

**Response by the Public Services Ombudsman for Wales to
the consultation on the Draft national framework for
continuing NHS healthcare**

I am pleased to have the opportunity to respond to the Welsh Government's consultation on the Draft national framework for continuing NHS healthcare (CHC).

As Public Services Ombudsman for Wales (PSOW), I investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction, which essentially includes all organisations that deliver public services devolved to Wales. These include:

- local government (both county and community councils);
- the National Health Service (including GPs and dentists);
- registered social landlords (housing associations) and
- the Welsh Government, together with its sponsored bodies.

I am also able to consider complaints about privately arranged or funded social care and palliative care services and, in certain specific circumstances, aspects of privately funded healthcare.

During 2017 and 2018, my officers assisted in the review of the 2014 National Framework for Continuing NHS Healthcare in Wales, as part of a working group established by the Welsh Government. Their contributions reflected evidence from my office's casework. It is in this context that I am responding to the current consultation. I set out below my responses to two of the consultation questions, as well as some more specific remarks on the content of the proposed Framework and the accompanying Decision Support Tool (DST).

Consultation questions

Question 2: I believe that it would be helpful to produce and publish a simplified framework aimed at both practitioners and service users. The document as proposed is not only technical but also very long. While this reflects the complexity of the subject, it could present a barrier for individuals seeking to understand their rights and entitlements. There is therefore certainly merit in producing a shorter and more user-friendly version of the framework. However, any such document would need to be carefully worded to reduce the risk of different interpretations across the two versions.

Question 9: In my view, the two-stage process for retrospective reviews proposed in the revised Framework is both appropriate and sufficiently comprehensive. The proposed changes to streamline the review process (e.g. one peer reviewer; flexibility in the communication channels available for individuals to participate in negotiation meetings) seem reasonable and will not, in my opinion, make the process less fair in practice.

Remarks on the content of the revised Framework and the DST

Key Messages (page 2): I believe that K4 in this section should read, “The NHS is responsible for assessing, funding and providing *health* services to meet the needs of its population”. This will help to avoid ambiguity regarding any wider responsibilities of the NHS for providing care services.

Paragraphs 4.27 - 4.35 (pages 42 - 43): I believe that these clauses would benefit from more clarity regarding the involvement of the patient or their representative in MDT meetings. The current wording is unclear about when the patient or their representative can be present and at what stage they can become involved.

Paragraphs 5.14 – 5.16 (page 55): I welcome the new clauses in this section which clarify how eligibility decisions should be provided to the patient or their representative.

Paragraphs 6.51 – 6.55 (page 70): I believe that this section would benefit from more detail. In addition, the wording of paragraphs 6.52 and 6.53 appears to be contradictory about whether Direct Payments can continue once the patient is eligible for CHC. I support the wording adopted in para 6.55, as it is not overly prescriptive and allows for the flexible consideration of cases on their individual merits.

Paragraph 8.10 (page 88): I believe that the sentence in this section should read, “Any genuine disagreements between practitioners should be resolved in a professional manner.

Paragraph 8.21 (page 91): I believe that this section should be reworded to read, “If the original decision is upheld by the Independent Review Panel and the individual believes that the Panel’s consideration of the matter was flawed, they can then complain to the PSOW”. This will remove any potential implication that the PSOW would “re-hear” the case for eligibility following a decision by the Independent Review Panel.

Paragraphs 8.20 - 8.24 (pages 91 - 92): It appears to me that the proposed wording of these paragraphs is contradictory. Paragraph 8.20 implies that, once the local procedures have been exhausted, the case will be referred to the Independent Review Panel (IRP). However, paragraph 8.24 suggests that this the referral would be made at the discretion of the Local Health Board. The wording on page 93 regarding the operation of the IRP leads me to believe that it is the latter wording that is correct.

Paragraph 9.10, bullet point x (page 99): This bullet point suggests that, in retrospective review cases, there will be a second peer review where the

recommendation of no eligibility is made. This is contrary to the wording elsewhere in the consultation document, which suggests that the requirement for second peer review should be removed. As I already noted above, I am supportive of the removal of this requirement.

Paragraphs 9.16 – 9.20 (page 101): These paragraphs outline the responsibility for processing retrospective claims by the All Wales Retrospective CHC Reviews Project. Given that the Project has by now come to an end, I would suggest that these clauses are removed in the final Framework to avoid any confusion.

DST, paragraph 31 (page 10): It appears to me that the wording in this paragraph is contradictory. While it initially refers to “physical” health conditions, it uses the example of “behaviour”. A different example could help to clarify the meaning of this section.

I trust that you will find my comments useful. Should you wish to discuss any of my points further please do not hesitate to contact Greg Phillips, Assistant Investigation Manager, who specialises in CHC (Gregory.Phillips@ombudsman.wales) or Ania Rolewska, the Head of Policy (ania.rolewska@ombudsman.wales).



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August 2019
