



Dorset Clinical Commissioning Group

NHS Dorset Clinical Commissioning Group
**Primary Care Commissioning and Contracting
Section 96 Discretionary Payment Protocol**



Supporting people in Dorset to lead healthier lives

DOCUMENT TRAIL AND VERSION CONTROL SHEET	
Name of document	Section 96 Discretionary Payment Protocol
Date of document	07/03/2017
Review date	TBC
Author	Sarah Walker (Primary Care Team Programme Lead)
Approved by	Luna Hill (Principal Primary Care Lead)
Date approved	TBC
Effective from	TBC
Status	Final Draft
Version	0.5
Version date	13/07/2017

CONTENTS

	Page
1: Introduction	
2: Background	2
3: Statutory Provision	2
4: Local Application	3
5: Criteria for Awarding Funding	4
6: Measurement and Monitoring	6
7: Recommendations and Conclusion	6

1. Introduction

- 1.1 Section 96, Assistance and support: primary medical services, of the 2006 National Health Service Act allows a commissioner to provide assistance or support to any person providing primary medical services.
- 1.2 Assistance or support is provided to vulnerable GP practices on such terms as the commissioner considers appropriate and assistance can include financial assistance.
- 1.3 The aim of this additional external support is to assess (as needed) and treat the causes of vulnerability, securing practice improvement and building longer term resilience, rather than deliver short term quick fixes
- 1.4 This paper presents a recommendation put forward by the Practice Profiling and Contract Management Group to outline the circumstances when it would be appropriate to use funds as described in Section 96. The Contract Management Group seeks to recommend assistance to vulnerable practices as required, including financial assistance, in the way described within this paper.
- 1.5 Any financial assistance will only be used in exceptional circumstances and would require approval in accordance with the Scheme of Delegation, as stipulated in the NHS Dorset CCG's Standing Financial Instructions.

2. Background

- 2.1. Primary Care is facing unprecedented demands. Nationally, an aging population, increasing workload and challenges in recruiting GPs pose significant challenges to the continued delivery of high quality primary care services.
- 2.2. Locally GP practices are not immune to these challenges. In recent months an increasing number of providers are sharing their challenges with commissioners and asking for support in addressing them. In many of these cases the continued provision of primary care services has been put at risk as a result of uncertain business continuity.
- 2.3. As part of the *General Practice Forward View* published by NHS England in April 2016 a programme to support practice resilience was announced. This incorporates the previously announced vulnerable practice scheme designed to support those practices that are most struggling.
- 2.4. In the first instance the CCG would seek to support practices through the GP Resilience Programme working with NHS England.
- 2.5. It may be that local intelligence suggests a GP practice is facing challenges but they do not qualify for support through a national programme or that support under this programme is not available to be able to respond to need in a timely way.
- 2.6. This document outlines a statutory provision available to commissioners and recommends the criteria against which it could be utilised. This document focusses on the use of this statutory provision to increase the resilience of General Practice to be able to better

respond to local need and challenges facing primary care, especially where there is significant risk of a provider being unable to continue to deliver primary medical services.

- 2.7. Commissioners recognise that there may be occasions when this statutory provision could be used to issue financial assistance to GP practices and the criteria below may not be relevant. In those circumstances principles of transparency should apply, ensuring a precedent is not set and considering the alternative likely consequences if financial assistance is not provided.
- 2.8. This statutory provision can only be utilised within the confines of commissioners' budgets and allocations. Therefore, any award of financial assistance will entail the identification of necessary funding and may impact on the CCG's ability to fund other commitments.

3. Statutory provision

- 3.1. Section 96 of the National Health Service Act 2006 provides a route for awarding financial assistance to providers of primary medical services. It states:

96 Assistance and support: primary medical services

(1) A Primary Care Trust may provide assistance or support to any person providing or proposing to provide—

- (a) primary medical services under a general medical services contract, or
- (b) primary medical services in accordance with section 92 arrangements.

(2) Assistance or support provided by a Primary Care Trust under subsection (1) is provided on such terms, including terms as to payment, as the Primary Care Trust considers appropriate.

(3) "Assistance" includes financial assistance.

Reference: <http://www.legislation.gov.uk/ukpga/2006/41/section/96>

4. Local application

4.1. *When would this statutory provision be appropriate to use?*

4.1.1. This statutory provision is designed to offer short term and immediate support to providers of primary medical services to secure practice improvement and build longer term resilience rather than a short term quick fix. All other routes of support should be explored prior to considering use of section 96.

