

NHS ENGLAND REVIEW OF UNITING CARE CONTRACT

The key facts and root causes behind the termination of the
Uniting Care Partnership contract

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Introduction and acknowledgements

This review was commissioned by NHS England in January 2016. The overall objective of this work is to establish, from a commissioner perspective, the key facts and root causes behind the collapse of the Cambridgeshire and Peterborough CCG contract with Uniting Care Partnership in December 2015 and to advise on next steps. It is particularly important to identify the lessons for any future contracts of this sort.

The work has involved a review of the events leading up to the collapse of the contract in order to draw out the lessons to be learned for other novel contracting forms in the context of the implementation of the New Models of Care strategy and more broadly.

The review has not examined the appropriateness of the governance arrangements, bid costing and tendering responses from a provider perspective, which are matters for the individual Foundation Trusts and Monitor.

The scope of the work has included a review of relevant documentation and discussion with key staff members to identify the root causes and contributory factors that led to the termination of the contract. The review has identified specific and wider lessons to be learned and makes recommendations for further action.

The full terms of reference can be found in Appendix A

The review was completed in February 2016 following a review of documentation and discussions with key individuals from the following organisations:-

- Cambridgeshire and Peterborough Clinical Commissioning Group
- Uniting Care
- Cambridge University Hospitals NHS Foundation Trust
- Cambridgeshire and Peterborough NHS Foundation Trust
- Virgin Care
- Care UK
- NHS Partners Network
- Cambridgeshire Community Services NHS Trust
- The Strategic Projects Team-a business unit of Arden and GEM Commissioning Support Unit
- NHS England-Midlands and East
- Healthwatch Cambridgeshire

In addition, I received comments and had discussions with a number of people who had an interest in this contract and wished to make a contribution.

I would like to thank all of the people I met and those who contacted me and provided information to assist this review. Without exception, everyone was helpful, open and keen to learn the lessons from this failed contract.

Executive Summary

Cambridgeshire and Peterborough Clinical Commissioning Group entered into a contract with Uniting Care, which was a limited liability partnership, in November 2014. The contract was a 5 year contract with an option to extend for a further 2 years. The contract was for the provision of all community care for over 18 year olds, acute emergency care for the over 65s together with older peoples mental health services. The contract value over the 5 year period was £725m.

This was a major novel contract for the NHS in so far as it required integrated services for the elderly and a significant proportion of the payment would be based on outcomes.

Contract procurement commenced in July 2013 and negotiations continued up to the day before the contract commenced on 1 April 2015 and then continued until the contract was terminated by Uniting Care, with regard to financial issues, in December 2015.

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All parties to the final negotiations agree that the approach to contract in an integrated way for the over 65s was the right approach.
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All parties to the final negotiations, the Clinical Commissioning Group, Uniting Care, Virgin Care and Care UK, agree that the approach to contract in an integrated way for the over 65s was the right approach. There was a great deal of enthusiasm within the CCG and Uniting Care and this enthusiasm was shared by many clinicians within the service.

The contract collapsed for financial reasons. It is clear, from reviewing the documentation and talking to the organisations involved, that this was the result of a number of factors and these are set out in the 'Findings' section of this report. In summary;

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**The contract should not have
commenced on 1 April 2015**
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- There were too many information gaps around community services,
- The financial envelope of the CCG for these services could not be reconciled to current expenditure levels,
- There was an additional VAT cost,
- The mobilisation period was not sufficient to make the planned financial savings that were required in the first year,
- The contract value was not absolutely agreed at the date the contract commenced.
- The contract should not have commenced on 1 April 2015. It should have been delayed until these issues were resolved.

I have set out my recommendations and I have also identified a number of specific areas that require urgent follow up investigation.

Background

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The contract was a major novel contract covering an initial period of 5 years

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This contract was a major novel contract covering a period of 5 years with an option to extend by a further 2 years. The contract negotiations spanned a period from July 2013 up to the day before the contract commenced on 1st April 2015 and then continued during 2015 until Uniting Care terminated the contract in December 2015.

The contract was for all community care for over 18 year olds, acute emergency care for over 65s along with Older Peoples Mental Health services. The contract value was £725m over 5 years.

