

NHS All Age Continuing Care

Local Resolution Procedure

Cheshire and Merseyside Integrated Care
Board V1



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1 Introduction

- 1.1 This local resolution procedure is created in accordance with paragraph 214 and 215 of The National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (revised July 2022). The National Framework reflects the guidance in the Health and Care Act 2022.

The Regulations under the Act set out the Standing Rules to be followed when determining eligibility for NHS Continuing Healthcare (CHC) and NHS Funded Nursing Care (FNC), and this procedure is designed to set out a clear pathway as to how individuals, or their representative, may challenge the Integrated Care Boards (ICB) eligibility decisions.

This procedure refers to a challenge made by an individual or their representative to NHS Cheshire and Merseyside Integrated Care Board (ICB) following an assessment of eligibility for NHS CHC as a dispute, whereas the Standing Rules use the term 'review' for the same situation. Therefore, when this document refers to 'local resolution' this equates to a 'review of a decision' regarding CHC eligibility made by the ICB. This procedure relates to individuals assessed by the All Age Continuing Care Teams operating within the 9 places within NHS Cheshire and Merseyside ICB.

- 1.2 This procedure is not for use where disputes arise between public bodies as to funding responsibilities or disagreement regarding a recommendation for eligibility made by the multi- disciplinary team (MDT). The procedure applies exclusively to cases for which the ICB is the Responsible Commissioner.

- 1.3 This procedure only applies to periods of care where eligibility for funding has been assessed.

Where periods of unassessed care exist, eligibility needs to be considered by the ICB prior to any local resolution procedure.

- 1.4 The local resolution process does not apply to checklists and cannot be raised by professionals or organisations on behalf of the individual unless they have been legally appointed to do so.

- 1.5 The Department of Health and Social Care has set a time limit of 3 months for responsible ICBs to investigate and bring a local resolution process to its conclusion.

- 1.6 This procedure aims to:

- Adhere to the Standing Rules for Continuing Healthcare.
- Provide transparency throughout the local resolution process.
- Adhere to guidance from the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care in addition to the timescales set by the Department of Health and Social Care.
- Adhere to the NHS Continuing Healthcare Operational Procedure for Independent Review Panels (2013 revised).




2 Requests for a Local Resolution

- 2.1 This local resolution process applies when an individual or their representative (who holds the appropriate legal authority) wishes to challenge the outcome following the CHC full consideration assessment as outlined in the National Framework for Continuing Healthcare and NHS Funded Nursing Care (revised 2022).
- 2.2 In cases where an individual does not have the mental capacity to manage their own affairs a representative may challenge the outcome of an eligibility decision on their behalf if they hold one of the following documents:
- A Lasting Power of Attorney which has been registered with the Office of the Public Guardian. This can be either a Health and Welfare Lasting Power of Attorney or a Property and Financial Affairs lasting Power of Attorney.
 - An Enduring Power of Attorney which has been registered with the Office of the Public Guardian.
 - An order of the Court of Protection appointing them as Deputy and the order enables them to decide to request a review of an eligibility decision.
 - An order from the Court of Protection, deciding that a review of eligibility should take place.

Where no person holds any of the documents from the above list, each case will be considered on an individual basis considering what would be in the best interest of the individual.

- 2.3 A request for local resolution may be made in the following circumstances:
- Where an individual or their representative is dissatisfied with the decision regarding eligibility for NHS CHC following completion of the Decision Support Tool.
- or
- Where there has been a failure to follow National Guidance in reaching its decision as to determine the individual's eligibility for NHS CHC.
- 2.4 All challenges must be received by the ICB no later than 6 months following receipt of the decision regarding eligibility.
- 2.5 Request for a local resolution should be made in writing. If a request is made orally, the individual or family member must be encouraged or, where required, assisted to put their request in writing. Exceptionality criteria may apply to the above time limit (see section 8 below).
- 2.6 Only once the responsible ICB has made an eligibility decision can a request for a local resolution be made by the individual or representative. The outcome of the decision will remain unchanged until such time as local resolution or independent review is concluded.



2.7 If because of the local resolution process the decision is overturned, NHS funding will normally be back dated to the 28th day following the date of the Checklist to which the request relates, was accepted by the ICB.

