



North Central London
Integrated Care Board

Any Qualified Provider (AQP) Contract Management Policy

Version 2: November 2024

Any Qualified Provider (AQP) Contract Management Policy

1.	SUMMARY:	This policy sets out the North Central London Integrated Care Board ('ICB') will manage the procurement and renewals of Any Qualified Provider (AQP) Contracts.			
2.	RESPONSIBLE OFFICER:	Chief Finance Officer.			
3.	ACCOUNTABLE OFFICER:	Chief Executive Officer.			
4.	AUTHOR:	Mark Eaton, Director of Strategic & Delegated Commissioning			
5.	APPLIES TO:	All ICB Board of Members (including committee members), employees, self-employed consultants, contractors, officers, and office holders.			
6.	GROUPS/ INDIVIDUALS WHO HAVE OVERSEEN THE DEVELOPMENT OF THIS POLICY:	ICB Governance and Risk Team London Commercial Hub (LCH) Business Processes			
7.	GROUPS WHICH WERE CONSULTED AND HAVE GIVEN APPROVAL:	North Central London Clinical Commissioning Group Procurement Committee			
8.	EQUALITY IMPACT ANALYSIS COMPLETED:	Policy Screened ✓		Template Completed ✓	
9.	RATIFYING COMMITTEE(S) & DATE OF FINAL APPROVAL:	NCL ICB POG approved on 20 November 2024			
10.	VERSION	NCL ICB Version 2			
11.	AVAILABLE ON:	ICB website and staff intranet.			
12.	RELATED DOCUMENTS:	ICB Constitution; Standing Financial Instructions; Conflicts of Interest Policy; Healthcare Services and Provider Selection Regime Policy; Non-NHS Provider Accreditation Policy Standards of Business Conduct Policy; Counter Fraud, Bribery and Corruption Policy; Disciplinary Policy; Speaking Up (Whistleblowing) Policy; Sponsorship and Joint Working With The Pharmaceutical Industry Policy.			
13.	DISSEMINATED TO:	All Staff			
14.	DATE OF IMPLEMENTATION:	20 November 2024			
15.	DATE OF NEXT FORMAL REVIEW:	20 November 2026			

Document Control

Date	Version	Action	Author
November 2024	1	Existing policy drafted to reflect best practice in Procurement of Any Qualified Provider (AQP) healthcare services. This policy has been created for the ICB from the policy previously in place that was inherited from the CCG.	Mark Eaton

1 Introduction

- 1.1 This policy is intended to support the future procurement and renewals of Any Qualified Provider (AQP) contracts.
- 1.2 Each AQP Contract will require a Service Specification including Key Performance Indicators and details of how performance and activity can be reported. The design and terms of these items are outside of the scope of this document.
- 1.3 The AQP procurement processes will comply with the ICB's Healthcare Services and Provider Selection Regime Policy.
- 1.4 The award of AQP contracts will follow the Provider Selection Regime Direct Award – Process B from The Health Care Services (Provider Selection Regime) Regulations 2023. Any deviation from this must be approved in advance by the NCL ICB Procurement Oversight Group.

2 Alignment to the NCL ICB Healthcare Services and Provider Selection Regime Policy

- 2.1 This policy is aligned to the Integrated Care Board ('ICB')'s Healthcare and Provider Selection Regime Policy and only applies to services within the scope of the Procurement Selection Regime (2023). The specific clause within the Procurement Policy relevant to this policy document is repeated below for clarity:

Clause 1.3: A mixed procurement is one that comprises a mixture of health care services and out of scope services or goods (see paragraph below) where the main subject-matter of the contract is the health care services, and the other services or goods could not have been reasonably supplied under a separate contract.

Clause 1.4: The pPolicy does not apply to those procurements that fall outside of PSR 2023 which are:

- The procurement of health care services where the procurement commenced prior to the 1 January 2024;
- Health care goods (unless as part of a mixed procurement as defined within this Policy);
- Non-health care goods or services or,
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- Works

- 2.2 This clause within the ICB Healthcare and Provider Selection Regime Policy that relates to the ability to utilize the PSR Direct Method B is repeated below:

Clause 8.3: NCL ICB can follow one of the following provider selection processes to award contracts for health care services:

- Direct Award Process B:
 - People have a choice of providers, and the number of providers is not restricted by the relevant authority.

- 2.3 Further clauses from the Integrated Care Board ('ICB')'s Healthcare and Provider Selection Regime Policy (the ICB Policy) that apply directly to this policy are repeated below, noting that other clauses also

apply and the ICB Policy should be read in conjunction with this policy.

