



# **Equality and Health Inequalities Analysis**

Refreshed NHS Continuing Healthcare Redress Guidance 2015

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# 1 Equality Analysis

**Title: NHS Continuing Healthcare Redress Guidance 2015**

**What are the intended outcomes of this work?** *Include outline of objectives and function aims*

**In terms of NHS Continuing Healthcare:**

- Remind CCGs of their responsibilities concerning redress and maladministration
- Remind CCGs of advice relating to ex gratia payments
- Advise CCGs how to calculate interest payments for redress – so that they continue to reflect the Parliamentary and Health Service Ombudsman ‘Principles for Remedy’ amended in 2012;(to put individuals back in the position that they should have been had the maladministration not occurred) in light of the current economic climate so that neither individuals nor the statutory sector are enriched
- Remind CCGs about the powers of LAs regarding deferred payment agreements

The refreshed guidance also has the following benefits

- Is clear for the NHS to follow
- Is clear for individuals and their family in terms of what they can expect

It is important to note that the guidance should assist CCGs to give an indication to individuals and families about what they can normally expect in redress cases. The guidance does not remove the requirement for CCGs to consider the specific circumstances of each individual case when determining the appropriate level of redress.

**Who will be affected?** *e.g. staff, patients, service users etc*

This guidance is for CCGs.

It also sets out more clearly for individuals and their families what they can expect in terms of redress cases i.e. where the individuals and their families may have a claim arising from reviews of NHS Continuing Healthcare decisions or where an eligibility decision has been reached on a previously un-assessed period of care in respect of NHS Continuing Healthcare.

## Evidence

**What evidence have you considered?** List the main sources of data, research and other sources of evidence (including full references) reviewed to determine impact on each equality group (protected characteristic). This can include national research, surveys, reports, research interviews, focus groups, pilot activity evaluations or other Equality Analyses. If there are gaps in evidence, state what you will do to mitigate them in the Evidence based decision making section on page 9 of this template.

**NHS England has utilised the Department of Health Equality Analysis for the National Framework for NHS Continuing Healthcare and NHS funded Nursing Care 2012**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/211257/Equality\\_Analysis.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211257/Equality_Analysis.pdf)

The key policy rationale for the National Framework for NHS CHC is to ensure that there is a consistent method to undertake the assessment for NHS CHC throughout the NHS.

Therefore the assessment process purpose is to assess an individual's needs across a range of domains to establish whether they have a "primary health need".

Eligibility for NHS CHC is not based on condition, or diagnosis. Therefore the core purpose of the National Framework is based on eligibility by needs **only** regardless of someone's age, disability gender or race etc. and the framework is therefore inclusive in its principles

The Redress Guidance sets out how financial re-imburement should be calculated for individuals and their representatives if they had paid for their care when they should have been in receipt of NHS CHC.

**Age** Consider and detail age related evidence. This can include safeguarding, consent and welfare issues.

NHS CHC is not condition specific nor is it dependent on diagnosis- see evidence section above

The National Framework relates to adults 18 and over.

From our dialogue with CCGs in general there are a higher proportion of older people eligible for NHS CHC as a result of co-morbidities and due to an aging population the demand on NHS CHC will increase. This is set out in detail in the DH Health Equality Analysis.

**Disability** Consider and detail disability related evidence. This can include attitudinal, physical and social barriers as well as mental health/ learning disabilities.

NHS CHC is not condition specific nor is it dependent on diagnosis- see evidence

section above.

However any individual with any illness or disability may be entitled to NHS Continuing Healthcare, according to their assessed individual health needs. By its nature, recipients of NHS Continuing Healthcare have long-term complex health needs.

NHS CHC affects people who have primary health needs, the vast majority of whom will be disabled within the definition of the Equality Act 2010 (“EqA”). There is an almost complete overlap between the definition of those adults entitled to NHS CHC and the definition of disability under the EqA. The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012, state that NHS CHC will be provided to:

*a person aged 18 or over to meet physical or mental needs which have arisen as a result of disability, accident or illness.*

Section 6 of the EqA defines a disabled person as someone who:

- (a) . . . has a physical or mental impairment, and
- (b) the impairment has a substantial and long-term adverse effect on [that person’s] ability to carry out normal day-to-day activities.

