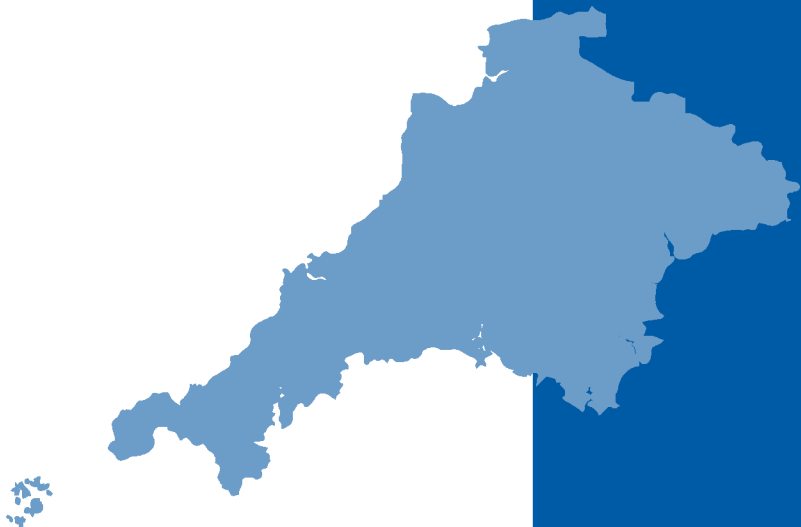


Assessing eligibility for Continuing NHS Health Care

**Information for
patients, carers
and relatives in
Devon, Cornwall
and the
Isles of Scilly**



This guide is in two parts.

The first part helps to explain why assessments are needed to establish whether the NHS pays for a person's continuing care. It also gives useful background information about the assessment process and eligibility criteria that have been used in Devon and Cornwall since 1996.

The second part of the guide helps to explain how the local NHS will conduct retrospective reviews to assess whether or not people should have been eligible to receive NHS funding for their continuing care needs.

PART 1

What is ‘continuing care’?

All UK residents are entitled to free health care under the NHS. However, because of their age, disability, illness or an accident, some people may require a long-term package of care that is above and beyond that provided by the NHS on a routine basis. This type of long-term care is known as ‘continuing care’.

If a person needs long term care, a team of health and social care professionals works with the individual to make an assessment of their health needs and recommends a package of care that best meets these needs. Needs can vary enormously depending on individual circumstances and care packages can include nursing and specialist medical care and social care to help with a wide range of activities such as washing, bathing, eating and shopping. The care may be provided in different settings, including a hospital, care home, hospice or the person’s own home - and may be provided by the NHS, social services, private providers or a combination of these.

Who should pay for continuing care?

Once a person’s health needs have been assessed and a package of care has been recommended, a decision has to be reached about who is responsible for paying for the various components of the care. In some cases, all of the care should be paid for by the NHS. In other cases, only part of the care should be paid for by the NHS.

In order to reach a decision about who should pay for the care, a person’s health needs are assessed against a number of ‘eligibility criteria’. The criteria against which a person’s needs are assessed are set out in detail in the *Continuing Care Policy* booklet.

Each person's health needs are different and assessing them can be an extremely complicated process but, in general terms, the following main rules apply:

- A person assessed as being eligible for 'Continuing NHS Health Care' should have all of their needs for care and treatment paid for solely by the NHS. Such people will usually have conditions requiring frequent and/or intensive medical or nursing care; a rapidly deteriorating or unstable mental or physical condition; be in the final stages of a terminal illness or require routine use of specialist health care equipment under the supervision of NHS staff.
- A person assessed as being eligible for 'Continuing NHS Health Care and Social Care' will usually have less complex or intensive health care needs but will still require a package of services that are provided by the NHS and social services. In such cases, the NHS should pay for the health component of a person's needs and social services should determine the social care component. Social services will also assess the person's requirement to make a financial contribution to this part of their care.

Why has the NHS set up a system to review past assessments now?