The Clinical Commissioning Group used the competitive dialogue process. It was an explicit requirement of the procurement that the preferred bidder established a prime vendor that was capable of holding the contract with the Clinical Commissioning Group. The Clinical commissioning Group went through the Department of Health Gateway Process and was assisted by The Strategic Projects Team [an internal business unit of Arden and GEM Commissioning Support Unit], Wragge & Co [solicitors] and Deloitte [who acted as financial advisers.]

A brief timeline of the procurement and contract termination was as follows;

- 60 expressions of interest were received and 10 consortia were successful at PQQ stage of the procurement process in September 2013.
- There was a 2 stage competitive dialogue process with multiple parallel dialogue processes.
- Outline solutions were submitted in January 2014.
- Three bidders were shortlisted -Uniting Care Partnership, Virgin Care and Care UK.
- Full and final submissions were submitted at the end of July 2014.
- The 'Go live' date was delayed twice during the process. Firstly, from 1 July 2014 to 1 January 2015 and then to 1 April 2015
- Uniting Care was appointed the preferred bidder on 1 October 2014 and the contract was signed on 11 November 2014 with a commencement date of 1 April 2015.
- The contract was terminated by Uniting Care due to financial issues on 3 December 2015.

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60 expressions of interest were received and 10 consortia were successful at PQQ stage
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Findings & Conclusions

Integration of Services

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All of the parties to the final negotiations [the CCG, Uniting Care, Virgin Care and Care UK] agree that the approach to contract in an integrated way for the over 65s is the right approach. However, despite these intentions, the contract collapsed. The health economy will now need to find another way of continuing with the integration of older people services.

**There should have been a
reassessment of the bidder . . . but
there was not**

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The work in preparing for this contract has delivered a number of benefits for the future including an Outcomes Framework, a service re-design process and service solutions. The CCG is committed to continuing the outcomes based approach and service model where it is cost effective to do so.

The Procurement Process

The procurement process was handled by the CCG with support from the Strategic Projects Team. This was a major procurement and a considerable logistical task.

In the early stage of the procurement process it was not apparent to the CCG that Uniting Care would be a Limited Liability Partnership[LLP]. It only became apparent later in the process. At the point that this became apparent there should have been a re-assessment of the bidder for capacity, capability, economic and financial standing but this was not carried out. However, It was identified at that stage that parent guarantees would be required from the two Foundation Trusts who constituted the LLP.

There was extensive reporting and discussion at the CCG Governing Body and Executive Management Team throughout the procurement process. However, there were some gaps in the detail of the reporting which may have impacted

upon the Governing Body's full understanding of the issues and risks. For example, there is no evidence of a discussion at the Governing Body around the risks associated with an LLP as a delivery vehicle. Also, there is no evidence of a discussion around a summary of the issues and actions stemming from the contract evaluation report.

Under the current arrangements, there is no requirement for NHS England to implement an 'assurance process' with CCGs on the detailed procurement arrangements.

Despite the flaws which subsequently became apparent, the final Department of Health Gateway Review on this procurement commented that "the procurement process, so far, has clearly been undertaken professionally. It is a mark of success for such a high profile, high value procurement that it has reached this stage, maintaining competitive tension, whilst also receiving no challenges to the process" As a follow up to this review, NHS England should investigate specifically the current Gateway review process for detailed lessons learned.

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**There was not a satisfactory
outcome with regard to risk**
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The Transfer of Risk

The view of all three final bidders was that there was not a satisfactory outcome with regard to the major issue of 'risk'.

The CCG's pay mechanism provided for adjustment up or down for population growth, it built in an uplift for acuity growth, it allowed the provider to spread risk over 5 years and it provided £10m additional transformation funds to manage double running in the first two years. It also provided access if non recurrent funds became available [e.g. system resilience funds]. All other risks would be passed to the provider and the provider would determine how services would be delivered in the 5 year period in order to deliver the required outcomes within the agreed financial envelope. The CCG resisted proposals for a 'risk share' / 'gain share' arrangement.

