

# What's new in the Standard Contract



Key changes to the 2022/23 NHS Standard Contract

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December 2022

BAILEY & MOORE

# Housekeeping

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- The presentation usually lasts 60 minutes, plus time for questions
- But we are happy to stay online as long as you want us to 😊
- Ask questions as we go, using the chat box or raise your ‘hand’
- All slides will be on our web site – link at the end
- If you’re using someone else's invite, send us your email address if you would like a copy of the slides or to be sent details of further courses

# What we will cover...

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- NHS England's overall approach for 2022/23
- Key national policy changes
- Administrative 'streamlining' measures introduced
- Using the Contract following the passage of the Health Care Act
- Payment rules – using the NHS Payment Scheme for 2022/23

Overall  
Approach for  
2022/23



**NHS Standard Contract  
2022/23**

**Technical Guidance**

# Overall Approach for 2022/23

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- Contract was effectively suspended during 2020/21 & 2021/22
- For 2022/23, a signed contract is required between all CCG/ICBs and providers where expected value of activity > £0.5m pa
- Pricing/payment rules per National Tariff Guidance 2022/23 (now known as the NHS Payment Scheme) -> Aligned Payment and Incentive (API)
- CQUIN is back, for contracts within scope of API
- Contracts initially signed with CCGs...
- National Transfer scheme to transfer contracts to ICBs on 1 July

# A lighter touch?

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- NHSE has made minimal change to the Contract, given everything else going on
- Contract still covers the same basics – defining the services provided, payment terms, quality outcomes and reporting requirements
- Perception that the Contract is now ‘too bureaucratic’...
- But worth remembering that:
  - Formal contractual processes need only be a backstop to a more collaborative approach
  - Local behaviours may be more important than the written contract in developing more collaborative working relations within each ICS?

# What constitutes a signed contract?

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## Services

- Schedule 2A – service specifications
- Schedule 2B – indicative activity plan



## Payment Terms

- Schedule 3A – local prices
- Schedule 3D – API, where in scope
- Schedule 3E – CQUIN, where in scope of API
- Schedule 3F – expected annual value



## Quality Outcomes

- Schedule 4 – local quality requirements



## Performance Monitoring

- Schedule 6A – reporting requirements

<https://www.england.nhs.uk/wp-content/uploads/2020/02/annex-d2-joint-contract-dispute-resolution-process-for-new-contracts-for-20-21.pdf>

# Main National Policy Changes for 2022/23

(for more details refer to section 3 of  
the Contract Technical Guidance)

Classification: Official

Publication approval reference: PAR1160



## 2022/23 priorities and operational planning guidance

Version 3, 22 February 2022

updates from previous versions are highlighted throughout the document



# National Quality Standards 2022/23

Policy	Description	Contract Ref
General	Removal of automatic financial sanctions for breaching standards	Previous schedules 4A/4B moved to Annex A of Service Conditions
Elective RTT waiting times	No waits above 104 weeks, rather than 52	SC Annex A
Very long waits in A&E	98% seen within 12 hours, rather than 100%	SC Annex A
Ambulance handover to A&E	No waits > 60 mins 95% handovers < 30 mins 65% handovers < 15 mins	SC Annex A

# National Service Changes – part 1

Policy	Description	Contract Ref
Midwifery services – continuity of carer	Agreement of local system action plans rather than national targets	SC3.13
Interface with Primary Care	Annual review of effectiveness on 30 Sept each year	SC3.17
Medical Practitioners Assurance Framework	Requirement for providers to ‘have regard’ to MPAF	SC3.18
Mental Health Units (Use of Force) Act 2018	Providers to comply with provisions of Act re restraint of patients, training, etc	SC3.19

# National Service Changes – part 2

Policy	Description	Contract Ref
Community pharmacy smoking cessation service	New service available for acute providers to discharge patients to <a href="https://www.nhsbsa.nhs.uk/pharmacies-gp-practices-and-appliance-contractors/dispensing-contractors-information/nhs-smoking-cessation-service-referral-secondary-care-community-pharmacy">https://www.nhsbsa.nhs.uk/pharmacies-gp-practices-and-appliance-contractors/dispensing-contractors-information/nhs-smoking-cessation-service-referral-secondary-care-community-pharmacy</a>	SC8.7
NHS Discharge Medicines Service	New service available for acute providers to discharge patients to <a href="https://www.england.nhs.uk/primary-care/pharmacy/nhs-discharge-medicines-service/">https://www.england.nhs.uk/primary-care/pharmacy/nhs-discharge-medicines-service/</a>	SC11.13
Use of the Lester Tool	To be used with service users with learning disability, autism, etc	SC8.9

