

NHS Continuing Healthcare Joint Disputes Resolution Procedure

1 Introduction

- 1.1 This Procedure is the mechanism to be applied by NHS Southampton Clinical Commissioning Group (“CCG”) and the Local Authority for the purposes of resolving disputes regarding the eligibility of a Service User for NHS Continuing Health Care (“CHC”).
- 1.2 While this Procedure is intended for use between the CCG and the Local Authority, its terms can also govern any disputes arising from time to time between the CCG and other local authorities, who agree to use it. The Partner Organisations recognise that whilst this procedure is intended to resolve disputes regarding eligibility for CHC, it could be adapted for use to resolve related issues such as disputes regarding individual packages of care, such as, but not exclusively, section 117 funded care and joint packages of care. This procedure has been developed with legal advice from legal advisers to Southampton City CCG and Southampton City Council
- 1.3 There are four stages to the resolution of disagreements between the Partner Organisations in this Procedure:
 - 1.3.1 Stage One: an informal dispute resolution procedure at operational level (Part I) and Clinical Lead level (Part II) as described in Paragraph 5.
 - 1.3.2 Stage Two: A formal dispute resolution procedure through the Disputes Panel, as described in Paragraph 6.
 - 1.3.3 Stage Three: Resolution by the Chief Executives, or equivalent levels, of each Partner Organisation as described in Paragraph 11.
 - 1.3.4 Stage Four: Arbitration as described in Paragraph 12.

Every effort will be made to comply with the time limits set out in this Procedure. The Partner Organisations may, by agreement, extend any of the time limits provided that this is in accordance with the National Framework.

2 Service User Complaints and Appeals

- 2.1 Complaints made by the Service User 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. 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.
- 2.2 For the avoidance of doubt, this Procedure is not to be used to manage disputes between a Service User and the CCG regarding that individual's eligibility for CHC. An individual can appeal against a CCG decision relating to their eligibility for CHC in accordance with the National Framework and NHS complaints procedures.

3 Funding During Disputes

- 3.1 Pending resolution of a Dispute, the Partner Organisations shall at all times act in the best interest of the Service User and, in the spirit of partnership and co-operation, will ensure that the Service User is being cared for in an appropriate environment and that their assessed needs are being met at all times. the CCG will ensure that Service Users are informed in writing as soon as possible about their eligibility (or not) for CHC once a final decision is made and in any event not more than 28 calendar days from the date of receiving the positive Checklist, in accordance with paragraphs 159 and 162 of the National Framework.
- 3.2 Pending resolution of a Dispute, there should be no delay to the provision of appropriate care for the individual Service User. At no point during the process may either the CCG or the Local Authority unilaterally withdraw from an existing funding agreement.

- 3.3 Where a Dispute arises, the Partner Organisations funding the arrangements in place at the time that the Service User is assessed by the Multi-Disciplinary Team (MDT) will continue with the funding on an interim basis (and without prejudice to their position) until the Final Resolution Date.
- 3.4 If no funding arrangements are in place at the time that the Service User is assessed by the MDT, the Partner Organisations will agree in writing responsibility for interim funding of the care required (without prejudice to their position) until the dispute is resolved.
- 3.5 Unless otherwise agreed, costs incurred by either Partner Organisation (“Paying Partner”) pursuant to interim funding arrangements being made in accordance with Paragraph 3.3 or 3.4 will be reimbursed by the other Partner Organisation no later than 28 days from the Final Resolution Date where that Dispute is resolved in favour of the Paying Partner.

