
# Fair and Transparent Pricing for NHS Services

*A Response to the Consultation*

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# Fair and Transparent Pricing for NHS Services

*A Response to the Consultation*

Prepared by Sector Regulation Unit

# Contents

# Introduction

The Government wants to ensure the health system delivers better health, better care and better value for money. Better value for money will be a key part in delivering enhanced services to patients and in equipping the NHS to improve standards, against the background of rising demand for health services and increasing treatment costs, and within the increasing public spending constraints as a consequence of the economic downturn. As such, Monitor, the sector regulator for health, will have the specific duty of promoting healthcare services that represent value for money and maintain or improve quality. A key way in which Monitor will achieve this is working with the NHS Commissioning Board to regulate prices.

From April 2014, Monitor will be responsible for publishing the National Tariff. It will develop its proposals for 2014/15 with the NHS Commissioning Board and engage widely on them, including giving providers, commissioners and others an opportunity to raise concerns and offer suggestions for improvement.

Monitor will be required to publish a final draft of the National Tariff and allow 28 days for commissioners and providers to object to the proposed methodology for calculating nationally mandated tariff prices. If sufficient numbers object, Monitor will have either to reconsider the proposed methodology and re-consult on revised proposals, or refer the proposed methodology to the Competition Commission for a decision on whether it is appropriate. These arrangements for a final check and balance will apply to all versions of the tariff from April 2014 onwards.

A consultation on our proposals – Fair and Transparent Pricing for NHS Services - closed on 21 December and this document sets out our response to that consultation. The consultation set out to establish the details of the arrangements for objections at the final consultation stage. In particular, we were seeking views on:

• Which providers can formally object to Monitor's proposed methodology; and

• The extent of objections from clinical commissioning groups (CCGs) and providers that would require Monitor to reconsider the pricing methodology or refer it to the Competition Commission for a determination about whether it is appropriate.

Rationale for the new pricing system:

Value for money in the provision of healthcare services means getting the maximum benefit from the NHS budget. This means we need to ensure that we make the best use of our resources so that inefficiencies in the system are addressed, best practice models of care are implemented and the right clinical and organisational behaviours are incentivised to deliver the best possible outcomes to the patient and the taxpayer. Thus, achieving the right balance between quality, outcomes and costs will ensure that patients get the best services possible and commissioners will have more funds to extend and improve services to patients overall.

An effective pricing system is fundamental to achieving value for money; ensuring resources follow patients rather than organisational boundaries. The National Tariff will include prices for specified services or bundles of services, delivered to prescribed standards. It is not about the cheapest price. It is about paying a fair price for the services patients want, delivered to high standards. Such a system means competition on quality, not price, driving improvements in standards. By paying fair prices, an effective pricing system will encourage a sustainable and vibrant sector supplying healthcare services, as well as minimising any perverse incentives.

The new National Tariff will be consistent with a set of six shared principles for pricing that Monitor (the independent sector regulator for healthcare services) and the NHS Commissioning Board have agreed i.e.:

i. Enable and promote improvements in care for patients and taxpayers;

ii. Enable an efficient provider to earn appropriate reimbursement for their services;

iii. Have regard to sustaining the NHS offer in the long run (a taxpayer funded health service that is universal and comprehensive based on clinical need, not ability to pay);

iv. Not preclude the delivery of the Secretary of State's Mandate for the NHS Commissioning Board;

v. Have regard to the principles of better regulation; and,

vi. Support movement towards a fairer playing field for providers.

Under the Government's reforms, Monitor, working alongside the NHS Commissioning Board, will publish the National Tariff for NHS-funded services (Annex B). This will place responsibility

for pricing with the bodies best placed in the new system to undertake it. Commissioners are most suited - due to their clinical expertise and understanding of patient needs - to say what currencies they will need in contracting for health services and to ensure these are aligned with their priorities for service improvement.

Monitor will be able to access necessary cost and activity information and to review this information over time. Their independence and objectivity will ensure that prices reflect provider costs and structures appropriately. Hence, Monitor will be responsible for developing the methodology for calculating national prices and for publishing the National Tariff and related guidance. It will also carry out enforcements.

