



REDRESS POLICY

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REDRESS POLICY

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1. Scope of the policy

- 1.1. This policy covers the application of redress in three areas of the work of the Northern Eastern and Western Devon Clinical Commissioning Group (the CCG)
- 1.2. Concerns and complaints about actions of the CCG, where the complaint is found to be upheld.
- 1.3. Concerns and complaints about the actions of providers commissioned by the CCG, where the complaint is managed by the CCG and is found to be upheld.
- 1.4. Decisions of the CCG in the assessments of Continuing Healthcare eligibility for patients whose care is funded by the CCG.

2. Legislative Background

2.1. **The NHS complaints regulations**

The Parliamentary and Health Service Ombudsman confirms in the document *Principles for Remedy* that all appropriate remedies should be considered for complaints that have been upheld and these include financial remedies. It should be noted that should a complaint be investigated by the Ombudsman, the method and amount of redress will be directed by the Ombudsman to all parties.

- 2.2 **The NHS Finance Manual** provides guidance for NHS bodies on "special payments", including ex-gratia payments. This guidance enables an NHS body to make such ex-gratia payments, generally where the complainant has incurred financial loss following the actions or omissions of the relevant NHS body. However, it also makes provision for payments where there has been no financial loss but clarifies that such payments should only be made in exceptional circumstances.

2.3 **NHS Continuing Healthcare Refreshed Redress guidance 2015**

This guidance advises CCGs when settling claims for individuals arising from NHS continuing Healthcare eligibility decisions or where an eligibility decision has been reached on a previously unassessed period of care in respect of NHS continuing Healthcare and the need for redress has been identified.

3. Context

3.1 **Concerns and complaints**

The CCG can lead the investigation of concerns and complaints about any function of the CCG, any function of a service provider commissioned by the CCG, and any concerns and complaints about multi-agency issues concerning the CCG and /or NHS providers.

3.1.1 The CCG's main purpose, when dealing with complaints and concerns, is to investigate thoroughly, resolve the situation as soon as possible and wherever possible ensure the individual is satisfied with the response, feels that they have been fairly treated and that a satisfactory outcome has been reached. Where problems are identified the CCG uses investigation information and resulting action plans to improve services for other patients.

3.1.2 In all cases where a concern or complaint has been upheld, or considered justified, the CCG will consider all appropriate forms of redress, whether or not the complainant has asked for a specific form of redress in their original contact. The decision and process will follow the best practice advised by the Parliamentary and Health Service Ombudsman *Principles of Remedy*.

See Appendix 1

3.1.3 The redress offered will be proportionate to the maladministration or poor service identified and will be appropriate to the complaint and the complainant. The intention of awarding redress is to, where possible, put the complainant back in the position they would have been had the issue not occurred.

3.1.4 In most cases an apology or other form of redress will be sufficient.

3.1.5 However in exceptional circumstances, and where no other form of redress is proportionate and suitable, the CCG will consider an offer of financial redress.

3.1.6 Where it is identified that a commissioned provider is responsible for remedy, the CCG will expect all providers to use their own remedy processes in line with the Ombudsman principles and CCG policy.

3.1.7 Additionally consideration will be made to whether remedy is valid for any other person affected by the identified maladministration or poor service.

3.2 **Continuing Healthcare assessment decisions**

Any decision that a patient is eligible for Continuing Healthcare funding will potentially mean that care costs already met by a family should now be paid to the family by the CCG. Where there is a case for additional losses to be covered, the CCG will assess the request following the Continuing Healthcare Redress Guidance 2015.

See Appendix 2

4. Forms of Redress

4.1 There is no set list of form of redress but redress could include:

- An apology
- An explanation
- Acknowledgement that something has gone wrong
- Remedial action to prevent it happening again; such as changing a decision, revising a procedure, training for staff.

- Involvement in a Root Cause Analysis or invitation to a Patient Focus Group to look at service improvements.
- Financial

5. Financial Redress

5.1 Financial redress will be offered by the CCG where:

- A concern/complaint has been upheld, **and**
- There has been maladministration or poor service by the CCG, **and**
- The maladministration has directly caused injustice or hardship to the complainant or their carer, **and**
- No other form of redress is proportionate or suitable.

