



## Statement of Prioritisation:

### Transforming Community Services Mergers – Transfers of GP practices

#### INTRODUCTION

1. On 17 December 2010 the CCP published its Prioritisation Criteria document which explains how the CCP will prioritise its work ([CCP Prioritisation Criteria](#)). At the same time it published a statement of prioritisation in relation to a number of *Transforming Community Services* merger cases in which it explained how it has decided to limit the resource it allocates to new Transforming Community Services merger cases.
2. On 17 January 2011 the CCP accepted for review the proposed acquisition of three Warwickshire General Practitioner (GP) practices, currently part of the NHS Warwickshire provider services arm, by George Eliot Hospital NHS Trust. This transaction was a reviewable merger under Principle 10 of the Principles and Rules of Cooperation and Competition. On 22 March 2011 the CCP published its advice and recommendations in relation to this merger. The CCP decided at the end of its Phase I investigation that there was a realistic prospect that the merger may result in a material adverse effect on patients and taxpayers. To address the CCP's concerns, the merger parties provided the CCP with assurances to address the likely adverse effects of the merger on the GP gatekeeper function and to safeguard patient choice of acute elective care.
3. On 24 March 2011, the Department of Health advised the CCP that the Secretary of State for Health accepted the CCP's advice and recommendations on the Warwickshire case. The Secretary of State for Health asked George Eliot Trust to provide an additional assurance in relation to managing potential conflicts of interest between GPs in their role as providers on one hand and commissioners on the other.

#### CCP STATEMENT OF PRIORITISATION IN RESPECT OF TRANSFERS OF CERTAIN GP PRACTICES

4. On the basis of its experience of reviewing the merger referred to in paragraph two above, the CCP considers that it is now appropriate to limit the resource it allocates to a number of new mergers involving Primary Care Trust (PCT) provider arm GP practices. The CCP considers that assurances similar to the ones offered in the Warwickshire merger, and endorsed by the Secretary of State for Health, are likely to be sufficient to address any potential adverse effects on patient choice and competition that might arise from these mergers. However, we continue to be concerned that there is the potential for a conflict of interest to arise in these circumstances and suggest that this is a potential issue for Monitor or the NHS Commissioning Board to consider in future, once they have been established. A list of the mergers which the CCP does not propose to review is set out below. This is subject to a number of conditions (see paragraph five). For the avoidance of doubt, new transactions that are not listed below will need to be assessed by the CCP in accordance with its existing process.
  - The transfer of PMS/APMS contracts by NHS Salford with Royal Salford NHS 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 INVOLVING GP PRACTICES**

5. 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 INVOLVING GP PRACTICES**

6. 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 listed at paragraph four. The CCP has also agreed that this is conditional upon:
  - the CCP being provided with a completed copy of the letter attached in Appendix 1; and
  - (in accordance with the letter) the acquiring Trust and relevant PCT providing the assurances described in Appendix 2 before completing the transaction.
7. 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 assurances it receives.
8. The decision to limit the resource allocated to the mergers listed at paragraph four above 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 six to the CCP. Third party organisations 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 each case.
9. New *Transforming Community Services* transactions that are not listed at paragraph four above (or Table 1 of the statement of prioritisation published on 17 December) will need to be assessed by the CCP in accordance with its existing process.

**5 April 2011**

## 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]* proposed merger with the GP practice[s] of *[name]* PCT**

In accordance with the CCP's statement of prioritisation published on 23 March 2011, please find enclosed signed assurances in the form set out in the CCP's statement of prioritisation regarding the transfer of the following GP practice[s] from *[name]* PCT to *[name of acquiring organisation]*:

- *[Name of GP practice]*

We confirm the following statements to be true and correct as at the date of this letter:

- The Heads of Terms dated *[x]* have previously been provided to the CCP on the *[date the Heads of Terms were provided]*;
- The Heads of Terms or an enclosed document included 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;
- All GPs in the GP practices named above have read the enclosed assurances provided by *[name of acquiring organisation]*.

Yours sincerely

.....

