NHS CHC Appeals Policy

NHS Devon

Proud to be part of One Devon: NHS and CARE working with communities and local organisations to improve people's lives

Version	3.0
Policy Sponsor	Chief Nursing Officer
Policy Lead	CHC Programme Manager
Approved by	Chief Nursing Officer, Chief Medical Officer
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Document change history (to add rows, copy and paste)

Date	Version number of policy	Comments
January 2015	V1	First draft
February 2015	V1.1	Comments added and formatted
March 2015	V1.2	Addition of Appendices
March 2015	V1.3	Addition of Appendices
May 2015	V1.4	Updated after comments
February 2017	V1.5	Updated as part of the 'Test Of Change'
March 2018	V1.6	Updated after comments
April 2018	V1.7	Update after comments and V1.7 agreed as final version to be submitted to CHC CC 6 April and then SLC 19 April 2018.
June 2018	V1.8	Update following South Devon and Torbay CCG inclusion
July 2022	V1.9	Updated following the transition to NHS Devon Integrated Care Board
September 2023	V2.0	Review and policy updates
December 2024	V2.1	Review and policy updates
December 2025	V3	Policy reviewed, no changes required

Equality, diversity and inclusion statement

NHS Devon ICB is committed to the promotion of equal opportunities, addressing health inequalities and fostering of good relations between people protected under the terms of the Equality Act 2010, the Health and Social Care Act 2012 and Human Rights legislation. We are equally committed to the elimination of unlawful discrimination, harassment and victimisation. To demonstrate this commitment, we develop, promote and maintain policies, strategies and operating procedures. Every

effort is made to ensure that patients, employees, contractors or visitors do not experience discrimination; either directly or indirectly, because of their vulnerability; disadvantage; age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex (gender) or sexual orientation.

All staff must comply with this policy. Compliance must reflect our organisational commitment to and policy on, equality, diversity and inclusion. In addition, each manager and member of staff involved in implementing this policy must give due regard to the needs of those protected under law.

If you, or any other groups, believe you are discriminated against under the terms of the Equality Act, the Health and Social Care Act 2012 or Human Rights legislation by anything contained in this document; or you need this document in an alternative format, for example, large print, Braille, Easy read or other languages; please contact our Patient Advice and Complaints Team (PACT):

Tel: 0300 123 1672
Email: D-ICB.PatientExperience@nhs.net
Post: Patient Advice and Complaints Team,
NHS Devon
Aperture
Pynes Hill
Rydon Lane
Exeter
EX2 5AZ

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1. Introduction

1.1 This appeal procedure is in accordance with the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care July 2022 (Revised).

1.2 NHS Continuing Healthcare (CHC) 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 this National Framework. 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.

2. Purpose

2.1 The purpose of this document is to:

- Clarify the procedure when a challenge is made by a family representative, or advocate following an assessment of eligibility for NHS CHC. This includes the assessments of NHS CHC eligibility made by NHS Devon.
- Provide a mechanism for all applications for a review of decision, including cases where there is a Previously Unassessed Period of Care (PUPoC) in line with the National Framework.
- Provide consistency to recommendations made to by the multidisciplinary teams (MDT) following a review of an individual's eligibility for NHS CHC.
- Ensure that robust governance arrangements are in place regarding reimbursement of care funds to an individual or their representatives following a review as part of this policy.
- Apply exclusively to cases for which NHS Devon is the Responsible Commissioner.

2.2 This procedure is not for use where disputes arise between public bodies as to funding responsibilities or disagreement regarding a recommendation for funding made by the MDT - please see the NHS Devon Disputes Policy 2016 V10.

2.3 The National Framework states that each NHS Integrated Care Board should agree a local review process including timescales. It is envisaged that all requests for review will be completed up to and including stage 2 local review within 12 weeks.

3. Scope

3.1 It is the duty of NHS Devon to take reasonable steps to ensure that an assessment of eligibility for NHS CHC is carried out in all cases where it appears to the NHS that there may be a need for such an assessment. The purpose of such an assessment is to establish whether an individual has a Primary Health Need to establish eligibility for NHS CHC.

3.2 NHS healthcare providers and external contractors are commissioned to undertake this duty on behalf of NHS Devon. The decision on whether or not an individual demonstrates a Primary Health Need remains the responsibility of NHS Devon.

3.3 This procedure sets out the process to be followed by NHS Devon to determine whether an individual's case is appropriate for consideration under the appeal procedures, in order to assess whether that individual has been wrongly denied NHS funding.

