

NHS Highland

External audit review of certain primary/secondary care procurement and subsequent contract performance monitoring arrangements

Undertaken on behalf of Audit Scotland in our role as external auditor (as set out in the Code of Audit Practice)

19 December 2017



Executive Summary

Background

Concerns in respect of NHS Highland's contract management (healthcare contracts) and procurement arrangements specific to two contracts were identified in correspondence submitted to Audit Scotland.

Following discussion between us, as NHS Highland's External Auditor, and Audit Scotland, Audit Scotland commissioned this short piece of work. Our specific focus was the consideration of NHS Highland's arrangements related to the procurement and subsequent contract monitoring of two contracts – Vasectomy SLA (secondary care) and the Nairn Intermediate Care Contract Both were identified in the correspondence received.

Scope

Our work focused on the following:

Contract Procurement

- Agreement of contract tender process back to the Board's Standing Financial Instructions (SFIs), considering SFI changes and focused on healthcare procurements
- Undertake sample testing, including the two named contracts, as well as a sample of contracts after the date the SFIs were changed to reflect the new procurement requirements (May 2016)
- Confirm contracts are correctly authorised in line with the SFIs and Scheme of Delegations

Performance monitoring

Establish the overarching monitoring/review arrangements relating to healthcare contracts including:

- Confirm and evidence changes that have been introduced in respect of contract monitoring following the Nairn Intermediate Care FOI requests and internal review
- Establish what contract monitoring arrangements are in place, for the two named contracts, and the sample of healthcare contracts
- Confirm reporting of contract management and authorisation structures

- Review a sample of both old and new contracts, including the Nairn Intermediate care contract and establish how monitoring arrangements were complied with and confirm new arrangements have been introduced and followed e.g. how is reporting information tailored to specific contracts; correct information is received by the Board before payments are made; confirm contract variations are agreed and whether reporting requirements are updated; and remedial action is taken where poor contract performance is identified.

Our work was undertaken at the request of Audit Scotland and solely for Audit Scotland. In the course of our work we identified some actions for NHS Highland management to consider relating to strengthening the control environment. These are set out in Appendix A, alongside the agreed management actions.

Key findings

Overall our review highlighted a number of further actions necessary for management to strengthen the procurement and subsequent performance contract monitoring arrangements in place across NHS Highland. Across our recommended actions key themes identified were:

1. The need to establish proper contracts for all healthcare related services which follow procurement rules and include specified outcomes and services to be delivered
2. Contract monitoring is inconsistent, lacks formality and is not always documented and therefore NHS Highland can not always demonstrate the achievement of value for money
3. When waivers are used clear evidence should be obtained by NHS Highland which supports the need for a waiver and that in particular the decision demonstrates value for money for NHS Highland and that alternative options have been explored where required to justify no alternative service provider.
4. There needs to be a focus on improving the understanding of the nature of these contracts and the importance of tracking and evaluating performance, linked to clear measures set out in the contract (quantitative and qualitative measures)

Further improvement required

Based on our sample testing we identified a number of actions where the controls in place need strengthened, particularly in relation to the ongoing contract performance monitoring of healthcare contracts outwith the GMS contract where there is a lack of formality and understanding of the importance of good contract management.

In particular we would highlight:

- The Nairn Intermediate Care Contract has been in place since 1998 and has not been subject to a formal tender or value for money (cost/benefit) formal assessment. This should be done by NHS Highland during 2017/18
- The number of procedures under the Vasectomy SLA are increasing (and therefore cost to NHS Highland), therefore NHS Highland may wish to review how the cost per case basis was calculated, whether this still represents value for money and that the SLA is delivering the intended outcomes e.g. moving non-acute services from Raigmore to be delivered by a specialist
- There is a lack of clarity over an SLA and a contract but regardless of the name, both should be subject to formal contract performance monitoring arrangements which are done on a consistent basis across NHS Highland, which is not currently the case
- Reporting of tender waivers needs to be done as a standing item on the Audit Committee agenda with all waivers supported by a clear rationale for the waiver and demonstrating what alternative options have been considered including an explicit assessment of value for money.
- Even if a formal procurement is not required, sufficient evidence should be obtained to demonstrate that the proposed contracting arrangements represent value for money to NHS Highland

Looking forward NHS Highland's strategy is to continue to look at the services provided within an Acute setting, and in particular the services carried out at Raigmore. This will involve greater use of care in a community setting, and NHS Highland have a number of GP led community hospitals.

In the future there may similar contracts entered into, like the Vasectomy SLA and the Nairn Intermediate care contract. Therefore, it is essential that the procurement policies and SFIs are followed and robust performance monitoring is in place in order for NHS Highland to effectively demonstrate value for money.

