

North Central London Clinical Commissioning Group NHS Continuing Healthcare Joint Disputes Resolution Policy and Process

Developed in partnership with the London Boroughs of Barnet, Camden, Enfield, Haringey and Islington

16/11/2020



DOCUMENT TRAIL AND VERSION CONTROL SHEET

Heading	North Central London Clinical Commissioning Group NHS Continuing Healthcare Joint Disputes Resolution Protocol and Process
Project Sponsor	Director of Continuing Healthcare (CHC)
Purpose of document	The purpose of this document is to set out the disputes protocol between health and social care in relation to CHC eligibility
Date of document	16/11/2020
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Author	Kim Hine
Approved by	Joint CHC Restoration Group membership - representatives from NCL CCG and London Boroughs of Barnet, Camden, Enfield, Haringey and Islington
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Key documents

1. National Framework for Continuing Healthcare and Funded Nursing Care October 2018 (revised) - <https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care> - referred to as “The Framework” throughout the document
2. Care Act 2014 - <https://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>
3. The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2020

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Introduction

“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 this 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.” (National Framework for Continuing Healthcare and Funded Nursing Care October 2018 (revised))

The Framework clearly indicates that CCGs and Local Authorities must comply with their responsibilities in regards to Continuing Healthcare (CHC) as set out in the Standing Rules Regulations and Care Act legislation.

By practitioners working in partnership and operating in accordance with The Framework, it should be possible to resolve most disagreements through normal processes without the need to invoke a disputes resolution procedure. However, on the occasions where an agreement cannot be reached informally, it is essential that the CCG and Local Authority in each area have agreed a joint process to assist, in the resolution of disagreements in those between both parties in relation to the CHC eligibility decision.

Purpose and Scope

The assessment and recommendation of whether an individual has a primary health need is a complex process and inevitably there will be disagreements between the 2 statutory authorities in regards to the eligibility recommendation. The purpose of this policy is to support professionals working in the NHS and Local Authorities to navigate these disagreements, providing a structured way to work closely and maintain a person centred approach where there are differences of opinion that require resolution.

The Joint Disputes Policy supports rapid resolution of disputes in regards to CHC eligibility between North Central London Clinical Commissioning Group (NCL CCG) and its Local Authority partners i.e. London Boroughs of Barnet, Camden, Enfield, Haringey and Islington as well as any interim joint funding arrangements and reimbursements where appropriate. It aims to ensure that resources are directed towards resolution of disputes in an appropriate and timely manner and avoid a disproportion of time being spent on resolving disagreements.

The policy is not intended to be used to dispute the validity of the Multidisciplinary Team (MDT) recommendation or incorrect completion of the Decision Support Tool (DST). All DSTs should refer to the evidence collated to support the levels in each domain, the identification of whether there is a Primary Healthcare Need and an eligibility recommendation. Disagreements between levels and final recommendation should be clearly recorded and signed by every member of the MDT.

The policy includes agreements on funding and case management arrangements throughout the dispute process and reimbursement between agencies on resolution. It also includes agreement on joint funding of any additional costs arising from the disputes process

Where disputes relate to a Local Authority not in North Central London area, the Framework indicates that the Joint Disputes Policy of the responsible CCG should apply.

The NCL CCG NHS Continuing Healthcare Joint Disputes Resolution Policy and Process is for use with all assessments completed for adults over the age of 18 where a CHC assessment has been completed (this includes individuals transitioning from children’s continuing care to adults CHC but only where a CHC assessment has been completed). It is not for use children under 18 years of age assessed under the National Framework for Children and Young People’s Continuing Care (2016)

Principles

Good communication, effective joint working and mutual respect are key to avoiding unnecessary disputes.

NCL CCG and London Boroughs of Barnet, Camden, Enfield, Haringey and Islington agree to work in partnership to fulfil their duties under the Care Act 2014 and The Framework 2018 in regards to CHC.

NCL CCG and its Local Authority partners are committed to fostering a culture of partnership working at both organisational and practitioner levels in all aspects of NHS CHC ensuring the person in need of care is at the centre of the process.

