



Department
of Health

From the Rt Hon Jeremy Hunt MP
Secretary of State for Health

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Councillor Yvonne Constance,
Chairman Oxfordshire Joint Health Overview and Scrutiny Committee,
County Hall,
New Road,
Oxford,
OX1 1ND

- 3 JUL 2017

Dear Cllr Constance,

Review of Oxfordshire Clinical Commissioning Group's decision not to re-procure services at Deer Park Medical Centre, Witney - IRP Advice on Referral by the Oxfordshire Joint Health and Overview Scrutiny Committee

I am responding to your letter of 8 February 2017 referring the decision taken by Oxfordshire Clinical Commissioning Group not to re-procure services at Deer Park Medical Centre to the Secretary of State.

You referred this case on the basis that consultation with the public and patients at Deer Park Medical Centre was inadequate and the closure of the surgery would not be in the interests of residents and patients in the Witney area. As you know, I asked the Independent Reconfiguration Panel (IRP) for its initial advice on receipt of your referral.

The IRP has now completed its initial assessment and shared its advice with me. After careful consideration, the IRP is of the view that your referral does not warrant a full review and I accept the IRP's advice in full.

IRP advice

The IRP has considered the issues you raise in your letter. They recommend that Oxfordshire CCG should immediately commission a time limited project to develop a comprehensive plan for primary care and related services in Witney and surrounds. This strategic vision should not preclude the possibility of providing services from Deer Park Medical Centre.

The IRP have recommended that Joint Health and Oversight Scrutiny Committee should review its relationship with the NHS and work to ensure that this relationship commands public confidence.

A copy of the full advice is appended to this letter and will be published today on the IRP's website at www.irpanel.org.uk.

I am copying this letter to The Lord Ribeiro, Chair of the IRP.

Yours sincerely

Jeremy Hunt
JEREMY HUNT

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The Rt Hon Jeremy Hunt MP
Secretary of State for Health
Richmond House
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11 April 2017

Dear Secretary of State

REFERRAL TO SECRETARY OF STATE FOR HEALTH
Referral of Oxfordshire Clinical Commissioning Group's decision not to re-procure services at Deer Park Medical Centre, Witney

Thank you for forwarding copies of the referral letter and supporting documentation from Cllr Yvonne Constance OBE, Chairman Oxfordshire Joint Health Overview and Scrutiny Committee (OJHOSC). NHS England South (South Central) and Oxfordshire Clinical Commissioning Group (CCG) provided initial assessment information. A list of all the documents received is at [Appendix 1](#).

The IRP has undertaken an initial assessment, in accordance with our agreed protocol for handling contested proposals for the reconfiguration of NHS services. In considering any proposal for a substantial development or variation to health services, the Local Authority (Public Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 require NHS bodies and local authorities to fulfil certain requirements before a report to the Secretary of State for Health may be made. The IRP provides the advice below on the basis that the Department of Health is satisfied the referral meets the requirements of the regulations.

The Panel considers each referral on its merits and concludes that **this referral is not suitable for full review because further local action by the NHS with the Committee can address the issues raised.**

Background

Primary medical care services (such as those provided by general practitioners) are commissioned under three main types of core contract - general medical services (GMS), personal medical services (PMS) and alternative provider medical services (APMS). APMS contracts allow the organisations responsible for commissioning primary medical care services to contract with a wide range of providers including those from the independent sector. Added flexibility allows commissioners to tailor

services to local needs. The health service reforms of 2012 placed responsibility for general practice commissioning with NHS England. However, in 2014/15, NHS England invited local CCGs to take on responsibility through one of three models – greater involvement, joint commissioning and delegated commissioning. More recently, new care models such as primary and acute care systems (PAC) and multispecialty community providers (MCP) have offered CCGs further options for developing and supporting general practice at scale, working with partners such as acute, community and mental health trusts. NHS England has stated that it wants national coverage of these two models to grow to 25 per cent in 2017/18 and 50 per cent by 2020.

Deer Park Medical Centre (DPMC) in Witney, Oxfordshire, provided primary medical care services for approximately 4,300 registered patients. There are three other practices in Witney (population approximately 23,000), within two miles of DPMC. The practice closed on 27 March 2017 prior to the end of the provider's contract on 31 March 2017.

