
**NHS BARKING AND DAGENHAM
CLINICAL COMMISSIONING GROUP (1)**

and

**NHS HAVERING CLINICAL
COMMISSIONING GROUP (2)**

and

**NHS REDBRIDGE CLINICAL
COMMISSIONING GROUP (3)**

and

**NHS WALTHAM FOREST CLINICAL
COMMISSIONING GROUP (4)**

**Undertakings to NHS Improvement
Pricing CCD 07/15 – Procurement of
Elective Care Services from the North
East London Treatment Centre**

THESE UNDERTAKINGS are given on

26 MAY

2016

BY:

- (1) 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 "CCGs")

TO

- (2) NHS Improvement

The CCGs hereby give NHS Improvement the following undertakings under Regulation 16 of the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, and in a manner consistent with their legal and regulatory obligations, for the purpose of preventing, remedying or mitigating any failures to comply with the rules that were the subject of NHS Improvement's investigation of the CCGs' procurement of elective care services from the North East London Treatment Centre (case reference: Pricing CCD 07/15).

The CCGs' decision to select Barking, Havering and Redbridge University Hospitals NHS Trust as the recommended bidder under the procurement investigated by NHS Improvement was announced on 30 June 2015, but no contract has yet been concluded because of the complaint made to NHS Improvement by Care UK Clinical Services Limited and NHS Improvement's investigation. Since the commencement of the investigation the CCGs have arrived at a better understanding of the challenges that Barking, Havering and Redbridge University Hospitals NHS Trust faces which raises issues about whether it would be appropriate to make the contract award to Barking, Havering and Redbridge University Hospitals NHS Trust.

The CCGs have notified NHS Improvement of their decision to abandon the procurement investigated by NHS Improvement. Having abandoned that procurement, to ensure the on-going provision of elective care services from the North East London Treatment Centre, the CCGs have decided to extend their existing contract with Care UK Clinical Services Limited to provide those services. They intend to ensure that Care UK Clinical Services Limited will also have a lease of the North East London Treatment Centre premises that is consistent with that contract extension.

These undertakings shall not preclude the CCGs agreeing to Care UK Clinical Services Limited and Barking, Havering and Redbridge University Hospitals NHS Trust entering into arrangements to support Barking, Havering and Redbridge University Hospitals NHS Trust reduce its patient backlog by treating patients at the North East London Treatment Centre where this is consistent with these undertakings and their purpose and the legal and regulatory obligations of the CCGs.

The CCGs have informed NHS Improvement that they intend to have re-procured elective care services from the North East London Treatment Centre by the time the arrangements under these undertakings come to an end and will do so consistent with their regulatory and legal obligations including obligations under the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 and public procurement law.

1 Definitions and Interpretation

1.1 For the purpose of these undertakings, the following terms shall have the following meanings:

"Care UK" means Care UK Clinical Services Limited of Connaught House, 850 The Crescent, Colchester Business Park, Colchester, Essex CO4 9QB.

"CCGs" means NHS Barking and Dagenham Clinical Commissioning Group, NHS Havering Clinical Commissioning Group, NHS Redbridge Clinical Commissioning Group and NHS Waltham Forest Clinical Commissioning Group.

"Existing Contract" means the contract between the CCGs and Care UK for the provision of elective care services from the North East London Treatment Centre which was entered into on 27 December 2011.

"Lease" means the lease of the North East London Treatment Centre which is granted by NHS Property Services Limited.

"Advertised Contract" means the contract to provide elective care services from the North East London Treatment Centre as advertised in the Procurement.

"North East London Treatment Centre" means the elective care treatment centre originally opened in 2006 that is currently located within the grounds of King George Hospital, Barley Lane, Goodmayes, Essex IG3 8YB.

"Procurement" means the CCGs' procurement for the provision of elective care services from the North East London Treatment Centre as advertised in the Official Journal of the European Union on 17 January 2015 with contract notice reference 2015/S 012-017430 and which was the subject of the investigation by NHS Improvement (case reference Pricing CCD 07/15).

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

"Trust" means Barking, Havering and Redbridge University Hospitals NHS Trust of Queens Hospital, Rom Valley Way, Romford, Essex, RM7 0AG.

"NHS Improvement" is the operational name for the organisation that brings together Monitor, NHS Trust Development Authority, Patient Safety, the National Reporting and Learning System, the Advancing Change team and the Intensive Support Teams. References to NHS Improvement in these undertakings mean NHS Improvement or Monitor.

- 1.2 Expressions in the singular include the plural and vice versa.
- 1.3 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 1.4 Unless otherwise stated, references to paragraphs, subparagraphs and annexes are references to the paragraphs and subparagraphs of and annexes to these undertakings.
- 1.5 Unless otherwise stated, terms defined in the 2013 Regulations shall have the same meaning when used in these undertakings.

