

Appendix 2: Procedure for Considering Appeals to the NHS Gloucestershire Integrated Care Board (ICB) Individual Funding Request Appeal Panel

1 Introduction

- 1.1 The ICB Individual Funding Request Appeal Panel (Appeal Panel) is a sub-committee of the Board of the ICB. It exists to consider appeals, in writing, by the applicant, and/or their patient against a decision of the ICB's Individual Funding Request Panel (IFRP). Appeals are not a rehearing of the case. Where there is new evidence not previously available or considered by the IFR Panel the case will be referred back to the IFR Panel for reconsideration.

2 Purpose of the Appeals Panel

- 2.1 The Appeals Panel's role is to independently assess whether the Individual Funding Request Panel's decisions are valid in terms of process, factors considered and criteria applied.
- 2.2 The Appeals Panel has the authority to make exceptions to the commissioning policies and healthcare contracts of the ICB and commit financial resources within the frameworks agreed.

3 Membership and Quoracy

- 3.1 The chair shall be the chair of the Integrated Care Board or their nominated deputy. None of the members of the appeal panel will have previously been involved in hearing any of the cases under consideration at the IFR panel. The Appeal Panel shall normally comprise at least one Lay worker. The Chair may co-opt onto the Panel a medical practitioner, nurse or other healthcare professional with relevant healthcare expertise, or any other advisor the chair considers will be helpful to the panel in its deliberations.
- 3.2 The Appeal Panel will be quorate if 3 members are present with at least:
- One Executive Director (or nominated deputy)
 - One Non-Executive Director
 - One healthcare professional

4 Responsibilities and Duties

- 4.1 The Appeal Panel will determine whether in considering the case in question the IFR Panel has breached any of the principles listed below:
- Illegality – the refusal of the request was not an option that could lawfully have been taken into account by the IFR Panel. The IFR Panel should have reached a decision that was open to them acting as a reasonable IFR Panel

- Procedural impropriety – there were substantial and/or serious procedural errors in the way in which the IFR process was conducted. The IFR Panel should have acted in accordance with the operating procedures adopted by the ICB.
- Irrationality – the decision to refuse to fund the requested treatment was a decision which no reasonable IFR Panel could have reached on the evidence before the Panel. In reaching its decision the IFR Panel should have taken into account and weighed all the relevant factors and not taken into account any irrelevant factors.

Those wishing to appeal will need to demonstrate which of the above grounds they feel has been breached and how.

Definitions – for guidance only

Illegality – alleges that the public authority has moved outside the duty or discretion granted it by statute. It has done something it ought not to have done, or failed to do something it ought to have done. This issue has become more important with the introduction of the Human Rights Act 1998 [discussed below *].

Irrationality – is sometimes called Wednesbury unreasonableness. It has been described in two ways, as follows:

‘It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls in this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our system’ [*In Council of Civil Service Unions v Minister for Civil Service* [1985]AC 374 at 410]

More recently it was explained by Lord Woolf MR. He said:

‘Rationality... has two faces: one is the barely known decision which simply defies comprehension; the other is a decision which can be seen to have proceeded by flawed logic’ [*R v N and E Devon HA ex p Coughlan* [1999] Lloyds Rep Med. 306, 323 col 2]

Procedural Impropriety – involves the duty to act fairly and impartially to those who are affected by decisions under the rules of natural justice. It has been described as follows:

‘failure by an administrative tribunal to observe rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice’ [Lord Diplock in *CCSU*]

*Illegality and the Human Rights Act 1998

Art.2 Everyone’s right to life should be protected by law...

Art.3 No one shall be subjected to torture inhuman or degrading treatment

Art.8 Everyone has respect for his private and family life

Art.12 Men and women of marriageable age have the right to found a family, according to the national laws governing the exercise of right

Art.14 The enjoyment of rights and freedoms shall be secured without discrimination on any ground such as race, colour, language, religion, political or other opinion...or other status.

- 4.2 Decisions are made by consensus. If consensus cannot be reached, decisions are made by simple majority voting, with each Panel member having one vote and the Chair having the casting vote.