3.4 This procedure aims to:

• Adhere to the Standing Rules for NHS CHC.

• Provide transparency throughout the appeal process.

• Adhere to guidance from the National Framework in addition to the timescales set by the Department of Health.

• Adhere to the guidance for NHS Devon on the time limits for an individual to request a review of an eligibility decision for NHS CHC Funding.

4. Challenges to individual decisions (Appeal)

4.1 Where a full CHC assessment has been carried out and the individual or their representatives (holding the appropriate legal authority) wishes to challenge the outcome of the decision, they must do so by contacting NHS Devon in the first instance.

4.2 In cases where an individual does not have the mental capacity to manage their own affairs a representative may request an appeal of an eligibility decision on their behalf if they hold one of the following documents:

• A Lasting Power of Attorney which has been registered with the Office of the Public Guardian. This can be either a Health and Welfare Lasting Power of Attorney or a Property and Financial Affairs lasting Power of Attorney.

• An Enduring Power of Attorney which has been registered with the Office of the Public Guardian.

• Court of Protection personal welfare deputy.

• A letter of authority from the individual concerned.

• Where no person holds any of the documents from the above list, each case will be considered on an individual basis taking into account what would be in the best interest of the individual concerned.

4.3 All challenges must be received, in writing, to NHS Devon no later than 6 months following notification of the decision regarding eligibility. Appeal notification prior to assessment and outcome will not be accepted. This time limit applies to all assessments undertaken after 1 April 2012, including PUPoC. Any procedure which may have been used before the implementation of this policy will no longer be used. Exceptionality criteria may apply to the above time limit and will be considered on a case-by-case basis.

4.4 A request for an appeal may be made in the following circumstances:

• Where an individual or their representative is dissatisfied with the application of the NHS Continuing Healthcare criteria regarding eligibility following completion of the Decision Support Tool (DST)

or

• The procedure followed by NHS Devon in reaching its decision as to the person's eligibility for NHS Continuing Healthcare

A request for an appeal can only be made once the recommendation of the MDT has been verified on behalf of NHS Devon. The decision will remain unchanged until such time as it is reviewed. If the decision is overturned, NHS funding will normally be backdated to the date where a primary health need was identified, or to the 29th day following completion of the Checklist, whichever is appropriate.

There is no recourse to appeal if the appellant disagrees with outcome of the NHS Continuing Healthcare Checklist. The individual has the right to ask NHS Devon to reconsider the decision. NHS Devon will give such requests due consideration, taking into account all of the information available, including additional information from the individual or carer should any be available.

4.5 Any refund will be in line with the NHS Continuing Healthcare Refreshed Redress Guidance 2015.

4.6 A copy of this policy is available on request and may be sent to those who wish to challenge a decision regarding eligibility.

4.7 The following challenges are outside the scope of this policy:

• The content of the National Framework. These should be pursued with the Department of Health and Social Care.

• The type and/or location of any offer of NHS funded CHC services or NHS treatment. These need to be pursued through the standard NHS Complaints Procedure.

4.8 NHS Devon ICB reserves the right to to refer an appeal directly to NHS England.

5. Receipt of a request for stage 1 review

5.1 An individual or representative will have received the outcome letter of non-eligibility which contains details of the procedure to follow where they have concerns regarding the outcome of the assessment process.

5.2 The individual or their representative will make contact with NHS Devon CHC Appeals Team to raise their concerns regarding the decision-making process. The appellant should be prepared to inform NHS Devon of the exact reasons for the appeal. This will involve the completion of an Appeal Request Form (completed by the appellant, see appendix 1) and the provision of appropriate authority to act (if not already provided). These should be returned to the Appeals Team within 20 working days.

Stage 1 review process

5.3 A representative of NHS Devon or a CHC lead assessor from the appropriate CHC hub, will contact the individual and / or representative within 5 working days of receipt of the appeal being logged. The aim being to address and resolve any concerns raised; this will usually take the form of a telephone conversation and could result in an online meeting if appropriate. A summary of conversations and actions will be recorded on the NHS Devon database.

5.4 An appropriate form of authority will be required along with consent to discuss the appeal and to share information. These may be determined by the particulars of the individual case. In a case where there is a lack of mental capacity, the principles of the Mental Capacity Act 2005 will be applied.

5.5 Where the individual to whom this decision relates is deceased, the appellant will need to provide appropriate legal evidence that they are entitled to benefit from the individual's estate.

