

# Different Types of Contract



Evaluating the different tools available to commissioners

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January 2023

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

# Introduction

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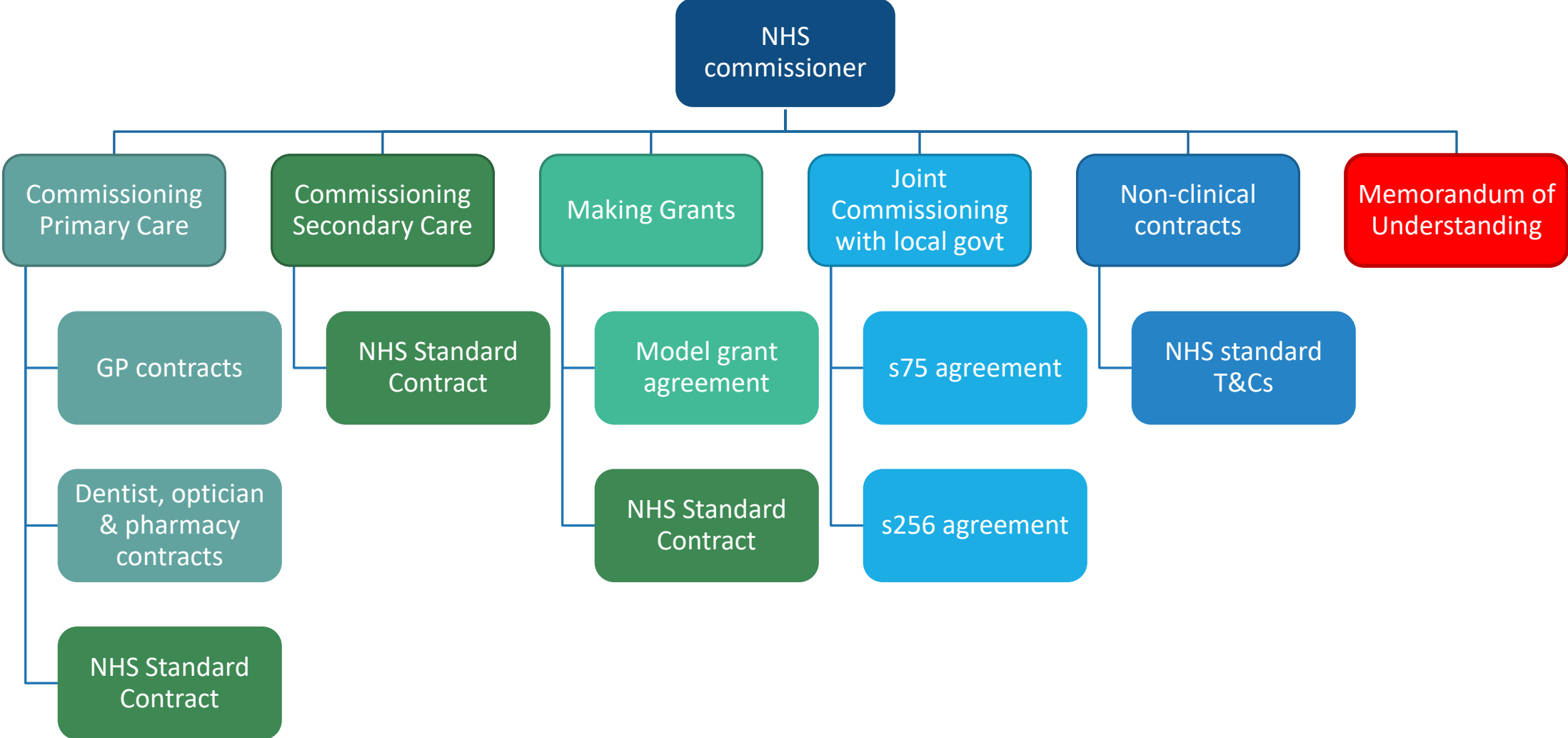
- The purpose of this session is to briefly cover the different types of contract available to NHS commissioners
- **Most of the choices are mandated by law and/or national guidance** – e.g. the NHS Standard Contract must be used by NHS commissioners when they commission secondary care services
- However, there are some discretionary options – e.g. making grants to third sector organisations – where national templates are provided but **not mandatory**
- Whichever route is chosen, need to consider appropriate governance and how to deliver best value for the taxpayer... if not using a national template, why not?

# What we will cover...

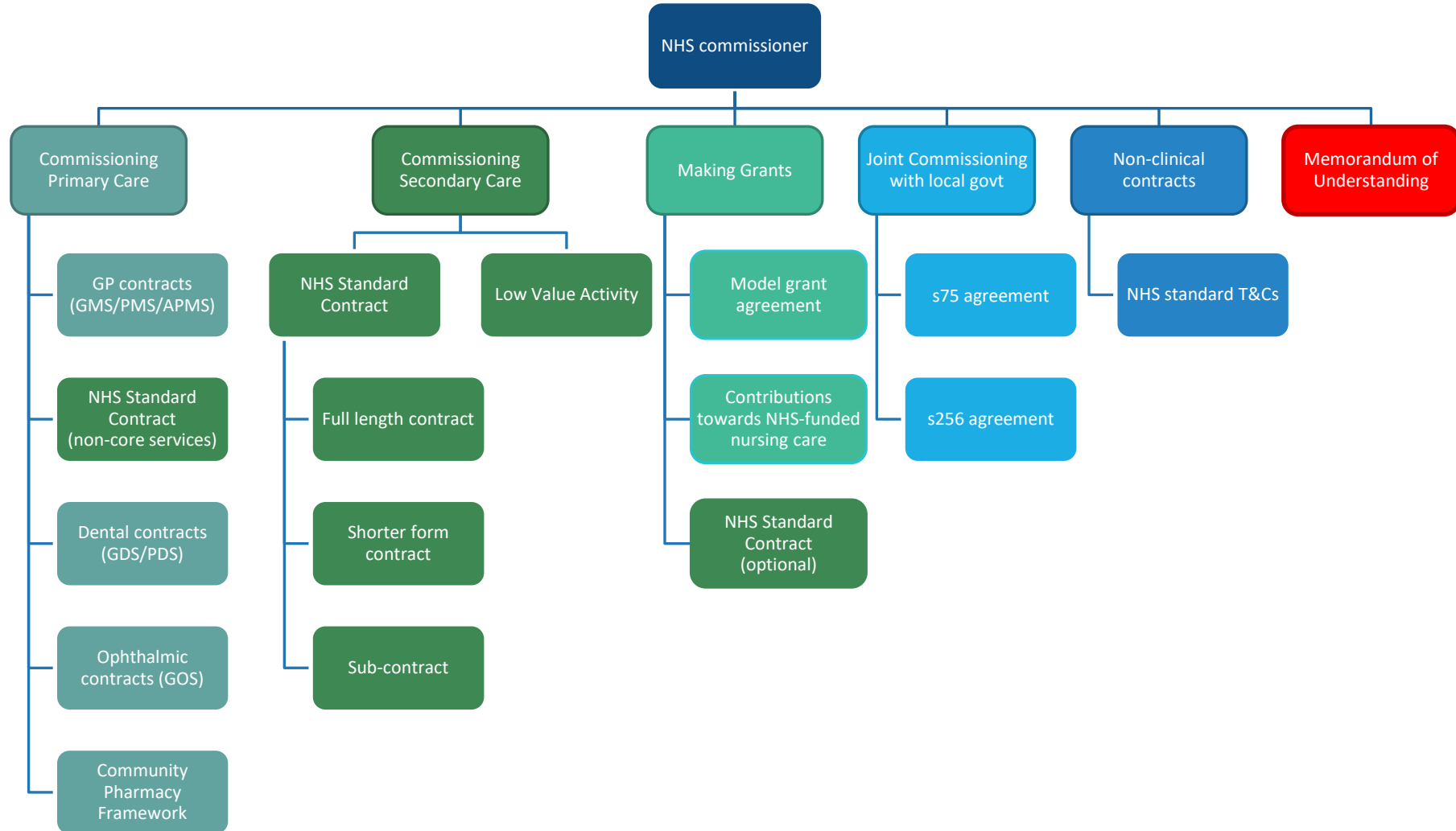
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- Commissioning primary care services
- Commissioning secondary care services
- Making grants to providers
- Partnership agreements with local government
- Procuring non-clinical services
- ‘Memorandum of Understanding’

