

Submission to Cooperation and Competition Panel by Churchill Medical Centre

Overview of Complaint

Summary

Kingston PCT (now known as NHS Kingston) has behaved in an unfairly anti-competitive manner against an existing primary care provider in consistently refusing to allow it to open a new branch surgery at 164, Tudor Drive, Kingston, to serve 1500 of its patients on the basis that it wishes to prevent competition with a newly instituted provider that has now been in place for 9 months with an established patient list. Both the initial and continuing refusals are anti-competitive and against the principles of choice and delivering services as close to the patient as possible.

Churchill Medical Centre approaches NHS Kingston re: opening a branch surgery

On December, 18th 2007 Churchill Medical Centre (registered population 14,450) approached David Smith, the chief executive of Kingston Primary Care Trust (PCT) with a proposal to set up an entirely self funded, new, GP branch surgery to provide services to its existing 1500 patients who live in Tudor Ward, Kingston. Churchill Medical Centre (CMC) is known nationally as a centre of excellence; it is one of only 2% of practices to receive the RCGP Quality Practice Award and has consistently set up new services at its patients' request, including pioneering extended opening hours. It has served patients in this area since 1919 and has had numerous requests to open a new branch, particularly from the large number of older patients in the area of the putative new branch surgery who find it difficult to attend our main surgery and younger mothers with children who lack transport and thus have to walk to their doctors' surgery. The intention was also to allow some of our existing patients to be seen at a branch site to ease the pressure on the existing surgery given its popularity and our rapidly increasing list size.

The chief executive responded that he would not object to this proposal. His words were 'we cannot stop you', but that it was at our business risk. He did not request any further information or suggest that a formal application would be required. The response we received from the PCT chief executive was taken on trust in its entirety and the Churchill Medical Centre identified appropriate premises for a 'hub and spoke' model of general practice consistent with the distributed polysystems model and obtained a lease for the shop for conversion to compliant NHS premises to service our existing patients.

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

At the time we were caretaking a neighbouring surgery in the area, having been asked at short notice to do so on the basis that we were the most appropriate provider to deal with the very significant systemic problems within that practice. The PCT were in the process of deciding on how to manage the small list of patients in that surgery (comprised of two separate lists of patients totalling no more than 3,600) but had made no decision on the future of the surgery when approached in December 2007. The PCT subsequently decided to tender the provision of medical services to these patients and that decision was communicated to us on the 18th January 2008.

PCT agrees planning application without objection

Application was made to the local authority for change of use for the new branch surgery to D1 Medical use and for planning permission to extend the surgery to provide the extra accommodation required to make the surgery compliant with DDA requirements for a small surgery as well as with building recommendations.

The PCT's approval was specifically sought and a written statement was made on February 19th 2008 to the local council by the PCT stating that they had no objection to this planning application. No qualifications were included. They did not object to the plans of the surgery provided, nor did they suggest that they were inadequate for a surgery or to the change of use to a doctors' surgery. Planning application was obtained as the local population supported the application and the PCT did not oppose it. Given the PCT chief executives earlier comments (which he gave no indication of rescinding) and this lack of objections, extensive rebuilding commenced immediately, funded totally out of the resources of the practice.

PCT refusal to add branch surgery to PMS contract

On 29th February we applied for N3 connection to link our new branch surgery to our computer systems within the secure NHS environment. We were then informed for the first time that we could not open our new surgery without formal PCT agreement. We subsequently applied on 25th March for the new premises to be added to our PMS contract to which the chief executive responded on 1st April, stating that the premises would be considered as part of the PMS review the PCT had decided to instigate. No request was made for further information or for a business case at that stage

Churchill Medical Centre applied to be considered to take over the patient list at the surgery we were caretaking on Tudor Drive. We passed the Pre-Qualification Questionnaire stage of the tendering process. The MOI included an agreement that the new arrangements could include a branch surgery, which our application duly contained. Again, no objections to our plans were made by the PCT at the time.

At this point, Churchill Medical Centre approached the board of the PCT requesting a meeting because of a perceived wider anti-Churchill bias. In June 2008 a meeting was arranged between some of the partners and some members of the PCT executive (including the chief executive) who refused to discuss the issue of the new proposed surgery because of the tender and on the basis it would be discussed at the forthcoming PMS review.

