

**Securing best value for NHS patients:
Requirements for commissioners to adhere to good procurement practice and protect
patient choice
Royal Pharmaceutical Society response**

The Royal Pharmaceutical Society (RPS) is the professional body for every pharmacist in Great Britain. We are the only body that represents all sectors of pharmacy in Great Britain.

The RPS leads and supports the development of the pharmacy profession within the context of the public benefit. This includes the advancement of science, practice, education and knowledge in pharmacy. In addition, it promotes the profession's policies and views to a range of external stakeholders in a number of different forums.

Its functions and services include:

Leadership, representation and advocacy: promoting the status of the pharmacy profession and ensuring that pharmacy's voice is heard by governments, the media and the public.

Professional development, education and support: helping pharmacists to advance their careers through professional advancement, career advice and guidance on good practice.

Professional networking and publications: creating a series of communication channels to enable pharmacists to discuss areas of common interest.

General comments:

There is guidance and legislation already in place covering a number of these areas WE believe that what is critical to success is that those who are involved in making commissioning decisions understand what applies and that Monitor doesn't hesitate in taking action where there are issues of concern around probity, and in particular declarations of interest and how they are to be handled within commissioners.

Choice is important, but unless it is informed it cannot lead to the quality change that the NHS is striving for.

There should be an assumption on transparency in line with EU requirements, so while absolute financials remain largely confidential all scoring criteria for proposals have to be robust and transparent.

There needs to be a truly fair and level playing field for all potential providers. While we support the principle of the 'any qualified provider' model there must be a level playing field for all providers, with equal opportunities for all and an understanding of the different cost models in place for all providers. Many private sector healthcare providers invest in equipment and training to deliver a service and require a long enough period of time in any specific contract to ensure that initial capital outlay is recouped.

For all providers to be able to provide an equitable service they all require access to relevant information about the patient. Currently, community pharmacy has no access to a patient's

electronic record and in hospital pharmacy access is varied and mainly reliant on having web-based systems in place. This places pharmacists and other healthcare providers at a serious disadvantage when tendering for services as a qualified provider. All qualified providers must have the same access to data and the same level of support to provide services.

Answers to the questions

Procurement

Do you agree that we should establish broad principles for good procurement practice in the regulations, rather than setting more prescriptive procedural rules?

We believe that these rules for good procurement practice are already laid down within EU law. However, health is excluded from some of the criteria and in those areas it would be sensible to establish principles of good practice.

Do we need to introduce any additional safeguards to ensure that commissioners comply with good procurement practice?

Any criteria used must be able to be justified and Monitor in its new competition role should support scrutiny and should ask local providers if they feel the rules used were justified in a sample number of cases. Where objections are raised these should be investigated and any learning added to the principles of good procurement.

Could the proposals have any perceived or potential impact on equality including people sharing protected characteristics under the Equality Act 2010?

We have no comments on this question.

Patient choice

Do you agree that the regulations should protect patients' rights to exercise choice as set out in the NHS Constitution?

Choice is enshrined in the NHS Constitution and if choice is reduced there must be a demonstration that this results in improved quality of patient care. Choice should be enabled by understanding the value of quality and basing cost of service on this basis. Driving cost down must not compromise quality or risk creating monopolies for single players which increases the risk of failure and loss of service.

Are there any further safeguards that should be established through the regulations or elsewhere to protect the extension of choice?

To enable choice all those supporting patients, particularly GPs, must offer a full range of choice and not drive patients into a preferred provider without justification.

There needs to be shared understanding that choice of provider and shared decision making are two separate things and the decision needs to be made regarding the intervention required before the provider is chosen.

Anti-competitive conduct

Do you agree that we should adopt an effects based approach to assessing restrictive conduct by commissioners, rather than assuming that conduct which restricts competition is automatically against patients' interests?

Yes. However, Monitor should investigate where questions are raised about the restrictive nature of contracts and hold Clinical Commissioning Groups (CCGs) to account where good practice procurement has been breached. Monitor should be able to force commissioners to re-tender and to oversee the tender process to ensure restrictive practices do not continue. Ultimately, if commissioners continue to operate in a manner which restricts choice inappropriately they should lose their capability to procure services.

What can the Department of Health, NHS Commissioning Board and Monitor do to ensure that commissioners understand the requirements so that they can effectively 'self-assess' whether or not their conduct falls within the rules?

All procurements should be assessed against the relevant criteria as laid down in EU law and the principles of good procurement. Any challenge must be assessed to ensure the system has been robust with Monitor acting as the regulator on behalf of patients and providers. Any guidelines should ensure multi-professional and patient involvement in the commissioning decisions.

Are there particularly problematic behaviours which we should address specifically, for example in the requirements or in Monitor's guidance for commissioners?

If all of the above are addressed and any learning from challenges are applied it should prevent problematic behaviour. There must be the sanction to prevent commissioners carrying out procurements if they continue to act in an anti-competitive manner.

Conflicts of Interest

Do you agree that the Act and proposed requirements impose sufficient safeguards to ensure that commissioners manage conflicts of interest appropriately?

All parties must issue declarations of interest and where there is a conflict must defer to others without conflict or demonstrate how the conflict has been managed to ensure it hasn't impacted on the final decision.

If not, what additional safeguards could we introduce?

All commissioning groups should have a lay member acting as a conflicts expert (where the normal lead is conflicted another is appointed for the purposes of the procurement). Oversight and scrutiny committees in local government should view all procurement and ensure they do not breach any regulations or good practice guidelines.

A handwritten signature in black ink that reads "Shilpa Gohil". The letters are cursive and somewhat stylized.

Shilpa Gohil

Chair, English Pharmacy Board,
Royal Pharmaceutical Society

For further information or any queries you may have on our consultation response please contact Heidi Wright heidi.wright@rpharms.com 0207 572 2602