NHS England

NHS Standard Contract for 2015/16

Discussion paper for stakeholders

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Description	In preparation for the 2015/16 update of the NHS Standard Contract, we wish to engage with stakeholders to assess how we can continue to improve the Contract. This paper sets out some key issues on which we would particularly welcome feedback. Comments are invited, by Friday 12 September 2014, to england.contractsengagement@nhs.net
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NHS Standard Contract 2015/16

Discussion paper for stakeholders

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Contents

1 Introduction

The NHS Standard Contract is mandated by NHS England for use by NHS commissioners to contract for all healthcare services other than primary care. The current (2014/15) version of the Contract was published in December 2013, and NHS England is now starting work on updating the Contract for 2015/16, for publication later in the year.

In preparation for this update, we wish to engage with all those with an interest in the NHS Standard Contract to assess how we can continue to improve the Contract. This paper sets out key issues on which we would particularly welcome feedback from stakeholders.

In developing the Contract for 2014/15, we deliberately left untouched most of the practical processes for managing the contract because these had only recently been re-drafted and needed time to bed in. You will see below that we are now particularly seeking your views on how well these processes work – but we will be glad to receive suggestions for improvement in other areas as well.

Please send your comments by Friday 12 September 2014 to: england.contractsengagement@nhs.net.

If possible, please use the response document provided (available at http://www.england.nhs.uk/wp-content/uploads/2014/08/sc-resp.docx).

2 Engagement on pricing, incentives and contracting

This specific process of engagement on the NHS Standard Contract is part of a wider process of engagement and consultation for 2015/16, co-ordinated across NHS England and Monitor, in relation to

- pricing and currencies for NHS healthcare services; and
- the financial incentives for commissioners and providers which are created by the NHS business rules
- models for commissioning and contracting.

The table below sets out the different elements of this engagement process, describing what we expect to publish when.

Because there are separate engagement processes planned in respect of pricing, currencies and financial incentives, this paper does not raise questions about these topics – instead, it concentrates on slightly narrower (but nonetheless important) issues about how the NHS Standard Contract works as a tool for commissioners and providers.

The five year forward view will provide the wider context and future direction for the NHS, including the development of new models of care.

	July - September	October	December
Pricing	Tariff Engagement Document for 2015/16	Statutory consultation on the National Tariff Document for 2015/16	Final National Tariff Document for 2015/16 (subject to outcome of consultation)
Incentives	Engagement on options for incentives and sanctions for 2015/16		National package of incentives and sanctions for 2015/16
Commissioning models and contracting	Discussion document for stakeholders on the development of the NHS Standard Contract for 2015/16 Discussion document for stakeholders on the development of NHS Five Year Forward View	Initial draft of the NHS Standard Contract for 2015/16 available for comment	Final NHS Standard Contract for 2015 and associated technical guidance and resources

3 Key issues on which we would welcome feedback

3.1 Key issue 1 The Contract as a commissioning lever

2015/16 will be a challenging year for the NHS, with demanding requirements for service performance and transformation in a tight financial climate. In this context, we would welcome stakeholders' views on whether we should be looking for ways to make the Contract a significantly stronger lever through which commissioners can achieve national and local goals for service improvement and financial affordability.

Question 1

To what extent should the NHS Standard Contract be used to support longer term strategic changes in local health systems? Would you propose any specific changes to the NHS Standard Contract to strengthen the ability of commissioners to use it to support the longer term strategic direction in local health systems?

3.2 Key issue 2 Changes made to the Contract for 2014/15

We made some significant changes to the Contract for 2014/15. We fundamentally revised the way in which financial sanctions were calculated for failing to meet Quality Requirements including Never Events, for instance, and introduced new requirements for providers to review and report on staffing levels. (Changes made to the Contract for 2014/15 are summarised in Appendix 1 of our Contract Technical Guidance, available at http://www.england.nhs.uk/wp-content/uploads/2014/04/tech-guid-march14.pdf.)

Question 2

How are the changes we made for 2014/15 working in practice? Have they delivered benefits? Have they caused any problems in practical implementation?