4 Preventing Disputes

- 4.1 Formal dispute is a last resort, which should seldom if ever be necessary. Most disagreements can be resolved through discussion and negotiation. Partner Organisations agree to stay focused on the key objective, which is to ensure that an individual’s eligibility for CHC is correctly determined in a timely fashion.
- 4.2 Resources should be directed at that aim rather than being directed into the management of disputes. It is therefore crucial that strategic managers take steps to strengthen joint activity that focuses on agreement and aims to prevent conflict.
- 4.3 Partner Organisations will need to work through the following issues:
 - **Partnership culture**—the Partner Organisations should ensure there is a clear and consistent message about the joint responsibility to solve problems and resolve disagreements purposefully and constructively before they develop into disputes.
 - **Assessment procedures**—accurate needs assessment is fundamental to the process of determining eligibility for NHS CHC. The Partner Organisations should ensure there is a robust and comprehensive joint assessment process in place and that this is adequately resourced to enable a timely and proportionate assessment to be undertaken in accordance with the Continuing Healthcare National Framework (2018)
 - **Decisions on eligibility** – should be agreed based on the assessed level of need and the multi-disciplinary recommendation arising from the assessment and recorded on the Decision Support Tool. As per paragraph 153 of the Continuing Healthcare National Framework, the multi-disciplinary team’s recommendation should be followed except in exceptional circumstances, and for clearly articulated reasons. It should not normally be necessary to challenge either the multi-disciplinary team’s recommendation or the local CHC eligibility panel decision if both health and social care staff have been fully included in the assessment and agree the overall recommendation.

5 Stage One: Informal Disputes Procedure

Part I: Attempts to resolve the Dispute at operational level

- 5.1 If the CHC Panel do not agree with the MDT’s recommendation in the first instance, the CHC Panel will refer the matter back to the MDT and if required, seek further information from the MDT and defer its decision to the next CHC Panel meeting, or to such CHC Panel meeting as it shall specify, providing that it is no longer than 21 days from the date the case is first considered by the CHC Panel. In line with para 154 of the Continuing Healthcare National Framework the CHC Panel should not refer a case back, or decide not to accept a recommendation, simply because the multidisciplinary team has made a recommendation that differs from the one that those who are involved in making the final decision would have made, based on the same evidence. The CHC Panel’s reason for deferral must be recorded and the Service User whose case is being considered should be informed of the likely timescale before the CHC Panel’s decision is communicated.
- 5.2 If the Local Authority disputes the recommendation of the MDT and notifies the CCG before a decision of the CHC Panel is made, the CCG will direct the CHC Panel to defer their decision until the next CHC Panel meeting in accordance with Paragraph 5.1 and the Local Authority will be entitled to make representations for the CHC Panel to consider at this meeting.

- 5.3 The final decision of the CHC Panel, together with the reasons behind it, will be recorded by a clerk appointed by the CHC Panel's chair and communicated to the Local Authority, the Service User and their carers within 5 working days of the decision.
- 5.4 If the Local Authority disputes a decision of the CHC Panel (whether that decision was made with or without referral to a second meeting) then they will notify the CCG in writing within 5 working days of the decision being made. This should be done by way of an email, identifying their concern(s) and sent to SOCCG.continuinghealthcare@nhs.net.
- 5.5 On receipt of the email, CCG will allocate the matter to an operational manager for consideration and in order to liaise with the Local Authority within 7 days. If a solution cannot be reached within 7 working days, then Paragraph 5.7 will apply.
- 5.6 To ensure robustness, the process needs to involve operational staff with a good understanding of the National Framework (and its application). To ensure fairness, this should be a balance between CCG and the Local Authority perspectives.

Part II: Attempts to resolve the Dispute at Clinical Lead level

- 5.7 If, despite following Stage One, Part I of this Procedure, the Local Authority continues to dispute the decision made by the CHC Panel, the dispute will be referred by the allocated operational manager to the Clinical Lead for NHS Continuing Healthcare (or their nominated deputy) for the CCG and a nominated service manager for the Local Authority. Such referral should take place within 5 working days of the decision being made. A joint decision will be reached within 10 working days of the case being referred and a request for extension should be agreed and recorded between the parties.
- 5.8 If the dispute cannot be resolved by negotiations within the 10 working day period and the Local Authority still disagrees with the decision made, the Local Authority service manager will submit a formal letter of dispute to the CCG. This letter will be submitted by email to SOCCG.continuinghealthcare@nhs.net within 10 working days of the expiration of the period of negotiation set out in paragraph 5.7 and should set out the grounds for the Dispute clearly and concisely.