Clause 8.12: NCL ICB is required to evidence that it has properly exercised the responsibilities and flexibilities permitted by PSR, to ensure that there is proper scrutiny and accountability of decision made in relation to health care services. Relevant Transparency Notices must be published depending on which provider selection option is selected. All transparency notices must be published using the UK e- notification services – the Find a Tender Service. NCL ICB must keep clear records detailing the decision-making process and rationale. NCL ICB must follow the PSR standstill period for published transparency notices prior to any contract award.

Clause 8.13: PSR allows providers to make a representation on provider selection decisions made by NCL ICB under Direct Award Process C, the Most Suitable Provider Process or Competitive Process. It also provides opportunity for a provider participating in a competitive procurement process to make a representation relating to the procurement process.

Clause 8.14: Representations are only considered from an impacted provider if the representation meets all conditions of the PSR. NCL ICB has in place a process to receive and respond to representations and for these to be considered by a Representation Panel within the required response timeline. To ensure the independence of the Representation Panel, where possible decisions will be reviewed by ICB Officers not involved in the original decision. Where this is not possible the Representation Panel shall consist of at least one individual that was not involved in the original decision.

3 Alignment to The Health Care Services (Provider Selection Regime) Regulations 2023

3.1 This policy is aligned to The Health Care Services (Provider Selection Regime) Regulations 2023 (the Regulations). The specific sections from the Regulations relevant to this policy document are repeated below for clarity:

Part 2 Procurement Process:

Point 6 Overview: (1) A relevant authority wishing to procure relevant health care services to which these Regulations apply must follow the appropriate process determined in accordance with this regulation

(4) Where—

- a) the proposed contracting arrangements relate to relevant health care services in respect of which a patient is offered a choice of provider,
- b) the number of providers is not restricted by the relevant authority,
- c) the relevant authority will offer contracts to all providers to whom an award can be made because they meet all requirements in relation to the provision of the relevant health care services to patients,
- d) the relevant authority has arrangements in place to enable providers to express an interest in providing the relevant health care services, and
- e) the procurement is not to conclude a framework agreement,
- f) the relevant authority must follow Direct Award Process B.

Point 8 Direct Award – Process B:

1. Where the relevant authority follows Direct Award Process B, the process is that the relevant authority—
 - a) awards any contract without a competition, and
 - b) submits for publication on the UK e-notification service a notice of the award.
2. The notice referred to in paragraph (1)(b) must—
 - a) include the information set out in Schedule 2, and
 - b) be submitted for publication within 30 days of the contract being awarded.

3.2 Under Provider Selection Regime Direct Award Process B the Relevant Authority must issue the following publications:

- Confirming Decisions (publish a confirmation of award notice)
- Contract Modification (publish a notice for contract modifications)
- The Relevant Authority must publish a confirmation of award notice within 30 days of the contract award.

The notice of award is expected to be published using the Find a Tender Service (FTS) website.

When following Direct Award Process B there is no requirement to make the intention to use the process clear in advance, or to have a standstill period.

If the Relevant Authority cannot or does not wish to award any contract, the transparency requirements for abandoning a provider selection process must be followed.

4 Qualification of the provider

4.1 The updated [NHS Standing Rules \(Part 8\)](#) set out the qualification criteria in regulation [42C](#) against which providers should be assessed to become a 'qualified' provider for services where patients' legal rights to choose a provider and team apply, and other services where the relevant body has decided not to restrict the number of providers patients can choose from.

5 Guidance from Monitor

5.1 Monitor previously issued the following guidance in respect of Any Qualified provider which has not been superseded and therefore remains applicable to this policy:

Acute elective care and other services where any qualified provider can provide services to patients

Different considerations will apply where patients are able to choose between any providers that satisfy a commissioner's quality criteria and are willing to provide services at the national or local tariff. For example, the NHS Constitution sets out the right for patients to choose, subject to certain exceptions, which provider to go to when they are referred for a first outpatient appointment for a service led by a consultant.

Where a commissioner does not restrict the total number of providers that appear on a list from which patients can choose to go to for a particular health care service, it will not need to run a competitive process to select providers (because subject to satisfying the commissioner's requirements on quality and price, all interested providers will be able to offer their services to patients). The commissioner will, however, need to ensure that the process through which a provider is able to become eligible to provide services is consistent with the framework

established by the regulations. For example, consistent with Regulation 7, the commissioner will need to establish and apply transparent, proportionate and non-discriminatory qualification criteria and, where the health care service is a first outpatient appointment for elective care led by a consultant, the commissioner cannot refuse to add a provider to the list of providers from which patients can choose to go if the provider satisfies that criteria (see Section 4 for details). It will also need to be satisfied that the way it handles requests by providers to become accredited is consistent with the requirements of the regulations (including, for example its overall objective to procure high-quality, efficient services that meet patients' needs, the requirement to procure services from those providers most capable of delivering this objective and the requirement to act transparently, proportionately and to treat providers equally).

