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The Rt Hon Andrew Burnham MP
Secretary of State for Health
Richmond House
79 Whitehall
London SW1A 2NS

15 February 2010

Dear Secretary of State

**REFERRAL TO SECRETARY OF STATE FOR HEALTH**
**Referral by Sunderland City Council Health and Wellbeing Scrutiny Committee**
**Church View Integrated Care Pilot**

Thank you for forwarding copies of the referral letters and supporting documentation from Cllr Peter Walker, Chair of the Health and Wellbeing Scrutiny Committee (the OSC), Sunderland City Council. NHS North East provided initial assessment information. We requested and received supplementary information from the Department of Health. A list of all the documents considered in the initial assessment is at Appendix One.

The IRP has undertaken an initial assessment, in accordance with our agreed protocol for handling contested proposals for the reconfiguration of NHS services. The IRP considers each referral on its merits and its advice in this case is set out below. **It concludes that this referral is not suitable for full review.**

**Background**
The Integrated Care Pilot Programme was instigated by the Department of Health in October 2008 to test and evaluate new ways in which PCTs could commission more integrated services. The programme invited applications from prospective pilot sites and received more than 100 applications.

The Church View Medical Practice (CVMP) and City Hospitals Sunderland NHS Foundation Trust (CHS) applied to take part in the programme. Under the pilot, CVMP and CHS will work together as an integrated organisation, collaborating in partnership with the PCT provider arm, social services and the Patient Participation Group. The pilot involves a variation to the Primary Medical Services (PMS) contract held by CVMP. CVMP and CHS will merge and CVMP's staff and the PMS contract will be transferred to CHS.
The pilot aims to prevent avoidable hospital admissions through early intervention management for individuals with emerging risk and intensive case management for very high-risk individuals. It will focus initially on around 50-150 patients from the practice population with long-term conditions known to be at high risk of hospital admission.

CVMP and CHS were notified in March 2009 that their application had been chosen as one of sixteen national pilots but were advised that they would need to make a formal submission to the NHS Co-operation and Competition Panel (CCP) for "formal advice". The CCP formally announced its investigation on 12 June 2009. Sunderland Local Medical Committee wrote to the CCP on 22 June 2009 to express its concerns with the pilot, copying its letter to the chair of the OSC. Sunderland Teaching PCT wrote to the CCP on 25 June 2009 to outline its views on the pilot. The PCT commented that it *"has given support to the submission by CHS and CVMP for a pilot application but has not consulted regarding the pilot proposal. A change in contract holder ie novation is not a matter on which the PCT would routinely consult as these are implemented through a routine internal process and would not lead to any major service change for patients"*. The CCP examined the proposal and, in its report of August 2009, found the merger to be consistent with its Principles and Rules and recommended that it be allowed to proceed.

Following a meeting of the OSC, the committee scrutiny officer wrote to Sunderland Teaching PCT on 15 October 2009 raising concerns about the process for consultation on substantial developments and variations and seeking clarification as to why no consultation had been undertaken with the OSC concerning the pilot scheme. The PCT responded in a letter of 17 November 2009 that it had determined *"that as this is a 'pilot', and not a substantial development or variation of health services (the pilot is proposing to affect approximately 50 people which is less than 1% of the Practice population, list size 6300), it is exempt from the statutory duty to consult…."*. Further, the letter quoted paragraph 4(2)(b) of the Local Authority (Overview and Scrutiny Committee Health Scrutiny Functions) Regulations 2002 which the PCT considered provided an exemption from the requirement to consult with overview and scrutiny committees in respect of any proposal for a pilot scheme within the meaning of section 4 of the NHS (Primary Care) Act 1997.

**Basis for referral**

The OSC's referral letter of 17 November 2009 states that referral is made in exercise of the power outlined in Regulation 4.5 of the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002.

The OSC summarises *"the following concerns:*

*i* *In respect of the requirement to consult when an exemption is claimed by an NHS body for a pilot scheme under regulation 4(2)(b) there is currently no obligation to notify the local authority of the exercising of this exemption and this appears to be a gap in the regulations.*

*ii* *The OSC are concerned that there needs to be greater clarity around what constitutes a pilot scheme and the opportunity to provide comment on what a pilot scheme is about. In this instance the pilot scheme is to run for 3 years and involves the permanent features such as the transfer of staff, which effectively negates the opportunity to extend the pilot and so it becomes a fait accompli.*

*iii* *The OSC consider that the proposal is in effect a substantial development or variation of health services on the OSC's area which links to the issue of what is or is not defined as a substantial development or variation in health services.*

*iv* *There are also a number of features surrounding the pilot that the OSC has concerns over."*

The concerns at iv above include:

- the role of the GP as "gatekeeper" to NHS secondary care
- the potential effect of changes to employment contracts for staff at CVMP
- the lack of consultation with the OSC on the basis that proposals for pilot schemes are exempted from the requirement to consult with overview and scrutiny committees
- that irrespective of any exemption to consult on pilots, the proposed scheme represents a substantial development or variation and as such, the OSC should have been consulted
- lack of consultation with the public, patients of the practice, and other members of the local health community

**IRP View**

With regard to the concerns raised by the OSC, the Panel notes that:

- legal advice from the Department of Health's solicitors confirms that:
  - paragraph 4(2)(b) of the 2002 Regulations was revoked in 2006
  - the NHS (Primary Care) Act 1997 has also been revoked
- the Department of Health has also confirmed that:
  - applications to take part in the Integrated Care Pilot Programme, including the CVMP pilot, come within the statutory framework of the NHS Act 2006
  - information to potential applicants to the programme was contained in *Integrated Care Pilot Programme: Prospectus for potential pilots*, issued by the Department in October 2008
- a protocol for determining what constitutes a substantial variation or development is in place between the OSC and the local NHS
- the CCP's report on the proposed merger of CVMP and CHS explicitly considered the GP gatekeeper role and concluded that the function would be protected subsequent to the merger by a number of factors, including the professional obligations of GPs to act in the best interests of patients and other measures to protect patient choice that would be put in place
- the need to ensure that all practice staff receive adequate HR support to explain the changes and the effect it would have on their employment rights is recognised in the pilot application: the Department of Health's response of 31 March 2009 highlights potential workforce implications and stresses that applicants must be aware of and understand compliance with current DH workforce policy, particularly in relation to the transfer of staff
- since paragraph 4(2)(b) of the 2002 Regulations was revoked in 2006, at the time the pilot scheme was being developed no exemption to consult with OSCs on pilot schemes existed
- as no exemption to consultation existed, whether or not the scheme was deemed to be substantial should have been a matter for consideration against the agreed protocol along with consideration of any further action required
- the pilot application states that CVMP has an active patient participation group that has always been involved with new developments with the practice and that the group supports the proposed pilot

## Conclusion

The Integrated Care Pilot Programme prospectus and accompanying evidence base document emphasise that integrated care *"can be an effective way of delivering health care, providing opportunities to break down barriers between primary and secondary care as well as health and social care"*. The IRP agrees with this view and supports the pilot programme as an opportunity to test innovative models for service delivery aimed at improving the quality of patient care. The CVMP/CHS pilot has undergone a rigorous and detailed selection process within the Department of Health and has also been investigated and approved by the NHS Co-operation and Competition Panel.

It is clear from the documentary evidence supplied to the IRP that widespread confusion existed about paragraph 4(2)(b) of the 2002 Regulations which previously provided an exemption from the duty to consult OSCs on proposals for pilot schemes but which was revoked in 2006. At the time the application was made to take part in the Integrated Care Pilot Programme no exemption from the duty to consult OSCs on substantial developments or variations existed for pilot schemes. Neither the OSC nor the local NHS appear to have been aware of this change in the regulations.

The IRP appreciates that a proposal of this nature, including the transfer or novation of a PMS contract from a GP practice to a foundation trust, may be a matter of some local interest and that a scrutiny committee may wish to consider whether such a proposal represents a substantial development or variation in accordance with its agreed protocol. It is encouraging that a protocol for determining what constitutes a substantial development or variation is in place. The effective operation of the protocol is, however, dependent on a commitment to early involvement and the appropriate exchange of relevant information.

Misunderstanding about the duty to consult on pilot schemes notwithstanding, information about the pilot has been made available to the IRP that directly addresses the OSC's concerns and could usefully have been made available to the OSC. The IRP considers that, had the OSC been more involved at earlier stage and an explanation of the purpose of the pilot provided, the referral of this matter could have been avoided.

## Further action

The IRP advises that:

1. The pilot should proceed in accordance with the requirements and systems for evaluation set out by the DH Integrated Care Pilot Programme.
2. The local NHS should clarify any outstanding queries that the OSC may have regarding the operation of the pilot – including, if required, arrangements for the transfer of staff employment and arrangements following the conclusion of the pilot period.
3. The OSC, having received any further information it requests, should consider how it wishes to proceed in line with the options for further action outlined in the protocol.
4. For the benefit of the NHS, OSCs and other interested bodies, the Department of Health should take steps to communicate the current legal position regarding consultation with OSCs and the status of pilot schemes.

5 DH guidance on the scrutiny of health services is out-of-date and under revision. The revised guidance is an opportunity to clarify some of the issues raised by this referral and to promulgate useful messages – including the benefits of the early involvement of local people in developing proposals for change and the value of a local protocol to determine what constitutes a substantial development or variation.

The IRP considers that this matter can be resolved locally and is not suitable for full review.

Yours sincerely

Dr Peter Barrett
Chair, IRP