6 Stage Two: Formal Dispute Procedure

- 6.1 Stage Two of the disputes procedure involves the convening of a Disputes Panel.
- 6.2 A meeting of the Disputes Panel will be set up by the CHC Department within 15 working days of receiving confirmation that Stage One could not resolve the Dispute.
- 6.3 The CHC Department will provide all Disputes Panel members with the documents to be considered by the Disputes Panel at least one week prior to the panel meeting. Input will be sought from the Local Authority as to what documents should be provided, including the supporting evidence that the Local Authority is relying on to dispute the decision.
- 6.4 Stage One of the disputes procedure should encourage resolution of disputes at the earliest opportunity and, where a formal Dispute is declared, it is important that all attempts to resolve the Dispute informally continue where possible and that the Disputes Panel is kept informed of any progress.
- 6.5 It is in the interests of the Partner Organisations to resolve Disputes whether informal or formal as quickly and effectively as possible.

7 The Role of the Disputes Panel

- 7.1 The Dispute Panel role is advisory, as the Partner Organisations cannot be compelled to accept its recommendations. Any recommendations should however be made available to the Chief Executive Officers, or their nominated officers, in the CCG and the Local Authority where they are unable to locally resolve a dispute (Stage 3) and prior to referral to Arbitration in accordance with Stage 4 of the disputes procedure.
- 7.2 The purpose of the Dispute Panel is to advise whether, based on all available evidence given by the MDT, the Service User is eligible for CHC funding, whether it should be a joint package of health and social care or whether it should be the Local Authority's sole responsibility. If it is the view of the Disputes Panel that the Service User is not eligible for CHC funding, they must advise on the extent to

which the CCG should contribute or not (either in funding or in service provision) to a Service User's care package in order to meet their assessed health needs. The Dispute Panel should also advise on the reimbursement of the costs incurred by the Partner Organisations if it is determined they do have a primary health need or health needs identified under a joint package agreement during the Dispute as appropriate (see Paragraphs 3.3 and 3.4)

7.3 To ensure fairness, there should be a balance between health and social care perspectives. Members of the Dispute Panel should act in a professional manner. They should interpret the eligibility of a Service User according to the Continuing Healthcare National Framework. They should not be representing the "position" taken by their own Partner Organisation and should ensure at all times that the Service User's needs and best interests are at the heart of the decision. In accordance with the National Framework, a review panel of a neighbouring CCG may be called upon to review the case which provides greater patient confidence in the impartiality in decision making. Provided that review does not put unnecessary delays in the process of the decision making.

8 Membership of the Disputes Panel

8.1 To ensure robustness, the process needs to involve individuals with a good understanding of the National Framework. For each case, decisions must be based on a high quality assessment.

8.2 The Disputes Panel must be composed of individuals with no previous involvement in the decision i.e. they must not have formed part of the original CHC Panel.

8.3 The Disputes Panel will have three members as follows:

- An independent chair (from Southampton Voluntary Services or such third sector or independent body acceptable to both parties. the costs i.e. fees and expenses approved by the Partner Organisations will be shared equally between the Partner Organisations);
- Associate Director or their nominated deputy for the CCG; and
- Decision making representative from the Local Authority at the equivalent level.

8.4 The following individuals may be present in an advisory capacity:

- Independent NHS CHC Manager/advisor;
- Case lead/presenter;
- Clinical advisor; and
- Co-opted specialists as required.

If the Dispute involves more than one Clinical Commissioning Group, the CCG will invite representatives of the other Clinical Commissioning Group(s) to attend.

9 Attendance and Procedure at the Dispute Panel Meeting

9.1 The CCG will co-ordinate dates, venues and minute taking for the Panel meeting.

9.2 Attendance at meetings is expected of all participants notified of the requirement to attend. Practitioners unable to attend will take responsibility for informing the Chair and sending another appropriate representative with delegated authority.