5.6 The representative of NHS Devon or the CHC lead assessor will address all the relevant points made by the appellant.

5.7 If any additional evidence is presented or there is a significant change in need, this should be recorded on the DST. This will need to be reviewed and approved by those involved the assessment process.

5.8 The representative of NHS Devon or the CHC lead assessor will make every effort to ensure that the appellant has a clear understanding of the NHS CHC eligibility criteria and how it applies to their own situation.

5.9 If the NHS Devon Appeals team or on receiving advice from the appropriate CHC hub / lead assessor are, of the opinion that a stage 1 review would not be appropriate, then a decision to proceed to the stage 2 review process can be made. Decision-making rationale will be recorded on the NHS Devon database.

5.10 The appellant has the right to request to proceed to a formal stage 2 meeting at any time.

5.11 The Stage 1 review process will be documented on the NHS Devon database under a communication note. The note will include a summary of dialogue between the appellant and the health representative, the outcome and confirmation that the process has been completed. An email should then be sent to the NHS Devon's Appeals team confirming this.

5.12 The appellant will be informed of the outcome of the stage 1 review process by the Appeals team. This will be in writing or other communication as agreed, with rationale and information on how to progress to the next stage if they do not agree with the outcome.

5.13 The stage 1 review process should be completed within 2 weeks, where possible, of the appellant making initial contact.

5.14 NHS Devon will monitor the outcome of the stage 1 review process.

5.15 The outcome of the stage 1 review process is one of the following decisions:

• The individual does not meet eligibility criteria for continuing healthcare funding and therefore the original decision is upheld.

• The individual meets eligibility criteria for continuing healthcare funding and therefore the original decision is revised and submitted to NHS Devon's verification panel.

• The case is referred for review of the original assessment to include additional information previously unknown or a significant change in need if the representative has evidence of this.

• Escalation to the Stage 2 review process.

5.16 The original decision regarding eligibility remains in place until the representative of NHS Devon or the CHC lead assessor involved in the stage 1 review completes the process.

6. Request for a Stage 2 review (Including PUPoC)

6.1 In such cases where the individual does not meet the eligibility criteria and the appellant remains dissatisfied with the outcome of the stage 1 review, they have the right to request that NHS Devon undertakes stage 2 review which will involve an online meeting, telephone conference call or consideration of a written submission.

6.2 The stage 2 review is a formal process. There is a requirement for all relevant supporting information to be available.

6.3 The attendees of the stage 2 review will include a Quality Assurance Lead Nurse or a designated deputy from NHS Devon (Chair), senior member of the adult social care service (local authority representative) if there had been no involvement in the MDT assessment process, and / or other specialist nurses as appropriate, a minute- taker, the appellant and /or their representative (not acting in a legal capacity). NHS Devon may, at its choosing, outsource this process or parts of the process to other providers, external contractors or agencies as appropriate and required.

6.4 The purpose of the stage 2 review is to review the process and decision-making regarding a recommendation of non-eligibility for NHS continuing care funding.

6.5 The key principles of the stage 2 review process will be:

• Gathering and scrutiny of all available and appropriate evidence, whether written or oral including that from the GP, hospital (nursing, medical, mental health, therapies, etc.), community nursing services, care home provider, local authority records, assessments, checklists, Decision Support Tools, records of deliberations of multidisciplinary teams, panels, etc., as well as any information submitted by the individual concerned.

• Involvement of the individual or their representative as far as possible, including the opportunity for them to contribute and to comment on information at all stages.

• Explanation of any decision-making rationale in line with the 4 key characteristics as per the National Framework.

6.6 The outcome of the stage 2 review is one or more of three decisions:

• The individual does not meet eligibility criteria for continuing healthcare funding and therefore the original decision is upheld.

• The individual meets eligibility criteria for continuing healthcare funding and therefore the original decision is overturned.

• The case is referred for reassessment if indicated.

6.7 When NHS Devon has made a decision regarding NHS Continuing Healthcare eligibility, this remains in effect until NHS Devon revises the decision. NHS Devon will make any appropriate reimbursement in line with redress policy.

6.8 The appellant will be sent the outcome of the stage 2 review, along with a copy of the minutes, the decision outcome and rationale for the decision within 4 to 6 weeks of the date of the stage 2 meeting. Any delay will be advised in writing. If no resolution can be made by NHS Devon, the appellant needs to be informed on how to contact NHS England for an Independent Review. The appellant needs to be informed that they need to contact NHS England within 6 months of the NHS Devon decision that no resolution was possible.

