

# Business Plan

2009-10



CO-OPERATION & COMPETITION PANEL  
FOR NHS-FUNDED SERVICES

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## **VISION**

**“A patient-centred, devolved healthcare system based on effective cooperation and competition that delivers continuous improvements in care for patients and value for money for taxpayers”**

## **MISSION**

**“To operate as an independent, transparent and effective advisory body to the Department of Health, Monitor and NHS-funded stakeholders regarding the application of the Principles and Rules and the development of cooperation and competition within the NHS generally”**

## 1. FOREWORD

- 1.1 The Cooperation and Competition Panel (CCP) is a newly created, independent, non-statutory, advisory body responsible for advising the Secretary of State (and his delegated authorities) and Monitor (the independent regulator of NHS Foundation Trusts) on the application of the Principles and Rules of Cooperation and Competition (Principles and Rules).
- 1.2 The Principles and Rules were published in December 2007 by the Department of Health as part of the *NHS 2008-09 Operating Framework* and came into force in April 2008. The aim of the Principles and Rules is to ensure seamless services for patients; foster patient choice, transparency and fairness; encourage competition for NHS-funded services; and establish the ground rules for mergers and other transactions involving NHS bodies.
- 1.3 The CCP commenced operations on 30 January 2009. This document outlines the CCP's vision and mission statement in addition to its specific strategies for 2009-10.

## 2. BACKGROUND

- 2.1 In December 2007, the Secretary of State made a commitment to establish a non-statutory advisory body to provide independent advice on issues arising from the application of the Principles and Rules that could not be resolved locally. This has resulted in the establishment of the CCP.
- 2.2 The CCP's role has derived from significant changes in the NHS over the past decade.
- 2.3 In 2000, the *NHS Plan* was published as a 10 year strategy to improve the NHS which had suffered from significant underinvestment. It outlined greater levels of spending to increase NHS capacity through funding new hospitals, modernised GP premises and increased NHS staff such as GPs, nurses and therapists. This resulted in improved access to care, including reducing waiting times within the NHS.
- 2.4 *Delivering the NHS Plan* was published in 2002, continuing the implementation of the NHS Plan. In the 2002 Plan, there was recognition that the health system should respond to its users, namely patients, rather than to management from above. Consequently, a greater focus was beginning to be placed on fostering patient involvement and choice within the provision of NHS-funded services. This included allowing patients the right to choose any willing and registered provider of certain elective services regardless of the physical proximity or type of provider.<sup>1</sup> The NHS was opened up to a plurality of providers including from the third and private sector.
- 2.5 Competition for the provision of NHS-funded services was seen as a tool in achieving the aim of reducing waiting times and providing patient choice by encouraging innovation, quality and responsiveness to patient needs. New mechanisms to support this reform included Independent Sector Treatment Centres (ISTCs), Payment by Results (PbR), plurality of providers (including the Any Willing Provider model) and World Class commissioning.
- 2.6 However, there was clear recognition that such measures could only be truly effective if there were clear, enforceable rules guiding and governing behaviour within the healthcare system.
- 2.7 In the past, those responsible for determining the nature of provision and funding of care made decisions without a clear set of rules. With only one type of provider, no choice or competition rules were required. In the evolving environment of greater choice, increased contestability and competition, there was a greater need to ensure rules and guidance existed to encourage effective cooperation and competition that would benefit patients and taxpayers.

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<sup>1</sup> This right has now been enshrined within the NHS Constitution (Department of Health, January 2009).

- 2.8 To address these changes, the Department of Health published the Principles and Rules as part of the *NHS Operating Framework 2008/09*. Their purpose is to ensure fair and transparent cooperation and competition so as to make the best use of resources, enable innovation, and provide essential safeguards for the interests of patients, taxpayers, and the reputation of the NHS. They apply equally to all established NHS, social enterprise and third sector organisations as well as the independent sector, practice-based commissioners and primary care.
- 2.9 The Principles and Rules are structured around 10 overarching principles, each underpinned by a public interest rationale, alongside a description of rules and expected actions/behaviours of commissioners and providers operating within the system. The principles fall under four general themes which are covered by the CCP's interim guideline documents:
- Mergers (including all types of corporate transactions involving an NHS body)
  - Conduct (including conduct by service providers or others that has the potential to undermine effective cooperation or competition);
  - Procurement; and
  - Advertising.
- 2.10 The CCP has been established for the purposes of advising the Department of Health and Monitor on cases arising under the Principles and Rules, and ultimately, the CCP aims to provide advice that results in the best outcomes for patients and taxpayers. The CCP is not a policy making body. Responsibility for the development of policy in relation to cooperation and competition within the NHS is held by the Department of Health.
- 2.11 The CCP does not initiate its own investigations but responds to matters that are referred to it. For example, it may investigate a complaint regarding the conduct of an organisation, or it will examine a merger in response to a request by two organisations that plan to merge.

