

Our Reference North East and North Cumbria ICB\
FOI ICB 24-451

NECS – John Snow House
Durham University Science Park
Durham
DH1 3YG

Tel: 0191 301 1300
E-mail: necsu.icbfoi@nhs.net

By Email

20 March 2025

Dear Applicant

Freedom of Information Act 2000 – Request for Information – NHS North East and North Cumbria Integrated Care Board (NENC ICB)

Thank you for your request received by North of England Commissioning Support (NECS) on 20 February 2025 for information held by NHS North East and North Cumbria Integrated Care Board (the ICB) under the provisions of the Freedom of Information Act 2000.

The ICB covers the areas of County Durham, Gateshead, Newcastle, North Cumbria, North Tyneside, Northumberland, South Tyneside, Sunderland, and Tees Valley (which covers the five local authorities of Darlington, Hartlepool, Middlesbrough, Redcar and Cleveland and Stockton-on-Tees).

Please find the information you requested on behalf of the ICB as follows.

Your Request

I am writing to request information under the Freedom of Information Act 2000 regarding the ICB's outsourcing of NHS Continuing Healthcare (CHC) reviews and assessments. My request is structured into key areas to ensure clarity and ease of response.

1. Procurement & Contracting

Please provide information on all private companies contracted to conduct CHC reviews, fast-track decisions, and full CHC assessments within the last 5 years:

- The name of each company contracted for CHC reviews/assessments.
- The contract start and end dates.
- The total value of each contract.
- Whether the contract was awarded via a competitive tender process, direct award, or framework agreement.
- Whether the contract was cost per case or a shared benefit agreement.
- The name of the procurement framework used, if applicable.
- The organisation that provided procurement advice for awarding the contract.
- The job title of the individual who signed the contract on behalf of the ICB and whether they had budget-setting responsibilities at the time.

- A copy of the Key Performance Indicators (KPIs) set for the provider and details of how their performance is measured.
- Confirmation of whether the contract was awarded via the NHS Standard Contract.

2. Due Diligence & Regulatory Compliance

To ensure the suitability of the providers, please provide:

- Copies of any due diligence reports conducted before awarding the contract.
- Confirmation of whether the ICB reviewed the provider's Companies House registration, SIC codes, and financial standing prior to appointment.
- Details of how the ICB verified the provider's compliance with NHS CHC Framework requirements.
- Confirmation of whether the provider is registered with the Care Quality Commission (CQC) and, if not, why this was not a requirement.
- A copy of any risk assessments conducted before outsourcing CHC assessments to the provider.
- Copies of any internal audit reports or governance reviews relating to outsourced CHC assessments.

3. CHC Assessment Outcomes & Financial Impact

To understand the impact of outsourcing on CHC eligibility and costs, please provide:

- The total number of CHC assessments (reviews, fast tracks, and full assessments) conducted by outsourced providers, broken down by year and assessment type.
- The percentage of assessments that:
 - Maintained CHC eligibility – please breakdown by standard CHC and fast tracks.
 - Were converted to Funded Nursing Care (FNC).
 - Resulted in a transfer to local authority/social care funding.
- Any reported cost savings attributed to outsourcing, including how savings were calculated (e.g., reductions in care package costs, transfers to social care, or other).

4. Appeals, Complaints & Disputes

- The total number of complaints received about outsourced CHC assessments.
- The total number of CHC eligibility appeals related to outsourced assessments.
- The number of ICB decisions overturned on appeal, and the body responsible for the decision (e.g., NHS England, independent review panels).
- The number of interagency disputes (e.g., between ICBs and local authorities) resulting from outsourced assessments.

5. Data Sharing & Patient Notification

To understand how patient data was managed when outsourcing CHC assessments:

- Was patient data shared with the outsourced provider? If so, please confirm:
 - The legal basis under which patient data was shared.
 - The types of data shared (e.g., clinical records, care plans, financial assessments).
 - Whether the provider was required to comply with NHS Data Security and Protection Toolkit (DSPT) standards.
- How were patients informed that their data would be shared with the outsourced provider?
 - What information was provided to patients (e.g., privacy notices, consent forms)?
 - Please provide copies of all patient-facing communications related to data sharing, including letters, leaflets, emails, or any other notification methods.
 - How much notice were patients given before their data was shared?
- A copy of any Data Protection Impact Assessment (DPIA) conducted before sharing patient data with an outsourced provider.

