

The investigation of complaints  
by Mr P, Mr H and Mr S  
against Powys Teaching Health Board

A report by the  
Public Services Ombudsman for Wales  
Cases: 201702418, 201702773 & 201703369

<b>Contents</b>	<b>Page</b>
Introduction	1
Summary	2
The Complaint	4
Investigation	4
Relevant legislation	4
The background events	6
The Health Board's evidence	8
Analysis and conclusions	9
Recommendations	11

## Introduction

This report is issued under section 16 of the Public Services Ombudsman (Wales) Act 2005.

In accordance with the provisions of the Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report therefore refers to the complainants as Mr P, Mr H and Mr S.

## Summary

The complainants, Mr P, Mr H and Mr S, complained about delays in the determination of retrospective claims for NHS funded continuing healthcare.<sup>1</sup> At the time the complaints were made to the Ombudsman, none of the complainants had received a determination of their claim.

The Welsh Assembly Government (as it then was) set up a system whereby retrospective claims submitted to individual health boards between August 2010 and April 2014 (known as “Phase 2 cases”) were mostly transferred to Powys Teaching Health Board (“the Health Board”) to be determined. In June 2014 the Welsh Government issued guidance indicating that such claims should take no longer than two years to process. In 2016 the Health Board introduced a new, two stage, process for the management of the large number of outstanding Phase 2 cases. This involves a preliminary review of the claim, which may result in a full review being carried out of a shorter period than that requested.

Mr P’s claim was made to Cardiff & Vale University Health Board on 17 May 2013, and was transferred to the Health Board in July 2014. On 17 August 2017 Mr P was notified of the outcome of the Stage 1 review of his claim, and that the Stage 2 review would be of part of the period claimed.

Mr H’s claim was made to Aneurin Bevan University Health Board on 13 March 2013, and was transferred to the Health Board in July 2014. On 18 August 2017 Mr P was notified of the outcome of the Stage 1 review, and that the Stage 2 review would consider the whole of the period claimed.

Mr S’s claim was made to a local authority on 13 September 2013, and was transferred to the Health Board in July 2014. On 16 August 2017 Mr S was notified of the outcome of the Stage 1 review, and that the Stage 2 review would consider part of the period claimed. Mr S’s claim has now been disallowed.

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<sup>1</sup> A package of care arranged and funded solely by the NHS for individuals outside of hospital who have ongoing health care needs

The Ombudsman found that the failure to determine the claims within the recommended timeframe, or even within a reasonable time, was maladministration. The complainants suffered the injustice of not knowing whether their claims would succeed and, if they were successful, the delay in receiving reimbursement for the costs incurred. He recommended that the Health Board apologise to the complainants, and make a payment of £125 to each in recognition of the considerable delay they had experienced.

The Ombudsman also recommended that the Health Board make a similar payment to each claimant whose claim had not been reviewed as at 7 September 2017 and who had waited in excess of two years from the date of the claim being accepted by the relevant Health Board.

The Health Board agreed to implement the recommendations.

## The Complaint

1. This report concerns three complaints, all relating to delays in the determination of retrospective claims for NHS funded continuing healthcare (“CHC”).<sup>2</sup> Two complaints (201702418 and 201702773) were made by a firm of solicitors on behalf of clients Mr P and Mr H, and one complaint (201703369) was made directly by the claimant, Mr S. For convenience, I shall refer to the complainants as Mr P, Mr H and Mr S throughout this report.

2. All three complainants alleged that there had been an excessive delay in the determination of their claims. At the time the complaints were made to me, none of the claimants had received a determination of their claim.

## Investigation

3. I obtained comments and copies of relevant documents from Powys Teaching Health Board (“the Health Board”) and the Welsh Government and considered those in conjunction with the evidence provided by the complainants. I have not included every detail investigated in this report but I am satisfied that nothing of significance has been overlooked

4. All complainants, Powys Teaching Health Board and the Welsh Government were given the opportunity to see and comment on a draft of this report before the final version was issued.

