

**Northern Devon Healthcare NHS Trust**

Case CCD 01/15

Response to Monitor's provisional findings regarding the commissioning of community services for adults with complex needs in eastern Devon

**Summary**

- 1 In this Response Northern Devon Healthcare NHS Trust (NDHT) responds to Monitor's provisional findings (Provisional Findings or PF) dated June 2015 in the above investigation.
- 2 NDHT requests that this Response is published in its entirety in conjunction with its Further Submission to Monitor<sup>1</sup> (to which this Response refers) and its letter to the CCG<sup>2</sup> regarding value for money and disaggregation costs should the Services transfer to RD&E. We annex those documents to this Response.
- 3 NDHT agrees with Monitor that:

*At the stage at which NEW Devon CCG selected Royal Devon & Exeter Foundation Trust as the preferred provider, it had not obtained a level of detailed information from the prospective providers that would give it an adequate understanding of the scope of services to be provided, how the providers would deliver them and the cost of the services<sup>3</sup>*

as required by the NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (the PPCC). Monitor repeats this finding regarding the inadequacy of NEW Devon CCG's process at the beginning, middle and end of its Provisional Findings<sup>4</sup>.

- 4 NDHT also agrees with Monitor that the CCG must carry out a further assessment before a contract award. But NDHT submits that the assessment must be one that identifies the most capable and best value for money provider of adult complex care services in the eastern locality of Devon (the Services) and is fully compliant with the PPCC.

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<sup>1</sup> Dated 14 May 2015

<sup>2</sup> Dated 22 May 2015

<sup>3</sup> Para. 81, PF

<sup>4</sup> Summary (page 5), paras. 81 and 197, PF

- 5** The CCG assessed that both NDHT and RD&E were capable providers. Therefore to comply with the PPCC, the CCG must undertake a comparative assessment to identify which of them is the most capable and offers best value for money. The assessment cannot be carried out in relation to RD&E alone, but must compare NDHT and RD&E.
- 6** NDHT respectfully disagrees with Monitor's provisional findings that the CCG has not, at this stage, acted in breach of the PPCC. The CCG has already ruled out NDHT as the preferred provider without (as Monitor has provisionally found) the information that it had to have to properly assess the prospective providers' capability of meeting the CCG's objective under the PPCC<sup>5</sup>.
- 7** It would be perverse and irrational to find that the CCG may run an inadequate process to select a preferred provider, but avoid a finding of breach of the PPCC as i) the contract has not yet been awarded and ii) the commissioner states it will be carrying out due diligence on the preferred provider alone at a later stage.
- 8** Specifically, it would be perverse and irrational to find that because the CCG will seek further information from RD&E within a 'due diligence process', the CCG has not breached the PPCC. Here, the CCG has already unfairly ruled out NDHT from further consideration as a result of a process that (as Monitor has provisionally found) did not comply with the PPCC. The seeking of further information will in no way remedy breaches of the PPCC leading up to the CCG's decision, which was not just to select RD&E as preferred provider, but also to rule out NDHT.
- 9** The CCG's appointment of RD&E as preferred provider is tantamount to the selection of a final provider which is then subject to the agreement of final terms. It would be perverse and irrational to find that the CCG did not breach the PPCC notwithstanding that it had not complied with the PPCC when selecting RD&E as preferred provider and ruling out NDHT.
- 10** Where such a commissioning approach escapes censure, the logical conclusion is that NHS commissioners can circumvent the PPCC by claiming they will test the most capable provider and best value for money requirements at a later date through due diligence with the preferred provider pre contract award.
- 11** NDHT submits that the CCG's preference for RD&E as set out in the draft Case for Change is unequivocal evidence that the CCG did not comply with the PPCC.

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<sup>5</sup> Summary, page 5, PF

Contrary to Monitor's Provisional Findings<sup>6</sup>, there is compelling evidence that the assessors took account of the draft Case for Change. Specifically, in the Guidance Document to the Invitation to Propose<sup>7</sup>, the CCG stated that the draft Case for Change was one of three documents to be read with it. It is therefore inconceivable that the assessors would not have read it. The CCG has offered no evidence that the assessors were not aware of this document or did not take account of its contents.