### 3. INTRODUCTION

- 3.1 In the following sections, the CCP outlines its strategies and goals for 2009-10 and how it will achieve them.
- 3.2 In its inaugural year, the CCP recognises that it is crucial to establish itself as a credible and beneficial organisation that contributes positively to the development of a devolved healthcare system that delivers benefits to patients and taxpayers.
- 3.3 Most fundamentally, the CCP will need to encourage awareness, understanding and support of the Principles and Rules themselves, and also of the CCP as the body tasked with advising on the application of these rules.
- 3.4 As such, the strategies for the CCP's first year of operation are focused on building the foundations of a strong, effective and credible organisation.
- 3.5 The CCP sets out its main strategies for 2009-10 below and discusses the goals and measures associated with achieving these aims in more detail in the following sections.

CCP STRATEGIES FOR 2009-10	
1.	Build awareness, understanding and support for the Principles and Rules and the role of the CCP.
2.	Establish sound procedures and robust analytical techniques in advising on the Principles and Rules to ensure credibility in the eyes of NHS stakeholders.
3.	Evolve as a high-performing organisation that effectively advises on the application of the Principles and Rules and provides support to commissioners and providers of NHS- funded services through reasoned and transparent precedents.
4.	Contribute to, and influence, the development of cooperation and competition in a devolved healthcare system by providing policy advice to Department of Health and other stakeholders on relevant issues.

## **4. STRATEGY 1: Build awareness, understanding and support for the Principles and Rules and the role of the CCP**

- 4.1 The Principles and Rules covering four main themes of mergers, conduct, procurement and advertising, have introduced concepts and expectations which guide and govern the behaviour of commissioners and providers of NHS-funded services.
- 4.2 It is important that stakeholders understand the Principles and Rules and their purpose in order to gain support for them. Without such support, the Principles and Rules are likely to be ineffective and the benefits to patients and taxpayers of effective cooperation, choice and competition may not be realised.
- 4.3 In 2009-10, the CCP will focus on increasing awareness and understanding of the Principles and Rules within the NHS. As a new body, the CCP also needs to introduce itself to the health services industry. The CCP commenced operation on 30 January 2009 and is very much in its infancy.
- 4.4 We will pay particular attention to developing our relationship with commissioners and providers of NHS-funded services as well as other key stakeholders, including the Strategic Health Authorities.

**STRATEGY 1: Build awareness, understanding and support for the Principles and Rules and the role of the CCP**

Goal	Actions
Build awareness, understanding and support for the Principles and Rules	<p>Engage with relevant stakeholders through a programme of events and communications activities that which highlight the Principles and Rules and their purpose.</p> <p>Encourage support for the Principles and Rules by utilising case studies to demonstrate the positive impact of competition and cooperation.</p> <p>Provide informal advice to parties to assist with understanding the application of the Principles and Rules.</p>
Build awareness, understanding and support for the CCP's role	<p>Develop the CCP's relationship and communications with commissioners, providers and other stakeholders to build an understanding of the CCP's role in advising on the application of the Principles and Rules.</p> <p>Ensure stakeholders, including those with influence over health policy, understand the CCP's role and its contribution to the positive development of the healthcare system.</p>
Measures	
	<ul style="list-style-type: none"> <li>➤ The CCP will use meetings and conference speaking opportunities to liaise with and educate different stakeholders with the aim of reaching key decision makers in 80% of PCTs (as commissioners and providers), acute trusts, mental health trusts and independent providers.<sup>2</sup></li> <li>➤ The CCP will promote understanding of its role by regularly communicating with its stakeholders through published articles with the aim of securing an average one published article each month.</li> <li>➤ The CCP will provide informal advice on its role and the application of the Principles and Rules in response to requests.</li> <li>➤ The CCP will work with the Department of Health to commission a stakeholder survey analysing: <ul style="list-style-type: none"> <li>• awareness of the CCP and the Principles and Rules;</li> <li>• understanding of the purpose and role of the CCP and the Principles and Rules;</li> <li>• the level of support for the CCP and the Principles and Rules; and</li> <li>• the credibility of the CCP.</li> </ul> </li> </ul>

<sup>2</sup> We will measure our contact with independent providers through reference to the membership of NHS Confederation – NHS Partners Network.

