

**All-Age Continuing Care**

Local Resolution Procedure

January 2023

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# Introduction

* 1. This procedure has been developed in accordance with the National Framework for NHS Continuing Healthcare (CHC) and NHS-funded Nursing Care (FNC) (Revised 2022), to ensure a consistency in application and approach across Cheshire and Merseyside**.** It sets out the Cheshire and Merseyside Integrated Care Board (ICB) CHC Local Resolution Process.

* 1. The aim of a Local Resolution Process (LRP) is to resolve outstanding issues locally, wherever possible, and for NHS Cheshire and Merseyside to take the opportunity to assist individuals and families in understanding how and why decisions have been made.
	2. This process should be used when an individual or their representative is dissatisfied with NHS Cheshire and Merseyside’s decision on eligibility for NHS Continuing Healthcare and requests a review of the decision.
	3. Responsibility for informing individuals of the decision about eligibility for NHS Continuing Healthcare and of their right to request a review lies with the ICB. NHS Cheshire and Merseyside will give clear reasons for its decision and will set out the basis on which the decision of eligibility was made.
	4. Where an individual or their representative asks NHS Cheshire and Merseyside to review the eligibility decision, this will be addressed through the Local Resolution Process, NHS Cheshire and Merseyside will instigate the two-step process which is normally expected to resolve the matter. NHS Cheshire and Merseyside will deal with a request for a review of the eligibility decision within **3 months** from the date of receipt.
	5. A separate All Age Continuing Care (AACC) Interagency working and Dispute Resolution Procedure is in place when disputes arise between public bodies as to the funding responsibilities regarding an eligibility recommendation and ICB decision. The CHC Disputes Policy will be followed by the public bodies under these circumstances.
	6. This procedure only applies to periods of care where eligibility for funding has been assessed. A separate procedure deals with previously unassessed periods of care.

# Requests for a Local Resolution

* 1. When a decision on CHC eligibility is made, NHS Cheshire and Merseyside will inform the individual or their representative of the outcome in writing including a copy of the Decision Support Tool (DST). This will include the basis on which the decision was made and information on how to request a review if they are dissatisfied.
	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:
	3. 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
	1. 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. 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.
	1. All requests for review must be received by NHS Cheshire and Merseyside no later than 6 months following receipt of the decision regarding eligibility. Exceptionality criteria may apply to the above time limit (see section 8 below).
	2. 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.
	3. 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.
	4. 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.
	5. The following are outside the scope of this procedure:
* The content of the National Framework for Continuing Healthcare and NHS-funded Nursing Care (Revised 2022).
* 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.
* 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.

# Upon Receipt of a Request for Local Resolution

* 1. All requests for reviews of eligibility decisions should be made in writing to the local team identified in the eligibility outcome letter sent to the individual or their representative.:

* 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:
* Link to NHS Cheshire and Merseyside website where a copy of this procedure can be found and offer of a paper copy on request
* Requesting a review of the eligibility decision form for completion,
* consent form for completion
	1. The individual and/or their representative will be required to send the following documentation to the AACC Disputes and Retrospective Team within **28 days** from the date of the acknowledgment letter:
* any relevant legal documentation
* a signed consent form
* a completed copy of the questionnaire
* any additional evidence that they wish to be considered

If there is no response within 28 days from the individual and/or their representative, the case will be closed and a letter confirming this sent.

* 1. 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 i.e. Will, Probate Letter of Admin.
	2. Appropriate consent to discuss the local resolution and share information should be sought by NHS Cheshire and Merseyside 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.

# Local Resolution Meeting

* 1. 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 Multidisciplinary Team (MDT) to reconvene with a rationale provided for consideration by the MDT.
	2. Once the case has passed the QA procedure an informal meeting will be held. NHS Cheshire and Merseyside will telephone the appellant to confirm receipt of the request to review the eligibility decision and explain NHS Cheshire and Merseyside’s procedure, advising that NHS Cheshire and Merseyside aim to complete the case within 12 weeks. 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 NHS Cheshire and Merseyside representative with regards to how NHS Cheshire and Merseyside 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 believes needs to be considered
* Describe additional information that was available to the MDT that the individual believes was not given due consideration
	1. If a resolution cannot be reached at this stage an offer of a formal meeting will be made by NHS Cheshire and Merseyside.
	2. This will involve the Dispute Resolution Nurse (where that post exists) or alternatively an NHS representative with no previous involvement in the original decision. This individual will Chair the Local Resolution meeting. In addition, a Local Authority (LA) rep and an NHS rep along with the individual or their representative will be invited.

