



South West London
Clinical Commissioning Group

South West London Health and Social Care Continuing Healthcare Disputes Resolution Protocol

South West London Clinical Commissioning Group and London Boroughs of Croydon, Kingston, Merton, Richmond, Sutton and Wandsworth Continuing Healthcare Disputes Resolution Protocol			
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Applies to	<ul style="list-style-type: none"> London Boroughs of Croydon, Kingston, Merton, Richmond, Sutton and Wandsworth Governing Body Members, Committee Members and all staff working for, or on behalf of NHS South West London CCG 		

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Controlled Document

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Target Audience	<ul style="list-style-type: none"> • London Boroughs of Croydon, Kingston, Merton, Richmond, Sutton and Wandsworth • Governing Body Members, Committee Members and all staff working for, or on behalf of NHS South West London CCG
Brief Description	<p>This protocol sets out the principles and process by which we will provide a robust framework to avoid and resolve disputes relating to the eligibility of an individual for NHS Continuing Healthcare, joint funding arrangements or operation of refunds guidance between the SWL CCG and the London Boroughs of Croydon, Kingston, Merton, Richmond, Sutton and Wandsworth as quickly as possible for the benefit of the individual concerned.</p>
Action Required	<p>Ensure that the contents of this Protocol are shared with all staff with responsibilities for Continuing Healthcare within Local Authority and with the Continuing Healthcare Teams across south west London.</p>

CHC Dispute Resolution Protocol

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CHC Dispute Resolution Protocol

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 the National Framework For NHS Continuing Healthcare and NHS -funded Nursing Care, October 2018 (revised)¹. 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.
- 1.2. NHS-funded Nursing Care is the funding provided by the NHS to care homes with nursing to support the provision of nursing care by a registered nurse. In all cases individuals should be considered for eligibility for NHS Continuing Healthcare before a decision is reached about the need for NHS-funded Nursing Care.
- 1.3. The clinical commissioning group (CCG) is legally responsible for all eligibility decisions for NHS Continuing Healthcare as such it must have suitable governance arrangements in place to satisfy itself that these functions are being discharged in accordance with relevant standing rules and guidance, including the National Framework.
- 1.4. Local authorities are key partners in the CHC eligibility assessment process. Under the Care Act (2014) they have a duty to assess any person who may be in need of care and support including whether they may be eligible for CHC. The National Framework requires local authorities to work cooperatively with CCGs in assessing individuals' eligibility for CHC with specific requirements including referring persons who may be eligible for CHC, providing advice and assistance when consulted by the CCG and participation in a multidisciplinary team assessment.
- 1.5. Disputes may arise when the local authority and CCG disagree with decisions on eligibility for NHS Continuing Healthcare, joint funding arrangements and refunds. It is critical that disputes are resolved in a robust and timely manner and to ensure there is no detrimental effect on the individual whose eligibility is disputed.
- 1.6. The Standing Rules Regulations² and the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (2018) require NHS bodies (CCG) and local authorities (LA) to have in place a jointly agreed local disputes resolution process for resolving inter-agency disputes about NHS Continuing Healthcare (CHC) eligibility, contribution to a joint package of care and the operation of refunds guidance.
- 1.7. It is the joint responsibility of the SWL CCG and London Boroughs of Croydon, Kingston, Merton, Richmond, Sutton and Wandsworth to resolve disputes using the agreed dispute resolution procedures where there is a dispute about:
 - A decision as to eligibility for NHS Continuing Healthcare or Funded Nursing Care;
 - or
 - Where a person is not eligible for NHS Continuing Healthcare or Funded Nursing Care, the contribution of social services to a joint package of care for that person.