Front line staff i.e. the MDT, will be empowered to resolve issues wherever possible at the assessment and recommendation stage within agreed policies and procedures.

NCL CCG and its Local Authority partners will ensure decisions about CHC eligibility are based on accurate, up to date evidence based assessment and recommendations, completed by appropriately experienced and trained professionals.

Both parties involved in the dispute are committed to completing and resolving the dispute process, prioritising workloads, to ensure completion in a timely manner, based on the agreed timeframes within the document.

Formal disputes should be the last resort and both parties agree to attempt to resolve any disagreements before a formal stage is required i.e. at assessment or eligibility panel. However, in entering into the formal dispute resolution both parties agree to be bound by the outcome.

Neither party will unilaterally withdraw case management support or funding from the individual in need of care and will ensure that no one is left without care provision as a result of a disagreement between them.

The individual and their representatives at the heart of the disagreement will have the disputes and the process explained clearly by the appropriate party, assuring them that care provision will remain until the dispute has been resolved. The individual will be kept informed throughout the process.

Types of dispute

Interagency disputes can occur at any time through the CHC assessment process in regards to a particular assessment or the process itself. There are 3 outcome stages that will be considered individually.

1. Checklist recommendation
2. FNC eligibility recommendation
3. CHC eligibility recommendation

Checklist recommendation

A checklist can be completed by a variety of health and social care professionals who should have completed the NHSE checklist training and should be familiar with the content and principles of the CHC Framework. Checklists can only be progress when they are supported by a brief description of need and relevant evidence. NCL CCG may disagree with the referrer's recommendation of a positive Checklist which would progress to the completion of the DST. On these occasions, a discussion between professionals will occur to establish whether there is sufficient evidence to trigger the DST completion. If this does not reach a satisfactory outcome this must be escalated to CHC clinical lead and LA team manager to discuss.

If necessary, the Local Authority Partner will write to CHC with reasons for the disagreement clearly indicated and CHC must take into account this decision before making its final decision. If, having taken all information into account, the decision is not to progress to DST, the CCG will provide a written response clearly articulating the reasons for the decision.

NCL CCG is not obliged to undertake a further checklist or proceed to DST

FNC eligibility recommendation

An FNC assessment and recommendation is made by a clinician from NCL CCG. If there is a disagreement around the recommendation of eligibility for FNC a discussion between the professionals must occur to reach an agreement. If this is not reached it will be escalated to the clinical lead and LA team manager for the recommendation to be ratified.

If necessary, the Local Authority Partner will write to CHC with reasons for the disagreement clearly indicated and CHC must take into account this decision before making its final decision. If, having taken all information into account, the decision remains that the individual is not eligible for FNC, the CCG will provide a written response clearly articulating the reasons for the decision.

Similarly to the checklist recommendation, NCL CCG is not obliged to undertake an additional FNC assessment if the Local Authority partners disagree with the eligibility recommendation.

CHC eligibility recommendation

Following an assessment the DST and eligibility recommendation should be completed by an MDT, which at minimum requires two different professionals from different healthcare backgrounds. However, it is considered good practice that the MDT consists of both health and social care professionals who are knowledgeable of the process and the individual's health and social care needs. The MDT is responsible for providing a recommendation on the individual's eligibility for CHC through consensus and the perspectives of all members are equally valuable.

The MDT, at times, may not agree on the domain levels or in fact the eligible recommendation. In this circumstance, the CHC clinical assessor must clearly record the points of disagreement and the rationale of the disagreement. The DST should be signed by all members of the MDT however, the social care practitioner may also submit a report detailing the specific areas of disagreement together with supporting evidence.

The CHC ratification process clearly states that where there is a disagreement in recommendation of eligibility a panel is convened between NCL and the corresponding Local Authority partner (The process by which this takes place and the terms of reference for the panel are included in the appendices).

