



CO-OPERATION & COMPETITION PANEL
FOR NHS-FUNDED SERVICES

Cooperation and Competition Panel

**Commissioning of primary and urgent care services in Peterborough:
Investigation into a complaint from 3Well Medical**

27 January 2012

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EXECUTIVE SUMMARY

1. On 19 September 2011 the CCP accepted a complaint by 3Well Medical in relation to the conduct of NHS Peterborough and its commissioning decisions regarding a consultation process for reconfiguring primary and urgent care services. 3Well Medical submitted that NHS Peterborough acted inconsistently with the Principles and Rules for Cooperation and Competition (Principles and Rules)¹ by running a consultation process that was flawed, and by proposing to close 3Well Medical's Alma Road Primary Care Centre. 3Well Medical submitted that the potential closure of its Alma Road practice would have a material adverse effect on patient choice and competition in primary and urgent care services in the Peterborough area.
2. The CCP accepted this case as both a conduct and procurement (commissioning process) case. In relation to the procurement aspects of the case we assessed whether the commissioning decisions of NHS Peterborough were within the range of decisions that it could reasonably have taken under Principle 2, including whether the decisions of the commissioner complied with the requirements in the Procurement Guide.
3. Under Principle 2 we assessed whether there was evidence that NHS Peterborough had discriminated against the Alma Road Primary Care Centre in its management of the contract and in its process for formulating the 2011 consultation options. We also assessed issues raised by 3Well Medical in relation to the transparency of NHS Peterborough's commissioning process. In particular, we considered whether the Commissioner had commenced its 2011 consultation with an open mind, whether NHS Peterborough had engaged reasonably with its stakeholders and whether there was a reasonable level of information contained in the consultation documentation. Overall, we found that the commissioner's actions were consistent with Principle 2 in relation to these issues.
4. Under the terms of the Procurement Guide, we also assessed whether NHS Peterborough's management of potential conflicts of interest in its commissioning process had been appropriate. We found that the involvement by NHS Peterborough of two clinicians in lead, influential roles, in a service reconfiguration consultation process was not appropriate in circumstances where those clinicians were associated with providers that would be directly affected, and might gain, from the process itself. Both of the clinicians are partners at GP practices in Peterborough that will be directly affected by, and might gain from the service reconfiguration process, and one of the clinicians also holds a senior position with an urgent care provider in Peterborough that will also be directly affected by the process. We concluded that NHS Peterborough's management of potential conflicts of interest in its consultation process was not consistent with the requirements of the Procurement Guide in this regard. We noted that while government policy requires commissioners to involve local clinicians in service reconfiguration processes that commissioners must also ensure that the clinicians they involve are appropriate in the circumstances in order to comply with the terms of the Procurement Guide and the Principles and Rules. Alongside this report we will be publishing a remedies notice in relation to this issue.

¹ Principles and Rules for Cooperation and Competition, available at www.ccp-panel.org.uk.

5. Under Principle 1 we assessed whether the commissioning processes adopted by NHS Peterborough in relation to its 2011 consultation might inhibit it from selecting the primary and urgent care providers who are best placed to the needs of their patients and populations, when the commissioner makes a final decision on the outcome of its consultation process. Overall, we found that NHS Peterborough's actions were consistent with Principle 1.
6. Under Principle 5 we also assessed whether the commissioner's proposal to close 3Well Medical's Alma Road Primary Care Centre was consistent with Principle 5. Overall, we found that the proposed closure was not likely to have a material adverse effect on patient choice and competition in both primary and urgent care. In primary care we noted that the Alma Road practice would be likely to provide a competitive constraint on other providers in its catchment area in the future, however 11 alternative practices will remain.
7. In relation to urgent care, we found that while there would be a reduction in patient choice from two major providers of urgent care in the Peterborough area to one (the City Care Centre) if the Alma Road practice were closed, that some competitive constraint would still be likely to remain from the A & E unit at the Peterborough and Stamford Hospitals NHS Foundation Trust site, and the number of potential bidders for the commissioner's future tender process for a single provider of the integrated care services at the City Care Centre site would not be reduced. We noted that 3Well Medical could still bid for the relevant future contract along with the remaining providers.
8. In conducting our analysis in this case we took into account relevant government policy that guides NHS commissioners and observed that commissioners are operating in an environment of long-term financial constraints. In this context, we noted that a key aspect of the commissioners' reconfiguration strategy is to invest in new and expanded healthcare facilities and to better manage its expenditure in line with its statutory duties to continue to get the best value for money from its providers.² While it is important for commissioners to continue to comply with these requirements, they also need to ensure that their commissioning processes comply with the Principles and Rules and the Procurement Guide.

INTRODUCTION

9. On 19 September 2011 the CCP accepted a complaint by 3Well Medical about the commissioning decisions and actions of NHS Peterborough in relation to its proposals to reconfigure primary and urgent care services in the Peterborough area, which included a proposal to close 3Well Medical's Alma Road Primary Care Centre.
10. The CCP accepted the case under Principles 1, 2 and 5 of the Principles and Rules (see paragraph 14 below). This report sets out the CCP's findings on the issues raised in the complaint.

² NHS Act 2006, ss229, 230, Schedule 15 paragraphs 2, 3 and 4.

PARTIES

11. 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 is open from 8am to 8pm, 7 days a week, and provides GP services and urgent care (including walk-in) services to its registered patients, patients registered with other GP practices in Peterborough and patients who have not registered with a GP; and
 - ii. the Botolph Community Health Centre: from where 3Well Medical provides GP services to a registered patient list.
12. The Alma Road Primary Care Centre commenced operation in May 2009, following its successful bid in a competitive tender process run by NHS Peterborough in 2008 for an Equitable Access Centre pursuant to the Government's Equitable Access Programme (paragraphs 27-31 provide further information on the Equitable Access Programme). 3Well Medical has a five year Alternative Provider Medical Services' (APMS) contract with NHS Peterborough for the services provided at the Alma Road practice, which is due to expire on 31 March 2014.³
13. NHS Peterborough is the Primary Care Trust (PCT) responsible for commissioning NHS funded healthcare services, including primary and urgent care, for the population of Peterborough.

JURISDICTION

14. On 19 September 2011 the CCP decided that the submission made by 3Well Medical regarding the conduct of NHS Peterborough met the CCP's acceptance criteria for a conduct and a procurement case. That is the CCP decided that:
 - i. the subject matter comes within the ambit of the Principles and Rules;
 - ii. the CCP is the most appropriate body to consider this matter;
 - iii. 3Well Medical had made available the necessary information for the CCP to decide whether to accept the case and to commence its analysis;
 - iv. no legal proceedings had commenced in relation to this matter;
 - v. the dispute was not trivial or vexatious; and
 - vi. 3Well Medical had engaged with parties at a local level, prior to raising the matter with the CCP.
15. As noted in paragraph 9 above, the complaint raises both conduct and procurement issues under the Principles and Rules. 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 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).

³ The Department of Health defines APMS contracts as locally agreed contracts between commissioners and new providers for primary medical services.

16. 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. In such cases it may be more appropriate and efficient for the CCP to consider interrelated conduct and procurement issues together in a single inquiry. The CCP considers this to be the case in relation to 3Well Medical's complaint because the procurement and conduct issues are interrelated.
17. We also note that at the commencement of our investigation NHS Peterborough raised concerns with the CCP about whether the procurement issues in this case fall within the ambit of the Principles and Rules and the Procurement Guide. The commissioner was concerned that because no procurement exercise has yet been run, that the decisions it made in relation to its service reconfiguration process for primary and urgent care fell outside of the Principles and Rules. We note that the Principles and Rules and the Procurement Guide apply to commissioning and procurement processes in their entirety, which includes processes for changing the way that a commissioner commissions their services (e.g. such as a service reconfiguration process, and the work that is undertaken to help commissioners decide whether to run a tender process).

CCP PROCESS

18. On 19 September 2011 the CCP published its Notice of Acceptance in relation to 3Well Medical's complaint.⁴ On the same date, the CCP invited interested individuals and organisations to make a submission in relation to this case. On 7 October 2011 we received a detailed submission from NHS Peterborough in response to 3Well Medical's complaint.⁵
19. Consistent with our Conduct Guidelines we were required to complete our Phase I review by 14 November 2011.⁶ At the end of Phase I the CCP concluded that there were reasonable grounds for suspecting the conduct of NHS Peterborough to be inconsistent with the Principles and Rules, and decided to proceed to Phase II of the investigation.⁷ During Phase II the CCP continued to analyse the procurement and conduct issues in more detail, and sought further relevant information from each of 3Well Medical and NHS Peterborough.
20. During Phase II, a member of the CCP's Clinical Reference Group who has expertise in primary and urgent care reviewed key procurement documentation provided to the CCP by NHS Peterborough and offered a clinical insight into the procurement issues in this case.⁸ On 12 December 2011, the CCP met separately with representatives from 3Well Medical and NHS Peterborough to discuss the issues in the case in more detail and for each party to make further representations. Each of NHS Peterborough and 3Well Medical provided the CCP with further written submissions during the week commencing 2 January 2012. Phase II of our investigation is required by our Conduct Guidelines to be completed by 14 March 2012.⁹

⁴ 19 September 2011, Notice of Acceptance available at www.ccp-panel.org.uk.

⁵ 7 October 2011, submission from NHS Peterborough, available at www.ccp-panel.org.uk.

⁶ 4 October 2010, CCP Conduct Guidelines available at www.ccp-panel.org.uk.

⁷ 14 November 2011, Decision to Proceed to Phase II available at www.ccp-panel.org.uk.

⁸ The CCP's Clinical Reference Group's role is to provide expertise in order to support the Panel's understanding of the clinical issues relevant to a conduct and/or procurement case.

⁹ Ibid, note 4.

INTERESTED PARTY SUBMISSIONS

21. We received a number of submissions from interested parties during our investigation of this case. In particular we received submissions from:
 - Peterborough City Councillors;
 - Peterborough LINK;
 - the Botolph Bridge Patients Action Group;
 - Mr Stewart Jackson MP; and
 - a partner at the Lincoln Road GP practice in Peterborough.
22. Some of the submissions supported the commissioning processes adopted by NHS Peterborough in its consultation, and the commissioner's proposals, whilst other submissions raised concerns about NHS Peterborough's commissioning processes and consultation proposals. Each submission was considered in the context of our analysis of the issues in this case. Public versions of the submissions are available on the CCP's website.¹⁰

POLICY BACKGROUND

23. Our assessment takes place in the context of relevant Government policy relating to primary and urgent care services, and patient choice and competition. In primary care, patients have the ability to choose their GP practice, but any GP practice may refuse patients who are not resident within their 'practice boundary'.¹¹ Most patients register at a GP practice to access primary healthcare and this is an important process for the delivery of healthcare in England. Once a patient is registered, a GP has certain responsibilities for that patient (including the provision of treatment at home). The status of a GP's list can also allow a GP practice to refuse to accept new patients. A GP's patient list must be classified as 'open' or 'closed' under the terms of the GMS, APMS and PMS contracts.
24. If a GP practice, with the agreement of the PCT, is classified as having a 'closed' patient list it cannot accept new patients unless they are an immediate family member of an existing patient.¹² A GP practice with an 'open' patient list is permitted to register anyone from inside or outside its practice boundary but can, where it has reasonable non-discriminatory grounds to do so, refuse new patients. Some GP practices have what is referred to as an 'open but full' patient list where, although not formally closed, the practice does not usually accept new patient registrations.¹³ This may make it harder for patients to find a convenient local practice, particularly in areas with low levels of primary care provision. Practice boundaries and the status of GP lists in a particular area may therefore impact on the choice available to patients.
25. Contractual mechanisms for service providers were developed to increase access and capacity as well as improve the quality of services provided by GP practices. Negotiations between the

¹⁰ The submissions are available at www.ccp-panel.org.uk.

