

NHS Standard Contract 2022/23 – answers to FAQs arising from webinars, January 2022

We have set out below answers to the questions which were most commonly raised in our recent webinars on the draft 2022/23 NHS Standard Contract.

Where the questions raised relate to changes we have proposed to the wording of the Contract for 2022/23, we have responded on the basis of what was included in the draft Contract for consultation, as published on 24 December 2021. We will of course be reviewing the detailed feedback we receive to the consultation, and we may then make further changes in the final version of the Contract, which we hope to publish by the end of February. Any such further changes will be clearly identified when the final Contract is published.

Deadline for contract signature	<p><u>What is the deadline for signing our 22/23 contracts?</u></p> <p>The Contract Technical Guidance says “Our expectation is therefore that written, signed contracts must be in place, for the full 2022/23 financial year, between commissioners and all providers (that is, with both Trusts and non-NHS providers)” That’s deliberately not quite the same as saying that all contracts must be signed before 1 April.</p> <p>It’s obviously best if signature before 1 April can be achieved, especially with non-NHS providers. You really don’t want a position where any provider (but especially a non-NHS body) is delivering services for any period without contract terms being agreed.</p> <p>But – with a large local Trust, where there may be more inter-dependency between the local system plan and the content of the local contract – there are a couple of options.</p> <ul style="list-style-type: none">• One is still to agree and sign a contract before 1 April – and then vary the financial elements of it subsequently, if that’s required to bring it into line with the final plan submitted at the end of April.	See draft Contract Technical Guidance para 2.2
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	<ul style="list-style-type: none"> The other is to defer final agreement on the plan-related issues in the local contract until the end of April – and only sign your contract at that point, but with local agreement that the agreed financial terms will be applied to the whole of the 22/23 financial year. That is a pragmatic approach which you can potentially consider if necessary. 	
<p>Online presentation of the General and Service Conditions</p>	<p><u>How will changes to the national terms of the Contract be communicated in future?</u></p> <p>NHSE will continue to consult publicly on any material changes to the terms of the Contract, in accordance with our legal obligations. We will, as before, publicise proposed changes in advance, on our website, through national bulletins and via email to our stakeholder list. The outcome of every consultation will be confirmed in the same way, with updated Contract documentation published on the NHSE website. If you would like to be added to the NHS Standard Contract stakeholder list, please send your contact details to england.contractsengagement@nhs.net.</p> <p><u>Will commissioners need to send “notice letters” to providers, informing them of changes to the national terms?</u></p> <p>No, there is no requirement for this. The revised national terms, as set out in the updated General Conditions (GCs) and Service Conditions (SCs), will apply automatically, by reference. Commissioners may choose, if they wish, to contact relevant providers to alert them to specific changes in the national terms, but the onus will be on both commissioner and provider to keep themselves informed of the current terms.</p> <p>There is no expectation that NHSE will start updating the national terms with greater frequency than in the past.</p>	

	<p><u>Why is it necessary to move the national quality standards (previously in Schedules 4A and 4B of the Particulars) into the Service Conditions?</u></p> <p>That's necessary and appropriate because the content of what has until now been Schedules 4A and 4B is entirely nationally mandated. We need to be certain that any changes we make to national standards will be given automatic effect locally. That will be the case if they are part of the SCs (because updates will be incorporated by reference) – but not if they remain part of the Particulars (which would only be updated if a local Variation is agreed between the parties).</p> <p>By contrast, we have not taken the same approach with Schedule 6A, Reporting Requirements, because elements of that schedule are for local completion, rather than being nationally mandated.</p> <p><u>What do you mean when you say that certain terms of the GCs / SCs will have to be “read over”?</u></p> <p>The Contract can be used to commission a wide range of services, and few providers provide all of them. Some conditions in the Contract apply only to certain types of service. So the Contract uses the concept of broad “service categories”, identified in the Particulars, to indicate which services a particular provider is providing under a particular contract. The right-hand column of the SCs is used to identify to indicate to which services each condition is relevant. And some conditions are to apply only to certain types of provider – eg Trusts or FTs. Where the condition is not relevant to a particular contract (eg the condition relates to mental health services, but the provider provides ambulance services, or the condition applies to Trusts but the provider is a private company), that condition is “read over” - that is, it can be taken not to apply. There is specific wording on page 9 of the Particulars making this clear (“Note that certain provisions of the Service Conditions and Annex A to the Service Conditions apply in respect of some service categories but not others”), or in the wording of the condition itself doing so.</p>	<p>See draft Contract Technical Guidance paras 32-34</p> <p>See examples in SC19 and SC21.</p>
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Various “YES/NO” tick boxes have been removed from the draft Particulars on pages 9 and 10. Don't we still need these references to know what is applicable in the Service Conditions rather than being “read over”?

