

# Monitor

Making the health sector  
work for patients

## Investigation into the commissioning of elective services in Blackpool and Fylde & Wyre: Remedies consultation



## **About Monitor**

As the sector regulator for health services in England, our job is to make the health sector work better for patients. As well as making sure that independent NHS foundation trusts are well led so that they can deliver quality care on a sustainable basis, we make sure: essential services are maintained if a provider gets into serious difficulties; the NHS payment system promotes quality and efficiency; and patients do not lose out through restrictions on their rights to make choices, through poor purchasing on their behalf, or through inappropriate anti-competitive behaviour by providers or commissioners.

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## Section 1: Why we are seeking views

### Purpose of this document

On 25 September 2014, we [published a report](#) of our investigation into a complaint brought by Spire Healthcare Limited (Spire). Our investigation found that Blackpool Clinical Commissioning Group (CCG) and Fylde and Wyre CCG (the CCGs) had not ensured that patients were being offered choice or that patient choice was being publicised and promoted.

The purpose of this document is to seek views from interested parties on whether we need to take enforcement action to address these problems and also to give the CCGs an opportunity to propose their own solutions.

Under the relevant rules,<sup>1</sup> commissioners must take proactive steps to ensure that:

- patients are being offered a choice of provider when they require an elective referral (whether by their GP, dentist or optometrist) for a first outpatient appointment with a consultant or consultant-led team (Standing Rule 39) and
- patients know that they are able to choose which provider they are referred to and can access (and know where to find) information to help them make that choice (Standing Rule 42).

We found that Blackpool CCG and Fylde and Wyre CCG did not comply with their obligations under Standing Rules 39 and 42.

### Our approach to taking enforcement action

Where we identify problems in a local area, the Regulations give us the power to take a range of enforcement actions.<sup>2</sup>

These include:

- a) the power to direct commissioners to put in place measures to prevent breaches, to remedy breaches and/or to mitigate their effects and
- b) the power to accept undertakings<sup>3</sup> from commissioners in place of a direction.

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<sup>1</sup> For ease of reference in this document, the term 'relevant rules' includes provisions of the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 (the **Regulations**) and the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (the **Standing Rules**).

<sup>2</sup> The procedure we follow is set out in our 'Enforcement guidance', at [www.gov.uk/government/publications/monitors-enforcement-guidance](http://www.gov.uk/government/publications/monitors-enforcement-guidance)

<sup>3</sup> Under Regulation 16, we may accept undertakings in place of issuing a direction. This enables commissioners who are in breach of the regulations to offer undertakings that would address the breach. Where we accept an undertaking, we will end our investigation and any actions we were taking to end the breach, unless the commissioner in question fails to comply with the undertaking.

In considering what action to take, our main aim is to protect and promote the interests of patients by promoting compliance with the relevant rules. We will ensure that the enforcement action we take is proportionate and reasonable in the circumstances. Our approach is set out in our '[Enforcement Guidance](#)'.<sup>4</sup>

In reaching a decision on whether to take enforcement action, we will consider, among other factors:

- what steps the commissioner has taken and/or proposes to take voluntarily to bring the breach to an end
- whether, if the commissioner has proposed voluntary steps, it would be beneficial to impose enforcement measures relating to those steps to ensure that the breach does not continue
- whether there are other steps that should be taken to ensure that the breach does not continue or is remedied.

In this case, the CCGs have notified us of actions they have taken since we initiated our investigation, which are relevant to our decision on whether or not further action is required to address problems with patient choice. We set out details of these actions in Section 2 and Section 3 of this document.

We have also provided our initial views on whether we think these actions effectively address the problems we identified or whether we still think that action (whether in the form of directions or undertakings) is required.

### **Next steps**

**We are now seeking views from interested parties on:**

- **whether the actions taken by each CCG and set out in this document are sufficient to protect and promote patient choice in each CCG area**
- **whether more or different action is needed (and if so what type of action).**

**We also invite the CCGs to propose any undertakings they consider may help protect and promote patient choice in each of their areas.**

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<sup>4</sup> This includes more details of the types of factors we take into account in deciding what action to take:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/283508/EnforcementGuidanceDec13.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/283508/EnforcementGuidanceDec13.pdf)

Respondents should submit their views in writing to:  
[coopandcompcases@monitor.gov.uk](mailto:coopandcompcases@monitor.gov.uk) no later than **5.30pm on Friday, 17 October 2014**. We cannot guarantee that submissions received after the deadline will be taken into account in our decision-making process.

