

Monitor

Making the health sector
work for patients

2015/16 National Tariff Payment System: Engagement on enforcing the national tariff



About Monitor

As the sector regulator for health services in England, our job is to make the health sector work better for patients. As well as making sure that independent NHS foundation trusts are well led so that they can deliver quality care on a sustainable basis, we make sure: essential services are maintained if a provider gets into serious difficulties; the NHS payment system promotes quality and efficiency; and patients do not lose out through restrictions on their rights to make choices, through poor purchasing on their behalf, or through inappropriate anti-competitive behaviour by providers or commissioners.

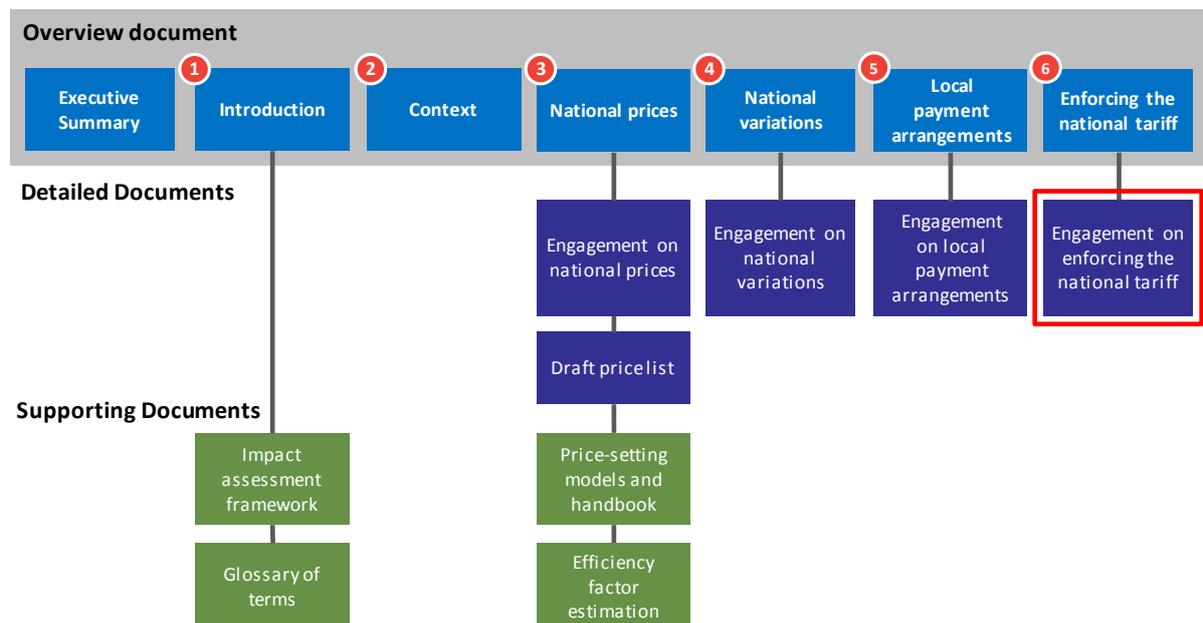
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1. Introduction

This paper is part of [a set of engagement documents](#) we are publishing on the ‘2015/16 National Tariff Payment System’ (see Figure 1). It sets out our intentions for ensuring compliance with, and enforcement of, the 2015/16 National Tariff Payment System. To support these intentions, this paper sets out our proposed changes to guidance on reporting arrangements and arrangements for submitting local modifications. These proposed changes are additional to the changes we are proposing to make to the rules for local payment arrangements.¹

Figure 1: Map of 2015/16 National Tariff Payment System engagement documents



Our approach to enforcement and compliance in 2015/16 will be informed by the lessons learned during 2014/15 and by responses to the proposals in this paper. Details of any change in approach will be set out in revised guidance on enforcement of the national tariff, which we will publish later this year. This will include details of how we propose to audit compliance with activity and costing standards.

The rest of this document is structured as follows:

- Section 2 summarises our approach to enforcing the national tariff
- Section 3 lists the principles that inform our enforcement of the national tariff
- Section 4 sets out our proposed reporting changes with regard to local payment arrangements.

¹ Local payment arrangements are: local modifications to a national price, local variations to a national price or a currency for a service with a national price, and local prices (sometimes based on nationally specified currencies). Our proposals are set out in '[2015/16 National Tariff Payment System: Engagement on local payment arrangements](#)'.

2. Our approach to enforcement of the national tariff

Monitor's legal powers for enforcing the national tariff with providers and commissioners of NHS services are unchanged in 2015/16. We are and will continue to enforce the national tariff in a predictable, transparent and proportionate manner, in order to support providers and commissioners. Our aim is to promote better use of the national tariff mechanisms to assure economic, efficient and effective provision of care for patients through:

1. pragmatic short-term improvements in transparency
2. a step change in the use and quality of activity and cost data
3. longer term 'clean sheet redesign' of the payment system.