7. Request for NHS England Review (Including PUPoC)

7.1 If the appellant remains dissatisfied with both outcomes of the stage 1 & 2 review process, they have the right to request that NHS England examine the evidence at an Independent Review.

7.2 This request must be made no later than 6 months following the date the stage 2 review process decision letter was sent by NHS Devon.

7.3 The Independent Review process does not apply where the appellant wishes to challenge:

• The content of the eligibility criteria.

• The type and location of any offer of NHS Funded continuing care services.

• The content of any alternative care package that they have been offered, the treatment or any aspect of the services they are receiving or have received.

7.4 NHS Devon's eligibility decision remains in place until NHS England have completed the independent review process.

8. Parliamentary and Health Service Ombudsman

8.1 If the original decision is upheld (by NHS England and NHS Devon), the individual has the right to contact the Parliamentary and Health Service Ombudsman to request a review of the process.

9. Funding

9.1 Where an appellant who has previously been found eligible for NHS CHC funding and is found, following review, that they are no longer eligible, that decision remains in effect during the appeals process and the appellant will be given 28 days' notice in writing of the cessation of any funding from date of decision of MDT.

9.2 Appropriate reimbursement will be made to an appellant where the appeal is upheld in line with NHS England NHS Continuing Healthcare Refreshed Redress Guidance 2015.

10. Complaints

10.1 It should be noted that the appeals and complaint procedures are two separate and distinct processes. Clarification should be sought as to which process is being requested.

10.2 All concerns and complaints should go via the Patient Advice and Complaints Team (PACT) who hold a database of all concerns and complaints received. All communications are logged, and the team are able to track the progress of any NHS Devon response.

10.3 PACT will forward the complaint to an appropriate team member or the appropriate NHS provider dependent on the nature of the complaint for investigation.

10.4 The investigating officer within the NHS Devon CHC team will be provided with a copy of the correspondence and a copy of the complaint plan that has been agreed with the complainant and the complaints team. The investigating officer will address the issues that have been raised and provide a response to the complaints team in the agreed timescales as per complaints policy.

11. Review and Dissemination

11.1 This procedure will be reviewed as indicated by the review date unless there are legislative changes to organisational infrastructure etc., which may require review sooner.

11.2 Staff will receive instruction and direction regarding this framework via:

- Line manager

• Specific training course

• Staff intranet

• Other communication method e.g., team meetings.

12. Distribution

12.1 Staff will be advised of this policy through the NHS Devon electronic newsletters and the NHS Devon website.

12.2 Managers are responsible for ensuring that staff have read and are aware of how to access this policy.

12.3 The policy will be available on request and may be sent to those who wish to challenge a decision regarding eligibility.

13. Accountabilities, Duties and Responsibilities

Chief Executive Officer	The Chief Executive Officer has ultimate accountability for the strategic direction and operational management of NHS Devon, including compliance with all legal, statutory and policy requirements.
Policy Sponsor	The Policy Sponsor is responsible for: • ensuring that policy is appropriate for consideration for approval. • endorsing this policy ahead of submission for approval. • with the Policy Lead, maintaining and updating procedures/protocols and other supporting documents for this policy;
Policy Lead / Author	It is the responsibility of the Policy Lead / author to: • ensure as far as possible that the policy is in line with Department of Health and Social Care guidance, legal requirements, and advice from clinical bodies. • to complete a QEIA and Implementation Plan where required • undertake a fair and proportionate consultation period with the relevant stakeholders as part of the document's development. • to ensure that the policy is in alignment with NHS Devon's strategy and values. • ensure that the policy is developed, approved, disseminated, and monitored as set out in the document. with Policy Sponsors, maintaining and updating procedures / protocols and other supporting documents for this policy.

Title of any other relevant Officer	N/A
Titles of any Committee	N/A
Line Managers	Line managers have a responsibility to ensure their staff comply with NHS Devon policies and standards within their areas of responsibility.
All Staff	Employed or engaged staff have a duty to comply with NHS Devon policies and standards as outlined in their contracts of employment and codes of conduct.

14. Approval and Review

14.1 This policy will be reviewed annually, or sooner if required, in order to ensure that it is current, relevant and reflects the strategic aims, objectives, organisational structures and responsibilities of NHS Devon.

15. Monitoring compliance and effectiveness

15.1 There is ongoing appeal data collection by the business intelligence team to evidence number of appeals within Devon Footprint.

15.2 The ICB will monitor CHC appeals by NHS Devon verification processes, through the Head of Quality Assurance. Any issues will be escalated and resolved through CHC assurance processes.

