

**POLICY FOR APPEALS AGAINST DECISIONS
TAKEN UNDER THE EVIDENCE BASED INTERVENTIONS POLICY**

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1 PURPOSE

To set out the process by which appeals against EBI Panel decisions made by the Commissioner are considered.

2 BACKGROUND

- 2.1 The Commissioner 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 Evidence Based Interventions Panel (EBIP).
- 2.2 Provided that the Commissioner 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 Evidence Based Interventions Panel.
- 2.3 Where the Commissioner, through the EBIP, 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 TERMS OF REFERENCE FOR THE APPEAL PANEL

PURPOSE

- 3.1 The purpose of the appeal process is to review decisions made by the EBIP where it might reasonably be argued that the decision was not made in accordance with the EBI Policy. The EBI Appeals Committee may overturn the decision of the EBIP if it can be demonstrated that the EBIP:

- Failed in a material way to follow its own procedures; and/or
- Failed in a material way to consider the evidence presented to it (e.g. by failing to take account of a material fact; and/or
- Made a decision that no reasonable EBIP could have reached on the evidence before the panel

3.2 The EBI Appeal Committee shall have the following options:

- Uphold all or part of the appeal, but consider that funding the intervention is not appropriate
- Uphold the patient's appeal, and if appropriate authorise funding for the requested intervention
- Dismiss the appeal, and uphold the decision on the EBI Panel

3.3 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 Patient Advice and Liaison Service (PALS) or formally pursue a complaint through the NHS Complaints process by writing directly to the Commissioner.

4 AUTHORITY

The appeal panel is the final arbiter of a decision for the Commissioner and acts as a sub-committee of the Clinical Commissioning Group's Board. This does not remove a patient's right to access the NHS complaints procedure and the Ombudsman in order to seek further redress.

5 MEMBERSHIP

Membership of the panel will comprise of (none of whom will have been Involved in the case previously);

- Chief Officer / Chief Operating Office (or a nominated deputy) in the Chair
- A Lay Member of the Clinical Commissioning Group Board
- A Lead GP from the Governing Body

6 INDEPENDENCE

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.

7 ACCESS TO EXTERNAL ADVICE

Panel members are not required to have specialist expertise in the clinical area covered by the funding request, but should have the opportunity to

commission external expertise if this is relevant. For example, if there is an instrumental dispute of the facts presented the panel should be able to seek the advice of a separate independent 'expert' advisor or panel.

8 QUORACY

All members of the Panel or suitable nominated deputies must be present.

9 FREQUENCY OF MEETINGS

The Panel will meet as required and will hear appeals within two months of the request being received 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 a maximum of six months of the request, unless there are extenuating circumstances.

10 APPEAL PROCESS

Who may Appeal

- 10.1 Requests to appeal a decision of the EBIP may be made by the individual's GP or managing consultant and/or by the individual directly (or their responsible parent, guardian or main carer where applicable; in the case of an adult with capacity, their consent will be required).

METHOD OF MAKING AN APPEAL

- 10.2 Communication of a re-consideration decision by the EBIP 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.
- 10.3 Appeals should be made in writing to the Commissioner, clearly stating the grounds for the appeal and should be made within 28 days of the original decision of the EBIP.
- 10.4 On receipt of a request for an appeal to be heard, the case will be referred to the Chief Officer / Chief Operating Officer (or nominated deputy) who has not previously been involved in the case and the appellant will be advised within 28 days of receipt of the appeal letter whether an appeal has been granted.

GROUNDINGS FOR APPEAL

- 10.5 The Chief Officer / Chief Operating Officer (or nominated deputy) who has not previously been involved in the case will review all requests for an appeal to determine whether grounds for an appeal exist. In determining whether grounds for appeal are present the process will take into account whether the EBIP;

- Failed in a material way to follow its own procedures; and/or
- Failed in a material way to consider the evidence presented to it (e.g. by failing to take account of a material fact; and/or
- Came to a decision that no reasonable EBIP could have reached on the evidence before the panel.

10.6 In circumstances where during the appeal process new, relevant information that the Chief Officer / Chief Operating Officer (or nominated deputy) considers may have materially affected the decision of the EBI panel is presented the case can be re-considered by the EBIP at the request of the Chief Officer / Chief Operating Officer (or nominated deputy) considering the appeal, or an appeal panel can be established to consider the new information. If the new information in the opinion of the Chief Officer / Chief Operating Officer (or nominated deputy) would not have affected the decision of the panel and no grounds for an appeal are identified the appeal will be rejected.

11 DISCLOSURE OF INFORMATION

11.1 The patient and /or the referring practitioner will be given access to all information used by the Commissioner to make the decision. This will be provided prior to the appeal hearing

11.2 Disclosure of information will only be withheld if disclosure is likely to be of harm to the recipient a result of the disclosure. The decision on whether to withhold information will be made by the Chair of the Appeals Panel. Information may be given to the panel orally where a written account may be considered inappropriate.

12 ARRANGEMENTS FOR THE HEARING

12.1 Patients are given the opportunity to make representations to the Appeal Panel either in person or in writing. Attendance at panel is at the discretion of the individual. 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.

12.2 A member of the original EBIP may be invited to attend the Panel hearing to outline to the Panel and Appellant what information was considered and to clarify the decision reached. The EBIP 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.

12.3 After hearing all relevant presentations and having considered all relevant information made available to the panel, the Panel will retire in private to make their decision in accordance with their terms of reference.

14.4 A decision will be made by a majority vote of the Appeals Panel. If there is

a tied vote, the Chair will have a further casting vote.

- 12.5 The Appeals Panel will inform the patient, their GP and/or any relevant Consultant (in writing) of the decision of the appeal panel within 7 working days of the appeal being heard.

13 GENERAL - COMMUNICATION

The commissioner is committed to robust and effective communication. All decisions will be communicated in writing to the appellant.

14 CONFIDENTIALITY

- 14.1 Information will only be shared amongst the panel members, invited experts and the commissioning team involved in preparation of panel materials.
- 14.2 All paperwork considered during the appeals process will be anonymised wherever possible. Information about the individual will only be revealed to the panel if deemed necessary and relevant for them to carry out their duties.
- 14.3 However, if the patient or their representative attends the panel, anonymity cannot be maintained: the identity of the patient will be made known to the panel by the very nature of the patient or their representatives' attendance at the appeal panel meeting.

15 REPORTING PROCEDURES

- 15.1 Decisions of the EBIP and Appeal Panel will be presented to the Board via an annual report.
- 15.2 All information presented to either the Board from the EBIP or Appeal Panel will be presented in such a way as to ensure confidentiality i.e. by not including any information that could identify any individual.

16 MEDIA

Media contact will be handled within the Commissioners communications policy.

17 RIGHT OF REDRESS

The Appeal Panel is the final arbiter of a decision for the Commissioner. Any further redress requested by the appellant would be through the NHS Complaints process and or the Parliamentary Health Service Ombudsman

The EBI Appeals Process
 (following EBIP consideration and/or reconsideration)

