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06 September 2012

Our Ref: DH/JB

EMAIL: [Janet.Soo-Chung@northlancs.nhs.uk](mailto:Janet.Soo-Chung@northlancs.nhs.uk)

Dear Ms Soo Chung,

**The Reconfiguration of Vascular Services in Lancashire and Cumbria  
Procurement Reference 11862**

Enclosed herewith is a full copy of the decision that the University Hospitals of Morecambe Bay NHS Foundation Trust intends to challenge together with all relevant earlier decisions relating to the matter. By way of this letter, please take note that we are requesting an appeal under the NHS Blackpool Dispute Resolution Process.

**Background**

The Vascular Clinical Advisory Group of the Lancashire and Cumbria Cardiac and Stroke Network recommended that the resident population of Lancashire and Cumbria should be provided with three vascular intervention centres, and that these should function as part of a regional clinical vascular network, providing good strategic and geographical fit for the region. It was recommended that the maximum travel time for patients to any intervention centre be 90 minutes (this being less restrictive than the national guidance that states 60 minutes). Evaluation of travelling times to existing vascular units has demonstrated that for the populations of West Cumbria (Barrow, Whitehaven and Workington) provision of service within these parameters would be challenging, and members of the Vascular Clinical Advisory Group raised concerns as to whether this was achievable with only three centres, particularly for West Cumbrian residents.

A tender bid process was instigated, initially led by NHS Blackpool, to identify suitable centres to provide all scheduled and unscheduled major vascular interventions on site, together with outreach out-patient and day surgery services at other sites within their agreed catchment area.

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CHAIR: SIR DAVID HENSHAW  
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In November 2011 five Trusts submitted bids to provide a vascular service for defined resident populations in Lancashire and Cumbria (Procurement Reference 11862). We proposed a provision of service for a population of 760,000, to include Blackpool Fylde and Wyre, North Lancashire, South Cumbria and a small population in North Yorkshire.

As part of the tender evaluation process we were invited to give a presentation in December 2011 after succeeding to progress to Stage 2.

We understand that recommendations were approved by both Lancashire Cluster and Cumbria PCT Boards on 28 June 2012 and 4 July 2012 respectively.

On 5 July 2012 we received notification that our offer to provide services had been unsuccessful and that NHS North Lancashire/PCTs were entering into contract variations with East Lancashire, Lancashire Teaching Hospitals and North Cumbria University Hospitals Trusts to provide Vascular Intervention Centres.

A meeting was arranged for 10 August 2012 between NHS North Lancashire and the Trust to facilitate an opportunity to debrief and ask questions relating to this procurement. We had been awarded a total score of 7.73 and the winning bids were awarded 8.64, 8.12 and 8.05 out of a maximum possible of 10. All bids were deemed compliant and acceptable bids to host a Vascular Intervention Centre.

### Grounds of appeal

The NHS Blackpool "Dispute Resolution Process" identifies the process to follow for appeal. There are 10 principles and rules for cooperation and competition identified in this document per the PRCC 2007 document (the references below reflect the 2007 guidance and the revised references per the latest 2010 guidance). This Trust presents an appeal against the process stating three of these principles have been breached.

- No 1 - Commissioners should commission services from the providers who are best placed to deliver the needs of their patients and population.
- No 3 - Commissioning and procurement should be transparent and non-discriminatory (2010 No 2).
- No 6 - Providers must not discriminate against patients and must promote equality (2010 No 8).

The grounds for appeal are that commissioners have contravened the above three principles by failing to follow the criteria stated, address patient safety concerns and needs of all the population and has acted in a biased and non-transparent manner, which has prejudiced and prevented the Trust from being awarded a Contract. Our case is documented as follows:

### No 1 - Commissioners should commission services from the providers who are best placed to deliver the needs of their patients and population

Following the debrief meeting held with Commissioners 10 August 2012 the Trust's view is that the objectives set by the Vascular Clinical Advisory Group have not been delivered by the tendering process adopted i.e. the process was fundamentally flawed. The Trust's main concerns relate to:

- (i) The tendering process was focussed upon identifying technically “suitable” vascular units with an evaluation process based on the following principles:
- The PCTs were to reject any response that were not compliant responses;
  - The technical performance, risk and timing elements;
  - The value for money and affordability offered.

