



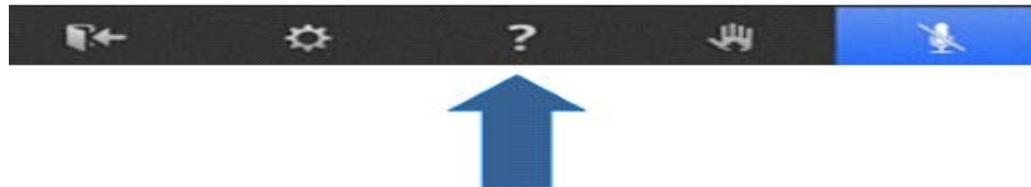
Continuing Healthcare training

Welcome

- Welcome to this Contact Webinar
- If there is a technical hitch, please do bear with us
- Those of you joining by pc, laptop, tablet or smart phone should now be able to see this introduction slide

Timings and Questions

- As there are so many attendees, it is not practical for verbal questions to be taken, therefore you will all remain 'muted' throughout
- If at any point you have questions, please use the question icon on your GoToWebinar tool bar on your screen
- This will allow you to type your question in to the text box and submit this to the Webinar administrator
- I will select as many relevant questions to answer as time allows, if similar questions are received I will condense these where possible



Q & A

- Further relevant questions, not covered in the time allowed, will be answered and posted on the Contact website along with the recording of this Webinar, details of which will be circulated next week
- At the end of the Webinar a short questionnaire will launch, please take the time to complete this as this will assist with future online training events

Overview

- Entitlement to continuing healthcare
- Assessing eligibility – the process
- Considerations/common problems

NHS continuing healthcare is a complete package of care arranged and funded solely by the NHS, where a person is assessed as having a primary health need. Care can be received in any setting. It is often described as ‘fully funded care’.*

National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care, 2012 (updated).

Legal framework

Legislation

National Health Service Act 2006 (as amended by the Health and Social Care Act 2012)

Regulations

National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012

National framework

National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care, November 2012 (Revised)

R v North and East Devon Health Authority, ex parte Coughlan (1999)

- Pamela Coughlan was seriously injured in a road traffic accident in 1971. She received NHS care in Newcourt Hospital until 1993. When the Exeter Health Authority wished to close that hospital and move Miss Coughlan and other individuals to a new NHS facility at Mardon House, the individuals were promised that Mardon House would be their home for life.
- In 1998, the successor health authority (North and East Devon Health Authority) decided to close Mardon House, and transfer the care of Miss Coughlan and other disabled individuals to the local authority (LA) social services. Miss Coughlan and the other residents did not wish to move out of Mardon House and argued that the decision to close it was a breach of the promise that it would be their home for life, and was therefore unlawful.
- The arguments on the closure of Mardon House raised other legal points about the respective responsibilities of the health service and the social services for nursing care. The Court of Appeal's judgement on this aspect has heavily influenced the development of continuing care policies and the National Framework.

R v North and East Devon Health Authority, ex parte Coughlan

Key relevant points include:

- As a very general indication as to the limit of local authority provision, if the nursing services are:
 - a) merely incidental or ancillary to the provision of the accommodation that an LA is under a duty to provide, pursuant to section 21; **and**
 - b) of a nature that an authority whose primary responsibility is to provide social services, can be expected to provide...then such nursing services can be provided under section 21 of the National Assistance Act 1948.
- Where a person's primary need is a health need, the responsibility is that of the NHS, even when the individual has been placed in a home by an LA.

R v North and East Devon Health Authority, ex parte Coughlan

- The NHS does not have sole responsibility for all nursing care. LAs can provide nursing services under section 21 of the National Assistance Act 1948, so long as the nursing care services are capable of being properly classified as part of the social services' responsibilities.
- An assessment of whether a person has a primary health need should involve consideration not only of the nature and quality of the services required, but also of the quantity or continuity of such services.
- The duty of Clinical Commissioning Groups under section 3 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012), is limited to providing the services identified, to the extent that they consider necessary to meet all reasonable requirements.
- This case was decided before the enactment of section 49 of the Health and Social Care Act 2001, but is still relevant today.