# Main types of contract



# Main types of contract in more detail

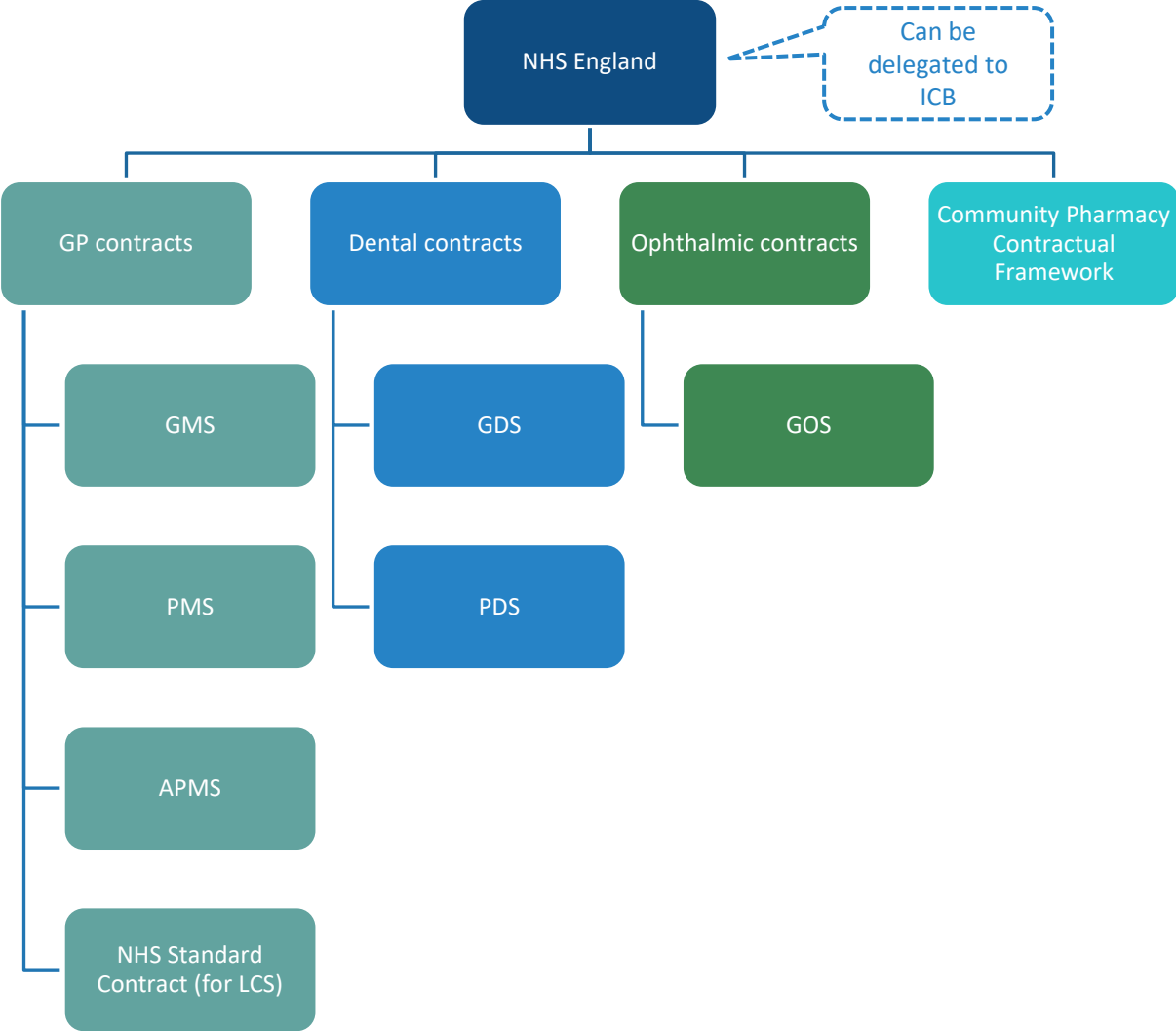


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# Commissioning core primary care services



# Main types of primary care contract





# Main types of GP contract

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## GMS (General Medical Services)

- National standard contract, negotiated each year between BMA & DHSC
- c69% of practices hold GMS contract

