HFMA briefing
February 2022

Provisions and accruals

The impact of the *Health and Care Bill* on CCGs

Introduction

The *Health and Care Bill* is currently working its way through Parliament. When it receives Royal Assent, and becomes law, it will abolish clinical care groups (CCGs) and establish integrated care boards (ICBs).

As the 2021/22 accounts are prepared, CCGs will need to consider whether there are any liabilities arising from decisions made ahead of the change in status that will meet the criteria for an accrual or a provision.

Accounting for provisions

Definitions

IAS 37 *Provisions, contingent liabilities and contingent assets*[1] includes various definitions that, combined, define a provision. The standard also provides guidance on the difference between a provision and an accrual.

A liability arises when something that has happened in the **past** results in an obligation that will be **settled in the future** by the **outflow of resources** embodying economic benefits. Usually, provisions are settled in the form of cash. Technically the obligation could be settled by other means, but a cash payment is usually made.

There are three types of liability defined in the standard:

- trade payables – liabilities to pay for goods or services that have been received or supplied and have been invoiced or formally agreed with the supplier
- accruals – liabilities to pay for goods and services that have been received or supplied but have not been paid, invoiced or formally agreed
- provisions – liabilities of uncertain timing or amount.

Provisions are reported separately but trade payables and accruals are usually reported together.

All types of liability can be current, expected to be settled within a year, or non-current that will be settled in more than a year. However, trade payables tend to be current unless the terms of the agreement suggest otherwise while provisions tend to be non-current due to the levels of uncertainty. Some provisions will be settled more quickly than others, for example, redundancy provisions are likely to be current while provisions relating to legal claims are more likely to be non-current.

Contingent liabilities are not recognised in the accounts because their existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity. Where there are material contingent liabilities, a narrative disclosure note is included in the accounts.

It is important that preparers of financial statements understand the differences between accruals, provisions, and contingent liabilities. Appropriate classification needs to be considered at the time it occurs and then reviewed regularly after that as circumstances change.

Provisions vs accruals

From an accounting perspective, the difference between a provision and accrual is largely down to levels of uncertainty. For most NHS bodies, the decision whether a liability is a provision, or an accrual does not make any difference to the bottom line and is largely presentational.

However, for the NHS Commissioning Board[2] and the Department of Health and Social Care (DHSC), the difference between a provision and an accrual makes a difference to their position against their financial targets.

[1] Access to the unaccompanied accounting standards for the current year is available for free from *IFRS Standards Navigator* – registration is required.

[2] Known as NHS England or NHS England and NHS Improvement. The NHS Commissioning Board is the statutory body

It should be noted that this is a key issue, and it is vital that the correct classification is used to ensure that the overall financial position is correctly reported. Local and national auditors have increasingly identified instances where provisions have been incorrectly classified as accruals. Misclassification could result in audit adjustments or, if adjustments are not made, qualification of the accounts.

The NHS Commissioning Board and the DHSC are monitored against mandated expenditure limits with provisions and accruals having an impact on two revenue limits:

- revenue departmental expenditure limits (RDEL) – this is expenditure that is considered to be under management's control. The vast majority of the NHS's revenue spend is DEL. This is the target that both organisations' performance is judged against and in the past few years it has been met by very narrow margins
- annually managed expenditure (AME) – this is expenditure that is outside of management's control. Impairments such as those that are the result of changes in market values and the establishment of provisions are scored against AME.

Accruals impact against RDEL when they are established. However, provisions do not hit RDEL until the cash is paid and the liability is discharged. The establishment of a provision impacts AME. Eventually, all provisions and accruals will be a charge to RDEL and the difference between the two is a matter of timing. The financial position of the DHSC group means that auditors take an interest in the classification of accruals and provisions as correction of a misstatement could result in an overspend against RDEL.

As the RDEL impact occurs when the provision is paid out, NHS England and NHS Improvement, and the DHSC use information around the expected timing of cashflows to manage their future financial position. This part of the note to the accounts therefore needs to be as accurate as possible.

