HFMA response
February 2023

Response to the consultation on the 2023/24 NHS standard contract

General feedback

The Healthcare Financial Management Association (HFMA) is pleased to have the opportunity to respond to this consultation and is broadly supportive of the proposed changes to the NHS standard contract (the contract) in 2023/24.

The proposals have been discussed with members of the HFMA's Payment Systems and Specialised Services Group. We have also received feedback from the HFMA's Environmental Sustainability Special Interest Group regarding the proposed changes to the contract that relate to Greener NHS.

Feedback from both groups has been considered in our overall response. We recognise that individual organisations will have specific queries and concerns but have endeavoured to submit a balanced response that reflects the national priorities.

We submitted a formally responded via the *NHS England Consultation Hub* on 27 January 2023 reflecting comments from our members. This report provides details of our response.

2023/24 standard contract

The pre-consultation engagement events that took place over summer 2022 were well received by our members. The general consensus from those sessions was that in the longer term, the contract needs to reflect the new ways of system working led by integrated care boards (ICBs), but that ICBs are not sufficiently embedded for the full extent of changes to be implemented in the 2023/24 contract.

Our members highlighted that there is currently a need for continued use of a standard contract, particularly noting the protection that it affords to all partners within an integrated care system (ICS) as they remain separate legal entities. However they acknowledge that the contract needs to evolve to reflect the changing landscape within which the organisations are working. Going forward it will be important that the language of the contract reflects the collaborative, partnership working that is expected from systems.

We are pleased that the proposed contract reflects this feedback and that changes in 2023/24 are limited only to those required to reflect national priorities as set out in the *2023/24 priorities and operational planning guidance*[1]. We also welcome the efforts to simplify guidance where possible by referring to associated published guidance and standards.

Proposed review during 2023

The HFMA welcomes the intention to undertake a fundamental review of the purpose and content of the contract during 2023 to inform changes from April 2024 and we look forward to participating in engagement and consultation.

We ask that the review considers the ongoing development of system working as relationships and collaboration continue to mature over the next few years.

In particularly we would expect this review to consider the recommendations arising from the *Hewitt review*[2] into ICS oversight and governance. The HFMA has submitted evidence[3] to the review recommending that national bodies set priorities but allow systems to determine how these are delivered at local level. We have also highlighted the essential requirement to share data across organisational boundaries to ensure effective use of resources and improved patient care and the need for robust data sharing rules to promote this. We would welcome data sharing rules being integrated into standard contracts in the future.

Furthermore, we would expect this review to recognise the impact of the delegation of specialised services commissioning to ICBs. While delegation of all appropriate services is expected from 1 April 2024 this is subject to significant preparatory work during 2023/24 and hence the 2024/25 contract may need to make provision for an ongoing transition path.

Response to proposed changes in 2023/24

In this section we have stated, or made reference to, the changes that are being consulted on and indicated whether the HFMA agrees with the proposal. The comments below each section have been included in our formal response to the consultation.

Changes to national waiting times standards

Topic	Change
Maximum RTT waiting times	We intend to amend the maximum RTT waiting time standard from 104 weeks in the 2022/23 contract to no more than 65 weeks (to be achieved by March 2024).
Four-hour A&E waiting times	We propose to amend the four-hour standard for A&E waiting times so that the threshold is set at 76% (to be achieved by March 2024), rather than 95%.
Ambulance response times	We propose to amend the standard for mean Category 2 ambulance response times to no more than 30 minutes (to be achieved across 2023/24), rather than no more than 18 minutes.
28-day cancer faster diagnosis standard	The contract includes a standard for patients to wait no more than 28 days from urgent cancer referral to diagnosis, with a threshold of 75%. We propose to retain the standard and the threshold but make clear that this is to be achieved by March 2024.

We support proposals to align the standard contract with the specific requirements on national waiting times standards set out in the *2023/24 priorities and operational planning guidance*.

However some of our members are concerned that these targets may be difficult to achieve given the current pressure on emergency care services and the impact on elective recovery. These current pressures are likely to have a knock-on effect in achieving the 2023/24 national waiting time standards. Continuing uncertainty over strike action and financial pressures will contribute to the risk

[1] NHS, *2023/24 priorities and operational planning guidance,* December 2022
[2] DHSC, *Hewitt review*, December 2022
[3] HFMA, *Response to call for evidence to Hewitt review,* January 2023

associated with providers achieving targets. We suggest that parties have flexibility to include expected achievement in contract particulars and to agree mitigation actions.

