

Dispute Resolution Policy for NHS Continuing Healthcare & NHS Funded Nursing Care (Revised October 2018)

1. Introduction and Background

The below policy document has been in ‘agreement’ between Sheffield Clinical Commissioning Group and Sheffield City Council since 1st January 2011. We have amended this policy where required based on the Care Act 2014 and the Revised National Framework for NHS Continuing Healthcare (CHC) and NHS funded nursing care (FNC), 2018.

Clinical Commissioning Groups (CCGs) and Local Authorities (LAs) are required to agree a Local Dispute Resolution Policy as directed within the National Framework for NHS Continuing Healthcare (CHC) and NHS funded nursing care (FNC), 2018

The CCGs and LAs are committed to working together to provide continuing care and jointly funded care in the interests of patients / service users; resolving difficulties at the earliest opportunity, ensuring that patients/service users are not involved in any dispute which may arise between the parties and that their individual needs are met in an appropriate environment throughout. We would positively encourage all involved to communicate in a manner that keeps to the principles of the Revised CHC Framework ie to keep the individual at the centre of the process.

It is expected that in all cases 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 (Please refer to Annexe E, CHC Framework, Page 159).

Sheffield Clinical Commissioning Group and Sheffield City Council subscribe to the principle that there should be no delay in the provision of services due to disagreements or disputes on the assessment recommendation or outcome of eligibility. Should such situations arise, the National Framework for NHS Continuing Healthcare & NHS funded-nursing care (Revised October 2018) is explicit in stating that any existing funding arrangements cannot be unilaterally withdrawn without a joint assessment being carried out and alternative funding arrangements put in place. Therefore anyone in their own home, or care home funded by the Local Authority must continue to be financially assisted by the Local Authority until the dispute is resolved. Similarly, anyone in hospital, or funded by the NHS must remain funded by the NHS until the dispute is resolved.

- Sheffield Clinical Commissioning Group and Sheffield City Council agree to adopt a “without prejudice” approach to such situations whereby the final outcome of the dispute will be backdated to the time of the Dispute Panel date of decision on eligibility. (Annex E: Guidance on responsibilities when a decision on NHS Continuing Healthcare eligibility is awaited or is disputed, revised National Framework October 2018). This means if Sheffield City Council has continued to fund an arrangement that was subsequently decided to be NHS Continuing Healthcare, Sheffield Clinical Commissioning Group funding should be backdated to the date that the eligibility decision confirmed made or day 29 following the date of

the original Checklist if there has been an unreasonable delay in the CCG verifying a MDT recommendation. Where Sheffield Clinical Commissioning Group has continued to fund an arrangement that subsequently is decided to have been a Local Authority responsibility, for example where a:

- New referral via check list would be either day 29 or date of DST completion if the DST was completed within the 28 days.
- Review DST date of agreement at Dispute panel for both

- 1.1 This document should be interpreted in accordance with the glossary contained in the Schedule.
- 1.2 This Policy is the mechanism to be applied by Sheffield Clinical Commissioning Group and Sheffield City Council for the purposes of resolving disputes regarding the eligibility of a Service User for NHS Continuing Health Care (CHC).
- 1.3 There are three stages to the formal resolution of disagreements between the Partner Organisations in this Policy:
 - 1.3.1 The prevention of disputes and the direction of resources towards the accurately and timely assessment of Service Users for CHC as described in the Point 3 Preventing Disputes.
 - 1.3.2 a formal dispute resolution procedure through the Disputes Panel as described in Paragraphs 6 to 9 (“Stage One”)
 - 1.3.3 resolution by the Heads of Service of each Partner Organisation as described in Paragraph 11 (“Stage Two”); and
 - 1.3.4 Arbitration as described in Paragraph 12 (“Stage Three”)

Every effort will be made to comply with the time limits set out in this Policy. The Partner Organisations may, by agreement, extend any of the time limits provided that this is in accordance with the National Framework, in particular paragraph 63.

2 Service User Complaints and Appeals

- 2.1 Both organisations have their own policies and procedures in place. Complaints and appeals will not form part of the dispute resolution policy between the two organisations.

3 Preventing Disputes

- 3.1 Formal dispute is a last resort, which should seldom if ever be necessary. Most disagreements can be resolved through discussion and negotiation. Partner Organisations should stay focussed on the key objective, which is to ensure that an individual’s eligibility for CHC is correctly determined in a timely fashion.

