Shropshire Community Health NHS
NHS Trust

Appendix 2

Policies, Procedures, Guidelines and Protocols

Document Details	
Title	**Trust Guidance for NHS Contracts, Sub-contracts and SLAs**
Trust Ref No	680
Local Ref (optional)	N/A
Main points the document covers	An introduction to, and guidance on, best practice for the preparation and management of NHS Contracts, Sub-contracts, and Service Level Agreements (SLAs)
Who is the document aimed at?	Budget Holders and other senior managers responsible for entering into agreements for services
Author	Mark Mawdsley
Approval process	
Approved by (Committee/Director)	Associate Director of Finance
Approval Date	24/07/2023
Initial Equality Impact Screening	No
Full Equality Impact Assessment	No
Lead Director	Sarah Lloyd (Director of Finance)
Category	Finance
Subcategory	Contracting
Review date	01/09/2026
Distribution	
Who the policy will be distributed to	Budget holders
Method	Electronically to budget holders & available to all staff via the Trust website
Document Links	
Required by CQC	No
Other	Required by Trust's Auditors

Amendments History		
No	Date	Amendment
1	July 2017	Guidance completely rewritten to reflect changed NHS structure and contracting requirements
2	August 2020	Guidance refreshed to cover developing integration agenda and COVID-19 response. Approval to be amended from Resource and Performance Committee to Contract Management Group

Contents

1. Purpose

This document is intended to provide general guidance on the types of arrangement for healthcare contracting that may be used by Shropshire Community NHS Trust (SCHT) and where they are applicable. It provides specific guidance on the use of Contracts, Sub-contracts and service level agreements (SLAs), where they should be used and details internal control processes.

2. Introduction to healthcare contracting

2.1 What are healthcare contracts?

The Trust enters into many transactions where goods and services are purchased or provided from/to other organisations. Most of these will be commercial arrangements with legally enforceable contracts and are supported by the Trust's procurement team. However, there are certain areas that we treat as healthcare contracting and these are dealt with differently and come within the remit of the healthcare contracting team. Any purchase of services, even if part of healthcare contracting, will always require the advice and support of the procurement team.

There is the added complication that some healthcare contracting agreements will be legally binding, and others will be **NHS contracts** as defined by the NHS Act 2006, as amended, and these are not legally binding.

Healthcare contracts will include:

1. Healthcare services required by and contracted from a "Commissioner".
2. Healthcare services provided to or from another healthcare provider
3. Non-Healthcare services provided to or from another NHS organisation i.e. another NHS Trust

2.2 Commissioned healthcare services

The Commissioner will generally be an NHS body, such as the Shropshire Telford & Wrekin Integrated Commissioning Board, which commissions most of the Trust's healthcare services, or NHS England who commission some specialist healthcare services direct. However certain areas are commissioned from outside the NHS, when responsibility has been transferred. The main example for the Trust is 0-19 public health nursing services which are commissioned by Local Authorities.

Services contracted by an NHS commissioner are required to us the NHS standard contract format **(see section 3)**. However, this will not be the case for non-NHS commissioners who will provide their own format.

Commissioned services may be longstanding arrangements, even where annual contracts are agreed, e.g., our local community services, or may be awarded after a tendering process and for a specific period, e.g., our School Aged Immunisation Service.

Where the commissioner is an NHS body any agreement will be an **NHS contract**, other contracts will be legally binding, e.g., those with Local Authorities.

2.3 Healthcare services to/from healthcare providers

These will occur where we are commissioned to provide a healthcare service but need to sub-contract a specialised element to another healthcare provider as we are unable to deliver it ourselves. An example would be the service to Stoke Heath prison commissioned by NHS England where we are the prime provider and take overall responsibility and provide much of the service ourselves, but sub-contract the mental health and dental services to other providers. Where those providers are NHS bodies then any agreement will be an **NHS contract**, if they are not then the agreement will be legally binding.

The opposite may also be the case, where another body is commissioned as prime provider but sub-contracts elements to us, e.g. the paediatric diabetes service at SaTH where we are sub-contracted to provide paediatric nursing and psychology services.

All sub-contracting arrangements should utilise the national NHS Sub-contract format recommended by NHS England, **see Section 3**.

2.4 Non-Healthcare services to/from NHS bodies

This may include services shared across the local system and therefore provided to/from other local NHS bodies, e.g., the payroll service provided across STW by SaTH.

Due to the organisations involved these will often be **NHS contracts**, however any agreement with an NHS Foundation Trust, e.g., RJAH or MPFT, will be in theory legally binding.

