

Checklist for the Review and Approval of Procedural Documents

To be completed and attached to any document which guides practices when submitted to the appropriate committee for consideration and approval.

	Yes/No/ Unsure	Comments
Title of Document		NHS Continuing Health Care Redress Policy
Could this policy be incorporated within an existing policy?	No	
Does this policy follow the style and format of the agreed template?	Yes	
Has the front sheet been completed?	Yes	
Is there an appropriate review date?	Yes	
Does the contents page reflect the body of the document?	Yes	
Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?	N/A	
Are all appendices appropriate and/or applicable?	Yes	
Have all appropriate stakeholders been consulted?	Yes	
Has an Equality Impact Assessment been undertaken?	No	
Is there a clear plan for implementation?	Yes	
Has the document control sheet been completed?	Yes	
Are key references cited and supporting documents referenced?	Yes	
Does the document identify which Committee/Group will approve it?	Yes	

Plans for communicating policy to – staff; practice membership; public (as appropriate)

Policy will be shared with all staff and will be available on the Intranet.

Individual Approval

If you are happy to approve this document, please sign and date it and forward to the chair of the committee/group where it will receive final approval.

Name	Diane Curbishley	Date	6 th of May 2016
Signature			

Committee Approval

If the committee is happy to approve this document, please sign and date it and forward copies to the person with responsibility for disseminating and implementing the document and the person who is responsible for maintaining the organisation's database of approved documents.

Name	Cameron Ward	Date	10 May 2016
Signature			

NHS Continuing Health Care Redress Policy

Version Number	Final
Ratified By	
Date Ratified	
Name of Originator/Author	Laura Mhlanga
Responsible Director	Diane Curbishley
Staff Audience	Herts Valleys CCG
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DOCUMENT CONTROL

Plan Version	Page	Details of amendment	Date	Author
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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 *NHS Continuing Healthcare: Continuing Care Redress* (hereafter the "**2007 Guidance**") to help PCTs to review the approach they took, and CCGs continue to take, to making redress where funding for NHS Continuing Healthcare (hereafter "**Continuing Healthcare**") had been wrongly withheld. The 2007 Guidance was subsequently superseded by NHS England guidance *NHS Continuing Healthcare: Refreshed Redress Guidance April 2015* (hereafter the "**2015 Guidance**"). The 2015 Guidance is the most recent guidance applicable in this context. The guidance applies to CCGs now responsible for the commissioning of Continuing Healthcare functions previously carried out by PCTs.¹

This policy applies to cases where Continuing Healthcare has been wrongly withheld and it is appropriate for redress to be paid, including:

- the review of cases dating back to 1st of April 1996 ('**Historic Redress Cases**'); and
- Cases where the Continuing Healthcare funding has been wrongly withheld and redress has yet to be made ("**Current Redress Cases**")
- Claims to which this policy applies must have been notified to Herts Valley CCG (hereafter "**HVCCG**") or their predecessor bodies Hertfordshire PCT or Central Eastern Commissioning Support Unit on or before the following deadlines²:

¹ The 2015 Guidance is a refresh of NHS Continuing Healthcare: Continuing Care Redress Guidance published by the Department of Health on 14 March 2007 and has been developed in conjunction with *the NHS National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care published November 2012* and structures that came into effect on 1 April 2013

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/215110/dh_133056.pdf

- For claims where the majority of time is prior to April 2004, such claims should have been lodged by **30 November 2007**;
- For claims where the majority of time falls between 1 April 2004 and 31 March 2011, the deadline was **30 September 2012**;
- For claims where the majority of time falls between 1 April 2011 and 31 March 2012, the deadline was **31 March 2013**.

HVCCG will only consider claims falling outside the deadlines in exceptional circumstances.

Claims notified after 31 March 2013 are unlikely to require redress and are beyond the scope of this policy. Claims arising after 31 March 2013 must be brought within six months from the date of notification of the eligibility decision. Such claims are not expected to include an element of redress and therefore this policy does not apply. Should such a claim arise it shall be reviewed in accordance with the national guidance and the relevant CCG's policy.

Objectives of this Policy

The objective of this policy is to ensure that HVCCG is compliant with the updated 2015 Guidance.

The 2015 Guidance states the purpose of redress as being “*solely to restore the individual to the financial position they would have been in had NHS Continuing Healthcare been awarded at the appropriate time.*” Redress should not lead to a profit or an advantage. Therefore, “*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.*”

HVCCG will always consider the specific circumstances of each individual case when determining redress.

Content of this Policy

This policy sets out how HVCCG will assess and manage a claim for redress in line with the 2015 Guidance.