3.3 Key issue 3 Mandated use of the NHS Standard Contract

Specific Parliamentary regulation (Regulation 17 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012)) enables NHS England to mandate the terms of commissioning contracts which CCGs must then use, and our Contract Technical Guidance makes clear that the Standard Contract must be used for all commissioning contracts other than primary care. CCGs are under a statutory duty to comply with that mandate. We would like to test whether this requirement is now well understood and is being operated in practice, or whether commissioners are continuing to use their own locally designed contracts.

Question 3

Are commissioners now routinely using the NHS Standard Contract for all their commissioned healthcare services other than primary care? If not, for which services are locally-designed contracts still being used? Are there specific problems with the format or content of the Standard Contract which are causing this?

3.4 Key issue 4 Tailoring the contract for different service types

We made a number of changes to the Contract for 2014/15 to increase the extent to which the content of the Service Conditions and the Particulars could be tailored locally to fit particular service categories. We also made specific changes to reduce the contractual burden on small providers. The idea behind this approach was that, used with the eContract system, the changes we had made would result in shorter, more relevant contracts.

We are keen to do more in this area for 2015/16, so we would welcome feedback on specific provisions in the Contract which are not, as they currently stand, appropriate for particular types of service and where we should therefore introduce greater tailoring, either to provide alternate versions for different service types or to delete them altogether for particular service types.

Question 4

Are there conditions within the Contract which are inappropriate or redundant for particular service types? Where would alternate provisions be appropriate, and where would the omission of particular provisions be appropriate, because they do not add value?

3.5 Key issue 5 NHS England as direct commissioner

NHS England publishes the NHS Standard Contract as a tool for all commissioners to use – but, through its Area Teams, it also uses the Contract itself to commission specialised and other secondary care services. NHS England as direct commissioner may have 'national requirements' which are currently not mandated through the nationally-set terms of the NHS Standard Contract because they would not be requirements for CCG-commissioned services.

We are therefore considering whether we should include particular direct commissioning requirements (on information flows, for example) as nationally-mandated elements of the Contract for 2015/16. We would welcome views on whether to do this – and, if so, what we should include and how best to do it.

Question 5

Would it be clearer if certain national requirements of NHS England as direct commissioner of services were built into the nationally-mandated text of the NHS Standard Contract (but perhaps to be included or excluded by appropriate selection of option via the eContract system)?

3.6 Key issue 6 Grant agreements

In our Contract Technical Guidance for 2014/15 (http://www.england.nhs.uk/wp-content/uploads/2014/04/tech-guid-march14.pdf), we reminded commissioners that, when part-funding a service provided by a voluntary sector provider, they are able to use grant agreements as an alternative to using the NHS Standard Contract. This can reduce the administrative burden on voluntary organisations. We have had some feedback that provision of a model grant agreement would be useful – we would welcome views on this, as well as any examples of effective grant agreements that commissioners are prepared to share with us.

Question 6

Would commissioners welcome publication by NHS England of a model grant agreement template? Do you have a form of grant agreement which you have used successfully with voluntary sector providers which you would be happy to share with us?

3.7 Key issue 7 Contract management (General Condition 9) and financial sanctions

General Condition 9 sets out a detailed contract management process through which commissioners can raise questions about provider performance, seek remedial action and potentially withhold funding. We are keen to know whether commissioners are able to use this process effectively to ensure provision of high-quality services.

In particular, we would welcome feedback on whether the changes we have made to the regime of financial sanctions for 2013/14 have produced a more workable system and whether sanctions are now pitched at the right level to provide effective levers to improve performance – or whether, in fact, we should place greater emphasis in the Contract on non-financial levers.

Question 7

Do commissioners use the Contract Management provisions in practice? Do these work effectively? Do the potential financial sanctions in the Contract Management process act as an effective incentive for providers to remedy poor performance? Are sanctions pitched at an appropriate level? Is there a need for further non-financial levers, aligning commissioner powers under the Contract with action by regulators?

