

# Common Contract Processes



Using the NHS Standard Contract for 'business as usual'

---

December 2022

BAILEY & MOORE

# Housekeeping

---

- 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

# Introduction

---

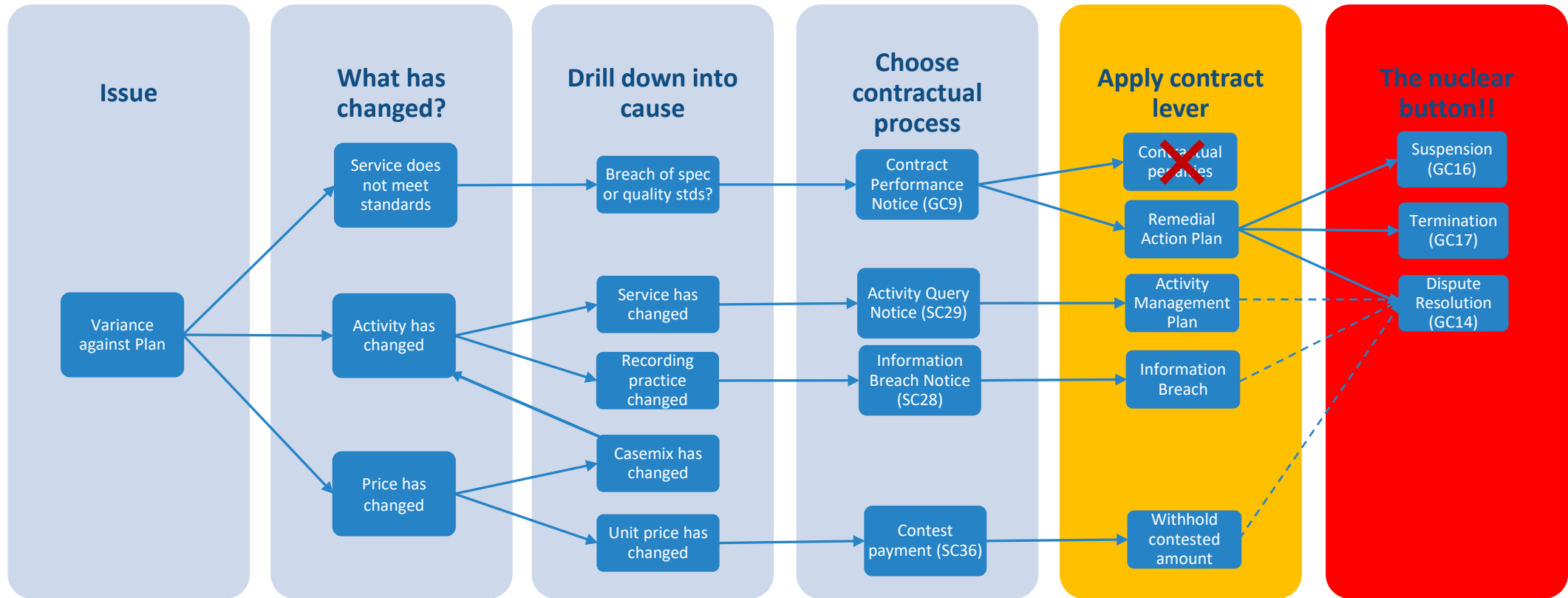
- The purpose of this session is to briefly cover the ‘ground rules’ relating to the most common contract processes
- Each process has its own section in the contract which sets out the documents that need to be exchanged, timescales, consequences, etc
- It is not clear how much of these will survive in the new ICS world – a perception of ‘too much bureaucracy’ ...
- But, used appropriately, they do provide basic control over what patient pathways are delivered, how they are monitored, how they are funded, etc

# What we will cover...

---

- Activity management (SC29)
- Contract monitoring reports, information and data (SC28)
- Payment terms (SC36)
- Service delivery: specifications, quality and patient outcomes (SC3 *inter alia*)
- Review meetings (GC8) and escalating issues (GC9)
- Varying (GC13), suspending (GC16) or terminating (GC17) the contract
- Dispute resolution process (GC14)