These arrangements will replace the current system whereby the Department of Health publishes the national tariff and associated guidance. It is intended that the Department will continue to do this until March 2014, including collecting data to inform Monitor's setting of the prices that will apply from April 2014 onwards.

The consultation, "*Fair and Transparent Pricing for NHS Services – A Consultation on Proposals for Objecting to Proposed Pricing Methodology*[1] , published October 2012 set out proposals to enable commissioners and providers of services for whom the National Tariff will apply, to object to Monitor's proposed methodology for calculating national prices. Under the proposed arrangements, if, following consultation, a sufficient proportion choose to object, Monitor would have to reconsider its proposals or refer the matter to the Competition Commission.

The Payment by Results system has helped deliver greater throughput and reduced waiting times. However, the system needs to evolve with a greater focus on outcomes. As such, the new arrangements set out in the Health and Social Care Act 2012 are intended to build on and enhance the current arrangements for tariff development. They will contribute by increasing the transparency of stakeholder engagement throughout the process. In addition, Monitor will be required to agree the National Tariff with the NHS Commissioning Board and then to formally consult on its proposals.

[1] https://www.wp.dh.gov.uk/publications/files/2012/10/Fair-and-transparent-pricing-for-NHS-services-A-consultation-on-proposals-for-objecting-to-proposed-pricing-methodology.pdf

The objections mechanism being proposed is intended as an additional backstop in the system and relates to the pricing methodology, not the prices. It is not intended to be a substitute for extensive and robust engagement and consultation.

We believe the new arrangements will see crucial investment in pricing to enable the respective parties develop a robust and fair pricing system. We believe this will create a more stable, predictable environment in which commissioners and providers can make more long-term investment decisions to improve patient care.

The Department received 48 responses from various parties to the consultation. Organisations who responded to the consultation are listed at annex A and are available on the DH website. We are grateful for the helpful responses received. The proposals summarised in this document will be implemented through a set of regulations which will be laid before parliament in due course.

# Key Messages from the Consultation

## The Scope of Relevant Providers

**Question 1: Do you agree that providers of services in the tariff in operation at the time at which Monitor consults on the next tariff should count towards the thresholds?**

**Question 2: If yes, do you agree that this should include any such providers who are exempt from the requirement to hold a licence?**

In order to determine the proportion of providers that must object in order to require Monitor to re-consider the methodology or refer it to the Competition Commission, it is first necessary to define which providers should be counted.

We proposed that all providers of services covered by national prices under the National Tariff in operation at the point at which the consultation on the future national prices takes place should be able to object. This would be irrespective of whether they were licence-holders or exempt from the requirement to hold a licence.

### Your feedback

On the whole, there was general agreement that the calculation should include providers of services subject to national prices in operation at the time of Monitor consulting on the next National Tariff Document. However, a number of respondents suggested that existing providers of services for which a national price was to be specified for the first time should also have the ability to object.

### Our response

Together with the NHS Commissioning Board and Monitor, we have considered whether providers of services for which a national price was to be specified for the first time should also be able to object.

We agree that it is right for providers of services whose existing business will be directly impacted by the application of the proposed methodology to be allowed to object to it. For the purposes of the objection threshold, we therefore propose to include in the definition of 'relevant providers', providers currently providing services for which a national price will be specified for the first time. Our proposals have been revised to reflect this change. It is important to note however, that this will not apply to providers who want to provide those services in the future.

It is also not possible to include providers of newly in-scope services in the share of supply percentage because the financial data required to make the calculation will not be available from providers until they have been providing services under national prices for a full financial year.

## The Objection Threshold

**Questions 3: Do you agree that the data used to calculate an objection threshold should be based on total tariff income, as reported in financial accounts? If no, please suggest an alternative source.**

**Question 4: Are there any other providers who should count towards the threshold? If yes, please give details and reasons.**

In developing proposals for the calculation of the objection percentage and related thresholds for commissioners and providers, we and our partners have considered a number of issues:

The new arrangements for the National Tariff are intended to achieve better value for money in the provision of NHS services by creating the right incentives. A successful pricing system can reinforce these incentives. However, as well as creating incentives to increase efficiency, prices should take account of unavoidable cost differences, such as those arising from geographical location and clinical case complexity. Thresholds therefore need to be set at levels that will capture these differences while ensuring that a majority of providers who have risen to the challenge of making improvements for patients are not affected by a minority of providers who have not.