The panel has 3 possible outcomes:

1. Agrees with the recommendation
2. Returns to the MDT for further evidence and/or review of the recommendation
3. In extreme circumstances the recommendation is overturned.

If both parties agree with the recommendation, no further dispute will be raised. If an agreement cannot be reached then the formal disputes process will be commenced.

Disputes around process

Any disputes around the CHC process will be discussed and agreed between Heads of Service / Service managers. If no resolution has been agreed then this must be referred to Director level for resolution.

Process and Stages of dispute resolution

(all days apply to working days for a Monday to Friday working week)

Prior to invoking a formal resolution process the expectation would be that every possible action has been taken to gain agreement between both parties.

A dispute can only be raised once NCL CCG has made a decision in regard to eligibility for CHC. Ratification would normally be by a senior CHC clinician / Head of Service or via eligibility panel. The process around ratification of DST can be found in the appendices.

NCL CCG will inform the appropriate Local Authority partner of the outcome of CHC eligibility within 2 working days of the decision being made.

Formal

Stage 1 – Heads of Service / Service Manager

The formal record of dispute, citing the reasons for disagreement, relevant supporting evidence and documentation, details of the attempt to gain agreement will be submitted by the Local Authority via email to the appropriate CHC service with the title “formal disputes notice” as the email title.

The formal record of dispute will be sent by the Local Authority 3 days from receipt of the outcome decision.

The responsible case manager must inform the individual at the heart of the dispute at this stage.

Once received a NCL CCG Head of Service and LA service manager will formally meet to resolve the dispute. This meeting will take place no longer than 5 days from the date the formal record of dispute was received.

All appropriate documents will be circulated by NCL CCG 3 days prior to the meeting and may be attended by NCL CCG administrative staff to take minutes.

A record of the meeting including an outcome of the decision will be sent to the Local Authority partner from NCL CCG 2 days following the meeting.

If the decision remains under dispute a referral to stage 2 must be made.

Stage 2 – Director Level

The Local Authority must notify NCL CCG that the decision remains disputed via email to the appropriate CHC service within 4 days of receipt of outcome following stage 1, including the reasons for ongoing dispute and any further evidence or supporting documentation.

A dispute panel will be convened specifically to hear the case, within 10 days of the receipt of notice. The disputes panel will be attended by director level (or a director nominated senior representative) from both NCL CCG and Local Authority partner who have had no previous involvement in the decision making for the particular case. The appropriate documents will be circulated by NCL CCG 3 working days before the panel meeting. Both the health and social care practitioners who completed the assessment and recommendation will be available for to present the case and answer any questions required by the Directors. Other professionals maybe requested to attend on the agreement of both parties. The meeting will be minuted. The minutes and outcome will be sent from NCL CCG within 10 days of the disputes panel.

Both NCL CCG and the relevant Local Authority partner agree to abide by the decision of its nominated representatives and / or dispute panel.

Stage 3 – Independent Arbitration

If, in the unlikely event, an agreement is not reached at stage 2 of the formal dispute then the case will be escalated to stage 3. Stage 3 can only be invoked by Director Level and involves the request for an independent chair to hear the case and make the decision in regards to eligibility. A request for stage 3 must be made by the Local Authority within 5 days of the receipt of outcome from stage 2.

The costs of independent arbitration will be split equally between both statutory authorities party to the dispute and both parties agree to abide by the decision reached.

At every stage throughout the disputes process there will be a ratification of the eligibility decisions and the individual and their representatives will be informed.

Timeframes of dispute

Action	Responsible organisation	Timeframe
Ratification of non-disputed assessments	CCG	2 days from date of submission
Eligibility panel for disputed decisions	CCG / LA	5 days from date of submission
Formal notification of CCG decision	CCG	2 days from ratification date
Notification of stage 1 formal dispute	LA	3 days from receipt of outcome decision
Stage 1 formal dispute meeting	CCG / LA	5 days from receipt of notification
Formal notification of CCG decision and provision of minutes	CCG	2 days from date of stage 1 meeting
Notification of stage 2 formal dispute	LA	4 days from receipt of outcome decision of stage 1 dispute meeting
Stage 2 formal dispute panel	CCG / LA	10 days from receipt of notification
Formal notification of CCG decision and provision of minutes	CCG	10 days from date of disputes panel
Notification of stage 3 dispute	LA	5 days from receipt of outcome of dispute panel
Independent Arbitration	CCG / LA	6 weeks from receipt of notification

Any disputes arising from Checklist or FNC decision will be responded to within 14 days of receipt of the notification of dispute and evidence to support the disagreement.

