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The Pharmaceutical Services Negotiating Committee

Response to:

NHS England's Discussion Paper for Stakeholders, on:

NHS Standard Contract for 2014 / 15

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PSNC is pleased to be able to comment on NHS England's discussion paper on the NHS Standard Contract 2014 / 14.

PSNC promotes and supports the interests of all community pharmacies in England. We are recognised by the Secretary of State for Health as the body that represents NHS pharmacy contractors. Our goal is to develop the community pharmacy service, and to enable community pharmacies to offer an increased range of high quality and fully funded services; services that meet the needs of local communities, provide good value for the NHS and deliver excellent health outcomes for patients.

Our response is as follows:

Question 1: Do you support our intention to retain the current three-part structure for the Contract for 2014/15?

Response: Yes.

Question 2 Do you support our intention not to make material changes for 2014/15 to the clauses of the Contract dealing with contract management processes?

Response: Not entirely. Whilst new structures and processes need time to bed in, and allow users comfort in building their experience in using them, there is a need also to allow the contract to evolve by making prompt amendment if the processes are found to be hindering commissioning. For example, we have found the complexity of the standard contract to be a barrier for the commissioning of community pharmacies, where hitherto, perfectly satisfactory contracts had been agreed between Primary Care Trusts and pharmacies. Some of the mandatory provisions, such as the requirements relating to the NHS Protect toolkit, are far more applicable to business which utilise NHS property, but community pharmacies, being private business are nevertheless required to comply. There are also sections which duplicate similar provisions imposed on pharmacies. PSNC is in the process of examining the NHS Standard contract with the aim of proposing modification where the provisions duplicate other requirements, or when there are otherwise no justifiable needs for them. If we eventually agree with NHS England that some terms need not be included in the contracts between CCGs and NHS pharmacies, we would prefer not to have to wait until the next routine review of the standard contract.

Question 3: Do you support our intention to provide a Contract with greater flexibility in terms of duration, as outlined above, and do you have any comments on the specific details of the approach?

Response: A twelve month maximum duration is limiting, and PSNC believes that such a short duration can have the effect of deterring potential providers from entering into such a contract, because of the need to cover set up costs during the lifetime of the contract. Indeed, in many commissioning exercises undertaken by PCTs, community pharmacies were subject to very short contract durations, often being set up as pilots. To maximise motivation to provide a service, a prospective provider must have the opportunity to agree a contract of sufficient longevity, to recoup start up costs.

For that reason we support, in principle, the proposal to allow longer contracts.

We do, however, see the challenges that this could cause, where a prospective provider is prevented from entering into a contract because a 'preferred provider' has been granted the contract for a lengthy period, with no opportunity to compete. We agree that where the contracts are awarded on an 'Any Qualified Provider' basis, the commissioner should be able to agree a contract lasting three or

more years. The option to enable either party to terminate on 12 months' notice does though re-introduce the uncertainty, and so we suggest that there should be a strong justification for terminating before the end of the initial term – such as changes to national priorities. Discontinuation on a whim should be deterred.

As a general rule, we believe contracts which have not faced competition should be limited in length. There is still a need to ensure that set up costs can be recouped during the contract term, but we expect that guidance can cover this point.

Question 4: Do you agree that the current Contract can support innovative commissioning models such as the 'prime contractor' approach? If not, what changes do you think are needed?

Response: It is vital that whatever commissioning methods are used, there are no opportunities for commissioners to distort or exclude competition. We have observed in the medical press that in some areas there has been an increase in commissioning of services from GP practices by CCGs (compared with the commissioning undertaken by PCTs). This increase may reflect a real desire to increase commissioning, or it could be that CCGs are seizing opportunities as the holders of the majority of NHS funds to divert funding towards their member practices. There is anxiety within pharmacy that competition could be distorted where there is so much potential for self interest within CCGs, and it will take time for this anxiety to diminish, as the CCGs demonstrate that they can commission in a way that encourages competition.

Therefore, we are reluctant to support 'prime contractor' type arrangements at present. In any event, we see the structure of the NHS Standard Contract as neither a barrier nor enabler of innovation.

Question 5: Can you suggest additional quality or service standards for community, mental health and other non-acute services which could be reflected in, and possibly incentivised through, the Contract in 2014/15?

Response: We disagree with the proposal to harmonise the levels of quality or service standards for community, mental health and other non-acute services with those experienced by the acute hospital sector by increasing the burden on these other sectors. Patients receiving treatment in acute hospitals have very little real choice of provider, and so nationally imposed standards are appropriate. In the case of community pharmacies, the existence of absolute choice of the patient drives quality and high standards.