These ‘contract option’ tick boxes ([Particulars pages 9-10 in the draft version](#)) were specifically used to drive “tailoring” of the Contract content via the eContract system. Now that we are no longer proposing to have an eContract system to allow the printing of tailored local Contract documentation, these tick boxes no longer have any function – so we have removed them, because we don't want people to have to fill in details which don't add value.

We've dealt with the issue of applicability of the affected provisions in a different way instead.

- In some cases, we have changed the drafting of the relevant Service Condition – that's true in respect of provisions which apply solely to Trusts, say, and to the provisions relating to the UEC DoS.
- In other cases, it will be self-evident whether a particular provision is applicable. If an Indicative Activity Plan has been included in the local contract at Schedule 2B, for instance, the provisions relating to such Plans in SC29 will apply.
- And in some cases, it's just a matter of common sense. In terms of the payment provisions in SC36, for example, (which are driven by whether there is an agreed EACV and whether or not data has to be submitted to SUS), the former will be clear from the Particulars and the latter will be known to both parties.

	<p><u>Does the online presentation of the General Conditions and Service Conditions apply to the template sub-contracts?</u></p> <p>The format of the template sub-contracts will stay the same. The General Conditions and Service Conditions are incorporated into a sub-contract, but are not set out in it – and from 2022/23 this will be by reference to the versions published on the NHS Standard Contract web page. We will add wording to the sub-contract Particulars to give this effect in the same way we have done on p7 of the Contract Particulars.</p>	
<p>Variations</p>	<p><u>Will you be publishing a National Variation for 2022/23?</u></p> <p>National Variations have usually been published by NHSE annually to date, alongside each annual iteration of the NHS Standard Contract. They have been the means of ensuring that, where a multi-year contract is in place locally, the national terms are kept up to date – but a National Variation has to be completed locally and signed between the parties to make this happen.</p> <p>The change for 2022/23 – so that the GCs and SCs are incorporated in the current form by reference – means that, <u>for 2023/24 onwards</u>, National Variations will no longer be needed.</p> <p>But we <u>will</u> be publishing one final National Variation <u>for 2022/23</u>. It will need to be used to update existing multi-year contracts, to move them onto the new national terms – under which then, in future years, further changes to the GCs / SCs would be automatically incorporated by reference.</p>	<p>See Contract Technical Guidance, para 47</p>

	<p><u>Will NHSE still publish updated Particulars each year?</u></p> <p>Yes, we will continue to do this – though there may only be very limited changes. Commissioners should then use the latest version of the Particulars for any new contracts.</p> <p><u>Will local Variations still be needed?</u></p> <p>Commissioners and providers will still need to agree locally-initiated Variations (under GC13), when they are making material in-year changes to the schedules in the Particulars of their contracts – or when they are amending the content of the Particulars in a more comprehensive way from year-to-year in a multi-year contract.</p> <p>So yes, NHSE will continue to publish a Local Variation template and guidance.</p>	
<p>Transfer of contracts to ICBs</p>	<p><u>Will we need to agree new contracts at the point when ICBs are formally established?</u></p> <p>The target date for formal establishment of ICBs, subject to passage of the Health and Care Bill, is now 1 July 2022. But there should be no need either for new contracts to be agreed at that point – or for local action to novate contracts from CCGs to ICBs. Nor do we currently anticipate updating the national terms of the Contract (the GCs and SCs) at that stage.</p> <p>Rather, contracts should be negotiated and signed, formally, by CCGs, and signed contracts will then transfer from CCGs to ICBs under the nationally arranged Transfer Schemes provided for in the Bill. Guidance on these Transfer Schemes is available on Future NHS (ICS implementation guidance: Due diligence, transfer of people and property from CCGs to ICBs and CCG close down - ICS Guidance - Integrated Care (future.nhs.uk)).</p>	<p>Draft Contract Technical Guidance para 2.3</p>