9.3 An independent person with CHC management experience from an organisation not a party to the Dispute should be invited to attend as a process advisor. This individual will attend Dispute Panel meetings as an advisor only (i.e. not as a member) and will have no right to vote.

9.4 The Disputes Panel members will endeavour to reach a unanimous decision. In the event of a majority decision the voting will be recorded together with the reasons for the decision and the recommendation made.

9.5 The Chair will take responsibility for appointing a clerk to take minutes of the meeting and record and issue the recommendations in writing to the Partner Organisations within 5 working days of the meeting.

10 Information sharing/documentation for the Disputes Panel

10.1 The Decision Support Tool and a copy of the CHC Panel minutes, together with all relevant supporting documentation, will be required.

- 10.2 The meeting attendees will need a basic understanding of the circumstances of the case under discussion and copies of documents to be referred to must be made available to all of those attending at least 5 working days before the Disputes Panel sits. Other specialist assessments may also be used if it would be helpful or appropriate to do so.
- 10.3 The data sharing agreement between the Partner Organisations will apply to any information shared throughout this process.

11 Stage Three: Referral of the Dispute to the Chief Executives of Partner Organisations

- 11.1 In the event that the Dispute cannot be resolved by the panel, the Dispute will be referred by both Partner Organisations to the Chief Executive of the CCG and the Chief Executive of the Local Authority, or their nominated Executive/Board level officers. Details of the Dispute should be provided in writing, by way of a joint letter agreed between them and sent to both officers within five working days of the letter being submitted as specified in Paragraph 5.8. In the event that a joint letter cannot be agreed, each Partner Organisation will write a separate letter to both Chief Executives.
- 11.2 The respective Chief Executives, or their nominated officers, will meet to discuss the decision of the Disputes Panel and, within 15 working days of referral to them, will make recommendations to the Partner Organisations. An independent CHC advisor should be present to provide advice to the Chief Executives on the Continuing Healthcare National Framework. An appointed clinical advisor, agreed by both parties, may also be necessary to provide advice.
- 11.3 The Partner Organisations will accept the recommendation made by the Chief Executives.. However, in the event that the Chief Executives fail to reach agreement, the matter shall be referred to Arbitration in accordance with Stage Four of this Disputes Resolution Procedure.

12 Stage Four: Arbitration

- 12.1 In the event that the Dispute cannot be resolved through Stage Three of the Disputes Procedure, the Partner Organisation that wishes to dispute the recommendation of the Dispute Panel must refer the matter for arbitration in accordance with this Paragraph 12. Such referral shall be made no later than 15 working days following confirmation of the Dispute Panel's recommendation. If no such referral for arbitration is made, the Partner Organisations agree that they will both be bound by the recommendation of the Chief Executive Officers at Stage 3.
- 12.2 Any Dispute referred to Stage Four of this Procedure shall be determined by arbitration governed by both the Arbitration Act 1996 and such rules as are agreed between the Partner Organisations ("Rules"). If, within 2 working days of receiving confirmation of the ongoing dispute as set out in Paragraph 12.1, the Partner Organisations are unable to agree on an arbitrator or arbitrators, or are unable to agree on the Rules, either Partner Organisation may, upon giving written notice to the other Partner Organisation, apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators and for any decision on Rules as may be necessary. The seat of the arbitration shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996.
- 12.3 It is agreed that the costs of the Arbitrator appointed in accordance with Paragraph 12.2 (and the costs, if any) of the Chartered Institute of Arbitrators in the appointment of that Arbitrator) will be shared equally between the Partner Organisations.

13 Review

- 13.1 The Partner Organisations agree that this Procedure will be reviewed annually to ensure that it meets the needs of both partners. If any amendments are required, then they will be agreed by the Partner Organisations and this Procedure will be updated accordingly.