

[This submission was updated on 24 July 2009 to correct some minor typographical and similar inaccuracies]

Submission to Cooperation and Competition Panel by Kingston Primary Care Trust

Introduction

NHS Kingston notes the Churchill Medical Centre (“CMC”) referral to the Co-operation and Competition Panel made on 2 July 2009 on the basis that NHS Kingston, formerly Kingston Primary Care Trust (“the PCT”), has consistently refused to allow CMC to open a branch surgery at 164 Tudor Drive for the provision of medical services pursuant to a Personal Medical Services (“PMS”) contract. The PCT has not permitted CMC to open these premises and refutes the claims made by CMC that this refusal and/or the PCT’s conduct has been anti -competitive and therefore in breach of Principle 4 of the Rules of Cooperation and Competition (“the Rules”).

1. Executive summary

The PCT gives appropriate consideration to applications to open branch surgeries by existing providers. This includes issues such as the impact on quality of services. For example, in the case of branch surgeries, the minimum standards for main practice premises need not necessarily be fully met and hours during which patients can access services may be much more limited, as in this case. Part of that consideration also involves a value for money test, as the opening of a branch surgery represents a cost to the PCT in terms of administration, which may include monitoring and contract management. In addition, if the PCT were to grant approval to CMC’s application, it is likely that the PCT would be obliged pursuant to the NHS (General Medical Services Premises Costs) Directions 2004 to reimburse the rent of the branch surgery as well as the rent of the practice which won the tender- effectively doubling its overhead in respect of the same patient group (given that this is the patient population that the practice wishes to compete for). It is the PCT’s view that these potential costs would not be in the interests of taxpayers.

The PCT is legally bound to adhere to the requirements of its Standing Orders to achieve best value for taxpayer’s money in the commissioning of services to meet the needs of its entire patient population. This means, among other requirements, that its resources should be allocated to serve the needs of patients in a way intended to achieve equality in healthcare.,

In this instance, among the other reasons set out further in this submission, it was the view of the PCT that the costs involved in the establishment of a branch surgery in immediate proximity of an existing practice with capacity to adequately serve the needs of the patient population of its catchment area did not represent value for taxpayer’s money, as it did not address an unmet need in patient care, and to do so would have represented a breach of the PCT’s obligations to adhere to the requirement to achieve best value set out in its Standing Orders. For example, to pay for 2 sets of overheads in respect of practices in close proximity would divert resources away from patient care and would therefore have a negative impact on the wider patient population.

Before a final decision was taken, this was weighed against the advantages of patients being able to choose between providers in the area and the PCT's view was that its resources should be carefully applied for the benefit of all patients in the PCT's administrative area. Patient choice is not simply concerned with the number of providers; it is also about the number of actual services available to them.

Furthermore, to agree to the opening of the branch surgery in question would lead to a healthcare inequality in Kingston. CMC is a significant player in the local healthcare market and it was considered that its opening of the branch surgery in question may have threatened the viability of its competitor practice. It is the PCT's view (having considered all available guidance) that practices which are non-viable are unlikely to be in the best interests of patients in the catchment area because they are unlikely to be in a position to be able to maintain the desired comprehensive range of services for patients at appropriate levels of quality and availability. In that instance, CMC would in effect be subverting the competitive process used to procure the competitor practice (in which it participated but failed to win) and could either destabilise that practice or force that practice out of business, leading CMC closer to a monopoly position in the area, which would be undesirable.

The application was therefore refused.

2. Background

The PCT is responsible for the commissioning of services that meet the needs of our local population from providers who are best able to meet these needs.

The PCT has 28 GP practices within its area, delivering care to 187,000 registered patients.

CMC is the third largest practice contracting with the PCT, having been early adopters of developments such as fund-holding and personal medical services. CMC has been keen to expand their services, winning a local tender some years ago for a small vacant practice in Surbiton, and participating with another large practice planning to develop a large shared health centre within the grounds of Kingston Hospital.

