

Monitor

Making the health sector
work for patients

**Case closure
decision on
Greater
Manchester and
Cheshire cancer
surgery services**

A close-up, slightly angled photograph of the NHS logo. The letters 'NHS' are rendered in a bold, white, sans-serif font against a vibrant blue background. The lighting creates a slight shadow and highlights the texture of the surface.

Case closure decision on Greater Manchester and Cheshire cancer surgery services

CCD 04/13

31 January 2014

Monitor opened an investigation into the commissioning of specialist cancer surgery services in Greater Manchester and Cheshire after two hospitals raised concerns about the way these services were being commissioned. We were concerned that the process being followed by the commissioner to take decisions about future provision would not lead to the best hospitals being selected to deliver care to patients.

We have today closed our investigation following confirmation from NHS England that the commissioning process under investigation has been discontinued. NHS England has also confirmed that it is developing a new service specification and process which will be fully compliant with the Procurement, Patient Choice and Competition Regulations.¹ We have also closed our parallel investigation into the behaviour of individual hospitals.²

Closing our investigation prior to a final decision being taken means we have not made specific findings in this case. In particular, we have not determined whether or not the conduct of NHS England or the hospitals complied with the rules applicable. This document explains our reasons for closing the case and provides guidance on some of the issues raised.

The decision to close our investigation does not prevent us from opening a fresh investigation in relation to the new commissioning process if concerns arise. Any decision to open an investigation will be made in line with our duty to protect and promote the interests of patients.

Our investigation

We launched our investigation on 8 August 2013 following complaints³ by University Hospital of South Manchester NHS Foundation Trust and Stockport NHS Foundation Trust. The hospitals complained that the process adopted by NHS England to select future hospital providers of urological, oesophago-gastric (upper GI), gynaecological and hepato-pancreatico-biliary (HPB) cancer surgery services in Greater Manchester was not based on quality of service, patient outcomes or patient preferences.

¹ National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013.

² See our [Notice of initiation of investigation](#).

³ We received a complaint on 22 March 2013 from University Hospital of South Manchester NHS Foundation Trust. We received a second complaint on 28 June 2013 from Stockport NHS Foundation Trust. The complaints are [summarised here](#).

We sought to establish whether the commissioning process to select hospitals to provide those cancer surgery services, including the criteria that hospitals were required to satisfy and the way they were involved in that process, complied with the applicable rules. It was therefore important to ensure the process was robust, that that all available options were examined, and that all hospitals capable of offering a high-quality service were considered so that the outcome would be in the best interests of patients.

During the investigation we spoke to a wide range of stakeholders, including the complainants, hospitals in the local area and NHS England.

We published a "[statement of issues](#)" (a consultation document, setting out the issues identified and the proposed focus of our investigation) on 30 October 2013. Our statement set out a number of specific issues regarding the procurement process, including:

- a requirement that hospitals have university teaching hospital status;
- a requirement that hospitals submit joint bids; and
- the use of a provider board⁴ and its role in decision-making.

We were concerned that the proposed approach may arbitrarily limit the number of options available to the commissioner and may therefore exclude hospitals which could offer a better service to patients. This could result in a procurement decision that was not in the best interest of the people using the services.

Recent developments

Following publication of our statement of issues, we received confirmation from NHS England that:

1. the commissioning process under investigation had been discontinued;
2. a new process and service specification was in development, which would be fully compliant with the Procurement, Patient Choice and Competition Regulations;
3. the new service specification would not include a requirement related to the hospitals' status as a university teaching hospital;
4. the new service specification would not include a requirement for potential providers to submit joint bids with another provider;
5. NHS England will be solely responsible for all decisions taken in relation to the commissioning process and the selection of future providers;

⁴ A group of providers given a role in discussions regarding the design of services.