## **5. STRATEGY 2: Establish sound procedures and robust analytical techniques in advising on the Principles and Rules to ensure credibility in the eyes of NHS stakeholders**

- 5.1 The CCP is responsible for providing advice regarding the application of the Principles and Rules. However, we recognise that to apply the rules fairly and consistently, we must establish procedures that are sound and transparent.
- 5.2 The CCP has published draft interim guidelines which set out its approach to analysing the cases that come before it. However, we recognise the importance of seeking input from stakeholders who are ultimately both the main audience for, and users of, the Principles and Rules. They are responsible for compliance with the Principles and Rules and will constitute aggrieved parties where there is a breach.
- 5.3 Therefore, we aim to hear views and gain input from relevant stakeholders to ensure that our approach to cases is procedurally sound and analytically robust. To achieve this, we have conducted a public consultation process on our interim guidelines in 2009 inviting comments from all interested parties. We aim to consider all submissions and have our CCP guidelines finalised and published by September 2009.
- 5.4 We understand that our approach to assessing breaches of the Principles and Rules cannot operate in a vacuum. Instead, we will, where appropriate, look to the approach adopted by other authorities both within the UK and internationally to inform our approach. In 2009-10, we aim to develop strong working relationships with relevant regulators including the Care Quality Commission and the Office of Fair Trading.
- 5.5 By involving all stakeholders in establishing the framework within which we will operate, the CCP aims to ensure its credibility in the eyes of stakeholders.

**STRATEGY 2: Establish sound procedures and robust analytical techniques in advising on the Principles and Rules to ensure credibility in the eyes of NHS stakeholders**

Goal	Action
<p>Establish sound guidelines for the application of the Principles and Rules</p> <p>Ensure consistency of the CCP's approach with established competition analysis</p>	<p>Conduct a public consultation process on the CCP guidelines which takes into account the views of stakeholders.</p> <p>Utilise health information in addition to legal and economic theory to develop tests in relation to patient and taxpayer benefits that are accurate and comprehensive.</p> <p>Develop relationships with relevant regulators and agencies to ensure, where appropriate, consistency in analytical approaches and a clear delineation of roles.</p>
Measures	
	<ul style="list-style-type: none"> <li>➤ CCP interim guidelines finalised by October 2009.</li> <li>➤ Memoranda of Understanding or other agreements with main health and competition agencies in place by of period to establish strong working relationships.</li> <li>➤ No successful legal challenges to the guidelines on either procedural or analytical grounds.</li> </ul>

## **6. STRATEGY 3: Evolve as a high-performing organisation that effectively advises on the application of the Principles and Rules and provides support to commissioners and providers of NHS-funded services through reasoned and transparent precedents.**

- 6.1 The CCP aims to be a small but highly effective organisation. We have established ourselves with a particular focus on recruiting talented staff to produce outcomes of the highest possible standards. In particular, the Panel is made up of highly respected experts from a wide range of fields including health, law and economics to ensure CCP advice is of the highest quality.
- 6.2 In 2009-10, we plan to utilise the expertise and commitment of our staff in order to produce sound recommendations and advice in relation to the Principles and Rules. We will base our decisions on established economic and legal theory, coupled with strong supporting evidence. Our decisions will be fair, logical and transparent.
- 6.3 Our reasoned decisions will act to provide clear and robust guidance to commissioners and providers and other stakeholders as to how the Principles and Rules apply in practice. We aim to provide clarity around the application of the Principles and Rules and encourage compliance through high quality precedents.
- 6.4 The CCP will ensure it completes high quality assessments in accordance with its guidelines. In doing so, we will demonstrate consistency in procedures and decision making such that we provide certainty to stakeholders as to what to expect when interacting with the CCP. We aim to be efficient and adhere to our published timeframes, and additionally, will not unnecessarily burden parties that come before us.
- 6.5 In order to accept decisions of the CCP and practice compliance, stakeholders will need to understand how and why the CCP reached certain decisions. In 2009-10, we will focus on providing guidance in a transparent manner by, amongst other things, publishing decisions and reasoning in relation to cases on our website.<sup>3</sup> By being as transparent as possible in explaining the evidence and analysis used to reach decisions, the CCP will ensure it remains credible.

