



## Churchill Medical Centre and Kingston Primary Care Trust

### Intention to proceed to a Phase Two Investigation

#### EXECUTIVE SUMMARY

1. The Cooperation and Competition Panel (CCP) has reviewed the complaint by Churchill Medical Centre (CMC) and the response to the complaint by Kingston Primary Care Trust (Kingston PCT). The information that has been received in the first part of this inquiry has raised a number of issues that warrant further investigation before the CCP can reach a view on whether or not there has been a breach of the relevant provisions of the Principles and Rules of Cooperation and Competition (the Principles and Rules).<sup>1</sup>
2. Given that the CCP is not in a position to dismiss the conduct complaint by CMC at the end of Phase One, the CCP intends to proceed to a Phase Two investigation.

#### BACKGROUND

3. On 7 July 2009 the CCP accepted a conduct inquiry submitted by CMC in relation to the conduct of Kingston PCT.<sup>2</sup>
4. On 18 March 2008, Kingston PCT informed CMC that they were not permitted to open a new branch surgery at 164 Tudor Drive as to do so would breach the terms of CMC's contract with Kingston PCT. On 14 July 2008, CMC was notified that it would not be permitted to open the branch surgery due to impact on existing services and the fact that there is no requirement for further PMS or GMS services in the area. On 27 March 2009 a letter was sent by Kingston PCT to CMC stating that it was acting within its powers in disallowing Churchill to open the branch. In this letter Churchill was also requested to provide its business case for opening a branch surgery at 164 Tudor Drive. CMC provided the business case to Kingston PCT on 20 June 2009. We understand from Kingston PCT that this business case is under consideration.
5. In its application to the CCP, CMC submitted that Kingston PCT behaved anti-competitively and in breach of Principle 4 Rule 2 by not giving CMC permission to open a branch surgery at 164 Tudor Drive, Kingston. CMC suggested that this has led to a reduction in patient choice. On 21 July 2009 Kingston PCT responded that it has adhered to the requirements of its Standing Orders to achieve best value for taxpayers' money in the commissioning of services to meet the needs of its entire patient population. The CCP also received a submission from AT Medics, an

---

<sup>1</sup> [www.ccp-panel.org.uk/content/Principle-and-rules-for-Cooperation-and-Competition.pdf](http://www.ccp-panel.org.uk/content/Principle-and-rules-for-Cooperation-and-Competition.pdf)

<sup>2</sup> Notice of Acceptance, [www.ccp-panel.org.uk/content/cases/Churchill-Medical-Centre-and-Kingston-Primary-Care-Trust/Notice-of-Acceptance.pdf](http://www.ccp-panel.org.uk/content/cases/Churchill-Medical-Centre-and-Kingston-Primary-Care-Trust/Notice-of-Acceptance.pdf).

interested party in this inquiry, which stated that the establishment of a branch practice by CMC at 164 Tudor Drive would have a significant impact on their practice situated at 192 Tudor Drive.

6. After reviewing the application, response, third party submissions and other information we requested from CMC and Kingston PCT, we set out the key issues in a letter dated 6 August 2009 to Kingston PCT for their response. We also invited comment from CMC and NHS London on the issues letter.
7. This paper sets out the key issues raised by the conduct, the relevant responses the CCP has received and explains why the Panel considers that further investigation is warranted.

## ISSUES

8. The conduct under consideration in this inquiry is the refusal by Kingston PCT to permit CMC to open a branch practice at 164 Tudor Drive (the Conduct).
9. The CCP assesses whether or not the Conduct is consistent with the Principles and Rules. The Conduct we are investigating in this case may be a breach of Principle 4, Rule 2:

### *Principle 4*

Commissioners and providers should foster patient choice and ensure that patients have accurate and reliable information to exercise more choice and control over their healthcare.

### *Rule 2*

Providers, referrers to and commissioners of NHS services must not restrict choice via collusive behaviour or any other action.

10. The CCP's draft interim conduct guidelines set out a cost-benefit framework for the assessment of conduct under this Principle.<sup>3</sup> That is, where conduct may give rise to costs to patients and taxpayers as a result of a loss of choice or competition, then these will be weighed up against any benefits to patients or taxpayers that may arise from the conduct. The CCP will then take a view on whether the conduct is likely to have resulted in a net benefit to patients and taxpayers.<sup>4</sup>
11. A PCT is required to take account of a number of factors in addition to the Principles and Rules when making decisions on whether or not a new branch should be permitted to open. This includes obligations in its Standing Orders related to achieving value for money from resources available and using to the best effect the funds available for commissioning healthcare, developing services and promoting health to meet the needs of the local population. In this inquiry the CCP will have regard to the context of the wider PCT considerations.

