**North East Lincolnshire Clinical Commissioning Group**

**Continuing Healthcare Overarching Policy**

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# 1. **INTRODUCTION**

This Operational Policy is the overarching statement of the principles for the provision of a NHS Continuing Healthcare (CHC) service across North East Lincolnshire Clinical Commissioning Group (NELCCG). The service will be delivered by NELCCG’s Continuing Health Care Team in line with the National Framework for NHS Continuing Healthcare (2012).

The National Framework for NHS Continuing Healthcare and Funded Nursing Care (revised 2018) sets out the principles and processes for the implementation of NHS funded care and it provides national tools to be used in assessment applications and for Fast Track cases.

NELCCG CHC NHS/Social care funding and commissioning principles are intended for people who are ordinarily resident in England. Therefore free NHS Continuing Healthcare or Funded Nursing Care commissioned by the CCG for care needs is restricted to ordinary residents. The meaning of the words ‘ordinary resident’ was considered by the House of Lords in 1982 in the case of Shah v. Barnet London Borough Council. The words may be briefly summarised as referring to a person who is living lawfully in the United Kingdom and for settled purposes as part of the regular order of their life, with an identifiable purpose for their residence here which has a sufficient degree of continuity to be properly described as settled.

If a person who is an ordinary resident transfers outside of England NELCCG will cease to provide funding for CHC care needs. However the NELCCG Individual Commissioning Advice and Approval Panel (ICAAP) will consider on a case by case basis cross border reciprocal placements within the United Kingdom.

Therefore under the NELCCG commissioning principles commissioned care may remain available to fund those who meet the eligibility criteria solely within the borders of the United Kingdom.

For those countries with current reciprocal arrangements as identified in the DoH legislation for NHS Medical treatment only the CCG in consultation with NHS England will consider these on a case by case basis.

The Department of Health published the revised National Framework in November 2018, which does not change the basis of eligibility decisions for NHS Continuing Healthcare and NHS funded-nursing care, or the overall principles, but seeks to provide greater clarity in the descriptions within the needs domains of the Checklist and the Decision Support Tool, giving greater clarity about the levels and types of need to be considered, as well as changes to the wider information that needs to be recorded and the Fast Track Pathway Tool.

This policy details the way in which the National Framework will be implemented by NELCCG and should be read in conjunction with the following documents:

* The National Framework for NHS Continuing Healthcare & NHS Funded-Nursing Care (Department of Health, 2012, revised)
* The National Framework of NHS Continuing Healthcare & NHS Funded-Nursing Care (Department of Health, 2018 revised)
* NHS Guide for Health and Social Care Practitioners (2014)
* Who pays? Establishing the Responsible Commissioner (Department of Health, August 2020)
* North East Lincolnshire CCG Joint Operational Guidance
* North East Lincolnshire CCG Choice Policy: NHS Funded Care
* North East Lincolnshire CCG Joint funding Policy

# 2. PURPOSE AND SCOPE

This policy sets out the responsibilities of North East Lincolnshire Clinical Commissioning Group in those situations where eligibility for NHS Continuing Healthcare has not been agreed, and for the management of situations that may arise as a result of NHS Continuing Healthcare eligibility decisions. The policy describes the way in which NEL Clinical Commissioning Group will commission care in a manner that reflects patient choice and preferences, whilst balancing the requirement that NEL Clinical Commissioning Group keep within the set financial limit allocated to the organisation.

This policy applies to all NHS Continuing Healthcare applications for adults 18 years or older who are registered with a NEL General Practice. This includes all care groups including:

* Physically Disabled
* Older People
* Learning Disabilities
* Young people in transition
* People with an organic mental health condition
* Functional Mental Health
* Acquired Brain Injury

These procedures do not apply to:

Children (under 18)

# **3. EQUALITY STATEMENT**

In applying this policy, the CCG will have due regard for the need to eliminate unlawful discrimination**,** promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic. An equality impact assessment can be accessed [here](https://portal.yhcs.org.uk/documents/5665646/17351999/EIA%2BContinuing%2BHealthcare%2BOverarching%2BPolicy/cc5484b7-845f-4117-af96-d473b181b34a).

# **4. BRIBERY ACT 2010**

The CCG follows good NHS business practice as outlined in the Business Conduct Policy and has robust controls in place to prevent bribery.

Under the Bribery Act 2010, it is a criminal offence to:

* Bribe another person by offering, promising or giving a financial or other advantage to induce them to perform improperly a relevant function or activity, or as a reward for already having done so; and
* Be bribed by another person by requesting, agreeing to receive or accepting a financial or other advantage with the intention that a relevant function or activity would then be performed improperly, or as a reward for having already done so.

Due consideration has been given to the Bribery Act 2010 in the development of this policy document and consistent application of this policy will mitigate bribery in relation to relocation assistance.

Anyone with concerns or reasonably held suspicions about potentially fraudulent activity or practice should refer to the Local Anti-Fraud and Corruption Policy and contact the Local Counter Fraud Specialist.

