Derby and Derbyshire
Integrated Care Board

CLINICAL POLICY ADVISORY GROUP (CPAG)

Defining the Boundaries between NHS and Private Healthcare

1. Introduction

This policy applies to any patient in circumstances where NHS Derby & Derbyshire Integrated Care Board (DDICB) is the responsible commissioner for their NHS care.

Note
This document contains guiding principles, for more specific advice relating to drugs and devices please refer to local Guidance on Prescribing in Primary Care

2. Entitlement to NHS Care

NHS care is made available to patients in accordance with the policies of DDICB. However individual patients are entitled to choose not to access NHS care and/or to pay for their own healthcare through a private arrangement with doctors and other healthcare professionals. Other than as currently stated in this policy, a patient's entitlement to access NHS care should not be affected by a decision by a patient to fund part or all of their healthcare needs privately.

An individual who is having treatment which would have been commissioned by DDICB is entitled to commence that treatment on a private basis but can at any stage request to transfer to complete the treatment in the NHS. In this event the patient is entitled, as far as possible, to be provided with the same treatment as the patient would have received if the patient had had NHS treatment throughout. This cannot be used as a justification to provide care that is not available to other NHS patients and may mean the patient having to wait for the continuation of treatment, to put that patient in the same position as any other NHS patient.

Patients are entitled to seek provision for part of their treatment for a condition by a private healthcare arrangement and part of the treatment to be commissioned by DDICB, provided the NHS care is delivered in episodes of care which are clearly differentiated from any privately funded care. However the NHS commissioned treatment provided to a patient is always subject to the clinical supervision of the treating clinician. There may be times when an NHS clinician declines to provide NHS treatment if he or she considers that any other treatment given, whether as a result of privately funded treatment or for any other reason, makes the proposed NHS treatment clinically inappropriate.

An individual, who has chosen to pay privately for an element of their care such as a diagnostic test, is entitled to access other elements of care through the NHS, provided the patient meets NHS commissioning criteria for that treatment. However, at the point that the patient seeks to transfer back to NHS care, the patient should:

- be reassessed by the NHS clinician
- not be given any preferential treatment by virtue of having accessed part of their care privately
- be subject to standard NHS waiting times

A patient, whose private consultant has recommended treatment with a medication normally available as part of NHS commissioned care in the patient's clinical circumstances, can ask his or her NHS General practice to prescribe the treatment as long as:

- GP considers it to be medically appropriate in the exercise of the GP's clinical discretion
- drug is listed on DDICBs drug formulary, or the drug is normally funded by DDICB
- GP is willing to accept clinical responsibility for prescribing the medication.

There may be cases where a patient's private consultant has recommended treatment with a medication which is specialised in nature and the patient's GP is not prepared to accept clinical responsibility for the prescribing decision recommended by another doctor. If the GP does not feel able to accept clinical responsibility for the medication, the GP should consider whether to offer a referral to an NHS consultant who can consider whether to prescribe the medication for the patient as part of NHS funded treatment. The default is for the medication to be prescribed and supplied privately. In all cases there should be proper communication between the consultant and the GP about the diagnosis or other reason for the proposed plan of management, including any proposed medication.

Medication recommended by private consultants may be more expensive than the medication options prescribed for the same clinical situation as part of NHS treatment. This may be due to the fact that a particular choice of treatment may have been deemed not to be clinically effective and/or cost-effective and consequently is not included in local formularies. In such circumstances, local prescribing advice from DDICB should be followed by the NHS General Practice without being affected by the privately recommended medication. This advice should be explained to the patient who will retain the option of purchasing the more expensive medication via the private consultant.

3. Joint NHS and Private Funding

NHS care is free of charge to patients unless regulations have been brought into effect to provide for a contribution towards the cost of care being met by the patient. Such charges, known as co-payment, include prescription charges and some clinical activity undertaken by opticians and dentists. These charges are not "co-funding" (as defined above) but are specific NHS charges set by regulations that have always been part of the NHS.

Co-funding, which involves both private and NHS funding for a single episode of care, is not permitted for NHS care. DDICB will not consider any funding requests of this nature.