	The Transfer Scheme will also cover other contractual documents such as Collaborative Commissioning Agreements.	
Collaborative commissioning	<p><u>What is the right footprint for “collaborative commissioning”?</u></p> <p>Collaborative commissioning allows multiple commissioners (CCGs now, ICBs in future) to sign the same contract with a provider. The “footprint” for such arrangements is for local agreement – but it makes sense for it to be as wide as possible, ideally including all of the commissioners who will need to have a written, signed contract with that provider, rather than falling within the new <£500K LVA arrangements for Trusts or traditional non-contract activity (NCA) arrangements for other providers.</p> <p><u>There are some CCGs within my system which have previously agreed written contracts with a local trust and others which have worked on an NCA basis. How should I handle that for 2022/23?</u></p> <p>As an ICB, your contract value with this Trust will be above the £500K LVA threshold. So you should make sure that your 2022/23 contract with the Trust covers, as a minimum, all of the CCGs in your ICB. The Indicative Activity Plan and Expected Annual Contract Value schedules would show each CCG’s share, plus an ICB total. And the Aligned Payment and Incentive (API) arrangements would then be transacted at ICB level. So the CCGs which previously used to work on an NCA basis would <u>not</u> move to the new arrangements for Low Volume Activity flows – but would instead be signatories to the contract. (Of course, your contract with the Trust should also continue to include other associate CCGs/ICBs from outside your local system as appropriate.)</p>	<p>See draft Contract Technical Guidance para 13</p> <p>See draft Contract Technical Guidance para 25</p>

<p>Collaboration between providers</p>	<p><u>Why don't you publish a model provider collaboration agreement?</u></p> <p>The point about our model collaborative commissioning agreement is that it is an agreement with a specific purpose – a group of commissioners are coming together in order to commission a set of services from a single provider under a joint contract.</p> <p>By contrast, providers may need to collaborate with each other for different reasons.</p> <ul style="list-style-type: none"> • The commissioner may have chosen a “lead provider plus sub-contractors” model – in which case our model sub-contract, based on the NHS Standard Contract, will be useful. • Or the providers may be working together, as equals, to deliver an integrated care pathway – and, for that, our model alliance agreement may be appropriate (see https://future.nhs.uk/connect.ti/SystemDesignEnablers/grouphome). • But providers may also want to collaborate on other areas such as back-office functions, for instance – and neither the model sub-contract nor an alliance agreement will be appropriate for those situations. <p>You may also want to refer to <i>Working together at scale: Guidance on Provider Collaboratives</i>, available along with other guidance about Integrated Care System design and governance at NHS England » Key documents for Integrated Care Systems.</p>	<p>See draft Contract Technical Guidance paras 8 and 38</p>
<p>Low volume activity (LVA) arrangements</p>	<p><u>Where can we find the detailed guidance on LVA?</u></p> <p>It's in para 25 of our draft Contract Technical Guidance and in paras 92-97 of <i>Revenue finance and contracting guidance for 2022/23</i>. The latter is an annex to the main Priorities and Planning Guidance document; it's currently available in draft on FutureNHS at</p>	

<https://future.nhs.uk/nationalplanning/view?objectId=32744656>, but will also be published in final form on the NHSE website in due course.

Where can I find the details of LVA coverage and financial values?

They are included in CCG and Trust planning templates, and a full schedule has been published on the PFMS portal.

What do I do if I have detailed questions about the proposed coverage of the LVA arrangements and the financial values involved?

Revenue finance and contracting guidance for 2022/23 (<https://future.nhs.uk/nationalplanning/view?objectId=32744656>) sets out the basis on which LVA values have been calculated. If, having read the guidance, you still have material queries, you can email NHSI.FinPlan@nhs.net.

What happens if the actual volume and value of LVA activity in 2022/23 proves different from the value set by NHSE?

This will be bound to happen in pretty much every case. The historic figures NHSE has used to set the LVA values can only be an approximate guide to what will actually happen in 2022/23.

But the whole point of the new LVA approach is that, in order to avoid the bureaucracy associated with patient-level NCA invoicing, we have to accept some reduction in the precise accuracy of the amount paid. So Trusts must continue to accept referrals and emergency presentations from distant CCGs/ICBs, as they would have done in the past – and accept that the nationally-set payment provides adequate payment for this.