Until 1995, there was no national guidance about eligibility for long term care and no consistently applied criteria. This created a situation where people's needs were being assessed differently and, as a result, care that was considered eligible for NHS funding in one part of the country did not necessarily qualify in another.

In 1995, the Department of Health issued guidance requiring health authorities to publish eligibility criteria to help clarify who should be eligible for Continuing NHS Health Care. However,

criteria were still not entirely consistent and there were still variations and inconsistencies in the way that the criteria were applied in different parts of the country.

The Coughlan judgement

In 1999, the Court of Appeal made a 'landmark' judgement concerning the funding of continuing care. The court concluded that, in most cases, the NHS should fund nursing care in residential and care homes if the care required is above a certain level. Following this case there have been changes in national policy and law about the funding of nursing in care homes. In October 2001, a phased programme of reassessment of nursing care needs was required due to a change in law. This means that, from 1 April 2003, all care provided to care home residents by a registered nurse is paid for by the NHS.

The Health Service Ombudsman's report

In February 2003, the Health Service Ombudsman published a report called *NHS funding for long term care of older and disabled people*. The report focused on concerns, raised by a number of complainants, about the criteria used by health authorities across the country between 1996 and 2001 to decide whether people were eligible for Continuing NHS Health Care in residential and nursing homes.

The report concluded that some health authorities had been using over-restrictive local criteria that were not properly in line with Department of Health guidance, nor with the Coughlan judgement (see above). In some cases, the use of these over-restrictive criteria had meant that people had paid for their own care when the NHS should have paid for it.

How have the inconsistencies in the system been addressed?

To address the inconsistencies in the previous assessment system, and to ensure that there is full compliance with the requirements of the Department of Health, the Coughlan judgement and the Health Service Ombudsman's report, the following steps have been taken:

- South West Peninsula Strategic Health Authority has conducted a review of the criteria in Devon, Cornwall and the Isles of Scilly to check that it is compliant with Department of Health guidance and/or the Coughlan judgement
- A retrospective review process has now been established to allow people to have cases reviewed where they feel that their eligibility for Continuing NHS Health Care may have been incorrectly assessed (see PART 2).

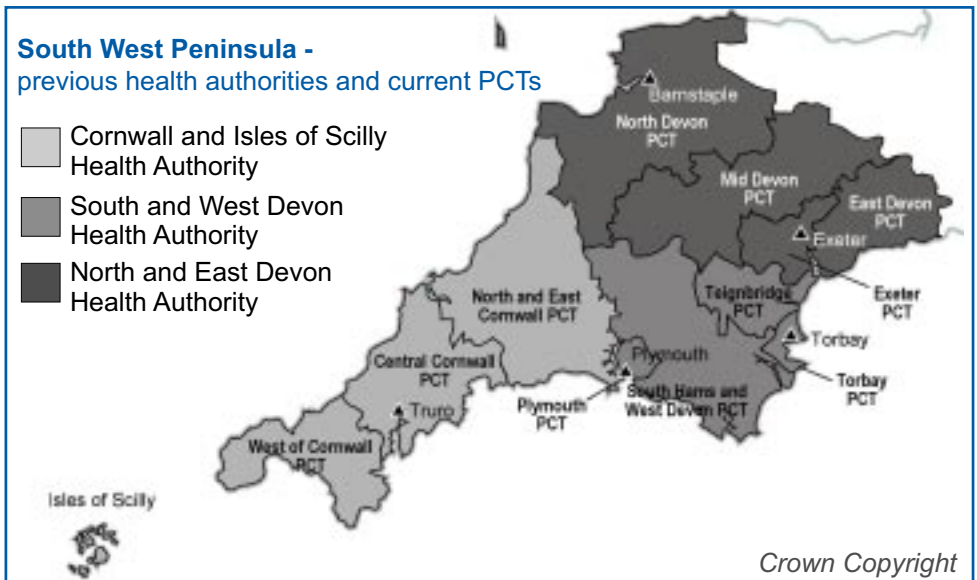
Are current eligibility criteria in Devon and Cornwall compliant?