5.2 Financial redress will be offered additionally when a CHC award is made where:

- a need for redress has been identified **and**
- there are exceptional circumstances **and**
- where a patient or family can demonstrate evidence of additional costs or financial loss occurring while a decision was not made as defined within the national redress guidance **and**
- this loss is beyond the actual care costs and legal interest addition.

NOTE: It should be noted that financial redress is NOT compensation. If the complainant or their representative is seeking damages or compensation, redress is not suitable and they should be directed to the legal routes available.

See appendix 3

5.3 Maladministration includes, for example, neglect or unjustified delay in service provision; failure to follow agreed policies; providing inaccurate or misleading advice or information, bias or unfair discrimination.

5.4 However, not all maladministration causes an injustice; the complainant may not have suffered any disadvantage or if the complainant has been disadvantaged, this may not be as a direct consequence of the issue or the processes in place. For financial redress to be considered it must be clear that the injustice occurred as a direct result of NEW Devon CCG actions or non-actions.

5.5 Financial redress will be considered in cases where the patient and/or carer have suffered direct or indirect financial loss as a direct result of maladministration by NEW Devon CCG.

For example: DRSS may consider reimbursing travel expenses to an appointment that the patient was not notified in advance had been cancelled by DRSS, or costs that have been incurred as a result of CCG actions that the complainant would not have had to pay otherwise.

6. Calculating financial redress

6.1 Where the financial loss is quantifiable the offer of payment will be calculated on the basis of how much the complainant has lost and/or any additional reasonable costs the complainant has incurred, and the situation meets a valid descriptor of injustice or hardship.

6.2 When the loss is not quantifiable, in order to calculate an appropriate amount to offer the following factors will be taken into account:

6.2.1 **The effects of the complainant's own actions:** For example, not attending an appointment.

6.2.2 **The contribution to the injustice or hardship of the complainant**

6.2.3 **Quantifiable loss:** Costs that would not have been necessary but for the CCG's maladministration. For example,

- A patient paying for treatment from elsewhere because of an error on the part of the service provider. This will need to be assessed with care, on the basis that it was reasonable for the complainant to incur costs and they were as a consequence of the maladministration
- Travel or carer expenses incurred through no fault of their own
- Loss of possessions. In such cases the individual should be reimbursed reasonable replacement value.

6.2.4 **Loss of value:** For example, damage to possessions.

6.2.5 **Lost opportunity:** For example, the complainant may have been deprived of the right to appeal against a funding decision because he or she was not told of that right.

6.2.6 **Distress:** This will include stress, anxiety, inconvenience, frustration, worry and uncertainty. The amount will need to take account of all the circumstances including the severity of the distress, the length of time involved, the vulnerability of the individual and the number of people affected.

6.2.7 **Professional fees:** It may sometimes be appropriate to recognise the nature of the person's difficulty was such that expenditure on professional fees in pursuing the dispute was justified; for example, paying an advocate because one had not been offered by the CCG. However, this will need to be assessed with care. The CCG will need to be satisfied that it was reasonable for the complainant to incur these costs in the first instance, and that it was a consequence of maladministration. It may sometimes be appropriate to reimburse only part of the expenditure, from the point when the professional advice became appropriate.

6.2.8 **Time and trouble in pursuing the complaint/CHC case:** This should only be paid when the time and trouble in pursuing the complaint/CHC case are more than the minor costs that would routinely be expected. It is not the same as

distress caused by the CCG's actions. In assessing whether payment is appropriate, relevant factors to consider could include the passage of time in resolving the matter; the effort required from the complainant; the degree of inadequacy of the CCG's responses, the vulnerability of the individual and whether there has been any element of wilful action by the CCG as opposed to poor administration or failure to adhere to agreed processes.

6.2.9 Previous awards of redress by the Parliamentary and Health Service Ombudsman

See Appendix 4

6.3 Where interest is applicable, the CCG will apply the rate of interest based on the Retail Price Index, as advised within the 2015 Continuing Healthcare guidance.

