

Statement to Review Panel, 28th.August 2013.

Please note that the following items in each section may not be in any particular order

1) Procedural Issues

- a. When I attended the healthcare panel meeting on the 30th.May, I was conscious that one panel member, Dr.Gareth Richards, seemed to be openly and obviously dismissive of my Mother's case and was not acting at all with an 'open mind'. Whilst other panel members behaved towards me as I would have expected, Dr.Gareth Richards did seem rather "hostile" to my Mother's case.
- b. No consideration was given to a comparison between my Mother's care needs and those of the Coughlan judgement which is very relevant timewise. Howard Stanley informed me that the panel was going to use the 2007 local SHA assessment criteria but there was no clarification given as to how these were Coughlan compliant.
(NB! In the outcome decision letter of the 19th.July 2012, it is stated that the Panel applied the local criteria in place towards the end of the 2002 period, ie the Norfolk, Suffolk & Cambridgeshire SHA eligibility criteria. I was not given, nor can I find, a copy of the 2002 criteria.)
- c. There is no evidence that the Panel used the 2007 DOH Care Domain assessment method as provided in the 2007 DOH Decision Support Tool document; rather that they have relied on the Subjective Summary Assessment in Section 3 of the 2009 DOH Decision Support Tool document.
- d. In the pre-review meeting my wife and I had with Sue H on the 20th.April 2012, I was told that I would have the opportunity to address the panel if I chose but essentially I would be "sitting-in" on their deliberations. I took this advice to mean that the Panel would be reviewing the large pile of documents that Sue H... had accumulated for the case.
- e. I did not expect, nor was I prepared for, the high degree of "interrogation" I received from the Panel. Although I gave a short address to the panel, the whole meeting was taken up with them asking me questions about my Mother's care and health. This was a little unfair since I have stated in many letters etc., that living 150 miles away I was not as close to my Mother's day to day care situation as I would have liked. For the 20th.April meeting with Sue H..... I was sent a few summary pages of the needs portrayal etc. documentation package. I now have the complete package from yourselves and it is very clear that I was not totally informed about the true state of my Mother's condition. Consequently, the comments I made in the 30th.May Panel meeting may not have been totally correct in hindsight. It is rather curious why the Panel decided to ask me so many questions when they had the full documentation package in front of them and I only had part of it.

2) Application of Eligibility Criteria

- a. In May 1998, my Mother was admitted to the Ipswich Hospital having been found in a disoriented state (details unclear). Apart from her **confusion, she was otherwise healthy and mobile**. In September 1998, she was discharged from hospital. In a provider assessment

report dated 30/10/98 on the front and 9/11/98, it clearly states that after discharge from hospital. my Mother was'in quite a poor state, frail, immobile, somewhat agitated, confused and rather disassociated from what is going on around her....' When eventually discharged to Eye, she was in a "very poor state"., see Report 30/10/98. Because my Mother was now **disabled and also incontinent**, a continuing care assessment should have been done prior to hospital discharge but was not. The NHS was therefore clearly negligent in this regard. Leaving aside the colonic cancer, my mother went into hospital mobile, anxious and confused with her dementia illness. She came out of hospital disabled, immobile, arthritic, incontinent having difficulty in feeding herself and no less anxious and confused with the dementia.

