

Commissioning Community Services for Adults with Complex Health Needs

**Response to Monitor's Provisional Findings:
Case Reference CCD 01/15**

Submission Date: 26 June 2015

Overview

- OS1. This document responds to Monitor's Provisional Findings regarding the Investigation into *NEW Devon CCG's commissioning of community services for adults with complex care needs in Eastern Devon* and is made as part of Monitor's public consultation process. The CCG welcomes the outcome of Monitor's Provisional Findings into the allegations and complaint raised by Northern Devon Healthcare NHS Trust, and note that Monitor finds that there was no breach in relation to the allegations relating to:
- a) Acting Transparently
 - b) Treating providers equally and in a non-discriminatory way
 - c) The need to avoid conflicts of interest which could affect the integrity of any award.
- OS2. The CCG was pleased to see the positive public responses to the original statement of issues, noting how the CCG had listened and taken views into account. The CCG would like to thank the public for their input to this programme and will continue to work to achieve a future service that is in the best interests of patients and delivers quality, efficiency and effectiveness of care.
- OS3. The CCG provided a comprehensive response on 11th February 2015 to the original Monitor Statement of Issues and has subsequently provided significant information and detail to assist this thorough investigation by Monitor. The CCG has been clear that it always intended to undertake additional work prior to recommending to its Governing Body that formal contract award be made for this locality in accordance with regulations 2 and 3. The CCG notes this has been taken into account by Monitor.
- OS4. The CCG considers that Monitor's Provisional Findings will assist it in further enhancing the next phase of the process as the CCG conducts the strategic and transitional due diligence work ahead of contract award in order to provide assurance to the Governing body, Monitor, and indeed the wider public that the final proposal meets the important requirements for quality, efficiency and value for money.
- OS5. In reviewing the Provisional Findings, the CCG wishes to specifically comment on:
- Scope of services including the responsibility of the CCG in determining scope and the process and extent to which this has been carried out
 - Value for Money including the CCG's approach incorporating both price and quality to achieve maximum benefits for patients.
 - To respond to and provide further clarity in relation to specific points in the Provisional Findings concerning patient choice and in relation to the retention of records.
- OS6. The CCG is confident that its current process, will be further enhanced in response to the further steps advised by Monitor in order to comply with the NHS (Procurement, Patient Choice and Competition) (No 2) 2013 Regulations before making a decision to award a contract. The CCG also welcomes additional advice much of which will be addressed in a current CCG review of governance structures.



Rebecca Harriott
Chief Officer

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1 Introduction

1. This document provides Northern, Eastern and Western Devon CCG's (the CCG) response to Monitor's Provisional Findings regarding the *Investigation into NEW Devon CCG's commissioning of community services for adults with complex care needs in Eastern Devon*¹. The CCG note that these findings represent Monitor's current view and welcomes the opportunity to comment on Monitor's assessment, reasoning and evidence used to help ensure the final findings are sound.
2. The CCG considers that Monitor's Provisional Findings will assist it in further enhancing the next phase of the process as the CCG conducts the transitional and due diligence work ahead of the decision of whether to award the contract. The CCG always intended to undertake additional work prior to recommending to its Governing Body that formal contract award be made for this locality in accordance with regulations 2 and 3. This work is clearly set out within the CCG's due diligence process that has been shared with Monitor as part of the investigation process. Further detail of this work is provided in section three to this response.
3. This response to Monitor sets out areas where the CCG feels that additional clarity of the finding and scope of the review would be of assistance to Monitor in preparing the Final Findings. It then sets out the work that the CCG has undertaken or plans to undertake following the final publication of Monitor's findings ahead of the decision of whether to award the contract.
4. The CCG understands that Monitor will publish this response in full.