7. Making an offer of financial redress

7.1 When an offer of financial remedy is made it should include the words "without prejudice" at the top of the first page. Any offer should always be without prejudice and as a goodwill gesture "in full and final settlement" of the complaint. This means that, if the offer is accepted, the matter is effectively closed. Confirmation of acceptance of the offer should be obtained in writing before payment is made.

7.2 All offers of financial redress will be made on a time limited basis of 3 months and will then expire. This will be made explicit in the letter of offer.

8. Monitoring and Authorisation of payments

8.1 The CCG has a process in place which describes the decision making, recording and monitoring of redress decisions of the CCG.

8.2 Offers and payments of redress following a complaint will be reported to Executive Committee. Records of all redress payments will be recorded by departments and copied to finance. Monitoring of redress payments will be carried out by Audit and Assurance Committee.

9. Liability for redress

9.1 The CCG expects all providers commissioned by the CCG to meet their obligations under the NHS Complaint Regulations and Parliamentary and Health Service Ombudsman Principles.

9.2 Within the investigation of any complaint managed by the CCG, all agencies contributing to the investigation are asked to confirm their role, identify whether the element of complaint about them is upheld, and identify what redress they feel is appropriate.

- 9.3 When the maladministration involves more than one organisation, agreement will need to be reached as to how the financial redress will be divided. This will need to take into account the proportionate level of service shortfall by each organisation involved.
- 9.4 Where the CCG is the lead agency for the investigation, the CCG will advise how redress, if financial, should be apportioned. The CCG will also be prepared to arbitrate between commissioned providers where joint liability has been identified, but the CCG has not led the investigation.
- 9.5 The agreement of redress should not be allowed to delay the provision of the complaint response unfairly or to the extent where further maladministration would be caused.



Principles for Remedy



Principles for Remedy

Good practice with regard to remedies means:

- 1 Getting it right
- 2 Being customer focused
- 3 Being open and accountable
- 4 Acting fairly and proportionately
- 5 Putting things right
- 6 Seeking continuous improvement



Introduction

This document gives our views on the Principles that should guide how public bodies provide remedies for injustice or hardship resulting from their maladministration or poor service. It sets out for complainants and bodies within the Parliamentary and Health Service Ombudsman's jurisdiction how we think public bodies should put things right when they have gone wrong and our approach to recommending remedies.

These *Principles for Remedy* should be read in conjunction with our *Principles of Good Administration* and *Principles of Good Complaint Handling*.

Remedying injustice and hardship is a key aspect of the Ombudsman's work. Not all maladministration or poor service results in injustice or hardship, but where it does; our underlying principle is to ensure that the public body restores the complainant to the position they would have been in if the maladministration or poor service had not occurred. If that is not possible, the public body should compensate them appropriately.

We aim to secure suitable and proportionate remedies for complainants whose complaints are upheld and, where appropriate, for others who have suffered injustice or hardship as a result of the same maladministration or poor service. We want public bodies to be fair and to take responsibility, to acknowledge failures and apologise for them, to make amends, and to use the opportunity to improve their services.

There is a range of appropriate responses to a complaint that has been upheld. These will include both financial and non-financial remedies. Financial compensation will not be appropriate in every case, but public bodies should not rule it out as a form of remedy for justified complaints. We understand that, for public bodies, there is often a balance between responding appropriately to people's complaints and acting proportionately within available resources. However, invite resources should not be used as an excuse for failing to provide a fair remedy.

The Ombudsman's *Principles for Remedy* accords with HM Treasury's guidelines on remedy as set out in *Managing Public Money*¹ and is cited as best practice in the *NHS Finance Manual*².

The Principles set out here are intended to promote a shared understanding of how to put things right when they have gone wrong and to help public bodies in the Ombudsman's jurisdiction provide fair remedies.

