

9th March 2020

Dear Requester

FREEDOM OF INFORMATION REQUEST - RESPONSE
FOI Reference: OPTUM FOI 400-864a 2nd Request – LE CCG

I refer to your email received on 12 February 2020. I can confirm on behalf of NHS Lincolnshire East Clinical Commissioning Groups (CCG) supported by Optum Commissioning Support Services, and in accordance with S.1 (1) of the Freedom of Information Act 2000 (FOIA) that we do hold the additional information you have requested as a result of receiving formal response FOI 400-864 (detailed within Appendix A) from the CCG. A response to each element of your new request is detailed below:

FURTHER REQUEST & RESPONSE

1. Thank you for your reply, however, it does not answer my request. For each of the responses provided, further clarification is required:
2. The National Framework sets out the principles and processes of NHS Continuing Healthcare and NHS-funded Nursing Care.
3. The DST is what it says; a support tool. It supports "practitioners" in identifying the individual's needs. It is designed to collate and present information; it cannot directly determine eligibility.
4. There are no criteria, (benchmarks, scales, yardsticks), in the National Framework, or the DST, against which the nature, intensity, complexity and unpredictability of a person's needs can be measured/assessed/weighed.
5. Please answer the **specific** question asked.
6. Please note, to be clear, I am not referring to the National Framework, the Checklist, the DST, Fast Track Pathway Tool, Needs Portrayals/Assessments, policies, so please do not respond, referencing, directing or pointing me to them, because, there are no criteria, (benchmarks/scales/yardsticks) in them, against which the nature, intensity, complexity and unpredictability of a person's needs can be measured/assessed/weighed.
7. **If there are no** criteria, (benchmarks, scales, yardsticks), against which the nature, intensity, complexity and unpredictability of a person's needs are measured/assessed/weighed, **please say so.**

RESPONSE

With regard to points 1 – 6 detailed above, the CCG uses the standards and guidance in the National Framework for Continuing Healthcare and NHS-funded Nursing care October 2018 (revised) Page 20 point 59 and in the practice guidance pages 96-97 points 3.1-3.6. The detailed information was provided as part of the initial response.

Special Note:

Extracts from [National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care](#) state the following:

131. The Decision Support Tool (DST) has been developed to aid consistent decision making. The DST supports practitioners in identifying the individual's needs. This, combined with the practitioners' skills, knowledge and professional judgement, should enable them to apply the primary health need test in practice.

147. The MDT is required to make a recommendation to the CCG as to whether or not the individual has a primary health need. In coming to this recommendation the MDT should work collectively using professional judgement.

With regard to point 7, in accordance with the framework, any decision made regarding eligibility will be a multi-disciplinary team decision, not the sole opinion of an individual. Lincolnshire CHC Service do not use a benchmarking document as this is not part of the framework process.

I trust that this answers your queries with the information we currently hold, but if we can be of any further assistance please do not hesitate to contact the FOI Team.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to

Optum Health Systems Support
FOI TEAM
South Kesteven District Council Offices
St. Peter's Hill
Grantham
NG31 6PZ

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the CCGs.

The Information Commissioner's contact details can be found here:

<https://ico.org.uk/global/contact-us/>

All information we have provided is subject to the provisions of the Re-use of Public Sector Information Regulations 2015. Accordingly, if the information has been made available for re-use under the [Open Government Licence](#) (OGL) a request to re-use is not required, but the licence conditions must be met. You must not re-use any previously unreleased information without having the consent from the CCG. Should you wish to re-use previously unreleased information then you must make your request in writing (email will suffice) to the FOI Lead. All requests for re-use will be responded to within 20 working days of receipt.

Yours faithfully

FOI Team
On behalf of NHS Lincolnshire East CCG

Appendix A

ORIGINAL REQUEST & RESPONSE FOI 400-864

The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012, states,

“21. (7) In deciding whether a person has a primary health need in accordance with paragraph (5)(b), a relevant body must consider whether the nursing or other health services required by that person are—

(a) where that person is, or is to be, accommodated in relevant premises, more than incidental or ancillary to the provision of accommodation which a social services authority is, or would be but for a person’s means, under a duty to provide; or

(b) of a nature beyond which a social services authority whose primary responsibility is to provide social services could be expected to provide,

and, if it decides that the nursing or other health services required do, when considered in their totality, fall within sub-paragraph (a) or (b), it must decide that that person has a primary health need.”

1. With reference to the above, against what criteria, benchmark/scale/yardstick/standard), are the nature, intensity, complexity and unpredictability of a person’s needs measured/assessed/weighed.

RESPONSE:

The CCG adheres to the standards and guidance in the National Framework for Continuing Healthcare and NHS-funded Nursing care October 2018 (revised) Page 20 point 59 and in the practice guidance pages 96-97 points 3.1-3.6 as detailed in Appendix 1.