# 5. RESPONSIBILITIES

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| **Party** | **Key responsibilities** |
| Health & Social Care staff assessment of clients for consideration of eligibility | * Ensure consent is obtained prior to completing the CHC Checklist. If individual is unable to consent follow the Mental capacity Act (2005).
* Complete the required documentation, Checklist and co-operate in completing the DST within 28 days of completing the Checklist
* Ensure that the Fast Track application is fully completed and forwarded to NHS NEL CHC Hub for authorisation
* Forward the relevant documentation to NHS NEL CHC Hub for FNC contributions and responsibility, when placing an individual within a nursing home in North East Lincolnshire for authorisation prior to placement
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| **Party** | **Key responsibilities** |
| NEL CCG Continuing HealthcareTeam | * Receive Fast Track Tools to ensure the standards required are met and that they indicate eligibility for receipt of service
* Maintain the continuing healthcare data base ensuring all referrals are recorded and that all correspondence is kept for each individual patient
* Appoint a Clinical Commissioning Manager (CCM) to oversee, facilitate the assessment process
* Review completed DST to ensure it is completed fully, in accordance with the National Framework, supported by robust clinical evidence and in an appropriate manner and that it has a clearly stated recommendation from the Multi-disciplinary Team who have completed it seeking further clarification as necessary
* Ensure appropriate health professionals including a social care practitioner are in attendance at the MDT/DST process. If a social care practitioner is not available to take part this must be recorded in the patient’s notes
* Verification of Consent, Checklists, Fast Tracks
* Arrange for the DST to be presented to the Continuing Healthcare (CHC) Panel along with any supporting information
* Write to the patient or their representative with the outcome and how to appeal
* If verification of eligibility is given by the panel for 100% continuing healthcare, arrange the package of care/ Personal Health Budget (PHB) based on the needs of the individual and provide costing’s of the package of care/PHB for approval
* If the individual is not eligible for NHS CHC but is entitled to NHS FNC arrange for the payments to be made to the care home in a timely manner
* Record all panel decisions in individual’s case records (panel minutes) and ensure all communication of panel decisions is undertaken in a timely and professional manner
* Ensure patient case management arrangements are in place
* Ensure reviews are undertaken in line with national policy and at other times as required
* Ensure that the CCG is alerted to issues with Care providers which may compromise quality of care
* Ensure all persons eligible for CHC are offered a PHB
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| **Party** | **Key responsibilities** |
| NEL Continuing Healthcare Panel | * Consider all applications for continuing healthcare eligibility in a timely and robust manner and verify recommendation
* Consider all patients who no longer meet the eligibility for 100% care packages and verify recommendation
* Verify the eligibility of a client/patient for a NHS funded package of care
* Review recommendation that an individual is no longer eligible for NHS FNC
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| **Party** | **Key responsibilities** |
| NEL CCG NHS Continuing Healthcare funding, care package procurement | * Ensure that an appropriate selection of packages including PHB, are offered to each client/patient based on their individual care plan
* Review all complex packages of care ensuring value for money has been considered
* Seek assurances that providers are fit and proper organisations to provide care
* Ensure that a database of clients and packages is maintained
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| **Party** | **Key responsibilities** |
| NEL CCG Contracts and contract monitoring | * Utilise the NEL CCG Policies for patients being placed within a Home with residential or nursing status
* Seek assurances in all cases that the providers have CQC accreditation
* Monitor the usage of Personal Health Budgets ensuring quality of provision and value for money
* Develop contracts with providers that ensure high quality care delivery and value for money.
* Quality monitor all contracts.
* Annual quality audits undertaken
 |

# 6. DEFINITIONS

The following categories relate to packages of care that are provided to meet assessed needs. An assessment of need, which includes an assessment of healthcare needs against the NHS Continuing Healthcare Framework, is an essential starting point for determining whether the NHS has a responsibility to provide funding for the full package of services. The overarching criterion for eligibility for NHS Continuing Healthcare is that if the person’s primary need (ie the principal need for that care) is for healthcare, because of the intensity and/or complexity and or unpredictability of his/her healthcare needs, he/she is eligible for NHS Continuing Healthcare and the NHS is responsible for funding the package of care.

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| **NHS Continuing Healthcare(CHC)** | Is a package of care arranged and funded entirely by the NHS. It may be provided in a hospital, a hospice, a care home, a care home registered to provide nursing care or in the service user’s own home. Whatever the setting for the care, the NHS meets the full cost of the health and personal care needed and provided and is free of charge to the individual. National guidance can be accessed through the link below:<https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>People eligible for CHC will be subject to regular review. This may mean that services/support provided may be increased or decreased and is dependent on assessed need.CHC funding does not mean that this is a lifetime provision and in some cases following review a person will no longer remain eligible. In those cases the Local Authority may support the provision of care. The Local Authority may undertake a financial assessment in regard to eligibility and there may be a cost associated with a Local Authority package of care. |
| **Community (Continuing) Care****(sometimes referred to as “long term care”)** | Is a general term that describes the care some people need over an extended period of time as a result of a disability, accident or illness. The care is provided to address physical and/or mental health needs, and may require the services of the NHS and/or Local Authority. It can be provided in a range of settings from a hospital to a care home (as registered under the Care Standards Act 2000) and includes the service user’s own home. |
| **Continuing Care must be distinguished from:** |  |
| **Intermediate care** | This has specific rehabilitative or recuperative objectives, and is provided for a time-limited period, usually no more than 6 weeks. |
| **Interim (Transitional/ temporary) funded periods of assessment** | This is a period of care provided and funded by the CCG, usually in a nursing home/care home setting or a person’s own home, discharged whose long term care needs are not clear when they are “fit for transfer” from a hospital but are not appropriate for rehabilitation. Interim funding care arrangements have been implemented by the CCG to prevent delays in discharging patients waiting for a CHC Checklist/DST/Fast Track assessment. These packages of care will be reviewed within 28 days of the placement/care being placed, and it is at that point that the MDT will assess, using the principles and guidance laid down in the National Framework 2018, and make recommendation by further assessment of a checklist or DST/Fast Track in regard to eligibility for NHS Continuing Healthcare to North East Lincolnshire Clinical Commissioning Group.Practitioners must also follow the Local Guidance for NHS Interim Care Funding requests. |
| **Multidisciplinary/multi-agency** | These are assessments that are also essential to determine eligibility for other categories of care. |
| **Continuing health and social care (Integrated/joint packages of care)** | Describes a package of care that involves services from both the NHS and Social Services Departments where the primary need is **not** for healthcare but is for accommodation and personal/social care. The healthcare needs are described as being ancillary and incidental (secondary) to the needs for personal and social care, but may be part funded by the NHS as a joint commissioning arrangement or health needs may be provided by through the door services of a GP or District Nurse. See guidance in Appendix 1 |
| **Transition planning** | Describes a process of eligibility and assessment for 14 to 18 year old children. See Appendix 3 |

# 7. PRINCIPLES

Continuing Care means care provided over an extended period of time to a person aged 18 or over to meet physical or mental health needs which have arisen as a result of disability, accident or illness. NHS Continuing Healthcare means a package of continuing care arranged and funded solely by the NHS. (National Framework for NHS Continuing Healthcare & Funded-Nursing Care, Department of Health, 2018)

An individual who needs “continuing care” may require services from NHS bodies and/or from Local Authorities. Clinical Commissioning Groups have responsibility to ensure that the assessment of eligibility for NHS Continuing Healthcare takes place within 28 days from the completion of the Continuing Healthcare Checklist and in a timely and consistent fashion.