We do agree that appropriate standards may be required in some circumstances, but the incorporation of standards should be based on the need for a standard, rather than as a means of balancing an apparent imbalance.

Question 6: Is the current guidance on collaborative contracting sufficiently comprehensive, detailed and clear? If not, which specific areas and issues require further clarification?

Response: There has been an enormous amount of confusion over the routes of commissioning of community pharmacies, as PCTs appear to have failed to understand their obligations when making the arrangements for the transfer of contracts. As Enhanced services under the NHS Pharmaceutical Services can be commissioned only by NHS England, it is highly desirable that CCGs (and local authorities) are encouraged to collaborate with NHS England to commission these services, so that

they can be used effectively to deliver services identified as needed in Pharmaceutical Needs Assessments.

Question 7: If an improved, more reliable and responsive eContract system is made available for 2014/15, will your organisation plan to make use of it for the majority of its contracts?

Response: PSNC is not itself involved in contracts, but community pharmacies, whom we represent, have a direct interest in the ease with which the eContract can be used.

We mentioned above our desire to work with NHS England to identify sections of the NHS Standard Contract that can safely be omitted when contracting pharmacies (primarily because the provisions are duplicated elsewhere, or are not relevant). If we are able to reach agreement with NHS England on a refined version of the NHS Standard Contract, then an eContract facility would support the development of an appropriate contract with minimal administrative overhead, and this is to be welcomed.

We are not aware of the teething problems that have occurred during the year, but would suggest that NHS England does devote some of its resources to an eContract template, as this is likely to be a good way forward for efficient contracting.

Question 8: Are there types of contract or provider for which use of the NHS Standard Contract is proving particularly problematic? How can these problems best be overcome?

Response: PSNC believes that the complexity of the NHS Standard Contract is wholly disproportionate for the types of service that a community pharmacy would be contracted to provide. It is frequently said that a full competitive tender may cost £10k - £20k, and if that is successful, there is often then a need for successful providers to expend even more on the legal advice needed to develop and agree a contract. These amounts are totally unrealistic for a typical community pharmacy.

We have offered to work with NHS England on identifying sections of the NHS Contract that can be safely omitted when contracting community pharmacies, and are grateful that NHS England has agreed to consider our proposals. For the purpose of the discussion document, we would reiterate that contracts between CCGs and community pharmacies need not to be as complex or as comprehensive as the current NHS Standard Contract, and we look forward to being able to agree an attenuated version.

Question 9: Do you agree that it would be appropriate to amend the Payment Terms clause, so that providers issue monthly reconciliation accounts, which each commissioner can then accept or contest?

Response: PSNC believes that providers should submit their monthly claims, and for these to be accepted or contested by the commissioner. There is also a need for the decision to accept or contest to be made in a timely manner.

Question 10: Do you have suggestions for specific changes to the Reporting Requirements schedule of the Contract, with a view to safely reducing the information collection burden?

Response: We support the principle of reducing the burden of administration, where this makes no contribution to patient care or safety. We have seen many examples during the period that PCTs were

responsible for commissioning, where information was collected for no justifiable reason. Indeed in many cases, the PCT had insufficient staff resource to do any processing or analysis of data that was reported to them.

We support the proposal to reduce reporting requirements, and suggest that any requirement to report is based not only on the value as a measure of safety or quality, but also to be reported only if the reports will be of value to those to whom the report is sent. We must move away from reporting for reporting's sake.

Question 11: In terms of practical completion of the Contract documentation, can you suggest ways in which this could be streamlined, eliminating any current requirements which are not seen as adding value locally? And do you have suggestions for the type of support you would like in understanding and using the Contract?

Response: NHS England is to be congratulated for recognising that there are opportunities to reduce administration, so that the NHS Standard Contract can be trimmed to allow commissioners and providers to avoid burdensome or duplicatory requirements.

PSNC has already offered to work with NHS England to identify such terms when used in contracts made with community pharmacies. We hope that we will be able to achieve this objective during the next few months.

Question 12: Do you think that the Contract gets the balance right, in terms of the extent to which existing guidance on specific policy areas is re-stated within it? Should specific content be removed, or additional areas added?

Response: It is a fine balance. A contract that states that it requires providers to 'comply with all applicable laws' is meaningless. If there is a legislative requirement, then the source legislation provides the necessary controls. On the other side of the argument, providers are seldom fully aware of all the legislative provisions that might apply, and would benefit from the reminder as to the legal provisions that apply. We would prefer that legislative requirements are not particularised in the body of the NHS Standard Contract, but, there should be an annex to each contract that provides an overview of the legal provisions that apply.