CCG provisions

Continuing care

The most common provision in CCG accounts is for continuing healthcare (CHC). These provisions arise when an individual has both health and social care needs but has been assessed as having a primary health need under the *National framework for NHS continuing healthcare and NHS-funded nursing care*[3]. When this assessment is made, the NHS has responsibility for providing for all of that individual's assessed needs, both health and social care.

The assessment of a primary health need will usually take place sometime after the individual starts to receive care in a social care setting or at home. The assessment will determine the point at which the primary health need started. A provision is therefore required to reimburse patients and their families for care costs incurred since that date.

The past event is the person having primary health needs and the liability is settled by the reimbursement of costs that should have been incurred by the CCG but were, instead, funded by the patient or their family.

All liabilities incurred by CCGs will be transferred to ICBs on the date of transition (currently expected to be 1 July 2022), it is important that all of the CHC case assessments are as up to date as possible and that all cases are considered to determine whether a provision should be established.

For CHC previously unassessed periods of care (PUPoC) cases, the responsibility for settlement of claims will transfer to ICBs from CCGs and the requirement to submit the provision detail and settlement information to NHS England will continue in line with the current process for CCGs.

Redundancy provisions

Redundancy provisions are accounted for in accordance with IAS 19 *Employee benefits* rather than IAS 37. Paragraph 165 of IAS 19 states:

[3] HFMA, *How it works: NHS continuing healthcare*, May 2019

‘An entity shall recognise a liability and expense for termination benefits at the earlier of the following dates:

(a) when the entity can no longer withdraw the offer of those benefits; and

(b) when the entity recognises costs for a restructuring that is within the scope of IAS 37 and involves the payment of termination benefits.’

Paragraph 14 of IAS 37 *Provisions, contingent liabilities and contingent assets* states:

‘A provision shall be recognised when:

(a) an entity has a present obligation (legal or constructive) as a result of a past event

(b) it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation and

(c) a reliable estimate can be made of the amount of the obligation.

If these conditions are not met, no provision shall be recognised.’

And paragraph 72 of IAS 37 provides specific guidance in relation to restructuring:

‘A constructive obligation to restructure arises only when an entity:

(a) has a detailed formal plan for the restructuring identifying at least

i. the business or part of a business concerned

ii. the principal locations affected

iii. the location, function, and approximate number of employees who will be compensated for terminating their services

iv. the expenditures that will be undertaken and

v. when the plan will be implemented and

(b) has raised a valid expectation in those affected that it will carry out the restructuring by starting to implement that plan or announcing its main features to those affected by it.’

Paragraphs 159-171 and BC254-BC261 of IAS 19 deal specifically with termination benefits. In summary, redundancy provisions should be recognised when the entity can no longer withdraw from the termination agreement. This will be when either the employee has accepted the offer of a termination payment or when the termination plan has been communicated to affected employees. It is not enough for the board to make a decision. That decision needs to be communicated in such a way that the staff affected have a valid expectation that there will be redundancies. The specific individuals do not necessarily need to have been identified but the group of staff affected will need to have been identified.

The *Guidance on the employment commitment*[4] issued in June 2021 indicates that staff below board level will effectively ‘lift and shift’ into the new bodies. However, board level staff are likely to be affected by change following the confirmation of the ICB board-level structure.

CCGs should therefore consider whether redundancy provisions should be recognised for board level staff at 31 March 2022. The deferral of the transition date to 1 July 2022 may have an impact on this assessment if the consultation process has been paused but it will depend on the circumstances for each organisation involved. As explained above, a provision will be required where there is still uncertainty as to the timing or amount of the liability. The level of certainty should be considered to determine the type of liability – it could be that an accrual is required where agreement has been reached.

[4] NHS, *Guidance on the employment commitment*, June 2021 (note: this document is on the FutureNHS site so needs a login to access)

The assessment should be documented with reference to the accounting standards, the relevant NHS guidance and the internal discussions and communications that have been held with staff.

While it is unlikely that other staff will be affected, CCGs should also document their thinking in relation to provisions for the redundancy of staff other than board members.

