
Care Funding Services Explained

farleydwek.
SOLICITORS LTD

Care Funding Services Explained

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Care Funding Services Explained

1. Introduction

Thank you for expressing an interest in Farley Dwek and our Care Funding Services.

Whether you've just downloaded our Free Guides for information, or already spoken to us about your circumstances, we hope that our range of legal services will be of assistance to you, either now or in the future.

This brochure explains the Care Funding Services that we offer.

We hope you find this useful in conjunction with our Free Guides.

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2. Who is Farley Dwek?

Farley Dwek Solicitors Ltd is a specialist provider of legal services in relation to issues arising around the funding of care provision in the UK. We were one of the first firms in the UK to tackle the growing issue of unfair Care Home Funding and are dealing with hundreds of claims for Care Home Refunds on behalf of families throughout the UK.

The issues surrounding Care Funding are wide ranging and Farley Dwek is able to provide specialist legal advice in a number of areas.

We specialise in acting for clients to ensure that their entitlement to NHS Continuing Healthcare Funding is properly assessed. Often we act on behalf of family members who want to ensure that their relative's entitlement to Care Funding has been properly assessed, or we act for families who believe that their relative's have already paid for care, when they should have been entitled to NHS Continuing Healthcare Funding and are entitled to a refund of those fees, which can be refunded even after their relative has passed away.

We also offer a Lasting Power of Attorney service.

Farley Dwek Solicitors Ltd are authorised and regulated by the Solicitors Regulation Authority who lay down strict criteria in relation to client care, so you can be assured that our legal services are provided to the highest degree of professional standards.

You can find out more about our specialist team on our website www.farleydwek.com

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3. Our Care Funding Services Explained

(i) Advisory Service

In simple terms we will act as your relative's advocate throughout the NHS Continuing Healthcare Assessment process.

This means that you and your relative will have access to our specialist legal knowledge of the Assessment process at all times. You will also have access to our specialist clinical advice as we employ a team of experienced nurses to support our clients.

Whilst we understand the legal requirements, our experienced team of nurses understand the clinical basis of the Assessment process.

If we believe that your relative is eligible for Funding, then we will offer to act on your/their behalf as their advocate and we will explain the costs associated with providing that service.

If you agree with our terms, we will ask you to enter into an agreement with us.

In terms of our Advisory Service, the next step will be to arrange a Checklist Assessment date, this is arranged through your CCG.

Once we have an Assessment date, one of our experienced nurses will attend the Assessment with both you and your relative. The nurse will come to see you and your relative ahead of the Assessment to check if anything has changed since you completed the Questionnaire and to get to know your relatives condition in more detail. Remember, at this stage we already believe that your relative will be eligible for Funding based on the information provided.

The Checklist Assessment meeting is the key. Our experienced nurses will ask the NHS Assessor to go through each of the Care Domains and explain the "score" they intend to allocate to each Care Domain. If our nurse disagrees with the NHS Assessor about the "score" being allocated, they will put across their alternate view based on their clinical assessment of your relative's condition and their view of what the "score" should be. In other words they will fight your corner.

The advantage you have, is that all our nurses have years of experience in the Assessment process and know exactly how the other side works and thinks. It's our nurse's job to convince the NHS Assessor to revise their assessment in line with our assessment.

Although we can never guarantee success, we have a very high success rate at Checklist Assessment meetings.

Once the Checklist Assessment is complete, the NHS Assessor will send a copy of their Assessment to you which we will review. If we disagree with the Assessment we will challenge it on your behalf. The NHS Assessor then completes a Full Assessment based on the Checklist Assessment, which may sometimes require our nurse to attend another meeting. The NHS Assessor makes a recommendation for Funding to a Multi Disciplinary Team (MDT) within the CCG, who make the ultimate decision on whether to approve Funding, based on the Assessment Report.

If the MDT denies Funding and our nurse believes that the Assessment supported a decision to fund, we will launch an Appeal on your behalf.

Once Funding is agreed, you will be notified by the CCG who will arrange to make payments directly to the care provider. There will usually be a review within the first 12 months and our nurse can attend any review meetings to ensure that the Funding is continued, as part of our service.

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3. Our Care Funding Services Explained

(ii) Reclaims Service

Our Reclaims Service helps families to recover care costs which have been paid incorrectly because an individual in care was wrongly assessed for their eligibility for NHS Continuing Healthcare Funding, or not assessed at all.

In many cases, we act for the families of relatives who have passed away in care and often they have used their life savings, or had to sell their homes to pay for care unnecessarily and unfairly. Or a claim can stem out of an Advisory Assessment.