6. Equality Impact & Patient Consultation

- Please provide a copy of any Equality Impact Assessment (EIA) conducted in relation to the outsourcing of CHC assessments.
- Has the ICB consulted patient groups, advocacy organisations, or families regarding the outsourcing of CHC assessments? If so, please provide copies of any consultation reports or feedback summaries.

Our Response

We can confirm, as per Section 1(1) of the Freedom of Information Act 2000, the ICB holds some of the information you have requested.

1. Procurement & Contracting

- Companies contracted for CHC reviews/assessments are Liaison, MLCSU (NHS), Mprove and XYLA.
- There are 2 contracts in place with start and end dates are 01/10/2024 to 31/03/2025.
- The values of the contracts currently in place are as follows:

Mprove (backlog reviews)	£499,000
MLCSU (NHS) (backlog reviews)	£292,077
XYLA	£25,000 (approx.)
Liaison	Contract started prior to ICB inception in July 2022. Information not held for this contract.

- There was a tender waiver for these contracts – there was a direct award due to urgency.
- The contracts were cost per case.
- Please refer to point 1.4 around tender waivers.
- NENC ICB provided procurement advice for awarding the contract.
- Transformation Deputy Director of Nursing (agreed by ICB Executive Committee) signed the contract on behalf of the ICB.
- A copy of the Key Performance Indicators (KPIs) set for the provider and details of how their performance is measured.
- The contract was not awarded via the NHS Standard Contract.

2. Due Diligence & Regulatory Compliance

- References were provided from other ICBs who had used services and from NHSE before awarding the contract.
- The ICB reviewed the provider's Companies House registration, SIC codes, and financial standing prior to appointment.
- The ICB verified the provider's compliance and requested a full proposal of work, structure, quality assurance and documentation.
- Confirmation of whether the provider is registered with the Care Quality Commission (CQC) was not done as they are not carrying out regulated activity.
- NENC ICB do not hold copies of risk assessments as detailed in your request.
- There are no official audit reports, the ICB has audited specific assessments which are patient identifiable, however, it will highlight the performance in detail of the provider.

3. CHC Assessment Outcomes & Financial Impact

- We can confirm, as per Section 1(1) of the Freedom of Information Act 2000, the ICB holds some of the information you have requested. However, we have estimated that to provide you with the required information, would exceed the cost limit of £450 for the NHS as

specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

S.12(1) of the FOIA provides that a public authority is not obliged to respond to a request for information if the cost of locating, retrieving, and extracting information and preparing the response can be included in the costs for these purposes.

It is estimated that it would averagely take a member of staff approximately 30 minutes to obtain the requested information from the system (all annual CHC reviews and Fast Track review backlog 2024/25). Allocating 30 minutes per transaction, the NENC ICB estimates that 1700 transactions/records x 30 minutes = 51,000 minutes divided by 60 = 850 hours to extract the level of detail requested from our system. NENC ICB is therefore unable to provide the requested information within the prescribed limit.

In accordance with our duty to provide advice and assistance under s.16 FOIA 2000, we estimate that we would be able to supply you with the requested data for approximately [insert what information we can provided if any] within the appropriate limit, should you wish to refine and submit a revised request.

Based on the number of hours 850 at a rate of £25 per hour the estimated cost of providing the information is £21,250. Should you wish to proceed we will be able to comply with your request upon receipt of payment. Alternatively, you may wish to reduce the scope of your request so that it comes in under the appropriate limit.

However, on the basis that all records must be checked, we cannot determine whether there is a way to minimise this search, within cost limits, to find meaningful information.

- Please refer to the response to point 3.1.
- NENC ICB does not hold details of cost savings attributed to outsourcing.

4. Appeals, Complaints & Disputes

- There are 27 complaints outstanding at present.
- There are no current CHC eligibility appeals related to outsourced assessments.
- NENC ICB received 23 IRPs in 2023/24, with none of these attributable to outsourced assessments.
- There are 48 on-going interagency disputes.