We discuss each of these in turn below.

2.1 Pragmatic short-term improvements in transparency

We propose using a range of formal and informal actions to identify breaches and enforce the rules in the national tariff. We will work with the NHS Trust Development Authority (NHS TDA) and NHS England to ensure that providers and commissioners adhere to national prices and national variations, and to the rules for local payment arrangements.

We intend to analyse the reasons why providers and commissioners may adopt payment approaches that do not comply with the national tariff, and take action with the NHS TDA and NHS England in order to correct any perverse incentives and unintended consequences that are identified to exist in the national tariff.

We also intend to evaluate local variations and local prices that use a national currency with a view to ensuring that they support innovative ways of delivering services and risk sharing between providers and commissioners.

2.2 A step change in the use and quality of activity and cost data

We propose to undertake an auditing programme that will assure the quality of data submitted to Monitor for the purposes of compliance with the national tariff. We would implement a programme of 'quality change agents' among providers, to support improvements in the quality of data that is submitted to us.

We propose implementing a pricing case management submissions and enquiries portal to:

1. enable providers and commissioners to check their compliance with the national tariff when making an online submission to Monitor
2. enable providers and commissioners to compare local payment arrangements and learn good practice from other local health economies.

2.3 Longer term 'clean sheet redesign' of the payment system

We propose to design and deliver a programme of benchmarking tools to support providers and commissioners. This would allow them to compare and assess their compliance with the national tariff. Additionally, it would allow them to identify opportunities to improve the economic, efficient and effective provision of healthcare through local payment arrangements.

2. Principles for enforcing the national tariff

This section reiterates the seven principles that we set out in the guidance document published alongside the 2014/15 National Tariff Payment System, '[Enforcement of the National Tariff](#)' ('the enforcement guidance'), which we propose to retain for 2015/16. In addition to our general duties under sections 62 and 66 of the Health and Social Care Act 2012 (the 2012 Act), these principles will underpin our approach to enforcing the national tariff.

1. Monitor will act to protect and promote the interests of patients

We aim to ensure that any enforcement actions we take help us to fulfil our main duty to protect and promote the interests of patients by promoting the provision of NHS healthcare services which is economic, efficient and effective, and maintains or improves the quality of services.

2. The 2012 Act says that the prices for services must be consistent with the national tariff

If the price of an NHS service is specified in the national tariff, this must be the price payable for service, subject to any variations provided for in the national tariff. If an NHS service is not specified in the national tariff, the price payable for that service is determined in accordance with the rules in the national tariff. Providers and commissioners are compliant with the national tariff if they agree a price in accordance with a local modification to the nationally determined price approved by Monitor, or in accordance with the rules for local variations. These are explained in the [national tariff document](#).

3. Monitor will facilitate compliance by encouraging appropriate use of the permitted local variations to national prices and currencies in the national tariff

We have worked with NHS England to develop rules for local variations, included in the national tariff. The rules on local variations are designed to allow providers and commissioners to vary national currencies and prices in certain circumstances where this promotes better value for patients. Complying with the local variation rules will constitute compliance with the national tariff.

4. Monitor will encourage transparency about current payment practices

We are aware that, in some localities, additional or supplementary payments are made outside of the national tariff. Monitor wants to encourage transparency about current payment practices in order to allow the development of national prices which reflect the complexities of the provision of care. There may be circumstances where an efficient provider cannot deliver services sustainably at nationally determined prices. To address this, we have developed rules for local modifications to be made to the national tariff. There may also be circumstances where an alternative service

delivery model or payment approach, which would increase value for patients, requires a change to national prices or currencies. We have developed rules for agreeing local variations in these situations, including a requirement for us to be informed when a local variation is used.

5. Monitor plans to publish decisions we have made to promote understanding of our enforcement approach

We plan to publish most decisions we make regarding enforcement action, as detailed in the enforcement guidance. In line with this general policy, Monitor and the NHS TDA will publish the decisions we make and actions we take to enforce the national tariff. Doing so should promote understanding of how to remain compliant.

6. Monitor will not resolve contract disputes – the parties must use the appropriate mechanisms

While Monitor, the NHS TDA and NHS England will offer education and support to encourage compliance with the national tariff, we will not generally become involved in contract disputes. If there is a dispute about a contract for NHS services between a provider and a commissioner, the parties need to use whatever dispute resolution process is included in the contract and, if necessary, legal processes to resolve it.

7. Monitor will prioritise enforcement work in order to make the best use of resources

We have limited resources, so we will prioritise our enforcement work in order to make the best use of them. The prioritisation framework in the enforcement guidance describes how we will do this in order to make the best use of finite resources. We will apply the principles of the prioritisation framework to all decisions relating to national tariff enforcement action, whether such action is against a provider or any other party.

