

# NHS North Central London Integrated Care Board NHS Continuing Healthcare Appeals Policy (incorporating the Local Resolution Process)

Original dated 9<sup>th</sup> February 2021

Updated 1<sup>st</sup> November 2024

Revised 29<sup>th</sup> July 2025

## Document Trail and Version Control

<b>Heading</b>	NHS North Central London Integrated Care Board NHS Continuing Healthcare Appeals Policy (incorporating the Local Resolution Policy)
<b>Project Sponsor</b>	Director of Complex Care/Deputy Chief Nursing Officer
<b>Purpose of document</b>	The purpose of this document is to define the terms of reference for all CHC Eligibility Panels for all directorates across NHS North Central London Integrated Care Board (NCL ICB)
<b>Date of document</b>	9 <sup>th</sup> February 2021
<b>Review Date</b>	1 <sup>st</sup> November 2024 and 29 <sup>th</sup> July 2025
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<b>Approved by</b>	Clinical Governance Group
<b>Date approved</b>	25 <sup>th</sup> January 2021
<b>Effective from</b>	25 <sup>th</sup> January 2021
<b>Status</b>	Draft 7.2
<b>Version</b>	Version 7 dated 1 <sup>st</sup> November 2024: Relabeled Appeal stages to move in line with NHS England stages of Independent Review at Stage 3, and support appellants understanding of process.
<b>Reviewed and updated</b>	1 <sup>st</sup> November 2024 and 25 <sup>th</sup> June 2025
<b>Next review date</b>	July 2027

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## 1. Introduction

- 1.1 The NHS North Central London Integrated Care Board (NCL ICB) Appeals Policy has been developed in accordance with the Department of Health's National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care, July 2022 (Revised) [National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care - July 2022 \(Revised\) - corrected May 2023.](#)
- 1.2 "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.
- 1.3 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).
- 1.4 To determine whether an individual has a primary health need, there is an assessment process, which is detailed in this 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.
- 1.5 Care is provided to an eligible individual aged 18 or over, to meet health and associated social care needs that have arisen because of disability, accident or illness.
- 1.6 Eligibility for NHS Continuing Healthcare (CHC) is not determined by the setting in which the package of care is offered or by the type of service delivered.
- 1.7 Paragraph 194 of "the framework" states "Where an individual or their representative asks the Integrated Care Board (ICB) to review the eligibility decision, this should be addressed through the local resolution procedure, which is normally expected to resolve the matter. ICBs should deal with requests for review in a timely manner."
- 1.8 All ICBs are expected to publish an appeals and local resolution policy that is fair and transparent that includes timescales for resolution.

## 2. Purpose and Scope

- 2.1 The NCL ICB Appeals Policy sets out the processes when individuals and / or their representatives disagree with the eligibility decision made by NCL ICB for NHS Continuing Healthcare (CHC) funding.
- 2.2 It does not cover disputes between public bodies (this is covered under the NCL ICB Joint Disputes Policy) and only applies to patients / representatives where eligibility has been assessed and there is a subsequent wish to appeal a CHC eligibility decision.
- 2.3 It does not apply to requests for:
  - Retrospective assessments,
  - NHS Funded Nursing Care (FNC) eligibility decisions,
  - NCL ICB to review its decisions regarding care packages.
- 2.4 Timeframes for individual stages of this process are outlined as working days (based on a five-

day week, Monday to Friday).

### 3. Background

- 3.1 Integrated Care Boards are responsible for decision making regarding NHS Continuing Healthcare eligibility, based on the recommendation made by the multidisciplinary team (MDT).
- 3.2 The decision is independent of budgetary constraints and based on the evidence collated by the multidisciplinary team during the assessment process and the subsequent recommendation.
- 3.3 Any disagreements on the domain levels and / or final recommendation should be clearly recorded on the Decision Support Tool (DST) with the individual being assessed and / or their representatives given the opportunity to add their own comments.
- 3.4 Once the decision regarding eligibility has been made NCL ICB is responsible for informing the individual and / or their representative in writing as soon as possible.
- 3.5 The written confirmation will include the decision, reasons for the decision, a copy of the DST, contact details if further clarification is needed and details regarding how to request a review of the decision.

### 4. Appeals process

- 4.1 A request for a review of the eligibility decision following the receipt of the assessment outcome letter can be made by the individual assessed or their representatives who hold the appropriate authority, including nominated individuals with Power of Attorney.
- 4.2 Any notification of appeal letters received prior to the assessment taking place and/or outcome letter being received will be disregarded.
- 4.3 A request can be made in the following circumstances, where the individual / representative:
  - Is dissatisfied with the decision regarding CHC eligibility
  - Perceives there has been a failure to follow the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care in reaching the decision regarding CHC eligibility.
- 4.4 If the assessed individual does not have the mental capacity to request a review it can be requested by a representative on the individual's behalf.
- 4.5 Where an appeal is received, it will be addressed through this policy which is expected to resolve the matter. If following the completion of the process, there is no resolution the next steps will be discussed.

### 5. Appeal Stages

- 5.1 If an individual / representative wishes to appeal the eligibility decision they must do so within **6 months** of the date of the outcome letter.