Funding and Case Management during dispute process (including on the hospital discharge service pathway)

Where there is a dispute in regards to CHC eligibility the statutory authority that is currently funding the care provision and providing case management will continue until the dispute is fully resolved.

Any changes in care provision must be agreed by both parties and be in response to the individual's care needs at the time.

If the individual needs the care provision moved out of the area covered by either NCL CCG or the Local Authority partner then each party will inform the appropriate responsible commissioner of the dispute, if appropriate.

If the individual has been funded under the Hospital Discharge Service pathway then the statutory service who originally completed the brokerage and agreed case management will remain as case manager and will be responsible for funding (after day 42) until resolution has been reached.

Where no support is currently in place both parties will agree to an interim funded arrangement, on a 50:50 ratio and an agreement made on who will lead case management, however both parties will remain involved.

Reimbursement of care costs

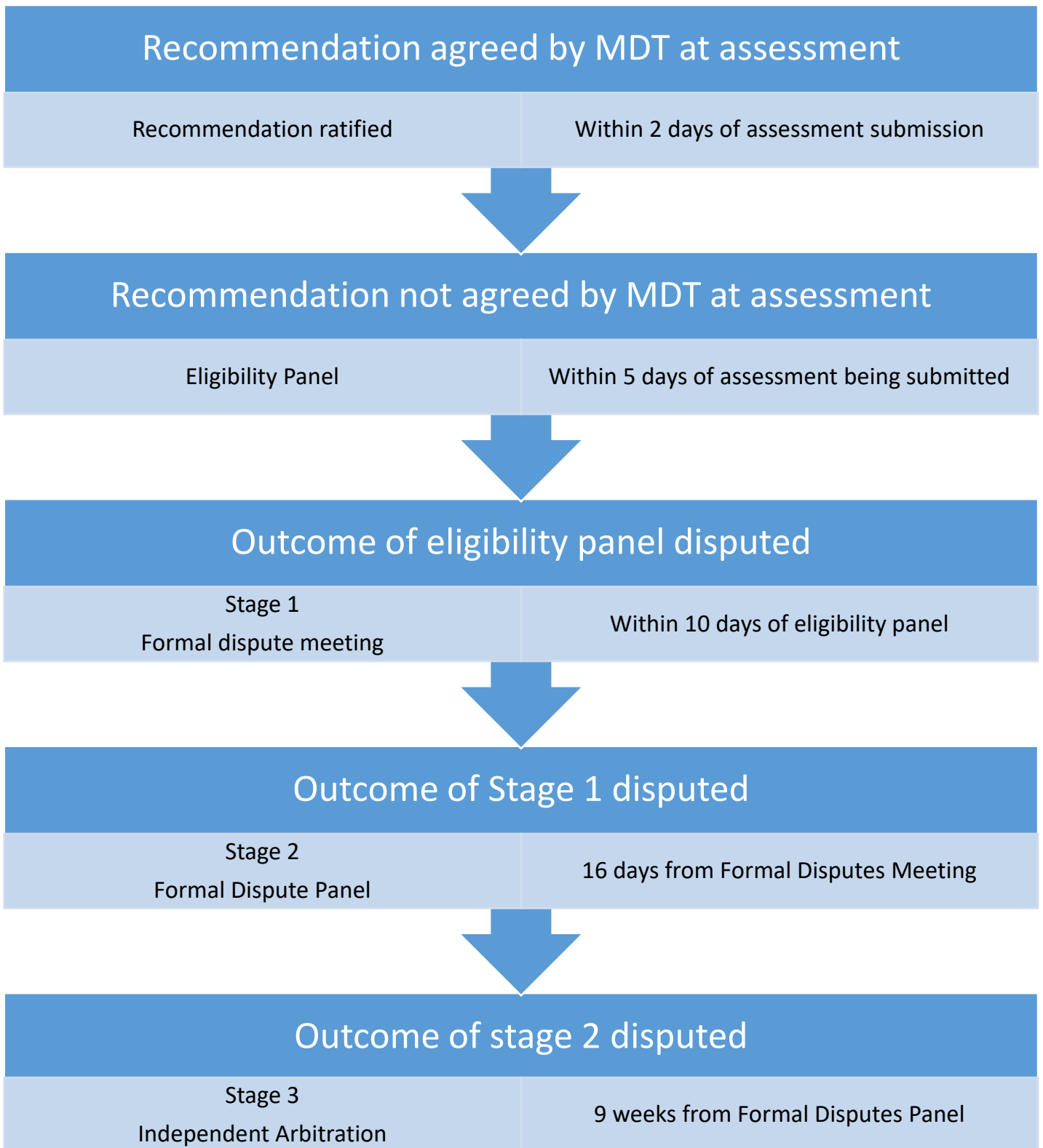
Where NCL CCG has funded or part funded care provision throughout the dispute process and the eligibility decision is upheld i.e. the individual has been found not eligible, the Local Authority partner will reimburse NCL CCG to the date of the original outcome letter i.e. post ratification panel