3.2 Resources should be directed at that aim, rather than being directed into the management of disputes. Recourse to a disputes procedure should be regarded as a failure of collaboration. However, it has to be recognised that this is a complex, high-risk area of activity for all the parties and that there may well be issues of disagreement and difference between the Partner Organisations. It is therefore crucial that strategic managers take steps to strengthen joint activity that focuses on agreement and aims to prevent conflict.

3.3 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 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 National Framework and the Directions.
- Applying Eligibility: there should be a clear and robust process agreed locally to determine eligibility as set out in the National Framework together with the Department of Health's supporting tools. This process should not involve finance officers from either of the Partner Organisations
- Assessment of Eligibility for CHC: this will be undertaken by a MDT in accordance with the NHS Continuing Healthcare (Responsibilities) Directions updated October 18 pages 10 and 11 of the CHC National Framework. The MDT will make its recommendation to Sheffield Clinical Commissioning Group through the CHC Panel. Only in exceptional circumstances and for clearly articulated reasons will the MDT's recommendation not be followed by Sheffield Clinical Commissioning Group. However Sheffield Clinical Commissioning Group may ask a multidisciplinary team to carry out further work on a DST.

Governance arrangements and terms of reference for the 'CHC Decision Making Panels' will be maintained in writing by Sheffield CCG.

4 Funding During Disputes

4.1 Service Users should not be involved or concerned by any dispute between the Partner Organisations and should not be involved in the application of this Policy. However, the Partner Organisations confirm that they will identify and use any relevant and pertinent comments made by the Service Users when discussing the details of their case. 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.

Sheffield Clinical Commissioning Group will ensure that Service Users are informed about their eligibility (or not) for CHC once a final decision is made.

- 4.2 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 Sheffield Clinical Commissioning Group or Sheffield City Council unilaterally withdraw from an existing funding agreement.
- 4.3 Where a dispute arises, the partner organisation funding the arrangements in place at the time that the service user is assessed by the MDT will continue with the funding on an interim basis (and without prejudice to their position) until the final resolution date.
- 4.4 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.
- 4.5 Unless otherwise agreed, costs incurred by either Partner Organisations (“Paying Partner”) pursuant to interim funding arrangements made in accordance with Paragraph 4.3 or 4.4 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.

5 Day to day decision making at an operational level

- 5.1 If the MDT are in agreement the DST will be signed off by a Clinical Team Leader. If the MDT are not in agreement or no local authority attendance the DST will be seen by Dispute Panel led by CHC Team Leaders and Local Authority Team Managers. In all cases where a social worker has not been part of the MDT, the Team Manager on behalf of the local authority will provide guidance in relation to adhering to the Care Act 2014.

In such instances where an alternative recommendation has been submitted by a social worker as a disagreement of recommendation, it is the eligibility panel’s responsibility to apply the national framework and come to a conclusion in regard to the appropriate eligibility of the service user. If the dispute cannot be resolved by negotiations at eligibility panel they will escalate to the Dispute Exceptions Panel stage one of the disputes resolution policy.

6 Stage 1: Dispute Panel

- 6.1 Stage 1 of the disputes procedure involves the convening of a Dispute Panel. Membership of the panel is represented by the Clinical Operational Lead of the CHC team or their Deputy, Service Manager from the Local Authority or their Deputy and a GP.

This panel should be available on a weekly basis. However there will be time when it will not have to convene due to there being no cases.

- 6.2 The disputes procedure should encourage resolution of disputes at the earliest opportunity and lowest level before a formal dispute is declared. It is important that all attempts to resolve the dispute informally are exhausted until referral to the Dispute Panel.

7 The Role of the Dispute Panel

- 7.1 The role of the Dispute Panel is to come to a consensus on agreeing a recommendation for eligibility based on all the available evidence given by the MDT and the Eligibility Panel.
- 7.2 Panel members are responsible for acting in a professional manner and applying the National Framework appropriately in reaching a collective decision on eligibility.

8 Attendance and Procedure at the Dispute Panel Meeting

- 8.1 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.
- 8.2 An independent person (GP) with Continuing Health Care Management experience from an organisation not party to the dispute should be invited to attend as a clinical advisor. This individual will attend Dispute Panel meetings as an advisor and will have the right to vote.
- 8.3 Sheffield Clinical Commissioning Groups Operational Lead will normally chair the meeting and ensure that the outcomes are recorded.
- 8.4 The 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.
- 8.5 The Chair will take the responsibility of appointing a business administrator 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.