At the same time (whilst Churchill Medical Centre was still a candidate) a member of the PCT was witnessed informing a competitor, during the tendering process, that the Churchill Medical Centre would not be allowed to open its surgery, which was already virtually complete, if the competitor won the tender. The PCT did not inform Churchill Medical Centre of this conversation, which was witnessed, and refused to discuss premises further whilst it was still a candidate

PCT refuses to allow branch to open on basis of competition

On the 14th July, 2008, pre-empting our PMS review meeting at which Mr David Smith, the chief executive of Kingston PCT had earlier agreed would be the forum to discuss our premises in Tudor Drive, we received a letter from Mr David Smith, informing us that we would not be given permission to open the new facilities on the basis of "preventing competition with whoever is successful in the tender process" and should we be minded to open new premises to serve our patients, this would constitute a major breach which would result in the removal of our PMS contract.

Tender awarded after selective contact with candidates

The award for the tender for the provision of medical services to the small population we had been caretaking was announced on the 21st July 2008. The tender was awarded to a private company, who allegedly had been informed unilaterally and collusively during the tendering phase that the Churchill Medical Centre would not be allowed to open its branch surgery. This seemed to have happened prior to any conversation with us.

That such a guarantee was given is supported by the PCT's subsequent statement that it could be held in breach of this agreement, should it allow us to open new premises to serve the needs of our registered population. The Medical director's quote is "This may also have left the PCT open to challenge by the new provider on the grounds that it had not given clear details of the basis on which bidders were tendering". Such an anti-competitive statement was not made to Churchill Medical Centre when it was a candidate. If such a guarantee was made to another particular candidate it should not have been, particularly before the close of the ITT process and especially since it was not conveyed to the other candidates. This was confounded by the PCTs behaviour including a refusal to discuss the premises with the Churchill Medical Centre.

It is our assertion that the tendering process should have been conducted differently and the PCT should face whatever consequences that arise from this; it should not be compounding the problem with further anti-competitive behaviour.

Our intention throughout has been to open a branch surgery for our existing patients so, although we have presented our concerns regarding the tendering process to the PCT, we are not at present pursuing the reopening of the tender, only trying to serve the needs of our growing population

PCT refuses to discuss premises further

On the basis that we wished to continue to pursue a resolution, a meeting with the PCT was arranged on 28th September 2008, at which our putative new premises were included on the agenda. However, the chief executive, when asked whether he was prepared to discuss the issue of the branch surgery, simply replied 'no' and refused to elaborate further. Again, no request was made for a business case.

The new providers of services at the existing branch surgery in Tudor Drive began to deliver services in October 2008. The PCT has been quoted in the local press as saying that it wishes to prevent competition with the new provider.

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

On several occasions, we requested a copy of the PCT's dispute resolution process. Given the lack of any response to this request, we approached NHS London for its dispute resolution documentation and agreed to use this as the basis of its statement for the local dispute resolution process.

Attempt at local Dispute Resolution

A comprehensive dispute resolution document was hand delivered and emailed to the PCT on November 19th 2008, which the PCT claimed never to have received. The papers were re-delivered on 19th January and signatures for delivery sought.

Churchill Medical Centre attended a local dispute resolution meeting on 20th February 2009, when it was assumed resolution would be attempted. The meeting was conducted in a confrontational and intimidating manner. It is felt that little attempt was made during the process to 'resolve' these issues, having been used as an opportunity only to rebut Churchill Medical Centre's grievances.

The panel that consisted of Directors of the PCT and an outside assessor subsequently rejected our complaint saying that it had sought legal advice and that it believed it was within its rights to behave as it did during the tender process. However there is no doubt that by doing so they have prevented competition within the NHS and denied patients registered with Churchill Medical Centre the choice of being seen by their own doctor close to their own home. The decision was clearly anti-competitive as restated in the PCT Medical Director's

contribution to the Dispute process. The continued refusal to allow the surgery to open has compounded the anti-competitive behaviour.

The PCT then for the first time asked for a business case for opening the surgery. We requested further information under Freedom of information which resulted in a response which was incomplete. We then prepared a business case in good faith and sent it to the PCT, (included in supporting document pack), as the PCT requested. However, in the response under the freedom of information act, the PCT then re-iterated its anti-competitive stance, pre-empting the presentation of the business case.