2 Response to Provisional Findings

Scope of Services

5. The Case for Change, published in November 2014, clearly sets out the services that are to be considered within each of the four bundles as part of the Transforming Community Services process. The Case for Change also sets out the overarching scope as well as key interactions between other services within the health and social care system. As the CCG is looking for transformation it would expect that these services will continue to develop and change over the course of the contract to deliver the CCGs vision for community services
6. Within their Provisional Findings, Monitor set out that the CCG has not "obtained a level of detailed information.....that would give it an adequate understanding of the scope of services to be provided" (Paragraph 79). The CCG does not consider that this reflects the position at the time of award of preferred provider status, or at the time of the investigation. Although the detailed specification had not been finalised at the point of preferred provider selection the overall scope, nature, and outcomes for services had already been set out in the Strategic Framework and draft Case for Change and further clarified in the final Case for Change. This set out the significant majority of the specification.
7. The CCG as commissioner is responsible for determining the scope of the services to be commissioned. During the course of the Monitor Investigation, and prior to the release of the Provisional Findings from Monitor, work was underway to finalise the full scope of services, including identification of any further interface issues, and ensure that the CCG understands

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433526/NEW_Devon_provisional_findings_for_publication.pdf

the detail of how the preferred provider proposes to meet the needs of the service users and the specification.

8. As contained in the comprehensive Due Diligence phase, details of which have already been submitted to Monitor, and as part of the contract negotiation work prior to contract award, the CCG has planned a detailed assessment of each of the services within the Complex Needs bundle. This is a consistent approach across all three localities and our application of this process in the Western locality ensured a comprehensive understanding for all parties at contract award stage. The outcome of the Western Locality negotiations will be considered in the context of the Eastern locality, as will Northern Devon Healthcare NHS Trust's response to the same issues in the Northern locality.

Value for Money

9. The CCG is confident that the approach it has taken will ensure that improvements in the healthcare system are delivered as the focus has been on the whole of community services. The CCG is confident that both the due diligence and transition processes will enable a provider to be selected that will be capable of delivering quantifiable future benefits of improved patient experience, quality of service, value for money and financial sustainability. This process will be supported by the Procurement team from the South, Central and West Commissioning Support Unit who are providing expertise in supporting the transition process.
10. The CCG believes that providing detail on individual service lines (some of which have a small service footprint) and focussing on unit price against specific services would not alone achieve its objective and may lead to a contract being awarded to a provider who may be able to initially deliver on price, but who may have been less successful in delivering the transformation and reallocation of resources necessary.
11. It is the CCG's opinion that such a narrow approach to Value for Money would not be in the best interests of patients and the wider public. This is consistent with Monitor's guidance on the regulations which points out Value for Money is not a simple matter of cheapest is best; and that due consideration needs to be given to the quality and safety of the services being provided for the contract value. It is important that the CCG consider the significance of the sustainability challenge across all services within the healthcare economy alongside the direct cost of the service itself.
12. In order to achieve the ambitious outcomes and strategic direction as set out in the Strategic Framework, Case for Change and locality Commissioning Intentions, the CCG recognised that the assessment of Value for Money was much broader than a straight comparison of the lowest price bid submission irrespective of other considerations. Simply focussing on price does not deliver the outcomes of care closer to home and reduced acute activity that the CCG set out within its Strategic Framework.
13. Accordingly, the CCG is not necessarily focussed on reducing spend on community services as these are seen as an enabler of wider system change in the redesign of healthcare provision within Devon. Value is also not confined to value within the services which are the subject of the process. The CCG regards it important to recognise that expenditure in the community may save more money across the healthcare system through reduced call on acute hospital and urgent care resources. This change in care pathways, investment in prevention, and reallocation of resources are essential to address the financial pressures within the Devon health economy while maintaining an excellent standard of services for patients.

