



Statement of Prioritisation: Transforming Community Services Mergers

INTRODUCTION

1. Since May 2009 the CCP has accepted 40 merger cases¹ arising from the *Transforming Community Services* initiative.² In each case the CCP has considered the effect of the proposed merger on patient choice and competition pursuant to the merger provisions of the Principles and Rules for Cooperation and Competition (Principles and Rules) and assessed whether the merger might be expected to have a material adverse effect on patients and taxpayers. In its reports the CCP has reviewed a significant body of material concerning NHS community services, the operation of competition and choice in this sector and the potential financial and clinical impact of mergers involving community services.
2. The CCP has now considered its role in future *Transforming Community Services* merger cases pursuant to its prioritisation criteria.³ The CCP has concluded that it is appropriate to limit the resource it allocates to new *Transforming Community Services* merger cases. This will allow the CCP to focus its resources in a manner that is consistent with its prioritisation criteria.
3. In reaching its decision, the CCP considered both merger reviews completed to date and recent developments in the community services sector. The CCP has found the majority of *Transforming Community Services* mergers it has assessed since May 2009 to be consistent with the merger provisions of the Principles and Rules. A number of other *Transforming Community Services* transactions that were assessed by the CCP raised initial concerns in respect of the primacy of the gatekeeper function of General Practitioners, as carried out by community service providers. In relation to these transactions the CCP accepted assurances or adopted remedies that were necessary to preserve patient choice in relation to acute elective care.
4. All of the CCP's earlier recommendations on *Transforming Community Services* mergers have been made after an exhaustive analysis of the issues, which informed the development of the CCPs fast-track guidance.⁴ This statement of prioritisation is thus an evolution from and based on our experience to date, which we would not be adopting were we of the view that intensive scrutiny on a case-by-case basis was still required in the public interest. The CCP does not ascribe a lower value to *Transforming Community Services* mergers but we are satisfied that our experience to date and the market generally enables us to be less intrusive in the way this new market evolves.

¹ The term 'merger' is used inclusively to refer to mergers, acquisitions, joint ventures and other similar transactions involving NHS providers.

² More on *Transforming Community Services* can be found here: www.dh.gov.uk/en/Healthcare/TCS/index.htm.

³ Details of the CCP's approach to prioritisation can be found here: www.ccp-panel.org.uk.

⁴ The CCP's merger guidelines (including the fast-track guidance) can be found here: www.ccp-panel.org.uk.

EFFECT OF CCP'S PRIORITISATION POLICY ON FUTURE TRANSFORMING COMMUNITY SERVICES MERGERS

5. The CCP has identified a number of *Transforming Community Services* transactions that it will assess in accordance with its existing process. For the avoidance of doubt, this includes all mergers which the CCP has already accepted and those transactions identified as raising particular concerns in respect of patient choice and competition (most notably issues concerning provider consolidation and the primacy of the GP gatekeeper function). A list of these transactions and their prioritisation status is set out at paragraph 6 below. New transactions that are not listed at paragraph 6 below or in Table 1 will need to be assessed by the CCP in accordance with its existing process.
6. The decision to limit the resource allocated to new *Transforming Community Services mergers* on administrative priorities grounds is not a statement that these transactions are exempt from review by the CCP. Organisations remain obliged to provide the information set out in paragraph nine to the CCP. Third parties continue to have the ability to raise concerns about these transactions in relation to their potential effect of patient choice and competition with the CCP. The CCP will then consider the appropriate steps to take in such a case.
7. The following *Transforming Community Services* transactions will remain subject to CCP review:
 - NHS South Birmingham, NHS Heart of Birmingham PCT and NHS Birmingham East and North
 - Outer North East London Community Services and North East London NHS FT
 - NHS South Staffordshire, NHS North Staffordshire and NHS Stoke
 - The transfer of PMS/APMS contracts by NHS Salford with Royal Salford NHS FT
 - The transfer of PMS/APMS contracts by NHS Warwickshire with George Elliot NHS Trust
 - The transfer of PMS/APMS contracts by NHS Sefton to Liverpool Community FT
 - The transfer of PMS/APMS contracts by NHS South Tees to South Tees NHS FT
 - The transfer of PMS/APMS contracts by NHS Sheffield to Sheffield Health and Social Care Trust
 - The transfer of PMS/APMS contracts by NHS County Durham and Darlington to County Durham and Darlington Foundation Trust
 - The transfer of PMS/APMS contracts by NHS South of Tyne and Wear to South Tyneside NHS Foundation Trust
 - The transfer of PMS/APMS contracts by NHS Oxfordshire to Oxfordshire and Buckinghamshire Mental Health Foundation Trust.