¹¹ A practice boundary is a defined geographical area which is agreed between a PCT and a GP practice.

¹² Across England four per cent of GP practices have 'closed' patient lists, Primary Care Access Survey, 2008/09.

¹³ An 'open but full' list does not have a statutory definition or legal validity but is a commonly used term to describe GP practices that have an 'open' patient list but nonetheless refuse to register new patients for an extended period of time. The Department of Health believes that around ten per cent of GP practice lists might be operating 'open but full' patient lists. The Department of Health does not accept that 'open but full' is an appropriate designation of a GP practice's list status under the terms of GMS or PMS contracts.

British Medical Association (BMA) and the NHS Confederation acting on behalf of the Department of Health concluded in 2004 established three major contract types:

- i. *General Medical Services (GMS)*: This contract contains nationally agreed terms, service requirements and funding allocations. The contract is negotiated centrally by the Department of Health and BMA, and managed locally by PCTs.
- ii. *Personal Medical Services (PMS)*: This provides for locally negotiated contracts, subject to certain mandatory criteria set out in the NHS (Personal Medical Services Agreements) Regulations 2004 (as amended) under the direction of PCTs with flexibility to tailor services to meet local population needs. PMS contractors must still provide the essential primary care services set out in the GMS contract where the contractor provides services for a list of registered patients.
- iii. *Alternative Provider Medical Services (APMS)*: This allows PCTs to contract with a range of providers including corporate, third sector and other public sector organisations. Contracts are locally negotiated, subject to certain mandatory criteria set out in the Alternative Primary Medical Services Directions 2009, and can be used to commission essential services and/or specified additional, enhanced or out-of-hours services. There are no statutory requirements for pricing under APMS contracts and the price of each service can be negotiated locally by the PCT and the provider. Payment can be on the basis of a fixed price, volume or performance related.¹⁴

26. The Department of Health has set out the right of patients to choose their GP practice in the NHS Constitution. It has also said that it is opening up more choice for patients that wish to register with a GP practice. This approach has been supported through its proposal to remove GP practice boundaries and the development of the NHS Choices website, which now provides information on GP practices aimed at facilitating patient choice.¹⁵ We also note that on 2 November 2011 the Department of Health announced that three areas will run a pilot from April 2012 which will enable patients to register with a GP practice close to their work, close to a relative they care for, or close to a child's school. The pilots will also test new arrangements to enable patients who are away from home to use a GP surgery as a non-registered patient.¹⁶ We note that the Department of Health continues to develop policy in the area of patient choice and primary care.

THE EQUITABLE ACCESS PROGRAMME

27. In 2008/09 the Government initiated the Equitable Access Programme with the aim of improving patient access to a GP by introducing greater competition and choice for patients,

¹⁴ These services can be commissioned from any individual or organisation (including independent sector and voluntary sector providers, NHS trusts, foundation trusts and GMS or PMS providers) that meets the provider conditions set out in the Alternative Provider Medical Services Directions 2009.

¹⁵ Policy announcements in September 2009 suggested that practice boundaries may be abolished to allow patients to register with any GP, for example, to register with a GP practice near the patient's workplace rather than home (see the speech by the Secretary of State for Health, the Rt Hon Andy Burnham on 19 September 2009: www.dh.gov.uk/en/News/Speeches/DH_105366). In addition, since October 2009 the NHS Choices web site allows patients to rate and compare their GP which gives patients greater information when choosing between GP practices www.nhs.uk/Pages/homepage.aspx?d:\data\rccpueverett\www.dh.gov.uk\en\News\Recentstories\DH_107002.

¹⁶ 2 November 2011, Department of Health policy announcement: 'GP contract arrangement allows more patient choice', available at www.dh.gov.uk.

particularly in areas described by the Department of Health as having 'inequality' and a low number of GPs per head of population.¹⁷

28. As a part of the Equitable Access Programme each PCT was expected to commission at least one GP health centre in their PCT area that was open from 8am to 8pm, 7 days a week. The centres had to combine a 'walk-in' GP service (i.e. allowing any member of the public to access primary care services for urgent or routine needs at the practice whether they were a patient registered at the practice or not) and registered GP services (i.e. offering patients the option of registering with the practice and using the practice for GP services as a registered patient). The programme also aimed to help improve inequalities by establishing over 100 GP practices in areas with the fewest GPs per head and the greatest health needs.¹⁸
29. Commissioners identified by the Department of Health as having the greatest health needs (of which there were 50), were provided with funding aid from the Department of Health to establish and run more than one Equitable Access Centre in their PCT areas. In PCT areas that were not identified as an 'area of greatest health need' there was still an expectation on them to commission one Equitable Access Centre, with no funding aid provided in support of establishing and running these new centres. We understand from NHS Peterborough that its PCT area did not fall within the 50 areas identified as having 'the greatest health needs'. Accordingly, NHS Peterborough did not receive funding aid from the Department of Health in relation for the Alma Road Primary Care Centre. PCTs commissioned Equitable Access Centres through competitive procurements, using time-limited APMS contracts, with a typical duration of five years.¹⁹
30. On 3 February 2011, the Department of Health wrote to all PCTs in England outlining the future responsibility for contracts established under the Equitable Access Programme.²⁰ The letter noted that PCTs will remain responsible for contractual arrangements with Equitable Access Centres, until proposed changes in the Health and Social Care Bill 2010-11 comes into effect.²¹ The Bill proposes that the NHS Commissioning Board will be responsible for the commissioning of primary care services for registered patients and GP consortia will be responsible for primary care services for non-registered patients (such as urgent care and 'out of hours' services, i.e. evenings and weekends). However, because Equitable Access Centres offer a mix of registered GP services and 'walk-in' services it would not be practical to separate out the management of contracts that have this service mix, so it is envisaged that from April 2013 at the latest, the NHS Commissioning Board will take over responsibility for the services provided at Equitable Access Centres.²²

¹⁷ See Department of Health's website 'Equitable Access Programme: GP health centres and new GP practices in deprived areas': at www.dh.gov.uk.

¹⁸ Ibid note 14.

¹⁹ Ibid, note 14.

²⁰ Department of Health, letter to all Chief Executives of PCTs in England 'Equitable Access Programme: Primary Medical Care Services, 3 February 2011.

²¹ A copy of the Health and Social Care Bill 2010-11 is available at: www.parliament.uk.

²² The Department of Health noted in its 3 February 2011 letter (see note 18) that exceptions to this might include where practices have no registered patients, or very small registered lists that could be transferred to other primary care providers, then responsibility for commissioning the 'walk-in' services element of the contract could be transferred to GP consortia. The NHS Commissioning Board may also delegate to GP consortia some aspects of the responsibility for managing the contracts.

31. We understand that these would be transitional solutions until current Equitable Access Centre contracts expire, at which point the NHS Commissioning Board will evaluate whether to re-commission the registered GP services (or whether to transfer those services to another GP practice), or in the case of 'walk-in' services, GP consortia will decide whether to re-commission those services.

COMMISSIONING OF URGENT AND PRIMARY CARE SERVICES IN PETERBOROUGH

32. In this section we summarise relevant background in 2009 and 2010 that preceded NHS Peterborough's 2011 public consultation on primary and urgent care services. We also summarise the key steps taken in the Commissioner's 2011 public consultation. Additional details regarding the background are provided in Appendix 1.
33. In early 2010 NHS Peterborough it became apparent to NHS Peterborough that it was in a difficult financial position with significant historical debt [£] from overspending across all healthcare areas. It commenced a review of its costs to determine how it could return its spending to affordable levels and repay its debts in full.
34. As a part of this review, NHS Peterborough considered all of the contracts it had with healthcare providers to determine if greater efficiencies and cost savings could be achieved in commissioning these services. In primary and urgent care NHS Peterborough identified that it may need to rationalise the number of GP contracts it had commissioned, reduce variability in rates and reimbursements to practices, work with GPs to reduce re-visits, potentially rationalise GP walk-in services and potentially renegotiate contracts with providers to bring its spending back to affordable levels. Following from its fiscal review, NHS Peterborough began discussions with all of its healthcare providers about possible measures to reduce its costs.
35. In relation to 3Well Medical, NHS Peterborough held meetings with the provider in June and July 2010. At these meetings a number of issues were discussed including possible mechanisms to reduce NHS Peterborough's costs in relation to the Alma Road Primary Care Centre (i.e possible adjustments to payments for patients registered at the Alma Road Primary Care Centre, based on actual activity levels, and possible adjustments to QOF payments). We understand that there was some disagreement between 3Well Medical and the commissioner in relation to these issues, and there were also a number of other ongoing issues in dispute between the parties at the time relating to clinical governance and other clinical issues. We understand that the parties had difficulty reaching resolution on some of these issues, and ultimately NHS Peterborough served 3Well Medical with a contract termination notice on 9 July 2010 (the termination notice was eventually revoked by NHS Peterborough in September 2010 – see discussion at paragraph 37 below).
36. In August 2010, NHS Peterborough commenced a short public consultation proposing two options for reconfiguring GP services in Peterborough: i) close the Alma Road Primary Care Centre, and ii) close another GP practice in Parnwell. This consultation was terminated early following feedback to NHS Peterborough suggesting that it should take a broader view of

commissioning primary care and urgent care services in the Peterborough area as a whole, rather than consulting on individual practice closures.

37. On 15 September 2010 NHS Peterborough signed a new agreement with 3Well Medical in which it revoked the 9 July contract termination notice, and reinstated the terms of the original contract in relation to the Alma Road Primary Care Centre with some amendments capping the value of the contract and reducing opening hours (these amendments only applied until 31 March 2011, at which point all of the original contract terms were reinstated).²³
38. The commissioner decided to conduct a broader review of its primary and urgent care services during October to December 2010. NHS Peterborough conducted a review of its primary and urgent care services across the whole Peterborough area, with a view to running a public consultation on options for reconfiguring the services more broadly in 2011. During its review NHS Peterborough recognised that there were a number of structural pressures that were impacting on the delivery of primary care services in Peterborough (such as predicted GP retirements in the next 5 years, Peterborough having the largest number of small GP practices per head in the East of England, high costs across all GP contracts, and a large number of GP practice premises with poor quality buildings that would not meet CQC standards). It was also recognised that the new City Care Centre site (which currently accommodates a nurse led walk-in service for urgent care, and an out of hours GP service, and provides various elective care services) could be better utilised.²⁴
39. At the conclusion of its service review in December 2010, NHS Peterborough's Board decided on a high level strategy for reconfiguring primary and urgent care. For primary care NHS Peterborough decided to pursue a strategy of consolidating services over time into medium and larger practices with improved patient access, and better quality of premises and services that would meet CQC standards. For urgent care, NHS Peterborough decided to pursue a strategy of developing a pattern of services that better assisted patients to access the right type of services quickly, and to reduce duplication in the services.
40. From January to May 2011 NHS Peterborough consulted with key stakeholders on its strategy for reconfiguring primary and urgent care services in Peterborough. Key stakeholders included primary and urgent care providers, community and patient groups, Peterborough City Councillors, the Department of Health, the East of England Strategic Health Authority and the National Clinical Advisory Team (NCAT). We understand that all new service reconfiguration proposals are required by Department of Health policy to have their clinical evidence base assessed by NCAT, and the proposed management of the process to be assessment by the Health Gateway Team.²⁵ We have been provided with a copy of each of NCAT's report and the Health Gateway Review Team's report in relation to NHS Peterborough's reconfiguration

²³ We note that in the CCP's July 2011 report on its 'Review of the Operation of 'Any Willing Provider' for the provision of routine elective care' (available at www.ccpnel.org.uk), we raised concerns about the use of contractual mechanisms by commissioners to restrict the activity levels of providers. We noted that mechanisms such as block and capped contracts could have a significant effect on competition between providers because they impact on the providers' ability, and incentive, to attract patients. In this case, we note that the cap placed on 3Well Medical's contract by NHS Peterborough was for a relatively short timeframe, so its effect would have been more limited.