1 www.hm-treasury.gov.uk/psr_mpm_index.htm

2 www.info.doh.gov.uk/doh/inman.nsf

Principles for Remedy

Good practice with regard to remedies means:

1 Getting it right

- Quickly acknowledging and putting right cases of maladministration or poor service that have led to injustice or hardship.
- Considering all relevant factors when deciding the appropriate remedy, ensuring fairness for the complainant and, where appropriate, for others who have suffered injustice or hardship as a result of the same maladministration or poor service.

2 Being customer focused

- Apologising for and explaining the maladministration or poor service.
- Understanding and managing people's expectations and needs.
- Dealing with people professionally and sensitively.
- Providing remedies that take account of people's individual circumstances.

3 Being open and accountable

- Being open and clear about how public bodies decide remedies.
- Operating a proper system of accountability and delegation in providing remedies.
- Keeping a clear record of what public bodies have decided on remedies and why.

4 Acting fairly and proportionately

- Offering remedies that are fair and proportionate to the complainant's injustice or hardship.
- Providing remedies to others who have suffered injustice or hardship as a result of the same maladministration or poor service, where appropriate.
- Treating people without bias, unlawful discrimination or prejudice.

5 Putting things right

- If possible, returning the complainant and, where appropriate, others who have suffered similar injustice or hardship, to the position they would have been in if the maladministration or poor service had not occurred.
- If that is not possible, compensating the complainant and such others appropriately.
- Considering fully and seriously all forms of remedy (such as an apology, an explanation, remedial action or financial compensation).
- Providing the appropriate remedy in each case.

6 Seeking continuous improvement

- Using the lessons learned from complaints to ensure that maladministration or poor service is not repeated.
- Recording and using information on the outcome of complaints to improve services.

These Principles are not a checklist to be applied mechanically. Public bodies should use their judgment in applying the Principles to produce reasonable, fair and proportionate remedies in the circumstances. The Ombudsman will adopt a similar approach in recommending remedies.

The supporting text for each Principle follows.

1 Getting it right

Where maladministration or poor service has led to injustice or hardship, the public body responsible should take steps to provide an appropriate and proportionate remedy.

The public body should:

- ideally, return complainants and, where appropriate, others who have suffered injustice or hardship as a result of the same maladministration or poor service, to the position they were in before the maladministration or poor service took place
- if that is not possible, compensate them appropriately.

The public body should also ensure they keep any commitments to provide remedies, including ensuring they do not repeat any failures.

In many cases, an apology and explanation may be a sufficient and appropriate response. Public bodies should not underestimate the value of this approach. A prompt acknowledgement and apology, where appropriate, will often prevent the complaint escalating. Apologising is not an invitation to litigate or a sign of organisational weakness³.

It can benefit the public body as well as the complainant, by showing its willingness to:

- acknowledge when things have gone wrong
- accept responsibility
- learn from its maladministration or poor service
- put things right.

In putting right any injustice or hardship suffered as a result of maladministration or poor service, the public body should assess all the relevant circumstances in a balanced way. This means taking into account both objective evidence and more subjective views of the impact of the injustice or hardship. In some cases, the remedy will be easy to work out; in others, it will be more difficult because of the number of factors to take into account.

Offering remedies should not necessarily be limited to formal complaints. A timely response may ensure that the person decides not to make a formal complaint.

³ Section 2 of the *Compensation Act 2006* states: 'An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty'. This section of the Act applies to England and Wales only.

2 Being customer focused

Public bodies should promptly identify and acknowledge maladministration and poor service, and apologise for them.

An apology means:

- acknowledging the failure
- accepting responsibility for it
- explaining clearly why the failure happened
- expressing sincere regret for any resulting injustice or hardship.

In some cases, it may also be appropriate to express sympathy. Public bodies should consider:

- which organisational level the apology should come from
- who should apologise
- the most appropriate form of apology, for example in person, by telephone or in writing.

It is important to manage expectations from the start, and to explain clearly to the complainant what is and is not possible, so they understand what may be achieved for them. It is possible that the complainant may:

- expect too much
- not fully understand their rights and responsibilities
- have contributed to or prolonged the injustice or hardship.