The contract was big, novel, with many information gaps and it was difficult for organisations to accept the proposed level of risk. All three final bidders seriously considered at some point walking away from the negotiations. Uniting Care did sign a contract in November 2014 but was only prepared to commence the contract in April 2015 after last minute changes were made to the contract in March 2015.

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**Parent guarantees should have
been put in place**
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These contract changes provided a process to update the contract value for a] 2014/15 expenditure levels, b] additional funding for community costs if, following a 6 month due diligence process, it was established that these had been understated due to information gaps and c] any other issue that arose during the period of the contract which threatened the financial stability of either party. If agreement could not be reached on these items then either party could terminate the contract.

Parent Guarantees

Despite having identified the need for parent guarantees, the signed contract between the CCG and Uniting Care did not ensure that these were put in place. As a consequence, when the contract folded, the LLP was significantly at risk of becoming insolvent. In order to manage this situation and with the advice of NHS England and Monitor the debt and other termination costs were split between the CCG and the two Foundation Trusts.

Parent guarantees should have been put in place by the Foundation Trusts and the CCG should have required them.

It is assumed that Foundation Trusts have the legal power to enter into parent guarantees. If they do not have such power then the appropriateness of the Limited Liability Partnership model will need to be considered.

Value Added Tax

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VAT was an issue
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VAT was an issue for Uniting Care during the process. The rules around VAT allow organisations within the NHS VAT group to reclaim some of their VAT from HMRC. As Uniting Care was outside the NHS VAT group, sums that would have been recoverable in the past were no longer recoverable under this structure. This had the impact of increasing costs to the two Foundation Trusts which they passed on to Uniting Care. This was not included in the Uniting Care bid, and the CCG and Uniting Care agreed to explore with HMRC and financial advisers ways of avoiding this cost. However, this issue was never resolved up to the point of termination. The sum involved amounted to £5m per annum. Conversely, the two private sector providers were well aware of the VAT issue and factored this cost into their bid. In any future contract the current VAT rules should be applied consistently and factored into the bid.

The Financial Envelope

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The CCG financial envelope was extremely difficult to calculate with a level of precision
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The financial envelope for this contract was extremely difficult for the CCG to calculate with a level of precision. This contract covers acute services to the over 65s, adult community services and older peoples mental health. The CCG used 2013/14 SUS data to calculate the acute activity element plus contract sums for smaller sub contracts. The most challenging area was community services costs. The CCG worked with Cambridgeshire Community Services to establish the 2013/14 costs and then updated them. The CCG also retained financial advisers to carry out a Due Diligence report on community services costs. However, despite these two approaches the CCG could not be confident that this element of cost was correctly captured in its financial envelope. As a consequence the CCG was not able to demonstrate to the bidders that the envelope was reconcilable to current expenditure levels. In fact, Cambridgeshire Community Services, the provider of community services at that time maintains that they were spending in excess of the sum included in the contract with the CCG for adult services and was 'cross subsidising' from other CCG commissioned funds and service lines.

The bidders expressed the view that the Due Diligence report on community services costs did not provide the information/assurance they required. This issue ought to be investigated further as part of the next steps following this review.

There was, therefore, ongoing debate around the level and robustness of information on existing community services. There was a view from providers that the CCG could have done more around this issue. However, Cambridgeshire Community Services was a bidder itself as part of a number of consortia. The Trust was therefore potentially conflicted in being asked to provide information to its competitors. As a consequence, Uniting Care and other bidders had to make their own assumptions for inclusion in their bids. After the service had transferred on 1 April 2015, Uniting Care was of the opinion that the transferred cost was materially in excess of its assumptions[circa £9m] which had been based on the information available to it. This was a major element in the 'financial gap' between Uniting Care and the CCG and the eventual collapse of the contract.

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There was on-going debate around the level and robustness of information on existing community services.
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Uniting Care has said, that at the point of being awarded preferred bidder status, it had 71 outstanding clarification questions and 34 of these were still outstanding at contract signature on 11 November 2014. The CCG disputes this and says that these numbers include many duplicates, errors and closed queries.

The lesson to be learned is to obtain this information, in a robust and accurate way, early in the process before existing providers become conflicted.

