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Title:	NHS Continuing Healthcare Funding & Funded Nursing Care Policy	
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CONTENTS

1 INTRODUCTION

1.1 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 this National Framework. Such care is provided to an individual aged 18 or over, to meet health and associated social care needs that have arisen as a result of disability, accident or illness. The actual services provided as part of the package should be seen in the wider context of best practice and service development for each client group. Eligibility for NHS Continuing Healthcare is not determined by the setting in which the package of support can be offered or by the type of service delivery. (National Framework p.7)

1.2 This Operational Policy sets out the responsibilities of Torbay and South Devon NHS Foundation Trust (TSDFT) for ensuring the correct implementation of the Department of Health and Social Care (DoH&SC) document: National Framework for NHS Continuing Healthcare and NHS-Funded Nursing Care (Revised October 2018). The overall responsibility of provision for NHS Continuing Healthcare lies with NHS Devon Clinical Commissioning Group (Devon CCG) who have delegated the operational process to Torbay and South Devon NHS Foundation Trust. (TSDFT)

1.3 Within TSDFT the CHC team has the role of undertaking the assessment and review function for all clients in line with the core principles of the framework. For South Devon clients the team will hold case management responsibility ensuring that the package of care meets the assessed need. The team will also undertake both the appeal and retrospective process. This team is referenced within this document as the CHC Hub and can be accessed by a single point of contact.

1.4 TSDFT is responsible for ensuring clear arrangements with other NHS organisations, Local Authorities and Independent/Voluntary sector partners to make certain there is standardised practice in the effective operation of the National Framework.

1.5 This policy is not inclusive of all finite details in the National Framework and therefore the document should be used in conjunction with this.

2 POLICY STATEMENT

2.1 This policy provides the operational procedure for determining the eligibility of clients for NHS-funded Continuing Healthcare. It outlines the roles and responsibility of TSDFT staff for the implementation of the National Framework for NHS Continuing Healthcare (CHC) and Funded Nursing Care (Revised October 2018).

2.2 It specifies the responsibilities of TSDFT in those situations where an individual is deemed not-eligible for NHS-funded Continuing Healthcare (CHC) and in such cases, if requested the management of the appeals process.

2.3 It explains the way in which TSDFT will commission and provide care in a manner that reflects the preferences of individuals whilst balancing the need to commission safe and effective care that makes the best use of resources.

3 ROLES & RESPONSIBILITIES

3.1 It is the responsibility of all registered professionals involved in undertaking the CHC checklists to ensure individuals deemed eligible for consideration of CHC funding, provide robust information in order that individuals are dealt with equitably and that the TSDFT is compliant with legislation.

3.2 It is the responsibility of all registered professionals dealing with the eligibility decision making process, to ensure that a full and detailed assessment of need is completed with contemporaneous supporting evidence.

3.3 It is the responsibility of the Trust to ensure there is robust quality assurance mechanism for all assessments and consequent decision making.

4 SCOPE

4.1 This policy sets out how staff employed by TSDFT implement The National Framework for NHS Continuing Healthcare and NHS-funded nursing care.

4.2 This policy does not include children's Continuing Care apart from transition from children's to adult services. There is a separate National Framework for children and young people.

5 ELIGIBILITY CRITERIA FOR NHS CONTINUING HEALTHCARE FUNDING

5.1 Following the Coughlan judgment (1999), and the Grogan judgment (2006), the Secretary of State for Health developed the **Primary Health Need** concept in order 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). To determine whether an individual has a primary health need, there is an assessment process, which is detailed in the 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. (National Framework P7).

5.2 For an application of NHS Continuing Healthcare to be agreed the care must be proven to be more than;

- Incidental or ancillary to the provision of the accommodation that a Local Authority (LA) is under a duty to provided, pursuant to section 21 of the National Assistance Act 1948; and
- Of a nature that an authority whose primary responsibility is to provide social services can be expected to provide.

5.3 If the care is deemed to be outside of this guidance this may signify a 'primary health need;' that the overall needs are such that, the responsibility for those needs cannot be met by the Local Authority (LA) and so must be the responsibility of the NHS.

5.4 There are many aspects to be considered when deciding if an individual has a 'primary health need'. It is not about the reason why someone requires care or support, nor is it based on their diagnosis; it is about their overall actual day-to-day care needs taken in their totality, it is the level and type of needs themselves that have been considered when determining eligibility for CHC.

5.5 The framework states that there are four characteristics to be considered when assessing eligibility for CHC: nature, unpredictability, complexity and intensity. These characteristics may, alone or in combination, demonstrate a primary health need, because of the quality and/or quantity of care that is required to meet the individual's needs.

5.6 Assessment for eligibility for CHC can take place in any setting, hospital, care home or domestic home. It is recommended that full CHC assessments are not completed in acute hospital settings unless there are exceptional circumstances. Anyone carrying out an assessment for eligibility should always consider the individual's potential for rehabilitation and for independence to be regained, and how the outcome of any treatment or medication may affect ongoing needs. It is preferable that assessments are completed when the individuals long term care needs are known.

5.7 In cases where practitioners identify arising health needs and that CHC may be required, the Checklist can be completed and the framework states that this is the only screening tool to be used.

6 APPLICATION PROCESS

CONSENT

6.1 While health and social care professionals can rely on a lawful basis other than consent to lawfully process personal data, consent is required to satisfy the common law duty of confidentiality. Where the individual concerned has capacity, their informed consent should

be obtained before the start of the process to determine eligibility for NHS Continuing Healthcare. This consent will need to encompass permission to undertake the NHS Continuing Healthcare assessment process and also to the 'sharing and processing of data' (i.e. sharing relevant personal information between professionals in order to undertake the eligibility assessment for NHS Continuing Healthcare and, where appropriate, for audit and monitoring of decisions). For consent to be valid for these purposes it must be: (National Framework p24)

- Explicit
- Specific
- Informed
- Freely given
- Can be withdrawn

6.2 A third party cannot give or refuse consent for an assessment of eligibility for NHS CHC on behalf of a person who lacks capacity unless they have a valid and applicable Lasting Power of Attorney (LPA). This is a document that allows decisions to be made in relation to a client's health and welfare. Alternatively, they may have been appointed a Personal Welfare Deputy by the Court of Protection if they already lack capacity. It is the responsibility of the practitioner to ascertain this before divulging confidential information regarding the individual.

6.3 If the individual has not assigned an LPA and there is concern that the individual may not have capacity to make informed decisions, then a Best Interest process should be invoked. This is in accordance with the Mental Capacity Act 2005 and the associated code of practice. The practitioner should be particularly aware of the five principles of the Mental Capacity Act 2005:

- **A presumption of capacity:** every adult has the right to make his or her own decisions and must be presumed to have capacity to do so, unless it is proved otherwise.
- **Individuals being supported to make their own decisions:** must be given all practicable help before anyone treats them as not being able to make their own decision.
- **Unwise decisions:** just because an individual makes what might be regarded an unwise decision, they should not be treated as lacking capacity to make that decision.
- **Best interests:** an action taken or decision made under the act for or on behalf of a person who lacks capacity must be done in their best interest.
- **Least restrictive option:** anything done on or behalf of a person who lacks capacity should be the least restrictive of their basic rights of freedom.

