

NHS Continuing Healthcare Redress Payment Policy

October 2018

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Related Documents	BCCG Joint Operational and Dispute Policy

POLICY DEVELOPMENT PROCESS

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Equality Impact Assessment prepared and held by

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Committee where policy was discussed/approved/ratified

Committee/Group	Date	Status
Policy Approval Group		

Equality Impact Assessment – Continuing Healthcare Redress Policy

This policy refreshed the guidance to the CCG to ensure compliance with the 2015 Refreshed Redress Guidance. The policy author has confirmed that there is no variance from NHS guidance and no scope for local variation. As a result an equality impact assessment is not required.

Paul Curry
Equality and Diversity Manager
26 September 2018

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1. Introduction

In March 2007, in response to the Parliamentary and Health Service Ombudsman's report "Retrospective Continuing Care Funding and Redress", the Department of Health ("DH") published best practice guidance on NHS Continuing Healthcare Redress (March 14th, 2007 (ref Gateway 7976) attached) ("2007 Guidance").

Guidance was developed to reflect the new NHS framework and structures which came into effect on 1 April 2013. Refreshed Redress Guidance was published 1 April 2015 to assist CCG's 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 (PUPoC) in respect of NHS continuing healthcare and the need for redress has been identified.

This follows the principles set out in the parliamentary and health service ombudsman's 'Principles of Recovery'.

- 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.
- 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.

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.

2. Purpose

This Policy of Bedfordshire Clinical Commissioning Group (BCCG) has been prepared to ensure compliance with the 2015 Refreshed Redress Guidance.

If an individual is dissatisfied with BCCG's approach to redress they can make a formal complaint to the CCG. If they remain dissatisfied they can refer their complaint to the Parliamentary and Health Service Ombudsman (PHSO).

This Policy describes four elements which will be required to be considered in calculating an appropriate redress payment:

3. Elements to Calculate the Redressing of Payment

3.1 Redress

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.

The 2007 Guidance and 2015 Refreshed Guidance provides that, in making redress payments, CCG's are advised to use a transparent rationale and clear calculations. They should ensure they fully consider the individual circumstances of each case, seeking legal advice where necessary. CCG's have the discretion to consider making ex gratia payments, over and above the care costs and interests, however, these are expected to be exceptional and would need to be made in accordance with BCCG's own Standing Financial Instructions and any other pre-requisite guidance.

In order to ensure appropriate reimbursement of public funds the claimant must provide independent evidence of payments made. This is consistent with the anti-fraud measures taken by the CCG.

In this context, independent means that the document comes from a person or organisation who will not benefit from a payment being made under the scheme.

3.2 Interest Rate

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>.

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.

Any individual in receipt of financial redress payments should liaise with HMRC regarding potential tax implications.

3.3 Other Financial Compensation

Financial compensation should be considered for:

- Loss of asset value where there is proof of maladministration leading to sale of asset. This may arise as a result of the premature sale of a residential property, though *it could relate to the disposal of other capital assets*, e.g. investments, antiques, heirlooms, etc, sold earlier than would otherwise have been necessary to raise cash to pay care costs. Loss will only have been incurred where those assets were sold at a lower price than might have been obtained had they been sold at a later date.

BCCG will consider the context of the sale, i.e. is the CCG satisfied that the sale was directly linked to the need to meet care costs or is there evidence that the sale took place at that time wholly or partly for other reasons.

Evidence submitted should show clearly:

- The date of the payment
- The purpose of the payment
- The person or organisation being paid
- The amount of the payment

Ideally there should be documentation evidencing who made the payment (as distinct from who received the payment)

Suitable evidence might include, for example:

- Copies of bank statements
- Copies of invoices paid
- Receipts, payment slips etc
- Details of contracts entered into etc
- Sale documents (e.g. if a property was sold, deeds of sale or associated letters from the solicitor undertaking the conveyancing on the sale).

