# Joint commissioning bulletin
## Identifying the responsible CCG commissioner to support local delivery of the SEND reforms

## 1. Introduction
### 1.1 Introduction to the Joint Commissioning Bulletin

The Council for Disabled Children regularly receives questions from SEND Regional Leads and delegates from the regional SEND workshops on a whole series of issues relating to the SEND reforms and joint commissioning. The joint commissioning bulletins are designed to share the learning from those discussions to a broader audience.

## 2. Identifying the responsible CCG commissioner
### 2.1 Using the *Who Pays? Determining Payments for Providers* guidance[1] to support local governance arrangements relating to the assessment, planning and review of Education Health and Care plans

The Children and Families Act 2014 places legal duties upon Clinical Commissioning Groups (CCGs) and NHS England in relation to the commissioning and provision of health services for children, young people and young adults with special educational needs and disabilities who are eligible for an Education Health and Care plan. It is essential for the local authority responsible for overseeing the assessment and planning process leading to the creation of an Education Health and Care plan to know who is the responsible CCG (with which it should have joint arrangements, and who has ultimately responsibility for section G (Health provision) of the Education Health and Care plan), even if the work on assessment and planning is undertaken by health providers. It is equally important for providers who are required to deliver the health provision specified in section G of the Education Health and Care plan to be fully involved in the process, and to have practical links in relation to EHC plans, to the CCG responsible.

Unfortunately, it is not always as straight forward as it seems to identify who the responsible CCG is. This Joint Commissioning Bulletin aims to provide practical examples based on NHS England's *Who Pays? Determining Payments for Providers* guidance, to help local authorities and NHS providers get the clarity that they need and to reduce the risk of disputes between commissioners. It may also be helpful to inform any review of local governance processes linked to addressing cross border issues.

1 The Who Pays? Guidance is currently being updated. This bulletin will be updated to reflect any changes as soon as the new guidance is available.

NEL Commissioning Support Unit

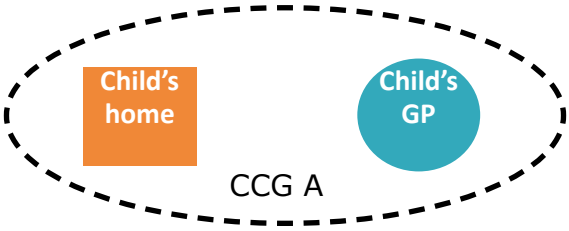
Council for disabled children

NHS England, (August 2013) *Who Pays? Determining Payments for providers* https://www.england.nhs.uk/wp-content/uploads/2014/05/who-pays.pdf

## 2.2 Scenarios to support local authorities identify the responsible CCG commissioner

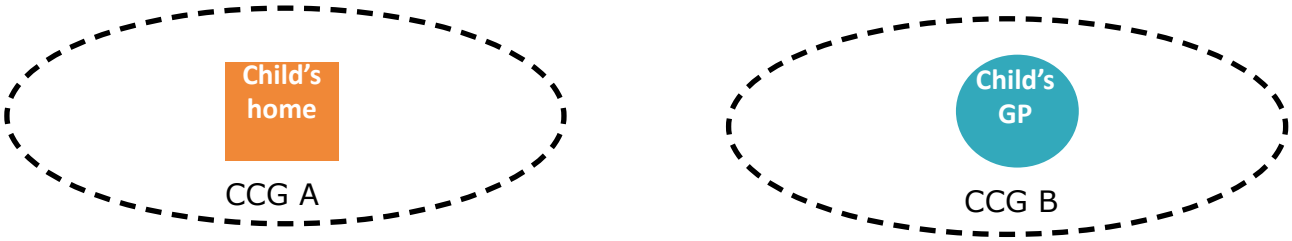
*Who Pays? Determining Payments for Providers* guidance identifies a series of scenarios that will be helpful for local authorities to consider when identifying the responsible CCG.

### Scenario 1: Responsible Clinical Commissioning Group where a child lives within the geographical boundaries of the CCG and is registered to a GP practice that is a member of same CCG.