In November 2010, the then Oxfordshire Primary Care Trust entered into an APMS contract with Virgin Care for the delivery of primary medical services at DPMC for a term of five years. The contract was extended in November 2015 for one year by NHS England South (South Central) as joint commissioner of primary care services with Oxfordshire CCG. In January 2016, The Oxfordshire Commissioning Board (incorporating the Joint Committee for Commissioning of Primary Care) took the decision to continue commissioning primary care services at DPMC for a further ten years and a procurement process began seeking to have a new contract in place for the provision of services from November 2016.

On 7 March 2016, in accordance with the requirements for tendering exercises, a notice was placed in the Official Journal of the European Union and Invitation to Tender (ITT) documents were published. The contract was offered at a bid price from the current GMS price upward, but with a ceiling of £95 per patient per year for the core costs. On 1 April 2016, Oxfordshire CCG became the fully delegated commissioner of primary care services.

Although five providers initially expressed an interest in tendering, and two retained an interest throughout the tendering period, ultimately only one bid was received by the closing date for submission of 11 April 2016. That bid, from Virgin Care, was based on a clinical model indicating 2.65 whole time equivalent (wte) GPs. At a meeting on 12 April 2016, Virgin Care representatives informed the Deer Park Patient Participation Group (PPG) that a bid for the new contract had been submitted.

The criteria set in the ITT documentation for short listing required bidders to have obtained a score of at least 60 per cent in the quality evaluation. An evaluation panel, comprising members from the NHS South (Central and West) Commissioning Support Unit procurement team, NHS England South (South Central), Oxfordshire CCG and Healthwatch took part in the evaluation process. Despite evaluation of its bid being assessed as slightly below the agreed threshold, Virgin Care was invited to present its bid to the CCG.

In line with its concerns about the financial envelope for the contract, Virgin Care in its presentation on 9 May 2016 confirmed that the level of GP provision offered was 2.0 wte. Further discussions to clarify the nature of the bid took place between May and July 2016 including a meeting between the CCG and Virgin Care on 28 June 2016. In particular, clarification was sought on the level of GP provision being offered and whether the proposed clinical model would deliver services to the expected standards whilst also taking account of anticipated population growth in the west Witney area. A meeting of the evaluation panel on 5 July 2016 concluded that Virgin Care had been unable to provide the necessary assurance on the reduced GP workforce model and covering of long and short term absence. The final score for the bid was revised down accordingly.

The Oxfordshire Primary Care Commissioning Committee (OPCCC) met on 4 August 2016 and, in the confidential session of its meeting, decided that a contract should not be awarded to Virgin Care on the basis that the bidder had failed to provide the necessary assurance about the clinical model and absence cover. It also decided that possible options should be explored and a virtual meeting held to deliberate and decide on the appropriate course of action.

Over the following two weeks, alternative local GP practices were approached to ascertain their capacity to accommodate Deer Park patients should the list be dispersed and also to explore whether any of the other practices would be willing to take on DPMC as a branch. No practice expressed a willingness to do so.

At an informal meeting with the OJHOSC on 11 August 2016, Oxfordshire CCG representatives provided the Committee Chairman with a confidential briefing on the Deer Park situation.

Between 17 and 19 August 2016, members of the OPCCC received and responded to a paper considering options and agreed not to undertake a further procurement on the basis that the previous exercise had resulted in only one bidder despite the

contract having been offered at a higher price than that paid to other practices in Oxfordshire. The decision was taken to disperse DPMC patients to other local primary care lists. Virgin Care was advised of the decision not to award the contract by letter on 19 August 2016.