²⁴ See Annexure 4 for a map outlining the locations of primary and urgent care providers in the Peterborough area.

²⁵ Department of Health, 'Health Gateway Reviews: Gateway/Clinical Reviews and NHS Reconfiguration programmes', 23 June 2011, available at: www.dh.gov.uk.

proposals. NHS Peterborough told us that NCAT's report was provided to its Steering Group and Board for their consideration of the clinical aspects of its strategy. Further details of the report are in Appendix 1.

41. During the pre-consultation phase NHS Peterborough also held four meetings with 3Well Medical and engaged in emails and letters with the provider about the PCTs proposed strategy and options for reconfiguring primary care and urgent care services. During March and April 2011 NHS Peterborough made a number of amendments to its draft consultation documents, and its business case, in response to the feedback it received from its key stakeholders. In particular, Option 2 (outlined at paragraph 42 below) in the consultation document was amended following comments received from 3Well Medical during pre-consultation.

FORMAL PUBLIC CONSULTATION

42. NHS Peterborough commenced a formal public consultation process on 18 May 2011. The consultation ran for three months (concluding on 18 August 2011) under the banner 'The Right Care at the Right Time'. There were three options that were consulted on for potentially changing the way that primary and urgent care services would be commissioned in the Peterborough area:
 - i. Option 1: NHS Peterborough would not make any changes to primary care and urgent care services in the PCT area, other than moving the Orton Medical Practice and Orton Bushfield Practice to new premises (this option was described by NHS Peterborough in the consultation documents as '*Option 1: Do Nothing*'); or
 - ii. Option 2: NHS Peterborough would do the following (this option was described by NHS Peterborough in its consultation documents as '*Option 2: Partly realise the vision for primary and urgent care*'):
 - iii. keep the Alma Road Primary Care Centre open, but reduce its walk-in services to only being available out of hours (i.e. at evenings and on weekends);
 - iv. upgrade the City Care Walk-in Centre to become a minor illness and injury unit;
 - v. provide new GP practice premises for 63 Lincoln Road Surgery and in Dogsthorpe (bringing together three GP practices);
 - vi. close the Burghley Road Surgery;
 - vii. extend the premises at the North Street and Hampton practices; and
 - viii. close the Orton Medical Practice, and move the Orton Bushfield Practice to new premises and expand their services; or
 - ix. Option 3: NHS Peterborough would do the following (this option was described by NHS Peterborough in its consultation documents as '*Option 3: Realise the full vision for primary and urgent care (preferred option)*'):
 - x. close the Alma Road Primary Care Centre, the Orton Medical Practice and the Burghley Road Surgery;
 - xi. upgrade the City Care Centre Walk-in Centre to become a minor illness and injury unit providing integrated urgent care;
 - xii. provide new GP practice premises for 63 Lincoln Road Surgery and North Street at one location;
 - xiii. provide new GP practice premises in Dogsthorpe (bringing together 3 practices);
 - xiv. provide new premises at the Orton Bushfield GP Practice and expand its services; and

- xv. provide new GP premises for the Hampton practice.
43. The options were outlined in a consultation document entitled *'The Right Care at the Right Time: Seeking your views on the Primary and Urgent Care Commissioning Strategies for Peterborough'* and a business case dated 18 May 2011. Both of these documents were made available to the public during the consultation on NHS Peterborough's website, at public meetings and through a variety of community centres and businesses in Peterborough. About three weeks into the consultation process (following requests from GPs and the public) NHS Peterborough translated the consultation documents, in a summary form, in six additional languages (Czech, Kurdish, Lithuanian, Polish, Portuguese and Urdu) to assist the non-English speaking community in Peterborough.
44. During May to July 2011 NHS Peterborough held eight public meetings in different locations across Peterborough in which the proposals were discussed and the public were provided with the opportunity to comment. We understand the meetings were chaired either by a representative of Peterborough LINKs, or a Non Executive Director from NHS Peterborough. We understand that at the public meetings two of the three clinicians who supported NHS Peterborough in its consultation process were usually present to assist the commissioner to communicate its strategy.
45. During the consultation period we also understand that 3Well Medical continued to explore other potential opportunities for the future of the primary care services provided at the Alma Road Primary Care Centre. In particular, 3Well Medical discussed the possibility of amending its opening hours with NHS Peterborough and it also entered into negotiations with two other primary care providers in Peterborough [redacted] about the prospect of potentially moving their primary care services to another site in Peterborough [redacted] and working as a single clinical team. We understand that the two other primary care providers ultimately withdrew from the proposal.
46. We understand from NHS Peterborough that it has not yet made a final decision in relation to the outcome of its public consultation process. NHS Peterborough told us that it delayed making a decision in relation to the outcome of the consultation while the CCP is carrying out its investigation in this case, to allow NHS Peterborough time to consider the late proposal that was submitted by 3Well Medical, and to consider comments that it received from the Peterborough City Council Scrutiny Commission for Health Issues at its September 2011 meeting when it considered the consultation options.
47. Since the consultation closed NHS Peterborough has reviewed the comments that it received during the consultation and has made amendments to its preferred option (option 3) in response to these comments. In particular it has adapted option 3 so that the City Care Centre will now comprise three major elements:
- i. a front end call handling and triage service linked to the new 111 service (a commissioner initiated phone service for non-emergency health inquiries);
 - ii. a GP-led minor injury unit will be open from 8am to 8pm, 7 days a week; and
 - iii. a GP out of hours service will operate from 6:30pm to 8:00 am Monday to Friday and 6:30pm every Friday evening to 8am Monday.

48. After it makes a decision about the outcome of its public consultation, NHS Peterborough intends to run a competitive tender for a future provider of the services listed at paragraph 47 above, from the City Care Centre site (expansion of the services provided from the City Care Centre was proposed in both options 2 and 3 in the consultation documents).

FRAMEWORK FOR ASSESSMENT

49. The complaint by 3Well Medical gives rise to both procurement (Principles 1 and 2) and conduct (Principle 5) issues under the Principles and Rules. These Principles state:

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.

Relevantly, at paragraph 4.13 the Procurement Guide states ... 'When conflicts of interest arise, it is the responsibility of the commissioner to manage them appropriately to ensure a robust and transparent procurement'.

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.

50. In assessing procurement issues the CCP reviews the decisions taken by the commissioner to determine whether they are reasonable under Principle 2 and the Procurement Guide for commissioners of NHS-funded services (Procurement Guide)²⁶. This means 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. If the CCP finds that there is a flaw in the commissioner's processes under Principle 2 (commissioning and procurement processes), it will then assess compliance with Principle 1 (commissioning from the best placed provider).
51. 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 the CCP will have regard to any benefits to patients and taxpayers arising from the conduct that might offset the identified costs.

²⁶ Department of Health, Procurement Guide for commissioners of NHS funded services, 30 July 2010, available at www.dh.gov.uk.

ASSESSMENT OF THE COMMISSIONING PROCESS

52. In this section we assess whether the commissioning decisions of NHS Peterborough in relation to its primary and urgent care consultation in 2011 were within the range of decisions that it could reasonably have taken under Principle 2 of the Principles and Rules, including whether the decisions of NHS Peterborough comply with the terms of the Procurement Guide.
53. 3Well Medical submitted that NHS Peterborough's commissioning process was flawed for the following reasons:
- i. The process was not sufficiently transparent – NHS Peterborough had pre-determined the outcome of the consultation prior to its commencement; there was minimal engagement with key stakeholders; there was minimal evidence in the consultation documents to support the proposals; the documents were not framed in an objective manner; the documents were not made available in non-English speaking versions until after a month into the consultation;
 - ii. The process was discriminatory – the Alma Road Primary Care Centre was not treated equally in comparison to other similar providers;
 - iii. NHS Peterborough did not manage potential conflicts of interest appropriately - by involving lead clinicians in its consultation process that have interests in primary care and/or urgent care providers that could benefit from the reconfiguration proposals.
54. We review each of these issues below.

Transparency of commissioning processes

55. In analysing the transparency of NHS Peterborough's commissioning processes, we first considered whether there was evidence that NHS Peterborough had commenced its 2011 public consultation without an open mind (i.e. whether it had pre-determined the outcome of the consultation before it commenced).
56. 3Well Medical was concerned that NHS Peterborough's public consultation process may not have been genuine in that the commissioner may have already made a decision in 2010 to close the Alma Road Primary Care Centre; irrespective of the feedback it received during its public consultation in 2011. 3Well Medical was concerned that NHS Peterborough's actions in 2010, when it issued the Alma Road Primary Care Centre with a contract termination notice for a short timeframe, and when the commissioner ran its first consultation proposing to close the practice (see description of these events at paragraphs 32-41 and Appendix 1) may have indicated that NHS Peterborough had predetermined that the Alma Road practice would be closed (i.e. that its preferred option in the 2011 consultation would be implemented).
57. In considering these issues, we reviewed a large volume of internal documents from NHS Peterborough in relation to:
- i. the circumstances that surrounded the commissioner issuing the contract termination notice on the Alma Road Primary Care Centre in 2010;
 - ii. the circumstances surrounding the commissioner's first public consultation in 2010, which proposed the closure of the Alma Road Primary Care Centre;

- iii. NHS Peterborough's review of urgent care and primary care services in late 2010, which preceded the 2011 consultation (outlined in further detail at paragraphs 32-41); and
 - iv. NHS Peterborough's pre-consultation phase for its 2011 consultation process, during which the consultation options were drafted.
58. Based on the evidence, we are satisfied that NHS Peterborough began its public consultation in May 2011 with an open mind. The evidence indicates that the options consulted on in 2011 were formulated by NHS Peterborough during its pre-consultation phase taking into account information obtained during the Commissioners' fiscal review in early 2010, information obtained during its broader urgent care and primary care services review in late 2010 and feedback it received from stakeholders during the pre-consultation phase. The evidence indicates that the proposal to close the Alma Road Primary Care Centre in the 2011 consultation was one of several options that were considered by NHS Peterborough as possible alternatives for consulting on a system-wide reconfiguration of primary and urgent care services. NHS Peterborough's internal documents indicate that the events surrounding the contract termination notice being issued on the Alma Road Primary Care Centre in 2010, and the first consultation proposing to close the Alma Road practice in 2010 were separate processes to the 2011 consultation. We decided that NHS Peterborough acted reasonably, in accordance with Principle 2 and the Procurement Guide in relation to this issue.
59. We then considered whether NHS Peterborough had engaged reasonably with its stakeholders during each of the pre-consultation and formal public consultation phases. This included consideration of whether opportunities were provided to stakeholders to provide meaningful input during these processes. The steps taken by NHS Peterborough during the pre-consultation and formal public consultation phases are explained at paragraphs 32-41, and in Appendix 1.
60. In both the pre-consultation and formal public consultation phases, the evidence shows that NHS Peterborough engaged with its stakeholders on many occasions. During pre-consultation several opportunities were provided to stakeholders to engage with NHS Peterborough on its proposed strategy for reconfiguring primary and urgent care services, and to have input on the options that would be consulted on in 2011. NHS Peterborough's internal documents show that it listened to the feedback it received during pre-consultation and it made amendments to its consultation documents in response to these comments, prior to commencing the formal public consultation process. In particular, we note that 3Well Medical was provided with several opportunities to have input on the consultation options, and we understand that option 2 in the consultation documents was suggested for inclusion in the consultation documents by 3Well Medical.
61. In relation to the formal public consultation process that was run in 2011, we found that NHS Peterborough engaged widely with its stakeholders in a meaningful manner. We noted that several opportunities were provided to key stakeholders, such as 3Well Medical, to engage with NHS Peterborough on its consultation strategy, and that several amendments have since been made to the consultation options by the commissioner in response to the feedback it received during the formal consultation process. Overall, we decided that NHS Peterborough

acted reasonably, in accordance with Principle 2 and the Procurement Guide in relation to this issue.