6. the Great Manchester Cancer Services Provider Board would be retained in a consultative capacity only;
7. NHS England has decided that, in order to comply with the Procurement, Patient Choice and Competition Regulations, a competitive tendering exercise is the most appropriate means of procuring urological and upper GI cancer surgery services. This process is expected to commence in February 2014 and will be consistent with points (2) to (6) above;
8. NHS England has not yet taken a decision on how best to commission gynaecology cancer surgery services, including whether or not a competitive tendering exercise will be required. When taking a decision in this respect, NHS England will comply with the Procurement, Patient Choice and Competition Regulations; and
9. NHS England has decided that it will award a contract for HPB to Central Manchester University Hospitals NHS Foundation Trust. NHS England explained that in the specific circumstances of HPB, it is satisfied that there are only two hospitals capable of providing the service and that Central Manchester University Hospitals NHS Foundation Trust is the most capable of the two.

Decision to close the case

To ensure we use our resources in a way which delivers the greatest potential benefit to patients, we apply a prioritisation framework⁵ when deciding whether or not to open an investigation. We also apply this framework when we consider whether or not to continue an investigation once underway.

In light of the developments listed above, we considered whether it remained appropriate to continue our investigation.

If we had completed this case and concluded that there had been a breach of the applicable rules, we would have then considered what action would be most appropriate to:

- bring that breach to an end; and
- reduce the likelihood of similar breaches occurring by helping commissioners to understand how their obligations might apply in similar circumstances in the future.

In reaching our decision, we therefore considered the following points:

- a. the original process complained of had been discontinued;

⁵ Our prioritisation framework is set out in Section 2 of our [Enforcement Guidance on the Procurement, Patient Choice and Competition Regulations](#).

- b. NHS England had voluntarily taken action when redesigning the new process to address a number of the concerns raised;
- c. NHS England has committed to ensuring that the new specification and process will be compliant with the Procurement, Patient Choice and Competition Regulations; and
- d. the objective of assisting commissioners in understanding how their obligations might apply in similar circumstances in the future could be achieved through guidance on the issues raised.

After careful thought, we determined that closing our investigation and issuing guidance would be the course of action likely to create the greatest potential benefit to patients and a proportionate means of achieving our objectives.

We have informed both original complainants of our proposed decision and provided them with an opportunity to comment. Given the action by NHS England, they were supportive of our decision to close our investigation.

Case CCD 04/13: Guidance

As part of our resolution of this case, we have produced the following guidance to assist commissioners and providers in understanding the concerns raised in this case and to help inform their approach to future procurement processes.

This guidance addresses issues raised in case CCD 04/13 and should be read alongside our statutory guidance.

1. **A requirement that a bidder holds university teaching hospital status**

University teaching hospital status may not always be the most appropriate indicator of whether a provider is best placed to provide high-quality, efficient services that meet the needs of health care users and deliver value for money.

A requirement that participants in a bidding process hold university teaching hospital status risks excluding from further consideration providers who may otherwise be best placed to provide a particular service and may lead to an outcome that is not in the best interests of patients.

2. **A requirement that providers submit joint bids**

A requirement for all bidders to submit joint bids at the initial stages of a procurement process may not be an appropriate means of selecting the provider or providers most capable of providing high-quality, efficient services that meet the needs of patients and deliver value for money.

This is because:

- providers which do not find another provider to pair with would be automatically excluded from further consideration, even where they may individually or in combination with another provider be best placed to provide that service; and
- where joint bids represent the only options considered by a commissioner, this may lead to that commissioner considering an artificially narrow set of options rather than considering the full range of potential combinations, one or more of which may be in the best interests of patients.

Where it is apparent that providers will need to co-operate with other providers, for example in order to ensure that care is delivered in an integrated way, there are a number of tools and mechanisms open to commissioners to ensure that this happens.

3. The use of a provider board and its role in decision-making

Engagement with providers and other stakeholders is an essential part of any commissioning exercise. The use of a provider board (ie, a group of providers given a role in discussions regarding the design of services) may provide valuable information for commissioners. However, provider boards should be limited to an advisory role by commissioners. Commissioners are the decision makers and therefore must make their own assessment of which options should be considered and the merits of these options. Similarly, providers must themselves ensure that when participating in a commissioning process (whether by competitive tendering or other means, including membership of or attendance at a provider board) their actions are consistent with their obligations under their provider licence.



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