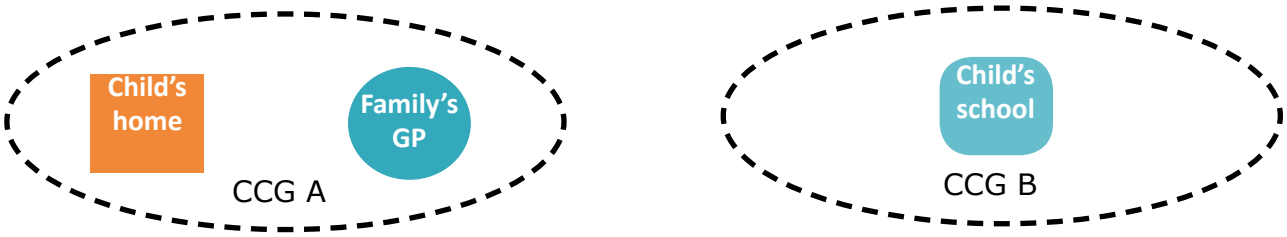

The general rules within *Who Pays? Determining Payments for Providers,* states that if a child is registered to a GP Practice, then the responsible CCG is the CCG of which that GP practice is a member. So in this scenario **the responsible CCG is CCG A**. However, some children may not be registered with any GP practice during the assessment and planning process that leads to an Education Health and Care Plan being created. In this case, the general rules within *Who Pays? Determining Payments for Providers* states that the **responsible CCG will still be CCG A** because the child lives within the geographical boundaries of CCG A.

### Scenario 2: Responsible Clinical Commissioning Group where the child lives in CCG A, but is registered to a GP Practice in CCG B.



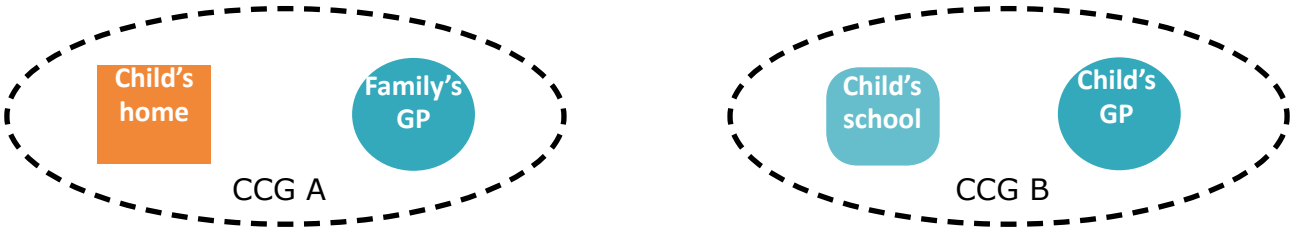

In this scenario, the general principle discussed in scenario 1 applies. The **responsible CCG that the local authority will need to liaise with is CCG B** since the child is registered to a GP Practice that is a member of CCG B. In practice, there should be relatively few examples of people living outside of the CCG where their GP practice is located, as residence inside a practice boundary is a convention of registration.

**Scenario 3: Responsible Clinical Commissioning Group where a child travels to a special school in a neighbouring CCG on a daily basis.**




In this scenario where a child who is registered to a GP practice that is a member of CCG A and has a special school named in Section I of their Education Health and Care plan that is located in a neighbouring CCG area (CCG B), **the responsible CCG would be CCG A**, since the general rule continues to apply. Therefore, the local authority would need to continue to liaise with CCG A, concerning the governance processes around the assessment, planning, sign-off and review of the Education Health and Care plan. CCG A continues to have the responsibility for paying for any health provision that the CCG has a responsibility for commissioning[2]. In this scenario the NHS providers operating in CCG B will be required to invoice CCG A for the cost of the health provision required to meet the child's assessed needs.

**Scenario 4: Responsible Clinical Commissioning Group where a child is placed in a residential special school located in another CCG area and a decision has been made to register the child with the GP practice nearest to the residential special school**



