



JOINT CONSULTANTS COMMITTEE

## JCC Response to Code of Conduct for Payment by Results

The Joint Consultants Committee (JCC) welcomes this opportunity to comment on the proposed *Code of Conduct for Payment by Results* (PbR). As a body representing the medical profession, the JCC provides a forum in which those issues that affect the practice of medicine and the delivery of healthcare in the UK can be robustly debated. The introduction of PbR and its impact on the future functioning of the health service has been, and continues to be, a source of great discussion within the JCC and we are pleased that continued attention is being paid to how the system will operate.

However, we are disappointed in the failure of the *Code of Conduct* to provide a satisfactory clarification of how the PbR system will be enforced and monitored effectively. We are concerned that without the necessary safeguards and regulatory mechanisms in place PbR has the potential to destabilise local health economies. Whilst we are aware that the stated intention of the *Code of Conduct* is to outline principles for best practice that will subsequently be supported by more detailed rules, our concern is that the *Code of Conduct* does not go far enough in providing a persuasive structure for those bodies participating in PbR. We therefore strongly suggest that the *Code of Conduct* be significantly redrafted to include clearer, more robust guidelines and unambiguous definitions of what can be considered as misconduct in respect of the operation of the PbR system.

More generally, we are concerned that the publication of this draft document there is a continuing failure to address the need for a wide-ranging revision of the PbR system as currently configured to remove anomalies and inconsistencies that have regularly been identified by the profession and managers. We remain uneasy in the knowledge that at present the PbR system will engender a framework for enabling a crude payment for activity (rather than results, per se) and that without revision to ensure greater sensitivity PbR will struggle to directly raise clinical standards or reward the service on a fair and transparent basis. We would urge the Department of Health to seek greater clinical input into the scheme's ongoing development on the understanding that the profession wishes to be constructive in demonstrating how the system can usefully be taken forward by increasing both its flexibility and the sensitivity of the tariffs.

Responses to consultation questions:

### **i. Is the overall aim of the Code clear?**

The aim of the Code of Conduct, as set out in its introduction, is quite clear but we are concerned that the lack of detail as presented in the document prevents the Code of Conduct from satisfactorily achieving it.

Consequently, without knowledge of the more detailed rules that are to support the principles of best practice contained within the Code of Conduct we are unable to assess the degree to which it should be setting out clear, coherent and binding guidance.

### **ii. Do you think the Code provides useful guidance for handling inter-organisational relationships in a constructive way? If not, how could it be improved?**

We are concerned that the guidance on inter-organisational relationships is far too broad and particular elements would benefit from clearer definition. The Code of Conduct states that all organisations operating Payment by Results, and individuals working within them, will;

- 11.5 Ensure care is provided efficiently with the best possible outcome;*
- 11.6 Work together to innovate, developing better services, closer to where people live and work;*
- 11.7 Behave and treat each other transparently, openly and fairly;*
- 11.8 Share information with each other wherever appropriate;*
- 11.9 Work together to anticipate and resolve problems; and*
- 11.10 Consult and involve each other wherever appropriate in decisions and changes.*

However, there are no further substantive details setting out how such relationships should be formally developed or how an organisation's performance in this respect will be monitored. It appears that inter-organisational relationships will largely be governed by contractual arrangements and it is therefore important that these rather general principles are translated, where appropriate, into specific measurable criteria that can then be incorporated into binding contracts.

**iii. Are there any additional areas that you think should be covered by the Code?**

It would be useful if the Code established a timetable setting out a number of dates at which time the Code would be formally reviewed. This is particularly important due to the ongoing system reform, such as that proposed in *Commissioning a Patient-Led NHS*, much of which will impact upon the operation of those organisations involved in PbR. Whilst there is a recognition in the draft that a further section of the Code will be required once new contracting and commissioning proposals are finalised, we strongly believe that a regular review process will be necessary to ensure the Code remains relevant.

**iv. Are there any areas of the Code that you think are not necessary or are duplicated/could be better located elsewhere?**

(No response).

**v. When we publish the final documents, how do you think they could be most usefully publicised/distributed to ensure maximum visibility and continued usage in working practice?**

The publication of the Code should be publicised via a number of means including a Health Service Circular, coverage in the NHS Chief Executive's Bulletin and a Department of Health press release.

The final documents should be circulated widely at all levels in those organisations involved in PbR. (Trust) Chief Executives should be responsible for ensuring that the Code is distributed to all relevant employees, (clinicians, manager's and support staff) and that compliance with its contents is seen as a priority.

The Code should also be made available electronically as a resource on the internet.

**vi. Are there any areas where the wording needs to be changed/clarified/ expanded? Can you suggest how?**

We suggest that the Code should be expanded to include a summary explaining the fundamentals of PbR, particularly how it is expected to work in practice. Though the Code does contain a section detailing *'the scope and objectives of PbR'* (para. 7-9) there is a lack of detail in relation to the mechanics of PbR. A brief exposition of PbR's processes should therefore be added so as to provide an opportunity for those exposed to the Code to develop a more informed understanding of the systems operation.

**vii. Where there are alternative wordings provided (in notes to consultees) what do you think would be the appropriate wording?**

**Para. 27.4:**

We are disappointed that the alternative wording presented here is offered as an either/or choice. We would wish to see tariff-sharing arrangements - "unbundling" – published in advance by the

commissioner but would also like such arrangements to be externally validated to ensure transparency. Therefore a composite of the two alternative wordings would be preferable.

**Para. 37:**

Please see response above regarding para. 27.4

**viii. Do you think the Code strikes the right balance between fair, clear and transparent rules and allowing for local flexibility? If not, how should it be changed?**

We are concerned that at present the Code's lack of detail prevents many of the rules and guidelines from being entirely transparent. For example, in para. 28-32 it is suggested that organisations will be expected to act '*promptly*' and in a '*timely fashion*' yet it is not clear whether a formal timetable exists against which this can be assessed.

Consequently, as a result of the vagueness of much of the Code in its present form we are concerned that the principles it sets out do not provide enough of a practical framework to be useful to many of the individuals and organisations who will be responsible for ensuring PbRs effective implementation.

Whilst we welcome scope for local flexibility it is important that the Code is robust enough to preclude local arrangements which may confuse the system's national operation.

**ix. Do you think the Code will be helpful in managing financial risk? If not, how should it be changed?**

The principles relating to this matter do not provide sufficient guidance to suggest that the Code will prove useful in managing financial risk.

**x. How do you think the Code should be enforced? Do you agree with our suggestions?**

We would suggest that the Code of Conduct, in combination with the detailed rules to which reference is made in the accompanying letter, should be enforced through a reliable monitoring system administered by an external, independent body.

As stated above, to ensure that monitoring is practicable it will be necessary to translate some of the more general principles into specific measurable criteria that can then be reliably assessed. A more stringent process would involve incorporating the Code into binding contracts for all organisations involved in PbR in a similar manner to that pertaining to Foundation Trusts.

We reserve further comment until more details of the '*assurance framework*' (para. 44) are available and it is clearer what the nature of the penalties will be for non-compliance.

**xi. Are there any terms that need further definition (in the Glossary)?**

(No response).

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