EFFECT OF CCP'S PRIORITISATION POLICY ON CASES OTHER THAN TRANSFORMING COMMUNITY SERVICES MERGERS

8. The CCP proposes to continue to accept all other mergers, conduct cases, procurement and advertising disputes which satisfy its acceptance criteria.

REMAINING CCP OBLIGATIONS ON PCTS REGARDING TRANSFORMING COMMUNITY SERVICES TRANSACTIONS

9. The CCP has agreed with the Department of Health and Monitor that it will not provide formal advice and recommendations on those *Transforming Community Services* mergers involving the provider arms of the PCTs listed in Table 1 on the basis of administrative priorities grounds. The CCP has also agreed that this is conditional upon:
 - The CCP is provided with a completed copy of the letter attached in Appendix 1; and (in accordance with the letter)
 - i. the merger parties provide the CCP with signed Heads of Terms for a business transfer agreement that confirms the details of the transaction;
 - ii. where an acute NHS Foundation Trust or acute NHS Trust is to acquire a provider arm, the acquiring Trust and relevant PCT will provide the assurances described in Appendix 2 before completing the transaction; and
 - iii. the transaction does not include the transfer of any PMS or APMS contract.
10. Monitor has confirmed that the provision of this information will satisfy Foundation Trusts' obligations under their Terms of Authorisation in relation to the CCP. The Department of Health has confirmed that the provision of this information is a requirement of those NHS organisations engaged in the transfer of PCT provider arms under *Transforming Community Services*. The CCP will maintain a register of the Heads of Terms and the assurances it receives.
11. New *Transforming Community Services* transactions that are not listed at paragraph seven or in Table 1 will need to be assessed by the CCP in accordance with its existing process.

17 December 2010

Table 1 Transforming Community Services transactions involving the transfer of the provider arms of the following PCTs will not be assessed by the CCP under the merger provisions of the PRCC

East Midlands SHA	Bassetlaw PCT	Leicestershire County and Rutland PCT
	Derby City PCT	Lincolnshire Teaching PCT
	Leicester City PCT	Nottinghamshire County Teaching PCT
	Northamptonshire Teaching PCT	Nottingham City PCT
East of England SHA	Bedfordshire PCT	Peterborough PCT
	South East Essex	Suffolk PCT
	Luton PCT	West Essex PCT
NHS London	Camden PCT	Tower Hamlets PCT
	Sutton and Merton PCT	
NHS North East	County Durham PCT	North Tyneside PCT
	Darlington PCT	Northumberland Care Trust
	Gateshead PCT	Redcar and Cleveland PCT
	Middlesbrough PCT	South Tyneside PCT
	Newcastle PCT	Sunderland Teaching PCT
NHS North West	Ashton, Leigh and Wigan PCT	North Lancashire Teaching PCT
	Blackpool PCT	Sefton PCT
	Bolton PCT	Stockport PCT
	Central and Eastern Cheshire PCT	Tameside with Glossop PCT
	East Lancashire Teaching PCT	Trafford PCT
	Halton and St Helens PCT	Warrington PCT
	Haywood, Middleton and Rochdale	Western Cheshire PCT
	Knowsley PCT	Wirral PCT
	Liverpool PCT	
NHS South Central	Hampshire PCT	Milton Keynes PCT
NHS South East Coast	East Sussex PCT	Surrey PCT
	Hastings and Rother PCT	West Kent PCT
NHS South West	Bournemouth and Poole Teaching PCT	Somerset PCT
	Cornwall and Isles of Scilly PCT	South Gloucestershire PCT
	Devon PCT	Wiltshire PCT
	Dorset PCT	
NHS West Midlands	Coventry Teaching PCT	Shropshire County PCT
	Dudley PCT	Solihull Care Trust
	Heart of Birmingham PCT	Telford and Wrekin PCT
	Herefordshire PCT	Walsall Teaching PCT
	Sandwell PCT	Warwickshire PCT
NHS Yorkshire and The Humber	Barnsley PCT	North Lincolnshire PCT
	Calderdale PCT	North Yorkshire and York PCT
	Doncaster PCT	Sheffield PCT
	East Riding Of Yorkshire PCT	Wakefield District PCT
	Leeds PCT	