16. Quality & Equality Impact Assessment (QEIA)

16.1 A QEIA should be completed for all new policies and where significant amendments are made. This is not a new policy.

17. References

National Framework for NHS Continuing Healthcare and NHS-Funded Nursing Care July 2022 (Revised). Available at: https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care

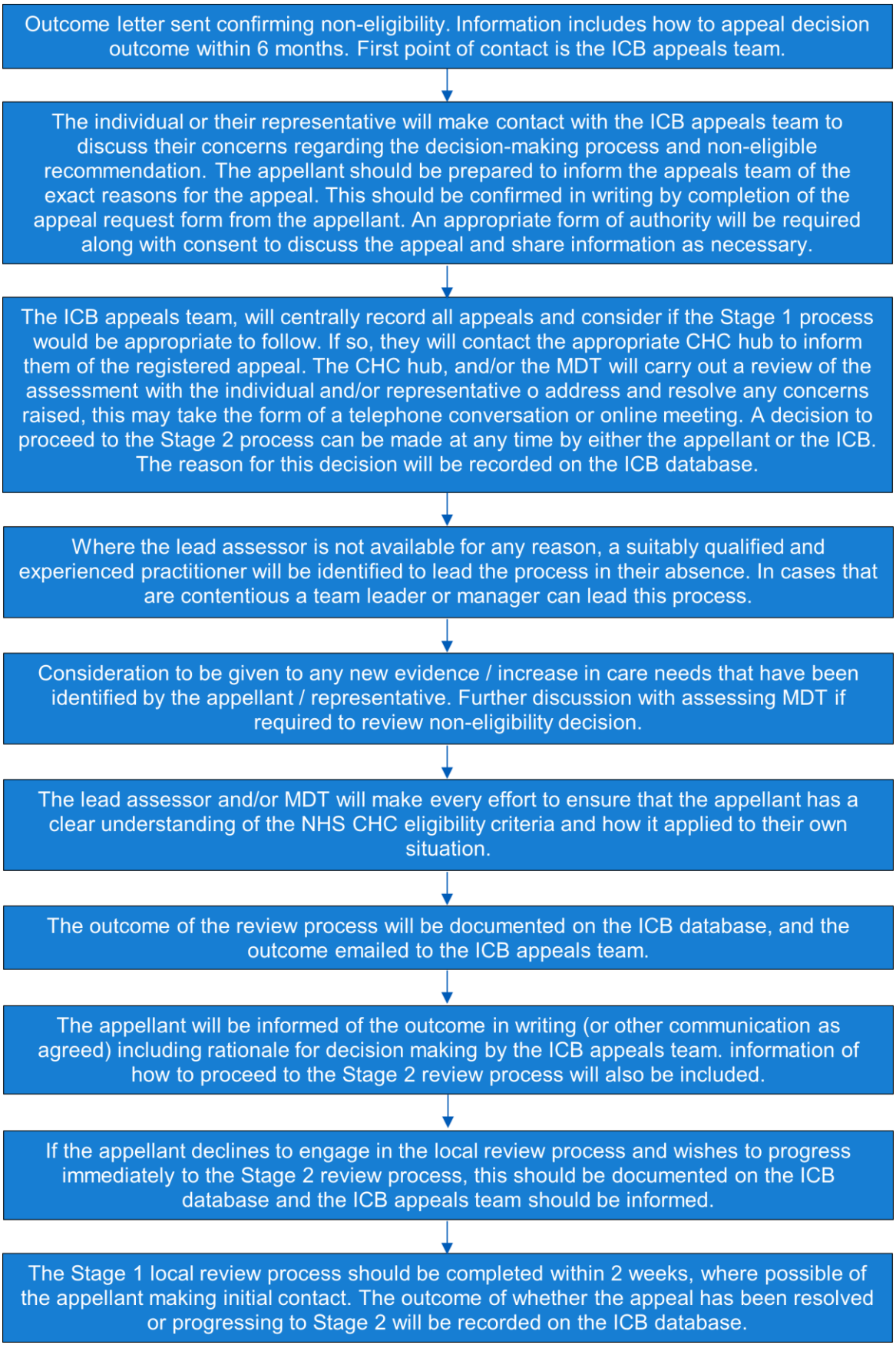
(Accessed 04 December 2024)

The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012: Part 6 Standing rules: NHS Continuing Healthcare and NHS funded nursing care
https://www.legislation.gov.uk/uksi/2012/2996/contents/made
(Accessed 04 December 2024)

