

Classification: Official

Publication approval reference: PAR1381



# NHS Continuing Healthcare: independent review process

## Public information guide

Version 2, 1 June 2022

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This guide is designed to give members of the public an overview of the NHS Continuing Healthcare independent review process.

## What is NHS Continuing Healthcare?

NHS Continuing Healthcare is the name given to an ongoing package of care arranged and funded solely by the NHS, for people who are assessed as having a 'primary health need'. If found eligible, your package of care is often delivered in your own home or a care home.

The Integrated Care Board (ICB) responsible for the planning and purchase of your local healthcare decides whether you are eligible for NHS Continuing Healthcare.

The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (National Framework) sets out the principles and process for assessing if a person is eligible for NHS Continuing Healthcare and for challenging a decision.

## Responsibility for NHS Continuing Healthcare eligibility decisions

If you are dissatisfied with the decision on your eligibility for NHS Continuing Healthcare, you (or your representative) can ask the ICB to review the decision using its local resolution procedure.

## Independent review

If it is not possible to resolve the matter through ICB local resolution, you may apply to us (NHS England) to request an independent review (IR).

### **What the IR process cannot do**

The process is unable to look at:

- the content of the eligibility criteria
- the type and location of any offer of an NHS Continuing Healthcare package
- the content of any alternative care packages you have been offered
- the treatment or services you may be receiving or have received
- an integrated care board's (ICB) refusal to consider a request for a full assessment following a negative checklist
- the calculation of any redress payment.

You should use the NHS complaints procedure to raise these issues.

## What to expect if you decide to request an IR

The process has several steps:

- You request, complete and return an application form.
- We review your application. We may allocate your case to a 'consideration process' (described below) before deciding whether or not to arrange an IR panel.
- We write to tell you of our decision.
- If we agree to a panel, we will propose a date for the panel to meet and invite you to attend the meeting, if you wish.

[Please note that IR panel members may be present either by telephone or digital technology, such as skype.]

- The IR panel meets and makes its recommendation about your eligibility.
- We inform you and the ICB of the decision and explain your options if you disagree with the outcome.

## Making a request for an IR and completing an application form

If you remain dissatisfied with the ICB's decision following the local resolution meeting, you must complete our 'Application for Independent Review' form. To request this, contact us using details given in the ICB's local resolution decision letter. You will need to return the form within six weeks so we can progress your application.

If you need assistance to complete the application form, just ask a member of our team.

We aim to move the process forward as quickly as possible, but we are dealing with a high volume of cases and it takes time to ensure we have all the required information.

## What to focus on when completing the application form

We will want to know your key reasons for disagreeing with the original eligibility decision. You may find it helpful to read the 'key considerations' section at the back of this guide and consider the following when completing the form:

If you consider the ICB did not properly assess the extent of your needs, explain the type of needs in question and what care you needed at the time of the assessment.

- Be as definite/specific as you can – it helps us much more if you say that a problem happened 'usually two or three times a day' than if you say it happened 'a lot'.
- Tell us about anything that made giving the care more complicated.
- Let us know if your needs were difficult to anticipate and whether they fluctuated.
- Your mental and emotional needs are as important as physical needs.
- Tell us about care your relatives or volunteers gave, as well as care from professionals.

You can only introduce new evidence for the IR process if it would be reasonable to have expected the ICB to have obtained and/or considered this evidence when conducting your assessment and making its decision, but it failed to do so.

This is your **final** opportunity to provide further information and you cannot introduce additional information at a later stage in the process.

The ICB provides us with submissions you made to them, so you do not **need** to send these to us. Please be assured that you will have the opportunity to review the information sent to us from the ICB before the meeting and to highlight verbally any concerns you have to the panel.

The process outlined above for making a request for an IR is not intended to place you at a disadvantage. If you are having difficulties with any aspect of the process, please contact the administrator responsible for processing your request at NHS England. The administrator should be named on the letter that accompanies the application form.

## Keeping you up to date

You will be given the details of the caseworker supporting your case, who will be able to answer any questions you may have. We aim to work through your request as quickly as possible and keep you updated of progress. In the meantime, please note that the process typically takes three-to-six months, and we have limited capacity to respond to requests for updates.

## Reviewing your application

We preview your case using your application form and a case file prepared by the ICB. There are several possible outcomes of the case preview which include the following:

- If we find the case file is incomplete, we request further information from the ICB.
- If the ICB did not offer local resolution following its initial decision, we return the case to the ICB to see if they can resolve your concerns without the need for IR.
- If we have any doubts, we allocate your case to an Independent Chairperson for advice on whether to convene an IR panel to review it.
- If the case is ready and is appropriate for an IR panel, we make the arrangements to fix a panel date.

We use the 'consideration process' to seek advice from an independent chair on whether or not to hold an IR panel for a particular case. If we allocate your case to this process, an independent chair and independent clinical adviser review your application form and case file.

If they consider your needs fall well outside the NHS Continuing Healthcare eligibility criteria, or your case is very clearly not appropriate for the IR panel to consider, the chair will prepare a report explaining their reasoning and will recommend that we do not hold a panel. We will send you a copy of the chair's report explaining their reasoning and their recommendation that we do not hold a panel.

However, if the chair decides a panel should consider your care, we will make the arrangements to fix a panel date.

## Arrangements for an IR panel

### **Scheduling**

We allocate a date for the IR panel meeting.

### **Your involvement**

We invite you to attend the meeting, if you wish, or you can put your views in writing.

