

What to do if you think our decision about your complaint is wrong

We receive thousands of complaints about the NHS in England. UK government departments and other public organisations every year. We consider each complaint very carefully. However, we realise that not everyone will be happy with the decision we make about their complaint. Occasionally, we get something wrong or new information becomes available.

If you think we have got something wrong you can ask us to review our decision under our internal complaints procedure, using this form. This form is also available from our website.

Important information to know before asking for a review

It is important to know that we will not be able to review our decision about your complaint just because you disagree. Please tell us what you think we got wrong and why. For us to be able to review our decision, you must send your request for a review to us within three months of the date of the decision. You must also show us that:

- (1) we made our decision based on evidence that contained facts that were not accurate and which could change our decision;
- (2) you have new and relevant information that was not previously available and which might change our decision; or
- (3) we overlooked or misunderstood parts of your complaint or did not take account of relevant information, which could change our decision.

A review does not mean we will look at your original complaint again. Instead it means we will look to see if we took account of all the relevant evidence and made a fair decision based on this.

If you would like to see the evidence we based our decision on, please ask the caseworker who dealt with your case. We would usually expect you to do this before you ask for a review.

Before filling in this form, please read the information below

If you need any help understanding this form, or need it in a different format (for example large print), please call our helpline on 0300 061 4076. If you are filling in the form by hand, please use BLOCK CAPITALS if you are able to. We are able to discuss the details of your original complaint.

Please note that there is no need to send a repeat of your original complaint or documents we have already seen, as we will not look at these again. Please only write in the boxes that apply to your request for a review. If you are sending any supporting documents to us, please explain what they relate to or mean. Without an explanation, we might not be able to consider them.

If you are making a complaint about the way we dealt with you, rather than about our decision on your complaint, please use our 'How to complain about the way we dealt with you' form. For a copy, please visit our website or call our helpline.

Why you want us to review our decision about your complaint

Please only fill in the sections which are relevant to your request.

(1) We made our decision based on evidence that you can show contained facts that were not accurate.

1.1 Please provide clear and specific details below of all the points in the decision letter you received about your complaint that you feel contain facts that were not accurate. Please provide, where possible, copies of information to support this, which we have not already seen.

1.1a) In Item 27 of your investigation report, your adviser seems to have mixed the health needs of Coughlan with a 'home for life promise' which is fundamentally not the case as far as CHC funding is concerned. The so called "health needs test" is nothing to do with a "housing needs test". I therefore dispute your advisor's view of the Coughlan case. In addition the "health needs test" or "primary needs test" is not that adopted by the court of Appeal in Coughlan, it did not lay down any "primary health needs test".

1.1b) In item 26 of your investigation report, your advisor incorrectly stated that " (Coughlan) case law compliance has been embedded in the National Framework. Therefore if a case adheres to the principles in the National Framework then effectively it is considered to have been in accordance with case law."

1.1c) Item 28. You are suggesting that as my Mother was transferred to the EMI section of a residential care home that by inference, she did not require nursing care. Your advisor's comments are simply wrong. Read the Pointon case (E.22/02-03) for clarification on who can provide "nursing care".

1.1d) In your letter of reply of the 11th April you state that the information looked at to consider eligibility went back as far as 1996 to " highlight the diagnosis of dementia and the point at which the mental health team withdrew". Therefore evidence about Ms ████████ condition at this early stage had been noted by the IRP. This comment is from the PCT presentation at the IRP but it is not correct. I've no idea what "the mental health team" was. I was never informed about any "mental health team" looking after my Mother, I certainly had no discussions with "the mental health team" so this information provided to the IRP by Sue H ████████ is simply misleading nonsense.

1.2 Please explain why the information you gave in section 1.1 would change our decision.

1.2a) Obviously a judgement cannot be based in part on a flawed argument.

1.2b) Because this statement has not been tested in law, it is an assumption of the entrenched culture of ineligibility amongst NHS and social services staff.

1.2c) This is an instance where the NHS was negligent in not providing a CHC assessment prior to my Mother leaving hospital. You cannot say that because this was not done, she did not require nursing care, that is an irrational argument.

1.2d) This is situation where the PCT is trying to paint a picture of care which did not happen and is in reality another instance of where the PCT was negligent and deficient in their duties.

(2) You have new and relevant information that was not previously available and which you can show might change our decision.

2.1 Please explain below clearly and specifically why this new information is relevant. You should attach copies of this evidence to this form.

2.1a) You, ie the Ombudsman, do not appear to be applying a level playing field. There are a number of cases, apart from Coughlan, that are very similar to my Mother's in which you upheld an appeal. I will quote you:-

(i) Dorset Health care NHS Trust case E208/99-00. Here the Health Authority used over restrictive eligibility criteria.

