

**NHS SOMERSET
INTEGRATED CARE BOARD**

EVIDENCE BASED INTERVENTIONS (EBI)

APPEALS POLICY

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DOCUMENT CHANGE HISTORY		
Version	Date	Comments
V2d	March 2014	CEC approved name change to Evidenced Based Interventions Panel (EBI), CCG house styled
V3a	August 2022	Somerset CCG replaced with Somerset ICB
V4	January 2023	Review & TOR aligned with NHSE appeals policy guidelines

1 PURPOSE

This document sets out the process for handling **Interventions not Normally Funded (INNF)** appeals against EBI Panel commissioning decisions made on behalf of NHS Somerset ICB.

2 BACKGROUND

NHS Somerset ICB has an EBI treatment 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).

Provided that NHS Somerset ICB is satisfied that the referring practitioner and the relevant specialist have provided adequate information on all the issues identified in the treatment policy, it will consider individual requests for treatment that are not normally funded through its Evidence Based Interventions Panel.

Where NHS Somerset ICB, 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.

3 APPEAL PROCESS

3.1 WHO MAY APPEAL

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).

3.2 METHOD OF MAKING AN APPEAL

- 3.2.1 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 clearly set out the grounds upon which, such an appeal will be considered and the process through which an appeal should be lodged.
- 3.2.2 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 EBI Panel.
- 3.2.3 On receipt of a request for an appeal the case will be referred to the Chief Medical Officer (or nominated deputy). The Chief Medical Officer (or nominated deputy) will advise the clinician within 8 weeks of receipt of the appeal letter whether an appeal has been declined or a date for a hearing will be arranged.

3.3 **GROUNDINGS FOR APPEAL**

3.3.1 The Chief Medical Officer (or nominated deputy) and Appeal Panel members 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 consider 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.

3.3.2 In circumstances where, during the appeal process, there is new relevant information that the Chief Medical Officer (or nominated deputy) and Appeal panel members consider may have materially affected the decision of the EBI Panel: the case can be re-considered by the EBI Panel at the request of the Chief Medical Officer (or nominated deputy).

3.3.3 If the new information in the opinion of the Chief Medical Officer (or nominated deputy) and Appeal Panel members would not have affected the decision of the EBI panel and there are no grounds for an appeal identified the appeal will be rejected.

3.4 **DISCLOSURE OF INFORMATION**

3.4.1 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 an appeal hearing

3.4.2 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.

4 **ARRANGEMENTS FOR THE HEARING**

4.1 Patients are given the opportunity to make representations to the Appeal Panel either in person or in writing. Attendance at the Appeal 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.

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

- 4.3 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.
- 4.4 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.
- 4.5 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.

5 GENERAL – COMMUNICATION

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

6 CONFIDENTIALITY

Information will only be shared amongst the Appeal Panel members, invited experts and relevant NHS Somerset ICB staffs involved in the preparation of Appeal Panel materials.

7 REPORTING PROCEDURES

Decisions of the Appeal Panel will be presented to the Quality Committee via an annual report.

All information presented to Quality Committee from the Appeal Panel will be presented in such a way as to ensure patient confidentiality.

8 MEDIA

Media contact will be handled within the Commissioners communications policy.

9 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.

Appendix 1

APPEAL PANEL TERMS OF REFERENCE (TOR)

1 Standard Operating Procedure Statement

NHS Somerset ICB will work, within available resources, to comply with the evidence-based interventions EBI guidance and individual funding requests IFR guidance as set out by NHSE.

<https://www.england.nhs.uk/wp-content/uploads/2017/11/comm-policy-individual-funding-requests.pdf>

<https://www.england.nhs.uk/wp-content/uploads/2017/11/ifr-standard-operating-procedure-v4.pdf>

2 EQUALITY STATEMENT

The EBI Panel will have due regard to the NHS public sector equality duty act [Equality Act 2010: guidance - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281212/equality-act-2010-guidance.pdf)

3 PURPOSE

The purpose of the Appeal Panel is to review decisions made by the EBI Panel (EBIP) where it might reasonably be argued that the decision was not made in accordance with the EBI Policy.

3.1 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 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

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 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 FREQUENCY

The Panel will meet as required and will consider appeals within 2 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 the appeal to be heard. In any event the appeal will be heard within a maximum of 6 months of the appeal request, unless there are extenuating circumstances.

9 QUORACY

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

10 ACCOUNTABILITY

The EBI panel is accountable to the Quality Committee of the ICB.

11 REPORTING AND MONITORING

Administrative support will take minutes and record the decision of the Appeal Panel against each case reviewed.

12 TRAINING AND SUPPORT

All members of the Appeals Panel will undergo induction training to gain a clear understanding of the principles for EBI decision making and interpretation of clinical evidence and clinical exceptionality. Legal considerations and case law will be covered in brief.

13 GUIDING PRINCIPLES

- All members must commit to regular attendance an Appeal Panel
- Suitably briefed nominated deputies should be identified where possible to
Ensure that the group is always quorate.
- Meetings should encourage open, honest, and challenging debate. Decisions should be reached by consensus where possible. Where there is a difference of opinion, a majority decision will be made, and this will be recorded in the minutes. In circumstances where there is no majority, the Chair shall have one additional casting vote.

14 REVIEW OF TERMS OF REFERENCE

The Terms of Reference of the Panel will be reviewed annually.

Appendix 2

Decision Making Pathway (Appeals)

