

Exceptional Funding Requests Policy and Procedures

Appendix 5: Terms of Reference for Exceptional Funding Requests Appeal Panel



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Equality statement

This document demonstrates NHS Bristol, North Somerset and South Gloucestershire CCG's commitment to create a positive culture of respect for all individuals, including staff, patients, their families and carers as well as community partners. The intention, in accordance with the Equality Act 2010, is to identify, and then remove or minimise discriminatory practice in the nine named protected characteristics of age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation, religion or belief, and marriage and civil partnership. The CCG complies with the Human Rights Act 1998 and seeks to promote positive equality practice, valuing the diversity of all individuals and communities.



Appendix 5: Terms of Reference for Exceptional Funding Requests Appeal Panel

1. Purpose

- 1.1. To set out the process by which appeals against decisions made by the EFR Panel are considered.

2. Background

- 2.1. The CCG has an agreed policy by which individual patient funding decisions are made for treatments falling outside of locally or nationally agreed commissioning policies. Such requests are considered by the Exceptional Funding Requests Panel (EFR Panel).
- 2.2. Provided that the CCG is satisfied that the referring practitioner and the relevant specialist have provided adequate information on all the issues identified in the policy, it will consider individual requests for care that is not normally funded through its EFR Panel.
- 2.3. Where the CCG, through the EFR Panel, has decided not to fund a particular procedure or treatment for an individual, it is open to the individual and/or their referring practitioner to request an appeal, where grounds for appeal exist.
- 2.4. This document sets out the process for handling appeals.

3. Remit

- 3.1. The remit of the Appeal Panel is to review decisions made by the EFR Panel where it might reasonably be argued that the decision was not made in accordance with the Policy. The EFR Appeal Panel may review the decision of the EFR Panel if it can be demonstrated that the EFR Panel:
 - Made a decision that was inconsistent with the CCG's Ethical Framework for Decision-Making.
 - Made a decision that was inconsistent with the principles set out in this policy.
 - did not act in accordance with the CCG's operating procedures.
 - In reaching its decision did not take into account or weigh up all the relevant factors in the information it was presented with.
 - In reaching its decision took into account factors that may be argued to be irrelevant in the context of this policy.
 - The EFR Panel reached a conclusion that was not open to it on the evidence, acting as a reasonable EFR Panel.
- 3.2. The presence of new or more detailed evidence is not one of the Grounds for Appeal.



3.3. The EFR Appeal Panel shall have the following options:

- Uphold the patient's appeal and return the case back to the original EFR Panel to reconsider the case.
- Dismiss the appeal, and uphold the decision on the EFR Panel.

4. Authority

4.1. The Appeal Panel is the final arbiter of a decision for the CCG and acts as a sub-committee of the Governing Body. This does not remove a patient's right to access the NHS complaints procedure and the Ombudsman in order to seek further redress.

4.2. The Appeal Panel is constituted to review the circumstances surrounding an individual case and is not authorised to review or formulate routine commissioning policy. Individuals who wish to raise concerns about a Commissioning Policy may approach the CCG's Customer Service team or formally pursue a complaint through the NHS Complaints process by writing directly to the CCG.

5. Membership

5.1. Membership of the panel will comprise a minimum of three members, to include:

- a senior officer (Nominated Director) of the CCG although not the Director of Commissioning, and
- a clinically-qualified member of the CCG, and
- an Independent Member of the CCG.

5.2. It is expected that the Independent Member will chair the Appeal Panel.

5.3. The Panel should not include any member who took part in the original funding decision. If any member of the Panel believes from the information provided, that they may have personal knowledge of the individual they should declare this to the Chair of the appeals panel who will then seek to replace them on the panel.

6. Training

6.1. Panel members must take part in induction training and ensure that they are fully familiar with the Exceptional Funding Requests Policy and procedures before sitting on a Panel.

7. Access to External Advice

7.1 The Appeal Panel may call for specialist legal or other advice as appropriate.

8. Quorum

8.1. All members of the Appeal Panel must be present.



9. Frequency of Meetings

- 9.1. The Panel will meet as required and will hear appeals within 30 working days of the letter of acknowledgement to the appellant, unless there are mitigating circumstances e.g., restricted availability of an independent expert where this is considered material to the decision making process. In the latter scenarios the appellant will be informed, in writing, of the delay and the reason for the delay and given an estimated timescale for their appeal being heard. In any event the appeal will be heard within 6 months of the request, unless there are extenuating circumstances.

