**Annex A**

# OLDER PEOPLE'S AND ADULT COMMUNITY SERVICES CONTRACT MANAGEMENT TRANSFERS TO CAMBRIDGESHIRE AND PETERBOROUGH CLINICAL COMMISSIONING GROUP

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| *To:* | **HEALTH COMMITTEE** |
| *Meeting Date:* | **12 May, 2016** |
| *From:* | **Jessica Bawden, Director of Corporate Affairs, Cambridgeshire and Peterborough CCG** |
| *Electoral division(s):* | **All** |
| *Forward Plan ref:* | **Not applicable** |
| *Purpose:* | **The Committee is asked to comment on and note the report** |
| *Recommendation:* | **That the Committee notes the report** |



| | ***Director contact:*** | | ***Member contact:*** |
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## 1. BACKGROUND

1.1 On 3 December 2015 Cambridgeshire and Peterborough Clinical Commissioning Group (CCG) and UnitingCare LLP announced that they were ending their contractual arrangement to deliver urgent care for the over 65s and adult community services.

1.2 The CCG then took on responsibility for contracting services to deliver urgent care for the over 65s and adult community services were transferred to the CCG. The CCG and UnitingCare worked together to ensure a smooth transition and to reassure patients.

1.3 This report updates the Committee on the CCG and NHS England Reviews and the actions taken by the CCG to stabilise services for patients.

## 2. CCG INTERNAL AUDIT REPORT

2.1 On 10 March 2016 Cambridgeshire and Peterborough Clinical Commissioning Group published the independent internal investigation on the termination of the Older People's and Adult Community Services (OPACS) contract held between the CCG and UnitingCare LLP. The Review was commissioned by Cambridgeshire and Peterborough Clinical Commissioning Group. It was conducted by West Midlands Ambulance Service (the CCG's internal auditors).

2.2 The CCG asked West Midland Ambulance Service to review the circumstances that led to the termination of the Older Peoples and Adult Community Services (OPACS) contract. The objective of the review was to document and evaluate CCG systems, processes and controls deployed in the procurement and management of the subsequent contract in order to identify any systemic weaknesses that may have contributed to termination of the contract and importantly identify learning points for future procurements. The CCG asked the Review to identify learning points for the CCG and for the wider NHS. The Terms of Reference for the Review are available on the CCG's website http://www.cambridgeshireandpeterboroughccg.nhs.uk/older-peoples-programme.htm.

2.3 The Review found that the main reason for the early termination of the contract was a mismatch in the expectations of the CCG and UnitingCare over the cost/value of the contract. The Review recognised that significant efforts were made during 2015 to bridge the financial gap, but these were ultimately unsuccessful. The Review assessed the financial evaluation process employed as part of the tender process and found that the CCG did have in place controls designed to ensure bids were within the estimated annual contract values and the values over the expected five years of the contract.

2.4 The Review identified a number of contributory factors to the eventual early termination of the contract which provide opportunities for learning and application to future procurements. These are:

- The timing of regulatory approval of bidders Business case and associated conditions prior to approval (Section 3.3.2)
- Rigorous application of controls within the procurement including re-assessment of all bidders where the nature of the bidders had changed during the process (Section 3.1.6);
- No re-assessment of the particular risks proposed by the change in legal entity of the successful bidder to a Limited Liability Partnership (LLP) and not being aware of the details of the ownership agreement between the partners; Cambridge and

Peterborough NHS Foundation Trust (CPFT) and Cambridge University Hospital NHS Foundation Trust (CUH Section 3.1.5);

- The failure to obtain Parent Company Guarantees from CPFT and CUH prior to the signing of the contract despite the engagement of external procurement and legal advisers (Section 3.1.10)
- The design of the evaluation process leading to a lack of knowledge of the of the legal entity and nature of the bidder at the time of evaluation by some of the work streams (Section 3.1.9);
- The CCG was not able to triangulate the bid with income assumptions contained within the business plan submitted by the Foundation Trusts to the regulator (Monitor) (Section 3.2.4);
- Need to identify flags of concern in particular lack of access to the bidders business case, the inconsistency of the first invoice with the contract sum (Section 3.2.3) ;
- Ensuring early flagging of the seriousness of concerns with NHS England (Section 3.3.7)
- Enhancements to the reporting to the Governing Body (Section 3.4.1)

## 3. NHS ENGLAND REVIEW

3.1 On 1 April 2016 NHS England published an independent review into the circumstances leading up to the termination of the contract between Cambridgeshire and Peterborough Clinical Commissioning Group and UnitingCare LLP.

3.2 The review was conducted from a commissioning perspective. The scope of the work included a review of relevant documentation and discussion with key staff members to identify the root causes and contributory factors that led to the termination of the contract. The review has also been informed by contributions to a mailbox through the NHS England website.

3.3 The report identified specific and wider lessons to be learned and makes recommendations for further action, for NHS England as well as Clinical Commissioning Groups. The full independent review can be found here: https://www.england.nhs.uk/mids-east/our-work/uniting-care/

3.4 The Report finds that the contract collapsed for financial reasons. In summary;

- There were too many information gaps around community services,
- The financial envelope of the CCG for these services could not be reconciled to current expenditure levels,
- There was an additional VAT cost,
- The mobilisation period was not sufficient to make the planned financial savings that were required in the first year,
- The contract value was not absolutely agreed at the date the contract commenced.
- The contract should not have commenced on 1 April 2015. It should have been delayed until these issues were resolved.

