Herefordshire Council

Minutes of the meeting of Adults and wellbeing scrutiny committee held at The Council Chamber - The Shire Hall, St. Peter's Square, Hereford, HR1 2HX on Thursday 20 September 2018 at 2.00 pm

Present: **Councillor PA Andrews (Chairman)**

Councillors: MJK Cooper, CA Gandy, J Hardwick, JA Hyde and D Summers

Officers:	**S Vickers**
	R Vickers
	M Appleby
	K Coughtrie
	J Coleman
NHS Herefordshire Clinical Commissioning Group:	**M Emery**
	N Warman
	J Sinclair
Healthwatch Herefordshire:	**S Brazendale**

9. APOLOGIES FOR ABSENCE

Apologies were received from Cllr PE Crockett and Cllr J Stone.

10. NAMED SUBSTITUTES (IF ANY)

Cllr J Hardwick attended as a substitute for Cllr PE Crockett.

11. DECLARATIONS OF INTEREST

There were no declarations of interest.

12. MINUTES

RESOLVED:

That the minutes of the meeting held on 17 July 2018 be confirmed as a correct record and signed by the chairman.

13. QUESTIONS FROM MEMBERS OF THE PUBLIC

There were no questions from members of the public.

14. QUESTIONS FROM COUNCILLORS

There were no questions from councillors.

15. NHS CONTINUING HEALTHCARE FRAMEWORK APPLICABLE TO HEREFORDSHIRE

The chairman reminded everyone of the duties placed on local authorities and NHS bodies by the Health and Social Care Act, regarding the provision of information on the planning, provision and operation of health services to enable health scrutiny, and the duty to respond formally to recommendations by a health scrutiny committee.
She recognised that there was a tension between financial sustainability and service delivery, and reminded all present to not lose sight of the vulnerable people in society, and to ensure the checks and balances were in place to support people in need of continuing healthcare.

The assistant director, care operations and commissioning, presented the report, to provide the national context and the local arrangements. He made the following key points:

- The national framework for continuing healthcare (CHC) was about individuals and their needs, and it was important not to lose sight that application of the framework was for the needs of our residents
- CHC related to packages of care and support funded by the NHS
- It was important to recognise that needs were on a spectrum ranging from social care, and as they change and become more intensive, moving into the responsibility of the NHS
- The decision maker locally was the Clinical Commissioning Group (CCG), but there was a national process to support this.
- A new framework was due to take effect from the start of October, although the definition for eligibility had not changed.
- The determination of whether someone has a primary health need is set nationally by the secretary of state. It involved completion of a checklist to determine eligibility, set at low threshold to enable professional to determine, with reference to care domains.
- There were two outcomes from the checklist – one being a lighter assessment, the other being a move to a full assessment, which is based on a decision support tool using the care domains and looking at complexity of needs. This is carried out by a multi-disciplinary team to determine if needs have gone over the definitions defined by the Social Care Act. From this, a recommendation would go to the CCG, with a requirement to evidence how the decision was reached.
- The national framework had recourse through disputes resolution. The local authority could challenge the decision through an escalation process based on policy which was a national requirement.
- The arbiter of social care need was the local authority. The Care Act determined the care that the local authority could discharge and so there were limits to the local authority's powers to support vulnerable adults.

Looking at the local picture, the assistant director highlighted that:

- An independent review had been commissioned to look into how CHC was applied. The terms of reference for the reviewer were to analyse national and local data, understand the relationship between staff and the CCG and local authority. The review presented a case for change on how to apply the arrangements locally. Recommendations were also produced and were summarised in the agenda papers, and these were built into an action plan.
- The majority of actions had fallen to the CCG. The CCG made decision to bring back responsibility for CHC for direct management and a member of staff had been recruited from a social work background to support the team. A dispute resolution policy was being developed as a recommendation, to afford clarity and escalation for disagreements.

- The changes had led to identifying 22 cases where the local authority believed that further work was needed where the decision has not been agreed by the local authority, showing additional rigour in the process. There remained challenges operationally from the local authority's perspective.

The chair noted a rapid reduction in CHC over the past 2 years and asked for explanation for the criteria changing and rapid reduction in eligibility.

The CCG chief financial officer explained that in 2016/17 there was a review of CHC clients which led to the criteria being reviewed and assessed to ensure appropriate. A service had been commissioned from St Michael's Hospice to fast track care to meet needs. This replaced a previous arrangement of spot-purchasing but the commissioning arrangement enabled direct care from the Hospice, and came into full effect in 2017/18, and the fast track numbers from 2016/17 reduced.

In answer to a question from the chairman regarding consultation on this change, the CCG director of governance explained that there had been no change in how assessments were undertaken. He added that much had been learned about partnership working with the local authority, and noted the positive nature of the report which was key in moving forward. It was recognised that communication had not been as positive as wished, but it was important to note that the driver of the commissioning was to provide far more appropriate care for the people who needed it.