- 12** As Monitor has already provisionally found, the draft Case for Change contained several statements which commented favourably on RD&E, such as: "It is our view that the Royal Devon & Exeter Foundation Trust is best placed to deliver our requirements and therefore are currently our preferred option."
- 13** NDHT agrees that (to say the least) it is difficult to reconcile the statements endorsed in the draft Case for Change with the CCG's intention to invite the other providers to bid for the Services. But NDHT submits that it would be perverse and irrational for Monitor to find that the draft Case for Change does not appear to have been taken into account in the CCG's evaluation and moderation process to assess proposals from providers.
- 14** Following the publication of the Provisional Findings, the CCG has contacted NDHT in the expectation that it will now provide the CCG with due diligence information regarding the current provision of the Services. To date, the CCG has informed NDHT that this co-operation is part of the safe and timely transfer of the Services to RD&E (i.e. its purpose is not to carry out a further probative comparison of NDHT and RD&E).
- 15** NDHT therefore requests that, going forward, Monitor secures undertakings from the CCG that it will carry out a further assessment to enable it to determine the most capable and best value for money provider and that this will be a process that complies with the PPCC. NDHT submits that such undertakings are required to prevent any further failures by the CCG to comply with the PPCC.
- 16** Based on the Provisional Findings, NDHT sets out what it now expects the assessment to comprise of to comply with the PPCC and allow providers a fair

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<sup>6</sup> Para. 129, PF

<sup>7</sup> Invitation to Propose a Solution for Pathways for People with Complex Needs dated 22 September 2014

opportunity to put their proposals forward<sup>8</sup>. Going forward, the CCG must be able to provide assurances to the public that it has followed a robust, transparent process which has allowed it to determine the future provider of the Services. In addition to this public test it might be appropriate, given the controversy this procurement has caused and the failings already identified, for NHS England and/or the Success Regime to oversee the remainder of the process and for it to be assured of the robustness of the process

- 17** NDHT is recognised as being at the forefront of integrated care with a truly collaborative approach to delivering high quality services to patients. NDHT would therefore welcome the opportunity to explain in much greater detail how it will deliver the Services in an even more integrated way to the population of eastern Devon. It believes the best way to deliver more integrated services is not to put those at risk with the distraction of a transfer at a time of such financial challenge but to build on the existing provision arrangements.
- 18** NDHT reserves the right to make a further complaint to Monitor under the PPCC should the CCG fail to carry out a transparent and non-discriminatory assessment process and/or award the contract to the most capable and best value for money provider.
- 19** NDHT sets out its detailed comments on these matters below.

### **The process**

- 20** In Sections 5 and 6 of the Provisional Findings, Monitor sets out the description of events (leading up to and surrounding the process) and its assessment of that process respectively.
- 21** NDHT agrees that the scope of services; how a provider will deliver them; and the cost of the services (including anticipated activity levels) is:
- intrinsic to any assessment of a provider's capability to meet the commissioner's objective to secure the needs of patients and improve the quality and efficiency of services, and to any assessment of value for money.*<sup>9</sup>
- 22** NDHT agrees that the information provided by providers in response to the Invitation to Propose would not have provided the CCG with the:

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<sup>8</sup> See below paras.A69 ff

<sup>9</sup> Para. 78, PF

*level of detailed information from the providers that would give it an adequate understanding of the scope of services to be provided, how the providers would deliver them and the cost of the services*<sup>10</sup>

and that it did not have this information at the time the CCG selected RD&E as the preferred provider of the Services.

- 23** NDHT reiterates that the lack of detailed information from both itself and RD&E regarding how the Services would be delivered in practice and the cost of the Services was a result of i) the absence of any specifications for the Services in the Invitation to Propose; ii) the 1500 word limit for each question; and iii) the fact that there was no question regarding best value for money, only a question regarding financial sustainability (which is not the same thing).