As the type of arrangement may range from full service being provided to the provision of a proportion of a single employee's time, the appropriate format may be a sub-contract or a service level agreement (SLA).

2.5 A grey area – what is healthcare?

On occasion what may be provided to or from another healthcare provider is less than a full healthcare service but could be argued to be healthcare related. An example might be clinical staff time to work within our healthcare provision, say a consultant session in outpatients. The service remains managed and administered by us and our responsibility, and what is provided is simply staff time. This might be covered adequately but there are complexities related to the role's involvement with patients and clinical responsibility. This might be covered adequately through the use of an SLA but it might be thought prudent to use the NHS sub-contract format, which links to our contract with the service commissioner, and also to national NHS standards and requirements.

3. The different types and formats of healthcare contracts

3.1 What should be in a contractual agreement?

Where there is a material commitment or financial amount involved it is always advisable to have a written agreement that governs the relationship to prevent confusion and minimise risk of disagreement. As discussed above this may be a legally enforceable contract or some other form of agreement, depending on the organisations involved.

Whatever the specific format, it will be a written agreement between a service provider and the service user that describes the service to be provided and detailing any quality or activity requirements. It will include the service and financial obligations of each party in accordance with delivery of the agreement, and state how service levels and/or quality are measured and monitored and how issues can be remedied if performance is not as expected.

Therefore, the benefits of a well-constructed agreement are:

- It ensures the aims, objectives, required standards, desired outcomes, obligations and financial implications of both parties are fully considered and documented;
- It promotes transparent working which can lead to service development and continuous improvement;
- It acts as a contractual lever to protect the parties from breaches in the agreed service specification and, therefore, incentivise good performance; and
- It acts as a remedial mechanism to resolve performance queries, performance notices and disputes.

It is important to remember that even where contracts, sub-contracts or SLAs do not represent a legally binding contract, they should be managed as if they are, with the same consideration of risk to the Trust.

All contractual agreements are governed by the Trust's Standing Financial Instructions (SFIs). Service leads and budget managers should ensure they always consider the requirements of SFIs, and this may include the requirement for a tendering process where services are purchased. The contracting and tendering procedures are detailed on page 22 of the SFIs:

http://www.shropscommunityhealth.nhs.uk/content/doclib/10609.pdf

For any tendering requirement service leads and budget managers should seek the guidance of SCHT's Procurement Lead – m.price11@nhs.net. This is to ensure that the Public Sector Procurement Regulations and Trust SFIs are complied with, and that value for money is achieved via the purchasing expertise of the Procurement Team.

Some healthcare services purchased by commissioning organisations will require the Trust to participate in a tendering exercise and a project team of corporate staff will support clinical and operational teams in this process. Such a tender will also normally set out the forma operation of the resulting contract and this should be considered as part of the tender assessment.