It was not organised to secure a model of provision that fitted with the key recommendations from the Vascular Clinical Advisory Group that:

- a) Each unit should cover a population of approximately 800,000, but recognising that some flexibility may be required to provide good strategic and geographical fit for the region;
  - b) There should be a maximum 90 minute transfer time to a vascular unit; and
  - c) That a functional regional Vascular Clinical Network was established which should seek to build on current established local clinical vascular networks to deliver good strategic and geographical fit for the region
- (ii) The tendering process was materially changed in relation to the process in June 2012 (bids submitted November 2011). At the meeting of the Lancashire Cluster Board in June 2012, the Vascular Services paper stated: “Due to geographical constraints, the population served by a centre at North Cumbria University Hospitals NHS Trust will not meet the 800,000 required by Vascular Society recommendations. The Director of the National Aortic Aneurysm Screening Programme has confirmed that this centre (Cumberland Infirmary in Carlisle) will be able to be accredited”. Our understanding is that the Carlisle Unit will be accredited even though it does not meet the population criteria due to the geographical challenges faced by the catchment population. This issue does not appear to have been fully considered for the West and South Cumbria population in terms of this Trust’s bid.
- (iii) The tendering process was materially changed in relation to the process in June 2012 (bids submitted November 2011). At the meeting of the Lancashire Cluster Board in June 2012, the Vascular Services paper stated: “Despite supplementary questions, the bids received in the south of the Network did not result in full population coverage. However, in order to progress with implementation we believe that the interventions centres must first be identified and followed by the necessary negotiations with appropriate HR and operational discussions”. This represents a clear material change in relation to process, and reference to centres in the North or South highlights that there appears to have been a pre-existing desire to designate centres at polar ends of the network, despite members of the Clinical Advisory Group questioning such terminology repeatedly within meetings, with their concerns being disregarded. There appears to be failure of due consideration for the central geographical population of the network, and again this Trust’s bid as “best placed to deliver the needs of their patients and population” does not appear to have been fully considered for the West and South Cumbria population, nor indeed the

populations of North Lancashire, Blackpool Fylde & Wyre, or Morecambe Bay for whom no other compliant bidder submitted proposals to provide for. There has been failure of process to consider and deliver the requisite strategic or geographical fit recommended by the Vascular Clinical Advisory Group with respect to the requirement to provide both elective and emergency care within this Vascular Network model proposal.

Based upon the above the Trust requests that the tendering process and its proposed way forward are set aside.

### No 3 - Commissioning and procurement should be transparent and non-discriminatory

The Trust does not believe the process has been transparent and non-discriminatory for the following reasons:

- (i) Travel times – The bids submitted in November 2011 were based upon the travel time iso-maps included in the Vascular Board’s paper “Improving Vascular Services: A Case for Centralisation of Vascular Services in Lancashire and Cumbria” pages 114 – 119. These clearly show that a 90 minute transfer time, taking account of road conditions, is not delivered for our South West Cumbria population (Barrow, Millom and Langdale) by other centres except for that based at the Royal Lancaster Infirmary. At the debrief meeting held on 10 August 2012 the Trust was informed that the commissioners have reconsidered their original analysis and have provisional assurance that a Preston Centre could deliver this requirement. It is unclear how this vital issue for our population’s perspective has been safely assessed in this process.
- (ii) Population coverage – The Commissioners accepted at the debrief meeting that the bids provided incomplete geographical coverage based on the three centres selected. The North Lancashire, Blackpool, South West Cumbria and Morecambe Bay populations were not included in any other tender submissions deemed compliant or acceptable bids (meeting minimum scoring criteria). Despite this the Vascular Board have made recommendations for three vascular intervention centres, and this will require bidders to change their population catchment areas. The structure and robustness of the staffing of these bids has not therefore been assessed and cannot be assured. Furthermore these recommendations will break up current vascular clinical networks with no guarantee that new functional networks are deliverable, and this is specifically against the recommendations of the Vascular Clinical Advisory Group, and undermines the establishment of a functioning Regional Vascular Network. Concerns have been raised that the Bolton and Wigan vascular clinicians who agreed to participate in a combined bid with Preston clinicians (which is now likely to be dissolved as part of the current proposal), may now look to participate in a Manchester Centre not Preston or Blackburn. The Trust asserts that this is a “material change” and that the conclusions of the tender process should be set aside and reconsidered.