Patients are entitled to request NHS Acute Trusts to provide privately funded patient care as part of their overall treatment. It is a matter for NHS Trusts as to whether and how they agree to provide such privately funded care. However, NHS Trusts must ensure that private and NHS care are kept separate . Any privately funded care must be provided by an NHS Trust at a different time and place to NHS commissioned care. DDICB will not commission any privately funded care within the same episode of care as NHS commissioned care. In particular:

- each visit by a patient to a hospital can be an "episode of care" (as defined above). This means that private and NHS funded care cannot be provided to a patient in a single visit to an NHS hospital
- if a patient is an in-patient at an NHS hospital, any privately funded care must be delivered for the patient in a separate building or separate part of the hospital, with a clear division between the privately funded and NHS funded elements of the care, unless separation would pose overriding

concerns of patient safety.
- a patient is not entitled to “pick and mix” elements of NHS and private care in the same treatment and/or episode of care so is unable to have privately funded and NHS funded drugs provided as part of the same care episode.

Private prescriptions may not be issued during an NHS consultation except were allowed by regulations e.g., GP’s may prescribe limited drugs listed in DT Part XVIIIA 'Drugs, Medicines and other substances not to be ordered under a general medical service contract' or drugs on the Selected List Scheme (where patients do not comply with the criteria for NHS funding) privately.

A common enquiry concerns fertility treatment, where patients who are paying for IVF treatment ask their GP to issue NHS prescriptions for medication required as part of that treatment or seek NHS funding for investigations which are part of the privately funded IVF treatment. This is not permitted. If the patient does not meet DDICBs commissioning criteria for funding IVF, the NHS should not prescribe drugs or support other medical procedures required as part of the privately funded treatment.

If a patient is advised to be treated with a combination of drugs, some of which are not routinely available as part of NHS commissioned treatment, the patient is entitled to access the NHS funded drugs and can attend a private clinician separately (in a separate episode of care) for those drugs which are not commissioned by the NHS. If the combination of drugs is required to be administered at the same time or within the same episode of care, and there are no patient safety issues, the patient must fund all of the drugs provided and the other costs associated with the proposed treatment. Patients in such circumstances may approach DDICB to apply for NHS funding for the whole of the treatment. However, treatment outside of drugs and other treatments usually provided as part of NHS care can only be provided on grounds of exceptionality. The fact that a patient is prepared to fund part of their own treatment is not a proper ground to support a claim for exceptional circumstances.

When a patient wishes to pay privately for a treatment not normally funded by DDICB, the patient will be required to pay all costs associated with the privately funded episode of care. The costs of all medical and care associated with the treatment include accommodation, assessment, inpatient and outpatient attendances, tests, rehabilitation and management of side-effects. DDICB will not make any contribution to the privately funded care to cover treatment that the patient could have accessed via the NHS. However the patient remains entitled to revert to NHS care at any stage and will, at that point, be entitled to be provided with any drugs or other treatment which would have been provided to an NHS patient in the same clinical situation.

Any privately funded arrangement which is agreed between a patient and a healthcare provider (whether an NHS Trust or otherwise) is a commercial matter between those parties.

4. NHS Continuation of Funding of Care that was Commenced Privately

Where an individual commences on a medication following a private consultation which is in line with an associated NICE Technology Appraisal and wishes to transfer to care provided by an NHS provider, they will be subject to the same waiting times that a newly referred patient would encounter. During this time until they are reviewed by the appropriate clinician, their treatment will continue privately, regardless of whether their private clinician believes their treatment falls within NICE guidance. The NHS provider will not be able to fund this treatment until they have been reviewed and deemed appropriate to continue the standard NHS referral pathway.

DDICB policies define which treatment DDICB will and thus, by implication, will not fund. Accordingly if a patient commences a course of treatment that DDICB would not normally fund, DDICB will not usually pick up the costs of treatment if, for example, through the course:

- an individual cannot afford ongoing private treatment costs; or
- private healthcare insurance does not cover the full treatment costs; or
- the patient requests the NHS to pick up the costs on the ground that the treatment is clinically effective; or
- revision of a procedure/intervention carried out in the private sector initially.

A patient's treating clinician can submit an Individual Funding request if a case for clinical exceptionality can be demonstrated. Further information can be found on the DDICB Clinical Policies website. However, where DDICB has decided not to fund a treatment routinely, the fact that the patient has demonstrated a benefit from the treatment to date (in the absence of any other evidence of exceptionality) would not be a proper basis for DDICB to agree to change its policy. Such an approach would result in DDICB approving funding differently for persons who could afford to fund part of their own treatment. It is the responsibility of the Private Healthcare Provider to ensure that the patient is fully informed of DDICBs position relating to ongoing funding before commencing the private treatment.