A member commented on the bewildering nature of the report and noted comparisons with Redditch where there was a higher percentage of people eligible for CHC. She added that it was difficult to understand how this could be when considering the significantly smaller population of older people compared with Herefordshire and queried that this was because they were receiving funded nursing care.
The member also observed that reference to Hospice commissioning was not apparent in the report. With regard to dispute resolution, the member asked about the number disputed and of those where the decision had been unchanged, whether there was a period of time to elapse before another application could be considered.

The CCG director of governance confirmed that one appeal had been upheld in the past 2 years but did not have the number to hand of appeals that had been lodged and offered to supply this information to the committee. With reference to the 22 cases that had been identified for further review, the wish was to work jointly with the local authority to understand the cases and get the dispute resolution policy clear. With regard to community care, the chief finance officer added that the CCG commissioned from a number of providers, with considerable investment, and it was necessary to also consider what was commissioned through the market towns, virtual wards and hospital teams at home.

The chairman referred to the recommendations arising from the findings of the review and asked for confirmation that the actions due for completion in August and September 2018 had been completed. In response and with reference to the policy development, the CCG head of CHC confirmed that the final policy had been agreed by the CCG and the council. She added that there was an outstanding issue but it had been signed off by the quality committee.

A member referred to the report's figures for East Riding and Northumberland, where there were more people in receipt of CHC, and queried how the comparatively low level in Herefordshire had been arrived at.
In response, the CCG director explained that there would be further reviews in November to see if there was consistent good practice. The figures for Herefordshire remained relatively consistent, where other areas had fluctuations suggesting that the assessment process was consistent. Comparisons were also made with Hastings and

Eastbourne where populations were similar. There was confidence in the processes that were followed with the national framework being applied consistently and fairly. There was a wish to improve and learn and follow the recommendations.

The member observed that for people not in receipt of CHC, the burden was on the local authority. For people who self-funded the burden fell on their families so it was necessary to be absolutely certain that they were correctly classified, otherwise there would be a disproportionate number of self-funders.

The chairman asked if it was being suggested that the system was working better locally compared with other councils with higher figures.

The CCG director confirmed that it was due to a consistent approach, and that the review looked at the application of the national framework.
The Assistant director added that the with regard to the CHC placements funded solely by the CCG, this was now down to 14 from 35 in quarter 1 of 2016/17, so there was significant movement in numbers. For under 65s, the number had reduced from 46 to 35. The movement was away from CCG funding and apart from self-funders, the only other funding body was the local authority and this was an inescapable fact.
The CCG director queried these figures; in the last quarter there was a rise and an increase in people eligible.

In response to a question from a member about greater financial detail and how the money is spent, the chairman commented that expenditure was variable and that the NHS and adult social care budgets were in the public domain.

The director for adults and communities commented that there was no doubt that there had been a downward trend and that it was disappointing to have working environment where there were disputes. It was important to get the decisions right for the individuals concerned and to reach a consensus as leaders in the process. It was difficult for staff to follow and it needed to be open and transparent.

The representative from Healthwatch Herefordshire reported that they had received a small number of enquiries from people who had asked for help to look into their cases, and it was noted that their assessments followed a downward trend and that it was unfair compared with other areas.
She requested clarification on the disputes resolution process and how self-funders figured in this, and how the CCG proposed to communicate with self-funders.

The CCG head of CHC explained that there was information on the CCG's website and that the CCG Was working with Wye Valley NHS Trust to ensure there were information packs on the hospital wards.
In response, the chair commented that it appeared the CCG website had not been updated since 2013 and requested that it be updated as a matter of urgency to account for changes in legislation.

The head of operations for adults and communities commented that there were people in homes who were self-funders who might not have an advocate and so strategies were being looked at to address this. She added that indirectly, this affected the budget because these people should be having care for free at the point of delivery, but they are picked up by the local authority.
The head of CHC explained the resolution process and that the decision could be challenged by the council so the self-funder would contribute. However, the head of operations added, self-funders were not always known to the local authority so it was up to the family to advocate for them. Healthwatch added that the process disadvantaged self-funders because they only had access to the appeals process and not the disputes resolution process.

The chairman asked what impact the difference in criteria had made, and why this was the case.

The CCG finance officer explained that it was a requirement to adhere to the national framework. There were reviews in 2016/17 and at a different level in 2017/18. The reviews were increased to 3 months, and the commissioning of the Hospice service had been a factor.
The chairman asserted that the interpretation of the criteria had been stiffened. In response the finance officer said that the CCG had ensured the framework was adhered to and that the review process had not always been undertaken in the right way, but the national framework had been complied with. She added that it was important to look at working to ensure patients received the care that was clinically appropriate in line with the national framework. The CCG was signed up to the recommendations and had measures in place to ensure actions were taken forward.