Public bodies should make clear to complainants that remedies aim to:

- return them to the position they would have been in if the maladministration or poor service had not happened, if possible
- compensate them appropriately, if that is not possible.

Public bodies should do the following:

- consider the wishes and needs of the complainant in deciding an appropriate remedy, but remedies should not lead to a complainant making a profit or gaining an advantage
- behave professionally and with regard to individual circumstances
- aim to remedy injustice or hardship in a timely way. If the complaint is about a very complex or sensitive issue, or involves more than one service provider, the complainant should be given a single point of contact
- consider all the circumstances of the case and try, wherever possible, to offer a remedy that is calculated fairly and impartially but is still appropriate.

3 Being open and accountable

Public bodies should provide clear guidance about the criteria they use for deciding remedies. Staff should know the circumstances in which they may offer remedies, and what they may and may not offer.

Criteria for deciding remedies should be clear. But they should not be applied rigidly or mechanically in a way that prevents staff and their managers considering the fairest and most appropriate remedy in all the circumstances.

Public bodies should be open and clear with complainants about what remedies may be available to them, and in what circumstances. If the internal governance of a public body means that some kinds of remedy are available only through a formal complaints procedure, it should be open and clear about that fact.

When offering a remedy, public bodies should explain to the complainant how they reached their decision. They should also keep a clear record of the decision and the reasons for it.

4 Acting fairly and proportionately

Remedies should be fair, reasonable and proportionate to the injustice or hardship suffered.

The public body should consider how the circumstances of the case have affected the complainant in all ways. Even if an offer of remedy is not legally required, the public body should consider whether it has acted fairly and how its decisions have affected:

- the complainant
- where appropriate, others who have suffered injustice or hardship as a result of the same maladministration or poor service.

When considering a remedy, it is reasonable for a public body to take into account any way in which the complainant has contributed to, or prolonged, the injustice or hardship.

Each case must be considered on its own merits. Any guidance or procedure that public bodies use to decide remedies should be flexible enough to enable the public body to consider fully:

- the individual circumstances
- the need to provide an appropriate remedy for the injustice or hardship sustained.

At the same time, people should be treated consistently. Decisions on remedies should take proper account of previous decisions made on similar facts. Any difference in remedies between similar cases should be justified by the objective features or the individual circumstances of the case.

If applying the law, regulations or procedures strictly would lead to an unfair remedy for an individual, the public body should seek to address the unfairness. In doing so, public bodies must, of course, bear in mind the proper protection of public funds and ensure they do not exceed their legal powers.

5 Putting things right

Where maladministration or poor service has led to injustice or hardship, public bodies should try to offer a remedy that returns the complainant to the position they would have been in otherwise. If that is not possible, the remedy should compensate them appropriately. Remedies should also be offered, where appropriate, to others who have suffered injustice or hardship as a result of the same maladministration or poor service.

There are no automatic or routine remedies for injustice or hardship resulting from maladministration or poor service. Remedies may be financial or non-financial.

An appropriate range of remedies will include:

- an apology, explanation, and acknowledgement of responsibility
- remedial action, which may include reviewing or changing a decision on the service given to an individual complainant; revising published material; revising procedures to prevent the same thing happening again; training or supervising staff; or any combination of these
- financial compensation for direct or indirect financial loss, loss of opportunity, inconvenience, distress, or any combination of these.

Public bodies should:

- calculate payments for financial loss by looking at how much the complainant has demonstrably lost or what extra costs they have incurred
- apply an appropriate interest rate to payments for financial loss, aimed at restoring complainants to the position they would have been in if the maladministration or poor service had not occurred
- consider what interest rate to pay and explain the reasons for the chosen rate.

Factors to consider when deciding the level of financial compensation for inconvenience or distress should include:

- the impact on the individual - for example whether the events contributed to ill health, or led to prolonged or aggravated injustice or hardship
- the length of time taken to resolve a dispute or complaint
- the trouble the individual was put to in pursuing the dispute or complaint.

