

## Governing Body meeting (held in public)

**DATE: 30 July 2015**

<b>Title</b>	<b>Retrospective NHS Continuing Healthcare Applications</b>	
This paper is for <b>Discussion</b>		
Recommended action for the Governing Body	That the Governing Body discusses and <b>Notes</b> the attached paper.	
Potential areas for Conflicts of interest	None.	
Executive summary	<p>The attached paper provides information on the number of Retrospective NHS Continuing Healthcare (CHC) applications received by Bexley CCG (the CCG), the process for reviewing applications, current position on the cases, costs to date and issues identified.</p> <p>The key points are as follows:</p> <ul style="list-style-type: none"> <li>• Bexley CCG received 323 requests for a NHS CHC retrospective review since the Department of Health's 'close down'</li> <li>• The CCG has 84 cases outstanding</li> <li>• Of the 74% of cases concluded, 110 cases were closed for reasons including the CCG not being the responsible commissioner, applicant withdrawing and non- receipt of documentation, 83 were screened out, 38 were agreed eligible for NHS CHC for all or part of the period and 8 were found not to be eligible for any period</li> <li>• It is a complex and time consuming process</li> <li>• The CCG is currently completing 4 cases a month and is on target to meet NHS England's deadline of completing reviews by 31 March 2017.</li> </ul>	
How does this paper support the CCGs objectives?	<b>Patients:</b>	N/A
	<b>People:</b>	N/A
	<b>Pounds:</b>	Delivering on all of our statutory duties and become an effective, efficient and economical organisation.
	<b>Process:</b>	Commission safe, sustainable and equitable services in line

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		with the operating framework and which improves outcomes and patient experience.	
What are the Organisational implications	Key risks	<p>The length of time it takes to complete reviews due to the administrative process that has to be followed, non-availability of records &amp; limited NHS CHC assessors</p> <p>Other CCG's do not complete their review in a timely manner (this can mean that Bexley can be identified as a responsible commissioner late in the process by another CCG).</p>	
	Equality	None.	
	Financial	<p>The CCG is bearing the costs involved in administrating and reviewing eligibility for NHS CHC from its current allocation. The cost of clearing the cases is estimated to be £162,500 (excluding VAT). This is in addition to the risk pool contribution of £1,778k in 2015/16.</p> <p>The cost of restitution is hard to estimate.</p>	
	Data	None.	
	Legal issues	None.	
	NHS constitution	None.	
Engagement	None.		
Audit trail	None.		
Comms plan	None.		
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Date	26 June 2015		

## Retrospective NHS Continuing Healthcare Applications 9<sup>th</sup> July 2015

### 1. Purpose, Background & Introduction:

This report provides an update for the Governing Body on Retrospective Continuing Healthcare Applications.

NHS Continuing Healthcare (CHC) is the name given to a package of care which is arranged and funded solely by the NHS for individuals outside of hospital who have ongoing healthcare needs. To qualify for NHS CHC, an individual must have a 'primary health need' which is assessed using the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care published 1 October 2007 (revised 2009). Prior to 1 October 2007 eligibility for NHS CHC was established using the relevant Strategic Health Authority criteria in place at the time.

On 15<sup>th</sup> March 2012, the Department of Health announced its intention to introduce a close down for any new cases to the system which required an assessment of eligibility for NHS CHC. The closing dates for each period were as follows:

Time Period	Deadline
1 April 2004 – 30 September 2007	30 September 2012
1 October 2007 – 31 March 2011	30 September 2012
1 April 2011 – 31 March 2012	31 March 2012

As a result of these deadlines, the NHS nationally received 59,000 enquires (4223 in London). On 31 March 2015 27500 were still remaining (1461 remaining in London). This high number was a result of NHS organisations putting adverts out to ensure all those who may have been eligible came forward before the deadline; media attention urging people to make an application, solicitors and claims companies advertising their services in making claims.

These are now known as the "Retrospective NHS CHC applications" but are also known as 'previously unassessed periods of care' (PUPoCs).

### 2. Number of Retrospective NHS CHC applications received by NHS Bexley

As a result of the 'close down' announced by the Department of Health, Bexley Care Trust received 318 applications which were subsequently passed to NHS Bexley CCG. An additional 5 cases relating to time periods after 31 March 2012 have also been received. Therefore the total number of Bexley cases is 323.