To ensure that the assessment process for NHS CHC is also applied consistently for individuals with Learning Disabilities best practice guidance has been developed and training days for clinical staff developed.. Consideration of issues such as mental capacity, safeguarding, DOLS, Best Interest decisions, consent etc. are also included. There is also an easy read version of the National Framework.

**Gender reassignment (including transgender)** Consider and detail evidence on transgender people. This can include issues such as privacy of data and harassment.

The NHS CHC policy framework is inclusive in its principles with no individual being treated differently on the basis of condition, diagnosis, gender reassignment etc. The assessment process is designed to establish an individual’s overall level of need and whether or not a ‘primary health need’ exists.

Any individual with any illness or disability may be entitled to NHS Continuing Healthcare, subject to their assessed individual health needs. There is no perceived difference in the benefits that people will receive from this guidance based on gender reassignment.

**Marriage and civil partnership** Consider and detail evidence on marriage and civil partnership. This can include working arrangements, part-time working, caring responsibilities.

The NHS CHC policy framework is inclusive in its principles with no individual being treated differently on the basis of condition, diagnosis, gender reassignment, or

marital status etc. The assessment process is designed to establish an individual's overall level of need and whether or not a 'primary health need' exists.

Any individual with any illness or disability may be entitled to NHS Continuing Healthcare, subject to their assessed individual health needs. There is no perceived difference in the benefits that people will receive from this guidance based on their marital status.

**Pregnancy and maternity** Consider and detail evidence on pregnancy and maternity. This can include working arrangements, part-time working, caring responsibilities.

The NHS CHC policy framework is inclusive in its principles with no individual being treated differently on the basis of condition, diagnosis, pregnancy etc. The assessment process is designed to establish an individuals' overall level of need and whether or not a 'primary health need' exists.

Any individual with any illness or disability may be entitled to NHS Continuing Healthcare, subject to their assessed individual health needs. There is no perceived difference in the benefits that women will receive from this guidance in terms of their maternal status.

**Race** Consider and detail race related evidence. This can include information on difference ethnic groups, Roma gypsies, Irish travellers, nationalities, cultures, and language barriers.

The NHS CHC policy framework is inclusive in its principles with no individual being treated differently on the basis of condition, diagnosis, gender, race etc. The assessment process is designed to establish an individual's overall level of need and whether or not a 'primary health need' exists.

Any individual with any illness or disability may be entitled to NHS Continuing Healthcare, subject to their assessed individual health needs. There is no perceived difference in the benefits that people will receive from this guidance based on their ethnicity or nationality.

However, it is the responsibility of commissioners and those referring, for example, as part of hospital discharge planning or local authority referrals, to ensure that individuals needs are identified and assessed appropriately, and where this might include assessment for NHS CHC eligibility.

CCGs are responsible for promoting NHS Continuing Healthcare in their local population, and providing information in a range of languages and formats to help overcome these barriers to access.

**Religion or belief** Consider and detail evidence on people with different religions, beliefs or no belief. This can include consent and end of life issues.

The NHS CHC policy framework is inclusive in its principles with no individual being treated differently on the basis of condition, diagnosis, religion etc. The assessment process is designed to establish an individual's overall level of need and whether or not a 'primary health need' exists.

Any individual with any illness or disability may be entitled to NHS Continuing Healthcare, subject to their assessed individual health needs. There is no perceived difference in the benefits that people will receive from this policy guidance based on their religion or beliefs.

**Sex** Consider and detail evidence on men and women. This could include access to services and employment.

The NHS CHC policy framework is inclusive in its principles with no individual being treated differently on the basis of condition, diagnosis, sex etc. The assessment process is designed to establish an individual's overall level of need and whether or not a 'primary health need' exists.

