



Decision to proceed to Phase Two inquiry regarding the merger of the provider arms of Mid Essex PCT and South East Essex PCT

PARTIES

1. Central Essex Community Services is the community health services provider arm of Mid-Essex PCT. Mid-Essex PCT is responsible for commissioning health services on behalf of the population in its PCT area of approximately 365,000 people, covering the Braintree, Maldon and Chelmsford districts. Central Essex Community Services has been operating as an autonomous provider organisation (APO) since April 2008. It has budgeted income in 2009/10 of £42.3 million.
2. Community Healthcare is the community health services provider arm of South East Essex PCT. South East Essex PCT commissions health services on behalf of the local population of approximately 342,000 people. Since 2008 Community Healthcare has operated as an APO separate from South East Essex PCT. Community Healthcare has budgeted income for 2009/10 of £31.2 million.

TRANSACTION

3. In the context of the broader policy requirement for greater separation between the commissioner and provider arms of PCTs, South-East Essex PCT undertook an option appraisal for its provider arm which was presented to East of England SHA in May 2009. The appraisal canvassed several options for the future of provider services and proposed to create a model which would deliver:
 - integrated care for adults, aligned with general practice and adult social care;
 - integrated care for children with local authorities; and
 - specialist services.
4. In July 2009, the boards of Mid Essex PCT and South East Essex PCT approved their provider arms entering into a transitional arrangement while the final organisational structure, set out in paragraph 3 above, is decided. The transitional arrangements are intended to commence in the first half of 2010 (following the CCP's review and the outcome of discussions with staff and the public) and will last until approximately April 2011 (the transition period). During the transition period, it is proposed that the merged Community Healthcare/Central Essex Community Services will have a single Provider Committee headed by a Joint Chief Operating Officer who will oversee the delivery of services, and a Transition Board supported by a Transition Director who will lead the transition programme. The Transition Board and the Provider Committee will report to the Board of Mid Essex PCT and South East Essex PCT.
5. Although the arrangements which we have been asked to review are described as transitional in nature, we have assessed them as a merger given that (a) they are not just short term (the transitional phase will last for around a year); and (b) the parties have indicated that once the

transitional arrangements commence, the two provider arms will not compete for contracts against one another.

6. The CCP accepted the transaction as a merger case on 16 December 2009 and published a Notice of Acceptance on its website.¹

ISSUES

7. The CCP's analysis of the effect of the transaction on patients and taxpayers in Phase One has highlighted the following issues:
 - in the absence of the merger, Community Healthcare and Central Essex Community Services would likely be close competitors for community services contracts in the Mid Essex and South East Essex PCT areas; and
 - a lack of credible competitors for 'core' community services in the South East Essex PCT area.²

COMPETITION BETWEEN COMMUNITY HEALTHCARE AND CENTRAL ESSEX COMMUNITY SERVICES

8. Central Essex Community Services told us that if they were not to merge with Community Healthcare they would seek to provide further community services in South East Essex. Community Healthcare indicated in a strategy document which they provided to us that: 'the strongest competitors for the total range of community services that we provide to South East Essex PCT would be from neighbouring PCT provider arms such as South West Community Healthcare and Central Essex Community Services community health services.
9. To date, Central Essex Community Services and Community Healthcare have not bid against each other for contracts in their respective PCT areas. However, this is most likely due to the limited number of community health services which have been put out to tender by Mid Essex PCT and South East Essex PCT. They have competed against each for a community health services contract in another PCT area – and we would expect them to compete against one another for, in particular, core community services contracts in future as these are tendered by the PCTs.³

CREDIBILITY OF COMPETITORS

10. Given that Community Healthcare and Central Essex Community Services appear to be close competitors, we have looked at whether there are sufficient credible alternative providers who would be able to provide competition to the merged entity.
11. For non-core community services (new services and services being moved from acute to community settings) there appear, based on the bidding information that we have reviewed, to be a range of credible providers apart from the parties, including other PCT provider arms,

¹ See www.ccp-panel.org.uk/content/cases/Merger-of-South-East-Essex-provider-services-arm-and-Mid-Essex-provider-services-arm/091209_NWESSE_NoA.pdf.