A member asked for more information about appeals and disputes, how they were resolved, and who helped the plaintiff.

The head of CHC clarified that for appeals, there were independent organisations to provide support and the CCG used an NHS-endorsed organisation for this purpose.
The head of operations added that disputes with the local authority would go through social workers, and second level cases would be heard by herself and the head of CHC, and third level cases would be heard by the legal team and directors. There were 3 current disputes at level 2.
Members noted that there was a limit to the amount of free support that could be offered to people and this was of concern.

The director for adults and communities emphasised the importance of recognising that the people being supported were at end of life and vulnerable, and were not in a position to pursue disputes with authorities. It was important to have information for them and to make the process available for them. It was essential to have sympathy with their position and to be recognise that families were not likely to be in a position to take on an organisation and challenge. Organisations needed to work together on this process.

The CCG director supported this and confirmed that the website would be reviewed. It was important to reflect and consider how to get information out to vulnerable families and there was committed to working to get this right.

Adding to an observation from the chairman that the process lacked clarity and was difficult for lay people to understand it, a member asked whether panels had the skills and understanding of the medical terminology involved in cases.
In response the director for adults and communities commented that there was nationally accredited training offered to staff to address this. He added that the CCG used a different trainer and this needed to be consistent and that professionals needed to be able to work through differences.
The head of operations added that there was feedback from practitioners that the criteria have changed and technical knowledge level was now a different requirement. Professionals were clear about what was above ancillary need and what the local authority's limitations were under the Care Act. There were grey areas about the limitations, but CCG did not see this, so there was work to do around nurse practitioners and social workers on how people were directed through care pathways. She added that social workers did not feel there was real change at the front line.

The chairman noted there was a need to upskill and provide specialist training for two key social workers to address this.

Members noted that in the middle of this there was a vulnerable person or family and there was too much emphasis on medical terminology which could cause confusion.

A member asked when the review took place that changed the criteria.
The head of CHC confirmed that the criteria were no changed but were reviewed in quarter 2 of 2016.
The member noted this as correlating to a drop in the figures, and asked that if they were correct, was it accepted that there was a significant drop in Herefordshire compared with the national average which had dropped only slightly.
In response, the head of CHC said that the benchmark data looked at those individuals who were eligible and those who were fast-tracked, and that it was normal to see fluctuations in fast track referrals.
The member noted that the projection was that the gap would become wider and wider.

The head of operations added that the expectation was that the CCG did not review people out of eligibility, but in fact this had happened. In responding to the guidelines, the numbers would be seen to increase.

The chairman made the observation that the elderly population was increasing and that anecdotally the new housing was being bought by people who were retiring.

A member requested that the appeals and disputes process be added to the work programme and be brought back to a future meeting of the committee.
The director for adults and communities suggested it be added to the review recommendations.

The chairman asked officers if they were happy that Herefordshire was the 6th lowest in the national figures for CHC, bearing in mind the demographics. She also asked if the comparator authorities were suitable, such as Luton, if they did not share the same demographics, and why they were chosen.
The head of CHC explained that the national variations were recognised; s. Rather than benchmark against regional neighbours, Herefordshire was benchmarked against those provided by NHS England, and they review the data and quality assurance.
In response to a question from the chairman, the CCG director said that in terms of NHS England's opinion on the figures, they look at different places where there are good practices or areas to improve. The comparator authorities were nationally set groups and the CCG had queried the groupings with NHSE England.
The chief finance officer added that NHS England look at compliance with the national CHC framework. The report had been accepted and the action plan had commenced, there was more understanding of the reasons for movement and the CCG had commissioned effectively for fast track, and it was important to move it forward in partnership.
The director for adults and communities requested that the NHS England review was treated as a system review which involved the local authority.

The chairman asked officers if they aspired to make improvements.

The chief finance officer stated that it was about applying the criteria and commissioning most appropriately; the framework had been refreshed and the CCG would ensure adherence. There was further work to understand the benchmarking, and that the commissioning in Herefordshire was approached differently compared with other CCGs.

RESOLVED
That:

a) **a small number of senior social workers be upskilled to ensure that there is a common understanding of the medical terminology when dealing with disputes;**

b) **the CCG be requested to commit to seeking to lift Herefordshire out of its current position of 6th from the bottom in the national CHC eligibility by 50k population and to report its progress against this commitment at a future adult's scrutiny committee;**
c) **the CCG be called back to the committee to report on progress made against their action plan recommendations in six months' time. Specifically –**

- **To update the committee on progress against the recommendations that have not been completed to date, and**
- **To report on the progress made as a result of the recommendations completed and implemented.**

d) **the CCG be requested to influence the report of the NHS England to be a system review and to include the local authority within that review.**

The meeting ended at 3.25 pm **Chairman**