North East Lincolnshire Clinical Commissioning Group and North East Lincolnshire Local Authority are committed to working in partnership to achieve these timeframes, together with local provider services.

The principles underlying this policy are that the residents of North East Lincolnshire have fair and equitable access to NHS funded continuing healthcare. These principles are:-

* The individual’s informed consent will be obtained before starting the process to determine eligibility for NHS Continuing Healthcare
* If the individual lacks the mental capacity either to refuse or consent, a ‘best interests’ decision should be taken and recorded in line with the Mental Capacity Act 2005 as to whether to proceed with assessment for eligibility for NHS Continuing Healthcare. A third party cannot give or refuse consent for an assessment of eligibility for NHS Continuing Healthcare on behalf of a person who lacks capacity, unless they have valid and applicable Lasting Power of Attorney for Welfare or have been appointed as a Deputy by the Court of Protection for Welfare only.
* Health and social care professionals will work in partnership with individual patients/clients and their families throughout the process
* All individual patients and their families representatives will be provided with information to allow them to participate in the process
* North East Lincolnshire Clinical Commissioning Group will support the use of advocacy for individuals through the process of application for NHS Continuing Healthcare, as in other services where advocacy is required
* The process for decisions about eligibility for NHS Continuing Healthcare will be transparent for individual patients and their families and for partner agencies
* Once an individual has been referred for a full assessment for NHS Continuing Healthcare, following the completion of a Checklist, all assessments will be undertaken by the multi-disciplinary team involved; ensuring a comprehensive multi-disciplinary assessment of an individual’s health and social care needs, following the procedure for completion of the Decision Support Tool
* Assessments and decision making about eligibility for NHS Continuing Healthcare will be undertaken within 28 days of the completion of the continuing healthcare Checklist to ensure that individuals receive the care they require in the appropriate environment and without unreasonable delays

# 8. HOW TO ACCESS THE SERVICE

To access NHS Continuing Health Care, individuals need to liaise with the current health or social care professional involved in their case. People who do not have any current involvement can contact their GP/Single Point of Access or District Nursing service to ask for a continuing healthcare assessment.

9. THE ELIGIBILITY FRAMEWORK

The National Framework for NHS Continuing Healthcare & NHS Funded-Nursing Care (revised, 2018) provides a consistent approach to establishing eligibility for NHS Continuing Healthcare. This is achieved through the use of the revised National Tools and Guidance developed to assist in making decisions about eligibility for continuing healthcare.

As a result of the Coughlan Judgement (1999) and the Grogan Judgement (2006), under the National Health Service Act 2006, the Secretary of State has developed the concept of a “primary health need” to assist in deciding which treatment and other health services it is appropriate for the NHS to provide under NHS Continuing Healthcare.

Where a person’s “primary need” is a health need, they are eligible for NHS Continuing Healthcare. Deciding whether this is the case involves looking at the totality of the relevant needs from the assessment process. Where an individual has a primary health need, the NHS is responsible for providing all of the care to meet that need, including accommodation, if that is part of that need.

Consideration of primary health need includes consideration of the characteristics of need and their impact on the care required to manage the needs. In particular to determine whether the quantity or quality of care is more than the limits of responsibility of Local Authorities (as in the Coughlan Judgement). Consideration is given to the following areas:-

* **Nature and type of need:** the particular characteristics of an individual’s needs and the overall effect of those needs on the individual, including the type of interventions required to manage them
* **Intensity of need:** both extent (quantity) and severity (degree) of the needs, including the need for sustained care (continuity)
* **Complexity of** need**:** how the needs present and interact to increase the skill required to monitor and manage the care. This may arise with a single condition or the interaction between a number of conditions. It may also include situations where an individual’s response to their own condition has an impact on their overall needs
* **Unpredictability of need:** the degree to which needs fluctuate, creating difficulty/challenges in managing the need. It also relates to the level of risk to the person’s health if adequate and timely interventions/care are not provided

To minimise variation in interpretation of the principles and to inform consistent decision making, the NHS Continuing Healthcare Decision Support Tool has been developed for use by practitioners to obtain a full picture of needs and to indicate the level of need that could constitute a primary health need. The Decision Support Tool combined with the practitioners own experiences and professional judgement should enable them to apply the primary health needs test in practice in a way which is consistent with the limits on what can be legally provided by a Local Authority.

Eligibility for NHS Continuing Healthcare is based on an individual’s assessed health and social care needs. The Decision Support Tool provides the basis for decisions on eligibility for NHS funded continuing healthcare. The Decision Support Tool must be completed by the multi-disciplinary team, which as a minimum should include a health professional and a social care practitioner. Social care staff must always be involved in the completion of the Decision Support Tool were possible. Specialist staff and mental health staff should be involved dependent on the individual’s needs.

The multi-disciplinary team will make recommendations on eligibility of the individual patients/clients for NHS funded continuing healthcare to NEL Clinical Commissioning Group Decision forum. The CCG will consider the MDT recommendation and can make the following decisions with regard to recommendations about eligibility for NHS Continuing Healthcare:-

* Verify the recommendations of the multi-disciplinary team
* For complex cases where agreement cannot be met at the CHC Decision Forum the case will be referred to NEL CCG ICAAP Panel for consideration

The CCG may defer the decision and request further evidence to support recommendation and consequently decision on eligibility:

* Not verify the recommendations of the multi-disciplinary team where the evidence provided does not support the level of need indicated in the Decision Support Tool. A full written detailed explanation of the decision will be provided to the applicant and/or their representative
* To remove continuing healthcare funding from an individual who is currently in receipt of it, if the multi-disciplinary team recommendation is no longer eligible for NHS Continuing Healthcare

# 10. FAST TRACK APPLICATIONS

The Fast Track process is part of the National Framework for NHS Continuing Healthcare and Funded Nursing Care.

