

Local Government &
Social Care
OMBUDSMAN

Funded Nursing Care payments



*Guidance for care
providers*

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Funded Nursing Care Payments: guidance for adult social care providers

The Local Government and Social Care Ombudsman has seen a rise in complaints from self-funders about Funded Nursing Care payments (FNCs). We are sharing the learning from these cases to help care providers respond to complaints about FNCs, and to understand the approach we will take to any complaints in this area.

What are FNCs?

They are payments from the Department of Health to nursing homes for nursing care and have been available to some nursing home residents since 2001. Eligibility for FNCs is by assessment. Payments are administered by a resident's local Clinical Commissioning Group and are made directly to the care provider. The resident does not receive any money directly.

The number of complaints from self-funders about FNC payments rose in 2016 when the Department of Health increased the weekly rate from £112 to £156.25. Most of the complainants were already getting FNCs and expected to benefit from the rate increase. They felt care providers should pass on the increase to them by reducing their weekly contribution. They felt they should have a 'refund' in their fees equal to the increase (which was in most cases paid to care providers as a lump sum several months after the increase came into force) and a reduction in the weekly fee going forward.

Our approach

When we investigate complaints, we look at what the law and guidance says care providers must do, and compare this with what happened. Where we find a care provider's actions have fallen short of expected standards and this has caused an injustice, we uphold a complaint and make recommendations to put things right for the affected person. This may include an apology and refund of fees. We may also recommend actions to improve services for everyone, like reviewing procedures or training staff.

Our starting point with FNC complaints is to look at the contract and any standard information given to the resident or their representative before they moved in. We interpret contracts on an ordinary reading. If a contract does not make sense to us, then we may view it as a failure by the care provider. We are likely to find fault where a contract term is ambiguous, inconsistent or is poorly drafted. We may also find fault where a contract contains conflicting terms or is silent on how the care provider treats FNCs. Information from other sources may also be relevant.

To illustrate our approach, here are some examples of complaints we have considered.



Contract and information should be clear and unambiguous

What happened

The care provider's contract set out the fee payable, which included nursing care, for those people who do not get FNC.

If FNC is awarded after the resident has signed the contract and moved in, the care provider's practice is to issue a new contract and/or notify the person of fee changes.

If the care provider fails to notify the person of a fee change after the FNC award, its practice is to refund the difference in fees for the period until written notification is given.

In another case, the care provider's practice was to refund the FNC payments to the person once the Clinical Commissioning Group awarded it. The care provider then issued a new contract, with a month's notice, which reflected the FNC award.

Our view

We do not criticise this approach, because it gives the resident time to decide whether to continue with the service.

Learning point:

It is acceptable to issue a new contract if circumstances change, as long as the person has time to decide whether they can afford any increase.

What happened

The person had a refund when they started to get FNC payments and believed there should be a further refund the year later when the rate increased.

Our view

As long as the terms and conditions are signed and explain the position and rights clearly, then nothing in *Regulation 19*, the *Fundamental Standards* guidance, or the *National Framework* requires a care provider automatically to pass on the government's increase in the FNC award to residents by reducing their fees.

In a similar case, we said *'There may be some cases where a care provider has charged nursing costs to an individual resident and / or made an individual assessment for a specific amount of nursing care or have specific contractual terms about how FNC contributions are treated. In such cases the Ombudsman might consider an adjustment of fees for changes in the FNC rate to be appropriate. We are not persuaded this is the case here. The evidence supports the nursing costs were not passed on to Mr X before or after the change of rate. Mr X has suffered no injustice from the change in FNC.'*

Learning point:

As long as the contract explains clearly what happens when FNC is awarded, then we are not likely to uphold a complaint.



Written costs should be clear

What happened

The care provider did not give the resident a written contract and the invoices stated 'nursing care'. When the resident was assessed as eligible for FNC, the care provider issued a contract showing the room rate as being the amount she was already paying, and FNC covering the nursing care element. The complainant expected the introduction of the FNC to reduce the amount the resident paid.

Our view

We found there were no clear written costs in breach of *Regulation 19*.