(ii) Berkshire Health Authority case E814/00-01. This is an interesting case because the Ombudsman upheld a complaint that the Berkshire Health Authority had not amended its criteria in line with the Coughlan judgement!

(iii) Dorset Health Authority case E308/99-00

(iv) Shropshire Health Authority case E5/02-03110

(v) South Cambridgeshire NHS Trust case E22/02-03. The Pointon case considered the issue of whether nursing care for a chronically ill patient could lawfully be provided by Social Services.

(vi) Birmingham Health Authority case E.1626/01-02. Here the Health Authority used over restrictive eligibility criteria.

(vii) Etc

2.1b) In Item 16 of your investigation report, your adviser states that "Ms [REDACTED] needs warranted a clinical discussion and for a professional judgement to be made based on this clinical evidence. Our adviser said that this type of judgement is not an exact science but it is essential that the decision is justified and reasonable". This has not been done. It would seem that you have rubber stamped the IRP and the IRP has rubber stamped the Suffolk NHS Primary Care Trust Review Panel irrespective of whether the original decision criteria were reasonable and accurate.

2.1c) There is a basic problem with the IRP assessment of my Mothers needs and the subsequent review by the Ombudsman. Some consideration has been made of the single National Framework and the Decision Support Tool which was put into place in 2007. My mother's care pre-dates this and into the general conflict area of what is "health care" and what is "social care" but in 1999 the Court of Appeal delivered its judgement in the

Coughlan case that social services could only fund low level nursing care. Following the Coughlan judgement, in 2002, the Ombudsman was trenchant in the DOH's failure to provide clear guidance to SHA's in applying Coughlan (HC 399, 2003 para. 31). In the Pointon case (Ombudsman Case no. E22/02/02-03) the Ombudsman states "the health bodies had failed to take into account the special skills it takes to nurse someone with dementia: that the assessment tools used by the NHS were skewed in favour physical and acute care; and the fact that Mr Pointon needed care at home - rather than in a nursing care home for example - was not material to the question continuing health care responsibility ".The Pointon report is of considerable importance, being an example of entitlement to continuing health care funding where (1) the nature of the health care need was not for acute medical support but for nursing of a quality that could manage his behaviour and (2) the fact that he was receiving care from untrained assistants, an issue that is often used as a reason for refusing entitlement to continuing health care. What is of key importance is what a person needs - not what he or she is receiving.

2.1d) One of the problems I faced after receiving the original PCT report was in understanding the subjectively qualitative decision aspects of the so-called nature, complexity, intensity or unpredictability parts of the "primary health need" in relation to the height of the bar between "health care" and "social care". In considering my Mother's illness the 2007 Decision Tool in the National Framework seemed to offer some quantitative basis for CHC decision making, albeit still mainly empirical in nature. The IRP seems to have supported this view, as per their panel remit. Although neither Coughlan nor Pointon would have qualified under the National Framework (Clements L, Briefing Document, Cardiff Law School 2006), the IRP evaluation was very much in favour of my Mother's case. However, because the National Framework was not in place in 2001, the IRP would only endorse the PCT decision criteria.

2.1e) In relation to the IRP evaluation using the Decision Tool, the multidisciplinary team did not consist of a dementia specialist as per the 2007 NHS Continuing Healthcare Responsibilities Directions requirement hence my comments under b) requesting a specialist review of my Mother's case.

2.1f) The way in which care notes are interpreted is crucial to the correct application of the DST (Decision-Support Tool for NHS Continuing Healthcare; DH 098518; 2007). In para 17 it states that if there are a number of domains with high and/or moderate needs this can also indicate a primary health need. In this case, the overall need, the interactions between needs in different care domains, and the evidence from risk assessments, should be taken into account in deciding whether a recommendation of eligibility for NHS Continuing Healthcare should be made.

2.2Please explain why the new information you gave in section 2.1 would change our decision.

2.2a) I am looking for some fairness. Examination of the similar cases above clearly show the Ombudsman has upheld like complaints in the past hence I am requesting the same consideration.

2.2b) I am therefore requesting that an independent dementia specialist look at this case because your adviser has merely looked at the overall review process rather than the underlying facts in the appeals.

2.2c) The point of the above references to Coughlan and Pointon is to identify that on the one hand whilst the Ombudsman is prepared to uphold complaints and criticise assessment tools in favour of complainants with seemingly similar health needs to my Mother, in my Mother's case the Ombudsman seems to be upholding the very system she originally complained about? This is grossly unfair. You can't have it both ways.

2.2d) and e) I am requesting that an independent dementia specialist look at this case because it seems to me the IRP decision is unsafe based on the facts I have presented

2.2f) Again we have a situation where my Mother's situation would be relevant for specialist consideration but the I PR could only endorse the PCT criteria under their remit, hence te IRP decision is questionably unsafe.

(3) We overlooked or misunderstood parts of your complaint or did not take account of relevant information.