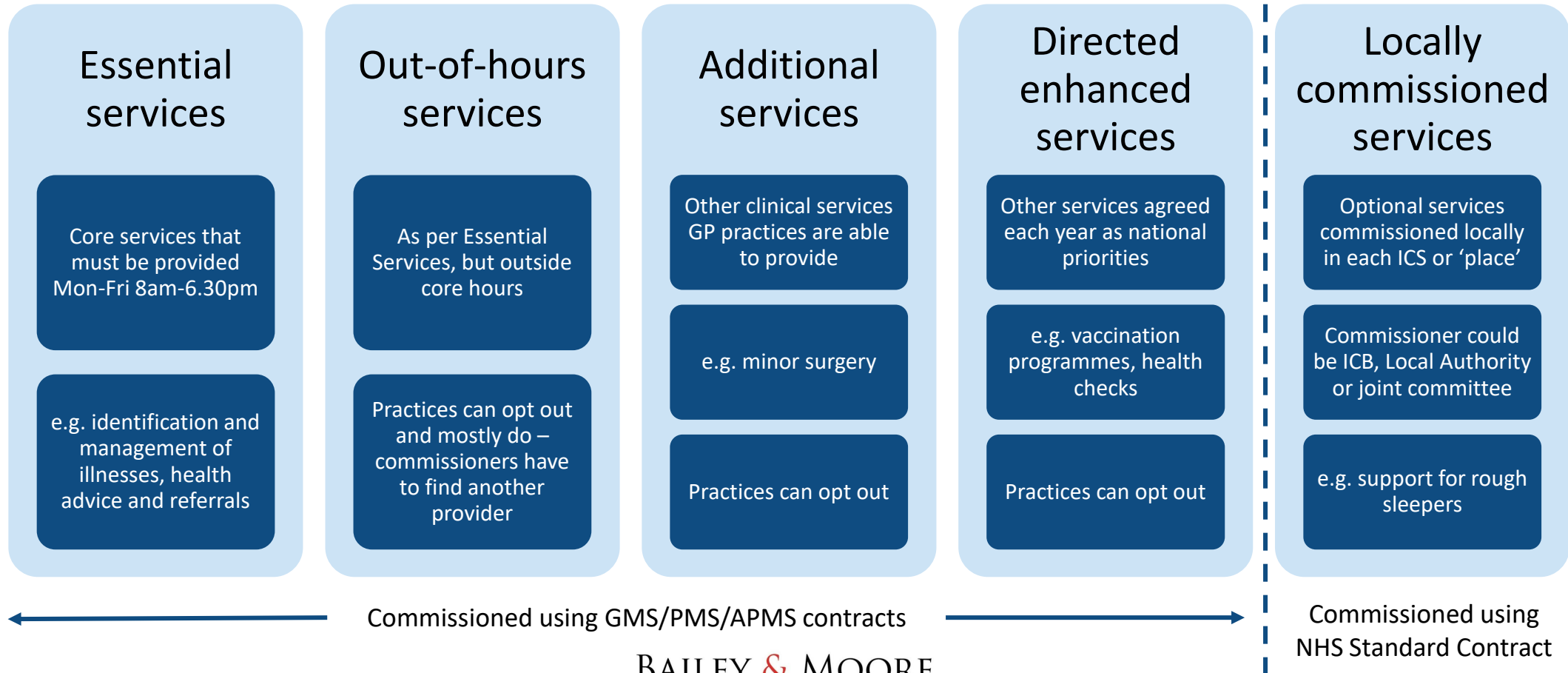
## PMS (Personal Medical Services)

- Provides more scope for local flexibility within national framework
- Negotiated between NHS commissioners (NHSE or ICB) and practices locally
- c29% of practices hold PMS contract

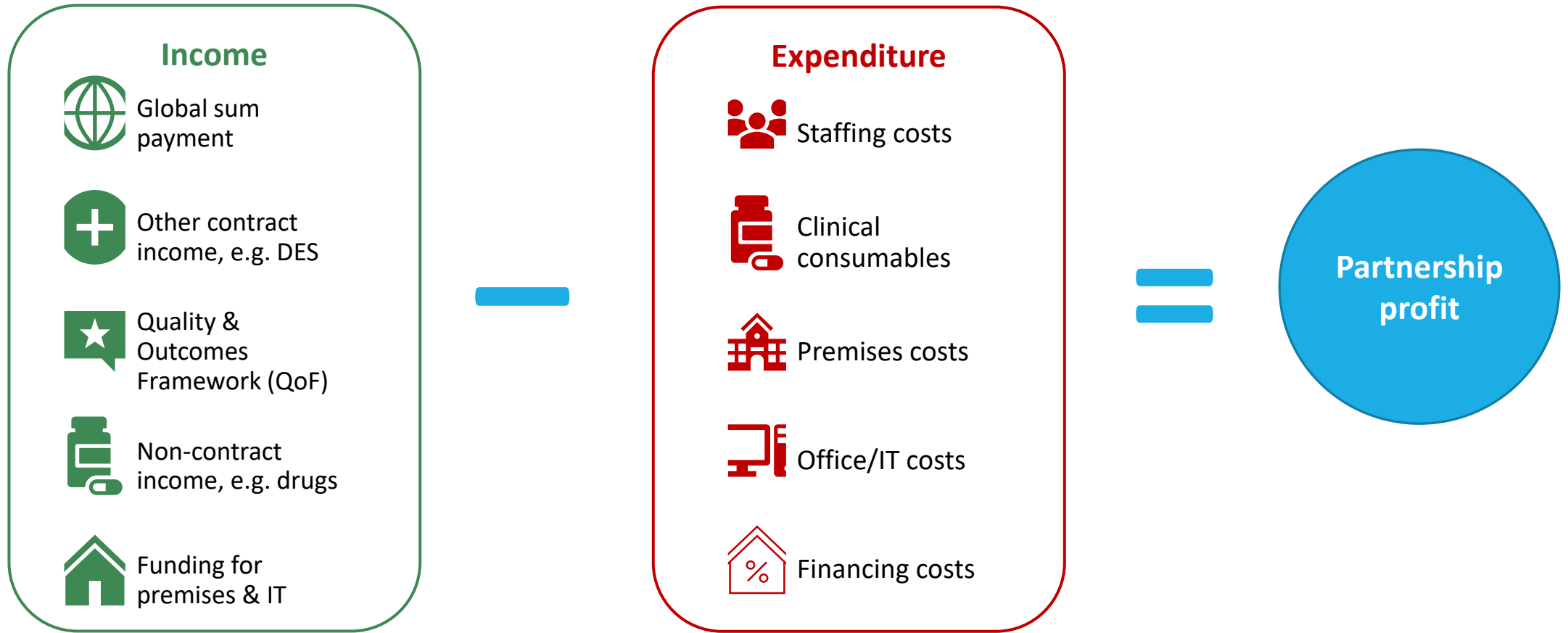
## APMS (Alternative Provider Medical Services)