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

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 the Checklist or the Decision Support Tool (DST). Therefore, the completed Fast Track Pathway Tool, which clearly evidences that an individual is both rapidly deteriorating and may be entering terminal phase, is in itself sufficient to establish eligibility.

In Fast Track cases, the Standing Rules state that it is an ‘appropriate clinician’ who determines that the individual has a primary health need. The CCG must therefore determine that the individual is eligible for NHS Continuing Healthcare and should respond promptly and positively to ensure that the appropriate funding and care arrangements are in place without delay.

An ‘appropriate clinician’ is defined as a person who is:

1. responsible for the diagnosis, treatment or care of the individual under the 2006 Act in respect of whom a Fast Track Pathway Tool is being completed; and
2. a registered nurse or a registered medical practitioner.

The ‘appropriate clinician’ should be knowledgeable about the individual’s health needs, diagnosis, treatment or care and be able to provide an assessment of why the individual meets the Fast Track Pathway Tool criteria.

The application **must** include a care plan which provides a full description of the assessed care needs and the care package being requested

The decisions of NEL Clinical Commissioning Group are communicated to the individual patients, or their representative and the appropriate social care representative via formal letter.

Where an individual has been found ineligible for NHS continuing healthcare, individual patients, or their representative if they have the legal authority to act on behalf of the patient, can appeal North East Lincolnshire Clinical Commissioning Group’s decision in writing within 6 months of the notification of eligibility decision. When an appeal is received this is acknowledged and the evidence is reviewed by the North East Lincolnshire Clinical Commissioning Group’s Continuing Health Care Specialist Nurse, if the appeal is not resolved at this stage an offer of a formal Local resolution meeting with the individual patient or their representative is made to go through the process of decision and rationale for the decision.

The Local Resolution Review Panel will be independent of the initial MDT decision makers that made the eligibility recommendation.

The individual patient, or their representative, will be asked to submit evidence on why they disagree with the CCG’s decision and to specify those areas of disagreement. Families and individuals are encouraged to attend Local Resolution Panel meeting and to participate in the discussions. (Appendix 3)

Where an individual remains dis-satisfied by the Local Resolution Panel outcome they can request an Independent Review by writing to NHS England North at:

3 Leeds City Office Park
Meadow Lane
Leeds
West Yorkshire
LS11 5BD

Local Authorities and their employees are not able to appeal against a decision made by North East Lincolnshire Clinical Commissioning Group on behalf of a client. Appeals may only be made by individual applicants themselves or their representative. North East Lincolnshire Local Authority may disagree with the North East Lincolnshire Clinical Commissioning Group outcome and in these circumstances the jointly agreed Dispute Procedure should be used.

The National Framework for NHS Continuing Healthcare (CHC) requires CCGs and Local Authorities to have in place a jointly agreed mechanism to resolve disputes between them on eligibility for NHS Continuing Healthcare, please see Appendix 2.

# 12. COMPLAINTS

If an individual patient or their representative is dissatisfied with the manner in which the overall process has been conducted, rather than specifically the outcome regarding eligibility for NHS continuing healthcare (in this instance please follow the appeal process outlined above), they may make a complaint to North East Lincolnshire Clinical Commissioning Group through the NHS complaints procedure.

Complaints should be e-mailed to nelccg.askus@nhs.net or posted to:

PALs

North East Lincolnshire CCG

Municipal Offices

Town Hall Square

Grimsby DN31 1HU

# 13. DISCHARGE PLANNING

North East Lincolnshire Clinical Commissioning Group does not use the Checklist/Fast Track tool or Decision Support Tool (DST) in hospital in line with recent NHS best practice. Where it is believed a person may be eligible for continuing health care funding the CCG policy is to interim fund so as to not delay the discharge and to allow the Checklist/Fast Track/DST to be carried out in a more appropriate environment for the patient.

# 14. SECTION 117 – MENTAL HEALTH AFTERCARE

Under section 117 of the Mental Health Act 1983 (‘section 117’), CCGs and LAs have a duty to provide after-care services to individuals who have been detained under certain provisions of the Mental Health Act 1983, until such time as they are satisfied that the person is no longer in need of such services.

Section 117 is a freestanding duty to provide after-care services for needs arising from their mental disorder and CCGs and LAs should have in place local policies detailing their respective responsibilities, including funding arrangements.

Responsibility for the provision of section 117 services lies jointly with LAs and the NHS. Where a patient is eligible for services under section 117 these should be provided under section 117 and not under NHS continuing healthcare.

 It is important for CCGs to be clear in each case whether the individual’s needs (or in some cases which elements of the individual’s needs) are being funded under section 117, NHS continuing healthcare or any other powers, irrespective of which budget is used to fund those services.

There are no powers to charge for services provided under section 117, regardless of whether they are provided by the NHS or LAs. Accordingly, the question of whether services should be ‘free’ NHS services (rather than potentially charged-for social services) does not arise.

 **It is not, therefore, necessary to assess eligibility for NHS continuing healthcare if all the services in question are to be provided as after-care services under section 117.**

A person in receipt of after-care services under section 117, however, may also have on-going care/support needs that are not related to their mental disorder and that may, therefore, not fall within the scope of section 117.

Also a person may be receiving services under section 117 and then develop separate physical health needs (e.g. through a stroke) which may then trigger the need to consider NHS continuing healthcare only in relation to these separate needs, bearing in mind that NHS continuing healthcare should not be used to meet section 117 needs.