If a patient commences treatment privately for a drug or other medical intervention that DDICB routinely agrees to fund, provided the patient's clinical circumstances are within those defined in DDICB's commissioning policy, the patient is entitled to transfer to NHS funded treatment at any stage, subject to waiting times. However, DDICB will not reimburse the patient for any treatment privately funded before a request is made for NHS funded treatment. If a patient seeks funding for a drug or other treatment that is not routinely funded and this is an application approved on the grounds of exceptionality, DDICB will not normally reimburse the costs of any prior privately funded treatment. DDICB is under no obligation to meet such costs but may do so at its discretion. Each case will be considered on its own merits, via DDICB's Individual Funding Request Policy route.

Individual patients who have been recommended treatment by an NHS consultant, which is not routinely commissioned by DDICB under its existing policies, are entitled to ask their GP to be referred for a second opinion from a different NHS consultant concerning their treatment options. DDICB's Contracts Team is available to offer advice on preferred providers in such circumstances. However a second opinion supporting treatment, which is not routinely commissioned by DDICB, does not create any entitlement to NHS funding for that treatment. The fact that two NHS consultants have recommended a treatment would not normally, in itself, amount to exceptional circumstances.

NHS patients are entitled to make a complaint about any refusal by DDICB to agree to fund care in their individual case, whether the care has been previously privately funded or not. If such a complaint is made, DDICB will investigate the patient's concerns as quickly as possible using DDICB's complaints procedure and will assess the decisions made against this policy and the relevant DDICB commissioning policies.

There is no legal or policy requirement for DDICB to take over funding responsibility for treatment which has been commenced outside the NHS and which is not routinely commissioned by the NHS.

DDICB commissioners have a responsibility to make rational decisions in the way in which they allocate resources and to act fairly between patients. DDICB makes prioritisation decisions each year which determine how resources are to be allocated. In addition, DDICB is prepared to consider in-year service developments and exceptional individual cases.

Patients who wish to make a case for DDICB to pick up funding for treatments that are not routinely commissioned can:

- discuss with their treating clinician about making an individual application for funding for their case on the grounds of exceptionality, or
- request DDICB to treat the application as a service development so that the requested treatment will be made available to all NHS patients in defined clinical conditions, or

- request that the treatment be included as part of DDICB's annual service plan and, if approved, be funded from the commencement of the coming financial year.

Continuation funding for treatment which has been commenced on a private basis will not be approved in any other circumstances.

It follows therefore that, in instances where DDICB has not yet agreed to fund a particular treatment, DDICB will not normally pick-up the costs of ongoing treatment.

This approach includes the following situations:
- Ongoing funding of treatment for patients leaving clinical trials. The responsibility for ongoing care rests with the sponsors of the trial – usually the pharmaceutical industry and the Provider Trust initiating treatment.
- Ongoing funding of treatment for patients who have been started on a treatment through drug company sponsorship (frequently known as compassionate use funding). The responsibility for ongoing care rests with the drug company and the Provider Trust initiating treatment.
- Ongoing funding for patients who have opted for private treatment and who can no longer afford private treatment.

Patients can access treatment on the NHS if and when the treatment is made available to all patients and/or where DDICB services and the patient's clinical needs meet DDICB commissioning policies for that particular treatment.

If a patient develops a non-emergency complication as a result a private procedure/intervention, the private healthcare provider will normally treat these, the patient will be expected to meet these costs which would not be funded by the ICB. An example of this would be revision surgery of procedures originally performed in the private sector.

If the cause of the complication is unclear or is an emergency, the NHS will treat the patient – and in this situation, the patient will not be expected to pay for the treatment.

5. Online Consultations

Private care provided by non-secondary care Consultants, e.g., online consultations. Any privately funded arrangement between a patient and healthcare provider is a commercial matter between both parties. General Practice is not under any obligation to arrange tests or investigations requested by private providers unless they deem them to be clinically necessary for the patient's care under the NHS. Any results from investigations requested from such consultations remain the clinical responsibility of the requester. It is not appropriate to return the results of such private investigations to the patient's GP to action. DDICB is not privy to such arrangements and cannot take any medico-legal responsibility for the terms of agreement or consequences to the patient. However, as the prevalence of remote healthcare increases, clinicians are encouraged to routinely enquire about privately accessed treatments during the patient consultation, to reduce clinical risk to the patient.