In 2006, there were 29 GP practices providing care to the registered population of the PCT. Two small practices sharing the same premises were situated at 192 Tudor Drive. One was a two-doctor (job sharing partnership) practice and the other a single-handed practice. In February 2007, it became necessary for the PCT to urgently arrange for caretaking arrangements to be put in place in the larger of the two practices, following a number of performance issues and the resignation of the two job sharing partners.

CMC provided locum services for the larger practice at 192 Tudor Drive from February 2007 to September 2008, for which the PCT is grateful as this secured services to patients over a period of considerable uncertainty.

When the single handed practitioner at 192 Tudor Drive withdrew from practice in October 2007, the PCT again turned to CMC to provide locum services on a temporary basis

Following representations from the Local Medical Committee, in early October 2007 the PCT undertook a local competitive tendering process among its training practices

in relation to locum cover at the smaller of the two practices at 192 Tudor Drive. The Groves Medical Centre won that tender and took over the role of locum for the smaller practice from CMC on 12 November 2007.

In the week between the announcement of the outcome of this local tender and the transfer of responsibilities to the successful practice, CMC used the patient database of the small practice at 192 Tudor Drive to write to all patients, inviting them to leave their current practice and join CMC. At this time, the single handed doctor was still the contractor/provider and CMC was acting as locum directly on behalf of this GP.

The letter generated a good deal of mistrust and confusion amongst patients. However, it appears that neither the GP nor his aggrieved patients took the advised action of making representations to the Data Commissioner regarding the matter. A copy of the letter dated 5 November 2007 sent from CMC to patients is attached at **annex 1**.

In the PCT's view, the sending of this letter demonstrates CMC's ambitions in respect of a Tudor Ward practice, their lack of regard for the requirements of Data Protection and disregard for the competitive process which had been conducted. CMC's conduct in writing to these patients also put the interests of CMC before those of patients, contrary to the provisions of the GMC's guidance, Good Medical Practice (paragraphs 74-76).

Churchill Medical Centre, having been providers of locum services at 192 Tudor Drive, would have had access to information about the difficulties being experienced by the PCT in deciding how best to proceed with one small vacant practice and one single handed practitioner who was himself experiencing difficulties. It was not until 7 January 2008 that the single handed doctor at 192 Tudor Drive gave notice of his intention to resign his contract. The resignation was to become effective on 1 April 2008. Only at this point did the PCT know that it could consider tendering the two practices as one viable unit.

Presumably based on the information CMC had obtained by virtue of their position as locum provider, in around November/December 2007, CMC took a commercial decision to develop surgery premises in a small shop unit at 164 Tudor Drive. They did not request formal agreement from the PCT to develop these premises, which were outside their agreed practice area. The PCT undertook an analysis of CMC's history of registrations at their main site in Clifton Road and their other branch surgery in Surbiton from key post codes, prior to them undertaking the locum cover at 164 Tudor Drive, during their locum cover and after. This breakdown is included in **annex 2**. This information demonstrated a significant growth in their registered population from an area that lay outside of their agreed practice area, which suggests that CMC were registering patients in anticipation of being permitted to open the branch surgery, despite no agreement having been requested, or obtained from the PCT.

Most unusually for a GP practice, CMC committed to, and invested in, the development of 164 Tudor Drive before the outcome of the tender was known and at time when the PCT was unable to give a commitment to them regarding whether such a practice could be opened. It would have been unfair to all bidders if the PCT had given permission to open these premises during the procurement process. Once the process was completed and the tender awarded to another bidder in July 2008, the premises purchased by CMC at 164 Tudor Drive were surplus to the requirements of the PCT in meeting the needs of the patients in the area.

A local councillor, Councillor David Cunningham, held an open meeting during November 2007 to talk to local people about the future of the two practices at 192 Tudor Drive. As a result of this meeting, the Tudor Ward (Kingston) Patients' Association was established. This Association sought the views of local residents, with the aim of ensuring the continued provision of general medical services in Tudor Drive. The resulting petition, which was facilitated by the Tudor Ward (Kingston) Patients' Association, set out views on plans for the Tudor Ward, was signed by approximately 500 local residents and prospective patients, and was presented to the PCT on 25 January 2008 at a meeting between senior officers of the PCT and Association members. Two of their members were included as full members of the selection panel during the competitive tender process.