NHS Highland as part of its redesign plans, should consider how they work with and engage all the GPs across the area, to promote further partnership working with a range of providers, alongside Nairn Medical Centre.

Appendix A Proposed Action Plan

| External Audit Observation | Recommendation |
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| <p>1. Responses to FOI requests</p> <p>From our review of the FOI requests and NHS Highland subsequent responses for the 2 items of correspondence received we note that there was a “back and forward” exchange over a sustained period of time. We would consider the NHS Highland responses to be very short in nature, and at times a defensive tone adopted. Potentially if Management had adopted a more open and transparent approach to these responses, the correspondent may have received a satisfactory response from their perspective in a much shorter time period.</p> | <p>Management and the Board should review the manner in which they respond to FOI requests to ensure they promote openness and transparency and actively promote engagement with service users/stakeholders.</p> <p>Management response:</p> <p>NHS Highland accepts the observations made by External Audit and can see that some responses in 2015 contributed to delays in information being supplied to requestors. We are confident that our revised staffing complement, which has been augmented by enhanced training, has improved processes over this time.</p> <p>NHS Highland presumes in favour of disclosure of information wherever possible and aims to prevent predictable follow-up FOIs by providing more comprehensive responses. The public interest test is considered thoroughly with colleagues across the organisation. If the request is to be refused under an exemption stipulated by the FOI (S) Act 2002, or if we do not hold information, we aim to continue to provide the requestor with context and an explanation. Furthermore, we aim to continue to check with requestors regarding the scope of their request. This will ensure timely provision of the appropriate information.</p> <p>Responsible for implementation: Board Secretary</p> <p>Date of implementation: Complete</p> |
| <p>2. Internal review of the Vasectomy Contract - Reporting</p> <p>As referred to in the FOI correspondence the Director of Finance reviewed the Vasectomy contract to determine if complied with the Standing Financial Instructions (SFIs). The report concluded that the contract did comply with the SFI's but the SFI's lacked clarity. The report referred to a number of individuals the Director of Finance interviewed but these individuals are not listed in the report. Also, there is no evidence that this report was formally submitted and discussed at the Audit Committee, as we would have expected.</p> | <p>The Audit Committee should be made aware of ongoing correspondence in respect of FOI requests and responses. In addition, any investigations of this nature should be automatically reported to the Audit Committee and written in the manner of a formal report, with associated action plan (if required).</p> <p>Management response: NHS Highland consider the most appropriate forum to report ongoing correspondence and any initial investigations, in respect of FOIs, is the Senior Management Team. This process will be formalised. In addition a formal report of any investigations of this nature, including the resulting action plan will be submitted to the Audit Committee.</p> <p>Responsible for implementation: Board Secretary</p> <p>Date of implementation: April 2018</p> |

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| <p>3. Interpretation of a contract vs Service Level Agreement (SLA)</p> <p>The Vasectomy SLA and Nairn Intermediate Care Contract SLA are both titled SLA's. However, through discussions and review of the various documentation there is a lack of clarity over the difference between an SLA and a contract and these 2 cases are contracts as with third parties outside of NHS Highland. Therefore, should be treated as contracts for procurement purposes and also contract monitoring arrangements. The same rigour you would expect over the contract award and monitoring is required in these two cases.</p> | <p>Staff should be reminded that an SLA is in effect an internal agreement between 2 NHS Highland departments and do not involve a third party. Regardless of the title, rigour should be applied to ensure meets the SFIs and procurement policies of NHS Highland and are monitored to ensure services are being delivered as intended, taking formal action where needed.</p> <p>Management response:</p> <p>The term 'contract' will now be used for all contracts with third parties going forward.</p> <p>The Procurement SFIs were updated following changes to regulations including The Procurement (Scotland) Regulations 2016, The Utilities Contracts (Scotland) Regulations 2016, and The Concessions Contracts (Scotland) Regulations 2016.</p> <p>These new SFIs came into force on 18 April 2016. In August 2016, a Procurement Handbook was issued setting out the fundamental rules, behaviours and standards applicable to procurement activity in NHS Highland.</p> <p>All procurement exercises are subject to these SFIs, including those relating to primary/secondary care. Abbreviated contracting protocol, with simple guidance, good practice, the legal framework, FAQs and links to expert staff support are available on the NHS Highland intranet procurement pages. In addition, a register of staff having authority to sign contracts, taking into consideration the seniority and skills needed, will be set up in consultation with senior management teams. A Learn-pro module will be developed and will be mandatory training for all staff having authority to sign contracts. We will also carry out a number of awareness-raising sessions at each of the Operational Unit Management Meetings and with all staff having authority to sign contracts.</p> <p>A Board-wide contracts register is publically available as per regulations, and will be refreshed as and when new contracts are put in place. For those contracts on the contracts register, arrangements are being put in place to routinely highlight the forthcoming expiry of the contract. This will be flagged to the relevant operational manager with a request for re-procurement instruction.</p> <p>Contracting technical expertise is currently provided by a number of teams, including general procurement, adult social care contracts, and healthcare contracts. This arrangement will be reviewed to provide more clarity to managers about where to access the relevant support for contracting.</p> <p>The above will be implemented in two stages. The first stage will be to set out and clarify the process, so that access to the technical expertise is clear, and 2) to thereafter raise awareness at relevant levels of the organisation as to what the processes are, how to access them, and what information different levels of staff need to be aware of.</p> <p>Responsible for implementation: Director of Finance Date of implementation: April 2018</p> |