5. Data Sharing & Patient Notification

- Yes, patient data was shared with the outsourced provider.
 - Data was shared under GDPR data processing agreement and data sharing agreements in place – ratified and overseen by ICB IG team. In alignment with NHSE policy, Necessary and proportionate, personal information may be shared with other organisations for example to: investigate complaints or potential legal claims; protect children and adults at risk; assess need, service delivery and treatment. purposes. Sharing of confidential patient information is an essential requirement in providing care to patients. The information collected also plays an important role in planning and evaluating health and care services and supporting medical research
 - Types of data shared include care plans, clinical records and assessments. There is no financial assessment data.
 - Yes, the provider was required to comply with NHS Data Security and Protection Toolkit (DSPT) standards. Copies of certificates were required. Data processing agreements were signed off by the Chief Nurse at that time.

- Patients were informed that their data would be shared with the outsourced provider in initial letters sent by the Provider themselves.
- The Freedom of Information Act (FOIA) 2000 contains a number of exemptions that allow a public authority to withhold certain information from release. Some of the requested information is exempt under s.43(2) of the FOIA2000 as disclosure is likely to prejudice the commercial interests of a person as defined by the Act. This s.43(2) exemption applies to question 5.3.

The procurement of any service is undoubtedly a commercial activity which is carried out in a competitive environment. External companies are competing to deliver the required services at a competitive and cost-effective price – the companies who completed the ICB's invitation to tender were all competing to secure the contract with us. Providing copies of DPIAs would put the providers at a competitive advantage by sharing their financial information and fee levels. This would expose commercial information and be in breach of their contracts.

The ICB work to ensure that services are procured efficiently, effectively and in accordance with the appropriate frameworks to get the best possible price bearing in mind that public money is being used. FOI responses are considered as mentioned above to be a release to the world at large and not to one applicant. By disclosing the specific details of the contract during the tender process could seriously undermine the trust and confidence which suppliers may have in our ability to effectively procure such services and may lose confidence in the ICB that their operational information may be comprised, and their information will not be secure throughout the process and not shared with third parties. This may deter businesses from competing and less likely to bid for public sector contracts if they believe the live procurement process could be prejudiced by sharing commercially sensitive information. It is important for the conduct of such tendering exercises to not disadvantage those businesses by making their information publicly available until after the contract has been awarded.

The application of this exemption requires an examination of the public interest in disclosure in comparison as opposed to that in non-disclosure.

The factors *in favour of disclosure* would include:

- There would be transparency of functions
- There may be increased competition in the market

Factors in *favour of withholding the information* are largely laid out in the explanation for the use of the exemption above but would include:

- Releasing this data might impact NENC ICB's purchasing position
- Procurement processes – due diligence
- Releasing the data may cause competitive disadvantage to providers and increases in amounts paid by the ICB
- Releasing the data would require the consent of all providers

To summarise, making the DPIAs publicly available could have commercial consequences for any forthcoming bids moving forward.

After consideration of the above factors, we believe, on balance, the public interest lies in maintaining the exemption.

6. Equality Impact & Patient Consultation

- Please find an Equality Impact Assessment (EIA) conducted in relation to the outsourcing of CHC attached.
- No the ICB has not consulted patient groups, advocacy organisations, or families regarding the outsourcing of CHC assessments.

In accordance with the Information Commissioner's directive on the disclosure of information under the Freedom of Information Act 2000 your request will form part of our disclosure log. Therefore, a version of our response which will protect your anonymity will be posted on the NHS ICB website <https://northeastnorthcumbria.nhs.uk/>.

If you have any queries or wish to discuss the information supplied, please do not hesitate to contact me on the above telephone number or at the above address.

If you are unhappy with the service you have received in relation to your request and wish to request a review of our decision, you should write to the Senior Governance Manager using the contact details at the top of this letter quoting the appropriate reference number.

If you are not content with the outcome your review, you do have the right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act 2000. Generally, the Information Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by the North of England Commissioning Support Unit.

The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

www.ico.org.uk

Any information we provide following your request under the Freedom of Information Act will not confer an automatic right for you to re-use that information, for example to publish it. If you wish to re-use the information that we provide and you do not specify this in your initial application for information then you must make a further request for its re-use as per the Re-Use of Public Sector Information Regulations 2015 www.legislation.gov.uk . This will not affect your initial information request.

Yours sincerely

S Davies

S Davies
Information Governance Officer