Appendix 1

[ON HEADED PAPER OF SUBMITTING ORGANISATION]

The Cooperation and Competition Panel
1 Horse Guards Road
London
SW1A 2HQ

[Date]

Dear Sirs

Re: [Name of acquiring organisation[s]] proposed merger[s] with community health services provider arm[s] of [name of relevant PCT[s]]

In accordance with the CCP's statement of prioritisation published on 17 December 2010, please find enclosed signed Heads of Terms for a business transfer agreement dated [] regarding the community health services transfer to be made between [*insert names of parties*] in accordance with the Department of Health's *Transforming Community Services* programme (the Transaction).

In connection with the Transaction we confirm the following statements to be true and correct as at the date of this letter:

- i. The Heads of Terms have been signed and dated for and on behalf of each organisation which is proposed to be a party to the Transaction;
- ii. The Heads of Terms or an enclosed document includes a service line breakdown of all service lines and the associated income of such services lines which are proposed to transfer pursuant to the Transaction;
- iii. The Transaction **does not** include the transfer of any GMS, PMS or APMS contracts;
- iv. [*Where relevant*: As part of the Transaction certain services shall Transfer to [insert names of acquiring entities which are either acute NHS Trusts or acute NHS Foundation Trusts]. We confirm that assurances in the form set out in the CCP's statement of prioritisation have been enclosed with this letter.]

Yours sincerely

.....
[Name]

[Position]

Appendix 2

[Assurances required where an acute NHS Trust is to acquire a provider arm]

ASSURANCES PROVIDED BY [INSERT NAME OF HOSPITAL TRUST]

Assurances

1. *[Insert name of Hospital Trust]* NHS Trust (the NHS Trust) on behalf of itself and *[insert name of PCT provider services arm]* (together, the Merged Organisation) now provides the CCP with the Assurances for the purpose of mitigating the adverse effects on patients and taxpayers which may exist in relation the Transaction. The Assurances shall take effect on completion of the Transaction.
 - i. The Merged Organisation will comply with *The Primary Care Trusts (Choice of Secondary Care Provider) Directions 2009* and *NHS Constitution, 8 March 2010*, and any superseding legislation or Department of Health guidance, which enshrine the rights of a patient to choose his/her provider of acute elective care.
 - ii. The Merged Organisation will ensure that it implements the Choose and Book System effectively.
 - iii. When a patient in the care of a Healthcare Professional requires Treatment, that Healthcare Professional will, if referring the patient on for the Treatment, provide the patient with an appointment letter which:
 - a) informs the patient that he/she has the right to choose the hospital where he/she will be referred;
 - b) informs the patient that he/she does not have to choose to be referred *[insert name of relevant hospital(s)]*;
 - c) informs the patient that he/she can make an appointment with his/her GP in order to receive advice and assistance on making arrangements for referral;
 - d) informs the patient about the NHS Choices website;
 - e) offers to assist the patient to make the appointment for the referral using the Choose and Book System; and
 - f) provides the patient with an appointment reference number and a password so that the patient can use Choose and Book his/herself if he/she chooses to do so.
2. Upon providing the patient with the appointment letter referred to in paragraph 1(iii) above, the Healthcare Professional will explain the contents of that letter so that the patient understands that he or she has a choice of date, time and hospital for the Treatment.
3. All Healthcare Professionals will receive training on NHS Choices and how to use the Choose and Book system. The Merged Organisation will keep records of which Healthcare Professionals have received training and the date(s) on which this has been provided. Healthcare Professionals who have not received appropriate training will not be permitted to refer patients for Treatment.

Compliance

4. In the event of a suspected breach of the Assurances, any interested party may ask the CCP to investigate. If the CCP finds that there has been a breach of the Assurances, it may advise *[insert name of relevant SHA]* to require the Merged Organisation to comply with the Assurances. The

Merged Organisation will comply with such written directions as *[insert name of relevant SHA]* and/or *[insert name of relevant PCT]* may from time to time give for the purpose of securing compliance with the Assurances.