Appendix A Proposed Action Plan

| External Audit Observation | Recommendation |
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| <p>4. Intermediate care contract – September 2016</p> <p>The Board and Nairn Medical Centre agreed a new Intermediate Care contract in September 2016 with better defined performance measures. The SLA is for a period of 2 years. However, the SLA was dated September 2016 and money paid under the SLA to Nairn Medical Centre on a monthly basis but the actual SLA was not signed off by both parties until February 2017. This means that NHS Highland were paying for a service which was not legally agreed by both parties.</p> | <p>Until a contract/SLA is signed by both parties it does not constitute a legally binding agreement and no payments should be made by NHS Highland until this is agreed.</p> <p>Management response:</p> <p>The payments referred to in the observation above were made under the pre-existing contract. This contract continued until the new contract was signed. The report states that this contract was terminated by the Board in May 2016. This is not the case, only notice of termination was given and then revoked, thus this pre-existing contract constituted a legally binding agreement at the time.</p> <p>NHS Highland accepts that payments should not commence until a contract has been signed by all parties. Where a new contract is being entered into, this will be the default position going forward. For pre-existing contracts, NHS Highland would seek to be able to roll such arrangements forward, by exception, where to cease payment would create a greater risk to service users (e.g. cessation of payments to care home providers) or an immediate and significant destabilising effect on the cash flow of small businesses. A formal process akin to a tender waiver will be developed to allow a variation to extend a contract with a long stop timescale after which no further payments will be made.</p> <p>Responsible for implementation: Director of Finance</p> <p>Date of implementation: April 2018</p> |

External Audit Observation

Recommendation

5. Intermediate Care Contract – Performance Measures

From review of the SLA which is in place now (September 2016) we noted that there are 5 service outcomes set out and 5 monitoring measures. These are quantitative for example practice admission rates, length of hospital stay and monitor activity using data sets. Whilst this is an improvement to the previous SLA's where there was a lack of clarity the measures do not necessary reflect on improved patient outcomes or reflect patient satisfaction of the services received. Some of these measures are also out with the direct control or influence of Nairn Medical Centre, and will be driven by patient flow and referrals from Raigmore.

As part of the routine management meetings involving NHS Highland and Nairn Medical Centre there should be an exploration of the more qualitative aspects of care and what "good" looks like and how this will be achieved and measured to demonstrate improved patient outcomes.

Management response:

NHS Highland will revisit the measures used to assess quantitative and qualitative aspects of care provided under this contract. This will be done in partnership with Nairn Healthcare and will be subject to review at routine monitoring meetings.

Responsible for implementation: Deputy Director of Operations - IMFOU (South & Mid)/Director of Finance

Date of implementation: Sept 2018

6. Secondary Care – Vasectomy Contract

The vasectomy SLA is a secondary care contract, designed to "free up" space in Raigmore for more minor/standard procedures to take place in the Community. When the SLA was agreed it forecasted a certain number of patients per annum at a cost of £500 per procedure. Referrals to Nairn Medical Centre come via Raigmore and on a monthly basis patient records are verified to treatment before payment is made, which is done on an invoice basis. Over time the number of procedures undertaken by Nairn Medical Centre has increased with an annual value of circa £120,000 per annum.

Given the increasing patient referrals Management should review the costing per case to determine if that should be linked to volume and reduced or remains good value for money. Also, the SLA has been in place since 2013 so should be reviewed against the anticipated outcomes to ensure it is still delivering the benefits intended and supporting the Boards wider service redesign aims.

Management response:

NHS Highland will review the terms of the vasectomy contract during 2018-19. This will include assessing projected need for the service, benchmarking current provision against other providers, assessing value for money, and considering introducing cost and volume agreements.