# Selecting the right process or lever...



1

# Activity Management



# Activity management: what we will cover

---

| Process   | Contract Reference                          |
|---|---|
| 1. Setting planned activity volumes for the contract                                      | Schedule 2B – Indicative Activity Plan      |
| 2. Setting activity thresholds, KPIs etc for the contract to help manage activity in year | Schedule 2C – Activity Planning Assumptions |
| 3. Managing activity levels in year using an <b>Activity Query Notice</b>                 | SC29 – Managing Activity and Referrals      |
| 4. Using <b>Prior Approval Schemes</b> as an alternative way of managing activity         | SC29 – Managing Activity and Referrals      |

# Activity management: Indicative Activity Plans

---

- IAP (schedule 2B) sets out expected activity volumes to be delivered under the contract, according to the service specs in place
- Indicative activity in block contracts also essential to monitor activity trends
- IAP can be zero/blank, e.g. for smaller ‘call off’ contracts
- IAP is **Indicative** – performing more or less activity is not a breach of contract
- **Joint** contractual responsibility to manage to IAP by reviewing trends, establishing causes and agreeing remedial action where necessary



# Activity management: Activity Planning Assumptions

---

- APA (schedule 2C) sets out specific activity thresholds, metrics, KPIs etc that are to be used to manage contract in year
- **Not** to be confused with stating generic assumptions that lie behind the IAP, e.g. '6 months doubled plus 3% growth'
- Typical examples are: outpatient first:FU ratios, A&E conversion rates, emergency readmission rates, min/max waiting times, etc
- Provider must use 'all reasonable endeavours' to comply with APA (SC29.4)
- Provider cannot refuse 'properly notified' APA (TG42.27)

# Activity management: Managing variances using SC29

|                |  |
|----------------|--|
| Working Day 0  | Provider or commissioner issue <b>Activity Query Notice (AQN)</b> specifying 'unexpected or unusual patterns of Referrals and/or of Activity'  |
| Working Day 10 | Meet to discuss AQN which results in either: <ul style="list-style-type: none"><li>• Withdrawal</li><li>• Utilisation Meeting</li><li>• Joint Activity Review</li></ul>                    |
| Working Day 20 | Meet to agree either: <ul style="list-style-type: none"><li>• Utilisation Improvement Plan or</li><li>• Activity Management Plan (AMP) (with £ sanctions specified if necessary)</li></ul> |
| Working Day 30 | If no AMP agreed, inform Boards of failure   |
| Working Day 40 | If still no AMP agreed, enter GC14 Dispute Resolution process  |

# Activity management: Prior Approval Schemes (also SC29)

---

- An alternative approach to managing elective activity in year
- ICS policy states how patients can access specified service – can be using predetermined clinical criteria or individual approval of each patient
- There is also a national list of ‘Evidence Based Interventions’
- Provider has to comply as long as it has been given at least 1 month’s notice
- Commissioner must ‘have regard’ to any administrative burden imposed and cannot restrict legal right of Patient Choice
- If provider breaches PAS, commissioner ‘not liable to pay’... but how? Adjust through API @ 50% national price? Adjust next year’s contract value?