4.1.2. The provision is not designed to offer long term financial assistance to providers of primary medical services.

4.2. *What could the assistance be used for?*

- 4.2.1. The NHS Act does not specifically define circumstances would warrant CCG assistance, other than stating that the Commissioner should believe it to be appropriate.
- 4.2.2. Commissioners should not use this clause to circumvent other provisions within the NHS Act or the terms of a provider's GMS/PMS contract. Any funding awarded should take note of the General Medical Services Statement of Financial Entitlements.
- 4.2.3. Funding related to premises is not subject to the Premises Cost Directions.
- 4.2.4. Funding must not contradict the intent of the NHS Forward View which requires equity of global sum for the delivery of general medical services.
- 4.2.5. A general principle guiding the use of this statutory provision is that funding should only be provided when all other routes of financial assistance have been explored. It should also be the opinion of the commissioner that without this assistance the risk of a provider being unable to continue to deliver primary medical services is unacceptably high.
- 4.2.6. Individual decisions to agree assistance for providers of primary medical care services do not set a precedent for the future.

5. Criteria for awarding assistance and support

- 5.1. Prior to considering the issuing of assistance and support under Section 96 GP practices should demonstrate to commissioners that they have both **looked out** and **looked in** for alternative solutions to the challenges they are facing.
- 5.2. **Looking out** requires GP practices to explore opportunities for working together with others for example in order to develop shared back-office services and to find collective ways of delivering primary care at scale. It also requires providers to consider accessing alternative routes of support such as the vulnerable practice scheme through NHS England.
- 5.3. **Looking in** requires GP practices to consider proposing closure of their list, changes to their boundary or closure of a branch surgery. However, before getting to this stage, GP practices should demonstrate that they have reviewed the tools made available by NHS England (South West) in relation to sustainable general practice. GP practices should complete the *Health Check Tool*, which might provide indications of areas for change and/or improvements: <https://www.england.nhs.uk/south/publications/sustainable-gp/>.
- 5.4. If **looking out** or **looking in** fails to produce solutions to assist GP practices in addressing the challenges they are facing, issuing of assistance, including financial assistance, under section 96 may be considered by commissioners.
- 5.5. In order to assess eligibility for financial assistance the following criteria will be reviewed. The criteria are listed in order of importance. Those highlighted in blue are mandatory criteria in order to be eligible for financial assistance:

No	Criteria	Rationale
1	<p>There must be evidenced extenuating circumstances within the practice population related to:</p> <ol style="list-style-type: none"> 1. Workload 2. Patient demographics <p>...that impact practice business and patient services</p> <p>This evidence may include an IMD score of 35 or higher for the practice population or evidence that local demographics dictate workload is not adequately reflected in the Carr Hill funding formula. This is proven by evidence of the downward weighting applied through the funding formula</p>	Evidence of the consequential impact on a practice workload must be provided
2	No doctor in the practice should have declared pensionable earnings in excess of £99,969 p.a. (apportioned as relevant for part time GPs)	Support not designed to increase pensionable income of GPs
3	The impact of planned reductions in MPIG or PMS/APMS premium payments will have a proven negative financial impact on the practice	There must be a negative financial impact on the practice
4	Practice expenses must be evidenced to be greater than 63%	National average ratio of expenses: profit is 63:37

5.6. Requests for assistance should be considered taking into account the impact if support is not provided and the provider is unable to continue to deliver the service.

6. Measurement and monitoring

6.1. All section 96 financial assistance must be formalised in a written service level agreement to include:

- 6.1.1. Parties to the agreement
- 6.1.2. Intent and purpose of the award of financial assistance
- 6.1.3. Amount to be awarded
- 6.1.4. Duration of the funding
- 6.1.5. Description of the key deliverables to be achieved through the award of the financial assistance
- 6.1.6. Monitoring arrangements to ensure delivery of agreement
- 6.1.7. Dispute/recovery process

6.2. Providers should be regularly monitored against achievement of the agreed key deliverables. Failure to achieve these key deliverables could result in a request to return any funding provided.

7. Recommendations and Conclusion

7.1 Recommendations:

- To provide a consistent and fair approach to all practices seeking support via Section 96 funding.
- To provide Section 96 funds only for immediate, short-term support in exceptional circumstances for primary medical services providers, when all other routes of support have been explored (see Dorset CCG's 'Menu of Support'), to secure practice improvement and build longer term resilience.
- To conduct a detailed diagnostic assessment on a practice to ascertain their eligibility for receiving Section 96 funds.
- Utilise the Practice Profiling and Contract Management Group for all requests for Section 96 Support.
- Utilise Dorset CCG's Corporate Processes for Urgent and Non-Urgent Decision Making.

7.2 The Committee is asked for approval for the Practice Profiling and Contract Management Group to review and recommend Section 96 assistance and support to providers of primary medical services as required, in line with the procedures described within this paper.