

Written evidence from Shirley Ann Lesiak (PHO 13)

Public Administration and Constitutional Affairs Committee Parliamentary and Health Service Ombudsman Scrutiny 2020-21 inquiry

This evidence is presented in response to the report entitled 'Continuing Healthcare...Getting it Right First Time' published by the Ombudsman, Rob Behrens on 3 November 2020.

Background information

My late mother was refused Continuing Healthcare funding (CHC) by West Suffolk Clinical Commissioning Group (CCG) and my subsequent appeal was based on the fact that the CCG did not assess my mother in accordance with the National Framework for Continuing healthcare funding. Both current and PUPOC (Previously unassessed periods of care) assessments were undertaken at that time. There were *multiple errors made by the nurse assessor and MDT (Multi Disciplinary Team) resulting in a flawed assessment and official reports which severely played down and grossly misrepresented my mother's needs. These flawed documents were then presented by the CCG at each and every stage of my appeal, which was unfair to my mother.

*NB (Importantly these errors have since been acknowledged by the CCG in question.)

For informationThe National Framework is published by the Department of Health and Social Care and is underpinned by the [NHS Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) Regulations 2012](#) as amended by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) Regulations 2013](#).

.....and also includes case law. (Coughlan)

From PHSO website

“NHS continuing healthcare (CHC) is a package of care, arranged and paid for by the NHS, that you receive in your own home, a care home or another setting that is not a hospital. It is for people whose primary need is for healthcare.”

What we can and can't do

“When we investigate complaints about CHC funding, our role is to decide whether or not the NHS carried out its decision making process in line with established guidelines (the National Framework). These are nationally agreed criteria for making decisions about who is eligible for CHC funding. The National Framework is there to make sure all decisions are consistent.”

The PHSO categorically failed to investigate my complaint fairly and in a timely manner.

Complaint timeline and summary

- 17.2.2017 - Complaint sent to the PHSO following an appeal hearing by NHS Midlands and East Independent Review Panel (IRP) in October 2016. The IRP panel upheld the decision made by West Suffolk CCG that my mother was not eligible for CHC funding. The IRP report stated that if I was not satisfied with their decision, I could take my complaint to the PHSO.
- May 2017- PHSO Caseworker allocated (JA) Case ref C 2010164. Numerous telephone calls and e mails during which time the caseworker insisted that he could not take my complaint about the IRP forward unless I changed the scope to include yet another medical assessment by the PHSO's own medical advisor, who would review the DST (Decision support tool) assessment scores. I was given no alternative other than to follow his lead. I correctly predicted that the PHSO's medical advisor would agree with CCG/IRP as he would also be presented with; and base his decision on; the same flawed documents.
- The caseworker(JA) ignored countless written evidence provided by myself that my late mother's CHC assessment was not conducted in line with the National Framework by the CCG and that the IRP did nothing to address or rectify this. At one point he actually requested that I stop sending him evidence!
- 11.09.2017- Draft report issued by caseworker (JA) with an opportunity for me to comment on its content .
(NB. I was only given a rigid 14 days in which to respond after having waited for 7months)
- I forwarded an rapid 8 page response evidencing precisely where the National Framework had not been taken into account by the CCG , IRPand now the PHSO.
- I directed the caseworker to the CHC Case Law and and Standing Rules and Regulations together with guidance issued by ADASS (Association of Directors of Adult Social Services) which clearly indicated that my mother's care needs were above and beyond the legal limit that Social services can provide (**by law**) and that she undoubtedly had a primary healthcare need. This was ignored by the caseworker who offered no reply to my concerns and proceeded with his final report.

I insisted that our case be escalated to Customer Feedback team for review. Case ref F0003620

- 22.05.2018- I was contacted by the a member of the Customer Feedback team (KF) who, after discussion, appeared genuinely shocked at what had taken place and agreed that the caseworker should have at least further responded to my concerns

before completing his final report. She advised that she would look into this on my behalf.....however I heard nothing more from her. I was unable to contact her by telephone and was eventually told by her colleague that she was no longer operating in that department! I found this questionable.