6.4 If the individual lacks the mental capacity to consent to the procedure then a 'Best Interests' decision should be taken (and recorded) as to whether to proceed or not. Further information can be found in the Multi Agency Mental Capacity Act 2005 Policy Checklist.

CHECKLIST

6.5 Eligibility for NHS CHC will be determined by, at first, using the checklist screening tool. Screening for NHS Continuing Healthcare should be at the right time and location for the individual and when the individual's ongoing needs are known. This will help practitioners to correctly identify individuals who require a full assessment of eligibility for NHS Continuing Healthcare.

6.6 The Standing Rules require a CCG to take reasonable steps to ensure that individuals are assessed for NHS Continuing Healthcare in all cases where it appears that there may be a need for such care. These regulations also state that if an initial screening process is used to identify where there may be a need for such care, then the Checklist is the only screening tool that can be used for this purpose (National Framework P29).

6.7 If after using the tool a referral for Continuing Healthcare assessment is made, this in itself is not an indication of the outcome of the eligibility decision. This fact should be communicated to the individual and, where appropriate, their representative/advocate.

6.8 The purpose of the Checklist is to encourage proportionate assessments, so that resources are directed towards those people who are most likely to be eligible for NHS Continuing Healthcare. At this stage, the threshold is set deliberately low to ensure that all those who require full consideration of their needs do get this opportunity. (National Framework P29).

6.9 The Checklist can be completed by a variety of health and social care practitioners, who have been trained in its use. This could include, for example: registered nurses employed by the NHS, GPs, other clinicians or local authority staff such as social workers, care managers or social care assistants.

6.10 There will be many situations where it is not necessary to complete a Checklist. These include where:

- The individual has short-term health care needs or is recovering from a temporary condition and has not yet reached their optimum potential (if there is doubt between practitioners about the short-term nature of the needs it may be necessary to complete a Checklist).
- It has been agreed by the CCG that the individual should be referred directly for full assessment of eligibility for NHS Continuing Healthcare.

- The individual has a rapidly deteriorating condition and may be entering a terminal phase – in these situations the Fast Track Pathway Tool should be used instead of the Checklist
- An individual is receiving services under Section 117 of the Mental Health Act that are meeting all of their assessed needs.
- It has previously been decided that the individual is not eligible for NHS Continuing Healthcare and it is clear that there has been no change in needs. (National Framework p31).

6.11 In the majority of cases, it is preferable for eligibility for NHS Continuing Healthcare to be considered after discharge from hospital when the person's ongoing needs should be clearer. The aim in most cases will be for the individual to return to the place from which they were admitted to hospital, preferably their own home. It should always be borne in mind that an assessment of eligibility for NHS Continuing Healthcare that takes place in an acute hospital might not accurately reflect an individual's longer-term needs. This could be because, with appropriate support, the individual has the potential to recover further in the near future. It could also be because it is difficult to make an accurate assessment of an individual's needs while they are in an acute services environment. (National Framework p34).

6.12 Within the Checklist screening tool, the indicators move from A - C; a full assessment for CHC is required if there are:

- Two or more domains selected in column A
- Five or more domains selected in column B, or one selected in A and four in B or
- One domain selected in column A in one of the boxes marked with an asterisk (i.e. those domains that carry a priority level in Decision Support Tool), with any number of selections in other columns.

6.13 If completion of the Checklist indicates that the individual is eligible to go forward for consideration for CHC, a Decision Support Tool (DST) will be completed by the relevant professionals.

6.14 If the checklist is negative and no further consideration for CHC is required, they may ask the Trust to reconsider the Checklist outcome. Once completed a clear and written response should be given including the individual's (and, where appropriate, their representative's) rights under the NHS complaints procedure if they remain dissatisfied with the position.

6.15 If the checklist criteria are not met but there is an identified need for a Nursing placement, a Health Needs Assessment will be required as evidence of those nursing needs and passed into the Hub for agreement of the Funded Nursing Care (FNC) contribution.

7 HEALTH NEEDS ASSESSMENT

7.1 A Health Needs Assessment/Mental Health Needs Assessment (HNA or MHNA) is the process of gathering relevant, accurate and contemporaneous information about an individual's health and social care needs, and applying professional judgment to decide what the evidence signifies in relation to these needs.

7.2 An assessment that simply gathers information will not provide the rationale for any consequent decision it must be supported by evidence.

7.3 Assessment documentation should be obtained from any professional involved in the individual's care and should be clear, well recorded, factually accurate, contemporaneous, signed and dated. Evidence should be:

- **Informed:** by information from those directly caring for the individual (whether paid or unpaid).
- **Holistic:** looking at the range of their needs from different professional and personal view points, and considering how different needs interact.
- **Taking into account:** differing professional views and reaching a commonly agreed conclusion.
- **Considerate:** of the impact of the individuals needs on others.
- **Focused:** - on improved outcomes for the individual.
- **Evidence – based:** providing objective evidence for any subjective judgments made.
- **Clear:** about needs requiring support in order to inform the commissioning of an appropriate package of care.
- **Clear:** about the degree and nature of any risks to the individual (or others), the individual's view on these, and how best to manage the risks.

7.4 An assessment is the systematic process used in engaging with specific clients to gather evidence from and about them, and utilising an evidence-based approach to effect service changes and improvements with their full involvement; it is to provide to assist in identifying if an individual is eligible to receive full health funding.

8 DECISION SUPPORT TOOL

8.1 The Decision Support Tool (DST) has been developed to aid consistent decision making. The DST supports practitioners in identifying the individual's needs. This, combined with the practitioners' skills, knowledge and professional judgement, should enable them to apply the primary health need test in practice.

8.2 The DST is not an assessment of needs in itself. Rather, it is a way of bringing together and applying evidence in a single practical format, to facilitate consistent, evidence-based assessment regarding recommendations for NHS Continuing Healthcare eligibility. The evidence and rationale for the recommendation should be accurately and fully recorded (National Framework p40).

8.3 The DST invites practitioners to document deterioration (this could include observed and likely deterioration) in an individual's condition to allow them to take this into account.

8.4 The DST should be used in conjunction with the guidance in the Department of Health National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care.

8.5 The individual should be given the full opportunity to participate in the completion of the DST. The individual should be given the opportunity to be supported or represented by a carer or advocate if they so wish.

8.6 The DST should be completed by a multidisciplinary team (MDT) following a comprehensive assessment of an individual's health & social care needs and their desired outcomes.

8.7 The MDT comprises of health and social practitioners, whose own experience and professional judgment will enable the application of the primary health needs test in a way which is consistent with the limits on what can lawfully be provided by the Local Authority.

8.8 The DST asks the MDT to set out the individual's needs in relation to twelve care domains (see DST). Each domain is broken down into a number of levels, each of which is carefully described. For each domain the MDT is asked to identify which level of description most closely matches the individual's needs.

8.9 If an individual, after assessment, is found to be eligible for NHS CHC funding this should be agreed from the date of completion of the Checklist if the decision is reached after day 29 or from the date of the assessment, or a specific date of when a care package commenced. If there are exceptional circumstances to the start date then the MDT will make a recommendation to the CHC managers for their approval.

8.10 If an individual, after assessment, is found to be eligible for NHS CHC funding this should be agreed from the date of completion of the Checklist if the decision is reached after day 29 or from the date of the assessment, or a specific date of when a care package

commenced. If there are exceptional circumstances to the start date then the MDT will make a recommendation to the CHC managers for their approval.