Clinical services – new additions to reflect national priorities

Topic	Change
Peri-operative care guidance	In accordance with the requirement stated in the Delivery plan for tackling the Covid-19 backlog of elective care, we propose to add a requirement for acute providers to implement, by no later than 31 March 2024, a system of early screening, risk assessment and health optimisation for all adults waiting for inpatient surgery.
Outpatient services	Redesigning outpatient services to make them more patient-centred and efficient is a key priority for elective recovery. To support this, we propose to include a new requirement in the contract on providers to have regard to *national guidance on implementing patient-initiated follow-up*.

We support these proposals and agree that they can represent a value based approach to healthcare, improving efficiency and productivity. However, it needs to be recognised that there is potential for negative unintended consequences.

There is a need for recognition of the potential increased costs associated with enhanced screening requirements for peri-operative care and local systems may need to look at funding envelopes and system-wide solutions to achieve these requirements. Systems will need to ensure that contract particulars contain sufficient detail to ensure providers can balance this requirement with the reduction of maximum RTT waits to 65 weeks for all patients.

There is a need to understand the implications of patient-initiated follow-up for different patient groups and to ensure that health inequalities do not increase as a result of any plans that are implemented within local systems.

In addition to the proposals noted above, the consultation sets out additions relating to national requirements for the following:

- *National infection prevention and control manual*
- vaccinations for Covid-19
- reporting deaths of people with a learning disability and/ or autism
- medical devices safety officer and medication safety officer.

The HFMA has no direct comments related to these additions but supports proposals to keep the standard contract consistent with published national standards and policies.

Clinical services – areas where updated contract wording is needed

The consultation details changes to the contract wording covering the following:

- maternity and neonatal services
- patient safety
- end of life care
- palliative care co-ordination.

In each case the updates are aimed at ensuring that the standard contract is kept in line with the latest published national standards and policies. The HFMA has no direct comments but supports this approach.

Workforce

Topic	Change
Workforce Race and Disability Equality Standards	The contract currently requires i) all providers to comply with the workforce race equality standard and ii) trusts to comply with the workforce disability equality standard, in each case reporting to the commissioner annually on compliance. We have reflected that this language is not quite suitable for these two standards, where the focus is on the provider improving its overall position against the indicators in the round. We therefore propose to amend the wording, so that there is instead a focus on improvement (through development of provider action plans to improve performance against the standards) and on transparency (through publication on provider websites of board approved annual performance reports and action plans). Existing reporting requirement (both nationally in accordance with national data collections approved by NHS Digital and locally to the commissioner) remain in place.
Workforce planning	The existing contract requires providers to co-operate with Local Education Training Boards (LETBs) and with Health Education England (HEE) in relation to the provision of education and training for healthcare workers. For 2023/24, we propose to amend the wording a) to add a requirement to co-operate in relation to healthcare workforce planning, b) to delete the references to LETBs and HEE and replace them with references to NHS England (NHSE), local ICBs and local trusts and c) make clear that all providers should be approaching workforce planning, education and training and the development and delivery of workforce plans more broadly in a way which supports NHS bodies to deliver their triple aim duties.
Staff health and wellbeing	Reflecting the intention behind the NHS health and wellbeing framework, we propose to include additional requirements in the contract relating to staff health and wellbeing. • We propose to add a general requirement on providers to promote staff health and wellbeing. Providers will be required to ensure that the issue is addressed in staff appraisals (through 'wellbeing conversations') and that staff are made aware of any support services available and are enabled to access those services where needed. • In accordance with published guidance, we intend to amend the Contract so that each trust is required to appoint a board-level wellbeing guardian.

Given the current workforce pressures across the NHS, the HFMA welcomes proposals that promote best practice in recruitment and retention of staff and supports the ongoing focus on workforce planning.

The HFMA and colleagues within the Future-Focused Finance area of One NHS Finance[4] are already supporting the finance function to understand and improve diversity and representation. They offer a variety of tools and resources to ensure that staff throughout the function have opportunities for career development and personal growth.

In addition to the proposals noted above, the consultation sets out additions relating to national requirements for the following:

- professional nurse advocate role
- freedom to speak up.

The HFMA has no direct comments but supports an approach that ensures the standard contract is kept in line with the latest published national standards and policies.

