
Board meeting – Public session

Title of paper:	Provision of Services Agreements: NHS England and Department of Health
Board meeting date:	29 April 2015
Agenda item no:	HSCIC 15 01 06 (a) and (b)
Paper presented by:	James Hawkins, Director of Programmes
Paper prepared by:	David O'Brien, Head of Business Intelligence
Paper approved by: (Sponsor Director)	James Hawkins, Director of Programmes
Purpose of the paper:	To inform the Board about Provisions of Services Agreements arranged with NHS England and the Department of Health
Key risks and issues:	The risks concern effective management of commissioned work, including the management of financial risks relating to income, costs and liabilities.
Patient/public interest:	The public interest is in ensuring the HSCIC manages its business in an effective way
Actions required by the board:	(i.) note the information in this report concerning the PoSAs arranged with NHS England and the Department of Health (ii.) note the PoSA between HSCIC and Department of Health presented at Appendix A

Provision of Services Agreements

NHS England and Department of Health

Author: David O'Brien

Date: 29 April 2015

Contents

Contents	2
1. Background	3
1.1 Introduction	3
1.2 Financial Risk	3
2. PoSA: Key Features	3
2.1 General	3
2.2 Legal Status (Section 2) and Obligations (Section 5)	4
2.3 Work Packages (Section 3)	4
2.4 Data Protection (Section 6)	5
2.5 Intellectual Property (Section 8)	5
2.6 Other Sections	6
2.7 Differences	6
3. Actions Required of the Board	6
Appendix A: PoSA between HSCIC and Department of Health	7

1. Background

1.1 Introduction

At its March meeting the Board received an update regarding Provision of Services Agreements (henceforth 'PoSA'). This paper explains the key content of such agreements.

The PoSA acts as an overarching Memorandum of Understanding agreed between HSCIC and external commissioning organisations. The PoSA arrangement ensures that all work commissioned by an external customer is subject to standard terms and conditions. It also ensures that all work commissions follow due process and are formally approved. The key features of the PoSA are introduced in Section 2 of the paper.

1.2 Financial Risk

The PoSA arrangement also represents a means by which HSCIC can manage financial risk associated with commissioned work. The PoSA documents, and work package schedules associated with these, include a number of features which clarify arrangements relating to charging, payments and other financial liabilities. Examples of these include the following:

- Clarity about the agreed charges payable by a commissioning body to HSCIC for a particular piece of work (for example, a project or service).
- An agreed payments schedule for each piece of commissioned work: so that HSCIC is better able to manage its future income streams and put in place business as usual processes to recover income as it becomes due.
- Clarity about financial liabilities in the event of early termination of commissioned work: where a commissioning body terminates a work package early, HSCIC is entitled to recover from that body the costs arising from commitments, liabilities, and expenditure that represent an unavoidable direct loss to HSCIC as a result of the termination.
- An agreed process for managing changes in scope of a work package: commissioning bodies cannot unilaterally change the scope of a piece of work (which in some cases could result in increased delivery costs to HSCIC). If either party wishes to make material changes to a PoSA work package it must complete a written change control request and reach agreement with the other party.

2. PoSA: Key Features

2.1 General

The PoSA documentation comprises three main elements:

- The PoSA: this is the overarching Memorandum of Understanding which sets out the standard terms and conditions for work commissioned by an external organisation and carried out by HSCIC. Once agreed, this agreement remains in place until it is terminated by either party. The PoSA has no monetary value: the financial arrangements for commissioned work are dealt with by individual work packages.

- **Work Package Schedules:** a distinct work package is agreed for each individual piece of commissioned work. This sets out, amongst other things, the definition, delivery requirements and financial arrangements for commissioned work.
- **A Register of Commissions:** a tool which holds key management information about all work packages. This is used to track progress on the development, approval and delivery of work packages.

The PoSA approach described above is supported by both NHS England and the Department of Health. PoSAs have been developed with both of these organisations.

Appendix A presents the PoSA agreed between HSCIC and the Department of Health (DH). Note that the PoSAs with Department of Health and NHS England are almost identical and it was not considered meritworthy to append both documents).

The following paragraphs explain some of the main elements of the PoSA document. References to section and paragraph numbers relate to the PoSA between HSCIC and DH

2.2 Legal Status (Section 2) and Obligations (Section 5)

Section 2 of the document presents the legal status of the PoSA. This section explains that the agreement is not intended to be contractually binding in a court of law, or to give rise to any other legally enforceable rights or obligations, or to be enforceable by any third party. Rather, the status of the PoSA is limited to the following:

- it outlines the key principles of the collaboration arrangements between HSCIC and the commissioning body in respect of the commissioned work.
- it sets out the respective duties, obligations, and allocations of risk between HSCIC and the commissioning body.
- it is the sole point of reference in respect of the agreed arrangements for the commissioned work.