2

# Monitoring Reports, Information & Data



# Reporting, Information & Data: what we will cover

---

| Process   | Contract Reference                   |
|---|--------------------------------------|
| 1. Setting out what information/data is required for monitoring the contract in year    | Schedule 6A – Reporting Requirements |
| 2. What happens if the provider changes how it records patient activity?                | SC28 – Information Requirements      |
| 3. Managing reporting/information/data issues using an <b>Information Breach Notice</b> | SC28 – Information Requirements      |

# Contract monitoring information: Reporting requirements

---

- Information/reports/data required (schedule 6A) split into 3 parts:
  - **National requirements reported centrally** as mandated by DCB – 113 live requirements on website last time we looked, e.g. daily ECDS
  - **National requirements reported locally**, e.g. SUS
  - **Local requirements** – anything else needed to manage contract
- Data Quality Improvement Plan (schedule 6B) for longer-term developments
- Commissioners '***must act reasonably... having regard to the burden which that request places on the Provider***' (SC28.4)

# Contract monitoring information: Changes in recording practice

---

- One of the main causes of contract disputes under the national tariff was where a provider changed how it recorded activity – leading to volume, casemix and/or financial increases!
- Providers do have a duty to record activity as accurately as possible...
- **BUT** commissioners are protected from any resulting financial shocks in year
- Providers have to give at least 6 months' notice of any planned changes
- Then neutralise any financial impact for the next contract year
- Neutralisation also applies to changes nationally mandated by NHS Digital

# Contract monitoring information: Managing breaches using SC28

---

|   |  |
|---|--|
| Working Day 0   | Commissioner issues <b>Information Breach Notice</b> (IBN) specifying nature of Breach and any £ amounts intending to withhold <b>up to 1% AMV</b> |
| Working Day 5   | Commissioners can withhold <b>amount specified in IBN</b> until Breach rectified   |
| If Breach rectified   | Commissioners return withholding within 10 working days (without interest)   |
| If IBN not justified  | Commissioners return withholding immediately (with interest)...<br>or enter Dispute Resolution process (GC14)                                      |
| Earlier of: <ul style="list-style-type: none"><li>• WDO + 3 months</li><li>• Termination</li><li>• Expiry</li></ul> | Commissioners can <b>permanently</b> withhold amount specified in IBN  |



3

# Payment Terms



# Payment Terms: what we will cover

---

| Process  | Contract Reference   |
|--|--|
| 1. Setting payment terms for the contract                            | Schedule 3A – Local Prices<br>Schedule 3D – Aligned Payment Incentive Arrangements<br>Schedule 3F – Expected Annual Contract Value |
| 2. What happens if an invoice from a provider needs to be contested? | SC36 – Payment Terms   |

# Payment terms

---

- National Tariff guidance still mandated by SC36 – but substance has undergone major changes over last 3 years
- For contracts within same ICS or >£30m, new Aligned Payment & Incentive (API) rules apply – document agreement in schedule 3D
- For other contracts, reach local agreement... can be block, activity x price, API rules, or anything else that is compliant with NTPS guidance
- If agreement cannot be reached, default is published national prices
- Expected Annual Value in schedule 3F – can be £0 for ‘call off’ contracts
- Local variations or modifications to national rules in schedules 3B & 3C

# Payment terms: Contesting payments using SC36

|                      |   |
|----------------------|---|
| Month 3              | Contract monthly value paid on 15 <sup>th</sup> account to provider   |
| End of Month 4       | Data coded and sent to SUS or direct to commissioner ('first rec' or 'flex')  |
| Month 5 (week 1)     | Commissioner reviews data and raises queries<br>For non-SUS contracts, provider sends invoice or credit note within 5 wk days         |
| Month 5 (week 2)     | Provider responds to queries  |
| Month 5 (week 3)     | Provider re-submits data to SUS by 'post reconciliation inclusion date'<br>Other data amended and re-sent by local agreement (Sch 6A) |
| Month 5 (final week) | Publication of final/frozen data on SUS for month 1 ('final rec' or 'freeze')   |
| Month 6 (week 1)     | Provider sends final reconciliation, invoice or credit note within 5 working days   |
| Month 6 (week 2)     | Commissioner can contest payment within 5 working days of receipt   |
| Month 7 (week 2)     | If payments remain contested after 20 working days, contesting party must seek dispute resolution (GC14)                              |