14. In its Strategic Framework, the CCG recognised the financial pressure within the local health economy which required a significant change in the way in which services are delivered and a not insignificant reduction in total spend on healthcare. The CCG continues to identify community services as an integral part of the overall solution, and so the amount of money spent commissioning community services may increase in time as resources flow from the acute provider to enable care to be provided in the community closer to home.
15. The CCG's Due Diligence approach has been designed to further challenge providers as to how they will deliver services to the quality and efficiency required whilst operating within the set financial envelope. In the light of the Monitor comments, the CCG has reviewed and amplified the process in relation to the Eastern Locality as set out in paragraph 38 below. This will enable the CCG to determine whether the services that are being commissioned represent true Value for Money and will meet the CCG's Strategic Framework. This due diligence process, with the additional benefit of Monitor's advice and associated learning from the Western Locality will be consistently applied across the three localities, and was completed within the Western Locality ahead of services transferring to Plymouth Community Healthcare on 01 June 2015. Learning from the Western Locality transition process will be applied to the remaining two transitions.
16. The CCG will actively pursue Monitor's advice as set out in paragraph 89 of the Provisional Findings, and has already made contact with a number of other healthcare organisations to ascertain the availability of comparative information. The CCG will of course have access to information relating to the current contract and arrangements elsewhere in Devon. However, the CCG is minded to avoid the emphasis being wholly on scope; which as the CCG has mentioned above appears to be related to the service lines, and price. The CCG's process is not aimed at delivering lowest price, but best value which needs to take into account the other factors which the CCG has identified and which will be assessed alongside the comparative data on price in the due diligence process.

Provider Choice

17. We note within the Provisional Findings Monitor's views in relation to patients' choice of provider (paragraph 115). The CCG does not believe that this is an accurate statement of its full approach to patient choice in the context of community services. Monitor acknowledges that this is outside of the scope of the review; therefore if a comment on patient choice is to remain, the CCG requests it takes into account the points below.
18. The CCG recognises that patient choice is a core element of service provision that needs to be considered during the commissioning process for any service. One of the CCG's pivotal aims from the Transforming Community Services programme is to improve the allocation of resources within the healthcare system; moving care from the acute providers to community, home based and preventative models.
19. This direction, set within our Strategic Framework, is in line with the Five Year Forward View. This approach to resource allocation will give service users choice in how they receive their care, including choice of providers for preventative and personalised packages of care. This is set out within both the Strategic Framework and Case for Change for Personalised and Preventative care. Patient Choice is also being considered within the review and recommissioning of Specialty Services.
20. The CCG also strongly believes in a single system of governance around the patient to ensure that services are provided in a safe manner for the wellbeing of patients. Increasing the

number of providers within a complex system delivery model can increase the risk of inconsistent governance arrangements. The CCG is not aware of any models of competition within the market for the provision of community hospital provision, nor crisis intervention teams.

21. The health economy within Devon is financially challenged, with NEW Devon CCG being one of three CCG areas being identified as part of the Government's Success Regime. This financial challenge has focussed the CCG on making the system more effective and efficient, enabling resources to flow and be reallocated within the system to address patient need. It is the CCG's view that this is only possible through streamlining the provision of services, not by the creation of many providers within one locality at this time. It should be noted that the CCG encourage partnership arrangements with a number of providers, including the local authority, in the delivery of services and are aware this is being considered by RDE.
22. However, due to the importance of keeping a focus on patient choice the CCG decided at an early stage to develop the personalised and preventive bundle with an ambition that over time this bundle would grow as more people, including adults with complex needs, accessed different models of care. Although it is at an early stage, the CCG is committed to adopting an approach to give individuals and their carers true choice. The CCG already has progressed personal health budgets and is working with the local authority to advance personal care.
23. The CCG suggests any comment on the introduction of patient choice of provider should acknowledge the CCG's strategic approach to achieving effective choice as a key part of the community services programme.

Email and Documentation retention

24. Throughout the investigation process, the CCG provided Monitor with a significant volume of information to support its investigation. All of Monitor's requests for information were delivered within the timescales agreed with the CCG, with no documentation being withheld from the investigating team. Throughout the investigation the CCG has been open and transparent with Monitor and has shared all information requested. Monitor has made positive comment to the CCG on this level of responsiveness and helpfulness.
25. Within the Provisional Findings, Monitor state that "the CCG was unable to provide us [Monitor] with a complete record of its communications with providers because it did not keep records of calls and deleted most emails".
26. The CCG feels that this statement could be misunderstood and gives an impression that deliberate action was taken by the CCG to avoid providing information to Monitor to support its investigation. This is absolutely not the case, and as such the CCG requests that Monitor's statement is revised to reflect the accurate position as set out below.
27. The CCG worked with Monitor to develop an agreed approach for the collation of communications between the CCG and providers. The request was for 'all emails between the CCG and providers'. Since this was beyond the context of the process leading to the selection of the preferred provider for the Complex adult community care services, a revision to the request was mutually agreed and revised to an agreed methodology with Monitor, which involved the collation of calls, letters and emails for 26 members of staff. A significant volume of data was provided to Monitor in response to this request for information.