Where an individual in receipt of section 117 services develops physical care needs resulting in a rapidly deteriorating condition which may be entering a terminal phase, consideration should be given to the use of the Fast Track Pathway Tool.

# 15. MENTAL HEALTH CAPACITY AND DEPRIVATION OF LIBERTY PROTECTION SAFEGUARDS (LPS)

The Mental Capacity Act 2005 contains provisions that apply to a person who lacks capacity and who, in their own best interests, needs to be deprived of their liberty in a care home or hospital, in order for them to receive the necessary care or treatment. The fact that a person needs to be deprived of his/her liberty in these circumstances does not affect the consideration of whether that person is eligible for NHS continuing healthcare. North East Lincolnshire CCG’s policy can be accessed through the link below.

[https://MentalCapacityAct2005andDeprivationofLibertyPolicy](https://portal.yhcs.org.uk/documents/5665646/5860313/Mental%2BCapacity%2BAct%2B2005%2Band%2B%2BDeprivation%2Bof%2BLiberty%2B%2BPolicy/5d61d767-cf66-4357-a735-e2f90d75c531)

# 16. COMMISSIONING OF CARE PACKAGES

It is the responsibility of North East Lincolnshire Clinical Commissioning Group to:

* Plan strategically
* Specify outcomes
* Procure services
* Manage demand
* Manage provider performance for all services that are required to meet the needs of all individuals who qualify for NHS Continuing Healthcare
* Manage provider performance for the healthcare component of joint packages of care

The services commissioned will include on-going case management for all those entitled to NHS Continuing Healthcare, as well as for the NHS elements of joint packages of care, including the assessment and review of individual patient needs. To meet this responsibility NEL CCG commissions this provision via a Service Level Agreement with NEL LA.

As well as service contracts, NEL Clinical Commissioning Group as commissioners are responsible for monitoring quality, access and patient experience within the context of provider performance. This is undertaken by the CCG Quality Team.

NEL Clinical Commissioning Group takes a strategic as well as an individual approach to fulfilling their NHS Continuing Healthcare commissioning responsibilities within the context of quality, innovation, prevention and productivity agenda.

The Commissioners will follow NEL CCG Choice Policy: NHS Funded Care when considering packages of care to ensure that patients and or their representatives choice is balanced with the requirement of the CCG to keep within the set financial limit allocated to the organisation.

# 17. **ENDING OF CARE PACKAGES**

When a patient is no longer eligible for NHS continuing healthcare, NHS funding will cease from the date the CCG verifies the MDT recommendation of “no longer eligible”. The CHC service will notify the Local Authority that the patient is no longer eligible for NHS funding and may require a community care assessment.

If the individual declines a community care assessment or following a community care assessment is not eligible for local authority funding ie because they are responsible for funding their own care, the CCG will continue to fund care costs for a maximum of 14 days from the individual receiving formal notification of the CCG decision.

# 18. CHOICE

The National Framework for NHS Continuing Healthcare & NHS funded-nursing care (DH 2007 revised 2009, 2012, 2018) states:

*“Where a person qualifies for NHS continuing healthcare, the package to be provided is that which the CCG assesses as appropriate to meet all of the individual’s assessed health and associated social care needs.”*

North East Lincolnshire Clinical Commissioning Group will commission the provision of NHS funded continuing healthcare in a manner which reflects the choice and preferences of individuals as far as is reasonably possible, ensuring patient safety, quality of care and making best use of resources. Cost has to be balanced against other factors in each case, such as a patient’s desire to live at home.

Patient safety will always be paramount in planning a care package and will not be compromised. Therefore in circumstances where there are concerns about the quality of care in a care home and/or other facility North East Lincolnshire CCG cannot commission care at that time, North East Lincolnshire CCG will work with individuals and their families to commission an alternative package of care elsewhere.

North East Lincolnshire CCG is required to balance the patient’s preference alongside safety and value for money, consequently patients will have a choice from amongst providers that have a contract with North East Lincolnshire CCG and have agreed North East Lincolnshire CCG’s quality and pricing structure. This applies equally to home care packages of care.

North East Lincolnshire CCG’s choice policy can be accessed by following the link below:

[Choice](https://portal.nyhcsu.org.uk/documents/5665646/5860313/Choice%2BPolicy/58fc2c8a-aec5-4960-9e45-2f929640d4c3) Policy

19. JOINT/INTEGRATED PACKAGES OF HEALTH AND SOCIAL CARE SERVICES

If a person is not eligible for NHS continuing healthcare, they may receive a package of health and social care (rather than be fully funded by the NHS)

There will be some individuals who, although they are not entitled to NHS continuing healthcare (because ‘taken as a whole’ their needs are not beyond the powers of a local authority to meet), but nonetheless have some specific needs identified through the Decision Support Tool that are not of a nature that a Local Authority can solely meet or are beyond the powers of a Local Authority to solely meet. North East Lincolnshire CCG will work in partnership with its Local Authority colleagues to agree their respective responsibilities in a joint package of care, including which party will take the lead commissioning role.

Apart from NHS-funded nursing care, additional health services may also be funded by the NHS, if these are identified and agreed as part of an assessment and care plan. The range of services that the NHS is expected to arrange and fund includes, but is not limited to:

* primary healthcare;
* assessment involving doctors and registered nurses;
* rehabilitation/reablement and recovery (where this forms part of an overall package of NHS care, as distinct from intermediate care);
* respite healthcare;
* community health services;
* specialist support for healthcare needs; and
* palliative care and end of life healthcare.

# 20. PERSONAL HEALTH BUDGETS

CCGs are required to offer personal health budgets to people in receipt of NHS Continuing Healthcare funding, in order to give patients better flexibility, choice and control over their care. A personal health budget helps people to get the services they need to achieve their agreed health and wellbeing outcomes (agreed between the patient and clinician). Financially, personal health budgets can be managed in a number of ways, including:

* A notional budget held by the CCG commissioner
* A budget managed on the individual’s behalf by a third party, and
* A cash or card payment directly to the individual (a ‘healthcare direct payment’).