8.11 In order to help determine eligibility holistically the Government has used four characteristics of need, Nature, Complexity, Intensity and Unpredictability. Their impact on the care required to manage them, may help determine whether the 'quality' or 'quantity' of care is above the limits of the Local Authority.

9 FOUR KEY CHARACTERISTICS

Nature is about the characteristics of both the individual's needs and the interventions required to meet those needs.
Questions that may help to consider this include:

- How does the individual or the practitioner describe the needs (rather than the medical condition leading to them)? What adjectives do they use?
- What is the impact of the need on overall health and well-being?
- What types of interventions are required to meet the need?
- Is there particular knowledge/skill/training required to anticipate and address the need? Could anyone do it without specific training?
- Is the individual's condition deteriorating/improving?
- What would happen if these needs were not met in a timely way?

Intensity is about the quantity, severity and continuity of needs.
Questions that may help to consider this include:

- How severe is this need?
- How often is each intervention required?
- For how long is each intervention required?

Complexity is about the level of skill/knowledge required to address an individual need or the range of needs and the interface between two or more needs.

Questions that may help to consider this include:

- How difficult is it to manage the need(s)?
- How problematic is it to alleviate the needs and symptoms?
- Are the needs interrelated?
- Do they impact on each other to make the needs even more difficult to address?
- How much knowledge is required to address the need(s)?
- How much skill is required to address the need(s)?
- How does the individual's response to their condition make it more difficult to provide appropriate support?

Unpredictability is about the degree to which needs fluctuate and thereby create challenges in managing them. It should be noted that the identification of unpredictable needs does not, of

itself, make the needs 'predictable' (i.e. 'predictably unpredictable') and they should therefore be considered as part of this key indicator.

Questions that may help to consider this include:

- Is the individual or those who support him/her able to anticipate when the need(s) might arise?
- Does the level of need often change? Does the level of support often have to change at short notice?
- Is the condition unstable?
- What happens if the need isn't addressed when it arises? How significant are the consequences?
- To what extent is professional knowledge/skill required to respond spontaneously and appropriately?
- What level of monitoring/review is required?

10 TIMEFRAMES

Decisions: in line with the Framework it is the expectation that the length of time from completed Checklist and receipt of assessment where all information is available:

- Fast-track applications-decisions made within 2 working days.
- Eligibility for CHC against Decision Support Tool (DST) – 28 working days.
- Validation of decision 2 days.
- Length of time from Panel decision to correspondence sent to the individual/representative advising outcome within 10 working days.

11 FAST TRACK

11.1 Individuals with a rapidly deteriorating condition that may be entering a terminal phase, may require 'fast tracking' for immediate provision of NHS Continuing Healthcare.

11.2 The intention of the Fast Track Pathway is that it should identify individuals who need to access NHS Continuing Healthcare quickly, with minimum delay, and with no requirement to complete a Decision Support Tool (DST). Therefore, the completed Fast Track Pathway Tool, with clear reasons why the individual fulfils the criteria and which clearly evidences that an individual is both rapidly deteriorating and may be entering terminal phase, is in itself sufficient to establish eligibility. (National Framework p63).

11.3 The framework makes it clear that the Fast Track pathway Tool can only be completed by an 'appropriate clinician', and the Responsibilities Directions define an 'appropriate clinician' as a person who is, '*(i) responsible for the diagnosis, treatment of care of the person in respect of whom the fast track tool is being completed, (ii) diagnosing, or*

providing treatment of care to, that person under the 2006 Act, and (iii) a registered nurse or is included in the register maintained under section 2 of the Medical Act 1983'.

11.4 Those completing the Fast Track Pathway Tool could include consultants, registrars, GPs and registered nurses. This includes relevant clinicians working in end of life care services within independent and voluntary sector organisations if their organisation is commissioned by the NHS to provide services. The practitioner should be knowledgeable about the individual's health needs, diagnosis, treatment or care and be able to provide comprehensive reasons as to why the individual meets the conditions required for the Fast Track decision.

11.5 Others involved in supporting an individual with end of life needs, including those working within the wider independent or voluntary sector organisations should, with the individual's consent, contact the appropriate clinician responsible for that individual's healthcare to request the Fast Track Pathway Tool to be completed. Alternatively, they should approach the Trust and make the request.

11.6 Neither a terminal condition nor palliative care needs alone are indications for Fast Track applications. If a person receiving palliative care for a terminal condition does not have a rapidly deteriorating condition, the DST will be used to consider eligibility.

11.7 Approval will be provided on receipt of the Fast Track Tool document by the Fast Track team in the CHC Hub. However, it must be supported with relevant information to allow an appropriate decision to be made. The decision making should take no longer than 48 hours on receipt of application.

12 INTERIM HEALTH FUNDING

12.1 The Framework states that it is preferable for eligibility for NHS CHC to be considered after discharge from hospital when the person's long-term needs are clearer, and for NHS-funded services to be provided in the interim.

12.2 This might include therapy and/or rehabilitation, if that could make a difference to the potential further recovery of the individual in the following weeks. It might also include intermediate care or an interim package of support in an individual's own home or in a care home.

12.3 Interim Health funding is a funding stream that is not CHC funding but is available to enable timely discharge from an acute hospital when an individual has an increase in their care needs requiring a Nursing Home placement.

12.4 The criteria is that:

- The individual has had a period of ill health but is considered to be ready for hospital discharge; their physical/mental health is such that rehabilitation is not appropriate, however, it is considered that the individual has not reached their optimum level of health and further improvement is likely. The MDT has decided that a Nursing Home placement is required to meet the needs of the individual.

12.5 Interim Health Funding requires a comprehensive HNA that clearly illustrates the need for Nursing Home placement. The application for Interim Health funding needs to be sent into the CHC Hub where authorisation will be approved by the Lead Nurse. This funding stream is generally agreed for 4 weeks unless there are extenuating circumstances and additional funding needs to be approved by the CHC managers.

13 EMERGENCY HEALTH FUNDING

13.1 In line with the National Framework for NHS Continuing Healthcare (CHC) 2018 and The Care Act 2014, NHS commissioners, providers and Local Authorities need to work together to ensure the wellbeing and care needs of individuals are met. Within this, consideration can be given to a health contribution towards urgent changes to care packages.

13.2 Where an individual's care needs change, a request may be made for a health contribution towards their care package:

- Where there is an identified health need and
- Where there is a crisis or urgent need

13.3 The NHS Framework provides detail on when or when not to complete a CHC Checklist as detailed within this policy. The expectation is that the full CHC process will be completed once the crisis has passed. The individual:

- may already have a CHC Checklist in place, but now is not the appropriate time for full assessment

- may have a CHC Checklist completed once the long-term care needs of the individual are known and the crisis has passed (Joint Funded Policy p13)

For an application for emergency funding the key worker will need to discuss with the CHC managers for approval.

14 JOINT FUNDING

14.1 The Framework states that there may be occasions where joint funding arrangements between health and social care may be appropriate. The framework expands on the respective responsibilities of CCGs and Local Authorities and notes that people who are

not eligible for CHC may still have needs which are beyond the powers of a LA to meet (Joint Funded Policy p5).