During August and September 2016, negotiations took place between Oxfordshire CCG and Virgin Care about future arrangements for patients and staff at DPMC. The OJHOSC Chairman was updated on developments by email on 8 September 2016. The Deer Park PPG was informed by a representative of Virgin Care at a meeting on 13 September 2016 that no contract had been awarded following the procurement exercise. The OJHOSC was updated on the situation by a Chairman's report at a meeting on 15 September 2016. A contract extension to 31 March 2017 was agreed between Oxford CCG and Virgin Care on 19 September 2016. Representatives of Oxfordshire CCG, NHS England and Virgin Care met members of the Deer Park PPG on 21 September 2016 to discuss the closure of DPMC and the provision of necessary information to affected patients. The CCG wrote to all DPMC patients in a letter dated 22 September 2016 advising that no contract had been awarded and that having considered the alternatives the CCG, supported by NHS England, had decided to close the practice. The letter further advised that agreement had been reached for Virgin Care to continue providing services until 31 March 2017 to ensure that all patients had time to choose and register with another practice. The letter advised that patients did not need to do anything at that stage. More information on how to register with another local GP practice would be provided in January 2017.

A meeting of the OPCCC on 6 October 2016 was advised that an impact assessment and action plan in respect of the DPMC closure were being prepared. Also on 6 October 2016, representatives of Virgin Care, DPMC and Oxfordshire CCG attended a meeting of the West Oxfordshire District Council Economic and Social Overview and Scrutiny Committee to provide an update. The Deer Park PPG submitted a report outlining its concerns to the district council committee dated 25 October 2016.

In response to patient concerns and those of its members, OJHOSC and Oxfordshire CCG met on 17 November 2016 to discuss the CCG's approach to managing current pressures on general practice. An overview of the changes at DPMC was presented at the meeting and it was agreed to hold an informal meeting to examine a substantial change assessment (known locally as the toolkit) that had been completed by the CCG and which had concluded that the CCG's actions in respect of DPMC did not constitute a substantial change in service. The toolkit meeting was held on 12 December 2016. While the CCG maintained its position that the matter did not constitute a substantial change, the majority of OJHOSC members present concluded that it did.

Also in December 2016, a letter before action was issued on behalf of a local resident to Oxfordshire CCG giving notification of an application for permission to bring a judicial review of the decision to disperse the patient list. Permission to bring a judicial review was refused in early February 2017 and an appeal against the Court's decision was dismissed on 27 February 2017.

At a meeting of the OJHOSC on 2 February 2017, it was agreed to refer the matter to the Secretary of State for Health. A letter of referral was sent on 8 February 2017. The Oxfordshire CCG wrote to DPMC patients on 27 February 2017 advising that the surgery was closing on 24 March 2017 and offering advice on how to register with another practice.

The Secretary of State wrote to the Oxfordshire CCG on 14 March 2017 advising that he was satisfied that, based on the evidence presented to him that *"the option to continue the existing service expired some months ago, and that it is not now a safe or practical option"*. The letter continued *"I wish to take this opportunity to reiterate that patient safety is my first and foremost priority and the priority of the NHS. It is therefore vital that all Deer Park Medical Centre patients should register with another surgery nearby, in line with the arrangement you have made, to ensure that, whatever the outcome of the IRP review, they have continued access to the services they need"*.

The practice closed on 27 March 2017. It is understood that, as of 6 April 2017, around 1,000 DPMC patients have yet to register with another practice.

Basis for referral

The OJHOSC's letter of 8 February 2017 states:

"On 2 February 2017 the Oxfordshire Joint Health Overview and Scrutiny Committee (OJHOSC) unanimously agreed to refer the Oxfordshire Clinical Commissioning Group's (OCCG) decision not to re-procure services at Deer Park Medical Centre (DPMC), Witney to the Secretary of State for Health. This referral is made pursuant to Regulation 23(9) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

and

“The Committee and the OCCG have been unable to reach agreement on whether the OCCG’s actions regarding DPMC constitute a substantial change in service and no satisfactory local resolution has been found. This referral is therefore made, pursuant to Regulation 23(9)(a) and (c) of the 2013 Regulations, on the basis that consultation with the public and patients at DPMC was inadequate and the closure of the surgery would not be in the interests of residents and patients in the Witney area.”

