



## Decision to proceed to Phase II in the NHS Peterborough Conduct Complaint

### SUMMARY

1. The Cooperation and Competition Panel (CCP) has reviewed the complaint made by 3Well Medical, the response to the complaint by NHS Peterborough and submissions from interested parties. 3Well Medical's complaint relates to whether NHS Peterborough has failed to act consistently with the Principles and Rules for Cooperation and Competition (the Principles and Rules), in relation to the commissioning decisions and actions taken by NHS Peterborough for the proposed reconfiguration of primary and urgent care services in Peterborough, which included a proposal to close 3Well Medical's Alma Road practice.<sup>1</sup>
2. In Phase I of this case we identified a number of potential concerns under the Principles and Rules arising from the conduct of NHS Peterborough. The CCP considers that further analysis is warranted and will therefore proceed to an in-depth Phase II investigation.

### BACKGROUND

3. 3Well Medical is a limited company formed by a group of GPs which operates two medical practices in Peterborough:
  - i. the Alma Road Primary Care Centre which provides GP services and urgent care (including walk-in) services to its registered patients, patients registered with other practices and patients who have not registered with a GP; and
  - ii. the Botolph Community Health Centre from where 3Well Medical provides registered GP services.
4. 3Well Medical has an Alternative Provider Medical Services' (APMS) contract with NHS Peterborough for the services provided at the Alma Road Primary Care Centre, which is due to expire on 31 March 2014.<sup>2</sup>
5. From 18 May to 18 August 2011, NHS Peterborough conducted a public consultation process in relation to three potential options for changing the way that primary and urgent care services would be commissioned in the Peterborough area under the banner 'The Right Care at the Right Time'. NHS Peterborough has not yet made a decision in relation to the outcome of the public consultation process carried out in 2011.
6. On 19 September 2011 the CCP accepted the conduct complaint submitted by 3Well Medical.<sup>3</sup> The relevant Principles and Rules in this case are Principles 1, 2 and 5 which state:

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<sup>1</sup> The Principles and Rules are available at: [www.ccp-panel.org.uk](http://www.ccp-panel.org.uk).

<sup>2</sup> The Department of Health defines APMS contracts as locally agreed contracts between commissioners and new providers for primary medical care services.

<sup>3</sup> Notice of Acceptance, [www.ccp-panel.org.uk](http://www.ccp-panel.org.uk)

*Principle 1: Commissioners must commission services from the providers who are best placed to deliver the needs of their patients and populations.*

*Principle 2: Commissioning and procurement must be transparent and non-discriminatory and follow the Procurement Guide issued in July 2010.*

*Principle 5: Commissioners and providers should promote patient choice, including – where appropriate – choice of any willing provider, and ensure that patients have accurate and reliable information to exercise more choice and control over their healthcare.*

7. NHS Peterborough made a submission to the CCP on 5 October 2011, responding to the complaint that was made by 3Well Medical. A summary of the complaint by 3Well Medical and the response from NHS Peterborough are set out below. During our Phase I investigation we also received submissions from a number of interested parties, some of whom noted their support for NHS Peterborough's reconfiguration strategy and consultation process and others noted their concerns about the consultation process and strategy.<sup>4</sup>
8. After reviewing the complaint, the response from NHS Peterborough and other submissions from third parties, the CCP sent a letter to NHS Peterborough and 3Well Medical setting out the issues identified in this case. Both parties were invited to comment on the letter before the CCP decided to proceed to Phase II of its investigation. This paper explains why the CCP considers that the issues raised in this case need to be considered further during a Phase II investigation.

