

NHS East of England SHA submission to the Co-operation and Competition Panel

This submission is based on complaints made to the NHS Cooperation and Competition Panel ('CCP') brought against Great Yarmouth & Waveney Primary Care Trust (GYW) under the NHS Principles and Rules for Cooperation and Competition ('PRCC') by the NHS Partners Network ('NHSPN') and ACEVO.

Background

1. The complaints against GYW relate to the tender placed by GYW on 18 December 2009, in the Health Service Journal as well as on the Supply2Health and the Trust's own website, that would lead to the transfer of its provider services.
2. The complainants have specifically stated that the tender breaches the Principles and Rules for Cooperation and Competition, specifically:
 - Principle 1: that NHS commissioners should commission services from the best providers and (rule 3) that PCT providers should be subject to these competition rules in the same manner as any other provider and be managed on equal terms to any other provider; and
 - Principle 4: that NHS commissioners should foster patient choice and (rule 2) that commissioners of NHS services must not restrict choice via collusive behaviour or any other action.

SHA position

3. The SHA contends that the process that GYW have adopted thus far has been consistent with national policy and DH guidance and further has evolved and is consistent with the clarification of the NHS as preferred provider (David Nicolson letter 13th October 2009).
4. The tender is a NHS only tender and the SHA through its processes met with GYW and confirmed support to this approach through a letter (9th November 09) which stated that further assurance areas and conditions needed to be met and specifically:
 - 'That the competition actively encourages innovation and collaborations to drive up quality and efficiency by engaging a range of potential partners'.

Principles

5. The decision to adopt a NHS-only tender and encourage partnership with independent and third sector providers, does comply particularly with preferred provider clarification, with Principle 1 of the PRCC in relation to the obligation to commission from best placed providers. The evidence on this point centers on the fact that market engagement by the PCT drew conclusions that participation by independent and third sector bidders could potentially offer service innovation, improved quality and improved value for money. The PCT informed interested parties on 24 November 2009 who had already attended a market information day (5th October) that it would now only accept bids from NHS organisations, although it was made very clear in the letters sent that Independent Sector parties were able to partner with bidding NHS bodies, this being a requirement made by the SHA. Therefore, the PCT is still able to select the best placed provider albeit through an arrangement of bidders to form a single contract with GYW led by a NHS organisation. It is the specification and the procurement strategy defined by any PCT that drives the responses to enable the best placed providers to be selected.
6. Further, the SHA does not consider that the PRCC have been breached in relation to Principle 1, rule 3 relating to the requirement for PCT provider arms to be subject to competition rules on the same basis as any other provider. The current tender (as described in the Memorandum of Information dated December 2009) clearly seeks to attract new providers and transform services. The principles around fairness, transparency, non discrimination and the 'sufficiency of advertising' test are very clear and the PCT has complied in these matters. This, therefore does not give the incumbent community services entity any favourable advantage and presents a level playing field consistent with national policy.
7. With regard to patient choice, the tender, in our opinion, fosters the principles around providing a range of options which would be determined in the final form, once the procurement is underway. GYW are obligated through national policy to provide choice through various mechanisms and the SHA assurance process establishes this requirement.
8. With regard to the allegation of collusion, the SHA would direct the panel to the evidence in the GYW project board minutes and multiple other sources that demonstrate that this allegation holds no materiality.

Process

9. To date the SHA has not received any form of communication from either of the complainants about the GYW community services project in general terms or specific to the tender. We note that member organisations did attend the market day event, however this does not, in our view, constitute local engagement by complainants.

10. The CCP's acceptance note cites that there is sufficient evidence to suggest local engagement has taken place, we would suggest that thresholds for this matter require further analysis.
11. Finally, the SHA notes that the complaints have been treated as 'conduct' matters, which are reserved to the CCP, as opposed to 'procurement' issues which would have been dealt with, in the first instance, through local governance arrangements.

18th January 2010.

End.