IRP view

With regard to the referral by Oxfordshire Joint Health Overview and Scrutiny Committee, the Panel notes that:

- referral on the grounds of inadequate consultation relates to consultation with the relevant scrutiny body - rather than wider consultation with patients, the public and stakeholders
- OJHOSC and Oxfordshire CCG were unable to reach agreement on whether the actions taken with regard to DPMC constituted a substantial variation in service provision
- the CCG asserts that any “lowering” of the threshold for considering what constitutes substantial would place a significant burden on NHS bodies and paralyse ongoing transformation work
- the use of APMS contracts offers added flexibility to commissioners in meeting local needs – however, attracting bidders for the contract within the financial envelope offered did not live up to expectations
- in the immediate period, Oxfordshire CCG’s duty to ensure the safety and continuity of services for the patients affected by the closure is paramount
- there is an urgent need to put in place a comprehensive plan that will ensure safe, accessible and sustainable primary care and related services for the residents of Witney including anticipated population growth in the area
- the OJHOSC and NHS bodies need to review the effectiveness of their working relationship

Advice

The IRP offers its advice on a case-by-case basis taking account of the specific circumstances and issues of each referral. **The Panel does not consider that a full review would add any value. Further local action by the NHS with the Committee can address the issues raised.**

OJHOSC has referred this matter to the Secretary of State on two grounds – that the consultation undertaken was inadequate and that the proposal would not be in the interests of the health service in its area. In considering issues of inadequate consultation, the 2013 Regulations relate to consultation with the scrutinising body rather than wider consultation with patients, the public and stakeholders. The concerns expressed by the OJHOSC about the lack of consultation with interested parties are addressed in this advice on the basis of their not being in the interests of the health service generally.

The 2013 Regulations require NHS bodies to consult a local authority on any proposal under consideration for a substantial development of the health service in its area or a substantial variation in the provision of such a service. Evidence submitted by Oxfordshire CCG indicates that it entered into the tendering exercise in the expectation that a new contract would be awarded. On that basis, there was no reason at that time to believe that a substantial development or variation would take place. Nor is there any indication that, prior to the commencement of the tendering exercise, OJHOSC deemed the matter to be substantial though the extent to which the Committee was aware of the issue at that point is unclear. Nevertheless, when the OJHOSC was notified of the outcome of the tendering exercise, it was reasonable at that point to consider whether the CCG's decision to close DPMC constituted a substantial variation.

The Regulations do not define what constitutes a substantial development or variation. Well established good practice is that joint consideration through protocols agreed locally between HOSCs and the NHS can help in this respect. It is disappointing that in this instance, despite the existence and use of an established toolkit for determining whether or not the matter should be considered substantial, agreement could not be reached. The unilateral determination by the Oxfordshire CCG that the matter was not substantial was not helpful and undermined ongoing dialogue. The IRP considers that determining whether or not a proposal or action is substantial is a matter for joint agreement. In cases where agreement cannot be reached, the parties concerned should reflect on the fact that it is local authorities that were given the powers of scrutiny. The logical conclusion of this is that the local authority's view (or that of its delegated scrutinising body) should prevail.

The evidence submitted to the IRP by the NHS asserts that, were the commissioning arrangements relating to a 4,300 patient practice to be viewed as substantial, this would indicate a significant lowering of the threshold for the need for public consultation. This is misguided on two counts. First, the requirement to consult with a local authority scrutiny body does not automatically mean that a full, three month, public consultation is necessary. This is a matter for discussion depending on the nature of the subject matter and the circumstances pertaining locally. Secondly, where a full public consultation is not deemed necessary, the NHS is still required to

fulfil obligations around public and patient involvement¹. Evidence prepared by the Deer Park PPG suggests that little, if any, work was undertaken either to inform or to seek the views of Deer Park patients or Witney residents before the tendering exercise began or once the outcome of the exercise was known. The IRP would have expected more to have been done, indeed evidence provided by the Oxfordshire CCG as part of its disclosure documentation for the judicial review application shows a considerable amount of public and patient involvement work undertaken to ascertain the views of residents affected by a parallel exercise in Banbury.