[4] One NHS Finance, Future-Focused Finance

Procurement of medicines and devices

Topic	Change
Procurement of medicines via national frameworks	High-cost drugs and devices are typically funded on a pass-through basis, with the commissioner bearing the financial risk of demand for those items. As a way of ensuring best value, the contract has for many years included a provision which allows the commissioner, on notice, to require the provider to purchase a particular high-cost drug or device from a specific supplier or framework. Where the provider does not comply, it is not entitled to payment for the drug / device in question. The provision applies to trusts only. More recently, a requirement was added to the contract for providers to purchase one specific high-cost drug, adalimumab, from a newly established national framework. More national frameworks are now being put in place for the purchase of medicines, and full use of these by trusts will maximise value for public money. We therefore propose to update the contract wording, so that where a particular medicine is available via a national framework a trust must purchase that medicine through that framework. This is subject to the caveats that the product available via the framework must be clinically appropriate for the patient in question, and that a trust may first use up any existing stock of the same or a similar product purchased through other means. We also propose to include a new requirement for accountability so that any trust which breaches its contractual duty to use national frameworks must, on request, provide a written statement to its commissioners, to its public board and/or to NHSE, explaining its purchasing decision and what it will do to ensure compliance with the contractual requirement in future.
Procurement of high-cost devices used in specialised services	The existing provision described above has been used routinely by NHSE in relation to high-cost devices used in specialised services. We now propose to separate this from the provision relating to procurement of medicines and to amend it so that, where a high-cost device required in the provision of specialised services is available for purchase via NHS Supply Chain, the provider must purchase it via that route.

While we support the proposals listed above, we recommend inclusion of a clause recognising the lead time for transferring patients to medicines available through a national framework. This also needs to take into account the potential for manufacturers to experience supply issues if demand suddenly peaks due to changes to national frameworks.

Greener NHS and healthcare food and drink standards

Topic	Change
Desflurane	The 2022/23 contract required providers to reduce the proportion of desflurane to all volatile gases used in surgery to 5% or less by volume. The NHS has made good progress on this commitment, and we propose to amend the target for 2023/24 to 2% or less.

Given the progress to remove the use of desflurane in most organisations, some members have expressed that this target could be amended to require zero use by the end of March 2023.

Topic	Change
Electricity supplies	The contract requires trusts to ensure that they source their electricity from certified renewable sources. Given the increased cost of renewable electricity, we now propose to amend this requirement so that it applies only as far as reasonably feasible.

While members recognise that the cost of sourcing their electricity from certified renewable sources is increasing, they also note that this is in line with or even less than the increasing cost of electricity supplies in general. Therefore we would like to see this proposal strengthened such that trusts should be required to source their electricity from certified renewable sources unless they can demonstrate that the cost of doing so is prohibitive.

Topic	Change
Piped nitrous oxide	The 2022/23 contract requires providers to reduce the carbon impact of the use or release of nitrous oxide. A significant proportion of nitrous oxide emissions is caused by waste from manifolds and the associated piped infrastructure. We propose to amend the Contract to focus the requirement specifically on reducing piped nitrous oxide waste.
NHS Net Zero Supplier Roadmap	We added a requirement to the 2022/23 contract, on trusts, to comply with Cabinet Office guidance, *Taking account of social value*. This meant that all trust procurements needed to include a minimum 10% net zero and social value weighting. We now propose to broaden this duty, so that trusts have to comply with the requirements of the published NHS net zero supplier roadmap. In addition to the existing 10% weighting requirement, one key effect will be that for 2023/24 onwards, for all contracts above £5 million, trusts must require suppliers to publish a carbon reduction plan.

Our members, including representatives from the HFMA Environmental Sustainability Special Interest Group support these proposals.

In addition to the proposals noted above, the consultation sets out amendments relating to *national standards for healthcare food and drink*. The HFMA has no direct comments but supports an approach that ensures the standard contract is kept in line with the latest published national standards and policies.

Payment and reporting

Topic	Change
Withholding of payment / financial sanctions	For many years, the contract included financial sanctions on providers for failure to achieve national waiting times standards. These were first suspended and in 2021 were removed from the contract altogether. With the Health and Care Act 2022 now in place, requiring ICBs and trusts to work to shared system-level financial objectives, we have further reviewed the remaining provisions in the Contract which involve application of financial sanctions or withholding of payment. We now propose to make further changes as follows. We intend to remove the detailed provisions which require commissioners to withhold payment i) for acute outpatient attendances made following acceptance of a GP referral not made via the NHS e-Referral Service (e-RS) and ii) for activity undertaken in breach of national *Evidence based interventions (EBI) guidance*. • Use of e-RS in the acute sector is very high, backed by a contractual requirement on GPs to use it; a specific financial incentive on acute providers is no longer needed. • The third list of interventions subject to EBI guidance is about to be published and will feature some examples where providers will be encouraged to undertake more, rather than less, activity. In that context, a non-payment provision makes no sense. • The idea of financial transactions at a very granular individual procedure level is not consistent with the greater emphasis on fixed payments now built into the aligned payment and incentive (API) rules for trusts. We also intend to remove the financial sanctions which apply to providers in relation to delays in undertaking care (education) and treatment reviews (C(E)TRs). The Contract will of course continue to require use of e-RS, compliance with EBI guidance and timely support to the C(E)TR process. The point of the changes is simply to remove the very transactional withholding of payment/ financial sanction element in each case. Financial incentives for trusts to follow EBI guidance will instead be built into the API rules.