62. The next issue we considered was whether a reasonable level of information was contained in NHS Peterborough's consultation documents such that parties who were consulted could provide meaningful comments in the consultation process, and whether the language used in the consultation documents was reasonable. We reviewed the main consultation document entitled '*The Right Care at the Right Time: seeking your views on the Primary and Urgent Care Commissioning strategies for Peterborough*' and the commissioner's 18 May 2011 business case.
63. We concluded that overall there was a sufficient level of information in the documents for stakeholders to understand the options being consulted on, and the strategy being proposed by NHS Peterborough. We noted that several opportunities were also provided over the course of the public consultation for parties to clarify with NHS Peterborough the meaning of the information contained in the documents.
64. 3Well Medical raised concerns about the objective nature of some of the language used in the consultation document. In particular 3Well Medical was concerned about language used by the commissioner to describe the consultation options (e.g. at pages 16 and 17 in the main consultation document NHS Peterborough used the following language: '*option 2: partly realise the vision for primary and urgent care*' and '*option 3: realise the full vision for primary and urgent care (preferred option)*'). We considered that more balanced language could have been used by the commissioner to describe the consultation options, however taking into account the remainder of the language in the entirety of the consultation documents, we concluded that overall the language that was less balanced in the documentation would not have materially impacted on the consultation documents as a whole, and members of the public who read the consultation documents would still be in a position to provide meaningful input in the consultation process.
65. We then considered whether NHS Peterborough's decision to make translated versions of the consultation documents available three weeks into the formal consultation process was within the range of decisions that it could reasonably have taken in the context of Principle 2. In analysing this issue we noted that there is a sizeable community in the Peterborough area that have a non-English speaking background. In this context it was unfortunate that the commissioner did not make translated versions of the consultation documents available at the start of its public consultation process. However, in the context of a public consultation that was run over three months, we consider that the delay of three weeks in providing translated versions of the consultation documents would not have had a material impact on the consultation overall.
66. Members of the public who relied on translated versions of the consultation documents to provide feedback to the commissioner would have had over two months to provide their comments after the documents were made available. We also note that the commissioner made translators available at all of its public meetings during the formal public consultation.

Overall, we decided that NHS Peterborough acted reasonably, in accordance with Principle 2 and the Procurement Guide in relation to this issue.

Discriminatory process

67. 3Well Medical was concerned that NHS Peterborough's preferred option in its public consultation documents was premised on an unfair treatment of the Alma Road Primary Care Centre by the commissioner, in comparison to other GP practices in the Peterborough area. 3Well Medical was particularly concerned that its APMS contract has not been managed fairly since the Alma Road Primary Care Centre commenced operations in 2009, and that this may have had some influence on the commissioner when it was formulating its consultation options.
68. In considering these issues we reviewed the framework that NHS Peterborough uses to manage its GP contracts, the circumstances surrounding NHS Peterborough's management of the Alma Road Primary Care Centre contract during 2010, and the steps taken by the commissioner to formulate its consultation options.
69. In relation to the framework that the commissioner uses to manage its GP contracts, we found that there was some variation in how NHS Peterborough manages its GMS, PMS and APMS contracts with respect to the frequency in which contract reviews are conducted for each contract type (e.g. APMS and GMS contracts are reviewed quarterly and PMS contracts are reviewed annually); we understand that this is due to differences in the length of the contracts and the contract terms across each contract type. With respect to the commissioner's management of APMS contracts, the documents showed that for each of its APMS contracts, NHS Peterborough conducts regular quarterly review meetings. There did not appear to be any variations in the way that NHS Peterborough manages its APMS contracts in this regard.
70. In relation to the criteria that the commissioner uses to review the performance of its primary care contracts, the evidence shows that NHS Peterborough uses the same criteria to assess the performance of all of its primary care providers, irrespective of whether they have a GMS, PMS or APMS contract. The criteria are set out in a document entitled Primary Care Performance Management Framework, of which we have been provided a copy, and in a schedule in each provider's contract. NHS Peterborough's internal documents indicated that the Alma Road Primary Care Centre was assessed against the same performance criteria as other primary care providers in its quarterly reviews.
71. In our assessment we also considered whether there was evidence that the Alma Road Primary Care Centre had been unfairly targeted by the commissioner when it raised issues with the practice in 2010 relating to clinical governance, staffing levels at the practice and other clinical issues. We understand that there was disagreement between the parties about these issues prior to the contract termination notice being issued on the Alma Road Primary Care Centre in July 2010 (see discussion at paragraph 35). We understand from NHS Peterborough that the impetus for raising these issues with 3Well Medical was in response to complaints that the commissioner had received about these issues. NHS Peterborough told us that it raised the issues with 3Well Medical in its own investigation as a part of its ongoing

management of the Alma Road contract. NHS Peterborough's internal documents show that the issues were raised with 3Well Medical on several occasions, including during the quarterly review meetings. The internal documents also demonstrated that the commissioner raised issues of a similar nature with other primary care providers during the same period in 2010. There was no evidence that the commissioner had treated the Alma Road Primary Care Centre unfairly in this regard.

72. In analysing this issue we also reviewed the steps that the commissioner took when it formulated its consultation options. These steps are explained in paragraphs 32-41 and Appendix 1. Based on the evidence, we decided that the consultation options were formulated taking into account several different factors including information obtained during the commissioners' fiscal review in early 2010, information obtained during its broader urgent care and primary care services review in late 2010 and feedback it received from stakeholders during the pre-consultation phase. Overall we decided that NHS Peterborough acted reasonably, in accordance with Principle 2 and the Procurement Guide in relation to these issues.

Management of potential conflicts of interest

73. 3Well Medical was concerned that NHS Peterborough may have acted inconsistently with the Procurement Guide in relation to its management of potential conflicts of interest in its 2011 consultation process. The Procurement Guide requires commissioners to manage conflicts of interest appropriately to ensure robust and transparent procurement activity.²⁷
74. 3Well Medical submitted that the three clinical leads who assisted the Commissioner during its 2011 consultation process may have been conflicted because they have interests in primary care providers (as practice partners) and/or urgent care providers (in senior positions) that would be directly affected by the reconfiguration proposals. 3Well Medical was concerned that the commissioner may not have managed potential conflicts appropriately in this regard, thereby impacting on the robustness of the commissioner's consultation process.
75. In analysing this issue, we considered who the lead clinicians were, the interests that each clinician had in primary and urgent care providers in the Peterborough area, the roles that each clinician held during the consultation process, relevant government policy regarding service reconfigurations and any actions taken by NHS Peterborough to manage potential conflicts of interest in its process.
76. There were three local Peterborough clinicians who assisted NHS Peterborough as clinical leads in its 2011 consultation process:
- i. *Clinical Lead for Emergency and Critical Care*: the Clinical Lead for Emergency and Critical Care at the Peterborough and Stamford Hospitals NHS Foundation Trust, and a consultant in Emergency Medicine at the hospital trust.
 - ii. *Lead GP Commissioner*: a partner at the Park Medical GP practice (a competing practice to two of the three GP practices that are proposed to be closed in the reconfiguration

²⁷ Department of Health, Procurement Guide for commissioners of NHS-funded services, July 2010, paragraph 4.13, p 23.

- proposals – see further discussion at paragraph 79), who is also the Director for Clinical Change for NHS Peterborough and a member of NHS Peterborough’s Board; and
- iii. *GP Urgent Care Commissioner Lead*: a partner at the Thomas Walker GP practice (a competing practice to two of the three GP practices that are proposed to be closed in the reconfiguration proposals – see further discussion at paragraph 87), who is also employed by Cambridgeshire Community Services in the position of Medical Director of the out of hours GP services which are provided from the City Care Centre site.
77. In relation to the Lead for Emergency and Critical Care we decided that his role as a Clinical Lead for Emergency and Critical Care, and a consultant in Emergency Medicine at the Peterborough and Stamford Hospitals NHS Foundation Trust was not likely to conflict with his role as a lead clinician in the relevant consultation process. We noted that the Peterborough and Stamford Hospitals NHS Foundation Trust is not a provider of primary care in Peterborough (i.e. it does not compete with primary care providers that could be impacted by the reconfiguration proposals), and while it is currently a provider of urgent care, it is the commissioner’s intention (in line with the direction of government policy) that in the future the A&E Department in Peterborough will focus on the provision of emergency care only, not urgent care (see paragraph 120 for further discussion on this point).
78. The remainder of this section focuses on the role of the GP Urgent Care Commissioner Lead and Lead GP Commissioner in NHS Peterborough’s consultation process, and the extent to which the commissioner sought to manage potential conflicts of interest that might arise in its consultation process from the involvement of the two clinicians as clinical leads.
79. With respect to the Lead GP Commissioner, he is a partner at the Park Medical GP practice, the Director for Clinical Change for NHS Peterborough and a member of NHS Peterborough’s Board. The Park Medical practice is located in a catchment area for registered GP patients that will be impacted by NHS Peterborough’s reconfiguration proposals; it is in the same catchment zone as the Alma Road Primary Care Centre, and the Burghley Road practice, which are two of the three GP practices that are proposed to be closed in NHS Peterborough’s consultation proposals.
80. The Park Medical practice is located in close proximity to both of the Alma Road Primary Care Centre and the Burghley Road practice, (within a 5-15 minute walk), which means it forms part of the closest set of competitors to these practices²⁸ and stands to be directly impacted by the reconfiguration proposals. If the Alma Road Primary Care Centre and the Burghley Road practices were closed, the Park Medical practice is likely to be considered an alternative by patients registered at those practices. As a partner of the Park Medical practice, the Lead GP Commissioner was unlikely to be impartial in his role as a lead clinician in the service reconfiguration process in circumstances where his practice would be directly affected by and might gain from the process.
81. There would be a gain if the practice’s list size for registered GP patients grew as a result of the closure of the Alma Road Primary Care Centre, and the Burghley Road practice, the Park

²⁸ See map of practice locations in Appendix 2.

Medical practice (and its partners) could gain financially; because as its list size increases the practice is likely to receive additional payments from the commissioner for each new patient that registers at the practice.

82. We do not wish to suggest that clinicians would intentionally exploit their position as clinical leads in a service reconfiguration process. Rather our view is that a clinician is unlikely to be impartial in such a situation.
83. NHS Peterborough told us that the clinician was appointed to the Lead GP Commissioner role in his capacity as the Director for Clinical Change for NHS Peterborough. The evidence shows that during pre-consultation the Lead GP Commissioner had some role (outlined below at paragraph 84), but his main involvement appears to have been in assisting NHS Peterborough to communicate its consultation options and strategy to the public during the formal consultation phase (discussed further at paragraph 85 below).
84. During the pre-consultation phase we understand that the Lead GP Commissioner attended the NHS Peterborough Board meeting, as a board member, where the decision was made to consult on the relevant reconfiguration options. NHS Peterborough told us that at the meeting the Lead GP Commissioner declared his potential conflict of interest in a register. We understand from the evidence that during pre-consultation, the Lead GP Commissioner also chaired the GP Clinical Lead Group meetings with local GPs in February and March 2011. We understand that at these meetings GPs considered the commissioner's strategy for reconfiguration of primary care services from a clinical perspective, and there was some consideration of the draft consultation documents. We understand that the views of GPs obtained at these meetings were fed back to the Primary and Urgent Care Steering Group which was responsible for managing the consultation process (of which the Lead GP Commissioner was not a member) and NHS Peterborough's Board. While, as chair of these meetings, the Lead GP Commissioner could have had some role in directing the flow of discussion, it is not clear from the evidence to what extent this role could have afforded the Lead GP Commissioner an opportunity to shape the consultation options beyond the input of other GPs consulted in the process, and in favour of the Park Medical practice. We were unable to be conclusive on this point.
85. However, the role of the Lead GP Commissioner during the formal consultation phase is clearer. During the consultation phase the clinician had a prominent role, at important stages in NHS Peterborough's communication strategy with the public on the reconfiguration options and its strategy. In the main consultation document entitled 'The Right Care at the Right Time: seeking your views on the Primary Care and Urgent Care Commissioning Strategies for Peterborough', the Lead GP Commissioner appeared (together with the other two clinical leads) prominently on the first page of the document with his picture, alongside a full page of text introducing the consultation document under the heading 'Message from our Clinicians'. The text concludes '*We need to know what you as a patient think to these proposals. This is a partnership between patients and clinicians...*'. The document gives the impression that the clinicians were integrally involved in NHS Peterborough's reconfiguration strategy, and support the strategy as independent clinicians. There is no mention in the document that the Lead GP Commissioner might have conflicting interests in his role as a clinical lead for NHS

Peterborough in the service reconfiguration process, and as a partner in a GP practice that competes with primary care providers that will be impacted by the reconfiguration proposals. Without a clear declaration of these potential conflicts of interest, a reasonable member of the public reading this document is not likely to have known that these conflicts existed, and would be less likely to be in a position to robustly question the reconfiguration proposals.