- Allows other providers to provide primary care – e.g. social enterprises, limited companies
- Or existing GP practices to provide ‘non-core’ primary care – e.g. services tailored to asylum seekers
- c2% of practices hold APMS contracts

# Typical GP services



# GP contract funding flows



# Main types of Dental contract

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## GDS (General Dental Services Contract)

- National standard contract since 2006
- Activity-based contract (UDAs) with 3 bands of chargeable dental activity
- Tends to incentivise lower cost activity as more profitable
- No requirement for emergency care – commissioners must contract elsewhere

## PDS (Personal Dental Services Agreement)

- Provides more scope for local flexibility within national framework
- Negotiated between NHS commissioner (NHSE) and practices locally
- More outcomes-based measures

# Other Primary Care contracts

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## GOS (General Ophthalmic Services Contract)

- Mandatory services – eye testing on provider premises
- Additional services – domiciliary eye testing
- Fee per test, but does not cover full cost

## Community Pharmacy Contractual Framework

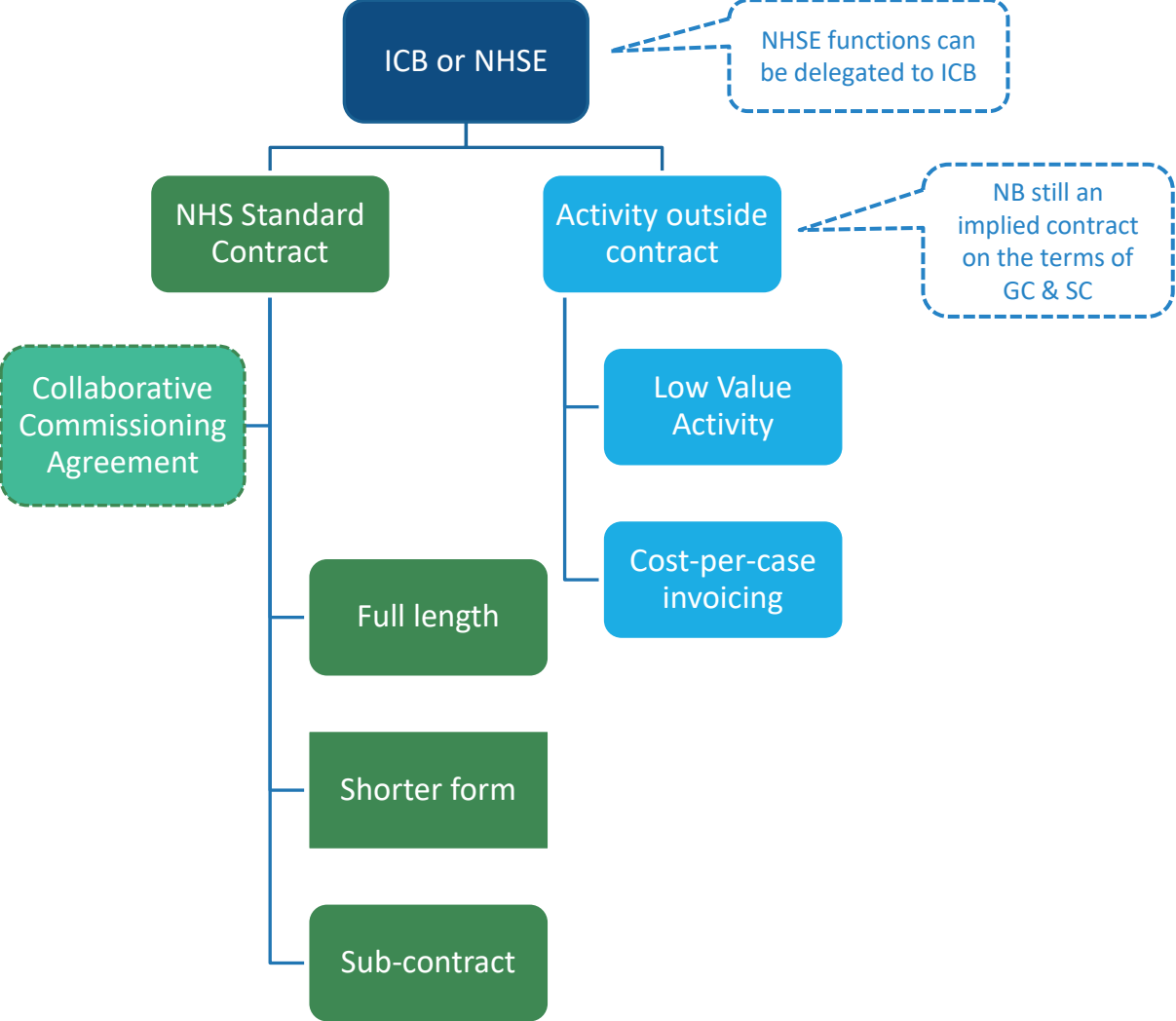
- Current 2019-24 framework negotiated between DHSC & PSNC
- Community Pharmacy Consultation Service – referrals from NHS 111
- Pharmacy Quality Scheme – e.g. check patients with diabetes, asthma, etc

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## Commissioning secondary care services



# Main types of secondary care contract



# NHS Standard Contract

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- 3 contract variants + 1 supporting document:
  - **Full-length contract** – used in most circumstances
  - **Shorter-form contract** – can be used for low complexity, low value non-Acute situations, e.g. nursing homes (**non-mandatory – can use full-length contract**)
  - **Sub-contract** – where a contracted provider wishes to sub-contract services to another provider (**non-mandatory**)
  - **Collaborative Commissioning Agreement** – sets out how multiple commissioners under a single Contract will work together (**non-mandatory**)



# NHS Standard Contract

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- One core national set of rules:
  - reflects national policy direction of the NHS Mandate and the law
  - cascades down to every provider commissioned by the NHS
- Level playing field for all provider types (NHS, private, voluntary) and sectors (acute, community, MH, ambulance)
- Economies of scale in producing documentation, so individual health systems don't waste time and money reinventing the wheel

<https://www.england.nhs.uk/nhs-standard-contract/>

# Shorter form contract

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- Shorter form of the Contract for services of relatively low complexity and value
- Cannot be used for any inpatient services, A&E, Minor Injury Units, emergency ambulance... or any contract in scope of NHS Payment Scheme API
- Could be used for non-inpatient MH/LD, community services, nursing homes, hospices, non-inpatient diagnostic services, PTS, GP LCS, etc
- **Not mandatory** but strongly encouraged for appropriate low value services
- **BUT** need to consider risk – where the “light touch” approach of the shorter-form may not be appropriate to the services or relationship
- “Light touch” can mean no teeth when things go wrong!

