

Commissioning Decisions Policy and Procedure

First issued by/date	Issue Version	Purpose of Issue/Description of Change	Planned Review Date
05/01/2016	2	<ul style="list-style-type: none"> • To outline the process for commissioning decisions which will result in the re-commissioning or de-commissioning of existing services • To demonstrate effective use of public money 	
Named Responsible Officer:-		Approved by	Date
Director of Commissioning		Joint Strategic Commissioning Board	
Policy file: Corporate Policy		Impact Assessment Screening Complete - Full impact Assessment Required -	Policy No. POL026

Key Performance Indicators:

1. Standard and transparent process for commissioning decisions.
2. Regular review of all existing contracts and outcomes delivered.

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1. INTRODUCTION

- 1.1 This policy will outline the principles, approach and process which will be followed by Wirral Health and Care Commissioning (the commissioner) to support effective decision making. The process will be transparent, fully informed and consistently applied by the Commissioner when undertaking commissioning decisions.
- 1.2 The Commissioner has responsibility to ensure that public money is utilised effectively and to commission high quality services that will deliver the right care, in the right place, at the right time for the Wirral population.
- 1.3 Public money to fund health and care services is limited and together with the changing needs of patients, the Commissioner must secure health and care services that deliver better outcomes and meet the needs of Wirral residents in the most efficient way, and also explore new models of care to meet the changing needs of patients.
- 1.4 The Commissioner is required to commission services which are safe, legal, improve the quality and outcomes for our population, and improve the efficiency in the provision of the services.
- 1.5 Our Strategic Plans outline the priorities for the commissioning of health and care services in order to meet the needs of the Wirral population.
- 1.6 This policy sets out how decisions relating to the re-commissioning and de-commissioning of health and care services will be made. For the remainder of this policy the term 'commissioning decision' will refer to both of these scenarios.

2. PURPOSE

- 2.1 To ensure that all of our resources are consistently directed in accordance with the Commissioners priorities, and statutory duties, and to commission services that will ensure effective use of those resources across the whole health and care economy.
- 2.2 Ensure that the needs of people are central to commissioning decisions.
- 2.3 For the Commissioner to commission a range of services that will achieve the best possible health and care outcomes for the local population within available resources.
- 2.4 To ensure services are always safe and are required to meet the highest standards of quality.

3. COMMISSIONING CYCLE

3.1 The need to undertake commissioning decisions is integral throughout the commissioning cycle which is shown in the diagram below.

Commissioning Cycle



3.2 As part of the commissioning cycle all commissioned services will be reviewed in terms of alignment to the strategic plan, statutory duties, priorities, quality, outcomes and efficiency. This review, of both existing and new services/initiatives, will inform the commissioning decisions undertaken by the Commissioner.

4. PRINCIPLES FOR COMMISSIONING DECISIONS

4.1 The following principles will be adopted by the Commissioner throughout the commissioning decision process. These principles are in line with NHS England's four tests for planning and delivering service changes. The four tests of service change are:

- Strong public and patient engagement
- Consistency with current and prospective need for patient choice
- Clear, clinical evidence base
- Support for proposals from clinical commissioners.

4.2 There is a further test applicable from April 2017 which is regarding any proposal of significantly reduce hospital beds. This additional test will also be adhered to if required.

4.3 The Local Government Association and NHS Clinical Commissioners have developed a commissioning framework (April 2018) for integrated commissioning and the principles within this are also reflected in the Commissioner principles below.

Our principles are integral to the values and business of the Commissioner and in accordance with those values, the process will be a process that:

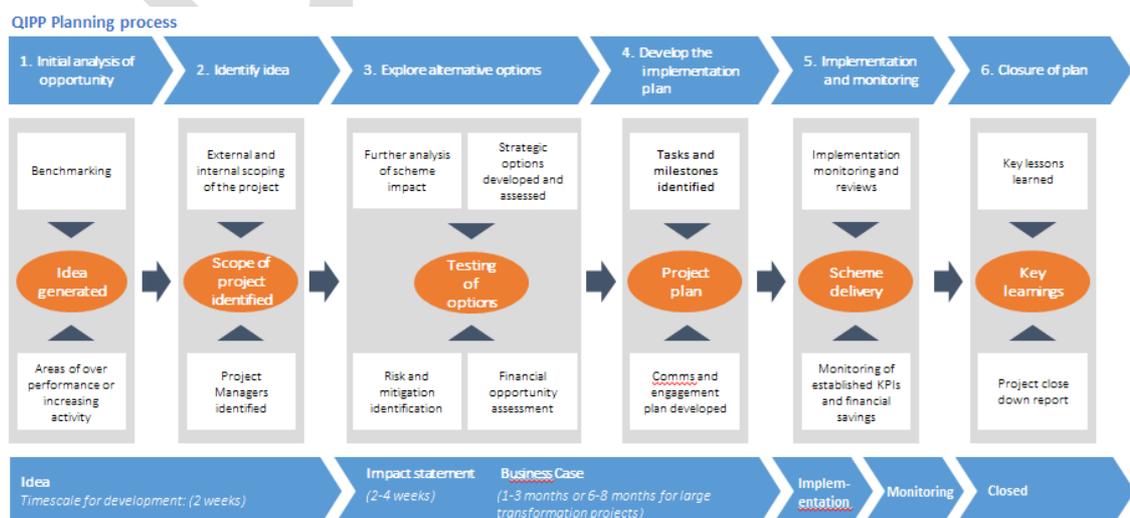
- will have a focus on the benefits for the 3 'P's: people, places and populations, with the individual at the heart of our approach
- will be clear and transparent
- will be consistent and robust ensuring decisions are informed and evidence based with a focus on outcomes over 'episodes of care'
- will ensure decisions will align with the priorities and strategic plans of the Commissioner together with the Wirral Health and Wellbeing Strategy, Healthy Wirral and the Cheshire and Merseyside Health and Care Strategy.
- will have clear, effective and interactive communication and engagement with key stakeholders including members, patients, public and providers will be ongoing throughout the process in line with best practice
- will be in-line with the Risk Management, Quality, Equality and Privacy guidelines of the Commissioner
- will be compliant with all legal duties required of a public sector organisation which includes legal duties imposed under the NHS Act 2006 (as amended by the Health and Social Care Act 2012)
- Decisions will be consistent with the NHS Constitution and the values of NHS Wirral CCG and Wirral Council.

5. GOVERNANCE FOR COMMISSIONING DECISIONS

5.1 Governance arrangements for commissioning decisions will have to comply with the NHS Wirral CCG and Local Authority scheme of delegation, together with procurement, patient choice and competition regulations. The process will be as per the business planning process of the Commissioner.

5.2 The commissioning decision process is outlined in Appendix A (currently being revised). This process will be followed unless an event as specified under the terms and conditions of the relevant contract and regulations require or allow for prompt termination of a contract.

5.3 As part of the commissioning cycle a requirement to commission a new service may be identified. To ensure a consistent approach, any new service developments will be in-line with the Commissioners Planning Process summarised below and will be tracked through our Business planning and reporting framework



5.4 The governance process of the Commissioner will ensure that decisions will not progress to final decision making prior to assurance of completion and adherence

to our business planning process. This will include quality impact assessment, equality impact assessment, stakeholder feedback, finance review and impact risk assessment.

6. CRITERIA FOR COMMISSIONING DECISIONS

6.1 The Commissioner will use the criteria set out in the Service Contract Review Checklist to inform its commissioning decisions related to existing contracts (Appendix B)

6.2 Drivers for Decommissioning

Together with the criteria above, as part of the commissioning cycle the Commissioner will be required to make decisions both proactively and reactively regarding the need to decommission or disinvest in a service. The main drivers include:

- service requirements have changed to reflect different needs or outcomes
- evaluation of service has proposed decommissioning
- persistent and/or serious immediate risk to patient safety
- notice of termination from the provider
- the service does not add value in terms of the patient pathway
- the introduction of new technologies enables the service to be provided in different ways
- breach of contract served due to irreconcilably poor patient experience, governance and / or risks to patient safety
- pathways do not reflect evidence based good practice

7. IMPACT ASSESSMENTS

7.1 In order to assess potential impacts (positive or negative) on quality, equality and privacy from any proposal to change the way services are commissioned and / or delivered impact assessments will be undertaken.

7.2 An impact assessment would be required at the 'development and consideration' phase of any proposals followed by the further or updated impact assessment when consultation is concluded and prior to a decision being made by the relevant approving group / committee.