14.2 The National Framework states that CCGs and LAs should agree protocols for jointly funded care provision.

14.3 With this in mind there is a clearly set out policy and Devon Joint Funding Tool to use in managing this function. The commissioning and care management responsibilities are set out within the policy in order to meet this requirement.

15 CHC/FNC REVIEWS

15.1 Reviews will be initially booked three months following an eligibility decision of CHC/FNC funding and every twelve months thereafter.

15.2 The focus of the review is primarily to ensure that the current commissioning arrangements for the individual are meeting the assessed level of need. Should changes in their assessed need indicate that the review of eligibility may need to be reviewed then in line with the framework the individual, their representative and the multidisciplinary team will be fully involved in completing the Decision Support Tool (DST).

15.3 When reviewing the need for NHS-funded Nursing Care, potential eligibility for NHS Continuing Healthcare must always be considered. This will normally be achieved by completing a Checklist and where necessary a full assessment for NHS Continuing Healthcare using the DST. However, where:

- a Checklist and/or DST has previously been completed (with the result that the individual was not found eligible for NHS Continuing Healthcare), and
- it is clear that there has been no material change in need then it will not be necessary to repeat the Checklist and/or DST and this should be recorded. The individual should be informed of this outcome and the reasons for it (Funded Nursing Care Practice Guidance P23).

15.4 If it is identified by a practitioner, client or representative that the needs of the individual have changed then an earlier review will be arranged.

15.5 Time frame from completion of the review assessment to decision – 28 working days.

15.6 Length of time from Panel decision to correspondence sent to the individual/representative advising outcome within 10 working days.

16 MANAGEMENT OF APPEALS

16.1 Where a not eligible decision is made, individuals/representatives are able to appeal against this decision within 6 months of receipt of the DST. This is in line with guidance issued by NHS England. The appeal should be addressed to the Continuing Healthcare Team. When an appeal is received it will be formally acknowledged by letter explaining the process.

16.2 All appeals are reviewed by the Appeals Co-ordinator within the CHC hub. A Local Resolution Meeting (LRM) will be offered to the client/representative, where the decision is discussed and any further information is considered.

16.3 If no resolution is achieved at the LRM then an Independent Review Panel will be convened. The members of this panel are independent of any previous MDT panel involved with the case but are still employed by the Trust/Local Authority. The client/representative will be invited to attend this meeting.

16.4 Following the decision of the Local Review Panel (LRP) if an individual/representative remains dissatisfied with this decision, they can make an application to NHS England for a further Independent Review. The panel members will be totally independent of TSDFT.

16.5 NHS England will involve the individual/representative allowing them to attend the meeting and present their case to the review panel.

16.6 If the individual/representative remains dissatisfied with the outcome there is a further route of appeal to the Parliamentary Health Service Ombudsman (PHSO) who will review the processes undertaken in reaching the eligibility decision. Further details are provided within NHS Continuing Healthcare, Guide for CCG's Independent Review Panels.

17 MANAGEMENT OF COMPLAINTS

17.1 If an individual/representative is dissatisfied with the manner in which the procedure has been undertaken, their involvement in this or the manner in which decision has been made, they should be directed toward the Feedback and Engagement Team in the Trust.

18 MANAGEMENT OF DISPUTES

18.1 The Framework sets out that CCGs 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 CCGs in different geographical areas, the dispute resolution process of the responsible CCG should normally be used in order to ensure resolution in a robust and timely manner. (National Framework p62).

18.2 There is an agreed disputes resolution process between the Trust and Devon County Council. If agreement cannot be reached on a 'not eligible' decision the local disputes process should be invoked. Current funding arrangements should remain in place until the dispute has been resolved.

18.3 On the occasions when an individual transfers from out of area and are in receipt of funding from a different organisation, if a dispute about funding arises, the Trust will ensure the dispute is resolved in a timely manner without it affecting the individual.

18.4 All individuals will remain funded by the appropriate organisation until the dispute is resolved. The result of the decision will determine who is liable to pay, for example, if the relevant Local Authority (LA) has continued to fund an arrangement and this is agreed to be NHS CHC funding the Trust will reimburse the LA for the outstanding balance.

19 PROCESS FOR COMMUNCATING DECISIONS

19.1 The CHC Hub will communicate the ratified decision to the individual and/or their legal representative in a timely manner (within 48 hours of the decision wherever possible).

This written confirmation should include:

- The decision on primary health needs, and therefore whether or not the individual is eligible for NHS Continuing Healthcare/Funded Nursing Care/Joint Funding.
- 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.

19.2 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).

20 SECTION 117 AFTERCARE

20.1 A patient liable to detention under Section 3 of the Mental Health Act may be eligible for Section 117 aftercare. These arrangements are separate and different from NHS funded Continuing Healthcare, so the two should not be confused. Only if an individual has additional health needs that are not covered under the Section 117 might it be necessary to carry out consideration for NHS CHC funding. An example of this might be if there is a significant physical problem in addition to their mental health needs which may be the responsibility of health organisations. However, their mental health and associated needs come under the Mental Health Act provision.

21 PREVIOUSLY UNASSESSED PERIODS OF CARE

21.1 There may be circumstances where an individual not previously assessed for NHS CHC funding believes that they should have been considered for funding.

21.2 In these circumstances the appropriate individual(s) can request a retrospective review of the individual's care needs and eligibility for NHS CHC funding.

21.3 Where a retrospective review of eligibility for NHS CHC funding is successful, appropriate arrangements will be made for financial recompense in accordance with the NHS Continuing Healthcare Redress Guidance April 2015.

21.4 Redress is about placing individuals in the position they would have been in had NHS Continuing Healthcare been awarded at the appropriate time and not about the NHS or the public profiting from public funds. CCG's are advised to apply the Retail Price Index for calculation of compound interest when considering redress cases. CCG's are advised to apply the average rate for the year which care costs are being reimbursed.

22 COMMISSIONING OF CARE PACKAGES

22.1 The Trust is responsible for identifying commissioning and contracting for services to meet the needs of individuals who qualify for NHS CHC funding; this will be for the whole package of care including social care.

22.2 The Trust will commission the provision of NHS CHC funding in a manner which reflects choice and preferences of individuals but balances the need for the Trust to commission care that is safe and effective and makes the best use of resources. They will also ensure that they have considered both the Equality Act and the Human Rights Act when putting forward the proposal.

22.3 The agreement for funding for all packages of care/residential/nursing placements will be need to be approved as per the scheme of delegation. If costs are above £1250 then the request should be forwarded to the Complex Care Panel for additional authorisation.

22.4 Care will only be commissioned from those care providers who have been deemed appropriate by the Trust using the information provided by the Care Quality Commission (CQC). Where a provider does not meet the required standards CHC packages of care will not be commissioned until the required standards have been met.

23 PATIENT CHOICE

23.1 'Topping up' payments, is legally permissible under legislation governing social services but it is **not** permissible under NHS legislation. See policy in relation Top-up payments to care homes.

23.2 It is important that the models of support that the provider use are appropriate to the individual's needs and they are confident in the provision of service.

23.3 In some circumstances individuals become eligible for CHC when they are already resident in care home accommodation for which the fees are higher than the Trust would usually pay for someone with their needs. This may be where the individual was previously funding their own care or where they were previously funded by social services or a third party had topped up the fees. In such situations, the Trust may consider whether there are reasons why they should meet the full cost of the care package, notwithstanding that it is at a higher rate, such as, that the frailty, mental health needs or other relevant needs of the individual mean that a move to other accommodation could involve significant risk to their health and wellbeing.