## **FRAMEWORK FOR ASSESSMENT**

9. This case raises both procurement (Principles 1 and 2) and conduct (Principle 5) issues. The CCP assesses whether or not procurement issues and conduct issues are consistent with the Principles and Rules. In assessing procurement issues the CCP reviews the decisions taken by the commissioner to determine whether they are reasonable under the relevant Principles and Rules (in this case Principles 1 and 2) and the Procurement Guide for commissioners of NHS-funded services (Procurement Guide). This means that the CCP considers whether the commissioner's decisions were within the range of decisions that it could reasonably have taken in terms of substance and process, within the context of the Principles and Rules and the Procurement Guide. The CCP does not consider whether the decision of a commissioner was correct on its merits.
10. In relation to conduct issues, the CCP reviews the effect of the conduct on patients and taxpayers to determine whether the conduct is consistent with the relevant Principles and Rules (in this case Principle 5). When assessing conduct issues the CCP applies a cost/benefit approach to its analysis whereby it considers whether the conduct is likely to result in any costs (detriments) to patients and taxpayers from a loss of patient choice or competition resulting from the conduct. If the CCP identifies material costs arising from the conduct, then

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<sup>4</sup>The third party submissions received in this case are available on our website at [www.ccp-panel.org.uk](http://www.ccp-panel.org.uk).

the CCP will have regard to any benefits to patients and taxpayers arising from the conduct that might offset the identified costs.

11. The processes relating to the CCP's consideration of conduct complaints and procurement disputes under the Principles and Rules differ. As a rule, procurement cases should be dealt with through formal dispute resolution processes at PCT and Strategic Health Authority (SHA) level prior to being considered by the CCP, and conduct complaints should be subject to local engagement prior to consideration by the CCP (without having to go through formal dispute resolution processes at either the PCT or SHA level). In cases involving both procurement and conduct issues, the CCP can consider both types of issues in a single inquiry where there has been appropriate local engagement and where the conduct and procurement issues are interrelated.<sup>5</sup> The CCP considers this to be the case in relation to the current complaint.

## ISSUES

12. We consider that this case raises a number of issues under the Principles and Rules about the commissioning processes adopted by NHS Peterborough in relation to its consultation and the potential impact on patient choice and competition of a decision by NHS Peterborough to close 3Well Medical's Alma Road practice. In this case the CCP is concerned that the consultation process undertaken by NHS Peterborough may not have been transparent and non-discriminatory, and the proposed closure of the Alma Road practice might give rise to a material adverse effect on patient choice and competition.

### *Commissioning and procurement decisions of NHS Peterborough potentially in breach of Principle 2*

13. 3Well Medical told us that NHS Peterborough may have breached Principle 2 because in 3Well Medical's view, the actions and decisions taken by NHS Peterborough in deciding on the options for public consultation, and during the consultation itself, were not transparent and were discriminatory against 3Well Medical. With respect to transparency, 3Well Medical told us that:
  - i. NHS Peterborough's engagement with 3Well Medical and other stakeholders before proposing to close the Alma Road Primary Care Centre was minimal;
  - ii. the consultation documents were framed in a way that suggests NHS Peterborough did not have an open mind about the consultation and had already made a decision about the outcome of the consultation before the process commenced (e.g. language such as '*option 3: realise the full vision for primary and urgent care*' and '*option 2: partly realise the vision for primary and urgent care*' was used in the consultation documents);
  - iii. the consultation documents were not made available in languages other than English until after a month into the consultation process – 3Well Medical notes that only 36%

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<sup>5</sup> This approach that the CCP took when investigating various past cases, including South Staffordshire and Shropshire NHS Foundation Trust conduct complaint, the NHS Western Cheshire conduct complaint, the East Midlands conduct complaint and the North Lancashire conduct complaint, see [www.ccp-panel.org.uk](http://www.ccp-panel.org.uk).