7.3 The process for undertaking impact assessments is included in the impact policy.

8. CONSULTATION, ENGAGEMENT AND PUBLIC INVOLVEMENT

- 8.1 The Commissioner recognises that throughout the process of making a commissioning decision it is important to identify and engage with stakeholders and is therefore keen to have an open, engaged and transparent process. The objective of engagement and consultation will always be made clear to stakeholders.
- 8.2 Engagement will ensure that final commissioning decisions are informed and will facilitate positive decisions as different expertise, alternative perspectives, identification of unintended impact and practical problems will be captured. Consultation and other forms of engagement will seek to gather the views of stakeholders of services and to test out options for future services to ensure these are in line with the needs and expectations of Wirral patients and public.
- 8.3 The Commissioner has a statutory duty to engage with and involve service users and patients on an ongoing basis and in the development of services. The Commissioner has established relationships with key partners including Healthwatch as well as having structures in place to understand people's views and public health insight on an ongoing basis.
- 8.4 Stakeholder identification and engagement must be evident in the developmental stages of any commissioning decisions as this will provide assurance that the Commissioner is meeting its statutory duty and to ensure that decisions being considered or made are fully informed by prior stakeholder engagement/consultation.
- 8.5 Not every decision requires a formal consultation process, e.g. minor changes to services that only impact a small number of people may not require a formal process as long as there is evidence of stakeholder engagement and consensus.
- 8.6 Engagement and consultation guidance can be found in Appendices C and D.

¹ (www.england.nhs.uk/publication/nhs-standard-contract-201718-and-201819-general-conditions-full-length/)

APPENDIX A - COMMISSIONING DECISION PROCESS FLOW CHART TO BE ADDED

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Service Contract Review Checklist

Commissioning Manager		Date of Review	
Service Type		Provider	
Pathway		Contract ID	

Section 1

Evidence (to provide documentary evidence for questions below)	Provider conforms?			Comments
	Yes	No	In Part	
Does the provider meet the service specification?				
Are specified waiting times consistently maintained more than 4/6 months?				
Does the service meet current national strategy in terms of outcomes and expectations?				
Does the evidence base (NICE/SIGN etc.) identify that the service is clinically effective? (parliamentary enquires could also provide evidence)				
Has the service evaluated well against the outcomes and key performance indicators and standards within the contract?				
Are there any equality implications i.e. does the service demonstrate it meets the needs of our population? Has the service reduced inequalities?				
Is there evidence of a material contractual breach?				
Has the provider had a remedial/performance notice or contract query raised?				
If yes, has the GC9 process been followed? As appropriate				
Actual activity v. contracted activity is significantly more or less (-/+5%)?				
Actual cost v. contracted cost is significantly more or less (-/+5%)				
Does the service cost provide value for money? (if on local tariff, is it on reasonable limits, if block, is the reference cost within regional average) calculations to be attached to checklist				
Does the service reduce activity and cost elsewhere in pathway?				
Are DNA rates in line with benchmarked national/regional DNA rates for the service?				
Are new/follow up ratios in line with benchmarked national/regional ratios for the service?				
Have there been any significant patient safety/clinical governance issues? (such as SUI's, CRB issues, breaches of policies or Commissioner strategy)?				

Evidence (to provide documentary evidence for questions below)	Provider conforms?			Comments
	Yes	No	In Part	
If the service is provided by a single practitioner, has this impacted on service delivery during the practitioner's absence?				
Is there positive patient feedback?				
Has the service provider had concerns raised as a performer?				
If yes, have these concerns/complaints been upheld by internal or external governance processes?				
Are there any safeguarding concerns?				
If yes, what was the outcome?				
Has the provider had any quality concerns / triggers leading to quality/risk summit?				
If yes, what was the outcome?				
Does the service conform with existing patient pathways? i.e. part of a referral pathway to other services?				
Is it statutory or core commissioning in the Commissioner's responsibility?				
Is this service commissioned by another organisation? Is there an opportunity for joint commissioning?				
Are there any other data from the review to consider? Please attach with indication below of conclusion following review of this data				

Section 2

Impact Assessments	Yes	No	Comments
Has the Equality Impact Assessment been completed?			
Has the Quality Impact Assessment been completed?			
Has the Privacy Impact Assessment been completed?			
Does the proposal have a financial impact to Commissioner?			
Does the proposal impact on other parts of the Wirral system?			
Have relevant stakeholders been consulted?			
Does the proposal impact positively / negatively on performance / constitutional standards?			

Please list stakeholders who have been involved in this review:

Proposal to Operational Management Group

Re-commission

De-commission

Re-design / Transform

Supporting information

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Engagement and Consultation Guidance (V1.2 – May 2018)

1. Introduction

This guidance outlines the general principles engagement and consultation for Commissioning activity, specifically the following:

- Commissioning or proposed decommissioning of services
- Policy development
- Strategy development

2. Understanding Engagement and Consultation

Wirral Health and Care Commissioning (Commissioner) has a statutory duty to engage with and involve service users and patients on an ongoing basis and in the development of services. The Commissioner has established relationships with key partners including Healthwatch as well as having structures in place to understand people's views on an ongoing basis.