R v Bexley NHS Trust, ex parte Grogan (2006)

- Maureen Grogan had multiple sclerosis, dependent oedema with the risk of ulcers breaking out, was doubly incontinent, a wheelchair user requiring two people for transfer, and had some cognitive impairment. After the death of her husband, her health deteriorated and she had a number of falls. Following admission to hospital with a dislocated shoulder, it was decided that she was unable to live independently and she was transferred direct to a care home that provided nursing care.
- Subsequent assessments indicated that (under the then local criteria dated December 2002) Mrs Grogan's condition was such that she did not qualify for fully funded NHS continuing healthcare. It was initially determined that she was in the medium band of NHS-funded nursing care. By and large, she remained in this band, although one determination placed her in the high band from April to October 2004. Mrs Grogan argued that the decision to deny her full NHS funding was unlawful, since the eligibility criteria put in place by South East London NHS CB were contrary to the judgement in the Coughlan case. She also submitted that the level of nursing needs identified in the Registered Nursing Care Contribution (RNCC) medium and high bandings (in which she had been placed) indicated a primary need for healthcare that should be met by the NHS.

R v Bexley NHS Trust, ex parte Grogan (2006)

Key relevant points include:

- In assessing whether Mrs Grogan was entitled to NHS continuing healthcare, the care trust did not have in place – and did not apply – criteria which properly identified the test or approach to be followed in deciding whether her primary need was a health need.
- The court identified the fact that there can be an overlap, or a gap, between social care and NHS provision, depending on the test, or tests, applied. The court accepted, as had been submitted by the Secretary of State, that the extent of her duties was governed by NHS legislation, not the upper limits of local authority lawful provision, and that therefore there was a potential in law for a gap between what the Secretary of State provided and those ‘health services’ that the local authority could ‘lawfully’ supply.
- If the policy of the Secretary of State was that there should be no gap, then, when applying the primary health need approach, this should be considered against the limits of social services lawful provision, not just by reference to a ‘primary health need’.
- The trust’s decision that Mrs Grogan did not qualify for NHS continuing healthcare was set aside, and the question of her entitlement to NHS continuing healthcare was remitted to the trust for further consideration.
- There was no finding, or other indication, that Mrs Grogan in fact met the criteria for NHS continuing healthcare

Criteria – a ‘primary health need’

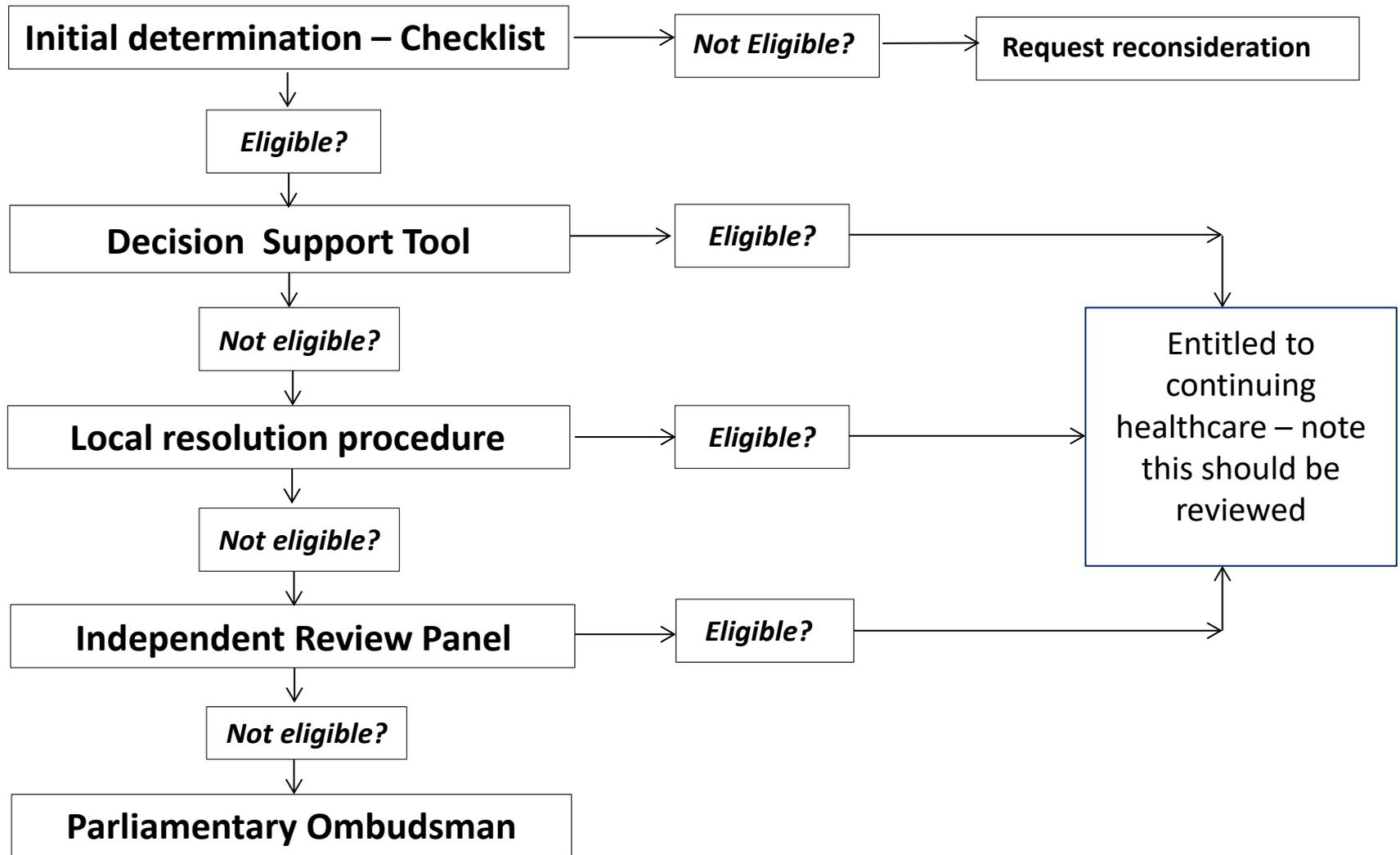
- Not defined in primary legislation
- National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012/National framework:

