissioning Group will then inform its future commissioning intentions from the outcome of these service and performance reviews, to identify service improvements and contractual efficiencies.

26. When making commissioning and decommissioning decisions the full Gateway Approval Process must be adhered to, taking a particular focus on ensuring full impact assessments are undertaken to inform robust decision making.

27. The Programme Delivery Group (PDG) has operational responsibility for ensuring the Gateway Approval Process is adhered to, escalating matters and recommendations to the Finance, Performance and Commissioning Committee, who in turn will make recommendations to the Governing Body for ratification.

DECOMMISSIONING & DISINVESTMENT

28. Decommissioning relates to the withdrawal of funding from a provider organisation that is subsequently re-commissioning in a different format. Disinvestment relates to the withdrawal of funding from a provider organisation and the subsequent stopping of a service.

29. Decommissioning and disinvestment decisions impact on patients and providers, therefore a clearly defined process and clear lines of accountability and responsibility are required. The process needs to be safe,

fair and transparent, becoming the evidence trail, including the ratification by a decision making authority, in the face of potential appeals and challenges, legal or otherwise.

30. The Governance Process for all decommissioning and disinvestment decisions mirror that of any other commissioning decision, as such are subject to the same Gateway Approval Process (Appendix 1)

31. The drivers to make a decommissioning or disinvestment decision will include:

- A persistent and serious risk to patient safety.
- The service represents poor value for money.
- There is insufficient need/demand to warrant the current volume of service and/or number of providers.
- The service model is out-dated i.e. the outcomes have not changed but new evidence on the model of delivery has developed which cannot be met via a variation of the existing contract
- The service is no longer a clinical priority – reassessment of priorities may mean that investment is required elsewhere and so certain 'non-essential' services may be disinvested.
- A mismatch between need and the current profile of provided services is identified as one of the outcomes of e.g. Health Need Assessments, Health Equity Audits, and/or Joint Strategic Needs Assessments.
- The provider is not demonstrably delivering on agreed outcomes following mutually agreed remedial action plans.
- As part of a commissioning or market management strategy.
- Advance mitigation of impact prior to natural expiry of a time-limited contract
- Notice of termination of contract from the provider.
- Breach of contract served due to irreconcilably poor performance, poor patient experience, governance and/or risks to patient safety.
- Following an event specified under the terms and conditions of the relevant regulations of the specific contract requiring immediate termination, for example, criminal acts, bankruptcy.
- As triggered by a contract review and dictated by cost, volume and quality.
- As triggered by a significant event, such as a Serious Untoward Incident or a 'Never Event'.
- Failure to sign a contract variation for a change in service.

32. Once a driver has been triggered without resolution the commissioning manager should submit the proposal to disinvest or decommission as

described within Gateway 1 of the Gateway Approval Process (Appendix 1) to the Programme Management Office.

33. Once approved by the Programme Management Office, the commissioning manager may continue to develop an Impact Assessment and Business Care, in doing so should consider;

33.1 Notifying the incumbent provider that a review of the service is being completed and discuss with them the potential outcomes, review process and timescales.

33.2 Request Transfer of Undertaking (TUPE) information from the incumbent provider. If it is being proposed to exit the contract early, any termination estimate, in line with the contract terms and conditions, should also be calculated to inform the financial risk to both the Clinical Commissioning Group and wider health economy.

33.3 Inform the Head of Communications and Engagement of any reviews at the earliest opportunity and before releasing the information to stakeholders. The Head of Communications and Engagement will advise if formal public consultation is required.

33.4 Complete a Quality, Equality and Privacy impact assessments. Impact should be mapped out across the whole health economy, detailing any adverse financial and quality affects the decision may have on stakeholders and delivery partners.

34. Programme Delivery Group will review the development of the Gateways and Approve or Recommend for Approval the outcome in line with the Scheme of Reservation and Delegation.

35 Once approved, the responsibility for serving notice on the provider is with the Head of Finance & Contracting.

36 The provider following notification of a decision to decommission will provide the commissioner with an ‘Exit Plan’ outlining actions required by both parties for smooth service cessation.

37 The commissioner will ensure mechanisms are in place where, in conjunction with the provider, to ensure execution of the exit plan is actively managed.

ENGAGEMENT AND CONSULTATION

38 Throughout the process of making a commissioning decision, it is important to identify and engage stakeholders. The Clinical Commissioning Group is committed to having an open, engaged and transparent process for making its commissioning decisions.

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39 Engagement will be proportionate to the identified impact of the commissioning decision, as such if a material change in the delivery of a service is proposed, such as decommissioning then full public consultation will often be required

40 The law requires NHS bodies to engage with members of the public before making decisions on changes to health services. The consequences of failing to comply with the requirement to involve the public can be severe and lead to judicial review.

41. Formal consultation may be required when a proposal constitutes a substantial development of or variation in the provision of a health service. In accordance with regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 the Clinical Commissioning Group should consult the local authority Overview and Scrutiny Committee to determine if formal consultation should take place. When a proposal to decommission or disinvest constitutes a substantial development or variation of the provision of a health service, 12 weeks consultation is considered to be good practice.

42. There are certain circumstances when a formal consultation can be carried out for less than 12 weeks (for example emergency closure of a service on safety grounds). In these circumstances, agreement should be reached with the Local Authority Overview and Scrutiny Committee prior to action being taken and the need for any retrospective consultation agreed.

43. The Public Sector Equality Duty (PSED) applies where an NHS body is proposing changes in relation to a substantial development or variation in the provision of a health service that will have an effect on a large number of patients who are in groups which have a “protected characteristic”. The Clinical Commissioning Group needs to fully understand the likely impact of any proposed changes to a service on local people with a protected characteristic under the Equality Act. It is therefore good practice to carry out an Equality Impact Assessment (EIA) prior to formal consultation.

44. All formal consultation carried out by NHS West Cheshire Clinical Commissioning Group should adhere to the Gunning Principles that:

- Consultation must take place when the proposal is still at a formative stage
- Sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response
- Adequate time must be given for consideration and response
- The product of consultation must be conscientiously taken into account

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45 Outcomes of the consultation will be rigorously examined against stated criteria to ensure that all the specified intentions have been met and all the resultant responses considered. Information resulting from consultation activity will be managed in an accurate and auditable way, ensuring that all stakeholder interactions and responses are conscientiously taken into account and reported against. It is considered best practice for an NHS body carrying out formal consultation to engage an independent party to assess the consultation outcomes.

PHARMACEUTICAL TRIALS & JOINT WORKING

46. The Department of health guidance 'Best Practice Guidance for Joint Working between the NHS and the Pharmaceutical Industry', encourages NHS organisations and their staff to consider opportunities for joint working with the pharmaceutical industry, where the benefits that this could bring to patient care and the difference it can make to their health are clearly advantageous.

47. Any collaboration or joint working arrangements with the Pharmaceutical Industry must be approved by the Programme Delivery Group (PDG), whom will escalate matters arising to the Finance, Performance and Commissioning Committee (FPCC) where appropriate.

48. Requests to engage in joint working or trials must follow the same principles and decision making process as defined within this policy

49. A mutually agreed and effective exit strategy will be in place at the outset of any joint working agreement, detailing the responsibilities of each party, including circumstances for early termination.

50. The latest guidance on meeting excess treatment costs as a result of a drug trial commissioned by NHS England for non-commercial purposes can be found here: Excess Treatment Costs