Northern Ireland
Public Services
Ombudsman

Investigation Report

Investigation of a complaint against the Western Health and Social Care Trust

NIPSO Reference: 22075

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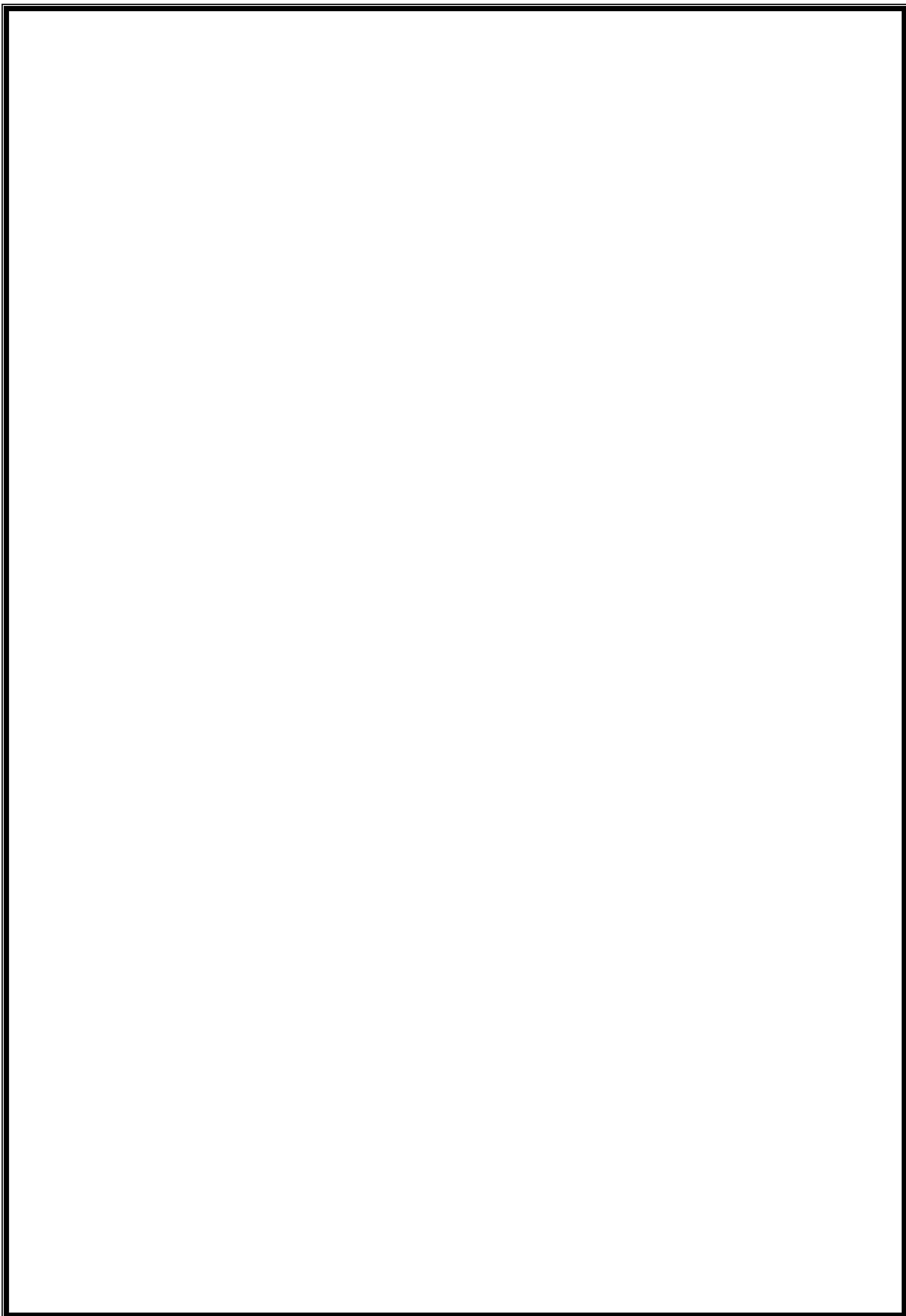

The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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Appendix 1 – The Principles of Good Administration

Appendix 2 – The Principles of Good Complaints Handling

Case Reference: 22075
Listed Authority: Western Health and Social Care Trust.

SUMMARY

I received a complaint about the actions the Western Health and Social Care Trust (the Trust). The complainant said the Trust failed to properly assess her mother's (the resident's) eligibility for Continuing Healthcare (CHC). The complainant believed that due to the resident's multiple medical conditions, her care should have been funded by the Trust as she believed the resident had a primary health care need.

In order to assist with the consideration of the issue raised in the complaint, advice was obtained from an independent advisor who specialises in CHC. The investigation of the complaint identified failures in how the Trust implemented a CHC framework for assessing applicants. Although the Trust correctly state the resident's NISAT assessments did not indicate the resident had a primary healthcare need, there was no indication that the Trust's decision on the resident's CHC eligibility was made pursuant to any procedure or process that included a multidisciplinary assessment. This was evident from the Trust's response to the complainant's request for a CHC assessment during 2016 to 2018, which did not make any reference to NISAT assessments or the resident's primary need.

I recommended the Trust issue an apology in accordance with the 2016 NIPSO guidance on apology for the anxiety, distress, upset, and uncertainty she experienced as a result of the failings identified within the report. I also made recommendations in relation to improving the service provided by the Trust. In the absence of updated guidance from the Department on a regional approach to CHC, I recommended the Trust, either individually or collectively with other HSC Trusts and organisations, takes action to put in place administrative arrangements that are necessary to enable it to consider all future requests for a determination of CHC eligibility in a timely, consistent and transparent manner and in accordance with the Department's policy direction, as set out in the 2010 Circular.

THE COMPLAINT

1. I received a complaint about the actions of the Western Health and Social Care Trust (the Trust). The complainant said the Trust did not correctly process her request to have her mother's (the resident's) primary need assessed to determine her eligibility for Continuing Health Care (CHC). The complainant believed that the resident should have been assessed as having a primary health care need, which would have made her eligible for CHC funding. The complainant also said the Trust did not respond to her requests for information or her complaint appropriately.

Issues of complaint

2. The issues of complaint accepted for investigation were:

Issue 1: **Whether the Trust's responses to the complainant's requests for determination of the resident's eligibility for Continuing Healthcare, were appropriate, reasonable and in accordance with relevant guidance?**

Issue 2: **Whether the Trust's handling of the complaint was appropriate, reasonable and in accordance with the relevant procedure?**

INVESTIGATION METHODOLOGY

3. In order to investigate the complaint, the Investigating Officer obtained from the Trust all relevant documentation together with the Trust's comments on the issues raised by the complainant. This documentation included information relating to the Trust's processing of the complainant's request for a CHC assessment and the resident's medical records.

Independent Professional Advice Sought

4. After further consideration of the issues, I obtained independent professional advice from the following independent professional advisor (IPA):

- A Continuing Health Care Specialist Practitioner RN– District Nursing. 35 years' experience including 15 years' experience within NHS Continuing

Health Care, working as the Clinical Lead within a Palliative Care Team managing all aspects of the application of the National Framework for NHS Continuing Healthcare and Funded Nursing Care in England.

