

Redress Policy

Northern, Eastern and Western Devon Clinical Commissioning Group

South Devon and Torbay Clinical Commissioning Group

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1.0	03/03/2018	Amended – New policy, combining previous CCG’s concerns and complaints policies
2.0	29/03/2018	Amended – Included reference to “CCG” within the definitions
2.1	29/03/2018	Amended – Included front pages, Policy information, document change history and information regarding quality, diversity and human rights.
2.2	24/04/2018	Amended – Policy title

Both Commissioning Groups promote equality, diversity and human rights and is committed to ensuring that all people and communities it serves have access to the services we provide. In exercising the duty to address health inequalities, the CCG has made every effort to ensure this policy does not discriminate, directly or indirectly, against patients, employees, contractors or visitors sharing protected characteristics of: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex (gender); sexual orientation or those protected under the Health and Social Care Act 2012 and Human Rights legislation.

All CCG policies can be provided in large print or Braille formats; translations on request; language line interpreter services are available; and website users can use contrast, text sizing and audio tools if required. For any other assistance, please contact either CCG at NEW Devon CCG 01392 205205 or South Devon and Torbay CCG sdtccg@nhs.net or

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1. Introduction

- 1.1. The purpose of this policy is to provide a consistent interpretation and clear guidance in how to apply the application of redress within NHS Northern, Eastern and Western Devon Clinical Commissioning Group and South Devon and Torbay Clinical Commissioning Group. (The CCG) The policy should be used, but not exclusive of the list below:
- When a concerns or formal complaints has been investigated thoroughly about a function of the CCG or a Provider organisation it commissions and it has identified learning, subsequent actions and has been upheld or partially upheld
 - When decisions of the CCG assessments of Continuing Healthcare (CHC) eligibility for patients whose care is funded by the CCG.
- 1.2 When redress has been identified following a concern or formal complaint, redress will be sought taking into consideration best practice advised by the Parliamentary and Health Service Ombudsman “*Principles of Remedy.*” **Appendix 1.**
- 1.3 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.
- 1.4 When a decision that a patient is eligible for Continuing Healthcare funding has been approved, the patient or its family may be entitled to costs already met by them which should now be paid in full by the CCG. Where there is a case for additional losses to be covered, the CCG will assess the request following the NHS Continuing Healthcare Redress Guidance for CCG, which can be found using the following link:
<https://www.england.nhs.uk/healthcare/redress-guidance-ccgs/>

2. Definition and forms of redress

- 2.1 The two Clinical Commission Groups (Northern, Eastern & Western Devon and South Devon & Torbay) are two separate entities, however for the purpose of this policy they will be referred to as CCG.
- 2.2 When redress is referred to within this policy, it means remedy has been identified and that either the CCG or its provider organisation are given the opportunity to put right where poor service or standards have failed below the standard of what a member of the public should expect.
- 2.3 There is no set list of form of redress but redress could include:
- An apology or 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 (RCA) or invitation to a Patient Focus Group to look at service improvements.
 - Financial redress
- 2.4 Redress offered will be proportionate to the maladministration or poor service identified and will be appropriate to the member of the public. The intention of awarding redress is to, where possible, put the member of public back in the position they would have been had the issue not occurred.

3. Legislative background

- 3.1. **Parliamentary and Health Service Ombudsman Principles for Remedy**
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.
- 3.2 **The NHS finance manual**
This 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.
- 3.3 **NHS Continuing Healthcare Refreshed Redress guidance 2015**
This guidance advises the CCG 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.

4. Financial Redress

- 4.1 Financial redress will be considered in cases where the member of public has suffered direct or indirect financial loss as a direct result of maladministration or poor service provided by the CCG. Financial redress will be offered by the CCG where:
- A concern/complaint has been upheld or partially upheld
 - There has been maladministration or poor service provided by the CCG
 - The maladministration or poor service has directly caused injustice or hardship to a member of the public
 - No other form of redress is proportionate or suitable.
- 4.2 In addition financial redress will be offered when a CHC award is made where:
- A need for redress has been identified
 - There are exceptional circumstances
 - 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
 - The loss is beyond the actual care costs and legal interest addition.
- 4.3 It should be noted and understood that financial redress is not compensation. If a member of the public is seeking damages or compensation, redress is not suitable and they should be directed to the legal routes available. **Appendix 2.**
- 4.4 An example of financial redress may be reimbursing travel expenses to an appointment that the patient was not notified in advance and had been cancelled by Devon Referral Support Services (DRSS), or costs that have been incurred as a result of CCG actions that the member of public would not have had to pay otherwise. For additional information on appropriate financial redress see **Appendix 3.**

5. Calculating financial redress

- 5.1 Where the financial loss is quantifiable the offer of payment will be calculated on the basis of how much the member of public has lost and/or any additional reasonable costs the member of public has incurred, and the situation meets a valid descriptor of injustice or hardship. Quantifiable payment may include the cost or part cost of professional fees, for example advocate fees.
- 5.2 When the loss is not quantifiable, in order to calculate an appropriate amount to offer the following factors will be taken into account:
- Lost opportunity, the effects of the member of public's not attending an appointment or deprived the opportunity to follow process
 - The contribution to the injustice or hardship of the member of public to include distress, anxiety inconvenience, frustration and uncertainty. Consideration will also need to include the severity of the distress, the length of time involved, the vulnerability of the individual and the number of people affected.
 - Costs that would not have been necessary but for the CCG maladministration
 - Loss of possessions. In such cases the individual should be reimbursed reasonable replacement value

- 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 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 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.

5.3 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.

6. Making an offer of financial redress

- 6.1 When the CCG make a financial redress offer it should include the words “without prejudice” at the top of any paperwork sent to the member of public as the offer should always be without prejudice and as a goodwill gesture “in full and final settlement” of the member of public. 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.
- 6.2 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.

7. Liability for redress

- 7.1 When the CCG are investigating a concern or complaint that involves multiple providers, they will all be asked to confirm their role, identify whether the element of concern or complaint about them is upheld or partially upheld, and identify what redress they feel is appropriate. Agreement will need to be reached as to how the financial redress will be divided between the providers involved and will take into account the proportionate level of service shortfall by each organisation involved.
- 7.2 The agreement of redress should not be allowed to delay the provision of the concern or complaint response unfairly or to the extent where further maladministration would be caused.



Parliamentary
and Health Service
Ombudsman

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.

Appendix 2. NHS Litigation Authority Information to patients

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 3. 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)

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