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Please note that this is a general guide and not to be relied upon when taking any personal or business decisions and that it is not a substitute for legal advice tailored to the reader's circumstances.

Should you be paying for your care?

In 1999 Pamela Coughlan took the NHS to court after it withdrew funding for her care in a nursing home. The Court of Appeal ruled that the NHS was responsible for funding care in a home, providing that the primary reason for going into the home was a health need. This remains the legal test for NHS Continuing Healthcare.

If someone qualifies for NHS Continuing Healthcare because they have a primary health need (as opposed to a social need, for which care can be provided by Social Services) they should be provided with a package of care arranged and funded solely by the NHS. This covers the costs of both the care and the accommodation and means that the individual should pay nothing.

In response to a further Court judgement, the Government introduced a National Framework in October 2007 which aimed to eliminate the "postcode lottery" under which the availability of funding varied widely, by providing clear principles and procedures to minimise the local interpretation of eligibility and improve the quality of decision making. However, the unintentional effect has been that people with genuine health needs are still being denied the care to which they are entitled, both due to confusing assessments and lack of awareness and understanding of the procedures to be followed.

Worryingly, more and more people are not receiving the initial assessment for NHS Continuing Healthcare that they should. Nobody should be asked to provide details about their financial circumstances until such time as they have been assessed for NHS Continuing Healthcare.

As you will appreciate, in many cases the boundary between health and social care is very hard to define and there is no statutory definition to rely upon. However, the NHS is required to follow the guidelines set down by the Government properly at all times. However, this is not always the case.

If you feel that you or your relative should not be paying for their care, a deceased relative should not have paid for their care, or the assessment undertaken was incorrect please contact one of our experts to arrange a no obligation appointment to discuss your specific circumstances. If we think that you have a case where you should have been awarded NHS Continuing Healthcare then we will discuss your options with you. If you are unable to attend the office we will be happy to visit you at home.