- 24** NDHT also agrees that:

*Without this information the CCG could not, in [Monitor's] view, properly assess the providers' capability of meeting the CCG's objective under Regulation 2 [procuring the Services to secure the needs of users, improve quality of the Services and efficiency of provision] and whether the providers' proposals represented value for money.*<sup>11</sup>

However Regulation 3(3) requires the CCG to assess the relative capability of capable providers i.e. the most capable provider and the best value for money in service provision. That is not the same as assessing 'capability' and 'value for money'. Regulation 3(3) requires a comparative assessment.

- 25** Monitor is of the view that the CCG's process at this stage was inadequate to assess capability and value for money. If that is the case (and NDHT agrees it is), how could the process be adequate enough to allow the CCG to select its preferred provider? Where commissioners choose to select a preferred provider before awarding a contract, that selection must also be based on greatest capability and best value for money. If the CCG could not assess these criteria adequately at that stage, it should not have selected RD&E and it should have made further enquiries of RD&E and NDHT.

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<sup>10</sup> Para. 81, PF

<sup>11</sup> Para. 81, PF.

**26** NDHT does not agree that the CCG may select a preferred provider on the basis of a process which Monitor recognises as inadequate but for which the CCG is not sanctioned because it states it will be carrying out a further due diligence process with the preferred provider. This is unfair and a means of circumventing the requirement of Regulation 3(3).

**27** Monitor concludes:

*Because NEW Devon CCG plans to gather further information and carry out more analysis before reaching a final decision to award a contract, our provisional conclusion is that the CCG has not breached regulation 3(3).<sup>12</sup>*

NDHT's view is that it cannot be the legislature's intention to allow commissioners to escape a finding of breach of their commissioning requirements simply because these occur prior to the award of a contract. Similarly, commissioners should not be able to escape sanctions simply because they claim they will carry out further work once they are investigated by Monitor.

**28** The CCG had no intention of testing its selection of RD&E as its provider in November 2014. NDHT received correspondence from the CCG which shows that the CCG views the next stage 'due diligence exercise' as simply part of the process of transferring the Services to RD&E, not for the purposes of compliance with Regulation 3(3) and the testing of RD&E's status as most capable and best value for money provider<sup>13</sup>.

**29** NDHT has received recent correspondence from the CCG<sup>14</sup> upon the publication of the Provisional Findings which shows that the CCG's next steps are the disclosure by NDHT of commercially sensitive information regarding the current provision of the Services. The correspondence shows a clear presumption that the Services will transfer to RD&E and there is no sense that the CCG will be using the information supplied by NDHT to carry out "*more analysis before reaching a final decision to award a contract*"<sup>15</sup>.

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<sup>12</sup> Para. 83, PF

<sup>13</sup> See letter from Jerry Clough to Alison Diamond dated 20 March 2015

<sup>14</sup> See letter from Jerry Clough to Alison Diamond dated 12 June 2015

<sup>15</sup> Para.83, PF

- 30**     Service specification: Monitor is of the view that it is not always necessary to produce a detailed service specification at the outset but that, before awarding a contract, the CCG will:

*need to know the scope of services to be provided, how Royal Devon & Exeter Foundation Trust will deliver them, and how much it will cost to deliver these services.*<sup>16</sup>

NDHT agrees with this view but it also believes that, in this case, a service specification was warranted at the Invitation to Propose stage as it was anticipated that this would lead to the selection of a preferred provider. How could the CCG have been able to assess with any degree of certainty RD&E's capability to deliver the Services and select it as its preferred provider in the absence of service specifications? RD&E had never provided the Services or any community services before - only NDHT has provided the Services to date.

- 31**     NDHT notes that the CCG has only recently commenced a detailed scoping of the Services and it cannot define the specifications at present. These will clearly need to be bottomed out before the CCG can proceed to assess further provider capability.

- 32**     Value for money: NDHT agrees that the CCG will need to know how RD&E will deliver the Services and how much the Services will cost to deliver including a cost/benefit analysis and that "*whole system effects*" will need to be taken into account<sup>17</sup>. As part of this analysis, NDHT submits that the CCG must take into account the risks associated with and the costs of transferring the Services to another provider. In this case, those costs to the health economy in Devon are considerable and need to be weighed against any supposed benefits arising from service transfer. (NDHT sets out such costs in the 'Further Assessment' section towards the end of this Response.)