Contract Commencement on 1 April 2015

Towards the end of March 2015 Monitor had not signed off the Cambridgeshire and Peterborough Foundation Trust business case for the major transaction. There was no requirement for Monitor to agree a business case for Cambridge University Hospitals Foundation Trust as this was not deemed to be a major transaction due to the size of that Trust.

At that point the Chairs of the CCG, Cambridge University Hospitals FT and Cambridgeshire and Peterborough FT contacted Monitor to explain the likely effect on patient safety if staff did not transfer on 1 April as well as the cost to the health economy if existing contracts had to be rolled forward. Monitor gave an interim assessment on 31 March 2015 and services transferred the following day.

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**To give financial certainty on the
agreed contract price the contract
should have been delayed**
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On 1 April 2015 when the contract commenced there should have been a finally agreed value of the contract for the first year. The contract clearly had the bid price included within it. However, this price needed to be updated to reflect actual expenditure levels on older people in the previous year, 2014/15, together with any adjustment in respect of transferred community costs if this was justified following the 6 month due diligence process.

The value of the 2014/15 expenditure adjustment, when it was calculated several months later, was £9m which is a material figure. The problem with commencing this contract on 1 April 2015 was that it was not possible to calculate this sum before the contract commenced.

The CCG did have the option of delaying the commencement date from 1 April 2015 to a later date, but it argued this could have had a destabilising impact upon staff who were scheduled to transfer under TUPE on 1 April 2015 and would have required a short term contract to be put in place with Cambridgeshire Community Services who were the current provider.

On balance, the CCG decided to commence the new contract with Uniting Care on 1 April 2015.

However, to give financial certainty on the agreed contract price the contract should have been delayed to a later date.

The Mobilisation Period- November 2014 To March 2015

The mobilisation period was originally set at 3 months but this was increased to 6 months following the public consultation on the contract. As, subsequently, a great deal of this period was taken up with preparing and discussing a business case for Monitor as well as preparing for a CQC inspection, this left little time to mobilise and commence transformation. Financially, this was a major problem for Uniting Care as they had planned to make savings in the first year and these planned savings were subsequently delayed resulting in a financial cost pressure of £9m. It is now apparent that the mobilisation period was far too short for such a complicated contract and contract commencement should have been delayed.

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The mobilisation period was too short

The Dispute and Contract Termination

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In May 2015, Uniting Care informed the CCG that, in line with the agreed contract variation clause, it required an additional £34m in 2015/16 to continue providing the service. Discussions took place and the CCG eventually offered, in August 2015, £9m of recurrent additional funding to reflect 2014/15 outturn together with some non recurrent funding. Uniting Care then submitted a formal contract variation for the £34m and this was escalated locally. However, a local resolution could not be agreed.

The matter was considered by NHS England in discussion with Monitor but there was no obvious national solution to the local dispute. Subsequently, Uniting care terminated the contract using the termination clause inserted into the contract in March 2015.

The CCG accepts that, with the benefit of hindsight, it should have done more to brief NHS England earlier in the dispute and request intervention.

Additional Cost to the CCG of Entering into this Contract

The additional cost to the CCG of procuring and entering into this contract, compared to a 'do nothing' position, was £6m. In addition, the two Foundation Trusts will have incurred costs. However, there were some benefits arising from the contract which include the production of an 'outcomes Framework' and 'service redesign models' which will be helpful to the CCG in the future.

External Advisers

The Strategic Projects Team and the legal and financial advisers were retained to assist the CCG in carrying out the procurement. Their function was to assist the CCG in ensuring success with the process and the logistics of a large procurement that needed to comply with European Law.

This report identifies a number of flaws in the process, which led to the contract being terminated seven months into the five year term. It is clear that there were a number of serious financial issues with this contract, primarily relating to VAT and information gaps around transferred community services. In addition, there clearly was not sufficient time during mobilisation for Uniting Care to put in place the transformation they needed in order to deliver their required savings for 2015/16. Also, there were no parent guarantees put in place.

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**There should be a thorough review
... of each of the advisors**
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As part of the next steps following this review, there should be a thorough review of the role, function and effectiveness of each of the advisors in order to determine any specific issues with their contributions and to identify lessons to be learned for future projects of this sort.

