

## **Cooperation and Competition Panel - Recommendation on Remedies**

### **Background**

The Cooperation and Competition Panel published its Recommendation on Remedies on 30 September 2011 following its investigation into a complaint by Circle Health Limited that Wiltshire PCT was seeking to impose restrictions on providers through its contracting process which are inconsistent with the Principles and Rules of Cooperation and Competition (Principles and Rules).

### **Remedies**

Following an invitation to interested parties to comment on the proposed remedies, the Cooperation and Competition Panel has recommended to the Secretary of State for Health that Wiltshire PCT:

1. Does not require that providers comply with any uniform minimum waiting time prior to treating patients (i.e. where required removal of the 15 week Referral to Treatment period specified in the NHS Standard Acute Contract in respect of patients from Wiltshire and the eight week period specified in respect of patients from BaNES).
2. Offers Circle Health (and other providers) the opportunity to provide those services that were previously commissioned by the Department of Health under the ECN contract, namely: Gastro-Intestinal and Liver; Ophthalmology; Gynaecology; Dermatology; Pain Management; and Neurosurgery.
3. Specifies that pre-operative assessments and follow-up appointments will be paid for at national Payment by Results tariffs, unless a decision to apply a local flexibility is agreed and published in accordance with the Payment by Results Code of Conduct and Guidance for 2011/12 and Principle 3 of the Principles and Rules.
4. Provides to each local provider a statement of the PCT's strategy for managing routine elective care activity across its PCT area. Any strategy should be consistent with the Payment by Results Code of Conduct and Guidance for 2011/12 as well as the Principles and Rules and the patient's right to choose their provider (as set out in the NHS Constitution and the Choice of Provider Directions).
5. Stops distorting patient choice by influencing the behaviour of GPs and local providers to transfer activity to any preferred provider. The PCTs should also ensure that its Referral Management Centre(s) implement the Choose and Book system effectively and shares with all local providers the scripts and any other internal communications provided to staff at the Referral Management Centre about providers of routine elective care, and copy to all local providers any information they supply to GPs concerning those providers.
6. Should publish a statement supporting the choice agenda and implement revised policies and procedures for commissioning services to ensure compliance with the Principles and Rules.

7. Does not enforce any provisions in the NHS Standard Acute Contracts that were agreed by Wiltshire PCT with other providers prior to the CCP's review of the complaint and which have terms inconsistent with the preceding remedies.

Wiltshire PCT and Circle Health Limited supported all of the possible remedies and considered that they would be effective to address the adverse effect on patient choice and competition that was identified by the CCP in the Advice.

The full report is available at

[http://www.ccp-panel.org.uk/content/cases/NHS\\_Wiltshire\\_Conduct\\_Complaint/11093\\_0\\_Recommendation\\_of\\_Remedies\\_FINAL\\_Web.pdf](http://www.ccp-panel.org.uk/content/cases/NHS_Wiltshire_Conduct_Complaint/11093_0_Recommendation_of_Remedies_FINAL_Web.pdf)

### **Department of Health Response**

The Department of Health has accepted the first recommendation, stating that "PCTs should ensure all patients are seen on the basis of clinical need which in itself means blanket minimum waits are not acceptable".

### **Impact on Royal United Hospital Bath NHS Trust**

The impact of the remedies on the Trust, if approved by the Secretary of State, is currently being considered in relation to potential changes in activity levels and income. As the Trust has already agreed to a full Payment by Results contract, without any activity caps, and without imposed minimum waiting times, the contractual impact is believed to be minimal.