

PROPOSED MERGER OF LEWISHAM PCT'S PROVIDER SERVICES ARM AND LEWISHAM HOSPITAL NHS TRUST

Intention to proceed to a Phase Two Investigation

PARTIES

1. Lewisham Hospital NHS Trust is in acute trust comprising University Hospitals Lewisham and The Children's Hospital, Lewisham. In addition to most of the services of a traditional general acute hospital Lewisham Hospital NHS Trust offers specialist services in paediatric and neonatal surgery, neonatal intensive care, cystic fibrosis and ear, nose and throat services. It has over 2,500 members of staff and serves a local population of approximately 265,000. The trust has three clinical divisions: Medicine and Long-Term Conditions; Surgery, Theatres and Anaesthetics; and A&E, Women's and Children's Services & Pathology.
2. Lewisham PCT Community Health Services (LCHS) is the provider arm of Lewisham PCT. It was awarded autonomous provider organisation status in April 2009. LCHS provides community services including phlebotomy, district nursing, child therapy and diabetes services.

TRANSACTION

3. The transaction involves the transfer of LCHS to Lewisham Hospital NHS Trust. Following the proposed transfer, the two organisations will become a single, integrated organisation.
4. On 19 October 2009 the CCP accepted the transfer as a merger case, and published a notice of acceptance on its website to this effect.¹
5. This paper sets out the key issues raised by the merger and explains why the Panel considers that further investigation is warranted.

ISSUES

6. The CCP assesses whether or not the merger is consistent with the Principles and Rules of Co-operation and Competition (the 'Principles and Rules'). The relevant provisions of the Principles and Rules to mergers generally are:
 - Principle 9: Mergers, acquisitions, de-mergers and joint ventures are acceptable and permissible when demonstrated to be in patient and taxpayers' best interests and there remains sufficient choice and competition to ensure high quality standards of care and value for money.

¹ <http://www.ccp-panel.org.uk/cases/merger-of-nhs-lewisham-provider-services-arm.html>

- Principle 10: Vertical integration is permissible when demonstrated to be in patient and taxpayers' best interests and protects the primacy of the GP gatekeeper function; and there remains sufficient choice and competition to ensure high quality standards of care and value for money.
7. The CCP's draft interim Merger Guidelines² set out a cost-benefit framework for the assessment of the effect of mergers under the Principle and Rules. The CCP will consider the impact of the merger and specifically whether it is likely to result in any adverse effects on patients and/or taxpayers because of any loss of patient choice and/or competition. The CCP will also consider, if any adverse effect is identified, whether the merger is likely to give rise to any countervailing benefits to patients and/or taxpayers.

Adverse effect on patients and taxpayers

8. The CCP's analysis of the effect of the transaction on patients and taxpayers in Phase One has highlighted the following principal issues:

a) *Lewisham Hospital NHS Trust's 'Challenged Trust' status*

Lewisham Hospital NHS Trust is currently designated as a 'Challenged Trust' by London SHA. The Challenged Trust Board³ (CTB) considered at a meeting held on 7 December 2009, whether Lewisham Hospital NHS Trust's should maintain this designation or be moved out of Challenged Trust status. Lewisham Hospital NHS Trust's financial position is relevant to our competitive assessment because, if it were to have an adverse impact on LCHS (e.g. through cross-subsidy), this may limit LCHS' ability to compete in the market when services are tendered by Lewisham PCT. Cross-subsidisation could also impact on the quality of care provided by LCHS, even if services are not tendered.

b) *Viability of provider arm as a stand-alone organisation*

LCHS has told us that it would be financially unviable as a stand-alone organisation. Lewisham Hospital NHS Trust has also indicated to us that, over the medium term, it would also be unlikely to continue as a stand-alone organisation. This is relevant to our assessment of what would happen to competition in the absence of the merger (the counterfactual). Assessing the counterfactual accurately is important to making sure that our assessment of the effect of the merger on patients and taxpayers compares this with the most likely alternative scenario. The parties have told us that in the absence of the merger, the likely alternative would be for LCHS to seek an alternative merger partner and for Lewisham Hospital NHS Trust to merge ultimately with another acute trust.

c) *Future tendering plans*

It is unclear how future tendering will be affected by the merger, or which services will be tendered in future. Lewisham PCT's tendering plans will not be available until 18 December 2009. This is relevant to our assessment of the merger as, without knowing which services

² <http://www.ccpanel.org.uk/content/CONSULTATION-Mergers.pdf>

³ Towards the end of 2008/9 London PCTs and NHS London agreed a Medium Term Financial Strategy, where PCTs undertook to invest in a collective fund to tackle historic debts across London. This included the creation of a Challenged Trust Board (CTB) to ensure that the collective fund was used wisely and that Trusts in receipt of resources from the fund had credible plans for the future.

are likely to be tendered in future, in what time frame, and how the merger would affect these plans, we cannot assess the extent to which the merger will affect competition.

Our preliminary view on a possible adverse impact on patients and taxpayers

9. The uncertainty about Lewisham Hospitals NHS Foundation Trust's financial status, and its potential impact on LCHS, means that the merger could have an adverse impact on patients and/or taxpayers.
10. In our view, the issues outlined above require further consideration at Phase Two. In particular, the CCP would like to examine:
 - a) Firstly, the outcome of the CTB's review of Lewisham Hospital NHS Trust's financial status. In the event that CTB decides that Lewisham Hospital NHS Trust is no longer challenged, we may still want to consider whether the fact that it was so recently financially challenged could result in costs for patients and/or taxpayers. This will involve assessing the role played by Lewisham PCT in managing the performance of the merged entity.
 - b) Secondly, the scenario where the parties were not to merge; in particular, we will seek evidence (e.g. financial projections/costings) as to why LCHS would not be viable as a stand-alone organisation. ;
 - c) Thirdly, which services Lewisham PCT intends to competitively tender and how, if at all, its plans in this regard are dependent on the merger.

Benefits of the merger to patients and taxpayers

11. The parties have claimed that a number of benefits are likely to accrue to patients and/or taxpayers if the merger proceeds. These include a number of clinical benefits such as: (a) a decrease in acute referrals as result of better integration of services; (b) improvement in staff education and training; (c) reduced length of patient stay; and (d) improved information-sharing between acute and community staff, leading to better access and care for patients, and improved use of resources. The parties have also identified potential savings from rationalisation of back-office functions.

Our preliminary view on benefits to patients and taxpayers

12. The parties have advanced evidence in support of the achievability of the claimed benefits and why they are merger-specific⁴. However, we have not had the opportunity in Phase One to fully assess this evidence. During Phase Two we will further consider whether the benefits put forward by the parties are substantiated and merger-specific.

INTENTION TO PROCEED TO A PHASE TWO INVESTIGATION

13. On the basis of the issues outlined above, we have concluded that there is a realistic prospect that the transaction will result in a material adverse effect on patients and/or taxpayers. The Panel considers that further investigation is warranted and we will therefore proceed to a Phase Two investigation.

⁴⁴ i.e. the benefits would not accrue if the merger did not take place.

14. The deadline for the completion of Phase Two is 12 April 2010.

Andrew Taylor
Director, Co-operation and Competition Panel
14 December 2009