cheselden continuing care

Cheselden Factsheet 2 – Key dates in Continuing Care since 1990

1990 – The Community Care Act is passed which requires Local Authorities to begin charging for social and personal care for all those with adequate assets and income.

April 1993 – Higher rate income support payments for people living in nursing and residential care homes are abolished. A large increase is soon noted in the number of nursing home beds being funded by Local Authorities. Many people are now paying for the full cost of care that would previously have been funded by the NHS.

1994 – The Health Service Ombudsman (HSO) publishes a report on the "Leeds Case" highlighting the misconception that has increasingly arisen since 1990 that the NHS will no longer fund continuing care.

1995 – In response to the HSO's report, the Department of Health draws up the first set of guidelines for Health Authorities to set local eligibility criteria to decide when a patient qualifies for NHS-funded continuing care.

February 1996 – The Department of Health issues follow-up guidance to improve the quality of continuing care decisions.

April 1996 – Health Authorities begin applying their new eligibility criteria.

1997 & 1998 – The Department of Health issues more follow-up guidance.

March 1999 – A Royal Commission on Long Term Care submits its report. The Commission has looked at a range of issues around the provision of long term care for the elderly. One of its main recommendations is that, if assessed as required, personal care for the elderly such as help with feeding and washing should be funded by general taxation. When the Government responds in 2000, it does not accept this proposal but instead announces its intention to make nursing care available free of charge in care homes by funding it through the NHS (see October 2001 below).

July 1999 – An important Court of Appeal judgment – known as the Coughlan judgment – rules that eligibility criteria used by the Health Authority concerned in this case were far too restrictive. The judgment also rules that a Local Authority can only provide healthcare services that are:

> (i) Merely incidental or ancillary to the provision of the accommodation which a local authority is under a duty to provide; and
> (ii) Of a nature which it could be expected that an authority whose primary responsibility is to provide Social Services could be expected to provide.

All other healthcare services must be provided and funded by the NHS.

August 1999 – In response to the Coughlan judgment, the Department of Health issues guidance asking Health Authorities to review their local eligibility criteria to ensure that they are "Coughlan-compliant" and to revise them if necessary. If criteria are revised, the Health Authorities should decide if current service users should be re-assessed. This guidance does not make any changes to current continuing care policy but announces that revised guidelines will be issued by the end of 1999. In fact, the new guidelines are not published until June 2001.

June 2001 – The Department of Health issues revised guidelines to Health Authorities for setting local eligibility criteria for continuing care funding. These replace the previous guidelines and refer to the Coughlan judgment and the necessity that all local criteria should be "Coughlan-compliant". The guidelines also anticipate the introduction in October 2001 of NHS-funded Nursing Care.

October 2001 – The Government introduces NHS-funded Nursing Care which provides NHS-funded care by a registered nurse (but not by other staff) to patients in nursing homes who are otherwise paying for the full cost of their care. The Registered Nursing Care Contribution (RNCC), the amount of nursing care required, is assessed by a NHS nurse as low, medium or high band. Each band attracts a different level of NHS funding. In April 2003, RNCC funding is brought in for all care home residents, not just those who are self-funding. The guidance that is issued on NHS-funded Nursing Care specifically states that the NHS is still responsible for funding continuing care if a patient requires it, based on the same local criteria as before.

April 2002 – The previous distinction between residential and nursing homes is abolished and all homes are now known as care homes, with or without nursing care. At the same time, the 95 Health Authorities in England are replaced by 28 Strategic Health Authorities (SHAs) and 303 Primary Care Trusts (PCTs). The Department of Health asks the 28 new SHAs to agree one set of eligibility criteria with Local Authorities in their area and to ensure these criteria are in use by all PCTs in their area by March 2003.

February 2003 – The Health Services Ombudsman publishes its report on NHS Funding for Long Term Care. The report analyses the pattern emerging from complaints investigated about the eligibility criteria used by Health Authorities between 1996 and 2001 and finds that the complaints raised are justified. The eligibility criteria used by the Health Authorities in question are found to be over-restrictive and not properly in line with the Department of Health's guidance or the Coughlan judgment. The main issues raised by the report are the "postcode lottery" created by allowing Health Authorities to develop their own eligibility criteria; the

lack of information given to patients and families as to why they do or do not meet the criteria; and the need to develop a national framework of guidance and procedures both for the assessment of patients and the application of eligibility criteria.

March 2003 – The Department of Health again asks SHAs to review their eligibility criteria to ensure that they are in line with the 2001 guidelines and are "Coughlan-compliant", and to revise the criteria if necessary. The Department also asks the SHAs to undertake a retrospective review of all cases assessed since April 1996 that may have been wrongly denied continuing care funding, and to make appropriate recompense if necessary. It asks for this review to be completed by 31 December 2003 and commissions an Independent Review of the progress of 9 SHAs; this review is published in December 2004. The retrospective review deadline is later extended to 31 March 2004 and then to 30 November 2007.

November 2003 – The HSO upholds a complaint made on behalf of Mr Pointon, a man with dementia who is cared for at home by his wife. The case raises a number of issues around continuing care funding including: the need to ensure criteria for funding continuing NHS health care at home are clearly defined; the need to ensure assessment takes account of psychological as well as physical needs; and recognition that it is possible for an unqualified carer to provide the same standard of care as a qualified nurse.

