

Continuing Healthcare in Northern Ireland: Introducing a fair and transparent system

**Consultation Response from the
Commissioner for Older People for Northern Ireland**

September 2017

Section 1

I am responding: as an individual
on behalf of an organisation
(please tick a box)

Name:	Commissioner for Older People For Northern Ireland
Job Title: (if applicable)	N/A
Organisation: (if applicable)	As above
Address:	Commissioner for Older People, 6 th Floor, Equality House, 7-9 Shaftesbury Square
City/Town:	Belfast
Postcode:	BT2 7DP
Email Address:	catherine.hewitt@copni.org

Section 2 – Questions relating to the proposed amendment to the continuing healthcare policy in Northern Ireland

These questions should be read in conjunction with the proposals set out in the accompanying consultation document.

<p>Q1: The Department’s preferred option is Option 3. This would involve introducing a Single Eligibility Criteria Question which is:</p> <p><i>‘Can your care needs be met properly in any other setting other than a hospital?’</i></p>	<p>Yes</p>	
<p>If the answer is yes, then the individual would be discharged to the appropriate care setting and the relevant charging policy would apply.</p> <p>This is similar to the model which currently operates in Scotland.</p> <p>Having read the consultation document, do you agree with the Department’s view that Option 3 is the most suitable approach to ensure that there is a transparent and fair system for all individuals who require nursing or residential home care in Northern Ireland?</p>	<p>No</p>	<p>X</p>
<p><i>Please explain why you have given this answer:</i></p> <p>The Commissioner for Older People for Northern Ireland (the “Commissioner”) does not agree that Option 3 is the most suitable approach to ensure that there is a transparent and fair system for individuals requiring nursing or residential care in Northern Ireland.</p> <p>It is the Commissioner’s view that this option is not in keeping with the traditional model of NHS Continuing Healthcare by which care “continues” to be provided for outside of an acute setting.</p> <p>The provisions of the Department’s own policy guidance document¹ references the availability and provision of Continuing Healthcare outside of a hospital setting, for example, in settings such as care homes. Option 3 would therefore appear to be in a direct contradiction to this position.</p> <p>The 1972 Order² prevents the Department / local Health and Social Care Trusts from charging for “nursing care” and where a person has been assessed as having a nursing care need, £100 per week is currently provided to the care home to meet this</p>		

¹ Circular HSC (ECCU) 1/2010 Care Management, Provision of Services and Charging Guidance, Department of Health, Social Services and Public Safety

² The Health and Personal Social Services (NI) Order 1972

need. It is arguable therefore that, in adopting a position where NHS Continuing Healthcare would only be available in hospitals, the Department is, in effect, failing to succinctly address the requirements of the 1972 Order for those receiving “nursing care” in nursing homes³.

It is not clear from the Consultation document, whether the Department’s intention is to **only** make Continuing Healthcare available in a hospital setting. If so, given the current strain upon availability of hospital beds, the Commissioner is also concerned as to how the acute system could possibly accommodate specially designated beds for “Continuing Healthcare” patients.

This question is particularly pertinent given this organisation’s understanding that most of the Continuing Healthcare beds previously in existence in Northern Ireland were housed within “GP Wards” in local / community hospital settings and the fact that most of these hospitals have now been closed. Further clarification should be provided in this regard.

The Consultation document references the Scottish experience. The Scottish position in relation to Continuing Healthcare was revised and reformed following an Independent review in 2014 which found it to be no longer fit for purpose⁴. The Scottish model is now one of “Hospital Based Complex Clinical Care”. It is particularly noteworthy however that personal care is treated differently in the Scottish context from the position in Northern Ireland. It is the Commissioner’s view that it is therefore unhelpful and potentially misleading to the public, to hold out certain experiences in other jurisdictions as good practice without providing a full and transparent comparison of the differences and challenges in infrastructure, policy position and underlying legislation.

The question also needs to be asked as to how this option would marry with current Departmental hospital discharge policy and the practical implications that retaining specific “Continuing Healthcare beds” in acute settings may have upon respite, intermediate and stepdown care beds in other settings.

