

Title: Procurement Strategy		
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Executive Summary	<ul style="list-style-type: none"> • Procurement is the process of acquiring goods, works and services, covering both acquisitions from third parties and from in-house providers. • The CCG has a responsibility to ensure that services are commissioned both to deliver its vision and to meet the needs of the people of Tower Hamlets • The purpose of this strategy is to describe the rules of procurement that will be followed by the CCG and any organisation undertaking procurement on its behalf, such as the Commissioning Support Service. • This strategy sets out the procurement principles and processes that have been adopted by Tower Hamlets CCG. The principles set out the CCGs approach to procurement while both the principles and processes will be adopted by any organisation that will carry out procurement on behalf of the CCG. In most cases, this will be through our Commissioning Support Services (CSS).
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<p>References and associated CCG documentation</p>		
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1 Introduction

Procurement is the process of acquiring goods, works and services, covering both acquisitions from third parties and from in-house providers. This process spans the whole cycle from identification of needs, through to the end of a services contract or the end of the useful life of an asset. It involves options appraisal and the critical 'make or buy' decision which may result in the provision of service in-house in appropriate circumstances. It includes the planning, design and implementation of a process enabling the organisation to commission services whether from third parties, in-house or from local providers.

Tower Hamlets CCG has a clear responsibility to ensure that services are commissioned both to deliver its vision and to meet the needs of the people of Tower Hamlets. Services have to be affordable within the limits of available resources, with a clear emphasis on value for money (*VfM*) ensuring that equalities are reflected throughout the tendering process, procuring services in a manner that is open, transparent, non-discriminatory and fair to all potential providers while ensuring that the quality of outcomes is maintained.

Future service planning will be developed using the Quality productivity and challenge methodology (QIPC). This document will be reviewed annually and re-written at least every 3 years in line with the Commissioning Strategy Plan (CSP).

The purpose of this strategy is to describe the rules of procurement that will be followed by TH CCG and any organisation undertaking procurement on its behalf, such as the Commissioning Support Service.

This strategy sets out the procurement principles and processes that have been adopted by Tower Hamlets CCG. The principles set out the CCGs approach to procurement while both the principles and processes will be adopted by any organisation that will carry out procurement on behalf of the CCG. In most cases, this will be through our Commissioning Support Services (CSS).

The scope of this strategy INCLUDES procurement relating to any contract with a value of £10,000 or more. It EXCLUDES the procurement of primary care services which will be undertaken by the NHS Commissioning Board.

While this strategy is primarily concerned with procurement related to health services, the principles it sets out can be applied to the procurement of any service by the CCG and any service provider, this includes procuring services from CSS.

2 Background

As part of our overall commercial framework Tower Hamlets CCG has developed a procurement toolkit with clear processes and guidance to support and inform the planning process, decision making and options for procuring future services.

This strategy identifies the guiding principles for the effective management of procurement of healthcare services throughout the organisation. The strategy takes into account the changing provider landscape and outlines service priorities within the transformational areas identified in the CSP.

Each priority area will develop a more detailed procurement plan which will state how the market will be managed and stimulated and which procurement route has been identified.

3 Key National and Local Priorities

The procurement strategy seeks to be in full compliance with all relevant legislation and Department of Health guidance and will be continuously reviewed in the light of any national changes. In so far as any assertion or intention in the current version of this document does not comply with such legislation or guidance, that assertion or intention must be regarded as void.

The key laws and guidance documents are:

- Public Contracts Regulation 2006, as amended, including by:
- Remedies Directive, 2007/66/EC
- Principles and rules for cooperation and competition (PRCC) (DH 2010)
- Procurement Guide for Health Services (DH May 2008)
- Framework for Managing Choice, Cooperation and Competition (DH May 2008)

National priorities are set out by the Department of Health and are mandatory for Healthcare organisations. The procurement strategy must therefore be read in the light of these.

Our local priorities are determined by our Joint Strategic Needs Assessment (JSNA) which is conducted jointly with the London Borough of Tower Hamlets. It reflects the needs of the local population and forms the assessment stage of the commissioning cycle.

Based on the JSNA, and produced with extensive clinical input, detailed public health analysis and other relevant consultation processes, the CSP sets out our strategic intent for improving services for the next five years. It is refreshed annually. The CSP is the key strategic document with which all Tower Hamlets CCG processes and strategies, including this procurement strategy must be fully compatible.

4 Principles of Procurement

All procurement plans will clearly define policies and processes to ensure organisational clarity and consistency. Robust and transparent procurement processes will deliver viable and affordable services.

We will seek to develop the local health economy in Tower Hamlets by encouraging new providers and supporting local and existing providers so they can participate fully. A strong, vibrant and well informed market place for healthcare provision will encourage innovation, and drive up quality, as a result we would be able clearly to demonstrate delivery of value for money.

Tower Hamlets CCG needs to commission outcomes that deliver high quality healthcare and give value for money for the population. In this context it is critical that we ensure that:

- Our processes are consistent with DH Procurement Guide for Health Services, relevant EU Procurement Directives; and local requirements
- Our approach to procurement is in line with the CSP direction, and supports the goals of improving quality of services and value for money

- Processes are transparent – including the use of sufficient and appropriate tenders, transparency in making decisions not to tender, and the declaration and separation of conflicts of interest. Tower Hamlets CCG will use the most appropriate media such as the Official Journal of the European Union (OJEU), NHS Supply2Health and DH procurement portal (part B tenders), in which to advertise contracts. We will provide feedback to all unsuccessful bidders.
- Proportionality is maintained – making procurement process proportionate to the value, complexity and risk of the services contracted, and critically not excluding potential providers through overly bureaucratic or burdensome procedures;
- There is no unfair discrimination – ensuring consistency of procurement rules, transparency on timescales and criteria for shortlist and award; and
- There is equality of treatment – ensuring that all providers and sectors have equal opportunity to compete where appropriate; that financial and due diligence checks apply equally and are proportionate.

Applying the principles identified within this strategy will ensure that all service commissioning by Tower Hamlets CCG will be through a robust and transparent process encompassing good procurement practice compliance with national and EU legislation and with the guidance set out by the Department of Health as referenced in section 3 above.

As an organisation we are developing a comprehensive database of current and potential providers that includes intelligence on our current providers' economics incorporating financial information, quality, productivity and patient experience. This market intelligence will inform our commissioning decisions and support the identification of an appropriate procurement route.

5 Equality and Diversity

Tower Hamlets CCG believes that services should be equally accessible to all community groups regardless of where they live, which equality group they belong to and their ability to pay for services. We need to ensure every patient in our locality is receiving high quality care based on their need. This means:

- i. Embedding the equality framework into the quality management framework to raise standard and make continuous improvement.
- ii. Integrating equality, diversity and human rights in business planning, commissioning and service delivery activities.
- iii. Addressing the needs of the different equalities groups in the JSNA and in all other stages of the commissioning cycle.
- iv. Ensuring robust data monitoring across all commissioned services.

6 Governance Framework

Tower Hamlets CCGs governance structure will ensure that all business cases are assessed and a decision taken on whether contestability applies. There are three key areas which Tower Hamlets CCG will consider when deciding on the appropriate procurement process to follow. These are:

- Contestability – whether or not active competition for a service (e.g. through tendering) is appropriate;

- Preferred provider status – where a legitimate contract is already in place with a provider that has been through an approved competitive process
- Any Qualified Provider – the ability to stimulate the market by creating a list of qualified providers, resulting from a formal tender process, with competition being restricted to those providers, subject to repeating the tendering exercise every six months to refresh the list.

For Tower Hamlets CCG the benefits of an effective approach to procurement will be:

- Consistent methodology and structure to how we go about our business
- Demonstration of our application of fair, transparent and compliant processes
- Opportunity to use target costing, i.e. forecasting service cost before provider supply estimate
- Delivery of healthcare services that provide high quality and value for money
- Driving quality and continuous improvement in the performance of the services we procure
- Opportunity to deliver improved efficiency and effectiveness of spend whilst delivering greater health benefits and improve quality

The effective planning, procurement process and managing of contracts is clearly reflected in all aspects of the commissioning cycle below.



Figure 1: The Commissioning Cycle

7 Good Practice Framework

7.1 What is the Good Practice Framework?

The Good practice framework (GPF) is a three stage model which will take the reader through the full procurement lifecycle. By this, we mean that it can be used from the point at which a CCG has agreed its strategic priorities through to the end of any contracts that result from the process. It has been developed to help CCGs decide on their approach to analysing, researching, addressing and contesting the market for any given care pathway.

The GPF is aimed principally at those within primary care trusts who have senior responsibility for commissioning and procuring services, managing service delivery and developing capacity and capability in the purchase of health care services. It will also serve as a reference guide for anyone planning or undertaking procurement activities for the organisation.

7.2 How should you use the GPF?

The GPF comprises three stages:

Strategic planning

The strategic planning section can be used at a number of different levels. While it is primarily designed to be used for addressing either a single care pathway or when planning for a major care area, it can also be used in preparation for the CCG's high level strategic commissioning plan and/or commercial strategy and for collaborative commissioning.