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<sup>3</sup> In very limited circumstances, the CCP may choose not to publish a decision for confidentiality or other reasons.

**STRATEGY 3: Evolve as a high-performing organisation that effectively advises on the application of the Principles and Rules and provides support to commissioners and providers of NHS- funded services through reasoned and transparent precedents.**

Goal	Action
<p>Provide effective advice and recommendations on issues under the Principles and Rules brought before the CCP</p> <p>Produce high-quality precedents to provide clarity as to the application of the Principles and Rules</p> <p>Demonstrate consistency</p> <p>Ensure transparency in decision-making</p>	<p>Utilise staff and Panel expertise to the full extent possible to ensure sound advice and recommendations.</p> <p>Utilise established economic and legal theories to ensure decisions are consistent and sound.</p> <p>Produce decisions that are clear and reasoned and are able to act as useful precedents as to the practical application of the Principles and Rules.</p> <p>Adhere to the CCP guidelines both in terms of procedure and analysis to ensure consistency of decisions and certainty for stakeholders.<sup>4</sup></p> <p>Publish decisions and reasoning on the CCP website to promote the transparency of CCP decision-making and to provide guidance to stakeholders.</p>
Measures	
	<ul style="list-style-type: none"> <li>➤ Extent to which CCP recommendations are adopted by the Department of Health and Monitor.</li> <li>➤ No successful legal challenges to decisions of the CCP.</li> <li>➤ Report and publish CCP completion times in relation to each type of investigation.</li> <li>➤ Demonstrate the application of relevant precedents in later decisions of the CCP.</li> <li>➤ Through the stakeholder survey, assess the extent to which stakeholders have modified their behaviour as a result of CCP decisions.</li> <li>➤ Evaluate and external review of CCP inquiries.</li> </ul>

<sup>4</sup> Except in exceptional circumstances for which reasons will be provided.

## **7. STRATEGY 4: Contribute to and influence the development of cooperation and competition in a devolved healthcare system by providing policy advice to Department of Health and other stakeholders on relevant issues**

- 7.1 The NHS is in the process of substantial reform and the CCP has an important role to play in contributing to the positive development of the healthcare system. As an advisor on issues relating to cooperation and competition in healthcare, the CCP is in a unique position to hear views and perspectives from a wide range of stakeholders
- 7.2 We propose to utilise this information and our case experience to influence policy in a positive manner.
- 7.3 In 2009-10, we aim to use our case experience to provide useful and constructive feedback to Department of Health Principles and Rules.
- 7.4 The CCP will also strive to provide input and engage with relevant stakeholders in relation to policies that may impact cooperation and competition within NHS-funded services.

**STRATEGY 4: Contribute to and influence the development of cooperation and competition in a devolved healthcare system by providing policy advice to Department of Health and other stakeholders on relevant issues**

Goal	Actions
<p>Usefully influence policy on cooperation and competition and policies that may impact on cooperation and competition</p>	<p>Contribute to the Department of Health’s review of the Principles and Rules.</p> <p>Deliver CCP messages clearly and influentially by working with key stakeholders.</p> <p>Utilise the experience gained by the CCP to constructively contribute to health policy development regarding cooperation and competition.</p>
Measures	
	<ul style="list-style-type: none"> <li>➤ CCP provides a submission to Department of Health for their review of the Principles and Rules</li> <li>➤ New Department of Health policies take into account advice provided by the CCP</li> </ul>

## 8. RESOURCES: 2009-10 BUDGET

- 8.1 The CCP has been provided with a budget of £2.8 million for 2009-10 as set out in the table below.
- 8.2 This budget provides the CCP with two case teams in 2009-10, and will allow the CCP to conduct up to 5 complex cases (e.g. two-phase merger and/or conduct cases) or 14 simple cases (e.g. single-phase merger or conduct cases, procurement appeals or advertising appeals).

CCP Budget for 2009-10	
Staff costs (including panel members and staff)	£1,506,927
Non- staff costs (including premises, administration, travel, IT, website, etc)	£1,293,073
<b>TOTAL</b>	<b>£2,800,000</b>