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| **Continuing Healthcare Inter-Agency Dispute Policy (Lincolnshire ICB)** | |
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# 1.0 INTRODUCTION

Integrated Care Boards (ICBs) are responsible and accountable for system leadership for NHS Continuing Healthcare within their local health and social care economy to include delivery of, and compliance with, the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care *October 2018 (Revised)* (National Framework)and promoting awareness of NHS Continuing Healthcare.

Under the provisions of the “National Framework”, a fundamental principle is for ICBs and local authorities to minimise the need to invoke formal inter-agency dispute resolution procedures and to always attempt to resolve inter-agency disagreements at an early and preferably informal stage.

Therefore, in the event of an inter-agency dispute, the ICBs are expected to establish local arrangements which clearly define how the ICB discharges its duty to consult with the local authority (The National Framework paragraph 21 (d)) and how the local authority discharges its duty to co-operate with the ICB (The National Framework paragraphs 25-30).

This Inter-agency Dispute Policy will hereafter be referred to as the “Disputes Policy”.

# 2.0 PURPOSE & REMIT OF THE DISPUTE POLICY

The purpose of this Disputes Policy is to ensure that inter-agency disputes between Lincolnshire ICBs and Lincolnshire County Council (LCC) regarding an individual’s eligibility for NHS Continuing Healthcare (CHC) are resolved as quickly as possible for the benefit of the individual concerned.

The dispute process should show a commitment from both organisations to work together, ensuring a person-centred approach to decision-making.

The guidance takes account of and where appropriate, makes reference to relevant sections of the following documents: -

* National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care, *October 2018 (Revised)*
* The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing rules) Regulations 2012. Hereafter referred to as the Standing Rules. Constitutional Standards 2013
* NHS England Operating Model for NHS Continuing Healthcare, June 2020
* The Care Act 2014
* The Care and Support Statutory Guidance 2016 (updated 2021)

In accordance with the aforementioned documents neither the Lincolnshire ICB or LCC should unilaterally withdraw from an existing funding arrangement without a joint reassessment of the individual and without first consulting one another and the individual about the proposed change of arrangement.

It is essential that alternative funding arrangements are agreed and put into effect before any withdrawal of existing funding, to ensure continuity of care. Any proposed change should be put in writing to the individual by the organisation that is proposing to make such a change.

If agreement between the Lincolnshire ICB and LCC cannot be reached on the proposed change, this Inter-agency Disputes Policy should be invoked. Current funding and care management responsibilities will remain in place until the inter-agency dispute has been resolved.Individuals must never be left without appropriate support while disputes between statutory bodies about funding responsibilities are resolved.

## 2.1 What disputes are covered by this Inter-agency Disputes Policy?

This Disputes Policy will assist in the resolution of disputes between Lincolnshire ICB and LCC, which arise from:

* A decision as to an individual’s eligibility for NHS Continuing Healthcare

or

* where an individual is not eligible for NHS Continuing Healthcare, the contribution of a Lincolnshire ICB or LCC to a joint package of care for that person
* the operations of the refunds guidance as set out in the National Framework, Annexe E: Guidance on responsibilities when a decision on NHS Continuing Healthcare eligibility is awaited or disputed

## 2.2 What disputes are not covered by the Inter-agency Disputes Policy?

This Inter-agency Disputes Policy does not cover disputes relating to:

* Responsible Commissioner Disputes between ICBs. please refer to ‘Who Pays Guidance’ [NHS England » Who Pays?](https://www.england.nhs.uk/who-pays/)
* Challenges and Individual Decision Disputes submitted by individuals and/or legal representative, which should be referred to ‘Individual Requests to Review a Continuing Healthcare Eligibility Decision’ Policy. A copy of this document should be sent by the ICB upon acknowledgement of a request to review an individual’s eligibility
* Complaints by individuals, their representatives or carers. These should be dealt with via the Organisational Complaints Procedure in accordance with the NHS England Complaints Policy.

## 2.3 What is the organisational scope of this Inter-agency Disputes Policy?

This Disputes Policy is administered by the Lincolnshire ICB.

This policy will apply where disputes arise involving Lincolnshire ICB, LCC and other out of area local authorities.