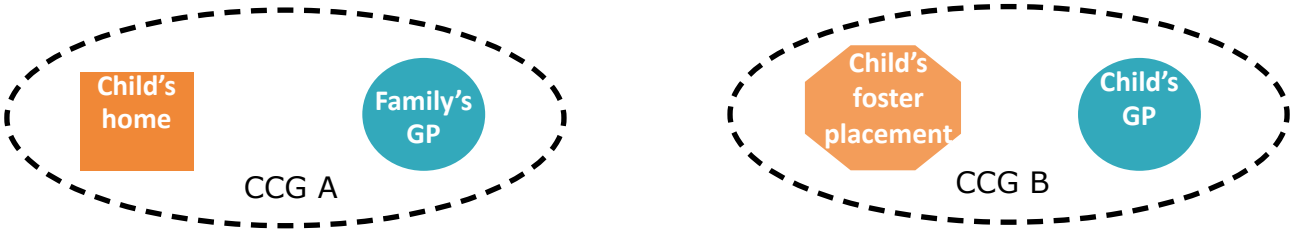

This scenario highlights one of the exceptions to the general rules identified in paragraphs 73 – 74 of the guidance. A child living in CCG A has had a residential special school named in Section I of their Education Health and Care plan. The residential special school is located in CCG B. To support the day to day management of the child's health needs a decision has been made to register the child with a GP Practice that is a member of CCG B and is close to the residential special school. In this scenario, even though the child is now registered to a GP practice that is a member of CCG B, **the responsible CCG that the local authority will have to liaise with around the child's Education Health and Care plan remains the "originating CCG", or CCG A**. Therefore, CCG A retains the responsibility for participating in the governance arrangements linked to establishment and review of the child's EHC plan, reviewing the quality of the placement and paying for any health provision that the CCG has a responsibility for commissioning[2]. In this scenario the NHS providers operating in CCG B will be required to invoice CCG A for the cost of the health provision required to meet the child's assessed needs. It is good practice for CCG A to notify CCG B that they have placed a child in their area.

The NHS providers who are based in CCG B will also be required to liaise with the

NHS providers located in CCG A to promote continuity of care during school holidays – should this be required.

2 Please see Appendix 1 for a list of the health services that CCGs are responsible for commissioning.

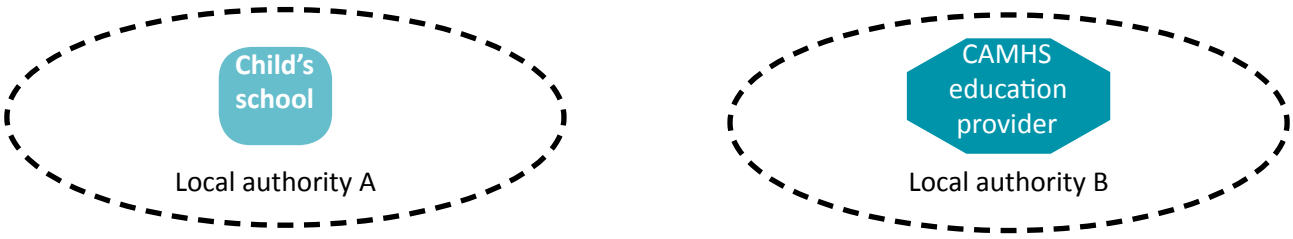
**Scenario 5: Responsible Clinical Commissioning Group where a Looked After Child is placed in a foster placement in another CCG area and is now registered at the same GP practice as the foster carers.**




This scenario describes another exception to the general rules identified in paragraphs 71-72 of the guidance. Similar to scenario 3, even though the child is now placed with foster carers who are living in CCG B and have registered the child at their local GP Practice, **the responsible CCG remains CCG A**. CCG A would be required to continue to participate in any governance arrangements linked to the establishment and review of the EHC plan, the child's Looked After status and pay for any health provision that it had a responsibility for commissioning. In this scenario the CCG also has a responsibility to ensure a smooth transfer of care from the NHS providers operating in CCG A to those who are operating in CCG B. The local authority has a responsibility for notifying CCG B that it intends to place a Looked After Child in its area. If the child is placed outside the geographical boundaries of the local authority, then CCG A will need support from the local authority's SEND department and the child's social worker to establish links with the new local authority where the foster carer lives to ensure it is able to continue to fulfil its statutory responsibilities in relation to the provision of healthcare identified in section G of the Looked After Child's Education Health and Care plan.

If the child is adopted and moves out of the area of CCG A on a permanent basis then CCG A will stop being the responsible CCG once the adoption has been completed. Also, if a care leaver chooses to continue to live in CCG B after leaving care then the responsible CCG for commissioning adult health services would be CCG B since the general rules on who the responsible CCG is would apply.

**Scenario 6: Responsible commissioner for education provision where a child is in a specialist health placements**




In this scenario a child is placed in a CAHMS inpatient setting and receives education from an independent provider in Local Authority B.

Under the 1996 Education Act local authorities have a responsibility to arrange education for children who are unable to attend a mainstream or special school because of their health. When a child is in a hospital setting following a referral from a

medical practitioner education may be provided by a range of providers, including the following schools:

- Local authority maintained schools and pupil referral units funded on the same basis as equivalent maintained schools, with Local Authority B receiving funding from the Education Funding Agency.
- Alternative provision academies and special academies funded directly by the Education Funding Agency.

However, when education is provided in a health setting by an independent provider (as is the case in many Tier 4 CAMHS settings) Local Authority A is the responsible commissioner of educational services.

The Department for Education has set out requirements, endorsed by the Department of Health for local authorities, NHS Trusts and education providers when securing this provision.