The belief expressed by the Oxfordshire Commissioning Board in January 2016 that the Deer Park tendering exercise would be “*quite a straightforward re-procurement*” can most charitably be described as complacent. Guidance from NHS England exists on managing the end of time limited contracts which sets out the first stage requirements that should inform a decision to recommission, procure or end a service. These include needs assessment, value-for-money, impact assessment and seeking the views of services users, local providers and other interested parties such as the local medical committee and the scrutiny body. It appears that this guidance was not followed. Consequently, when the CCG decided it could not award a contract, it had not done the background preparation for other options or for managing the risks that materialised.

It is unclear whether the financial policy to align the value of APMS contracts with GMS contracts is, in isolation, compatible with securing future services. Whether attracting bidders for this type of contract within the financial envelope offered was ever, or will be in the future, a realistic possibility must be open to question. However, that is not to say such situations will or should end with the closure or merger of affected practices. CCGs play a pivotal role in working with practices to shape and implement changes towards working at scale through hubs and networks as well as exploring alternative models such as PACs and MCPs. In this regard, Oxfordshire CCG, rather than simply accepting a practice closure such as DPMC, needs to be much more proactive, inclusive and forward thinking about the future of general practice and primary care.

That there are many lessons to be learnt from these events has been acknowledged by the Primary Care Commissioning Committee of the Oxfordshire CCG. The more

¹ Continuous engagement should be built into all practice relating to the strategic planning of services. NHS England has published new guidance *Patient and public participation in commissioning health and care: Statutory guidance for clinical commissioning groups and NHS England* “to support staff to involve patients and the public in their work in a meaningful way to improve services, including giving clear advice on the legal duty to involve”. <https://www.england.nhs.uk/wp-content/uploads/2017/04/ppp-guidance.pdf>

pressing issue now, and the one that will be of most interest to Witney residents, is how to proceed for both the immediate and longer term benefit of the local population.

Secretary of State's letter of 14 March 2017 to the Oxfordshire CCG made clear that patient safety must be the priority. There are still some 1,000 DPMC patients who have yet to register with another practice. The CCG has a duty to provide medical care services for these people. The impact assessment and action plan produced in October 2016 set out steps to mitigate the loss of DPMC and it is imperative that plans are implemented as quickly as possible to ensure the continuity of care for the patients affected. The IRP has received mixed messages about the progress of dispersal and experiences of affected patients. The CCG must continue actively to pursue the objective that all former DPMC patients are registered as soon as possible. Healthwatch has been providing informal support and might usefully be more formally engaged in facilitating and evaluating progress.

General practice is one of the great strengths of the NHS and patients rightly expect and deserve high quality care from a familiar team of healthcare professionals they know and trust. Beyond the immediate needs of the patients affected, there is a longer term goal to secure the best primary medical services for the people of Witney and the surrounding area. The CCG should immediately commission a time limited project to develop a comprehensive plan for primary care and related services in Witney and its surrounds. At the heart of this must be the engagement of the public and patients in assessing current and future health needs, understanding what the options are for meeting their needs and co-producing the solutions. This work should seek to produce a strategic vision for future primary care provision in line with national and regional aims and should not preclude the possibility of providing services from the Deer Park Medical Centre in the future. Further, the work should be completed within six months and should be reviewed by a third party identified by NHS England so that residents can see a credible plan for delivering the services they need.

Having fully delegated the commissioning of primary care services to Oxfordshire CCG, it is NHS England's duty to monitor the performance of the CCG to ensure that it is properly executing its responsibilities. This applies both to the duty to provide primary medical services for those Deer Park patients who have yet to register elsewhere and the urgent action required to secure the services needed now and in the future.

Whilst there are many lessons to be learned from this case for the NHS, the Oxfordshire Joint HOSC should also reflect on the part it has played. The

Sustainability and Transformation Plan (STP), Oxfordshire Transformation Plan and self-evident problems of providing primary care in the county present a challenging agenda to be tackled. Involving the public and their elected representatives in a transparent way is critical to moving forward successfully. As part of this, the OJHOSC should review its working practices with the NHS to develop and sustain the open, no surprises, productive and effective working relationship that is required to command public confidence.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ribeiro", with a large, sweeping flourish above it.