The PCT undertook a lengthy and detailed public engagement process regarding the views of local people as to their needs in the Tudor Ward.

At the start of the competitive process, in February 2008, the PCT wrote to all families registered with the doctors at the Tudor Drive Surgery, enclosing a questionnaire, in order to seek opinions from patients on their priorities for primary care services at Tudor Drive, specifically in relation to the following issues:

- access;
- availability of male and female doctors;
- nursing services;
- ancillary services; and
- the opportunity to list other important services.

A copy of the letter and a summary of the responses received are attached at **annex 3 and annex 4**.

On 27 February 2008, a public meeting was held regarding the outcome of the questionnaire and provide a further opportunity for people to influence our planning at Tudor Hall, the community hall next door to the Tudor Drive Surgery. The attendees were addressed by the PCT's Chief Executive, Medical Director and other managers from the PCT. Local Councillors and the MP for North Kingston (Richmond Park Constituency) were present. Following a short presentation from the Chief Executive, the majority of the meeting was given over to questions and comments from the audience. The minutes of this meeting are attached at **annex 5**.

The notes of the meeting and the outcomes of the questionnaire and the information included in the petition presented by the Association were subsequently used by the PCT to shape the services that were to be commissioned.

A Memorandum of Information (**annex 6**) in respect of the proposed new practice was published on 10 March 2008 at the commencement of the formal procurement process. This contained a profile of Tudor Ward, the area served by the Tudor Drive Surgery. This included demographic details and details of other surgeries within the area (**annex 6, pages 9 and 10 and annex 7a and 7b**). This information was provided to assist bidders in assessing the level of service they would need to provide, based on assumptions about the number of patients who were, or could be expected to be, registered at the surgery.

CMC submitted a bid for the Tudor Ward, based on the use of the practice premises they had purchased at 164 Tudor Drive as a branch surgery.

The PCT completed a fair and open tender process, which took the views of local residents, including patients, into account, and, on 21 July 2008 awarded a contract to AT Medics. They took over the two practices at Tudor Drive on 1 October 2008.

3. Specific response to points raised by CMC

3.1 Churchill Medical Centre approaches the PCT re: opening a branch surgery

Two representatives of CMC did meet with the Chief Executive of the PCT, David Smith, on the 18th December 2007. Dr Peter Smith and Dr Charles Alessi clearly articulated that their discussion was “off the record and highly confidential”. They described how they intended to purchase the lease of a property in Tudor Drive Parade and convert this into a branch surgery. They stated that they intended to fund this development by themselves and that there would be no call on the PCT for financial support.

David Smith was aware of the uncertainty relating to the future of two adjacent practices in Tudor Drive and that a formal commissioning decision would need to be made in the very near future. David Smith was therefore not in a position to either support or dissuade CMC in this venture. He therefore stated that CMC would be proceeding with their plans at their own risk. David Smith considered the discussions to be high level and speculative and therefore did not request further information or discuss the operational details of CMC applying formally to the PCT in respect of opening a branch surgery, in line with Direction 7 of the GP Contract or PMS Regulations 2004 Part 5 paragraph 11 (1b).

Given CMC’s status as an experienced provider of general medical services, they would have been aware of the requirement to obtain formal permission from the PCT to vary its PMS contract in order to enable it to open a branch surgery.

3.2 PCT decision to tender services at neighbouring practice in Tudor Drive (January 18th 2008)

The PCT did make a decision to proceed to a formal procurement process in respect of the provision of general medical services in Tudor Ward and note that CMC was aware of the PCT’s intention from 18th January 2008.

This decision was made following a wide patient consultation regarding the type of care that patients wished to access locally.