Acquisition

The acquisition stage provides guidance from the point at which a decision has been made to procure services through to the award of the contract. It follows the formal procurement routes as set down in guidance provided by the Office of Government Commerce, whilst taking account of the wider context for commissioning and procuring health care services.

Monitoring

This stage assists CCGs in managing providers throughout the life of the contract, ensuring not only that agreed targets are met but that a constructive and flexible relationship is developed which enables continuous improvement to ensure the best patient outcomes.

Within each stage there are individual steps that tackle a different aspect of the procurement process. In general, these steps are chronological but some steps can be carried out concurrently. At the beginning of each step you will see pre-requisites that are needed before commencing the step and this should help you to formulate a plan of activities.

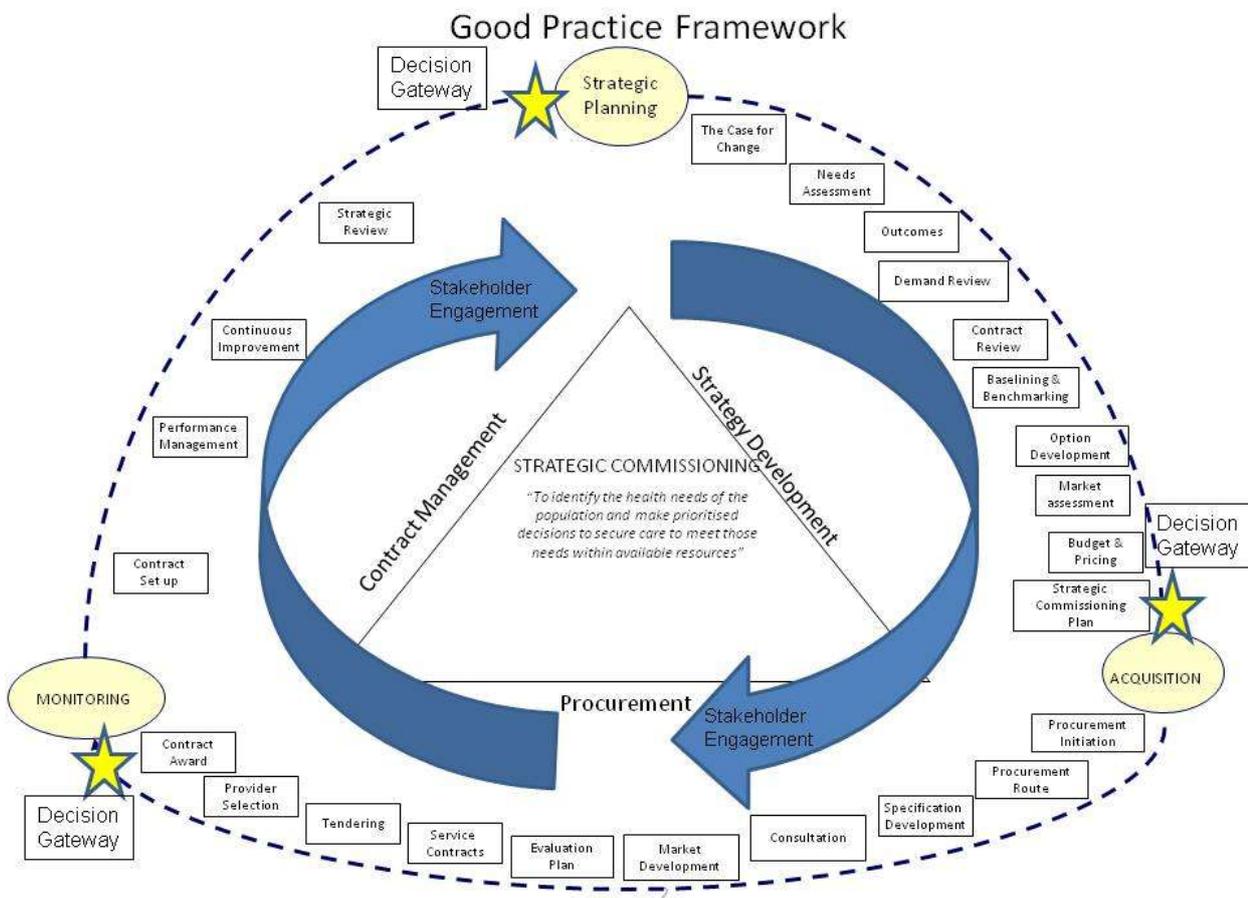
7.3 How is the GPF structured?

Underneath each of the three stages there is:

- An overall summary of what the stage is designed to achieve
- A Gateway summary of what needs to have been completed before moving on to the next stage.

Each stage then consists of a number of steps which in turn are made up of:

- A summary of what the step will achieve
- A list of pre-requisites needed before you start the step
- Any information you will need
- Details of who needs to be involved
- More detailed guidance to achieve the outputs required by each step
- Tools and templates
- Links to guidance available on external websites



7.4 How does the GPF link with other “good practice” models such as the Road maps?

The GPF is a generic tool that can be applied to all types of care pathways and procurements. However, there may be specific considerations required for commissioning particular services. To accompany each of the standard contracts (mental health, acute, community and ambulance services) a Roadmap has been developed containing guidance relevant to each of these areas and should be consulted. The GPF provides links to the Roadmaps in the relevant sections.

8 Strategic Procurement Objectives

Tower Hamlets CCG's Commissioning Strategy Plan (CSP) sets out an ambitious vision for borough based commissioning between Tower Hamlets CCG and the London Borough of Tower Hamlets.

Tower Hamlets CCG also commissions a portfolio of services from the third sector. The procurement principles set out in this document will apply equally to this sector, and the standard of service required will be equally high.

The CSP specifies the transformation work that will take place over the next five years to reinvigorate fundamental aspects of health care provision this includes:

- Urgent care provision across a range of access points not just Accident & Emergency
- Identifying opportunities to provide care closer to where people live without sacrificing the quality or expertise to deliver services
- A more focused and tailored approach to prevention to ensure that people in Tower Hamlets have a better chance of staying healthy
- Detecting disease earlier and ensuring those affected by disease show better rates of recovery and live longer

9 Implementation

The implementation of this strategy is facilitated by a group of procurement documents; the Market Management Strategy, the Negotiation Strategy and the Decommissioning Policy.

These documents outline how and when it is appropriate to seek to introduce competition or to apply other commissioning levers to achieve the most beneficial and cost effective modes of delivery. It provides rigorous and transparent processes to deliver the key strategic aims of generating momentum for delivery of completed schemes, full stakeholder engagement and the delivery of viable and affordable services within defined timescales.

A key output of this strategy will be the CCGs commissioning intentions.

10 Consultation

Effective consultation is a key part of NHS procurement. Not undertaking consultation carefully, or not following the guidance fully, can provide the greatest threat of challenge to a procurement process.

Anything constituting a substantial variation of existing services (as defined within Department of Health guidance) will require an automatic referral to the London Borough of Tower Hamlets Overview and Scrutiny Committee for examination, and dependent on the Committee's findings a full public consultation may follow.

Tower Hamlets CCG recognises its duty to involve and consult with all relevant clinicians, potential providers, patients and the public on:

- The early stages of planning provision of services
- The development and consideration of proposals for changes in the way those services are provided

- Decisions to be made affecting the operation of those services, recognising that it is essential to enable patients to have a greater involvement in decisions about their care

The main forum for service developments will be our Programme Boards, which will undertake consultation and engagement with patients and residents and the Patient and Public Engagement Delivery Group that will oversee the implementation of our Communications and Engagement Strategy which are central elements to putting our patients and residents and the centre of our commissioning process.

This is a wide responsibility, and it is not limited to “substantial” developments. As the threshold for consultation is not defined, and there is a requirement to involve the public in planning the provision of services, Tower Hamlets CCG will engage on an ongoing basis through the Local Involvement Networks (LINKs) or any current equivalent.

On those occasions when formal consultation is required, the process needs to comply with statutory requirements and judicial review can be sought if the process is flawed. To minimise any risk of a judicial review, there are four basic criteria that Tower Hamlets CCG will adhere to through any consultation process:

- Consult widely throughout the process
- Be clear about what the proposals are, who may be affected, what questions are being asked, and the timetable for responses
- Ensure that the consultation is clear, concise and widely accessible
- Give feedback regarding the responses received and how the consultation process influenced the policy

11 Sustainable Procurement

The NHS Carbon Reduction Strategy and the Climate Change Act proposes a 26% reduction in carbon emissions by 2020 and an 80% reduction by 2050 (2% pa). All NHS organisations are required to have an agreed environmental and sustainable procurement policy in place which includes a number of environmental objectives and targets, approved by the Trust Board, relating to sustainable development and environmental purchasing and supply activities in the NHS.