Once a provider has been qualified to offer its services to patients, a commissioner should not run a new process to re-qualify the provider when its contract with the provider comes to an end, unless there are specific reasons for doing so (for example, because the commissioner has already raised concerns as part of the contract management process that the provider is not meeting required quality standards, or because the commissioner has decided to change the quality criteria). If, for example, a provider of acute elective care wants to continue to offer services at the relevant tariff and the commissioner is satisfied that the provider continues to meet the necessary quality standards, it should simply extend or renew the contract.”

6 Reasons for re-Procurement of Service

6.1 When one or more of the following criteria are met, whether they have been triggered by either the Commissioner or the Provider, the ICB will give notice to current providers in line with the contract terms and start a new procurement either for a replacement AQP Service or for a new service as appropriate:

- Material change in the Service Specification;
- Material change in the Quality Standards;
- Material change in the price or Pricing Methodology;
- Change in guidance issued by Monitor or other Regulatory Body;
- The ICB decides to move away from the service being delivered as an AQP Service for any reason.

6.2 Notice given to providers will be in line with the standard NHS National Contract.

7 New Entrants

NOTE: This section should be read in conjunction with Clauses 5.1, 6.6 and 7.1 of the Non-NHS Provider Accreditation Policy. The specific clauses within the Non-NHS Provider Accreditation Policy relevant to this policy document are repeated below for clarity:

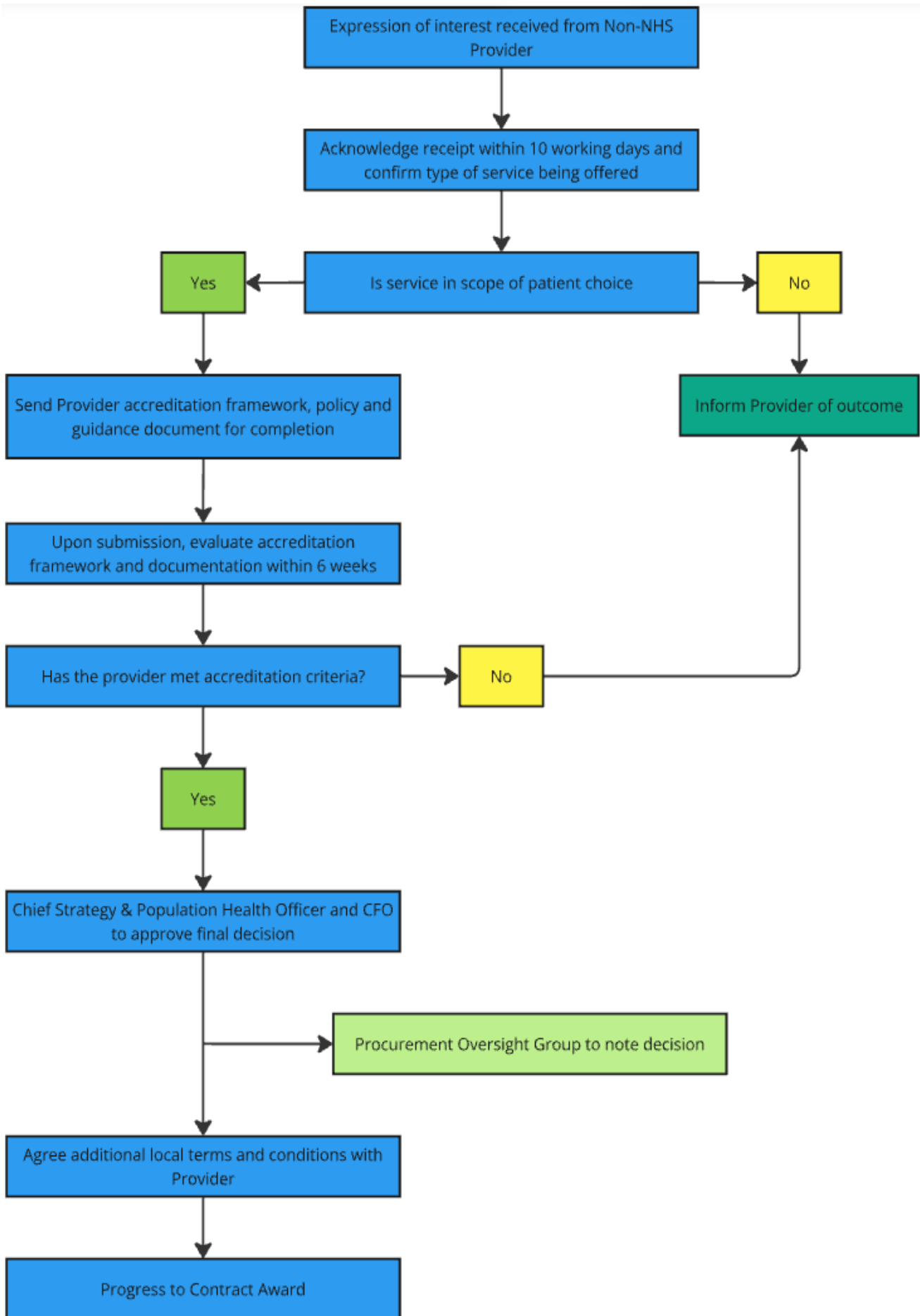
Clause 5.1: The ICB is legally accountable for commissioning health services for its local population. This Policy applies to all potential and actual Non-NHS healthcare Providers. The ICB is responsible for not only the outcome of the Non-NHS Provider Accreditation process, but also ensuring it is carried out fairly and according to the law, whilst ensuring improved health outcomes and value for money.

