



CO-OPERATION & COMPETITION PANEL
FOR NHS-FUNDED SERVICES

Cooperation and Competition Panel

Invitation to Comment on Possible Remedies in Respect of the CCP's Report on the Commissioning of primary and urgent care services in Peterborough: investigation into a complaint by 3Well Medical

27 January 2012

INVITATION TO COMMENT ON POSSIBLE REMEDIES

1. On 27 January 2012 the Cooperation and Competition Panel (CCP) published its report in relation to its investigation of a complaint by 3Well Medical about the conduct of NHS Peterborough and the commissioning decisions of the commissioner with respect to a consultation process for reconfiguring primary and urgent care services in 2011.¹
2. In its investigation the CCP considered issues relating to both the conduct of the commissioner and its procurement (commissioning) process. The CCP found that the commissioner's conduct was consistent with Principles 5. In relation to NHS Peterborough's commissioning process, the CCP found that the decisions of the commissioner were consistent with Principles 1 and 2 except in relation to its management of potential conflicts of interest. In relation to this issue the CCP found that the commissioner had not complied with the terms of the Procurement Guide² (and accordingly the commissioner's actions were not consistent with the Principles and Rules) because of the involvement of two lead clinicians in the commissioner's consultation process that had associations with primary and/or urgent care providers that would be directly affected by and might gain from the consultation process. The CCP found that NHS Peterborough had not managed conflicts of interest in its process appropriately, as required by the Procurement Guide.
3. In February 2012 the CCP will provide its final recommendations to the Secretary of State for Health in relation to the remedies in this case. The Secretary of State for Health will decide whether or not to accept the CCP's recommendations and what action, if any, is required as a result. The CCP's advice on remedies is not binding on the Department of Health.
4. Before providing its recommendations to the Secretary of State for Health, the CCP is consulting on how the effects on patients and taxpayers arising from the conduct that was found to be inconsistent with the Procurement Guide might best be remedied. The CCP invites views on whether the options set out below might be effective in remedying the effects on patients and taxpayers identified in our published advice to the Secretary of State for Health.

POSSIBLE REMEDIES

5. We have set out below possible remedies to address the likely impact on patients and taxpayers that was identified in the CCP's published advice in relation to this case. We are considering whether these options would address the effects on patients and taxpayers arising from the conduct that was found to be inconsistent with the Procurement Guide in our published advice.
6. Before it makes its recommendations to the Secretary of State for Health, the CCP invites submissions or any other practical remedies that might be proposed in response to this consultation process that would effectively address the effects on patients and taxpayers arising from the conduct that was found to be inconsistent with the Procurement Guide.

¹ The CCPs report is available at www.ccp-panel.org.uk.

² Department of Health, Procurement guide for commissioners of NHS-funded services, July 2010, available at: www.dh.gov.uk.

7. We have set out possible remedies below to address the likely impact on patients and taxpayers from the conduct that we have found to be inconsistent with the Procurement Guide. These possible remedies include:
- i. **An independent panel of clinicians to report to NHS Peterborough's Board:** Prior to making its final decision on the outcome of its 2011 consultation process, NHS Peterborough's board would consider a report from a panel of independent clinicians concerning the clinical case regarding options 1, 2 and 3 consulted on by the commissioner in its 18 May – 18 August 2011 consultation process (*'The Right Care at the right Time'*). The clinicians would be independent, with no associations with either urgent care or primary care providers affected by the reconfiguration proposals, and would have requisite expertise in urgent and primary care. In preparing their report the clinicians would consider:
 - a. NHS Peterborough's consultation documents (and any other documents in NHS Peterborough's possession that the independent panel of clinicians considers to be relevant to understand the clinical case for change);
 - b. any relevant amendments made by the commissioner to its consultation options; and
 - c. all feedback provided to the commissioner during its consultation process.
 - ii. **Measures to manage future conflicts of interest:** NHS Peterborough would put in place measures to ensure that in its future commissioning processes potential conflicts, including in relation to its external advisers and other persons who assist the commissioner in its commissioning processes, are identified and appropriately managed. NHS Peterborough would agree the measures it will adopt with the CCP and inform the CCP once those measures are implemented.
8. We invite submissions on the practical, effective application of the proposed remedies outlined at paragraphs 7(i) and 7(ii) above. In particular, we welcome views on whether option 7(i) or 7(ii) should be adopted, or whether both options 7(i) and 7(ii) should be adopted.
9. In relation to paragraph 7(i), we are also seeking feedback on how to identify the proposed independent panel of clinicians, including whether there is an appropriate body that might propose members of the panel (e.g. the Royal College of General Practitioners).

OTHER MEASURES

10. The CCP will also consider any other practicable remedies that might be proposed to address the effects on patients and taxpayers arising from the conduct that was found to be inconsistent with the Procurement Guide in our published advice.

COST OF REMEDIES AND PROPORTIONALITY

11. The CCP will recommend remedies that are effective in addressing the effects on patients and taxpayers arising from the conduct that was found to be inconsistent with the Procurement Guide in our published advice. When deciding on an appropriate remedy, the CCP will have

regard to its effectiveness, the associated cost and the principle of proportionality. The CCP invites views on the costs and proportionality of these proposed remedies.

12. Responses must be submitted in writing to: cases@ccpanel.gsi.gov.uk by **10 February 2012**. Unfortunately we cannot guarantee that submissions received after the deadline will be considered. If you have any questions in connection with this matter please email your query to: cases@ccpanel.gsi.gov.uk or contact us on 020 7270 5653.

Cooperation and Competition Panel

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