

PROCUREMENT FRAMEWORK

1. INTRODUCTION

This Procurement Framework describes the context, guiding principles and implementation arrangements that Croydon CCG will follow in managing the decision making process around the procurement of clinical services.

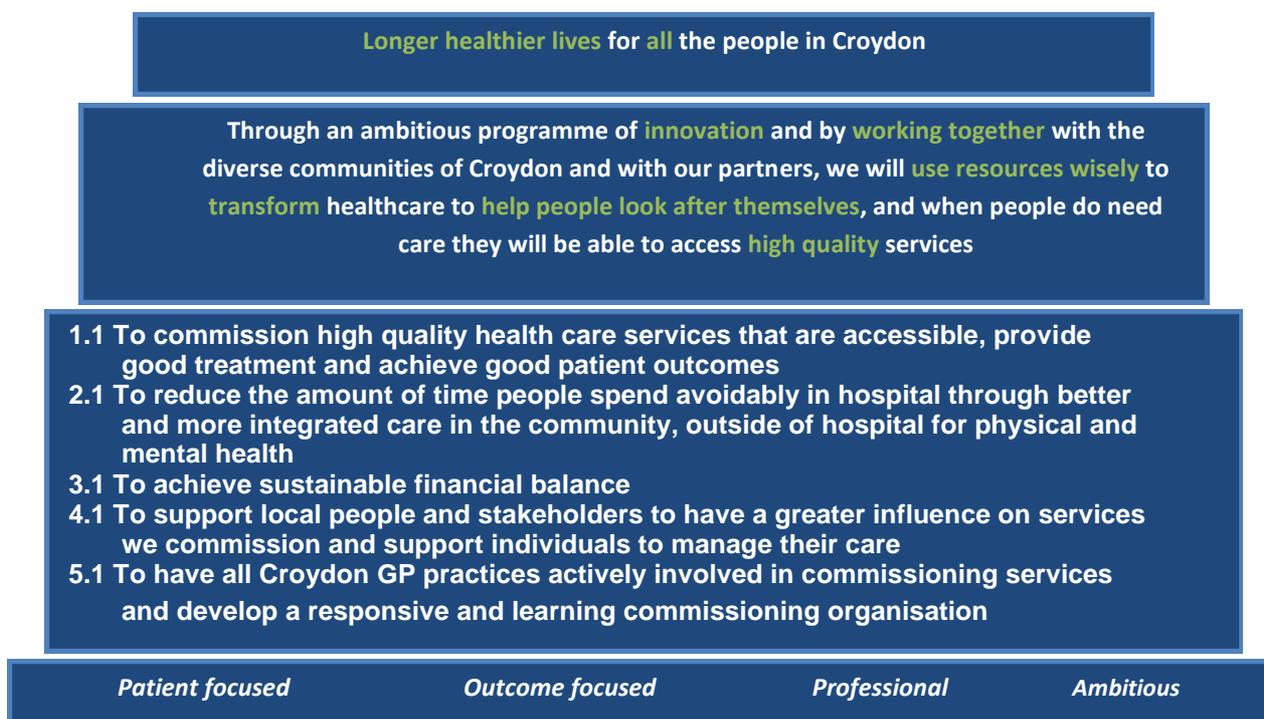
The historic need for this framework has been particularly important given developments over the last few years such as the introduction of outcomes based commissioning approaches and moves to prime provider contractor options, where decisions around procurement need to be made within an overall agreed framework. In addition to this, there needs to be a recognition of the direction of travel toward New Models of Care involving integrated care systems to better enable accelerated re-design, testing and implementation of improved pathways of care within whole system budget models.

The content of the Framework draws on recent national guidance and is set within the context of the standards of practice expected from that national guidance.

The Framework also recognises how the awarding of contracts must have regard to and comply at all times with the procurement framework to the extent it is applicable to commissioning healthcare services.

2. THE STRATEGIC CONTEXT

The Framework needs to be set within the context of the CCGs overall strategic aims which are summarised below:



The outcome of all procurement activity for clinical services needs to clearly demonstrate how it contributes to the achievement of these strategic objectives and the prioritisation of procurement activity will need to follow the strategic priorities while ensuring compliance with the legal procurement framework. In particular, the objectives around the provision of safe, integrated, quality services will be key, and that this can best assure a financially sustainable local healthcare system.