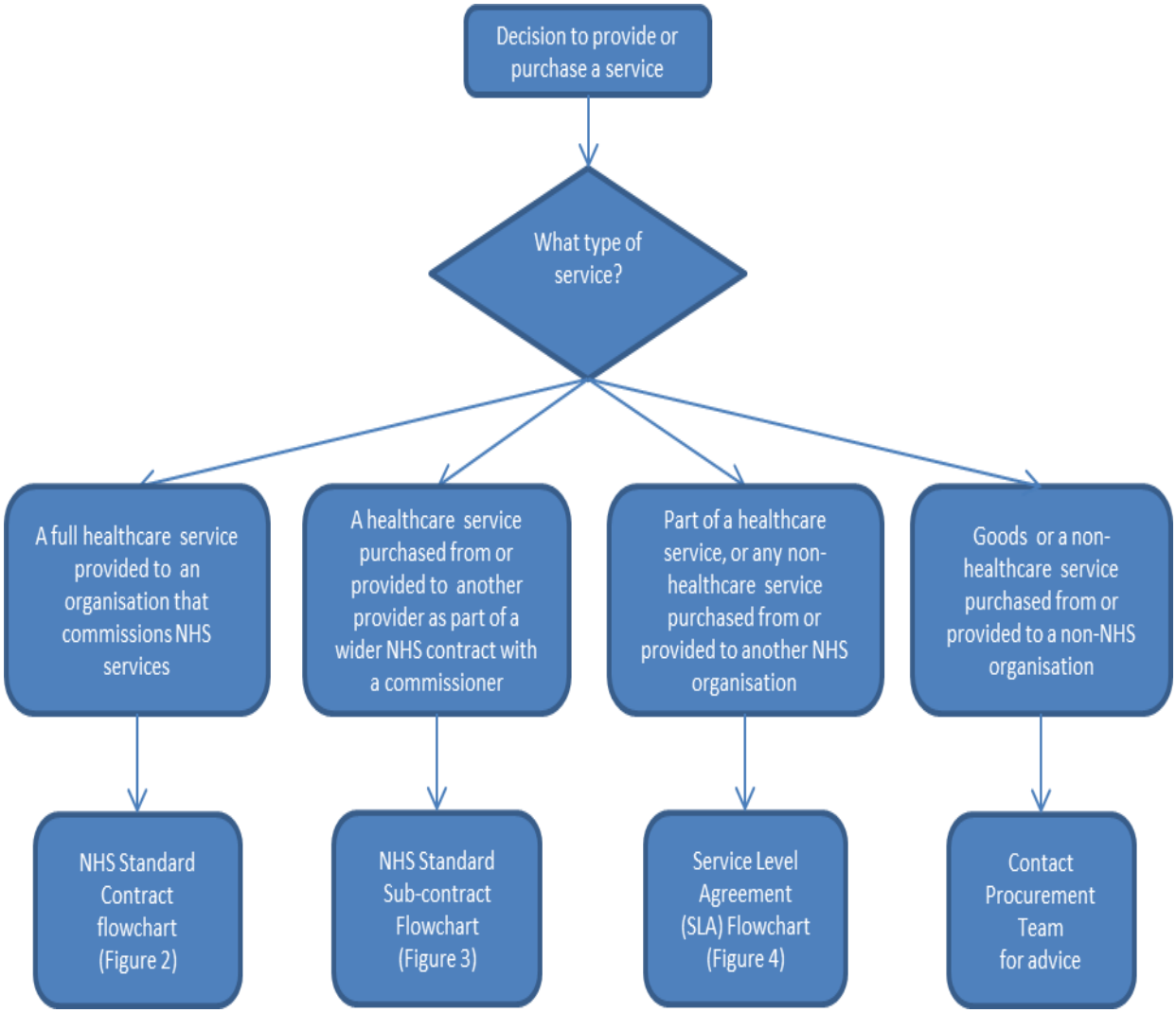
Whatever the type of agreement or contract entered into, and regardless of the support and advice obtained, service leads and budget managers retain responsibility for ensuring that contracts are managed effectively where this is specific to their service.

3.2 Deciding on the type of agreement needed

The type of contractual arrangement needed depends on the type of service that is to be purchased or provided and/or the organisations involved.

The flowchart below (figure 1) shows the process to be followed:

Figure 1



3.3 The different types of contractual arrangements in the NHS

As can be seen from **figure 1** above there are four main types of contractual arrangements that occur within the NHS:

1) the NHS Standard Contract
2) the NHS Standard Sub-contract
3) Service Level Agreements (SLAs)
4) Commercial Procurement Contracts

3.4 The NHS Standard Contract

The NHS Standard Contract is published by NHS England, and its use is mandated for use by Integrated Care Boards (ICBs) and NHS England for all their clinical services contracts, except for those for primary care services. The Contract is published in both full-length and shorter-form versions.

The benefits from NHSE mandating core terms for the NHS Standard Contract) at national level are:

- Having mandatory national terms allows us to set, at a high level, consistent national standards of care
- and to promote local implementation of key national policy priorities.
- It offers significant economies of scale (avoiding ICBs having to pay lawyers to draft contract terms locally).
- It provides one consistent set of contractual rules and processes, easily understood and used by all – and a level playing field for providers.