27 February 2004 – The Secretary of State for Health issues the Continuing Care (National Health Service Responsibilities) Directions 2004 and the Delayed Discharge (Continuing Care) Directions 2004.

December 2004 (1) – The Department of Health publishes its Independent Review into the review and restitution process followed by 9 SHAs. The Review looks at factors affecting the integration of eligibility criteria and the investigation and restitution process.

December 2004 (2) – The HSO publishes its follow-up report to the February 2003 Report on NHS Funding for Long Term Care. The report gives an overview of the type of complaints received during the review process which was instigated after the February 2003 report.

December 2004 (3) – The Department of Health announces that it is commissioning the development of a national consistent approach to assessment for continuing care, i.e. the National Framework. But the consultation process does not start until June 2006.

April 2005 – The House of Commons Health Select Committee publishes a wide reaching report which supports the need for a single set of national eligibility criteria that take account of mental as well as physical health needs. The criteria should be supported by a national assessment tool and a single set of documentation to record the outcome. Confusion caused by the similarities in the guidance for NHS Continuing Healthcare and for NHS-funded Nursing Care should be addressed.

January 2006 – The High Court rules in favour of Mrs Grogan who argued that she had been wrongly denied continuing care. The Judge criticises the lack of clarity in the Department of Health's 2001 guidelines as well as the local criteria applied by Bexley PCT, which had failed to properly identify the "Coughlan-compliant" Primary Health Need Test which defines the limits of a Local Authority's responsibilities for healthcare.

March 2006 – In response to the Grogan judgment, the Department of Health publishes guidelines for SHAs, PCTs and Local Authorities. The guidelines ask SHAs to once again review their local eligibility criteria and their application to check that they are in line with the findings of the Grogan judgment and to revise them if necessary. The SHAs are particularly asked to review the interaction between their policies on NHS-funded Continuing Care and NHS-funded Nursing Care to ensure that correct procedures are being followed.

June 2006 – The Department of Health publishes its Consultation Document on the National Framework, proposing: a single policy on who should receive NHS-funded Nursing Care and NHS-funded Continuing Healthcare, a single band of funding for those granted NHS-funded Nursing Care and a standard process for assessing eligibility for both types of care.

October 2006 – The number of SHAs is further reduced from 28 to 10 and the number of PCTs from 303 to 152. The Department of Health issues guidance recommending that the 10 new SHAs review their inherited criteria but to keep any changes to a minimum, pending the publication of the National Framework.

January 2007 – The Health Services Ombudsman upholds the Pearce case and orders the Torbay Primary Care Trust to repay £50,000 of care costs to Mike Pearce, who had been forced to sell the family home to pay for his mother's care home fees. The case is determined using the draft Decision Support Tool from the National Framework, which will not be published until June 2007.

25 June 2007 – The Department of Health publishes the Response to Consultation on the National Framework. This outlines the nature of responses received to the Consultation Document published in June 2006 and how the Department has reacted to these responses when drawing up the National Framework. Responses have been

received from PCTs, SHAs, Local Authorities, charities, professional medical and legal bodies and members of the public.

26 June 2007 – The National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care is published as best practice guidance for continuing care eligibility decisions.

31 July 2007 – The Chief Executive of the NHS writes to all PCTs and SHAs recommending that the retrospective review process started in March 2003 should be drawn to a close. No new cases pre-dating April 2004 should be accepted for review after 30 November 2007. PCTs and SHAs are asked to publicly advertise this deadline. However, as the letter is not legally binding so cannot stop claimants asking for cases pre-dating April 2004 to be reviewed.

1 October 2007 (1) – The Secretary of State for Health issues three Directions which make compliance with the National Framework mandatory. These replace the previous Directions issued on 27 February 2004.

1 October 2007 (2) – The Department of Health publishes the NHS-funded Nursing Care Practice Guide 2007. The Guide makes it clear that a patient should be assessed for continuing care **first** before their need for nursing care is considered.

1 April 2009 – The Department of Health launches new framework to regulate the safety and quality of health and social care services. The Care Quality Commission (CQC) replaces the Healthcare Commission, the Commission for Social Care Inspection (CSCI) and the Mental Health Act Commission. Shortly after its launch the CQC announces that one of its first tasks will be to review standards in care homes.

14 July 2009 – The Government publishes its long-awaited Green Paper on the reform of adult social care services and funding. Three new ways of funding social care in the future are proposed. All include a level of contribution from the Government towards an individual's 'basic care needs' regardless of their income. The new funding system is referred to as a National Care Service. Although the Paper makes no mention of NHS-funded continuing healthcare, any proposals from it that are implemented could have consequences for those that are currently receiving NHS funding. The Paper launched the 'Big Care Debate' – a public consultation which will last until November 2009.

22 July 2009 – The Department of Health issues a revised version of the National Framework for Continuing Care and NHS-funded Nursing Care which replaces the original version that was published in June 2009. The new Framework will become mandatory in October 2009. It aims to clarify the ways that a patient's needs should

be considered during the assessment process and to improve the ways that decision support tools are used. The DoH also states that it will shortly issue new Directions (see 1 October 2009 [1]) to reflect the revised Framework.

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