- 14.09.2018- I sent an E mail to Operations Manager of Customer Feedback team (VJ) outlining what had happened thus far.
- 02.10.2018- E mail received from Head of the Review and Feedback Team (JR) saying that he would look into the case.
- (November 2018 I contacted my local MP (James Cleverly) highlighting my worries regarding both the current general situation with NHS CHC and my own situation with the PHSO. I also wrote to the then Secretary of State , Matt Hancock and the Head of Continuing Healthcare ,Trish O’Gorman, none of whom offered a reply of any substance)
- 31.12.2018- Following endless correspondence and telephone calls I finally received a written reply from JR. He articulated that the evidence I had provided was of no real significance as what the CCG did/or did not do, was not his concern!

Quote

“In your letter to Mr A (caseworker) you explain why you do not consider the DST was conducted in line with the National Framework and refer to your concern about the weighting’s of the original DST being changed on 23 January 2015. You refer to the MDT meeting being non-compliant with the legally binding direction and standing rules and also express your concern that no co-ordinator was assigned to your mothers case .

Whilst these are clearly significant concerns for you, these relate to what the CCG did rather than the IRP”

I find totally astounding that he nonchalantly dismissed the fact that both the CCG and IRP were non compliant with the National Framework. I would not have had to bring this complaint to the PHSO if the IRP had acted appropriately upon its findings.

During the **682 days** that my complaint was with the PHSO it is clear to me that it was of no concern that the National Framework was ignored in my mother’s case. The IRP identified errors and anomalies in my mother’s assessment but did nothing to rectify this and in turn the PHSO followed suit.

I therefore find it absolutely astonishing that on 3 November 2020 The Ombudsman,Rob Behrens published his report;

‘Continuing Healthcare. Getting It Right First Time’

in which he states in his introduction :-

“PHSO’s casework has been instrumental in achieving improvements in the structure and processes of Continuing Healthcare for more than 25 years. This includes contributing to the development of the National Framework, which provides guidance about decision making.

In that tradition, this report draws on 60 cases resolved in the last three years relating to Continuing Healthcare. We have found not only significant failings in care and support planning but also failings in reviews of previously unassessed periods of care. The impact of these mistakes on people cannot be understated. They constitute an abrogation of basic rights. They have led to people unnecessarily paying out large sums to cover care, or going without care because of incorrect or delayed decisions. Many have faced years of uncertainty about their future finances and experienced stress, anxiety and ill-health as a result. The NHS should be supporting people in their care needs, not needlessly adding to emotional and financial burdens.

And on page 15:- *“PHSO’s casework has been instrumental in achieving improvements in the structure and processes of NHS CHC since our first report on this subject in 1994. Following PHSO’s 2003 report on CHC, NHS funding for long term care: 2nd report - session 2002 to 2003/10, the Department of Health set aside £180 million to provide redress for people who were eligible for NHS CHC but instead had to pay privately for nursing care. Our work provided a unique source of learning that was also instrumental to the Department of Health developing the National Framework, which provides guidance that all CCGs must follow when making decisions about NHS CHC.”*

My point is that Mr Behrens in his role as Parliamentary and Health Service Ombudsman has yet again identified failings within Continuing Healthcare which were the substance of not only my complaint but also the complaints of many others over the past few years. NONE of his so called ‘improvements in CHC structure and process’ have made any difference to the way in which some CCGs are operating. To reiterate, in his statement he says :-

“the National Framework, which provides guidance that all CCGs must follow when making decisions about NHS CHC.”

Neither the CCG, IRP nor PHSO followed the National Framework in my mother’s case!

I brought this to the attention of the PHSO over a period of almost 2 years but my complaint was dismissed. Quite frankly this is totally unacceptable.

The Ombudsman is the final step of an extremely exhausting and arduous NHS CHC process which took me a long, drawn out 3 years of correspondence, telephone calls and meetings to reach; and at a time when I was also dealing with the stress of my mother being extremely ill.

Again to reiterate, Mr Behrens states in his introduction *“Many have faced years of uncertainty about their future finances and experienced stress, anxiety and ill-health as a result. The NHS should be supporting people in their care needs, not needlessly adding to emotional and financial burdens”*

Page 15 of the same 2020 report explains :-

“PHSO’s casework has been instrumental in achieving improvements in the structure and processes of NHS CHC since our first report on this subject in 1994. Following PHSO’s 2003 report on CHC, NHS funding for long term care: 2nd report - session 2002 to 2003 the Department of Health set aside £180 million to provide redress for people who were eligible for NHS CHC but instead had to pay privately for nursing care”

The same failings have once again been identified by Mr BehrensNothing has changed.... therefore where is the redress for those who have been affected by this in more recent years ?

