

Corporate	CHC Organisational Disputes Policy
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Version Number	Date Issued	Review Date
V2.1	14 June 2022	30 June 2022 (or until ICB policy supersedes this policy)

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Consultation Process:	Director of Quality and Patient Safety
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Policy Adopted From:	NHS Continuing Healthcare. PCT/LA Dispute Resolution Procedure Between NHS North of Tyne and Newcastle, North Tyneside and Northumberland Local Authorities.
Approval Given By:	North Tyneside CCG Governing Body

Document History

Version	Date	Significant Changes
V1	04/04/17	New Policy
V2	22/02/2019	Introduction of revised National Framework (Oct 2018)
V2.1	14/06/2022	Extended in line with ICB establishment

Equality Impact Assessment

Date	Issues
2019	None Identified

POLICY VALIDITY STATEMENT

This policy is due for review on the latest date shown above. After this date, policy and process documents may become invalid. Policy users should ensure that they are consulting the currently valid version of the documentation.

Accessible Information Standards

If you require this document in an alternative format, such as easy read, large text, braille or an alternative language please contact NECSU.comms@nhs.net

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1. Introduction.

The National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (Oct 2018, Revised) requires Clinical Commissioning Groups (CCGs) to determine eligibility for NHS Continuing Healthcare (CHC) funding. This replaces the NHS Continuing Healthcare (Responsibilities) Directions 2009.

CCGs have the lead responsibility for CHC in their locality area. They may delegate and commission some parts of the CHC service from other partners and providers but the final decision on eligibility cannot be delegated. The CCG has a duty to consult with the Local Authority (LA) before making any decision on eligibility. The LA is required to provide advice and assistance as far as reasonably practicable to the CCG to assist with the process.

Since the introduction of the revised framework in October 2018, North Tyneside CCG uses a virtual panel process involving the LA/CCG panel members to determine and sign off decisions regarding CHC eligibility. It is within this forum that debates and discussions are held regarding eligibility status of individuals. Steps are taken by Panel members to resolve any issues within this process where possible. If there are any cases which cannot be agreed at this level, this Policy is to be used. Any dispute between a CCG and the relevant LA regarding:

- A decision as to eligibility for NHS Continuing Healthcare:

Or

- Where a person is not eligible for NHS Continuing Healthcare, the contribution of the CCG or LA to a joint package of care for that individual:

shall be resolved in accordance with a dispute resolution process agreed between the two organisations concerned.

2. Status.

This policy is a corporate policy.

3. Purpose and Scope.

This policy document outlines the procedure to be followed when the LA disagrees with either the CHC eligibility decision or the NHS contribution to a joint package of care. It should also be followed when the CCG disagrees with the LA contribution to a joint package of care. This policy complies with the requirement as laid out:

CCGs and LAs in each local area must agree a local disputes resolution process to resolve cases where there is a dispute between them about eligibility for NHS Continuing Healthcare, about the apportionment of funding in joint funded care or about the operation of refunds guidance (Pg. 59).

There are specific requirements for CCGs and LAs to cooperate and work in partnership in a number of key areas. North Tyneside CCG has determined that it will comply with its duty to consult with the relevant LA before making an eligibility decision on CHC funding in the following ways:

- It will require the CHC Nursing Assessment Team to extend an invitation to the LA to participate in the Decision Support Tool (DST) multi-disciplinary meeting of an individual's healthcare needs and to contribute a Community Care Assessment.
- It will require the CHC Nursing Assessment Team to ensure that the multi-disciplinary team (MDT) develop a proposed care plan for submission alongside the DST and any other evidence required.
- It will invite the LA Adult Social Care Director to identify a representative to participate in the CCGs Eligibility Decision Making Panel where a CCG designee will consult them again before making an eligibility decision. For the purpose of clarity, North Tyneside CCG hosts the panel process via a virtual process and invites the LA to participate in agreeing the recommendation of the MDT completing the decision Support Tool. A Designee from the CCG will distribute copies of DST's to panel members for the benefit of decision making.

4. Definitions.

The following terms are used in this document:

(CHC)	Continuing Healthcare
(MDT)	Multi-disciplinary Team
(DST)	Decision Support Tool
(CCG)	Clinical Commissioning Group
(LA)	Local Authority

5. Dispute Process.

This policy should not be confused with the patient/representative appeal process which includes the Independent Review Process as a procedure which can be pursued after the Local Resolution Process has been completed.

As previously detailed, the LA is invited to participate in the virtual CCG Eligibility decision Making Panel to advise and assist the CCG in its full consideration including any points of discourse raised during the MDT and recorded on the DST during the meeting, before making a decision.

The Panel members will work to find a solution that can be agreed upon without compromising either party's legal duties. The CCG and LA should not be expected to fund or charge for services unlawfully so the CCG will therefore consider the *Limits to Social Care* before making any decision regarding CHC eligibility. In the event there are any disagreements or points to note as part of the discussion, these should be recorded in the Panel meeting notes (CHC Patient Panel Record). The eligibility decision is final at this point subject to the outcome from any patient appeal that may be brought at some point in the future.