---

<sup>3</sup> Conduct may give rise to costs to patients and taxpayers if it diminishes patient and commissioner choice and competition. As set out in the *Framework for Managing Choice and Competition*, patient choice and competition in the NHS can be expected to improve quality and safety in service provision, improve health and well-being, improve standards and reduce inequalities in access and outcomes, lead to better informed patients, generate greater confidence in the NHS, and provide better value for money.

<sup>4</sup> CCP, *Draft interim guidance on the assessment of conduct* (January 2009), paragraphs 6.3-6.5.

12. The CCP will consider the impact of the Conduct and specifically whether it increased or decreased patient choice and competition. Conduct can give rise to adverse effects on patients and taxpayers if it diminishes patient choice and competition. The CCP will have regard to possible benefits from the avoidance of costs that would be incurred by the PCT to add a new branch and the possible impact on the allocation of funding for healthcare in the PCT area.<sup>5</sup>

### ***Adverse effect on patients and taxpayers***

13. The Conduct could reduce patient choice and competition if it has the effect of preventing the expansion of the supply of primary care services in Kingston PCT. This loss of choice and competition could adversely affect patients and taxpayers. A reduction in patient choice and competition can ultimately be expected to reduce efficiency, service, quality and innovation in an area.

14. If CMC's branch surgery were permitted to open, the choice for local patients would be to register with:

- i) AT Medics at 192 Tudor Drive;
- ii) a branch surgery at 164 Tudor Drive with a main surgery over a mile from the branch; or
- iii) another surgery altogether.

15. CMC has noted that around 1500 of its patients are within the KT2-5 and TW10 postal codes. For these patients, CMC's main surgery is over a mile away and CMC has stated that these patients would be better served by the branch surgery at 164 Tudor Drive since it would provide improved local access.<sup>6</sup> If the branch is not permitted to open this could potentially affect around 1500 patients currently registered with CMC.

16. The scale of this impact is unclear because it is likely that the branch surgery would have more limited services and opening hours than CMC's main surgery. This may require at least some patients in KT2-5 and TW10 to continue to travel to the main surgery for some services. CMC has responded that patients will need to travel for urgent out-of-hours care and some specialised procedures such as minor operations or anticoagulation.

17. However, in addition to the possible loss of choice for patients of CMC, patients of other nearby surgeries could also be adversely affected if the branch were not permitted to open. We would expect nearby surgeries to respond to increased patient choice and competition from a new branch, giving rise to wider benefits for patients and taxpayers.

---

<sup>5</sup> Where the CCP finds that there are no costs to patients or taxpayers arising from conduct, it will not necessarily critically analyse patient or taxpayer benefits ascribed to the conduct by the parties.

<sup>6</sup> CMC has carried out a consultation exercise with its patients, which supports this statement. The results of the consultation were set out in CMC's business case provided to Kingston PCT to support it opening a spoke surgery in Tudor Parade, June 2009.