Engagement can be both formal and informal and should not in most circumstances be restricted to specific episodes requiring engagement, rather staff responsible for commissioning services or service development should have a clear understanding of who their principle stakeholders are and have proactive ongoing engagement activity. This provides a robust platform when there is a need to change services, develop new policies, proposals or strategies and will influence the level and duration of any formal consultation requirement.

Stakeholder identification and engagement must be evident in the developmental stages of any proposals as this will provide assurance to the relevant group or committee that the Commissioner is meeting its statutory duty and to ensure that decisions being considered or made are fully informed by prior stakeholder engagement/consultation. Stakeholder mapping should include the commissioner's principle stakeholders including GP members, Local Representative Committees (LMC/LPC), Providers and service users. Early stakeholder engagement provides the opportunity to determine consensus (or otherwise) on any proposals prior to deciding on the level of any consultation in accordance with these guidelines.

The Patient and Public Advisory Group (PPAG) acts in a capacity to review the engagement plans of commissioning proposals in the formative stage. It also reviews the outcome of engagement and consultation activity to ensure that outcomes were achieved and to identify best practice.

The PPAG reports to the Quality & Performance Committee and as such will escalate any issues relating to engagement and consultation that arise during its business.

Commissioning teams should plan for early engagement with the PPAG when plans or proposals are at a formative stage and following initial stakeholder mapping The PPAG will require the following in order to review any proposal or plan.

- Overview of the proposal or plan (inc. links to any national guidance)

- Proposed communications and engagement plan inc. specific targeted engagement arising from initial Equality and Quality Impact Assessments Recommendation for consultation level (if required) as detailed in the Consultation Decision

Consultation is the term used when there is a need to formally ask for people's views in relation to a proposal. The requirement to formally consult is based on a number of factors including significance, target audience or where there is a contentious issue or some element of media/political interest. The '*Guidance for Consultation Level*' document provides a framework for determining the level of consultation. Not every decision requires a formal consultation process, e.g. minor changes to services that only impact a small number of people may not require a formal process as long as there is evidence of stakeholder engagement and consensus.

3. Consultation principles

There are significant risks to Public Sector bodies who fail to consult and legal challenges can come from numerous sources. A legal challenge can result in judicial review and any review will not consider the merits of proposals but rather the process by which a proposal has been developed as well as the associated consultation process.

The following points should be considered:

- It is critically important that there is no evidence that the Commissioner has reached a decision without any stakeholder engagement or consultation. The Commissioner **must** be open minded and wishing to seek views to inform the development of proposals. **All** documentation is disclosable.
- Making a decision and then consulting on that decision is unlawful
- Proposals should be termed in 'development and consideration' phase during any initial stakeholder engagement or during a consultation period
- Options can be considered at an initial stage but these must be developed with stakeholder engagement in more detail prior to commencing a formal consultation.
- A preferred option can be consulted upon as long as the Commissioner is open to alternatives and gives consideration to suggestions put forward by the public
- A single option can be consulted upon as long as there is a strong rationale for why a single option was realistic and the Commissioner must be open and give genuine consideration to any alternatives put forward by the public. In practice it is always preferable to have multiple options for consultation
 - All options to be consulted upon must be affordable within the Commissioner funding allocations.
- The Commissioner is not bound by the views of the public and stakeholders, however the views of stakeholders and the public must be considered by decision makers and that there is evidence that these have been taken into account before a decision is reached. If a decision is reached that goes against the views gathered during consultation then there need to be good reasons for it and these must be recorded
- A decision can be reached based on an option that was not part of the consultation as long as there is a strong rationale for a change in approach. This may include information discovered as part of the consultation. However, if the decision differs substantially from the initial options, then a second consultation may be required

4. Public Sector Equality Duty (PSED)

The Public Sector Equality Duty is statutory and the Commissioner must ensure that it

meets the requirements of the PSED in any of its functions. In particular, when proposals are under consideration there needs to be due regard for any impact on service users who have a protected characteristic.

The PSED has three principle requirements:

- Remove or minimise any disadvantage experienced by people with a protected characteristic (Race, Disability, Sexual Orientation etc.)
- Take steps to meet the needs of those who share such characteristics
- Encourage participation of those who share such characteristics

Within the context of these guidelines, an Equality Analysis (EA) would be required at the 'development and consideration' phase of any proposals followed by the further or updated EA when consultation is concluded and prior to a decision being made by the relevant approving group/committee.