The process for our Reclaims Service is slightly different to the Advisory Service, because we are dealing with the issue of whether NHS Continuing Healthcare Funding should have been provided historically.

The Retrospective Assessment is still based on the information provided in the Questionnaire, but relies on further historical evidential support in the form of care home records, GP and hospital notes.

We use our specialist team of Nurses to undertake a clinical retrospective analysis of the individuals care needs over their period of care and our specialist solicitors present the arguments for entitlement to NHS Continuing Healthcare Funding to the CCG's, who will assess the retrospective eligibility arguments through a Panel Meeting.

In some circumstances CCG's agree refunds for part periods of care only and our legal team then decide whether to appeal for refunds against those periods in dispute. There are also issues of interest payments due on the care costs paid and again our legal team are highly skilled at working out the often complex interest calculations, to make sure that the maximum entitlement is refunded.

Naturally this process takes longer to be assessed by the NHS as they are also examining past records. If a refund of fees is denied we will consider the reasons and may agree to launch an Appeal on your behalf.

To date our average reclaim is £60,000 including interest.

It should be noted that the Government has now imposed deadlines beyond which refunds of incorrectly paid care costs cannot be reclaimed. Any retrospective claims can now only be made for care costs paid after 31st March 2012. Care costs paid before that date cannot be reclaimed.

However, if you have already made a claim before 31st March 2012, which has been unsuccessful in terms of its assessment, you can still challenge that assessment, for payments made for care dating back to 2004.

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3. Our Care Funding Services Explained

(iii) Free Assessment

Whether you need help with a current Assessment, or need help to recover previously paid care home fees, we can help.

The first step in either process is for us to undertake a Free initial assessment of your relatives circumstances.

In order to complete a full Free initial assessment you will need to complete our Questionnaire in which we ask you to provide us with details of your relatives care requirements and health needs.

We appreciate that the Questionnaire is detailed, but a detailed level of understanding is required for us to advise you properly on your prospects of securing NHS Continuing Healthcare Funding, or a refund of care home fees already paid.

If you are unsure about whether your relative is likely to qualify for Funding, then it's a good idea to call us first to discuss their circumstances and condition. Very often we will be able to give you an initial assessment over the telephone.

If we don't think that your relative will qualify for Funding at this stage that's by no means the end of the line. An individual's health condition and health care requirements can change very quickly. We will be able to advise you on what to look out for in terms of your relative's health and you can contact us to discuss their condition as often as necessary and our advice will always be Free of charge.

If we do believe, having spoken to you, that your relative may be eligible for Funding, then we will ask you to complete the detailed Questionnaire.

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3. Our Care Funding Services Explained

(iv) Lasting Power of Attorney

Before any assessment for NHS Continuing Healthcare Funding can take place, your relative will need to provide their consent for the process to take place, which includes sharing their personal information with different organisations involved in their care and of course sharing information with us as their advocate.

As long as your relative has the capacity under the Mental Capacity Act 2005, they can provide that consent either verbally or preferably in writing.

However, your relative's capacity could deteriorate very quickly and once its determined that they don't have the capacity to make decisions for themselves, their advocate will have to apply to the Court of Protection for what's called a Deputyship Order in order to gain "control" over their affairs.

This can be expensive and most importantly it takes time, which delays the process.

If your relative sets up a Lasting Power of Attorney (LPA) whilst they still have the capacity, then this issue won't arise.

Under an LPA your relative grants control over their affairs to another person, usually a relative or close friend who they trust. They can in turn appoint us as their legal advocate to help with their Assessment.

There are two types of LPA, one covering your relative's Health and Welfare and another covering their Property and Financial affairs.

We strongly recommend that (you and) your relative set up both types of LPA immediately to help the process of managing their affairs in the future.

We offer a fixed cost service to set up both types of LPA.

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3. Our Care Funding Services Explained

(v) What do our Care Funding Services cost?

That depends on how you want to proceed. We offer a number of funding options.

The most common option is for us to act for you under what's known as a Non Contentious Business Agreement (NCBA). Essentially that's a form of "No Win No Fee" agreement, where we will only charge you if we are successful in securing NHS Continuing Healthcare Funding. If we do not secure Funding, then we will not charge you anything, save for the costs of disbursements, for example obtaining medical records.

If you are successful, we will charge you a percentage of what your Care Costs would have been had you not qualified for funding. Our charges will only be based on the next 12 months cost of your Care and we will also provide you with a rebate of our charges, if you your funding is subsequently withdrawn during the first year, or you pass away, subject to minimum fee of £1500 + VAT.