5 Appeals administration

- 5.1 The servicing and administration of the Panel will be conducted by a member of the IFR team, who will be responsible for managing the administration of the appeal from receipt of the letter of appeal through to the notification of the decision.

6 Evidence available to the Appeals Panel

- 6.1 The Appeals Panel will have all the documents available to the Individual Funding Request Panel, as well as the record of the IFR Panel's decision and reasoning. The appellant is not permitted to introduce new or additional evidence to support the appeal. Should such new information be presented and be considered by the Appeals Panel to be material, the appellant should be advised to re-submit the application to the IFR Panel for review. No patient representation is possible at the appeal stage.

7 Referral to an Independent Assessor

- 7.1 Where the facts of a case are in dispute, the Chair of the Appeal Panel may, either before or at the hearing, refer the dispute to an independent assessor, chosen by the Chair, for determination. The assessor shall provide a written report to the Chair of the Panel within six weeks. If, as a result of the appeal, the case is referred back to the Individual Funding Request Panel for re-consideration, the Individual Funding Request Panel shall be bound by the assessor's determination of the disputed areas of the case in the absence of any new relevant evidence.

8 Time for Appeal Hearing

- 8.1 Unless circumstances render this impossible, the Panel hearing will take place a maximum of six weeks after the date of receipt of the appeal in order to give sufficient time to obtain relevant information. In the event of an "urgent" appeal the Appeal Panel will meet as soon it is reasonably possible for a quorate Panel to be assembled. The appellant to be informed of the Appeal Panel date in writing, or other means as appropriate, within 5 working days of receipt of the appeal.

9 Meeting Procedure

- 9.1 At the commencement of each Appeal Panel the Chair will explain the purpose, roles, responsibilities, quoracy, and confidentiality of the meeting membership. The Chair will also request any declaration of interest from the members of the meeting. The Appeal will only consider the paper records concerned with the request and the decision making

process (there will be no representation in addition to this). At the end of the meeting the minutes will be agreed by the Chair of the Appeal Panel.

Through the Chair the Panel can access legal advice and have legal representation at the meeting.

10 Appeal Decision

10.1 The Appeal Panel can reach one of 4 decisions:

1. Uphold the decision of the IFR Panel
2. Refer the case to the Individual Funding Request Panel for reconsideration at its next scheduled meeting with or without a recommendation
3. Overturn the decision of the IFR panel and agree to commission the requested treatment.
4. Defer a decision pending the submission of further information or advice

10.2 The Appeals Panel administrator will inform the appellant and the Chief Medical Officer (on behalf of the IFRP) of the decision in writing within 15 working days.

10.3 In the case of an “urgent” appeal the decision of the Appeal Panel will be communicated in writing, or other means as appropriate to the appellant within 5 working days.

10.4 A summary of the reasoning behind the decision will be included in the letter, as well as an outline of the complaints procedure if the applicant is unhappy with the outcome of the Appeal Panel decision.

11 Authority

11.1 The Panel is authorised by the ICB Board to seek any information it requires from members of the Individual Funding Request Panel who are directed to co-operate with any such request. The Appeal Panel is also authorised by the ICB Board to obtain legal advice and to secure the attendance of other appropriate persons with relevant experience and expertise if it considers this necessary.

12 Confidentiality

12.1 Panel members are bound by the Code of Confidentiality in respect of all written material and verbal discussions concerning the appeal. All papers are to be collected at the end of the Appeal Panel’s sitting except those required by an executive member for subsequent action. Any member who does not attend the sitting is responsible for returning all papers to the Appeals Secretary for shredding.

13 Complaint

13.1 If a complaint is made about the handling of an appeal, the ICB’s complaints procedure can be invoked at any stage. If the complaint relates to the impact of a commissioning policy on an individual then the complaints procedure will only be implemented once the Panel has reached a final decision.

- 13.2 A complainant contacting the ICB will be informed:
- i) Of how their complaint will be handled
 - ii) Of their right of recourse to the complaints procedure
 - iii) That, if an appeal decision is found to be properly and reasonably reached, an Independent Review Panel cannot overturn that finding.