- 33**     The comparative assessment: Monitor suggests examples of possible alternatives against which the CCG could compare RD&E's proposal for the Services<sup>18</sup>. The examples are just examples but they point clearly towards the CCG conducting a further comparative assessment. NDHT comments on them individually below.

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<sup>16</sup> Para. 85, PF

<sup>17</sup> Para. 87, PF

<sup>18</sup> Para. 89, PF

**34** *A service scope and price established by engaging in further dialogue with other potential providers*

NDHT doubts the practicability of this option. How likely are ‘other potential providers’ to engage in such an exercise when the CCG has already selected its preferred provider? The competitive tension has dissipated. (NDHT notes that Care UK and Devon Partnership decided not to express an interest in providing the Services or that there was ‘*little point in participating in the provider assessment*’ as the CCG’s intention to give the Services to RD&E was clear<sup>19</sup>.)

NDHT is therefore the only other potential provider of the Services - only it and RD&E responded to the Invitation to Propose and it is highly unlikely other providers would take part at this late stage.

NDHT would participate if this alternative were expressed as a further process inviting detailed submissions in response to refined service specifications and a medium-term financial model.

**35** *The current scope and price of the relevant services in the eastern locality*

This alternative necessitates a detailed comparison with NDHT’s current service provision. NDHT would have to consider the impact taking part in such an exercise would have on its resources and it would not be obliged to disclose commercially sensitive information. Again it is difficult to see how there is any attraction to NDHT in devoting scarce resources to this alternative.

**36** *The scope and price of community services for adults with complex needs in the other two Devon localities*

Both NDHT and the CCG have already submitted to Monitor that there are significant material differences in the status of the Services in northern and western Devon, which would make equitable and transparent comparison very difficult.

**37** *The scope and price of similar NHS services elsewhere in the UK*

NDHT reiterates its comments above regarding comparisons with different geographies (and Monitor acknowledges this<sup>20</sup>). The comparison would also have to be made, presumably, in relation to the provision of the Services in England, not elsewhere in the UK, with a similar demographic.

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<sup>19</sup> Paras. 123-124, PF

<sup>20</sup> Para. 89, PF

- 38 The only logical and fair way to proceed therefore is for the CCG to commence a further process inviting detailed submissions in response to refined service specifications with a medium-term financial model.
- 39 NDHT is satisfied that Monitor has directed that the CCG should not award a contract for the Services without assuring itself of compliance with Regulation 3(3). Monitor is firmly of the view that if the CCG were to award the contract to RD&E on the basis of information from the process so far, it would be in breach of the PPCC.
- 40 NDHT would welcome clarity where Monitor states that the CCG will need to “*consider alternatives*” if the due diligence process does not satisfy the CCG that proceeding with RD&E would be the best way to secure the needs of patient etc<sup>21</sup>. The next part of that paragraph is excised (for unknown reasons). NDHT requests clarification if the “*alternatives*” are the same as those suggested above<sup>22</sup>.
- 41 Monitor is clear that, in the case where there are two (or more) capable providers, the CCG’s due diligence process must consist of a comparison to assure itself that RD&E is the most capable and best value for money provider<sup>23</sup>. NDHT requests that Monitor makes this requirement clear in its final decision.
- 42 Proportionality: Monitor assesses whether the process adopted by the CCG to procure the Services was proportionate to the value, complexity and clinical risk associated with the Services<sup>24</sup>. It states:
- It was therefore imperative that any process to commission them would identify the best solutions for patients and that appropriate time and resources were devoted to commissioning decisions.*<sup>25</sup>
- 43 NDHT agrees with this view. However NDHT would not agree with the implication that spending significant time and resource on a commissioning approach are determining factors in assessing whether commissioners have acted in a proportionate way as required by Regulation 3(2)(a).