Remedies may need to take account of injustice or hardship that results from pursuing the complaint as well the original dispute. Financial compensation may be appropriate for:

- costs that the complainant incurred in pursuing the complaint
- any inconvenience, distress or both that resulted from poor complaint handling by the public body.

Remedial action may include improvements to the public body's complaints policy or procedures.

6 Seeking continuous improvement

Part of a remedy may be to ensure that changes are made to policies, procedures, systems, staff training or all of these, to ensure that the maladministration or poor service is not repeated. It is important to ensure that lessons learnt are put into practice.

It is a false economy and poor administrative practice to deal with complaints only as they arise and to fail to correct the cause of the problem. Learning from complaints, and offering timely and effective remedies, gives the best outcome in terms of cost effectiveness and customer service - benefiting the service provider, the complainant and the taxpayer.

The public body should ensure that the complainant receives:

- an assurance that lessons have been learnt
- an explanation of changes made to prevent maladministration or poor service being repeated.

Quality of service is an important measure of the effectiveness of public bodies. Learning from complaints is a powerful way of helping to develop the public body and increasing trust among the people who use its services. So systems should exist to:

- record, analyses and report on the outcomes of complaints and remedies
- apply the information to improving customer service.

NHS Continuing Healthcare

Refreshed Redress Guidance



NHS England INFORMATION READER BOX**Directorate**

Medical	Commissioning Operations	Patients and Information
Nursing	Trans. & Corp. Ops.	Commissioning Strategy
Finance		

Publications Gateway Reference:	03261
Document Purpose	Guidance
Document Name	NHS Continuing Healthcare Refreshed Redress Guidance
Author	NHS England
Publication Date	01 April 2015
Target Audience	CCG Accountable Officers, CSU Managing Directors, Directors of Nursing, Directors of Finance, Heads of NHS Continuing Healthcare and their teams
Additional Circulation List	
Description	NHS England has published final refreshed Redress Guidance for NHS Continuing Healthcare for CCGs. This now reflects guidance from the Parliamentary and Health Ombudsman for all public sector bodies, on calculating interest on redress payments
Cross Reference	National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care November 2012 (Revised)
Superseded Docs (if applicable)	Department of Health NHS Continuing Healthcare: Continuing Care Redress (2007)
Action Required	For implementation
Timing / Deadlines (if applicable)	This Guidance applies with immediate effect from date of publication
Contact Details for further information	Continuing Healthcare Nursing Directorate Quarry House, Quarry Hill Leeds LS2 7PD http://www.england.nhs.uk/ourwork/pe/healthcare/redress-guidance-ccgs/
Document Status	<p>This is a controlled document. Whilst this document may be printed, the electronic version posted on the intranet is the controlled copy. Any printed copies of this document are not controlled. As a controlled document, this document should not be saved onto local or network drives but should always be accessed from the intranet. NB: The NHS Commissioning Board (NHS CB) was established on 1 October 2012 as an executive non-departmental public body. Since 1 April 2013, the NHS Commissioning Board has used the name NHS England for operational purposes.</p>

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1 Executive Summary

This Guidance

1. This guidance is a refresh of “NHS Continuing Healthcare: Continuing Care Redress Guidance” published by the Department of Health on 14 March 2007¹ in response to the Parliamentary and Health Service Ombudsman’s report “Retrospective Continuing Care Funding and Redress” published 13 March 2007. This guidance follows the principles set out in the Parliamentary and Health Service Ombudsman’s “Principles for Remedy”².
2. The purpose of this guidance is to assist Clinical Commissioning Groups (CCGs) when settling claims for individuals arising from NHS Continuing Healthcare eligibility decisions or where an eligibility decision has been reached on a previously un-assessed period of care in respect of NHS Continuing Healthcare and the need for redress has been identified.
3. NHS England has responsibility for NHS Continuing Healthcare for specified groups, for example prisoners and serving members of the Armed Forces and their families. Throughout this document where CCG is referred to, the guidance will also apply to NHS England in relation to these specified groups.
4. This guidance also retains the previously established principle that “where maladministration has resulted in financial injustice, the principle of redress should generally be to return individuals to the position they would have been in but for the maladministration which occurred.”
5. This guidance does not remove the requirement for CCGs to consider the specific circumstances of each individual case when determining the appropriate level of redress.
6. The guidance recommends that the Retail Price Index is the appropriate interest rate to apply to redress.