# National Service Changes – part 3

Policy	Description	Contract Ref
National Quarterly Pulse Survey	New survey requirement to replace the former NHS Staff Friends & Family Test	SC12.6
Antibiotic Prescribing	New target of 4.5% reduction in prescribing from the WHO 'watch' & 'reserve' categories	SC21.3
Coronavirus vaccination	Providers to use 'all reasonable endeavours' to ensure staff vaccinated against COVID	SC21.4
Assessment and treatment for acute illness	Removal of requirements to report on 4 specific patient harms	SC22.1

# National Service Changes – part 4

Policy	Description	Contract Ref
Safeguarding	Requirement to comply with the Domestic Abuse Act 2021	SC32.3
Discharge summaries	New Information Standard re electronic transmission of discharge summaries	SC11/ GC definitions
Seven day services	Revised clinical standards published	SC3.11/SC3.12/ GC definitions
Health literacy	Providers must ensure information provided to patients has regard to their literacy level	SC12.4

# Patient Choice/eReferral Policy Changes

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Policy	Description	Contract Ref
Listing of services on eRS	Specific requirement to list services under the correct menu	SC6.2
Use of eRS for mental health & learning disability services	Progress stalled during pandemic... Requirement now relaxed to 'use reasonable endeavours'	SC6.4
Legal right of choice	Clarifying that legal right only applies to services 'as commissioned' – point previously made in TG	SC6.13

# Facilities/Environment Policy Changes

Policy	Description	Contract Ref
National Standards of Healthcare Cleanliness	Requirement to comply with NSHC, except ambulance/patient transport services	SC17.1
NHS Premises Assurance Model (PAM)	Requirement to complete the safety & patient experience domains of the PAM	SC17.9
Green NHS	Requirements in line with Delivering a Net Zero NHS, e.g. installing electric vehicle charging points	SC18
Car parking	Updated guidance: <a href="https://www.gov.uk/government/publications/nhs-patient-visitor-and-staff-car-parking-principles/nhs-patient-visitor-and-staff-car-parking-principles">https://www.gov.uk/government/publications/nhs-patient-visitor-and-staff-car-parking-principles/nhs-patient-visitor-and-staff-car-parking-principles</a>	GC definitions

# Administrative streamlining for 2022/23





# Electronic signatures

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- Previous contract guidance always recommended physical signatures
- But world has moved on post-COVID...
- Law Commission has stated that English common law does not prescribe a specific form for signatures
- Therefore electronic signatures are valid provided that:
  - The person signing intended to authenticate the document
  - Any governance formalities relating to the signature have been satisfied

<https://www.lawcom.gov.uk/project/electronic-execution-of-documents/>

# Electronic signatures

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- Contract guidance now states electronic signatures are acceptable – provided organisations have sought their own legal advice (?)
- Could be a simple insertion of a scanned signature
- Or a more secure and auditable software platform, e.g. DocuSign

# Online presentation of the Contract

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- Master version of GCs and SCs now published online and kept up-to-date automatically
- Organisations only exchange Particulars – no longer need to exchange GCs and SCs as these are taken to be the official electronic versions
- No longer any process for National Variations under GC13 as these are executed automatically online – although legal duty to consult on material changes would remain
- ‘eContract’ system retired as SCs can no longer be tailored

# Streamlining of Contract schedules

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- **Schedule 9** (System Collaboration & Financial Management Agreement) removed, as duty to manage finances collaboratively now embedded in 2022 Act & SC4
- **Schedules 4A & 4B** (National Operational/Quality Standards) now moved to Annex A of SC
- **Schedule 6F** (Provider Data Processing Agreement) now moved to Annex B of SC – only table detailing data to be processed left in schedule 6F