Figure 2

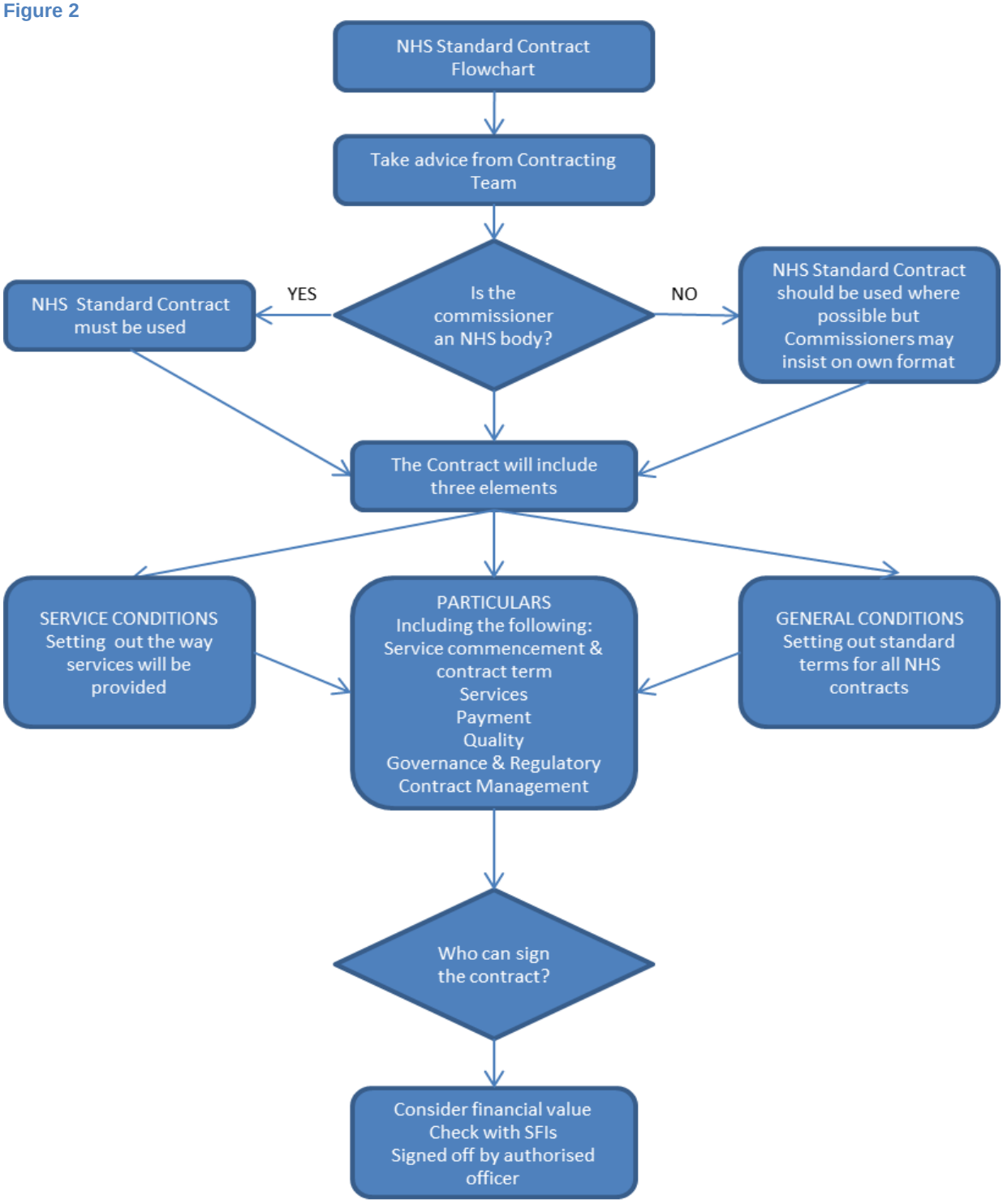


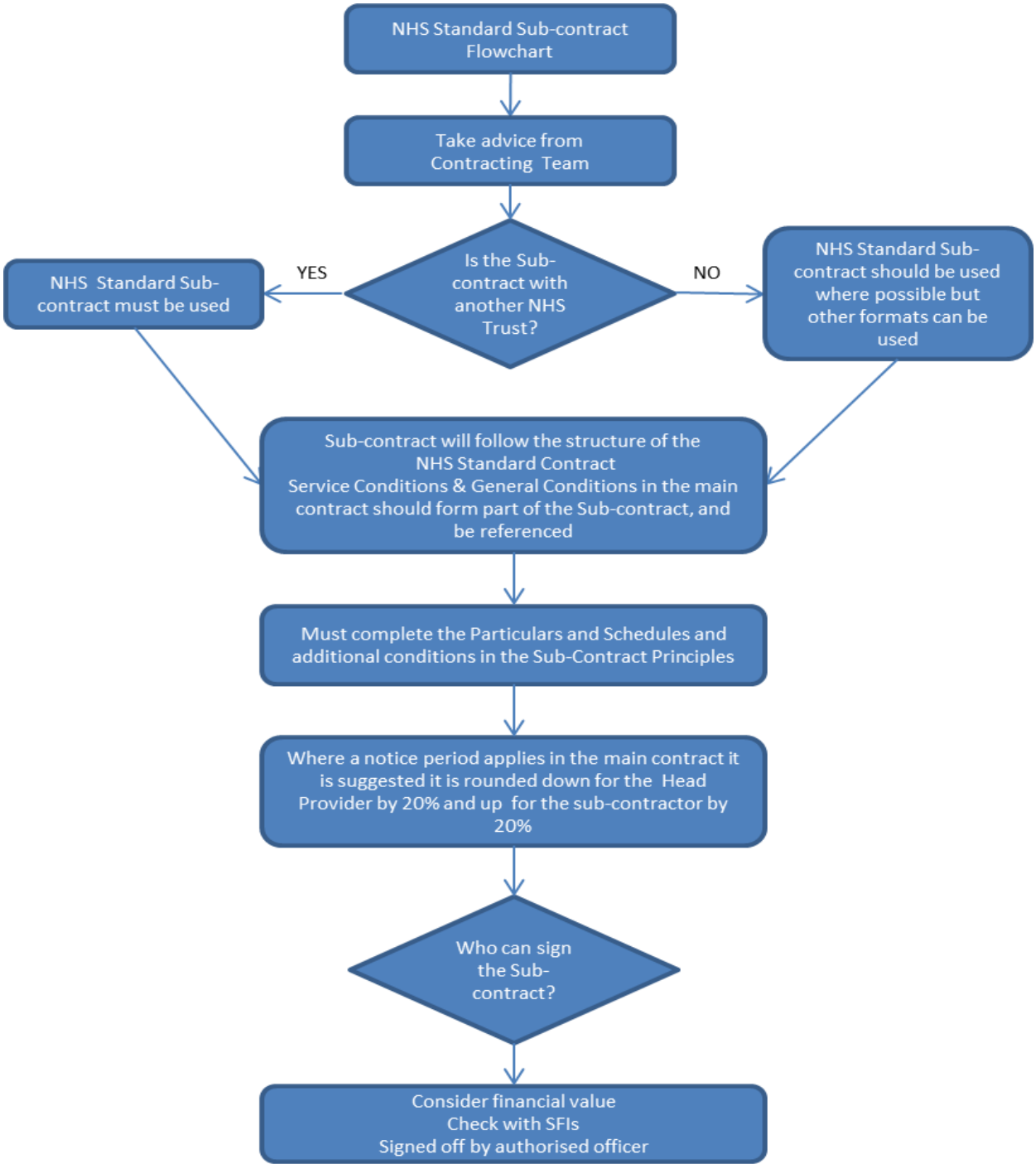
Figure 2 above illustrates the decision making for employing the NHS Standard Contract. The Trust's largest contract is with the STW ICB and therefore will be in the NHS Standard Contract format. The format for other contracts with commissioners will depend on the type of organisation, local Authorities generally follow their own specific format. These contracts are often agreed annually as part of the NHS operational planning and contracting process, though the term can be longer, especially for tendered services.

A link to NHS England guidance on the NHS Standard Contract is given below:

https://www.england.nhs.uk/nhs-standard-contract/

3.5 The NHS Standard Sub-contract

Figure 3



As shown in **Figure 3** above, the Trust may decide to sub-contract an element of its obligations to Commissioners under a main contract to another Trust or other third party who will provide those services on our behalf. SCHT may also be a sub-contractor to other providers for services provided under a contract that the other provider has agreed with commissioners. The Trust will normally do this using the nationally agreed **NHS Standard Sub-contract**. This can be the sub-contracting of an entire service or of delivery of part of a care pathway and can include multiple sub-contractors under a prime contractor commissioning model.

A link to NHS England guidance on the NHS Standard Sub-contract is given below:

https://www.england.nhs.uk/nhs-standard-contract/previous-nhs-standard-contracts/22-23/sub-contracts/

3.6 Service level agreements (SLAs)

Service level agreements (SLAs) are usually required when either purchasing or providing specific and discrete elements of healthcare services or any other services from/to other healthcare bodies (ICBs, NHS Trusts and Foundation Trusts etc.) e.g., purchase of a pathology testing service from an Acute Trust. However, SLAs are in practice often used for agreements with other public or health related bodies for convenience, e.g. Local Authorities, GP practices, PCNs, schools, registered charities etc. An **SLA** is a distinctly separate arrangement in its own right. It does not form part of the main contract with Commissioners, nor does it represent a sub-contracting of obligations under the main contract. In some cases, depending on who it is with, an SLA will also need to be a full legally enforceable contract, e.g., with local authorities, NHS Foundation Trusts, charities, GP practices etc.

