



Public health services for 0-5 year-olds

Transfer of commissioning responsibilities to local authorities

***Additional contracting guidance for NHS
commissioners***

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Document Status

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Contents

- 1 Introduction..... 5
- 2 Overall approach 5
- 3 Detailed process for novation of contracts..... 6
- 4 Communicating with providers 8
- 5 Sharing contract documentation..... 8
- 6 Complex scenarios..... 9
- 7 CQUIN..... 10
- 8 Advice and support..... 10
- Appendix A 11

1 Introduction

- 1.1** Earlier in November 2014, NHS England published initial guidance for NHS commissioners, clarifying the contractual approaches and options available to commissioners to ensure a stable transition process in relation to the impending transfer of commissioning responsibilities for the 0-5-year-old Health Child Programme.
- 1.2** The initial guidance related to those existing contracts held by NHS England which expire at 31 March 2015. This document now provides additional guidance on handling the smaller number of existing longer-term contracts held by NHS England, where the contract will only expire after the transition date of 30 September 2015.
- 1.3** As before, this guidance is not aimed directly at local authorities, recognising that this is not the role of NHS England, however this document has been produced with input from, and has the support of, the Department of Health, Public Health England and the Local Government Association. We hope that it will be of interest and use to local authorities.

2 Overall approach

- 2.1** With input from staff in the relevant area teams, NHS England has undertaken a review of the 38 longer-term contracts which are currently in place with 0-5 providers. This review has included consideration of the local position reached so far in discussions with local authorities.
- 2.2** On the basis of this review, NHS England has concluded that there is, at this stage, general support from local authorities for these longer-term contracts to transfer to them from NHS England by novation on 1 October 2015. Our guidance therefore recommends that area teams pursue the approach of contract novation as their default option. Novation of existing contracts will assist in ensuring service continuity and stability during the transitional period – as opposed to the much more disruptive process which would ensue if NHS England gave notice to terminate its existing contracts.
- 2.3** Area teams will need to update their existing contracts for 2015/16 by a process of variation and should aim to secure formal approval of both the variation agreement (by the provider) and the deed of novation (by the local authority and the provider) by mid-March 2015 – with the deed of novation taking effect only from 1 October 2015.
- 2.4** Very close working between area teams, local authorities and providers will be crucial in ensuring the successful novation of contracts.

3 Detailed process for novation of contracts

3.1 This section sets out the intended approach to be followed in the simplest scenario, where the existing contract is in the form of the NHS Standard Contract (whether the version from 2014/15 or a previous year) and where commissioning responsibility will transfer to a single local authority. More complex scenarios are discussed in section 6 below.

Variation of existing contracts

3.2 These longer-term contracts do not expire on 31 March 2015, so there is no need to put in place a new contract for 2015/16 – but area teams will need to update each contract for 2015/16, through a process of variation.

- As they would normally do, they will need to update the key contract schedules as necessary. Some of the main areas to update will be Service Specifications (Schedule 2A), Indicative Activity Plans (2B), Local Prices (3A), Expected Annual Contract Value (3F), Local Quality Requirements (4C) and Local Reporting Requirements (6B).
- They will also need to incorporate updated national terms and conditions for 2015/16 through a National Variation (which will be published in the New Year to accompany the NHS Standard Contract for 2015/16).
- The variation to the contract must secure the objectives to be set out in NHS England's public health commissioning intentions, which will be published later in the year. In particular, it must secure full delivery on an ongoing basis of the planned 2014/15 expansion of health visitor staff numbers.
- Where the contract is for the provision of 0-5 healthcare services and other services (rather than a standalone contract for 0-5 services only), the variation should remove the 0-5 services from the existing contract, so that the existing contract continues in respect of the other services only. A new contract should then be entered into for the 0-5 services only for the original contract term (i.e. the new contract expires on the original expiry date). This new contract for 0-5 services only can then be novated to the local authority in accordance with paragraph 3.4 to 3.13 below.

3.3 General guidance on variation agreements is already available at <http://www.england.nhs.uk/nhs-standard-contract/>, and this will be updated in the New Year for 2015/16.

Novation of contracts to new local authority commissioners

3.4 Transfer of contractual rights and responsibilities under an existing contract from NHS England to a local authority can be secured by formal approval (by NHS England, the local authority and the provider) of an appropriate deed of novation. NHS England will provide a model deed of novation which can be adapted for local use; this will be available in early January 2015.

- 3.5** The novation process should be very straightforward where the local authority is content to accept transfer of the existing contract on the basis of the existing NHS England service specification, price, quality standards and CQUIN incentives.
- 3.6** Of course, there may also be situations where the local authority wishes to change aspects of the contract from 1 October 2015 onwards, including in potentially more contentious areas such as the specification or price. Subject to the agreement of all the parties, such changes can be accommodated by including additional content in the variation (see 3.2 above), so that the locally-agreed detail of the contract effectively states one set of provisions which apply for April to September 2015 and a slightly different set which apply from 1 October 2015 onwards. It will be essential that there is very close dialogue between the area team, the provider and the local authority, to ensure that any necessary changes can be agreed and built into the variation, so that novation of the contract will then be acceptable to the local authority.
- 3.7** What the area team must not do, as part of the variation process, is to vary the nationally-mandated terms of the NHS Standard Contract.