# NHS standard sub-contract

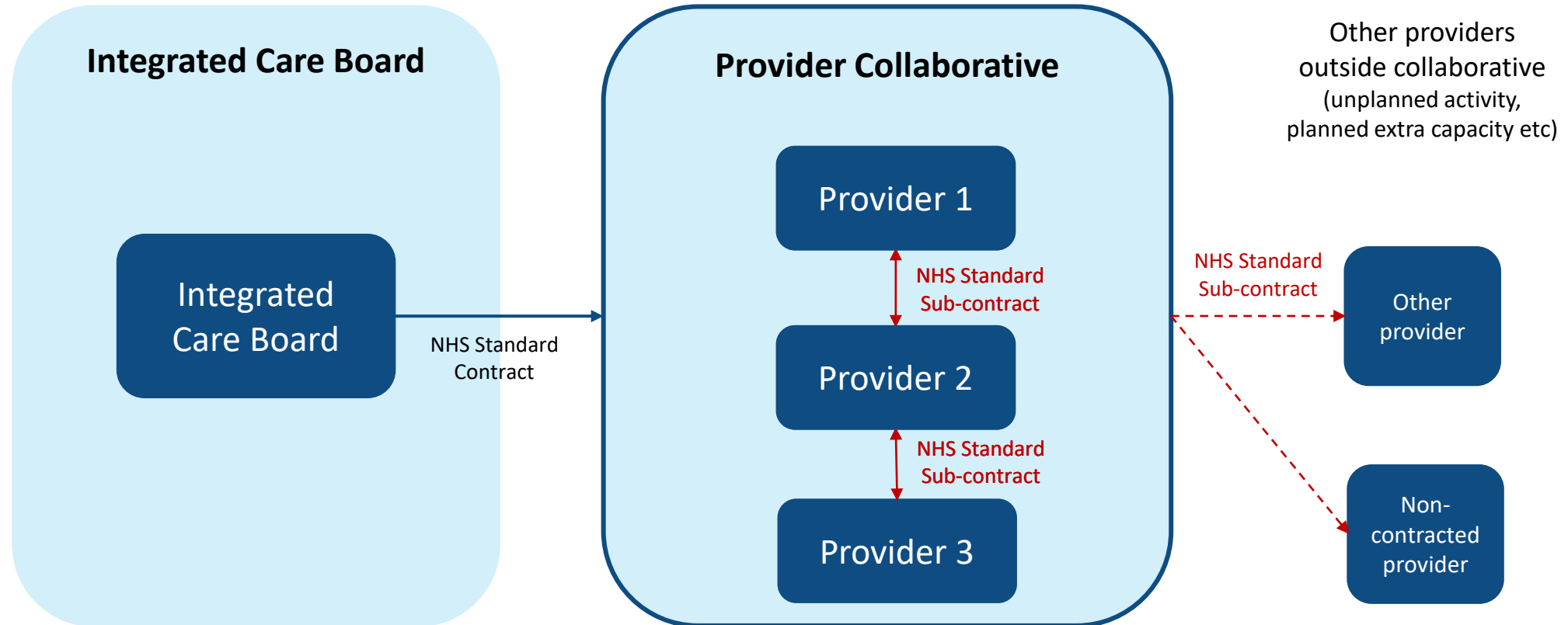
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- Used when a contracted provider sub-contracts services to another provider
- **Use is not mandatory** (except for ICF sub-contracts)
- But saves time and increases assurance for all parties involved
- Ensures the key national T&Cs in the head NHS Standard Contract flow down to the sub-contractor, so all contracts are consistent
- Timescales/notice periods are flexed so they 'fit' with the head contract
- Almost total flexibility to agree local content, but in practice certain aspects will need to match head contract, e.g. reporting requirements need to flow down

# NHS standard contract v sub-contract

Issue	NHS Standard Contract	NHS Standard Sub-Contract
Service specifications	Non-mandatory template	Total flexibility re content
Directory of Services (DoS)	E-booking is mandatory	Optional
Pricing and payment	NHS Payment Scheme applies Monthly payments on account	Total flexibility re payment mech Payment in arrears
Quality requirements	Mandatory by service category	Need to match head contract
CQUIN schemes	Apply as per national guidance	No CQUIN, but can have LIS
Reporting requirements	National mandated elements	Total flexibility (but in practice will need to match head contract)
Data processing/GDPR	Provider will be Data Controller	If provider is Data Processor, use schedule 6F to document

# NHS Standard Contract in the new world... provider collaboratives



# Collaborative Commissioning Agreement

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- If multiple commissioners are party to the contract, one commissioner will be the 'co-ordinating commissioner' (normally the provider's host ICB) and the others will be 'associate commissioners'
- CCA can be used to set out roles and responsibilities of each commissioner – template provided but **not mandatory**
- Arrangements summarised in the contract at schedule 5C
- Otherwise GC10 applies – co-ordinating commissioner acts as an agent for the associates, but each is responsible for its own payments

# Low Volume Activity (LVA)

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- Commissioners should have written contracts for any activity flow > £500k pa
- Nonetheless exceptions occur, e.g. unplanned admissions, and service is provided to a patient with no signed contract in place
- Implied contract 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, so no cost-per-case invoicing will normally occur

# Cost-per-case invoicing

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- LVA rules should eliminate most invoicing by NHS providers to NHS commissioners for activity outside contracts
- Cost-per-case invoicing may still be needed for:
  - non-English NHS providers where there is no contract
  - non-NHS providers where there is no contract
  - non-emergency OOA MH placements
- But this should only really be for **exceptional non-elective activity**, everything else should be covered by some form of contract, even if a 'call off' arrangement