5. The information and advice which informed the findings and conclusions are included within the body of this report. The IPA(s) provided 'advice'; however how this advice was weighed, within the context of this particular complaint, is a matter for my discretion.

Relevant Standards and Guidance

6. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case. I also make reference to relevant regulatory, professional and statutory guidance.
   The general standards are the Ombudsman's Principles[1]:
   - The Principles of Good Administration
   - The Principles of Good Complaints Handling
   - The Public Services Ombudsmen Principles for Remedy

7. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions and professional judgement of those individuals whose actions are the subject of this complaint.

8. The specific standards and guidance relevant to this complaint are:
   - Department of Health, Social Services, and Public Safety, Circular ECCU 1/2006 - HPSS Payments for Nursing Care in Nursing Homes; dated 10 March 2006. (the 2006 Circular);
   - Department of Health, Social Services, and Public Safety, Circular HSC ECCU 1/2010 – Care Management, Provision of Services and Charging Guidance; dated 11 March 2010) (the 2010 Circular);

[1] These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

- Department of Health, Social Services, and Public Safety, 'Transforming Your Care' – A review of Health and Social Care in Northern Ireland. December 2011. (Transforming Your Care Review)

9. I did not include all of the information obtained in the course of the investigation in this report but I am satisfied that everything that I consider to be relevant and important was taken into account in reaching my findings.

10. A draft copy of this report was shared with the complainant and the Trust for comment on factual accuracy and the reasonableness of the findings and recommendations.

THE INVESTIGATION

Issue 1: Whether the Trust correctly followed the Department of Health's guidance in relation to the resident's Continuing Healthcare assessment?

Issue 2: Whether the Trust's handling of the complainant's complaint was appropriate, reasonable and in accordance with the relevant procedure?

Detail of Complaint

11. In considering the complaint, I decided to report on both issues of complaint together. The Trust's responses to the complaint are inextricably linked to the issue of how the Trust responded to the complainant's request for a CHC assessment. I therefore consider it provides greater clarity on the role of the Trust in making CHC determinations.

12. The complainant believed that the resident met the criteria for CHC and that the Trust failed to properly assess the resident's '*eligibility for [CHC] from the point she entered a Nursing Home in January 2015 until she died on 18 May 2018.'* By way of remedy, the complainant requested *'a fair and comprehensive re-examination of the Board's assessment process in relation to CHC for [the resident], which will in turn examine the whole question of CHC in NI.'*

Evidence Considered

(i) Relevant legislation, policy and guidance

The Health and Social Services (NI) Order 1972

13. The main legislation governing the provision of health and social care services in Northern Ireland is the Health and Personal Social Services (NI) Order 1972 (the 1972 Order). The 1972 Order does not provide an explicit statutory framework for the provision of CHC in Northern Ireland, nor does it require that CHC be provided to people in Northern Ireland. However, Article 78 of the 1972 Order requires that all services provided under that statute (which includes the provision of residential and nursing home care placements) and the Health Services (Primary Care) (NI) Order 1997 are provided free of charge, except where there are provisions to the contrary in either piece of legislation. Where an individual is placed in residential care by a Health and Social Care Trust (HSC Trust), the relevant HSC Trust has a statutory obligation to charge the individual for their placement if they have the financial means to pay for, or make a contribution towards, the cost of that placement. This applies where the individual does not have a primary need for health care.

Circular HSC (ECCU) 1/2010 - Care Management, Provision of Services and Charging Guidance

14. The 2010 Circular, issued by the Department of Health[2] (the Department) provides guidance on:
    - the care management process, including the assessment and case management of health and social care needs;
    - the provision of services, including placement of service users in residential care homes and nursing homes; and
    - charging for personal social services provided in residential care homes and nursing homes.

15. Paragraph 17 of the 2010 Circular states, *'… the distinction between health and social care needs is complex and requires a careful appraisal of each*

[2] Department of Health, Social Services and Public Safety at the time the 2010 Circular was issued

individual's needs. In this context, it is for clinicians, together with other health and social care professional colleagues and in consultation with the service user, his/her family and carers, to determine through a comprehensive assessment of need whether an individual's primary need is for healthcare or for personal social services. In the latter case, the service user may be required to pay a means tested contribution.'

16. Paragraph 63 of the 2010 Circular states, *'[The 1972 Order] requires that a person is charged for personal social services provided in residential care or nursing home accommodation arranged by a HSC Trust.* ***There is no such requirement, or authority, to charge for healthcare provided in the community, either in the service user's own home or in a residential care or nursing home'*** (the 2010 Circular's emphasis).

17. In addition, paragraph 88 of the 2010 Circular states, *'When contracting with homes, HSC Trusts should contract for the full cost of the placement, and where there has not been a determination of continuing healthcare need, seek reimbursement under [the Health and Personal Social Services (Assessment of Resources) Regulations (NI) 1993].'*

18. The 2010 Circular also refers to the means by which an individual's health and social care needs are to be assessed. Specifically (on page 4) the 2010 Circular advises that the Northern Ireland Single Assessment Tool (NISAT) '*has been developed and validated, primarily in relation to assessing the needs of older people'*, and that the NISAT *'supports the exercise of professional judgement in the care management process'*. The 2010 Circular further states, *'NISAT is designed to capture the information required for holistic, person-centred assessment. It is structured in component parts and using domains which will be completed according to the level of health and social care needs experienced, from non-complex to complex.'* There is further reference to the NISAT in paragraph 15 of the 2010 Circular, which states, *'The NISAT, developed primarily in the context of older people's needs, provides a validated assessment framework.'*

19. The 2010 Circular also explains the position in Northern Ireland in relation to

costs associated with the provision of nursing care in nursing homes. In this regard, paragraph 74 of the 2010 Circular advises, '*In October 2002, the Northern Ireland Assembly introduced a weekly HSC contribution towards the cost of nursing care provided in nursing homes. This flat weekly payment is intended to pay for the professional care given by a registered nurse employed in a nursing home. For individuals with assessed nursing needs who pay privately, the flat weekly rate is payable by HSC Trusts to homeowners. Alternatively, it is discounted from the charges raised by HSC Trusts for people who are required to refund HSC Trusts the full rate.'*

Circular ECCU1/2006 - HPSS Payments for Nursing Care in Nursing Homes

20. The 2006 Circular provides guidance on the responsibility of HSC Trusts to make payments for the cost of nursing care provided in nursing homes, on behalf of individuals who pay for their nursing home care. Paragraph 2 of the 2006 Circular explains that since the Health and Personal Social Services Act (NI) 2002 came into operation on 7 October 2002, HSC Trusts have been '*responsible for paying the nursing care of residents who otherwise pay the full cost of their nursing home care.'* Paragraph 10 of the 2006 Circular advises that HSC Trusts *'should encourage Nursing Homes to explain to [residents] that a nursing needs assessment is a requirement to determine eligibility for [HSC] payments.'* Paragraph 12 of the 2006 Circular advises of the availability of the Nursing Needs Assessment Tool (NNAT), which was *'developed specifically to establish nursing needs…'*

Health Minister's Response to Northern Ireland Assembly Question on Continuing Healthcare in Northern Ireland

21. In September 2013, the then Minister of Health (the Health Minister) provided a written answer to a Northern Ireland Assembly question about CHC. The Minister's answer further explained the legislative position regarding CHC in Northern Ireland.[3] The Minister stated, '*[l]egislation governing the provision of health and social care in Northern Ireland differs significantly from that in England. This is a result of Northern Ireland benefitting from a fully integrated*

[3] AQW25318/11-15

system of health and social care, with services delivered by [HSC Trusts]. Departmental Circular ECCU 1/2010 'Care Management, Provision of Services and Charging Guidance' provides HSC Trusts with direction on the assessment process to be undertaken to identify both health and social care needs. As set out in the circular an individual's primary need can be either for health care – which is provided free – or social care for which a means tested contribution may be required. My Department sought confirmation from all HSC Trusts in October 2012 that they were compliant with this circular. All HSC Trusts confirmed that this was the case.'