North East Lincolnshire CCG Practice Guide: Personal Health Budgets in NHS Continuing Healthcare provides comprehensive details regarding this process and can be accessed by following the link below.

[NELCCG Operational Policy for Personal Health Care Budgets](https://portal.yhcs.org.uk/documents/5665646/7753725/Operational%2BPolicy%2Bfor%2BNELCCG%2BPersonal%2BHealth%2BBudgets%2Bin%2BNHS%2BContinuing%2BHealthcare/3c392d55-ab76-4c83-9049-7bbe776dc27c)

# 21. TRANSITION FROM CHILDREN’S SERVICES TO ADULT CONTINUING HEALTH CARE SERVICES

The National Framework for NHS Continuing Healthcare & funded-nursing care (2018, Department of Health) and the supporting guidance and Tools only applies to people aged 18 years or over. It is important that both the Adult and the Children’s Frameworks consider transition.

* Participate in and engage where appropriate, in timely discussions with relevant Adult and Children’s Services managers regarding all proposed placements / support packages funded by Children’s Services that may require Adult Services funding post 18 (for example residential school placements) prior to any formal agreements being made
* Liaise where appropriate, with relevant Adult Services to assist them to ensure that all necessary planning and financial negotiations are completed in good time, enabling the transition from Child to Adult Services to be as seamless as possible for all concerned.

North East Lincolnshire Clinical Commissioning Group will ensure that it is actively involved in the strategic development and oversight of the local transition planning processes with their partners, and that their representation includes those who understand and represent adult NHS Continuing Healthcare. North East Lincolnshire Clinical Commissioning Group will ensure that adult NHS Continuing Healthcare is appropriately represented in all transition planning meetings regarding individual young people whenever the individual’s need suggest that there may be potential eligibility.

North East Lincolnshire Clinical Commissioning Group recognise as best practice that future entitlement to adult NHS Continuing Healthcare should be clarified at as early a stage as possible in the transition planning process, especially when the young person’s needs are likely to remain at a similar level until adulthood. Professionals responsible for children’s transition into adult services should identify those young people for whom it is likely that NHS Continuing Healthcare will be necessary, and should notify North East Lincolnshire Clinical Commissioning Group CHC Team, who may have responsibility for them as adults. This should occur when a young person reaches the age of 14. This should be followed up by a formal referral in order that a Checklist can be completed at age 16.

# 22. JOINT COMMISSIONING FOR SPECIAL EDUCATIONAL NEEDS AND DISABILITY (SEND)

Since September 1 2014, under section 26 of the Children and Families Act 2014, a new framework for children and young people (up to age 25) with SEND will apply in England. All new entrants to the system will be supported via these arrangements, and children and young people with existing statements of special educational needs will transfer to the new arrangements over a three year period. At the heart of the arrangements is an integrated Education, Health and Care plan (EHC plan).

NEL CCG has worked with NEL Local Authority, to develop a Local pathway, in regard to the range of education, health and social care services available for children and young people in their area who have SEN or are disabled, including those who do not have EHC plans, and how they can be accessed. This includes details of continuing care services and how one accesses continuing care.

A child or young person with a continuing care need will often also have SEND. Where this is the case, the child or young person’s continuing care needs, and package of care should at the very least feature as part of the integrated package of care in their EHC plan. There are many children and young people with special educational needs or disability without a continuing care need, and their health needs should of course be reflected in the EHC plan. The EHC plan process has at its heart a co-ordinated assessment of a child or young person’s needs, based on multi-professional input, and focused on the outcomes which make the most difference to the child or young person and their family. The views and aspirations of the child or young person, and of their family, are central to developing a holistic view of the child’s needs.

NEL CCG and NEL Local Authority have developed and implemented joint arrangements that include an agreement as to how continuing care fits with the EHC process. All cases which require a health contribution to the plan are considered initially at the CHC decision forum and presented to the ICAAP (multi-agency panel of senior managers and clinicians).

As the new SEND arrangements extend up to age 25, there will be young people aged 18-25, who are assessed as having a primary health need under the NHS Continuing Healthcare framework. This means that the NHS is responsible for providing the individual’s assessed health and social care needs – including accommodation, if that is part of the overall need. The local authority may not have any responsibility towards the young person. The local authority would still take the lead in co-ordinating the EHC plan but the services they were ultimately responsible for securing would be negligible.

# 23. TRAINING

~~T~~raining is delivered by the Continuing Healthcare Team by a rolling training programme or by request and in various venues.

All those applying the checklist, Fast Track Tool and DST must have been trained in the use of these documents. An ESR e-learning module for NHS continuing healthcare is available which all staff can use to gain greater understanding of the process.

# 24. GOVERNANCE

Implementation and delivery of the requirements of the National Framework for NHS Continuing Healthcare and NHS funded-nursing care (DH 2007 revised 2009, 2012, 2018) will be monitored through performance reports to the North East Lincolnshire Clinical Commissioning Group’s Director of Quality and Nursing.

National guidelines on continuing care packages:

<https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>

<http://www.networks.nhs.uk/networks/news/nhs-continuing-healthcare-faqs-published>

# 25. SOURCES OF GUIDANCE

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* The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care - November 2012 (revised)
* The NHS Continuing Healthcare (Responsibilities) Directions 2009
* Human Rights Act 1998
* National Assistance Act 1948 (Choice of Accommodation) Directions 1992 (as amended)
* Guidance on: National Assistance Act 1948 (Choice of Accommodation) Directions 1992. National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources) (Amendment) (England) Regulations 2001
* Updated guidance on National Assistance Act 1948 (Choice of Accommodation) Directions 1992: Consultation outcome (14 October 2004)
* National Health Service Income Generation - Best practice: Revised guidance on income generation in the NHS (1 February 2006)
* National Health Service Act 2006
* Who Pays? Establishing the Responsible Commissioner (August 2020)
* Relevant case law
* NEL Choice Policy: for NHS funded care
* NEL Practice Guide: Personal Health Budgets in NHS CHC
* NEL CHC Public Information about CHC Eligibility and the Appeals Process
* NEL Resolution of Disputes between the Local Authority and NELCCG regarding Eligibility for NHS CHC
* MCA 2005
* NHS CHC refreshed Redress Guidance 2015
* NELCCG Ethical and Pragmatic Decision Making Policy

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# APPENDIX 1

**GUIDANCE TO JOINT/INTEGRATED PACKAGES OF HEALTH AND SOCIAL CARE SERVICES**

According to North East Lincolnshire Local Authority eligibility threshold, it will be responsible for providing such social care, including personal care, as can lawfully be provided following the Coughlan limits. With respect to other types of joint package, the extent to which each service should provide care is for NHS and Local Authority partners to agree, bearing in mind the fact that Local Authorities can provide some health services, subject to the legal limitations.