- of its registered patients at the Alma Road Primary Care Centre list English as their first language; and
- iv. that many of the reasons provided by NHS Peterborough in its consultation documents to support the proposals lacked evidence.
14. With respect to discrimination, 3Well Medical told us that:
    - i. there has been a disproportionate focus on the closure of the Alma Road practice by NHS Peterborough during its consultation process - particularly in the way the consultation documents were framed as discussed above at 13.ii; and
    - ii. NHS Peterborough 's proposal to close the Alma Road Primary Care Centre, whilst at the same time constructing new facilities for Alma Road's competitors, is discriminatory against the Alma Road Primary Care Centre. 3Well Medical is concerned that NHS Peterborough's processes for deciding which GP contracts would not be renewed (e.g. which practices would be closed) in its proposals that it consulted on were discriminatory; and
    - iii. the three clinical advisors who assisted NHS Peterborough to formulate the options for consultation were conflicted because they have interests in competing practices or services to the Alma Road Primary Care Centre.
  15. NHS Peterborough told us that it considers that it has run a robust and legally compliant consultation process. NHS Peterborough told us that during its pre-consultation process it consulted widely with stakeholders, including with 3Well Medical on many occasions, and had its proposals reviewed by the Department of Health's Gateway Team and the National Clinical Advisory Team (NCAT). NHS Peterborough told us that its consultation documents were assessed independently by the Strategic Health Authority and a specialist legal advisor to ensure balance.
  16. NHS Peterborough noted that the reference in the consultation documents to 'fully implementing the vision' refers to option 3 enabling all four proposed health centres to be funded, which in NHS Peterborough's view would not be possible under options 1 and 2 because sufficient savings would not be made. NHS Peterborough has told us that it made amendments to its consultation documents following comments it received from stakeholders during the pre-consultation phase, which included adding in option 2 in the consultation documents (which among other things proposed to keep the Alma Road practice open, but reduce its walk in services to only being available out of hours i.e. at evenings and on weekends) after the option was suggested to NHS Peterborough by 3Well Medical.
  17. NHS Peterborough has told us that during the consultation phase it engaged widely with the public and other stakeholders by sending 30,000 letters to patients outlining the proposed options, distributing 10,000 consultation documents, 250 posters, four newspaper advertisements, 39 newspaper articles and participated in seven radio/television interviews in relation to the proposals. NHS Peterborough also told us that it held eight public meetings and attended 17 meetings held by other organisations in relation to the proposals. NHS Peterborough says that it has engaged independent consultants to analyse the response to the consultation to assist the board when it makes its decision about the outcome of the consultation process. NHS Peterborough told us that it received a large number of responses

to its consultation which in its view demonstrates active engagement by the community in the consultation and that it received 379 completed PCT questionnaires, 13 formal organisation responses, eight petitions of around 9000 names and 110 emails/letters and telephone calls.

18. NHS Peterborough says that following comments it received during the public consultation it adapted its preferred option (Option 3) to include that the City Care Centre would offer 'in hours' medical services and be closely linked to the new 111 service (a PCT initiated phone service for non-emergency health inquiries). NHS Peterborough says that these changes show that it has not pre-determined its decision and it continues to keep an open mind to the views expressed during the public consultation.
19. With respect to the issue of whether the consultation documents were provided in languages other than English, NHS Peterborough has told us that it followed its policy governing the standards for communicating in different languages. NHS Peterborough told us it provided documents in six languages, with four of the languages being requested by GP practices for their patients and two languages were requests from members of the public. NHS Peterborough told us that the translated documents were provided from 10 June 2011, around three weeks into the 13 week consultation process. NHS Peterborough told us that over 600 documents were distributed in each language through GP practices, local ward councillors, at public meetings, through local community leaders, to individuals on request and through NHS Peterborough's website. NHS Peterborough told us that it also supplied interpreters at public meetings in seven key community languages, and interpreters to speak to individuals on request.
20. In relation to the issue of discrimination, NHS Peterborough has told us that its commissioning process was not discriminatory against 3Well Medical because its reconfiguration strategy focuses on surgeries with significant sustainability problems, either due to their patient list size or their problems with their premises. NHS Peterborough told us that these practices include contractors on all types of GP contracts, including APMS, PMS and GMS contracts.<sup>6</sup> NHS Peterborough also submitted that its strategy focuses on ways to use existing budget to address important longstanding premises problems to the benefit of 60,000 people in Peterborough (49,000 of whom are registered with practices serving deprived communities) at a time of major financial constraint.
21. NHS Peterborough considers that it has treated 3Well Medical in a fair and equal manner. NHS Peterborough told us that options 1 and 2 in the consultation documents were developed with 3Well Medical and included the continuation of the Alma Road Primary Care Centre at alternative premises. NHS Peterborough notes that it is continuing to explore options with 3Well Medical for relocating the services provided at the Alma Road Primary Care Centre.