Responsible for implementation: Deputy Director of Operations - IMFOU (Raigmore Hospital)

Date of implementation: June 2018

External Audit Observation

Recommendation

7. Vasectomy SLA timeframe

The SLA in place for the Vasectomy service was for a 7 year period. It is unusual to have in place an SLA of that length and it is unclear how that time period was determined.

When entering into a SLA/Contract management should follow procurement recommended practices when determining the length of that agreement and any potential review/break clauses. This would allow Management to assess value for money, and how this is being achieved as well as explore potential other service options.

Management response:

NHS Highland agree that it is now generally accepted in the procurement community that best value for contract length, taking into account that the average cost of procurement exercise is £30,000, is on average 4 years.

This contract was implemented prior to the 2016 changes and fell within the "Part B" requirements of the previous regulations. Different rules applied to the procurement of these types of services and a contract of 7 years was not unusual.

New contracts implemented since the 2016 revised legislation, described in Observation 3 above, are compliant with the new rules, and, with the arrangements being put in place as detailed elsewhere within the management responses, a system will be implemented to seek specific instruction for re-procurement actions prior to expiration of existing contracts.

Furthermore, as described in our response to Observation 6, we are not obliged as part of this contract to refer any cases to Nairn Healthcare under this contract as it does not contain minimum volume guarantees.

Responsible for implementation: Director of Finance

Date of implementation: April 2018

8. Reporting tender waivers

The Tender Waiver register is reported to Audit Committee on a 6 monthly basis. Given the number of waivers over recent years it is recommended practice would be for this to be reported to the Audit Committee at each meeting (quarterly) to allow for effective scrutiny.

The Tender Waiver register should be a standing item on the Audit Committee agenda to allow for scrutiny.

Management response:

All waivers are recorded on the Procurement Waiver Process Register, which will be a standing item on the Audit Committee Agenda.

Responsible for implementation: Head of Procurement/Head of Area Accounting

Date of implementation: March 2018

| External Audit Observation | Recommendation |
|---|---|
| <p>9. Tender Waivers – Demonstrating consideration of value for money</p> <p>Since 2014 Tender Waivers have been increasing, which reflects the change in SFIs from 2016 where anything over £10k requires a waiver and that the processes have been strengthened to capture all waivers, which were not as robust previously. Within our sample testing we selected 3 services where the tender had been waived. All were requested on the standard form and signed off by an appropriately authorised employee. However, in 2 out of 3 the narrative stated that the services had been provided by X healthcare supplier over a number of years and no alternative existed. On further review we could not obtain evidence to validate how value for money had been determined, and there was no mention of contract performance over that time period to support the decision making.</p> | <p>When considering and submitting a tender waiver it is the responsibility of the employee submitting the tender to evidence the justification provided and confirm that the Board is achieving value for money and the choice made supports the Board's strategic priorities. Where this results to the extension of a current contractor, contractor performance should be formally taken into consideration.</p> <p>Management response:</p> <p>Following the regulatory changes in 2016, the process for requesting and authorising a tender waiver has been completely revised to ensure full compliance with the new regulatory regime. The new process, including guidance notes and documentation, was introduced for FY 2017/18. The procedure to be followed for seeking a procurement waiver is now explicitly detailed in our revised SFIs and was agreed by our Audit Committee earlier this year. The revised process asks managers for both an explanation and justification (amongst other things) of why a tendering exercise can't be carried out and aligns this to one of the pre-defined exemption criteria set out in the regulations. This process will be included in the Learn-Pro Module and awareness-raising sessions described in the management response to Observation 3.</p> <p>Responsible for implementation: Director of Finance</p> <p>Date of implementation: April 2018</p> |

External Audit Observation

Recommendation

10. Consistent approach to monitoring primary care services outwith the GMS Contract

Outwith GMS contract monitoring, contracts should be being monitored by the relevant Divisional Unit, recognising the geography of Highland, which results in 4 Divisional operational teams. Based on our sample tested we noted that this varied in terms of approach, documentation and follow up of actions.

Given, as part of the Board's strategy, more services may be devolved into local communities including GPs, there is merit in having a clear policy and guidelines on how contract performance monitoring should be undertaken, documented and any issues arising escalated.

Management response:

A model contract is in place for the purchase of goods, services, and adult care services. This includes provision for the submission of key performance information. It is recognised that these arrangements could be strengthened and actions will be progressed to ensure technical input is available in the drafting of obligations to demonstrate performance, this will be done alongside the work already described under observation 3. In terms of primary care providers, KPIs will be developed in partnership with providers and these will inform performance monitoring.