Our intention is to give the best possible care to our patients in a place as close as possible to their homes in line with Healthcare for London. We are very saddened by the attitude of the PCT. As an innovative practice we are in the forefront of change in the NHS. It is unusual for a practice to be as proactive as we are in extending choice for our population both by increasing hours of availability as well as providing multiple healthcare facilities. We are also not asking for any PCT resources for the new facilities, in line with the new arrangements for primary care.

Continuing refusal to allow branch and local consultation

Although the PCT states the spoke surgery will compete with the new providers, it is now nine months since the new primary care providers took over the premises of the old Tudor Drive surgery we were caretaking. Their patient list is established and in line with government policy, patients can and should decide where and how their medical care is provided.

The proposed Churchill spoke surgery is considerably smaller than the existing Tudor surgery, (to which the PCT has offered £100,000 to improve facilities further) and will have shorter opening hours and deliver fewer services on site (some more specialist services will be delivered at the Churchill Hub site 1.25 miles away)

The PCT claims to have consulted local people 'at great expense', yet their own accounts of public meetings include statements from our own patients in support of Churchill Medical Centre. The extensive consultation we have conducted and local opinion expressed through its elected representatives, the local councillors and MP, are overwhelmingly in support of the opening of Churchill Medical Centre's branch surgery.

These comments have been ignored to allow the PCT to pursue its anti-competitive stance. Despite the refusal of the PCT to allow us to open the branch surgery, it is understood that there has been no movement of our patients to register with the new providers, which suggests that the PCT has at least reached erroneous conclusions from its own consultation.

A consultation with our existing patients has demonstrated overwhelming support for our branch and a patient group has prepared its own petition, obtaining in the region of 800 signatures of support and is arranging a local and parliamentary protest. The local MP, and local councillors are fully supportive of the principle that patients have a right to exercise choice and the need to open this branch surgery, especially in an urban environment of outer London.

There had previously also been competition in this area as the two small practices in Tudor Drive we were caretaking were housed side by side in the same building and held separate lists, thus the presence of two surgeries within close geographic proximity is not establishing a departure from what existed.

Closing comments

The position of the PCT in refusing us permission to open our branch surgery is anti-competitive and restricts choice for our existing patients. The behaviour of the PCT has been consistently ant-competitive towards Churchill Medical Centre.

We do not accept the Chief executive's suggestion that there is no need for further primary care in the area – we believe our 1500 patients would be better served by the branch surgery we have set up. Support from the local councillor and MP and the campaign being initiated by patients in the area belie this.

We do not accept the statement of the chief executive that limiting the number of surgeries increases choice. This may well be the case in a rural environment or in the Shetland Isles, but has no credence in London. We believe that the behaviour of the PCT in its continued prevention of opening of our branch surgery is clearly anti-competitive, restrictive of choice, and against the spirit and letter of NHS policy of empowering patients.

Corroboration

Documents detailing all of the above are attached.

Infringements

Principle 4

The anti-competitive behaviour and actions of the PCT in its initial denial of permission to operate from our premises in Tudor Drive has reduced patient choice against the wishes of patients and is unfairly anti-competitive. NHS Kingston's behaviour in continuing to deny the practice the right to deliver services to its patients from its branch surgery 9 months after the new providers have been in place and its restatement of its stance constitutes further anti-competitive behaviour.

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.

Rationale for Principle 4

Choice is an important way of empowering individual patients. For patients to exercise choice they need to know what is available and how different providers compare; and there should be sufficient providers to offer meaningful choice where appropriate.

Actions/Behaviours breached

In making such commissioning decisions, commissioners should engage transparently and constructively with a full range of providers (Commissioning framework for health and well-being, March 2007).

Rules breached

Providers, referrers to and commissioners of NHS services must not restrict choice via collusive behaviour or any other action. EU competition rules (Article 81) have been breached resulting in financial loss to Churchill Medical Centre

Please see form below for further details of the infringements.

Chronology of Events

December, 18th 2007 Churchill Medical Centre approaches David Smith, the chief executive of Kingston PCT with a proposal to set up an entirely self funded, new, GP branch surgery to provide services to 1500 existing patients who live in Tudor Ward, Kingston. His words were 'we cannot stop you'. No further information requested.

18th January 2008 PCT conveys opinion it is to tender practice that Churchill Medical Centre is currently caretaking..

February 19th 2008. PCT responds to planning application for change of 164, Tudor Drive to D1 use and extension to provide a branch surgery for NHS patients raising no objections and offering no qualifications. Surgery work commences quickly and completed rapidly.

