

Policy Briefing 02/2010

The Co-operation and Competition Panel in England: one year on



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Introduction

The Co-operation and Competition Panel (CCP) was established in January 2009 as an independent agency to provide advice to the Department of Health in England, Monitor, and Strategic Health Authorities on issues arising from the Government's policies of choice, co-operation and competition. The panel is now a year old and has reflected on its work over the last year based upon the CCP's own report of its performance.¹ This briefing provides a brief review of the work of the panel.

Context

There are now a number of different organisations (ranging from charitable, social enterprise to commercial organisations) providing health and social care in England. The choice of which organisation to provide which service is often the result of a tendering (or procurement) process. There are principles that govern this process, set out by the Department of Health in the principles and rules of co-operation and competition (PRCC) and there are both local and a national panel which can be asked for advice or can be approached to assess if these principles have been breached.

National Co-operation and Competition Panel

The panel can investigate under the following four main areas:

- merger inquiries (where two or more providers propose to join together)
- conduct inquiries (where one or more provider may be accused of inappropriate conduct)
- procurement dispute appeals (where one or more commissioning organisation(s) may be accused of not meeting best practice in relation to procurement)
- advertising and misleading information dispute appeals (where one or more provider may be accused of breaching advertising rules and/or providing misleading information).

The panel will (in the majority of instances, exceptions relate to concerns of collusive behaviour, and proposed mergers) only consider a case where the local primary care trust (PCT) and strategic health authority (SHA) processes have been exhausted and failed to achieve a satisfactory outcome for all parties involved.

¹ Cooperation and Competition Panel (2009) *Progress Report*. Available from: <http://www.ccp-panel.org.uk/content/CCP-Progress-Report-Jan2010.pdf>

Cases and findings

The panel has completed seven cases to date. The issues and findings are summarised in the table below.

Case	Finding
Study examining the restrictions on how consultants use their non-contracted hours.	CCP supported removing restrictions unless they are focused on safety concerns or broadly what might be termed conflict of interest.
Transfer of Barking & Dagenham PCT's provider arm to North East London Foundation Trust.	CCP found that this did not breach the PRCC.
Sale of Bedfordshire & Luton Partnership Trust to South Essex Partnership Foundation Trust.	CCP found that this did not breach the PRCC.
Merger between Richmond & Twickenham PCT's provider arm and Hounslow PCT's provider arm.	CCP found that this did not breach the PRCC.
Merger between City Hospitals Sunderland and Church View Medical Practice.	CCP found that this did not breach the PRCC.
Merger of NHS West Sussex provider services arm and South Downs Health NHS Trust.	CCP found that this did not breach the PRCC.
NHS Kingston and Churchill Medical Practice – conduct complaint.	CCP found that NHS Kingston did breach the PRCC.

In addition the CCP has provided informal advice to a range of agencies, particularly to commissioners and acute trusts. The CCP recommends that commissioners come early to ensure that they are not going forward with proposals which would

subsequently be found by the panel to be in breach of the PRCC. In particular, the panel notes that commissioners have placed themselves at risk by:

- changing the criteria to evaluate bidders than initially described in the bid documents
- excluding potential bidders on grounds unrelated to their ability to deliver the services tendered
- failing to select the best performing service provider as the preferred bidder.

Outstanding issues

The CCP's job is to assess whether the principles and rules of co-operation and competition have been met. These principles are currently being reconsidered by the Department of Health. In addition, the CCP's own guidance is not yet finalised. They have been consulted upon, but no revised guidance has been published which responds to stakeholders comments. You can read the RCN's comments on this guidance on our website².

This means that the CCP continues to operate but is using guidance which is soon to be out of date and with processes which may also be subject to change which provides an uncertain environment for all stakeholders.

Tell us what you think

This briefing is intended to provide a brief review of the CCP and the cases it has looked at in the last year, and the Policy Unit would like to receive comments/feedback from as many members as possible on this important issue. Please email us at policycontacts@rcn.org.uk

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² RCN (2009) *Consultation on Cooperation and Competition Panel Guidance Documents – RCN Response*. Available from: http://www.rcn.org.uk/_data/assets/pdf_file/0006/248208/RCN_Response_to_Consultation_on_CCP_FINAL.pdf