# Principles underpinning the Inter-agency Dispute process

A fundamental principle within the National Framework is for ICBs and local authorities to minimise the need to invoke formal inter-agency dispute resolution procedures and to always attempt to resolve inter-agency disagreements at an early and preferably informal stage.

This Disputes Policy agreed by Lincolnshire ICB and LCC includes an informal and a formal approach. They will work together to ensure that the majority of disputes are resolved through the informal process in a timely and efficient manner.

During both the informal and the formal disputes process, the CHC Lead Coordinator will act as the nominated person to keep the individual and or their family/representative informed as to the progress of the dispute and, when appropriate, of the timescales for the next steps.

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# 3.0 INTERIM CARE PROVISION

In cases where there is a dispute about an individual's eligibility for NHS continuing healthcare, the National Framework (Paragraph 211) states, *'it should be remembered that decisions regarding eligibility for NHS Continuing Healthcare are the responsibility of the ICB, who may choose to make the decision before a multi-agency agreement has been resolved. In such cases it is possible that the formal disputes resolution process will have to be concluded after the individual has been given a decision by the ICB'*.

The National Framework, in Annex E, provides further details on responsibilities when a decision on NHS continuing healthcare is awaited or is disputed.

Where the individual is already in receipt of a care package consideration must be given as to whether additional services need to be provided by either health and/or social care, while waiting resolution of the dispute.

In cases, where at the time the dispute is raised, the individual has not been receiving a package of care interim services should be provided by health and/or social care to meet assessed needs.

Where interim services are required to meet newly assessed needs, health and social care will work collaboratively and jointly to consider the needs of the individual that have been identified and agree responsibility for the provision and funding of the services.

Both parties must consider whether any of the needs identified are above the lawful limits of what the local authority can be expected to provide.

The funding of any care services during the dispute process will be on a 'funding without prejudice' basis i.e. providing, and funding interim care services does not commit either organisation to the on-going provision and funding of care following resolution of the dispute.

The NHS 28 day Key Performance Indicator (KPI) must be adhered to, therefore in cases where there is an Inter-Agency dispute the ICB will make a decision pending the outcome of the Dispute and this will stop the 28 day clock in regards to the KPI (this does not affect Adult Care performance indicators).

## 3.1 Individual's financial contribution for interim community care provision

If at the time LCC raise a dispute the individual is in receipt of community care services, both LCC and the individual will continue to pay their agreed contributions.

Where it is identified that the individual requires additional community care services to meet their assessed needs LCC will pay the full cost of the additional services. The individual will not be required to pay towards the cost of the additional care provision.

The individual will not pay towards the cost of any interim community care services while in Dispute, however if the Local Authority provide a statutory provision the financial Policy will apply.

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# 4.0 ELIGIBILITY DISPUTE PROCESS

## 4.1 Informal Dispute Process

**The purpose of the informal stage of the disputes process is to enable health and adult social care practitioners to resolve differences of opinion when making a recommendation on an individual's eligibility for CHC at an operational level.It is anticipated this will have a positive impact on the individual's experience of the CHC process.**

## 4.2 Informal Process - STEP 1

It is best practice for all members of the MDT to agree the Recommendation at the time the Decision Support Tool (DST) meeting is conducted.

In cases where this is not immediately achievable and the MDT arrives at a *Split Recommendation*, the MDT will conduct a private discussion, away from the individual and/or their representative, to define their respective professional views regarding the individual's eligibility and work to come to a unanimous eligibility recommendation.

This discussion will take place as part of the DST MDT meeting and the CHC Lead Coordinator will be responsible for recording the content and outcome of the discussion within the body of the Decision Support Tool (DST); this information should be agreed and shared with the social care practitioner at this time. The CHC Lead Coordinator will be responsible for informing the individual/representative of the outcome of the discussion and advise of next step

In cases where the MDT are still unable to reach a unanimous agreement on the individual's eligibility, the dispute will need to progress to Step 2 of the Informal Process. At this point, the CHC Lead Coordinator will:

* send a copy of their DST to the social care practitioner involved in the DST within 48 hours; to include the CHC Lead Coordinators 4 Key Characteristics.
* Will record this outcome within the body of the DST (to include where the Local Authority disagree with the CHC Lead Coordinators recommendation within the 4 Key Characteristics)
* Arrange a mutually agreed date (within the timeframe below) to communicate the outcome of Step 2 to one another

LCC will ensure, if not already provided, that a copy the Adult Care Needs Assessment is submitted to ICB to outline the individuals care needs and to inform the disputes process, this will enable Lincolnshire ICB and LCC to work in partnership to ensure the individual receives appropriate support throughout the disputes process.