### **Special requirements**

If you have any special requirements, for example: wheelchair access, ground floor or lift, braille, British Sign Language – please inform us as soon as possible and at least two weeks before the panel meeting.

### **Your copy of the case file**

The ICB sends you a copy of the case file to be used at the meeting. If the file has not arrived two weeks before the meeting date, please inform us straight away.

As the applicant, you are not required to attend the IR panel, although you are very welcome to do so. If you do not attend, we will accept your key views in writing once you have reviewed your case file provided by the ICB.

### **Attendance by solicitors**

Some people choose to appoint a solicitor to act as their advocate at the IR panel meeting. If you do, it is important they know that the IR panel meeting is not a legal process. As there is no formal role for legal professionals at the IR panel meeting, the NHS does not reimburse any costs you incur by appointing a solicitor.

### **The IR panel's approach towards procedural issues**

It is important to understand that even if there were problems arising from the procedure followed when you were assessed for NHS Continuing Healthcare, this will not lead the IR panel to recommend that you are eligible for NHS Continuing Healthcare, unless the panel concludes that the process that was followed previously precluded the ICB from making a fair and robust decision.

The only basis on which the IR panel can recommend you are eligible is if it decides you have a 'primary health need' according to the principles set out in the National Framework.

In certain circumstances where we believe procedural problems prevented the ICB making a robust decision, your case may be referred back to the ICB. If your case is sent back to the ICB for a full re-assessment, you will be entitled to apply for an additional IR of that full re-assessment if you disagree with the outcome.

### **Proceedings on the day**

The IR panel consists of:

- an independent chair (someone not employed by the NHS and not previously aware of your case)
- an ICB representative and a social services authority representative, from organisations not previously involved with your case
- a clinical adviser may also be present.

The clinical advisor's role is to advise on whether the assessors have correctly interpreted your needs in relation to your clinical diagnosis. It is not their role to provide a second opinion on your original clinical diagnosis, management, or prognosis.

The procedure and operation of the review panel is a matter for the chair, who must have regard to the process described in the National Framework. In general, we expect the open session of the meeting to last an hour.

The open session enables the panel members to have access to the views of key parties including the individual, his or her family and any carer, health and social services staff, and any other relevant bodies or individuals. The panel will have reviewed all the written evidence in advance of the open session but may wish to seek further information to clarify the position.

Additionally, the open session enables the individual and/or their representative, as well as the responsible ICB, to put their views across verbally or in writing.

In closing the open session, the chair sets out the timescale for preparing the report describing the IR panel's findings and recommendations. Then you and the ICB representative (from the ICB who made the original decision) are asked to leave the meeting.

The IR panel then deliberates on your case in private and reaches a decision on its recommendations.

## Who is eligible for NHS Continuing Healthcare?

Full information is to be found in the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care available on the Department of Health & Social Care website:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/746063/20181001\\_National\\_Framework\\_for\\_CHC\\_and\\_FNC\\_-\\_October\\_2018\\_Revised.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746063/20181001_National_Framework_for_CHC_and_FNC_-_October_2018_Revised.pdf)

## Summary of key considerations we use in deciding if someone has a 'primary health need'

Eligibility for NHS Continuing Healthcare is not dependent on a having a particular disease, diagnosis, or condition, and it does not depend on who provides the care or where the person lives. It can be provided in a care home, a care home with nursing or in a person's own home.

Eligibility is determined by whether a person has a 'primary health need' as opposed to mainly a need for social care and accommodation, which a local authority could be expected to provide. Having a need for nursing care does not necessarily make someone eligible for NHS Continuing Healthcare.

The 'primary health need' is assessed by looking at **all** the person's care needs in detail and relating them to four key characteristics:

- **Nature:** This describes the characteristics of an individual's needs (which can include physical, mental health or psychological needs) and the type of those needs. This also describes the overall effect of those needs on the individual, including the type ('quality') of interventions required to manage them.
- **Intensity:** This relates both to the extent ('quantity') and severity ('degree') of the needs and to the support required to meet them, including the need for sustained/ongoing care ('continuity').
- **Complexity:** This is concerned with how the needs present and interact to increase the skill required to monitor the symptoms, treat the condition(s) and/or manage the care. This may arise with a single condition, or it could include the presence of multiple conditions or the interaction between two or more conditions. It may also include situations where an individual's

response to their own condition has an impact on their overall needs, such as where a physical health need results in the individual developing a mental health need.

- **Unpredictability:** This describes the degree to which needs fluctuate and thereby create challenges in managing them. It also relates to the level of risk to the person's health if adequate and timely care is not provided. An individual with an unpredictable healthcare need is likely to have either a fluctuating, unstable or rapidly deteriorating condition.

Each of these characteristics may, alone or in combination, demonstrate a primary health need.

The question of whether, taken as a whole, the nursing or other health services required by the individual are of the type that can be lawfully provided by a local authority must also be considered. If they are not, this will demonstrate a 'primary health need'.

## What happens to your personal data?

### Privacy notice

Our privacy notice – <https://www.england.nhs.uk/contact-us/privacy-notice/> – describes how we use personal data and explains how you can contact us and invoke your rights as a data subject. We will process your information in accordance with the requirements of the Data Protection Act 2018.

If you have any questions or concerns, please contact the relevant regional team using the contact information on this website:

<https://www.england.nhs.uk/healthcare/>

If you have any questions relating to data protection, please contact our Data protection office: [england.dpo@nhs.net](mailto:england.dpo@nhs.net)

You have the right to make a complaint against us regarding data protection issues with the Information Commissioner's Office: <https://ico.org.uk/make-a-complaint/>

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