*[Name]*

*[Position]*

## Appendix 2

[Assurances required where an acute NHS Trust is to acquire a GP practice]

[ON ACUTE NHS TRUST HEADED PAPER]

### ASSURANCES PROVIDED BY [INSERT NAME OF ACUTE NHS TRUST]

#### ASSURANCES

1. The NHS Trust, on behalf of itself and the GP Practice (together, the Merged Organisation) now provides the CCP with the following Assurances for the purpose of mitigating the adverse effects on patients and taxpayers which may exist in relation to 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 (in accordance with all relevant national and local requirements or standards). The Merged Organisation will ensure that all GPs comply with the obligations set out in paragraph 5(iv) below as well as any ethical and professional rules or procedures relating to referrals for Treatment (including, without limitation, the General Medical Council's 'Good Medical Practice' guidance).
  - iii. The Merged Organisation will ensure it does not use any performance measures or incentives for monitoring its provision of its services which may inappropriately influence any of the GPs to refer patients to the NHS Trust.
  - iv. When a patient in the care of a GP requires Treatment, that GP will, if referring the patient on for Treatment, provide the patient with written information that:
    - a) informs the patient that the GP Practice is owned by the NHS Trust;
    - b) informs the patient that he/she has the right to choose the hospital where he/she will receive the Treatment;
    - c) informs the patient that he/she does not have to choose to receive the Treatment at [insert names of relevant hospital(s)];
    - d) informs the patient about the NHS Choices website;
    - e) informs the patient about how to make an appointment for the Treatment using the Choose and Book System and offers to assist the patient in making the appointment; and
    - f) provides the patient with an appointment reference number and a password so that the patient can use the Choose and Book System independently if he/she chooses to do so.
  - v. When providing the patient with the written information referred to in paragraph 5(iv) above, the GP will also explain the information so that the patient understands that he or she has a choice of date, time and hospital for the Treatment.

## Appendix 2

- vi. The Merged Organisation will make it clear to all patients that the GP Practice is owned by the NHS Trust by displaying external and internal signs at the premises. A leaflet will be made available for patients to read in the waiting areas of the GP Practice notifying patients that the GP Practice is managed by the NHS Trust. The leaflet shall also make it clear that patients have the right to choose the hospital where they will receive Treatment and confirm that patients do not have to choose to receive Treatment at the NHS Trust. These steps are to be taken in addition to the requirement to provide each patient with the information set out in paragraph 5(iv) above.
- vii. All GPs will receive training on NHS Choices and how to use the Choose and Book System. The Merged Organisation will keep records of which GPs have received training and the date(s) on which this training has been provided.
- viii. The Merged Organisation will keep records of the referral patterns for Treatment and provide the PCT with such information on a monthly basis and attend quarterly review meetings with the PCT. The Merged Organisation will alert the PCT if any significant changes in usual referral patterns are identified to enable the PCT to investigate such changes and resolve any concerns.
- ix. The Merged Organisation shall allow the PCT to appoint an independent 'Choice Adviser' to be remunerated by the Merged Organisation if the PCT considers this necessary.
- x. The Merged Organisation shall ensure that its employees who are GPs and who provide primary healthcare services and who also commission healthcare services through membership of a commissioning consortium will be free from conflicts of interest that could adversely affect their judgement or objectivity. In particular, in their role as a member of a commissioning consortium, GPs employed by the Merged Organisation will not seek to commission services from the Merged Organisation of which they are part.

### COMPLIANCE

2. 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 the PCT may from time to time give for the purpose of securing compliance with the Assurances.
3. The Merged Organisation shall cooperate fully with the CCP, [*insert name of relevant SHA*], 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

4. 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 compliance with the Assurances.

