

Andrew Taylor
Chief Executive
Co-operation and Competition Panel
1 Horse Guards Road
London
SW1A 2HQ

18th January 2010

Dear Andrew

NHS Great Yarmouth & Waveney conduct complaint - PCT Network comments

This letter sets out comments from the PCT Network in the NHS Confederation on the NHS Great Yarmouth & Waveney conduct complaint which is currently being considered by the Co-operation & Competition panel (CCP)

While the PCT Network is not fully conversant with the details of the case, there are a number of more general points we would wish to make.

We understand and support NHS Partners and ACEVO's desire to get clarity on the status of the "NHS as preferred provider" statements from the DH. It is evident that there is not complete clarity on:

- its status – does it supersede the existing Procurement Guide and PRCC?
- how it applies to a decision to transfer community health services from PCT management to alternative management as none of the scenarios documented by the DH in their explanation of the policy directly apply to this scenario

However there is no doubt that NHS Great Yarmouth and Waveney ("the PCT") considered that the policy meant they needed to change their proposed tendering approach to make it restrict the prime contracting relationship to an NHS provider, whilst preserving the ability of the independent and third sector to participate in partnership with NHS providers. The PCT is clear that it sought advice from East of England SHA and the DH on this, before reaching this conclusion.

The crux of the issue therefore is whether the PCT interpreted the policy correctly. It undoubtedly would be helpful to get clarity on this point for the benefit of PCTs across the country and for all types of providers of health services. However it is not clear that a CCP review of the case against the PRCC is the best way of resolving this issue.

We would favour a statement from the DH or the Secretary of State to give clarity to the policy position which will be increasingly important in light of the timetable in the Operating Framework for PCTs have plans for their community services agreed by March 2010 and to implement these by April 2011. This would avoid the problem of an extended CCP process of consideration given the earliest the CCP will reach a view on this case is by 2 March 2010 and the latest is by 28 June 2010. This delay will add to uncertainty for staff and patients both in Great Yarmouth and Waveney and in the wider NHS. We would question whether this is in taxpayers and patients interests.

We also have a number of issues on the CCP process itself:

- We would wish to register our concerns about the lack of clear procedure for the conduct of this review by the CCP. It is concerning that the CCP has not issued their procedures for consideration of cases following the consultation in 2009. We presume this case is being considered under the CCP's draft rules of procedure and draft interim conduct case guidelines, but these have never been finalised.
- We are concerned that the draft rules of procedure have not been followed in this case. The draft rules state (paragraph 9) that there should be attempts at local resolution prior to referral to the CCP
- Your own guidance states that only complaints about collusion should be considered by the CCP without attempts at local resolution. While there is one element of complaint suggesting collusion (although little explanation was given), this could have been considered separately from the remainder of the complaint.

I hope these comments are helpful.

Yours sincerely

David Stout
Director
PCT Network