9 Information sharing/documentation for the Dispute Panel

- 9.1 The decision to convene a Dispute Panel meeting will normally be the result of the completion by the MDT of a Decision Support Tool, which has previously been discussed in the CHC Eligibility Panel. The written assessment information and a copy of the CHC Panel minutes together with all relevant supporting information will be required.

9.2 Data protection and Caldicott guidelines will apply.

10 Stage 2: Referral of the dispute to the Head of Services of the Partner Organisations

- 10.1 In the event that the Dispute Panel recommendations are not accepted by either Partner Organisation, the dispute may be referred by either Partner Organisation within 5 working days of the Dispute Panel's decision to the Heads of Service at the Sheffield Clinical Commissioning Group and the Sheffield City Council.
- 10.2 The respective Heads of Service will meet to discuss the decision of the Disputes Panel and, within 14 working days of referral to them, will make recommendations to the partner organisations as to whether they agree with the decision of the Dispute Panel. An independent CHC advisor should be present to provide advice to the Heads of Service on the framework, with the nominated advisor agreed by both parties. An appointed clinical advisor, agreed by both parties, may also be necessary to provide advice.
- 10.3 The partner organisations will accept the recommendation made by the Heads of Services. However, in the event that the Heads of Service fail to reach agreement on the Dispute Panel decision, the matter shall be referred for arbitration in accordance with Stage 3 of this Disputes Resolution Policy.

Authorisation to escalate to Stage 3 approved at Director level.

11 Stage 3: Arbitration - Independent Panel

- 11.1 In the event that the Dispute cannot be resolved through Stage 2 of the Disputes Procedure, either Partner Organisation may serve written notice on the other confirming that they wish to refer the matter for arbitration to an independent panel. Such notice shall be made no later than 14 working days following confirmation by the Heads of Services that they are unable to resolve the dispute.
- 11.2 Any dispute referred to Stage 3 of this Disputes Resolution Policy shall be determined by an independent panel through a jointly agreed regional Clinical Commissioning Groups Eligibility Panel within the SYB ICS footprint.

12 Review

- 12.1 The partner organisations agree that this policy 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 policy will be updated accordingly.



Authorised by

..... Mandy Philbin
Chief Nurse, Sheffield Clinical Commissioning Group

.....Phil Holmes, Director of Adult Services

Implementation Date: 21st January 2019

Review Date: February 2020

Authors:

Andrew Wheawall Head of Service, Sheffield City Council

Paul Higginbottom Senior Programme Manager Ongoing Care, Joint Post

Alison Hall Operational Lead Nurse Continuing Healthcare

Julie Pronesti Service Manager, Sheffield City Council

Scheduled Glossary

“SCCG” means Sheffield Clinical Commissioning Group

“CHC” means NHS Continuing Health Care (as defined in the National Framework);

“CHC Departments”

means Sheffield Clinical Commissioning Group, NHS Continuing Healthcare Team;

“CHC Eligibility or Dispute Panel”

means a panel that has been established by the Sheffield Clinical Commissioning Group ensure consistency and quality of decision making for the purposes of determining a person’s eligibility for CHC;

“Disputes”

means disputes between both organisations regarding the eligibility of a Service User for CHC;

“Disputes Procedure”

means the dispute resolution procedure described in this Policy;

“Final Resolution Date”

means the date on which the Partner Organisations reach final resolution of a Dispute. Such resolution may occur following completion of any of the 3 stages of the Disputes Procedure;

“SCC”

means Sheffield City Council;

“MDT”

means the multi-disciplinary team;

“National Framework”

means the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care; October 2018

“Nominated Senior Managers”

means senior managers nominated by each Partner Organisation and whose identity and contact details have been notified to the other Partner Organisation;

“Partner Organisations”

means Sheffield Clinical Commissioning Group and Sheffield City Council;

“Policy”

means this dispute resolution policy;

“Service User”



means an individual who requires services for whom the Sheffield Clinical Commissioning Group and Sheffield City Council are the responsible authorities.

CHC Disputes Resolution Policy – Version Control

Version	Date	Author	Status	Comment
0.1	8.10.18	A Wheawall	Draft	
0.2	10.12.18	A Wheawall	Draft	Circulated CHC Steering Group
0.3	December 2018	A Wheawall	Draft	Re-worked D Wade, A Hall
Final Version	21.01.19	A Wheawall	Approved	Ongoing Care Steering Board