29th February 2008 N3 connection applied for – Churchill Medical Centre informed they could not open branch without agreement.

25th March 2008 Churchill Medical Centre applies for 164 Tudor drive to be added to its PMS contract.

1st April 2008, Chief Executive responds stating that the premises would be considered as part of the PMS review the PCT had decided to instigate. No request was made for further information or for a business case.

June 2008 PCT Chief executive refuses to discuss the issue of the new surgery premises because of the tender and on the basis it would be discussed at the forthcoming PMS review.

During the tendering phase, the PCT allegedly informs the subsequently successful candidate that Churchill Medical Centre would not be allowed to open its surgery. This information was not conveyed to us, at a point at which we were still a candidate.

14th July, 2008, Pre-empting the imminent PMS review meeting chief executive of the PCT informs us that he would not be granting permission to open the new facilities on the basis of "preventing competition with whoever is successful in the tender process".

21st July 2008. Tender awarded to a private company

28th September 2008 PCT arranges a dispute resolution meeting, at which our putative new premises were included on the agenda. However, the chief executive, when asked whether he was prepared to discuss the issue of the branch surgery, simply replied 'no' and refused to elaborate further. Again, no request was made for a business case.

October 2008. The new providers of services at the existing branch surgery in Tudor Drive began to deliver services in October 2008

November 19th 2008 Dispute resolution document delivered and emailed to the PCT. The PCT claims that they never received them despite the fact they were both hand delivered and emailed.

January 19th 2009 Dispute Resolution document redelivered.

February 20th 2009, local dispute resolution meeting. PCT takes intimidating and confrontational approach and does not discuss anticompetitive behaviour.

February 25th 2009 PCT rebuts claims without attempt at resolution but panel suggests a business case for putative new Churchill premises on 164, Tudor Drive.

May 18th 2009 Churchill conducts consultation on the proposed opening of 164, Tudor Drive branch with its 1500 patients that might be affected by it. Overwhelming support received.

May 28th 2009 Partial information provided by NHS Kingston under FOI, re-iterates its ant-competitive stance before business case is received, but which has been prepared in good faith and sent to the PCT

June 27th 2009, Patients present 800 strong will petition supporting the opening of the new branch surgery to local MP to raise in parliament and to Local Councillors to raise with NHS Kingston and NHS Richmond.

Harm to practice

Apart from being totally against the key NHS principles of choice and wider provision of services by a range of providers, we consider this action to be clearly anti-competitive and contrary to EU competition rules and if continued will result in considerable financial loss to the practice. The needs and clear requests of our patients' and local political leaders have been ignored by the PCT. The PCT chief executive has gone back on his original assertion that if we opened a branch surgery we did so at risk and he could not stop us opening if we wished to, which he did not change until July 2008. The practice has therefore already incurred substantial financial costs and if the PCT continues to refuse to allow us to open, the harm to the practice will be the cost incurred in developing the new premises.

Remedies Sought

The PCT should review its continued anti-competitive stance and allow our small branch surgery to open.

The PCT should consider what financial measures it needs to take to redress the situation.

Nature of Business

Churchill Medical Centre is a PMS practice with 14,450 patients.

Nature of target of the complaint

The complaint is made against Kingston PCT.

Chief executive: David Smith

Chair: Neslyn Wilson-Druee

Details of any relevant contact with the target of the complaint. Please include how you have attempted to resolve this dispute with them: *

Churchill Medical Centre on several occasions requested a copy of the PCT's dispute resolution process. Given the lack of any response to this request, CMC approached NHS London for its dispute resolution documentation and agreed to use this as the basis of its statement for the local dispute resolution process.

An attempt was made to resolve this dispute through the local dispute resolution process. To this end a meeting was held on 20th February 2009. Churchill Medical Centre entered this

process in good faith assuming the meeting was an attempt to resolve the issue. However, the meeting was conducted in an intimidating and confrontational way from the outset. In its response, the Panel requested a business case. This was prepared and sent to the PCT in good faith. However, again pre-empting the receipt of this, the PCT has restated its position that it believed it had acted correctly in denying us permission to open the surgery, suggesting it is once again not prepared to consider the business case the panel has requested us to complete.

Details of the relationship between your organisation and the target of your complaint

The target of our complaint is the holder of our PMS contract.