23.4 Where an individual is in an existing out of area placement funded by either the LA or a third party and becomes eligible for NHS CHC, if the fee is of a higher cost than the Trust would usually meet, it is important before refusing, to consider the market rates in the locality of the placement.

23.5 The Trust will ensure that when the above situations ensue they are dealt with sensitively and in close liaison with the individuals affected and where appropriate, their families, the existing service provider and social services if they have up to this point, been funding the care package.

23.6 Where separation of NHS and privately funded care arrangements is possible, the financial arrangement for the privately funded care is entirely a matter between the individual and the relevant provider and it should not form part of any service agreement between the TSDFT and the provider.

23.7 Where an individual wishes to dispute TSDFT's decision not to pay for higher-cost accommodation, they should do this via the NHS complaints process.

24 RESPONSIBLE COMMISSIONER

24.1 Who Pays? Determining responsibility for payments to providers (DOH 2014) sets out a framework for establishing responsibility for commissioning an individuals care within the NHS, helping to determine who should pay for the individuals care.

24.2 General principles:

- Where the patient is registered on a General Practitioners (GP) practice list of NHS patients when they become eligible for NHS CHC funding, the responsible commissioner will be the CCG that holds the contract with the GP practice.
- If a patient is not registered with a GP practice, the responsible commissioner will be the CCG in whose geographical area the patient is 'usually resident'.
- If a patient is unable to give an address, in accordance with Responsible Commissioner directions the responsible commissioner will be determined as the CCG in which the individual is 'usually resident,' further information is provided in Annex B of this document.

24.3 There are a number of exceptions to this guidance and the Trust is required to refer to the criteria appropriate to the period being considered, that is the Responsible Commissioner Guidance in place for any particular period (DOH 2003 & 2006a).

24.4 The guidance indicates:

- If the Trust has identified a person as eligible and the individual/representative exercise their right to request patient choice to move care home in another area, the originating CCG remain responsible to fund the placement. (If the placement chosen is not suitable, the Trust should liaise with the new host CCG re the placement).
- The new host CCG will only pick up funding if the individual has moved (or relative has moved them) without any involvement or knowledge of the originating CCG. This is what the responsible commissioner guidance refers to as independently chosen. This only applies to care home placements.
- It is different if an individual is deemed eligible and the choice is to move to a family home in another area. In this situation the CCG responsible is the receiving CCG (GP registration applies) but the two CCG's/Trusts need to positively discuss the transfer to allow the receiving CCG to assess the care package.

24.5 It should be the exception that a CCG picks up funding for an NHS CHC funded client moving into their area or doesn't continue to fund a patient who moves.

25 DIRECT PAYMENTS

25.1 If an individual is receiving a Direct Payment from the LA and then becomes eligible for CHC the existing care package will be reviewed to ascertain if it is still meeting the individual's needs. If the individual still wishes to have control over the care package then a Personal Health Budget will be offered.

26 PERSONAL HEALTH BUDGETS

26.1 A Personal Health Budget (PHB) is an amount of money to support the identified healthcare and wellbeing needs of an individual, which is planned and agreed between the individual, or their representative, and the local CCG. PHB's are a means by which an individual can be given more choice and control. It is not new money, but a different way of spending health funding to meet the needs of an individual.

Individuals who are eligible for CHC have had a right to have a PHB since October 2014. Personal Health Budget Standing Rules require CCGs to provide people eligible for NHS Continuing Healthcare with information about PHB's to offer them the option of taking them up, and support to do so.

26.2 PHB's can be provided in three different ways, or in a combination of these ways:

a) A notional budget held by the commissioner;

b) A budget managed on the individuals behalf by a third party;

c) A cash payment to the individual (a 'direct payment'). NF p.79.

26.3 The principles are as follows, the individual will;

- Be able to choose the health and wellbeing outcomes they want to achieve, in agreement with a healthcare professional.
- Know how much money they have for their health and care support.
- Be enabled to create their own care plan with support if they want it.
- Be able to choose how their budget is held and managed, including the right to ask for a direct payment.
- Be able to spend the money in ways and at times that make sense to them, as agreed in their plan.

26.4 For all clients whose request is to have a PHB, the CHC Hub will work with them to ensure that their care plan and associated budget is agreed and set up. Employment

advice will be provided by the Independent Living Advisors from Devon County Council. For clients living within Torbay where the current care planning arrangements are that the Community Support Unit is responsible for all case management the Hub will provide support to this process. Further details can be found Guidance on Direct Payments for Healthcare; Understanding the Regulations. (DH 2014).

27 EQUIPMENT

27.1 Where individuals in receipt of NHS Continuing Healthcare require equipment to meet their care needs, there are several routes by which this may be provided:

a) If the individual is, or will be, supported in a care home setting, the care home may need to provide certain equipment in order to meet regulatory standards or as part of its contract with the CCG. Further details of the regulatory standards can be found on the Care Quality Commission's website.

b) Individuals who are eligible for NHS Continuing Healthcare should have the same access to standard joint equipment services as other people. Therefore, when planning, commissioning and funding joint equipment services CCGs should ensure that the needs of current and future recipients of NHS Continuing Healthcare are taken into account.

c) Some individuals in receipt of NHS Continuing Healthcare will require bespoke equipment (or other non-bespoke equipment that is not available through routes (a) and (b) above) to meet specific assessed needs. (National Framework p80).

27.2 The Trust has a jointly funded equipment process whereby clients in Torbay will receive equipment through these exiting processes. In South Devon all equipment requests are processed through the Independent Living Centre.

27.3 Any bespoke equipment requests that are assessed by a health or social care professional as being essential to meet an assessed need are to be forwarded to the CHC Hub for authorisation.

28 SAFEGUARDING VULNERABLE ADULTS

28.1 All employees within the Trust are responsible for the safety and welfare of our service users.

28.2 Anybody can see abuse taking place, be told about abuse or suspect abuse is occurring. All staff have a statutory obligation to report such concerns.

28.3 If on visiting an individual a safeguarding situation is identified it is important to proceed with the following:

- Report this to the Single Point of Contact (SPOC) (for Torbay clients)/Care Direct (for South Devon clients) immediately for discussion and action planning.
- Record their concerns plus any action taken in PARIS/CareFirst.
- Pass this concern to the Line Manager.

28.4 The individual at risk should be informed of the intention to report this information, where it is safe and appropriate to do so. When informing the individual:

- DO NOT press the individual for further information.
- DO NOT make promises you cannot keep.
- DO reassure the individual.
- DO keep the individual informed as per policy.

28.5 The LA is the lead agency in any safeguarding enquiry. The lead commissioner, or those delegated to case manage clients in any safeguarding case will be expected to contribute to enquiries, directly feeding into the responsible manager of the CSU/ safeguarding team.

29 TRAINING

29.1 A training package has been designed by NHS England to be used across the Health and Social Care arena. Training is delivered jointly with Devon County Council available as full day MDT/DST training or half day Fast Track/Checklist training. Training can be booked directly via the CHC Hub. There is also training being provided for Joint Funding.