## Relevant legislation

5. In 2003, the then Health Service Ombudsman for England issued a report on CHC.<sup>3</sup> Her investigations revealed that the health authorities involved were using over restrictive criteria on which to base their decisions on whether patients were entitled to CHC in a care home. Furthermore, she considered that the criteria they were using were not in line with legal judgments or guidance issued by the English Department of Health. She was concerned that others across the country might have suffered similar injustice to that of the individuals in the cases she had investigated. She

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<sup>2</sup> A package of care arranged and funded solely by the NHS for individuals outside of hospital who have ongoing health care needs

<sup>3</sup> NHS Funding for Long Term Care, HC 399, TSO, February 2003.

recommended that local NHS bodies should review the criteria they used to determine entitlement to CHC and the way those criteria were applied, and should try to identify all those patients in their area who may have been disadvantaged and remedy any injustice caused.

6. Although the report dealt with cases in England, it was widely accepted that her findings and recommendations were also relevant in Wales. The Welsh Assembly Government (as it then was) therefore set up a process for reviewing retrospective claims that patients had wrongly been assessed as ineligible for CHC. For reasons relating to the reorganisation of the NHS in Wales in 2003, any claims for the period before 1 April 2003 fell to be determined by Powys Local Health Board (as it then was). After these were completed, the current All-Wales Retrospective CHC process was set up by the Health Board in June 2011 to review 2,454 claims received in response to a cut-off date for claims announced in December 2009 which included claims received up to 15 August 2010. These are known as “Phase 1” cases.

7. In the meantime, a backlog of newer retrospective claims had been building with the individual health boards which were supposed to be reviewing them. It was therefore decided to transfer most of the outstanding claims submitted to the individual health boards between August 2010 and April 2014 to the Health Board for consideration. These are known as “Phase 2” cases.

8. In June 2014, Welsh Government issued a new National Framework for Continuing Care, section 6 of which dealt with retrospective reviews. The Framework advised that Phase 2 claims should ‘take no longer than two years to process’.

9. In 2016 the Health Board introduced a new system for the management of the large number of outstanding Phase 2 cases. The Health Board concluded that it was unnecessary to review every case for the whole of the period requested. It introduced a two stage process:

- i. A chronology of need using GP records and the care providers’ care plans and risk assessments is compiled, the chronology is considered against the NHS Continuing Healthcare Checklist

issued in 2012 and used in England to identify if any triggers for CHC apply and, if so, from what date (Stage 1).

- ii. If a trigger is identified, a full chronology is compiled from that date and the case is reviewed through the normal process (Stage 2).

10. The definitions used by the Health Board include the following:

- 'Activated' – claimant has submitted all necessary documentation for review to commence
- 'Reviewed' – review completed [i.e. at Stage 1 or Stage 2] but reimbursement has not been made .

11. The project considering the Phase 2 cases is to be closed on 31 December 2018, by which time it is anticipated that the majority of the Phase 2 claims will have been completed.

## The background events

### Mr P's complaint

12. Mr P wrote to Cardiff & Vale University Health Board on 17 May **2013**, making a retrospective claim for CHC in respect of his late mother, Mrs P. The claim related to the period from 1 April 2003 to 5 April 2013. On 11 July **2014** Mr P was informed that his claim was being transferred to the Health Board 'in order to ensure [the] claim is efficiently and promptly dealt with'. On 11 September the Health Board confirmed that it was in the process of gathering Mrs P's records in order to complete the chronology. On 22 November **2016** the Health Board confirmed that it had received all the available records. On 17 August **2017** (after the submission of the complaint to me) the Health Board confirmed the outcome of the Stage 1 review and that the claim would progress to Stage 2 review of part of the period for which Mr P had claimed (12 January 2006 onwards). The Health Board said it would 'endeavour to complete the Stage 2 Review as quickly as possible', but did not give any estimate of when that might be.