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<sup>6</sup> PMS means Personal Medical Services contract. According to the Department of Health, PMS contracts can be used by PCTs to contract with providers for primary medical services. The contracts may also include additional features such as GPs to be employed directly by PCTs, and providers can support an enhanced role for nurses or other health professionals in primary care. GMS means General Medical Services contract. According to the Department of Health about 53% of all general practice is currently provided under GMS. Under the national contract, PCTs contract with GP practices to provide primary medical services for their population.

22. NHS Peterborough has told us that it included all walk-in services for unregistered patients in its commissioning strategy (i.e. the services provided at the Alma Road Primary Care Centre and the walk-in centre at the City Care Centre). NHS Peterborough has told us that it considers it would have been discriminatory not to include the services provided at the Alma Road Primary Care Centre in the options it consulted on. NHS Peterborough considers that the consultation options would have been limited to the detriment of the Peterborough area, if the services provided at the Alma Road Primary Care Centre were not included in the consultation options.
23. In relation to the clinical advisors who are alleged to have assisted NHS Peterborough to formulate the proposals for consultation, NHS Peterborough has told us that only one of the relevant GPs is a member of NHS Peterborough's Board (which is the body that takes the decisions on the consultation) and that at the board meeting where the decision was taken to consult, the relevant GP declared his interest, and NHS Peterborough has told us that this GP will be excluded from voting should a vote be required in a future board meeting on the outcome of the consultation process.
24. NHS Peterborough told us that the GPs alleged to have influenced its processes were not involved in the formulation of the options contained in the consultation documents. NHS Peterborough told us that two of the GPs were involved in communicating the strategy at public meetings. NHS Peterborough told us that the GP's involvement at these meetings was with regard to matters of clinical safety, doctor recruitment and clarification of the handling of specific clinical cases in the current services. NHS Peterborough has told us that it identified the potential for an adverse perception of conflict of interest, however, it was not able to identify other suitable clinicians able or willing to take on the roles from the relevant GPs.
25. NHS Peterborough told us that the group that was responsible for managing the consultation project and advising NHS Peterborough's board in relation to the project includes a non executive director, a member of LINKs and does not include either of the GPs who are alleged to have been conflicted.
26. We consider that the concerns raised by 3Well Medical about the commissioning and procurement decisions of NHS Peterborough may raise concerns under Principle 2, including:
  - whether the processes undertaken by NHS Peterborough to decide which options it would consult on may have been discriminatory against 3Well Medical (taking into account the issues identified at paragraph 15);
  - whether NHS Peterborough conducted a process that was discriminatory against 3Well Medical by involving in the process for the formulation of the proposals that were consulted on by the NHS Peterborough, clinical consultants that are alleged to have interests in competing providers and services to 3Well Medical's Alma Road practice; and
  - whether the consultation processes run by NHS Peterborough was sufficiently transparent, (including whether key stakeholders such as the non-English speaking population that is serviced by 3Well Medical's Alma Road practice were adequately consulted).

27. We consider that further information and analysis is required to determine whether the decisions of NHS Peterborough were reasonable in the context of Principle 2 and the Procurement Guide.

*Commissioning and procurement decisions of NHS Peterborough potentially in breach of Principle 1*

