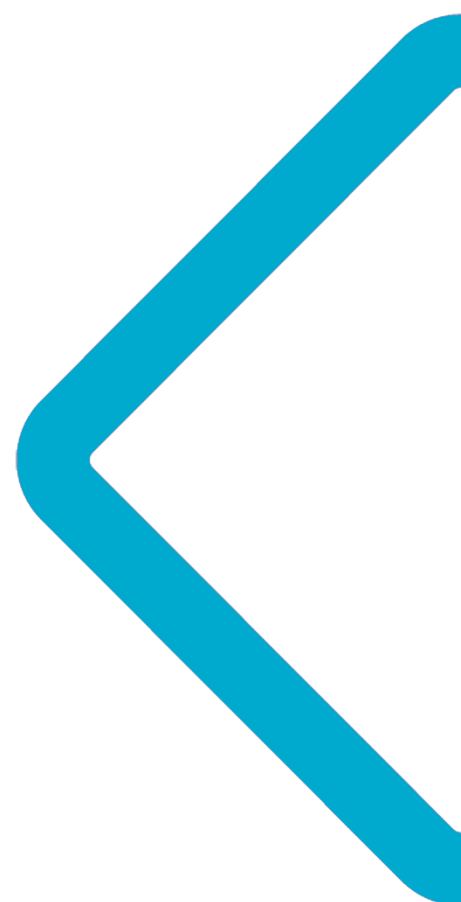


# NHS All Age Continuing Care

Exceptional Circumstances Procedure

Version 1a



## Document History

Version	Author(s)	Purpose / Change	Approval Date	Date Ratified	Responsible Committee	Review Date
1	All Age Continuing Care Network members. All Age Continuing Care System Oversight Group.	New ICB Policy			System Oversight Board.  Quality, Performance and Assurance Group.	
1a		Amended following Quality and Performance Committee comments	December 2024	11 Dec 25	Quality and Performance Committee	December 2027



<b>Contents</b>	<b>Page</b>
1. Background.....	4
2. Responsibilities and duties .....	5
2.2. Administrator: .....	5
2.3. The Panel: .....	5
2.4. Designated Decision Maker:.....	6
3. Procedure .....	6
4. Appeal.....	7
Appendix 1: Exceptional Circumstances Flowchart .....	9
Appendix 2: Exceptional Circumstances Panel Record .....	<b>Error! Bookmark not defined.</b>
Appendix 3: Exceptional Circumstances Panel Terms of Reference .....	10

- Background

- .1. The Cheshire and Merseyside Integrated Care Boards (ICB) All Age Continuing Care Commissioning Policy describes the way in which the Commissioner will make provision for individuals who have been assessed as eligible for an episode of:
  - NHS Continuing Healthcare funding
  - The NHS element to a Joint Package of Care
  - NHS Funded Nursing Care
  - Children's and Young People's Continuing Care
  - Section 117 Aftercare
  - Section 17 Leave
  - Mental Health Funding as an inpatient in an independent hospital
- .2. It is essential that when commissioning a package of care the Commissioner is mindful of the range of factors that can impact on the individual. The Commissioning Policy states that the Commissioner will **balance** a range of factors when commissioning a package of care including:
  - individual safety.
  - individual choice and preference.
  - individual's rights to family, private and home life and Equality Act protected characteristics.
  - value for money.
  - the best use of resources for the population.
  - ensuring services are of sufficient quality.
  - ensuring services are culturally sensitive.
  - ensuring services are personalised to meet individual need.
- .3. The impact of those factors is outlined in more detail in the ICB's All Age Continuing Care Commissioning Policy Equality Impact Assessment.
- .4. The ICB recognises that there may be occasions when Commissioners may not be able to balance all the factors equally when decision making on the provision of care. The purpose of this procedure is to ensure that where exceptional circumstances exist decisions are made that are:
  - Fair.
  - Reasonable.
  - Lawful.
  - Open to external scrutiny.
  - Evidenced.
  - Comply with Standing Financial Instructions.

Exceptionality will be determined on a case-by-case basis.
- .5. Examples of an exceptional circumstance that must be considered in this manner include the following:
  - Employing a family member as a paid carer via a Direct Payment Personal Health Budget.
  - Bespoke piece of equipment required above normal levels of expenditure.
  - Use of private services as opposed to Core NHS Services, for example, private physiotherapy or hydrotherapy.
  - Complex / specialist care that would be removed from family / informal carers.
  - If an individual requires specific care provision which reflects their religion, belief, and

culture, which requires care to be commissioned above normal levels of expenditure. This could improve their spiritual health and sense of belonging.