# Using the Contract following the 2022 Act



## Health and Care Act 2022

### CHAPTER 31

#### HEALTH AND CARE ACT 2022

##### PART 1

##### HEALTH SERVICE IN ENGLAND: INTEGRATION, COLLABORATION AND OTHER CHANGES

###### *NHS England*

- 1 NHS Commissioning Board renamed NHS England
- 2 Power to require commissioning of specialised services
- 3 Spending on mental health
- 4 NHS England mandate: general
- 5 NHS England mandate: cancer outcome targets
- 6 Duties as to reducing inequalities
- 7 Duties in respect of research: business plan and annual report etc
- 8 NHS England: wider effect of decisions
- 9 NHS England: duties in relation to climate change etc
- 10 Public involvement: carers and representatives
- 11 Information about inequalities
- 12 Support and assistance by NHS England
- 13 Exercise of functions relating to provision of services
- 14 Preparation of consolidated accounts for providers
- 15 Funding for service integration
- 16 Payments in respect of quality
- 17 Secondments to NHS England

###### *Integrated care boards*

- 18 Role of integrated care boards
- 19 Establishment of integrated care boards
- 20 People for whom integrated care boards have responsibility

# Contract wording

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- Contract is worded flexibly, as it was published before the Health and Care Act 2022 came into force
- Uses terms such as ‘Commencement Date’ to refer to ‘the date that a section or a paragraph of a schedule of the 2022 Act comes into force’
- Pay attention to the Definitions at the end of the GC:
  - e.g. the term ‘NHS England’ incorporates the former Monitor/NHSTDA/NHSI which was subsumed on 1 July
- Should be tidied up for the 2023/24 version

# Collaborative commissioning

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- Contract has always allowed for multiple commissioners to be party to a single contract
- Co-ordinating commissioner will normally be the provider's host ICB
- Any other ICBs with activity flows > £0.5m pa can be associate commissioners
- Each commissioner makes its own payments – associates can have own payment mechanism if < £30m pa, but ideally follow host ICB
- Model Collaborative Commissioning Agreement still available on NHSE website

# Provider Collaboratives/ Place-Based Partnerships

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- Contract not well suited to the new world of provider collaboratives, as only 1 provider can be party to a contract
- Therefore 1 provider has to be the nominated lead to hold the 'head contract' with the ICB and the other providers are technically 'sub-contractors'
- There are options to merge primary care providers into a secondary care contract using sch 2L but very limited in scope
- Hopefully more flexibility will be incorporated in future years?



# Delegation

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2022 Act allows delegation of commissioning functions:

- **From NHS England to ICBs** – mainly primary care for 2022/23 but could become more relevant to the Contract in the future for secondary care, e.g. dental, specialised services
- **From ICBs to Trusts** – ICBs can delegate commissioning to a provider where it considers this beneficial to delivering its statutory objectives... another way of contracting with provider collaboratives?

# Return of CQUIN

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- CQUIN now subsumed within the NHS Payment Scheme rules and moved to schedule 3E in the Contract
- 1.25% now included by default in prices/payments, but can be clawed back where targets not reached
- Only operates for contracts in scope of API, so all other contracts effectively 'keep' the 1.25%
- National menu of 15 indicators with recommendation that no more than 5 apply to a single provider contract

NHS Payment  
Scheme/  
National Tariff  
rules for  
2022/23

Classification: Official

Publication approval reference: PAR1359



2022/23 National Tariff Payment System  
**Guidance on the aligned  
payment and incentive  
approach**

31 March 2022

# NHS Payment Scheme: evolution or revolution?

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- 2022 Act replaced National Tariff with **NHS Payment Scheme**
- NHSE must consult on and publish pricing rules each year – which may or may not include national price list
- Moving away from published prices towards guidance and tools that facilitate each ICS designing its own payment rules within national policy framework
- **Aligned Payment & Incentive** (API) approach mandated for all contracts within same ICS or > £30m pa...