¹http://collection.europarchive.org/tna/20080107220102/dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh_073094

²http://www.ombudsman.org.uk/_data/assets/pdf_file/0009/1035/0188-Principles-for-Remedy-bookletweb.pdf

7. The guidance applies with immediate effect from the date of publication where:
 - an eligibility decision for NHS Continuing Healthcare has been made on or after the date of publication of this guidance; and
 - the need for redress has been identified by the CCG.

8. The Parliamentary and Health Service Ombudsman is aware that this guidance has been developed.

2 Background

1. NHS Continuing Healthcare is a package of care arranged and funded solely by the health service in England for a person aged 18 or over to meet physical or mental health needs which have arisen as a result of disability, accident or illness. Where an individual has both health and social care needs, but they have been assessed as having a 'primary health need' under the *National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care*³ (the National Framework), the NHS has responsibility for providing for all of that individual's assessed health and social care needs. This care can be provided in a number of settings, including at home. Further information on the policy can be found in the National Framework.
2. This guidance has been developed to reflect the new NHS framework and structures which came into effect on 1 April 2013. This guidance details the appropriate interest rate which should generally apply to NHS Continuing Healthcare redress. This approach aims to achieve an outcome that is fair and reasonable to the individual and will demonstrate an appropriate use of public funds.
3. The Parliamentary and Health Service Ombudsman's report "Retrospective Continuing Care Funding and Redress"⁴ was published on 14 March 2007. Subsequently, the Department of Health issued the *NHS Continuing Healthcare: Continuing Care Redress*⁵ Guidance in 2007 to help Primary Care Trusts review the approach they had taken, and were taking, to settle cases arising from continuing care reviews since 1996.
4. The purpose of redress is solely to restore the individual to the financial position they would have been in had NHS Continuing Healthcare been awarded at the appropriate time. As set out in "Principles for Remedy" "remedies should not lead to a complainant making a profit or gaining an advantage". This principle also applies to the NHS.

3 Redress Guidance

Action

1. The guidance applies with immediate effect from the date of publication where:
 - an eligibility decision for NHS Continuing Healthcare has been made on, or after, the date of publication of this guidance; **and**
 - The need for redress has been identified. This is irrespective of the period of care for which NHS Continuing Healthcare funding is being paid.

Therefore if the CCG is in the process of undertaking an assessment of a case and the decision on eligibility is made after publication of the guidance then, if appropriate for redress, this guidance applies.

Redress

2. CCGs are independent decision-making bodies. When making redress payments they should employ a transparent rationale and ensure they fully consider the individual circumstances of each case, taking legal advice where necessary. CCGs have the discretion to consider making ex-gratia payments, over and above the care costs and interest, however, these are expected to be exceptional and would need to be made in accordance with a CCG's own Standing Financial Instructions and any other pre-requisite guidance.

Interest rate

3. Redress is about placing individuals in the position they would have been in had NHS Continuing Healthcare been awarded at the appropriate time and not about the NHS or the public profiting from public funds.
4. CCGs are advised to apply the Retail Price Index for calculation of compound interest when considering redress cases. The index is

calculated monthly, with an average for each calendar year. CCGs are advised to apply the average rate for the year for which care costs are being reimbursed. The rates of the Retail Price Index are available from the Office of National Statistics at: <http://www.ons.gov.uk/>. The contact details for the Office of National Statistics are available here <http://www.ons.gov.uk/ons/site-information>.

5. It is important that once an eligibility decision for NHS Continuing Healthcare is reached, CCGs should promptly pay any redress sums owed to individuals or their representatives. Disputes about aspects of the redress payment or other aspects of a case should be dealt with subsequently.