We strongly support this proposal, welcoming the efforts that have been made throughout the propose standard contract changes that reflect new ways of system working led by ICBs and align with the transition to more collaborative and system partnership models.

Topic	Change
NHS payment scheme	Under the Health and Care Act 2022, NHS rules on the payment of providers are now referred to as the NHS payment scheme, rather than the national tariff payment scheme. NHSE is currently consulting on the NHS payment scheme 2023/25, and we have included in the draft contract a number of provisional changes to give effect to the new scheme. These should be read in conjunction with the consultation draft NHS payment scheme. As a result of these changes, we have been able to shorten service condition 36 considerably. We have also amended the order and content of the various related schedules. Under the proposed NHS payment scheme for 2023/25, the API rules (which include CQUIN) will now apply to all trust contracts. Neither API nor CQUIN feature in the shorter-form version of the contract and including them would make that version longer and more complex. In consequence therefore our *Contract technical guidance* now makes clear that the shorter-form version of the contract should not be used for trusts. When we publish the final version of the 2023/24 contract, we will confirm wording in relation to payment in line with the outcome of the consultation on the NHS payment scheme.

We strongly support proposals to align the language and requirements of the standard contract to the NHS payment scheme and amendments to the short-form version of the contract that are consistent with the payment scheme provisions for contracts with non-NHS providers and other relationships that do not require an API basis. Note that the HFMA has submitted a detailed *response to the consultation on the 2023/25 payment scheme*[5].

Topic	Change
Deadlines for contesting invoices and reconciliation accounts	Where a commissioner wishes to contest any element of payment in a provider's invoice or reconciliation account, the contract requires that it must do so within five working days of receipt of that invoice or account. We have been made aware of (rare) instances where, because the provider submits its invoice or account very early, the contract timescale means that the commissioner has to decide whether to contest any element of payment before it is able to view, in SUS, the provider's activity data for the relevant period. That is clearly inappropriate – and we have therefore proposed minor amendments to the contract wording, so that the five-day period for contesting payment will run from either receipt of the invoice / account or publication in SUS of the relevant period's activity data, whichever is the later.

We welcome this change and that there has been recognition of the problems associated with the previous wording. We would recommend that future contracts allow for more freedom to agree these deadlines in a way that is mutually beneficial across systems. This would better reflect new ways of system working and partner relationships.

In addition to the proposals noted above, the consultation sets out amendments that align with other national guidance relating to the following:

- reporting requirements
- charging of overseas visitors.

The HFMA welcomes all proposals that simplify the contract and the removal of wording that is no longer appropriate.

[5], HFMA, *Response to the consultation on the 2023/25 NHS payment scheme*, January 2023

Other smaller updates

Topic	Change
Delegation of commissioning functions	It is expected that NHSE will, at some future point, delegate to ICBs some of its functions for commissioning prescribed specialised services. We propose to amend the contract wording to ensure that the use of national service specifications, relevant national quality requirements and nationally-set reporting requirements remain mandatory, even where delegation has taken place and contracts for specialised services are awarded and managed by ICBs, rather than by NHSE itself.

We recognise that there is an ongoing transition as budgets and the responsibility for setting contracts are delegated from NHSE to regions to ICBs and welcome that there is provision in the proposals to cover this.

The consultation also details changes to the contract wording to ensure it remains current, accurate and robust in the following areas:

- Armed Forces covenant
- NHS 'triple aim'
- booking from NHS 111 into A&E services
- antibiotic usage
- domestic abuse
- liability under indemnities
- payment of sub-contractors
- suspension and termination
- definition of change in control
- primary and community mental health services
- joint system plan obligations.

In each case the updates are aimed at ensuring that the standard contract is kept in line with the latest published national standards and policies. The HFMA has no direct comments but supports this approach.

About the HFMA

The Healthcare Financial Management Association (HFMA) is the professional body for finance staff in healthcare. For over 70 years, it has provided independent and objective advice to its members and the wider healthcare community. It is a charitable organisation that promotes best practice and innovation in financial management and governance across the UK health economy through its local and national networks.

The association also analyses and responds to national policy and aims to exert influence in shaping the wider healthcare agenda. It has particular interest in promoting the highest professional standards in financial management and governance and is keen to work with other organisations to promote approaches that really are 'fit for purpose' and effective.

The HFMA offers a range of qualifications in healthcare business and finance at undergraduate and postgraduate level and can provide a route to an MBA in healthcare finance. The qualifications are delivered through HFMA's Academy which was launched in 2017 and has already established strong learner and alumni networks.

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