3.3 PCT agrees planning application without objection

In February 2008, the Managing Partner of CMC, Mrs Susie Puffett, telephoned Mrs Jennie Widdowson, Primary Care Development Manager of the PCT, at her home, to request her opinion on CMC’s planning application. Mrs Puffett was told that the PCT was not in a position to offer support to a planning application on the basis of an ‘off the record’ phone call. The practice was asked to put their plans for the premises in writing for the PCT to consider. No such letter or communication was forthcoming.

A few days later, the Planning Department at the Royal Borough of Kingston Upon Thames sought the views of the PCT regarding CMC’s application for change of use in respect of the premises they had purchased at 164 Tudor Drive. The PCT’s response on 19th February 2008, which stated that the PCT had “no objection” to the application, was made in light of its intention to formally tender for a new general medical service provider in the Tudor Ward. It was considered to be unfair and

inappropriate for the PCT to support or object to this application, in view of the fact that CMC could submit a bid. Had the PCT made any comments or indicated a view on this application, it is possible that this would have been the subject of a future challenge by another bidder in the tender process on the basis of unequal treatment.

As set out above, CMC's decision to purchase and develop premises at 164 Tudor Drive, in the absence of any formal application to the PCT or any formal confirmation that such premises would be allowed to open, was entirely at CMC's own commercial risk, a fact of which CMC were aware.

3.4 PCT refusal to add branch surgery to PMS contract

On the 29th February 2008, the PCT received a request from CMC for an N3 connection for the Tudor Drive premises. An N3 connection is a secure electronic data line linking NHS sites, including GP practices. This was in advance of the release of the PCT's Memorandum of Information, which was to be published on 10 March 2008, although after CMC had been informed of the PCT's intention to formally tender the practice. The request was also made in the absence of any formal application by CMC to the PCT to vary their existing PMS Contract in order to open a branch surgery. The request was therefore refused.

CMC then applied in brief for a variation to be made to their existing PMS contract on 25 March 2008, **annex 8**. The variation was to include the use of the new branch surgery at 164 Tudor Drive. However, by this stage the PCT was planning to undertake reviews of all PMS contracts within its area, and a formal tender process had commenced in respect of the Tudor Ward. The PCT therefore advised CMC of their right to take part in the tender and alerted CMC to the proposed review of their existing PMS contract and the potential ability to vary their contract during that review.

The allegations made by CMC that the PCT is biased towards it are wholly unfounded. It is correct that CMC attempted to raise the issue of the proposed branch surgery at 164 Tudor Drive at a meeting with the PCT in June 2008. At this time, the tender process in respect of Tudor Ward was still active, and it would have been entirely inappropriate for the PCT to have entered into discussions with one of the bidders in this process regarding the premises which formed part of their bid. In fact, such a discussion could have been the subject of a successful challenge by other participants in the tender process.

In relation to the allegation that a member of the PCT's staff informed a bidder that CMC would not be allowed to open its branch surgery, the PCT informed bidders in the tender process that the PCT had not granted permission for CMC's premises to be used for the provision of NHS services, and that CMC had been advised that they have taken the premises at their own commercial risk (see responses to questions (1) and (14) in the tender "Q&A" document, attached as **annex 9**).

It is refuted that a member of the PCT's staff provided any of the bidders with any additional information other than that contained within the Q&A document, and a signed witness statement regarding this matter has been included at **annex 10**.

3.5 PCT refuses to allow branch to open on basis of competition

From mid May 2008 onwards, CMC displayed large posters in the windows of the premises at 164 Tudor Drive, declaring that a new NHS GP surgery would be “opening here soon”. These posters included the NHS logo.

On 4 June 2008, the Surrey Comet carried an item on the tender process. The final paragraph of this stated that “The winner will be announced on 21 July, the day the new Churchill Medical Centre is expected to open.” Opening a branch then would have taken place in the absence of any formal approval from the PCT, and in breach of CMC’s existing PMS contract. A copy of this item, and a piece from the Comet’s website, dated 3 June 08 are attached at **annex 11**.

As part of the formal procurement process for the Tudor Drive Surgery the PCT identified its preferred bidder on 2 July 2008, notified all bidders on a confidential basis on 3 July 2008 and made a formal public announcement at the Board meeting on 21 July 2008.