- 14.01.19.- Freedom of Information request made to PHSO .
- 28.01.19. -Response as follows :-

“Dear Shirley Lesiak

RE: Your information request: R0000462

I write in response to your email of 14 January 2019 regarding your request for information made under the Freedom of Information Act 2000 to the Parliamentary and Health Service Ombudsman (PHSO).

Request:

- 1. From January 2017 to date how many Continuing Healthcare Complaints following IRP have been received by the PHSO?*
- 2. How many of these complaints were fully investigated?*
- 3. How many of these complaints were :- Fully upheld
Partially upheld
Not upheld*

Response

We are unable to provide you with precisely what you have requested in relation to ‘Continuing Healthcare Care Complaints following Independent Review Panels’ as we have no way of easily obtaining this level of detail from our system without accessing each individual case file. However, we have provided below the number of ‘continuing care’ themed complaint cases received from 1 January 2017 to date. This table also includes the numbers which were accepted and closed along with the number of investigations concluded and their outcomes”

Continuing Care	2017	2018	2019 (to 14/1/19)
Cases received	661	536	8
Cases accepted	285	175	1
Cases closed	422	505	16
Investigations concluded	269	208	4
- upheld	20	23	0
- partly upheld	21	37	0

- not upheld	163	117	4
- discontinued	29	24	0
- resolved	36	7	0

It appears that the PHSO were unable to provide the specific information I requestedcould that possibly be because **no** cases were upheld by them following an NHS Independent Review Panel?

The table does however confirm how very few CHC cases were actually upheld by the PHSO irrespective of whether or not they involved an IRP.

I am convinced any efficient IT system and a little effort could have pinpointed the cases where an IRP had been undertaken, as I requested.

It is also interesting that Mr Behrens' report publishes various case studies (page 28) **none of which** include a situation where the PHSO has assisted following NHS IRP.

Given my personal experience, I conclude that the PHSO are, for whatever reason, either unwilling or unable to intervene once an IRP has taken place . They appear to be happy to let the NHS "mark their own homework".

PACAC should therefore question whether the public should actually be directed to the PHSO as the final arbiter in the CHC appeals process where an IRP has already taken place.

Is PHSO fit for purpose in this scenario?

- 7.11.2020 - Given that the publication of Mr Behrens' 'Continuing Healthcare ..Getting it Right First Time' report contained details of various case studies where the PHSO **had** taken action against **CCGs** who had been found to have acted inappropriately, (unlawfully?) I contacted the Head of Review and Feedback (JR) to ask that he consider re-opening my mother's case to review it in its entirety (ie. look at the complaint as a whole including the now acknowledged numerous errors and maladministration which had occurred during the initial CCG CHC assessments)
.....He refused!

If I were asked to rate my experience with PHSO from 1 to 10 it would be <1.

It was a complete waste of my time and effort. I am not sure that this is something that the PHSO as an organisation should be proud of.

If Mr Behrens is serious about "Continuing Healthcare....Getting it Right First Time" I would suggest that **HE** hold more CCGs to account in cases such as my mother's, as opposed to making lame recommendations which have been proven in the past to make no actual difference whatsoever.

Were KPIs met in my case ?NO

“Vision and strategy

Vision

To be an exemplary public services ombudsman providing an independent, impartial and fair complaints resolution service, while using our casework to help improve public services.

Independence: from organisations we investigate, holding them to account for service failure

Fairness: listening carefully to complainants and the organisations we investigate and making impartial and fair decisions based on relevant evidence”

Definitely not met in my case

“Role

PHSO makes final decisions on complaints that have not been resolved by UK Government departments, the NHS in England and some other UK public organisations. We do this impartially and independently of Government, holding public bodies to account. PHSO is not part of Government, the NHS in England or a regulator. We are neither a consumer champion nor an advocacy service”

Definitely not met in my case

October 2021