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<sup>21</sup> Para. 91, PF

<sup>22</sup> i.e. Para. 89

<sup>23</sup> Paras. 87-89, PF

<sup>24</sup> Para. 100, PF

<sup>25</sup> Para. 101, PF

- 44 In this case, the CCG devoted a relatively long period of time to gathering the views of local stakeholders and other consultation-type exercises (14 months) and, in contrast, a relatively brief amount of time to assessing the providers (less than 2 months). That assessment process (the Invitation to Propose) did not elicit an adequate level of information (as recognised by Monitor) as the CCG did not ask detailed enough questions (including no best value for money question). Plus the providers' proposals were limited to 9,000 words and had to be submitted within 4 weeks.
- 45 It would be perverse and irrational to find that the 'back end' of the CCG's approach could be seen as proportionate. NDHT is of the view that far too little time was spent on this key stage in the commissioning approach.
- 46 Proportionality in public law is a broad concept and must be applied to each stage of the procurement process.

#### **Equal treatment and non-discrimination**

- 47 In Section 7 of the Provisional Findings, Monitor considers whether the CCG complied with the requirement to treat providers in an equal and non-discriminatory way.
- 48 Monitor first considers if the outcome of the provider assessment was pre-determined. It is very significant that (as Monitor found) both Care UK and Devon Partnership did not engage in the Invitation to Propose<sup>26</sup> as, in their view, the CCG had already decided to select RD&E as the future provider of the Services. This was their common impression even though it was at two very different stages in the CCG's approach.
- 49 Draft Case for Change: NDHT was clear in its Further Submission to Monitor that the draft Case for Change was a pivotal document in evidencing discrimination towards RD&E as future provider of the Services. This states:

*It is [the CCG's] view that the Royal Devon & Exeter Foundation Trust is best placed to deliver [the CCG's] requirements and therefore are currently our preferred option.*

- 50 In its Response to the Statement of Issues, the CCG relies on numerous occasions on the draft Case for Change. At no point does the CCG state that evaluators were

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<sup>26</sup> Paras. 123-124, PF

to disregard this document given the late change in the CCG's commissioning approach.

51 In the Provisional Findings, Monitor states:

*"It is difficult to reconcile the statement endorsed in the draft Case for Change with the CCG's intention to invite other providers to bid for the services. However the draft Case for Change does not appear to have been taken into account in the CCG's evaluation and moderation process to assess proposals from providers."<sup>27</sup>*

52 In the absence of any evidence to the contrary (there is none) it would be perverse and irrational to find that the evaluators did not take the draft Case for Change into account. The Guidance Document (which accompanied the Invitation to Propose) states that it was:

*to be read in conjunction with the following documents:*

- Strategic Framework*
- **Draft Case for Change***
- Engagement Report*

*These documents provide the **strategic direction** for community services<sup>28</sup>*  
[NDHT's emphasis]

53 Prospective providers therefore had to read these public documents in submitting their proposals; it would be perverse and irrational to find that the CCG's Transforming Community Services Team, clinicians and lay representatives (who carried out the evaluation of tenders) did not have any regard to them.

54 NDHT requests that Monitor provide such evidence if it is to find conclusively that the draft Case for Change and its preference for RD&E was not taken into account by the evaluators. If there is no such evidence, the conclusion must be that the evaluators were aware of this document and its preference for RD&E as future provider of the Services.

55 Statements by the CCG: Monitor states that it did not receive from the providers any statements of what CCG members said (which indicated the CCG's selection of

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<sup>27</sup> Para. 129, PF

<sup>28</sup> Page 3, Guidance Document

RD&E was pre-determined). This is not correct. As part of the evidence substantiating its complaint, NDHT provided Monitor with a letter it sent to the CCG immediately after a public meeting where it complained about such statements being made<sup>29</sup>. In that letter, NDHT reported these prejudicial statements to the CCG verbatim.

56 Monitor has not asked NDHT to provide it with further evidence to support these statements.

57 It is extraordinary that there is no record of telephone calls between the CCG and providers and that most emails between the CCG and providers have been deleted<sup>30</sup>. NDHT submits that Monitor must draw adverse inferences from those facts.