(iii) Scoring mechanism – The feedback including the debriefing process identified the Trust had scored zero on the Risk Assessment (service delivery plan) element. The scoring mechanism is considered at an organisational level and is as follows:

- Risk will be regarded as low (and score 4) if robust procedures are in place to initiate the service and transition it to Full Service Commencement, with such procedures both appearing reasonable and likely to achieve acceptable results.
- Risk will be regarded as medium (and score 2) if procedures are in place to initiate the service and transition it to Full Service Commencement, but these procedures have significant shortcomings, or may lead to unsatisfactory outcomes.
- Risk will be regarded as high (and score 0) if no effective procedures are in place to initiate the service and transition it to Full Service Commencement, or such processes as described are likely to prove unsuccessful in transitioning the service.

The feedback from the debriefing meeting identified the following reasons for the zero score. The Trust's questions and concerns against each are given in Table 1.

<b>Table 1 : Scoring – Risk Assessment (Service Delivery Plan)</b>	
<b>Commissioner reason for zero score</b>	<b>Trust question/concern</b>
Lack of contingency plan associated with delivery plan.	Can the PCT confirm where this requirement was clearly specified in the tender request and scoring guidelines.
Critical care plan – Trust had not started to mobilise the plan.	Can the PCT confirm where this requirement was clearly specified in the tender request and scoring guidelines.
CQC and Monitor concerns/actions relating to overall governance.	Can the PCT confirm where this requirement was clearly specified in the tender request and scoring guidelines.  Can the PCT also confirm their logic about how the CQC and Monitor issues are directly related to the tender submitted for vascular service provision within the context of the scoring mechanism.

The Trust requests that the above issues are reviewed and its score is re-scored. At the debrief meeting the Chair of the Panel accepted that scoring in this area was not based on wholly objective measures, but was partly “perceptual”. Our view is that the score awarded was not a fair reflection in this area. On this basis the Trust’s score should have been at least two, and we have estimated that this would have elevated the Trust’s total score from 7.73 to 8.23 effectively placing it second in terms of overall scores for the four bids submitted. On this basis the validity of the conclusions of the tender process are flawed and should be set aside.

- (iv) Tendering/scoring sub-criteria – Based upon the above analysis the Trust is concerned that there may have been other sub criteria used as part of the tendering and evaluation process that were not provided to bidders. Can the PCT confirm that there were no unpublished sub criteria used in the process. If this cannot be confirmed the tender process should be regarded as fundamentally flawed and set aside.
- (v) Timescale adherence and level of disclosure - Requests for further information prior to and in support of the debrief meeting have not been disclosed in full. This included requests for information that involved our Trust and other providers as well as the process used by commissioners to reach its decision. There has been a failure to provide the detailed scores for this Trust and the output from the Equality Analysis and Impact Assessment Tool, requested prior to and after the debrief meeting. Whilst we acknowledge that certain information cannot be provided to a competitor where it is commercial sensitive our view is that the process lacks transparency.