Tower Hamlets has a Carbon Reduction policy, which makes recommendations in ten key areas:

- Energy and carbon management
- Procurement and food
- Low carbon travel, transport and access
- Water
- Waste
- Designing the built environment
- Organisational and workforce development
- Role of partnership and networks

- Governance
- Finance

These recommendations must be fully taken into account in any procurement decision. Some key points from the national Carbon Reduction Policy are:

- Improving energy efficiency and carbon reduction targets in line with those proposed by the NHS Carbon Reduction Strategy and for NHS Climate Change Act compliance.
- Investing in clean, energy efficient technologies and developing potential for renewable energy production wherever feasible.
- Raising staff awareness and commitment to deliver carbon reduction.
- Reducing water consumption and employing systems for its efficient use into building development at design stage and also establishing opportunities for recycling and reuse of waste wherever possible.
- Encouraging sustainable procurement terms in key suppliers' contracts.
- Actively developing a travel plan for staff.
- Signing up to and addressing the issues raised by the Good Corporate Citizenship Assessment Model.

12 Equality & Diversity

Tower Hamlets CCG is committed to being an organisation which is fit for purpose, committed to making radical changes to eliminate discrimination and promoting equality of opportunity for all who live and work in Tower Hamlets.

Recruiting and developing a workforce that reflects the community is one of our top priorities. We are committed to improving our workforce performance management. We recognise that we need to work closely with our local partners and the community to strengthen our role as a local employer of choice.

The Key challenges here are:

- How to recruit, develop and retain a workforce reflective of the local population at all levels.
- How to promote greater awareness and the need of staff from different equalities groups.
- How to provide seamless and coordinated support to all staff [e.g. staff with mental health conditions].
- How to ensure all staff members are aware of the HR policies and the equal opportunities policies.

12.1 Service improvement, commissioning and delivery

At Tower Hamlets CCG we want to improve our services that we deliver to our patients and their carers. Whilst achieving value for money our commissioners will ensure that all our services are meeting the needs of our community across the borough. We believe services should be equally accessible to all community groups regardless of where they live, which equality group they belong to

and their ability to pay for services. We need to ensure every patient in our locality is receiving high quality care based on their need.

The key challenges are:

- Embedding the equality framework into the quality management framework to raise standard and make continuous improvement.
- Integrating equality, diversity and human rights in business planning, commissioning and service delivery activities.
- Involvement of the six equalities groups in the Joint Strategic Needs Assessment (JSNA) and in all other stages of the commissioning cycle.
- Ensuring robust data monitoring across all services including commissioned services.

12.2 Engagement and consultation

Our duty to engage the community effectively will remain a challenge for us in the coming years, particularly in the times of making difficult choices. We will ensure that all our decision making processes are as inclusive as possible and as open as possible to ensure that every group, be patients or staff, has the opportunity to participate, and their views are heard. Our Patient Experience and Public Engagement Strategy will lay out our approaches to public involvement while the Operating Plan will highlight what we need to do to engage our Board, staff groups and the management teams.

The key challenges are:

- Active engagement of the Board, Executive Team, staff teams, forums and networks in promoting equality.
- Clear demonstration in actions reflecting the outcomes of consultation and survey with various internal and external groups.
- To engage and consult the hard to reach equalities groups.

12.3 Communication

We recognise the need for effective and appropriate communication with our workforce, patients and the community. We understand that the need of each group may be different because of individual circumstance, and therefore we should not make any assumption that 'one size fits all'. In developing our communication strategy we have learned that some of our patients may need interpreting as they may not speak English. Some may require sign language. Similarly we want to ensure that our internal communication is effective to meet the needs of all employees. Both our public and staff information will be linguistically accessible, sensitive to individuals' circumstances and promoted through effective channels.

The key challenges are:

- How we meet the diverse communication needs of our patients, carers and staff.
- Better coordination of communication information to ensure effectiveness.

12.4 Partnership and procurement

Providing the best quality care services for patients and carers remains a key challenge for the NHS. Both local health services and the Council will be required to use their power to build better and stronger partnership between health and social care providers and commissioners within the locality and outside to tackle health inequalities.

The key challenges are:

- How to ensure equity in commissioning and procuring services, particularly integrated services.
- Agreeing priorities based on joint needs assessment and developing targeted interventions.
- Developing joint protocols to assure quality and efficiency to promote equality for all groups of users.

13 Conclusion

The Procurement Strategy will be reviewed annually along with the aforementioned plans to ensure that it is compliant with the latest guidance and that improvement has been achieved and progress is maintained.

This document is an integral part of the Procurement toolkit, and the wider Commercial skills toolkit, and should be read in conjunction with the other documentation from the toolkit, in particular:

- Market Management Strategy
- Decommissioning Policy
- Negotiation Strategy

These three documents are included as appendices below.

Appendix 1 – The Market Management Strategy

1 Introduction

This strategy sets out the way in which Tower Hamlets will develop an innovative healthcare market to support delivery of our Commissioning Strategy. The strategy will identify the principles by which Tower Hamlets CCG will enable the development of an appropriate provider market to meet local needs, improve clinical quality and the patient experience, as well as maximising the productivity of providers. The aim is to have a managed market of high quality healthcare providers, and the appropriate balance of plurality and patient choice.

Good practice in effective market management is an evolving concept, both in terms of the NHS as a whole and the local approach within Tower Hamlets. However, the dual functions of market analysis (understanding the current and potential market) and market development (supporting the development of innovation, quality and a diverse healthcare market) are central to developing a competitive provider environment and informed decision making about procurement routes.

2 National Context

The Framework for Managing Choice, Cooperation and Competition outlines the principles that the NHS will adhere to in supporting and developing improved patient choice as part of the wider approach to co-ordinated system management. The best practice in system management incorporates the following:

- Choice on the part of the patients between providers of clinical services, settings and models of care;
- Competition between providers both for the healthcare market and within the healthcare market;
- Governance arrangements are in place between contracting organisations;
- Contracts are in place between all NHS contracting organisations and providers;
- Strategic Partnerships; and,
- Information for patients and referrers to enable them to make informed choices, for commissioners to ensure quality, safety and value for money and for providers to benchmark themselves.

The benefits are as follows:

3 Market Vision

To deliver on Tower Hamlets CCGs Commissioning Strategy Plan (CSP), there will be a need to create and develop a more diverse and enriched provider landscape that will deliver higher quality services for less and which will use more innovative models of care to deliver services.

The future provider landscape within Tower Hamlets will:

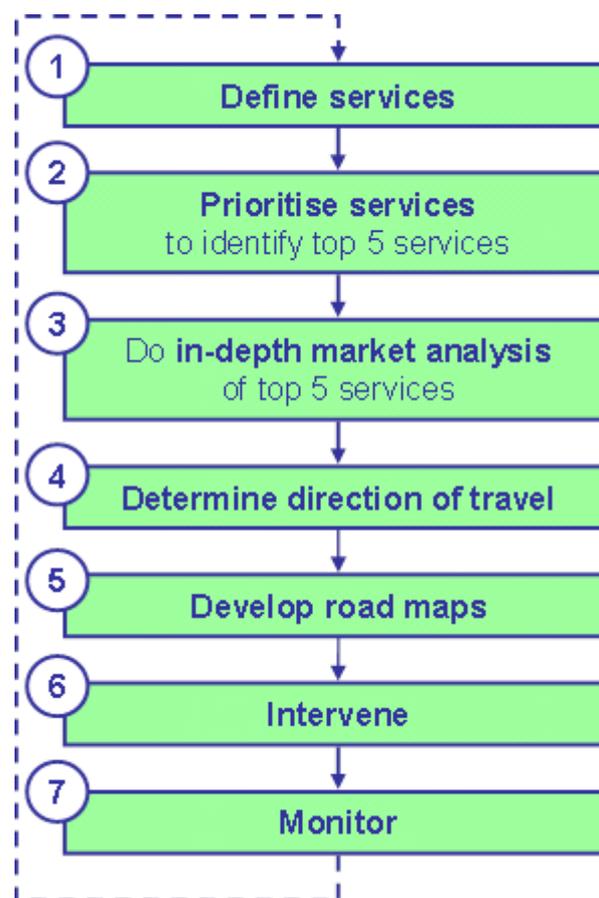
- Promote Patient Choice
- Actively innovate based on patient feedback and satisfaction in order to maintain high quality services and proactively demonstrates a desire to continually improve

- Provide value for money, affordable services which are free at the point of access for all patients
- Provide sustainability across all healthcare services
- Provide a high performance autonomous provider network
- Adopt a fair level playing field which is accessible to a wide range of providers from all sectors
- Freely competes where possible and appropriate (within limitations where key services cannot be permitted to fail)
- Encompass providers from a range of sectors including the voluntary and independent sectors
- Display the identifiers of the free market (for example “natural” movements in entries and exits)
- Limit price variation between providers for the same service.

4 Tower Hamlets CCGs Approach to Market Management

Market management is about using appropriate levers to ensure that healthcare systems operate effectively and in the interests of the patient.