The guidance specifies that there needs to be agreement between the responsible local authority and the education provider regarding the provision to be delivered and the NHS Trust should advise the education provider not to assume that the costs of education provision will be met by the relevant local authority unless prior contact with the authority has confirmed that the authority has agreed to commission the education, and has agreed to fund the costs.

Ensuring a good education for children who cannot attend school because of health needs Statutory guidance for local authorities

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269469/health_needs_guidance__-_revised_may_2013_final.pdf

High needs funding: operational guide 2017 to 2018

https://www.gov.uk/government/publications/high-needs-funding-arrangements-2017-to-2018/high-needs-funding-operational-guide-2017-to-2018

Hospital education: a guide for health services

https://www.gov.uk/government/publications/hospi-

## Resolving disputes

The joint arrangements which must be made between the local authority (LA) and the CCG should cover how they would reach agreement on issues of commissioning responsibility, identifying the appropriate panel or group which would consider disputed issues for example, and how disagreements can be resolved. Where there is a potential overlap between CCG and LA commissioning, there should be a mechanism between the relevant LA and the responsible CCG for resolving disputes, and agreeing a multi-agency commissioned package. This should include determining responsibility for any nursing or other clinical support for a child or young person in a mainstream school or college.

A way forward could be identified by looking at the best practice of peers – asking other LAs or CCGs how they have resolved such issues, or formally seeking the judgement of peers, or the Health and Wellbeing Board. Arrangements could include a set of principles to which partners will adhere in resolving disputes (for example, setting escalation procedures to the relevant executives). Over time, a LA and CCG will identify working precedents which will help to obviate most disagreements (such as bipartite or other shared funding arrangements for particular types of cases).

The CCG must have arrangements in place for considering any requests for services for an EHC plan which are not met by universal or specialist provision. Where such requests are under consideration, the CCG must keep the family and LA informed, and ensure an appropriate case is developed for the panel, involving the child or young person and their family as necessary. Similarly, decisions should be communicated to the relevant LA. The framework for children and young people's continuing care provides advice on a process for considering individual funding requests which could be used for requests within the context of an EHC process.

https://www.gov.uk/government/publications/children-and-young-peoples-continuing-care-national-framework

# Appendix 1

| Table 1 to show the responsible commissioner for health services | |
|---|---|
| **Responsible commissioner** | **Health services** |
| NHS Clinical Commissioning Groups | Child health (Community paediatricians)<br>Community children's nursing services<br>Continence services (Tier 2)<br>Early support key working (this may be jointly commissioned).<br>Physiotherapy<br>Clinical psychology<br>Audiology<br>Dietetics<br>Wheelchair service<br>Looked after children health teams<br>Unaccompanied asylum seekers service<br>Safeguarding liaison service<br>Local hospital services<br>Specialist tertiary hospitals e.g. Great Ormond Street where the child stays in hospital for over 70 days.<br>Specialist treatment services e.g. to treat stammering.<br>Specialist health placements<br>Specialist health equipment e.g. ventilators.<br>Personal health budgets or health direct payments<br>IAPT (Improving access to psychological therapies) services.<br>Adult mental health service<br>Speech and language therapy (adults)<br>NHS continuing care for children and young people and continuing healthcare for adults over 18. |

1 NB There may be local variation across the country around the services listed in this box.

2 See the Bulletin on identifying the responsible commissioner for the core functions of a speech and language therapist, occupational therapist and physiotherapist for a fuller explanation.

## About the Council for Disabled Children

The Council for Disabled Children (CDC) is the umbrella body for the disabled children's sector in England, with links to the other UK nations. CDC works to influence national policy that impacts upon disabled children and children with Special Educational Needs (SEN) and their families. The CDC Council is made up of a variety of professional, voluntary and statutory organisations, including disabled young people and parent representatives. CDC's broad based membership and extensive networks of contacts provide a unique overview of current issues. It also enables us to promote collaborative and partnership working among organisations.

CDC hosts the following networks and projects:

- IASS Network
- Independent Support
- Making Ourselves Heard
- Special Educational Consortium

## About NEL Healthcare Consulting

NEL Healthcare Consulting is a consultancy by and for the NHS. As committed NHS professionals, we understand our clients' needs well and we share your mission of improving patient wellbeing, increasing access to safe and effective care, and demonstrating value for money.

Our clients range from CCGs, local authorities and STPs to NHS England, specialised commissioners, voluntary sector organisations, mental health trusts and providers. Our consultants are experts in delivering, supporting and advising complex programmes with different partners and stakeholders across multiple organisations.

Our consultants' expertise includes strategic service review and service reconfiguration planning and delivery, option appraisal, business case development, activity and capacity modelling, impact assessment, management of independent review panel processes and implementation planning and delivery.

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