

# **NHS Continuing Healthcare Refreshed Redress Guidance**



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<b>Document Purpose</b>	Guidance
<b>Document Name</b>	NHS Continuing Healthcare Refreshed Redress Guidance
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<b>Target Audience</b>	CCG Accountable Officers, CSU Managing Directors, Directors of Nursing, Directors of Finance, Heads of NHS Continuing Healthcare and their teams
<b>Additional Circulation List</b>	
<b>Description</b>	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
<b>Cross Reference</b>	National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care November 2012 (Revised)
<b>Superseded Docs (if applicable)</b>	Department of Health NHS Continuing Healthcare: Continuing Care Redress (2007)
<b>Action Required</b>	For implementation
<b>Timing / Deadlines (if applicable)</b>	<b>This Guidance applies with immediate effect from date of publication</b>
<b>Contact Details for further information</b>	Continuing Healthcare Nursing Directorate Quarry House, Quarry Hill Leeds LS2 7PD <a href="http://www.england.nhs.uk/ourwork/pe/healthcare/redress-guidance-ccgs/">http://www.england.nhs.uk/ourwork/pe/healthcare/redress-guidance-ccgs/</a>

**Document Status**

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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 2007<sup>1</sup> 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”<sup>2</sup>.
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.

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<sup>1</sup>[http://collection.europarchive.org/tna/20080107220102/dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh\\_073094](http://collection.europarchive.org/tna/20080107220102/dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh_073094)

<sup>2</sup>[http://www.ombudsman.org.uk/\\_data/assets/pdf\\_file/0009/1035/0188-Principles-for-Remedy-bookletweb.pdf](http://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*<sup>3</sup> (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"<sup>4</sup> was published on 14 March 2007. Subsequently, the Department of Health issued the *NHS Continuing Healthcare: Continuing Care Redress*<sup>5</sup> 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

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<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/213137/National-Framework-for-NHS-CHC-NHS-FNC-Nov-2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213137/National-Framework-for-NHS-CHC-NHS-FNC-Nov-2012.pdf)

<sup>4</sup> [http://www.ombudsman.org.uk/\\_data/assets/pdf\\_file/0011/1118/Retrospective-continuing-care-funding-and-redress.pdf](http://www.ombudsman.org.uk/_data/assets/pdf_file/0011/1118/Retrospective-continuing-care-funding-and-redress.pdf)

<sup>5</sup> [http://collection.europarchive.org/tna/20080107220102/dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh\\_073094](http://collection.europarchive.org/tna/20080107220102/dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh_073094)

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.
2. 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.