Where the Local Authority partner has funded or part funded throughout the dispute process and the eligibility decision is not upheld i.e. the individual has been found eligible, NCL CCG will reimburse the Local Authority partner from day 29 of a valid checklist or day 43 of the Hospital Discharge Service pathway.

Responsible partner at start of dispute	Responsible partner during dispute	Individual found CHC eligible	Individual not found CHC eligible
LA	LA	CCG to reimburse LA	No reimbursement required
CCG	CCG	No reimbursement required	LA to reimburse CCG
No current care package	Funding on 50:50 basis Agreed lead however both parties remain involved	CCG to reimburse LA	LA to reimburse CCG

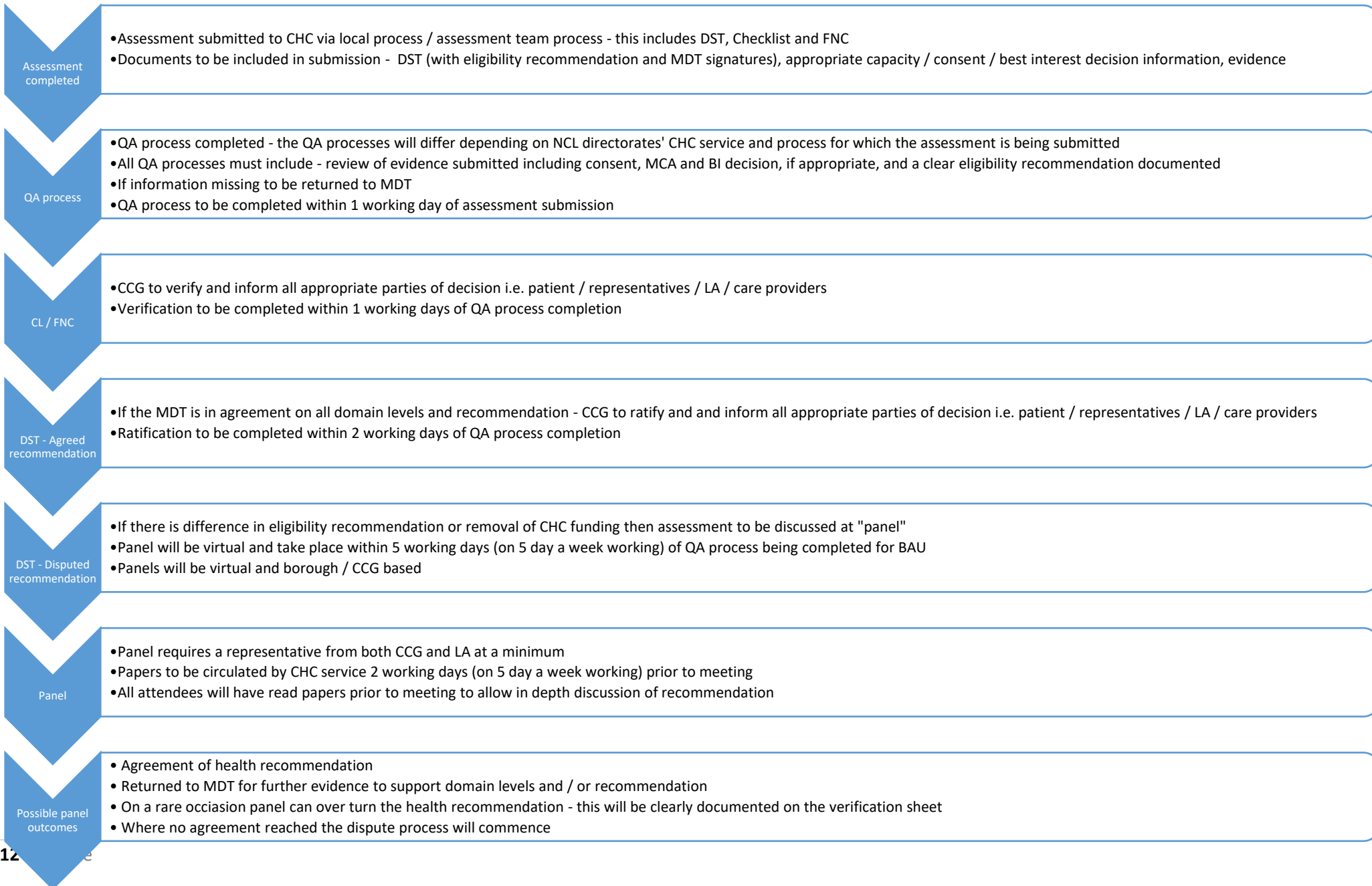
- Responsibility covers both funding of care and ongoing case management including keeping the individual informed of the dispute and outcome throughout the process
- FNC contributions, if appropriate, will need to be taken into account when considering reimbursements

Stages of dispute



Appendix

1. CHC ratification process
2. CHC Eligibility Panel Terms of Reference
3. Disputes Panel Terms of Reference





North Central London
Clinical Commissioning Group

Terms of reference
Continuing Healthcare Eligibility Panel

16/11/2020

DOCUMENT TRAIL AND VERSION CONTROL SHEET

Heading TOR	Continuing Healthcare Eligibility Panel
Project Sponsor	Director of Continuing Healthcare (CHC)
Purpose of document	The purpose of this document is to define the terms of reference for all CHC Eligibility Panels for all directorates across North Central London Clinical Commissioning Group (NCL CCG)
Date of document	16/11/2020
Review Date	16/02/2021
Author	Kim Hine
Approved by	Joint CHC Restoration Group membership - representatives from NCL CCG and London Boroughs of Barnet, Camden, Enfield, Haringey and Islington
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Introduction

“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 this 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.” National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care October 2018 (Revised) (National Framework)

CCGs are required by Standing Rules Regulations to have regard to the National Framework which takes into account the changes in legislation with the introduction of the Care Act 2014 and preserves the limits of local authority responsibility in relation to provision of healthcare.

CCGs and local authorities have legal duties and responsibilities in relation to NHS CHC with the CCG remaining legally responsible for all eligibility decisions.

North Central London Clinical Commissioning Group (NCL CCG) was formally established in April 2020, bringing together five north London boroughs – Barnet, Camden, Enfield, Haringey and Islington. NCL CCG is a clinically-led and member-driven CCG with the 201 GP practices across Barnet, Camden, Enfield, Haringey and Islington making up our membership.