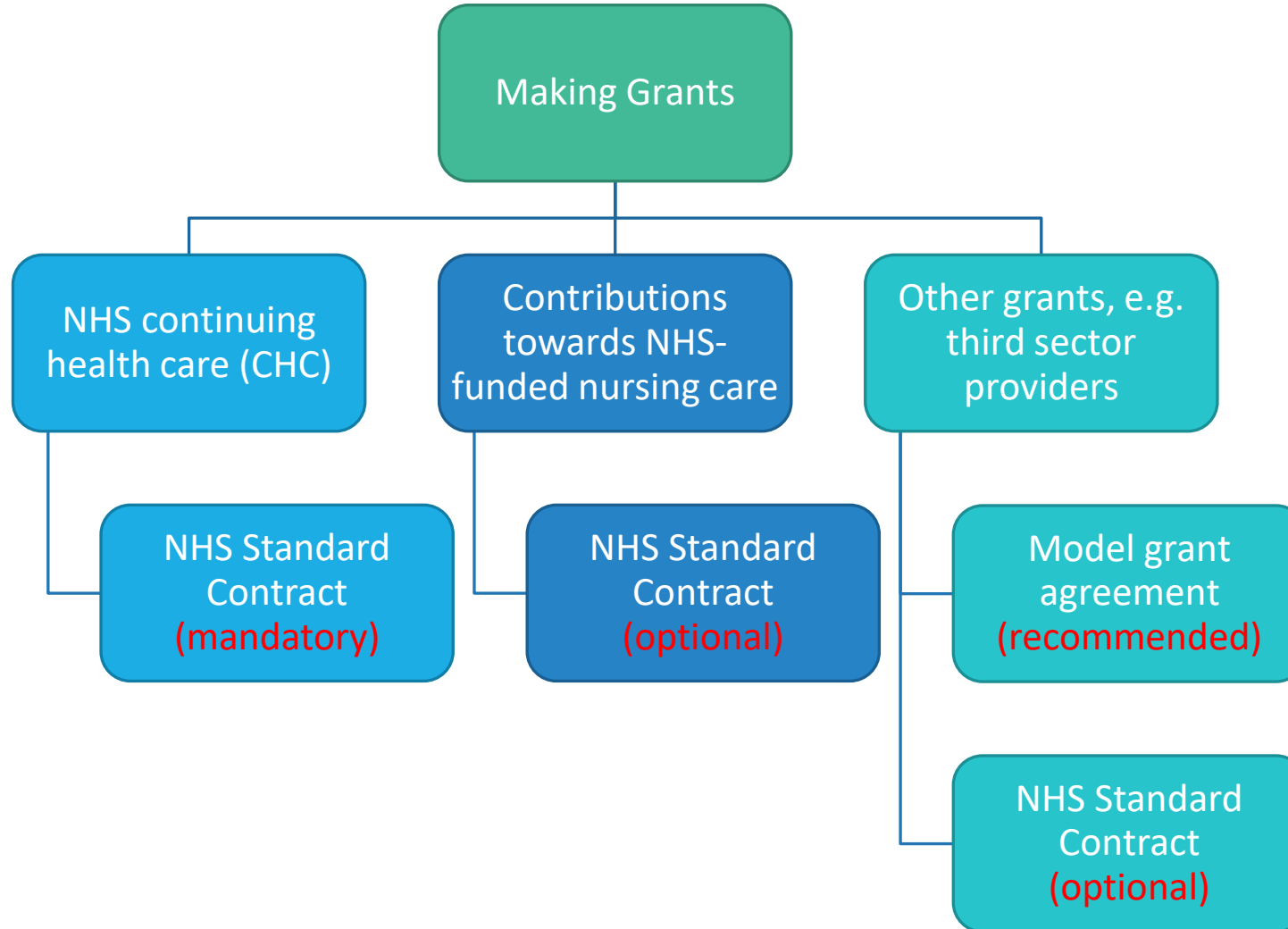
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## Making Grants



# Main types of grant in more detail

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# NHS Continuing Health Care (CHC) & Funded Nursing Care (FNC)

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## NHS continuing healthcare

A package of ongoing care that is arranged and funded solely by the NHS where the individual has been assessed and found to have a 'primary health need' as set out at <https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>

## NHS-funded nursing care

Funding provided by the NHS to care homes with nursing to support the provision of nursing care by a registered nurse

# NHS Continuing Health Care (CHC) & Funded Nursing Care (FNC)

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- For **CHC**, NHS Standard Contract is **mandated** – can be call off agreement etc
- For **FNC**, NHS Standard Contract is **not mandated** – but can be used if both parties agree
- NHS financial contribution for FNC is set nationally each year by DHSC and treated as a grant if no commissioning involved
- See s12 of the Contract Technical Guidance and more detailed guidance at <https://www.gov.uk/government/publications/nhs-funded-nursing-care-practice>

# Other Grant Agreements

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- Commissioners can use grant agreements to provide funding support for voluntary and community sector, where this supports their commissioning objectives
- **Non-mandatory model agreement** (updated March 2022) and associated guidance are available at <http://www.england.nhs.uk/nhs-standard-contract/grant-agreement/>
- Cannot obligate the body to provide a particular service but can contribute financially towards its work, subject to certain conditions, e.g. £ must be spent on specific project
- Need to provide appropriate level of assurance re quality of care
- NHS Standard Contract **must** still be used where NHS commissioning a specific clinical service
- See s11 of the Contract Technical Guidance