## Appendix 2

### MATERIAL CHANGE OF CIRCUMSTANCES

5. 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

6. For the purposes of the Assurances:

'Assurances' means the assurances contained in this document;

'CCP' means Cooperation and Competition Panel or any successor body (as applicable);

'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;

'GP(s)' means the general practitioners responsible for facilitating patient choice of Treatment for the Merged Organisation (through the use of the Choose and Book System);

'GP Practice(s)' means [*insert name of relevant merging GP practice or practices. Note that if more than one GP practice is merging, then the references to 'GP Practice' will need to be plural*];

'Merged Organisation' means the NHS Trust and the GP Practice on completion of the Transaction;

'NHS Trust' means [*insert name of relevant NHS Trust*];

'PCT' means [*insert name*] Primary Care Trust;

'Report' means the CCP's advice to the Department of Health on the Transaction;

'Transaction' means proposed transfer of the GP Practice, currently managed by the PCT, to the NHS Trust; and

'Treatment' means elective treatment in an acute setting; and

**Signed:**

[*Insert Name*]

[*Insert Position and name of NHS Trust*]

[Assurances required where an NHS Foundation Trust is to acquire GP practice]

[ON NHS FOUNDATION TRUST HEADED PAPER]

## **ASSURANCES PROVIDED BY [INSERT NAME OF NHS FOUNDATION TRUST]**

### **ASSURANCES**

1. The NHS Foundation Trust, on behalf of itself and the GP Practice (together, the Merged Organisation) now provides the CCP with the following Assurances for the purpose of mitigating the adverse effects on patients and taxpayers which may exist in relation to 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 (in accordance with all relevant national and local requirements or standards). The Merged Organisation will ensure that all GPs comply with the obligations set out in paragraph 5(iv) below as well as any ethical and professional rules or procedures relating to referrals for Treatment (including, without limitation, the General Medical Council's '*Good Medical Practice*' guidance).
  - iii. The Merged Organisation will ensure it does not use any performance measures or incentives for monitoring its provision of its services which may inappropriately influence any of the GPs to refer patients to the NHS Foundation Trust.
  - iv. When a patient in the care of a GP requires Treatment, that GP will, if referring the patient on for Treatment, provide the patient with written information that:
    - a) informs the patient that the GP Practice is owned by the NHS Foundation Trust;
    - b) informs the patient that he/she has the right to choose the hospital where he/she will receive the Treatment;
    - c) informs the patient that he/she does not have to choose to receive the Treatment at [insert names of relevant hospital(s)];
    - d) informs the patient about the NHS Choices website;
    - e) informs the patient about how to make an appointment for the Treatment using the Choose and Book System and offers to assist the patient in making the appointment; and
    - f) provides the patient with an appointment reference number and a password so that the patient can use the Choose and Book System independently if he/she chooses to do so.
  - v. When providing the patient with the written information referred to in paragraph 5(iv) above, the GP will also explain the information so that the patient understands that he or she has a choice of date, time and hospital for the Treatment.

- vi. The Merged Organisation will make it clear to all patients that the GP Practice is owned by the NHS Foundation Trust by displaying external and internal signs at the premises. A leaflet will be made available for patients to read in the waiting areas of the GP Practice notifying patients that the GP Practice is managed by the NHS Foundation Trust. The leaflet shall also make it clear that patients have the right to choose the hospital where they will receive Treatment and confirm that patients do not have to choose to receive Treatment at the NHS Foundation Trust. These steps are to be taken in addition to the requirement to provide each patient with the information set out in paragraph 5(iv) above.
- vii. All GPs will receive training on NHS Choices and how to use the Choose and Book System. The Merged Organisation will keep records of which GPs have received training and the date(s) on which this training has been provided.
- viii. The Merged Organisation will keep records of the referral patterns for Treatment and provide the PCT with such information on a monthly basis and attend quarterly review meetings with the PCT. The Merged Organisation will alert the PCT if any significant changes in usual referral patterns are identified to enable the PCT to investigate such changes and resolve any concerns.
- ix. The Merged Organisation shall allow the PCT to appoint an independent 'Choice Adviser' to be remunerated by the Merged Organisation if the PCT considers this necessary.
- x. The Merged Organisation shall ensure that its employees who are GPs and who provide primary healthcare services and who also commission healthcare services through membership of a commissioning consortium will be free from conflicts of interest that could adversely affect their judgement or objectivity. In particular, in their role as a member of a commissioning consortium, GPs employed by the Merged Organisation will not seek to play any role in commissioning services from the Merged Organisation of which they are part.

#### **COMPLIANCE**

- 2. 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 Monitor and/or the PCT may from time to time give for the purpose of securing compliance with the Assurances.
- 3. 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**

- 4. 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 compliance with the Assurances.