Figure 2: Using Markets in System Management, 2009 outlines a 7 step approach to market management



The steps within this process will not necessarily be new to Commissioners. However, the process consolidates a number of planning activities and will rationalise the future approach.

4.1 Step 1: Define Services

Markets are groups of healthcare services where competition creates the incentive to increase quality, which can include both clinical quality and improvements to the patient experience. This is because providers are subject to competitive pressure, whereby providers realise that if quality falls they may lose patients and if quality rises they may gain more.

Some conditions must be satisfied if competition within markets is to be effective:

- Demand side conditions: patients and / or CCGs must be able to switch between substitutes e.g. being able to see a GPwSI rather than a hospital consultant.
- Supply side conditions: providers of care must be able to switch resources into new areas of care or expand as opportunities arise.

A 'market segment' is a cluster of services that meet a patient need. The following table offers a segmentation of current markets within Tower Hamlets.

Maternity	Other surgery
Birth	ENT
Other maternity (ante/post natal)	Ophthalmology
Pregnancy – termination	Urology
Paediatrics	Oral and Maxillo facial surgery
Paediatric surgery	Other surgery
Paediatric neurology	Optometry
Other paediatric	Infectious diseases
General medicine	Pharmacology
Gastroenterology	Haematology
Cardiology	Anaesthetics
Respiratory medicine (thoracic medicine)	Pain management
Other general medicine	Other anaesthetics
Other medicine	Immunology and allergy
Dermatology	Plastic surgery
Endocrinology	Mental health – non-community based
Neurology (adult, incl. stroke)	Adult – all except substance misuse
Other medicine	Older people – all except substance misuse
Oncology	CAMHS – all except substance misuse
Hospital-based chemotherapy	Substance misuse
Hospital-based radiotherapy	A&E
Rheumatology	Obstetrics and gynaecology
General surgery	Minor procedures
T&O	Other OBGYN
Trauma	
Orthopaedics	

4.2 Step 2: Prioritize services

In order to identify five services for a market analysis, the following criteria should be considered:

Strategic priorities

These would be informed by the CSP, JSNA and the Clinical Networks Programme.

Performance

This would include where feedback from patients is poor, there are indications of underperformance and/or where there are concerns regarding clinical quality (e.g. a Serious Untoward Incident has been declared).

Spend (value for money)

This would involve analysing commissioning spend to identify areas where most resources are allocated.

4.3 Step 3: Market Analysis

Competition cannot be measured by any single indicator. Rather, developing an understanding of the degree of competition, or 'market dynamism', through examining a range of areas helps to build a more comprehensive picture:

Choice

This would examine the number of providers that a patient could access services from ('hypothetical level of choice'). Choice would be examined in relation to geography, as some patients may be more likely to travel a further distance for a specialist service than a more generic one, or patients may be restricted by boundaries for accessing services.

Concentration

This is the market share of providers serving a defined area (this is where patients choose to access services from, rather than where they could receive services from). A measure for this is the Herfindahl Hirschman Index (HHI). Healthcare markets are considered to be highly concentrated compared to other markets. For example, the UK Competition Authorities define a market with a HHI in excess of 1800 as being highly concentrated; NHS analysis of many markets in London indicates that the average HHI for CCG areas is in excess of 4000.

Switching

This is the number of people switching from one provider to another within a given time. Market concentration and switching are related

Rivalry

The degree of actual or potential entry into and exit from a market.

4.4 Step 4: Determine the Direction of Travel

In order to determine the 'direction of travel' the state of competition identified in Step 3 must be compared with a range of benchmarks. For example, is it desirable to increase or decrease rivalry?

Making strategic decisions on the direction of travel that will shape the market to optimal conditions must be underpinned by an understanding of the local context. Nonetheless, an aspirational view of the market can be formulated by using 'market archetypes'.

There are a range of characteristics that can be used to examine healthcare markets. However, the principal ones that will be used for this strategy are:

Barriers to Entry

The ability for providers to enter a market place will vary significantly according to the healthcare being provided. Barriers will be significant for highly capital intensive services (such as complex hospital care). In contrast, barriers may be minimal for those services delivered with little expensive equipment (such as physiotherapy or community nursing), there may also be regulatory or legal barriers that limit entry.

Information Asymmetry

Patients will be more able to make informed judgments about the quality of some services compared to others. For example, patients are likely to have a relatively good sense of quality for services, such as general practice, that are used frequently

Economies of Scale

Some services may be better organised on a large population basis for economic or clinical economies of scale. For example, highly specialist services, such as hyper acute stroke services, are likely to be delivered with higher quality outcomes if concentrated on fewer sites.

This will inform what the most desirable market approach is, which could be:

Competition ‘in-the- market’

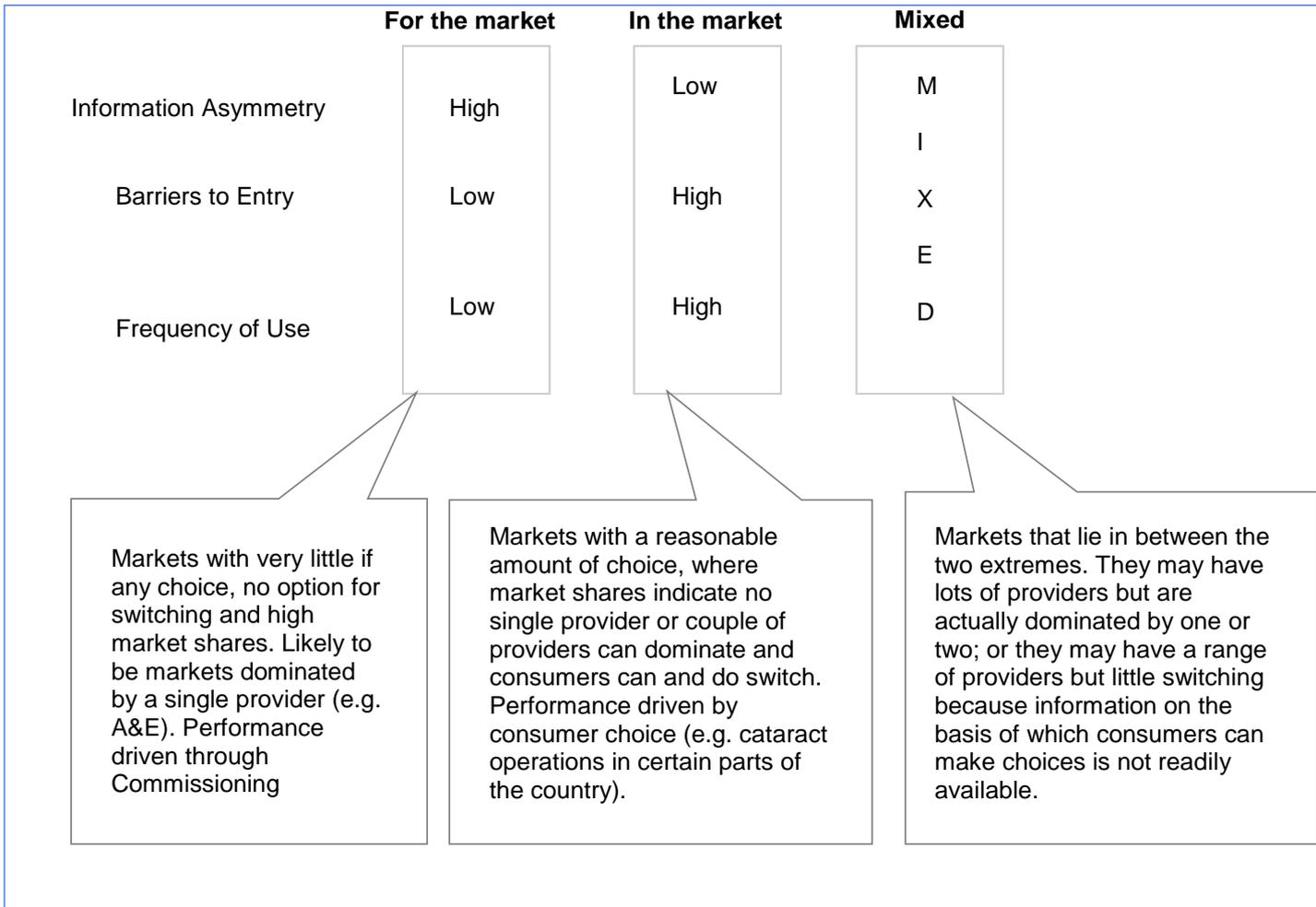
Where licensed providers compete for patients on a day-to-day basis with no guaranteed activity volumes or revenues.

Competition ‘for-the-market’

Where CCGs contest the right to provide services for a given population. The winning provider earns the right to offer the service for a given period of time; over the course of this period it has some guaranteed payments to provide capacity.

Mixed market: a combination of ‘for’ and ‘in’ the market, where a CCG selects a restricted number of providers and lets them compete for patients.