Any adjustment to joint funding arrangements will be made within one month of the Continuing Healthcare Decision Forum agreement or in the case of high cost packages ICAAP will finalise the funding split. Such adjustments may include a refund being due to the adult social care budget, or the NHS budget, or to an individual who has contributed more than is required.

This policy relates only to joint package of care following an North East Lincolnshire CCG decision that an individual does not have a primary health need and does not qualify for a full package of care arranged and funded by the NHS  but that the assessment indicates that there are some needs that may be a NHS responsibility to fund.  This does not necessarily mean the funds will be from the CHC budget but from the wider CCG budget examples *(from the Framework)* given below.

In addition to NHS FNC where the care provided by a nurse within a care home registered to provide nursing care is paid directly to the care home by the NHS. The NHS is required to provide and fund a number of “through the door” community services. These may also form part of any joint package of care. CHC funding cannot be used to fund replacements for these services. Examples of these services include (but are not limited to):

* Primary healthcare, including GP’s and Community Nurses, assessment involving doctors and registered nurses.
* Rehabilitation/enablement and recovery (where this forms part of an overall package of NHS care, as distinct from intermediate care).
* Intermediate care.
* Community health services.
* Specialist support for healthcare needs eg Specialist Nurse support.
* Palliative care and end of life healthcare.

Section 117 is a freestanding duty to provide after-care services for needs arising from their mental disorder and CCGs and Local Authorities should have in place local policies detailing their respective responsibilities, including funding arrangements. 120. Responsibility for the provision of section 117 services lies jointly with Local Authorities

Apart from a CCG’s responsibilities for NHS continuing healthcare and their respective responsibilities under the Mental Health Act 1983, there may be other circumstances when the NHS is expected to take responsibility for a person’s long-term care. One example might be people with learning disabilities, where there may be an existing agreement to fund on-going care for individuals following the closure of long-stay hospitals or campuses. These responsibilities arise independently of a CCG’s responsibility to provide NHS continuing healthcare, and there should be no assumption that these responsibilities equate to eligibility for NHS continuing healthcare or vice versa or that there is a responsibility to joint fund these packages of care. Such agreements vary in terms of the commitments they make to fund needs that subsequently arise.

Where additional needs do arise, it will be important for the CCG to first check whether there is clarity in such agreements on whether or not they cover responsibilities to meet such needs. If the additional needs fall outside the agreement, CCGs must consider their responsibilities to meet them, in terms both of the CCG’s general responsibilities and potential eligibility for NHS continuing healthcare.

It is important that all assessments and reviews are carried out jointly by NHS and ASC practitioners. These practitioners will work collaboratively to draw up jointly agreed care plan(s). For most joint packages of care, ASC will be responsible for case management. However, this may not always be appropriate; each case should be considered individually and the most appropriate person identified to case manage.

Where an individual’s eligibility for full NHS Continuing Healthcare ceases, but they are eligible for a joint package of care, the NHS case manager may retain some elements of case management. In all cases the case manager should obtain a cost breakdown from the chosen provider(s) based on the jointly agreed care plan. The cost breakdown should be as detailed as possible, separating NHS and ASC contributions.

Once the care plan has been agreed by NHS and ASC practitioners, it will be submitted (together with the cost breakdown) for approval to the CHC Decision Forum. The NHS and ASC practitioners cannot agree/request the amount of joint funding this will be determined by Specialist practitioners at CHC Decision Forum.

Those elements of a jointly agreed care plan that can clearly be identified as either an NHS or ASC responsibility will be funded partially or in full by the relevant budget holder. Where the care or support requirements cannot be clearly attributed to the NHS or ASC, the NHS will be funded on a percentage basis.

It is important to note that If a person has a joint element of care agreed by CHC decision forum for a person who has an identified health need, this will be subject to regular review. It is important to note that Joint funding may be withdrawn if/when the identified health needs stabilise.

It is also important to note that the health element of funding contributing to a joint funded package of care must be clearly documented in the person’s plan of care along with a rationale for the amount of joint funding.

# APPENDIX 2

**North East Lincolnshire Clinical Commissioning Group**

**Adults and Community**

**RESOLUTION OF DISPUTES BETWEEN THE LOCAL AUTHORITY AND THE CCG REGARDING ELIGIBILITY FOR NHS CONTINUING HEALTH CARE**

1. The National Framework for NHS Continuing Health Care (CHC) requires CCG’s and Local Authorities to have in place a jointly agreed mechanism to resolve disputes between them on eligibility for NHS CHC (i.e. disputes in which body is responsible for funding the care package required.)
2. A separate procedure is in place to resolve appeals from individuals or their authorised representatives. The procedure described below cannot be used to make an appeal on the individual’s behalf.
3. If an appeal is lodged by the individual at the same time or subsequent to a dispute registered by the Local Authority, the appeal by the individual will take precedence and will follow the Appeals Procedure to its conclusion
4. The key objective of both the CCG and the Local Authority is to ensure that an individual’s eligibility for NHS Continuing Health Care is correctly determined based on the assessment of their care needs