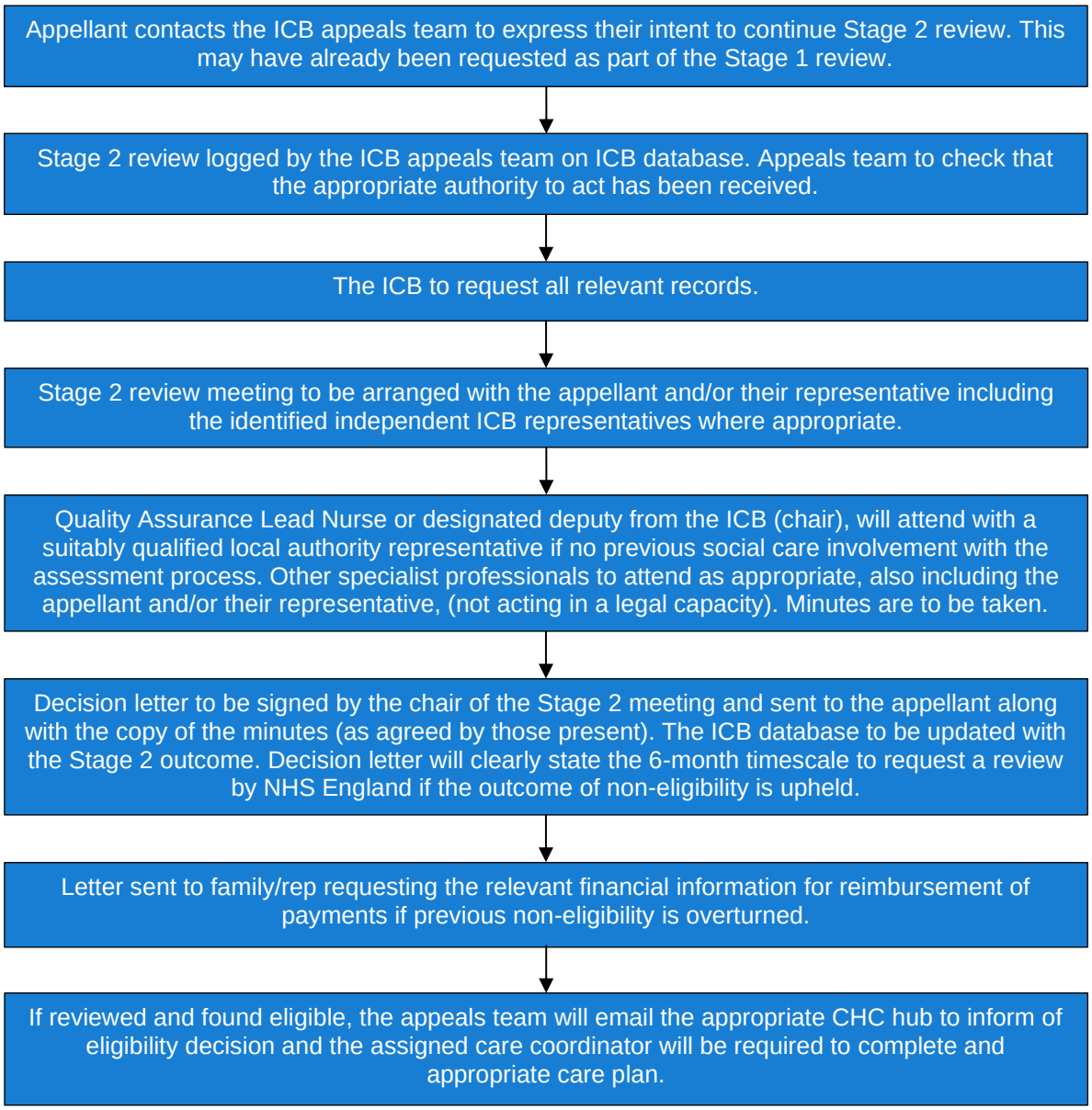
NHS England NHS Continuing Healthcare Refreshed Redress Guidance 2015.
https://www.england.nhs.uk/wp-content/uploads/2015/04/nhs-cont-hlthcr-rdress-guid-fin.pdf
(Accessed 04 December 2024)

Mental Capacity Act 2005.
https://www.legislation.gov.uk/ukpga/2005/9/contents
(Accessed 04 December 2024)

Appendix 1 Stage 1 – Local Review Process



Appendix 2 Stage 2 Local Review Process (Inc PUPOC)



Appendix 3 Stage 3 – NHS England independent review