¹ National Framework for NHS Continuing Healthcare and NHS -funded Nursing Care October 2018 (revised)

² http://www.legislation.gov.uk/uksi/2018/283/pdfs/uksem_20180283_en.pdf

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2. Purpose

- 2.1. The purpose of this protocol is to provide a robust framework that will proactively support timely resolution of disagreements and disputes about eligibility of an individual for NHS Continuing Healthcare as well as regarding any joint funding arrangements and operation of refunds between the SWL CCG and the London Boroughs of Croydon, Kingston, Merton, Richmond, Sutton and Wandsworth.
- 2.2. The effectiveness of this protocol is dependent on full and consistent application of the guidance set out in the National Framework for NHS Continuing Healthcare. This should enable most disagreements and disputes to be resolved informally and minimise the number of formal disputes.
- 2.3. The named organisations agree to operate under this protocol to proactively resolve disagreements and disputes as quickly as possible and minimise their escalation.
- 2.4. The protocol aims to ensure resources are directed towards the provision of appropriate, timely and robust assessment, determination and review to avoid disproportionate time spent on the resolution of disagreements and disputes.
- 2.5. The Department of Health and Social Care advises CCGs and local authorities to carefully monitor the use of their disputes process. Disputes should be reviewed after resolution for learning points and these should be fed back to those involved in the decision-making process of the case. Learning points should also be built into training of multidisciplinary team (MDT) members as appropriate.

3. Legal, Statutory, Mandatory, and Best Practice Requirements

- The NHS Commissioning Board and Clinical Commissioning Group (Responsibilities and Standing Rules) Regulations 2012;
- The NHS CHC (Responsibilities of Social Services Authorities) Directions 2013;
- The Care Act (2014); and
- National Framework for NHS Continuing Healthcare and NHS funded-nursing care October 2018 (Revised).

4. Scope

- 4.1. The protocol addresses the following:
 - What counts as a disagreement and what counts as a formal dispute
 - Process for resolving and managing Continuing Healthcare and Funded Nursing Care eligibility disagreements and disputes with different levels of dispute resolution
 - Paperwork and/or information needed and timescales at each stage of the process.

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- Arrangements to ensure individuals get the care or support they need whilst disputes are being resolved, and clarification of arrangements for reimbursement of care costs where applicable
- 4.3 While disagreements and disputes regarding joint funding are not within scope of this protocol the general approach and principles to resolving disagreements and disputes regarding parties' respective share of jointly funded care packages apply. A detailed joint funding protocol including resolution of disputes will be developed at a later stage.
- 4.4 This protocol does not apply to disputes between the CCG and individuals or their representatives applying for NHS Continuing Healthcare funding. These are dealt with through the complaint, appeals and review process outlined in the National Framework for NHS Continuing Healthcare (revised 2018).
- 4.5 Where disputes relate to local authorities and CCGs beyond South West London, the disputes resolution process of the responsible CCG should normally be used to ensure resolution in a robust and timely manner.

5. Principles

- 5.1. SWL CCG and London Boroughs of Croydon, Merton, Kingston, Richmond, Sutton and Wandsworth have agreed the following joint working principles on Continuing Healthcare which underpin this protocol:
- We will work together in good faith to achieve the best outcomes for our residents through the Continuing Healthcare process.
 - We will work together to ensure that our application of Continuing Healthcare will support the aspirations of our residents to be as independent as possible and wherever possible to remain in their own homes
 - We will embrace a culture of openness, trust, and transparency.
 - We will respect the contribution of all professionals involved in the process regardless of discipline.
 - We will seek collaborative and innovative solutions to complex issues
 - We will strive for consistent and full application of our agreed SWL CHC policies and processes ensuring these are underpinned by good communication and robust processes and systems
 - We will be mindful of the duties of each organisation including targets and metrics, and will support each other within the framework to achieve these
 - We will be mindful of the pressures that our organisations face in terms of resources and will always seek to help where possible.
 - We will support the whole health and care workforce to have a greater understanding of Continuing Healthcare and its application, to improve the experience for our residents
 - We will embrace an improvement culture and come together regularly to review our progress and performance.
 - We will commit to a “no disputes” approach to resolving issues, acting collaboratively, collectively and taking responsibility and only using the “disputes resolution policy” as a last resort.