Legal costs and complaints

6. The Parliamentary and Health Service Ombudsman has indicated that it is rarely appropriate to receive a refund of legal and professional costs in bringing forward an NHS Continuing Healthcare dispute.
7. Individuals do not need to seek legal advice in order to request an assessment of eligibility for NHS Continuing Healthcare and there is also a mechanism to request a review of a decision on eligibility. CCGs and third sector services will help and advise individuals or their representatives on the process that will be followed in line with the '*National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care*'.
8. If an individual is dissatisfied with the CCG's redress offer, they can pursue the matter via the CCG's complaints process. However, CCGs should not delay payment in respect of undisputed elements.

Deferred payment agreements

1. CCGs are reminded that under section 55 of the Health and Social Care Act 2001, effective since 1 October 2001, people in care homes who are responsible for paying all or part of their fees may be able to avoid having to sell their home to pay the fees by entering into a Deferred Payment Agreement with their local authority. The duties on local authorities to offer deferred payments are strengthening and being expanded from April 2015 (as a result of the Care Act 2014) so more people will be eligible than previously. Those already in residential care could now qualify for a deferred payment under the new rules, even if they have not previously been eligible.



Information for Patients

The NHS Litigation Authority (NHSLA) handles negligence claims and works to improve risk management practices in the NHS.

When a claim of negligence is made we are responsible for acting on behalf of the NHS body involved. As a result, we are not able to offer advice to individual patients. However, we have developed this page to explain how negligence claims are handled and to outline alternatives to legal action when something goes wrong in the NHS.

Negligence claims

Under English law, an individual may be entitled to compensation if they have been injured as a result of the negligence of another person. In order for a patient to obtain financial compensation when something goes wrong in the NHS, the following criteria must be met

:

- The doctor (or other health professional caring for the patient) must have acted in a way which fell short of acceptable professional standards. The test is whether the actions of the health professional in question could be supported by a “responsible body of clinical opinion”. It will not be enough to show that other health professionals might have done something differently if a “responsible body” of health professionals would support the action taken.
- The harm suffered by the patient must be shown, on the balance of probabilities, to be directly linked with the failure of the health professional to meet appropriate standards. If, for example, there was a good chance that the patient would have suffered the harm even if the health professional had acted differently, then the claim is unlikely to succeed.

If you believe that these two criteria have been met and you wish to seek financial compensation you should seek legal advice. The organisation [Action against Medical Accidents](#) (AvMA) can help you to consider the options that may be open to you after suffering a medical accident and can, if you wish, put you in contact with a specialist solicitor. AvMA also offers support to patients in coming to terms with the effect that a medical accident may have had on them, whether or not clinical negligence is potentially involved.

Alternative forms of redress

You may wish to pursue alternative forms of redress. The [NHS complaints system](#) gives an overview of how to complain and what your rights are.



Appendix 4. Examples of Appropriate Financial Redress

The amounts have been based on national guidance and precedence:

- Local Government Ombudsman's (LGO) report *Remedies, Guidance on Good Practice 6*. (84 decisions on redress 1.4.13-31.3.14)
- Parliamentary and Health Service Ombudsman (PHSO), *Remedy in the NHS – Summaries of Recent Cases*.
- Volume 1, report 1 (February and March 2014)
- April to June 2014

CIRCUMSTANCES	AMOUNT	REFERENCE
Moderate time and trouble	£50-£100	Based on LGO report.
Considerable time and trouble	Up to £250	
Unhelpful, negative and defensive response to complainant with threat of counterclaim and lack of apology. Disregard for procedures and good practice.	£250	PHSO
Poor complaint handling and injustice resulting	£500	PHSO
Exceptional time and trouble. For example, where the investigation and review of a complaint has taken many months in excess of the relevant timescale agreed with the complainant and the complainant has been put to considerable inconvenience in pursuing a complaint.	Up to £500	Based on LGO report. PHSO
Delay in complaint handling and failure of Trust to adequately respond to recommendations made by the Healthcare commission	£500	PHSO
Continuing Health care of an individual – care provided between Council and CCG	£12000	PHSO
Care of a child. No adequate systems in place for care planning, communication, risk assessment and risk management.	£20000	PHSO