Informal Process

The CHC Panel affords the opportunity for debate, discussion and reaching an agreed way forward for those cases where opinions differ between the LA and CCG. There are a number of ways this can be dealt with at an informal stage including:

- Requesting further information from the MDT to inform the decision making.
- Requesting a new DST is completed by a new MDT.

In those cases, despite best efforts by Panel members an agreement cannot be reached, this should be recorded on the CHC Panel Patient Record together with the reason for the disagreement. This will signal the beginning of the formal dispute process and will be followed up in writing by the LA elaborating on the rationale for the dispute.

Formal Process

If the CCG and LA representatives are unable to come to an agreement about their respective organisational responsibilities, this should be recorded at the Panel sitting and registered as a formal dispute.

The LA should then submit the written dispute to the CCG within 7 working days of the Panel sitting detailing:

- The nature of the dispute – eligibility decision or NHS contribution to a specific joint package.
- The reason for the disagreement, in particular why the LA believes it will be required to act beyond its legal powers or obligations.
- What the LA proposes as a solution to the disagreement.

The CCG will add this to the CHC Panel agenda, determine the action to be taken and track progress at each CHC Panel sitting until the issue is closed. The CCG will consider the submission and decide to respond either:

Respond immediately to the submission by the LA including a clear rationale for not changing the decision based on the submission within 7 working days. This may be the case if the CCG is very confident that there are no substantive grounds for the dispute.

Or

An extraordinary Panel will be convened within 10 working days, wherever possible by North Tyneside CCG with membership drawn from other locality members (not the locality where the dispute has occurred). The case will be considered by the panel and all parties agree to abide by their decision. Consent will be sought from the individual/representative to ensure they are aware of information sharing with another LA and Nursing Team during this Panel review.

In the event that a dispute in relation to the funding of Social Care elements of a joint package of care has been raised by the CCG with the LA and Panel members are unable to resolve, the above steps would need to be followed.

6. Duties and Responsibilities.

The Lead Director for CHC is responsible for the prompt and timely delivery of the dispute resolution procedure. The prime consideration throughout this process is to ensure that the interests of the individual are protected. A funding decision should not impact upon the individual and their package of care and/or services should not be disrupted. Discharge from hospitals should not be delayed due to disputes between funding responsibilities therefore agreement needs to be reached between parties to confirm responsibility for payment until the dispute is resolved. It would be expected that:

- If a commissioned package of care is already in place and being funded by the CCG or LA, this should continue until after the dispute has been resolved. Agreement between parties to reimburse should be made without prejudice.
- If a discharge from hospital (Inc specialised units), is to be facilitated and there is no current care package/support in place, the CCG will finance the care until the dispute is resolved. This will be without prejudice and reimbursement will occur after this process if applicable.
- If the individual is in the community with no commissioned care package in place, the LA would be expected to finance the care until the dispute is resolved. This will be without prejudice and reimbursement will occur after the process is complete if applicable.

At this time of severe financial constraints on both CCGs and LAs, both parties may be reluctant to release any new funds for care packages where there remains an outstanding dispute about responsibility of funding. However, in order to protect the individual, both parties will agree these interim funding arrangements **without prejudice** pending the outcome of the dispute. These arrangements and the agreement of both parties to adhere, shows strong commitment to partnership working in the best interests of the individual concerned.

7. Implementation

This policy will be available to all Staff for use in relation to CHC Dispute Process.

All directors and managers are responsible for ensuring that relevant staff within their own directorates and departments have read and understood this document and are competent to carry out their duties in accordance with the procedures described.

8. Training Implications

It has been determined that there are no specific training requirements associated with this policy/procedure.

9. Related Documents.

North Tyneside CCG CHC Eligibility Panel and Process. Terms of Reference.

10. Monitoring, Review and Archiving.

The Governing Body will agree a method for monitoring the dissemination and implementation of this policy. Monitoring information will be recorded in the policy database.

The Governing Body will ensure that this policy document is reviewed in accordance with the timescale specified at the time of approval. No policy or procedure will remain operational for a period exceeding three years without a review taking place.

Staff members who become aware of any change which may affect a policy should advise their line manager as soon as possible. The Governing Body will then consider the need to review the policy or procedure outside of the agreed timescale for revision.

For ease of reference for reviewers or approval bodies, changes should be noted in the 'document history' table on the front page of this document.

NB: If the review consists of a change to an appendix or procedure document, approval may be given by the sponsor director and a revised document may be issued. Review to the main body of the policy must always follow the original approval process.

The Governing Body will ensure that archived copies of superseded policy documents are retained in accordance with Records Management: NHS Code of Practice 2009.

11. Equality Impact Assessment.



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