Any individual with any illness or disability may be entitled to NHS Continuing Healthcare, subject to their assessed individual health needs. There is no perceived difference in the benefits that people will receive from this guidance based on their gender.

**Sexual orientation** Consider and detail evidence on heterosexual people as well as lesbian, gay and bisexual people. This could include access to services and employment, attitudinal and social barriers.

The NHS CHC policy framework is inclusive in its principles with no individual being treated differently on the basis of condition, diagnosis, sexual orientation etc. The assessment process is designed to establish an individual's overall level of need and whether or not a 'primary health need' exists.

Any individual with any illness or disability may be entitled to NHS Continuing Healthcare, subject to their assessed individual health needs. There is no perceived difference in the benefits that people will receive from this guidance based on their sexual orientation.

**Carers** Consider and detail evidence on part-time working, shift-patterns, general caring responsibilities.

Any individual with any illness or disability may be entitled to NHS Continuing Healthcare, subject to their assessed individual health needs.

The Redress Guidance is about the principle of putting the individual back in the position that they would have been in had the individual been assessed as eligible for NHS CHC. This will therefore apply to individuals who had funded their own care previously and once an assessment for NHS CHC had been undertaken, if eligible then the NHS should have funded their care. It is about how to make a fair, rational and reasonable re-imburement. Care provided to them may form part of that consideration.

**Other identified groups** Consider and detail evidence on groups experiencing disadvantage and barriers to access and outcomes. This can include different socio-economic groups, geographical area inequality, income, resident status (migrants, asylum seekers).

Any individual with any illness or disability may be entitled to NHS Continuing Healthcare, subject to their assessed individual health needs. Since its introduction in 2007, the National Framework has done much to improve access to NHS Continuing Healthcare.

Eligibility for NHS Continuing Healthcare is based upon the individual's health needs. However, it is recognised that different levels of education, articulacy, awareness and confidence are known to collate closely with economic status, background and these factors may be important in relation to the processes around NHS Continuing Healthcare appealing eligibility decisions and seeking redress. However, commissioners have a role in ensuring that the process of assessment and decision-making for NHS CHC is person centred and this means placing the individual, their perception of their support needs, and their preferred models of support at the heart of the assessment and care-planning process. When deciding on how their needs are met, the individual's wishes and expectations of how and where the care is delivered should be documented and taken into account, along with the risks of different types of provision and fairness of access to resources.

The Redress Guidance is about the principle of putting the individual back in the position that they would have been in had they been assessed as eligible for NHS CHC. This will therefore apply to individuals who would have funded their own care previously and had an assessment for NHS CHC been undertaken and they been found eligible then the NHS should have funded their care. It is about how to make a fair, rational and reasonable re-imburement.

## Engagement and involvement

How have you engaged stakeholders with an interest in protected characteristics in gathering evidence or testing the evidence available?

The key principle of the Redress Guidance is to put the individual back in the position that they should have been in had they been assessed as eligible for NHS CHC and therefore there is no change in this policy.

The guidance reflects the Principles for Remedy revised by the Parliamentary and Health Service Ombudsman in 2012

We have worked with the Parliamentary and Health Service Ombudsman in preparing the Guidance.

We have invited comments from the NHS Continuing Healthcare Stakeholder Group which include a range of charities representing individuals being assessed or in receipt of NHS Continuing Healthcare such as Age UK, the Alzheimers Society, Spinal Injuries Association, Parkinson's UK, Motor Neurone Association, Marie Curie Care).

How have you engaged stakeholders in testing the policy or programme proposals?

We have worked with the Commissioning Assembly, Association of Directors of Adult Social Services and Healthwatch

The guidance was published in draft on the NHS England website for comment February 6 2015 for six weeks

For each engagement activity, please state who was involved, how and when they were engaged, and the key outputs:

A draft of the NHS England Refreshed Redress Guidance was placed on the NHS England website on February 6 2015 for six weeks for comment on the policy. NHS England requested CCGs to place a link to the draft Refreshed Guidance on their own websites. No comments received with regards to the principles of the policy.