Typically, the Trust should enter into a SLA for any service agreement which has financial implications in excess of £5,000 **AND** has an expected duration of at least 12 months. This is to ensure that the Trust has sufficient contractual leverage and security when committing significant financial resources whilst also minimising the administrative burden for low value, short term arrangements. In addition, an SLA will ensure clarity over the service to be purchased or provided and minimising risks to the Trust. However financial risks are not the only ones to be considered and the need to prevent clinical, operational or information governance risks may equally give rise to the need for an SLA no matter the financial value.

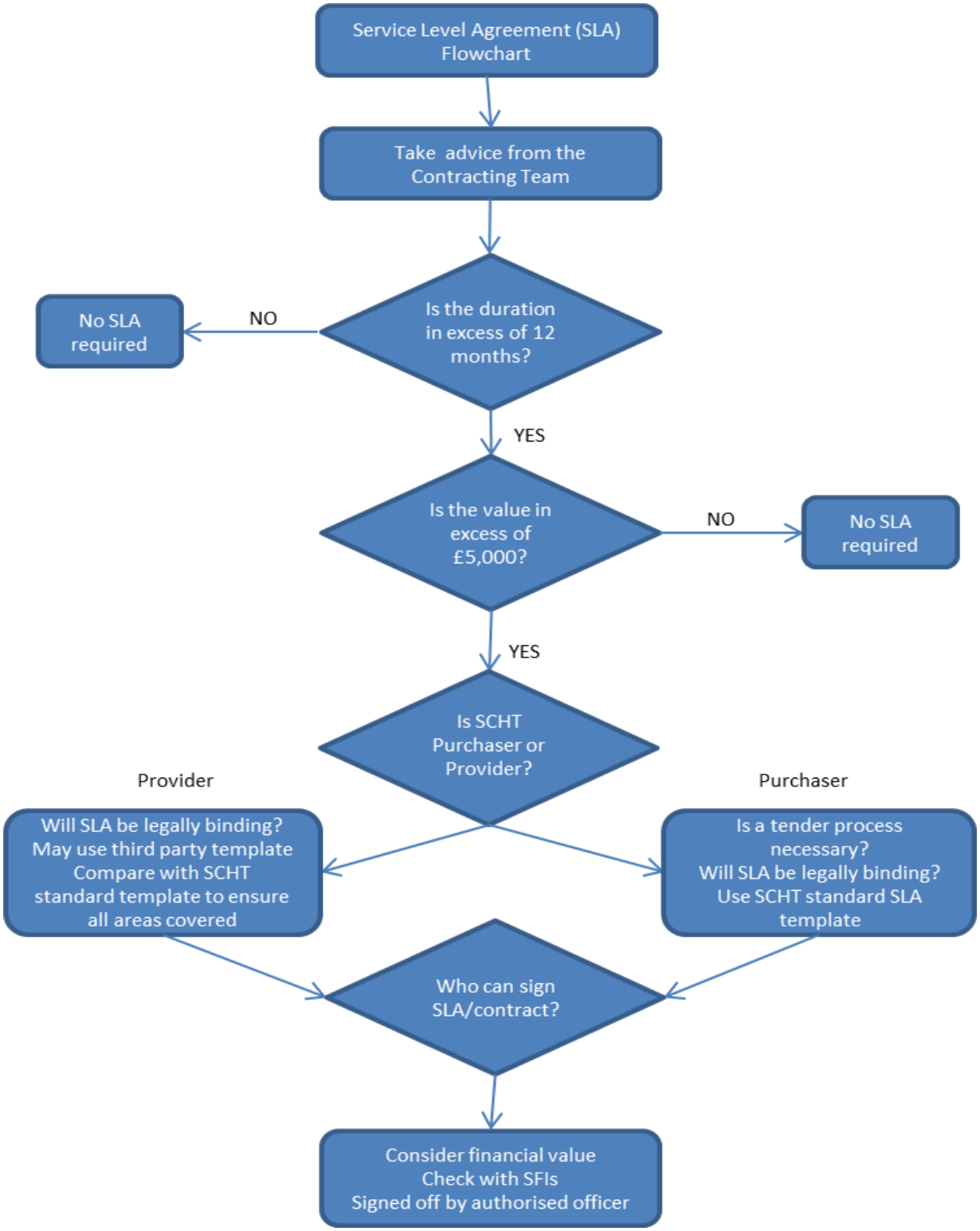
The purchaser of services often has the greater incentive to formalise arrangements by creating an SLA, to ensure the services are delivered as expected. If the Trust enters into an informal arrangement to provide a service but the purchasing organisation does not wish to create a formal SLA, the Trust may only provide the service in absence of an SLA once it has carefully considered the implications and assessed any risks.

