

Investigation into the commissioning of elective services from the North East London Treatment Centre: decision to accept undertakings



We have decided to accept undertakings under Regulation 16 of the Procurement, Patient Choice and Competition Regulations¹ instead of continuing our investigation into the commissioning of elective care services from the North East London Treatment Centre (the treatment centre). These undertakings prevent, remedy or mitigate any failures to comply with the Procurement, Patient Choice and Competition Regulations that we might have identified as a result of our investigation.

The undertakings have been offered by the commissioners in this case: NHS Barking and Dagenham Clinical Commissioning Group, NHS Havering Clinical Commissioning Group, NHS Redbridge Clinical Commissioning Group and NHS Waltham Forest Clinical Commissioning Group (collectively, the local CCGs). The main elements of the undertakings offered by the local CCGs are as follows:

- they will rescind their decision to award a contract to provide elective care services from the treatment centre to Barking, Havering and Redbridge University Hospitals NHS Trust (Barking, Havering and Redbridge Trust) and will abandon the procurement exercise we were investigating; and
- they will extend their existing contract with Care UK Clinical Services Limited (Care UK) to provide elective care services from the treatment centre until 30 June 2017 to ensure the on-going provision of those services. They will also take steps to ensure that Care UK's lease of the treatment centre premises is extended for a period consistent with the contract extension.

The CCGs told us that since the commencement of our investigation they have arrived at a better understanding of the challenges that Barking, Havering and Redbridge Trust faces which raises issues about whether it would be appropriate to make the contract award to Barking, Havering and Redbridge Trust. This, together with our investigation, has prompted the CCGs to change their procurement plans.

We opened our investigation in July 2015 following a complaint to us by Care UK about the local CCGs' procurement exercise to select a provider of elective care services from the treatment centre and their decision to select Barking, Havering and

¹ National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013; these Regulations confer a power on Monitor to accept an undertaking from clinical commissioning groups to take specified action in connection with arrangements for the provision of health care services.

Redbridge Trust. Care UK's complaint raised a number of issues related to the local CCGs' compliance with the Procurement, Patient Choice and Competition Regulations and the National Tariff rules in relation to local variations.²

We were investigating a number of issues. A key question was whether selecting Barking, Havering and Redbridge Trust to operate the treatment centre was consistent with the local CCGs' obligations to act in the interests of patients in line with Regulations 2 and 3(3) of the Procurement, Patient Choice and Competition Regulations.³

The local CCGs have decided to rescind their decision to award the contract to provide elective care services from the treatment centre to Barking, Havering and Redbridge Trust and will abandon the procurement exercise we were investigating. The local CCGs have offered undertakings to this effect. They will also extend their existing arrangements with Care UK, which Care UK has agreed to and which ensures the on-going provision of services from the treatment centre by a provider with a track record of providing those services. The local CCGs have told us that this extension will give them time to re-procure the provision of elective care services from the treatment centre on a longer term basis. For these reasons, it is our view that accepting the offered undertakings achieves a good outcome for patients and prevents, remedies or mitigates any failures to comply with the Procurement, Patient Choice and Competition Regulations that we could have found. We have therefore closed our investigation without determining whether any such failures occurred.

We are required to maintain a register of undertakings. The undertakings and this decision will be placed on our website.

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² Section 115 of the Health and Social Care Act 2012 and the rules outlined in the 2014/15 National Tariff Payment System. As the CCGs will abandon the procurement exercise and therefore the proposed pricing arrangement we were investigating, this outcome also addresses any failings we might have identified in relation to the National Tariff rules and we have also closed our investigation into those aspects.

³ Regulation 2 requires commissioners to act with a view to securing the needs of people who use the services, improving the quality of the services and improving efficiency in the provision of the services, including through the services being provided in an integrated way. Regulation 3(3) requires commissioners to procure the services from one or more providers that are most capable of delivering the objective referred to in Regulation 2 in relation to the services and provide best value for money in doing so.