Where the original document cannot be identified, alternative evidence can be accepted (subject to the agreement of the CCG Chief Finance Officer), providing that it is independent. For example, a solicitor's letter could be substituted for the deeds of sale for the property, providing that details, amount, recipient etc are shown clearly.

Items such as cheque stubs, on their own, are not acceptable. This type of evidence is open to manipulation. Cheque stubs supported by an invoice or contract would be accepted.

The Chief Finance Officer reserves the right to review any evidence submitted and to request further information, consistent with their responsibility to ensure proper use of public money.

Where the value of a residential property would have increased over the relevant period, the CCG will consider deducting from that increase in value other costs and expenses that would have been incurred had the property been retained by the claimant, e.g. council tax, water rates, utilities and maintenance costs for the relevant period.

Where the property was subject to a mortgage at the time of sale, the CCG will also consider what interest payments on that mortgage would have had to have been made over the period during which the property would have been retained.

If offering a deferred payment was omitted in a particular case the CCG should ensure that the individuals are directed to the local authority who provided or arranged the accommodation, usually this will be the local authority for the area where the house is situated. Complaints about this aspect of policy should be raised with the local authority and, if not resolved, with the Local Government Ombudsman's Office.

Legal costs:

- The PHSO has indicated that it is rarely appropriate to receive a refund of legal and professional costs in bringing forward an NHS continuing healthcare dispute.

3.4 Ex Gratia Payments

Ex gratia payments are payments made in cases where there is **no obligation or legal liability** but where, in all the circumstances, the payer considers it is responsible for loss or damage that ought properly to be compensated or desires to address a hardship that the payee has had to suffer as a result of failure or delay on the part of the payer.

As per the Refreshed Guidance 2015 ex gratia payments should be considered only in exceptional cases and on an individual basis.

Calculation of Redress Payment – Formulae and Template

Step 1- Calculation based upon retained benefits and interest at RPI

Payment	£
Nursing Home fees for the period of £x per week for y weeks	$x*y$
= Payment before interest	$x*y$
RPI interest (up to date of settlement)	z
Total Payment (pr)	$Pr=(x*y)+z$
Step 1 Pr Total =	£

Step 2 Total Redress

Payment due in respect of Care Home fees including interest	P
Loss of asset value including sale of property	D
Additional Financial costs	E
Loss of Income	F
Reasonable Costs	G
Damaged for inconvenience and distress	H
Less value of costs & expenses that would have occurred had the property been retained eg. Council tax, water rates, utilities, maintenance costs and interest payments on any mortgage on the property.	I
Total Redress Due (T)	$T=P+D+E+F+G+H-I$
Step 2 T Total =	£

4 Responsibilities

The BCCG Continuing Healthcare Department will continue to liaise with the BCCG Finance Department including the Chief Finance Officer relating to the authorisation of any Redress Payments.

5 Development Process

This policy has been developed following updated guidance from NHS England, NHS Continuing Healthcare Refreshed Redress Guidance 01 April 2015. There is no other policy within BCCG relates to the Redress of CHC payments.

6 Document Replaces

NHS Bedfordshire NHS Continuing Healthcare Policy on Redress Payments 2016.

7 Monitoring

This policy will be monitored against any new guidance received from NHSE, Department of Health, the Parliamentary and Health Service Ombudsman.

8 References

National Framework for NHS Continuing Healthcare & NHS funded-nursing care *October 2018 (Revised)*:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690426/National_Framework_for_CHC_and_FNC_-_October_2018_Revised.pdf

NHS Continuing Healthcare Refreshed Redress Guidance 01 April 2015:

<https://www.england.nhs.uk/wp-content/uploads/2015/04/nhs-cont-hlthcr-rdress-guid-fin.pdf>

Recommended Standards of Evidence Required from Eligible PUPoC Claimants Draft Guidance for CCG's:

Kathy Neville CPFA, Management Accountant Berkshire NHS South, Central and West Commissioning Support Unit, 18 November 2015.

9 Appendices

The appendices should contain example forms and other supporting documentation including the completed Equality Impact Assessment



Bedfordshire
Clinical Commissioning Group