28. 3Well Medical told us that NHS Peterborough may have breached Principle 1 because the processes adopted by NHS Peterborough when formulating the proposals that it consulted on might not enable NHS Peterborough to select the providers who are best placed to deliver the needs of their patients and populations for urgent care and primary care services.
29. In response to 3Well's concerns, NHS Peterborough has told us that the proposals that it consulted on were formulated with a clear strategy to create sustainable primary and urgent care practices that represent value for money and to commission services from providers who are best placed to deliver the needs of their patients and populations. NHS Peterborough has told us that its strategy and options to achieve that strategy were provided to stakeholders for comment during the pre-consultation process and comments that it received from stakeholders were then fed into the proposals that were ultimately consulted on. NHS Peterborough has told us that following the consultation process it has made some amendments to the proposals in response to comments received during the public consultation.
30. NHS Peterborough has told us that after it makes a decision about the outcome of the public consultation, it intends to run a competitive tender process for the future provider of the out of hours primary care and walk-in services to be provided at the City Care Centre (expansion of these services at the City Care Centre is proposed in both options 2 and 3 in the consultation documents – the degree to which the services would be expanded differs in each option).
31. We consider that the concerns raised by 3Well Medical about the commissioning and procurement decisions of NHS Peterborough may raise concerns under Principle 1. In particular, we consider that the commissioning and procurement decisions of NHS Peterborough may raise concerns with respect to whether the processes adopted by NHS Peterborough when formulating the options for consultation inhibit the future ability of NHS Peterborough to select the providers who are best placed to deliver the needs of their patients and populations for urgent care and primary care services.
32. We consider that further information and analysis is required to determine whether the decisions of NHS Peterborough were reasonable in the context of Principle 1.

*Conduct of NHS Peterborough potentially in breach of Principle 5*

33. 3Well Medical told us that a decision by NHS Peterborough to close the Alma Road Primary Care Centre may restrict patient choice and competition in the Peterborough area because in 3Well's view:
  - i. it would result in the removal of an innovative practice, in comparison to its competitors, which offers services that are specifically tailored to the needs of the non-

- English speaking population (including Eastern European people) in Peterborough (i.e. the walk-in centre operated at the Alma Road practice);
- ii. there was an identified need by NHS Peterborough in 2008, under the Equitable Access Programme, for a practice offering the service mix of Alma Road – 3Well Medical is concerned that the options presented by NHS Peterborough for service change do not include adequate services to meet this identified need;
  - iii. it would result in the removal of a competitive practice, that is preferred by many patients over other surgeries in the area (3Well Medical notes that NHS Peterborough’s forecasts for patient registrations projects higher growth rates at the Alma Road practice in comparison to other primary and urgent care practices in the Peterborough area);
  - iv. NHS Peterborough’s consultation documents suggest a 12-24 month gap in the provision of some primary and urgent care services as a result of the reconfiguration proposals - 3Well Medical is concerned that NHS Peterborough has not adequately addressed this issue and patient choice and the quality of services provided to patients could be impacted as a result;
  - v. there will be increased pressures placed on primary care and urgent care service providers in Peterborough if the capacity provided at the Alma Road practice is removed from the system, and not adequately substituted – 3Well Medical notes that providers already struggle to meet demand in Peterborough and 3Well Medical predicts that approximately 80 000 (8 percent) appointments in the Peterborough area for primary and urgent care will be lost if the Alma Road practice is closed – and A&E Departments at local hospitals will come under increased pressure as a result.
34. NHS Peterborough told us that even though its preferred option (option 3) would lead to a reduction in the number of practices in central Peterborough from eleven to seven, it would not result in a reduction in capacity. NHS Peterborough told us that its preferred option would ensure each provider is of a sustainable size, is able to achieve high standards and operates from premises alongside community health teams and is affordable. NHS Peterborough considers that this will bring the following benefits to patients:
- more extended hours for GP services;
  - more funding would be released to expand the range of urgent care and primary care services available to patients;
  - the new community health services provided at the City Care Centre would allow the practice to offer integrated services with other community health services in the area due to the extra space that would be provided at the premises; and
  - GP practices with smaller lists have expressed concerns to NHS Peterborough about their sustainability; NHS Peterborough considers that its preferred option would result in more sustainable practices in Peterborough.
35. NHS Peterborough has told us that it is confident its revised strategy meets the needs of the relevant population in Peterborough in a better way because:
- existing premises will have capacity for an additional 10 000 patient registrations, rising to 20 000 in two years when new buildings and phased growth at other practices comes