Section 5 of the document concerns the obligations of each party. It confirms that PoSA arrangements are grounded in 'good faith' and that HSCIC and commissioning bodies will work together using best endeavours to achieve the objectives of commissioned work.

2.3 Work Packages (Section 3)

Section 3 of the document explains that each distinct piece of commissioned work (for example a project or a service) will be described as a 'work package', and proceeds to outline the key features of the work package arrangement.

All work packages have a standard format, and this includes the following key elements:

- The term of the programme, project or service to be delivered, including commencement and expiry dates.
- A summary description of the work to be delivered.
- Customer requirements, quality standards and acceptance criteria.
- Data protection and other information governance requirements.
- Delivery milestones and dates.
- Funding arrangements, including a schedule of charges and payments.

Work packages are approved on an individual basis based on their value and in accordance with HSCIC's scheme of delegation. New work packages with a value of £2m or more must be approved by the HSCIC Board. Six such work packages were approved by the HSCIC Board in November 2014.

In 2014/15 HSCIC agreed 25 work packages with NHS England and 24 work packages with the Department of Health. The total value of these was £25m and £19m respectively.

2.4 Data Protection (Section 6)

Section 6 sets out the requirements of both parties in respect of data protection. As an overall principle, paragraph 6.3 states that both parties shall comply with their respective duties under Data Protection Law. In addition, and emphasising the collaborative nature of the PoSA arrangement, the same paragraph requires that each party will give each other all reasonable assistance to enable each other to comply with those duties.

In terms of more specific data protection issues, some of the key requirements enshrined in the PoSA include the following:

- Parties will only process such personal data as is necessary to perform their obligations under the PoSA and the agreed work package (6.4.1).
- Parties will maintain a log of all processing of personal data (6.4.2).
- Parties will not disclose or transfer personal data to any third party (6.4.3).
- Parties will implement appropriate technical, organisational and other security measures against any unauthorised or unlawful processing of personal data (6.4.4).
- Parties will implement appropriate technical, organisational and other security measures against any accidental damage to or loss, destruction, alteration, or disclosure of personal data (6.4.4).
- Parties should only transfer personal data if it is (a) essential and (b) encrypted in accordance with international data encryption standards for healthcare (6.6).
- Parties will complete and publish an annual information governance assessment using the NHS information governance toolkit (6.7.1), and must achieve a minimum of Level 2 against all requirements in this toolkit (6.7.2).
- Parties must put in place, maintain and apply policies concerning individual personal responsibilities for those handling personal data (6.7.5).
- Parties must put in place and maintain a policy concerning organisational obligations under data protection law (6.7.6).

2.5 Intellectual Property (Section 8)

Section 8 sets out the arrangements in respect of intellectual property rights. Paragraph 7.2 states that unless otherwise specified, or else in other exceptional circumstances, all intellectual property rights in work package deliverables created by HSCIC shall be owned by HSCIC. However, paragraph 7.3 explains that, under the terms of the agreement, HSCIC grants license to the commissioning body to use such intellectual property rights to the extent necessary to make use of the work package deliverables.

2.6 Other Sections

Other elements of the PoSA document concern the following issues:

- Key Personnel (Section 4)
- Term and Termination (Section 8)
- Termination of a Work Package (Section 9)
- Dispute Resolution Procedure (Section 11)
- Charging and Payments (Section 12)
- Freedom of Information (Section 13)
- Confidentiality (Section 14)
- Change Control Procedure (Section 15)
- Staff Transfers (Section 16, and Schedule 2: Employment Matters)

2.7 Differences

As stated earlier, the PoSAs arranged with NHS England and DH are almost identical. Two areas of difference are as follows:

1. In relation to Data Protection, the DH PoSA includes more detailed requirements concerning the handling of complaints about the processing of personal data (see paragraphs 6.4.91. to 6.4.9.6).
2. In relation to Intellectual Property Rights, the NHS England document includes additional requirements about the treatment of royalties arising from any products developed as a result of a work package commissioned by NHS England and subsequently sold, lent, leased, let on hire or licensed to others by HSCIC.

3. Actions Required of the Board

The Board is asked to:

- (i.) note the information in this report concerning the PoSAs arranged with NHS England and the Department of Health
- (ii.) note the PoSA between HSCIC and Department of Health presented at Appendix A