Who Pays? Appendix 3 – National arbitration process

March 2024

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## Appendix 3A - Case summary and chronology for those entering arbitration

Both parts of this form 3A are to be completed **jointly** by both (or all) the commissioners involved in the dispute and submitted as a Word document to [england.responsiblecommissioner@nhs.net](mailto:england.responsiblecommissioner@nhs.net).

**By submitting this document, each commissioner agrees to be bound by any arbitration finding provided by NHS England and agrees to meet costs, where applicable, in accordance with Appendix 1 of Who Pays?**

**Case summary**

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| --- | --- |
| **Name and contact information for commissioner A** | **Name and contact information for commissioner B** |
| *Include the name of the organisation and contact details for the person to whom all queries and requests for further information should be addressed* | *Include the name of the organisation and contact details for the person to whom all queries and requests for further information should be addressed* |
| **What is the issue in dispute?** | |
| *Summarise the issue in dispute between the commissioners*  *Clarify whether the dispute is retrospective (affecting payments already made to or owed to a provider), prospective (affecting payment responsibility for care or treatment not yet provided) or both.*  *If the dispute has a retrospective element, clarify*   * *when the dispute was first formally initiated by one party or the other* * *the period for which payment responsibility is disputed* * *the financial value involved.* | |
| **If the dispute risks delaying the next step in the patient’s care pathway, have you jointly agreed a “without prejudice” approach to assessing the patient’s needs and putting in place any necessary care package?** | |
| *This is an absolute requirement of Who Pays? – see paragraphs 1.11, 7.4 and 4d) of Appendix 1*  *Answer Yes or No.*  *If No, explain why not.* | |
| **How have you attempted to resolve this dispute and why have you been unable to?** | |
| *You must demonstrate that discussions between the commissioners have been escalated to Director level and that attempts have been made to resolve the issue in line with the step-by-step approach set out in Appendix 1. Please provide a brief statement only, and do not attach details of correspondence etc.* | |
| **Details and signature of responsible Director** | |
| **Name of Director:**  **Signature:**  **Email:** | **Name of Director:**  **Signature:**  **Email:** |

**Case chronology**

Patient details

|  |  |
| --- | --- |
| 1. Patient identifier: 2. *(eg “Patient X” “AB”. Do not include PID)* |  |
| 1. Patient date of birth: |  |

Relevant chronology

*Exactly what information is needed to support arbitration will inevitably vary from case to case.*

*As a general approach, try to provide information back to a point at which the ICB (or predecessor CCG) responsible for a patient was not in dispute. This is likely to be back to the beginning of a particular care episode or sequence of placements. For each subsequent move or placement, explain what happened and why, giving details of GP registration and locations.*

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| **Dates** | **Location (including of hospital, care home or other residential care provider)** | **Details of treatment or placement** | **Is payment in dispute?**  **(Yes / No)** | **ICB of registered GP** | **If no GP, ICB of usual residence** |
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**Case chronology – completed example**

Patient details

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| --- | --- |
| 1. Patient identifier: 2. *(eg “Patient X” “AB”. Do not include PID)* | 1. *JW* |
| 1. Patient date of birth: | 1. *17/01/2004* |

Relevant chronology

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| --- | --- | --- | --- | --- | --- |
| **Dates** | **Location (including of hospital, care home or other residential care provider)** | **Details of treatment or placement** | **Is payment in dispute?**  **(Yes / No)** | **CCG / ICB of registered GP** | **If no GP, CCG / ICB of usual residence** |
| *Prior to 1/4/2020* | *Lived with family in Leeds* | *N/A* | *No* | *Leeds* | *N/A* |
| *2/4/2018* | *Barnsley* | *Placed by Leeds City Council in a children’s home in Barnsley* | *No* | *Barnsley (from 10/4/2018)* | *N/A* |
| *16/5/2020* | *York* | *Moved by Leeds City Council to a residential special school in York* | *No* | *York (from 30/5/2020)* | *N/A* |
| *15/8/2021* | *York* | *Referred by Leeds City Council to York CCG to assess eligibility for / plan transition to NHS CHC* | *No* | *Still York* | *N/A* |
| *25/11/2021* | *Wakefield* | *Admitted to hospital under S2 of the Mental Health Act (converted to S3 on 2/12/2019)* | *Yes* | *Still York* | *N/A* |
| *As at 15/2/2022* | *Still detained in hospital in Wakefield* | *Discharge and s117 aftercare now being planned. No agreement on who should fund either hospital detention or aftercare.* | *Yes* | *Still York* | *N/A* |

## Appendix 3B - Statements of case for those entering arbitration

Once the case summary and chronology form has been submitted and reviewed by the NHSE national team, this form 3B is then to be completed **individually** by each commissioner involved in the dispute and submitted as a Word document to [england.responsiblecommissioner@nhs.net](mailto:england.responsiblecommissioner@nhs.net). In the interests of transparency, the statements of case will be included in the arbitration report and sent to all parties.

**Details of dispute**

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| --- | --- |
| 1. Name and contact information for the commissioner | 1. *Include the name of the organisation and contact details for the person to whom all queries and requests for further information should be addressed* |
| 1. Dispute details | 1. *Describe the dispute by reference to the anonymised patient identifier given on the case chronology; name the other commissioner(s) involved* |

**Statement of case**

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| 1. *Set out here your argument, by reference to the applicable sections of Who Pays? and, where relevant to legislation and other guidance, as to why you believe that, in this particular case, your NHS commissioning organisation should not be responsible for paying for the NHS care and treatment involved – and why the other NHS commissioning organisation involved in the dispute should be responsible.* 2. *Please keep your argument concise. You should attach other documents only where strictly necessary, and you must make clear, within this statement of case, the direct relevance of any information contained in such attachments.* |

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