As a provider, the Trust bears the risk of non-payment of debt by the purchasing organisation or potential issues about validating delivery and performance. The service lead or budget manager should always use prudence in deciding whether to perform the services without a SLA in place because of these financial and reputational risks. The Head of Costing and Contracting can be consulted in decisions of this kind.

The Trust will occasionally enter staff secondment arrangements with other organisations which will require reimbursement for staff costs. If these arrangements do not include the provision of any service, then they will not normally require an SLA but advice should be sought from Human Resources about the use of a secondment agreement.

Figure 4 below shows the process to be followed when considering using an SLA:

Figure 4



3.7 Commercial procurement contracts

The Trust also enters into commercial agreements with non-healthcare bodies for non-healthcare goods and services. Whilst there is still a requirement for legal contracts with commercial bodies, these transactions will fall under the responsibility of the Trust's **Procurement Team** and do not involve the healthcare contracting team and so are not specifically covered under this guidance; e.g. photocopier

service contracts. Contracting and tendering procedures will apply in accordance with the Trust's Standing Financial Instructions.

For these arrangements service leads and budget managers should seek the guidance of SCHT's Procurement Lead – m.price11@nhs.net – especially if at any time unsure of their obligations. This is to ensure that the Public Sector Procurement Regulations and Trust Standing Financial Instructions are complied with, and that value for money is achieved via the purchasing expertise of the Procurement Team.

The contracting and tendering procedures are detailed on page 23 of the Trust's Standing Financial Instructions.

http://www.shropscommunityhealth.nhs.uk/content/doclib/10609.pdf

4. Managing service level agreements (SLAs)

4.1 Who drafts the SLA?

The Trust may enter into an SLA as either the purchaser or as the provider. It is usual for the purchaser to draft the SLA to ensure that their requirements and expectations are being fully considered within the agreement.

It would be expected that the purchasing service lead or budget manager would prepare the SLA as they have the insight and knowledge of the exact service specification they require.

In order to make this easier the Trust has a standard SLA template that should be used for all services purchased by the Trust. The service lead or budget manager would be expected to provide good reason where this was not the case.

Conversely, when the Trust is providing a service, it would be expected (although will not always be the case) that the purchasing organisation will wish to use its own SLA template.

However, SLAs should be collaborative agreements meeting each party's needs and expectations and there may need to be compromise about the specific format used. Service leads and budget managers should use the Trust's standard SLA template as a benchmark to ensure all relevant elements are included and covered effectively, regardless of the format used.

Specific guidance regarding completion of the Trust's standard SLA template can be found within the template document itself (embedded below).

Standalone SLA AT draft.docx

This template will be updated as and when necessary and appropriate, please contact the Head of Costing and Contracting if you require clarity.

4.2 What is included within a SLA?

The Healthcare Contracting Team have developed a standard SLA template which is expected to be used when the Trust purchases healthcare services from a third party or other services from a healthcare organisation. This template ensures that the agreement is contractually robust, whilst also facilitating an efficient purchasing process.

The headings contained within the SLA template are:

1 DEFINITIONS AND INTERPRETATION
2 PRINCIPLES
3 COMMENCEMENT AND DURATION
4 SERVICES
5 PRICES & PAYMENT
6 QUALITY ASSURANCE
7 INFORMATION MANAGEMENT AND GOVERNANCE
8 PERFORMANCE MONITORING AND REVIEW
9 DISPUTE RESOLUTION PROCEDURE
10 EMPLOYMENT CHECKS
11 TERMINATION
12 RENEWAL OR EXTENSION OF THIS AGREEMENT
13 VARIATIONS
14 NOTICES
15 INSURANCE AND LIABILITY
16 FORCE MAJEURE
17 GENERAL
18 ENTIRE AGREEMENT

The SLA template also contains a series of 'schedules'. These schedules provide additional and supporting information to the agreement. They should be comprehensive and are the main mechanisms for which the Trust can articulate its requirements and expectations.

The schedules contained within the SLA template are:

SCHEDULE 1 – DATA SHARING PROTOCOLS AND AGREEMENTS

SCHEDULE 2 – SERVICE SPECIFICATION

SCHEDULE 3 – REPORTING REQUIREMENTS

SCHEDULE 4 – FINANCIAL INFORMATION - "SERVICE FEE"

SCHEDULE 5 – RECORD OF AGREED CONTRACT VARIATIONS

The format, contents and level of detail required for an SLA should be representative of the financial implications, service risk and patient risk. Contextual circumstances may allow for the shortening or truncating of the SLA template where full detail is not warranted. Alternatively, there may be specific occasions that warrant amendment of the format or inclusion of additional elements. It is the

responsibility of the service lead or budget manager to always ensure that the Trust's contractual, financial and service obligations are being protected.