	<p>The intention is that we will then, over time, use each year’s actual data to update the annual LVA figures for the following year, so – if a Trust’s LVA volumes increase over time – so will the amount it receives through LVA payments.</p> <p><u>What happens if the actual value for a particular commissioner exceeds £500K in-year? Does commissioner need to move onto a signed contract in-year?</u></p> <p>No. The nationally set fixed payment would be made in Q2, in accordance with the guidance, and would cover the full year, regardless of the actual level of activity, as described above.</p> <p>LVA values will be reviewed year-on-year, though, and it is possible that – where there is a growth in activity over time – a particular relationship may need to move out of LVA arrangements and onto a signed local contract in the following year.</p> <p><u>Do the LVA arrangements cover non-NHS providers?</u></p> <p>No. Where they are entitled to accept referrals or presentations of patients from commissioners with whom they do not have signed contracts in place (ie for emergency care or where the legal right of choice of provider applies), non-NHS providers will continue to operate on “traditional” NCA arrangements.</p> <p><u>Do the LVA arrangements apply to services commissioned by NHSE?</u></p> <p>No. NHSE is one legal entity and should hold one comprehensive contract with a provider, covering patients who attend from wherever in the country – so there is no need for a system such as LVA, which is there to deal with flows from multiple different commissioner entities. But we will, in future, look separately at ways in which we can streamline the basis on which providers are asked to invoice NHSE.</p>	<p>See draft Contract Technical Guidance para 25</p>
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	<p>We will also consider further how to adapt the LVA approach for 2023/34, when some NHSE responsibilities for commissioning specialised and other services may be delegated to ICBs.</p> <p><u>Do LVA arrangements apply to devolved administrations?</u></p> <p>No. CCGs and Trusts will need to revert to normal pre-pandemic arrangements for invoicing and payment.</p>	
Electronic signatures	<p><u>Can contracts now be signed electronically?</u></p> <p>Our Contract Technical Guidance now includes more detailed, though still high-level and generic, advice on this issue – but a fundamental first step is to review what is allowed by your own organisation’s internal governance requirements (Standing Financial Instructions etc).</p>	See draft Contract Technical Guidance para 15
Aligned Payment and Incentive rules	<p>A number of questions were raised about the arrangements in the draft National Tariff Payment System for 2022/23, particularly the Aligned Payment and Incentive rules. We have referred these questions to the Tariff team, for them to consider in any FAQs they may publish. Detailed guidance on these issues is available at https://www.england.nhs.uk/publication/2022-23-tariff-consultation/, including a specific document, <i>Guidance on the aligned payment and incentive approach</i>. Information about Finance-focused FAQs and webinars (including on payment arrangements) is available on FutureNHS at https://future.nhs.uk/nationalplanning/view?objectId=32742288. Outstanding questions can be directed to pricing@england.nhs.uk or NHSI.FinPlan@nhs.net.</p>	

<p>CQUIN</p>	<p><u>Where can I find out more about CQUIN?</u></p> <p>The CQUIN guidance for 2022/23 has been published at https://www.england.nhs.uk/nhs-standard-contract/cquin/, and detailed queries may be directed to the CQUIN team via e.cquin@nhs.net.</p> <p>Applicability of CQUIN to a particular contractual relationship is determined on the basis of the Aligned Payment and Incentive (API) rules in the draft 2022/23 National Tariff Payment System. There is specific guidance on API at guidance on the aligned payment and incentive approach.</p> <p><u>In what circumstances is CQUIN mandatory for inclusion within a contract?</u></p> <p>Under the draft National Tariff rules, the API approach (and therefore CQUIN) are mandatory for <u>any</u> contractual relationship for NHSE-commissioned specialised services and for <u>any</u> contractual relationship between a CCG/ICB and a local partner Trust within the same Integrated Care System – in both cases, regardless of the financial value involved. For other contractual relationships, the API approach and CQUIN are mandated if the expected annual value of the contractual relationship is £30m or more.</p> <p>Note however that API and CQUIN do <u>not</u> apply to non-NHS providers operating under the Increasing Capacity Framework.</p> <p><u>The National Tariff guidance recommends use of the API approach even for contractual relationships below that £30m threshold. In that situation, must CQUIN be included?</u></p> <p>As per the guidance on the aligned payment and incentive approach, for contracts between a commissioner and a provider who are members of different ICSs and with an expected annual contract value of less than £30 million (but not under the Increasing</p>	
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	<p>Capacity Framework), contract partners are free to agree to use the API approach locally. In these circumstances, CQUIN would not be mandated – whether or not funding should be conditional on achievement of CQUIN indicators would be a matter for local agreement.</p> <p><u>Can we agree changes to CQUIN indicators on a local basis?</u></p> <p>The circumstances under which local CQUIN indicators can be developed are set out in s19 of the CQUIN guidance (https://www.england.nhs.uk/nhs-standard-contract/cquin/2022-23-cquin/).</p> <p>Please remember that, where national indicators apply, they must not be changed, and that the technical detail and thresholds of the CQUIN must be delivered in line with the individual indicator specification.</p>	
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Queries on the NHS Standard Contract may be sent to nhscontractshelp@nhs.net