2 Commencement and Duration

- 2.1 These undertakings commence on the date they are accepted by NHS Improvement.
- 2.2 These undertakings will remain in force until the CCGs have discharged their obligations under these undertakings or until such earlier date as NHS Improvement may agree.

3 Undertakings Parties

- 3.1 Each of the CCGs jointly and separately undertakes to comply with their respective obligations under these undertakings.

4 Abandon the Procurement

- 4.1 The CCGs will:

- 4.1.1 rescind their decision to award the Advertised Contract to the Trust as notified to the Trust and Care UK on 30 June 2015;
- 4.1.2 abandon the Procurement; and
- 4.1.3 notify all candidates and tenderers involved in the Procurement of the CCGs' decision to abandon the Procurement and the reasons for that decision.

5 Extension of the Existing Contract

- 5.1 To ensure the on-going provision of services provided under the Existing Contract, the CCGs will:

- 5.1.1 by 26 May 2016 enter into an extension of the Existing Contract with Care UK for a period of 15 months commencing on 1 April 2016 and shall not otherwise alter the overall nature or terms of the Existing Contract; and
- 5.1.2 take all necessary steps within their power to procure the grant of an extension to the Lease or the grant of a new Lease by NHS Property Services Limited to Care UK for a period consistent with the period of the extension of the Existing Contract by the date the parties enter into the extension of the Existing Contract or as soon as reasonably possible thereafter. These steps will include the CCGs requesting that NHS Property Services Limited enter into that extension of the Lease or a new Lease with Care UK.

6 Reporting to NHS Improvement

- 6.1 The CCGs will report to NHS Improvement:

- 6.1.1 to confirm within 10 working days of the date of these undertakings their compliance with paragraphs 4 and 5;
- 6.1.2 to confirm at least 10 working days in advance of any arrangements that the CCGs intend to enter into with Care UK or the Trust, or that the CCGs intend to permit between Care UK and the Trust, in relation to the North East London Treatment Centre or in relation to elective care services, that the proposed arrangements are consistent with these undertakings and their purpose and the legal and regulatory obligations of the CCGs; and
- 6.1.3 to notify and provide reasons to NHS Improvement at least 10 working days in advance of any material proposed changes to the Existing Contract save for the extension of 15 months referred to in paragraph 5.1.1 above, in order to enable NHS Improvement to consider any action that might be appropriate and to respond before the changes are made to the Existing Contract.

7 Monitoring

- 7.1 The CCGs will attend meetings or telephone calls at agreed times and locations as required by NHS Improvement in relation to these undertakings.
- 7.2 The CCGs will comply with such written requests for information as NHS Improvement may require from time to time for the purpose of monitoring or securing compliance with these undertakings.

8 Variation

- 8.1 These undertakings may be varied in accordance with paragraph 3 of Schedule 9 to the Health and Social Care Act 2012.
- 8.2 The variation of these undertakings shall not affect the validity and enforceability of any rights or obligations that arise prior to such variation.

9 Effect of Invalidity

- 9.1 The CCGs undertake that should any provision of the undertakings be held by any court or tribunal to be contrary to law or invalid for any reason they will continue to observe the remaining provisions unless NHS Improvement and the CCGs agree otherwise.

10 Address for correspondence

- 10.1 A notice or report given to a party under or in connection with the undertakings shall be sent to the party at the address specified below or as otherwise notified in writing to the other party.

NHS Improvement
133-155 Waterloo Road SE1 8UG
cooperationandcompetition@nhs.net

NHS Havering Clinical Commissioning Group

Imperial Offices, 2-4 Eastern Road, Romford RM1 3PJ

Tom.Travers@onel.nhs.uk

NHS Barking and Dagenham Clinical Commissioning Group

Maritime House, 1 Linton Road, IG11 8HG

Tom.Travers@onel.nhs.uk

NHS Redbridge Clinical Commissioning Group

Becketts House, 2-14 Ilford Hill, Ilford IG1 2QX

Tom.Travers@onel.nhs.uk

NHS Waltham Forest Clinical Commissioning Group

Kirkdale House

7 Kirkdale Road

London E11 1HP

les.borrett@walthamforestccg.nhs.uk

A notice or report given to a party under or in connection with the undertakings can be sent by email.

Signed:



Conor Burke, Chief Officer

Name / Position

For and on behalf of NHS Havering Clinical Commissioning Group



Conor Burke, Chief Officer

Name / Position


For and on behalf of NHS Barking Clinical Commissioning Group



Conor Burke, Chief Officer

Name / Position

For and on behalf of NHS Redbridge Clinical Commissioning Group


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Name / Position

For and on behalf of NHS Waltham Forest Clinical Commissioning Group