Formal approval of variation and novation

- 3.8** In order to secure a stable transition, it will be very beneficial if the agreements to vary the contract for 2015/16 and to novate it to the local authority can be agreed at the same time, by mid-March 2015. This will give up-front clarity and reassurance to the provider and its staff about commissioners' expectations for services and funding for the full financial year of 2015/16.
- 3.9** The variation agreement must be signed by NHS England and the provider. The deed of novation must be approved in the appropriate form by NHS England, the local authority and the provider. Further detailed guidance on approval of deeds of novation will be provided in January.

Understanding local authorities' contracting intentions

- 3.10** Our review of longer-term contracts suggests that, at this stage, many local authorities are comfortable at the prospect of transfer of these existing longer-term contracts by novation. However, local authorities may wish to review the financial allocations proposed by DH for 0-5 services, as well as the final mandate for the range of 0-5 services they will be statutorily obliged to commission, before committing in principle to the novation approach.
- 3.11** At the same time, NHS England is proceeding at risk by not terminating its longer-term contracts, in the expectation that they will transfer to local authorities by novation. It will therefore be very important that area teams gain a clear understanding from local authorities as to whether novation is likely to be acceptable. Area teams should therefore seek early written assurance from the local authority that the local authority is comfortable, in principle, to pursue the

approach of contract novation. We recommend that this is done by no later than 22 January 2015.

Giving notice to terminate existing contracts

- 3.12** We do not anticipate that it will be necessary for NHS England to give notice to existing providers to terminate existing contracts, other than in very exceptional circumstances. In any such instances, specific advice will be provided by the NHS England national support centre team to area teams on a case-by-case basis.

Managing contracts after novation

- 3.13** A novated contract retains its existing duration. Some novated contracts will have only six months to run (until 31 March 2016), others will have a longer period until expiry. Subsequent to novation, the local authority can manage the contract using the processes set out within it; it can, for example, seek to vary the terms of the contract (by using the variation process set out in it). And the local authority can of course plan to put in place whatever contractual arrangements it sees fit once the contract expires.

4 Communicating with providers

- 4.1** It is important that commissioners communicate clearly with all providers, in order to give confidence about the way in which the transition will be managed. We therefore recommend that area teams should write to each provider with a longer-term contract, setting out the intended approach to contractual arrangements for 2015/16. The letter should be sent as soon as possible – and should preferably be a joint letter with the relevant local authority.
- 4.2** Example letters for different scenarios are set out in Appendix A. These will need adaptation by area teams to reflect local circumstances.

5 Sharing contract documentation

- 5.1** Where area teams have not already done so, they should share existing contract documentation and in-year reporting information with local authority colleagues, allowing them to familiarise themselves with aspects of the existing contract such as service specifications, quality and reporting requirements and financial monitoring arrangements.

6 Complex scenarios

6.1 The scenario described in section 3 above generally reflect the simplest situation

- where the area team contracts with a single provider, with the contract in the form of the NHS Standard Contract; and
- where commissioning responsibility will transfer to a single local authority.

6.2 There are many different scenarios which may emerge at local level. Though this guidance cannot cater for them all, it is worth exploring four specific situations which may arise.

Where contracts other than the NHS Standard Contract are in place

6.3 The great majority of our longer-term contracts are in the form of the NHS Standard Contract, but we are aware of a number of specific instances where different contract types are in place, including primary care contracts. In such cases, area teams will be able to access specific legal support to assist with this where necessary.

Where, currently, a single NHS England contract exists, but multiple local authorities will commission the service separately in future,

6.4 Agreeing arrangements to novate a single NHS England contract to multiple local authorities will undoubtedly be complex. Where necessary, area teams will be able to access specific legal support to assist in tailoring deeds of novation to support this.

Where the existing NHS England contract includes other services as well as 0-5 services

6.5 We are aware of cases where an existing longer-term contract held by NHS England includes both 0-5 and other services. Paragraph 3.2 above sets out the process to be followed in this scenario. As above, area teams will be able to access specific legal support to assist with this where necessary.

6.6 The same will apply in situations where there is a joint NHS England / CCG contract in place, including other services as well as 0-5 services.

Where a contract is in place which expires on 30 September 2015

6.7 Again, we are aware of a very small number of contracts which expire on 30 September 2015. In this scenario, the area team will need to vary the contract to update it for 2015/16 (see 3.2 above), but should work with the local authority to help the local authority to put in place its own contract with the provider from 1 October 2015, in line with the process set out under Option 2 in the initial contracting guidance.

7 CQUIN

- 7.1** CQUIN (Commissioning for Quality and Innovation) schemes offer providers operating under the NHS Standard Contract a financial incentive of up to 2.5% of actual contract value for achieving specified quality improvements.
- 7.2** Longer-term contracts for 0-5 services currently held by NHS England will therefore generally (but not always) include a CQUIN scheme. Area teams should update these schemes for 2015/16 in accordance with the national CQUIN guidance to be published by NHS England later in the year. This should be done, with local authority involvement, as part of the overall contract variation process described at 3.2 above.
- 7.3** Where contracts which include CQUIN schemes are novated to local authorities, local authorities will be bound by the terms of these schemes.