Department of Health's Public Consultation on Continuing Healthcare in Northern Ireland

22. In June 2017, the Department launched a public consultation on the future of the continuing healthcare system in Northern Ireland. The consultation document, *'Continuing Healthcare in Northern Ireland: Introducing a Transparent and Fair System'*[4], explained that the term 'continuing healthcare' describes the practice of the health service meeting the cost of any social need which is driven primarily by a health need. It was also explained that *'Eligibility for continuing healthcare depends on an individual's assessed needs, and not on a particular disease, diagnosis or condition'*, and that *'[i]f an individual's needs change, then their eligibility for [CHC] may also change.'* The Department's consultation document further advised that in Northern Ireland, HSC Trusts *'are responsible for ensuring that an assessment of need is carried out for individuals in a timely manner and with appropriate multidisciplinary professional and clinical input as required'*. The document also explained, however, that *'[s]o as not to interfere with professional and clinical judgement, the Department [had] to date, refrained from drafting administrative guidance on a specific healthcare assessment.'*

23. The Department's public consultation document on CHC further explained that the assessment process *'covers both health and social care needs'*, and that should the outcome of such an assessment *'indicate a primary need for*

[4] https://www.health-ni.gov.uk/consultations/continuing-healthcare-northern-ireland-introducing-transparent-and-fair-system

healthcare, the [the relevant HSC Trust] is responsible for funding the complete package of care in whatever setting. This is what is known as [CHC] in the local context. Alternatively a primary need for social care may be identified and where such a need is met in a residential care or nursing home setting, legislation requires that the HSC Trusts to levy a means-tested charge.' It was also explained in the Department's consultation document that if an assessment identified that nursing home care was appropriate and the individual was responsible for meeting the full cost of their nursing home care, the relevant HSC Trust was responsible for making a payment of £100 per week directly to the nursing home provider to cover the cost of the nursing care.

NI Direct Website

24. The NI Direct website, the official government website for Northern Ireland citizens, refers, in proving advice on the *'HSC contribution towards the cost of nursing care provided in nursing homes'*, to CHC in Northern Ireland. The webpage[5], which remains unchanged at the date of this report, states, '*If you live in a nursing home and have assessed nursing needs, your local trust will pay £100 per week towards the fees to cover the cost of the nursing element. If your assessment indicates that your primary need is for health care, your Trust will pay the full cost of your care. This is called "continuing healthcare".'*

Transforming Your Care Review

25. 'Reason 2' of the Transforming Your Care Review suggested *'more health and social care services should be delivered in GP surgeries, local centres and in people's homes'.* Although *'[i]nresident hospital care will always be an important part of how care is provided… it is only best for a resident with acute medical needs'*. The Transforming Your Care Review emphasised the benefits of '*delivering care within people's homes and in their local communities'.* Page 46 of the Transforming Your Care Review states: '*There will be a much greater emphasis on enabling people to remain in their chosen home.'* Page 114 makes clear that people's homes include *'nursing homes or residential facilities'.*

[5] https://www.nidirect.gov.uk/articles/paying-your-residential-care-or-nursing-home-fees

Correspondence issued by the Department of Health

26. In response to a question tabled in the Northern Ireland Assembly on 5 September 2013 regarding whether residents in nursing homes could avail of CHC in Northern Ireland, the Minister of Health issued the following written answer on 13 September 2013:

> '*Departmental Circular ECCU 1/2010 'Care Management, Provision of Services and Charging Guidance' provides HSC Trusts with direction on the assessment process to be undertaken to identify both health and social care needs. As set out in the circular an individual's primary need can be either for health care – which is provided free – or social care for which a means tested contribution may be required. [The DOH] sought confirmation from all HSC trusts in October 2012 that they were compliant with this circular. All HSC Trusts confirmed this was the case.'*

27. On 4 November 2014, the Department wrote to the Chief Executives of all Trusts regarding the application of continuing healthcare in Northern Ireland. The Department stated '*current departmental guidance on continuing healthcare is framed within the context of assessment of need, and is set out in paragraph 17 of [the 2010 Circular].'* The Department acknowledged the *'need to develop further extant guidance on continuing healthcare'.* The Department's letter explained '[*i]t is the responsibility of HSC Trusts to ensure that appropriate assessments of needs for individuals are carried out, including those with continuing healthcare needs… [a]s you will be aware within the integrated system in Northern Ireland, it is clinicians, together with other health and social care professionals, who are responsible for assessing the needs of the individual and for making decisions about appropriate long term care. This is done in consultation with the client, the client's family and their carers.'*

28. In June 2017, the Department issued a consultation document. Paragraph 10 states *'[a]t present, if the outcome of an assessment indicates a primary need for healthcare, then the HSC is responsible for funding the complete package of care in whatever setting.'*

29. Paragraph 11 states *'[i]f the assessment identifies that nursing home care is appropriate and the individual is responsible for meeting the full costs of their nursing home care, then the relevant HSC Trust is responsible for making a payment of £100 per week to cover the cost of private nursing care.*

30. Paragraph 18 states *'[t]he outcome of the review has provided the Department with sufficient evidence that further clarity and revision to the local continuing healthcare policy is now required…it is important that all decisions regarding an individual's care requirements are based on a clinical assessment of need.'*

31. Paragraph 20 states *'if the Department chose to continue with the status quo, this would mean that no changes are made to the current Departmental guidance. Multidisciplinary panels in HSC Trusts would remain primarily responsible for determining whether a client was eligible for continuing healthcare if the assessment indicated a primary need rather than a social care need.'*

32. The outcomes of the Departmental Review noted *'one of the key drivers for HSC Trusts receiving a request for a continuing healthcare assessment is once an individual needs to, or has, moved into a nursing home. In such circumstances the individual is required to contribute to the cost of their care according to their financial means, for as long as they are able to do so…All HSC Trusts confirmed that individuals are assessed using the Single Assessment Tool (NISAT), which is the standardised, multi-professional assessment tool providing a framework for holistic, person centered assessment. HSC Trusts also confirmed that a Nursing Needs Assessment (NNAT) is undertaken when required.'*

Communications with the Department of Health

33. The Investigating Officer corresponded with The Department to confirm the Department's position in relation to the application and administration of CHC. In relation to previous investigations carried out by this office, the Department confirmed to the Investigating Officer on 19 November 2019 that it remains the responsibility of HSC Trusts to ensure that an assessment of need is carried out for individuals in a timely manner and with appropriate multidisciplinary

professional and clinical input as required. The assessment will determine whether the individual's primary need is for health care, which is provided free of charge in whatever setting.