86. This impression was further reinforced at another key stage in NHS Peterborough's consultation process: the public meetings held during the formal consultation phase. We understand that the Lead GP Commissioner attended a number of these public meetings to assist NHS Peterborough to communicate its reconfiguration options and consultation strategy to the public. We understand that when attending the meetings the Lead GP Commissioner sat in a prominent position at the front of the room, alongside representatives from NHS Peterborough. We understand that the clinician did not introduce the Commissioner's strategy at the public meetings, but he was involved in the open discussion and answered questions relating to clinical issues that were directed to NHS Peterborough by the public. We understand that the clinician did not declare his potentially conflicted interests at the public meetings. Without a clear declaration of this potential conflict of interest, a reasonable member of the public attending those meetings is not likely to have known that these potential conflicts existed.
87. In relation to the GP Urgent Care Commissioner Lead, we note that he is a partner at the Thomas Walker practice and is also employed by Cambridgeshire Community Services in the position of Medical Director of the out of hours GP services (urgent care) provided from the City Care Centre. Similarly to the Park Medical practice, the Thomas Walker practice is located in close proximity to both of the Alma Road Primary Care Centre and the Burghley Road practice, (within a 5-15 minute walk), which means it forms part of the closest set of competitors to these practices²⁹ and stands to be directly impacted by the reconfiguration proposals. If the Alma Road Primary Care Centre and the Burghley Road practices were closed, the Thomas Walker practice is likely to be considered an alternative by patients registered at those practices. As a partner of the Thomas Walker practice, the GP Urgent Care Commissioner Lead was unlikely to be impartial in his role as a lead clinician in the service reconfiguration process in circumstances where his practice would be directly affected, and might gain, from the process.
88. There would be a gain if the practice's list size for registered GP patients grew as a result of the closure of the Alma Road Primary Care Centre, and the Burghley Road practice, the Thomas Walker practice (and its partners) could gain financially; because as its list size increases the practice is likely to receive additional payments from the commissioner for each new patient that registers at the practice.
89. In addition to his interests in the Thomas Walk practice, the GP Urgent Care Commissioner Lead also holds a senior position as Medical Director for the out of hours GP services provided by the Cambridgeshire Community Services from the City Care Centre site. We note that other than the Alma Road Primary Care Centre, the City Care Centre is the only other major provider

²⁹ See map of practice locations in Appendix 2.

of urgent care in Peterborough. The Cambridgeshire Community Services, which provides the services from the City Care Centre site, stands to be directly impacted by the service reconfiguration proposals because it will be the sole commissioned provider of urgent care if the Alma Road practice is closed (at least until the commissioner completes its intended future competitive tender for a single provider of integrated care services at the site).

90. As Medical Director of the out of hours GP services provided by the Cambridgeshire Community Services from the City Care Centre site it would have been difficult for the GP Urgent Care Commissioner Lead to be impartial as a lead clinician in a service reconfiguration process in circumstances where the organisation with whom he is contracted as a Medical Director would be directly affected by and might gain from the process. If the Alma Road Primary Care Centre were closed, Cambridgeshire Community Services, (as provider of urgent care services at the City Care Centre site), would gain urgent care patients because it would be the sole commissioned provider of those services in Peterborough. Cambridgeshire Community Services is likely to receive additional payments from the commissioner for each new patient that attends the City Care Centre site for out of hours GP services.
91. The evidence indicates that the GP Urgent Care Commissioner Lead was not involved during the pre-consultation phase, but that his main role was in assisting the commissioner to communicate its consultation options to the public during the formal public consultation phase. Like the Lead GP Commissioner, the GP Urgent Care Commissioner Lead had a prominent role, at key stages in the NHS Peterborough's communication strategy with the public on the reconfiguration options. As outlined at paragraph 85, all of the clinical leads in NHS Peterborough's process had a prominent, influential, role in the main consultation document. Like the Lead GP Commissioner, the GP Urgent Care Commissioner Lead did not declare his potentially conflicted interests in the main consultation document, leaving the impression with the reader that the consultation process was supported by independent clinicians.
92. We understand that the GP Urgent Care Commissioner Lead also attended a number of the public meetings held by NHS Peterborough during the formal public consultation phase, to assist the commissioner to communicate its consultation options. Similarly to the Lead GP Commissioner, we understand when the GP Urgent Care Commissioner Lead attended the public meetings he sat in a prominent position at the front of the room next to NHS Peterborough representatives, and answered questions relating to clinical aspects of the reconfiguration proposals (see further explanation of the configuration of the public meetings at paragraph 86). We understand that like the Lead GP Commissioner, the GP Urgent Care Commissioner Lead did not declare his potentially conflicted interests at the public meetings.
93. We note that clinicians play an important role in service reconfigurations. The Lord Darzi Next Stage Review in 2008 set out pledges that commissioners of NHS services were expected to take into account when reconfiguring healthcare. One of the pledges stated that change should be clinically driven and should always be led by clinicians based on the best available clinical evidence.³⁰ In this context, the role that clinical leads play in service reconfigurations is

³⁰ See Department of Health, High quality care for all: NHS Next Stage Review final report, June 2008, available at: www.dh.gov.uk.

central to the process. Their input is material, influential and should be impartial at all stages of the process.

94. NHS Peterborough told us that it recognised that there was a potential for an adverse perception of a conflict of interest by involving the two clinical leads in its consultation process. The commissioner submitted that it had difficulty finding alternative clinicians that had the requisite knowledge of primary and urgent care and who were available to attend the public meetings. We note that the evidence we reviewed indicated that little effort was made by the commissioner to consider alternative options for its Lead GP Commissioner and the GP Urgent Care Commissioner beyond the clinicians who were appointed, even after it recognised the potential for an adverse inference to be drawn by their involvement in the consultation process.
95. The commissioner submitted that it would have been preferable for it to have had an independent clinician to assist it in communicating its consultation proposals to the public, however NHS Peterborough noted that in addition to the practical difficulties noted above, this would have involved an additional external cost. NHS Peterborough told us that it involved local Peterborough based clinicians as its clinical leads in its consultation process because of guidance from the Department of Health that requires local clinicians to be involved in service reconfiguration proposals.³¹ NHS Peterborough noted that the Department of Health has set out four tests that commissioner's must pass when implementing service reconfigurations:
- i. there should be clarity about the clinical evidence base underpinning the proposals;
 - ii. the proposals must have the support of the commissioning GPs;
 - iii. the proposals must promote patient choice and competition; and
 - iv. there must be genuine engagement with the public, patients and local authorities.³²
96. The CCP works within the Department of Health's policy framework and recognises the importance of involving local clinicians in service reconfiguration processes. However, we note that commissioners are also required to comply with the terms of the Department of Health's Procurement Guide when changing the way that they commission NHS funded services. The Procurement Guide states that conflicts of interest is an issue that commonly arises during procurement activity and can occur when a commissioner is engaging incumbent or potential providers in preparing them to provide solutions to deliver that service or during the procurement process itself.³³ The Procurement Guide goes on to state that when conflicts of interest arise, *it is the responsibility of the commissioner to manage them appropriately* to ensure a robust and transparent process.³⁴
97. We note that in this case, the service reconfiguration proposals are wide reaching and impact on a large number of providers in the Peterborough area. In relation to primary care there were few registered GP patient catchment areas in Peterborough that would not have been impacted by the reconfiguration proposals. In this context, we consider it would have been

³¹ 29 July 2010, Department of Health letter to all NHS Chief Executives 'service reconfiguration'.

³² Ibid, note 30.

³³ Ibid note 27, paragraph 4.13, p 23.

³⁴ Ibid note 28.

more appropriate for the commissioner to have involved two GPs as clinical leads in its process that were from outside of the Peterborough geographic area and did not have interests in practices that compete with providers that could be impacted by the service reconfiguration. Another option that could potentially have been pursued by the commissioner was to involve GPs in its process from a catchment area within Peterborough that was not likely to be impacted by the reconfiguration proposals (assuming those GPs did not also have interests in practices in catchment areas that were proposed to be reconfigured). With respect to urgent care, given the limited number of providers of urgent care in Peterborough, and the broader geographic area in which those providers compete (i.e. the Peterborough area), it would have been more appropriate for NHS Peterborough to involve a GP as its clinical lead with urgent care expertise from outside of the Peterborough area.

98. We consider that it is important for commissioners to continue to engage with local commissioners in their service reconfiguration processes, and we do not wish to discourage commissioners from gaining this valuable input in their commissioning processes. However, commissioners must ensure that when they are engaging with clinicians in commissioning processes that the role the clinician plays in the process is appropriate taking into account all of the relevant circumstances. We note that the circumstances of each service reconfiguration will differ on a case by case basis (i.e the type of services being reconfigured, and/or the scope of the reconfiguration) so identifying appropriate, impartial, clinicians to involve as clinical leads will differ in each case depending on the circumstances.
99. We note that some attempts were made by NHS Peterborough to manage the involvement of the Lead GP Commissioner and the GP Urgent Care Commissioner Lead during the pre-consultation phase. As mentioned at paragraph 84, the Lead GP Commissioner who is a member of NHS Peterborough's Board declared his potential conflict of interest at the board meeting where a decision was made to consult. We also understand from NHS Peterborough that the GP Urgent Care Commissioner Lead declared his potential conflict of interest in the same register. We understand from NHS Peterborough that when it makes its final decision in relation to the outcome of the consultation that if a vote is required, the Lead GP Commissioner will have no vote. NHS Peterborough also told us that both of the two lead clinicians were not part of the Primary and Urgent Care Steering Group that managed the consultation process and drafted the consultation options. We consider that these measures have gone some way towards managing the potential conflicts of interest in NHS Peterborough's consultation process, however the two lead clinicians still held prominent, influential roles during the formal consultation phase, which may have had a material impact on the robustness of the consultation process.
100. We concluded that the commissioner had not managed potential conflicts of interest in its consultation process appropriately. We found that the involvement by NHS Peterborough of two clinicians in lead, influential roles, in a service reconfiguration consultation process was not appropriate in circumstances where those clinicians were associated with providers that would be directly affected by and might gain from the process. Both of the clinicians are partners at GP practices in Peterborough that will be directly affected by the service

reconfiguration, and one of the clinicians also holds a senior position with an urgent care provider in Peterborough that will be directly affected by the service reconfiguration proposals.

101. Overall, we decided that NHS Peterborough's actions were not consistent with the Procurement Guide and Principle 2 in relation to this issue.

