



# **NHS Standard Contract 2015/16**

## **Consultation on National Variation to change RTT sanctions**

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<b>Contact Details for further information</b>	NHS Standard Contract Team 4E64 Quarry House Quarry Hill Leeds LS2 7UB <a href="mailto:nhs.cb.contracts@nhs.net">nhs.cb.contracts@nhs.net</a> <a href="http://www.england.nhs.uk/nhs-standard-contract/">http://www.england.nhs.uk/nhs-standard-contract/</a>

**Document Status**

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## 1 Introduction

This document sets out proposals for an in-year National Variation to the NHS Standard Contract in relation to the financial sanctions which apply to 18-week Referral to Treatment (RTT) standards.

## 2 Background

The NHS Standard Contract currently sets out (in Schedule 4A of the Particulars) three standards in relation to RTT waiting times, with associated financial sanctions where providers fail to deliver the standard. The three standards are

- 90% performance for completed admitted pathways
- 95% performance for completed non-admitted pathways
- 92% performance for incomplete pathways.

On 4 June 2015, Simon Stevens issued a letter to CCG Accountable Officers and Chief Executives of NHS providers (*Improving access and simplifying measurement*, Gateway 03545), announcing that the two RTT measures relating to completed pathways are to be abolished as soon as possible, with the performance focus in the future being solely on the incomplete pathway measure, the only measure which captures the experience of every patient waiting. The full rationale for this decision is set out in an accompanying letter from Sir Bruce Keogh to Simon Stevens (*Making waiting time standards work for patients*). Both letters are available via <http://www.england.nhs.uk/publications/>.

A further letter was sent to NHS commissioners and providers on 24 June 2015 from NHS England, Monitor and NHS TDA (*Changes to the Referral to Treatment (RTT) operational standards and reporting arrangements*, Gateway 03615), setting out the operational arrangements for the implementation of these changes. The letter makes clear that commissioners should not levy any financial sanctions associated with the admitted and non-admitted RTT standards with effect from 1st April 2015 and highlights that NHS England will need to issue an in-year National Variation to the NHS Standard Contract, in order to give formal effect to this change.

## 3 Proposed National Variation

### 3.1 Summary

The draft National Variation is attached at Appendix A. It proposes to

- remove the existing financial sanctions for the two completed pathway RTT standards and insert alternative wording making clear that there must be no financial sanctions, or other consequences, for providers who fail to achieve these standards (this is consistent with the approach which commissioners have been instructed to take in the letter of 24 June 2015 referred to above);

- retain a financial sanction in respect of performance against the incomplete pathway RTT standard, increasing the value of the sanction from the current level of £150 per excess breach to £300 per excess breach.

Subject to Parliamentary approval of revised regulations, we will remove the two completed pathway standards themselves from the Contract with effect from no later than 1 April 2016.

### **3.2 Increasing the sanction for incomplete pathway performance**

The intention of financial sanctions within the Contract is to provide a strong incentive for providers to use every effort to achieve core national standards such as those set out in the NHS Constitution. The underlying aim is to create incentives for providers to succeed, not to penalise them for continuing to fail.

We are determined to lock in the achievements which the NHS has made in reducing patient waiting times. It is essential that providers are fully motivated to achieve the incomplete pathway standard on a sustainable monthly basis.

If we simply remove the sanctions for the two completed pathways and retain the existing sanction for incomplete performance, we will effectively halve the overall value of the financial incentive in place for providers to achieve the national RTT requirements.

To maintain a strong incentive, we therefore propose to double the value of the incomplete pathway sanction from £150 to £300 per excess breach. On the basis of past performance, this would maintain the total quantum of RTT sanctions, across all providers, at broadly the current level. Clearly, our aim is to see a significant improvement in performance against the single incomplete pathway measure, with the result that the financial impact in practice is much lower.

We propose that introduction of the higher sanction for incomplete pathways should be from 1 October 2015, and this is therefore the proposed Effective Date of the National Variation.

### **3.3 Implementation**

Subject to the outcome of this consultation, our intention is that a final version of the National Variation will be published over the summer.

Local commissioners would then need to implement the National Variation in all of their relevant local contracts – that is, those contracts primarily with acute providers within which the RTT standards apply. (The NHS Standard Contract sets out, at General Condition 13, a clear mechanism through which National Variations are to be implemented.) Commissioners would need to ensure that the National Variation is introduced into contracts ahead of its proposed Effective Date of 1 October 2015.

## 4 Consultation Responses

We welcome comments on this proposed in-year National Variation to the 2015/16 NHS Standard Contract. Comments on the proposals should be sent to [england.contractsengagement@nhs.net](mailto:england.contractsengagement@nhs.net) by Friday 24 July 2015.

# APPENDIX A

## DRAFT NATIONAL VARIATION AGREEMENT RTT waiting times

**Contract/Variation Reference:**

**Proposed by:** Co-ordinating Commissioner on behalf of NHS England

**Date of Variation Agreement:**

Capitalised words and phrases in this Variation Agreement have the meanings given to them in the Contract referred to above.

1. The Parties have agreed the Variation summarised below:

**National Variation to amend Operational Standards in relation to RTT waiting times for non-urgent consultant-led treatment.**

Schedule 4A (*Operational Standards*) is varied as follows:

(a) Operational Standards E.B.1 and E.B.2 are each varied by the deletion of the existing consequence of breach and its replacement by the following:

*“There will be no consequence, financial or otherwise, for breach of this Operational Standard.”*

(b) Operational Standard E.B.3 is varied by the deletion of the existing consequence of breach and its replacement by the following:

*“Where the number of breaches at the end of the month exceeds the tolerance permitted by the threshold, £300 in respect of each excess breach above that threshold”*

2. The Parties agree that the Contract is varied accordingly.

3. The Variation takes effect on 1 October 2015.

**IN WITNESS OF WHICH the Parties have signed this Variation Agreement on the date(s) shown below**

**SIGNED by**

.....  
Signature

**[INSERT AUTHORISED  
SIGNATORY'S NAME]  
for and on behalf of  
the Co-ordinating Commissioner**

.....  
Title

.....  
Date



**SIGNED by**

**[INSERT AUTHORISED  
SIGNATORY'S NAME]  
for and on behalf of  
[INSERT PROVIDER NAME]**

.....  
Signature

.....  
Title

.....  
Date