3. THE POLICY CONTEXT

The key (non-exhaustive) pieces of legislation which the CCG is required to comply with in the context of the physical mechanisms for awarding contracts that they wish to commission are as follows:

- Health & Social Care Act 2012
- Public Services (Social Value) Act 2012
- NHS (Procurement, Patient Choice & Competition (PPCC))(No.2) Regulations 2013 (**PPPC**)
- The Public Contracts Regulations 2015 (**PCR 2015**)

It is for commissioners to decide what services to procure and how best to secure them in the interests of healthcare service users. The PPCC regulations adopt a principle based approach intended to give flexibility to commissioners. NHS Improvement's role is limited to ensuring that commissioners have operated within the legal framework established by the regulations.

While NHS Improvement is able to provide informal advice on the PPCC regulations, to ensure compliance whilst having full regard to commissioning strategic objectives for the local health system, such advice is rarely binding and often requires to be confirmed by obtaining legal advice, in particular in relation to compliance with PCR 2015 obligations.

When the CCG takes decisions as to how health services should best be commissioned and procured, the CCG will always consider and take into account any up to date guidance published by NHS England, NHS Improvement and the Crown Commercial Service affecting the commissioning process.

The PPCC regulations (reg 2) set out a general requirement to ensure that commissioners must act with a view to achieving the following objectives when procuring NHS health care services:

- Securing the needs** of healthcare service users
- Improving the quality** of services; and
- Improving the efficiency** with which services are provided

Within these principles there are many different ways in which quality and efficiency can be improved. Commissioners are also encouraged to secure delivery of health services in **an integrated way**, including with other health services, health – related services or social care services.

The guidance¹ goes on to define integrated care as follows:

¹ <https://www.gov.uk/government/publications/integrated-care-how-to-comply-with-monitors-requirements/complying-with-monitors-integrated-care-requirements#delivered>

Care and support is integrated when it is person centred and coordinated. From the health care service user's perspective, care is delivered in an integrated way when "I can plan my care with people who work together to understand me and my carer(s), allow me control, and bring together services to achieve the outcomes important to me."

What unifies all models for the delivery of integrated care is that all of the different services accessed by a patient are delivered in a seamless way from the patient's perspective regardless of whether they are provided by different professionals within an organisation or different organisations altogether.

4. CORE COMMISSIONING PROCUREMENT COMPETENCIES

Core procurement commissioning competencies should include a range of standards relevant to understanding and shaping the local provider market, procuring and contracting for services with provider organisations and can be summarised as follows:

- Effectively stimulate the market to meet demand and secure required clinical and health & wellbeing outcomes.
- Secure procurement skills that ensure robust and viable contracts
- Effectively manage systems and work in partnership with providers to ensure contract compliance and continuous improvement in quality, outcomes and value for money

Systems and processes should be in place to be able to:

- Actively engage with and to analyse and understand the provider market and have identified a full range of core providers for each specialty and level of care;
- Have conducted analysis to assess the relative cost and quality of providers;
- Review the healthcare provision marketplace, identify gaps in supply and future providers;
- Make arrangements for providers to express an interest in providing services(reg 4);
- Establish and implement a procurement strategy;
- Demonstrate contract negotiations achieve defined improvements in service quality and value for money, with contracts incentivising good patient experience and clinical quality;

5. GUIDING PRINCIPLES

In the context of the CCG's strategic priorities and evolving national guidance, it is proposed that the CCG will develop and implement arrangements to enable the contestability and procurement of clinical services based upon the following principles:

Principle 1: In making its commissioning decisions it will determine how it will comply with its obligations under PPCC and PCR 2015 in the given factual circumstances.

The CCG recognises its obligations under PPCC and PCR 2015 and in making any commissioning decision in respect of any clinical service, it will undertake a full appraisal of the most appropriate way to award an appropriate contract in such a way as to comply with those obligations.