6. Responsibilities

- All DDICB Commissioned Providers and Member Practices are required to adhere to this Policy.
- The DDICB IFR Team/Panel/Appeals Panel will ensure that any individual funding requests relating to Defining the Boundaries between NHS and Private Care comply with this policy.
- The DDICB Medicines Optimisation Team will ensure that GP Practices are fully aware of the policy when asked to advise on the transfer of patients from NHS to Private Care.
- DDICB Contracting Teams will ensure that providers are aware of this policy.

7. Useful Resources

- NHS Derby & Derbyshire: Guidance on Prescribing in Primary Care published July 2023 accessed 21/03/25 http://www.derbyshiremedicinesmanagement.nhs.uk/assets/Non_Clinical_Guidelines/Prescribing_advice/Prescribing_in_Primary_Care_Guidelines.pdf
- NHS website /Going abroad for treatment - NHS – published Oct 2023, accessed 21/03/25

8. References

- NHS. The NHS Constitution. 2023 The NHS Constitution for England - GOV.UK – accessed 21/03/25
- Department of Health. Guidance on NHS patients who wish to pay for additional private care. 2009. Guidance on NHS patients who wish to pay for additional private care, accessed 21/03/25
- East Midlands Specialised Commissioning Group. Commissioning Policy, Defining the boundaries between NHS and Private Healthcare. 2009 Contract No.: EMSCGP0052V2.
- NHS commissioning board. Commissioning Policy: Defining the boundaries between NHS and Private Healthcare. 2013 Contract No.: Ref: NHSCB/CP/12.
- NHS Derby & Derbyshire: Guidance on Prescribing in Primary Care published July 2023 – accessed 21/03/25 http://www.derbyshiremedicinesmanagement.nhs.uk/assets/Non_Clinical_Guidelines/Prescribing_advice/Prescribing_in_Primary_Care_Guidelines.pdf
- General practice responsibility in responding to private healthcare - BMA

Appendices

Appendix 1 - Definitions

TERM	DEFINITION
Co-funding of NHS care	*Co-funding of NHS care* is any arrangement under which the cost of an episode of care within the NHS (for example an out-patient visit, an operation, etc.) is part funded by an NHS commissioner and part funded privately by the patient. Co-funding is not permitted within the NHS apart from the limited forms of co-payment permitted under regulations.
Co-payment	*Co-payment* is where the Government has passed Regulations which require patients to make a contribution to the overall cost of NHS commissioned care.
Cost effectiveness	*Cost effectiveness* is an assessment as to whether a healthcare intervention provides value for money.
Effectiveness - clinical	C*linical effectiveness* is a measure of the extent to which a treatment achieves pre-defined clinical outcomes in a target patient population.
Exceptional clinical circumstances	*Exceptional clinical circumstances* are clinical circumstances pertaining to a particular patient which can properly be described as out of the ordinary, unusual or special compared to other patients in that cohort. It can also refer to a clinical condition which is so rare that the clinical condition can, in itself, be considered exceptional. That will only usually be the case if the NHS commissioning body has no policy which provides for the treatment to be provided to patients with that rare medical condition.
Experimental and unproven treatments	*Experimental and unproven treatments* are medical treatments or proposed treatments where there is no established body of evidence to show that the treatments are clinically effective. The reasons may include the following: • The treatment is still undergoing clinical trials for the indication in question. • The evidence is not available for public scrutiny. • The treatment does not have approval from the relevant government body. • The treatment does not conform to an established clinical practice in the view of the majority of medical practitioners in the relevant field. • The treatment is being used in a way other than that previously studied or for which it has been granted approval by the relevant government body. • The treatment is rarely used, novel, or unknown and there is a lack of evidence of safety and efficacy. • There is some evidence to support a case for clinical effectiveness, but the overall quantity and quality of that evidence is such that the commissioner does not have confidence in the evidence base and/or there is too great a measure of uncertainty over whether the claims made for a