Reimbursement of Care Costs

This is the cost of care incurred by the patient or their family which ought to have been met by the NHS. HVCCG will determine the sum for any reimbursement of care costs in line with the 2015 Guidance.

All claimants have a duty to keep their losses to a minimum. In view of this, the CCG will consider whether the care home fees are reasonable and reflective of the fees payable by HVCCG had the patient been eligible for Continuing



Healthcare. If the CCG considers the care costs incurred excessive relative to the patient's needs, then the CCG may reduce the amount of any compensatory sum offered.

Other Financial Compensation

Where it is reasonable and appropriate to do so HVCCG will consider compensation for financial losses other than care costs that have been incurred as a result of Continuing Healthcare having been unreasonably withheld. HVCCG will only reimburse financial losses other than care costs where the claimant is able to provide documentary evidence of those losses and HVCCG is satisfied that the losses being claimed were directly linked to the need to meet care costs incurred directly as a result of Continuing Healthcare having been wrongly withheld.

The CCG will request documentary evidence of the other financial costs incurred; and Consider the context in which the costs were incurred:, i.e. is the CCG satisfied that the costs were directly linked to the need to meet care costs or is there evidence that they were incurred wholly or partly for other reasons.

Interest

HVCCG will calculate interest on redress cases using the Retail Price Index. The rate used will be the average rate for the year for which care costs are being reimbursed.

The rates of the Retail Price Index are available online from the Office of National Statistics at: <http://www.ons.gov.uk>. The contact details for the Office of National Statistics are available only at: <http://www.ons.gov.uk/ons/site-information>.

Following an offer of settlement, interest will continue to accrue from the date the offer is made until the date the offer is accepted or where no response to an offer is received for a period of no more than 28 days from the date the offer is made. If the settlement sum is disputed, HVCCG will consider an interim payment to prevent the accrual of additional interest.

Legal Costs

It will rarely be appropriate for an individual to receive a refund for legal or professional costs incurred in relation to Continuing Healthcare. An individual does not require legal advice to obtain an assessment of eligibility for Continuing Healthcare or to have a decision on eligibility reviewed.

Where an individual is dissatisfied with HVCCG's redress offer, they can pursue the matter via HVCCG's complaints process. In the case of a dispute arising HVCCG will not delay payment in respect of any undisputed elements.

Ex-Gratia Payments

HVCCG has the discretion to consider making ex-gratia payments in addition to any compensatory redress where it feels it appropriate to do so, however, these are expected to be infrequent and will only apply in exceptional circumstances.

Continuing Healthcare Redress Panel

HVCCG has set up a Continuing Healthcare Redress Panel (hereafter the "Panel") to review claims for redress. The Panel is aimed at ensuring consistency in how redress claims are dealt with and is made up of:

- Director of Quality & Nursing
- Deputy Chief Finance Officer
- Assistant Director of CHC (Chair)
- Clinical Representative from the CHC Team

The Continuing Healthcare Redress Panel will:

- Review the evidence provided by the claimant of financial loss, costs and expenses incurred or distress suffered;
- Consider what settlement should be offered to the claimant in accordance with this policy;
- Make a recommendation to the CCG on the settlement to be offered
- Formulate an offer or a negotiating position; and
- If all offers are rejected by the claimant, decide on an action plan.
- Ensure responsible commissioners are identified in each case and appropriate use and monitoring of any shared risk budget for redress and restitution spend.

Settlement

If the CCG is unable to reach an agreement with the claimant as to any settlement of their claim, the case will be referred back to the Panel with further representations made by the claimant as to why the settlement offered is unacceptable.

The Redress Panel will recommend a further offer or negotiating position to the CCG. Cases will normally be considered at the next Redress Panel meeting but, in order to speed up the settlement of claims, cases may be discussed by the Panel members by other means e.g. email or telephone conference and decisions or recommendations may be made in this way between Panel meetings.

Any further recommendation by the Panel will be final. If the claimant is still dissatisfied with the settlement, the claimant should make a complaint using HVCCG's complaints procedure.

Accepting an offer of settlement and payment of settlement monies

An offer of settlement can only be agreed by an individual with the appropriate authority to accept the offer. HVCCG will only make an offer of settlement in circumstances where there is an individual with the appropriate authority to accept that offer and in circumstances where there is an individual with the appropriate authority to receive payment of the settlement.

Where the claimant is alive and deemed to have full capacity the CCG require that the claimant approve the offer of settlement and that payment be made into a bank account in the claimant's name or into an alternative bank account otherwise specified by the claimant in writing.