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### **3. Process for reviewing Retrospective NHS CHC applications**

A part-time administrator has been employed since November 2012 on an agency basis to help the CHC Business Manager manage the retrospective NHS CHC process (points 1 – 10, 12, 16-19 of the process described below). The clinical review of cases by a Nurse Assessor has predominately been contracted out to 'Blauw Bear Ltd', a company which specialises in NHS CHC reviews (points 11, 13-15 of the process described below).

In October 2012 a guide to dealing with requests for assessments of previously un-assessed periods of care was produced by NHS Strategic Health Authorities. It is this guide that Bexley follows and is outlined below:

1. All applicants were sent a questionnaire and consent form to complete and return
2. On receipt of the questionnaire it had to be established if Bexley was the correct body to deal with the request. If it was established that Bexley would not have been the responsible commissioner for the time period under review the case was forwarded to the correct NHS organisation.
3. On receipt of the consent form it had to be established if the person requesting the review was authorised to do so. In accordance with the Data Protection Act 1998 which governs access to the personal data held in records pertaining to living people, the requester needed to be one of the following:
  - The holder of Enduring Power of Attorney registered with the Court of Protection.
  - A receiver appointed by the Public Guardianship Office of the Court of Protection.
  - A person appointed by the Court of Protection.
  - A person holding Lasting Power of Attorney registered with the office of the Public Guardian.
  - If none of the above, has a best interest's decision been made?

The Access to Health Records Act 1990 governs access to the personal data pertaining to deceased people. Therefore if the request related to a deceased patient the person requesting the review was asked to provide one of the following:

- A Grant of Probate or Grant of Letters of Administration or confirmation the applicant is in the process of obtaining authority from the Probate Registry
- A redacted copy of the Will showing the Executor / Administrator or beneficiary
- Legal evidence that a Will is being contested

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4. If a request is made via a third party such as a solicitor or claims company their authority to act on behalf of an individual is also needed to proceed with a review.
5. If the request related to a living patient it was prioritised, and a current CHC assessment was completed by the CHC team. If it was established the patient was not currently eligible for NHS CHC, the nurse's professional judgement was used as to whether they may have been eligible in the past. A letter explaining this was sent advising if they have evidence which shows the patients' needs fluctuated to a level that would have been eligible for NHS CHC in the past, they should provide this information.
6. For each case it had to be established whether the person had been considered for NHS CHC previously. In order to find out if the person had been considered for NHS CHC previously, historic data back to 2004 contained on Excel spreadsheets and in archiving records had to be checked.
7. Where it was established that the person had been considered for NHS CHC in the past a copy of the assessment or checklist was located. The assessment or checklist was then checked to establish whether it had been completed appropriately, was clinically sound, reflected the patient information known at the time and related to the relevant period.
8. If the past consideration for NHS CHC was sound then the applicant received a letter explaining a retrospective review would not be completed.
9. If no consideration for NHS CHC has been completed in the past, a review of CHC eligibility for a different period was being requested or the checklist/assessment was not considered to be sound it was agreed a retrospective review would be completed. For many cases the review period was reduced significantly.
10. For cases that require a review, records relevant to the review are requested – this typically includes Care home, District Nursing, GP, Hospital, Social Services & Community Mental Health Records.
11. Once all the records have been gathered, sorted into chronological order and page numbered the case is ready to be reviewed by a nurse assessor. Initially a CHC Checklist is completed which determines if the patient would have met the threshold for a full CHC assessment. If a long period needs to be reviewed a checklist should be completed for each year.
12. If the CHC checklist identifies that the patients would not have required a full CHC assessment then the applicant is informed that full retrospective review will not be completed. Information of the complaints process is given.