* 1. If confirmation of attendance is not received by telephone, email or post, at least 24 hours before the meeting date, the meeting will be postponed, and an offer of one further date made. If no confirmation of attendance is received following this second offer the process will be concluded and an outcome will be formulated based on the available evidence and submissions made by the individual or their representative.

* 1. A written record of the meeting will be taken, and this will be shared between all parties present. Audio or video recording of the meeting will be considered in exceptional circumstances, with the agreement of the Chair in advance of the meeting, will this be permitted.
	2. During the Local Resolution Process the following will be considered:
* levels of need in disputed care domains
* the application of the ‘primary health need (PHN) test’ as set out in the National Framework
* any process concerns
	1. The team will prepare a file containing all the relevant core information that was considered by the MDT summarised into a Needs Portrayal document. In adherence with the National Framework all available and appropriate evidence is provided when making their recommendation, such as:
* GP summary records,
* care provider records,
* local authority records and
* any other information deemed important for the completion of the NHS CHC recommendation

This is not an exhaustive list.

* 1. NHS Cheshire and Merseyside 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 NHS Cheshire and Merseyside will form the file that is sent to NHS England, if an Independent Review is requested.
	2. If the individual believes there is other or new relevant information available and informs NHS Cheshire and Merseyside of this before or during the Local Resolution meeting, NHS Cheshire and Merseyside will make reasonable and proportionate effort to obtain it. A decision will not be reached at this meeting and the meeting will be postponed.
	3. Any new information will need to be considered by the MDT who made the initial recommendation of eligibility with a request to review their recommendation in light of the new information. Requests for additional information will be recorded in the individual’s records held at NHS Cheshire and Merseyside, for audit and communication purposes. A valid consent will be required to request new information from organisations.
	4. Following the formal meeting, NHS Cheshire and Merseyside will determine one of the following actions:
* There is no new evidence thus NHS Cheshire and Merseyside decision is upheld.
* 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 NHS Cheshire and Merseyside decision is upheld.
* There is further evidence to consider, and ICB will reconvene the MDT.
* The evidence supports changes to the levels of the domains that does impact on the overall recommendation and therefore NHS Cheshire and Merseyside decision is unsound and is overturned.
	1. This will be communicated in writing to the individual and / or their representative within 28 days of the formal meeting.
	2. In such cases where NHS Cheshire and Merseyside 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 NHS Cheshire and Merseyside.
	3. 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. It should be noted that all NHS ICBs adhere to a zero-tolerance policy at all times and will not tolerate behaviours which threaten or cause distress, such as aggression, abuse, violence such as shouting and swearing. 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 NHS Cheshire and Merseyside.

# 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)

* 1. NHS Cheshire and Merseyside 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.
	2. To determine whether exceptional circumstances exist, NHS Cheshire and Merseyside will consider all relevant factors, including the following scenarios:

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?
	1. 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)?
* 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?
* 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’?
	1. Examples of issues that are not exceptional include where a patient 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 patient 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 patient 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.

# Individual Complaints

* 1. Complaints made by an individual about a Partner Organisation, their performance and provision (or non-provision) of services should be responded to in accordance with that Partner Organisation’s complaints handling process.
	2. All such complaints should be addressed to the complaints officer of the relevant organisation in the first instance. In addition, Patients Advice and Liaison Service (PALS) will assist in dealing with specific concerns raised by NHS patients.