5. The Merged Organisation shall cooperate fully with the CCP, *[insert name of relevant SHA]*, and *[insert name of relevant PCT]* when any of these organisations is either monitoring compliance with the provisions of the Assurances or investigating potential breaches of the provisions of the Assurances.

Provision of information

6. The Merged Organisation will furnish promptly to the CCP, the PCT or *[insert name of relevant SHA]* such information as any of these organisations consider necessary to enable them to monitor the Assurances.

Material change of circumstances

7. In the event of a material change of circumstances the Merged Organisation may ask the CCP to vary the Assurances. The CCP may make any variations which it considers appropriate following a request from the Merged Organisation

Interpretation

8. For the purposes of the Assurances:

“Assurances” means the assurances contained in this document;

“CCP” means Cooperation and Competition Panel, or, as applicable, any successor body;

“Choose and Book System” means a system offering a service that allows patients to choose their hospital or clinic and book an appointment with a specialist;

“Healthcare Professional” means any member of staff employed by the merged entity, who refers a patient for Treatment;

“PCT” means *[insert name of relevant PCT]*

“Report” means the CCP’s advice to the Department of Health on the Transaction;

“Transaction” means proposed transfer of the provider services arm of *[Insert name of relevant PCT]* to *[Insert name of relevant Hospital Trust]*; and

“Treatment” means elective treatment in an acute setting.

Signed:

[Insert Name]

[Insert Position and name of NHS Trust]

ASSURANCES PROVIDED BY [] NHS FOUNDATION TRUST

Assurances

1. [] NHS Foundation Trust (the NHS Foundation Trust) on behalf of itself and the provider services business of the PCT (together, the Merged Organisation) now provides the CCP with the Assurances for the purpose of mitigating the adverse effects on patients and taxpayers which may exist in relation the Transaction. The Assurances shall take effect on completion of the Transaction.
 - i. The Merged Organisation will comply with *The Primary Care Trusts (Choice of Secondary Care Provider) Directions 2009* and *NHS Constitution*, 8 March 2010, and any superseding legislation or Department of Health guidance, which enshrine the rights of a patient to choose his/her provider of acute elective care.
 - ii. The Merged Organisation will ensure that it implements the Choose and Book System effectively.
 - iii. When a patient in the care of a Healthcare Professional requires Treatment, that Healthcare Professional will, if referring the patient on for the Treatment, provide the patient with an appointment letter which:
 - a) informs the patient that he/she has the right to choose the hospital where he/she will be referred;
 - b) informs the patient that he/she does not have to choose to be referred to [*insert names of relevant hospitals*];
 - c) informs the patient that he/she can make an appointment with his/her GP in order to receive advice and assistance on making arrangements for the referral;
 - d) informs the patient about the NHS Choices website;
 - e) offers to assist the patient to make the appointment for the referral using the Choose and Book System; and
 - f) provides the patient with an appointment reference number and a password so that the patient can use Choose and Book his/herself if he/she chooses to do so.
2. Upon providing the patient with the appointment letter referred to in paragraph 1(iii) above, the Healthcare Professional will explain the contents of that letter so that the patient understands that he or she has a choice of date, time and hospital for the Treatment.
3. All Healthcare Professionals will receive training on NHS Choices and how to use the Choose and Book system. The Merged Organisation will keep records of which Healthcare Professionals have received training and the date(s) on which this has been provided. Healthcare Professionals who have not received appropriate training will not be permitted to refer patients for Treatment.

Compliance

4. In the event of a suspected breach of the Assurances, any interested party may ask the CCP to investigate. If the CCP finds that there has been a breach of the Assurances, it may advise Monitor to require the Merged Organisation to comply with the Assurances. The Merged

Organisation will comply with such written directions as Monitor and/or the PCT may from time to time give for the purpose of securing compliance with the Assurances.

5. The Merged Organisation shall cooperate fully with the CCP, Monitor and the PCT when any of these organisations is either monitoring compliance with the provisions of the Assurances or investigating potential breaches of the provisions of the Assurances.

Provision of information

6. The Merged Organisation will furnish promptly to the CCP, the PCT or Monitor such information as any of these organisations consider necessary to enable them to monitor the Assurances.