In light of the decision that had been made, and the actions of CMC outlined above, the PCT did not wish to wait until the PMS review meeting before alerting CMC to the situation. The letter from the PCT to CMC dated 14 July 2008 reflected this position.

3.6 Tender awarded after selective contact with candidates

The PCT refutes all allegations that any bidder or other party was informed that CMC would not be permitted to open their proposed branch surgery, or that the PCT was guilty of collusive conduct during the tender process (see further under 3.4 above)

If CMC considered that it had valid grounds on which to challenge procedural aspects of the tender process, or the fairness of this process, it had an opportunity to do so following the outcome of the tender, but did not bring such a legal challenge.

Bidders invited to submit full tenders were invited to view the surgery at 192 Tudor Drive on 28 May 2008. These short inspections were attended by Jennie Widdowson, the PCT’s Primary Care Development Manager. She was asked by a representative of A T Medics, the eventual winners of the process, about the premises at 164 Tudor Drive. She confirmed the information given in the Q&A pack. The PCT refers to the witness statement attached at **annex 10,10a and 10b** in this regard.

3.7 PCT refuses to discuss premises further

The PCT’s unwillingness to discuss the issue of the branch surgery with CMC at a further meeting on 28th September 2008 was consistent with the PCT’s view that CMC had been provided with an opportunity to take part in the competitive process for a Tudor Ward practice, which could have resulted in it being entitled to open a branch surgery, but that it had been unsuccessful.

3.8 Churchill Medical Centre approaches NHS London as no dispute process received from PCT

CMC claims to have delivered and e-mailed the PCT on 19th November 2008 with a comprehensive dispute resolution document. There are no records of either version of this document having reached the PCT. A comprehensive investigation was carried out to identify whether routine processes had failed and the documentation had gone astray in the building. Firstly, the process for recording all hand delivered mail at reception was checked and secondly scrutiny of the electronic mail service

was conducted. No evidence was found to indicate that the documents had ever reached the building.

The PCT was subsequently made aware by London SHA that they had been contacted by CMC regarding their dissatisfaction with the tender process for the Tudor Ward. London SHA advised that local resolution should be attempted in the first instance and sent CMC relevant paperwork to complete. The PCT does not have any record of CMC contacting it requesting a copy of the Local Dispute Resolution Process.

However, at around this time, the PCT did have to make press releases in response to CMC publicising their grievance regarding the PCT's decision not to allow CMC to open a branch surgery in Tudor Drive.

3.9 Attempt at Local Dispute Resolution

The PCT did receive CMC's documents for the local dispute resolution process on 19th January 2009. On receipt, the PCT established a formal Local Dispute Resolution Panel, chaired by a Non Executive Director. The Panel of three included an Executive Director who had not been associated with the tender and an independent member who was external to the PCT and a retired GP. An independent note taker was engaged and a recording was made of the proceedings that took place on 20th February 2009.

The PCT wholly refutes that the local dispute resolution meeting held on 20th February 2009 was conducted in a confrontational and intimidating manner, and the PCT's view is that this opinion is expressed by CMC as a result of its dissatisfaction with the Panel's decision.

The outcome of the Local Dispute Resolution was that the Panel considered the tender process conducted to have been robust, but the Panel also suggested that CMC should consider submitting a formal business case to the PCT in respect of the branch surgery for due consideration.

The Panel did indeed seek legal advice on one issue and did not feel it was appropriate to release this under a Freedom of Information request made by CMC which was received by the PCT on 8 May 2009, consistent with rules of legal privilege.

CMC's business case was received on 20 June 2009 and is currently being considered by the PCT.

3.10 Continuing refusal to allow branch and local consultation

As set out above, the PCT has not approved the use of 164 Tudor Drive as a branch surgery of CMC.

Under the National Health Service Act 2006, PCTs must exercise their powers so as to provide primary medical services within their area, or secure their provision, in order to meet all reasonable requirements. It is therefore the function of the PCT to decide whether there is sufficient provision of primary medical services within its area.