34. The Department stated it *'remains committed to seeking to achieve an outcome which will ensure that a transparent and fair system is in place for all individuals in Northern Ireland who may or may not have a continuing healthcare need. However, in light of the current political situation it is not possible to provide a definitive timeline for progressing this area of work. Consequently HSC Trusts have been reminded that in the interim until such time as any revision to the current arrangements have been agreed and implemented, the extant Departmental guidance as set out in [the 2010 Circular] continues to apply.'* The Department also confirmed '*it would be the Department's understanding and/or expectation that each HSC Trust has in place policies/protocols/procedures/ guidance to enable it to fulfil its responsibilities in relation to continuing healthcare, in accordance with the policy position set out in the 2010 Circular.'*

35. In October 2020, the Department provided a further update on its review of CHC. At that time, it advised that there was no indicative timescale in relation to the publication of the public consultation response report and the implementation of new CHC arrangements in Northern Ireland.

36. The Department also advised, as recently as October 2020, that HSC Trusts were reminded that until such time as any revision to the current CHC arrangements were agreed and implemented, the existing Departmental policy direction and guidance, as set out in the 2010 Circular, continued to apply. It further advised that '*it would be the Department's understanding/ expectation that each HSC Trust has in place policies/protocols/procedures and/or guidance to enable it to fulfil its responsibilities in relation to [CHC], in accordance with the [Department's] policy position set out in the 2010 Circular'.*

Trust's responses to the complainant and to NIPSO enquiries

37. The complainant wrote to the Trust on 19 September 2016 to ask that it *'arrange an assessment [CHC] effective from 7/01/2015'*. The complainant

explained that she believed the resident met the criteria to be eligible for CHC *'as she needs continuing NHS health care, which can only be provided by a healthcare professional'.* The Trust responded to the complainant's request on 18 November 2016. The Trust apologised for the delay in responding, which the Trust stated was a result of seeking advice from the Department on the latest legal advice relating to CHC assessments. The Trust's letter stated the resident's needs were '*being met in Edenvale Care Home'.*

38. On 21 November 2018, the Trust wrote to the complainant stating '*CHC funding requires evidence from both Health and Social Care professionals that the service user's needs cannot be met within the existing care provision.'*

39. In its July 2019 letter to the complainant the Trust stated *'all HSC Trusts are required to use the [NISAT] to provide a holistic and comprehensive assessment of the individual's health and social care needs. The outcome of [the resident's] assessment, which took into consideration both her health and social care needs, indicated that whilst [the resident] had a number of health issues, [her] predominant needs were assessed to be personal social services needs.'*

40. The Trust also stated *'a review of your mother's health, personal care and nutritional needs was conducted in April/May 2017 by your mother's social worker, GP and the Trust's Nutrition and Dietetics Service. The assessments indicated that [the resident] required assistance with all activities of daily living, with the predominant need continuing to indicate that these were to provide personal social services.'* In its 18 December 2019 correspondence to the complainant, the Trust stated *'the NISAT indicated that [the resident's] needs were primarily personal social services and not health care needs. Therefore on this basis, the Trust applied the regulations contained within the Health and Personal Social Services (Northern Ireland) Order 1972, which requires that a person is charged for personal social services provided in residential care or nursing home accommodation arranged by a HSC Trust. In addition, the Trust also applied the terms of Department of Health (NI) Circular ECCU 1/2010, which, as you know, requires Trusts to determine whether an individual's primary need is for healthcare or for personal social services.'* The Trust also

stated the resident's *'personal social services needs were more predominant than her health needs.'* The Trust stated it was *'confident that is has applied the relevant legislation and as stated above, the assessments conducted to determine your mother's needs included an assessment of both her health and social care needs.'*

41. In its 30 January 2020 response to NIPSO enquiries, the Trust stated '*all HSC Trusts in Northern Ireland are required to utilise the Northern Ireland Single Assessment Tool (NISAT) to provide a holistic and comprehensive assessment of an individual's health and social care needs.'*

42. In response to NIPSO's request for an explanation about the criteria for assessment, the Trust stated *'the outcome of the [resident's] assessment, which took into consideration both her health and social care needs, indicated that while [the resident] had a number of health issues, her predominant needs were assessed to be personal social service needs, relating to washing, dressing, toileting; mobilising; meal provision; etc. Because of the sustained level of personal social services input required for [the resident], it was acknowledged by her and her family that these needs were best met within a facility such as Edenvale Care Centre, which operates on a 24 hour basis.'* The Trust also stated it is *'obliged to utilise the current assessment processes in place as directed by the Department of Health.'*

Relevant medical records

43. The IPA provided a detailed review of the resident's medical records, which is enclosed at Appendix four. The IPA summarised the resident's medical history as follows:

> *'[The resident] was residing at home supported by a package of care and her family. She was admitted to Edenvale Nursing Home [the Care Home]) on 7 January 2015. She was initially admitted to the Care Home for a period of respite, following which she agreed to remain in the Care Home due to the need for support over the 24-hour period… At the time of admission [the resident] was 91 years old. She had a medical history that included atrial fibrillation, heart failure, pacemaker,*

hypertension and a fractured right humerus in 2013. In summary, [the resident's] needs at that time were for a safe environment with access to a care worker over the 24-hour period to reduce the risk of falling when mobilising. She also required assistance with the activities of daily living, provision of meals and drinks, assistance to access the toilet and with taking medication.'

44. The IPA discussed the resident's time in the nursing home and noted she *'slowly declined over the time she was at the care home and her dependency increased. She became more prone to infections and symptoms of heart failure, requiring adjustments in medication, oxygen therapy and closer monitoring by the Registered Nurses…The resident sadly passed away on 18 May 2018.'*

Relevant Independent Professional Advice

45. As part of the investigation process, I obtained independent professional advice from a specialist practitioner with 15 years' experience within NHS CHC (IPA). The IPA was asked to describe whether the Trust's reviews and NISAT assessments of the resident were the appropriate assessments for determining CHC eligibility.

46. The IPA advised '*The [NISAT] is appropriate for determining eligibility for Continuing Healthcare.'…'Circular HSC (ECCU) 1/2010 sets out guidance for Trusts in the assessment of both health and social care needs using the Northern Ireland Single Assessment Tool (NISAT). NISAT has three primary components: I. the Contact Screening; II. the Core Assessment, with prompts to specialist assessment, where necessary; and III. the Complex Assessment, with prompts to specialist assessment, where necessary.'*

47. The IPA advised that the Trust *'would have gathered sufficient information to determine if the resident's needs were predominantly for health or social care services following the completion of the NISAT assessment process in January 2015 and confirmed again in April/May 2017.'*

48. In relation to the assessments carried out on the resident, the IPA advised that following the identification of a need for residential respite care, the Trust *'appropriately and in accordance with ECCU 1/2010, assessed [the resident] by completing Core and Complex NISAT assessments.*

49. The IPA reviewed the NISAT and Core NISAT assessments dated 07/01/2015 and determined '*both have been adequately completed and as such were appropriate in determining if [the resident's] needs were predominantly for health or personal care services. Therefore the Trust had sufficient information at this stage to determine that [the resident's] needs were predominantly for personal care services.'*