## 4.3 Informal Process – STEP 2

Where an agreement regarding eligibility could not be agreed through the MDT discussion:

The health professional and Adult Social Care practitioner will be required to individually escalate the case and discuss with an appropriate manager **within 5 working days** of the DST MDT meeting to consider the individual’s needs and interpretation of The National Framework.

At this point if an agreement is reached regarding the individual’s eligibility, the four key characteristics will be discussed and determined as the rationale. The date and time of the MDT member’s discussion will be recorded on the DST. Formal notification will be sent by letter to the individual and/or their representative as well as the Local Authority.

If agreement is not reached, the Inter-Agency Dispute will enter the Informal Process (Step 3).

In either case, the outcome will be communicated to the individual and/or their representative, **within 2 working days** via telephone by the CHC Lead Coordinator **and the date and time of which must be recorded on the DST and Broadcare.**

## 4.4 Informal Process – STEP 3

The CHC Lead Co-ordinator will request the case be presented via the CHC Panel Submission Standard Operating Procedure (SOP) at the next available ICB Panel meeting where Health and Adult Social Care are both represented.

### 4.5 ICB Panel meeting

The purpose of the ICB CHC Panel meeting is to consider the DST content, supporting evidence and recommendation(s); to agree a final recommendation of eligibility.

The DST and all supporting evidence, which must include an up to date copy of the Adult Care Needs Assessment, will be submitted to the CHC team. The Health and Adult Social Care practitioners can submit any additional evidence that becomes available to support their view of the individual's eligibility; this should be submitted to the Lead MDT Co-ordinator, in preparation for the ICB CHC Panel meeting.

It is important that all professionals present at Panel will base their decision making on the individual’s eligibility only on the evidence provided for the Panel meeting.

The ICB CHC Panel meeting discussions will be recorded on a Panel Log. Formal notification will be sent by letter to the individual and/or their representative **within 5 working days**. The LCC panel representative will be responsible for informing the appropriate adult care practitioner of the outcome of their respective cases.

In cases where the LCC Adult Care Panel representative agrees with the outcome from Panel, this will be the final decision and there will be no further action.

Where the LCC adult care panel representative does not agree with the Recommendation on an individual’s eligibility, a formal dispute can be raised in writing **within 10 working days** by the Adult Care Head of Service to the ICB.

Every effort must be taken to resolve the dispute at the informal stage.

**5.0 FORMAL DISPUTE PROCESS**

The CHC Lead Coordinator will continue to be the nominated person responsible for keeping the individual and/or their representatives updated throughout the Formal Dispute Process.

## 5.1 Formal Dispute Process – STAGE 1:

On receipt of the formal dispute letter, the designated ICB CHC Panel Chair (or deputy) will escalate the dispute to the ICB CHC Clinical Lead/Associate Director of Nursing and Quality, who will be responsible for convening an extraordinary meeting between Health and an Adult Social Care Head of Service (face to face or via MS Teams) **within 10 working days**.They will further discuss and evaluate the information/evidence, to try and reach an agreement of the individual’s eligibility.

Where no-agreement is reached, the dispute will progress to Formal Dispute Process, Stage 2 and the ICB will communicate the outcome to the Local Authority in writing, within **5 working days**.

## 5.2 Formal Dispute Process – STAGE 2: FINAL STAGE

This stage involves independent arbitration and should only be invoked as a final resort and should rarely, if ever, be required.

It can only be triggered by executive managers, within the respective organisations who, in partnership must agree within **20 working days**, how the independent arbitration is to be sourced, organised and funded.