Clause 6.6: In order to become an accredited provider under this policy, providers must successfully complete the application process and be approved by the Chief Strategy & Population Health Officer and the CFO. The process is as follows:

- a) Providers complete and submit the Accreditation Framework Questionnaire and relevant supporting documentation. The Accreditation Framework Questionnaire can be found in Appendix B of this document;
- b) The ICB will convene a panel to consider and assess this application. The panel

- will consist of (but is not limited to) representatives from Quality, Clinical, Commissioning, Contracting, Finance, Procurement;
- c) The panel shall decide whether or not each provider meets the standard required for accreditation and make a recommendation to the Chief Strategy & Population Health Officer and the CFO for approval. Where the panel does not have sufficient information to make a decision, it may ask the applicant for more information or reject the application and require the provider to submit a new application with the information required;
 - d) The ICB's decision shall be communicated to the applicant;
 - e) Providers have the right to appeal a decision to reject them where the ICB has not followed proper process and/or the decision is not fair or reasonable based on the evidence. The ICB will convene a panel which will include at least one person that was not involved in the original recommendation to reject the application. The panel's recommendation will be remitted to the Chief Strategy & Population Health Officer and the CFO for a decision which shall be final.
 - f) If a provider wishes to appeal, they must submit their detailed reasons in writing within 14 days of the date the ICB informed them of the original decision. Appeals should be submitted to: nclimb.contracts@nhs.net

Clause 7.1: The diagram below sets out a high level overview of the accreditation process:



- 7.1 The ICB will periodically review whether to open up the contract for new entrants. When the contract is opened up to new entrants this will be for a period of no less than 28 days for new entrants who wish to become an accredited provider for an Any Qualified Provider contract. The timeline for each advertisement will be agreed in the workplan for the Procurement Oversight Group.
- 7.2 The timeline for periodically advertising an Any Qualified Provider contract will be agreed by the ICB Procurement Oversight Group.
- 7.3 The Procurement Oversight Group will consider any request from a new bidder and confirm the next window for advert.
- 7.4 The advert will be placed on the ICB's website, on Contracts Finder (<https://www.gov.uk/contracts-finder>) and Find a Tender Service (<https://www.gov.uk/find-tender>) as appropriate depending on the contract value
- 7.5 The accreditation of any new provider will need the approval of the Procurement Oversight Group.
- 7.6 All new entrants will need to demonstrate that they meet the NCL standards for Equality of Access.

8 Price Changes

- 8.1 The original procurement will set the price of the service for the initial duration of the contract.
- 8.2 After the initial contract duration is completed and the contract moves to automatic renewal then price will be adjusted in line with the Tariff inflator/deflator published by NHS England or any other appropriate NHS Regulatory Body.
- 8.3 Price changes outside of 8.2 (ie above or below that of national inflators/deflators or outside of the annual planning cycle) will need to be considered via the Procurement Oversight Group and approved by the Finance Committee of the NCL ICB.

9 Review

- 9.1 This policy should be reviewed every two years. An earlier review may be indicated if revised or updated guidelines become available that needs to be considered.

10 References

- 10.1 The NHS England guidance on Any Qualified Providers can be found via the following link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/283505/SubstantiveGuidanceDec2013_0.pdf

- 10.2 The Health Care Services (Provider Selection Regime) Regulations 2023 link:

[The Health Care Services \(Provider Selection Regime\) Regulations 2023](#)