We recommended:

- > a refund of payments for a period where there was no written contract,
- > an apology and
- > changes to the care provider's procedures.

Learning point

Always give information about fees in writing, including a written contract.

Terms and conditions should be made clear

What happened

The care provider's written contract did not explain how the provider would treat FNCs.

Our view

We found the contract could have been drafted in a way which allowed the care provider to increase fees automatically on receipt of FNC and to keep the payments for itself. The care provider did not do this. Instead, the contract was silent on what happened to FNC payments and so fell short of expected standards.

We recommended a refund.

Learning point

If a contract does not say anything about FNCs, we may take a broad view on fairness. A complainant will have suffered an injustice if he or she reasonably believed she was entitled to a refund, whatever the strict contractual position.

As long as the contract explains clearly what happens when FNC is awarded, then we are not likely to uphold a complaint. It is also acceptable to issue a new contract if circumstances change, as long as the person has time to decide whether they can afford any increase.

A resident's contribution could stay the same or fall when FNC comes into effect. What happens depends on the care provider's terms and conditions. The contract needs to explain how the care provider treats FNC payments.



Key messages for care providers

- > New residents should receive a clear written contract, which sets out what happens to FNC payments
- > Make sure your standard information about fees is clear and in writing. You should be able to show you have given this information to a prospective resident
- > Ensure you tell people about fee increases in the contract and write to them in advance of an increase being made
- > Any inconsistencies or ambiguities about FNC may cause injustice, in which case we may recommend refunds, apologies or changes to procedure.

Resources for care providers

Our [website](#) has a suite of advice and tools to help support good complaint handling:

- > [Care provider resources](#) – template documents to adapt, including complaint procedures; complaint response letters; checklists and guides to help signpost people to the right places
- > [Our decisions](#) – searchable resource of all our published decisions
- > A range of [e-newsletters](#) including a care providers bulletin
- > [Training courses](#) – to help improve complaint handling, including specialist courses for care providers



Appendix: Relevant legislation and guidance

Law and guidance on fees

[Regulation 19](#) of the Care Quality Commission (Registration) Regulations 2009 says care providers should provide the resident or their representative with a written statement, ideally before the resident moves in. The statement should:

- > Set out the terms and conditions of service, including the amount and ways to pay the fee;
- > Include a contract.

Guidance by the Care Quality Commission, Fundamental Standards, explains:

- > People must receive a copy of the contract and they must agree to the terms before their care and support begins;
- > Care providers should tell people about any changes in terms and conditions in advance, including increases in fees. This is so people have time to consider whether to continue with the service;
- > Care providers should give an estimate of costs if a fixed price is not possible. This should include details of additional costs.

The point of Regulation 19 and the Fundamental Standards guidance is to ensure care providers give timely and accurate written information about any fees and terms and conditions in a contract, where people are paying either in full or in part for their care.

Guidance on FNCs

[NHS Funded Nursing Care Practice Guide \(July 2013\)](#) is national guidance on FNCs.

It explains:

'NHS Funded Nursing Care, introduced in October 2001 is the funding provided by the NHS to care homes providing nursing, to support the provision of nursing care by a registered nurse for those assessed as eligible.... the need for care from a registered nurse should be determined. If the individual has such a need and it is determined that the individual's overall needs would be most appropriately met in a care home providing nursing care, this would lead to eligibility for NHS- funded nursing care. Once the need for such care is agreed, the CCG's responsibility to pay a flat rate contribution towards registered nursing care costs arises'

[The July 2013](#) Guidance defines registered nursing as:

'services provided by a registered nurse and involving either the provision of care or the planning, supervision or delegation of the provision of care, other than services which.....do not need to be provided by a registered nurse.'

The National Framework for NHS Continuing Healthcare and NHS-Funded Nursing Care (November 2012) ('the National Framework') explains how FNCs affect other funding for a care package. It says:

- > FNC is a contribution towards the cost of registered nursing care;
- > The issue is about how the fee is shared between the resident and the NHS;
- > The care provider should set an overall fee for care and accommodation, which includes any registered nursing care provided. FNC, when awarded, is paid directly to the care home. The balance is paid by their resident or representative.



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