

## Integrated Care Board

<b>Date of meeting</b>	27 <sup>th</sup> July 2022
<b>Title of paper</b>	Continuing Healthcare: Local Authority settlement proposal
<b>Presented by</b>	Professor Sarah O'Brien
<b>Author</b>	Sarah O'Brien, Chief Nursing Officer
<b>Agenda item</b>	7
<b>Confidential</b>	No

### Purpose of the paper

The purpose of this paper is to highlight to the Board current challenges and risks associated with CHC including a historical dispute between seven of the eight pre-existing CCGs and three Local Authorities and to ask for approval of a financial settlement for this dispute

### Executive summary

NHS Continuing Healthcare (CHC) is a package of ongoing care that is arranged and funded solely by the NHS where the individual has been assessed and found to have a primary health need. The legally prescribed decision-making process is set out in the National Framework (revised 2018). The statutory responsibility for the assessment, eligibility decision and commissioning of CHC packages lies with the ICB (transferred from CCGs).

In Lancashire and South Cumbria there are variations in the model of delivery for CHC and currently overall the system is not meeting a key quality indicator to assess all eligibility decisions within 28 days and there is a significant backlog of yearly CHC reviews. In addition, there has been an ongoing dispute between seven CCGs and three Local Authorities regarding delayed or incomplete assessments for CHC eligibility. The CCGs included accruals in accounts to enable a settlement to this dispute and the ICB Chief Nurse has worked with one representative on behalf of the Local Authorities to agree a resolution.

### Recommendations

The Integrated Care Board is requested to:

1. Note the contents of the report and risks associated with CHC
2. Approve the proposed financial settlement of £8.037 million with the three Local Authorities (Lancashire County Council, Cumbria County Council and Blackburn with Darwin Borough Council)

### Governance and reporting (list other forums that have discussed this paper)

Meeting	Date	Outcomes
ICB Executive Meeting	12 <sup>th</sup> July 2022	Agreed Board Paper content

### Conflicts of interest identified

ICB Local Authority Partner Member is employed by one of three Local Authorities included in settlement. Any declaration or management of this conflict will be agreed by the Chair prior to the report being considered.

**Implications**

<i>If yes, please provide a brief risk description and reference number</i>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Comments</b>
Quality impact assessment completed			X	
Equality impact assessment completed			X	
Privacy impact assessment completed			X	
Financial impact assessment completed	x			Backlog of referrals is a financial risk to the ICB
Associated risks	x			CHC performance is a risk
Are associated risks detailed on the ICB Risk Register?	x			

**Report authorised by:** Prof Sarah O'Brien, Chief Nursing Officer

# Integrated Care Board – 27<sup>th</sup> July 2022

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## Continuing Healthcare: Local Authority settlement proposal

### 1. Introduction

- 1.1 NHS Continuing Healthcare (CHC) is a package of ongoing care that is arranged and funded solely by the NHS where the individual has been assessed and found to have a primary health need. The legally prescribed decision-making process is set out in the National Framework (revised 2018).
- 1.2 Primary Health Need is a concept developed by the Secretary of State for Health to assist in deciding when an individual's primary need is for healthcare (which the NHS provide under the 2006 Act) rather than social care (which the Local Authority may provide under the Care Act 2014).
- 1.3 The statutory responsibility for the assessment, eligibility decision and commissioning of CHC packages now lies with the ICB (transferred from CCGs). Where an ICB delegates functions (eg to a provider) it continues to be legally responsible and must have suitable governance arrangements to ensure these functions are being discharged in accordance with relevant guidance.
- 1.4 The purpose of this paper is to highlight to the Board current challenges and risks associated with CHC including a historical dispute between seven of the pre-existing CCGs and three Local Authorities and to ask for approval of a financial settlement for this dispute.

### 2. Existing Risks and Challenges Associated with CHC

- 2.1 In Lancashire and South Cumbria there are varied models for delivery of CHC, Blackpool has an 'in house' service that works closely with the Local Authority whereas all other areas commission Midlands and Lancashire Commissioning Support Unit (CSU) to deliver CHC for them but to varying degrees across the ICB.
- 2.2 It is explicit in the National Framework that eligibility decisions should be made within 28 days once an initial checklist suggests eligibility. This is also a key quality indicator for the ICB (measured by NHSE), performance against this indicator varies across the ICB and we are not meeting this key target.
- 2.3 If there is a delay in the 28-day timeframe to determine CHC eligibility, residents are likely to be receiving care either within the NHS, funded by the Local Authority or funding it themselves. It is clear in the national framework that once the eligibility decision is made it should be dated back to day 29 of the decision

process. This can cause issues between partners where a decision is significantly delayed.

- 2.4 Once a resident is in receipt of CHC they should have a 3 and then 12 monthly review to assess ongoing appropriateness of the care package. Excluding Blackpool, we are not meeting this legal responsibility to review and there is a significant backlog.
- 2.5 It is important to note that the challenges in relation to CHC in Lancashire and South Cumbria are longstanding and even pre-date the formation of CCGs in 2013.
- 2.6 The Chief Nurse's team are exploring solutions to: the variations in CHC delivery, backlog of reviews and poor 28 day performance, this will be a large piece of work and progress will be reported through Quality Committee.

### **3. Delayed / Incomplete CHC Assessments**

- 3.1 There has been an ongoing dispute between seven CCGs and three Local Authorities regarding delayed or incomplete assessments for CHC eligibility.
- 3.2 The CCGs acknowledged there were a significant number of potential CHC cases submitted prior to March 2020 for eligibility decisions where the assessment wasn't completed or was significantly delayed.
- 3.3 Up to April 2022 the CCGs and Local Authorities had been unable to reach a financial settlement for the cases that were now deemed eligible but where there had been delays. There was a risk of legal action between the parties.
- 3.4 The Chief Nurse has worked with a representative on behalf of the three Local Authorities to reach a proposed settlement for the historical delays.
- 3.5 There are a small number of cases that still require review and potential settlement but the majority of assessments are completed and a consensus has been reached regarding the financial settlement.
- 3.6 The CCGs recognising their liability, included an accrual in their accounts for a settlement and this is now available to the ICB. The combined value of this accrual is £9.455 million.
- 3.7 The proposed total settlement across the three Local Authorities is £8.037 million (note there may be a few additional cases to settle).
- 3.8 The ICB are asked to approve this settlement with the three Local Authorities: Lancashire County Council, Cumbria County Council, Blackburn with Darwin Borough Council.

#### **4. Conclusion**

- 4.1 The ICB has a statutory responsibility for CHC and there are risks that need addressing as a priority. Collaboration between the NHS and Local Authorities on CHC is an important feature in effective delivery. Historically, the CCGs and Local Authorities (except Blackpool) in Lancashire and South Cumbria have had challenges including a significant financial dispute regarding delayed assessments. Settlement of this dispute is essential to enable the ICB and Local Authorities to move forward on deeper integrated working.

#### **5. Recommendations**

- 5.1 The Integrated Care Board is requested to:
1. Note the contents of the report and risks associated with CHC
  2. Approve the proposed financial settlement of £8.037 million with the three Local Authorities

**Professor Sarah O'Brien**

**15<sup>th</sup> July 2022**