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6. Preventing and Resolving Disagreements and Disputes

- 6.1 A fundamental principle is to minimise disputes and their escalation through full and consistent application of the national framework as set out in the SWL CCG Continuing Healthcare Operational Policy and by working collaboratively with a commitment to proactively resolving disagreements before they develop into disputes.
- 6.2 Formal disputes should be a last resort, only invoked after all the informal steps have been exhausted within agreed timescales.
- 6.3 Both partners are committed to completing and resolving all disagreements and disputes in a timely manner and to ensure there is no detrimental effect on the individual whose eligibility is disputed.
- 6.4 At the heart of good decision making and minimising and resolving disputes is the collation of good evidence and rationale. A key requirement of this protocol is ensuring robust evidence supports the Continuing Healthcare assessment and decision-making process. Both organisations will ensure robust evidence is provided as early in the process as possible and within the timelines agreed in this protocol. In exceptional cases longer timescales may need to be agreed to gather additional evidence and avoid escalation.

7. Types of Dispute

7.1 Disagreements and disputes may arise in the following circumstances:

CHC Checklist	LA challenges a CCG decision not to progress a completed negative checklist to a full assessment of eligibility
CHC MDT / DST Stage	Disagreement within MDT on domain score or weighting MDT is unable to agree a recommendation
CCG eligibility decision	The LA disagree with the CCG's CHC eligibility decision and requests the CCG to review its decision
FNC Eligibility	LA disagrees with CCG decision that individual is not eligible for FNC

8. Resolving CHC Disagreements Informally

- 8.1. Where the MDT is unable to agree an eligibility recommendation, all efforts will be made to resolve disagreements informally through further discussion between relevant parties including collection and submission of further evidence if necessary, prior to invoking the formal disputes protocol.

- 8.2. The CCG CHC lead, and LA lead will be responsible for supporting their team members responsible for the case in attempting to resolve disagreements informally as quickly and efficiently as possible.
- 8.3. It is expected that most informal disagreements will be resolved **within 7 working days of the communication of the disagreement** (to the CCG CHC Lead) which should be within 1 working day of the initial MDT meeting. If disagreements are not resolved informally within this time frame, then formal dispute procedures will need to be invoked.
- 8.4. The specific areas of disagreement along with the rationale for disagreement must be clearly recorded on the relevant paperwork including the agreed action proposed to attempt to resolve the disagreement. Similarly, the outcome of informal disagreements should be clearly recorded on the agreed template.
- 8.5. Any existing arrangements for the provision and funding of care should continue while the disagreement is being resolved and a decision on eligibility awaited as set out in section 12. Where there is an urgent need for adjustment this will be arranged by the CCG on a “without prejudice” basis until a decision about eligibility is made with the arrangements for any reimbursement of care costs during the period of dispute set out in section 13.
- 8.6. The informal disagreement resolution process for the different areas of dispute is detailed below.

Area of dispute	Actions to resolve informally	Timeframe
Checklist	LA practitioner raises with the CCG CHC Assessor that they have a disagreement with the decision not to progress from a completed checklist to a full CHC assessment. They will work together to attempt to resolve the disagreement within 48 hours.	Within 48 hours of receipt of checklist decision
	The referrer may request in writing a review of the CCG’s decision not to progress to completion of DST with reasons for the disagreement. As set out in the National Framework, the CCG CHC Lead should give such requests due consideration, taking account of all the information available including additional information from the individual or carer, though there is no obligation for the CCG to undertake a further checklist.	A clear and written response with the decision and its rationale should be provided within 14 days of receipt of the request
DST/MDT Stage	<u>Disagreement on domain scoring</u> During the DST meeting, the MDT may not always agree on the domain weighting. When completing the DST the MDT Coordinator clearly records areas of disagreement in domain scoring, with	During DST/MDT meeting. Completed draft DST form is shared with MDT members within 1 working day of MDT meeting.