4

# Service Delivery



# Service delivery: what we will cover

---

| Process   | Contract Reference                      |
|---|---|
| 1. Specifying the patient services to be provided under the contract  | Schedule 2A – Service Specifications    |
| 2. Adding desired patient outcomes and quality requirements in to the contract                                    | Schedule 4 – Local Quality Requirements |
| 3. Where services are not being provided to the required standard, escalating issues to a Contract Review Meeting | GC8 – Contract Review                   |
| 4. Escalating unresolved issues using a <b>Contract Performance Notice</b>  | GC9 – Contract Management               |

# Service Delivery: Service specs

---

- Specs describe the health services to be provided under the Contract... Sch 2A
- So make sure all important services are sufficiently specified!

*“The service specifications are one of the most important parts of the contract, as they describe the services being commissioned and can, therefore, be used to hold the provider to account for the delivery of the services, as specified.” (TG36.1)*

- Even more important where activity reports don't tell the whole story and/or block payment terms are in force
- If commissioners want a specific service or pathway, set it out in the spec

# Service Delivery: Quality standards and outcomes

---

- National operational and quality standards are listed in SC – can't be amended but not all standards will apply to all provider types
- Anything else the ICS wants locally is added to schedule 4 – this is where you add local quality standards and patient outcomes required by ICS – with cross-ref to the applicable service spec
- Financial sanctions for non-achievement have been removed – NHS moving away from 'fines for failure' towards system collaboration to solve problems
- Financial incentives to achieve quality/outcomes can be added through CQUIN schemes (schedule 3E) or local incentive schemes (schedule 3A)



# Service Delivery: Contract review and escalating issues

---

- Expectation is that most contract issues resolved informally and collaboratively
- Regular contract review meetings must be held to discuss any issues that need to be escalated to a formal meeting (GC8)
- Issues still unresolved can be further escalated using contract management process – see next slides (GC9)
- Either side has options to vary (GC13), suspend (GC16) or terminate (GC17) the contract or service(s) within the contract
- Final stage of escalation is to use dispute resolution process (GC14)

# Service delivery: Escalating issues using GC9

---

|                |   |
|----------------|---|
| Working Day 0  | Commissioner or Provider issue <b>Contract Performance Notice (CPN)</b> for 'failing to comply with any obligation'   |
| Working Day 10 | Contract Management Meeting to discuss, resulting in either: <ul style="list-style-type: none"><li>• Withdrawn</li><li>• Remedial Action Plan (RAP) or Immediate Action Plan (IAP)</li><li>• Joint Investigation (JI)</li></ul> |
| WD10 + 2 mths  | JI must complete and recommend either: <ul style="list-style-type: none"><li>• CPN withdrawn</li><li>• Agree RAP</li></ul>  |
| Working Day 15 | Parties must agree content of RAP – outcomes, names and £ sanctions   |

---

# Service delivery: Escalating issues using GC9 (cont.)

---


|  |   |
|--|---|
| Working Day 20   | If either party not attended CMM or RAP not agreed, inform Boards   |
| Working Day 30   | If RAP not agreed, commissioners may withhold <b>up to 2% AMV</b>   |
| Within 5 days of RAP breach  | Provider/Commissioner issue <b>Exception Report</b> to Boards and regulator<br>Commissioners may withhold £ as specified in RAP or otherwise <b>up to 2% AMV</b> for each action breached (maximum <b>10% AMV per RAP</b> ) |
| 20 days after ER issue <b>or</b><br>RAP not agreed within 6 months | Commissioner may permanently withhold £ if RAP breach not remedied within 20 days or by expiry/termination of contract.<br>Same if RAP not agreed within 6 months of CMM or by expiry/termination.                          |

---

5

Variations,  
Suspensions,  
Terminations &  
Dispute  
Resolution

The End.