COMMISSIONING FROM THE BEST PLACED PROVIDERS

102. In this section we assess whether the commissioning decisions of NHS Peterborough in relation to its primary and urgent care consultation were within the range of decisions that it could reasonably have taken under Principle 1 of the Principles and Rules. We interpret this as meaning that services must be commissioned from those providers that supply the best service for the best price (i.e. the best value for money).
103. 3Well Medical is concerned that NHS Peterborough may have acted inconsistently with Principle 1 because the commissioning processes it adopted in relation to its 2011 consultation might inhibit it from selecting the primary and urgent care providers who are best placed to deliver value for money, at the conclusion of its consultation.
104. NHS Peterborough's internal documents indicate that a key factor which influenced the Commissioner's strategy for reconfiguring primary and urgent care services was to commission services in a more affordable manner, and to create sustainable primary and urgent care practices that represent value for money. While we identified some issues in NHS Peterborough's commissioning processes (discussed in our Principle 2 analysis), overall, we considered that NHS Peterborough's ability to select the best placed providers for urgent and primary care is not likely to be materially impacted at the conclusion of its consultation.
105. We note that the Commissioner has made several amendments to its preferred consultation option following feedback it received during the formal consultation phase, and that it intends to run a competitive tender for the future provider of the out of hours primary care and walk-in services to be provided at the City Care Centre after it makes a final decision on the outcome of its public consultation. Overall, we concluded that NHS Peterborough's actions are consistent with Principle 1.

IMPACT ON PATIENT CHOICE AND COMPETITION

106. In this section we analyse whether NHS Peterborough's proposal to close the Alma Road Primary Care Centre in its preferred consultation option is consistent with Principle 5. In particular, we assess whether the potential closure of the practice would be likely to result in a material loss of patient choice and competition in the provision of primary and urgent care services in the Peterborough area. When reaching a view on the costs to patient choice and competition that are likely to arise from the potential closure, we review the degree of patient choice and competition that exists prior to the conduct occurring (i.e. the closure of the Alma Road Primary Care Centre), and then reach a view on the likely effect of the conduct on choice and competition in the relevant geographic region.

107. We note that in option 2 in the consultation documents the commissioner proposed an alternative option for the Alma Road Primary Care Centre, which included keeping the practice open, but reducing its walk-in services to only being available at evenings and on weekends. A reduction in services would not equate to a closure of 3Well Medical's services and would therefore be unlikely to bring about the same effect on choice and competition for primary care provision to patients in the relevant geographic area. Therefore our analysis in this section focuses only on the possible closure of the services provided by 3Well Medical at the Alma Road Primary Care Centre.
108. Our analysis centred on the following:
- i. *Primary care*: the extent of patient choice and competition that would remain in the central Peterborough area, if the Alma Road Primary Care Centre were closed; and
 - ii. *Urgent Care*: the extent of patient choice and competition that would remain at the single remaining City Care Centre site, if the only other major provider of urgent care services in the Peterborough area was closed: the Alma Road Primary Care Centre.
109. Patients choose their provider both for primary care and for urgent care; we therefore evaluate the competition for patients by providers of both these types of services. In general we expect that patient satisfaction and clinical quality of GP services would improve the greater competition a provider faces to attract patients.³⁵ We also expect that the loss of an important competitor would reduce the scale of the benefits of competition.

Impact on choice and competition in Primary Care

110. If the Alma Road Primary Care Centre were closed by NHS Peterborough, there would be one less provider of standard in-hours GP services for registered patients (including walk-in sessions for registered patients) in the Peterborough area. Accordingly, we considered whether the loss of this provider would be likely to have a material adverse effect on patient choice and competition for the provision of these services.
111. We found that the Alma Road Primary Care Centre operates in a catchment area³⁶ in central Peterborough, which has significant geographic overlap with other GP practices. We found that in addition to the Alma Road Primary Care Centre, there are 11 other GP practices operating in the same catchment area, and noted that each of these practices is located within 1.5km of each other. The relevant practices include:
- i. Burghley Road practice;
 - ii. Church Walk branch of Welland Surgery,
 - iii. Millfield Medical Centre;
 - iv. Huntly Grove practice;
 - v. Thomas Walker Surgery;
 - vi. Minster Medical Practice;
 - vii. Park Medical Centre;
 - viii. Thistle Moor Road practice;

³⁵ See Pike, C. 'An Empirical Analysis of the Effects of GP Competition', Co-operation and Competition Panel Working Paper, August 2010 (http://www.ccp-panel.org.uk/content/100819_GP%20paper_full_paper.pdf)

³⁶ A 'catchment area' is the area within which patients must live in order to be able to register with the practice.

- ix. North Street practice;
 - x. 63 Lincoln Road practice; and
 - xi. Westgate Surgery.³⁷
112. NHS Peterborough has provided us with maps of each of these practice's catchment areas.³⁸ We considered whether all of the 11 practices would be available alternatives to patients in the central Peterborough area (and beyond). We found that most of the practices listed at paragraph 109 cover at least the area south of the A47, north of the River Nene, west of the A1139 and East of Nene Parkway, and many of the practices have catchment areas that go beyond these boundaries. The two exceptions are the Thistlemoor Road practice which appears to cover only a very small area, including Peterborough's New England and Walton areas, and the Welland Church Walk site which appears to cover only the area in direct proximity to the surgery.
113. In terms of quality of primary care services, we found that all of the 11 practices listed at paragraph 109 have high clinical QOF scores. We identified two practices as needing additional quality monitoring [§]. In relation to opening times, we noted that the 11 practices differ greatly from one another. A number of the practices close at lunchtime and there are times in the middle of the day when Millfield Medical and Westgate are the only two other practices providing GP clinic times, besides the Alma Road Primary Care Centre.³⁹ Provision is also scarce before 8:30am and after 6:00/6:30pm. Only three clinics in addition to the Alma Road Primary Care Centre are open on Saturday morning and the Alma Road Primary Care Centre is the only GP practice open on Saturday afternoon and on Sundays. Further detail on the opening times of Peterborough GP practices is set out in Appendix 4.
114. We note further that the Alma Road Primary Care Centre has a payment contract by which it gets paid for its registered patients, and gets paid for the sessions of care it provides to patients registered at other practices or not registered at all. Other GPs, on the other hand, are paid on a 'per registered patient' basis and would not have lost payments for a patient unless s/he had decided to un-register with the practice and re-register at the Alma Road Primary Care Centre.
115. Therefore, if a registered patient at a rival GP practice to Alma Road decided to visit Alma Road for services also provided by its own surgery, such as in-hours walk-in appointments for non-urgent care, the rival GP practice would not see its payments decrease. In these circumstances the reaction of GPs in the central Peterborough area, or absence thereof, do not provide a useful guide to the actual competitive constraint exercised by Alma Road on other GP practices in the area, because the incentive is not in place to try to avoid registered patients using Alma Road for services a GP practice can itself provide. For this incentive to exist, a PCT would need to be able to penalise a GP practice (e.g. by withdrawing funding) whose patients who choose to obtain care from an alternative provider such as Alma Road for treatment that they can or could themselves provide.

³⁷ A full list of these practices, their owners, the postcode of their location, their list size and the PCTs plans for these practices is provided in Appendix 2. Note that some of these practices are due to close or be relocated under option 3 put forward by the PCT.

³⁸ See Appendix 3 for a map of practice locations.

³⁹ NHS Peterborough told us that Millfield Medical centre already offers 8am to 8pm appointments and walk-in sessions and other practices would also be likely to provide these services post-reconfiguration.

116. Despite the current payment mechanisms in place, we expect that 3Well Medical's operations at the Alma Road Primary Care Centre would be likely to have provided a competitive constraint if it were not closed by NHS Peterborough, especially as it would increase its list of registered patients going forward. However, our analysis of location, catchment areas, quality (as measured by clinical QOF scores) and opening times suggest that a number of important rivals for standard in-hours GP services for registered patients would remain if the Alma Road Primary Care Centre were closed.⁴⁰ Therefore, with regards to standard in-hours GP services for registered patients, the proposed closure of the Alma Road Primary Care Centre is unlikely to materially reduce the competitive constraint faced by the remaining providers.

Impact on patient choice and competition in urgent care

117. In addition to standard in-hours GP services for registered patients, 3Well Medical also provides urgent care services at the Alma Road Primary Care Centre.⁴¹ These services include:

- i. Walk-in appointments for patients registered at a practice other than the Alma Road Primary Care Centre;
- ii. Walk-in appointments for patients not registered with any GP practice (an option for accessing the system which we understand may be preferred by certain cultural groups in Peterborough);
- iii. Pre-scheduled and 'walk-in' GP and nurse appointments between 7am and 8am, and between 8am and 10pm weekdays;
- iv. Pre-scheduled and 'walk-in' GP appointments on Saturday between 7am to 8:30am, and 12:00 noon and 10pm;
- v. Pre-scheduled and 'walk-in' GP appointments on Sundays between 7am to 10pm; and
- vi. unscheduled GP services on bank holidays.

118. The Alma Road Primary Care Centre is the only GP practice in its catchment area that is commissioned to provide urgent care services. The other 11 practices in the Alma Road Primary Care Centre's catchment area are only required to have GPs on site during their GP clinic times (usually one session in the morning and one in the afternoon).

119. If the Alma Road Primary Care Centre were closed, urgent care will cease to be provided in the central Peterborough catchment area. Therefore there will be a reduction in the range and opening times of urgent care services offered to both patients registered at the Alma Road Primary Care Centre and patients that are not registered at a GP practice. In addition, there could be a reduction in the degree of competition faced by the remaining GP providers in the central Peterborough area because the other 11 GPs in the same catchment area as the Alma Road Primary Care Centre are not commissioned to provide the urgent care services listed at paragraph 103. We note that if the Alma Road Primary Care Centre had continued to provide its full range of services this might have put pressure on other GPs in the catchment area to improve their services (e.g. by offering extended opening hours). We also note that generally

⁴⁰ This is not to say that all remaining 11 practices exercise the same degree of constraint on each other. For example, one practice might be of a greater constraint on another if it is located the closest to it; while other practices will operate a constraint, they will not operate as strong a constraint.

⁴¹ The proportion of urgent care provided by Alma Road is difficult to quantify as walk-ins for urgent care cannot easily be distinguished from walk-ins for non-urgent care. The Peterborough PCT estimates that roughly 60% of care at Alma Road is provided out of standard GP contracted hours.

when new providers enter a market new or improved services are often offered by incumbent providers to try and encourage patients to continue to use the services provided at their existing GP practice, rather than switch to the new provider.