There is not a specific requirement to meet the needs of everyone with a protected characteristic, rather the Commissioner has to ensure that it has given due regard to the duty and has taken reasonable steps to remove or minimise any negative impact on those with a protected characteristic.

5. Consultation process

Development and consideration (Pre-consultation)	
Initial proposal development	
Complete stakeholder mapping	Some stakeholders will be evident (GP Members/LMC/LPC, although some others will be specific to what is being proposed or the wider public as a whole for major programmes.
Stakeholder engagement (inc. options development)	Complete stakeholder engagement activity to develop options and proposal
Initial submission to Patient & Public Advisory Group	<p>Documents Required</p> <p>Proposal Document</p> <p>Engagement Report with consultation level recommendation (refer to Guidance for Consultation Level)</p> <p>Communication and Engagement Plan</p> <p>*PPAG will advise on the communication and engagement plan prior to commissioning teams submitting a full proposal to the relevant committee.</p>
Initial submission to relevant group/committee	<p>Documents required:</p> <p>Proposal documentation</p> <p>Engagement Report with consultation level recommendation (refer to Guidance for Consultation Level)</p> <p>Communication and Engagement Plan</p> <p>Equality and Quality Analysis</p>

Post submission actions	<p>Notification letter to Local Authority Overview and Scrutiny Committee from Accountable Officer (statutory requirement)</p> <p>Notification letter to local Members of Parliament from Accountable Officer (Level 4 and 5)</p> <p>Development of supporting consultation materials (Survey/Website etc.)</p> <p>Develop press materials (where applicable)</p> <p>Plan specific engagement activity to complete during consultation</p>
Consultation Period	
Progress engagement activity	Level 4 and 5 consultations should have at least one planned public event in addition to established forums
Monitor responses and reply accordingly	Any responses received can be responded to as long as it is factual and does not express an opinion from the Commissioner that would prejudice the ongoing consultation
Monitor supporting materials (website)	Weekly check to ensure that website links and survey are working
Post consultation	
Complete consultation analysis report	Report should include background, methodology, what options were subject to consultation, analysis of responses with key themes supported by qualitative comments where applicable
Revise existing Equality Analysis	Refer to the existing EA and revise if anything has changed in the course of the consultation
Submission to approving committee	<p>Documents required:</p> <p>Final proposal documentation</p> <p>Consultation Analysis Report</p> <p>Equality / Quality Analysis (revised from consultation responses if applicable)</p>
Publish consultation response on Website	Short summary of consultation responses with link to approving committee paper detailing final decision on proposal

Guidance for Consultation Level

This guidance is based on the assumption that stakeholders have been identified and engaged as part of the development process. If there has been limited or no engagement with stakeholders then Level 4 or Level 5 should be considered.

Level 1	Minor changes – no further consultation is required	None
Level 2	Medium changes that are broadly supported by stakeholders through prior engagement	Up to 6 weeks (min 4 weeks) + limited proactive engagement during consultation
Level 3	Significant changes that are broadly supported by stakeholders through prior engagement	Up to 10 weeks (min 6 weeks) + proactive engagement during consultation
Level 4	Significant change with some contentious issues	12 weeks + proactive engagement during consultation
Level 5	Highly contentious/High volume impact on a number of stakeholders/High levels of dissent/Significant financial implications/High level of media interest or political profile	12 weeks + extensive pre and during consultation engagement

The level chosen should be proportionate to what is being developed. The following questions should be considered when determining the level of engagement or consultation.

- How significant is the change for patients?
- Are certain patient groups disproportionately impacted?
- What is the size of the population affected?
- What is the financial impact and affordability of the proposal?
- Will the policy or service change the geography of where services are provided?
- If the patient group is very small – can they be contacted individually?
- Has an Equality Analysis been completed and what is the outcome?

The following decision tool can be used to assist in determining the level of consultation:

Target audience	Score	Significance	Score
Public and all patients	4	High levels of change/contentious/High profile media or political issue	4
Specialist patient groups (<1000)	3	Medium to large number of changes	3
Proposal relates to known health inequality		Consensus not likely between stakeholders	
Specialist patient groups (<1000)	2	Small changes	1
		Consensus between stakeholders has been established	

Target audience + significance = total score

- A score of 6 or above should involve a level 4 or 5 consultation
- A score of 5 or 6 indicates that a level 3 consultation should be considered
- A score of 4 indicates that a level 2 consultation should be considered
- A score of 3 or less indicates that a level 1 consultation should be considered