2.8 The following challenges are outside the scope of this procedure:

- The content of the Department of Health National Framework for Continuing Healthcare and NHS-funded Nursing Care. These need to be pursued with the Department of Health.
- The type and/or location of any offer of NHS funded Continuing Healthcare services or NHS treatment. These need to be pursued through the standard NHS Complaints Procedure.

3 Upon Receipt of a Request for Local Resolution

3.1 An acknowledgement letter will be sent in writing to the individual and/or their representative enclosing the following documents within 5 working days where possible:

- A copy of the local resolution leaflet,
- Notification of Requesting a review of the eligibility decision form for completion,
- Consent form for completion (where this is not already held).

The individual and/or their representative will be required to send the following documentation to the All Age Continuing Care place-based Disputes and Retrospective contact indicated on the eligibility outcome letter, within 28 days from the date of the acknowledgment letter:

- Any relevant legal documentation,
- A signed consent form (where this is not already held),
- A completed copy of the questionnaire,
- Any additional evidence that they wish to be considered.

3.2 Where the individual to whom this decision relates to is deceased, the person requesting the review of an eligibility decision will need to provide evidence that they are entitled to benefit from the deceased's estate.

3.3 Appropriate consent to discuss the local resolution and share information should be sought by the ICB reviewing officer determined by the particularities of the individual case. In cases or a case where there is a lack of mental capacity the principles of the Mental Capacity Act 2005 will need to be applied.

4 Local Resolution Meeting

4.1 Local Resolution processes will be conducted by staff independent of the original assessment.


4.2 A Quality Assurance (QA) form will be completed prior to an informal meeting with the appellant. Where process issues are found, the case will be returned to the MDT to



reconvene with a rationale provided for consideration by the MDT.

- 4.3 Once the case has passed the QA procedure an informal meeting will be held. The ICB will telephone the appellant to confirm receipt of the request to review the eligibility decision and explain the ICB's procedure, advising that the ICB aim to complete the case within 12 weeks of the receipt to review the decision. During this telephone conversation there will be an opportunity for the appellant to:
- Receive clarification of anything that they have not understood,
 - Have an explanation from the ICB representative with regards to how the ICB has arrived at the decision of 'not eligible' to receive NHS CHC – this will reference the completed Decision Support Tool and the Primary Health Need criteria as described in the four key characteristics,
 - Describe additional information that has not been obtained by the MDT that the individual believe needs to be considered,
 - Describe additional information that was available to the MDT that the individual believes was not given due consideration.
- 4.4 If a resolution cannot be reached at this stage an offer of a formal meeting will be made by the ICB.
- 4.5 A Local Resolution Meeting will be convened within 6 weeks of receiving the notification of a request to review an eligibility decision and consent forms. The ICB will explain the local resolution process and make every effort to ensure that the appellant has a clear understanding of the NHS CHC eligibility criteria and how it applies to their own situation.
- 4.6 The ICB will use the independent Review Panel (IRP) Standard Index as the outline for the Local Resolution file. All the information used at local resolution by the ICB will form the file that is sent to NHS England, if an IRP is requested.
- 4.7 During the Local Resolution Meeting the appellant should be prepared to discuss with the reviewing officer the exact reasons for the request. This may include the submission of additional information that was not available at the time of the assessment.
- 4.8 Notes will be taken at the meeting for record keeping purposes and will be available upon request from the appellant.
- 4.9 It is acknowledged that this meeting process is both sensitive and emotional in nature and the Local Resolution Meeting member/s will attempt to prevent any further distress to individuals or their representatives. Furthermore, individuals or their representatives may request a break during the meeting given the potentially distressing nature of the discussion. If a conflicting situation becomes apparent the Chair will terminate the meeting. On the rare occasion this action is practiced, reasons will be identified within the written outcome documentation and an incident form will be logged by the ICB.

5 Gathering of Information

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- 5.1 Attempts should be made to access information from all reasonable sources to ensure a complete and robust review is undertaken.
 - 5.2 The reviewing officer should address all the relevant points made by the appellant.