PCTs are also required to operate within a prescriptive regime which governs the way they can seek to provide services in order to effectively discharge their legal

duties. It is in this context that PCTs use detailed, binding contracts with GPs to secure the delivery of medical services. These are either General Medical Services contracts, which are agreed nationally, or section 92 agreements (otherwise referred to as Personal Medical Services contracts) which take account of local needs.

These contracts specify, amongst other matters, the particular locations from which services can be offered by GP contractors and, as a result, this contractual term cannot be altered without the consent of the other party to the contract, the PCT.

In view of the framework in which they operate, PCTs cannot simply agree to variations to GP contracts when requested, and must instead take all relevant factors into account when making a decision using, where necessary, processes intended to promote competition through appropriate means.

If, as in this case, a GP contractor is seeking a PCT's agreement to a contractual variation which will necessarily affect the provision of services, such as opening an additional premises, the PCT is required to consider whether agreeing to such a change would be appropriate in all the circumstances. There is no "right" for contractors to open new premises at will and, if this were the case, there would be potentially disastrous financial consequences for the NHS more widely.

The PCT is aware that CMC intend to offer limited opening hours at the proposed branch surgery, meaning that a reduced range of services would inevitably be offered there.

In this instance, the PCT identified that a requirement for a new practice existed, and the PCT was therefore required to follow competition rules and instigate a formal and robust procurement process in order to fill the vacancy in question, which it did, in compliance with Principles 1 & 3 of the Rules. In fact, the PCT had identified the need for additional services and had started the competitive process before CMC first requested a contract variation (but after CMC would have become aware of the PCT's intentions in this regard).

Procurement rules apply to public contracts in order to maximise competition by opening a particular market to a fair and open process, and CMC took part in the tender conducted by the PCT, but was not successful. In these circumstances, the PCT agreeing to a contract variation notwithstanding CMC's failure to succeed in its bid would have had the effect of circumventing the formal competitive process, as well as potentially breaching Principle 1 of the Rules, and could have opened the PCT to challenge.

Part of the PCT's consideration of CMC's application involved a value for money test, as the opening of a branch surgery represents a cost to the PCT in terms of administration, which may include monitoring, contract management and is likely to include, for example, rent reimbursement. The PCT is legally bound to adhere to the requirements of its Standing Orders to achieve best value for taxpayer's money in the commissioning of services to meet the needs of its entire patient population. This means that its resources should be allocated to serve the needs of patients in a way intended to achieve equality in healthcare for the PCT's entire patient population and to maintain quality of existing services.

In this instance, the PCT took the decision that the costs involved in the establishment of a branch surgery in the immediate proximity of an existing practice with capacity to adequately serve the needs of the patient population of its catchment area did not represent value for taxpayer's money, as it did not address an unmet

need in patient care, and to do so would represent a breach of the PCT's obligations to adhere to the requirement to achieve best value set out in its Standing Orders. Additionally, to pay for 2 sets of overheads in respect of practices in close proximity would divert resources away from patient care and would therefore have a negative impact on the wider patient population.

If the PCT had consented to the contract variation requested by CMC (disregarding the potential breach of Standing Orders, procurement rules and competition principles which would result), the opening of a branch surgery would have affected the viability of the successful bidder's practice, thereby resulting in a reduction in patient choice and effectively allowing CMC to avoid the competitive process "by the back door".

The PCT undertook comprehensive enquiries of the local population with regards to their needs and wishes for primary medical services and appropriately tailored the tender to fit in with those requirements. In support of this point, copies of correspondence relating to this matter from Dr Harold Hughes of Tudor Ward (Kingston) Patients' Association is attached as **annex 12a and 12b**. This correspondence demonstrates the extent to which patients' views were taken into account by the PCT during the tender process, in order to maximise the utility of services and the level of choice presented to patients. However, it should be pointed out that the views expressed in Dr Hughes' correspondence are not necessarily those of the PCT, or matters of which the PCT has first hand knowledge.