58 Record-keeping by a commissioner is concomitant with the general requirement of procurement to act in a transparent way<sup>31</sup>. The absence of record-keeping is not transparent. Monitor is responsible for enforcing the PPCC in respect of the transparency requirement under Regulation 3(2)(a).

59 Unfair advantage: RD&E did have an unfair advantage in its engagement with the CCG during May-July 2014. Monitor highlights the risks with the CCG's approach in terms of wasted resource and the disadvantage to other providers if the *"information from Royal Devon & Exeter at this stage was relied on in the subsequent provider assessment"*<sup>32</sup>. Monitor goes on to state:

*It does not appear that this was the case.*<sup>33</sup>

60 However Monitor then states that a moderator in the final provider evaluation meeting and who was also the chair of that meeting, attended RD&E's initial presentation to the CCG in July 2014<sup>34</sup>. This being the case, NDHT would expect to see reference to evidence that the chair did not have any influence over the evaluators (for

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<sup>29</sup> Letter dated 31 October 2014 from Alison Diamond to Rebecca Harriott

<sup>30</sup> Para. 132, PF

<sup>31</sup> Regulation 3(2)(a), PPCC

<sup>32</sup> Para. 139, PF

<sup>33</sup> *ibid.*

<sup>34</sup> Para. 140, PF

example, as evidenced by meeting notes). The fact that that person did not have voting rights is not conclusive that there was no advantage to RD&E.

### Transparency

- 61 In Section 8, Monitor criticises the CCG's record-keeping practices where records of telephone calls and emails with providers were deleted. However, as the PPCC are silent on record-keeping by commissioners, Monitor states it cannot find a breach of the transparency requirement on these grounds<sup>35</sup>.
- 62 NDHT repeats its comment that certain record-keeping by a commissioner is concomitant with the general requirement of procurement that a commissioning body act in a transparent way. The PPCC are not prescriptive to this degree but it is accepted that transparency by public bodies requires records. If a commissioner is at liberty to destroy records of its communications with providers (and other stakeholders), the impact of those communications on its decision-making is beyond assessment by the regulator. That is not transparent.
- 63 Requests for information: In respect of the CCG's delay in responding to questions posed by NDHT about its commissioning approach (before the competitive assessment was decided upon), Monitor sets out its general expectation that "*a commissioner [should] provide a timely response to questions about its process.*"<sup>36</sup>
- 64 Monitor goes on to state however that:
- the CCG's failure to provide a complete and timely response did not affect Northern Devon Healthcare Trust's ability to participate in the provider assessment, or lead to it being disadvantaged in the process.*<sup>37</sup>
- 65 Monitor repeats this stance in respect of the CCG's failure to answer NDHT's question regarding the identity of the senior officers of the CCG who were involved in the evaluation process.<sup>38</sup>

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<sup>35</sup> Para. 154, PF

<sup>36</sup> Para. 161, PF

<sup>37</sup> Para. 162, PF

<sup>38</sup> Para. 167, PF

- 66** This suggests that a lack of transparency by a commissioner is acceptable provided it does not disadvantage a provider. NDHT would not agree with this view – transparency is a general requirement of procurement under the PPCC.
- 67** Monitor's Provisional Findings demonstrate that CCG's approach to the commissioning of the Services was manifestly shambolic. The CCG's published Response to the Statement of Issues of the description of the commissioning process is impenetrable.

### **Conflict of interest**

- 68** NDHT agrees with Monitor's comments regarding the CCG's failings in managing conflicts of interest, particularly where the CCG failed to disclose potential (although discounted) conflicts<sup>39</sup>. NDHT also agrees with Monitor's expectations as to how commissioners, generally, should behave regarding the review and cross-checking of declarations of independence.