18. Kingston PCT has told us that its duty is to commission services to such extent as it considers necessary to meet all reasonable requirements in its area.<sup>7</sup> It does not consider it necessary to commission additional services because there are already four surgeries located within around one mile of the proposed new surgery (one of these is CMC) and all of these have open patient lists. Kingston PCT considers that this number of surgeries indicates that patients have a comprehensive choice of surgeries and services. Kingston PCT has also noted that because of a recent tender resulting in the appointment of AT Medics to 192 Tudor Drive, it does not consider that there is any need to commission additional services in the area.
19. On the other hand, CMC responded that the assessment undertaken by Kingston PCT for the purposes of the recent tender did not take account of the need of those patients based near Tudor Drive and that the PCT has acknowledged that: (i) CMC operates in an area that is half the expected floor space it would be entitled to operate from and; (ii) there was no room for expansion at CMC's existing central surgery.
20. Kingston PCT have submitted that to allow existing providers in an area to expand whenever they identify a perceived desire for additional services could lead to a reduction in new (and possibly more innovative) providers and even risks leading to a situation where competition is restricted and innovation is stifled because existing providers must be permitted to open surgeries on request since this increases patient choice, rather than allowing PCTs to competitively tender for primary care services.
21. Both Kingston PCT and AT Medics have told us that if CMC were allowed to open a branch practice at 164 Tudor Drive then this could have an impact on the practice operated by AT Medics at 192 Tudor Drive. This could lead to a reduction of income for AT Medics which could, in turn, result in a reduction of staff, services or opening hours. This could have an adverse impact on patients.
22. In addition, we have been told by Kingston PCT that there is a risk that if there was a negative impact on patient numbers at AT Medics then that practice may not be able to provide certain services. For example, to fit intrauterine contraceptive devices a practitioner is required to undertake a minimum number of procedures each year in order to maintain accreditation. Without sufficient patient numbers this service could be lost to all patients of a low patient population practice. This could reduce the range of services for those patients currently registered with AT Medics.
23. We note that AT Medics inherited an existing patient list when it started providing services. Kingston PCT told us that practices tend to take around one year to become established and that the existence of a high profile campaign by CMC to support the opening of a branch practice on Tudor Drive may make it more difficult for AT Medics to establish itself in the area.

---

<sup>7</sup> Section 83, NHS Act 1983.

24. CMC has responded that the branch surgery is an attempt by the practice to cater for the needs of their existing patients and as such there would be no threat to the effectiveness or viability of the other practice at Tudor Drive. They also note that the new surgery in Tudor Drive will have been open for a year in October 2009 and hence has already had an opportunity to initiate and develop services.

*Our preliminary view on a possible adverse impact on patients and taxpayers*

25. The Conduct may reduce choice and competition in the relevant local area, which in turn could lead to lower levels of service, quality, efficiency and innovation.

26. In general, we note that expansion by existing providers may be harmful to competition only if they have a very significant advantage in attracting patients to a new branch compared to possible entrants,<sup>8</sup> or if demand is not growing and costs of entry and expansion are significant.

27. On the basis of the information we have seen, the Conduct may have adversely affected those patients of CMC who would otherwise have benefited from the branch surgery. In addition, we have been told that CMC is an innovative practice with high service levels and a strong reputation in the area. This, on its own, could suggest that the opening of a branch surgery by CMC may impact positively on primary care services in the relevant area. However, in a situation where there already is a significant degree of competition and choice for patients, the decision to not allow a new branch surgery to open might be mitigated because there is only a limited adverse effect on competition. The potential adverse impact on AT Medics is also relevant to this consideration.

28. Based on the information that we have to date, the Conduct does not appear to result in direct detriment to taxpayers, because it has not created any new costs for Kingston PCT. That is, there does not appear to be any direct incremental cost to Kingston PCT resulting from its decision not to allow a new branch practice to open and we consider it unlikely that the Conduct would have reduced the number of available bidders for primary care contracts. However, we do not yet have a view on whether the Conduct has resulted in less competition for the provision of primary care services in the local area. We would ultimately expect less competition to result in greater cost to Kingston PCT and the taxpayer.

29. The responses we have received from all the stakeholders throughout the first phase of our inquiry have emphasised the complexity of the impact of the Conduct on patients. We have received a significant amount of information from Kingston PCT which will assist us with our analysis. We have also identified other information which we will need to obtain in order to complete our analysis.

30. We are aware that there are a number of local practices serving the relevant local area and Kingston PCT has responsibilities to its entire area. To determine the extent to which competition and choice might have been reduced by the Conduct, we intend to consider the

---

<sup>8</sup> In this context a significant advantage could be obtained through a number of factors including, for example, very strong reputation effects or possible regulatory barriers to entry that tend to make it easier for existing providers to expand.

structure and characteristics of the local market(s). This will be helpful when we are reaching a view on the nature of competition between GP practices and the possible scale of detriment to patients. In this context, we also wish to consider whether or not there is need for more primary care services in the relevant area and if choice has been unduly restricted.

31. We will need to assess whether or not the effectiveness or viability of an established practice at 192 Tudor Drive would be materially affected by the opening of a branch practice by CMC, and whether this adversely affects patient choice and competition.