120. However, the catchment area for urgent care is likely to be larger than the central Peterborough area. There are two major urgent care facilities in Peterborough, one of which is the Alma Road Primary Care Centre and the other of which is the City Care Centre located on Thorpe Road (see map at Appendix 3). The City Care Centre is likely to attract a proportion of its patients from the same area as Alma Road.⁴² In addition to the City Care Centre, the A&E Department at the Peterborough and Stamford Hospitals NHS Foundation Trust is also another provider of urgent care. We note, however, that A&E is not likely to be a major provider of urgent care services in the future based on the wish of the commissioner and national policy direction towards encouraging patients to seek urgent care services from better placed providers with use of hospital A&E units being reserved for emergency care only.
121. We expect that the loss of a competitor would reduce the benefits of competition to deliver better patient satisfaction and clinical quality to patients. Peterborough PCT told us that when it formulated its consultation options, it considered their effect on patient choice and competition. The PCT found its preferred option (which includes the closure of the Alma Road Primary Care Centre), to be in the best interest of patients and taxpayers in the Peterborough area, which is ultimately a decision for the Commissioner.
122. The PCT has also informed us that it intends to issue a competitive tender for a single integrated urgent care service in Peterborough to be located at the City Care Centre site, which will include out-of-hours GP services and a GP-led Minor Injury and Illness Unit, once a final decision on the outcome of the consultation process has been made. We understand that along with other potential providers of these services, that 3Well Medical will be invited to participate in this tender process. We note that if the Alma Road Primary Care Centre were closed, this would not reduce the number of potential bidders who will be in a position to participate in the competitive tender, and therefore the conduct is unlikely to materially reduce the competitive constraint faced by the remaining provider of urgent care at the City Care Centre site. We expect that NHS Peterborough will run a fair, transparent and competitive tender process that is consistent with the Principles and Rules and the Procurement Guide.
123. Ultimately, we understand that if the Alma Road Primary Care Centre were closed, patients who used the Alma Road facilities, but were not registered at the practice will have three options available to them: register with another GP practice in their relevant catchment area if they are not happy with their current provision, visit the City Care Centre for urgent care, or visit the A&E unit at the Peterborough and Stamford Hospitals NHS Foundation Trust. With regards to primary care, comparable options for alternative GP services in the central Peterborough area exist and patients will be able to register with another GP. The

⁴² Evidence suggests that Alma Road attracts patients from a smaller area around its premises while the City Care Centre attract patients from a wider area. The area from which Alma Road attracts patients is entirely included in the areas from which the City Care centre attracts patients.

Peterborough PCT has confirmed that all GP lists are open and are currently accepting new patients.⁴³

124. With regards to urgent care, the PCT should satisfy itself that given the location of the integrated urgent care centre outside the central Peterborough area, that patients will still be able to satisfactorily access these urgent care facilities.

CONCLUSIONS AND RECOMMENDATIONS

125. The CCP accepted this case as both a conduct and procurement (commissioning process) case. In relation to the procurement aspects of the case we assessed whether the commissioning decisions of NHS Peterborough were within the range of decisions that it could reasonably have taken under Principle 2, including whether the decisions of the commissioner complied with the requirements in the Procurement Guide.
126. Under Principle 2 we assessed whether there was evidence that NHS Peterborough had discriminated against the Alma Road Primary Care Centre in its management of the contract and in its process for formulating the 2011 consultation options. We found that there did not appear to be any significant variations in the way that the commissioner manages its GP contracts, and there was no evidence that the commissioner had unfairly targeted the Alma Road Primary Care Centre during its management of the contract that might have influenced the formulation of the consultation options. We found that the commissioner's process for formulating the 2011 consultation options did not appear to discriminate against the Alma Road Primary Care Centre, in favour of other providers.
127. Under Principle 2, we also assessed issues raised by 3Well Medical in relation to the transparency of NHS Peterborough's commissioning process. In particular, we considered whether the Commissioner had commenced its 2011 consultation without an open mind, whether NHS Peterborough had engaged reasonably with its stakeholders and whether there was a reasonable level of information contained in the consultation documentation such that parties consulted could provide meaningful comments in the process. Overall, we found that the commissioner's actions were consistent with Principle 2 in relation to these issues.
128. Under the terms of the Procurement Guide, we also assessed whether NHS Peterborough's management of potential conflicts of interest in its commissioning process had been appropriate. We found that the involvement by NHS Peterborough of two clinicians in lead, influential roles, in a service reconfiguration consultation process was not appropriate in circumstances where those clinicians were associated with providers that would be directly affected by and might gain from the process. Both of the clinicians are partners at GP practices in Peterborough that will be directly affected by the service reconfiguration, and one of the clinicians also holds a senior position with an urgent care provider in Peterborough that will be directly affected by the service reconfiguration proposals. We concluded that NHS Peterborough's management of potential conflicts of interest in its consultation process was not consistent with the requirements of the Procurement Guide. We noted that while

⁴³ Please see the column entitled 'Future plans (PCT Comments)' of the table reproduced in Appendix 2 for an estimate of the additional number of patients the Peterborough PCT believes each practice can take on.

government policy requires commissioners to involve local clinicians in service reconfiguration processes that commissioners must also ensure that the clinicians they involve are appropriate in the circumstances in order to comply with the terms of the Procurement Guide and the Principles and Rules.

129. Under Principle 1 we assessed whether the commissioning processes adopted by NHS Peterborough in relation to its 2011 consultation might inhibit it from selecting the primary and urgent care providers who are best placed to deliver value for money, when the commissioner makes a final decision on the outcome of its consultation process. Overall, we found that NHS Peterborough's actions were consistent with Principle 1.
130. In relation to our assessment of the conduct of NHS Peterborough, we reviewed whether the commissioner's proposal to close 3Well Medical's Alma Road Primary Care Centre was consistent with Principle 5. In primary care we found that while it was likely that the Alma Road practice would provide a competitive constraint on other providers in its catchment area in the future, that the removal of the practice as a competitor was not likely to have a material adverse effect on patient choice and competition. We found that there were 11 alternative GP practices in the same catchment area as the Alma Road Primary Care Centre, with which patients could register if the Alma Road practice were closed.
131. In relation to urgent care, we found that the potential closure of the Alma Road Primary Care Centre would result in a reduction from two major urgent care providers in the Peterborough area, to one major provider (the City Care Centre). However, we noted that some competitive constraint would be likely to remain from the A&E unit at the Peterborough and Stamford Hospitals NHS Foundation Trust site, and that the commissioner intends to run a competitive tender process for a future provider of the integrated care services to be provided from the City Care Centre. We found that the number of providers that could potentially bid for the tender was not likely to be reduced if the Alma Road Primary Care Centre were closed. We concluded that the closure of the Alma Road Primary Care Centre was not likely to have a material adverse effect on patient choice and competition in urgent care.

Cooperation and Competition Panel

27 January 2012

APPENDIX 1

APPENDIX 1: COMMISSIONING OF URGENT AND PRIMARY CARE SERVICES IN PETERBOROUGH

- Table 1 below summaries the key relevant background in 2009 and 2010 that preceded NHS Peterborough's 2011 public consultation process, and the key steps in NHS Peterborough's 2011 public consultation.

Table 1: Summary of background information during 2009, 2010 and 2011.

<i>Date</i>	<i>Activity</i>
January 2010	NHS Peterborough commenced a review of its finances and costs with a view to returning its spending to affordable levels. The review identified a number of areas for possible cost savings, including potentially reducing the number of GP contracts, reducing variability in rates and reimbursements, reducing GP re-visits, rationalise GP walk-in services and potentially renegotiate contracts with healthcare providers.
Early-mid 2010	NHS Peterborough commenced discussions with all healthcare providers about possible measures to reduce costs.
June - July 2010	NHS Peterborough held several meetings with 3Well Medical, at which a number of ongoing contractual issues were discussed, as well as possible measures to reduce NHS Peterborough's costs in relation to the Alma Road Primary Care Centre.
9 July 2010	NHS Peterborough served 3Well Medical with a contract termination notice after the parties could not reach agreement in relation to several ongoing issues. The notice was due to come into effect on 9 January 2011 (but was ultimately withdrawn by NHS Peterborough in September 2011).
August 2010	NHS Peterborough commenced a public consultation proposing to close the Alma Road Primary Care Centre and another GP practice in Parnwell. The consultation was stopped soon after it commenced following feedback which suggested NHS Peterborough should consider reconfiguring primary care and urgent care services in a broader sense.
15 September 2010	NHS Peterborough signed a new agreement with 3Well Medical for the services provided at the Alma Road Primary Care Centre. The agreement revoked the 9 July termination notice, and reinstated the terms of the original contract with some amendments capping the contract value and reduced opening hours for the practice (the amendments only applied until April 2011).
October – December 2010 December 2010	NHS Peterborough conducted a broader review of primary and urgent care services. Further research was conducted on reconfiguring primary and urgent care services across the Peterborough area as a whole. NHS Peterborough's board considered the information obtained during its review and decided on a broad strategy for changing the way primary and urgent care would be commissioned. The board agreed that a joint consultation for reconfiguring primary and urgent care should be run in 2011 given the interconnected nature of the services.
January 2011	NHS Peterborough formed a Primary and Urgent Care Steering Group to coordinate and manage the proposed public consultation process.
17 January 2011	NHS Peterborough presented its proposed reconfiguration strategy to Peterborough City Council Scrutiny Commission for Health Issues for their feedback. The Commission had a number of questions about the rationale underpinning the strategy and asked NHS Peterborough to return to it when the draft consultation documents were complete.
January - May 2011	NHS Peterborough consulted with key stakeholders on options for a public consultation.
Feb/Mar 2011	NHS Peterborough held two meetings with GP cluster leads to get views on the proposed reconfiguration strategy.
February 2011	The Department of Health conducted a Gateway Review of NHS Peterborough's strategy for reconfiguring primary and urgent care services. The review team considered the objectives for the reconfiguration proposals to ensure they made the necessary contribution to government, departmental, NHS or organisational strategy. Feedback to NHS Peterborough included that the commissioner's strategy was broadly in line with national policy and was generally supported by the locality, but that some amendments would need to be made to the consultation documents to make them more robust and to make a more persuasive case in support of the proposals.
March 2011	The National Clinical Advisory Team (NCAT) reviewed NHS Peterborough's proposed strategy and consultation options from a clinical perspective. Feedback to NHS Peterborough from NCAT included that the plans for reconfiguration made clinical sense, that the plans did not pose issues of patient safety, that the commissioner should proceed to public consultation and describe clearly to the public the benefits that could arise from the proposals.
March – April 2011	NHS Peterborough made a number of amendments to its consultation documents in response to feedback it received from stakeholders.
April 2011	Peterborough City Council Scrutiny Commission for Health Issues considered the revised consultation documents.
April 2011	NHS Peterborough's board decided that the relevant reconfiguration proposals should be consulted on. The board decided that the consultation process should commence on 18 May 2011.
18 May 2011	NHS Peterborough commenced its formal public consultation process.
May – July 2011	NHS Peterborough held 8 public meetings in different locations across Peterborough regarding its reconfiguration options and strategy.
May – August 2011	NHS Peterborough and 3Well Medical held several meetings in which further potential options for the future of the services provided at the Alma Road Primary Care Centre were discussed. We understand the parties were unable to reach agreement on an alternative option. During this period 3Well Medical was also exploring possible alternative options for the primary care services provided at the Alma Road practice, with other providers in Peterborough.
18 August 2011	NHS Peterborough's public consultation process closed.

APPENDIX 2

APPENDIX 2: DETAILS OF GP PRACTICES IN PETERBOROUGH

TABLE 1: List of GP Practises in Peterborough

	<i>Current</i>	<i>Ownership</i>	<i>Postcode</i>	<i>List size: April 2011*</i>	<i>2010/2011 Clinical QOF**</i>	<i>Future plans (PCT comments)</i>
1.1	Alma Road Primary Care	3Well	PE1 3FG	[<]	[<]	Possible closure
1.2	Burghley Road	First Health	PE1 2QE	[<]	[<]	Possible closure
1.3	Church Walk branch of	Dr Mazumdar & Srinivasana	PE1 2TP	[<]	[<]	
2	Millfield Medical Centre	Dr M Kennedy	PE1 3BF	[<]	[<]	Currently offers 8am to 8pm and walk-in sessions. Serves large new to the UK community. Has capacity to grow list numbers to include 4-6000 more patients.
3.1	Huntly Grove	Dr B K Shoban	PE1 2QP	[<]	[<]	
3.2	Thomas Walker	Dr Hastie & Partners	PE1 2QP	[<]	[<]	Proposal to combine and offer 8am to 8pm and weekend services. Would have capacity to grow list numbers to include 4-6000 more patients.
3.3	Minster Medical Practice	Dr Bailey	PE1 2QP	[<]	[<]	
4	Park Medical Centre	Dr M Caskey & Partners	PE1 2UF	[<]	[<]	Scope to grow list numbers to include 500-1000 more patients.
5	Thistlemoor Road	Dr J Modha & Partners	PE1 3HP	[<]	[<]	New premises with popular walk-in model. Serves large new to UK community. Scope to grow list numbers to include 1-3000 more patients.
6.1	North Street	Dr Z Myszka	PE1 2RA	[<]	[<]	Proposal to combine and offer 8am to 8pm and weekend services (requires new premises) and has scope to grow list numbers to include 2-4000 more patients.
6.2	63 Lincoln Road	Dr Watson & Partners	PE1 2SF	[<]	[<]	
7	Westgate Surgery	Dr Sanders & Partners	PE1 1NW	[<]	[<]	Consolidating after recently joining with a nearby small surgery. Serves large new to UK community.