8 Advice and support

- 8.1** There are certain to be additional issues which emerge and further complexities which need to be addressed. Where these cannot be resolved locally, area teams are welcome to raise them with the NHS Standard Contract team via nhscontractshelp@nhs.net. Updated guidance or FAQs will be issued as necessary.

Appendix A

Draft letters for area teams to send to providers (joint with local authorities wherever possible), giving details of future contracting intentions

The example letters below are drafted for the most straightforward situation, where there is a simple 1-1 relationship between NHS England as the current commissioner and one local authority as future commissioner.

Local circumstances will vary widely, of course, and the letters below will need to be adapted by area teams, sometimes in discussion with local authorities, to suit the particular circumstances of each contract.

In particular, where the existing contract includes other services as well as 0-5 services, the letters below will need amending to include reference to the process of splitting out the 0-5 element into a separate contract from 1 April 2015, as set out in paragraph 3.2 above.

1. Example joint letter where novation is agreed as the preferred approach

Joint NHS England / local authority letter to be sent where

- the existing contract is an NHS Standard Contract which expires after 30 September 2015
- the contract is for 0-5 services on a stand-alone basis and does not cover other NHS-England or CCG-commissioned services
- the local authority is comfortable to state a broad intention, at this stage, to accept novation of the contract from 1 October 2015 and to commission the service from the same provider, to use the NHS Standard Contract and to commission the same services at the same price as NHS England

Dear [name]

Transfer of commissioning responsibilities for 0-5 children's public health services

As you know, responsibility for commissioning of 0-5 children's public health services will transfer from NHS England to local authorities on 1 October 2015. As the present and future commissioners, we are writing to update you on how we intend to manage the transition locally. Our underlying aim is to secure a smooth transition with continuity of service provision and clear, well-understood contractual arrangements.

As you will be aware, NHS England's contract with you is a multi-year contract which does not expire until [date]. Our joint intention is that, in the period from December 2014 to February 2015, the contracting team from NHS England, working closely with the Council, will update our existing contract with you for 2015/16, applying the

National Variation to contract terms which will be published by NHS England in December 2015. At the same time, we will aim to agree a deed of novation, to be approved by all three parties, so that rights and responsibilities under the contract will transfer from NHS England to the Council with effect from 1 October 2015.

Our intention is that the contract variation will be signed, and the deed of novation approved, by the end of February 2015, thus giving you full clarity before the start of the year about funding and expected service levels for the full year.

We hope that this letter is helpful in setting out our broad intentions at this stage and gives you, and your staff, confidence that the transition of commissioning responsibilities will be managed in a way which ensures continuity of service provision. However, before making firm decisions on these issues, the Council will wish to review both the final mandate for 0-5 services to be commissioned and the final financial allocation it receives from the Department of Health. We will therefore write to you again in January with a further update.

Yours sincerely

[Name]

[Job title]

NHS England Area Team / XXX Council

2. Example NHS England letter where discussions with local authorities are not well advanced

Letter to be sent by the NHS England area team alone, where the existing contract is an NHS Standard Contract which expires after 30 September 2015, but where the local authority does not feel able to make any written commitment on its contracting intentions at this stage

Dear [name]

Transfer of commissioning responsibilities for 0-5 children's public health services

As you know, responsibility for commissioning of 0-5 children's public health services will transfer from NHS England to local authorities on 1 October 2015. I am writing to update you on how we intend to manage the transition locally. Our underlying aim is to secure a smooth transition with continuity of service provision and clear, well-understood contractual arrangements.

As you will be aware, NHS England's current contract with you is a multi-year contract which does not expire until [date]. Although our statutory responsibility for commissioning 0-5 services will cease after 30 September 2015, we have decided at this stage not to issue formal notice to terminate our contract with you. Instead, in order to help secure a stable transition period, we will seek to agree with XXX Council a deed of novation to transfer the existing contract to them from 1 October 2015. We are in discussion with XXX Council about its commissioning intentions. Pending confirmation of the mandate and its financial allocation, the Council is not yet in a position to make a firm statement about whether it will be prepared in principle to agree to novation of the existing contract.

Besides resolving the question of novation, we will also need to update our contract with you for 2015/16 in the normal way, implementing the National Variation to update the core contract terms and agreeing revised contract schedules. Ideally, we would wish to work with the Council and yourself to undertake these two processes of novation and variation at the same time, with the aim of reaching formal agreement on both by the end of February 2015. The novation itself would of course not take effect until 1 October 2015.

We hope that this letter is helpful in setting out NHS England's intentions at this stage, and we will continue to work with XXX Council to ensure that there is a clear process to manage the transfer of commissioning responsibilities. We will write to you again in due course with a further update.

Yours sincerely

[Name]

[Job title]

NHS England Area Team (copy to XXX Council)