³ The HSC contribution towards the cost of nursing care provided in nursing homes was introduced by the Northern Ireland Assembly in 2002 and was revised in Departmental guidance in 2006. It is the Commissioner’s view that this guidance is long overdue an overhaul as part of the wider need to establish the real cost of care in Northern Ireland to ensure fairness and transparency in providing for the true nursing element required for older people assessed as having a nursing need.

⁴ The Independent Review of NHS Continuing Healthcare
<http://www.scotland.gov.uk/Publications/2014/03/2480>

Q2. If your answer to Question 1 above was No, do you have a preferred choice from the alternative options listed in the consultation document?	Yes	X
	No	

If you answered Yes, please indicate which option you would prefer and why you have chosen this option.

Option 1: Do Nothing

Please explain why you have chosen this option:

It is the Commissioner’s view that it is not acceptable to do nothing. The Commissioner has been approached by numerous older people and their families and carers who are frustrated at the inconsistent approaches adopted by Health and Social Care Trusts across Northern Ireland. A number of meetings have been held with Departmental officials and the Commissioner has raised this issue directly with a number of different Ministers of Health in the last 3-4 years. The current lack of consistency and clarity cannot be permitted to continue. Clear, open and transparent guidance is required as a matter of the utmost urgency.

Whilst welcoming the instant Consultation in relation to the issue of Continuing Healthcare in Northern Ireland, the Commissioner is of the view that this represents just one area which forms part of an overall need for reform of how healthcare and social care in Northern Ireland is planned and costed. The Commissioner therefore considers this review to be too restrictive in scope by considering Continuing Healthcare in a vacuum rather than including it as part of the much needed overall review of healthcare and adult social care services in Northern Ireland.

A general lack of clarity and consistency has been highlighted to the Commissioner in respect of the provision of adult social care and support in Northern Ireland and particularly a confusion in relation to what constitutes “healthcare” (and is therefore free at the point of need under the NHS) as opposed to “social care” and other “support services” (which are often means tested).

The Commissioner is concerned that tighter constraints upon pure “healthcare” services has led in practice, to a policy shift of categorising more and more services as being “social care” in an attempt to enable such services to be means tested and charged accordingly. This tendency is confusing to service users and nonsensical where the system and pool of resources is “integrated”.

Previous discussions between the Commissioner’s office and the Department have identified an absence of prioritisation of the necessary resources required to be able to commission an independent economic review of the provision of adult social care and support services in Northern

Ireland in the future. A commitment from the Department to establish clarity on the cost of adult social care was not fulfilled during the last Programme for Government period nor was such a commitment contained within the draft Programme for Government published prior to the dissolution of the Northern Ireland Executive.

The Commissioner's draft Corporate Plan for 2016-2020 outlines the need for commissioned research from an expert health economist to provide a technical basis on which the Commissioner can advise government about planning for the future needs of older people based on an accurate cost for healthcare and social care services for older people.

There will inevitably be areas of cross - over between healthcare and social care due to the integrated nature of the system in Northern Ireland and it is the view of COPNI that this review must consider both the costs of healthcare and social care – currently and into the future – in order to provide much needed clarity on a whole system wide basis.

This response is therefore provided on the basis that it is the Commissioner's view that a transparent and fair system is required for the provision of Continuing Healthcare in Northern Ireland. Such reform however would be best provided as part of a wholesale and system wide review of the way both healthcare and social care is fully and fairly provided and funded in Northern Ireland.

Option 2: Introduce a Continuing Healthcare Decision Tool Checklist Model (as is currently implemented in England and Wales)

Please explain why you have chosen this option:

There is little detail provided in the Consultation document in relation to this option which makes it difficult to comment fully at this stage.

It would appear to the Commissioner that introducing such a tool may offer an interim solution whilst the full blown reform of Option 4 is properly progressed.

It must be noted that Continuing Healthcare is not currently included in the Northern Ireland Single Assessment Tool (NISAT) which is used to assess people's care needs. Concerns over the consistent application of the NISAT to Continuing Healthcare have been raised with the Commissioner. It is the Commissioner's view that, in order to represent a feasible, short term "stop gap", the NISAT would require to be amended to include a specific section on Continuing Healthcare. This would also be required to be supported by practical guidance and training for Healthcare Practitioners and social workers to ensure an effective and consistent application on a regional basis. The existence of a transparent and effective appeals process would also be important.

