



May 2015

PSNC Briefing 027/15: Contracts and the NHS Standard Contract

Community pharmacists and their teams work at the heart of communities and are trusted professionals in supporting individual, family and community health. Many services provided by community pharmacists are commissioned locally according to the needs of the area. NHS Regions, Clinical Commissioning Groups (CCGs) and Local Authorities (LAs) commission services from individual pharmacies, for example:

- NHS Health Check service;
- sexual health services including emergency hormonal contraception (EHC);
- stop smoking services;
- near-patient testing such as cholesterol testing, pregnancy testing or INR monitoring;
- seasonal influenza vaccination;
- planned hospital care;
- emergency care (including out-of-hours and accident and emergency services); and
- mental health and learning disability services.

A written contract (or sometimes an SLA – [see SLA Briefing](#)) therefore will be agreed between the parties as a result of the commissioning. This Briefing provides basic information on the NHS Standard Contract and other contracts (i.e. non-mandatory contract which can be use by LAs) including:

- What is a contract
- Structure of the NHS Standard Contract
- When should the NHS Standard Contract be used
- Public Health Services Contract (non-mandatory contract)

The NHS standard contract is mandated by NHS England for use by NHS commissioners to contract for all healthcare services other than primary care as there are benefits in having standard provisions which ensures consistency of approach. It should be noted that there were some simple contracts and service level agreements agreed between NHS England's Regions and NHS community pharmacies which were inadequate and therefore the principle of an NHS standard contract to ensure consistency and appropriateness is now supported.

In December 2014 NHS England published a consultation on NHS standard contract for 2015/16 which was based on feedback previously received from stakeholders. Commissioners were asked whether they are now routinely using the NHS standard contract in accordance with NHS England's mandate and guidance or whether there are still examples of other forms of contract being used. Commissioners' responses indicated that the mandate and guidance are now well understood and complied with in almost all circumstances. There was however some residual misunderstanding about the use of the Standard Contract by local authorities (NHS England has no power to mandate them to use it, although they may choose to). There were also isolated incidents of other forms of contract being used when the NHS Standard Contract should be used. It was felt however that further guidance as to the circumstances in which the Standard Contract must be used, could be used or should not be used, would be useful. As the issue of the Standard Contract's suitability for small providers and low value contracts was also raised by a number of respondents, it was stated in the consultation that NHS England will continue to look for

opportunities to enable tailoring of the NHS Standard Contract to suit the needs of smaller providers and lower value contracts, within the parameters afforded by procurement rules and policy.

What is a contract

A contract is an agreement, between two parties where one party agrees to do something for an agreed return, and under which both parties intend that the agreement should be legally binding. A contract is usually in writing (for some contracts, a contract is valid only if it is in writing) or it may be made orally. The difficulty with an oral contract is proving the terms if there is a disagreement.

A contract should include all the terms that need to be agreed before the service is provided. It will identify the parties, set out the fundamental conditions that must be complied with, and in some cases refer to one or more annexes that contain the detailed service specification. A contract will include a start date and an end date (and may include provision for renewal or extension of the contract), set out the procedure for claims and payment, and the process to be followed in case of dispute.

A contract is usually enforceable in the courts, but within the NHS the formality of court proceedings is avoided by providing alternative dispute resolution procedures. These are not available where one party is not an NHS body and generally, pharmacies are not NHS bodies, but private organisations, so enforcement of contract terms may ultimately have to be by the courts. It should also be noted that under Local Pharmaceutical Services (LPS) contracts an LPS provider is able to opt to be treated as an NHS body for the purpose of dispute resolution, which means that they are required to pursue disputes through the NHS dispute procedures rather than resorting to the courts.

Structure of the NHS Standard Contract

The NHS Standard Contract is divided into three parts.

- **The Particulars** which contain all the sections that require local input, including details of the parties to the contract, the service specification and schedules relating to payment, quality and information.
- **The Service Conditions** section which contains the generic, system-wide clauses concerning the delivery of services. Some of these clauses will be applicable only to particular services or types of provider; If these clauses are relevant to the contract they must be included exactly as written in the template. However, clauses that are not relevant to the contract can be deleted.
- **The General Conditions** section which contains the fixed standard conditions which apply to all services and all types of provider, including mechanisms for contract management, generic legal requirements and defined terms. These must all be included without local amendment.

When should the NHS Standard Contract be used?

The NHS Standard Contract helps commissioners and providers to operate to one clear and consistent set of rules which everyone understands.

CCGs and NHS England must use the NHS Standard Contract where they wish to contract for NHS-funded healthcare services (including acute, ambulance, patient transport, continuing healthcare services, community-based, high-secure, mental health and learning disability services and pharmacy). It is important to note that when NHS England commission primary care services (pharmaceutical services) from community pharmacies they use the Community Pharmacy Contractual Framework and not the NHS Standard Contract.

The Contract must be used regardless of the proposed duration or value of a contract, which means that it should be used for small-scale short-term pilots as well as for long-term or high-value services. Where a single contract includes both healthcare and non-healthcare services, the NHS Standard Contract must be used.