The identified mechanism for final resolution will involve referring the case to another ICB and Local Authority outside of Lincolnshire and agreeing to accept their recommendation. A copy of all relevant documentation will be made available to the Independent Arbitration Panel, to include;

* DST
* All the health and social care evidence collated to support the DST
* Any additional evidence collated during the dispute process, to include multi agency meeting notes
* Written communication between the ICB, their CHC teams and LCC regarding the dispute steps and stages

The Independent Arbitration Panel decision will be final and accepted by all partner organisations. Once the dispute has been resolved/decision accepted, the ICB CHC team will inform the individual and/or their representatives in writing.

Where the resolution at any stage of the process results in a change in funding stream the ICB CHC team will send a formal letter of notification to the provider, individual and/or their representative within **5 working days** of the decision; advising them of the change and where appropriate the reimbursement process.

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# JOINT FUND DISPUTE

In the event a person is not eligible for NHS Continuing Healthcare, they may potentially receive a joint package of health and social care. This is where an individual’s care or support package is funded by both the NHS and the LA. This may apply where specific needs have been identified through the DST that are beyond the powers of the LA to meet on its own. This could be because the specific needs are not of a nature that a LA could be expected to meet, or because they are not incidental or ancillary to something which the LA would be doing to meet needs under sections 18-20 of the Care Act 2014.

The case would be presented at the ICB CHC Panel, with representation from Lincolnshire ICBs and LCC Adult Social Care. The purpose of the ICB CHC Panel meeting is to determine whether the individual’s assessed health needs can be met via statutory provision or whether there is a need to fund additional healthcare services.

It should be noted that joint packages can be provided in any setting (National Framework paragraph 263).

The range of services the NHS is expected to arrange and fund includes, but is not limited to;

* Primary Healthcare
  + Assessment involving doctors and registered nurses
  + Rehabilitation/reablement and recovery (where this forms part of an overall package of NHS care, as distinct from intermediate care)
  + Respite healthcare
  + Community health services
  + Specialist support for healthcare needs
  + Palliative care and end of life healthcare

## 6.1 Joint Fund – Informal Process

Once the individual has been deemed not eligible for CHC (Full Fund) but there remains a dispute over whether there should be a Joint Fund package of care, all evidence for consideration should be collated, and the case will be requested by the CHC Lead Coordinator to be reviewed via the SOP by the ICB CHC Panel.

The ICB CHC Panel will make a determination as to whether Joint Funding is required and the Chair will be responsible for notifying the members of DST/Review MDT. Formal notification will be sent by letter to the individual and/or their representative and copied to the Local Authority, within **5 working days** of the meeting.

In the event where the LCC adult care panel representative does not agree with the outcome, a formal dispute can be raised in writing by the Local Authority Head of Service to the ICB and present a written submission to the ICB CHC Panel Chair requesting submission for consideration through a formal process **within 10 working days**, as outlined above.

## 6.2 Joint Fund – Formal Process

On receipt of the written submission, the designated ICB CHC Panel Chair will escalate the dispute to the ICB CHC Clinical Lead/Associate Director of Nursing and Quality, who will be responsible for convening an extraordinary meeting between Health and Adult Social Care Head of Service (face to face or via MS Teams), to further consider the supportive evidence and make a final ruling; which will be communicated and accepted by the ICB and LCC. This outcome should then be relayed to the individual and/or their representatives by CHC.

# 7.0 MONITORING & REVIEW

A quarterly report will be drafted by the CHC Quality Leads and submitted via the CHC Governance Board. All partner organisations should jointly consider “lessons learned” and implement strategies to reduce future disputes and influence future commissioning opportunities to promote improved experience for the individual.

**8.0 REIMBURSEMENT PROCESS**

When the resolution of a dispute results in one party needing to reimburse costs to another party, it is expected this will occur within 28 days of the date resolution was reached.

Individuals should not be disadvantaged in relation to their health and wellbeing or financial situation by the dispute resolution.

Reimbursement will be in accordance with the National Framework, as outlined in Annexe E.

Where the ICB’s decision is not eligible for NHS CHC, LCC may become responsible for funding from the date the decision is made.

The individual will require formal notification of the resolution outcome including a 14 day period of notice from the CHC Team that NHS Continuing Healthcare funding or the health element of a Jointly Funded Package is going to be withdrawn.