#### No 6 - Providers must not discriminate against patients and must promote equality

- (i) The population base for this tender was either not all covered or duplicated within the bids submitted. We understand that potential providers may have submitted bids for the same population base resulting in duplication. Both East Lancashire and Lancashire Teaching Hospitals have included elements of the same population in their initial bids. There is dispute amongst Vascular clinicians within the Bolton & Wigan centres that there was any agreement on their part for their populations to be represented in both bids, clinicians having only agreed to be part of the Lancashire Teaching Hospitals bid. Further there is question as to whether the East Lancashire bid did indeed have executive sign-up from all the acute provider trusts for the populations within that bid (i.e. both Bolton Hospitals and Wigan, Wrightington & Leigh Hospitals), and that if not this would call into question the validity of their bid. We request written confirmation from the PCT that there had been confirmation from respective Trusts that they had agreed to their catchment populations being included in the East Lancashire bid. Secondly the population of North Lancashire, Blackpool, Morecambe Bay and South & West Cumbria have not been addressed by any of the providers deemed appropriately compliant other than the bid submitted by the University Hospitals of Morecambe Bay NHS Foundation Trust.
- (ii) There are high risk and unpredictable interventions needed each year (approximately 5-6) for the South Cumbria population, calling into question

patient safety. These interventions relate to when vascular surgeons need to attend another hospital site to intervene if another operation has run into difficulties e.g. major bleed or damage to a major vascular structure with consequent threat to life or limb. The Trust does not believe this facility will be available within a timely manner from Preston (or other proposed centres) to Westmorland General Hospital, Kendal or Furness General Hospital, Barrow in Furness.

- (iii) In terms of travel times the bids submitted in November 2011 were based upon the travel time iso-maps included in the Vascular Board's paper "Improving Vascular Services: A Case for Centralisation of Vascular Services in Lancashire and Cumbria" pages 114 – 119. These clearly show that a 90 minute transfer time, taking account of road conditions, is not delivered for our South West Cumbria population (Barrow, Millom and Langdale) by other centres except for that based at the Royal Lancaster Infirmary. Deviation from the original isochrome maps which were the basis for the Vascular Clinical Advisory Group recommendations is a clear material change in process, yet at the debrief meeting held on 10 August 2012 the Trust was informed that the commissioners have reconsidered their original analysis and have provisional assurance that a Preston Centre could deliver this requirement. It is unclear how this vital issue for our population's perspective has been safely assessed in this process, and it appears that the Review Board have reconsidered travel assessments in an attempt to ensure that they appear satisfactory for the centres proposed, when most reasonable people with knowledge of the journey routes and adverse weather, traffic and travel conditions would deem the revised preliminary transport guidance unrealistic.
- (iv) The Trust are also concerned that geographical and travel time issues do appear to have been considered in supporting other bids submissions i.e. North Cumbria University Hospitals NHS Trust, but not with respect to the University Hospitals of Morecambe Bay NHS Foundation Trust bid.

The Trust's view is that the proposals as they stand do not provide for our local population and should be set aside and reconsidered.

### Proposed Resolution and Conclusion

We seek to resolve this dispute at the most local level possible and therefore are requesting an appeal under the NHS Blackpool Dispute Resolution Process. We request that the contract variations with the successful providers be set aside while you consider our appeal. Our proposed resolution would be to support a fourth intervention centre at University Hospitals of Morecambe Bay NHS Foundation Trust (Lancaster) to reflect the geography, travel time and safety issues.

We state that there have been breaches of the Principles and Rules for Cooperation and Competition in the process for determining the award of the above tender. Accordingly we request that you consider our complaint in full.

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Can you please confirm to the Trust when the PCT Boards will make a definitive/final decision, a list of the Panel members who will consider this appeal and the timetable for a decision on the appeal.

The Trust is taking legal advice to proceed to judicial review in case a satisfactory resolution cannot be secured for our population. The Trust reserves the right to add to its concerns/complaints once it has received full legal advice from our advisors.

I look forward to your response in due course.

Yours Sincerely

A handwritten signature in black ink, appearing to read "Sir David Henshaw". The signature is written in a cursive style with a horizontal line underneath the name.

**Sir David Henshaw**  
**Chair**