

Final Eligibility Decisions: ICB Responsibilities

Verification and Eligibility Decision-Making

- ICBs are responsible for decision making regarding NHS Continuing Healthcare eligibility, based on the recommendation made by the multidisciplinary team in accordance with the process set out in this National Framework.
- Only in exceptional circumstances, and for clearly articulated reasons, should the multidisciplinary team's recommendation not be followed.

(National Framework 2022: Paragraph 173).

- ICBs may choose to verify the multidisciplinary team's recommendation in several different ways. It is expected that whether the verification is done by an individual or by a panel, this process should not be used as a gate-keeping function or for financial control.
 - A decision not to accept the multidisciplinary team's recommendation should never be made by one person acting unilaterally.
- The final eligibility decision should be independent of budgetary constraints, and finance officers should not be part of a decision-making process.

(National Framework 2022: Paragraph 176).

Decision-making on eligibility for NHS Continuing Healthcare by the ICB

PG 37 What is the role of the ICB in the decision-making process?

37.1: ICBs are responsible for making the eligibility decision for NHS Continuing Healthcare, based on the recommendation made by the MDT in accordance with the processes set out in this National Framework.

37.2: The role of the ICB decision-making processes, whether by use of a panel or other processes should include:

- o verifying and confirming recommendations on eligibility made by the MDT, having regard to the issues in Practice Guidance note 41.
- o agreeing required actions where issues or concerns arise.

37.3: ICB decision-making processes should not have the function of:

- o financial gatekeeping.
- o completing/altering DSTs.
- o overturning recommendations (although they can refer cases back to an MDT for further work in certain circumstances).

(National Framework 2022: Practice Guidance Paragraph 37)

Timeframe for decision-making

- It is expected that ICBs will normally respond to MDT recommendations within 48 hours (two working days), and that the overall assessment and eligibility decision-making process should, in most cases, not exceed 28 calendar days from the date that the ICB receives the positive Checklist (or, where a Checklist is not used, other notice of potential eligibility) to the eligibility decision being made (**National Framework 2022: Paragraph 182**).
- In the minority of cases where an assessment of eligibility is being carried out in an acute hospital setting, the process should take far fewer than 28 calendar days if an individual is otherwise ready for discharge (**National Framework: Paragraph 183**).
- When there are valid and unavoidable reasons for the process taking longer, timescales should be clearly communicated to the person and (where appropriate) their representative(s). An example of this might occur where additional work is required to ensure that the DST and supporting evidence submitted to the ICB accurately reflect the full extent of an individual's needs (**National Framework: Paragraph 184**).
- It should also be noted that the 28-calendar day timescale does not apply to Children and Young People in transition to adult services (**National Framework: Paragraph 184**).

What are the 'exceptional circumstances' under which an ICB or panel might not accept an MDT recommendation regarding eligibility for NHS Continuing Healthcare?

- Eligibility recommendations must be led by the practitioners who have met and assessed the individual.
- Exceptional circumstances where these recommendations may not be accepted by an ICB include:
 - where the DST is not completed fully (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 provided and the recommendation made,
 - where the recommendation would result in either authority acting unlawfully.
- In such cases the matter should be sent back to the MDT with a full explanation of the relevant matters to be addressed.
- Where there is an urgent need for care/support to be provided, the ICB (and Local Authority where relevant) should make appropriate interim arrangements.

(National Framework 2022: Practice Guidance Paragraph 39)

How should ICBs fulfil their duty to make final eligibility decisions for NHS Continuing Healthcare?