2. Please provide a copy of the document used to measure/assess/weigh a person’s needs.

RESPONSE: Please find here a link to the Decision Support Tool form used:

<https://www.gov.uk/government/publications/nhs-continuing-healthcare-decision-support-tool>.

Appendix 1: - Extract from National Framework for Continuing Healthcare and NHS-funded Nursing Care October 2018 (revised) (The published document is available [here](#))

59. In applying the primary health need test as set out above CCGs should take into account that section 22(1) of the Care Act 2014, in setting out the limits of Local Authority responsibilities, applies the 'incidental and ancillary' test in all situations, National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care 20 including where care is being provided in the person's own home. As there should be no gap in the provision of care, CCGs should consider this test when determining eligibility. Eligibility is the same for all individuals, whether their needs are being met in their own home or in care home accommodation. Certain characteristics of need – and their impact on the care required to manage them – may help determine whether the 'quality' or 'quantity' of care required is more than the limits of a local authority's responsibilities, as set out in section 22(1) of the Care Act 2014:

- **Nature:** This describes the particular characteristics of an individual's needs (which can include physical, mental health or psychological needs) and the type of those needs. This also describes the overall effect of those needs on the individual, including the type ('quality') of interventions required to manage them.

- **Intensity:** This relates both to the extent ('quantity') and severity ('degree') of the needs and to the support required to meet them, including the need for sustained/ongoing care ('continuity').

- **Complexity:** This is concerned with how the needs present and interact to increase the skill required to monitor the symptoms, treat the condition(s) and/or manage the care. This may arise with a single condition, or it could include the presence of multiple conditions or the interaction between two or more conditions. It may also include situations where an individual's response to their own condition has an impact on their overall needs, such as where a physical health need results in the individual developing a mental health need.

- **Unpredictability:** This describes the degree to which needs fluctuate and thereby create challenges in managing them. It also relates to the level of risk to the person's health if adequate and timely care is not provided. An individual with an unpredictable healthcare need is likely to have either a fluctuating, unstable or rapidly deteriorating condition.

3.1 Four characteristics of need – namely 'nature', 'intensity', 'complexity' and 'unpredictability' – 'may help determine whether the 'quality' or 'quantity' of care required is beyond the limit of a local authority's responsibilities, as outlined in the Coughlan case (a summary of the case can be found at Annex B). It is important to remember that each of these characteristics may, alone or in combination, demonstrate a primary health need, because of the quality and/or quantity of care that is required to meet the individual's needs.

3.2 It may be helpful for MDTs to think about these characteristics in terms of the sorts of questions that each generates. By the MDT answering these questions they can develop a good understanding of the characteristic in question. The following questions are not an exhaustive list and are not intended to be applied prescriptively.

3.3 **'Nature'** is about the characteristics of both the individual's needs and the interventions required to meet those needs.

Questions that may help to consider this include:

- How does the individual or the practitioner describe the needs (rather than the medical condition leading to them)? What adjectives do they use?
- What is the impact of the need on overall health and well-being?
- What types of interventions are required to meet the need?
- Is there particular knowledge/skill/training required to anticipate and address the need? Could anyone do it without specific training?
- Is the individual's condition deteriorating/improving?
- What would happen if these needs were not met in a timely way?

3.4 **'Intensity'** is about the quantity, severity and continuity of needs.

Questions that may help to consider this include:

- How severe is this need?
- How often is each intervention required?
- For how long is each intervention required?

National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care
97

- How many carers/care workers are required at any one time to meet the needs?
- Does the care relate to needs over several domains?

3.5 '**Complexity**' is about the level of skill/knowledge required to address an individual need or the range of needs and the interface between two or more needs.

Questions that may help to consider this include:

- How difficult is it to manage the need(s)?
- How problematic is it to alleviate the needs and symptoms?
- Are the needs interrelated?
- Do they impact on each other to make the needs even more difficult to address?
- How much knowledge is required to address the need(s)?
- How much skill is required to address the need(s)?
- How does the individual's response to their condition make it more difficult to provide appropriate support?

3.6 '**Unpredictability**' is about the degree to which needs fluctuate and thereby create challenges in managing them. It should be noted that the identification of unpredictable needs does not, of itself, make the needs 'predictable' (i.e. 'predictably unpredictable') and they should therefore be considered as part of this key indicator.

Questions that may help to consider this include:

- Is the individual or those who support him/her able to anticipate when the need(s) might arise?
- Does the level of need often change? Does the level of support often have to change at short notice?
- Is the condition unstable?
- What happens if the need isn't addressed when it arises? How significant are the consequences?
- To what extent is professional knowledge/skill required to respond spontaneously and appropriately?
- What level of monitoring/review is required?