Once we have received responses to this consultation document, we will set out our next steps, which may or may not include enforcement action against one or both CCGs.

If you have any questions in connection with this matter please email your query to:  
[coopandcompcases@monitor.gov.uk](mailto:coopandcompcases@monitor.gov.uk) or contact us on 020 3747 0228.

## Section 2: Fylde and Wyre Clinical Commissioning Group

This section sets out:

- the actions taken by Fylde and Wyre CCG to ensure that patients will be offered choice and that patient choice will be publicised and promoted
- our initial views on those actions and whether they may address the problems identified
- next steps.

### Actions to date

Fylde and Wyre CCG told us that, since the beginning of our investigation, it has taken a number of steps to ensure that patients are offered a choice of provider for their first outpatient appointment and that the right to choice is publicised and promoted.

These steps include:

- a patient choice survey
- a new patient choice policy statement providing patients with detailed information about how choice operates in their local area
- a new contract to incentivise GPs to offer patients choice (and report this to the CCG) and to promote choice through posters displayed in waiting rooms
- a patient choice communication plan, which includes digital communications, paper newsletters and engagement with relevant stakeholders
- plans to revise part of the CCG's website to promote the availability of choice.

We have set out these steps in more detail below.

#### *Patient choice survey*

In February 2014, Fylde and Wyre CCG carried out a survey in conjunction with Ipsos MORI.<sup>5</sup> This survey sought to understand how important choice was to patients and may itself have helped raise the profile of choice in the area. It found that 88% of respondents thought it was important to be able to choose which hospital they were treated at and 67% of respondents thought it was important to be able to choose their hospital consultant.

This survey also asked residents where they would look for information about which hospital to choose for treatment. 52% of respondents said they would speak to their

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<sup>5</sup> [www.fyldeandwyreccg.nhs.uk/publication/7553-public-perceptions-of-the-nhs-in-fylde-and-wyre](http://www.fyldeandwyreccg.nhs.uk/publication/7553-public-perceptions-of-the-nhs-in-fylde-and-wyre)

GP, while 20% said they would consult non-NHS websites, 19% said they would speak to friends, colleagues or family, 13% said they would use NHS Choices and 11% said they would look at other NHS websites.

### *Patient choice policy statement*

Fylde and Wyre CCG provided us with a draft patient choice policy statement in July 2014.<sup>6</sup> This document sets out in detail the patients' right to choice, from the patients' perspective, and how choice should be offered in each relevant situation. It includes information about first outpatient appointments, maternity services, mental health, community services and diagnostics. It also has information about the rights a patient has when they are not treated within 18 weeks and information about what to do if a patient has not been offered choice and wishes to complain.

Fylde and Wyre CCG has told us that although the document has been approved by its board, it has not yet been made public.

### *Contractual arrangements with GPs*

In July 2014, Fylde and Wyre CCG provided us with details of proposed updated contractual arrangements with GPs, which it intended to introduce later this year.<sup>7</sup>

These arrangements include objectives to monitor the proportion of patients at each GP practice in the CCG area who are offered a choice of healthcare provider and to help improve more generally awareness of patient choice. The arrangements require GPs to report the number of patients offered a choice at their practice, to include additional specified information about patient choice on their practice websites and to display promotional material reminding patients of their right to choice in waiting rooms.<sup>8</sup>

We understand that GPs will receive a nominal payment for reporting when choice is being offered and for achieving certain targets in relation to the number of patients offered a choice of provider.

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<sup>6</sup> NHS Fylde and Wyre CCG patient choice policy statement.

<sup>7</sup> These arrangements are called the 'Referral Support and Pathway Enhancement Scheme' (RSPE) contract'.

<sup>8</sup> We understand that this contract was originally agreed with 18 of 21 Fylde and Wyre GPs in June 2013. It paid GPs to meet certain targets for reporting numbers of patients referred through Choose and Book and included an expectation that 85% of referrals would be through Choose and Book. While this contract may have helped the CCG increase the use of Choose and Book, it is not clear that it monitored whether, or increased the extent to which, patients were actually offered choice of provider.



### *CCG website*

Fylde and Wyre CCG's website now has a front page banner referring to patient choice, which links to a separate page containing information on patient choice.<sup>9</sup>

### *Patient choice communication plan*

Fylde and Wyre CCG also provided us with a copy of its patient choice communication plan.<sup>10</sup> This outlines steps it is taking to improve the profile of patient choice in this local area.