	<p>evidence and their recommendation on the DST form. The national framework recommends that where there is disagreement the higher weighting should be taken.</p>	
	<p>Unable to agree on recommendation The MDT is unable to agree n eligibility recommendation</p> <p>Further discussion between parties, involving team managers if necessary, with clarification and additional evidence sought if necessary.</p> <p>MDT meeting reconvened to consider additional evidence and clarification with support of LA and CHC team managers.</p> <p>If at this stage the MDT is still unable to agree on a recommendation then the CCG coordinator will make a recommendation and once this is ratified and the LA still disagrees with the eligibility decision then a formal dispute is raised.</p>	<p>The MDT coordinator should record on the completed draft MDT form that they have been unable to come to an agreed recommendation and that the MDT intends to try to come to an agreement through the informal disagreement process.</p> <p>The informal disagreement period should start once the LA practitioners receives a copy of the draft MDT form. The period for attempting to resolve the disagreement informally should be no longer than 7 working days from the date the LA received the completed draft MDT form. After this a recommendation should be submitted for verification.</p>
<p>Review</p>	<p>LA team manager contacts CCG Clinical lead to note they disagree with the decision to carry out an eligibility reassessment following a review. Relevant parties to discuss.</p>	<p>Within 3 working days of receipt of notification of intention to reassess eligibility for CHC</p>

9. Formal Disputes

- 9.1 The aim for both organisations involved in the dispute is for the majority of disputes to be resolved informally as detailed above before they reach the formal dispute stage. However, if this is not possible then the following formal process should be followed with the aim to resolve disputes as proactively and quickly as possible and minimise their escalation.
- 9.2 **The expectation is that excluding Stage 4, Independent Arbitration, cases in, formal dispute should be resolved within 30 working days of receipt of a “Formal Dispute Notice”.**

Stage	Timescale
Formal Dispute Notice raised	Within 7 working days of receipt of formal eligibility assessment outcome letter
Stage 1 – Escalation to Managers – meeting between CCG Head of CHC and Local Authority Head of Service	Within 10 working days of receipt of formal dispute notice
Stage 2 – Escalation to Senior Managers – review and discussion by CCG Director and Local Authority Assistant Director	Within 10 working days of escalation to stage 2
Stage 3 - Escalation to Directors – review and discussion by CCG Place Leader/Locality Director) and Local Authority Director	Within 10 working days of escalation to stage 3
Stage 4 – Independent Arbitration	CCG Locality Director and Local Authority Director to agree on independent arbitration arrangements within 5 working days of stage 3 outcome

10. Raising a Formal Dispute

- 10.1 A “Formal Dispute Notice” triggers the formal dispute process. The notice accompanied by the details and reason for the dispute, including supporting evidence should be submitted within **7 working days** of the formal notification of the outcome of the eligibility decision. (Formal notification date is defined as date the LA social work practitioner received the ratification letter by email). The ratification letter is sent to the social work practitioner via a secure LA email account on ratification day).
- 10.2 The dispute notice must be sent to the following as relevant with “**FORMAL DISPUTE NOTICE**” written in the subject line of the email.

Continuing Healthcare Place Team	Email
Croydon	croccg.chcenquiries@nhs.net
Wandsworth	WACCG.CHCreferralsWCCGCHSHealthcare@nhs.net
Merton	merccg.chcchsreferrals@nhs.net
Kingston	KINCCG.chc-kingston@nhs.net
Richmond	RICCCG.richmondchc@nhs.net
Sutton	SUTCCG.Continuingcare@nhs.net

- 10.3 Following the receipt of a “**Formal Dispute Notice**”, the nominated CCG CHC Lead will request a peer review of the anonymised disputed DST decision form from a CCG CHC lead within another SWL Borough / Place CHC Team. The purpose of this step is to obtain an objective review of DST decision (**This is an internal SWL CCG process**). The local authority raising the dispute may also wish to request a peer review from another SWL LA colleague.

11. Resolving and Escalating a Formal Dispute

11.1 Stage 1: Escalation to Managers - meeting between CCG Head of CHC and Local Authority Head of Service

A meeting between the CCG’s Head of CHC (or nominated deputy) and nominated LA Head of Service (or nominated deputy) will be held to attempt to resolve the issues raised in the Dispute Notice. This will be a formal, minuted meeting held **within 10 working days** of receipt of the formal dispute notice. A representative from the CCG’s CHC service will take minutes.

The evidence provided when the formal dispute notice was raised will inform the discussion at the formal, minuted meeting. LAs may wish to provide additional evidence which must be submitted at least 3 working days before the formal meeting.