The second option is for us to act for you on a Fixed Fee basis. We will agree a Fixed Fee with you at the outset, based on our assessment of the complexity of your healthcare needs. Under this option, however, you will pay our Fixed Fee at the outset, regardless of whether your eligibility for NHS Continuing Healthcare Funding is successful or not.

Finally, the third option is for us to act on your behalf on a straight forward hourly rate. We will agree our hourly rate with you at the outset and charge you monthly for the time we spend acting on your behalf. Once again, under this option you will responsible for paying our fees regardless of whether your eligibility for NHS Continuing Healthcare Funding is successful or not.

In terms of our Reclaims Service, we only offer to provide this service under an NCBA.

We will always discuss all the funding options in detail with you before we agree to act on your behalf, to make sure you choose the option which is best for you.

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4. Contact Details

To discuss any of our Care Funding Services, please contact Andrew Farley, either by e mail or telephone.

E Mail: andrew@farleydwek.com

Telephone: 0161 272 5222 or 0800 011 4136

Or you can write to us at:

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You can also download or request a Questionnaire through our website www.farleydwek.com

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Case Studies

Advisory Service

Mrs. P contacted us for help with her mothers NHS Continuing Healthcare Funding Assessment. She felt that her mother should receive funding and had organized a Checklist Assessment date with her mothers CCG, but having read our Free Guides and considered the process, she felt that she needed support.

We assessed her mother's condition and agreed that we felt she would qualify for funding. One of our senior nurses arranged to attend the Assessment as her advocate.

The NHS Assessor started the meeting by saying that on her initial assessment, she felt that Mrs. P's mother didn't score highly in any of the care domains and appeared to have a stable condition requiring routine care.

After a 3 hour clinical discussion with our nurse, the NHS Assessor agreed that Mrs. P's mother did indeed have complex care needs and scored her as having 1 severe, 4 high, 3 moderate and 3 low needs. 2 days later Mrs. P received confirmation from her CCG that her mother was eligible for funding and her care costs would be met in full.

Needless to say, Mrs. P was delighted with the service and the way in which our nurse challenged the NHS Assessor on clinical grounds about her mother's condition. She remarked on the adversarial nature of the assessment and the way in which the NHS Assessor had come prepared to decline her mothers funding from the outset.

Andrew Farley who dealt with Mrs.P's case said:

"It's not unusual for our clients to have already arranged Assessments, but it's important that they are represented. This was a classic example of the way the NHS approaches many Assessment with a view to decline funding from the outset. Mrs. P was in no doubt that if we hadn't been on hand to argue her case from an clinical and legal perspective, that her mother would not have qualified for full funding"

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Case Studies

Reclaims Service

Brian Marshall is waiting for a cheque for more than £40,000 after his father was wrongly charged for care home fees.

Brian, 62, from Surrey, says: “I don’t like to take money out of the health service but I feel strongly that my dad, who has now passed away, was hard done by and didn’t get his entitlement.

“My dad left school at 15, joined the Army at 16 and worked hard, paying his taxes, all his life. Then he got dementia.

“We tried to care for him as a family but he was just too ill and we had to put him into a home. He had done the right thing and saved and bought his own home, so we had to pay for it – £700 a week. He was initially assessed in hospital when he wasn’t so ill but he never got re-assessed, despite the fact he quickly deteriorated.

“For the first two weeks in the home, he could get out of bed and eat but after that he never got out of bed again.

“It has taken us a couple of years to sort this out but it has now been agreed he should have been re-assessed.

“What worries me, looking away from Dad, is that other people going forward could be struggling to find the money needed to pay their way when they are entitled to help. We really need a fairer, more transparent system that doesn’t penalise the mass of hard workers who have always paid their way and saved up.

“The costs for care are so high and that needs to be looked at. You don’t need any more worry about how to come up with the money at a time when you are trying to cope with the emotion and distress of trying to get the best care possible for loved ones. This needs sorting out and I’m glad Farley Dwek is on my side and helping through the process.”

Jonathan Dwek who is representing Mr Marshall, said:

“This is a national disgrace and if the Government is to avoid being accused of a cover up, it has to give the NHS the resources it needs to communicate this policy effectively.

“We estimate there are millions of pounds on standby for the relatives of victims but we believe local CCG’s are quietly satisfied at the relatively slow take-up, thanks to a strategy of trying to keep the issue low profile.

“Families with a relative who was rejected for funding on financial eligibility alone should definitely challenge the decision immediately and seek advice from Farley Dwek.”



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