The requirement to consider how best to procure the provision of a clinical service may be triggered by a number of events including:

- The commissioning of a new service for which there is no existing provider
- The expiry of a previously awarded contract term
- Requirement for an existing contract to be modified during its term in a manner assessed to be “material” in nature (as defined within PCR 2015)), including following service redesign or extension, for example
- Concerns or repeated concerns about the quality, effectiveness, appropriateness or value for money of an existing service, where contract negotiation has failed to bring about sufficient improvements and termination is a realistic option
- Consequences of new national policy

Any advertised, competitive procurement process will be designed to ensure that it is proportionate to the situation and will ensure compliance with the standards of practice set out in any relevant guidance and prevailing law.

This Framework is not designed to stifle innovation in the development of clinical services. It is recognised that on occasions a new approach to service delivery may best be piloted for a short, defined period of time in partnership between the CCG and an appropriate provider organisation; equally, the CCG acknowledges that the direct award of pilot type contracts are not exempt from the regulations. At the time a decision is made to conduct a pilot, the CCG will undertake a risk based analysis to understand the level of risk which the CCG would be likely to encounter in such circumstances (given compliance with PPCC and PCR 2015 is unlikely to be practicable).

In all circumstances, where the agreed period of a pilot is about to expire, consideration must be given as to whether the service being the subject of the pilot is intended to continue and the manner in which such continuation should take place in accordance with the principles in this Framework.

Principle 2: Where procurement or failure to award a contract to a preferred provider would place other core services at significant risk by impacting on their viability and long term sustainability, an alternative route to procurement will be sought.

The CCG must always consider the wider implications of any decision to commission a particular service (in particular any knock-on effects on other service provision) when making decisions how best to procure those services.

Additionally and to assist with the above, clinical service procurements should not be undertaken until service pathways have been systematically mapped and agreed in accordance with the CCG’s agreed service redesign methodology.

Principle 3: Any decision not to undertake a competitive process in respect of a service award should be supported by clear and transparent evidence to demonstrate which of the “qualifying conditions” have been met in an individual case.

There are a limited range of circumstances in which the CCG may be justified to adopt a preferred provider approach to the identification of a future service provider. These “qualifying conditions” may include one or more of the following:

- There is an appropriate pre-procured framework already in existence which is open to the CCG to utilise in the circumstances
- Specialised services where provider designation has already lawfully taken place at a national or local level (e.g. framework in existence)
- Where NHSE programmes and guidance so steers (subject always to understanding the associated risks of adopting this approach)
- Where, due to a limited set of circumstances outside the CCG's control (e.g. unforeseeable urgency), the time required to undertake a contested approach will jeopardise continuity of service provision or timely delivery of a new service
- Where the service to be procured has such strong service alliances with an existing service that consideration of granting an extension to existing arrangements is appropriate and can be justified under PCR 2015
- Where the procurement of a service as a standalone contract is financially and or clinically unsustainable or would contribute to the unsustainability of other services in which event, a wider consideration of how affected services should be commissioned (in a sustainable manner)
- Where, through and appropriate market analysis, it is concluded that there is only one capable provider of the service in question
- Where procurement for an individual service would compromise proposals or plans for more strategic approaches to services change, e.g. larger system prime contractor or outcomes based commissioning approaches which cover more than one speciality, where, as part of the CCG's strategic approach, below-threshold procurements are not seen as a means to avoid having to procure openly.

The CCG Governing Body will take the decision in all situations where a service procurement is not to be put out to an advertised, competitive tender process only with the support of recommendations from the Procurement Advisory Group, subject always to the PAG having taken account of and managed any actual or potential conflicts of interest.

Principle 4: The CCG recognises its leadership role in the development of the local provider market and will work towards supporting the development of a more integrated provider delivery model while preserving local access and patient choice to a sustainable and expanding range of services appropriate to meet the needs of the local population.

The primary driver to ensuring a managed approach is the need to ensure a continuous, sustainable and safe supply of a range of health services to meet the full needs of a local population in a more integrated fashion.

As implicit in a competitive market, there are also other factors that direct commissioners and policy makers towards a more managed approach to shaping healthcare markets, these can be summarised as:

- The nature of the service modelling is complex and becoming increasingly so
- For some services there is not a ready-made alternative sector supply source
- In other cases, there is growing diversity of suppliers which include charities, social enterprises and increasingly complex joint ventures which lend themselves to some but not all areas of provision

Effective market management will require the CCG to develop its commissioning and procurement expertise while being cognisant at all times of its legal obligations under relevant procurement legislation. Notably, it will need to develop its supply-side insight in order to better understand the supply sector's motivations; this will be critical if the

CCG is to create the right conditions to attract new providers into this arena. The CCG will need to develop its skills in supporting and facilitating consortia and partnership supply models, and will need to develop a strong understanding of the market to ensure it maintains the right balance between the free market approach and a more managed context.