	treatment can be justified.
Healthcare intervention	A *healthcare intervention* means any form of healthcare treatment which is applied to meet a healthcare need.
Healthcare need	*Healthcare need* is a health problem which can be addressed by a known clinically effective intervention. Not all health problems can be addressed.
NHS commissioned care	*NHS commissioned care* is healthcare which is routinely funded by the patient's responsible NHS Commissioner. Commissioners have policies which define the elements of healthcare which they are, or are not, not prepared to commission for defined groups of patients.
NHS Directions	*NHS Directions* are instructions issued by the Secretary of State who has powers under NHS primary legislation to give directions to all NHS bodies (other than NHS Foundation Trusts) including DDCCG which place a legal requirement on NHS bodies to act in accordance with the Direction.
NHS pick-up of private patient	*NHS pick-up of private patients* refers to situations where a patient has chosen to access a treatment not normally available on the NHS, by self-funding private care and who then seeks NHS funding to provide on-going treatment or complete the course of treatment.
Private healthcare	*Private healthcare* means medical treatments or medical services which are not funded by the NHS, whether provided as a private service by an NHS body or by the independent sector. A patient may choose to seek treatment on a private basis even where that treatment is available from an NHS provider.
Private patients	*Private patients* are patients who receive private healthcare, funded on a pay-as-you-go basis or via a medical insurance policy. The healthcare provider can be an NHS Trust, a private hospital or an individual doctor.
Similar patient(s)	*A similar patient* refers to the existence of a patient within the patient population who is likely to be in the same or similar clinical circumstances as the requesting patient and who could reasonably be expected to benefit from the requested treatment to the same or a similar degree. The existence of one or more similar patients indicates that a policy position may be required of the commissioner.
Value for money	*Value for money* in general terms is the utility derived from every purchase or every sum spent.

"Episode of Care"	*An **Episode of Care*** is a period of engagement between an NHS commissioned healthcare intervention and the patient in which NHS commissioned care is provided to the patient. The following are examples of episodes of care: • A single visit to the GP • An outpatient appointment • A series of diagnostic tests relating to the same person at an NHS hospital on the same day • A day case operation will all the supporting clinical activity before and after the operation on that day • The initial assessment and prescription of a cancer drug. If the drug is required to be given at a series of outpatient appointments, then each attendance will be a separate episode of care
Attributable costs	***Attributable costs*** are to be considered when privately funded treatment is provided within NHS settings. ***Attributable costs*** means all costs which would not have been incurred by the NHS had the patient not sought private treatment. If an NHS patient has also gone to a private provider to buy a drug not available as part of the NHS care package, then they are expected to pay for any additional monitoring needed for the drug (blood tests, CT Scans etc.) and also for the treatment of predictable complications of receiving the drug/ if a patient chooses to seek private healthcare for a treatment that is not normally commissioned by the NHS the patient is expected to pay all **attributable costs.** It is not acceptable for example to "piggyback" a private monitoring test onto routine monitoring the patient might be having in parallel with the NHS.
Patients going abroad for medical treatment	Patients need to be aware of the implications of going abroad for treatment which is outlined in the NHS Guidance "Going aboard for medical treatment" The guidance provides advice to patients about being aware of how aftercare will be provided on return to the UK and to understand the conditions under which treated will be provided aboard If patients are considering seeking private treatment, of any kind, this should be discussed with a GP surgery before taking action.

Appendix 2 - Consultation

Consultee	Date
Head of Contracting, DDICB	February 2025
Director of Primary Care , DDICB	February 2025
Chair, GP Provider Board	February 2025
Consultant Public Health, Derby City Council	February 2025
Consultant Public Health, Derbyshire County Council	February 2025
Head of Pharmacy - Policy, DDICB	February 2025
Lead Individual Decisions Manager, DDICB	February 2025
Clinical Director, Derby Private Health, UHDBFT	February 2025
GP, DDICB Gender Dysphoria Working Group	February 2025
Quality Delivery Manager, CRHFT	February 2025
Clinical Policy Advisory Group (CPAG)	April 2025

Appendix 3 - Document Update

Document Update	Date Updated
Version 4.0 • Policy updated to reflect minor amendments including typos, consistency in terminology, links and references to CCGs • Section on patients going abroad for medical treatment has been added to Appendix 1 – Definitions • References to IFR have been updated to reflect that applications should be submitted by clinicians not patients • Clarification provided that NHS and private care should be kept separate • Online Consultation section updated to state that General practice is not obliged to arrange tests or investigations requested by private provider unless they are clinically necessary for the patients care under the NHS.	April 2025