Where a claimant is alive but deemed to lack capacity then from that date the HVCCG will require a representative (an attorney under an Enduring or Lasting Power of Attorney or a Court-appointed property and financial affairs deputy) be appointed to represent the claimant's interests in a claim for redress moving forwards. The CCG will require that the offer of settlement be approved by a formally appointed representative and that all settlement monies be paid into a [bank account held in trust for the claimant OR into a bank account in the claimant's name.]

Where the claimant is deceased the claim for Continuing Healthcare redress should be brought for and on behalf of the deceased's estate by a personal representative, that representative having obtained and provided evidence of having obtained a Grant of Probate. If a claimant dies during the claim process then their personal representatives will be permitted to continue the claim on



behalf of the estate after having obtained and provided evidence of the Grant of Probate. The personal representatives of the deceased's estate must approve the offer of settlement. The CCG will only pay settlement monies into an account held for and on behalf of "the estate of" the deceased claimant.

Reimbursement of Historic and Current Redress Cases

Where in respect of any **Historic Redress Case**, the application of the formula in the 2015 Guidance indicates that the patient was over-reimbursed for all of their financial losses, including interest, taking into account any appropriate ex gratia payment that ought to have been made, HVCCG will not attempt to recoup any overpayment, except in the case of misinformation or fraud.

HVCCG will give assurances to patients and their families that if patients were financially advantaged by the method used to calculate their reimbursement prior to 2015 and received more than they would have received had the formula in the 2015 Guidance been applied, they will not be required to pay the difference.

Where in respect of any Current Redress Cases the decision on eligibility is made on or after 1 April 2015 HVCCG will calculate the value of the redress claim in line with the 2015 Guidance. If the decision on eligibility pre-dates 1 April 2015 then the value of the redress claim will be calculated in accordance with the 2007 Guidance.

Future review of this policy

HVCCG will continue to review this policy in light of future decisions made in respect of redress claims.

Associated Documentation;

HVCCG Redress Policy 2014.

Appendix 4 Equality & Quality Inclusion Analysis Form

Step 1:

<p>Name of 'Policy or function' – this may relate to:</p> <ul style="list-style-type: none">NHS Continuing Healthcare Redress Policy	<ul style="list-style-type: none">Purpose: To ensure that HV CCG is compliant with the Refreshed Redress Guidance, Department of Health April 2015.Aims: To provide guidance to the CCG and any team with which the CCG contract when settling claims for individuals arising from NHS Continuing Healthcare eligibility decisions or where an eligibility decision has been reached previously un-accessed period of care in respect of NHS CHS Continuing Healthcare verses the need for redress has been identified. <p>Please refer to section 2 of the policy.</p>
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Step 2:

<p>Test for relevance:</p> <ul style="list-style-type: none">Will this help to deliver one or more of the aims of the Equality Act 2010?Will this have a potential impact on the nine characteristic groups and/or others as described in the guidance?

- Does the above 'Policy' have any relevance to equality? **Yes** × Please give your reasons for your selection.

If you have selected yes, please complete section 3-8 below.

Step 3:

Engagement, involvement and consultation undertaken		PSED Due regard to:	1. Eliminating unlawful discrimination, harassment and victimisation			2. Advancing equality of opportunity between people			3. Fostering good relation between people			Please provide details of evidence considered, service, workforce, research (national or local), demographic etc.
Internal	<input type="checkbox"/>											
External	<input type="checkbox"/>											
Provide details		Equality Characteristic Groups	-ve	N	+ve	-ve	N	+ve	-ve	N	+ve	
		Age			√			√			√	
		Disability			√			√			√	
		Gender			√			√			√	

	Gender Reassignment			√			√			
	Marriage & Civil Partnerships		√			√			√	
	Pregnancy & Maternity		√			√			√	
	Race or Ethnicity		√			√			√	
	Religion or Belief		√			√			√	
	Sexual Orientation		√			√			√	
	Other groups (please list)									

Key: +ve = positive impact, -ve = negative impact, N=no impact

Step 4

Engagement, involvement and consultation undertaken		Quality				Please provide details of evidence considered, service, workforce, research (national or local), demographic etc.
Internal	<input type="checkbox"/>					
External	<input checked="" type="checkbox"/> <input type="checkbox"/>	Patient/Programmes	-ve	N	+ve	
		Patient Experience – will it: Impact on the experience of patients and service users? Impact on patient choice?			✓ ✓	
		Patient Safety – will it: Impact on safety? Impact on preventable harm? Impact on the risk of healthcare acquired infection? Impact on clinical workforce capability,	✓ ✓ ✓			



		care and skills?	√			
		Clinical effectiveness – will it:				
		Meet evidence based practice/NICE guidance?	√			
		Impact on clinical leadership?	√			
		Include systems for monitoring clinical quality supported by good information?	√			

Step 5:

Have you identified any gaps or potential negative impact from the above? If yes, please state:			
Do you plan any further engagements? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Do you require further information or data to complete the analysis/actions? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Any actions to be undertaken (including mitigation) regarding the negative impact:			
Action	Outcome	Lead	Date for completion
Any changes made as a result of this assessment?		YES <input type="checkbox"/>	NO <input type="checkbox"/>
Please provide brief description of changes			

Following information (internal use only)

Step 6: Key individuals

Analysis conducted by:	Lead Name:	Job Title:	Contact Details:

Laura Mhlanga	Laura Mhlanga	Assistant Director	Laura.Mhlanga@hertsvalleysccg.nhs.uk
Other key contributors involved:			

Step 7:

Conclusion and/or recommendations:

Step 8:

Date form completed:	Clinical/Managerial approval:	Job Title/Directorate:	Date:	Signature:
Does a Committee or Senior Leadership Team need to be informed about this IEQIA? Yes <input type="checkbox"/> No <input type="checkbox"/>		Do you need to undertake monitoring/review Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, date of Review:		Date of publication:



Completed copy to be forwarded to Quality Team (name)

Questions to consider when carrying out an EQIA

In completing the EQIA you may find our annual publication of equality information along with local health inequality data from our website and/or intranet useful, as well as Hertfordshire County Council and National charities and EHRC.

When completing this EQIA please consider the following in a proportionate and relevant way:

Equality monitoring

- In line with our legal obligations, you may wish to consider how you will monitor our service users and/or workforce data by the nine equality characteristic groups.

Access to services and information

- If an eligibility criteria is applicable, please ensure that this is not discriminative unless it can be justified.
- Please consider if our buildings are physically accessible to everyone or would some people such as those with a physical disability encounter barriers? If so, what mitigation steps have you undertaken?
- In some cases information about our policies, and/or publications may need to be available in Braille, large print, easy read or on a tape or in a different community language. Do images in our publications reflect the diverse population that we serve?

Respect, dignity and cultural awareness

- Please consider that our policies always treat service users, carers, members of the public and staff with respect and dignity and that, where appropriate, we take account of people's beliefs, languages and dietary needs.

Definitions of the relevant protected characteristic groups:

Age

Definition: Age refers to a particular age group.

If your service is open to people of all ages, how will you make sure it is used by people of all ages?

Disability

A person has a disability if they have:

- a) A physical or mental impairment, and
- b) The impairment has a substantial and long term adverse effect on the person's ability to carry out normal day to day activities

Race

Race includes:

- a) Colour
- b) Nationality
- c) Ethnic or national origins

How will you make sure that people from a wide range of ethnic backgrounds use your service? (NB you may find it helpful to look at this section alongside the section on Religion and Belief as the actions are closely related).

Religion or Belief

- a) Religion means any religion and a reference to religion including a reference to a lack of religion
- b) Belief means any religious or philosophical beliefs and a reference to belief includes a reference to lack of belief

Sex

Definition: A reference to a person who has a particular protected characteristic is a reference to a man or to a woman.

Sexual orientation

Sexual orientation means a person's sexual orientation towards:

- a) Persons of the same sex
- b) Persons of the opposite sex, or
- c) Persons of either sex

Gender reassignment

A person has a protected characteristic of gender reassignment if the person is proposing to undergo/is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex, by changing physiological or other attributes of sex.

Pregnancy and maternity

Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.

Marriage and civil partnership

A person has the protected characteristic of marriage and civil partnership if the person is married or is a civil partner.

Public Sector Duty regarding social/economic inequalities

An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.

Quality considerations

- Patient Safety:
 - provision of information, data quality improvement, clinical coding,
 - serious incidents, incidents, never events, complaints, PALs enquiries
 - medicines management
 - equipment management
 - safe environment
 - management of Healthcare Associated Infections (HCAI)

- Clinical effectiveness of care:
 - NHS Outcomes Framework: how will the business case impact on the delivery of the five domains?
 - Preventing people from dying prematurely
 - Enhancing quality of life
 - Helping people recover from episodes of ill health or following injury
 - Ensuring people have a positive experience of care

- 
- Treating and caring for people in a safe environment and protecting them from avoidable harm:
 - standards applied by relevant professional bodies i.e. mandatory training, qualifications, CPD, revalidation & accreditation, CRB
 - Compliance with regulatory bodies
 - Compliance with relevant guidance / appraisals from NICE
 - Application of national standards and outcome measures
 - Participation in relevant clinical networks, national and local clinical audit programmes
 - Service development and improvement

 - Patient experience:
 - How is the service user engaged in planning and service design?
 - How are they listened too?
 - How do they get feedback on the service
 - How do we ensure equity of access equality and non-discrimination?