50. The IPA was asked whether these assessments were, in themselves, sufficient to determine the resident's eligibility for CHC funding. The IPA advised that *'[t]he Core and Complex assessments completed in the period leading up to 07/01/2015 were completed in sufficient detail to identify if further specialist assessments were required at that time. The assessments took account of both health and personal services needs with sufficient consideration to areas of risk such as falls, swallowing and nutrition.*

51. The IPA also advised that at the time of the NISAT assessments *'[n]o needs were identified at that time that required further specialist assessment. Therefore this level of assessment would have enabled the MDT to make a recommendation to the Trust as to whether [the resident's] needs were predominantly for health or personal social services. However, it is not clear from the documentation supplied by the Trust whether an MDT formally reached the decision.'*

52. The IPA was asked whether the Trust completed the necessary assessments in accordance with the relevant guidance and in a timely manner, to determine the resident's eligibility for CHC funding. The IPA advised '*the Trust completed the necessary NISAT assessments leading up to [the resident's] admission to the care home in January 2015. The Trust also appropriately completed a number of reviews and assessments in 2016, 2017 and 2018.*

53. Regarding the follow up NISAT in 2017, the IPA advised *'[t]he complainant requested a Continuing Care Assessment in December 2016. The Trust, in response to the complainant dated 21 December 2016, stated that a review would take place in line with HSS ECCU 1/2010 using NISAT.'* The IPA advised *'[t]his response was in line with HSS ECCU 1/2010 Paragraph 27 "More frequent reviews may be required in response to changing circumstances or at the request of service users or other persons, including carers, or agencies involved in their care". 'The Trust appropriately, and in accordance with HSS ECCU 1/2010, completed an assessment using NISAT core assessment in April/May 2017. A GP report supported this assessment. It is reasonable that the timing of this NISAT was scheduled to coincide with the annual review.'*

54. In conclusion, the IPA advised the 2017 NISAT assessment was *'adequately completed and as such was appropriate in determining [the resident's] needs were predominantly for health or personal care services. Therefore the Trust had sufficient information again at this stage to determine [the resident's] needs were predominantly for personal care services.' 'Following the complainant's request to the Trust for a continuing healthcare assessment in December 2016 a NISAT was completed in April 2017. An annual review was due in April 2017 and therefore it was reasonable that the timing of this NISAT be scheduled to coincide with that next annual review.'*

55. The IPA explained that a primary healthcare need describes a resident who *'primarily / predominantly [has] a need for healthcare rather than a need for both health services [such as a GP] and personal care services.* According to the IPA, a resident's primary need should be *'identified through a comprehensive assessment of an individual's needs by the MDT and concluding in an analysis of the presenting needs. This will determine whether an individual's primary need is for healthcare or for personal social services.'*

56. The IPA advised that making the distinction between a primary healthcare need and a primary need for personal social services is *'complex and requires a careful appraisal of each individual's needs. In this context, it is for clinicians, together with other health and social care professional colleagues and in consultation with the service user, his/her family and carers, to determine*

through a comprehensive assessment of need whether an individual's primary need is for healthcare or for personal social services.'

57. The IPA advised that based on her review of the records, the resident did not have a primary healthcare need when she was admitted to the Care Home on 7 January 2015. The IPA explained '[*a]t the time of admission [the resident] was 91 years old. She had a medical history that included atrial fibrillation, heart failure, pacemaker, hypertension and a fractured right humerus in 2013.*' The IPA outlined the resident's needs and concluded *'[the resident's] needs on admission to the care home were mainly for personal care services and as such [the resident] did not have needs indicative of a Primary Need for healthcare.'*

58. Based on the evidence within the records, the IPA advised that the resident *'required occasional hospital care, but outside of those acute admissions her care needs remained for nursing and personal care services with the support of her GP and community health services.'* After the resident's admission to the Care Home, the IPA advised the resident's *'needs remained similar during 2016 as were during 2015 and other than her mobility slowly reducing and she became less mobile [the resident's] needs remained mainly for personal care services and as such [the resident] did not have needs indicative of a Primary Need for healthcare.'*

59. The IPA also reviewed the resident's needs in 2017 and advised the resident's *'dependency increased during 2017 - she had chest infections and episodes of breathlessness associated with chest infections and heart failure. Periods of oxygen therapy were required. Her nursing needs increased and included more regular monitoring of her vital signs, oxygen saturations and her skin integrity. Her day to day care needs remained mainly those associated with daily living needs.'* The IPA concluded the resident's needs in 2017 were for *'nursing and personal care services with the support of her GP and as such [the resident] did not have needs indicative of a Primary Need for healthcare.'*

60. The IPA also advised the resident's condition continued to slowly deteriorate and her dependency further increased as she spent increasing amounts of time

in bed. She continued to require regular monitoring of her vital signs and oxygen saturations, periodically requiring oxygen therapy.

61. The IPA advised the resident passed away on 18 May 2018 after she was diagnosed with a chest infection and her condition did not respond to treatment.

62. In summary, the IPA advised from the resident's *'admission to the care home in January 2015 to the date of her sad passing in May 2018, other than when there was a need for acute hospital care, [the resident's] needs were for 24-hour personal care services and nursing care. Therefore, there was no evidence that [the resident] had a primary health need during this period.*

63. Having considered the full extent of the resident's needs from January 2015 until May 2018, the IPA concluded that she was '*satisfied that [the resident's] needs were not indicative of having a primary need for healthcare as determined within Circular ECCU 1/2010 throughout the time she was resident at the care home.'* Based on her review of the resident's needs between 2015 and 2018, and her review of the relevant assessments, the IPA concluded '*the Trust completed the necessary NISAT assessments leading up to the resident's admission to the care home in January 2015. The Trust also appropriately completed a number of reviews and assessments in 2016 and 2017.'*

64. The IPA explained that she '*reviewed the NISAT and Core NISAT assessments in 2015 and 2017 -the assessments have been adequately completed in accordance with Circular ECCU 1/2010 and as such were appropriate in determining whether [the resident's] needs were predominantly for either health or personal care services. Therefore the Trust had sufficient information following those NISAT assessments to be confident that [the resident's] needs were predominantly for personal care services.'*

65. The IPA advised the Trust *'consider putting in place local processes or protocols to support staff in determining whether an applicant is suitable for Continuing Healthcare in line with the guidance for assessment set out within NI Department of Health's Circular HSC (ECCU) 1/2010).'* The IPA also recommended the Trust *'implement a process for the MDT to follow that explicitly demonstrates that a resident's needs, following NISAT, have been*

considered in relation to if those needs are indicative, or not indicative of a primary need for healthcare.'

