NHS Standard Contract 2022/23

Summary of key changes made in response to consultation feedback

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Version number: 1

First published: March 2022

Publication Approval Number: PAR907

Introduction

Following our consultation which ended in January 2022, NHS England has now published the final NHS Standard Contract and Contract Technical Guidance for 2022/23. This document describes, by exception, the material changes we have made in the final full-length Contract in response to stakeholder feedback received during the consultation process. Changes have been carried over to the shorter-form Contact where relevant.

Overall consultation feedback

We received feedback from 187 organisations or individuals in relation to the 37 specific changes we proposed in the draft 2022/23 Contract. Most responses received were from providers (57%); CCGs/CSUs accounted for 25%.

For each of the 37 proposed changes, the consultation feedback demonstrated majority support, by a significant margin, amongst those responding with a view on that specific change. In most cases, therefore, we have retained in the final Contract, the wording we had proposed in the draft version.

The consultation feedback has, however, highlighted a number of areas where our proposed Contract wording could be made more precise. In other cases, the feedback indicates that – whilst the specific changes to the Contract which we had proposed are appropriate and should proceed – it may be helpful if we provide further clarification as to their rationale and intent. Our detailed response to these cases is set out, issue by issue, below.

National quality requirements

In the draft Contract, we proposed to make changes to three "national quality requirements" – that is, national minimum performance standards covering access and waiting times, set out in Annex A of the Service Conditions of the Contract. In each case, the proposed changes reflected the specific expectations set out for the NHS in the 2022/23 Priorities and Operational Planning Guidance. The proposed changes covered:

- long waits for elective treatment (where we proposed changing the standard from a maximum 52-week wait to a maximum 104-week wait);
- long waits in A&E departments (where we proposed moving from a zero-tolerance approach to waits over 12 hours to a 2% tolerance); and
- delays in handover from ambulance to A&E (where we proposed to set a zero-tolerance standard at 60 minutes, with additional requirements that 95% of handovers must take place within 30 minutes and 65% within 15 minutes).

Overall, there was very strong support for these changes in the consultation feedback; of the responses giving a view on the three changes, 87-91% were in

favour. Both commissioners and providers recognised that the revised standards reflect the reality of what providers of the relevant services are, on average, likely to be able to deliver in 2022/23 – and agreed that it would be unhelpful for the Contract to set standards which were specifically in contradiction of Planning Guidance requirements.

At the same time, many of those responding to the consultation were concerned that any reduction in the minimum standards required of the NHS should last for as short a time as possible. Providers of ambulance services were particularly concerned at the potential impact of longer handover delays at A&E on their own ability to meet ambulance response times standards.

We fully understand these concerns. To clarify, therefore:

- The changes made to these three standards in the Contract are for the financial year of 2022/23. They are necessitated by the reality of the NHS's starting position, given the impact of the pandemic. As described in more detail in the Planning Guidance, they should be viewed as minimum standards from which to build improvement.

- Expectations of the NHS will of course be reviewed for 2023/24 and beyond, with the aim of reverting to more demanding standards – in Planning Guidance and in the Contract – at the earliest realistic opportunity. The delivery plan for tackling the COVID-19 backlog of elective care now sets out the expected performance trajectories beyond March 2023.

We have made two specific amendments in the final Contract.

- The first makes clear that the 12-hour standard for maximum waits in A&E is now to be measured from the point of arrival in A&E to discharge, admission or transfer – rather than (as has previously been the case) from the decision to admit to admission.

- The second clarifies that the 104-week maximum wait requirement applies from July 2022, as described in the delivery plan for tackling the COVID-19 backlog of elective care.

The Contract continues to contain a range of other long-established national standards on access and waiting times, delivery of which has been impacted by the pandemic. Examples include the 92% standard for 18-week RTT performance, the 99% standard for diagnostic test waiting times, the 95% standard for four-hour waits in A&E and the 75% Faster Diagnosis Standard for cancer. Except where the Planning Guidance has proposed a specific alternative for 2022/23, we have not amended these standards in the 2022/23 Contract. Providers should continue to do everything they can to optimise their performance against these standards.

Legal right of choice of provider

In the draft Contract, we proposed clarifications to ensure that current rules in relation to the legal right of choice of provider are properly applied, in situations where the provider does not have a contract with the responsible commissioner of the patient being referred.

Where a provider holds a contract with at least one CCG/ICB for a service which is subject to the legal right of choice (see the NHS Choice Framework for further detail), it is required to accept all referrals made by primary care clinicians into that service – even if they are of patients from different CCGs/ICBs, with whom the provider does not have a direct contract. (This is referred to in the NHS as "non-contract activity".)

But this legal right of choice only applies to the service as commissioned – that is, on the basis specified in the provider's contract with the first CCG/ICB. So if the provider has a contract for service X to be provided in location A, that of itself does not allow that provider, on a non-contract activity basis, to open a new facility and offer service X in location B, a hundred miles away. Neither does it of itself allow that provider, on a non-contract activity basis, to offer service Y in location A or in location B. This point has been made clear for some time in our Contract Technical Guidance; the additional detail we proposed to the Contract wording (at Service Condition 6.13) was intended simply to reinforce the existing position.

Overall, consultation feedback on this change was very positive; of the 153 responses giving a view on this point, 86% were in favour and 14% against. However, a small number of providers, chiefly from the independent sector, disagreed with the proposed changes and expressed concern as to whether they might have unintended consequences, in terms of signalling a lessening of importance for the patient choice agenda and making it harder for providers, especially from the independent sector, to open up new facilities and services for NHS patients.