- Commissioning a package of care above normal levels of expenditure when a reasonable alternative is available.
- Where a case is in dispute with a council or other ICB and Cheshire and Merseyside ICB are paying or need to consider paying without prejudice.

.6. A case may also to be referred for consideration as an Exceptional Circumstance where the commissioner identifies features that may be considered unusual or contentious.

- **Responsibilities and duties**

.1. **Referring clinician:**

All requests must be accompanied by anonymised evidence provided by the Commissioning Nurse / Practitioner responsible for commissioning the care package or an element of the care package.

It is the clinician's responsibility to ensure that the appropriate information is provided, this is done by completing Section 1 of the Exceptional Circumstances Panel Record (Appendix 2) and submitting to the Panel administrator. The referring clinician must be aware that only information that is material to the commissioning decision will be considered by the exceptional circumstances panel. This may include information about non-clinical factors relating to the individual or information which does not have a direct connection to the individual's clinical circumstances.

Additional information may come from individuals in addition to the clinician's request, but this needs to come via the requesting clinician due to cases being anonymised.

.2. **Administrator:**

It is the role of the administrator to:

- Review Exceptional Circumstances Panel requests, ensuring these are fully completed and anonymised
- Ensure all requests are dealt with consistently, in a timely way and logged (this includes the outcome of the panel).
- Arrange an appropriate panel and ensure the members have sight of the request.
- Attend the panel meeting: take notes and record the decision, by completing section 2 of Appendix 2.
- Communicate the outcome of the Exceptional Circumstances Panel to the referrer.
- Record the outcome on the patient ID system.
- Log appeals and progress cases to the appeals procedure.

.3. **The Panel:**

The panel will meet as required with appropriate representation. The Panel will meet in private. Individuals or their representatives do not attend. It is important to note that the panel's decision will be based on the information submitted to them, so it is critical that this information is accurate and as detailed as possible.

The role of the panel is to discuss and make a decision regarding the offer of care based on the recommendation of the commissioning Practitioner and considering the evidence that has been provided by the referrer in sourcing the package of care. The panel will consider the balance of factors that is proposed.

The panel will consist of:

- The Chair, who will be the Designated Decision Maker, will be a senior member of the ICB as determined by the Commissioner's Standing Rules and Financial Instruction.
- Specific staff may be invited to the panel depending upon the request made, for example an Occupational Therapist may be invited to consider the purchase of bespoke equipment. It will be the responsibility of the panel chair to decide on the membership of each panel.

An Exceptional Circumstance Consideration Panel may meet face to face or virtually and the case may be discussed jointly or considered separately if the panel members agree the decision and any actions arising from the panel.

The Panel Terms of reference are outlined in Appendix 3.

#### .4. Designated Decision Maker:

The Designated Decision Maker will Chair the panel. They will ensure the case is evaluated, the recommendation is discussed and decide either to:

- Accept the case for funding identifying which of the options presented are approved.
- Reject the case for funding identifying which of the options presented are rejected.
- Request further information if they feel they do not have all the information required to make a decision.

- **Procedure**

.1. The flowchart outlined in appendix 1 is designed to ensure individuals and Commissioners can resolve where exceptional circumstances exist.

.1.1.  Individual found eligible for a package of care to be arranged by ICB.

Following assessment an individual is eligible for an episode of NHS Continuing Healthcare (CHC) funding including Funded Nursing Care (FNC) or a contribution to a Joint package of Care (JPC) or Section 117 Aftercare or NHS Funding as an inpatient in an independent hospital.

.1.2.  Individual needs outlined in a support or care plan.  
The Commissioning Nurse / Practitioner will ensure this is complete.

Gather any preferences that exist considering the views the individual and their representatives hold?

It is essential to understand if individuals hold clear views on the type of care provision that they prefer e.g., care at home, care in a specialist nursing home. Or how they propose to spend a personal health budget. It is imperative that preferences relating to protected characteristics (gender, sexual orientation, faith etc.) are reflected when planning care packages and therefore need to be understood by the Commissioning Nurse / Practitioner sourcing the package of care. This will be completed by the Commissioning Nurse / Practitioner.

.1.3.  Identify potential negative impacts perceived by the individual relatives or representatives on right to family, private or home life.

- .1.4.  Commissioning Nurse / Practitioner outlines all options for the provision of a package of care e.g., Domiciliary Care and Care in a Nursing Home.

It is essential that the package of care is considered in line with the factors outlined in section 3.7 of Cheshire and Merseyside's All Age Continuing Care Commissioning Policy. All options must be outlined and include impact of:

- Meeting individual need.
- Culturally sensitive.
- Individual rights and preferences.
- Sufficient safety.
- Sufficient quality.
- Cost.