28. The CCG acknowledged to Monitor that in some cases information was not available due to individuals managing their email account by only retaining those emails that require action. Due to data limits within NHS Mail, significant volumes of emails are not able to be retained, and some people actively chose not to maintain off line data folders.
29. Monitor also suggest in their Provisional Findings that the CCG has not retained core documentation relating to the procurement process including communication with providers. All communications between the CCG and the providers during the procurement process were managed through the procurement team of South, Central, and West Commissioning Support. When requested by Monitor, the procurement team were able to provide details of all communications between the procurement team and the providers during the process. The CCG was also able to provide copies of letters and other communications made with providers during the period before and after the procurement.
30. In light of the Provisional Findings, the CCG is however reviewing its policies surrounding Record Retention and determining what steps are necessary for the CCG to take with regards to storing records of core communications. The CCG accepts that spirit in which the recommendation is made, but considers that retaining all emails (regardless of content), and making notes of all calls with providers would be unnecessarily burdensome and resource intensive compared to the perceived risk. We would accept that where these relate to a procurement process they should be retained, as they were in this case once the more formal process started.
31. To the extent that the comments made by Monitor in paragraphs 154 and 213 are intended to extend wider than the procurement processes subject to the Regulations, the CCG will take Monitor's views into account and discuss these with NHS England as these could be seen as having implication for all NHS providers and commissioners.

3 CCG Action Planning

Due Diligence and Value for Money

32. The CCG provided Monitor with a copy of the due diligence programme it plans to undertake on the Royal Devon and Exeter NHS Foundation Trust. This work is currently in progress.
33. In addition to the agreed programme, the CCG is reviewing whether any further enhancements to this programme are necessary given the complexity of the transition that is being proposed, and in the light of Monitor's comments in the provisional findings.
34. As reflected in Monitor's substantive guidance on the regulations, Value for Money is a measure of the quality of service that is provided compared to the cost of acquiring that service. As such, it is not appropriate to conclude that the lowest price offered necessarily represents the best value for money for the taxpayer, unless the quality offered is comparable to other higher price offers. Similarly, a high cost model may represent excellent Value for Money if the quality and scope of services being provided is exceptional. The CCG's approach to Value for Money will consider both price and quality aspects. A summary of this process is provided at paragraph 38.
35. The CCG's procurement process has already determined that the Royal Devon and Exeter NHS Foundation Trust is the most capable provider to deliver services within the Eastern Locality. This Value for Money exercise will, therefore, determine whether the service proposed within the Royal Devon and Exeter NHS Foundation Trust's procurement

submission represents good Value for Money for the CCG and the taxpayer. Any comparable work will be undertaken against contracts outside of the Eastern Locality to ensure that any potential bias or influence is minimised.

36. The CCG's procurement process was not focussed solely on price, with other factors being considered as being of greater importance. The CCG recognises, however, that price has a material impact on the consideration of contract award. The CCG's assessment of the contract price within the Value for Money exercise will be based on an indicative contract value which will be subject to negotiation following the completion of the due diligence exercise. In undertaking this work, the CCG will generate a comparable contract value based on cost, activity and demographic profiling from other CCG areas. The CCG will then explore and investigate any significant differences in assessing the Value for Money of the services offered, recognising that no benchmark will be perfect.
37. The CCG will undertake further detailed work to understand the proposed quality and efficiency measures that were set out within Royal Devon and Exeter NHS Foundation Trust's procurement application. This will enable the CCG to determine whether the quality element of the Value for Money exercise will result in a better quality service than that currently provided. Where it is possible to attach a robust financial value to these savings, this will be incorporated into the assessment of price.
38. In addition to the work on Value for Money, the CCG will be undertaking the due diligence work as set out in the documentation provided to Monitor. The CCG considers that this due diligence process that is in place is sufficient for the CCG to assess the ability of the Royal Devon and Exeter NHS Foundation Trust to deliver high quality, safe and efficient services and lead the provider system through a programme of change in delivering the CCG's Strategic Framework.
39. In summary the process for the evaluation will be :-
 - Create specification for independent analysis based on Monitor findings
 - Appoint independent advisor
 - Agree relevant benchmarks and comparisons
 - Independent advisor to discuss Value for Money approach with Monitor
 - CCG receives final report
 - CCG to review and determine Value for Money outcome
 - CCG external auditors and Audit Committee to assure process and report
 - CCG to determine contract award
40. This process will enable the CCG to finally conclude whether the award of a contract to the Royal Devon and Exeter NHS Foundation Trust would be consistent with the obligation to commission from the provider most capable of delivering services to meet the needs of the people who use the services, improve the quality and efficiency of those services, and deliver Value for Money. Through this work, the CCG will assure both its Governing Body and the public as to the robustness of the work undertaken in reaching this conclusion.

