

Response form:

Substantive guidance on the Procurement, Patient Choice and Competition Regulations

We are consulting on the guidance that we intend to publish about how to comply with the Procurement, Patient Choice and Competition Regulations and with certain requirements relating to patient choice in the NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 which Monitor has the power to enforce under the Procurement, Patient Choice and Competition Regulations.

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Please write your answers to the following questions in the boxes below. Please expand the boxes or continue on further sheets if necessary. Then follow the instructions at the end of this form to return your response to Monitor.

Chapter 3, Question 1:

Do you agree with the examples of factors that Monitor may consider when deciding whether commissioners have complied with their duty to act transparently, proportionately and in a non-discriminatory way?

Are there other factors that you think we should highlight?

Please provide more details:

The Royal College of Physicians of Edinburgh (“the College”) agrees that yes, this process appears reasonable. However, the impact of potentially destabilising present NHS services must be considered. Services are interlinked, and there may be unintended consequences of removing a part to a new provider.

Chapter 3, Question 2:

Do you agree with the examples of factors that Monitor may consider when deciding whether commissioners have complied with their duty to procure services from the providers most capable of delivering commissioners’ objective and that provide best value for money?

Are there other factors that you consider we should highlight?

Please provide more details:

The College has a number of reservations about the examples provided. There is no mention of the importance of education and training. Removal of some services may harm the training of junior doctors and weaken service provision in future.

There are concerns that clinical services may need to be unbundled. An example would be PCI for a patient with an acute coronary syndrome being done at the Regional Centre, but cardiac rehabilitation and secondary prevention needing to be done by a different provider, at the local hospital. The consequences may be a service being lost at a local unit, or instability being caused at a local unit.

Length of contract is also important, as a reasonable length would allow stability and the service to evolve to meet changing demands as well as being monitored to ensure that the best value for money is still being delivered.

Chapter 3, Question 3:

Do you think that the description of integrated care, choice and competition is helpful?

Please provide more details:

Yes. However, some additional examples would be beneficial in this section, as some simplistic models and examples are currently included which are not helpful and indeed are not completely accurate – the oncology patient will benefit from oncology, radiology and pathology but frequently also relies on local acute medical services to deal with complications of their disease and treatment. Furthermore, dermatology is often a single organ problem whereas diabetes is a multi-organ problem involving specialists from a number of disciplines. If we are truly describing integrated care the acknowledgement of care across all sectors of social care, primary care and secondary care must be clear, but the example given of care from multiple providers does not mention secondary care services.

Chapter 3, Question 4:

Do you agree with the examples of the factors that Monitor may take into account in deciding whether commissioners have complied with their general duty to consider appropriate means of improving quality and efficiency, including through services being delivered in an integrated way, patient choice and competition?

Are there other factors that you consider we should highlight?

Please provide more details:

The College feels service targets and outcomes should be included in these examples.

While some health services are integrated across primary and secondary care, there is little or no integration between health and social care. Both have developed along different pathways, have different funding streams and have different priorities eg an elderly patient in hospital requiring a care package may be regarded as a lower priority to an elderly patient living at home and failing due to having no package of care. The consideration of integrated care and competition has to take into account the whole pathway of care and not small parts.

As the population ages, there is a need to integrate these services. However, while the health care budget has remained relatively stable over the last few years, social services have seen their budget decrease. The balance of care provision therefore must be carefully screened.

Chapter 4, Question 1:

Do you think the description of the considerations that commissioners should take into account when deciding whether or not to publish a contract opportunity is helpful?

Do you think there are other considerations that we should list?

Please provide more details:

In general, yes. However all contracting opportunities for services should be publically known. There needs to be greater openness and transparency of the contracting opportunities with greater public participation in decisions.

Chapter 4, Question 2:

Do you think that the examples of situations where it may be appropriate for a commissioner to award a contract without publishing a contract notice and running a competitive tendering process are helpful?

Please provide more details:

The College feels this is a crucial area which needs further clarification. Commissioners invest in a detailed review being undertaken as stated on page 23, but the commissioners may also have an interest in organisations that could function as providers. It would obviously not be satisfactory for a non-competitive process to be undertaken in these dubious circumstances. Furthermore, commissioning processes must always be open to public scrutiny.

Chapter 4, Question 3:

Do you think that the description of the circumstances in which a contract will be treated as a new contract is helpful? Are there other situations where a contract may amount to a new contract that you think we should highlight?

Please provide more details:

Yes.