3. Proposed reporting requirements

Our aim is to promote better use of the national tariff to support patients' best interests. One of the ways we can improve adherence to the national tariff is by facilitating the sharing of information on good practice and lessons learned, to help commissioners and providers to strengthen their future compliance.

This section sets out the ways we are proposing to facilitate good practice through the submission of information on local payment arrangements. Specifically, for 2015/16 we propose to publish guidance:

- on local modifications being submitted to Monitor by 30 September 2015
- on including details of plans to address structural issues affecting services as part of the submission of local modifications
- on the publication of decisions on local modifications, whether or not they are approved, on Monitor's website
- on including details about how commissioners will measure the benefits of the variation in the submission of local variations
- on including details of any non-recurrent costs of redesigning and restructuring services in the submission of local variations
- on recording how providers and commissioners arrived at a local price, to demonstrate adherence to the local payment arrangement principles (and to make this information available to Monitor if we request it).

We are also considering whether it would be appropriate to make any of the changes proposed above mandatory for 2015/16 by changing the rules on local payment arrangements, or the method for local modifications, rather than issuing guidance (which is non-mandatory). We would welcome your views on this.

Questions:

1. Do you agree with our proposed guidance on the submission of information in relation to local payment arrangements? Specifically:
 - a. on a proposed date for submitting local modifications to Monitor
 - b. on the inclusion in local modification submissions of details of plans to address structural issues
 - c. for publishing decisions to refuse local modifications, as well as approvals
 - d. for the inclusion in local variation submissions of information relating to measuring the benefits of the variation and on non-recurrent costs of redesigning and restructuring services.
 - e. on recording information about local pricing
2. Do you think that any of the proposed changes in question 1(a) (b) or (e) should be made mandatory by a change to the method for local payments, rather than being set out as guidance?

3.1 Local modifications

Stakeholders have asked us to share lessons on local modifications to improve compliance with the national tariff in future years. We think this is a good idea which will encourage best practice. However, the absence of current guidance on the date for submitting agreements or applications means that local modifications can be submitted throughout the year, with the result that we are limited in our ability to share lessons with the sector in a timely manner.

For 2015/16, in order to share lessons in sufficient time to inform commissioners and providers' plans for the following year, we propose to set out guidance on local modifications that agreements and applications should be submitted by 30 September 2015. However, we would still consider submissions after this date.

Stakeholders have also asked us to share examples of how providers and commissioners are addressing structural issues affecting their services. For 2015/16, we propose to issue guidance about including details of structural issues being addressed through Strategic Commissioning Plans and provider business plans within local modification applications and agreements. This information would be shared with the sector as part of our lessons learned, unless a provider requests otherwise because of commercial confidentiality.

Under the Health and Social Care Act 2012, Monitor is only required to publish its decisions to approve a local modification agreement or grant a local modification application. In response to requests from stakeholders to improve transparency on all decisions, in 2015/16 we propose to also publish decisions to reject a proposed local modification.

3.2 Local variations

The '[2014/15 National Tariff Payment System](#)' does not require commissioners to identify to us how they will measure the benefits that their local variations are intended to achieve. This omission limits our ability to identify and share innovation and good practice with the sector. For 2015/16, we propose that documentation on all local variations submissions should specify the measures that providers and commissioners will use to ensure that the variation delivers the patient benefits it is intended to. We are interested in stakeholders' views on what these measures might be.

The information that we propose to collect is the same information that commissioners should be using to monitor their contracts as part of their internal controls and governance arrangements. We do not expect that this proposal would require commissioners to produce new information.

Additionally, in circumstances where a local variation results in a higher agreed price than would be implied by national prices (for example due to service redesign costs), we propose that the local variation documentation should separately identify any non-recurrent costs of redesigning and restructuring services in the price agreed.

We will make changes to the local variation submission template to reflect the above proposals, if supported by the sector.

3.3 Local prices

The '[2014/15 National Tariff Payment System](#)' does not require commissioners to demonstrate the benefits that local prices are intended to achieve. This limits our ability to assess agreed local prices against the principles of promoting patients' interests, transparency and constructive engagement, which underpin local payment arrangements.

For 2015/16, we propose to set out guidance which asks providers and commissioners to record how they arrived at a local price, in order to demonstrate compliance with the local payment arrangement principles. We also propose to issue guidance on our expectation that providers and commissioners should supply this information to Monitor's pricing enforcement and compliance team either upon request or as part of any compliance audit to provide assurance of adherence to the national tariff. This only applies to local prices with a national currency, in accordance with current guidance.

The information that we expect providers and commissioners to hold is the same information that they should be using to monitor their contracts as part of their internal controls and governance arrangements. We do not expect that this proposal would require new information to be produced by providers and commissioners.

In the case of adult mental health services, the requirement to use care clusters for local price setting will be the subject of pricing enforcement and compliance activity in 2015/16. The use of mental health cluster currencies will be included in our programme of audits in order to assure compliance with the rules and to identify any systemic recording and coding errors.



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