Financial Flexibility of the CCG and Uniting Care

Some participants to the review have said that the 'financial gap' which they understood to be in the range of £6m to £9m per annum was a small price to pay for the major service benefits that could accrue in the future from the revised service models. In looking at the figures I do not believe that the gap was as low as £6m to £9m. In getting down to a gap of that size the CCG and Uniting Care agreed to work together in trying to avoid the additional VAT cost. However, whilst agreeing to look at this area there was no guarantee that this would avoid further costs. I believe the financial gap, including the VAT issue, was £14m and the reality is that neither the CCG nor Uniting Care had the financial flexibility to cope with deficits of this order even if this could be justified by savings in the future.

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The reality is that neither the CCG nor Uniting Care had the financial flexibility to cope with deficits of this order
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Commissioner and Provider Optimism Based on Different Financial Scenarios

At the point the contract commenced on 1 April 2015, both the CCG and Uniting Care were very optimistic that the contract could be delivered. However, each party's optimism was based on a different financial scenario.

An amendment to the contract, which was agreed in March 2015, established a process whereby financial revisions to the contract could be agreed for a period of six months after the commencement date. If the revisions were not agreed then the contract could be terminated.

The CCG view was that this clause would be used to update the contract in respect of 2014/15 expenditure levels and could also be used to transfer any additional funds into the contract from Cambridgeshire Community Services, if it could be proven that these costs had been understated due to gaps in the information made available to Uniting Care. However, the Uniting Care view was that the process would be used for these two areas but, in line with the agreed

contract variation, would also be used to cover other financial issues[e.g. additional VAT] which threatened their financial performance.

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The insertion of the contract variation clause into the contract in March 2015 was a pragmatic solution to enable the contract to commence whilst resolving a number of financial issues at a later date. However, the consequence of the clause was to bring financial uncertainty.

At the point the contract commenced on 1 April 2015 both the CCG and Uniting Care were very optimistic . . . Each party's optimism was based on a different financial scenario.
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All of the financial issues should have been resolved prior to contract commencement.

Recommendations

For NHS England

1. Follow up this Part 1 review with Part 2 in the form of follow up investigations specifically on the role of external advisors to the procurement, the effectiveness of the Gateway review process, and the role of the CCG executive leadership, Governing Body and related audit functions throughout the procurement and contract period.
2. Consider which is the most appropriate process to achieve an integrated system wide solution consistent with EU law. There are advantages to formal procurement including transparency and focus. However, this requires capacity and capability to carry out the procurement, robust costing and other information to inform the contract and financial flexibility of bidder organisations to manage risk.
3. The current approach of complete delegation to CCGs to enter into large complex novel contracts without the need to provide any assurance to NHS England should be reviewed. The consequences of failed contracts can impact on patients, staff, commissioners and providers and undermine working relationships for the future. Consider establishing an assurance process for novel contracts carried out by appropriately skilled individuals.

If NHS England put in place an assurance process around these major novel contracts then this could assist Monitor in the triangulation of business case assumptions as Monitor could confer with NHS England to triangulate key assumptions.

4. Consider commissioning work to determine a model around the disaggregation of acute and community costs for the over 65s so that this can assist CCGs in developing different contracting models.
5. Review all current and planned CCG and NHS England contracts of this sort as a matter of urgency, prior to entering into any new commitments
6. Consider how the innovative work in Cambridgeshire and Peterborough can be retained and developed for the benefit of not only this area but elsewhere in the country.

Recommendations

For Clinical Commissioning Groups

1. Consider the proposed level of 'risk transfer' carefully. Allocate risk proportionate to the organisation's ability to manage it.
2. Ensure that all bidders are assessed for capacity, capability, economic and financial standing and that they are re-assessed if the structure of their bid or their corporate form changes during the procurement process.
3. Ensure that future contracts with Limited Liability Partnerships or Special purpose Vehicles have parent guarantees.
4. Ensure that sufficient time is spent at the front end of the process to disaggregate costs from the existing service provision model. This is particularly relevant for community services. It is important that an accurate financial envelope for the new service procurement model is established before the procurement commences. If this is not done then existing providers can be conflicted when they are bidding in their own right whilst at the same time providing information to their competitors.
5. Be open with bidders around the calculation of the financial envelope so that they can become comfortable that the envelope does reconcile back to current expenditure levels even if the CCG requires additional efficiency savings.
6. Ensure that NHS providers have included the additional cost of VAT in their bid submissions if they are utilising a relevant model, such as Limited Liability Partnership.