3.8 Key issue 8 Never Events

In contractual terms, the key question on Never Events is around the application of financial sanctions. Wherever a Never Event occurs, the Standard Contract currently allows the commissioner to recover the cost of the relevant procedure / episode (or a reasonable proxy for this), together with the costs of any corrective procedure or necessary care arising from the Never Event. We are particularly interested in stakeholders' views on whether, in practice, these financial sanctions act as an obstacle to open and transparent reporting of Never Events and whether we should adjust the contractual wording for 2015/16, so that it aims to dis-incentivise failure to report Never Events, rather than applying a financial sanction for each individual Never Event which takes place.

Question 8

Would you support changing the focus of Never Event sanctions for 2015/16, to focus on dis-incentivising failure by providers to report Never Events?

3.9 Key issue 9 Sub-contracting (General Condition 12)

For the 2014/15 Contract, we made some changes to the provisions on sub-contracting (General Condition 12), but also provided more information about this in our Technical Guidance and at our contract training workshops. Generally, our approach has been to emphasise that commissioners do have a legitimate right to approve proposed sub-contracts and their terms.

However, we have received many queries about sub-contracting, suggesting that, in practice, commissioners and providers are uncertain about the definitions in the Contract (Mandatory Material Sub-contract and Permitted Material Sub-Contract) and about what constitutes a realistic and proportionate approach, in terms of commissioner oversight of provider sub-contracting arrangements.

Question 9

What would constitute a proportionate approach to commissioners having oversight of provider sub-contracting arrangements? Are the expectations in the current Contract on sub-contracting unreasonable or unrealistic – and, if so, why? Should we review and clarify our definitions and guidance on sub-contracting? We have received requests to publish a non-mandatory template for sub-contracts – would this be helpful?

3.10 Key issue 10 Dispute resolution (General Condition 14)

The Contract sets out a process for dispute resolution at General Condition 14. We are interested to understand whether this process is being used in practice and how well it works.

The dispute resolution process set out in the Contract only applies once a contract is actually in place – but serious disagreements also arise during the negotiations to agree a contract. Clearly, in such situations, either commissioner or provider may simply make a decision to 'walk away'. Realistically, though, there are many situations where this is not an option, at least in the short term, and where both parties know that patient services must, on some basis, continue to be provided and paid for. We would welcome feedback on whether the NHS business and contracting rules offer sufficient clarity about the basis on which, in such situations, the parties should reasonably expect to reach agreement – and what happens if they do not.

Question 10

How frequently do commissioners and providers follow the formal dispute resolution process – or are they usually able to resolve in-year differences informally? Is the process of Expert Determination set out in the Contract workable in practice?

Is there sufficient clarity about the basis on which disputes relating to the agreement of a new contract should be handled? Would further national guidance in this area be helpful?

3.11 Key issue 11 Managing activity and referrals (Service Condition 29)

The Contract sets out, at Service Condition 29, quite complex processes for managing activity and referrals. These include agreement of an Indicative Activity Plan, Activity Planning Assumptions, Utilisation or Joint Activity Reviews, and Activity Management Plans. For simpler services, the Contract allows SC29 to be tailored so that only a sub-set of the provisions appear.

The origin of these provisions was in the old acute services contract, and we are keen to understand how relevant they are, in practice, for other services. We would also welcome feedback on whether the provisions are strong enough in the requirements they place on providers, given that there are no automatic financial sanctions associated with non-compliance.

Question 11

Do commissioners use the activity management provisions in SC29 in practice? Are there some service types for which the provisions are simply not relevant at all? Do the provisions strike the right balance between commissioner and provider responsibilities and create strong enough incentives for each?

3.12 Key issue 12 Information flows, payment and financial reconciliation

The Contract sets out processes under which providers supply data to commissioners about activity and costs under the contract and submit invoices and reconciliation accounts; commissioners validate the data and accounts they receive and make payment, although they may of course contest aspects they disagree with. The detail is set out in Service Conditions 28 (Information Requirements) and 36 (Payment Terms), but there is cross-reference to the National Tariff document and to the monthly SUS reconciliation timescale published by the Health and Social Care Information Centre.

We are keen to ensure that these arrangements, which are necessarily complex, work satisfactorily in practice for both commissioners and providers and that the Contract ensure that commissioners are provided with all the information they need to assure the accuracy of any payments they are asked to make.