### **Further Assessment**

- 69** It is clear from the wording of Regulation 3(3) that the CCG must procure services from the most capable provider and who can provide best value for money in doing so.
- 70** That means the CCG must compare RD&E's capability and value for money with other providers to assure itself that RD&E is the most capable provider of the Services and provides best value for money in doing so. NDHT sets out above why three of the alternative comparisons proposed by Monitor<sup>40</sup> are not useful or practicable.
- 71** The only logical comparison must be with NDHT as the only other capable provider of the Services. The CCG will therefore need to compare RD&E's capability and value for money with that of NDHT before it can award a contract for the Services in compliance with Regulation 3(3).
- 72** This process will need to be carried out in a transparent and non-discriminatory manner. Going forward, the CCG must be able to satisfy itself and provide assurances to the public that it has followed a robust process which has allowed it to determine the future provider of the Services. Given the degree of controversy and

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<sup>39</sup> Paras. 191-193, PF

<sup>40</sup> Para. 89, PF

the number of failings already identified, NDHT believes it appropriate for NHS England and/or the Success Regime to oversee this process.

**73** Based on what has been highlighted by Monitor in the Provisional Findings, NDHT assumes that the further assessment will need to request from RD&E and NDHT detailed submissions in relation to at least the following:

- meeting the precise Service specifications and, in particular, how the Services will be delivered in an integrated way;
- the costs of providing the Services with common parameters in terms of certain variables such as future demand;
- a medium-term financial model;
- any 'whole system effects' (both positive and negative).

The CCG will need to set an adequate and proportionate word count in respect of these key requirements and provide weightings for the detailed capability and value for money criteria. An appropriate word count will allow NDHT and RD&E to expand appropriately on their previous responses to the CCG.

**74** With regard to whole system effects, NDHT reiterates that, as well as an absence of a best value for money assessment during the provider assessment process, the CCG has not taken into account the very high financial costs to the Devon health economy in transferring the Services to another provider. In line with Monitor's comments<sup>41</sup>, NDHT expects that the CCG will need to quantify and take into account any whole system effects before it can determine which provider offers best value for money in delivering the Services.

**75** In its Further Submission, NDHT alerted Monitor to the fact that there would be multi-million pound costs in transferring the services. NDHT has already referred to the loss and costs to the eastern locality of the benefit of the Electronic Health Care solution (including significant Treasury funding).

**76** NDHT would now add that a Cost Improvement Programme (CIP) of several million pounds is also at risk if the Services transfer – NDHT fully expects that these projected savings for the following 12 months (and possibly more) will be at risk and harder to deliver. NDHT will still need to deliver the CIP and so NDHT will require

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<sup>41</sup> Para. 87, PF

either RD&E or the CCG to 'buy out' this liability on transfer if this occurs prior to March 2016.

- 77** NDHT also estimates pure transition costs of £900,000 in terms of human resources (additional finance, payroll, I.T. estates, and workforce costs) to manage the transition – a process which will take at least six months with an additional period of oversight following transition.
- 78** In terms of timeframe for the further assessment, NDHT anticipates that the refining of the Service specifications alone (there is just one at present for community nursing) will take some time. NDHT notes that the CCG is still working towards the transition of the Services by October 2015 which now does not seem at all feasible.

### **Undertakings**

- 79** Monitor has found significant inadequacies in the CCG's assessment process to date<sup>42</sup>. As it has not yet awarded a contract for the Services, Monitor has provisionally found that the CCG has not, currently, breached the PPCC. The CCG has now been given an opportunity to ensure it complies with the requirements of the PPCC going forward in commissioning the Services.
- 80** NDHT respectfully submits that, as part of its final decision in this investigation, Monitor should secure undertakings from the CCG for the purposes of preventing a failure to comply with the requirements of the PPCC.

### **Right to complain further**

- 81** NDHT reserves its right to complain to Monitor again should the CCG fail to comply with the PPCC - in particular, the requirement to procure the Services from the provider which is the most capable of delivering the Services and provides the best value for money in doing so.

### **Publication**

- 82** NDHT requests that this Response is published in its entirety in conjunction with its Further Submission to Monitor and its letter to the CCG regarding value for money and disaggregation costs should the Services transfer to RD&E (see annexes).

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<sup>42</sup> See, in particular, paras. 78, 80, 81 and 90, PF