Competition “in the market” is likely to be powerful in driving improved quality where there are relatively few barriers to entry (or a large existing base of providers), where commissioners provide patients with good information with which to judge quality and economies of scale do not mean that it is inefficient or a risk to quality to provide a range of competing providers within easy reach of the population. Where these conditions do not hold, competition “for-the-market” may be preferred or some mix of the two.



There is no consensus over a set of benchmarks that can be used to determine the 'right' market characteristics. Therefore, market archetypes are a guide to inform strategic planning rather than an absolute.

The diagram on the following page offers a further guide on benchmarks for optimal market conditions:

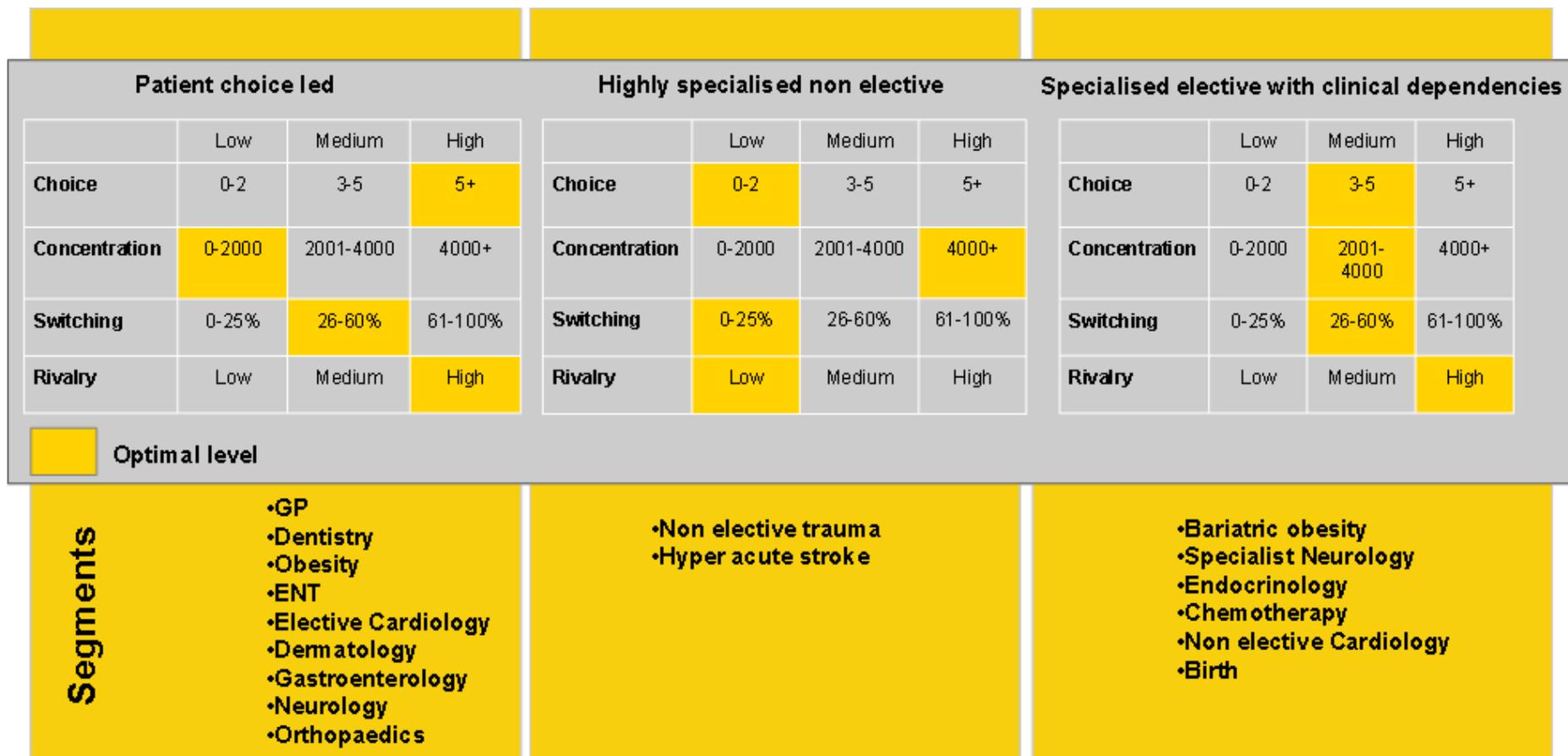


Figure 3: Benchmarks for optimal market conditions

4.5 Step 5: Develop a Road Map

By combining the current market analysis (step 3) with the direction of travel implied by comparison with the market archetypes (step 4), a road map can be developed which identifies a locally-achievable market state, together with a set of levers with which to bring this about.

In order to do this, we first need to understand the range of levers available to commissioners. This section sets out a long list of levers, then provides a process of decision support to identify which levers to pull.

Demand side levers consist of three main categories: provision of information, demand shaping and education and consumer engagement.

1. Provision of information	1.1 Review the current quality and type of information provided to patients
	1.2 Review the current quality and type of information provided to patients agents (e.g. GPs)
	1.3 Segment patient population
	1.4 Segment agent population
	1.5 Agree strategies that ensure the patient population has better access to the information necessary to make an informed choice
	1.6 Agree strategies that ensure the agent population has better access to the information necessary to make an informed choice on behalf of the patient
	1.7 Agree the comparative metrics that will be used as a basis for informing patients about provider performance
	1.8 Agree the comparative metrics that will be used as a basis for informing patients agents about provider performance
	1.9 Improve the quality of the information provided to patients
	1.10 Improve the quality of information provided to patients agents
2. Demand	2.1 Review total activity occurring within defined product and geographic markets

shaping education	and	2.2 Determine sources (GP / PBC) and rates of referrals
		2.3 Identify the reasons underlying referrals, beginning with GPs / PBCs that have the largest referral rates
		2.4 Agree clinical intervention strategies that reduce patient dependency on clinical services
		2.4 Establish referral monitoring and performance management mechanisms that ensure patients are treated where and when necessary
		2.5 If necessary, move to commissioning new, redesigning, or decommissioning services as appropriate
3. Consumer engagement		3.1 Segment patient market
		3.2 Segment patient agent market
		3.3 Agree approaches to securing engagement with each consumer segment

Supply side levers consist of four main categories: market creation, provider management, market development and market exit.

1. Market creation	1.1 Identify the underlying reasons for the existence of a monopoly
	1.2 Determine level of quality providers and therefore, the market should be providing
	1.3 Identify potential new market entrants (public / private / third sectors)
	1.4 Identify terms under which any new market entrant would expect to operate
	1.5 Consider any incentives that may attract new market entrants
	1.6 Discuss potential new market interest with market incumbents

	<p>1.7 Proceed to tender / designation process for new market entrants</p> <p>1.8 Review existing contracts under which provider(s) currently operate to identify financial / clinical quality risks</p> <p>1.9 Consider deployment of 'provision of information' levers with a view to securing provider response</p>
2. Provider management	2.1 Identify areas for strengthening within contractual management approach (specific performance requirements / performance management framework / contract type or duration)
3. Market development	<p>3.1 Identify the underlying reasons for the need to develop a market i.e. introduce new entrants into an apparently uncompetitive market</p> <p>3.2 Determine level of quality providers and therefore, the market should be providing</p> <p>3.3 Identify potential new market entrants (public / private / third sectors)</p> <p>3.4 Identify terms under which any new market entrant would expect to operate</p> <p>3.5 Consider any incentives that may attract new market entrants</p> <p>3.6 Proceed to tender / designation process for new market entrants</p> <p>3.7 Review existing contracts under which provider(s) currently operate to identify financial / clinical quality risks</p> <p>3.8 Consider deployment of 'provision of information' levers with a view to securing provider response</p>
4. Market exit	4.1 Engage with failing providers to inform them of the reasons for the decision to

	decommission services
	4.2 Consult where necessary, with key stakeholder groups on the intention to decommission services
	4.3 Serve formal notice to providers from whom services are to be decommissioned

Regulation levers consist of three main categories: licensing, de-licensing and regulatory influence.

1. Licensing	1.1 Liaise with CQC to identify need for licensing of given provider
	1.2 Liaise with potential new provider to ensure they are aware of CQC licensing requirements
	1.3 Develop local accreditation standards as part of local provider licensing
2. De-licensing	2.1 Liaise with CQC to identify need for de-licensing of given provider and consult on appropriate process moving forward
	2.2 Identify impact of de-licensing on remaining market providers
	2.3 Review compliance of AWPP providers with local accreditation standards and de-licence if required.
	2.4 Identify impact of de-licensing on remaining market providers.
3. Regulatory influence	3.1 Identify key regulatory stakeholders (economic and quality) associated with given market and develop stakeholder relationship plan

The decision tree on the following page is a guide to identifying which market management levers should be pulled. However, it should be noted that some markets are highly complex and may require sever levers to be pulled in a coordinated manner.