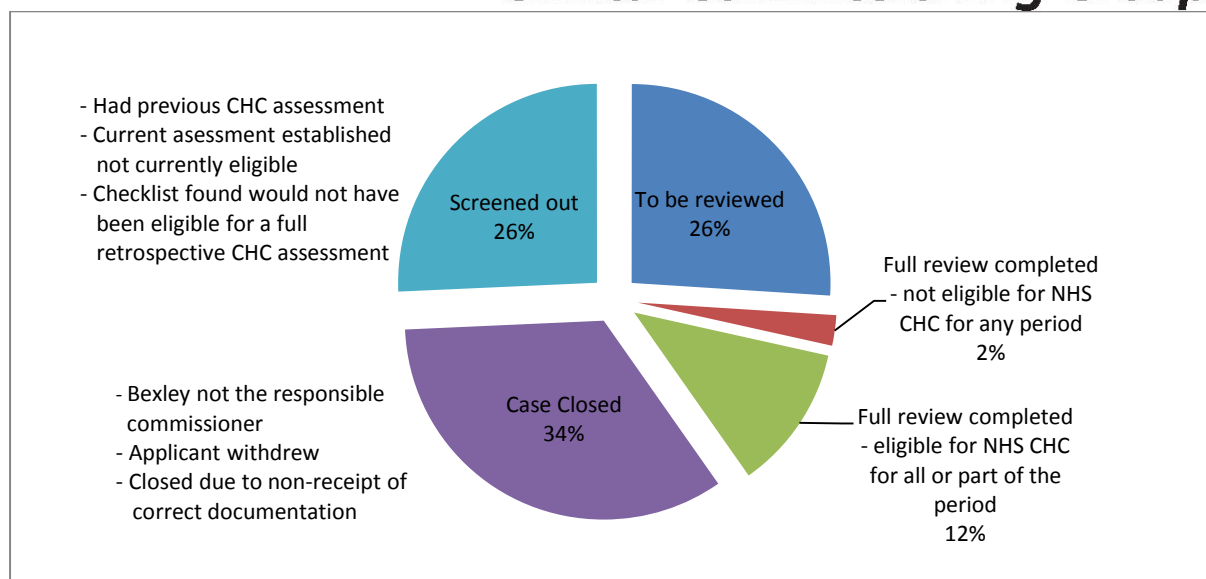
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13. If the CHC checklist identifies that a full retrospective assessment is required then the nurse assessor will firstly complete a needs portrayal document from the records obtained that builds up a comprehensive picture of the patients needs for the period under review. Typically hundreds of pages of records are reviewed to complete a needs portrayal.
14. Once the needs portrayal has been compiled the assessor meets with the applicant to obtain their views, gather any additional evidence they may have and to agree the document is accurate. The needs portrayal is then amended to reflect the meeting with the applicant and then sent to the applicant to sign.
15. A Decision Support tool is then completed by a multi disciplinary team (MDT). If the review period covers a number of years then generally it is appropriate to split the claim into periods of 12 months. Following completion of the decision support tool the MDT makes a recommendation to the CCG on the patient's eligibility for NHS CHC.
16. Following receipt of the MDT's recommendation the case is considered and ratified by Bexley CHC Panel.
17. A letter is sent out following the CHC Panel with the outcome detailed. This letter includes what information should be sent to the CCG to enable restitution to be calculated and paid and how to appeal a decision.
18. Following receipt of evidence that the care home fees were paid, and the weekly rate, restitution is calculated by Assistant Director of Financial Management by adding interest at the RPI rate. The calculation is then checked by the chief financial officer.
19. If the applicant does not agree with the CCG's decision the first step in appealing is to request a local resolution meeting. If the applicant is not satisfied after this meeting an Independent Review Panel convened by NHS England can be requested. Following an Independent Review Panel the case could be referred to the Ombudsman.

#### **4. Current position of Bexley Retrospective Cases**

To date a conclusion had been reached on 239 cases (74%). Therefore, there are 84 cases that are still to be reviewed. The chart below provides information on the 239 cases that have been concluded to date.

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It should be noted that of the 12% that were agreed to be eligible for NHS CHC the majority were only agreed eligible for part of the period.

### 5. The cost of Retrospective NHS CHC applications

The costs involved in administering and reviewing if a person was eligible for NHS CHC is no longer allowed to be included and offset against the CHC risk pool. Therefore, the CCG is bearing these costs from its current allocation, in addition to the risk pool contribution of £1,778k in 2015/16.

In order to review and concluded cases Blauw Bear Ltd was been employed for 245 days at a cost of £500 a day (excluding VAT). It is hoped that this should be sufficient to clear the outstanding cases within the deadline. Blauw Bear Ltd are happy for un-used days purchased to be carried forward across financial years. In addition the cost of employing the part time administrator is £20,000 a year. Therefore total cost of reviewing the outstanding cases is estimated to be £162,500 (excluding VAT).