We have considered the feedback carefully, and our response is set out below.

- **It is absolutely not our intention to put obstacles in the way of the expansion of safe choices for patients.** Existing legislation on patient choice and procurement places obligations on commissioners to promote choice locally. And it is clear from the delivery plan for tackling the COVID-19 backlog of elective care that the continued operation of patient choice will be central to the recovery of NHS elective services from the pandemic, with the independent sector playing a key role.

- **Where providers are able to offer new, clinically appropriate elective services (or existing services from new locations), we want to see them properly and swiftly accredited by local commissioners. Where providers meet local criteria for those services (which must be transparent, proportionate and non-discriminatory), providers should be awarded NHS Standard Contracts for those services without delay** (with payment dependent on actual activity ultimately undertaken). For in-scope

providers, the Increasing Capacity Framework offers a convenient means through which such contracts can be awarded.

- Service delivery can then commence on a secure footing and on agreed terms and conditions – rather than disputes arising because services start being delivered without a contract in place. It is in order to minimise such disputes that we have retained the proposed wording change in the final Contract (with one minor amendment as described below)– because we are clear that this is the correct technical position in relation to activity carried out without a written contract in place.

- We have made one change to the wording of Service Condition 6.13 in the final Contract. Some contracts may specify actual locations from which services are to be delivered, but others may offer greater flexibility, allowing services to be delivered from any suitable locations which are within a particular geographical area. Recognising this, we have amended the wording to refer more generally to "a site or sites at which or a geographical area within which the Service is to be delivered", rather than to the more specific "postal addresses", as we proposed in the draft Contract.

- Where necessary, providers and commissioners can seek detailed advice about the operation of the choice and non-contract activity rules from NHS England's national teams, either via england.contractshelp@nhs.net.

We will of course keep the wording of the Contract in relation to patient choice under review, as relevant regulations and guidance are updated as part of work on the Health and Care Bill and to implement the delivery plan for tackling the COVID-19 backlog of elective care.

Other changes made in response to consultation

In response to consultation feedback, we have made a small number of other changes in the final version of the Contract.

Topic	**Change**	**Contract Reference**
Smoking cessation service	We have • included a link to the specification for the new NHS Smoking Cessation Advance Service (the smoking cessation service provided by community pharmacy contractors; and • clarified that, at this stage, the contractual requirement to make referrals to the new service applies to acute Trusts only.	Service Condition 8.7

National standards of healthcare cleanliness	We have made clear that the national standards of healthcare cleanliness do not at this stage apply to ambulance and patient transport services. Further work is being done at national level to develop appropriate standards for these services.	Service Condition 17.1
Antibiotic prescribing	We have corrected an error relating to the cumulative reduction required in the use of broad-spectrum antibiotics in the "Watch" and "Reserve" categories (per 1000 admissions) against the 2018 baseline. In order to deliver the reductions required in the UK National Action Plan for microbial resistance, the reduction needed is 4.5% by March 2023; the draft Contract wrongly stated a figure of 4.0%. (The requirement to achieve a reduction of 6.5% by March 2024 remains unchanged.) Note that the contractual requirement here remains for "reasonable endeavours" to be used to achieve the intended reduction. There is – of course – no expectation that efforts to deliver the overall reduction should prevent individual patients from receiving necessary medication where clinically appropriate.	Service Condition 21.3
Coronavirus vaccination	We had included in the draft Contract a requirement for providers to "comply with applicable Law and Guidance relating to the deployment of Staff who have not been vaccinated against coronavirus". Following further consultation, the government has now confirmed its intention to revoke the regulations under which vaccination against coronavirus would be mandatory for health and social care staff deployed in front-line settings. In the final Contract, we have therefore removed the specific reference to compliance with Law and Guidance – but we have retained the broader requirement for providers to use all reasonable endeavours to ensure that all frontline staff are vaccinated against influenza and coronavirus.	Service Condition 21.4
Discharge Summaries	NHS Digital has now published a new Information Standard (DAPB4042), dealing with electronic transmission of discharge summaries from hospitals to GPs following acute inpatient care (addressed in Service Condition 11 of the Contract). The standard is for full implementation by 31 October 2022. We have incorporated the Standard into the definition of Discharge Summary within the General Conditions of the Contract; we have also updated the definition of Delivery Method. This is the first of four message standards to be approved by NHS Digital for transfer of care, the others being Inpatient and Day Case Discharge Summary for Mental Health, Emergency Care Discharge Summary, and Outpatient Clinic Letter. These are planned to go through the DAPB approval process during 2022/23.	Definitions

Seven-day services	Revised seven day services clinical standards have just been published, alongside an updated seven-day service Board Assurance Framework for use by Trusts. These are referenced in Service Condition 3.11-12. We have updated the relevant Definitions in the Contract accordingly.	Definitions

National Tariff Payment System

The draft National Tariff Payment System for 2022/23 was published for consultation alongside the Contract on 24 December 2021.

As described at https://www.england.nhs.uk/publication/2022-23-tariff-consultation/, a further Tariff consultation has now been launched in relation specifically to the variable rate to be payable under the Aligned Payment and Incentives (API) Rules and to the arrangements for payment of activity carried out under sub-contracts.

The Contract cross-refers at a high level to the provisions of the Tariff, but does not quote the specific variable rate as a percentage or refer directly to payment under sub-contracts. We have therefore seen no need to delay publication of the final Contract until completion of the second Tariff consultation. Once confirmed following the second consultation, the new Tariff arrangements will automatically take effect in the relevant local contracts.

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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Published March 2022
Published in electronic format only