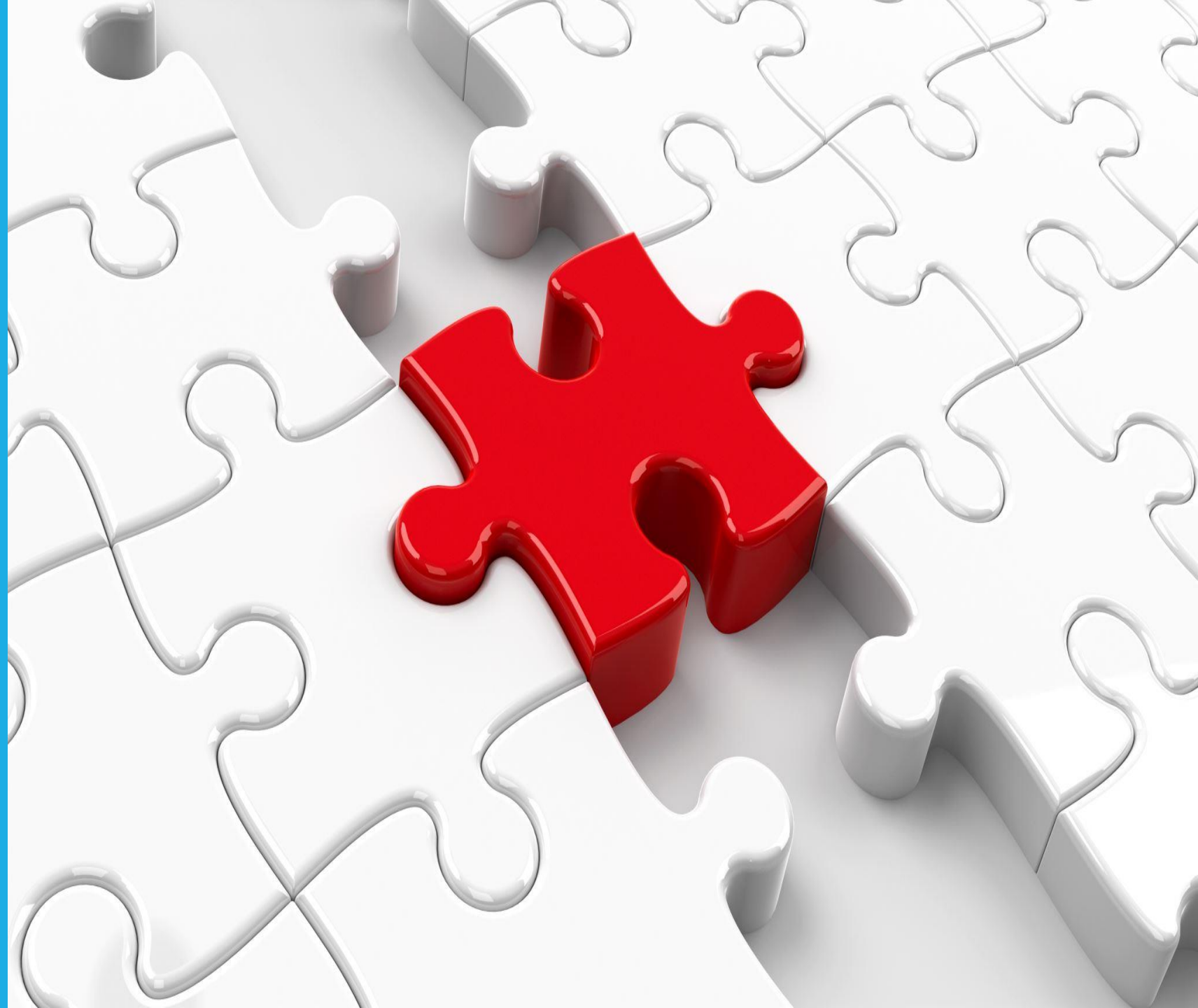
# Grant Agreements

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- Suggested guidance:
  - Identify clearly purpose of funding and intended outcome
  - Use intermediaries to select right partner
  - Partner with other commissioners – ICBs or local government
  - Develop application form and written agreement to ensure public money is used appropriately
  - Award process is not normally subject to EU procurement law, but must be clear and transparent
- Cannot use grant agreement where services are competitively tendered and potential providers include both voluntary sector and other types of provider – same form of contract must be offered to all bidders

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# Joint Commissioning with local government



# Commissioning with local government

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- Pooling NHS resources with local government is central to the concept of 'Place' in the Health and Care Act 2022
- s75\* allows NHS bodies to set up pooled budgets, hosted by either party
- s256\* allows NHS bodies to make grants to local authorities, where these enable the delivery of healthcare
- s76\* allows local authorities to make grants to NHS bodies
- Pooling/partnerships can operate between commissioners or between providers

\* of the NHS Act 2006, as amended by the Health and Care Act 2022



# A brief history of partnership...

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- **Local Scrutiny Committees** established in 2003
- **Health and Wellbeing Boards** – LA statutory committees established under the 2012 Act, responsible for developing...
- **Joint Strategic Needs Assessment (JSNA)** to *“identify the current and future health and wellbeing needs of a local population”*
- **Joint Health and Wellbeing Strategy (JHWS)** to identify and address the needs of the local population
- **Integrated Care Strategy (ICS)** – each ICS develops under the 2022 Act, with emphasis on pooling budgets where this would deliver the best outcomes

# s75 flexibilities

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- s82 of 2006 Act requires NHS and LAs to co-operate *“to secure and advance the health and welfare of the people of England and Wales”*
- 2022 Act requires ICBs and LAs to consider how to make best use of flexibilities when developing their ICS, JSNA, JHWP, etc
- s75 provides for:
  - Pooled budgets
  - Aligned budgets
  - Lead commissioning
  - Integrated provision

# Examples of s75 flexibilities

## Pooled budgets

- Partners contribute to single pot
- Encourages seamless service
- Each partner handles its own governance & accounting

## Aligned budgets

- Partners maintain separate funding streams
- Can be less bureaucratic than pooling
- Or can be interim stage to pooling