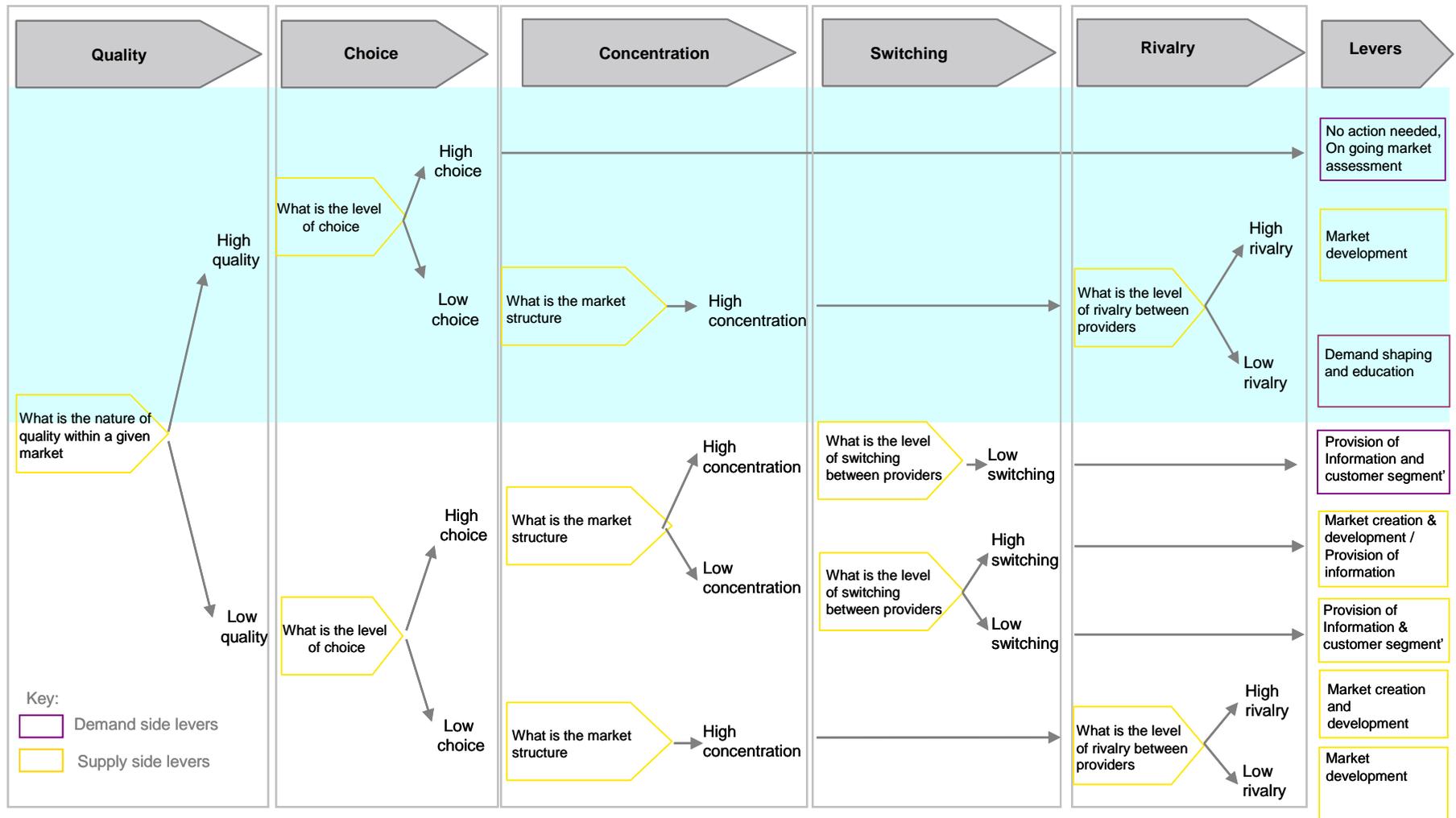


Figure 4: Identifying market management levers decision tree

4.6 Step 6- Intervene

Market analysis is a means to an end, rather than an end itself. The development of a roadmap will identify the appropriate actions that need to be taken to improve the quality in a given segment. The next step is to take that action, which could include procurement.

4.7 Monitor Quality

The NHS Commissioning Board monitor market conditions in London so that CCGs can monitor the impact of their interventions and to see whether new priorities are emerging. The NHS is still developing a common view of what 'ideal' market conditions are for different segments (see step 4 above). It is therefore useful for CCGs to understand their markets in context of those of their peers. This process of market analysis and management is continuous and iterative. In particular, as markets evolve, segmentation may need to be revisited. For example, new segments may be created such as those for integrated care pathways.

5 Conclusion

This strategy sets out Tower Hamlets CCGs approach to market management over the next 4 years and, together with the Procurement strategy, forms an integral part of our approach to system management. It explains the way in which the dual functions of market analysis and market development will support delivery of Tower Hamlets CCG's commissioning intentions and ensure that the principles of transparency, fairness and proportionality are applied in the development of a sustainable healthcare market.

However, market management is an evolving concept for the NHS and this strategy will require annual review to ensure that it is consistent with national policy, local circumstance and patient experience. Crucially, this strategy outlines an approach which is not an end in itself but, by identifying the steps to developing an innovative and sustainable healthcare market, will enable Tower Hamlets to commission for improved patient outcomes and reduce health inequalities caused by poor access and patient choice.

Appendix 2 – The Negotiation Strategy

1 Purpose of the Strategy

The purpose of this strategy is to assist the CCG in negotiating with its providers. It should be noted that in the majority of cases, negotiations with health service providers will be undertaken by the Commissioning Support Service (CSS) on the CCGs behalf. This may be in initial negotiations, where a new service is being set up, periodic negotiations where service performance is causing concern and commissioning levers need to be applied, or terminal negotiations where the relationship has broken down and Tower Hamlets CCG is seeking to extricate itself from the contract.

The negotiation strategy applies equally to the CCG's relationship with its service providers (including CSS).

2 Background

The strategy supports the delivery of the procurement strategy, which sets out Tower Hamlets CCG's approach to achieving its service delivery objectives through the application of good procurement practice, defining the market, identifying available suppliers, and setting out outcomes and specifications.

This document outlines the process and approach for negotiating healthcare contracts with providers. It aims to provide a structured approach to contract negotiators and give robust advice for conducting negotiations.

Negotiation is a process whereby two or more parties reach agreement. Typically associated with contracting, negotiation is equally relevant to a range of activities from dispute resolution to shared decision making in everyday life. Setting the strategy includes the Stance, Style and Model for negotiation.

In order to achieve the strategic and service outcomes that the CCG has set, it is important that the organisation has an approach to negotiations. This defines how Tower Hamlets CCG will go about delivering these outcomes, and the subsequent patient benefit, through contract and will increase the likelihood of the CCH delivering:-

- its short and medium term service delivery aims identified within the Joint Strategic Needs Assessment (JSNA); Commissioning Strategy Plan (CSP); and annual Operating Plan.
- contracts within the agreed budget
- contracts that give better value for money.
- contracts that improve the quality of care
- enhanced challenge within the system leading to more innovative solutions

Negotiation will involve some behavioral techniques used to achieve a 'win win' outcome and support Procurement in implementing commissioning requirements throughout the commissioning cycle.



Figure 5: The Commissioning Cycle

3 Principles and Reasons for Negotiating

Negotiations may be necessary to ensure that the procurement process and resultant contracts are fully in line with legislation, Health Service guidance, national and local priorities and with the Trust's Commissioning Strategy Plan (CSP).

Relevant laws and guidance documents includes:

- Public Contracts Regulation 2006, as amended, including by:
- Remedies Directive, 2007/66/EC
- Principles and rules for cooperation and competition (PRCC) (DH 2010)
- Procurement Guide for Health Services (DH May 2008)
- Framework for Managing Choice, Cooperation and Competition (DH May 2008)
- Sale of Goods Act (as amended)
- Supply of Goods and Services Act
- Unfair contract Terms Act

The “implied terms” that relevant pieces of legislation may add to any contract should always be made clear as a part of the negotiating process. It must also be borne in mind that changes in legislation may have the immediate effect of overriding any provisions in this document, or may have implications triggering an immediate new negotiation with a provider, notwithstanding that the document has not yet been reviewed in response.

Good practice in procurement means that Tower Hamlets CCG need to ensure that:

- Negotiations are conducted around defined variables
- There is rigorous preparation for contract negotiations including;
 - Establishing a service specification
 - Establishing the best alternative to a negotiated agreement (BATNA)
 - Defined negotiation strategy
 - Defined negotiated team roles

- Use of negotiation variables
- Defined improvements in service quality and value for money
- Sophisticated approach for negotiating risk and risk sharing

Our local priorities are determined by our Joint Strategic Needs Assessment (JSNA) which is conducted jointly with the London Borough of Tower Hamlets. It reflects the needs of the population and forms the assessment stage of the commissioning cycle.