Reference to the Competition Commission is a final check and balance in the system, not the "first line" stakeholder engagement process. The new statutory consultation process will provide opportunities to engage on the tariff-setting process at each stage. We believe this will strengthen the tariff development process.

## Your feedback

We received mixed responses to our proposals on the objections threshold. A number of respondents supported the proposed threshold. However, a number suggested that the objection thresholds were too high, with some suggesting a percentage of 30% or lower would make more sense than the 51% currently proposed. Others felt there should be consistency with the threshold for licensing objections (20%) and some respondents thought a higher

threshold would be more appropriate. A number also asked for more clarity around the objection process.

## Our response

The 20% licensing threshold is based on precedents for objections to licence changes set in other sectors. There are no precedents for price-setting, so our objective in determining the threshold was to set it at a fair and appropriate level, while reducing the regulatory burdens on organisations wherever possible.

One of the reasons for taking a different approach to that taken with licence objections is the definition of ‘relevant providers’. The definition of relevant providers is less inclusive for licensing, as only those providers who have the condition to which the modification applies in their licence can object. For pricing, any provider providing any service for which a national price is specified in the National Tariff Document can object to any part of the methodology, even if it does not apply directly to them. Any clinical commissioning group can also object. This is because of the additional administrative burdens that would be imposed on Monitor and providers were we to try and circumscribe 'relevant providers' more specifically to particular currencies under tariff. Arguably therefore, a higher threshold is necessary given the scope of 'relevant' is more inclusive. We nevertheless commit to keep the level of the threshold under review to ensure it remains fit for purpose.

A further reason for setting the threshold so that it requires a majority share of providers to object is that the new arrangements set out in the Health and Social Care Act 2012 - as set out in Annex B - enhance stakeholder engagement throughout the tariff development process. Monitor will also be required to agree the National Tariff with the NHS Commissioning Board, and then formally consult on its proposals. These measures should give sufficient opportunity for stakeholders to engage in and influence the process while the tariff is in development and should minimise the need to use the objection mechanism. We anticipate that the new arrangements for extensive, open and inclusive engagement and consultation will mean that any issues should be detected and addressed early in the process, well before Monitor proposes the methodology, and therefore make it less likely for providers and commissioners to feel it necessary to object. The objections mechanism for the proposed methodology is

therefore intended as a backstop in the system, rather than a substitute for extensive and robust engagement and consultation.

In addition, local modifications, where agreed by Monitor, will be available to mitigate any cases where providers face costs which are unavoidably higher than the level reimbursed through national prices, even when the service is efficiently provided. It is important to ensure that high quality, efficiently provided services valued by patients and commissioners can remain financially viable. The local modifications regime is designed to achieve this and provides an additional safeguard.

We have therefore decided that at the present time, to retain a threshold of 51%, rather than a lower threshold of say 30%, as a starting point for the new system. This, we believe, represents the fairest balance as a starting point for the new system.

This decision should be seen within the context of Monitor developing its new role, and the changes being embedded within the NHS as a whole. We would expect that, as the objections mechanism beds down, we will be in a position to review whether any changes to the threshold are necessary to ensure the system operates optimally, having taken advice from the NHS Commissioning Board and Monitor. Indeed, Monitor has a statutory duty to keep such regulatory burdens under review on an on-going basis to ensure the sustainable and effective regulation of the sector.

## Share of supply

**Question 7: Do you agree that a provider's share of supply should be calculated across all tariff services covered by the tariff in force at the time at which the consultation takes place? If not, how should their share of supply be calculated?**

**Question 8: Do you agree that providers should be weighted based on income received from tariff services, as stated in the previous year's financial accounts, minus local area adjustments? If not, on what basis should they be weighted?**

The proposals we consulted on would mean that the objections threshold would be met if objections were received from organisations providing 51% or more of the services with a national price specified in the tariff in operation when the consultation took place. This would be measured by the income generated from such services, as stated in the previous year's

financial accounts. It is not possible to include existing providers of NHS services, for which a national price will be specified for the first time in the share of supply calculation because the financial data required to make the calculation will not be available from providers until they have been providing services under national prices for a full financial year. In addition, potential new entrants to tariff services will not be able to object for the same reason.