- .1.5.  Refer to Exceptional Circumstance panel.  
Complete the Exceptional Circumstances referral and decision-making form (Appendix 2). Individual views and preferences included. The Commissioning Nurse / Practitioner will ensure this is complete and send anonymised to the panel administrator.

- .1.6.  Referral checked and logged.  
To ensure requests are dealt with consistently and in a timely way a logging and tracking system will be used. The documents will be checked. Requests which do not contain all the relevant documents will be returned at this point pending further information and the referrer will be informed.  
An Administrator will complete this.

- .1.7.  Panel considers evidence and recommendation, assesses if balance is achieved of all factors. (Section. 3.7 of the Commissioning Policy). Decide on option(s).
- Approve options
  - Reject option(s)
  - Request further information if they feel they do not have sufficient information.

- .1.8.  Approved Options progress to offers of care for the individual to choose or for a Best Interest decision to be made in a case where the individual lacks capacity to decide regarding these aspects of their care.

- 1.9.1 Cases which exceed panel members approval limits, as defined within the ICB Standing Rules and Financial Instructions, must be referred through relevant approval routes following the Exceptional Circumstances Panel.

- **Appeal**

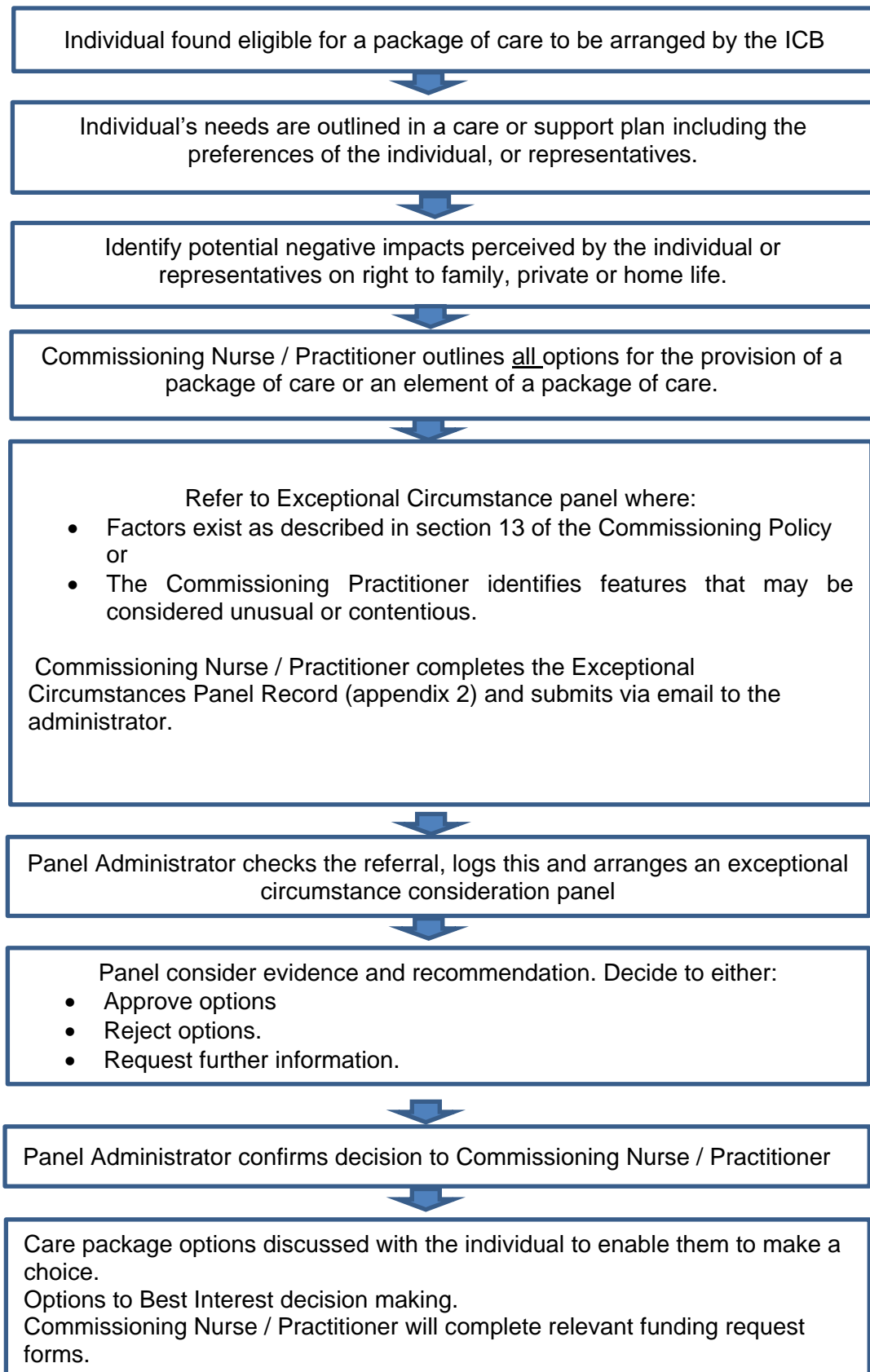
- .1. The appeal process will mirror that outlined in Section 17 of Cheshire and Merseyside's All Age Continuing Care Commissioning Policy. In line with its legal obligations, Government guidance and this Policy, the Commissioner will make a reasonable offer of care to individuals deemed eligible for NHS funding.
- .2. In the case of any offer of care either being considered to be inappropriate, unreasonable and/or unacceptable to the individual, this should be notified to the Commissioner within five working days, outlining the reasons or objections to the offer of care.
- .3. Upon receipt of a request to reconsider its offer of care, the Commissioner will arrange for a timely review to take place within a timescale appropriate to the urgency of the case, and a