Material change of circumstances

7. In the event of a material change of circumstances the Merged Organisation may ask the CCP to vary the Assurances. The CCP may make any variations which it considers appropriate following a request from the Merged Organisation

Interpretation

8. For the purposes of the Assurances:

“Assurances” means the assurances contained in this document;

“CCP” means Cooperation and Competition Panel, or, as applicable, any successor body;

“Choose and Book System” means a system offering a service that allows patients to choose their hospital or clinic and book an appointment with a specialist;

“Healthcare Professional” means any member of staff employed by the merged entity, who refers a patient for Treatment;

“PCT” means [*insert name of relevant PCT*];

“Report” means the CCP’s advice to the Department of Health and/or Monitor on the Transaction;

“Transaction” means proposed transfer of the provider services arm of the PCT to the NHS Foundation Trust; and

“Treatment” means elective treatment in an acute setting.

Signed:

[Insert Name]

[Insert Position and name of NHS Foundation Trust]

[Assurances required where an acute NHS Trust or acute NHS Foundation Trust is to acquire a provider arm]

ASSURANCES PROVIDED BY [INSERT NAME OF PCT]

Assurances

9. *[Insert name of relevant PCT]* (The PCT) now provides the CCP with these Assurances for the purpose of mitigating any adverse effects on patients and taxpayers which may exist in relation to the proposed Transaction. The Assurances shall take effect on completion of the Transaction.
 - i. The PCT will monitor and analyse actual patient attendances by specialty, trust, GP practice and category of referrer, compared with previous time periods, examining changes in patterns accordingly.
 - ii. The PCT will also monitor the referrals flowing through the Choose and Book system.
 - iii. The PCT will monitor the quality of choice being offered and to do so use patient experience information from patient surveys, both national and local, and information from their Patient Advice and Liaison Service and Local Involvement Networks as further sources of information.
 - iv. As new integrated pathways are developed, the PCT will include in its specification the point at which choice must be offered and who will offer the choice. This will almost always be through the GP. If pathways do arise which do not use the GP, then special monitoring arrangements will be put in place, including monitoring data from Choose and Book, and specific patient surveys of patients' perception of the choices they were offered.
 - v. If there is any indication that the merged organisation is not offering choice appropriately, then there will be a further investigation, which can include a specific patient survey, and further analysis of the data. Mechanisms are in place through the contract to ensure that performance improves, including the issue of a performance notice and ultimately the termination of the contract.

10. The PCT will store this information in such a way as to ensure it can be provided to the CCP and/or *[insert name of relevant SHA]* in a timely and clear manner and will provide such information upon request from either organisation.

Compliance

11. In the event of a suspected breach of the Assurances, any interested party may ask the CCP to investigate. If the CCP finds that there has been a breach of the Assurances, it may advise *[insert name of relevant SHA]* to require the PCT to comply with the Assurances. The PCT will comply with such written directions as *[insert name of relevant SHA]* may from time to time give for the purpose of securing compliance with the Assurances.

12. The PCT shall cooperate fully with *[Insert name of Hospital Trust]* (the NHS Trust), the CCP and *[insert name of relevant SHA]* when any of these organisations is either monitoring compliance with the provisions of the Assurances or investigating potential breaches of the provisions of the Assurances.

Provision of information

13. The PCT will furnish promptly to the CCP, the NHS Trust or *[insert name of relevant SHA]* such information as any of these organisations consider necessary to enable them to monitor the Assurances.

Material change of circumstances

14. In the event of a material change of circumstances, the PCT may ask the CCP to vary these assurances. The CCP may make any variations which it considers appropriate following a request from the PCT.

Interpretation

15. For the purposes of the Assurances:

“Assurances” means the assurances contained in this document;

“CCP” means Cooperation and Competition Panel;

“Choose and Book System” means a system offering a service that allows patients to choose their hospital or clinic and book an appointment with a specialist;

“*[Insert name of Hospital Trust]*” means the NHS Trust;

“PCT” means *[Insert name of PCT]*; and

“Transaction” means proposed transfer of the provider services arm of *[Insert name of PCT]* to *[Insert name of Hospital Trust]*.

Signed:

[Insert Name]

[Insert Position and name of PCT]