This correspondence also expresses a number of the concerns which helped inform the PCT's decision to refuse permission to CMC to open its branch surgery following the tender process, including that such action would jeopardise the continued functioning and level of service provision at the Tudor Drive surgery.

Before a final decision was made, the PCT's inclination to refuse CMC's application was weighed against the advantages of patients being able to choose between providers in the area, and it was the PCT's view that its resources should be applied for the benefit of all patients in the PCT's administrative area.

The suggestion that competition had existed in the area before the recent tender, as a result of two adjacent practices is misleading. The two practices were formed as a direct result of a practice split in 2000, as described in **annex 10 paragraph 5**.

On 25 June 2009, the Local Health Overview and Scrutiny Committee received a petition from a local CMC patient in support of opening the branch surgery at 164 Tudor Drive, which was immediately passed to the PCT. On analysis, it showed that 773 people had signed the petition, with 17.3% of respondents either falling outside of the Ham and Tudor Ward area, or their responses illegible or duplicated. However, the information will be considered with the current business case.

4. Alleged infringements

Principle 4: Commissioners and providers should foster patient choice and ensure patients have accurate and reliable information to exercise more choice and control over their health care.

Churchill Medical Centre has referred the PCT to the Cooperation and Competition Panel alleging a breach of principle 4 of the Principles and Rules for Cooperation and

Competition (“the Rules”). We set out the PCT’s comments on the issues raised in principle 4 below.

Principle 4 requires PCTs to decide and agree with their respective SHAs which services should be subject to direct competition, the extent of such competition and how this should be secured (with regard to the Rules).

From the outset, the PCT kept the London SHA abreast of its plans regarding the two practices, via regular performance meetings. The SHA were therefore aware of the PCT’s intention to tender the services offered by the two practices and the nature of the tender process proposed.

The Rules require commissioners to specify the services they require, along with the requirements for access and quality of services. Patient choice is not simply concerned with the number of providers; crucially, it is also about the number of actual services available to them.

It is evident that, as commissioners, the PCT clearly specified the services that we required for the local population during the tender, and all documentation relating to the tender was available on the PCT’s website.

Under principle 4, the PCT is also required to engage transparently and constructively with a full range of providers.

In advertising the tender nationally, the PCT believes it engaged transparently and constructively with a full range of providers. The PCT received 32 expressions of interest, 13 pre qualifications questionnaires and 7 formal bids.

In response to the question of the PCT allowing and promoting free choice, the PCT’s view is that it has not limited free choice through its conduct in respect of CMC’s proposed branch surgery.

Patients within Tudor Ward are able to register with anyone of the 7 local practices serving the area. It should be noted that patients who live within Ham (whom CMC allege would be served by the opening of their branch surgery) are not entirely the responsibility of the PCT. Ham lies within the boundary of NHS Richmond and Twickenham. The PCT has contacted NHS Richmond and Twickenham to clarify the status of their plans for Ham residents. At this time, NHS Richmond and Twickenham is not seeking to increase GP access, because their local surgery in Lock Road has capacity. Therefore, patients from within this area who have registered with CMC, 133 people by June 2009, have chosen to register with a practice which lies some distance from where they live.

The PCT has finite resources and seeks to invest these funds wisely, demonstrating value for money. The PCT has commitments to funding the premises of a new local practice at Tudor Drive, the shape and type of services which it delivers having been determined by local people, and a formal competitive process having been conducted in accordance with Principle 1 of the Rules. The new practice has been in place for 9 months.

A local practice can take at least a year to establish itself. The new provider at 192 Tudor Drive has cleaned the list of patients, for example, by removing patients from the list who have moved or who have died, reducing the number of registered patients to 2,500. Allowing CMC to open a branch surgery at 164 Tudor Drive would

have a negative impact on the new practice. A statement from the new practice is attached at **annex.13**.