This document outlines the Terms of Reference for the NCL CCG CHC Eligibility Panel including:

- Scope and Purpose
- Membership
- Responsibilities
- Meetings

Working days throughout the document refer to 5 day a week working patterns Monday to Friday.

Background

The National Framework indicates that CCGs can choose to verify recommendations for eligibility in a number of ways. The final eligibility decision is to be made independently of financial considerations and must not be used as a gate keeping function.

NCL CCG has agreed that for CHC assessments, including checklists, funded nursing care assessments (FNC) and decision support tools (DSTs) where there is a clearly agreed recommendation between health and local authority will be ratified by appropriate personnel within the CCG i.e. clinical leads and head of service across the 5 directorates

Where there is a disagreement in the recommendation between health and social care or where there is a removal of CHC funding then these cases will be considered at the CHC Eligibility Panels.

The panels will be conducted at a local level i.e. Camden directorate CHC service with London Borough of Camden

Scope and Purpose

The National Framework states that CCGs are responsible for making the eligibility decisions for CHC which must be based on the Multidisciplinary (MDT) recommendations. CCGs are able to verify MDT recommendations in a number of ways of which a panel is one. The National Framework also indicates that panels may be used selectively i.e. where there is a disagreement between LA and health over the eligibility recommendation.

NCL CCG have agreed that only assessments where there is a disagreement between health and Local Authorities will be considered and ratified at panel. All agreed recommendations will be ratified by the CCG. This is to fully utilise the capacity of both local authority and CCG staff in the most appropriate way.

The purpose of the Panel is to review the evidence in the DST and any supporting documentation to reach an agreement in regards to the recommendation of eligibility.

Panels must not replace the function of the MDT whose role is to gather appropriate evidence, assess the individual, complete the DST and make the recommendation of eligibility.

CHC eligibility panels will consider the following client groups:

Adults CHC – for any individual over the age of 18

Transition cases – for children, where a CHC assessment has been completed as part of transitioning to adults CHC

Panels should not delay any decision making process and staff need to be available to attend in a timely manner. Panels can be conducted virtually via telephone or appropriate online meeting platform i.e. Microsoft Teams.

Membership

For the panel to be considered quorate there must be representation from both NCL CCG and the Local Authority in which the individual who has been assessed is ordinarily resident.

If panel members also have budgetary responsibilities it needs to be clear that decisions are made on needs and not financial considerations.

Other representatives can be co-opted into the panel at the agreement of both parties

Responsibilities

Panel members will review the DST and evidence prior to the panel to allow a meaningful discussion, in a timely manner

The panel will determine one of the following outcomes:

1. Agree with the documented health recommendation
2. Return to the MDT for further evidence and consideration on the recommendation
3. Overturn the recommendation

Recommendations should only be overturned in exceptional circumstances including:

- Where the DST is not fully completed (including where there is no recommendation)
- Where there are significant gaps in evidence to support the recommendation
- Where there is an obvious mismatch between evidence and recommendation
- Where the recommendation would result in either authority acting unlawfully

If one of these outcomes is not reached then the disputes process will commence.

Meetings

Eligibility panels will occur on an “as needed” basis at a mutual convenient time for both parties. These need to occur within 3 working days of the assessment being submitted and quality assured.

CHC administrative staff will ensure the documents are circulated 2 working days prior to the meeting

Agenda and Minutes

CHC service will be responsible for agendas and minutes. Agendas will be circulated with the documents 2 working days prior to the meeting and minutes will be circulated within 2 working days after the panel meeting.

Terms of reference
Continuing Healthcare Disputes Panel

16/11/2020

DOCUMENT TRAIL AND VERSION CONTROL SHEET

Heading TOR	Continuing Healthcare Disputes Panel
Project Sponsor	Director of Continuing Healthcare (CHC)
Purpose of document	The purpose of this document is to define the terms of reference for all CHC Disputes Panels for all directorates across North Central London Clinical Commissioning Group (NCL CCG)
Date of document	16/11/2020
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Introduction

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CCGs are required by Standing Rules Regulations to have regard to the National Framework which takes into account the changes in legislation with the introduction of the Care Act 2014 and preserves the limits of local authority responsibility in relation to provision of healthcare.