6 Findings of the Local Resolution

6.1 The latest assessment documentation held by the ICB will be examined to ensure that any decision made was appropriate to the evidence it contains. Following scrutiny of all the information the reviewing officer will complete a report that will recommend one of the following:

- The evidence supports the claim that there was a clear omission on the part of the ICB that not all the evidence had been considered, or that a robust decision-making process did not lead to a sound decision on eligibility.
- The evidence does not support the claim that there was a clear omission on the part of the ICB that not all the evidence had been considered, or that a robust decision-making process did not lead to a sound decision on eligibility.

6.2 The Reviewing Officer will recommend one of the following actions:

1. There is no new evidence the ICB decision is upheld.
2. There is evidence that supports changes to the levels of the domains however that does not impact on the overall recommendation or decision and therefore the ICB decision is upheld.
3. There is further evidence to consider, and ICB will reconvene the MDT.
4. The evidence supports changes to the levels of the domains that does impact on the overall recommendation and therefore the ICB decision is unsound and is overturned.

6.3 In all cases an outcome letter including a copy of the Local Resolution Report or annotated Decision Support Tool should be sent to the appellant within the 12 weeks.

6.4 Where the ICB considers the decision made is sound and the appellant remains dissatisfied, they will be notified of the address and contact details of NHS England to request an Independent Review Panel is convened. These details will be included within the outcome letter.

6.5 Where there is further evidence to consider, The MDT meeting should be reconvened, and all new and original evidence should be presented. The appellant is given the opportunity to attend this meeting and is offered the opportunity to give their views.

6.6 The ICB should be satisfied that the appellant has been fully involved throughout the Local Resolution Process whether they attend the MDT meeting in person or not.

6.7 Following the reconvened MDT, a decision on eligibility should be reached and communicated within 7 working days and the whole review process should be no longer

than 3 months from receipt of the request.

7 Challenges to the outcome of the Local Resolution Meeting

7.1 In such cases where the ICB decides that an individual does not have a primary Health Need and is therefore not eligible for NHS CHC funding and the appellant remains dissatisfied with the local resolution meeting outcome, they have the right to request that NHS England consider their case at an Independent Review Panel. This request should be made no later than 6 months following the date the local resolution meeting decision letter was sent by the ICB. Details will be included within the outcome letter described at 6.4.

8 Exceptionality Criteria (regarding non-submission of a request for a review of the eligibility decision by the Department of Health stipulated 6-month time limit following notification of an eligibility decision)

8.1 The ICB will consider whether there are exceptional circumstances and if a request for an assessment should be considered outside of the deadlines. Each case will be considered on its individual merits.

8.2 To determine whether exceptional circumstances exist, the ICB will consider all relevant factors, including the following scenarios:


8.2.1 If the individual lacked the capacity to understand the meaning of the deadline referred to in paragraph 3.3 (see above) and the steps they needed to take to request a review of the eligibility decision:

- Did they have anyone appointed to manage their affairs (e.g., an Attorney registered with the Office of the Public Guardian or a Court of Protection appointed Deputy)?
- If so, were there circumstances that meant such an Attorney or Deputy could not reasonably have been expected to know about the deadline (e.g. they were out of the country for the entire period or they were themselves incapacitated)?
- Was there any other individual who could reasonably have been expected to know about the deadline and its consequences for the individual?
- Would it be in the best interests of the individual to apply for an assessment?

8.2.2 If the individual had the capacity to understand the meaning of the deadline referred to in paragraph 3.2 and the steps they needed to take to request a review of an eligibility decision:

- Were there circumstances that meant the individual could not reasonably have been expected to know about the deadline (e.g., they were out of the country for the entire period, or they were otherwise incapacitated)?

8.2.3 Was there an error on the part of any NHS body in processing a request for a review of an eligibility decision, which was received prior to the relevant deadline?



8.2.4 At the time of the assessment is their evidence that was known, or should reasonably have been known, to the relevant ICB that the individual did demonstrate a 'primary health need'?

8.3 Examples of issues that are not exceptional include where an individual or their representative:

- Believes they were unaware of the deadline for requesting a review of the eligibility decision despite a letter having been sent to the individual stating that the deadline existed.
- Was unaware that care provided by the Local Authority is means-tested.
- Was unaware of a decision taken by the individual or a separate representative not to pursue a request to review an eligibility decision and disagrees with that decision.

The above list is illustrative and is not intended to be exhaustive.