Yes. South West Peninsula Health Authority reviewed and revised eligibility criteria for Devon, Cornwall and the Isles of Scilly in November 2002 and they are now fully compliant with all requirements. The revised criteria have been in use in Devon since December 2002 and will be used in Cornwall from June 2003. A revised policy will also be available from June 2003 to reflect the findings of the Health Service Ombudsman's report.

Were previous eligibility criteria in Devon compliant?

Since September 1999, eligibility criteria have been compliant across the whole of Devon. However, between April 1996 and August 1999 they were largely non-compliant and assessments made during this period have either been reviewed or may still need to be reviewed.

Between 1996 and April 2002 there were two health authorities in the county, one serving North and East Devon and the other serving South and West Devon. (These were replaced in April 2002 by the South West Peninsula Strategic Health Authority, which serves the whole of Devon, Cornwall and the Isles of Scilly). Each of the two previous health authorities in Devon managed the review process slightly differently.



In 1999, North and East Devon Health Authority undertook an extensive investigation to identify those people that may have been assessed against non-compliant criteria, ie between April 1996 and August 1999. Hundreds of cases were reviewed and, in a few of them, financial recompense was made.

In 1999, South and West Devon Health Authority also took steps to identify those people that may have been assessed against non-compliant criteria, ie between April 1996 and August 1999, but less extensively. This exercise resulted in a far smaller number of cases being reviewed and re-assessed than in North and East Devon and it is possible that some cases in this part of the county may still require a review.

Were previous eligibility criteria in Cornwall and the Isles of Scilly compliant?

From June 2003, eligibility criteria across Cornwall and the Isles of Scilly will be fully compliant. However, between April 1996 and May 2003, the criteria used in Cornwall and the Isles of Scilly may have been over-restrictive and hence non-compliant. This means that there are likely to be cases where people have had to pay for their own care when the NHS should have been paying for it.

Can I question recent decisions about eligibility for Continuing NHS Health Care?

If you do not agree with a recent decision made about eligibility for 'Continuing NHS Health Care' (or the band of nursing care that has been allocated) you should discuss your concerns with the health professionals involved in the case in the first instance. You may also wish to contact your local Patient Advice and Liaison Service (PALS) for support and guidance. This service can be contacted through your local PCT on page 15.

If you remain dissatisfied and you consider that proper procedures have not been followed in reaching a decision, or that the criteria have not been properly applied, you can request that your case be submitted to the Independent Review Panel.

Can I question past decisions about eligibility for Continuing NHS Health Care?

If you do not agree with a past decision, since April 1996, made about eligibility for 'Continuing NHS Health Care' (or the band of nursing care that has been allocated) you can speak to the health professionals involved or your local Patient Advice and Liaison Service. But if you remain dissatisfied and you consider that proper procedures were not followed in reaching a decision, or

that the criteria were not been properly applied, you can request that your case be submitted to the Independent Retrospective Review Panel.

In Part 2 there is an explanation of the Independent Retrospective Review Panel process that has been put in place by the Strategic Health Authority specifically for this purpose. This is a separate process from the existing Independent Review Panel – which will only consider recent cases.

PART 2

This part of the guide helps to explain how the NHS will conduct retrospective reviews to assess whether or not a person should have been eligible to receive NHS funding for their continuing care needs between 1996 and 2003.

What do I do if I wish to have a case reviewed?

You need to write to the Local Review Officer at the Primary Care Trust (PCT) responsible for providing the care, giving details of the case that you would like to be reviewed. A PCT is a local NHS organisation that covers a specific geographical area. There are 11 PCTs in Devon and Cornwall and each one has a Local Review Officer, who will send you a Review Request Form for you to complete and return within 28 days (contact details on back cover. If you are unsure about which PCT is/was responsible for providing the care, you can contact your nearest Patient Advice and Liaison Service (PALS) for advice (contact details on page 15).