LCC will need to undertake a financial assessment to determine what the individual's financial contribution will be or whether they will be self-funding the total cost.

# 9.0 DUE REGARD

This policy has been reviewed in relation to having due regard to the Public Sector Equality Duty (PSED) of the Equality Act 2010 to eliminate discrimination, harassment, victimisation; advance equality of opportunity; and foster good relations.

## **10.0** **EQUALITY and DIVERSITY STATEMENT**

Integrated Care Board (ICB) within Lincolnshire have collaboratively worked with Lincolnshire County Council and aims to design and implement this policy document that meet the diverse needs of our services, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account current UK legislative requirements, including the Equality Act 2010 and the Human Rights Act 1998, and promotes equal opportunities for all. This document has been designed to ensure that no-one receives less favourable treatment due to their personal circumstances i.e. the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity. Appropriate consideration has also been given to gender identity, socio-economic status, immigration status and the principles of the Human Rights Act.

In carrying out its functions, ICBs are committed to having due regard to the Public Sector Equality Duty. This applies to all the activities for which ICBs are responsible, whether internal or on behalf of partners, including policy development, review and implementation.

## **11.0 REFERENCES**

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## **12.0 GLOSSARY OF TERMS**

|  |  |
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| **ASC** | Adult Social Care |
| **CHC** | NHS Continuing Healthcare - Often abbreviated to ‘NHS CHC’ or ‘CHC’.  Means a package of care that is provided and funded solely by the NHS. |
| **CHC Lead Coordinator** | Assessor that will lead the meeting for the Decision Support Tool (DST) |
| **CHC**  **Co-ordinator**  **LCC** | A member of the Adult Social Care Team with responsibility for providing advice and support on the Local Authority’s role in the NHS Continuing Healthcare assessment process. |
| **Dispute** | Disagreement between partners organisations regarding the CHC eligibility decision. |
| **Due Regard** | Having ‘due regard’ to the Public Sector Equality Duty involves a proactive approach to:   * eliminating discrimination * advancing equality of opportunity * fostering good relations between persons who share a protected characteristic and those who do not   This also includes taking steps to meet the needs of people from protected groups where these are different from the needs of other people and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low. |
| **Eligibility decision** | Where an individual is considered to be eligible or non-eligible for NHS Continuing Healthcare funding. |
| **Framework** | A set of principles/guidance, used to support decisions and judgments. |
| **Manager General/Area** | Manager in Lincolnshire County Council, responsible for teams of adult social care workers, within a designated geographical area. |
| **Independent Arbitration Panel** | Membership consists of health and social care practitioners who have no link to the area or agencies involved in the dispute. Aim of the Panel is to provide a transparent process for ICBs and LAs with an impartial decision for resolving funding disputes. |
| **LA** | Local Authority |
| **LCC** | Lincolnshire County Council |
| **Panel Meeting** | Panel meeting, consisting of a chairperson, one other registered nurse from the Lincolnshire ICB NHS Continuing Healthcare service provider and a representative from Lincolnshire County Council adult social care. |
| **MDT** | Multi-disciplinary team. A team consisting of at least two practitioners from different disciplines. For the purpose of addressing interagency disputes regarding eligibility for NHS continuing healthcare this will include, as a minimum, a registered health professional and an adult social care worker. |
| **Multi-agency Meeting Logs** | A written record of the NHS Continuing Healthcare multi-agency meeting process and eligibility decision for an individual case. |
| **Policy** | Principles and/or rules which have been formulated and approved by the relevant ICB Board or committee, with delegated authority.  It is a set of statements, prescriptive by nature, documenting the standards, intentions and/or expectations of how a practice or course of action will be implemented and adopted.  A policy is considered binding, and a breach of policy will result in an investigation into the reasons for the breach.  Where appropriate, information must be provided for patients and other stakeholders. |
| **Standard Operating Procedure (SOP)** | Process for which the CHC Lead Coordinator will ensure that the case evidence and information is collated and submitted to the panel meeting. |

**13.0 APPENDIX A**

**Standard Operating Procedure (SOP)**