### ***Benefits to patients and taxpayers***

32. It could be that the Conduct results in benefits to patients if the money saved by not permitting CMC to open the branch surgery is deployed to provide services to other patients within Kingston PCT. Specifically, it is possible that these other patients might benefit from funding that would otherwise be committed to the CMC branch practice and the patients of the CMC branch practice. We understand that Kingston PCT has a duty to provide primary care services to all of its population and appreciate that it should do so in a way that avoids (or addresses) healthcare inequality and represents best value for money.
33. Kingston PCT told us that they are required to only commission services which fulfil the reasonable requirements of the area. Otherwise there are financial implications for the NHS (and ultimately the taxpayer) because GP surgeries have the right to apply for significant sums in rent reimbursement, rates, water and IT support every year. Kingston PCT has told us that if it allowed all practices which requested permission to open surgeries, it would not be complying with its statutory duty to commission services to meet the health needs of the entire local area. CMC has responded that it has made clear to Kingston PCT that all costs associated with the project would be borne at the risk of CMC and hence there would be no extra potential cost to the taxpayer.
34. Kingston PCT has stated that permitting CMC to open the branch surgery would have financial implications for Kingston PCT, for example monitoring and contract management, IT-related expenditure and reimbursement of rent. We understand that the additional expenditure to the PCT associated with the operation of the branch is in the region of £20,500 per annum and that this covers rent, rates, water and IT support, notwithstanding any other costs that there might be. We have been told by CMC that they are not seeking reimbursement for expenses associated with the branch surgery. CMC also stated that they had previously been informed by Kingston PCT that no funds were available to increase support for infrastructure reimbursement and so their intentions were for the proposed branch practice to remain cost neutral (from the perspective of Kingston PCT).
35. Kingston PCT told us that they have agreed a minimum income guarantee for a limited period with AT Medics. This has been provided because it was anticipated by Kingston PCT that the list size at that practice would fall slightly due to list cleansing and because there would need to be an increase in staffing levels (especially nursing and management) above those that had been

provided by the original doctors running the practice. This minimum income guarantee will, for the period it is valid, increase the cost per patient registered at AT Medics, if the size of its patient list declines sufficiently. However, we note that Kingston PCT has already committed to the minimum income guarantee and the decision to not allow CMC to open the branch practice merely reduces the likelihood that this increased cost per patient will be incurred. We will need to consider further whether any cost to Kingston PCT as a result of this guarantee could be attributable to the Conduct.

36. In addition, Kingston PCT has stated that to permit the opening of the branch surgery would jeopardise the effectiveness of AT Medics' practice. If so, we understand that the PCT may incur additional costs. For example, if the practice provided by AT Medics were to become unviable and ultimately close, Kingston PCT may need to undertake a new tender process. However, we note that CMC has told us that its intention is to service its existing patients and not to seek new patients.

#### *Our preliminary view on possible benefits to patients and taxpayers*

37. Our initial analysis shows that there are a number of factors which contribute to the total cost of a GP practice from the perspective of a PCT. To the extent that permitting a branch surgery to open would have a material negative impact on the effectiveness or viability of the practice at 192 Tudor Drive, this may impose incremental costs on Kingston PCT. In turn this could divert resources away from other patients in the Kingston PCT area. The incremental costs might also result in lower service levels and disruption to patients registered at 192 Tudor Drive. In this way, not permitting the branch to open may ultimately be beneficial to patients overall.
38. We note that there appears to be disagreement between the parties as to whether or not Kingston PCT will incur costs if it permits the branch to open. CMC have told us on several occasions that they are not seeking any costs in this respect, but Kingston has asked us to take certain costs into account in our analysis (see paragraphs 33 and 34 above).
39. The amount and impact of the various costs in CMC setting up a branch practice will need further analysis before we can reach a conclusion on whether there are benefits to patients or taxpayers resulting from the Conduct.

#### ***Procurement process***

40. The Conduct has to some extent been contemporaneous with the procurement process conducted by Kingston PCT for the provision of NHS primary medical service in North Kingston in 2008. CMC was unsuccessful with its bid for this contract and a local dispute resolution process was initiated. It appears that on 27 February 2009 the local PCT panel decided to not uphold any of the complaints that had been made about the tender process. It does not appear to be appropriate for us to consider the procurement process for the provision of NHS primary medical service in North Kingston in the context of this inquiry.

## **INTENTION TO PROCEED TO A PHASE TWO INVESTIGATION**

41. The Conduct raises potential concerns under the Principles and Rules. Since the Panel considers that further investigation is warranted we will proceed to a Phase Two investigation. The deadline for Phase Two is 24 December 2009.