30 AUDIT & MONITORING

30.1 There is an internal IT system used by the CHC team - CHIPPS, for which all individuals details processed within the team are inputted. Financial benchmarking data is provided quarterly to NHS England via NHS Devon CCG. Internal and External audit will be undertaken as requested by the regulatory bodies. The information collated is overseen by the Continuing Healthcare manager.

30.2 The ongoing decision making by the multidisciplinary team will be monitored by the Clinical Lead and Lead Nurses within each area. Overall responsibility will be with the CHC Manager.

DOCUMENTS

All documents related to this policy and process will be found on the ICON link for Continuing Healthcare.

REFERENCES

DoH&SC National Framework for NHS Continuing Healthcare and NHS-Funded Nursing Care (Revised October 2018)
Who Pays? Determining responsibility for payments to providers (DH August 2013)

Guidance on Direct Payments for Healthcare; Understanding the regulations (DH March 2014)

NHS Continuing Healthcare Guide for Clinical Commissioning Groups and Commissioning Support Units, Independent Review Panels

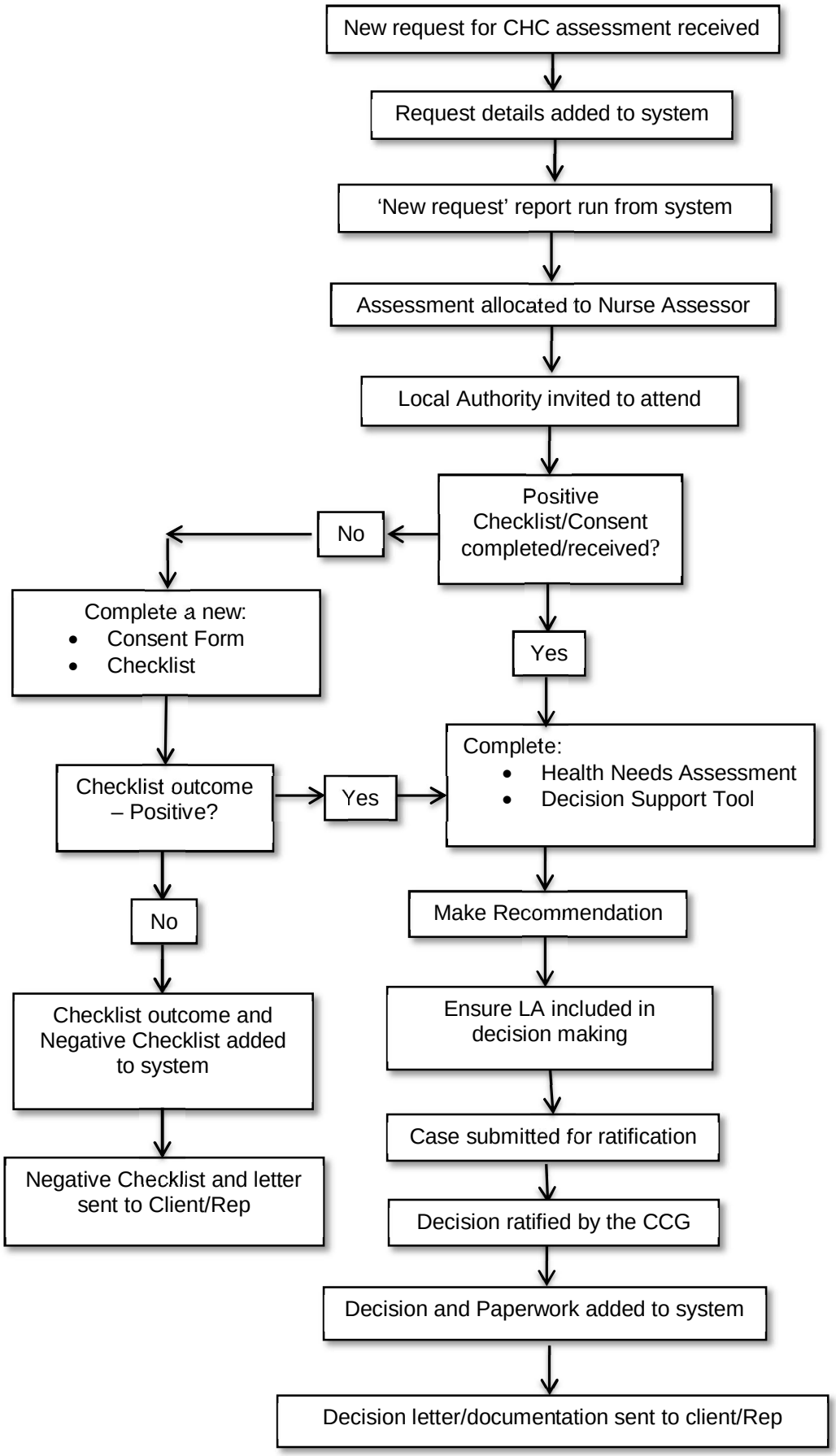
NHS Continuing Healthcare Refreshed Redress Guidance April 2015

NHS-Funded Nursing Care Practice Guidance December 2018

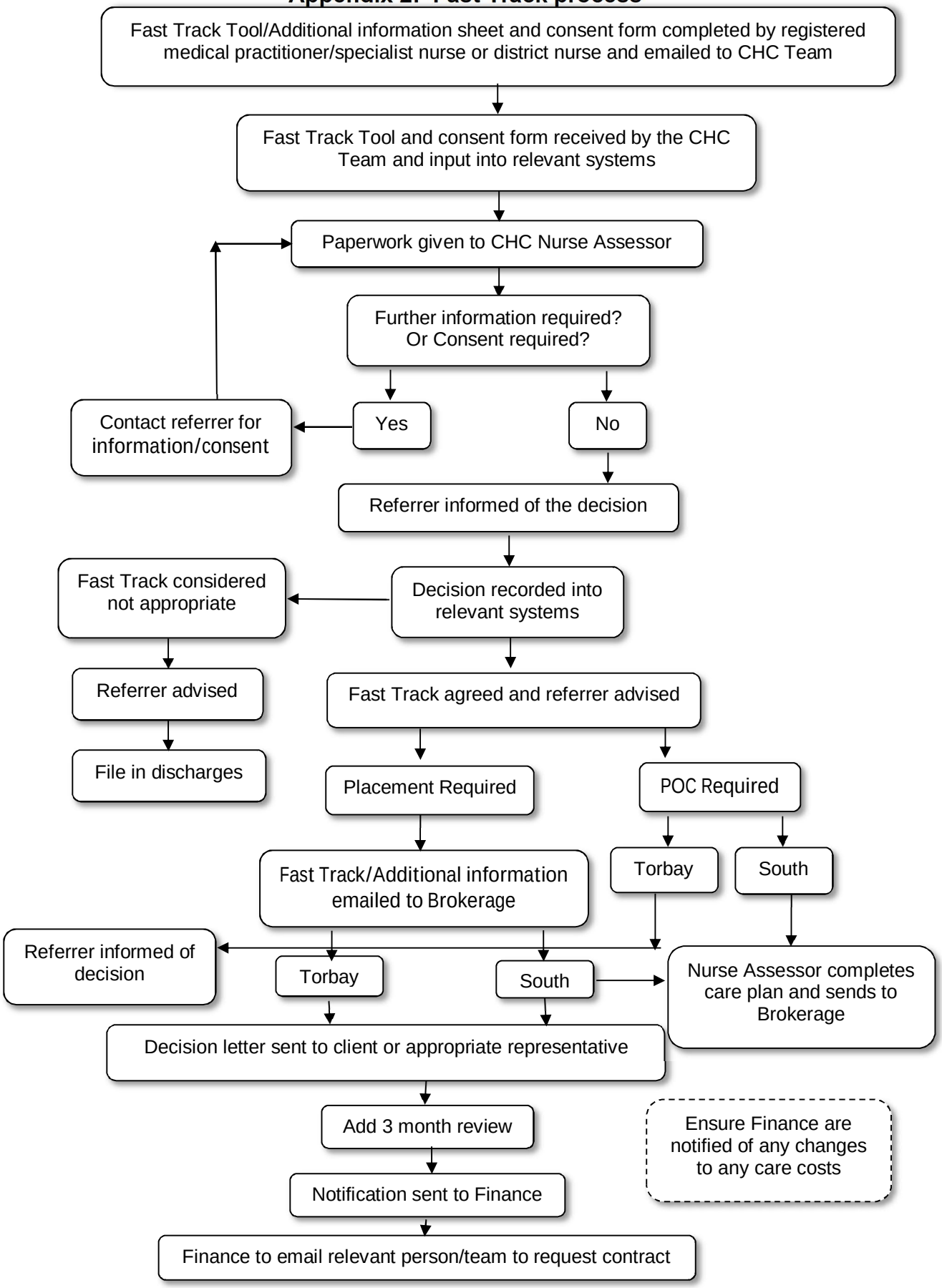
Joint Funding Policy and Processes Revised May 2019