All exit payments need to be disclosed in the exit packages note to the accounts in the year that the package is agreed, not paid[5]. Some payments will also need to be disclosed in the losses and special payments note.

Special payments

When redundancy arrangements are being discussed, all NHS bodies need to ensure that they comply with the requirements of HM Treasury's *Managing public money*[6]*.* Special severance payments are paid outside of normal statutory or contractual requirements[7] and are therefore exceptional and could have wider repercussions.

The HM Treasury guidance on public sector exit payments states that the following are not special severance payments:

- statutory redundancy payments
- contractual redundancy payments, whether applicable to voluntary or compulsory redundancy, and whether agreed by collective agreement or otherwise
- payment for untaken annual leave
- payments ordered by a court or tribunal.

However, where there is any doubt about whether an exit payment is a special payment, approval should be sought.

All special payments that are above £95,000 and/ or are considered novel, contentious or could cause repercussions elsewhere in the public sector need to be submitted to HM Treasury for approval[8]. Special severance payments are always considered novel, contentious or repercussive so HM Treasury will be required.

Approval must be sought BEFORE any offers, oral or in writing are made. It is best practice to seek approval as early in the process as possible – as soon as an additional payment is considered and before it is discussed with the individual involved.

The regularity opinion for the NHS Commissioning Board annual report and accounts 2020/21[9] was qualified because a special payment of £36,809 made to an outgoing accountable officer was not approved in advance by HM Treasury. Two other similar payments were disclosed in the losses and special payments note to the accounts.

Onerous contracts

It may be that other liabilities arise as a result of the abolition of CCGs and the establishment of ICBs. In particular, CCGs should consider whether they have any onerous contracts. Paragraph 10 of IAS 37 defines an onerous contract as:

> 'a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it.'

For example, contracts for office accommodation may be terminated as several organisations become a single ICB and staff move to a single site or work from home on a permanent basis. Termination clauses in contracts may result in a liability or it may be that the contract cannot be terminated leaving a liability for office space that will not be used and will therefore have no economic benefits.

[5] DHSC, *DHSC group accounting manual 2021/22*, January 2022
[6] HM Treasury, *Managing public money (paragraphs A4.13.9 to A4.13.15),* June 2021
[7] HM Treasury, *Public sector exit payments: guidance on special severance payments*, June 2021
[8] NHS, *Financial accounting and reporting updates - special payments*, 22 April 2021
[9] NHS, *NHS Commissioning Board annual report and accounts 2020/21*, January 2022

Contracts for healthcare tend to be renewed annually and would therefore not result in a liability but all contracts that extend over the transition date should be identified and whether they could be onerous should be considered.

Other provisions

Some CCGs may have other provisions for legal cases or other liabilities in their accounts. These will need to be reviewed to ensure that the liability will transfer to the ICB on establishment. As these provisions are rare, it will be particularly important that documentation and evidence relating to establishment of the provisions is kept and transferred to the new organisation[10] so that they can be appropriately written down when the liability is discharged.

[10] HFMA, *CCG closedown: maintaining corporate memory*, February 2022

About the HFMA

The Healthcare Financial Management Association (HFMA) is the professional body for finance staff in healthcare. For over 70 years, it has provided independent and objective advice to its members and the wider healthcare community. It is a charitable organisation that promotes best practice and innovation in financial management and governance across the UK health economy through its local and national networks.

The association also analyses and responds to national policy and aims to exert influence in shaping the wider healthcare agenda. It has particular interest in promoting the highest professional standards in financial management and governance and is keen to work with other organisations to promote approaches that really are 'fit for purpose' and effective.

The HFMA offers a range of qualifications in healthcare business and finance at undergraduate and postgraduate level and can provide a route to an MBA in healthcare finance. The qualifications are delivered through HFMA's Academy which was launched in 2017 and has already established strong learner and alumni networks.

HFMA

HFMA House, 4 Broad Plain, Bristol, BS2 0JP

T 0117 929 4789

E info@hfma.org.uk

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HFMA is also a limited company registered in England and Wales, no 5787972. Registered office: 110 Rochester Row, Victoria, London SW1P 1JP

www.hfma.org.uk