² By 'core' community services we refer to those community services such as district nursing, health visitors, end of life care and care of long term conditions which have historically been provided by PCT provider arms, rather than new community services commissioned to deliver secondary care in a community settings or new prevention services.

³ Central Essex Community Services and Community Healthcare have competed for a health trainers contract in North Essex PCT. Neither party was successful its bid – the contract was awarded to the local PCT provider arm. Mid Essex PCT and South East Essex PCT's commissioning plans confirm that they will seek to increasingly contest the community services they procure over the next 5 years.

mental health and acute trusts and independent/third sector providers. However, the majority (by value) of community services being transferred are the 'core' community services currently provided by Central Essex Community Services and Community Healthcare. While these services have yet to be put out to tender, they are likely, if sufficient market interest exists, to be subject to increased competitive tendering in the future. We have asked potential NHS providers in Essex, Suffolk, Medway and Cambridgeshire, as well as independent and third sector providers with a UK-wide presence, about their future bidding intentions for community services in Mid Essex and South East Essex. From these responses, we have some concerns about the limited number of other credible bidders for 'core' community services, particularly in South East Essex. These concerns are based on our understanding that PCT provider arms tend to be the strongest bidders for these services because of their experience in delivering them.

12. To date, only one PCT provider arm has clearly indicated that it would be interested in bidding across the full range of community services in South East Essex (with another indicating that it would possibly bid). Several acute hospitals have indicated that they would be interested in bidding across a full range of services and a mental health trust has indicated that it may bid for community services around its borders (which would include South East Essex). However, at this stage of the inquiry we have some concerns about the credibility of these other bidders and the extent to which they will represent effective competition to the merged entity.⁴

OUR VIEW ON DETRIMENTS (OR COSTS) TO PATIENTS AND TAXPAYERS

13. Based on the information that we have reviewed to date, our view is that Central Essex Community Services and Community Healthcare, in the absence of the merger, would have been important competitors to one another in bidding for community services in Mid Essex and South East Essex and that there will be an insufficient number of credible competitors for core community services to the merged Central Essex Community Services /Community Healthcare, particularly for contracts tendered in the South East Essex PCT area. The parties have submitted that the provider landscape is likely to change over time, as more services are competitively tendered, with acute trusts, GPs and independent/third sector providers likely to provide an increasing degree of competition to PCT provider arms. While we accept that the provider landscape is likely to develop over time, it is inherently uncertain how, and over what time period this will occur. Establishing the likely extent of future market entry by alternative providers will form a key part of our Phase Two investigation, as will establishing the credibility of other bidders.

BENEFITS

14. The parties have submitted that the merger will result in a number of benefits for patients and taxpayers. In particular, they claim that the merger will result in cost savings that will help to create a sustainable provider organisation. The cost savings that the parties have identified result from an anticipated reduction in overheads and synergies in procurement and other operational areas. Further, the parties submit that the merger will give rise to improved clinical

⁴ In particular, the acute trusts in the area are not currently providing community services and the parties' own strategy documents do not identify them as 'close' competitive threats, and the mental health provider has indicated that it is more likely to bid to provide community services within its local area.

leadership, allow staff and patients to have greater input into service design, allow patients access to a greater range of services, and that the merged organisation will be better able to recruit and retain staff.

15. At this stage, we cannot conclude that the claimed benefits outweigh the prospective costs arising from the merger. In Phase Two we will need to consider further whether the claimed benefits are achievable, and whether they are merger-specific.⁵

DECISION TO PROCEED TO A PHASE TWO INVESTIGATION

16. Based on the issues outlined above, the Panel has concluded that there is a realistic prospect that the merger between Central Essex Community Services and Community Healthcare will result in a material adverse effect on patients or taxpayers. The CCP considers that further investigation is warranted and we will now proceed to a Phase Two investigation.

17. The deadline for this Phase Two investigation is Wednesday, 9 June 2010.

Co-operation and Competition Panel

11 February 2010

⁵ That is, the benefits would not accrue if the merger did not take place.