maximum of five working days, while ensuring the individual's safety and welfare is paramount. If the offer of care has not already been discussed at an Exceptional Circumstance Panel, then this should be arranged to consider the relevant factors informing the decision. If the offer of care has already been discussed at an Exceptional Circumstance Panel the review should be escalated to the next senior commissioners to consider. An outcome should be clearly documented and communicated to the individual or their representative within a maximum of 5 working days.

- .4. Following its review, where the Commissioner determines to uphold the offer of care, this will be confirmed to the individual, advising of the right to make a formal complaint and how such a complaint may be made in accordance with the NHS complaints process.
- .5. Any dispute in care provision should not lead to a delay in discharge from Acute (Hospital care) and while the dispute is resolved the service user will receive their care in an appropriate environment outside of acute hospital.



## Appendix 1: Exceptional Circumstances Flowchart



## Appendix 3: Exceptional Circumstances Panel Terms of Reference

### 1. Purpose

- 1.1 To deliver the responsibilities as outlined in Cheshire and Merseyside ICBs All Age Continuing Care Commissioning Policy for the following reasons:
  - Where the package of care has factors identified within section 13 of the AACCC Commissioning Policy.
  - Where the package of care has identified negative impacts on the individual.
  - Where the package of care includes unusual or contentious features.
  - Where the Commissioner is unable to effectively balance the factors outlined in section 2.7 of the Policy.
- 1.2 Cases eligible to be considered by the panel will be those who following a comprehensive, multidisciplinary assessment of their health and social care needs the outcome shows that they are therefore eligible for an episode of:
  - NHS Continuing Healthcare funding
  - The NHS element to a Joint Package of Care
  - NHS Funded Nursing Care
  - Section 117 Aftercare
  - NHS Funding as an inpatient in an independent hospital

This includes newly referred individuals and existing individuals who are already in receipt of a care package.

- 1.3 To provide exceptional consideration to individual care packages on a case-by-case basis whilst enabling the Commissioner to retain its obligation to make best use of NHS resources to meet the needs of the whole population served.

### 2 Main functions

- 2.1 To consider exceptional circumstances by:
  - Considering the evidence that has been provided by the Commissioning Nurse / Practitioner in arranging a package of care.
  - Consider the balance of factors that is proposed.
  - To establish if exceptional circumstances exist that justify the options proposed.
- 2.2 To decide to either:
  - Accept the case for funding identifying which of the options presented are approved.
  - Reject the case for funding identifying which of the options presented are rejected.
  - Request further information if they feel they do not have all the information required to decide.

### 3 Panel Membership

- 3.1 The panel membership will be made of representatives who hold senior managerial positions in NHS Cheshire and Merseyside ICB All Age Continuing Care Services and have appropriate levels of financial authority as described in the Standing Rules and Financial Instructions.
- 3.2 Panel membership will consist of at least 2 members and will include specialist practitioners on an as required basis.

- 3.3 The members will have a sound understanding of the National Framework and CHC Processes, Mental Health Funding streams and the relevant expertise.
- 3.4 The panel will provide timely and responsive communication back to the individual within three working days of the date of the panel.

#### **4 Additional Responsibilities**

- 4.1. The panel must provide a written summary of the proceedings that include evidence of any areas of discussion and a clear reasoned decision.
- 4.2. The panel must provide sufficient detail and explanation regarding its decisions.

#### **5 Frequency of Panels**

- 5.1. The panel will meet on a case-by-case basis as soon as is reasonably practicable.