Question 12

Are any specific aspects of information, payment and reconciliation processes set out in the contract unclear? Is the overall reporting burden appropriate? Do the nationally-mandated Reporting Requirements in Schedule 6B cover all of the core information which commissioners require for any contract? Is there a case for including a specific requirement in the Contract so that any claim for a provider for payment must be backed by datasets at individual patient level?

3.13 Key issue 13 The electronic contract system

We recognise that there have been continuing difficulties with the timeliness and reliability of the eContract system. In assessing the way forward, we still see that there are potential benefits in the eContract approach.

- The eContract system produces shorter, ‘tailored’ contracts which only include the provisions relevant to the particular services being commissioned.

- The system may, over time, offer opportunities for greater efficiency in contract production – although the low uptake of the system in practice by commissioners suggests that this is not yet the case.

We would welcome feedback, particularly from commissioners, on what our next steps should be with the eContract system.

Question 13

What would encourage you to make greater use of the eContract system? Is the key requirement to have a basic system which works reliably from the start of the contracting round?

3.14 Key issue 14 Staff engagement and equality

The NHS Standard Contract requires providers to respect equality and human rights of staff, service users, carers and the public (GC 5.3.5.). The NHS Equality and Diversity Council (EDC) has proposed, and NHS England supports, consultation on the inclusion in the 2015/16 NHS Standard Contract of a new workforce race equality standard by which providers would be required to demonstrate progress against indicators of workforce race equality. The EDC has also asked NHS England to consult on whether the Equality Delivery System (EDS) which is already used by most providers should now be mandated so as to support continuous improvements in equality against all protected characteristics.

Furthermore, we believe there could be value in extending the current requirement on NHS Trusts and Foundation Trusts to undertake the NHS Staff Survey, so that the same requirement applies to all providers of NHS funded care – and to require the results of these surveys to be analysed with reference to the protected characteristics. The practical aspects of this would require careful consideration, however, and we would welcome views on whether it would be a helpful step.

Question 14

Would you support these proposed additions and amendments to the NHS Standard Contract for 2015/16?

3.15 Key issue 15 Minimising redundancy costs when senior NHS staff are subsequently re-employed

The NHS Standard Contract already contains various provisions relating to employment matters in provider organisations (such as GC5 and GC35). There is legitimate public concern about so-called 'revolving door' re-hiring of senior NHS staff made redundant by one NHS employer and then quickly employed by another. This may be addressed in time through the Small Business, Enterprise and Employment Bill (if enacted), under which it is proposed that HM Treasury may be empowered to make regulations to require employees in some circumstances to repay redundancy pay received. However, we also wish to explore whether a new provision could appropriately be included in the NHS Standard Contract (potentially a financial sanction on the provider) that would prohibit or dis-incentivise this behaviour. We are interested in views on how any proposals might best be designed and how they could be applied to NHS commissioners as well as providers.

Question 15

How could the NHS Standard Contract be used to create appropriate incentives for providers and commissioners, in terms of the re-hiring of senior NHS staff in receipt of redundancy pay from their previous NHS employer?

3.16 Key issue 16 Contract support from NHS England

The NHS Standard Contract team at NHS England offers a range of support to users of the Contract. We provide detailed Contract Technical Guidance, we run training workshops to familiarise commissioners and providers with the updated Contract, and we deal with large numbers of queries from contract users through our mailbox, nhscb.contractshelp@nhs.net. We would welcome your views on whether what we offer is useful and what more we should be doing.

Question 16

How can the NHS Standard Contract team better support commissioners and providers using the Contract at local level? In particular, how useful is our Contract Technical Guidance, and do you have suggestions for additional topics which need to be covered in it?

3.17 Other issues

We are happy to receive suggestions for improvement to any other aspects of the NHS Standard Contract. Please feel free to cover further topics in your response.

4 How to respond

Please send your comments, by Friday 12 September 2014 to:
england.contractsengagement@nhs.net

If possible, please use the response document provided (available at http://www.england.nhs.uk/wp-content/uploads/2014/08/sc-resp.docx).