10. Who may Appeal

- 10.1 Appeal requests can be made by:
- the clinician who submitted the Exceptional Funding Request;
 - the patient's GP (if different);
 - the patient;
 - a person with parental responsibility where the patient is a child under 16 years of age;
 - a person appointed with lasting power of attorney if the patient lacks the mental capacity to lodge an appeal themselves; or
 - a third party with the documented consent of the patient.
- 10.2 If the Requesting Clinician or GP lodges the appeal, s/he is required to confirm that s/he has discussed the Appeal process fully with the patient and is acting with his/her consent.

11 Method of Making an Appeal

- 11.1 Communication of a decision by the EFR Panel not to fund a procedure/treatment will include advice to the individual of their right to appeal. The letter will set out clearly the grounds upon which such an appeal will be considered and the process through which an appeal should be lodged.
- 11.1.1 Appeals should be made in writing to the CCG within 20 working days of the receipt of the letter communicating the Exceptional Funding Requests Panel decision. The Appeal should clearly state the grounds for the appeal.

12 Grounds for Appeal

- 12.1 Patients and/or Requesting Clinicians may not agree with decisions made by the Exceptional Funding Requests Panel. An Appeal request simply seeking to overturn a decision without clear Grounds for Appeal being demonstrated will not be considered.
- 12.2 A senior officer (Nominated Director) of the CCG who is a member of the Commissioning Executive of the CCG and a member of Exceptional Funding Requests Appeal Panel ('Appeal Panel') will review the original case papers, the minutes of the EFR Panel and the appeal letter to decide whether one or more of the grounds for appeal may plausibly be advanced. The senior officer



will not make a decision about the merit of the appeal, but will decide whether a case has been made in the appeal letter that one or more of the Grounds for Appeal may exist, so that there is a potential case for review.

12.3 In determining whether grounds for appeal are present the process will take into account whether the EFR Panel:

- The decision was inconsistent with the CCG's Ethical Framework for Decision-Making.
- The decision was inconsistent with the principles set out in this policy.
- The EFR Panel did not act in accordance with the CCG's operating procedures.
- In reaching its decision the EFR Panel did not take into account or weigh up all the relevant factors in the information it was presented with.
- In reaching its decision the EFR Panel took into account factors that may be argued to be irrelevant in the context of this policy.
- The EFR Panel reached a conclusion that was not open to it on the evidence, acting as a reasonable EFR Panel.

12.4 In circumstances where during the appeal process new, relevant information that may have materially affected the decision of the EFR panel is presented, the case must be returned for reconsideration by the EFR Panel.

13 **Confidentiality**

13.1 Exceptional Funding Requests information will routinely be exchanged via secure NHS e-mail, letter or by telephone and will not be anonymised but will be managed in full compliance with CCG and national information governance standards.

14 **Arrangements for the Hearing**

14.1 The Appeal Panel will meet in private. Patients and appealing clinicians will not attend the appeal meeting. The person appealing will be invited to provide a written submission which should contain only information about how the Exceptional Funding Requests process or decision is thought to be flawed by reference to the points in 12.3 of this Terms of Reference.

14.2 Patients are welcome to use advocacy services to assist in the presentation of their case, if they wish though this excludes legal representatives acting in their professional capacity.

14.3 A member of the original EFR Panel may be invited to attend the Appeal Panel hearing to outline what information was considered and to clarify the decision reached. The EFR Panel representative will be then asked to leave the Panel meeting, and will not be included in the decision making process, which will be undertaken by Appeal Panel members only.

14.4 The Appeals Panel will inform the patient, their GP and/or any relevant consultant (in writing) of the decision of the appeal panel within 5 working days of the appeal being heard.



15 **Reporting**

- 15.1 Appeal Panel reports will be included in the Exceptional Funding Requests performance report will be submitted in accordance with defined key performance indicators to the CCG Quality Committee quarterly and to the CCG Governing Body at least annually.

16 **Review**

- 16.1 The Terms of Reference of the Exceptional Funding Requests Appeal Panel shall be reviewed on an annual basis.



