

# Guidance on the use of the model Grant Agreement

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## Guidance on the use of the model Grant Agreement

This document provides guidance on using the model NHS Grant Agreement.

**References in this document, and in the model NHS Grant Agreement, to ICBs and to section 14Z47 of the NHS Act 2006 have been included in expectation of the passage of the Health and Care Bill and the coming into effect of section 20 of the Bill following passage in its form as of March 2022. Unless and until these things happen, those references should be read over/deleted: for the time being it is solely for CCGs to exercise grant-making powers under section 14Z6 of the NHS Act 2006.**

The Grant Agreement is a non-mandatory model, and may be adapted for local purposes by CCGs/ICBs.

Questions on using the Grant Agreement may be sent to [england.contractshelp@nhs.net](mailto:england.contractshelp@nhs.net).

Further general information on making grants and the use of grant agreements is available [here](#).

### 1. Grants and contracts

Where a CCG/ICB, as part of its statutory duties to arrange for the provision of health services, wishes to commission a provider to provide a service, it should use the [NHS Standard Contract](#): under the Standard Contract, the provider is required to provide the service and the CCG/ICB has a range of performance levers to ensure continuity and quality of service provision. Separately, CCGs/ICBs have the power to make grant (or loan) payments to voluntary organisations<sup>1</sup> that provide services that are similar to the services that the CCG/ICB is required to commission<sup>2</sup>.

It is important that CCGs/ICBs are aware of the distinct purpose that grant funding agreements have: grant funding can be given by a CCG/ICB to a voluntary organisation where the CCG/ICB wishes to support the activities of that organisation because they complement the services that the CCG/ICB commissions (for example, grant funding to contribute to a hospice). CCGs/ICBs should note that, by giving grant funding, they are not commissioning services from the organisation, but rather they are supporting its existing activities: the grant agreement is not a contract for services, and so grant funding does not oblige the recipient to provide services to the CCG/ICB and the CCG/ICB cannot, through grant funding, compel a body to provide services. However, grant funding should not be unconditional since it is important that the CCG/ICB is assured that any funding will be used strictly for the purposes for which it was given, and that the services provided by the recipient to those who benefit from its activities are appropriate (for example, regarding safeguarding) to receive public funds.

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<sup>1</sup> In this context, a “voluntary organisation” means a non-profit-making body, and it does not include any public or local authority

<sup>2</sup> CCGs/ICBs have this power under Section 14Z6/14Z47 of the National Health Service Act 2006

For this reason, CCGs/ICBs should consider carefully whether, in a given circumstance, they are requiring the delivery of services (which would amount to a contract for services and which may raise procurement issues), or whether they are contributing towards funding the activities of a voluntary organisation (through grant funding). A grant agreement should not be used as a “short form” contract for services.

CCGs/ICBs will also need to ensure that any grant funding is an economic and effective use of their resources.

## 2. The model grant agreement

This model is intended for use where a CCG/ICB wishes to contribute grant funding to a voluntary organisation. It is not designed to be used:

- Where a CCG/ICB is making a loan to a voluntary organisation<sup>3</sup>
- Where the CCG/ICB is making payments under Section 256 of the National Health Service Act 2006 (payments relating to social care made to local authorities and other bodies, to which particular requirements attach)
- Where the CCG/ICB requires the delivery of services<sup>4</sup>
- Where the CCG/ICB requires the voluntary organisation to act as a data processor on its behalf: in those circumstances a data processing agreement will be required (which may form part of an NHS Standard Contract or other form of contract for services, as appropriate)
- (Without amendment) by NHS England when making grants under Section 13X of the NHS Act 2006

The model is not mandated, and CCGs/ICBs may wish to adapt it for their local circumstances.

It has been drafted to cater for circumstances where there is a clinical and patient-contact element to the purpose of the grant, and therefore includes appropriate provisions in relation to clinical governance, safeguarding, data protection and information governance which may not be necessary in all circumstances or for all purposes in or for which grant funding is provided.

The key is to adopt an approach which is proportionate and appropriate to the purpose, scope and size of the grant.

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<sup>3</sup> i.e. using its alternative power under Section 14Z6/14Z47 of the National Health Service Act 2006 to make loan payments to voluntary organisations

<sup>4</sup> If a CCG/ICB requires the delivery of clinical services, the NHS Standard Contract must be used. If a CCG/ICB requires the delivery of non-clinical services, an appropriate form of contract must be used.

### 3. Scope of the grant

The grant is structured on the basis that the funding must be applied by the recipient to the stated purpose, and any changes to that use must be agreed to by the CCG/ICB. There are various provisions under which the CCG/ICB may allow the recipient to use grant monies for other purposes (for example, agreed changes to the stated purpose). CCGs/ICBs should ensure that any varied purpose to which grant monies are applied is one that the CCG/ICB would otherwise be able to fund, and that to fund any varied purpose is not only within the CCG's/ICB's powers but remains an economic and effective use of CCG/ICB resources.

The scope of the funded activities is to be set out in Schedule 1. Because CCG/ICB consent is required to vary the scope, a balance should be struck between too broad a description (which might not give the CCG/ICB sufficient assurance about how funds would be applied) and an overly detailed description (which might require the recipient to seek CCG/ICB consent repeatedly for minor operational changes and thus place an administrative burden on both parties).

### 4. Payment

Some payment mechanisms are suggested in the model, but the required mechanism is likely to vary according to local requirements and so should be amended to suit the project in question. CCGs/ICBs are able to terminate the agreement on notice (the notice period in the model can be amended as required), and in setting the notice period, a balance should be sought between giving the CCG/ICB adequate flexibility in the event of policy change or changed financial circumstances, and giving the recipient a sufficient degree of certainty and predictability of funding to enable it to plan ahead.

Because the CCG/ICB is committed to make any payments due up to the expiry of any notice period, where the grant is given in instalments and not as a single payment, CCGs/ICBs should ensure that funding is available for the required duration.

The model suggests a number of situations in which it may be appropriate for the CCG/ICB to withhold, suspend or recover funding. These are important protections to assure the appropriate use of the public funds that will be made available to the recipient, and CCGs should be careful not to weaken these provisions through local changes.

### 5. Assets

Grant funding will often be given toward revenue costs rather than towards the purchase of assets by a recipient. However, to cover situations where the grant is given towards assets, the agreement contains some provisions (clause 14.1 to 14.3) to protect CCG/ICB monies given for those purposes. These provisions may safely be omitted if funding is to be given solely for revenue purposes. CCGs/ICBs should have regard to the guidance contained in Annex 5.2 of HM Treasury *Managing Public Money*<sup>5</sup>, which discusses factors to be taken into account when grants are

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<sup>5</sup> <https://www.gov.uk/government/publications/managing-public-money>

used to fund assets. Where substantial assets are funded, it may be appropriate for a CCG to take a legal charge over the asset to protect its interest in the funded asset – that is outside the scope of the model grant agreement and in those circumstances the CCG should seek appropriate specialist advice.

Equality and diversity are at the heart of NHS England's values. Throughout the development of the policies and processes cited in this document, we have given due regard to the need to:

- reduce health inequalities in access and outcomes of healthcare services
- integrate services where this might reduce health inequalities
- eliminate discrimination, harassment and victimisation
- advance equality of opportunity and foster good relations between people who share a relevant protected characteristic (as cited in under the Equality Act 2010) and those who do not share it.

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