Safeguarding Adults – Policy for the Protection of
Adults at Risk from Abuse – Can be accessed on the link below
https://icon.torbayandsouthdevon.nhs.uk/areas/safeguarding/safeguarding-adults/Safeguarding%20Adults%20Policy%20Documents/TSDFT%20Approved%20Safeguarding%20Adult%20Policy%20-%20February%202019.pdf

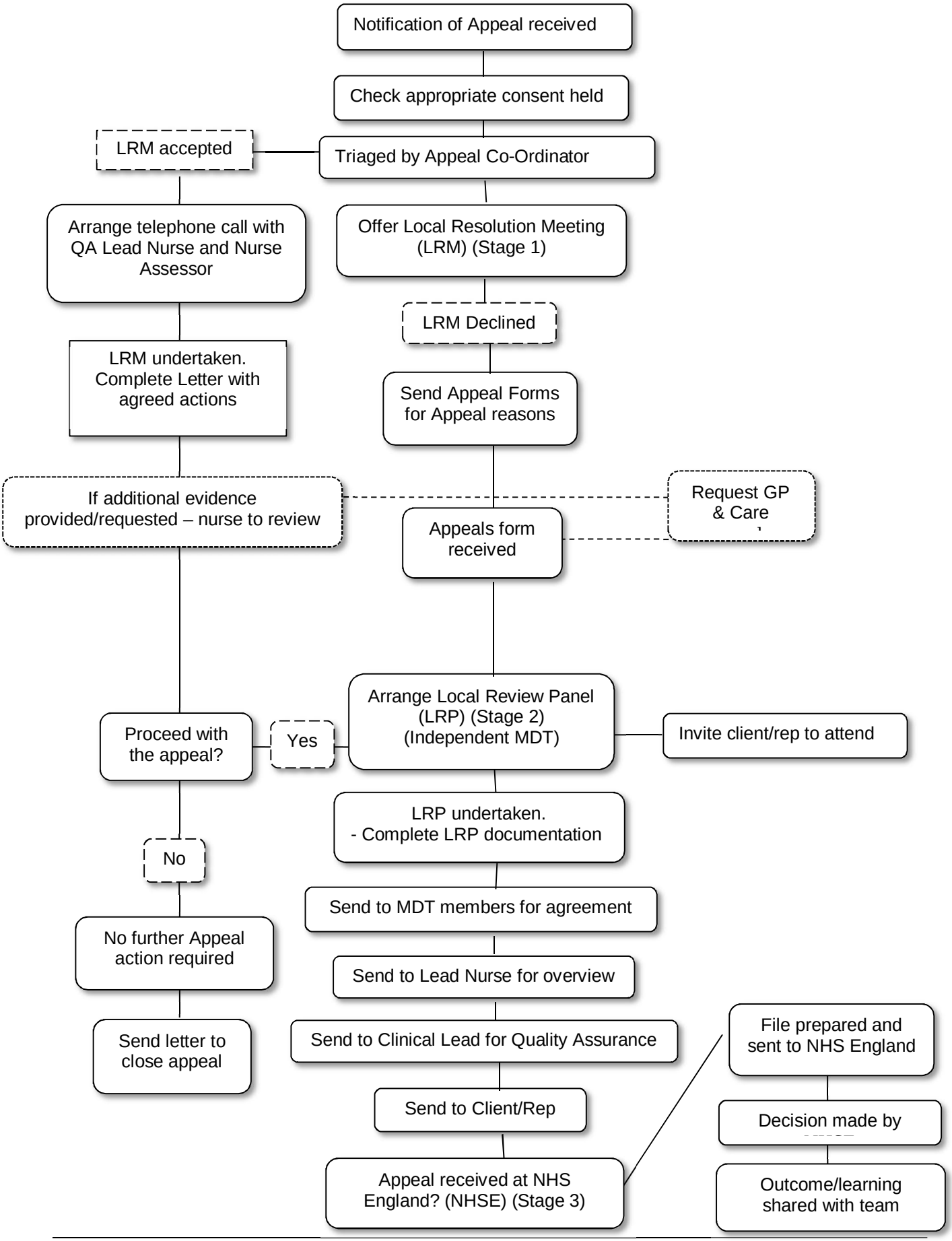
Appendix 1: New assessment of Continuing Healthcare process



Appendix 2: Fast Track process



Appendix 3: Appeals Process



Document Control Information

This is a controlled document and should not be altered in any way without the express permission of the author or their representative.

Please note this document is only valid from the date approved below, and checks should be made that it is the most up to date version available.

If printed, this document is only valid for the day of printing.

This guidance has been registered with the Trust. The interpretation and application of guidance will remain the responsibility of the individual clinician. If in doubt contact a senior colleague or expert. Caution is advised when using clinical guidance after the review date, or outside of the Trust.