66. The IPA also advised on whether the Trust appropriately communicated with the complainant in response to her requests for information regarding how CHC is applied in the Trust. The IPA advised '*taking account of the complexities of explaining CHC eligibility, overall the letter dated 18 November 2016 appears a reasonable and appropriate response to the complainant's request for the resident's CHC eligibility to be determined - appropriate assessments had been completed using NISAT in the determination of [the resident's] needs and the Trust had followed the process set out within HSS ECCU 1/2010.'* The IPA also advised that the letter from the Trust to the complainant dated 21 December 2016 did not address all the complainant's concerns, but did *'offer a reassessment in accordance with HSS ECCU 1/2010'*. The IPA advised the Trust's statement to the complainant that *'"The issue of continuing health needs is complex and requires evidence that the service users' needs cannot be met within the existing care provision" is inaccurate and could have been better explained.'* The IPA explained '*it is the type and extent of health needs that determine a predominant need for health care, not the existing provision… therefore in this respect a more appropriate and reasonable response to the complainant's request for [the resident's] CHC eligibility to be determined would have been to include a better explanation of why her mother did not have a predominant need for healthcare.'*

Analysis and Findings

67. I carefully considered this complaint. There are several concerns that I consider need to be addressed. First, the extent of the Trust's obligation to develop and implement local guidance for the assessment of CHC requests, pursuant to the 2010 Circular; second, whether the Trust determined the complainant's CHC eligibility correctly, with proper local procedures in place and in a manner that is consistent with the 2010 Circular's obligations; and third, whether, the quality of the Trust's communication with the complainant was consistent with the principals of good administration. I considered these concerns in turn below.

The Trust's obligations under the 2010 Circular.

68. I considered the Trust's correspondence with the complainant between 2016 and 2019 and in particular, I considered the Trust's statements about how CHC should be assessed. In its 18 November 2016 letter to the complainant, the Trust indicated the resident's CHC application was denied in part because her needs were '*being met in Edenvale Care Home'.*

69. In its 21 November 2018 response to the complainant, the Trust stated '*CHC funding requires evidence from both Health and Social Care professionals that the service user's needs cannot be met within the existing care provision.'* The Trust explained *'there are no [CHC] assessments currently being used in NI'* and *'at present, there is no policy and eligibility in NI for [CHC]…* stating '*CHC funding requires evidence from both Health and Social Care professionals that the service user's needs cannot be met within the existing care provision.'*

70. In contrast, in its July 2019 response to the original complaint, the Trust stated *'all HSC Trusts are required to use the [NISAT] to provide a holistic and comprehensive assessment of the individual's health and social care needs. The outcome of [the resident's] assessment, which took into consideration both her health and social care needs, indicated that whilst [the resident] had a number of health issues, [her] predominant needs were assessed to be personal social services needs.*' I note the Trust also stated a review of the resident's *'health, personal care and nutritional needs was conducted in April/May 2017 [the resident's] social worker, GP and the Trust's Nutrition and Dietetics Service. The assessments indicated that [the resident] required assistance with all activities of daily living, with the predominant need continuing to indicate that these were to provide personal social services.*'

71. I note the communication between the Trust and the complainant about the applicability of CHC spanned three years. During this time, the Department was in the process of carrying out a review into the process by which CHC determinations were made. The 2017 consultation was never concluded. Regrettably, well over three years later, the Department has still not issued any recommendations from the 2017 Consultation. I am conscious that although

the Department has confirmed the outcome form the 2017 Consultation will be submitted to the Health Minister for a decision on how to proceed, there is no current time frame for any decision.

72. In the absence of updated guidance, I note the Department has repeatedly affirmed that the Trusts remain responsible for ensuring they have local processes that are consistent with the 2010 Circular until the Department of Health issues updated guidance. Accordingly, absent an anticipated timeframe for the implementation of a regional framework, the Trust must ensure it is compliant with the 2010 Circular. This is consistent with the Department of Health's position that the 2010 Circular is still the '*extant departmental guidance'* and *'Trusts have been reminded that in the interim until such time as any revision to the current arrangements have been agreed and implemented, the extant Departmental guidance as set out in [the 2010 Circular] continues to apply.'*

73. I note the contrasting positions taken by the Trust in its correspondence with the complainant. In some instances, the Trust indicated that it believes CHC is simply not available to residents whose '*needs can be met'* in a nursing home or care home. At other occasions, the Trust indicated *CHC funding requires evidence from both Health and Social Care professionals that the service user's needs cannot be met within the existing care provision.'* In contrast, the Trust also told the complainant that its decision to deny the CHC application was because *"the NISAT indicated that [the resident's] needs were primarily personal social services and not health care needs. Therefore on this basis, the Trust applied the regulations contained within the Health and Personal Social Services (Northern Ireland) Order 1972.'*

74. I also note the Trust did not provide any policy which outlines what its actual position is regarding how it determines CHC applicability. Given the contrasting positions adopted by the Trust and the absence of any policy clarifying the Trust's position, I considered the language used in the 2010 Circular to determine the correct approach to CHC funding. In particular I note Paragraph 20 of the 2010 Circular establishes that CHC is available in whatever setting and Paragraph 88 explicitly references the availability of CHC to nursing

residents, noting *'[w]hen contracting with homes, HSC Trusts should contract for the full cost of the placement, and,* ***where there has not been a determination of continuing healthcare need****, seek reimbursement under the 1993 regulations.'* I consider the Trust's position of determining CHC eligibility based on location is not supported by the Paragraph 20 and the express language of Paragraph 88.

75. I also considered the Transforming Your Care Review, which emphasised the '*many benefits associated with delivering care within people's homes and in their local communities'* and stressed how hospital care '*is only best for a resident with acute medical needs*'. The Transforming Your Care Review is clear that care should be delivered in people's homes where possible, and '[*i]n some cases people's homes are nursing homes or residential facilities'*.

76. I also considered the 1972 Order. I note the 1972 Order does not provide an explicit statutory framework for the provision of CHC in Northern Ireland, nor does it expressly require that CHC be provided to people in Northern Ireland. That said, I also note that paragraph 63 of the 2010 Circular, states *'[The 1972 Order] requires that a person is charged for personal social services provided in residential care or nursing home accommodation arranged by a HSC Trust.* ***There is no such requirement, or authority, to charge for healthcare provided in the community, either in the service user's own home or in a residential care or nursing home'*** (the 2010 Circular's emphasis). There is, therefore, a clear difference between healthcare needs and social care needs, in terms of the legal authority for a HSC Trust to charge for the care provided to an individual who has been placed in a residential care or nursing home.

77. I am concerned by the Trust's conflicting responses as to how it determines applicability for CHC funding. In particular, I am concerned by the statements made by the Trust which would seem to indicate CHC funding can be determined based upon the resident's location, or setting. I am also concerned that the Trust does not seem to have any clear policy for determining CHC funding, as no such policy was provided. The 2010 Circular makes no distinction regarding the applicant's location. Without a clear process for determining whether they are eligible for CHC, applicants from residential or

nursing home settings may be wrongly required to make significant financial contributions to their care.

78. Accordingly, I accept the IPA's advice that the Trust's position *'is not in accordance with ECCU 1/2010 as the charging guidance only applies when there has not been a determination whether the person's need is a Predominant Need for Healthcare, requiring a NISAT core, complex and if necessary, specialist assessments to enable a determination of continuing healthcare need to be made.'*

79. The Trust's ability to charge for care must be based on a determination that personal social services are being provided, not based on the applicant's location. There is an affirmative obligation on the Trust to make this determination when an applicant requests a CHC assessment, before charging the applicant for care. From the available evidence, I consider that the Trust has not implemented a proper local procedure for determining continuing healthcare applications. Although some statements by the Trust indicate it has applied this standard, these are contradicted by other statements and the fact that no CHC policy was provided by the Trust. Such a policy should set out that assessments should be multidisciplinary and should determine the applicant's primary need – either healthcare, or personal social services. Paragraphs 20 and 88 create an expectation that continuing healthcare applies to nursing and residential home residents, who should receive a multi-disciplinary assessment upon request in order to determine whether their primary need is for healthcare, or personal social services.

