Pharmaceutical Services Negotiating Committee (PSNC) response to Consultation on NHS Provider Selection Regime

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Contact	Gordon Hockey
	Director, Legal
	Gordon.Hockey@psnc.org.uk
	0203 1220 821

14 Hosier Lane | London | EC14 9LQ

Introduction

The NHS England and NHS Improvement engagement exercise in 2019 demonstrated strong support for scrapping section 75 and the PPCCR. On the basis that government proceeds with legislation to do this, we are now asking questions specifically about how the new regime would work.

Response

The Pharmaceutical Services Negotiating Committee (PSNC) promotes and supports the interests of all NHS community pharmacies in England. We are recognised by the Secretary of State for Health and Social Care as the body that represents NHS pharmacy contractors. We work closely with Local Pharmaceutical Committees (LPCs) to support their role as the local NHS representative organisations.

Our goal is to develop the NHS 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.

Consultation Questions

Question 1:

Should it be possible for decision-making bodies (e.g. the clinical commissioning group (CCG), or, subject to legislation, statutory ICS) to decide to continue with an existing provider (e.g. an NHS community trust) without having to go through a competitive procurement process?

Strongly disagree | Disagree | Neutral | **Agree** | Strongly agree | Don't know

Response:

We agree with the view that generally, decision-making should not have to go through a competitive tender process - subject to the proposals outlined in the consultation for the continuation of existing arrangements and identifying the most suitable provider for new/substantially changed arrangements; and subject to appropriate criteria in the regime for selecting providers and delivery of contracted services to a satisfactory standard by existing providers.

Question 2:

Should it be possible for the decision-making bodies (e.g. the CCG or, subject to legislation, the statutory ICS) to be able to make arrangements where there is a single most suitable provider (e.g. an NHS trust) without having to go through a competitive procurement process?

Strongly disagree | Disagree | Neutral | **Agree** | Strongly agree | Don't know

Response:

(Same as the answer to question 1) We agree with the view that generally, decision-making should not have to go through a competitive tender process - subject to the proposals outlined in the consultation for the continuation of existing arrangements and identifying the most suitable provider for new/substantially changed arrangements; and subject to appropriate criteria in the regime for selecting providers and delivery of contracted services to a satisfactory standard by existing providers.

Question 3:

Should it be possible for the decision-making bodies (e.g. the CCG or, subject to legislation, the statutory ICS) to be able to make arrangements where there is a single most suitable provider (e.g. an NHS trust) without having to go through a competitive procurement process?

Strongly disagree | Disagree | Neutral | **Agree** | Strongly agree | Don't know

Response:

We agree that there are some situations where exemptions should apply, for example, as set out in the proposal where urgent needs arise unexpectedly, or patient safety is at risk.

Question 4:

Should it be possible for the decision-making bodies (e.g. the CCG or, subject to legislation, the statutory ICS) to be able to make arrangements where there is a single most suitable provider (e.g. an NHS trust) without having to go through a competitive procurement process?

Strongly disagree | Disagree | Neutral | **Agree** | Strongly agree | Don't know

Response:

No further comment.

Question 4:

Do you agree with our proposals for a notice period?

Strongly disagree | Disagree | Neutral | **Agree** | Strongly agree | Don't know

Response:

No further comment.

Question 5:

It will be important that trade deals made in future by the UK with other countries support and reinforce this regime, so we propose to work with government to ensure that the arranging of healthcare services by public bodies in England is not in scope of any future trade agreements. Do you agree?

Strongly disagree | Disagree | Neutral | **Agree** | Strongly agree | Don't know

Response:

No further comment.

Key Criteria

Question 6:

Should the criteria for selecting providers cover: quality (safety effectiveness and experience of care) and innovation; integration and collaboration; value; inequalities, access and choice; service sustainability and social value?

Strongly disagree | Disagree | Neutral | **Agree** | Strongly agree | Don't know

Do you have any additional suggestions on what the criteria should cover/how they could be improved?

Response:

None.

Transparency and scrutiny

Question 7:

Should all arrangements under this regime be made transparent on the basis that we propose?

Strongly disagree | Disagree | Neutral | **Agree** | Strongly agree | Don't know

Response:

Proportionate safeguards:

We agree with the proposed transparency and scrutiny within the regime, including, for example, publishing an intention to award a contract and the steps proposed to evidence decision-making – publishing, recording, annual audit and annual report. We consider that these safeguards are important and that where applicable, the detail required, or enquiry undertaken should be proportionate to the value of the contract.

Conflicts of Interest:

We also consider that potential conflicts of interest should be addressed separately and explicitly under transparency and scrutiny, and that in advance of the award of a contract, the decision-makers are identified, and any conflicts of interest identified so that any issues arising can be addressed in advance of the award and are not the subject of complaint or concern afterwards (unless there was no disclosure or failure to address the conflict of interest appropriately). This is particularly important to ensure collaborative working between different sectors. We are not convinced that the existing arrangements for managing conflicts of interest are adequate.

General questions

Question 8:

Beyond what you have outlined above, are there any aspects of this engagement document that might:

- have an adverse impact on groups with protected characteristics as defined by the Equality Act 2010?
- widen health inequalities?

Response:

None.

Question 9:

Do you have any other comments or feedback on the regime?

Response:

Locally Commissioned Community Pharmacy Services
As stated in the proposal, the regime would not apply to: 'community pharmaceutical services, as separate regulations already set out how community pharmaceutical services are to be arranged, negating the need for additional rules' (paragraph 4.4). So, the regime would not apply to nationally contracted pharmaceutical services (Essential and Advanced pharmaceutical services) and those agreed locally (Enhanced services). We agree with this.

But many services provided by community pharmacies are commissioned by Local Authorities (LAs) and Clinical Commissioning Groups (CCGs) and our understanding is that the proposed regime would apply to these services. PSNC provides information on such services and examples are at https://psnc.org.uk/services-commissioning/locally-commissioned-services/
Information provided by the Kings Fund explains that:

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In addition to these nationally determined services [Essential, Advanced and Enhanced services], community pharmacies can also be contracted to provide **locally commissioned services** – like enhanced services, these are commissioned by public bodies, including clinical commissioning groups (CCGs) or local authorities, to meet the needs of particular local populations outside the nationally set and specified services. Examples of local commissioning from community pharmacies includes sexual health services, needle and syringe exchange services, or smoking cessation services. (see What services does community pharmacy provide? At https://www.kingsfund.org.uk/publications/community-pharmacy-explained)

We are keen that community pharmacy is recognised by local commissioners as a key provider of healthcare services in primary care.

Representation

A concern we have is around representation on ICS Boards and ICS Health and Care Partnerships.

We consider that sectors, organisations and healthcare providers with representation on ICS Boards or Partnerships will have a better opportunity to inform and educate decision-makers and showcase the potential of their sectors, organisations and healthcare providers. This is particularly so in the absence of any formal tender process. While there are some safeguards proposed, for example, publication of intention to award contracts, this is often too late in the day to make a real difference, as the opportunity to influence the commissioning of primary care services is often at an earlier stage of the commissioning process, when consideration is given to addressing patients' health needs or the scope of the service specification or patient pathway. Better informed and educated, commissioners are more willing to commission relevant services.

Accordingly, we consider that it is vital for community pharmacy to be represented on ICS Health and Care Partnerships.

In what capacity are you responding? *Industry body*

If responding on behalf of an organisation:

Organisation name: *Pharmaceutical Services Negotiating Committee*