

## NHS Continuing Healthcare

### Dispute Resolution Principles

A guiding principle, wherever there is a dispute between statutory agencies, is that there should be no gaps in the provision of care and support for the individual concerned as a result. It is good practice for any dispute between statutory bodies to be resolved as quickly as possible.

Collaboration between partners (including local government and NHS) within an integrated care system is essential to sustain joined-up, efficient and effective services. Draft guidance published by NHS England for ICBs, the Integrated Care Systems Design Framework, sets out that a key function of the ICB is to establish joint working arrangements which embed collaboration with partners when commissioning services, which includes NHS Continuing Healthcare.

*(National Framework 2022: Paragraph 228).*

ICBs must cooperate with other organisations within their footprint. ICBs are encouraged to establish joint working arrangements with these organisations which embed collaboration, to meet the health needs of the local population, including for NHS Continuing Healthcare. This includes collaborative working with relevant local authorities with statutory social care responsibility whose area falls wholly or partly within the area of the ICB (see also Practice Guidance 47 and 48).

*(National Framework 2022: Paragraph 231).*

### Dispute Resolution Between Statutory Agencies:

#### Dispute between ICB's

In situations where there is a dispute between ICBs regarding responsibility for an individual, then the underlying principle is that there should be no gaps in responsibility as a result. No treatment should be refused or delayed due to uncertainty or ambiguity as to which ICB is responsible for funding an individual's healthcare provision. Nor should there be undue delays in making payments to providers, with costs to be met by one or more of the ICBs in dispute on a 'without prejudice' basis where disputes cannot be resolved quickly at a local level. Where the ICBs are unable to resolve their dispute using the binding rules set out in the NHS England 'Who Pays?' guidance, the matter should be referred to NHS England for informal advice. If a matter remains under dispute, the formal dispute resolution process set out at Appendix 4 of 'Who Pays?' can be invoked.

*(National Framework 2022: Paragraph 237).*

#### Dispute between Local Authorities

The Care Act 2014 (sections 39-41), associated regulations 4.4 The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014 and The Care and Support (Disputes Between Local Authorities) Regulations 2014 and chapter 19 of the Care and Support Statutory Guidance, set out and give guidance on updated rules regarding 'ordinary residence', which is the key concept in determining which Local Authority is responsible for assessing and addressing the care and support needs of individuals and their carers. As with 'responsible commissioner' guidance a key principle is that individuals

should not be left without support whilst any disagreement about which local authority is responsible is resolved.

*(National Framework 2022: Paragraph 238).*

### Disputes Between ICBs and Local Authorities

ICBs and local authorities in each local area must agree a local dispute resolution process to resolve cases where there is a dispute between them about eligibility for NHS Continuing Healthcare, about the apportionment of funding in joint funded care/support packages, or about the operation of refunds guidance (see Annex E). Disputes should not delay the provision of the care package, and the protocol should make clear how funding will be provided pending resolution of the dispute. Where disputes relate to local authorities and ICBs in different geographical areas, the dispute resolution process of the responsible ICB should normally be used in order to ensure resolution in a robust and timely manner. This should include agreement on how funding will be provided during the dispute, and arrangements for reimbursement to the agencies involved once the dispute is resolved. Individuals must never be left without appropriate support whilst disputes between statutory bodies about funding responsibility are resolved.

*(National Framework 2022: Paragraph 239).*

### Local Disputes Resolution Process:

ICBs and local authorities in each local area must agree a local disputes resolution process to resolve cases where there is a dispute between them about:

- a decision as to eligibility for NHS Continuing Healthcare, or
- where an individual is not eligible for NHS Continuing Healthcare, the contribution of a ICB or local authority to a joint package of care for that person, or
- the operation of refunds guidance (see Annex E)

*(National Framework 2022: Paragraph 233).*

### Elements of Interagency Disagreement and Dispute resolution protocols

When developing and agreeing local inter-agency disagreement and dispute resolution protocols, ICBs and Local Authorities should ensure that they encompass the following elements:

- A brief summary of principles including a commitment to work in partnership and in a person-centred way.
- The ICB duty to consult with the local authority (refer to paragraph 22) and the expectation that the local authority works jointly with the ICB in carrying out the NHS Continuing Healthcare process (refer to paragraphs 26-31). This should include arrangements for situations where the Local Authority has not been involved in the MDT and in formulating the recommendation.
- An 'informal' stage at operational level whereby disagreements regarding the correct eligibility recommendation can be resolved – this might, for example, involve consultation with relevant managers immediately following the MDT meeting to see whether agreement can be reached. This stage might include seeking further information/clarification on the facts of the case or on the correct interpretation of the National Framework.

- A formal stage of resolving disagreements regarding eligibility recommendations involving managers and/or practitioners who have delegated authority to attempt resolution of the disagreement and can make eligibility decisions. This stage could involve referral to an inter-agency NHS Continuing Healthcare panel.
- If the dispute remains unresolved, the dispute resolution agreement may provide further stages of escalation to more senior managers within the respective organisations.
- A final stage involving independent arbitration. This stage should only be invoked as a last resort and should rarely, if ever, be required. It can only be triggered by senior managers within the respective organisations who must agree how the independent arbitration is to be sourced, organised and funded.
- Clear timelines for each stage.
- Agreement as to how the placement and/or package for the individual is to be funded pending the outcome of dispute resolution and arrangements for reimbursement to the agencies involved once the dispute is resolved. Individuals must never be left without appropriate support whilst disputes between statutory bodies about funding responsibility are resolved.
- Arrangements to keep the individual and/or their representative informed throughout the dispute resolution process.
- Arrangements in the event of an individual requesting a review of the eligibility decision made by the ICB.

*(National Framework 2022: Paragraph 234).*

### **Other Considerations:**

It should be remembered that decisions regarding eligibility for NHS Continuing Healthcare are the responsibility of the ICB, who may choose to make their decision before an inter-agency disagreement has been resolved. In such cases it is possible that the formal dispute resolution process will have to be concluded after the individual has been given a decision by the ICB.

*(National Framework 2022: Paragraph 235).*

Where disputes relate to local authorities and ICBs in different geographical areas, the dispute resolution process of the responsible ICB should normally be used in order to ensure resolution in a robust and timely manner.

*(National Framework 2022: Paragraph 236).*

## **References**

[National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care - July 2022 \(Revised\) \(publishing.service.gov.uk\)](#)

[NHS England » Who Pays?](#)

[Ordinary residence: resolving disputes in health and social care - GOV.UK \(www.gov.uk\)](#)