80. The first and sixth principle of good administration, getting it right and seeking continuous improvement, require the Trust to '*act in accordance with the law and with the regard to the rights of those concerned'* and to review '*policies and procedures regularly to ensure they are effective'* while also ensuring it *'learns lessons from complaints and uses these to improve services and performance'*. In the absence of any further guidance form the Department of Health, the Trust is obligated to develop local procedures that are compliant with the 2010 Circular. Accordingly, I consider that the Trust has failed to implement a local procedure for the assessment of continuing healthcare applications in

accordance with the 2010 Circular. I find that this failure constitutes maladministration.

81. However, I agree with the Trust's statement that '*all HSC Trusts are required to use the [NISAT] to provide a holistic and comprehensive assessment of the individual's health and social care needs.'* The NISAT assessment, used in conjunction with an applicable MDT assessment, should form the basis for determining an applicant's primary need.

The Trust's Assessment of the resident's Application for Continuing Healthcare

82. I considered how the Trust processed the complainant's application for CHC and specifically whether the Trust ever determined the resident's primary need by carrying out the proper assessments in a timely fashion, in accordance with the Department's position. I also considered whether the Trust's decision to deny the complainant's application was based on appropriate criteria.

83. I considered the IPA's advice regarding the necessary assessments to determine whether an applicant should be eligible for CHC. In particular, I considered the IPA's advice that *'[t]he [NISAT] is appropriate for determining eligibility for Continuing Healthcare.'…'Circular HSC (ECCU) 1/2010 sets out guidance for Trusts in the assessment of both health and social care needs using the Northern Ireland Single Assessment Tool (NISAT). NISAT has three primary components: I. the Contact Screening; II. the Core Assessment, with prompts to specialist assessment, where necessary; and III. the Complex Assessment, with prompts to specialist assessment, where necessary.'*

84. I also considered the IPA's analysis of the assessments that were carried out by the Trust when the resident was being admitted to the Care Home. The IPA advised that following the identification of a need for residential respite care, the Trust *'appropriately and in accordance with ECCU 1/2010, assessed [the resident] by completing Core and Complex NISAT assessments.* The IPA reviewed the NISAT and Core NISAT assessments dated 07/01/2015 and determined '*both have been adequately completed and as such were appropriate in determining if [the resident's] needs were predominantly for health or personal care services. Therefore the Trust had sufficient information*

at this stage to determine that [the resident's] needs were predominantly for personal care services.'

85. The IPA advised that *'[t]he Core and Complex assessments completed in the period leading up to 07/01/2015 were completed in sufficient detail to identify if further specialist assessments were required at that time. The assessments took account of both health and personal services needs with sufficient consideration to areas of risk such as falls, swallowing and nutrition.*

86. The IPA advised that the Trust *'would have gathered sufficient information to determine if the resident's needs were predominantly for health or social care services following the completion of the NISAT assessment process in January 2015 and confirmed again in April/May 2017.'* I note the IPA's advice that '*[n]o needs were identified at that time that required further specialist assessment. Therefore this level of assessment would have enabled the MDT to make a recommendation to the Trust as to whether [the resident's] needs were predominantly for health or personal social services.*

87. Although the IPA advised the decision that the resident was not eligible for CHC was correct, I am concerned that the IPA advised '*it was not clear from the documentation supplied by the Trust whether an MDT formally reached the decision.'* In addition to carrying out the appropriate assessments before the resident was admitted, I note the IPA advised *'the Trust also appropriately completed a number of reviews and assessments in 2016, 2017 and 2018.*

88. Regarding the follow up NISAT assessment in 2017, I note the IPA advised *'[t]he complainant requested a Continuing Care Assessment in December 2016. The Trust, in response to the complainant dated 21 December 2016, stated that a review would take place in line with HSS ECCU 1/2010 using NISAT.'* The IPA advised *'[t]his response was in line with HSS ECCU 1/2010 Paragraph 27 "More frequent reviews may be required in response to changing circumstances or at the request of service users or other persons, including carers, or agencies involved in their care". 'The Trust appropriately, and in accordance with HSS ECCU 1/2010, completed an assessment using NISAT core assessment in April/May 2017. A GP report supported this assessment. It*

is reasonable that the timing of this NISAT was scheduled to coincide with the annual review.'

89. In conclusion, I note the IPA advised from the resident's *'admission to the care home in January 2015 to the date of her sad passing in May 2018, other than when there was a need for acute hospital care, [the resident's] needs were for 24-hour personal care services and nursing care. Therefore, there was no evidence that [the resident] had a primary health need during this period.*

90. Having considered the Trust's assessments of the resident, I find that the Trust adequately determined the resident's primary need was for personal social services. The IPA advice is clear that the NISAT assessments carried out in 2015 and 2017, along with the nursing assessments throughout the resident's time in the care home demonstrate the resident did not have a primary healthcare need.

91. Furthermore, I accept the IPA's advice that the NISAT assessments were *'adequately completed and as such was appropriate in determining [the resident's] needs were predominantly for health or personal care services. Therefore the Trust had sufficient information again at this stage to determine [the resident's] needs were predominantly for personal care services.'* Having considered the Trust's assessments of the resident, I find that the Trust properly carried out NISAT assessments on the complainant which demonstrate the resident's primary need was for personal social services.

92. Nevertheless, I am concerned that there appears to be no recorded rationale on the part of a Multidisciplinary Team that the resident did not have a primary healthcare need. As discussed above, it is important for the Trust to ensure it has appropriate procedures in place which require MDTs to record their rationale for denying or approving CHC. The third principle of good administration, *'being open and accountable'*, requires the Trust to **'***'state its criteria for decision making and give reasons for decisions'* and to '*keep appropriate records'*. Although NISAT assessments were carried out on the resident appropriately, there is no recorded rationale on the part of the MDT regarding the resident's primary need. Specifically, whether her primary need

was for health, or personal social services. I consider this to be contrary to the 2010 Circular. This failure constitutes maladministration. Accordingly, I uphold this element of the complaint in part.

The Trust's communication with the complainant

93. I considered the Trust's communications with the complainant from the time she initially requested that the resident be evaluated for CHC eligibility up until and including the Trust's final response to her complaint. I note that although the complainant initially contacted the Trust in 2016, her complaint was submitted on 3 April 2019 and The Trust's final response to the complaint was issued in early July 2019. As the 'complaints handling' process only encompassed 3 months in what was actually years of communication, from 2016 up to 2019, I did not limit this element of complaint simply to the complaints process. Instead, I considered whether the Trust's communication with the complainant was appropriate and consistent with the principles of good administration from her initial request for a CHC assessment in 2016, up to the conclusion of the complaints process in 2019.