It includes:

- the Ipsos MORI survey referred to above<sup>11</sup>
- efforts to help GPs improve their practice websites and promote patient choice messages through both digital and traditional (for example, newsletter) communications
- plans to include information about patient choice at CCG 'listening cafes' and other engagement events
- plans to ensure that choice strategy is discussed with council members and at practice manager meetings.

### **Our initial views on the actions by Fylde and Wyre CCG**

Our initial view is that, if implemented, the proposed contractual arrangements with GPs could help Fylde and Wyre CCG meet its obligation to ensure patients are offered choice and that patient choice is publicised and promoted.

However, we note that:

- the arrangements provide for payment in circumstances where 80% of patients are offered choice. Given that all patients requiring an elective referral are entitled to choose which provider they go to for a first outpatient appointment, we would expect reassurance that Fylde and Wyre CCG will continue to work to ensure that all patients are offered a choice of provider
- the proposed contractual arrangements between Fylde and Wyre CCG and GPs are voluntary in nature. Therefore the effectiveness of the arrangements as a monitoring mechanism will depend on the number of GP practices that sign up to them.

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<sup>9</sup> [www.fyldeandwyreccg.nhs.uk/news\\_items/6334-patient-choice](http://www.fyldeandwyreccg.nhs.uk/news_items/6334-patient-choice)

<sup>10</sup> Fylde and Wyre Communication Plan extract – patient choice: provided as response to further working paper.

<sup>11</sup> [www.fyldeandwyreccg.nhs.uk/publication/7553-public-perceptions-of-the-nhs-in-fylde-and-wyre](http://www.fyldeandwyreccg.nhs.uk/publication/7553-public-perceptions-of-the-nhs-in-fylde-and-wyre)

The patient choice policy statement could also be helpful to patients. However, we would expect Fylde and Wyre CCG to ensure that patients are able to make full use of it (for example, by providing copies in GP surgeries, links on the CCG's and GPs' websites and other ways of promoting its content).

### **The possible next steps available to us**

Our initial view is that these actions could form the basis of undertakings to Monitor. However, we welcome views on these actions and any suggestions about additional or alternative steps that Fylde and Wyre CCG could take, including views on the proposed contractual mechanisms for ensuring choice is offered to patients.

We also invite Fylde and Wyre CCG to propose any undertakings it considers may help to ensure that choice is offered, and publicised and promoted in its area.

## **Section 3: Blackpool Clinical Commissioning Group**

This section sets out:

- the actions taken to date by Fylde and Wyre CCG to ensure that patients will be offered choice and that patient choice will be publicised and promoted
- our initial views on whether those actions address the problems identified
- the possible next steps available to us.

### **Actions to date**

Blackpool CCG provided us with a copy of its patient choice communication plan,<sup>12</sup> which refers to a number of planned initiatives, including:

- ongoing stakeholder engagement events
- information on patient choice included in the CCG's five-year strategic plan
- information about patient choice included in twice-yearly Choose and Book workshops to which all GP practices are invited
- the use of digital and traditional media to promote the availability of patient choice, including providing information on big screens at Blackpool Football Club stadium.

Blackpool CCG also uploaded a page on its website with some information about patient choice in November 2013.

### **Our initial views on actions by Blackpool Clinical Commissioning Group**

Blackpool CCG has notified us of steps it has taken to improve the operation and promotion of patient choice in its area. Our initial view is that Blackpool CCG has not done enough to ensure that GPs are routinely offering patients a choice of provider or taken steps to promote that choice.

Many of the identified actions are historic and some of the future actions are not specific. It is not immediately clear to us whether these future actions would ensure that choice will be offered to patients or that patient choice will be publicised and promoted.

Further steps that Blackpool CCG could take include:

- a plan to speak regularly to local GPs
- periodically surveying patients

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<sup>12</sup> Blackpool CCG patient choice communications plan.

- providing information about patient choice on the CCG websites
- programmes to promote patient choice in GP surgeries (through posters and leaflets for example)
- wider programmes in the local area (such as publicity in newspapers or newsletters to patients about patient choice).

### **The possible next steps available to us**

We are concerned about the operation and promotion of patient choice in the Blackpool CCG area. Our initial view is that the actions proposed by Blackpool CCG do not go far enough to ensure that choice will be offered to patients or that the right to choice will be publicised and promoted.

We welcome views and any suggestions about additional or alternative steps that Blackpool CCG may need to take.

We also invite Blackpool CCG to propose any undertakings it considers may help to ensure that choice is offered, and publicised and promoted in its area.



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