## Summary of Analysis

Considering the evidence and engagement activity you listed above, please summarise the impact of your work. Consider whether the evidence shows potential for differential impacts, if so state whether adverse or positive and for which groups and/or individuals. How you will mitigate any negative impacts? How you will include certain protected groups in services or expand their participation in public life?

Now consider and detail below how the proposals impact on elimination of discrimination, harassment and victimisation, advance the equality of opportunity

and promote good relations between groups.

The assessment for NHS CHC is based on need and is not condition specific or based on diagnosis.

The NHS CHC policy framework is inclusive in its principles with no individual being treated differently on the basis of gender, or race etc.

The Redress Guidance is about how to calculate the reimbursement of monies once an assessment has been undertaken for a past period of care and the individual is deemed eligible for NHS CHC and therefore the care should have been funded by the NHS regardless of gender, race etc

### **Eliminate discrimination, harassment and victimisation**

Where there is evidence, address each protected characteristic (age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sexual orientation).

Please see DH Equalities Analysis

### **Advance equality of opportunity**

Where there is evidence, address each protected characteristic (age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sexual orientation).

## Evidence based decision-making

Please give an outline of what you are going to do, based on the gaps, challenges and opportunities you have identified in the summary of analysis section. This might include action(s) to eliminate discrimination issues, partnership working with stakeholders and data gaps that need to be addressed through further consultation or research.

- What health inequalities currently exist with regard to the health issue that your policy will address  
The Guidance follows the PHSO Principles for Remedy which sets out that the individual should be put back in the position that they should have been had they been found eligible for NHS CHC. Therefore this is for individuals who should have had their long term care funded by the NHS but have not had an assessment or an inappropriate assessment and had to fund their own care as social care is means tested.
- By the nature of the healthcare provided, there is a tendency for recipients of NHS Continuing Healthcare to be older and/or disabled in some way. The core values and principles of the Framework are aimed at addressing inconsistency in the application of the policy, and so should improve access to funded care for these groups.
- Access to assessment, decision-making and provision should be fair and consistent. There should be no discrimination on the grounds of race, disability, gender, age, sexual orientation, religion or belief, or type of health need. CCGs are responsible for ensuring that discrimination does not occur and should have effective auditing to monitor this

How will you share the findings of the Equality analysis? This can include corporate governance, other directorates, partner organisations and the public.

To be published on the NHS England website alongside the Refreshed NHS Continuing Healthcare Redress guidance

## 2 Health Inequalities Analysis

### Evidence

**1. What evidence have you considered to determine what health inequalities exist in relation to your work?** List the main sources of data, research and other sources of evidence (including full references) reviewed to determine impact on each equality group (protected characteristic). This can include national research, surveys, reports, research interviews, focus groups, pilot activity evaluations or other Equality Analyses. If there are gaps in evidence, state what you will do to mitigate them in the Evidence based decision making section on the last page of this template.

The National Framework for NHS Continuing Healthcare contains the tools to be used by CCGs in the assessment process for eligibility. There is also an equality monitoring form so that CCGs can collect equalities information with regards to the individuals that are assessed.

### Impact

**2. What is the potential impact of your work on health inequalities?** Can you demonstrate through evidenced based consideration how the health outcomes, experience and access to health care services differ across the population group and in different geographical locations that your work applies to?

The Redress Guidance is about financial redress and putting individuals back in the position that they would have been in had they been assessed as eligible for NHS CHC.

### Monitor and Evaluation

**1. How will you monitor and evaluate the effect of your work on health inequalities?**

The National Framework for NHS Continuing Healthcare contains the tools to be used by CCGs in the assessment process for eligibility. There is also an equality monitoring form so that CCGs can collect equalities information with regards to the individuals that are assessed.

### For your records

**Name of person(s) who carried out these analyses:**

**Trish O’Gorman**

**Name of Sponsor Director: Jane Cummings**

**Date analyses were completed:**

December 19 2014 and March 29 2015

**Review date:**