*A decision of ineligibility for NHS continuing healthcare is only possible where, **taken as a whole**, the nursing or other health services required by the individual:*

a) are no more than incidental or ancillary to the provision of accommodation which LA social services are, or would be but for a person’s means, under a duty to provide; and;

b) are not of a nature beyond which an LA whose primary responsibility it is to provide social services could be expected to provide

The assessment process



Assessing a claim

- More than a ‘social care need’
- Overall picture of needs
 - Level of need
 - DST domains
- Four key indicators

Assessed level of need – domains

Care Domain	P	S	H	M	L	N
Behaviour						
Cognition						
Psychological Needs						
Communication						
Mobility						
Nutrition – Food and Drink						
Continence						
Skin (including tissue viability)						
Breathing						
Drug Therapies and Medication						
Altered States of Consciousness						
Other significant care needs						
Totals						

The four key indicators

- **Nature:** This describes the particular characteristics of an individual's needs (which can include physical, mental health or psychological needs) and the type of those needs. This also describes the overall effect of those needs on the individual, including the type ('quality') of interventions required to manage them.
- **Intensity:** This relates both to the extent ('quantity') and severity ('degree') of the needs and to the support required to meet them, including the need for sustained/ongoing care ('continuity').
- **Complexity:** This is concerned with how the needs present and interact to increase the skill required to monitor the symptoms, treat the condition(s) and/or manage the care. This may arise with a single condition, or it could include the presence of multiple conditions or the interaction between two or more conditions. It may also include situations where an individual's response to their own condition has an impact on their overall needs, such as where a physical health need results in the individual developing a mental health need.
- **Unpredictability:** This describes the degree to which needs fluctuate and thereby create challenges in managing them. It also relates to the level of risk to the person's health if adequate and timely care is not provided. Someone with an unpredictable healthcare need is likely to have either a fluctuating, unstable or rapidly deteriorating condition.

Eligibility – strong indicators

Scoring

- 1 priority need
- 2 + severe
- 1 severe with 'other' needs
- Number of domains with high/moderate needs.

Always consider totality of needs

Assessing the claim

- Stages of the claim
- Reoccurring health problems
- Totality of need
- Deadlines
 - 6 months to appeal
 - Bar on some retrospective claims
- Changes in need – partial eligibility?

Submissions

- Clear, concise
- Medical point of view
- Structure
- Quotes from records

Instructing experts

- Borderline cases
- Rare condition, interaction of multiple conditions

Challenging an ineligibility finding

Considerations:

- Funded nursing contributions – not determinative but can indicate level of need
- Well managed needs are still needs
- Interaction between four key domains
- Totality of need
- Contradictions
- Care home/other records

Challenging an ineligibility finding

Considerations:

- Acknowledging agreed level of need
- Joint packages
- Evidence used/professionals involved
- Additional needs which do not fit into categories
- Opportunity for comment for applicant/representatives

Any questions?

Thank You!

- Thank you for attending with us today
- A short questionnaire will launch at the end of this webinar
- Please take the time to complete this it will help us plan future online training events including other topics you would like to see
- The recording of this Webinar, presentation and questions will be on the parent participation Resources page of Contacts' website next week – an email confirming this will be sent to you once this is available