- on line (NHS Peterborough has told us that this represents double the requirements to meet population growth and the patients at the Alma Road practice);
  - these providers provide services that are tailored to the needs of, and are used by, the non-English speaking communities in Peterborough. NHS Peterborough told us that these practices cared for 89 percent of registered patients in Peterborough who were new to the United Kingdom in the last 12 months and that comparatively the Alma Road practice cares for 11 percent of this population; and
  - a key risk will be addressed in the community which is that there are inadequate facilities for GP practices in Peterborough.
36. NHS Peterborough considers that there would be a cost to registered GP patients at the Alma Road practice because they will no longer be able to access routine GP appointments outside the hours of 8am – 8pm on weekdays and Saturday mornings. NHS Peterborough also notes that its analysis shows that 26% of attending patients would have increased travel time as a result of being required to travel to the City Care Centre to access walk-in services, and NHS Peterborough notes that there would be a cost to taxpayers from its preferred proposal through a net increase in the spend on primary care premises. However NHS Peterborough considers these costs to be minimal and are outweighed by the benefits described in paragraphs 34 and 35 and below.
37. NHS Peterborough told us that in its view the integrated model proposed for the City Care Centre will ensure that patients receive appropriate care at their first visit, which will reduce the need for patients to see additional health professionals for the same condition and take pressure off the Hospital Emergency Department. NHS Peterborough considers that the inclusion of a minor injuries unit will enable a ‘one stop facility’ in the city area which will simplify the patient care pathway. NHS Peterborough notes that the urgent care service will be staffed by doctors 24 hours a day, 7 days a week, from 8am to 8pm and a GP out of hours service will be operated in the evenings, weekends and on bank holidays.
38. NHS Peterborough told us that overall its preferred option would benefit taxpayers by reducing wasted costs through increased efficiencies in the system. NHS Peterborough has told us that in its view the Alma Road practice is popular among patients because it is convenient for patients to use the ‘walk-in’ services offered at the practice. NHS Peterborough told us that this service is a high cost to taxpayers NHS Peterborough also considers that £730,000 will be saved from the costs of the walk-in centre facilities at the Alma Road practice, and there is potential to save £500,000 by reducing attendances at A&E departments at local hospitals. NHS Peterborough has also told us that there would be £430,000 in savings from contractual efficiencies in its preferred option and £223,000 in savings for exiting the facility used to accommodate the Alma Road practice. NHS Peterborough has told us that the consultation feedback it received shows that the GP services provided in the walk-in services at the Alma Road practice is highly valued and it has been added to the integrated urgent care service proposed for the City Care Centre.
39. In relation to 3Well Medical’s concerns that there would be a loss of eight per cent of appointments for primary and urgent care in Peterborough if the Alma Road practice were closed, and this would increase attendances at A&E departments, NHS Peterborough has told

us that five per cent of the appointments referred to would be managed by growth in existing practices and three per cent would be managed by the practice with whom they are registered. In NHS Peterborough's view, there is no evidence that there would be increased attendances at A&E departments as a result of its preferred proposal.

40. NHS Peterborough has also told us that there will be no gap in the provision of primary and urgent care services as a result of its proposals. NHS Peterborough has told us that there is capacity available now for registered patients at other practices in the relevant area, and that new buildings will be added to practices in the area allowing practices to offer a full range of services to their patients which they currently are not able to do. NHS Peterborough notes that for walk-in services, the service provided at the Alma Road practice would only close when the new integrated GP led service is operational in the City Care Centre.
41. We consider that the concerns raised by 3Well Medical about the conduct of NHS Peterborough may raise concerns under Principle 5. In particular, the potential closure of 3Well Medical's Alma Road practice may raise concerns if it would be likely to reduce competition for the provision of primary and urgent care services in the Peterborough area. We consider that further information and analysis is required to determine whether the conduct of NHS Peterborough is consistent with the Principle 5.

## **INTENTION TO PROCEED TO PHASE II**

42. This case raises a number of potential concerns under the Principles and Rules, in particular Principles 1, 2 and 5. The CCP considers that further analysis is warranted with regard to the issues raised and will proceed to an in-depth Phase II investigation. In Phase II the CCP will complete analysis on whether the conduct of NHS Peterborough is likely to be inconsistent, or not, with the Principles and Rules. The deadline for completion of Phase II is 5 March 2012.

Cooperation and Competition Panel  
14 November 2011