# Proposed national support for locally designed payments

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- **NHS Payment Scheme** – expected to include **National Prices** (non-mandatory) and **local pricing rules** (mandatory)
- **National Cost Collection** – analysis of providers' historic costs v peers – to enable benchmarking, planning, intelligent payments, etc
- **Costed GIRFT pathways** – costing of 'exemplar' pathways to enable comparison and discussion, starting with cataracts
- **Population group analysis** – analysing population resource usage by segment
- **Programme budgeting** – whole system costs by healthcare condition
- **The Model Health System website** brings these tools together (<https://model.nhs.uk/>)

# National Tariff Guidance 2022/23: 'Aligned Payment & Incentive approach'

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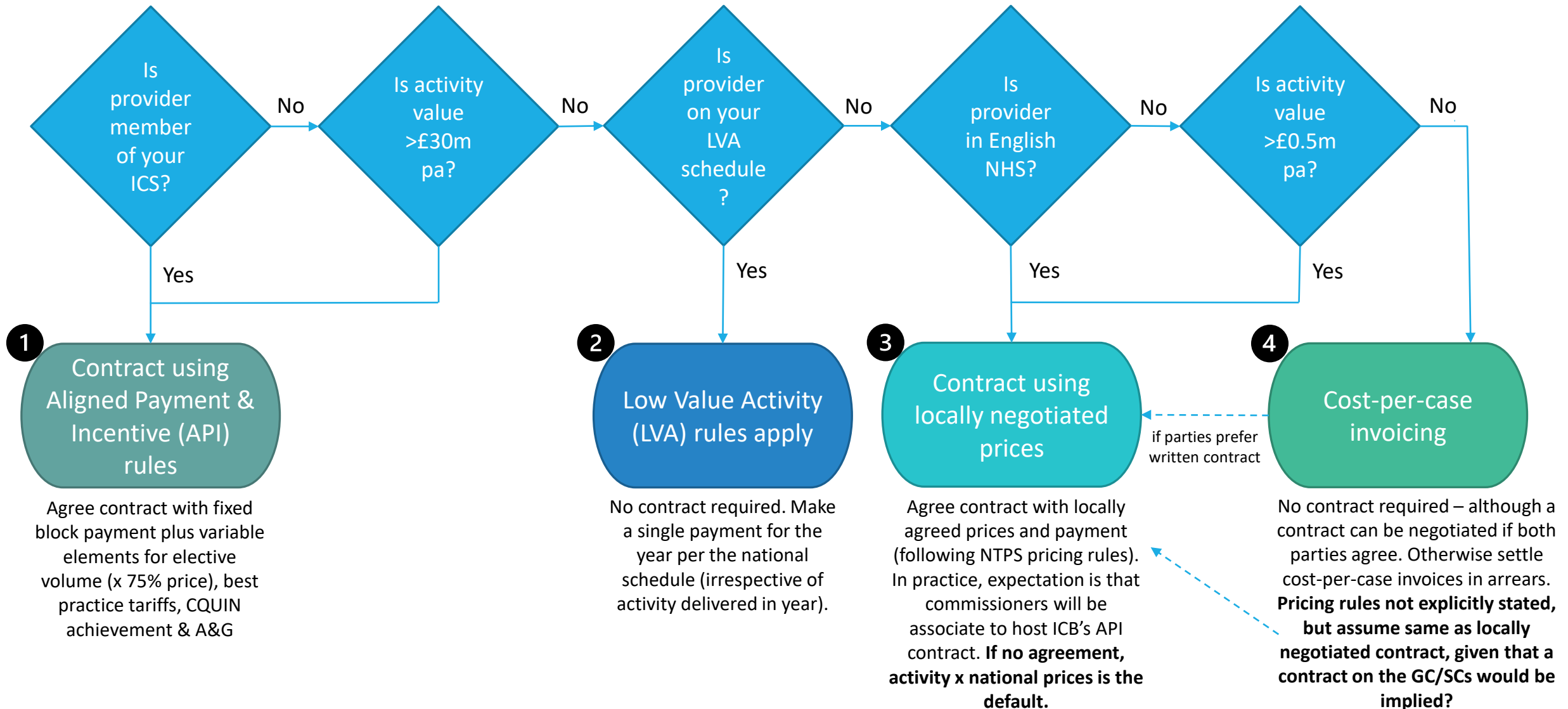
- Majority of payment to be **fixed block** – basis and % to be locally agreed
- Remainder to be **variable payment** to reflect:
  - elective volume (including 1<sup>st</sup> OP) +/- @75% of price
  - best practice tariff achievement (top up £)
  - Advice & Guidance service activity
  - CQUIN achievement (1.25% included in block/tariff, can be clawed back)
- Applies to contracts where **either** members of the same ICS **or** over £30m pa
- Other contracts can agree prices/payment mechanism locally