Lord Ribeiro CBE

Chairman, IRP

APPENDIX 1

LIST OF DOCUMENTS RECEIVED

Oxfordshire Joint Health Overview and Scrutiny Committee

- 1 Letter from Cllr Yvonne Constance OBE, Chairman OJHOSC, 8 February 2017
Attachments:
- 2 DPMC substantial change assessment, as completed by the OCCG, 12 December 2016
- 3 Record of the informal Committee meeting to discuss the OCCG's assessment, 12 December 2016
- 4 OCCG presentation for HOSC toolkit meeting on DPMC, 12 December 2016
- 5 Email form the OCCG – availability of appointments at DPMC, 13 December 2016
- 6 OCCG impact assessment – DPMC closure, 18 October 2016
- 7 Questions put to the OCCG Board on DPMC, 29 November 2016
- 8 OCCG report – *Primary Care in Oxfordshire*, presented to OJHOSC, 17 November 2016
- 9 OJHOSC minutes, 17 November 2016
- 10 West Oxfordshire District Council DPMC Working Party minutes, 9 November and 26 October 2016
- 11 West Oxfordshire District Council Economic and Social Overview and Scrutiny Committee minutes, 19 January 2017, 24 November 2016 and 6 October 2016
- 12 DPMC Patient Participation Group report for West Oxfordshire District Council Economic and Social Overview and scrutiny Committee, 25 October 2016

NHS

- 1 IRP template for providing initial assessment information
Attachments:
- 2 Disclosure documents of the defendant in the matter of a proposed application for judicial review between The Queen on the application of Yvonne de Burgo and Oxfordshire Clinical Commissioning Group
- 3 CQC inspection report, Deer Park Surgery, 21 November 2016
- 4 Minutes of Oxfordshire Commissioning Board meeting, 5 January 2016

- 5 Contract award report, SCW CSU/NHS England, 4 August 2016
- 6 Presentation to Oxfordshire CCG Primary Care Commissioning Committee, 4 August 2016
- 7 Presentation to Oxfordshire CCG Commissioning Board, 5 January 2016
- 8 Oxfordshire OCCG report, 23 February 2017
- 9 Impact assessment, 18 October 2016
- 10 Emails to IRP from Oxfordshire CCG, 29 March 2017, 3, 4, 6 April 2017 and attachments
- 11 Letter to Area Directors, Review of PMS contracts, NHS England, 3 February 2014
- 12 Implementing the 2016/17 GP Contract, NHS England, 6 April 2016
- 13 Virgin Care ITT submission
- 14 Q5 DPMC practice structure
- 15 Virgin Care clarification 30 June 2016
- 16 Part F, financial model template
- 17 OPCCOG draft minutes v3, 19 July 2016
- 18 Deer Park contract value comparisons, 13 December 2016
- 19 Tabled paper for OPCCOG, 19 July 2016
- 20 Monthly contract value comparisons for DPMC

Other information

- 1 Letter to Secretary of State for Health from Robert Courts MP for Witney, 1 March 2017
- 2 Letter to Secretary of State for Health from Robert Courts MP for Witney, 16 March 2017
- 3 Emails and attachments to IRP from representative of Deer Park Patient Participation Group, 16, 20, 21, 24 March 2017, 2, 5, 7 April 2017
- 4 Letter to Cllr B Churchill from Dr Carol Lole-Harris, 3 April 2017
- 5 Feedback forms from Witney residents, 1 April 2017
- 6 Submission to IRP and chronology from DPMC Patient Participation Group, 6 April 2017
- 7 Update from DPMC Patient Participation Group, 20 March 2017
- 8 Letter before claim re judicial review application, 5 December 2016

- 9 Correspondence from Witney Town Council, 4 October 2016, 11 November 2016, 9 December 2016
- 10 Oxfordshire CCG letters to DPMC patients, 26 September 2016, 2 February 2017, 27 February 2017
- 11 Email from NHS South Central and West CSU, 25 May 2016
- 12 NHS England Five Year Forward Plan – Next Steps, 31 March 2017
- 13 Sustainability and Transformation Plan covering Oxfordshire
- 14 Managing the end of time limited contracts for primary medical services, NHS England, June 2013