Responsible for implementation: Director of Finance

Date of implementation: Commencing April 2018

11. Vasectomy SLA timeframe

We note that one of the Non-Executives on the NHS Highland Board is a GP at Nairn Medical Centre. This is declared in the register of interests, and the GMS contract is shown on the declaration. We highlight that the Non-Executive member is not involved in the contract monitoring of either the Vasectomy contract or the Intermediate Care contract and is not a named signatory. However, these two contracts are not part of the GMS contract so for completeness and transparency they should be declared separately including contract values.

The register of interest should be updated to show these two contracts including contract values, in addition to the declaration of the GMS contract.

Management response: Actioned

Responsible for implementation: Board Secretary

Date of implementation: Complete

External Audit Observation

12. Nairn Intermediate Care Contract – Timeframe

We note that the intermediate care contract has been in place since circa 1998 but no original contract/SLA can be identified which is acknowledged by the Board. This continues to be extended without formal tender, although given the annual values and length this should be considered. Annually the contract is now worth in the region of £200,000 to Nairn Medical Centre. As part of our work we reviewed the minutes of meetings between NHS Highland management and Nairn Medical Centre and we note that in certain minutes discussions take place which outline that the value/outcomes NHS Highland anticipated may not be being achieved.

In addition, the contract was terminated by the Board in May 2016. The reasoning behind this is unclear, and following on from a letter of complaint from the medical practice was re-instated and the new SLA established for a further 2 year period.

Lastly, in the discussions NHS Highland appeared to initially seek a 1 year SLA/Contract but the Medical Centre wanted two from the perspective of service sustainability.

Recommendation

Whilst recognising the improved SLA from November 2016 in relation to description of service outcomes and the measurements it is still recommended the arrangement in place is thoroughly reviewed taking into consideration:

- The value and timeframe and the potential need to do a formal tender under the SF's
- How do NHS Highland know they are getting value for money from this arrangements and how that is evidenced
- The governance around this particular contract, and the level of Board and/or Committee awareness
- An option appraisal or assessment of strategic fit of this contract with the Board service redesign plans
- The value of the contract and how this is determined and whether the services provided should be individually costed and the costing re-considered where necessary

Management response:

This contract will be reviewed in line with the above, and all other relevant audit recommendations contained in this report, during 2017-18. This review will inform any new contract arrangements when the existing contract expires in September 2018.

Responsible for implementation: Director of Finance

Date of implementation: Sept 2018

| External Audit Observation | Recommendation |
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13. Vasectomy SLA timeframe
 NHS Highland has a continued aim of moving non-critical services out of Raigmore and shifting care from Acute to the Community setting. Recognising this the GP practices play a key role in supporting this change, and over time similar contracting arrangements may be entered into. To ensure the Board achieve the outcomes they require, and achieve value for money they should work with all GP practices to consider all potential service options whilst recognising a number of GP practices led the delivery of services in Community Hospitals which mean they have wider access to facilities.

The Board and Management should re-consider how they engage with all GP practices across the NHS Highland area to help the GPs support NHS Highland and support them in understanding the Board's longer term requirements. This will then enable them all to consider how they could support the aims, and provide wider services, and competing to provide services on a level playing field.

Management response:
 Operational units recognise and are developing appropriate approaches to strengthen engagement with primary care as part of the transformation of health and social care as captured in their Strategic Plans. This is an ongoing and iterative process which will be further strengthened within the new GP contract implementation.

Responsible for implementation: Deputy Directors of Operations

Date of implementation: Commencing Jan 2018

14. Other contracting arrangements
 Our work focused on the two contracts/SLAs mentioned in the correspondence and a sample of procurements undertaken from May 2016 onwards (as the SFI's changed). In both cases these are considered historic/legacy contracts and given the remote location, and divisional nature of NHS Highland there is a risk that other similar contracts may be in place which may not be monitored effectively.

Management should undertake a review of all SLA/contract arrangements currently in place to identify any further similar contracts. Where similar contracts are identified, the requirements to tender should be considered, alongside the current monitoring arrangements in place to ensure they remain appropriate and in line with Board procurement arrangements.

Management response:
 As per the response to Observation 13, any such contracts will be re-tendered in line with the revised SFIs that have been in operation since April 2016, noting that in some cases the exclusion where services are of a special nature or character in respect of which it is not possible or desirable to obtain competitive quotes or tenders, may apply. In such circumstances this will be dealt with through the procurement waiver process.

Responsible for implementation: Director of Finance

Date of implementation: Contracts will be reviewed by April 2018 and re-tendered if required in line with current contract end dates



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