If the PCT were to allow CMC's branch surgery to open, there is a risk that the new practice would no longer be viable, despite the practice having successfully tendered for and won a contract. The PCT would then be required to re-distribute some 2,500 patients to remaining practices, as a further tender would be unlikely. Further, if CMC were to be permitted to open its branch surgery, the choice of services on offer at the successful bidder's surgery could be adversely affected as there may be insufficient numbers of patients to enable the practice to offer such services cost effectively.

In any event, the PCT (having considered all relevant circumstances) does not consider it is necessary to open another practice in the Tudor Ward in order to secure the delivery of services, and allowing CMC to open its branch surgery would lead to a duplication of services as well as costs, and would place the PCT in breach of its Standing Orders to achieve best value. If the PCT having made this assessment proceeded to permit the opening of the branch surgery knowingly in breach of its Standing Orders, it would be acting beyond its powers hence unlawfully. Furthermore, if there was a vacancy remaining, the PCT would have adopted a competitive tender process to fill this vacancy (including a patient consultation), rather than simply awarding the vacancy to CMC.

The alternative presented by CMC would amount to allowing a bidder which has been unsuccessful in respect of both locum services and the formal tender, to open premises when they have taken advantage to build up their list of local residents whilst acting in a position of caretaker. Patients who choose to register with CMC can do so at their main surgery.

Any losses to CMC which have arisen have resulted from CMC choosing to purchase and develop a new surgery at its own commercial risk, without any confirmation from the PCT that such a surgery would be allowed to open.

There is also the issue of the disregarding the terms and conditions of the PMS contract and other NHS regulations in omitting to seek prior approval. The impact of this would be to establish a precedent that would allow for any provider to undermine a tender process and set up a competitive service, thereby wasting valuable public resources.

In terms of resources, the PCT has considered the impact of these additional and unplanned premises at 164 Tudor Drive. In undertaking our function as a commissioning organisation the PCT has:

- Undertaken a needs assessment for the future provision of services in Tudor Ward on the basis of the registered lists - £500*;
- Consulted with local people in the planning of those services and included two patient representatives in the formal procurement of those new services- £3,500*;
- Undertaken a full and competitive tender for the provision of services for at 192 Tudor Drive to serve at least 3500 patients- £20,000*; and
- Let a new contract to a new provider - £5,000*.

** Estimated costs.*

Whilst accepting that this is core business, it should be acknowledged that dedicated time and resources of staff were required to undertake this work. The PCT would argue that this is an appropriate use of public resources.

In addition the PCT has had to invest additional time in arranging and holding a local Competition Dispute Panel for CMC which, again demanded dedicated staff time, legal fees and the fees for an independent Panel member, the costs of which are estimated as £12,000.

It would appear that by letting CMC open the premises at 164 Tudor Drive, the result could be that actual choice to patients is limited as a result of the demise of a new practice.

For the PCT to agree to the opening of a new additional branch surgery in Tudor Drive would have fundamentally changed the basis of these calculations for other bidders.

5. Summary

In summary, the PCT adopted a proper, competitive process in order to appoint a new practice in the Tudor Ward, which took full account of patients' and others' views. The function of the PCT in these circumstances is to ensure that the provision of primary medical services are adequate to meet the requirements of people in its area, to ensure NHS monies are not wasted and to provide value for money for both taxpayers and patients. The PCT is also bound by primary legislation to adhere to the requirements of its Standing Orders to achieve best value and may not act in breach of its Standing Orders.

The competitive process to which CMC was subject is designed to protect patients and taxpayers, by ensuring that those providers who are best placed to deliver services are awarded with contracts. The process undertaken by the PCT resulted in a new practice in Tudor Ward, which provides competition with other GP practices in the area and increases patient choice.

It would not be appropriate to allow practices to open new premises at will; not only on the basis that they have limited budgets, but because this would have a negative impact on patient choice: GP practices essentially require a 'critical mass' of registered patients in order to operate effectively and offer an adequate choice of services to patients, and this would be at risk if practices could self-determine patient need and open branches accordingly.

In conclusion, the PCT is of the view that the process adopted in relation to this matter was in the best interests of patients and taxpayers for the reasons outlined above.