The cost of paying restitution to the patient or estate of a deceased patient who was found retrospectively eligible for NHS CHC has been approximately £829,000 to date. As stated above, of the 12% of cases agreed eligible the majority were only agreed eligible for part of the period. Therefore 23% of the restitution paid has been under £15,000. To date, there have only been 3 cases where the restitution has exceeded £100k.



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### **6. Complaints, Appeals & Referrals to the Ombudsman**

To date the following has been received in relation to the 239 cases that have reached a conclusion:

- 9 complaints have been received
- 2 Local Resolution meetings have been held
- 1 case has been heard by NHS England's Independent Review Panel who upheld the CCG's decision
- The Health Service Ombudsman recommended that the CCG re-open 1 case that had been closed as despite several reminders documentation required to progress the case had not been received.

### **7. Issues identified**

Completing NHS CHC retrospective reviews is a very time consuming, administrative process that requires nurses with CHC experience to review records and complete the assessments retrospectively. The main issues that have been identified are as follows:

- The limited number of nurses nationally with CHC experience to complete the reviews. This has meant that nationally and in Bexley there are cases awaiting review/ assessment by a Nurse Assessor and reviews take a long time to conclude.
- The non-availability of records that are required to complete the review. This is especially the case for requests that relate to time periods 2004-2009 as many have been destroyed in line with care home record retention policies
- Estimating the potential cost of retrospective reviews is difficult, as until a review is complete, whether they are eligible and for what time period is unknown. Additionally, the weekly rate and their personal contribution to costs are also unknown.
- Some patients moved from 'Bexley CCG' care homes to outside Bexley and vice versa. Therefore, Bexley CCG cannot complete their period of review until it has been established that the person was not eligible for NHS CHC whilst a resident of the other CCG. As a result of this Bexley CCG is waiting for other CCG's to reach a decision on 16 cases before our review can commence.
- Eligibility for NHS CHC is an emotive subject, with the chance that restitution could be paid.
- It is very easy for relatives, Solicitors and Claims companies to request a review, raise a complaint and challenge assessments.



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- As detailed above there are many stages to a request for a retrospective review. Even when the CCG has reached a decision on NHS CHC eligibility a case is not absolutely concluded for at least 6 months. This is because after the CCG's decision not to complete a retrospective review for all or part of the period concerned, the applicant has 12 months to raise a complaint. After the multi-disciplinary teams' recommendation is ratified by Bexley's CHC Panel the applicant has 6 months to request a local resolution meeting and then after a local resolution meeting a further 6 months to request an Independent Review Panel.
- To date Bexley CCG has only had 2 local resolution meetings and 1 case where an Independent Review Panel requested. These low numbers can be attributed to the thoroughness of the assessments completed by Blawu Bear Ltd and the time they spend engaging applicants to ensure their views are listened to. Nationally, other CCGs may have completed retrospective reviews more quickly, but they now have a 'backlog' of local resolution meetings and cases waiting to be heard by an Independent Review Panel.

### **8. Next Steps**

Since April 2015 NHS Bexley CCG has been concluding 4 cases a month in line with the current trajectory set by NHS England.

In a letter dated 26 June 2015 NHS England states that the Parliamentary & Health Service Ombudsman has raised concerns with regards to slow progress and has set an expectation that all cases will have had an initial assessment and decision letter by 31 March 2017. In addition, that any CCGs that have a current assessment outstanding for living patients identified through the close down exercise must deal with these as a matter of urgency. Bexley CCG prioritised the assessment of any living patients identified as part of the close down exercise and therefore has none outstanding.

To ensure that steady progress is being made to clear the backlog of cases, a national programme is now being put in place. The following changes are being made to the existing reporting process:

- Moving to monthly reporting from the beginning of August 2015
- Setting of new trajectories to 31 September 2016
- Formalising the regional assurance process overseen by a Regional PUPoC Performance Programme Board

The letter also states that NHS England regional teams will continue to support CCGs with this major challenge by providing training, guidance and legal advice to ensure a robust and consistent approach to assessments. NHS England, London region has also offered to provide independent local resolution teams to meet with families appealing the CCGs decision. Bexley CCG has already used an

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Independent local resolution team for one case and will take advantage of this offer for any other appeals received in the future.

Bexley CCG will continue with the process outlined in this report and is on target to meet the 31 March 2017 deadline.

**Caroline Shirley**  
**Continuing Healthcare Business Manager**  
**9<sup>th</sup> July 2015**