If any of the objection thresholds were met, i.e. an unweighted proportion of commissioners; an unweighted proportion of providers; or a weighted proportion of providers calculated as above, Monitor would have to reconsider its proposals or make a reference to the Competition Commission.

Again, these mechanisms will be kept under review by the Department, on advice from Monitor and NHS Commissioning Board to ensure they do not present an undue burden on the system, or affect the optimal operation of the sector.

## Your feedback

Respondents' views were generally mixed about the proposals around objections based on share of supply. The majority view was that the share of supply percentage should be calculated across all tariff income, and that it should be weighted according to income for nationally priced tariff services. However, some felt they would prefer the percentage to be based on a service-specific specification, which they felt would give smaller providers a fairer say in the process. It was also felt that providers would have little say in the process if the denominator was calculated across total income from services where a national price is specified in the tariff. There was a suggestion that tariff activity would be a better weight than income from tariff services.

## Our response

We are sympathetic to the views put forward by those respondents who suggested alternative approaches. However, we are also mindful that the arrangements for the new pricing system involve greater requirements for consultation during the development phase, meaning that the objections mechanisms should only operate as a backstop provision. We fully expect Monitor to engage appropriately on the development of methodology before any statutory consultation takes place.

The selected percentages reflect the importance of the tariff methodology, and the need to secure the best outcomes for patients by achieving a balance between:

- The benefits of getting the methodology in the National Tariff as appropriate as possible and the costs of delaying its implementation;
- The interests of commissioners, and those of providers and
- The need to avoid placing disproportionate burdens on regulators, providers and other key stakeholders.

This suggested to us that there should be a significant number of objections to require re-consideration of the final draft of the National Tariff. As stated above, this is a starting point, and the Department will keep it under review, taking advice from the NHS Commissioning Board and Monitor. It is also useful to remember that Monitor have a duty to keep regulatory burdens under review to ensure the effective operation of the sector. Monitor will take an evidence-based approach to regulation and it will ensure that its regulatory mechanisms evolve as the evidence base does.

For calculating “share of supply”, we have defined “supply” as the entirety of tariff services provided at a national level in the first instance. Providers would therefore be weighted according to the total income they receive from all tariff services, minus adjustments including market forces factor**.** Following suggestions from some respondents, we considered whether activity or service-specific income would be an appropriate basis weighting. However, we cannot see how this can be achieved in a fair and more transparent manner without imposing an excessive administrative burden on both providers and Monitor. We are also clear that weighting should be specific to the impact of the methodology on business, not the wider tariff. We have therefore decided to retain the proposed share of supply methodology.

# Other issues arising from the consultation

Overall, the consultation responses were generally positive about the importance of National Tariff to the NHS, particularly for ensuring providers are adequately reimbursed for the services they provide. Respondents were generally supportive of the increased transparency and engagement that was proposed for the new system. Some did suggest that engagement should be extended to other groups, such as trade groups, Royal Colleges and patient groups.

A number of respondents raised concerns relating to the creation of a fair playing field. In particular, concerns were raised about the potential for the tariff to incentivise the acute sector to generate greater levels of activity. The independent and voluntary sector also raised concerns around the potential burden of information flows to support the development of National Tariffs**.**

Some respondents suggested that commissioners should also have the opportunity to have their objections weighted according to their share of supply.

## Our response

We believe the new pricing arrangements will bring much greater transparency to the price-setting arrangements, and improve credibility and confidence in it, and are pleased many of the respondents agreed with that. Price-setting will receive investment to help further develop a payment system that is transparent, fair and credible and provides fair reimbursement for services provided.

Whilst there is not a formal requirement to consult trade groups, Royal Colleges and patient groups on the proposed methodology, Monitor and the Board are required to obtain appropriate clinical advice, and involve patients and the public in carrying out its general duties, and it is anticipated that pre-consultation engagement would involve these groups as appropriate.