<p>Option 4: Develop standalone continuing healthcare guidance and an assessment checklist specific to the Health and Social Care (HSC) system in Northern Ireland</p> <p><i>Please explain why you have chosen this option:</i></p> <p>This option represents the Commissioner’s preferred option.</p> <p>Care needs assessment and ongoing management is a complex area both in terms of current legislation and policy practice. The Commissioner acknowledges and agrees that, <i>“there is a pressing need to provide clarity”</i> on this issue and it is his strong view that a clear, transparent and fair process is required. This option would best fit with the Department’s ongoing reform agenda which commenced with Transforming Your Care and the need, highlighted by this office, to fully review, analyse and plan ahead for health and social care service provision in Northern Ireland.</p> <p>In particular, the Department’s position in relation to dementia needs to be clarified as a matter of urgency. Dementia can manifest with both healthcare and social care needs and therefore the Commissioner is concerned that the Department’s proposal will lead to an outcome where all older people with a diagnosis of dementia, whether living in their own home or in a care home, will never be eligible for Continuing Healthcare.</p> <p>Whilst this may well constitute a <i>“potentially intensive exercise”</i> requiring <i>“significant input from clinicians and practitioners”</i>, this is not an acceptable reason to refuse to act and indeed, the resources required may not be at the level required in England. The Department should seek to learn from experiences and best practice elsewhere and the existence of our integrated health and social care system may mean, in practice, that the ultimate proposals put forward, are less resource intensive.</p>	X	
<p>Q3. If you do not agree with any of the options listed in the consultation document, do you have an alternative option which you would like the Department to consider?</p>	Yes	
	No	X
<p><i>Please provide details of your alternative approach below and why you believe it is a better option:</i></p> <p>N/A</p>		
<p>Q4. The Department is proposing that individuals already in receipt of continuing healthcare will continue to receive it for as long as they remain eligible to do so.</p> <p>This means that irrespective of the Option implemented, those individuals will not be disadvantaged by the new</p>	Yes	

<p>arrangements.</p> <p>Do you agree with the Department’s proposal regarding the plan for existing continuing healthcare recipients?</p>	<p>No</p>	
<p><i>If you answered No, please explain why you have given this answer and explain how you think individuals currently receiving continuing healthcare should be treated:</i></p> <p>Additional clarity is required in relation to this question. It would appear to be the case that the Department is saying that, even in the event of a new policy being adopted, those currently in receipt of Continuing Healthcare will be “ring - fenced” and thus not be “disadvantaged” by any new arrangements implemented.</p> <p>This however would appear to be contradicted by the use of the words, “...for as long as they remain eligible to do so” contained within the first paragraph above.</p> <p>If the proposed position is that all current recipients will continue to receive Continuing Healthcare for as long as they have an assessed care need (under the previous regime) and/ or for the remainder of their life, this should be clarified.</p>		
<p>Q5. The Department has outlined two possible approaches for dealing with applications for continuing healthcare which have already been submitted to Health and Social Care (HSC) Trusts.</p> <p>The first approach would require HSC Trusts to assess these applications for continuing healthcare in line with the existing guidance.</p> <p>The second approach would require HSC Trusts to retain applications for continuing healthcare until the outcome of the public consultation exercise is known. Following this, HSC Trusts would then arrange to assess these applications in line with the new arrangements introduced.</p> <p>Please indicate your preferred approach.</p>	<p>Assess under current guidance</p>	
	<p>Assess under new arrangements</p>	
<p><i>Please explain the reasons for choosing your preferred approach. If you do not agree with either of the approaches outlined above, please indicate how you think existing continuing healthcare applications should be assessed by HSC Trusts:</i></p> <p>The Commissioner is of the view that neither of the above approaches will adequately address the highlighted disparity currently evidenced in Northern Ireland.</p>		

Continued delay in processing applications pending an outcome from this consultation will also serve only to further disadvantage older people and other potential recipients. A transparent and robust process is required to be put in place to fully deal with all pending applications – possibly using the tools referenced in Option 2 above. Further detail should be provided to consider an acceptable interim solution as a matter of urgency.

Q6. Do you have any other comments you want to offer or are there any particular points which you think the Department should consider when making any policy decision about continuing healthcare in Northern Ireland?