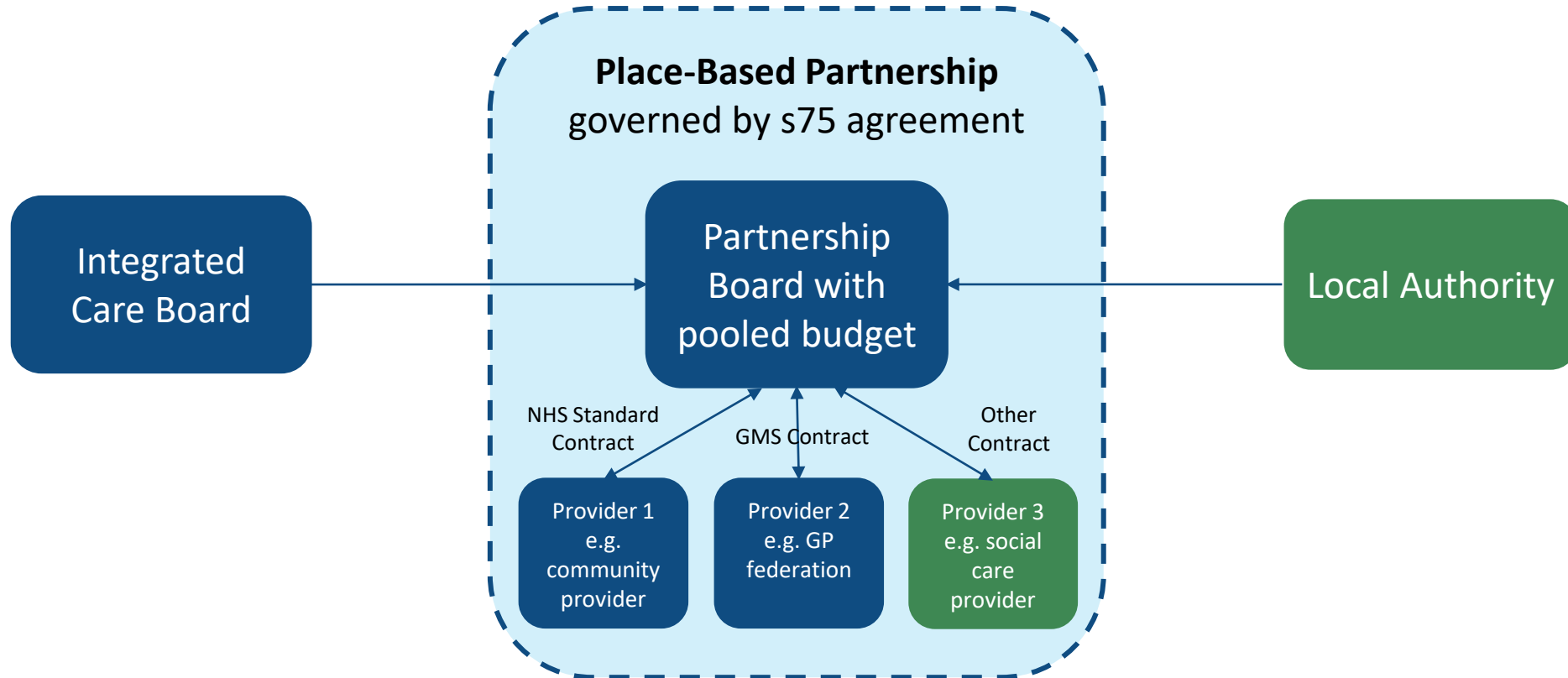
## Lead commissioning

- Partners agree to delegate commissioning to one lead organisation
- Often combined with pooled budgets

## Integrated provision

- Service providers agree to merge their resources into single structure
- Normally hosted by one partner, which recharges others

# Place-Based Partnerships



# s256/s76 – grants to/from local authorities

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- s256 allows ICBs or NHSE to make capital or revenue grants to LAs for most health-related functions
- Does not transfer health-related functions to LA, NHS remains the commissioner
- Usually for provision of integrated community services, e.g. towards health care of LD clients in a LA community facility
- s76 allows LAs to make grants to similar integrated facilities run by NHS, e.g. for social care or housing costs

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## Non-clinical contracts



# Non-clinical contracting

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- Standard NHS terms and conditions for the procurement of goods and non-clinical services
- Mainly used by NHS providers, but available to any NHS organisation
- Different variants where:
  - Contract document needs to be signed
  - Contract is formed on issue of a Purchase Order
  - Contract is under existing Framework Agreement
- **Not mandated** but national commercial strategy is for NHS to act as a 'single customer'

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# 'Memorandum of Understanding'





# Memorandum of Understanding

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- Halfway house between a verbal agreement and a written contract
- Statement of intent about how to work together to achieve common goals
- Normally **not** binding on either party
- Risky if used for anything to do with £ – consider how it would handle disputes and/or oblige the other party to do anything?
- Also consider have you inadvertently formed a binding contract?
- In our experience, not a good idea...

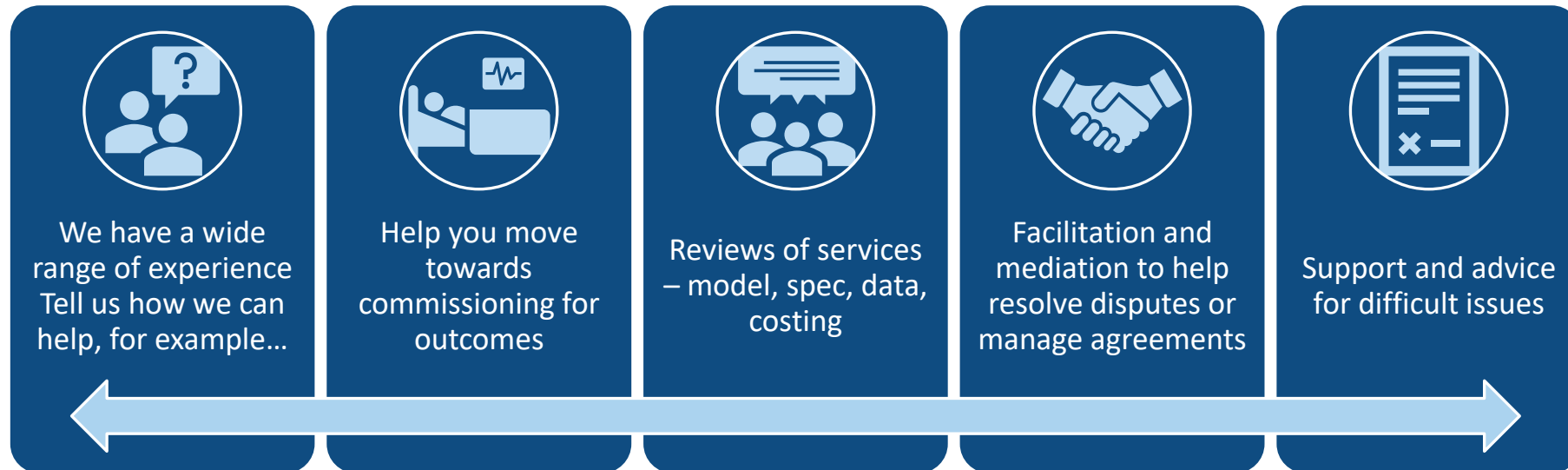
# Summary

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- There are many contractual routes open to NHS commissioners, depending on the service being commissioned
- **Most of the choices are mandated** – e.g. the NHS Standard Contract when ICB/NHSE commissions secondary care services
- There are some discretionary options – e.g. making grants to third sector organisations, provider-provider contracts
- The overriding objective is to deliver the best value for the taxpayer from the governance put in place – if something should go horribly wrong with the services provided, would your contract pass the ‘Daily Mail Test’?

# 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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- *Key changes to the NHS Standard Contract 2022/23*
- *Contract processes – using the Contract for BAU*
- *Step by step guide to documenting patient services in your ICS*
- *Value not volume – commissioning for patient outcomes*
- *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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