# Variation/Suspension/Termination/DRP: what we will cover

---

| Process  | Contract Reference                      |
|--|---|
| 1. How to vary the terms of the contract in year   | GC13 – Variations                       |
| 2. Suspending or terminating some or all of the contract where there are serious unresolved issues | GC16 – Suspension<br>GC17 – Termination |
| 3. Using the Dispute Resolution Process as a last resort   | GC14 – Dispute Resolution               |

# Contract Variations

---

Working Day 0    Either party proposes CV and notifies other party

Working Day 10    Recipient party confirms whether agreed or not

Working Day 20    If not agreed, parties must meet to discuss

Working Day 30    Recipient party finally confirms whether agreed or not

---

If a provider refuses to accept CV, the commissioner may:

- Terminate service, with 3 months notice/6 months notice if materially impacts staff
- Withdraw proposed CV
- Go to Dispute Resolution (GC14) (?)

# Contract Suspensions & Terminations

---

- If a Suspension Event occurs, commissioners can suspend services until the required standard is met (GC16)

*e.g. “the Provider receiving a Contract Performance Notice in respect of a Service within 12 months after having agreed to implement a Remedial Action Plan in respect of the same issue with that Service”*

- ‘No fault’ terminations – either party can terminate the contract using the notice period agreed in the Particulars (GC17)

- Provider/commissioner default – other party can terminate immediately

*e.g. “two or more Exception Reports are issued to the Provider under GC9.20 within any rolling 6 month period”  
“the aggregate undisputed amount due to the Provider from the Co-ordinating Commissioner... exceeds 25% of the Expected Annual Contract Value”*

# Dispute Resolution Process (DRP)

---

- For issues that cannot be resolved through normal contract processes
- Contract DRP (GC14) provides for escalated negotiation, followed by external mediation, followed by expert determination
- Much more on this in our separate session on avoiding disputes!

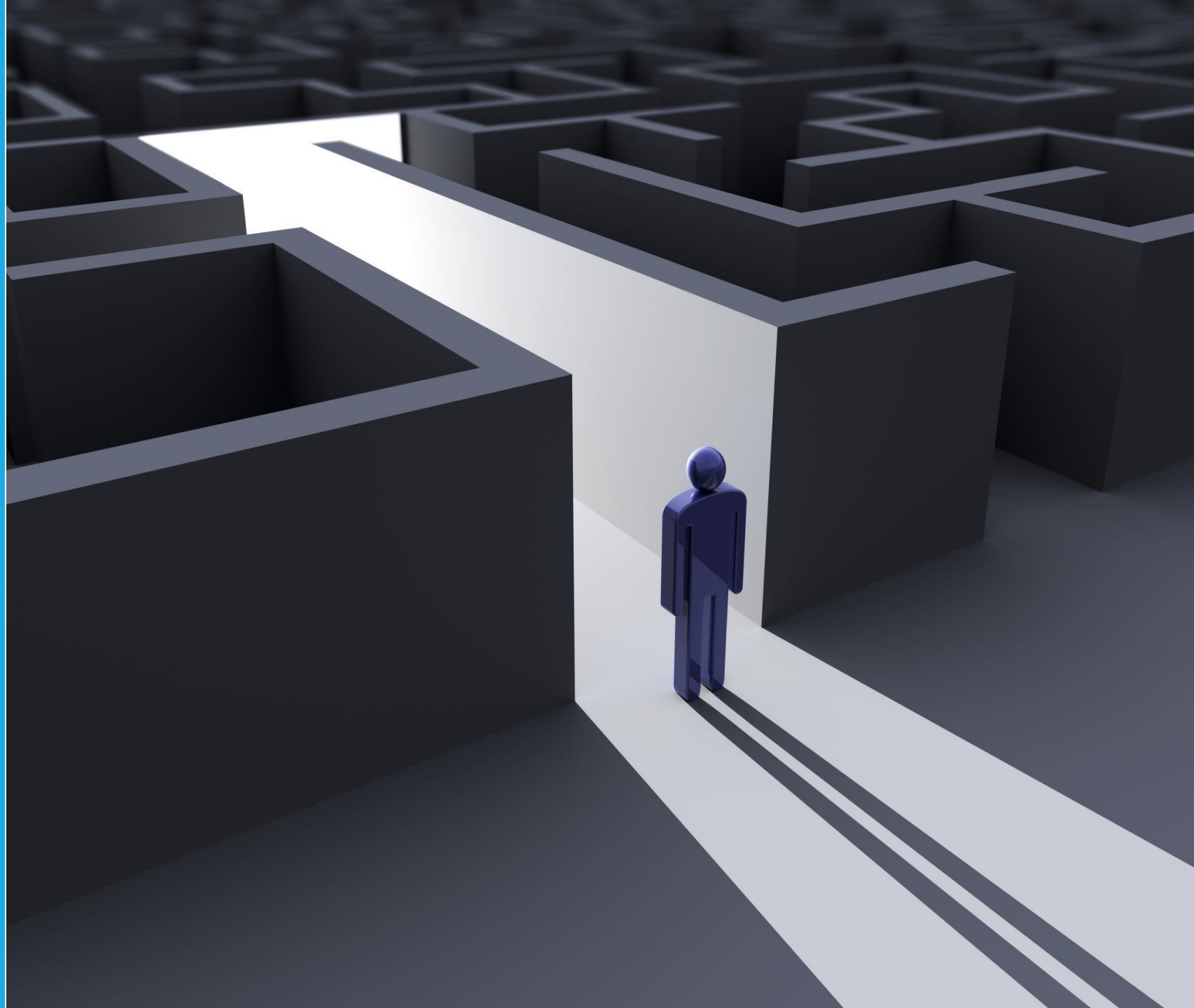
|                 |  |
|-----------------|--|
| Working Day 0   | <b>Escalated negotiation</b> – by senior person with no day-to-day involvement and authority to settle dispute |
| Working Day 10  | <b>Escalated negotiation</b> – by Director, Chief Exec or other Board Member                                   |
| Working Day 15  | <b>Mediation</b> – by NHS England (NHS disputes)/per Particulars (non-NHS)                                     |
| After mediation | <b>Expert Determination</b> – Expert appointed by NHS England (NHS)/CEDR (non-NHS)                             |