3.5 The Report makes 6 recommendations for NHS England and 10 recommendations for Clinical Commissioning Groups.

3.6 Recommendations for NHS England:

1) Follow up this Part 1 review with Part 2 in the form of follow up investigations.
2) Specifically on the role of external advisors to the procurement, the effectiveness of the Gateway review process, and the role of the CCG executive leadership,

Governing Body and related audit functions throughout the procurement and contract period.

3) Consider which is the most appropriate process to achieve an integrated system wide solution consistent with EU law. There are advantages to formal procurement including transparency and focus. However, this requires capacity and capability to carry out the procurement, robust costing and other information to inform the contract and financial flexibility of bidder organisations to manage risk.
4) The current approach of complete delegation to CCGs to enter into large complex novel contracts without the need to provide any assurance to NHS England should be reviewed. The consequences of failed contracts can impact on patients, staff, commissioners and providers and undermine working relationships for the future. Consider establishing an assurance process for novel contracts carried out by appropriately skilled individuals.
5) If NHS England put in place an assurance process around these major novel contracts then this could assist Monitor in the triangulation of business case assumptions as Monitor could confer with NHS England to triangulate key assumptions.
6) Consider commissioning work to determine a model around the disaggregation of acute and community costs for the over 65s so that this can assist CCGs in developing different contracting models.
7) Review all current and planned CCG and NHS England contracts of this sort as a matter of urgency, prior to entering into any new commitments
8) Consider how the innovative work in Cambridgeshire and Peterborough can be retained and developed for the benefit of not only this area but elsewhere in the country.

3.7 Recommendations for Clinical Commissioning Groups:

1) Consider the proposed level of 'risk transfer' carefully. Allocate risk proportionate to the organisation's ability to manage it.
2) Ensure that all bidders are assessed for capacity, capability, economic and financial standing and that they are re-assessed if the structure of their bid or their corporate form changes during the procurement process.
3) Ensure that future contracts with Limited Liability Partnerships or Special purpose Vehicles have parent guarantees.
4) Ensure that sufficient time is spent at the front end of the process to disaggregate costs from the existing service provision model. This is particularly relevant for community services. It is important that an accurate financial envelope for the new service procurement model is established before the procurement commences. If this is not done then existing providers can be conflicted when they are bidding in their own right whist at the same time providing information to their competitors.
5) Be open with bidders around the calculation of the financial envelope so that they can become comfortable that the envelope does reconcile back to current expenditure levels even if the CCG requires additional efficiency savings.
6) Ensure that NHS providers have included the additional cost of VAT in their bid submissions if they are utilising a relevant model, such as Limited Liability Partnership.
7) Avoid a situation where the new contract is still not agreed or ready to commence but notice has been given to providers to terminate existing contracts and TUPE notices have been issued to staff. If a CCG reaches this situation and does not have a viable alternative option then the strength of its negotiating position on the new contract is weakened and there can be a risk to the continuity of services and relationship with staff.

8) Ensure that the contract value is absolutely clear before the contract commences and is not a provisional figure based on historical or estimated data which needs to be updated for the previous year's expenditure levels and other issues.
9) Ensure that there is a way of coping with the risk of inadvertently omitting key service delivery needs from the service specification. This may be achieved by not spending all of the agreed contract savings until the contract has bedded down later in the year.
10) Escalate disputes to NHS England at an early stage and keep them informed.

3.8 Following the recommendations as set out in the report, NHS England will be commissioning a further review to investigate specific areas, such as the role of external advisors, the effectiveness of the Gateway review process and the role of the CCG executive leadership and Governing Body through the procurement and contract period.

## 4. NEXT STEPS

4.1 The CCG has accepted the findings of both the internal Review and the NHS England Review. The CCG is also awaiting the NHS England Part 2 review and wishes to consider those as well. In the meantime the recommendations have been shared widely and have been discussed by the CCG Governing Body. Amendments will be made to the CCG Procurement Strategy to incorporate the learning and any additional learning will be made as necessary, subject to the outcome of the Part 2 review. The CCG has also ensured that learning has been incorporated into decisions made in relation to procurements of the Non Emergency Patient Transport Services and the Integrated Urgent Care (out of hours and 111) service.

4.2 Since December 2015 the CCG has been working with its partners on how to deliver the benefits of the model within the resources available. The CCG has been working with partners (including Local Authorities, Healthwatch, providers and other stakeholders) to review all the workstreams that UnitingCare had established, including those in development.

4.3 On 24 February 2016 the CCG held a workshop for organisations involved in delivering older people's and adult community services. The workshop showed strong support for the model that had been developed by UnitingCare, as well as providing feedback on what is working well and what could be improved. We are also attending a Healthwatch community learning event on 11 May.

4.4 The CCG is committed to the model of an integrated and outcomes-based approach as we believe this delivers benefits for patients and the health system. There are new pieces of work which need to be taken into account before making decisions about the range and scope of services to replace the UnitingCare contract. (For example, the new Sustainability and Transformation Programme, the Urgent & Emergency Care Vanguard and the Better Care Fund.) We are continuing discussions with partners to review the workstreams and further updates will be discussed at the Governing Body on 10 May and we will be able to verbally update the Committee on the outcome of that discussion. Our priority is to ensure that we have a good quality, sustainable model of care moving forward.

Appendix 1: Cambridgeshire and Peterborough Clinical Commissioning Group independent internal investigation

Appendix 2: NHS England independent review (part 1)