If by working day 11 (following the receipt of the formal dispute notice), there is no agreement then the case/dispute should be escalated to stage 2 – review and discussion by CCG Director and Local Authority Assistant Director.

11.2 Stage 2: Escalation to Senior Managers - review and discussion by CCG Director and Local Authority Assistant Director

The CCG Director and Local Authority Assistant Director will review the case and dispute within **10 working days** of being notified of the Formal Stage 1 dispute outcome. If there is no agreement in Stage 2, the case is then escalated to Formal Stage 3 for discussion between the CCG Place Leader/Locality Director and the Local Authority Director.

11.3 Stage 3: Escalation to Senior Managers - review and discussion by CCG Place Leader/Locality Director and Local Authority Director

The Directors will review the case and dispute within **10 working days** of being notified of the Formal Stage 2 dispute outcome.

There is an expectation in the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (October 2018) that disputes will be resolved locally. If in the very unlikely event, there is no agreement in Stage 3, the CCG Place Leader/Locality Director and Local Authority Director will invoke independent arbitration of the case as a last resort

11.4 Stage 4: Independent Arbitration

Independent arbitration can only be triggered by the Directors within the respective organisations who must agree timeframe for resolution and how the independent arbitration will be sourced, organised and funded. **It is to be noted that failure to resolve disputes within SWL is to be considered as a poor outcome of local escalation.**

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12. Approach to funding care arrangements during disagreements and disputes

- 12.1 In line with the national framework SWL local authorities and SWL CCG are committed to ensuring individuals get the care and support they need whilst disagreements and disputes are being resolved.
- 12.2 SWL LAs and SWL CCG are committed to ensuring that neither parties unilaterally withdraw from funding of an existing package until there has been appropriate reassessment and agreement on future funding responsibilities.
- 12.3 Prior to a decision on eligibility being made and where care needs to be provided whilst a decision on NHS CHC is awaited then any existing arrangements for the provision and funding of care should continue until the dispute is resolved and a decision on eligibility made, unless there is an urgent need for adjustment.
- 12.4 In those circumstances where there is no funded care package or the existing care package cannot meet the needs of the individual, the local authority and CCG CHC Lead will urgently agree an interim care package on a 'without prejudice' 50:50 funding basis until the disagreement or formal dispute is resolved.
- 12.5 The discharge of the patient should not be delayed whilst waiting for disagreements or disputes on CHC eligibility to be resolved. Patients should be discharged with their existing care package maintained where that meets their needs. Where there is an urgent need for adjustment, the CCG and the LA will urgently agree an interim package of care on a 'without prejudice' 50:50 funding arrangement basis if required until the disagreement or formal dispute is resolved.

13. Retrospective Reimbursement of Care Costs

- 13.1 Where the CCG has funded care costs in full or in part throughout the dispute process and the CCG's eligibility decision has been upheld and the individual has been found not eligible, the LA will reimburse the CCG backdated to the date of the original eligibility determination (date of ratification email with eligibility assessment outcome) or the date of discharge from hospital (for those assessed in hospital).
- 13.2 Where the LA has funded in full or in part throughout the dispute process and the outcome of the process is that the CCG's decision is not upheld, and the individual has been found eligible for CHC, the CCG will reimburse the LA backdated to day 29 from the date of valid Checklist referral or to the date of discharge from hospital for those assessed in hospital.

14. Arrangements for keeping individuals informed during disagreements and disputes

- 14.1 SWL CCG is responsible for communicating the outcome of the decision on eligibility to the individual and to the Local Authority.

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- 14.2 Prior to a decision on eligibility being made and where care needs to be provided whilst a decision on NHS CHC is awaited then any existing arrangements for the provision and funding of care should continue, unless there is an urgent need for adjustment.
- 14.3 It is the responsibility of the CCG to provide written notice of the withdrawal of existing funding as well as written confirmation of alternative funding arrangements that have been agreed by the organisation(s) responsible for their care.

15. Monitoring

The SWL CCG Continuing Healthcare Business Support Team will be responsible for recording formal disputes and lessons learnt on a quarterly basis and sharing this with local authority partners.

16. Change History

Policy Number	Effective Date	Significant Changes
TBC	01/04/2020	