

May 2015

## PSNC Briefing 026/15: Contracts and Service Level Agreements

Many services provided by community pharmacists are commissioned locally according to the needs of the area. Locally commissioned community pharmacy services can be contracted via a number of different routes and by different commissioners, including local authorities (LAs), NHS England's Regions and Clinical Commissioning Groups (CCGs)<sup>1</sup>.

LAs have responsibility for commissioning a wide range of services, including most public health services and social care services (i.e. stop smoking, weight management, NHS health check etc.).

Regions commission all services in the NHS Community Pharmacy Contractual Framework (CPCF), i.e. Essential, Advanced and Enhanced services. Other commissioners cannot commission these services from community pharmacies. Enhanced services are those pharmaceutical services that are listed in The Pharmaceutical Services (Advanced and Enhanced Services) (England) Directions 2013. Other commissioners may choose to commission some of these Enhanced services from community pharmacies, but they would be classed as locally commissioned services and not Enhanced services.

The services that CCGs commission include planned hospital care, rehabilitative care, urgent and emergency care (including out-of-hours and accident and emergency services), most community health services, maternity services, mental health and learning disability services.

As a result of commissioning, a written document, often incorporating a Service Level Agreement (SLA), will be agreed between the parties.

This Briefing provides basic information on contracts and SLAs including:

- What is an SLA?
- When to use an SLA
- Core elements of a standard SLA
- How a SLA is drawn up

To assist LPCs in discussing SLAs, PSNC has developed generic templates containing the elements which may be considered for inclusion, along with guidance notes. However, PSNC is not authorised or insured to give legal advice, so pharmacy contractors and LPCs may need to seek their own independent legal advice.

It should also be remembered that SLAs would normally be drawn up by the commissioner of the service, and not the provider. The template documents in the appendices may serve the interests of pharmacy contractors, but there can be no guarantee that commissioners will use them. Including them in this briefing therefore is primarily to guide LPCs on the terms that may appear in SLAs, but for some 'simple' services that a commissioner wishes to commission quickly, the documents may provide a useful starting point.

---

<sup>1</sup> CCGs however are required to use the NHS Standard Contract from April 2014.

## What is an SLA

A Service Level Agreement (SLA) is a written agreement between a provider of a service and the commissioner of that service setting out the range and level of services to be provided, the responsibilities and priorities and the fees. It is therefore a document which simply confirms an agreed level of service that is expected to be provided to meet the business needs of the customer.

A SLA is not a contract. The SLA document should be seen as a list of targets, rather than a legal binding agreement. The parties should be aware that the SLA itself does not guarantee that the expected service levels will always be met or that penalties will be imposed if they are not met. A SLA therefore is not an absolute statement; it is a working process to define and balance business requirements with available service resources. The process with SLA is more important than the document; the process must be viewed by the parties involved as an ongoing process towards improved quality, rather than as an absolute and potentially punitive statement.

## When to use it

Service provision and receipt should be governed by an agreement. Where an individual pharmacy contractor agrees to provide services to another organisation, or an LPC agrees to broker the provision of such services, it is sensible for all parties involved to formalise that arrangement through the establishment of an SLA. If the commissioner or the pharmacy contractors want the agreement to be legally binding, then there should be a contract.

Care should be taken if the service being provided is by an individual pharmacist in circumstances that would normally be considered to be employment and should be covered by an employment contract rather than an SLA. For LPCs, as the representative of the pharmacy contractor, not individual pharmacists, their role and remit means that negotiating or brokering SLAs or contracts should be on behalf of contractors, and not the individuals that are employed or engaged by contractors. When a service is to be delivered by a pharmacist (or other person) and is being provided other than on pharmacy contractor premises, the LPC must take care not to negotiate or broker a deal which excludes the pharmacy contractor.

SLAs help to improve and maintain service level performance which assists the business in meeting its strategic aims and objectives. They provide the basis for measuring the efficiency and effectiveness of a service and whether it is cost effective. It also helps to monitor demand for a service and can encourage developments in line with user's needs. SLAs assist the providers of a service in planning the services they required to carry out their work and also clarifies expectations of both the service and the user.

A good reason for using SLAs instead of contractual status is that very often both parties do not know the current level of service provided and are thus in no position to commit themselves to targets that they may have no possibility of achieving with their current resources. In this case, once the SLA process has identified actual service levels and resource requirements, it may then be possible and realistic to develop the SLA into a contract if required.

