

20 April 2015

Mr Malcolm Alexander

By email only

Dear Mr Alexander

Re: Choice and Competition

Thank you for your email of 4 April, which has been passed to me to respond on David Bennett's behalf.

It is clear from the [Procurement, Patient Choice and Competition Regulations](#) ('the regulations') that competition should be used to further the interests of patients. The [guidance](#) on the regulations that we have produced reflects this emphasis. We are also clear that it is for commissioners to decide when and how to use competition to commission the best possible services for patients.

Monitor's section of the gov.uk website contains a section for [commissioners](#) where they can find all the guidance, case scenarios and reports we have produced on choice and competition, aimed at helping them comply with the requirements of the regulations. [NHS Choices](#) also provides guidance on patient choice for patients.

I will go on to address the specific numbered questions you have asked.

1) How are commissioners upholding patients' rights to choice in acute and primary care?

Commissioners are required to ensure that patients are given a choice of first outpatient appointment for elective care. However, the regulations do not proscribe how they should do this, and so you may wish to direct this question to NHS England and/or [NHS Clinical Commissioners](#).

However, our casework leads us to understand that commissioners are doing a number of different things to ensure patient choice, and you can find examples (in the form of formal investigations we have carried out into alleged breaches of the regulations) [here](#). Our investigation into commissioning in the Blackpool area also highlighted a number of approaches commissioners could take.

2) What framework are commissioners using to make decisions if and when to introduce choice or use a competitive procurement processes in the interests of patients?

Commissioners should use the Procurement, Patient Choice and Competition Regulations as a framework for approaching commissioning decisions. The regulations contain a requirement to consider if and when to use choice and competition.

3) How are you helping commissioners and providers to develop a better understanding of where choice and competition may be appropriate?

I have already made reference to the guidance, reports and case scenarios we have produced and are available on the Monitor section of gov.uk for commissioners. To support this, we have hosted a number of roadshows around the country for commissioners and provide an informal advice service to anyone that approaches us directly.

4) What are you doing to ensure that choice and competition are helping to improve patient outcomes and what evidence do have on the positive and negative outcomes?

The purpose of promoting good procurement and, where appropriate, enabling patients and commissioners to choose between competing service providers is to support improvements in the quality of care and the efficiency with which it is provided. Our role is to help commissioners and providers make sure patients do not lose out through poor commissioning, restrictions on their rights to make choices or inappropriate anti-competitive behaviour by commissioners or providers.

We do this through: the choice and competition licence conditions in the NHS provider licence; the Procurement, Patient Choice and Competition Regulations; and through the analysing mergers involving an NHS foundation trust. In terms of what we know about negative and positive outcomes for patients, we have produced reports on [community services](#) and on [adult hearing loss services](#) that look at this. We expect to produce further such reports in coming months in line with our commitment to make the health sector work better for patients. All such investigations and reports are supported through stakeholder engagement, so that organisations including Healthwatch England, local Healthwatch groups, and relevant patient representative organisations are informed about our efforts to make sure choice and competition is working in the best interests of patients.

5) How are NHSE and Monitor working together to strengthen the evidence base, so that commissioners can decide if and when choice and competition are appropriate for the services they would like to commission for their local communities?

We think commissioners should have access to the best information to help support their decisions. We are frequently expanding the range of information available on our website through guidance, reports and other publications.

6) Where services are underperforming, what action are commissioners taking to bring about improvement, in relation to choice and competition and the integration of services?

Commissioners are taking a number of different approaches to bring about improvements. In community services, for example, our report outlines a few examples. Again, this may be question best directed at commissioners, but we expect commissioners to use the regulations to inform their commissioning decisions.

7) What guidance have you produced to demonstrate how choice and competition can operate for the benefit of patients, and in delivering more integrated care and support?

See above regarding the guidance we have produced on the regulations.

8) Can you let me know what changes have been made to the commissioning and procurement of clinical services by Monitor and NHSE following responses to the Fair Playing Field Review recommendations?

There were a number of recommendations to strengthen commissioning in the 'Fair Playing Field Review', the most significant of which was to produce guidance on the regulations, which we have done (referred to above).

I hope this answers your questions and gives you a good understanding of what we have done in this area.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tom Grimes', with a stylized, cursive script.

Tom Grimes

Head of Enquiries, Complaints & Whistleblowing