---



6

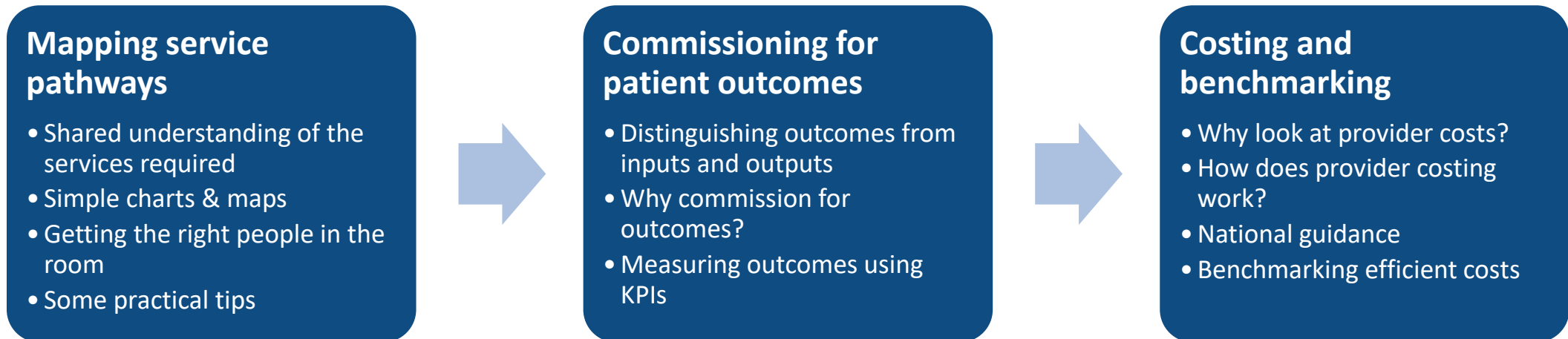
# Looking to the Future



# So what next... “money for stuff”?

---

As we move away from activity x price and towards a form of risk share... what will we measure and how will we pay for it?

