

## **Case CCD 04/13: Investigation into the commissioning of certain cancer surgery services in Greater Manchester**

### **Summary of complaints received from University Hospital of South Manchester NHS Foundation Trust and Stockport NHS Foundation Trust**

17 September 2013

1. On 22 March 2013 we received a complaint from University Hospital of South Manchester NHS Foundation Trust (“**UHSM FT**”) regarding the commissioning of certain cancer surgery services in Greater Manchester. The complaint concerns steps taken by the NHS Commissioning Board (now known as NHS England) and before then NHS Greater Manchester.
2. On 28 June 2013, we received a second complaint from Stockport NHS Foundation Trust (“**Stockport FT**”) regarding the commissioning of these services.
3. We set out below the background to the complaints, based on the information provided to us by the complainants, and summarise the concerns that they raise.
4. Both complainants have also raised their concerns with NHS England. These concerns have not been resolved.
5. Our investigation is ongoing and we have not yet reached a view as to whether there has been any breach of applicable rules by NHS England or any of the providers that have been involved in the process to reorganise the cancer surgery services in question.

#### **Background**

6. The complainants told us that the aim of the work being undertaken by NHS England is to reconfigure cancer surgery services in Greater Manchester to improve the quality of provision and patient outcomes.
7. A number of meetings were held during the course of 2012 and 2013 to consider the appropriate approach to the commissioning of these services. These were attended by both providers and commissioners in the Greater Manchester area and were known as cancer summits.

8. We understand that in the latter part of 2012 discussions progressed to a point at which it was clear that NHS Greater Manchester wished to move to a model in which cancer surgery services would be provided from a smaller number of sites and that it wanted the providers in the area to form a “Provider Board” (now known as the Greater Manchester Cancer Services Provider Board) to work collaboratively towards achieving this model.
9. We understand that the intention is that the Provider Board process will be used in connection with the commissioning of all cancer surgery services in the area, but the first specialities to which it has been applied are urological, gynaecological, oesophageal and hepato-pancreatico-biliary cancer surgery services. The role and responsibilities of the Provider Board is one of the subject matters of the complaints.
10. In a letter dated 14 January 2013, the Provider Board issued a call for proposals from providers for each of these four cancer surgery services. The letter sets out the number and type of sites from which services are to be provided, ostensibly based on the requirements of commissioners:
  - Gynaecological cancers – a single service for specialist surgery across two university teaching hospital sites;
  - Urological cancers – a single specialist surgical service across two university teaching hospital sites plus the surgical service at The Christie NHS Foundation Trust;
  - Oesophageal cancers – a single specialist surgical service across two university teaching hospital sites; and
  - Hepato-pancreatico-biliary cancers – a single specialist surgical service operating from a single university teaching hospital site.
11. The call for proposals defined the term “university teaching hospital” to include UHSM FT, Central Manchester University Hospitals NHS Foundation Trust, Salford Royal NHS Foundation Trust and The Christie NHS Foundation Trust only. The letter also states that each case proposal will need to be on behalf of and with agreement between more than one trust in order that the single service required by commissioners can be assured.
12. The deadline for submitting proposals was 31 January 2013.
13. UHSM FT and Stockport FT have raised a number of concerns with us regarding the role of the Provider Board and the criteria that proposals were required to satisfy, as set out in the letter dated 14 January 2013. The complainants have suggested that these may give rise to breaches of the Principles and Rules for Co-operation and Competition and/or the National Health Service (Procurement,

Patient Choice and Competition) (No.2) Regulations 2013. These concerns are described in more detail below.

### **Concerns about the Provider Board**

14. UHSM FT and Stockport FT have both expressed general concerns about the Provider Board's role including the overall lack of clarity as to the process to be followed and the basis for decision-making.
15. In particular, the complainants have told us that the Provider Board purported to commence its activities in mid-January 2013, before it had been formally established. However, the memorandum of understanding which sets out the Provider Board's purpose and the relationship between its members and its terms of reference were only circulated and discussed between February and March 2013 and were not approved by the majority of members until March 2013. These documents have still not been approved by UHSM FT, which told us that it has had little or no opportunity to consider, input into or vote on the specific role and terms of reference for the Provider Board before it began making decisions that affect UHSM FT.
16. UHSM FT has also expressed concerns that the arrangements for the Provider Board contain no provision for recognising and managing conflicts of interest on the part of providers who put themselves forward as providers of services in the future and also assess proposals from other providers and make recommendations to commissioners regarding those proposals.

### **Concerns about the criteria in the call for proposals**

17. Both UHSM FT and Stockport FT have raised concerns that the criteria set out in the call for proposals are not based on quality (including patient outcomes and experience).
18. In particular, both complainants have suggested that the requirement for case proposals to be made on behalf of and with agreement between more than one trust excludes the opportunity to consider quality. According to the complainants, this is because the selection of future providers is dependent on whether a provider has reached agreement with other providers and not on the relative quality of current provision. UHSM FT has suggested that service quality, impact on patients, patient outcomes and choice should be considered first, with providers that meet the necessary standards then being invited to form collaborations with others.
19. UHSM FT has also suggested that it did not receive sufficient notice of this criterion from the Provider Board to enable it to reach an agreement with another provider. UHSM FT told us that it was first made aware of the requirement on 14 January 2013 when it received the letter calling for proposals, which required submissions to be made by 31 January 2013. Although UHSM FT has told us

that the intention to focus work at specialist sites was set out in the draft specification for discussion at the cancer summit on 9 and 10 January 2013, this document was only a draft and did not indicate that the formation of consortia of providers would be a criterion.

20. UHSM FT has also told us that some other providers of the cancer surgery services were aware of this criterion at an earlier stage and had already commenced discussions about collaborating with each other prior to the January cancer summit.
21. Stockport FT has additionally raised concerns regarding the criterion related to university hospital status. The trust has suggested that the criteria should look at the substantive matters thought to be reflected in university hospital trust status rather than the status itself. It has also told us that it raised these concerns with NHS Greater Manchester at the time and that it was agreed that it could submit a proposal to provide urological cancer surgery services even though it is not a university hospital, without being automatically excluded from consideration. Stockport FT has expressed its concern that notwithstanding this assurance, the absence of university hospital status has been cited as one reason why its proposal has not been recommended by the Provider Board.