The Healthcare Contracting Team will always provide support, advice and assistance in drafting, negotiating and agreeing SLAs but this will require clarity from the service lead or budget manager about the service specification.

4.3 Who can approve SLAs?

All SLAs should require an authorised officer to sign on behalf on the organisation. Whilst the responsibility for preparing the SLA is likely to reside with the service lead or budget manager, responsibility for signing off the SLA should be in accordance with the Trust's Standing Financial Instructions for revenue expenditure/tender authorisation

SLAs are, essentially, a commitment in incur expenditure. Therefore, they should be approved by the appropriate management authority. When deciding the appropriate individual the total value over the expected lifespan of the SLA should be considered as this represents the full commitment on behalf of the Trust.

See **Figure 6** below:

	SLA ANNUAL FINANCIAL VALUE	**AUTHORITY DELEGATED TO**
a)	Financial value up to £1,000	Service Lead
b)	Financial value up to £5,000	Resource Manager
c)	Financial value up to £15,000	Budget Manager
d)	Financial value up to £50,000	Senior Budget Manager (Operations Directorate only)
e)	Financial value up to £75,000	Director
f)	Financial value greater than £75,000	Director and Director of Finance or Chief Executive

Figure 6

4.4 Who monitors the performance of the SLA?

A copy of the SLA should be held by the Trust's responsible manager and should be used to ensure the service provision meets the agreed terms. A copy should always be provided to the Healthcare Contracting Team.

It is the responsibility of the responsible service lead or budget manager to monitor the performance of the other party and to ensure both parties fulfil their contractual obligations.

Monitoring should also ensure that the service and business needs of the Trust are being protected and financial risks avoided.

Monitoring of performance should be undertaken in accordance with the terms specified in the SLA itself.

Authorisation of provider invoices should only take place once the responsible service lead or budget manager is assured that the service is being provided in accordance with the SLA.

4.5 Central register

A centrally held register is maintained by the Healthcare Contracting Team containing details of all healthcare sub-contracts and SLAs. This register is a critical piece of management information and an audit requirement. The register allows for more effective management of contracts. For example, the register can identify sub-contracts/SLAs nearing expiry and trigger review of sub-contracts/SLAs ensuring the Trust maximises its purchasing power and obtains value for money while minimising financial risk. Information from the register will be used in healthcare contracting update reports to the Trust's Resource and performance Committee (RPC).

To ensure that the register is a reliable source of management information, **it is the responsibility of all service leads and budget managers and all other Trust staff to inform the Head of Costing and Contracting of any new agreements entered into and of any material changes or issues arising with existing agreements. Notification should ideally be provided when the intention to agree a service is identified, so that advice and guidance can be provided and progress to agreeing an SLA monitored.**

The centrally held register will contain all known sub-contracts and SLAs. The fields in the register contain:

- A unique reference number
- Purchaser organisation
- Provider organisation
- Start date
- Agreement period
- End date
- SCHT responsible manager
- Purchaser/Provider contact
- Annual financial value

SCHT responsible managers should ensure that electronic copies of signed SLAs are shared with the Head of Costing and Contracting. Please send electronic copies to mark.mawdsley@nhs.net.

The Head of Costing and Contracting is also the designated contract for all queries and support requests with regards to healthcare contracting, including SLAs.

5. Notes

5.1 NHS contracts

In the 2006 Act:

an NHS contract is an arrangement under which one health service body ("the commissioner") arranges for the provision to it by another health service body ("the provider") of goods or services which it reasonably requires for the purposes of its functions.

Whether or not an arrangement which constitutes an NHS contract would apart from this subsection be a contract in law, it must not be regarded for any purpose as giving rise to contractual rights or liabilities.

"Health service body" means any of the following—
NHS England,
an integrated care board,
an NHS trust,
a Special Health Authority,
a Local Health Board,
a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978,
a Special Health Board constituted under that section,
the Regional Agency for Public Health and Social Well-being,
the Common Services Agency for the Scottish Health Service,
the Wales Centre for Health,
the Care Quality Commission,
NICE,
the Scottish Dental Practice Board,
the Secretary of State,
the Welsh Ministers,
the Scottish Ministers,
Healthcare Improvement Scotland,
the Regional Business Services Organisation,
a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 (S.I. 1990/247 (N.I.3)),
a Health and Social Care trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I.1)),
the Department of Health, Social Services and Public Safety.