## Core Elements of a standard SLA

SLAs should be well defined, and although the style and exact content of an SLA will vary from one organisation to another, the core elements are likely to be similar, and include the following:

- **Parties to the agreement** – who the agreement is between;
- **Purpose of the agreement** – what services are to be provided by whom, to whom, and subject to any conditions or specification (which may be included as appendices or schedules);
- **Description of services** – a detailed description of the services should be included (i.e. what each individual service is, where it is to be provided, to whom it is to be provided and when it is required);

- **Performance Standards** – the provider should state the expected standards of performance. The commissioner may decide whether the service levels should be set deliberately low in order to guarantee that the service can be provided at a competitive price;
- **Period of the agreement** – including notice periods for termination, and whether the agreement can be renewed;
- **Financial terms** – fees, method of claiming, and payment terms. It may also be helpful to include the VAT status of the payments.

Other additional elements are often included, depending on the views of the organisations involved and the complexity of the service to be provided. These may include:

- **Management** – parties may need to keep performance of the services under review and therefore provisions dealing with reporting, meetings, information provision and escalation procedures for disputes may be included.
- **Changes to pricing** – pricing may need to vary depending on a number of factors and the SLA may therefore include a pricing review mechanism or provisions dealing with the sharing of cost savings.
- **Detailed specifications** – defining exactly how the service is expected to be provided, what staff qualifications or training are required, recording and other documentation to be used, possible timetables for delivery and periodic performance reviews, respective responsibilities and liabilities of supplier and commissioner, insurance and indemnity arrangements, confidentiality statements, termination conditions, dispute resolution etc. and
- **Services not included** – there may be circumstances where it is necessary, or desirable, to also define those services that are not included within the agreement, particularly if there is any risk of misinterpretation.
- **Change control** – a change of control procedure which sets out a mechanism for agreeing and recording changes to the agreement or to the services to be provided.

## How a SLA is drawn up

Prior to entering into an agreement to commission the supply of goods or services, the commissioner will have determined the likely costs, and whether it exceeds a threshold set by the European Union. This is set every two years by the EU, in Euros, but with conversion factors for GBP. If the contract (over its lifetime) exceeds £100,000 it is likely that the commissioner would need to go through a formal tendering process. The obligations are on the commissioner to satisfy the EU Directives, so LPCs and pharmacy contractors need only to be aware that some contracts will only be entered into after a formal tendering process.

An SLA should not be completed without in depth discussions around the service expectations from both parties, what should happen if levels of service fall below the agreed standard and how disputes should be resolved.

Once agreement has been reached that a service is to be commissioned from a pharmacy, or a number of pharmacies, the commissioning organisation is likely to take the lead in drawing up the content of the SLA. This may follow an organisational style used for all their SLAs, or may be more organic, seeking to capture the elements relevant to the particular situation.

Once the service commissioner has drawn up an initial draft of the SLA, the prospective provider of the service should expect to have the opportunity to make comments on its content, because this is an agreement – i.e. not a unilateral imposition of standard terms. Depending on the complexity, and value of the SLA, pharmacy contractors may wish to seek legal or professional advice on the content before agreeing to the terms.

Ideally, the SLA documentation should be concluded before the pharmacy contractor starts to provide the service. On rare occasions, however, this is not possible and the commencement of the service by agreement of both parties may come first, particularly if the funding to initiate a service is time-limited. But, PSNC has received expressions of concern from pharmacy contractors and LPCs that, where this has happened, disagreements have

occurred about the nature of contracts or service specifications, and many of those concerns are about payment terms – so there is a need to be cautious before beginning to provide a service which has no agreed and signed SLA.

## NHS Standard Contract

Although the NHS standard contract has resulted in a contract that is more appropriate for higher value contracts than the ones usually agreed with NHS community pharmacies, NHS England accepted that some simple contracts and service level agreements formerly agreed between Regions and NHS community pharmacies were inadequate and supports the principle of an NHS standard contract to ensure consistency and appropriateness.

From 1 April 2014 CCGs commissioning community services are required to use the NHS Standard Contract. When the new requirement to use the NHS came into force some CCGs had not had time to change to the new contract and SLAs had been rolled forward temporarily. However, all CCGs commissioning community services has to transfer to the new standard contract as soon as possible.

If you have queries on this PSNC Briefing or you require more information please contact [Maria Georgiou, Regulations Officer](#).