### **Mr H's complaint**

13. Mr H wrote to Aneurin Bevan University Health Board on 13 March **2013** making a retrospective claim for CHC in respect of the late Mrs B, for the period from 14 November 2007 to 23 January 2011. On 31 July **2014** Mr H was informed that his claim was being transferred to the Health Board. The Health Board's records show that on 28 July **2015** it confirmed it had received all available records and the claim was awaiting allocation to a Special Investigator to compile a chronology of events. On 12 December **2016** the Health Board confirmed the claim had been allocated to a Special Investigator. On 18 August **2017** (after the submission of the complaint to me) the Health Board confirmed the outcome of the Stage 1 review and that the claim would progress to a Stage 2 review of the whole of the period for which Mr H had claimed. Again, the Health Board said it would 'endeavour to complete the Stage 2 Review as quickly as possible', but did not give any estimate of when that might be.

### **Mr S's complaint**

14. Mr S wrote to Conwy County Council on 13 September **2012** making a retrospective claim for CHC in respect of Mr R for the period 1 July 2007 to 15 March 2012. On **4 July 2014** Mr S was informed that his claim was being transferred to the Health Board. On the same day the Health Board requested Mr R's records for the care home in which he had been living between the relevant dates, and wrote again to the care home requesting the records on 30 October **2015**. On 8 November **2016** the Health Board confirmed to Mr S that it had received all available records and that the claim had been allocated to a Special Investigator for a chronology to be written. However, the records show that on 19 May **2017** the Health Board again wrote to the care home indicating that it had not received Mr R's records; on 15 June the (new) owners of the care home indicated that they did not have any records relating to Mr R as he had not been a resident when they took over the care home in June 2013. On 16 August **2017** the Health Board confirmed the outcome of the Stage 1 review and that the claim would progress to a Stage 2 review of part of the period for which Mr S had claimed (17 March 2008 onwards). Mr S complained to my office on 31 August. On 15 November the Health Board wrote to Mr S enclosing

the Clinical Advisor's recommendation that Mr R was not eligible for CHC for any of the period in question. Although Mr S disputed this assessment, I understand that his claim has now been disallowed.

## **The Health Board's evidence**

### **Preliminary information**

15. The Health Board was asked for some preliminary information to enable my office to decide whether to investigate the complaints from Mr P and Mr H. It explained the particular challenges in managing Phase two cases:

- Long claim periods of up to 13 years
- Most cases have all records available
- The Health Board has to produce all chronologies for Phase two cases
- Difficulties in recruitment of clinicians
- High turnover of Specialist Investigators due to fixed term contracts

The Health Board said that the Phase two claims had taken significantly longer and were more complicated than expected. It said 941 cases had been transferred to the Health Board in 2014 from the other health boards involved, of which 379 remained to be completed as at August 2017 (this number had decreased to 290 by February 2018).

16. The Health Board explained the new process which had been established in September 2016 (see paragraph 9). It said that the claims had progressed through the Stage 1 review, and the delay in completing claims had been caused by problems in recruitment of Clinical Advisors which it was trying to address. It said it was also attempting to speed up the process by Senior Special Investigators taking a greater role in preparing reviews for the Clinical Advisors.

17. The Health Board said that claims were being reviewed in chronological order, and that Mr P's and Mr H's claims were approximately halfway down the list of the 330 claims to be reviewed.

## **Mr P's and Mr H's complaints**

18. The Health Board provided further information after the investigation into Mr P's and Mr H's complaints had begun. It said that the recent recruitment exercise had appointed three new Clinical Advisors, who were expected to take up their posts in October 2017, taking the complement of Advisors to the equivalent of nine whole time members of staff. The Health Board intended to re-advertise to fill the remainder of the vacancies (3.6 whole time equivalents). The Health Board said that in September 2017 it had also recruited the equivalent of 3.8 whole time Senior Special Investigators, whose role was further developed to carry out more of the preparatory work for Clinical Advisors. It said this had the benefit of allowing Clinical Advisors to concentrate on completing clinical analysis of the information.

19. The Health Board, in summary, said that since the introduction of the Stage 1/Stage 2 process in September 2016 considerable time had been saved in the preparation of chronologies, thus allowing a Clinical Advisor to begin the (Stage 2) review some 12 days earlier than under the previous process. It said that the overall claim periods to be reviewed at Stage 2 had reduced by 489 years, allowing the Clinical Advisor to concentrate on the analysis of the individual's health care needs. The Health Board acknowledged that both Mr P and Mr H had waited an extended time, and apologised for any additional distress caused by this.

