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| CHC legacy debt and arbitration mechanism |

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| Dear colleagueIn my CCG Leaders Bulletin last week I shared with you the [**letter we had sent to NHS England**](http://email-update.net/20PM-2AJES-EYYYX9-ZBMOA-1/c.aspx) about the CHC legacy debt issue and the way in which NHS England had made decisions about the establishment of a risk pool etc.  Amanda Doyle, Charles Alessi and myself discussed this with Ros Roughton and Sheena Powell last Tuesday and were promised a full response which we now have – [**see link**](http://email-update.net/20PM-2AJES-EYYYX9-ZBMO9-1/c.aspx). I am sharing this with you, as our CCG leaders, once again on a confidential basis. Just to give you a little more background, yesterday we discussed this at our Transitional Steering Group. Steve Kell, Charles Alessi, Michael Dixon and I were present. I also tested reactions to the response with a couple of Leadership Group members, asking about the potential next steps we might take on your behalf. The Steering Group has asked me to share the response with you, to highlight our reaction and seek your views.  The key issues and concerns remain that:-The NHS has in effect paid twice for the historical CHC liability at a time when the NHS can least afford it and that the legacy debt before 2010/11 has in effect, been passed over to CCGs. We asked for clarity about the size of the financial ‘problem’ and what had happened to the provisions made by PCTs in 2012/13 accounts? The response does specify the size of the problem but we remain unclear as to where the £800 million went as a result of the treasury accounting regime? From discussions it is apparent that at the time it was never made clear that nationally these provisions would not count against the departments spending limit.  Instead the provisions were charged to a different budget, referred to as AME. As a result, although the NHS did pay the costs relating to CHC by diverting resources into this, the DH also ended up handing back a large underspend to the Treasury in 2012/13. Accountancy ‘rules’ have been given as the  explanation but this misses the point that the NHS paid once then and now a sub-set of the NHS commissioning system – CCGs – are being charged again. It should have been known and made very clear at the time that handling provisions in this way would not sort the issue out, because of the difference in ‘accounting’. As such we should ask why the NHS is paying twice? Surely the money should be paid back to the NHS so the costs can accrue against that fund starting 2014/15. Also we should ask for clarity around the apparent confusion that seems to have arisen about how the legacy debt is defined? This ‘confusion’ seems to be serving to mask the real issues.NHS England also point to the NHSE board paper on allocations, noting that £250m was added to the pool for CCG allocations and that this has been distributed to CCGs. However, the only way CCGs have received this is via growth which only covers inflation uplift. So, the net effect of all this is that CCGs are receiving the standard 2.14% uplift.  Either NHS England must either confirm that they are not maintaining real term funding (as the GDP deflator was 2.14%, and actual acute tariff inflation including CNST is 2.8%) or they must confirm that CCGs haven’t received any extra funding in reality to cover the CHC cost. Either way we anticipate arguing this point on your behalf too.**Do you agree that these are the critical ongoing concerns that we should be pursuing on your behalf?**We are raising these issues at a variety of discussions over the next week with the Secretary of State’s office and Number 10 officials, as well as responding further to NHS England, very early next week, once we have any further reaction from yourselves as members.We have made it very clear that there must be no criticism laid at the door of CCGs as a result of dealing with the legacy issue in the way NHS England has so far without discussion. Additionally there must be a collective way in which the financial risk of the £250 million on CCG financial bottom lines is managed. The acceptance on the part of NHS England that they did not handle the engagement and communication with CCGs appropriately is welcomed, but we must now ensure that the NHS Commissioning Assembly Finance Reference Group which is to be established has the right Terms of Reference and powers. Also that it will have the right blend of people from CCGs on it as well as NHS England and a CCG Co-Chair. We feel we must drive this to happen and would value your thoughts. What will be the right level of involvement from CCGs and how might we as NHS Clinical Commissioners work to ensure that it does genuinely become a group operating in the ways expected of the new system - rather than the old? Finally, having pushed back about this issue formally through the letter signed by Steve Kell and Amanda Doyle, we also became aware, last Friday about another piece of guidance that we were told by our members had come completely ‘left of field’. This was about handing disputes and the arbitration mechanism for contracts with non FTs, when not agreed by the end of February 2014. Essentially the guidance details a process for contract arbitration specifying that arbitration will be via NHS England AND the Trust Development Authority (TDA). Furthermore it stipulates that the process will cost £100,000 if by the time of the guidance CCGs had not agreed contracts. The members who contacted me were extremely concerned about this both in terms of the involvement of the TDA in the process, as they felt it would not be independent and the fact that CCGs were to be bound to something retrospectively, without discussion or agreement about the process or who should be involved. I tested this with the NHSCC Leadership Group and in particularly the concerns about the conflicted nature of the involvement of the TDA came up most strongly. I therefore took the opportunity to put these concerns to NHS England and you will see in their reply that we can expect a further response. We feel that there is a really important concern here about the governance of this process and the nature of the involvement of the TDA and NHS England. Again, your thoughts would be appreciated and we will of course keep you appraised of this key issue as it progresses.  As well as sending this to you, our CCG Leaders by email, I will also post it on the member only area of our website. Please do therefore respond either via office@nhscc.org or via the [member only area of the site](http://email-update.net/20PM-2AJES-EYYYX9-ZBMO8-1/c.aspx). NHSCC is the independent collective voice of CCGs and we are strongly member led. Your view and opinion as to our next steps is vitally important. Our next Leadership Group meeting is Wednesday 26th March and we will be discussing this there. A number of CCG Leaders within the Leadership Group will then go onto No 10 for a meeting with the Prime Ministers Special Advisor on Health. We look forward to hearing from you.Julie Wood*Director*  |

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| **We want to hear from you!**Let us know what you like in NHSCC Connect? Are there other items you would like covered? Got brickbats you want to throw (or bouquets)? Do let us know at press@nhscc.org[Visit the NHSCC website](http://email-update.net/20PM-2AJES-EYYYX9-ZBLPN-1/c.aspx) |

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| **Are you on Twitter?**We are keen to make sure we know which CCGs are on twitter so we can you follow you. We have a list of CCGs and CCG people here. And you can follow us [@NHSCCPress](http://email-update.net/20PM-2AJES-EYYYX9-ZBLPP-1/c.aspx)**Our mailing address is:**NHS Clinical Commissioners, 50 Broadway, London SW1H 0DB, UKYou are receiving this newsletter as your CCG is a member of NHS Clinical Commissioners. [Unsubscribe](http://email-update.net/20PM-2AJES-B3EYYYX9A8/uns.aspx) | [Forward to a friend](http://email-update.net/20PM-2AJES-B3EYYYX9A8-1/fw.aspx)Copyright © 2014 NHS Clinical Commissioners, All rights reserved. |

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