In some cases however the use of NHS Standard Contract is not mandatory for CCGs and NHS England. In particular, there are two exceptions:

- primary care services commissioned by NHS England, where the relevant primary care contract must be used; and
- any primary care improvement schemes agreed by CCGs with GP practices (with contractual arrangements, involving a variation or supplement to existing general practice contract agreed between local NHS England teams and CCGs). Such Local Improvement Schemes involve payments for improving the quality of services provided under an existing GP contract, not the commissioning of additional services.

What elements of the NHS Standard Contract can be agreed locally?

The elements of the Contract for local agreement fall within the Particulars. The Service Conditions may be varied only by selection of applicability criteria, determining which clauses do and do not apply to the particular contract. The content of any applicable Service Condition may not be amended locally. The General Conditions must not be amended at all, and all parts must be included.

Commissioners must not put in place locally-designed contracts for healthcare services instead of NHS Standard Contract or vary any provision of the NHS Standard Contract except as permitted by CG13 (Variation) or seek to override any aspect of the NHS Standard Contract.

Where commissioners and providers wish to record agreements they have reached on additional matters, they may use Schedule 2G (Other Local Agreements, Policies and Procedures) or Schedule 5A (Documents Relied On) for this purpose. Commissioners are reminded that any such local agreements must not conflict with the provisions of the Contract. In the event of any such conflict or inconsistency, the provisions of the Contract will apply, as set out in GC1.

Which commissioners can be party to the NHS Standard Contract?

The Standard Contract may be used by CCGs, by NHS England and by local authorities. Any combination of these commissioners may agree to work together to hold a single contract with a given provider, identifying a co-ordinating commissioner and putting in place a collaborative agreement.

Even where they are placing separate contracts from NHS commissioners, local authorities may wish to use the NHS Standard Contract, for example to commission services from a provider whose main business is the supply of services to NHS commissioners. In this situation, it is not mandatory for local authorities to use the NHS Standard Contract, but they may choose to do so. In a situation where NHS commissioners and a local authority are intending to sign the same single contract with a provider, however, and where the service being commissioned involves a healthcare service, then the NHS Standard Contract must be used.

By contrast, where an NHS commissioner has devolved commissioning responsibility to a local authority under a formal lead commissioning arrangement, the local authority would be able to contract on its own chosen basis. As the NHS commissioner would not be a party to the contract, there would be no requirement for the NHS Standard Contract to be used – although, again, the local authority may choose to do so. The NHS commissioner should, however, satisfy itself that the arrangements being put in place are such that it can meet its statutory obligations.

The contract creates legally binding agreements between NHS commissioners and providers. Agreements between commissioners and NHS Trusts are 'NHS contracts' as defined in Section 9 of the National Health Service Act 2006. The NHS Standard Contract allows the commissioner to select the contract term it wishes. There is no default duration. Commissioners may wish, when procuring services on a competitive basis, to offer a contract with the possibility of extension – for example, a five year contract term with the potential for an extension, at the commissioner's discretion, by a further two years. The NHS Standard Contract therefore includes an optional provision (*Schedule 1C Extension of Contract Term*) so that details of any potential extensions can be recorded at the start of the contract.

Public Health Services Contract (non-mandatory contract)

LAs are responsible for commissioning services locally, informed by Joint Strategic Needs Assessments (JSNAs) and Joint Health and Wellbeing Strategies (JHWSs) developed by health and wellbeing boards on which they are represented. They also need to have regard to the Public Health Outcomes Framework which sets out key indicators of public health from the wider determinants of health through to effectiveness in reducing avoidable mortality. In discharging their functions, they are supported by a ring-fenced budget for public health. Also, from October 2015 LAs will be responsible for commissioning children aged 0-5 public health services.

The public health services contract is for local authority commissioners to use if they choose to do so – it is not a requirement. The public health services contract (“the contract”) is therefore a non-mandatory contract that local authorities, as commissioners, can use for commissioning public health services. However, the contract provides a robust framework to hold providers to account for the delivery of high quality public health funded services to achieve improved health outcomes. Use of the public health services contract reflects safe clinical practice and processes and also offers local authorities (and providers) considerable cost savings as they will not need to develop bespoke contracts or adopt various contract management mechanisms.

If the public health services contract is not used by LAs, they can use any contract (i.e. NHS Standard Contract, Service Level Agreements (SLAs) or any other contract).

Scope: The contract has been developed for LAs to use when commissioning services to satisfy their public health functions. These can include, but are not limited to national child measurement programme, health check assessments, and alcohol and drug misuse services.

The contract can be used when commissioning services from a wide range of providers including providers from the independent sector, general practitioners and community pharmacies.

Review: An annual review of the contract takes place in order to ensure that the contract is beneficial to commissioners and up to date.

Structure of the contract: The public health services contract has three sections:

- Section A contains the particulars and sets out the parties to the contract and key dates.
- Section B contains the General Terms and Conditions. It therefore identifies the standard commercial position of the parties to the contract.
- Section C should set out any Special Terms and Conditions required locally. The content of section C will be for local determination. Any locally agreed clauses may be inserted into section C of the contract. Also, section C can be used to record additional clauses, to disapply or vary the standard commercial position in section B or to incorporate other matters that have been locally agreed and therefore not dealt with in section B. Clauses in section C will where used prevail over any other clauses in the contract.

Duration: The duration of the contract is for local determination. However, for reasons of service delivery, cost effectiveness and efficiency, it is expected that the majority of contracts will be around three years in duration.

The contract requires that the parties act in good faith towards each other.

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