Principle 5: The CCG will develop approaches that promote and support personalisation and choice for patients. The CCG will collaborate with other agencies to specify and procure services that address joint health and care needs where appropriate. The CCG will utilise patient experience feedback to influence the ongoing performance management of service providers and procurement decisions.

This principle reflects the changing drivers for service provision and the need for public services to become increasingly customer centric in their responses to individual patients needs and the design and delivery of care or treatment packages. To achieve a more individualised approach, the CCG will need to commission from those service providers across all settings of care who can increasingly demonstrate flexibility in the planning and delivery of services for individual patients, specific care pathways, or particular local communities. Decisions on the selection and performance of providers should increasingly be influenced by feedback from patients on their experience of services and by individuals exercising choice over the services they access based on a range of published provider performance indicators.

Principle 6: The CCG recognises the model of “any qualified provider” as offering potential benefit for patients and the CCG.

The Department of Health previously introduced the concept of Any Qualified Provider (AQP) as has been preserved in Regulation 7 of PPCC. Within this model any provider able to meet the service specification and quality standards laid out for an area of provision are able to enter the market. The ensuing contracts are zero based having no activity or financial guarantees. An award of such a contract simply gives a provider “permission” to provide services to the CCG population subject to accreditation, inclusion on the local choice menu, and the delivery of services to agreed quality and performance standards and at a fixed tariff as determined and offered by the CCG. This approach has been used for some time by the CCG for intermediate care services.

The CCG will consider the appropriateness of the AQP model, assessing the relative benefits to both patients and the CCG in line with the 2013 regulations, in comparison with other contracting models to determine which may deliver optimum benefit.

6. PRACTICAL IMPLEMENTATION

To support the delivery of an on-going programme of procurement activity, the CCG will undertake a range of measures to enable practical implementation. These measures include:

6.1 Procurement Advisory Group

A Procurement Advisory Group has been established to co-ordinate and deliver procurement and contestability initiatives for commissioned clinical services. The Group will be chaired by the Director of Commissioning, with representation from Finance, Governance and Quality and shall seek appropriate support and advice (internally and externally) as required.

The Group will report into the SMT and shall be responsible for the regular review and monitoring of the CCG's Contract Database to ensure that appropriate and timely procurement plans are developed in advance of contracts reaching their respective termination / expiry dates.

The Group will assist to consider, risk assess and recommend the most appropriate forms of contractual arrangements and processes to put contracts into place, having regard to the CCG's commissioning objectives and its legal procurement obligations.

6.2 Framework Process

The CCG will work with its procurement team to develop, maintain and publish a Procedure for Procurement, setting out its best practice approach to making and implementing procurement decisions.

The Procurement Advisory Group will hold operational responsibility for ensuring compliance with the appropriate procedure adopted from time to time. Compliance with the procurement procedure may also be reviewed by the CCG auditors and the audit committee.

When designing service requirements we recognise that it is good practice to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient need. Such engagement, done transparently and in a non-discriminatory manner, is entirely lawful and consistent with procurement regulations. However, potential procurement issues and / or conflict of interests can occur if a commissioner engages selectively with only certain providers or types of providers (be they incumbent or potential new providers) in developing a service specification for a contract for which they may later bid.

As a commissioner the CCG will seek, as far as possible, to specify the outcomes it wishes to see delivered through a new service, rather than the process by which these outcomes are to be achieved.

Such engagement should at all times comply with the EU Treaty derived principles enshrined within PPCC and PCR 2015, namely fair treatment, equal treatment, non-discrimination, proportionality and transparency. In addition, where service redesigns are under consideration, compliance with the CCG's broader consultation obligations will be need to be ensured at all times.