CCGs and local authorities have legal duties and responsibilities in relation to NHS CHC with the CCG remaining legally responsible for all eligibility decisions.

North Central London Clinical Commissioning Group (NCL CCG) was formally established in April 2020, bringing together five north London boroughs – Barnet, Camden, Enfield, Haringey and Islington. NCL CCG is a clinically-led and member-driven CCG with the 201 GP practices across Barnet, Camden, Enfield, Haringey and Islington making up our membership.

This document outlines the Terms of Reference for the NCL CCG CHC Disputes Panel including:

- Scope and Purpose
- Membership
- Responsibilities
- Meetings

Working days throughout the document refer to 5 day a week working patterns Monday to Friday.

Background

The assessment and recommendation of whether an individual has a primary health need is a complex process and inevitably there will be disagreements between the 2 statutory authorities in regards to the eligibility recommendation. The purpose of this policy is to support professionals working in the NHS and Local Authorities to navigate these disagreements, providing a structured way to work closely and maintain a person centred approach where there are differences of opinion that require resolution.

The Joint Disputes Policy supports rapid resolution of disputes in regards to CHC eligibility between North Central London Clinical Commissioning Group (NCL CCG) and its Local Authority partners i.e. London Boroughs of Barnet, Camden, Enfield, Haringey and Islington as well as any interim joint funding arrangements and reimbursements where appropriate. It aims to ensure that resources are directed towards resolution of disputes in an appropriate and timely manner and avoid a disproportion of time being spent on resolving disagreements.

The panels will be conducted at a local level i.e. Camden directorate CHC service with London Borough of Camden

Scope and Purpose

The purpose of the Disputes Panel is to review the evidence in the DST and any supporting documentation to reach an agreement in regards to the recommendation of eligibility.

A dispute panel will be convened specifically to hear the case and will be attended by director level from both NCL CCG and Local Authority partner who have had no previous involvement in the decision making for the particular case. The appropriate documents will be circulated by NCL CCG 3 working days before the panel meeting. The meeting will be minuted.

Both NCL CCG and the relevant Local Authority partner agree to abide by the decision of its nominated representatives and / or dispute panel.

Membership

For the panel to be considered quorate there must be representation at director level (or above) from both NCL CCG and the Local Authority in which the individual who has been assessed is ordinarily resident.

If panel members also have budgetary responsibilities it needs to be clear that decisions are made on needs and not financial considerations.

The health and social care practitioners who completed the assessment and recommendation will be available for to present the case and answer any questions required by the Directors. Other professionals maybe requested to attend on the agreement of both parties.

Responsibilities

NCL CCG and Local Authority Directors will review the DST and evidence prior to the panel to allow a meaningful discussion, in a timely manner

The panel will determine one of the following outcomes:

4. Agree with the documented health recommendation
5. Return to the MDT for further evidence and consideration on the recommendation
6. Overturn the recommendation

Recommendations should only be overturned in exceptional circumstances including:

- Where the DST is not fully completed (including where there is no recommendation)
- Where there are significant gaps in evidence to support the recommendation
- Where there is an obvious mismatch between evidence and recommendation
- Where the recommendation would result in either authority acting unlawfully

If one of these outcomes is not reached then a Stage 3 formal dispute will be raised by the Local Authority.

Meetings

CHC disputes panels will occur on an "as needed" basis at a mutual convenient time for both parties. These need to occur within 10 working days of the stage 2 formal dispute being raised.

CHC administrative staff will ensure the documents are circulated 3 working days prior to the meeting

Agenda and Minutes

CHC service will be responsible for agendas and minutes. Agendas will be circulated with the documents 3 working days prior to the meeting. The minutes and outcome will be sent by NCL CCG within 10 days of the disputes panel.