Under what circumstances will a review be conducted?

Requests for a retrospective review will only be considered in the following cases:

1. Where the case in question relates to the period when local assessment criteria were not compliant with Department of Health guidance or the Court of Appeal judgement in the Coughlan case (see PART 1). For cases in Devon, this is between April 1996 and August 1999. For cases in Cornwall and the Isles of Scilly, this is between April 1996 and May 2003.
2. Where assessment criteria appear to have been applied unfairly or
3. Where correct procedures appear not to have been followed.

How is the review undertaken?

Once your completed Review Request Form has been received, the Local Review Officer will ensure that your request for a review meets the criteria set out above. If it does not meet these criteria, the review will not proceed and the Local Review Officer will confirm this to you in writing within two working days, explaining the decision. Other relevant parties will be informed of the decision at the same time. You will also be advised of your right to make a complaint under the normal NHS Complaints Procedure.

If your request does comply with the criteria, the Local Review Officer will notify you in writing within two working days and then start to gather the relevant information from the organisations and individuals concerned. In cases where patients are now deceased, this process may take some time. The aim is to complete this initial stage of the process within four weeks.

When all of the relevant information has been gathered, a report will be provided for the Local Clinical Review Team, who will then undertake the review. Each Local Clinical Review Team will be drawn from a small pool of NHS professionals and social services staff. All reviews will be conducted using a consistent method and format.

The Local Clinical Review Team will make a recommendation on eligibility for NHS funding and this will be presented to the Local Review Officer at the end of the review process. Most reviews should be completed within four weeks. The Local Review Officer will then contact you to discuss the recommendation of the Local Clinical Review Team.

Your claim may be resolved at this stage through agreement between you and the Local Review Officer. If this is the case, you will be asked to sign an agreement stating that you are

satisfied with the outcome of the review process and the action that has been proposed. This action may include financial recompense in those cases where an individual has paid for care when it is deemed that the NHS should have paid for it.

What happens if I do not agree with the recommendation made by the Local Clinical Review Team?

You can request that the Local Review Officer refer your case to the Independent Retrospective Review Panel. The Local Review Officer will ask you to provide your views in writing and these will be submitted to the Independent Retrospective Review Panel along with the Local Clinical Review Team's report.

How is the Independent Retrospective Review Panel set up?

Two panels have been set up – one to cover cases in Devon and one to cover cases in Cornwall and the Isles of Scilly. Each Independent Retrospective Review Panel is made up of an Independent Chair, appointed by the Strategic Health Authority, and three other members. They are:

- One representative from a local authority*
- One representative from a PCT*
- One representative from the Strategic Health Authority.

*Representatives will not be from the local authority or PCT responsible for providing the care in question.

In addition to the Chair and three members, Independent Retrospective Review Panel hearings will also be attended by a Clinical Adviser (who is present only in an advisory capacity), the Local Review Officer (whose role is to present the information and assist with any factual queries) and the Independent Retrospective Review Panel Co-ordinator (who will take notes).

How can the Independent Retrospective Review Panel consider my views?

The Independent Retrospective Review Panel will carefully consider your case, and if necessary take account of any independent clinical advice that has been sought. You will be asked if you wish to attend the Independent Retrospective Review Panel hearing. If you have an advocate or representative they are free to attend with you, or in your place.

Is the Independent Retrospective Review Panel's decision final?

The recommendation of the Independent Retrospective Review Panel will be final but will not affect an individual's rights under the NHS Complaints Procedure, which remains open to those who remain dissatisfied with the outcome of the review of their case. Details of the NHS Complaints Procedure are available from your local PALS team (contact details on page 15).

Having considered all relevant information, the Independent Retrospective Review Panel will make a recommendation in accordance with its terms of reference and rules of conduct. The Independent Retrospective Review Panel Co-ordinator will inform you, in writing, of the recommendation and the reasoning behind it. Other relevant parties will be notified of the recommendation at the same time.