3.1 Please tell us below what evidence we did not take into account when we made our decision about your complaint. Please clearly and specifically link this evidence to the decision letter you received.

3.1a) In your letter dated 11th.April you state that you have found no evidence that I was not able to make a full statement to the IRP. Previously you had chosen to ignore this item in my original complaint to you. The IRP Chairman stopped me on a number of occasions, particularly with reference to Coughlan, and would not allow me to make my case properly. You have the IRP minutes and you have my statement I have already sent you the statement I wanted to present at the IRP....they do not compare because the Chair kept shutting me down!

3.1b) You have chosen to ignore the section in my complaint to you regarding the lack of assessment before discharge from hospital. Because my Mother at that time was disabled and also incontinent, a continuing care assessment should have been done prior to hospital discharge but was not. The NHS was therefore clearly negligent in this regard. My mother went into hospital mobile, anxious and confused with her dementia illness. She came out of hospital disabled, immobile, arthritic, incontinent having difficulty in feeding herself and no less anxious, agitated and confused with the dementia. In not providing a continuing care assessment before discharge, the NHS was negligent in not identifying my Mother's nursing care needs. Prior to hospital discharge the NHS should have been required to complete a 'Multi-disciplinary assessment' (MDA) to determine what on-going care is required and where and by whom it can best be provided.

3.1c) In the IRP documentation dated 19th.September 2013, Section 9, Recommendations, which I submitted a copy to you as part of my complaint, it was noted that the PCT's completion of the "primary health needs" test was confusing and given that the case might be referred to the Ombudsman, the PCT should give further thought to clarifying their statements under each of the headings, particularly those of complexity and intensity..... was that done? If not why not?

3.1d) For the IRP review on the 28th. August 2013, I submitted a written statement, already referred to above. In this statement, item c) under Procedural Issues, you will note that I have stated I was not sent a complete document package from Sue H [REDACTED] prior to the PCT review, only a few summary pages.. Whether this was a deliberate ploy on behalf of the PCT is questionable but as a consequence I did not have a full understanding of my Mother's care regime and as it turns out I was severely disadvantaged at that review. As a result a number of incorrect statements were made in the PCT report....see Appendix B in my statement to the IRP dated 28th. August 2013. You have overlooked this item of my complaint to you.

3.1e) In Item 17 of your investigation report HS- [REDACTED], your adviser mentions that the IRP used the decision support tool but I don't think your adviser looked very closely at this. The DST for CHC funding requires 1 priority domain or 2 severe domains. The IRP agreed on 1 severe domain and for mobility, settled on a high rating whereas I consider this should be a severe domain. This disagreement is unfairly subjective and should have been looked at properly with advice from a specialist dementia consultant. If not being able to stand, move without assistance, unable to dress, turn over in bed etc is not a severe condition I don't know what is.

3.1f) A particularly relevant item that seems to have been overlooked was the fact that the EMI residential home stated many times for the record that they were finding it very difficult to meet my Mothers' nursing care needs. This is referred to in the IRP review but not properly considered. There is a significant amount of correspondence on this by Ipswich Social Services in my Mother's care record attempting to obtain nursing care funding and nursing home placement for my Mother. Clearly therefore, her so called 'eligibility criteria' had been met. Furthermore, in a situation such as this, since dementia is a degenerative condition, I find it difficult to understand why the PCT did not consider my Mother's health needs in more timescale detail as her mental and physical condition deteriorated to the point of her eventually requiring palliative care before death.

3.2 Please clearly and specifically explain why you think the evidence would change our decision.

3.2a) You have my copy of my statement to the IRP dated 28th. August but as I have already stated, I was not allowed to talk about all of this. Please examine my statement and compare with the IRP minutes. I deserved the right to be properly heard.

3.2b) There was clearly no agreement to discharge my mother from hospital. She was not assessed for CHC funding when she should have been. It would appear that the NHS by default chose to transfer responsibility onto Social Services without the due process of assessment that my Mother was entitled to. This is an important factor in my case that must be taken into account. The NHS failed to follow their own rules.

3.2c) In the opinion of the IRP, clearly the PCT documentation and procedures were at fault and should be revisited.

3.2d) Clearly the PCT panel review on the 30th. May 2012 was defective, based on inadequate information. The PCT had not circulated their complete record to me beforehand, hence creating an unfair imbalance in the evidence presented. Clearly the PCT documentation and procedures were at fault and should be revisited.

3.2e) My Mother's health condition should be reviewed by an independent Dementia consultant in order to address the culture of ineligibility within some health bodies.

3.2f) It doesn't make a lot of sense that the residential home is providing nursing and palliative care with the assistance of specialist nurses and yet the PCT and IRP regard this as social care when it clearly isn't. There should have been regular clinical reviews for CHC funding but clearly there were not.