# Low Volume Activity (LVA)

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- Commissioners should have written contracts for any activity flow > £0.5m pa
- Nonetheless exceptions occur, e.g. unplanned admissions, and service is provided to a patient with no signed contract in place
- In these cases, a contract is implied on national terms and conditions (GC and SC)
- From April 2022, funding is covered by nationally determined annual block payments from commissioners to English NHS providers
- There is no longer any separate invoicing by providers for this activity... except for non-NHS providers, non-English NHS providers and non-emergency OOA MH placements!

# Contract payment rules 2022/23





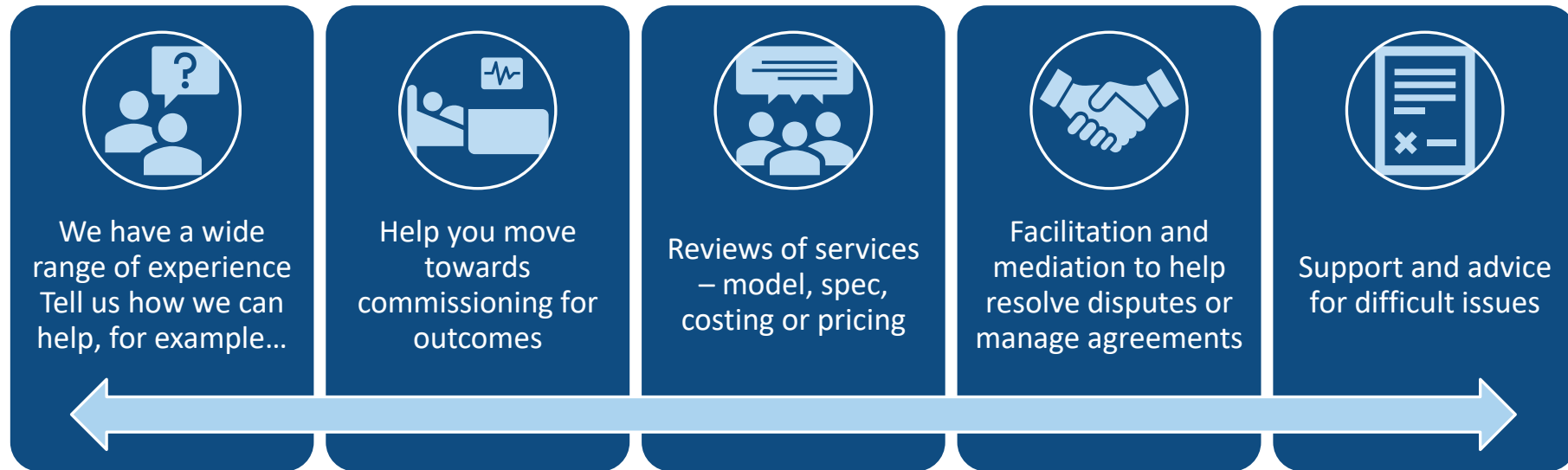
# Summary

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- NHS Standard Contract still mandated – needs to be used judiciously to promote collaborative relationships
- Use the benefits of having a standardised document that everyone knows and loves 😊
- Focus on the key schedules that are needed to operate the contract and monitor performance in year
- New payment arrangements post-national tariff – agree local prices/rules, but within a national framework

# Can we help? We offer retainer services...

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We have almost 30 years' experience at senior level within the NHS  
and can provide practical support across a wide range of issues

Email us at [info@baileyandmoore.com](mailto:info@baileyandmoore.com) to discuss how we could help

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# Other courses we offer include

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- *Brave New World? Life in the NHS after the Health and Care Act*
- *Step by step guide to documenting patient services in your ICS*
- *Value not volume – commissioning for patient outcomes*
- *Why is costing important? A ‘how to’ guide to pricing and costing*
- *Preparing for April 2023 – what next?*

If you are interested in these or other topics, email us at [training@baileyandmoore.com](mailto:training@baileyandmoore.com) and we can discuss your requirements

# Thanks for listening!

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Slides available at:

<http://baileyandmoore.com/resources/training-slides/>

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