- The National Framework makes it clear that ICBs should not delegate their final decision-making function in relation to eligibility for NHS Continuing Healthcare.
- ICBs remain legally responsible for all such decisions even where they have authorised another body to carry out assessment functions on their behalf.
- ICBs have several options as to how to fulfil this responsibility. For example, they might choose to use one, or a combination of, the following:

- Appoint (or jointly appoint) an employee (or employees) to work within the organisation carrying out the assessment functions such that this member of staff has authority to make eligibility decisions as an employee of the ICB with clear lines of authority and accountability within the ICB for undertaking this role.
- Identify an employee (or employees), within the ICB to make eligibility decisions regarding NHS Continuing Healthcare having received the completed assessments and recommendations from the organisation carrying out the NHS Continuing Healthcare assessment function on behalf of the ICB.
 - Use a verification committee or 'panel' as a formal sub-committee of the ICB with delegated responsibility for decision making in relation to NHS Continuing Healthcare eligibility.
- Whatever arrangements the ICB chooses, it must be remembered that the National Framework places a strong emphasis on the MDT recommendation regarding eligibility for NHS Continuing Healthcare and states that 'Only in exceptional circumstances, and for clearly articulated reasons, should the multidisciplinary team's recommendation not be followed.
- A decision not to accept the recommendation should never be made by one person acting unilaterally (National Framework 2022, paragraph 176). Any model for final ratification must respect this requirement and the requirement that 'the final eligibility decision should be independent of budgetary constraints' (National Framework 2022, paragraph 176).
- It is vital that all arrangements for verifying recommendations and for making the final eligibility decisions are timely and efficient and do not result in delays, particularly where the individual concerned is awaiting transfer of care from an acute hospital setting.

(National Framework 2022: Practice Guidance Paragraph 40)

If the ICB uses a panel as part of the overall decision-making process what should its function be and how should it operate?

- Once an MDT has made a recommendation regarding eligibility it is for the ICB to make the final eligibility decision.
- There is no requirement for ICBs to use a panel as part of their decision-making processes.
- Where an ICB does use a panel, this should not replace the function of the MDT, whose role it is to assess the individual, complete the DST and make a recommendation regarding eligibility.
- Close working with local authorities is a central part of this National Framework, for example in terms of membership of MDTs and in having local joint processes for resolving disputes.
- It would be consistent with this overall approach for ICBs to have mechanisms for seeking the views of LA colleagues before making final decisions on NHS Continuing Healthcare eligibility and this could be using a panel.
- However, the formal decision-making responsibility rests with the ICB. Annex F (Local NHS Continuing Healthcare Protocols) contains details of the recommended content of local protocols, including decision-making processes.
- Panels may be used in a selective way to support consistent decision-making. For example, this could include panels considering:
 - Cases which are not recommended as

eligible for NHS Continuing Healthcare (for audit purposes or for consideration of possible joint funding).

- Cases where there is a disagreement between the ICB and the LA over the recommendation – this could form part of the formal disputes process.
 - Cases where the individual or his/her representative is appealing against the eligibility decision.
 - A sample of cases where eligibility has been recommended for auditing and learning purposes to improve practice (refer to paragraph 70 of the National Framework and Practice Guidance note 1).
- If an ICB chooses to use a panel arrangement as part of the decision-making process this should not be allowed to delay decision-making.
 - Where relevant expertise is considered essential to the panel the ICB should ensure that staff with such expertise are made available in a timely manner.

(National Framework 2022: Practice Guidance Paragraph 38)

Communicating the eligibility decision to the Individual

- Once the eligibility decision is made by the ICB, the individual should be informed in writing as soon as possible (although this could be preceded by verbal confirmation where appropriate). This written confirmation should include:
 - the decision on primary health need, and therefore whether the individual is eligible for NHS Continuing Healthcare
 - the reasons for the decision
 - a copy of the completed DST
 - details of who to contact if they wish to seek further clarification; and
 - how to request a review of the eligibility decision.
- Where an individual is not eligible for NHS Continuing Healthcare, the outcome letter may also include, where applicable and appropriate, information regarding NHS-funded Nursing Care or a joint package of care.
- Where an individual is eligible for NHS Continuing Healthcare, an indication of the proposed care package, if known, could be included within this communication, or if not known at that stage, information on what the next steps are.
- Eligibility for NHS Continuing Healthcare is not indefinite, as needs could change. This should be made clear to the individual and/or their representative.

(National Framework 2022, paragraphs 179-181).

References

National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care July 2022 (Revised).

Annex F: Local NHS Continuing Healthcare Protocols.

[National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care - July 2022 \(Revised\) \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/106422/nf2022-annex-f.pdf)