#### **Pre – Appeal Stages (Clauses 5.2 to 5.4)**

- 5.2 The appeal must be lodged with the local CHC team in writing (contact details are provided in each outcome letter).
- 5.3 NCL ICB will respond with a written acknowledgement of the appeal within **5 working days**, including details of the allocated case manager who will handle the appeal and act as the point of contact for the appellant (the individual or representative requesting the appeal).
- 5.4 The appeal acknowledgement letter will include a form requesting relevant information from the appellant about the areas in which there is disagreement and any further information and / or evidence to support the appeal. This should be returned to the CHC service within **2 weeks**. Where an individual is unable to make the appeal in writing due to illness, disability or unfamiliarity with written English, NCL ICB will support them in submitting the appeal or can provide details of advocacy service as needed.

### **Appeal – Stage 1 Local Resolution Meeting (Clauses 5.5 to 5.7)**

- 5.5 An informal meeting known as a Local Resolution Meeting (LRM) will take place between the allocated case manager and appellant within **10 working days** of receiving the completed appeal form from the appellant. The appeal will be discussed, and representatives will attempt to resolve any matters raised, if possible, prior to moving to the next stage. This meeting will have written minutes and may take up to **an hour**. In certain circumstances, and only by mutual written consent, this stage may be skipped, and representatives would proceed directly to stage 2.
- 5.6 If, at this stage, the appellant wishes to withdraw the appeal, correspondence will be sent by NCL ICB confirming the withdrawal. If, following the informal meeting, the allocated case manager decides that a review of the recommendation would be appropriate if, for example, further evidence has been presented, the assessment will be returned to the original multidisciplinary team for reconsideration.
- 5.7 If, due to the period of time, or other factors, a member of the multidisciplinary team is no longer available to reconsider the recommendation, then the appeal will be heard at the Local Resolution Panel. In either case NCLICB will send correspondence to the appellant confirming the next steps.

### **Appeal – Stage 2 Local Resolution Panel (Clauses 5.8 to 5.16)**

- 5.8 If the appeal cannot be resolved at stage 1 then a Local Resolution Panel (LRP) will be convened. The purpose of an LRP is to discuss the appeal, the needs of the patient at the time of the completion of the DST, and the content of the DST. This meeting may take up to **2 hours**.
- 5.9 The discussion will also include how the eligibility decision was reached and provide clarification on anything not understood regarding the process or the assessment tool. It is also an opportunity for the appellant to provide additional evidence to be considered.
- 5.10 All appropriate documents will be collated in a format that mirrors NHS England's Independent Review Panel indexing and circulated a minimum of **2 weeks** prior to the panel date to allow time for all attendees to pre read the information.
- 5.11 Any change in the level of care needs that have occurred after the completion of the DST cannot be considered in relation to eligibility at the time, however, may lead to a recommendation of a new assessment.

5.12 The Chair, case manager and Local Authority (where appropriate) will deliberate the assessment after the conclusion of the LRP to consider all evidence before making the eligibility decision. The Terms of Reference detail the purpose and scope of the panel as well as the membership of the panel, and will be made available to the appellant, upon request. The LRP should take place within **3 months** of the date of appeal being received by NCL ICB.

5.13 There are 3 possible outcomes of the LRP:

- Decision upheld i.e.: individual not eligible for CHC,
- Decision overturned i.e.: individual eligible for CHC,
- Recommendation of components of care that should be health funded.

5.14 An additional outcome may be that, although not eligible at the time of the appealed assessment, a change in need may merit the completion of a new referral and assessment.

5.15 The appellant will be informed in writing of the outcome of the LRP, including a copy of the report, within **4 weeks** of the meeting.

5.16 If following the LRP it has not been possible to resolve the disagreement the individual and/or their representative may apply to NHS England (NHSE) for an independent review of the decision, by NHSE's Independent Review Panel (Stage 3) – see Clause 6.

**Figure 1: NCL ICB Appeals Policy Stages**



## 6. NHS England Independent Review Panels (Stage 3)

6.1 If an individual and/or their representative wishes to go ahead with the appeal, they must write to NHS England requesting an Independent Review, see [www.england.nhs.uk/healthcare/](http://www.england.nhs.uk/healthcare/). This must be done within **6 months** of receiving the outcome of the NCL ICB Stage 2 LRP.

6.2 The address to send the request to is IRP Facilitator, NHS Continuing Healthcare Team - Nursing Directorate, 1<sup>st</sup> Floor Wellington House, 133 - 155 Waterloo Road, London SE1 8UG. Or contact by e-mail: [england.londonchc-irp@nhs.net](mailto:england.londonchc-irp@nhs.net)

- 6.3 NHS England is responsible for convening an Independent Review Panel (IRP) which will consist of an independent chair, an ICB and Local Authority representative (who have not been involved in the original eligibility decision).

## 7. Ombudsman

- 7.1 Following an NHSE Independent Review Panel, if the original decision is upheld but there is still a challenge the individual and/or their representative has the right to make a complaint to the Parliamentary and Health Service Ombudsman [www.ombudsman.org.uk](http://www.ombudsman.org.uk).