## **Mr S's complaint**

20. The Health Board said (on 19 October 2017) that Mr S's claim was at that time awaiting allocation to a Special Investigator for completion of the Stage 2 chronology, it was anticipated this would begin within two weeks and a recommendation on eligibility would be made within three to six months. The Health Board again acknowledged that Mr S had been waiting for an extended period and apologised for this.

## **Analysis and conclusions**

21. All three of these complaints relate to what the complainants believe was an excessive delay in the determination of their retrospective claims

for CHC. The delay involved in all three is similar, albeit that Mr S's claim was made some six months before those of Mr P and Mr H. However, all three claims were transferred to the Health Board during July 2014, and all three complainants waited until August 2017 for the Stage 1 review to be completed. I can therefore set out my conclusions generally rather than in relation to each complaint separately. I would like to make clear that this report, and in particular these conclusions and recommendations, relate to Phase 2 claims only.

22. I am conscious of the large number of Phase 2 claims which the Health Board has received. I also appreciate the difficulties in recruitment to which the Health Board has referred, exacerbated by the nature of fixed-term contracts. However, the fact remains that the Health Board has failed to comply with the Welsh Government guidance contained in the 2014 Framework - that these claims should take no longer than two years to complete. All three complainants have been waiting in excess of three years for a determination of their claims; only Mr S's claim has been considered at Stage 2, and I have received no indication of when any of the claims are likely to be concluded.

23. The failure to determine these claims within the recommended timeframe, or even within a reasonable time, is maladministration. I agree with the complainants when they say that their wait has been excessive. The injustice to the complainants is clear; at the very least there is the uncertainty of not knowing whether their claims will succeed, and in addition, if they are successful, the delay in receiving reimbursement for the costs incurred for the period concerned (although I note that interest is paid in respect of any successful claims). I therefore **uphold** these complaints.

24. Finally, it is evident that the three claimants who have complained to me about the delay are merely some of a large number of claimants who have been waiting for an excessive period for a determination of their claims. I have seen nothing to suggest that these claimants have been treated in any way less favourably than any others; indeed, the Health Board has said that claims are being dealt with in chronological order, which is, of course, a reasonable way for the Health Board to proceed. The Health Board said in August 2017 that there were still some 330 claims to be reviewed. Presumably since that time the Health Board

has made some progress towards completing these, but it seems likely that there are still a large number of claims outstanding. I believe that these claimants are entitled to the same redress as the three complainants, and I intend that my recommendations will reflect this.

## Recommendations

25. I do not believe that there is anything to be gained by my making any recommendations of a procedural nature. In reaching this conclusion, I have borne in mind the efforts the Health Board has made to deal with the outstanding claims in as timely a manner as possible, as well as the intended closure date of the project. I therefore make the following recommendations:

26. I **recommend** that, within one month of the issue of the final report, the Health Board:

- (a) Apologises to Mr P, Mr H and Mr S for the delay in determining their respective claims
- (b) Offers a payment of £125 to each complainant in recognition of the considerable delay they have experienced.

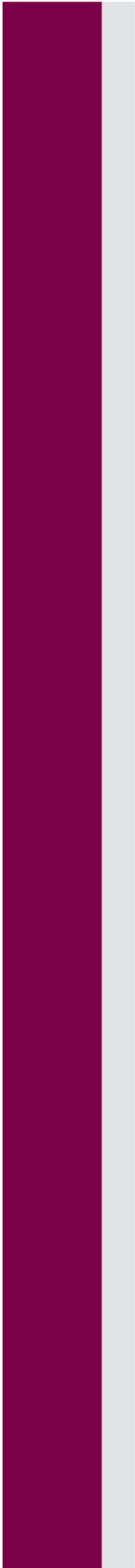
27. I **recommend** that, within three months of the issue of the final report, the Health Board offers the same payment to each claimant whose claim had not been reviewed by 7 September 2017 and who had been waiting in excess of two years from the date of the claim being activated.

28. I am pleased to note that in commenting on the draft of this report Powys Teaching Health Board has agreed to implement these recommendations.



**Nick Bennett**  
Ombudsman

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