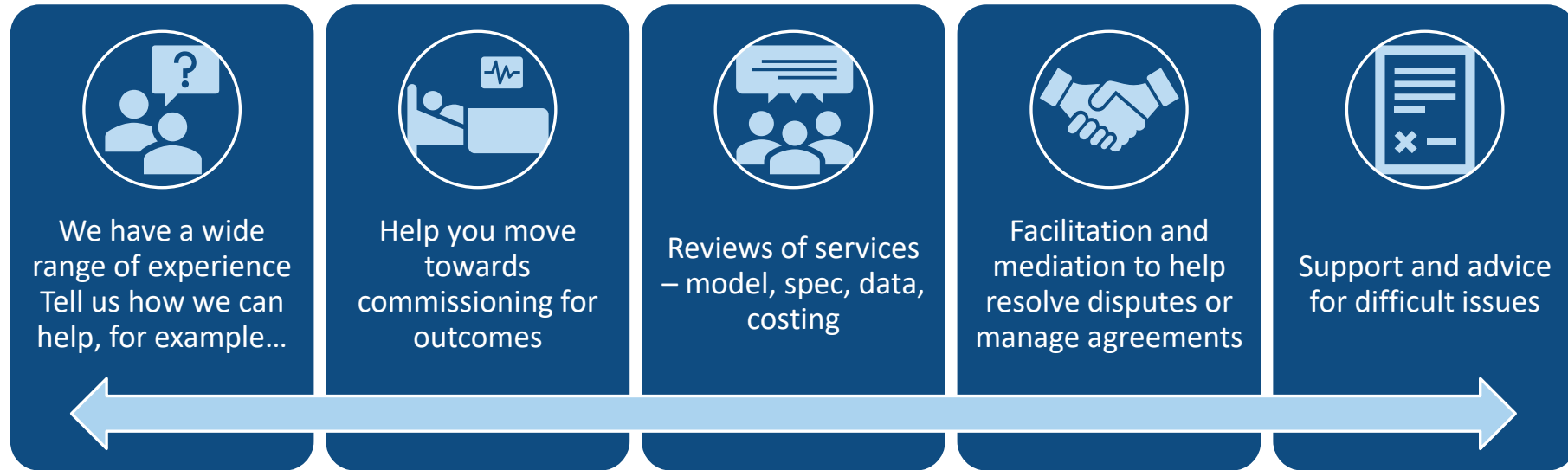


# Which parts of the contract might be useful in the future?

| Theme                    | Contract Reference                                   | Reason  |
|--------------------------|--|---|
| Thinking “System first”  | Schedule 8 (JSOP)                                    | All providers work to one agreed ICS plan                                     |
| Service specifications   | Schedule 2A (service specs)                          | ICS needs to jointly agree which services provided and how                    |
| Patient outcomes         | Schedule 4 (local quality requirements)              | Contract for patient outcomes, not volume of activity                         |
| Payment arrangements     | Schedules 3A (prices), 3D (API), 3F (contract value) | Funding = block based on benchmarked cost ± variable adjs for volume/outcomes |
| Indicative activity plan | Schedules 2B (IAP), 2C (APA)                         | Still need to monitor volume/outputs as these often drive costs               |
| Reporting requirements   | Schedule 6A (reporting reqs)                         | Can’t do any of the above without good data!                                  |

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

---



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

BAILEY & MOORE

# Other courses we offer include

---

- *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!

---

## BAILEY & MOORE

Email us with any comments or requests for training courses at:

[training@baileyandmoore.com](mailto:training@baileyandmoore.com)

Slides available at:

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

BAILEY & MOORE