If the Independent Retrospective Review Panel considers that the original decision was incorrect, the case will be referred back to the Local Clinical Review Team for re-assessment (if the patient is still living). The Independent Retrospective Review Panel's recommendation may include a recommendation for financial recompense in those cases where an individual (living or deceased) may have paid for their care when it is deemed that the NHS should have paid for it.

How long is the average review expected to take?

Each case will be treated on its own merits and some cases will be more complex and time-consuming than others. However, the review process will be conducted as quickly as possible and the aim is to complete most reviews within 12 weeks of receiving a Retrospective Review Request Form.

Reviews will be prioritised on the following basis:

1. Requests for reviews for people currently receiving care will take priority over those requested for people who are now deceased.
2. Requests for reviews relating to a period when assessment criteria were known to be non-compliant (between April 1996 and August 1999 in Devon and between April 1996 and May 2003 in Cornwall and the Isles of Scilly) will take priority over other requests.
3. Requests for reviews where there is an imminent financial risk or commitment, for example the proposed sale of a property to pay for care, will be given a high priority.

The prioritisation of cases will be at the discretion of the Local Review Officer, but reviews will be processed as fairly and even-handedly as possible.

Can anyone help me fill out the forms?

Yes. Your local Patient Advice and Liaison Service (PALS) will be able to support you (contact details overleaf). Alternatively, your local Citizens Advice Bureau, Age Concern or local advocacy services may be able to help. The telephone number can be found in your local telephone directory.

PALS contacts

Central Cornwall Primary Care Trust

Janet Hart Tel: 01872 354414
Email: janet.hart@centralpct.cornwall.nhs.uk

East Devon Primary Care Trust

Liz Hankin Tel: 01404 816001
Email: liz.hankin@eastdevon-pct.nhs.uk

Exeter Primary Care Trust

Jenny Bowers Tel: 01392 208640
Email: jenny.bowers@exeter-pct.nhs.uk

Mid Devon Primary Care Trust

Carmel Fanconi Tel: 01392 449774
Email: carmel.fanconi@middevon-pct.nhs.uk

North Devon Primary Care Trust

Catherine Williams Tel: 01271 327779
Email: catherine.williams@ndevon.swest.nhs.uk

North & East Cornwall Primary Care Trust

Carol Steer Tel: 01579 335341
Email: carol.steer@nepct.cornwall.nhs.uk

Plymouth Primary Care Trust

Rachel Abel Tel: 01752 211818
Email: pals@plymouthguild.org.uk

South Hams & West Devon Primary Care Trust

Dilys Slater Tel: 01803 861829
Email: dilys.slater@shandwd-pct.nhs.uk

Teignbridge Primary Care Trust

Jo Carpenter Tel: 01626 357000
Email: jo.carpenter@nhs.net

Torbay Primary Care Trust

Sue Luscombe Tel: 0800 0282 037
Email: sue.luscombe@nhs.net

West of Cornwall Primary Care Trust

Neal Chambers Tel: 01209 888222
Email: neal.chambers@westprimcare.cornwall.nhs.uk

Local Review Officers

Central Cornwall Primary Care Trust

Local Review Officer

Tel: 0845 2301900

East Devon Primary Care Trust

Paul Boulton

Tel: 01404 816002

Exeter Primary Care Trust

Di White

Tel: 01392 208426

Mid Devon Primary Care Trust

Nicky Morrish

Tel: 01392 449761

North Devon Primary Care Trust

Sue Kennedy

Tel: 01271 327779

North & East Cornwall Primary Care Trust

Local Review Officer

Tel: 0845 2301900

Plymouth Primary Care Trust

Jenny Herring

Tel: 01752 566627

South Hams & West Devon

Primary Care Trust

Jenny Monks

Tel: 01803 866665

Teignbridge Primary Care Trust

Jenny Monks

Tel: 01626 357000

Torbay Primary Care Trust

David Hamblin

Tel: 01803 210893

West of Cornwall Primary Care Trust

Local Review Officer

Tel: 0845 2301900