7. Avoid a situation where the new contract is still not agreed or ready to commence but notice has been given to providers to terminate existing contracts and TUPE notices have been issued to staff. If a CCG reaches this situation and does not have a viable alternative option then the strength of its negotiating position on the new contract is weakened and there can be a risk to the continuity of services and relationship with staff.
8. Ensure that the contract value is absolutely clear before the contract commences and is not a provisional figure based on historical or estimated data which needs to be updated for the previous year's expenditure levels and other issues.
9. Ensure that there is a way of coping with the risk of inadvertently omitting key service delivery needs from the service specification. This may be achieved by not spending all of the agreed contract savings until the contract has bedded down later in the year.
10. Escalate disputes to NHS England at an early stage and keep them informed.

Appendix A - Terms of Reference

Background

Cambridgeshire and Peterborough CCG (CPCCG) entered into a contract with Uniting Care Partnership (UCP - a LLP formed by two Foundation Trusts) in November 2014 for the provision of Older Peoples Services. The service commenced on 1st April 2015, with transition and mobilisation activities taking place between November 2014 and 1st April 2015.

The contract was terminated in December 2015.

Overall Objective

The overall objective of this work is to establish, from a commissioner perspective, the key facts and root causes behind the collapse of the CPCCG contract with UCP in December 2015, and to advise on next steps.

This will involve a review of the events leading up to the collapse of the UCP contract in order to draw out the lessons to be learnt for other novel contracting forms in the context of implementation of the New Models of Care strategy, and more broadly.

This review will not examine the governance arrangements, costing and tendering processes from a provider perspective. This is a matter for the individual Foundation Trusts and Monitor.

Scope

The scope of this work will include a review of relevant documentation and discussion with key staff members to identify the root causes and contributory

factors that led to the termination of the contract, specific or wider lessons to be learned, recommendations and any further action to be taken across the following areas:

- The conduct of CPCCG in the negotiation and subsequent management of the UCP contract (this will include the process and conclusion of any gateway reviews of the programme, and any immediate steps to be taken by CPCCG management following the collapse of the UCP contract)
- The role of the NHS England regional and local teams in carrying out structured assurance of these contracts for both CCGs and its own directly commissioned services
- The role of the Strategic Projects Team in the procurement, as well as any other parts of NHS England or CSUs who are relevant to the process
- The views of the two Foundation Trusts who made up the UCP Board and senior leadership
- The wider approach to negotiation and management of service integrator contracts by NHS commissioners, particularly with reference to the risk management of such contracts
- The wider approach to novel contracting forms more broadly, particularly in the context of New Models of Care.

Approach

The following procedures will form the approach to this work:

- Review of key documentation relating to the negotiation, management and assurance of the UCP contract, including correspondence relating to legal

advice and programme documentation

- Introductory discussion with NHS England Midlands and East Regional Director
- Discussions with appropriate NHS England colleagues in the regional, national and local offices
- Discussions with key contacts in the CPCCG leadership and management, as well as directors and leadership of UCP and the Foundation Trusts, as advised and arranged by NHS England
- Review of relevant contract management procedures and processes by NHS commissioners
- Review of relevant assurance and procurement procedures and processes as carried out by NHS England and CSUs
- Review discussion with NHS England Midland and East Regional Director and NHS England Chief Financial Officer on draft findings before the issuing of the final report
- Review of submissions and comments by any other parties through the designated contact mailbox on the NHS England website at ENGLAND.ucreview@nhs.net.

Deliverable

Following completion of the steps listed in the approach section above a report will be produced for the NHS England Chief Financial Officer and Regional Director of Midlands and East. This report will include the scope and approach to the work and cover any relevant observations, identified root causes and contributory factors to the issue, lessons to be learned, and recommendations where further action should be taken. The report will be published following the completion of the review.