Based on the JSNA, and produced with extensive clinical input, detailed public health analysis and other relevant consultation processes, the CSP sets out our strategic intent for improving services for the next five years. It is refreshed annually. The CSP is the key strategic document with which all processes and strategies, including this procurement strategy must be fully compatible.

The factors which may profitably be negotiated could include:

- Cost
- Time
- Quality
- Service
- Performance
- Terms and Conditions

Within the current NHS operating framework Commissioners are required to use the department of Health Standard contracts. This limits the amount of negotiation on the terms and conditions and focuses the negotiation on other areas such as cost, time, quality etc.

The key principles of Tower Hamlets procurement strategy are: transparency, proportionality, non-discrimination and equality of treatment.

4 Consideration /Context

In any negotiation it is important to recognise that the parties may have significantly different aims that they wish to establish through the contract negotiations.

Within the NHS the aim of both commissioners and providers to best serve the patient is a key driver for both parties. However, with the advent of contestability (which describes the way in which we will approach securing future providers of health services through the tendering of health services in an open market context) this will not necessarily remain the case, with providers increasingly having to satisfy investment criteria as well as service driven issues.

It is therefore imperative to recognize that needs and interests of parties do frequently differ, and reflect different values, concerns, and motives. The negotiation therefore has to be a process that finds the solutions that will satisfy both parties, aspirations. Within the NHS negotiation needs to be a side-by-side dialogue where both parties can recognize and support their differences, rather than a battle over unreconcilable differences.

There is much evidence which shows that where there is a mutual “win- win” for both parties within a contract these are the most likely elements to be successfully delivered. Early identification of these will help successfully move the contract through the more difficult negotiations as some “winners” can already be banked by both parties.

4.5 An example could be the introductions of community based services that reduce spend in the acute sector but enable the specific organization to rationalize estate and reduce costs accordingly.

5 Contract Negotiation Processes

Unplanned negotiations are unlikely to deliver the required outcomes. It is therefore important that Tower Hamlets has a structured approach. There are four key stages to effective negotiation which are discussed below

6 Plan and Prepare

Planning is the foundation of effective and timely negotiation. Opposition should be assessed – it is important to gather information about the provider to allow prediction of, and preparation for, potential issues and problems.

Key questions to ask are:

What are the key service imperatives?

- Link to strategic framework

What are the key financial imperatives

- Links to Medium Term Financial plan and financial balance
- Approach to delivery of productivity opportunities and CRES
- Use of incentives/penalties

What are the key quality imperatives?

What are the supporting issues, e.g.

- Tower Hamlets CCG reputational issues
- How important is a satisfactory resolution to the contract?
- Will lack of resolution impact on other areas?

Deciding on a range of imperatives before negotiation allows the negotiators to feel secure in their position.

Developing an agreed Contract Negotiation Strategy is a corner stone of effective contract negotiations. The negotiation team should have a clear and developed strategy that is understood by all those taking part in the negotiations. To achieve this, the following steps should be taken:

- Identify negotiation priority interests
- Set most and least desirable outcomes
- Identify the Best Alternative to a Negotiated Agreement (BATNA)
- Produce negotiation stances for sharing with Provider

The negotiation variables are desirable outcomes that help achieve a final agreement. Once these variables have been identified and ranked according to their importance, the least or most desirable outcome and what is the best alternative to a negotiated agreement should be defined. The Least Desirable Outcome (LDO) represents the minimum outcome that Tower Hamlets CCG would agree to. If this was not achieved the negotiation would fail. The Most Desirable Outcome (MDO) represents the best outcome for Tower Hamlets CCG, it fully meets the needs and expectations of Tower Hamlets CCG.

Another important factor to address in this negotiation stage is exactly what information Tower Hamlets CCG is prepared to reveal to the provider and the information being sought from them, Tower Hamlets CCG's LDO should remain confidential and not disclosed to the provider.

From an early identification of Tower Hamlets CCGs priority interests and those of the provider it is possible to collate a relative list of priorities. The prioritised list will identify those "must win" items that cannot be conceded under any circumstances but also those of less importance that can be conceded in return for the other party agreeing to a priority of Tower Hamlets CCG. Less important interests are therefore traded by either party during the negotiations. Only in rare circumstances should interests be given up without some form of concession by the other party.

It should be noted from the outset that the negotiation may not be successful. To cope with this, there should be a contingency plan (sometimes referred to as BATNA – the best alternative to a negotiated agreement). This is an outline of what the fallback position is should the negotiation fail. This could include not doing the deal at all. Defining a BATNA, also provides a standard against which to assess any offers that are made.

Negotiation is both a science and an art, this is most apparent in individual negotiation styles and tactics. Most people in negotiations are using one or more negotiation styles to try to influence the negotiations in their favour. As a result it is important to understand and recognise when people are using different negotiation styles and how to adapt to them. There are various theoretical approaches which may name negotiating styles in a variety of ways but a common classification is into five styles: Competitive, Avoiding, Compromising, Accommodating and Collaborating.

7 Conducting a Negotiation

To begin with it is important to establish the right atmosphere. Partly this is a matter of physical surroundings, or setting the tone of what is said, perhaps beginning with social conversation and continuing with a statement of the matters that have already been agreed. It is important to listen as well as to talk, the provider may have new information to release or may wish to clarify issues, words and attitude may give clues as to his readiness to cooperate.

There should be an agenda agreed in advance which should be based around the latest version of Tower Hamlets CCG's agreed negotiation variables. The agenda should be shared a week in advance if possible. It is important to identify the most important variable and also those where there may be a significant barrier to agreement and to give a thought to where they sit on the negotiation agenda. Positioning on the agenda is important as it can have an impact on the outcome of the negotiations.

7.1 Discussing the issues

It is vital that Tower Hamlets CCG begins with a clear statement of identified priority interest. The negotiating team must have adequately prepared themselves to explain their perspective on the issues under discussion, expressing what they are looking for. Performance in contract negotiations is vitally important to achieving the desired outcomes. It is therefore important to remain focused on the most desirable outcomes whilst being mindful of the worst outcome that would be acceptable and what the alternative to negotiation is.

The negotiating team must also listen carefully to the provider's perspective and form a view on what the other side might really want to achieve. The more Tower Hamlets CCG can understand the values, needs, and issues from the other side's perspective, the better the chance of assessing what they might want as their priority needs.

By doing this Tower Hamlets CCG may be able to offer creative solutions that can also set the right tone for the negotiations with Tower Hamlets CCG being seen as a helpful organisation rather than adversary.

In the early stages of negotiation it is particularly important to understand the drivers behind the provider's set position and use structured enquiry to better understand their position. The open, two way, sharing of data will support better contract outcomes.

7.2 Closing

Win-win outcome is where both parties emerge from the negotiation feeling that they have won or at least have achieved the minimum goals. This is an ideal outcome and both sides come away feeling they have gained something. Once the deal is closed, what has been agreed should be recorded in writing, ensuring that both parties confirm the agreement and that there are no ambiguities or uncertainties

8 Conclusion

This strategy has been developed to cater for the reality of commissioner/provider separation and the need for rigour and genuine contestability. However it is based on principled negotiation and attempts to separate the people from the problem and base the result on an objective standard.

A negotiation is successful if it is efficient, produces an agreement when agreement is possible, and improves or at least does not harm the relationship between the negotiating parties. Principled negotiation allows commissioners and providers to work as a team in a search for a solution. Separating the people from the problem allows negotiators to deal directly and compassionately each other as human beings.

Building a relationship of trust, understanding, respect and friendship can make later negotiations smoother. Relationships should be based on accurate perceptions, clear communication, appropriate emotions, and a forward looking outlook.

Trying to focus on the basic interests of each side, rather than on “winning” or “losing” will be likely to produce more efficient results. Keeping an open mind yet being well prepared provides an opportunity to suggest options which could serve the interests of both sides and speed up the negotiation.

Appendix 3 – The Decommissioning Policy

1 Background/national context

Tower Hamlets CCG will work proactively with all providers to successfully commission services that optimise health gains and provide high quality services for its patients.

The award of a contract is not the end of the commissioning process, service provision will be continuously monitored and any performance concerns addressed by applying the relevant commissioning levers. In extreme cases it may become clear that another provider for a service must be assigned – in such cases decommissioning of the previous provider will be necessary.

There may be other reasons for decommissioning. Service quality may have declined, with the result that the service is no longer safe. Commissioning in the current way may no longer be compatible with the Trust's Strategic Direction or priorities. Or there may simply no longer be any need for the service locally.

The development of best practice procurement processes and the overarching Commissioning Strategy Plan (CSP) - informed by the Joint Strategic Needs Assessment (JSNA) - has inevitably led to the need to clarify under what circumstances and by what processes services can be decommissioned.

This policy serves to establish and identify the overarching principles and processes in order to clarify when decommissioning is appropriate. In addition it identifies a clearly defined process with the key steps, decision points, lines of accountability and responsibility to support the process.

This document is part of an overall Procurement toolkit to support the overall commissioning of services.