Additional Actions

41. In December 2014, and after the completion of the CCG procurement process, NHS England released new guidance in relation to conflicts of interest². This was an update to the guidance

² <http://www.england.nhs.uk/wp-content/uploads/2014/12/man-confli-int-guid-1214.pdf>

previously published for CCGs in March 2013. This new guidance was adopted on release and has been utilised for all current CCG procurements including the recent Urgent Care procurement within the Transforming Community Services Programme. In addition the CCG is in the process of revising its Standard of Business Conduct policy. Part of this revision will capture the updated guidance on conflicts of interest. The CCG is in the process of revising its governance structures. Once this work has been completed, the CCG will ensure that there are enhanced processes in place for the management of conflict of interests in line with its Business Conduct policy.

42. In addition updates in relation to the introduction of the new Public Contracts Regulations 2015 were presented to April 2015 Finance Committee and following the release of Monitor's Provisional Findings, its legal and procurement experts have been commissioned to provide further training sessions to its senior managers with regards to impact of changes to Procurement legislation, Conflicts of Interest and Consultation guidance.
43. In line with best practice the CCG will also undertake a programme review to capture the learnings from the procurement and areas of focus from the Monitor Investigation.

4 Conclusion

44. The CCG welcomes the outcome of Monitor's Provisional Findings into the allegations and complaint raised by Northern Devon Healthcare NHS Trust, and note that it finds that there was no breach in relation to the allegations relating to:
 - a) Acting Transparently
 - b) Treating providers equally and in a non-discriminatory way
 - c) The need to avoid conflicts of interest which could affect the integrity of any award.
45. While there is further work to be completed on Value for Money, the CCG maintains, as supported by Monitor, that this was always intended to be completed as part of the due diligence process and prior to contract award. The CCG is reviewing how the planned due diligence processes can be enhanced to provide additional assurance to Monitor regarding the outcome of this assessment. The CCG has provided additional areas of clarity which it is hoped will be of assistance to Monitor in finalising its report.
46. The CCG is also in the process of reviewing a number of its governance and operational processes in light of Monitor's Provisional Findings to further enhance the robust control environment within the CCG.
47. The CCG awaits Monitor's final findings and is committed to ensure that all necessary work will be completed that will provide the necessary assurances ahead of a decision on whether to proceed to contract award, and ultimately to ensure the safe and efficient transfer of services from Northern Devon Healthcare NHS Trust to the Royal Devon and Exeter NHS Foundation Trust.
48. The CCG remains committed to identifying a provider that is not only able to deliver high quality, safe and efficient community services to the patients of Eastern Devon, but who is able to work with the CCG in redesigning the provision of healthcare services to enable the delivery of the CCG's strategic vision as set out in the Strategic Framework. The CCG is confident that the process that is being followed will achieve the stated commissioning ambitions for the people of Devon.
49. The CCG will continue to co-operate with Monitor to reach the conclusion of this investigation.

A handwritten signature in black ink, appearing to read 'Rebecca Harriott', with a stylized flourish at the end.

Rebecca Harriott

Chief Officer

Northern, Eastern and Western Devon Clinical Commissioning Group