## **MATERIAL CHANGE OF CIRCUMSTANCES**

5. 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**

6. For the purposes of the Assurances:

'Assurances' means the assurances contained in this document;

'CCP' means Cooperation and Competition Panel or any successor body (as applicable);

'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;

'GP(s)' means the general practitioners responsible for facilitating patient choice of Treatment for the Merged Organisation (through the use of the Choose and Book System);

'GP Practice(s)' means *[insert name of relevant merging GP practice or practices. Note that if more than one GP practice is merging, then the references to 'GP Practice' will need to be plural]*;

'Merged Organisation' means the NHS Foundation Trust and the GP Practice on completion of the Transaction;

'NHS Foundation Trust' means *[insert name of relevant NHS Foundation Trust]*;

'PCT' means *[insert name]* Primary Care Trust;

'Report' means the CCP's advice to the Department of Health on the Transaction;

'Transaction' means proposed transfer of the GP Practice, currently managed by the PCT, to the NHS Foundation Trust; and

'Treatment' means elective treatment in an acute setting; and

**Signed:**

*[Insert Name]*

*[Insert Position and name of NHS Foundation Trust]*

[Assurances required where an acute NHS Trust or NHS Foundation Trust is to acquire a GP practice]

[ON HEADED PAPER OF THE PCT]

## **ASSURANCES PROVIDED BY [INSERT NAME OF PCT]**

### **ASSURANCES**

1. The PCT provides the CCP with the following Assurances for the purpose of mitigating the adverse effects on patients and taxpayers which may exist in relation to the Transaction:
  - i. The PCT will monitor and analyse the following information relating to each patient that needs to be referred for Treatment: (i) the type of treatment required; (ii) the trust to which the patient is referred; (iii) the name of the referring GP practice; and (iv) the category of the referrer, and compare this information with previous information gathered before the merger, examining changes in patterns accordingly.
  - ii. The PCT will also monitor the referrals from the Merged Organisation that flow through the Choose and Book System.
  - iii. The PCT will monitor the quality of choice being offered to patients who require referrals from the Merged Organisation. To do this, the PCT will use patient experience information from patient surveys (both national and local) and information from their [*Patient Advice and Liaison Service*]<sup>1</sup> and Local Involvement Networks as further sources of information.
  - iv. If there is any indication that the Merged Organisation is not offering choice appropriately, then this will be investigated in more detail and any such investigation may involve a specific patient survey and further analysis of the relevant data.
  - v. The PCT acknowledges that it may be appropriate to appoint an independent 'Choice Adviser' to monitor the quality of choice being offered to patients who require referrals from the Merged Organisation. If the PCT considers an appointment necessary, the PCT will notify the Merged Organisation and make arrangements for the Merged Organisation to reimburse the PCT for the costs of employing the 'Choice Adviser'.
2. The PCT will store all the information collected in accordance with paragraph 1 above 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.
3. The PCT confirms that prior to executing these Assurances it has shared a copy with the GPs from the GP Practice.

### **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 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.

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<sup>1</sup> [Note: PCT needs to consider whether patient experience information is gathered via a Patient Advice and Liaison Service. If not, the PCT needs to insert a more appropriate reference.]

5. The PCT shall cooperate fully with 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**

6. 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**

7. 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**

8. For the purposes of the Assurances:

‘Assurances’ means the assurances contained in this document;

‘CCP’ means the Cooperation and Competition Panel or any successor body (as applicable);

‘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;

‘GP(s)’ means the general practitioners responsible for facilitating patient choice of Treatment for the Merged Organisation (through the use of Choose and Book System);

‘GP Practice(s)’ means *[insert name of relevant merging GP practice or practices. Note that if more than one GP practice is merging, then the references to ‘GP Practice’ will need to be plural]*;

‘Merged Organisation’ means the GP Practice and the NHS Trust on completion of the Transaction;

‘NHS Trust’ means *[insert name of Trust]*;

‘PCT’ means *[insert name]* Primary Care Trust; and

‘Transaction’ means proposed transfer of the GP Practice, currently managed by the PCT, to the NHS Trust;

**Signed:**

*[Insert Name]*

*[Insert Position and name of PCT]*