With regard to fair playing field issues, Monitor will consider these as part of its fair playing field review, due to report in March. The Department will the consider what, if any, action needs to be taken as a result. A number of the issues raised during the consultation will be addressed by the move to a fairer, more transparent pricing system.

In considering whether commissioners should also have an opportunity to have their objections weighted by share of supply, we reflected that because *all* commissioners can object, whereas only 'relevant' providers can, it was appropriate to give providers this additional means of objecting. In addition, no practicable ways of weighting a commissioner's share of supply were identified by respondents.

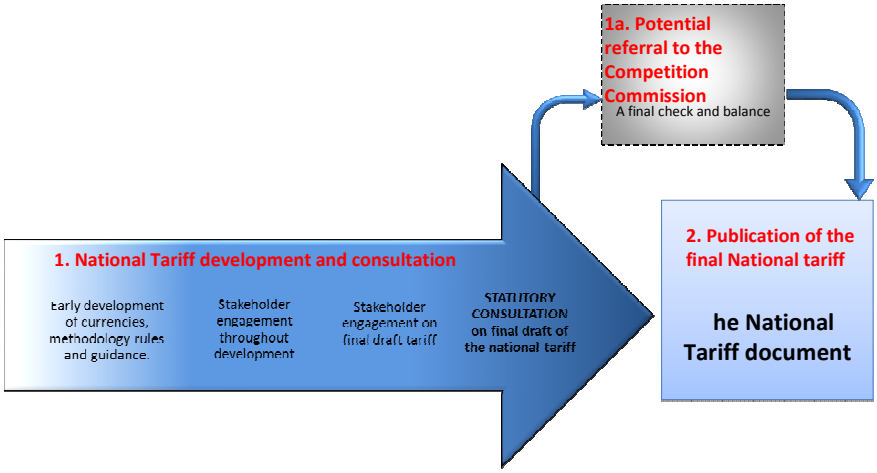
Few responses highlighted any perceived impact or potential impact of the proposals on people sharing protected characteristics under the Equality Act 2010. We do not anticipate any adverse impact on equalities as a result of the proposals. This is consistent with the Government's overall assessment of the equalities impact of its wider proposals for regulating providers and reflects the nature of the function, in that regulators do not provide or commission services directly. However, Monitor and the NHS Commissioning Board have general and specific duties under equalities legislation and as such we do not intend to introduce further requirements.

**Annex A**

**Organisational Responses to the Consultation**

- Airedale NHS FT
- Basildon and Thurrock University Hospitals NHS FT
- Bliss
- British Association of Dermatologists
- British Medical Association
- Cambridge University Hospitals NHS FT
- Chelsea & Westminster Hospital FT
- Chesterfield Royal NHS FT
- City Hospitals Sunderland
- County Durham & Darlington NHS FT
- East Kent Hospitals University NHS FT
- Federation of Specialist Hospitals
- Foundation Trust Network
- Gateshead NHS FT
- Guild of Healthcare Pharmacists
- Guy's and St. Thomas' NHS FT
- Healthcare Financial Management Association
- Help the Hospices
- Independent Mental Health Services Alliance
- Lancashire Teaching Hospitals NHS FT
- Lesbian & Gay Foundation
- National LGB&T Partnership
- NHS Confederation
- NHS Eastern Cheshire CCG
- NHS Partners Network
- North East Ambulance Service NHS FT
- Nuffield Health
- Optical Confederation
- Oxford University Hospitals Trust
- Priory Group
- Royal College of Radiologists
- Shelford Group
- Somerset Partnership NHS FT
- Specialist Orthopaedic Alliance
- St Helen's & Knowsley Teaching Hospitals NHS Trust
- Staffordshire County Council
- Sue Ryder
- The Practice
- Together for short lives
- University College London Hospitals NHS FT
- University Hospitals Birmingham FT
- Western Sussex Hospitals NHS Trust

## Annex B


1a. Potential referral to the Competition Commission
A final check and balance
1. National Tariff development and consultation
Early development of currencies, methodology rules and guidance.
Stakeholder engagement throughout development
Stakeholder engagement on final draft tariff
STATUTORY CONSULTATION on final draft of the national tariff
2. Publication of the final National tariff
he National Tariff document

**Annex C**

**The pricing methodology consultation, objections and reference process**