Please provide any further comments below:

Cost of Care generally in Northern Ireland

A lack of clarity and consistency has been highlighted to the Commissioner in respect of the provision of adult social care and support in Northern Ireland and particularly a confusion in relation to what constitutes “healthcare” (and is therefore free at the point of need under the NHS) as opposed to “social care” and other “support services” (which are often means tested).

The Commissioner is concerned that tighter constraints upon pure “healthcare” services has led in practice, to a policy shift of categorising more and more services as being “social care” in an attempt to enable such services to be means tested and charged accordingly. This is confusing to service users and nonsensical where the system and pool of resources is “integrated”.

Previous discussions between the Commissioner and the Department have already identified an absence of prioritisation of the necessary resources required to be able to commission an independent economic review of the provision of adult social care and support services. A commitment from the Department to establish clarity on the cost of adult social care was not fulfilled during the last Programme for Government period nor was such a commitment evident within the draft Programme for Government period.

Older people need to have clarity about what elements of health and social care are available and what they should expect to have to plan to contribute towards that care. The Commissioner believes there is an opportunity and a necessity to seek independent economic advice on what resources will be required given the changing demographics of our population and what options are available to people in the future if and when they need adult care and support.

Reform of the law and practice in Northern Ireland in relation to Adult Social Care generally is overdue and ideally, a review of Continuing Healthcare should have formed part of that much needed reform. The Commissioner continues to call for legislative change in Adult Social Care by way of a new or consolidated legal framework, based on human rights principles, for Northern Ireland⁵.

⁵ “Prepared to Care? Modernising Adult Social Care in Northern Ireland” June 2015, Commissioner for Older People for Northern Ireland.

Section 3 – Equality and Human Rights

Section 75 of the [NI Act 1998](#) requires departments in carrying out their functions relating to NI to have due regard to the need to promote equality of opportunity:

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between person with a disability and persons without; and
- between persons with dependants and persons without.

You may wish to refer to the Equality Screening, Disability Duties and Human Rights Assessment Template at <https://www.health-ni.gov.uk/consultations>

Q7. Is the preferred option set out in the consultation document likely to have an adverse impact on any of the nine equality groups identified under Section 75 of the 1998 Act?	Yes	X
	No	
<p><i>If yes, please state the group(s) and provide comment on how these adverse impacts could be reduced or alleviated in the proposals:</i></p> <p>It is the Commissioner’s view that a full Equality Impact Assessment must be carried out as it is clear that the policy proposal will potentially seriously adversely impact upon older people more than any other age group in society.</p> <p>Northern Ireland, like the rest of the UK and Europe has an ageing population. People are living longer than ever before and according to the Northern Ireland Statistics and Research Agency (NISRA), Northern Ireland has the fastest-growing older population of any country within the UK. NISRA has projected that the number of adults aged 65 and over is to increase by 12.1%, between 2013 and 2018, and by 63.3% between 2013 and 2033. Between 2013 and 2018, the very elderly population (those aged 85 and over) is projected to increase by 22.2% and more than double between 2013 and 2033 from 1.8% to 4%.⁶</p> <p>The consequences of living longer means that some older people will be living with complicated health and social care needs which will increase pressure on the adequate assessment of care needs, which should properly include an assessment for continuing health care for older people where appropriate.</p>		

⁶ OFMDFM/NISRA - A Profile of Older People in Northern Ireland: Annual Update (2015)

Q8. Are you aware of any indication or evidence – qualitative or quantitative – that the preferred option set out in the consultation document may have an adverse impact on equality of opportunity or on good relations?	Yes	
	No	X
<i>If yes, please give details and comment on what you think should be added or removed to alleviate the adverse impact:</i>		
Q9. Is there an opportunity to better promote equality of opportunity or good relations?	Yes	
	No	X
<i>If yes, please give details as to how:</i>		

Q10. Are there any aspects of the proposals in the consultation where potential human rights violations may occur?	Yes	X
	No	
<i>If yes, please give details as to how:</i>		
The Commissioner is concerned at the potential impact of the Department's preferred option upon older people's Article 8 (Respect for private and family life) and Article 5 (Right to Liberty and security in the event of delayed discharge from hospital) fundamental human rights under the European Convention on Human Rights.		