# Definitions

**‘NHS Continuing Healthcare’** means a package of ongoing care that is arranged and funded solely by the National Health Service (NHS) where the individual has been assessed and found to have a ‘primary health need’ as set out in the National Framework. Such care is provided to an individual aged 18 or over, to meet health and associated social care needs that have arisen as a result of disability, accident or illness. The actual services provided as part of the package should be seen in the wider context of best practice and service development for each client group. Eligibility for NHS Continuing Healthcare is not determined by the setting in which the package of support can be offered or by the type of service delivery.

**‘NHS-funded Nursing Care’** is the funding provided by the NHS to care homes with nursing to support the provision of nursing care by a registered nurse. Since 2007 NHS-funded Nursing Care has been based on a single band rate. In all cases individuals should be considered for eligibility for NHS Continuing Healthcare before a decision is reached about the need for NHS-funded Nursing Care.

**‘Primary Health Need’** is a concept developed by the Secretary of State for Health to assist in deciding when an individual’s primary need is for healthcare (which it is appropriate for the NHS to provide under the 2006 Act) rather than social care (which the Local Authority may provide under the Care Act 2014). To determine whether an individual has a primary health need, there is an assessment process, which is detailed in the National Framework. Where an individual has a primary health need and is therefore eligible for NHS Continuing Healthcare, the NHS is responsible for providing for all of that individual’s assessed health and associated social care needs, including accommodation, if that is part of the overall need.

**‘Cheshire and Merseyside Integrated Care Board’** Integrated Care Boards (ICBs) were established as new statutory organisations to lead integration within the NHS. The Cheshire and Merseyside ICB has a unitary board and minimum requirements for board membership will be set in legislation. The Integrated Care Board is responsible for the day-to-day running of the NHS in Cheshire and Merseyside, including planning and buying healthcare services. The current functions of Cheshire and Merseyside’s nine clinical commissioning groups (CCGs) transferred to the Integrated Care Board on 1 July 2022, following their closure.

**‘Clinical Commissioning Groups’** (CCGs) Clinical Commissioning Groups (CCGs) were created following the Health and Social Care Act in 2012 and replaced Primary Care Trusts on 1 April 2013. They were clinically led statutory NHS bodies responsible for the planning and commissioning of health care services for their local area in place up until 1st July 2022.

**‘Independent Review’** (IR) An Independent Review is convened by NHS Englandwhich may lead to a formal review of NHS Cheshire and Merseyside’s decision by an independent panel of experienced health and social care professionals and a lay Chair. Individual / family / representatives will be invited to attend part of the panel hearing.

**‘Integrated Care Systems’** (ICSs) ICSs are new partnerships between the organisations that meet health and care needs across an area, to coordinate services and to plan in a way that improves population health and reduces inequalities between different groups. Since 2018, they have been deepening the relationship in many areas between the NHS, local councils and other important strategic partners such as the voluntary, community and social enterprise sector. They have developed better and more convenient services, invested in keeping people healthy and out of hospital and set shared priorities for the future.

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| **Appendix One - Local Resolution Process** |
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Request for review of eligibility decision received by NHS ICB, **within 6 months** of the eligibility letter.

Review of NHS CHC eligibility decision reviewed by relevant lead for appropriateness

Admin to contact the individual acknowledging receipt of review of NHS CHC eligibility decision sending relevant forms **within 5 working days**.

Allocated to arrange an informal meeting which may be telephone/ Virtual technology or face to face.

ICB contact the individual/family/representative by email, telephone or post **within 2 weeks** of the request and takes informal meeting notes and discusses the next stage with the individual. Informal notes to be sent to the individual for sign off

Following receipt of the informal meeting notes signed by individual, NHS Cheshire and Merseyside will conclude the meeting recommendations and send to the individual.

Case required to go to **Formal Local Resolution Process**.

A Senior ICB representative with no involvement in the original recommendation is nominated to Chair.

**Yes**

Outcome letter sent, **within 28 days,** outlining the agreement of the case to be closed at this stage.

**No**

Formal Local Resolution Process followed.

Outcome identified and decision communicated to individual **within 28 days**

**Upheld**

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Outcome of resolution to be sent to the individual & next steps communicated by ICB

Outcome of resolution to be sent to the individual and current assessment required no

**Overturned**