**Key Principles**

5. The following principles apply:-

* The development of a culture of problem solving and partnership
* Formal disputes should be the last resort and should seldom be necessary
* Operational staff at MDT level should endeavour to resolve issues at the frontline wherever possible and should not be encouraged by either party to elevate the decision making to more senior people with less knowledge and understanding about the individual’s care needs.
* When they are unable to reach an agreement, operational staff will have timely and ready access to senior managers who are expected to agree a resolution of the issue with their counterparts
* The patient should not be informed of or become involved in the dispute in any way. In such cases they should be informed of the CCG’s decision on eligibility in the normal way, giving them the opportunity to appeal if they wish to
* Patients should always be cared for in an appropriate environment throughout the process

**The disputes process**

6. The process of considering and deciding eligibility for NHS Continuing Care must not delay treatment or appropriate care being put in place. The agreed arrangements therefore are based on the following principles:-

* Neither the CCG nor Local Authority will unilaterally withdraw from funding an existing package.
* The patient will be discharged from hospital as soon as they are ready (home, nursing/residential care etc.)
* The Local Authority and CCG will work together to agree case management arrangements to ensure the patient continues to receive the best possible care.
* In the event of a dispute between the CCG and the Local Authority, the placement will be funded without prejudice to the final decision and reimbursement will be made as required from the date that the dispute was registered.
* For disputed cases the placement / care package will be funded by:
	+ the current funding body (e.g. if patient was funded by CCG as NHS Continuing Health Care before admission, the CCG would fund on discharge. Likewise for the Local Authority if a comparable package of care was funded by the Local Authority).
* If there was no funding responsibility before admission or no comparable care package the CCG will fund on discharge for patients who require care in a nursing home and the LA will fund care at home or in residential care.
* The LA will undertake a full Community Care Assessment for disputed cases and provide a copy of the assessment to the CCG
* The LA must send a formal notice of dispute to the CCG setting out the reasons why it is considered that the assessment is incorrect or has not been applied to the criteria correctly.

**Dispute Panel Arrangements**

1. The arrangement for resolving disputes should be on an exceptional basis. Every effort should be made for the dispute to be resolved by discussion between the CCG Assessment Complex Case nurse, Social Worker and other MDT members who have direct knowledge of the patient and are conversant with his/ her care needs.
2. The dispute process must not delay discharge of a patient if a care package is ready prior to the dispute being resolved.
3. The stages for resolving the dispute are as follows:

**Dispute Stage Process Timescale**

|  |  |  |
| --- | --- | --- |
| Stage 1 | CCG Lead CHC Specialist Nurse and Local Authority Advanced Practitioner to meet with Assessment Complex Case nurse and Social Worker. Failure to agree, move to Stage 2 | Within 10 days |
| Stage 2 | CCG Head of Service and Social Care Head of Service to meet with CCG Lead CHC Specialist Nurse and Local Authority Advanced Practitioner | Within 10 Days |

At **Stage 2**, The respective CHC Leads can elect to resolve the matter by arbitration, mediation or independent review if considered appropriate.

|  |  |  |
| --- | --- | --- |
| Stage 3 | Formal Disputes Group to be convened consisting of:* The responsible CCG Director
* A responsible Local Authority Service Director
 | Within 10 days |

At **Stage 3**, the respective Directors / Chief Officers can elect to resolve the matter by arbitration, mediation or independent review if considered appropriate.

|  |  |  |
| --- | --- | --- |
| Stage 4 | Discussion between the Chief Officer of the CCG and the LA Strategic Director, People.  | Within 10 days |

At **Stage 4**, the Chief Officer and the Director of Social Care can elect to resolve the matter by arbitration, mediation or independent review if considered appropriate

**Information Sharing**

1. At all stages in the process, those involved in resolving the dispute must have access to all documents which are relevant. This should include:
* The Checklist
* The Decision Support Tool
* Community Care Assessment
* Care Plans
* All available patient records

# APPENDIX 3

**NEL CCG NHS Continuing Healthcare & Transition Planning Process**

At age 14 Children’s CHC Team should identify young people who are currently eligible for Children’s CHC and/or likely to be eligible for adult CHC. This is undertaken by joint annual review between Children’s and Adult CHC Senior/Specialist Nurses.

Following annual review relevant children are added to the Adult S1 CHC module with a front page note on their status and to be referred directly to adult CHC at transition/screening stage.

Transition team are notified annually.

NB:

Some children will not be required to have a NHS Checklist or DST until after their 18 birthday due to the nature of their needs or deterioration in health. Adult CHC will take automatic funding responsibility if already assessed as eligible for children’s CHC funding, if necessary these young people will have an adult CHC assessment later, or be fast tracked if appropriate.

At age 16 a NHS Checklist should be completed for those children not identified by the Children’s CHC team screening via the transition team completing an NHS Checklist where relevant.

Adult Social Care (A3 team) will triage transition referrals to adult social care and will only complete Care Act Assessment if they consider child does not meet DoH threshold for proceeding to a DST.

A3 will triage referrals and request a checklist from Children’s Services before this will progress a referral any further.

All completed checklists, positive or negative are required to be submitted to the adult CHC team. An ASC worker will be required to work jointly with colleagues in health.

At age 17 a NHS Decision Support Tool (DST) will be required to determine eligibility for adult CHC, a decision should be given in principle by the relevant CCG with a copy of the comprehensive Support Plan identifying how needs will be met.

Where needs may change, it may be appropriate to make a provisional decision and review two months prior to 18th birthday, all relevant documentation to be resubmitted. At this point, a decision will be made about whether health or social care will take the lead responsibility.

NB:

As identified above some children will be notified of a decision in principle prior to completion of a DST and prior to their 17th birthday.

At age 18assessed package of care is commissioned.

CHC will manage cases that are fully funded however, may still require some assistance from Adult Social Care for data inputting or assisting with needs, which remain within Local Authority responsibility, e.g. accommodation, carer’s services etc.

Reviews will take place in line with national framework for Adult NHS CHC.