Notes:

* The PCT has informed us that in December 2010/11 all patients were required to reply to the PCT with regard to their Health Care Summary Record. The PCT used this data to clean the lists of registered patients in the Peterborough area. In addition, the PCT have informed us that each quarter patients new to the UK within the last 12 months receive a letter requiring them to confirm they continue to be resident in the UK. They noted that this particularly affects Millfield Medical and Thistlemoor and that the process is likely to lead to a small underestimation of the list of registered patients in these surgeries, due to non-replies for patients who are still resident in Peterborough and in need of services.

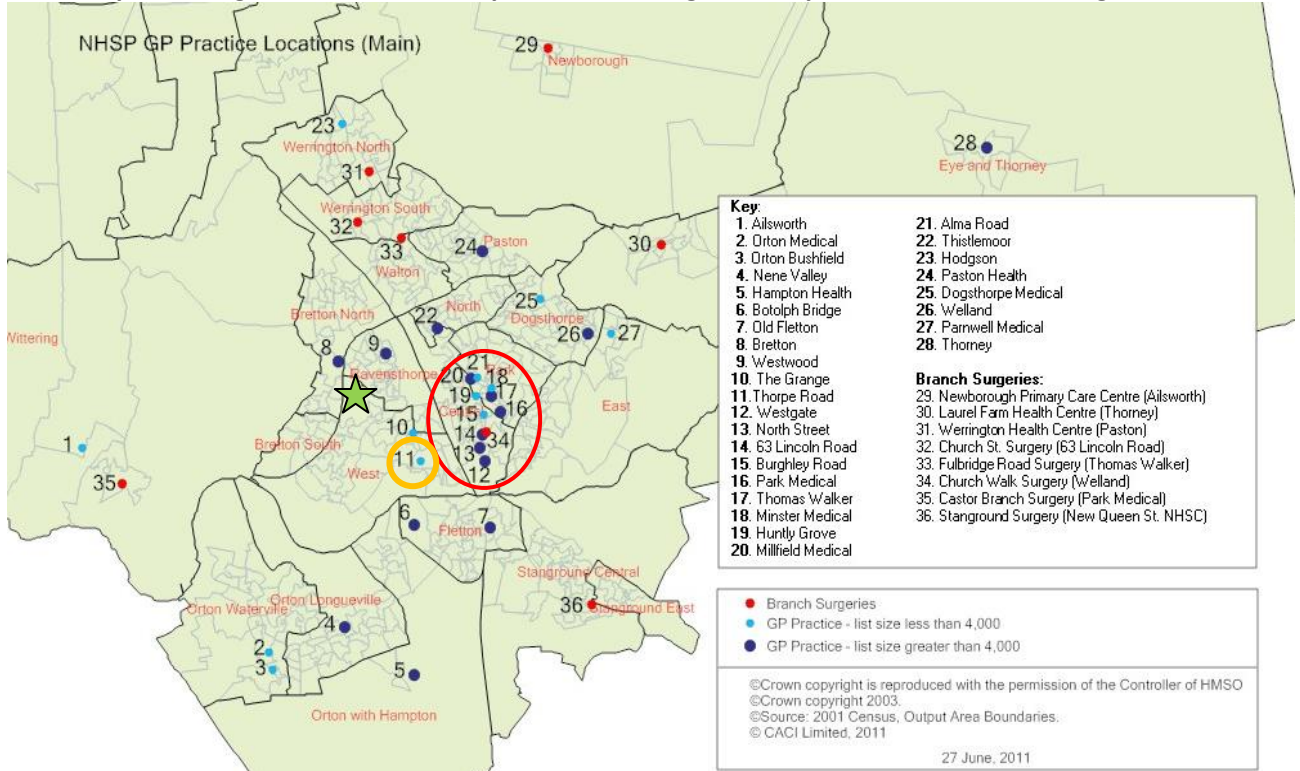
**QOF stands for Quality and Outcomes Framework (QOF). It is a system to remunerate general practices for providing good quality care to their patients, and to help fund work to further improve the quality of health care delivered. The total available points for the clinical domain of QOF are 697. The clinical QOF evaluates practices on 86 indicators in 20 specialty areas. The clinical QOF accounts for 69.7% of the overall QOF score. The other QOF domains are the organisational domain, the patient experience domain, and the additional services domain.

Source: PCT Peterborough

APPENDIX 3: LOCATIONS OF GP PRACTICES AND URGENT CARE PROVIDERS IN PETERBOROUGH

Figure 1

Map outlining locations of the GP practices and urgent care providers in Peterborough



KEY

The red circle indicates the central Peterborough area; this area includes the Alma Road Primary Care Centre and the 11 other practices in the area.

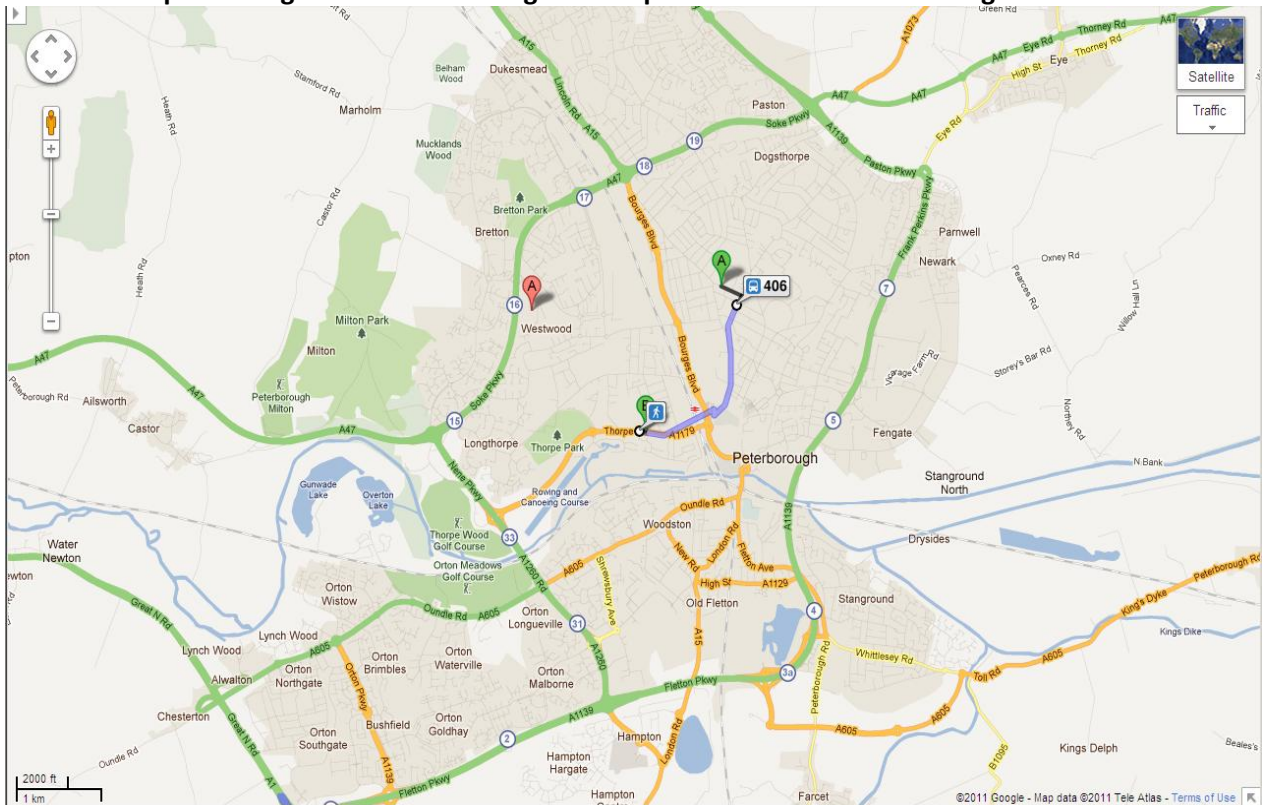
The orange circle indicates the location of the City Care Centre – proposed as the location of the new Minor Injuries Unit (or integrated urgent care centre).

The green star indicates the location of the A&E unit at the Peterborough and Stamford Hospitals NHS Foundation Trust site.

APPENDIX 3

FIGURE 2

Map outlining the locations of urgent care providers in the Peterborough area



KEY

Peterborough's A&E unit is located in Westwood, close to exit 16 of the A47 (red marker A).

The Alma Road Primary Care Centre is located at the green marker A; the City Care Centre is located at the green marker B.

APPENDIX 4

APPENDIX 4: GP PRACTICE OPENING TIMES

- Table 2 below outlines GP practice opening times in Peterborough. The commissioner told us that all practices are open for patient care as a minimum between 0800 and 1830 Monday to Friday. The commissioner told us that the times in Table 2 below show the periods that practices offer bookable or walk-in appointments and practices may choose to extend beyond these times depending on the demand on the day. In addition to the hours marked in Table 2, NHS Peterborough told us that the practices also provide clinics for specific patient groups (i.e. long term conditions), telephone services and home visit during practice opening hours.

TABLE 2: GP Practice Opening Times in Peterborough

Day	Practice name	7:00-7:30	7:30-8:00	8:00-8:30	8:30-9:00	9:00-9:30	9:30-10:00	10:00-10:30	10:30-11:00	11:00-11:30	11:30-12:00	12:00-12:30	12:30-1:00	1:00-1:30	1:30-2:00	2:00-2:30	2:30-3:00	3:00-3:30	3:30-4:00	4:00-4:30	4:30-5:00	5:00-5:30	5:30-6:00	6:00-6:30	6:30-7:00	7:00-7:30	7:30-8:00	8:00-8:30	8:30-9:00	9:00-9:30	9:30-10:00				
Monday	Alma Road																																		
	Burghley Rd																																		
	Huntly Grove																																		
	63 Lincoln Rd																																		
	Millfield Medical																																		
	Minster Medical																																		
	North St																																		
	Park Medical																																		
	Thistlemoor																																		
	TWS																																		
	Westgate																																		
	Church Walk																																		
Tuesday	Alma Road																																		
	Burghley Rd																																		
	Huntly Grove																																		
	63 Lincoln Rd																																		
	Millfield Medical																																		
	Minster Medical																																		

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Friday	Burghley Rd		
	Huntly Grove		
	63 Lincoln Rd		
	Millfield Medical		
	Minster Medical		
	North St		
	Park Medical		
	Thistlemoor		
	TWS		
	Westgate		
	Church Walk		
	Alma Road		
Saturday	Burghley Rd		
	Huntly Grove		
	63 Lincoln Rd		
	Millfield Medical		
	Minster Medical		
	North St		
	Park Medical		
	Thistlemoor		
	TWS		
	Westgate		
	Church Walk		
	Alma Road		
Sunday	Burghley Rd		
	Huntly Grove		
	63 Lincoln Rd		
	Millfield Medical		
	Minster Medical		
	North St		
	Park Medical		

APPENDIX 3

<i>Thistlemoor</i>		
<i>TWS</i>		
<i>Westgate</i>		
<i>Church Walk</i>		

Source: NHS Peterborough