Ref No:	1863		
Document title:	NHS Continuing Healthcare Funding and Funded Nursing Care Policy		
Purpose of document:			
Date of issue:	17 November 2020	**Next review date:**	17 November 2023
Version:	5	**Last review date:**	
Author:	Clinical Lead for Continuing Healthcare		
Directorate:	Continuing Healthcare		
Equality Impact:	The guidance contained in this document is intended to be inclusive for all patients within the clinical group specified, regardless of age, disability, gender, gender identity, sexual orientation, race and ethnicity & religion or belief		
Committee(s) approving the document:	Care and Clinical Policies Group Meeting		
Date approved:	11 November 2020		
Links or overlaps with other policies:			

Have you identified any issues on the Rapid (E)quality Impact Assessment. If so please detail on Rapid (E)QIA form.	Yes ☐	
	Please select *Yes*	*No*
Does this document have implications regarding the Care Act? *If yes please state:*	☒	☐
Does this document have training implications? *If yes please state:*	☒	☐
Does this document have financial implications? *If yes please state:*	☒	☐

Is this document a direct replacement for another? *If yes please state which documents are being replaced:*	☒	☐

Document Amendment History

Date	Version no.	Amendment summary	Ratified by:
17 August 2011	1	Approved	Care & Clinical Policies Group
October 2014	2	Revised	Care & Clinical Policies Group
October 2016	3	Revised	Care & Clinical Policies Group
07 August 2020	4	Revised	Care & Clinical Policies Group
17 November 2020	5	Revised	Care and Clinical Policies Group

The Mental Capacity Act 2005

The Mental Capacity Act provides a statutory framework for people who lack capacity to make decisions for themselves, or who have capacity and want to make preparations for a time when they lack capacity in the future. It sets out who can take decisions, in which situations, and how they should go about this. It covers a wide range of decision making from health and welfare decisions to finance and property decisions

Enshrined in the Mental Capacity Act is the principle that people must be assumed to have capacity unless it is established that they do not. This is an important aspect of law that all health and social care practitioners must implement when proposing to undertake any act in connection with care and treatment that requires consent. In circumstances where there is an element of doubt about a person's ability to make a decision due to 'an impairment of or disturbance in the functioning of the mind or brain' the practitioner must implement the Mental Capacity Act.

The legal framework provided by the Mental Capacity Act 2005 is supported by a Code of Practice, which provides guidance and information about how the Act works in practice. The Code of Practice has statutory force which means that health and social care practitioners have a legal duty to have regard to it when working with or caring for adults who may lack capacity to make decisions for themselves.

"The Act is intended to assist and support people who may lack capacity and to discourage anyone who is involved in caring for someone who lacks capacity from being overly restrictive or controlling. It aims to balance an individual's right to make decisions for themselves with their right to be protected from harm if they lack the capacity to make decisions to protect themselves". (3)

All Trust workers can access the Code of Practice, Mental Capacity Act 2005 Policy, Mental Capacity Act 2005 Practice Guidance, information booklets and all assessment, checklists and Independent Mental Capacity Advocate referral forms on ICON.

https://icon.torbayandsouthdevon.nhs.uk/areas/mental-capacity-act/Pages/default.aspx

Infection Control

All staff will have access to Infection Control Policies and comply with the standards within them in the work place. All staff will attend Infection Control Training annually as part of their mandatory training programme.

NHS Devon Clinical Commissioning Group

NHS Torbay and South Devon NHS Foundation Trust

Rapid (E)quality Impact Assessment (EqIA) *(for use when writing policies)*

Policy Title (and number)	**NHS Continuing Healthcare Funding & Funded Nursing Care Policy**	Version and Date	4 January 2020
Policy Author	Clinical Lead in Continuing Healthcare		

An (e)quality impact assessment is a process designed to ensure that policies do not discriminate or disadvantage people whilst advancing equality. Consider the nature and extent of the impact, not the number of people affected.

Who may be affected by this document?		
Patients/ Service Users ☐	Staff ☒	Other, please state… ☐

Could the policy treat people from protected groups less favourably than the general population? PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below					
Age	Yes ☐ No☒	Gender Reassignment	Yes ☐ No☒	Sexual Orientation	Yes ☐ No☒
Race	Yes ☐ No☒	Disability	Yes ☐ No☒	Religion/Belief (non)	Yes ☐ No☒
Gender	Yes ☐ No☒	Pregnancy/Maternity	Yes ☐ No☒	Marriage/ Civil Partnership	Yes ☐ No☒
Is it likely that the policy could affect particular 'Inclusion Health' groups less favourably than the general population? (substance misuse; teenage mums; carers[1]; travellers[2]; homeless[3]; convictions; social isolation[4]; refugees)					Yes ☐ No☒
Please provide details for each protected group where you have indicated 'Yes'.					

VISION AND VALUES: Policies must aim to remove unintentional barriers and promote inclusion	
Is inclusive language[5] used throughout?	Yes ☒ No☐ NA ☐
Are the services outlined in the policy fully accessible[6]?	Yes ☒ No☐ NA ☐
Does the policy encourage individualised and person-centred care?	Yes ☒ No☐ NA ☐
Could there be an adverse impact on an individual's independence or autonomy[7]?	Yes ☐ No☒ NA ☐

EXTERNAL FACTORS	
Is the policy a result of national legislation which cannot be modified in any way?	Yes ☒ No☐
What is the reason for writing this policy? (Is it a result in a change of legislation/ national research?) Policy review	

Who was consulted when drafting this policy?		
Patients/ Service Users ☐	Trade Unions ☐	Protected Groups (including Trust Equality Groups) ☐
Staff ☒	General Public ☐	Other, please state… ☐

What were the recommendations/suggestions?	
Does this document require a service redesign or substantial amendments to an existing process? PLEASE NOTE: 'Yes' may trigger a full EIA, please refer to the equality leads below	Yes ☐ No☒

ACTION PLAN: Please list all actions identified to address any impacts		
Action	Person responsible	Completion date

AUTHORISATION: By signing below, I confirm that the named person responsible above is aware of the actions assigned to them			
Name of person completing the form	Clinical Lead in Continuing Healthcare	Signature	
Validated by (line manager)		Signature	

Please contact the Equalities team for guidance:
For Devon CCG, please email d-ccg.equalityanddiversity@nhs.net & d-ccg.QEIA@nhs.net
For Torbay and South Devon NHS Trusts, please call 01803 656676 or email pfd.sdhct@nhs.net
This form should be published with the policy and a signed copy sent to your relevant organisation

Consider any additional needs of carers/ parents/ advocates etc, in addition to the service user
[2] Travelers may not be registered with a GP - consider how they may access/ be aware of services available to them
[3] Consider any provisions for those with no fixed abode, particularly relating to impact on discharge
[4] Consider how someone will be aware of (or access) a service if socially or geographically isolated
[5] Language must be relevant and appropriate, for example referring to partners, not husbands or wives
[6] Consider both physical access to services and how information/ communication in available in an accessible format
[7] Example: a telephone-based service may discriminate against people who are d/Deaf. Whilst someone may be able to act on their behalf, this does not promote independence or autonomy

Clinical and Non-Clinical Policies – Data Protection

Torbay and South Devon NHS Foundation Trust (TSDFT) has a commitment to ensure that all policies and procedures developed act in accordance with all relevant data protection regulations and guidance. This policy has been designed with the EU General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA 18) in mind, and therefore provides the reader with assurance of effective information governance practice.

The UK data protection regime intends to strengthen and unify data protection for all persons; consequently, the rights of individuals have changed. It is assured that these rights have been considered throughout the development of this policy. Furthermore, data protection legislation requires that the Trust is open and transparent with its personal identifiable processing activities and this has a considerable effect on the way TSDFT holds, uses, and shares personal identifiable data.

Does this policy impact on how personal data is used, stored, shared or processed in your department? Yes ☐ No ☐

If yes has been ticked above it is assured that you must complete a data mapping exercise and possibly a Data Protection Impact Assessment (DPIA). You can find more information on our GDPR page on ICON (intranet)

For more information:

- Contact the Data Access and Disclosure Office on dataprotection.tsdft@nhs.net,
- See TSDFT's Data Protection & Access Policy,
- Visit our Data Protection site on the public internet.