Chapter 5, Question 1:

Do you agree with the examples of the factors that Monitor might take into account in deciding whether commissioners have complied with their duty to apply and establish transparent, proportionate and non-discriminatory qualification criteria?

Are there other factors that you consider we should highlight?

Please provide more details:

No; decisions should be based on a proven ability to deliver a service. Awarding contracts to untried providers could be a clinical risk.

Commissioners need to be able to publish why they made a decision to give a contract to a provider. The information should include the rationale behind that decision process.

Chapter 6, Question 1:

Do you agree with the suggestions of the types of information that may be relevant for the purposes of compiling an adequate record of a contract award decision to demonstrate that commissioners have complied with their relevant duties under the National Health Service Act 2006?

Are there other types of information that may be relevant that you consider we should highlight?

Please provide more details:

In general, yes. A decision to award a service must have been through due process and the commissioners must have the necessary skills to make a decision.

Chapter 7, Question 1:

Do you agree with the examples of the factors that Monitor might take into account in deciding whether commissioners have complied with their duty to ensure that any person providing commissioning support or assistance acts in accordance with the relevant requirements of the Procurement, Patient Choice and Competition Regulations?

Are there other factors that you consider we should highlight?

Please provide more details:

The College feels there needs to be explicit evidence of no financial or other gain by providers who are involved in the commissioning process. This should extend to GP partners of those submitting applications.

This should also extend to exclusion of all with an indirect financial interest such as significant shareholdings in a company awarded a contract or a spouse or partner with the same.

There should also be a declaration that they will work within the spirit and aims of the NHS Constitution.

Chapter 8, Question 1:

Do you agree with the examples of interests in the provision of services that may give rise to a conflict with the interests in commissioning them?

Are there other examples that you consider we should highlight?

Please provide more details:

See above.

Chapter 8, Question 2:

Do you agree with the examples of factors that Monitor may take into account when deciding whether a conflict affects or appears to affect the integrity of a contract award?

Are there other factors that may be relevant that you consider we should highlight?

Please provide more details:

Yes, but prior to any decision being made a formal declaration should be made. A register of interests should be worth consideration and there must be some mechanism of scrutiny in addition to self-declaration.

Chapter 8, Question 3:

Do you agree with the suggestions of the types of information that may be relevant for the purposes of compiling an adequate record to demonstrate that a conflict of interest has been appropriately managed?

Are there other types of information that may be relevant that you consider we should highlight?

Please provide more details:

Managing a conflict of interest should be a Board level responsibility. Any record of involvement in the process by someone with a vested interest should be followed by suspension of the process and beginning a new process. Any subsequent process must be preceded by open declaration of interests. Significant review of individual involvement in commissioning and provider status should follow such a suspension of process

Chapter 9, Question 1:

The cost/benefit analytical framework is the same as that applied by the Cooperation and Competition Panel when analysing anti-competitive behaviour under the Principles and Rules.

Do you think this description is helpful?

Please provide more details:

Generally yes, but there is also mention of a qualitative assessment sometimes being used, which can be open to debate.

Chapter 9, Question 2:

Do you agree with the examples of the considerations that Monitor may take into account in assessing whether a commissioner has engaged in anti-competitive conduct that is not in the interests of patients?

Do you think there are other examples that we should highlight?

Please provide more details:

The College would highlight services where there is a significant training component provided. Cherry picking of conditions may harm the future training and thus provision of specialists and patient care in the long term.

Chapter 10, Question 1:

Do you agree that we should include a description of the requirements relating to patient choice in the Responsibilities and Standing Rules Regulations that Monitor has the power to enforce under the Procurement, Patient Choice and Competition Regulations?

Please provide more details:

Yes.

Chapter 10, Question 2:

Do you agree with the examples of relevant factors that Monitor may take into account in deciding whether commissioners have complied with their duties relating to patient choice?

Are there other relevant factors that you consider we should highlight?

Please provide more details:

Yes, agreed.

Thank you for taking the time to read and respond to our consultation.

Substantive guidance on the Procurement, Patient Choice and Competition Regulations was published on Monday 20 May 2013. Please submit your responses to the questions and any other comments that you have by **5pm on 15 July 2013**.

Please save this document and email it to RegulationsGuidance@monitor.gov.uk with 'Substantive guidance' in the subject line.

Alternatively, post your response to:

Procurement, Patient Choice and Competition Regulations Guidance Consultation
Co-operation and Competition Directorate
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Please note: we may use your details to contact you about your response or send you information about our future work.

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