94. I note that complainant repeatedly requested clarity from the Trust on the application of CHC during this time and requested the Trust carry out a CHC assessment. The Trust's responses on 18 November 2016 and 21 November 2018 did not reference any CHC assessment. This is concerning, as the Trust later claimed in its response to the complaint in July 2019 that a '*review of [the resident's] health, personal care and nutritional needs was conducted in April/May 2017 by your mother's social worker, GP and the Trust's Nutrition and Dietetics Service. The assessments indicated that [the resident] required assistance with all activities of daily living, with the predominant need continuing to indicate that these were to provide personal social services.*' The Trust also explained that these needs included '*washing, dressing, toileting, etc.'*

95. It is unclear why the Trust did not provide the information contained within its July 2019 response when the complainant requested a CHC assessment in 2016. If the decision not to award CHC funding was indeed based on the

assessments carried out in April and May of 2015, I see no reason why the complainant was not told this in the Trust's 18 November 2016 correspondence.

96. The third principle of good administration, being open and accountable, requires the Trust to '*'be open and clear about policies and procedures and ensure that information, and any advice provided, is clear, accurate and complete'.* This principle also requires the Trust to *'state its criteria for decision making and give reasons for its decisions.'* The correspondence from the Trust to complainant during 2016 to 2018 did not provide the complainant with any information about how the Trust determined the resident's CHC eligibility or primary need. The complainant was not provided with the information until 2019, when she was forced to make a complaint. I find that this failure to properly respond to the complainant constitutes maladministration.

97. I note that the complaint was submitted to the Trust on April 3, 2019, after the complainant had repeatedly asked for information about how to obtain a CHC assessment for her mother. I note the Trust provided an informative response to the complaint and updated her throughout the complaints handling process. However, I am concerned that the Trust only provided this information after a complaint was raised. I consider that a complaint should not have been necessary for the Trust to provide an informative response to the complainant when this information should have been readily available to the Trust's staff during the years before the complaint was submitted.

98. As discussed above, although I am satisfied that the Trust arrived at the correct decision regarding the resident's CHC eligibility, there is no indication this was as a result of a well applied process, or procedure. This is evident from the communication with the complainant from 2016 to 2018, which did not provide the complainant with any information about how the Trust assesses CHC applications generally, or how the Trust assessed the resident for CHC eligibility.

Injustice

99. I considered whether the failings identified above caused an injustice to the

resident and the complainant. I accept that the resident would not have been entitled to CHC funding based on the IPA's advice. However, I am satisfied this maladministration identified above caused the complainant the injustice of frustration, uncertainty, and upset. Good administration requires local procedures are put in place for the Trust to assess applications in a systemic and consistent manner, and for applicants to be made aware of the decision making criteria.

100. The central issue is the Trust's failure to have a transparent and consistent local policy in place to assess an applicant's primary need. I carefully considered how to suggest an appropriate remedy for the complainant. I carefully considered the advice of the IPA that the Trust should *'consider putting in place local processes or protocols for use by staff in determining whether an applicant is suitable for Continuing Healthcare in line with the guidance for assessment set out within [the 2010 Circular]'* I also carefully considered the IPA's advice that the Trust should *"implement a process for the MDT to follow that explicitly demonstrates that a resident's needs, following NISAT, have been considered in relation to if those needs are indicative, or not indicative of a primary need for healthcare.*

101. NIPSO has recently concluded investigations into how CHC has been implemented in three other Trusts, it is clear that confusion exists between and within the Trusts about how CHC should be implemented. For this reason, I believe the best course of action at present is for the Trust, in consultation with the other Trusts and health and social care organisations across Northern Ireland to agree a uniform approach in the absence of a decision by the Minister of Health which is consistent with the 2010 Circular and the Transforming Your Care Review.

102. In the event that the Trusts are unable to develop a consistent approach to assessing CHC applications, the Trust should develop its own policy. I consider the potential difficulties which might be caused by individual Trust policies are outweighed by the significant injustice being experienced by CHC applicants, who are not receiving a meaningful assessment and explanation consistent with the 2010 Circular.

CONCLUSION

103. The complainant submitted a complaint concerning how the Trust processed the resident's application for CHC and how the Trust communicated with the complainant in relation to her requests for information and her complaint.

104. I investigated the complainant's complaint and have found maladministration in relation to the following;

(i) Failing to implement a local procedure for the assessment of CHC applications in accordance with the 2010 Circular;

(ii) Failing to have a CHC policy that is consistent with the principles set out in the Transforming Your Care Review.

105. Although I consider the 3 April 2019 complaint was processed in a manner consistent with the principles of good complaints handling, I am concerned about the failure on the part of the Trust to properly communicate with the complainant form 2016 to 2019 that necessitated the complaint. Accordingly, I also found maladministration in relation to the Trust's communication with the complainant regarding her request for a CHC assessment of her mother.

106. I am satisfied that the maladministration I identified caused the resident and the complainant to experience the injustice of frustration, uncertainty, and upset.

Recommendations

107. I recommend that the Trust, either individually or collectively with other HSC Trusts and organisations, take action to ensure that it has in place the administrative arrangements that are necessary to enable it to consider all future requests for a determination of CHC eligibility – in whatever setting – in a timely, consistent and transparent manner, and in accordance with the Department's policy direction, as set out in the 2010 Circular. In particular, the Trust should:

(i) develop a local policy on the implementation of the provisions of the 2010 Circular;

(ii) develop and implement local protocols and procedures in relation to the determination of an individual's primary need and consequently, their CHC eligibility;

(iii) deliver training on the provisions of the 2010 Circular, and the related local CHC policy, protocols and procedures to be implemented, to staff involved in the assessment of individuals' complex health and social care needs; and

(iv) publish details of the Trust's position on the determination of primary need and CHC eligibility.

108. The Trust should implement an action plan to incorporate these service improvement recommendations and provide this Office with an update within six months of the date of this report, supported by evidence to confirm that appropriate action has been taken.

109. I also recommend that the Trust provides the complainant with an apology in accordance with the NIPSO guidance on apology. This is for the failings identified in this report, and should be issued within **one month** of the date of my final report.

110. I recommend that the Trust puts the necessary administrative arrangements in place to enable it to consider all future requests for assessment for funded Continuing Health Care in line with the 2010 Circular.

SEAN MARTIN
Deputy Ombudsman **February 2021**

Appendix 1

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.

- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

Appendix 2

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

1. **Getting it right**

- Acting in accordance with the law and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learned from complaints.
- Including complaint management as an integral part of service design.
- Ensuring staff are equipped and empowered to act decisively to resolve complaints.
- Focusing the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure in the right way and at the right time.

2. **Being customer focused**

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.

- Responding flexibly, including where appropriate co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

3. Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.

- Publishing service standards for handling complaints.

- Providing honest evidence-based explanations and giving reasons for decisions.

- Keeping full and accurate records.

4. Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.

- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.

- Ensuring that decisions and actions are proportionate, appropriate and fair.

- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.

- Acting fairly towards staff complained about as well as towards complainants

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.

- Providing prompt, appropriate and proportionate remedies.

- Considering all the relevant factors of the case when offering remedies.

- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

6. Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.

- Having systems in place to record, analyse and report on learning from complaints.

- Regularly reviewing the lessons to be learnt from complaints.

- Where appropriate, telling the complainant about the lessons learnt and the changes made to services, guidance or policy.