2 Circumstances where decommissioning may be considered

As mentioned above, Tower Hamlets CCG carries out routine monitoring of all service performance. Performance reports are taken to the Performance Committee, which is a Committee of the Board with a non executive chair and its remit includes full and independent scrutiny of service performance and the making of formal recommendations for remedial action where necessary.

In addition, Tower Hamlets CCG will work closely with other CCGs to identify services that require closer scrutiny to ensure an appropriate level and quality of service is being delivered and which is demonstrating value for money. There will also be relevant discussion with Provider Organisations where appropriate.

As a result the need to establish decommissioning principles is essential, in order to ensure clarity and defined circumstances where decommissioning is appropriate. In addition there is also need to ensure that where decommissioning is a valid action, a clearly defined process needs to be established to define key steps and decision points, with clear lines of accountability and responsibility.

Tower Hamlets CCG's Decommissioning Principles

- To understand the impact on the current provider(s) – likely to be financial but could also effect the continued provision of other services
- Tower Hamlets CCG, as the legally accountable guardian for NHS resources in Tower Hamlets, will ultimately take the decision with regard to the decommissioning of any service, having regard to all statutory and commercial implications
- There should be clear and objective reasons for the decommissioning of a service that will be based on assessment of the current providers' performance, value for money and the need for service redesign to improve services for patients. This will be particularly important in the exceptional circumstance of decommissioning outside contractual notice periods
- There should be demonstrable benefits for the decommissioning of a service

- Decommissioning of any service will be managed in line with the “Principles and Rules for Co-operation and Competition” (PRCC) (DH December, 2010)
- The new procurement of any decommissioned service will be processed within Tower Hamlets CCGs Standing Orders and Standing Financial Instructions. In addition an assessment of potential contestability should be undertaken
- Decommissioning of any service should not be contrary to any Tower Hamlets CCGs strategic objectives
- Where appropriate Tower Hamlets CCG will introduce new services to compensate for work decommissioned. Where decommissioning is proposed, Tower Hamlets CCG has the responsibility to determine when it is necessary to consult with patients, public and with the Overview & Scrutiny Committee (OSC) – where any significant service change, as defined by the Committee, is likely to occur
- Tower Hamlets CCG will ensure that no segment of the provider market is given any unfair advantage during the process
- Tower Hamlets CCG will retain an audit trail fully documenting all key decisions
- Where a case for change is proven, it is Tower Hamlets CCGs responsibility to carry out an impact assessment to identify the anticipated or actual impacts of the development intervention, on any health, social, economic and workforce factors which the intervention is designed to affect or may inadvertently affect. This must be approved by the Board.
- Where the case for change and impact assessment has been approved it is Tower Hamlets CCGs responsibility to succession plan and to limit the impact of any changes on patients, public and workforce
- Reasonable timescales will be determined and applied across the whole process
- Tower hamlets CCG will ensure that no sector of the provider market is given any unfair advantage during the decommissioning process.

3 The commissioning cycle

Decommissioning is an integral part of the commissioning cycle



Figure 6: The Commissioning cycle

In order to be a successful commissioning organisation in designing new fit for purpose services, Tower Hamlets CCG recognises it has a responsibility to decommission and disinvest in services which are no longer needed, or which are no longer fit for purpose.

Decommissioning is the process of ceasing to contract for services with a Provider where it has been identified that those services are no longer needed, or are now best provided elsewhere.

There may be different expectations over the life of a contract which can result in the need to decommission services. This is an issue that appears with many services (and in particular acute services) from a provider for one of the following reasons:

- The current provider is not meeting the levels of quality agreed
- There is insufficient need to warrant the current volume of service – e.g. the Health needs assessment demonstrates that the health needs of the population are currently being appropriately addressed.
- The service being provided is no longer a clinical priority – reassessment of priorities may mean that investment is required elsewhere and so certain ‘non-essential’ services may be decommissioned
- The service is both a priority, and there is need, but it is currently unaffordable and/or the provider is not delivering on agreed outcome measures – in this case, the service should be re-commissioned elsewhere, where the greatest value for money (increase in health outcome per pound) can be obtained.
- It is not possible to demonstrate delivery of agreed outcome measures or there is a failure to deliver outcomes, despite agreed remedial action
- The Provider discriminates against certain patients and/or fails to promote equality across all the equalities groups.

4 The process for decommissioning of a service

This part of the document relates to a decision to begin the decommissioning process.

The decommissioning process will need to have appropriate regard to the contractual terms with current service providers, including opportunities to improve performance against agreed metrics where relevant, and notice periods.

4.1 Preparing for Decommissioning (general)

This part of the tool asks some general questions concerning the readiness for decommissioning services. It places an emphasis on ensuring that the decommissioning activity is in line with the broader commissioning context and that the appropriate project and risk management infrastructure is in place.

4.2 Identifying and Preparing Specific Services for Decommissioning

With the general infrastructure in place, this part of the tool provides some guidance on identifying which specific services are to be decommissioned, and how to prepare ahead of engaging with the market.

4.3 Informing the market and understanding the response

Once prepared there is a need to understand how the market will respond to Tower hamlets CCGs plans. This understanding should be gained prior to putting plans into action since this will affect how to proceed. A process of engagement can smooth the way for subsequent implementation.

4.4 Commercial Consequences- reducing them via leverage

There are likely to be costs associated with decommissioning – these need to be calculated and minimised where ever possible.

4.5 Other factors: quality, performance, value for money, future demand

Once prepared the organisation will need to understand how the market will respond to service plans. Gaining an understanding prior to putting plans into action since this will affect how to proceed. The process of engagement can smooth the way for subsequent implementation.

4.6 Termination of Contract

The ideal situation is to terminate an existing contract via mutual agreement. However, there are likely to be situations where contracts will have to be terminated without this agreement. In contracts where there are no volume commitments or exclusivity clauses there may be an option to withdraw without needing to go to termination- in which case this part of the tool does not apply. Other than holding information sessions with providers, there should not yet have been any formal negotiation. Doing so without being fully prepared, which includes asking questions specified in the tool, could leave Tower Hamlets CCG exposed.

4.7 Transition/ exit planning

Ideally for major contracts, it is good practice to include transition / exit planning requirements in the original contract. In practice, few contracts have the proper provision for smooth exit and hand-over to subsequent contract holders. Given we are in a period of transformation, where flexibility under certain circumstances is necessary, such clauses should be added.

5 Governance issues in Decommissioning

The need for decommissioning is likely to arise from a consultative process involving formal CCG Groups, GPs, key trust managers, clinicians and other key stakeholders. Specific responsibilities within the CCG are as follows:

- Deputy Director of Strategy & Planning to raise any out-of-the-ordinary concerns in connection with Service performance at the Executive Team, and take to Trust Committees as necessary
- Deputy Director of Strategy & Planning to raise any out-of-the-ordinary concerns in connection with Clinical performance at the Executive Team, and take to Trust Committees as necessary
- Finance, Performance and Quality Committee, to formally monitor the performance of services
- Finance, Performance and Quality Committee to formally monitor the quality of services
- Service Transformation and Innovation Committee, to set the strategic direction for service commissioning
- Other stakeholders, e.g. the Local Authority, Voluntary Groups, members of the Public, will also feed in concerns where appropriate. Tower Hamlets CCG will proactively seek the views of the public by means of the tailored local consultation initiatives as well as through the statutory patient surveys

The formal trigger for any decommissioning process should be a request from a Committee of the Trust Board. This could be:

- based on a clear assessment that the service performance is unacceptable, and likely to remain so under the current provider
- based on a clear finding that the service quality is unacceptable, and that the current level of service presents a clear risk to patients

- based on a clear assessment that commissioning of the service in its current form is no longer aligned with the Strategic Direction of the CCG or its CSP

Any discussions at Committees must be clearly and fully minuted, in addition the full detail of any previous monitoring, discussions with providers, breach notices or any other relevant documentation must be maintained in a full audit trail of any decommissioning decision.

Ratification of any decommissioning decision should be made by the CCG Board.

Where the Committee/ Board stops short of a definitive decision to decommission a service, it may nevertheless order the suspension of a service due to outstanding concerns, while re-commissioning options are considered. The original provider may then be given the opportunity to bid to continue deliver the service, providing conclusive evidence that the original concerns have been addressed and that the service continuation will be safe and of a sufficient level and quality.

Minimum notice periods may be specified in contracts however these should not be so long as to limit the trust's power to decommission a service where there are serious concerns. In no case should a minimum notice period be longer than six months or be incompatible with contracting rules.

The Commissioning Support Service will be fully involved in / communicated with on any decisions made.

Where Tower Hamlets CCG is the lead commissioner for a contract it will work in concert with any other organisations who have activity from, or provide funding for, that contract.

6 Appeals

Should a provider wish to appeal the decision of Tower Hamlets CCG as the Commissioning Organisation, they should follow the process described Commissioning Support for London's decommissioning tool accessible at:

<http://www.wcccommercial.co.uk/node/45>