- b. In not providing a continuing care assessment, the NHS was negligent in not identifying my Mother's nursing care needs. It would appear that the NHS by default chose to transfer responsibility onto Social Services without the due process of assessment that my Mother was entitled to. There was clearly no agreement to discharge my Mother from hospital. Further to this the NHS did not make it clear to Social Services the proper tests they should apply before deciding whether my Mother should remain the responsibility of the NHS or be means tested by Social Services.
- c. In the decision letter I received on the 19th.May, there are single timeframe assessment sheets for the whole period of my Mother's illness irrespective of the fact that the illness was far more serious in 2002- Sue H... had attempted to separate these periods in her pre-assessment but clearly the panel took no notice of this. These sheets are headed Suffolk NHS, but no indication of the Norfolk, Suffolk & Cambridgeshire SHA eligibility criteria decision process is provided, although there is a strong reliance on specialist care criteria. The DOH issued a guidance note (EL(96)8), in February 1996. That referred to the danger of eligibility criteria being over-restrictive and mentioned the risk of an over-reliance on the needs of a patient for specialist medical opinion when determining eligibility for continuing care. It said that there would be a number of cases where the complexity or intensity of nursing or other clinical needs might mean that a patient was eligible for continuing care even though they no longer required medical supervision.
In a Health Ombudsman's follow-up report, "NHS funding for long term care" it is stated that it is the healthcare needs, not the diagnosis, that determine whether the criteria for funding are met. His examination of the complaint raised two key issues. First, that assessment of non-entitlement to NHS funding was based on inadequate clinical evidence; secondly, that funding was denied due to an emphasis on the requirement for 'specialist' intervention, a word which appears in the strategic health authority's eligibility criteria. They had concerns about the strategic health authority's insistence on the need for specialist intervention (which DoH's guidance did not require) in order for a patient to be considered eligible for funding.
- d. From the 30th.May meeting The Suffolk Retrospective Continuing Care Panel produced a Primary Health Needs Test summary. Although this summary of the Nature, Intensity, Complexity and Unpredictability of my Mother's condition is basically correct as far as it goes, there are a few omissions and errors which need to be addressed, See Appendix B. In Appendix A I have used the Care Domain sheets to define my Mothers level of needs based on the various assessments and daily care records at her care home from 98 to 1-1-2002. The result is that my Mother **was** eligible for CHC funding since there were 2 incidences identified as severe across all the care domains. After 1-1-2002 until her death, my mother's health needs increased significantly so therefore it follows that her eligibility applies in this period also. People who need a high level of supervision and equipment to preserve life on an

on-going basis fall into the category of primary health need. Her care needs were linked to her health needs which arose from her dementia. Her mental and physical needs should be referred to equally as healthcare needs.

- e. You will all be familiar with the Coughlan judgment in 1999. I have a copy of Pamela Coughlan's daily nursing regime, signed by her, which, because of the timescale similarities, I should like to compare to my Mother's daily needs. They are remarkably similar. On the one hand Coughlan's needs are defined as health care needs yet the 30th.May Panel seems to have defined my Mother's needs as 'personal care'. As follows:-
- Coughlan required washing and a sling hoist for bathing. Same for my Mother
 - Coughlan required continence pads to be changed as required several times a day. Same for my Mother
 - Coughlan required to be lifted into her wheelchair. Same for my Mother
 - Coughlan required assistance with eating food. Same for my Mother
 - Coughlan required turning every 2-4 hours throughout the night. Same for my Mother
 - Coughlan required regular enemas. Same for my Mother
 - Coughlan suffered with headaches and required positional intervention. My Mother was often in pain and cried out. She was given painkillers regularly
 - Coughlan had a very active mind and did not require any stimulation. My Mother had advanced dementia, little memory function and a very poor quality of life
 - Coughlan did not require psychiatric care. Nor did my Mother
 - Coughlan had tetraplegia but retained use of her arms. My Mother was not mobile but also had the use of her arms.
 - Coughlan could read books, write letters and use the phone. My Mother couldn't do any of this.
 - Coughlan could select her own clothing. My Mother couldn't.

It would appear that Suffolk NHS has set the bar ridiculously high and in terms of the Coughlan judgement so it is questionable whether their criteria were legal and more restrictive than national guidance framework allows. Using these criteria in relation to the Coughlan judgement:-

- Coughlan did not require psychiatric intervention
- Coughlan did not show violent behaviour
- Coughlan did not show any behavioural disturbance
- Coughlan did not require regular medication
- Coughlan did not require extensive healthcare support
- Coughlan was not at risk of harm to herself or others

The obvious conclusion from the above sections is that my Mother's health care needs were equal to those of Pamela Coughlan, then under the Law, my Mother should have qualified for NHS continuing healthcare.