Other steps we will take include:

- ensure all participants are provided with the same information at all stages of a process
- advertise the fact that a service design/re-design exercise is taking place widely and invite comments from any potential providers and other interested parties (ensuring a record is kept of all interactions);
- as the service design develops, engage with a wide range of providers on an ongoing basis to seek comments on the proposed design, e.g. via the commissioner's website or via workshops with interested parties;
- use engagement to help shape the requirement to meet patient need but take care not to gear the requirement in favour of any particular providers;
- if appropriate, engage the advice of an independent (non-conflicted) clinical adviser on the design of the service;
- be transparent about procedures;

- ensure at all stages that potential providers are aware of how the service will be commissioned; and
- maintain commercial confidentiality of information received from providers, unless rights to share such information have been expressed and/or agreed.

When engaging providers on service design we will remain focussed on the fact that we have ultimate responsibility for service design and for selecting the provider of services. NHS Improvement has issued guidance on the use of provider boards in service design.

6.3 Conflicts of Interest Guidance

The CCG as part of this work stream should ensure that potential conflicts of interests are effectively managed as part of procurement activity in accordance with the CCG's Conflict of Interest Policy.

The CCG notes the publication by NHSE on 16 June 2017 of updated Statutory Guidance on Managing Conflicts of Interest for CCGs . The CCG will both implement and adhere to this guidance and any updates to said guidance.

6.4 Market Assessment

In order to support on-going procurement and contestability activities, the CCG needs to hold a comprehensive knowledge of the current configuration, capacity and competence of the existing provider market. Areas where change is required, either because of an absence of service provision, poor performance or limited choice for patients, need to be identified and proactively addressed.

The CCG should consider commissioning a comprehensive assessment of the current and potential local provider market. This assessment would need to include consideration of how to effectively include patient experience feedback in the on-going review of the quality of commissioned services and the type of information that may helpfully be supplied to patients and other stakeholders on the performance of local services across all settings of care.

6.5 Transparency

The CCG shall ensure that its commissioning intentions are based on local health needs and reflect evidence of best practice – securing 'buy in' from local stakeholders to the clinical case for change.

Its documentation shall support transparency through the documentation of the approach taken at every stage in the commissioning cycle so that a clear audit trail is evident.

The CCG seeks to secure expert advice and engage with providers when necessary, by facilitating early engagement with both incumbent and potential new providers over potential changes to the services commissioned for a local population. The CCG will invite engagement using the lawfully mandated national online portal, Contracts Finder, and where the PCR 2015 require, the Official Journal of the European Union (OJEU).

When testing the market for potential providers of services and when initiating a procurement process to invite expressions of interest, tenders or applications to an

Any Qualified Provider framework, the CCG will ensure compliant notices are published on Contracts Finder and where required by the PCR 2015, on OJEU.

The CCG will create clear and transparent commissioning specifications that reflect the depth of engagement and set out the basis on which any contract will be awarded.

The CCG will ensure that details of all contracts, including the contract value, are published on its website as soon as contracts are agreed. Where the CCG decides to commission services through Any Qualified Provider (AQP), it will publish on its website the type of services commissioned and the agreed price for each service.

The CCG will follow its procurement processes which accord with legal arrangements, including even-handed approaches to providers and which are underpinned by sound record-keeping, including up to date registers of interests; and being underpinned via a clear, recognised and easily enacted system for dispute resolution (set out within its conflicts of interest policy).

Our general processes and safeguards apply at all stages of the commissioning process.

6.6 Communications

It is recognised that the principles outlined in this Framework represent the CCG's approach to securing the provision of clinical services and creating diversity within the range and scope of provider organisations delivering local services. The CCG will develop and implement a communications plan to explain the new arrangements to the health market as well as local public forums and organisations.

6.7 Annual Procurement Programme

The CCG will publish an Annual Procurement Programme highlighting the areas of change expected within commissioned services that it is intended will be either:

- subject to open competition within the arrangements set out in this Framework or the accompanying procurement process;
- not to be openly and transparently competed for following a decision that appropriate qualifying conditions have been met (setting out those conditions).

The programme will need to be prioritised based on the strategic objectives of the CCG and available capacity.

The Procurement Advisory Group should be responsible for the development of the annual programme and will submit this to the CCG SMT for approval prior to publication.

Ordinarily, the Annual Procurement Programme will be published alongside the CCG Operating Plan at the commencement of each financial year.

Signed off : 06 November 2018