



National Audit Office

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## **Report**

by the Comptroller  
and Auditor General

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## **Department of Health**

# Investigation into the collapse of the UnitingCare Partnership contract in Cambridgeshire and Peterborough

## What this investigation is about

**1** In November 2014, following a competitive tender process, Cambridgeshire and Peterborough clinical commissioning group (the CCG) awarded a five-year contract to provide older people's and adult community services in Cambridgeshire and Peterborough. The services included all community care for adults over 18 years old, acute emergency care for those over 65 years old, and older people's mental health services.

**2** The successful bidder was UnitingCare Partnership LLP, a limited liability partnership, set up to fulfil the requirements of the contract. The partners in the organisation were Cambridge University Hospitals NHS Foundation Trust and Cambridgeshire and Peterborough NHS Foundation Trust. UnitingCare Partnership then subcontracted with a range of bodies to provide the services, including the two trusts themselves, other NHS providers and a number of other private sector and voluntary organisations.

**3** The new contract aimed to bring previous health services together to give patients a clear and more integrated pathway of care. It planned to increase capacity in community support, deliver care closer to home, reduce emergency attendances and acute admissions, and discharge patients more quickly into community settings. This integrated approach aimed to make efficiencies through reduced hospital admissions, and to deliver a better service to patients. The CCG intended to commission for outcomes, and to create financial incentives to deliver better services. The contract is in line with NHS England's Five Year Forward View, which advocates for integrated patient-focused services, networks of care and an increased focus on out-of-hospital care.

**4** UnitingCare Partnership's bid was for a contract costing £726 million over five years, with a budget of £152 million in the first year. The contract value reduced over the following four years because it was assumed that the new model of working would result in efficiency savings. The contract went live in April 2015 but was terminated in December that year after only eight months. This was because of a failure to reach agreement on contract cost. The termination led to unfunded costs totalling at least £16 million, shared between the two trust partners in UnitingCare Partnership and the CCG.

**5** Following correspondence we received on the topic, we conducted this investigation to set out the facts about the design and procurement of the services, the operation of the contract and the contract's termination. There are several other reviews about the failure of this contract either under way or already published. This investigation will provide an independent view of what happened and set out the main factors leading to the contract's collapse. We do not evaluate the decision to use this particular design for the model of care, or the value for money of the services provided by the contract.

**6** Appendix One lists our methods, which included reviewing documents and interviewing organisations involved in the contract's design, procurement and operation.

# Summary

## Key findings

### The service model

**1 The clinical commissioning group (CCG) needed to change the way its older people's and adult community services were provided, as it faced a funding shortfall of £250 million in the five years to 2018-19.** The Cambridgeshire and Peterborough CCG is one of the most financially challenged in the country. Despite recent funding increases it remained more than 3% below its target funding allocation in 2015-16, with significant financial challenges and an ageing population. The CCG's model aimed to improve outcomes for patients by increasing and better integrating out-of-hospital services, while achieving savings.

**2 There was significant support from stakeholders for the contract's design, which provided a new model of services based around the patient.** We heard a consistent view that the new model was innovative and ambitious, requiring a significant amount of reconfiguration of existing services. The approach had strong potential to join together all bodies in the local health economy and to deliver better patient care. The new approach was popular with patients, staff and providers alike.

**3 Although the successful bidder, UnitingCare Partnership, was only just starting to reconfigure and transform services, stakeholders were encouraged by early progress.** UnitingCare Partnership's business case set out total estimated net savings of £178 million to the local health economy by 2020, mostly by reducing inappropriate emergency hospital admissions and emergency attendances. Although it was too early to see whether the new model would deliver these savings, stakeholders were positive about the benefits of new services such as the joint emergency teams.

## **Commercial expertise: designing the contractual terms**

**4 The trusts chose a limited liability partnership to meet the CCG's requirement for contracting with a single entity, but neither UnitingCare Partnership nor the CCG made proper arrangements to fund the ensuing VAT liability.** Based on legal advice, the trusts chose to form a limited liability partnership to hold the contract with the CCG. This arrangement reduced the risk to the two shareholder trusts, neither of which was in a financial position to become the lead provider. However, this resulted in problems because as a separate legal entity, UnitingCare Partnership was not itself an NHS body and was outside NHS VAT arrangements. Therefore NHS subcontractors were no longer able to recover VAT on the services provided to UnitingCare Partnership that had previously been recovered when they provided the same services to the CCG. The partnership had not factored these additional costs into its contract price.

**5 The contract included a £10 million transformation sum to help redesign the service, but other bidders thought this was insufficient.** Bidders highlighted the small amount of transformation funding and the short mobilisation period allowed. The CCG told us that it expected the provider to invest its own funds up front to assist with service transformation, but this was not a requirement in the contract, and UnitingCare Partnership told us that it disagreed with this expectation.

**6 The contract included an estimated 10% cost reduction over the term of the contract from reconfiguring services.** Some stakeholders told us this cost reduction profile was optimistic. They indicated that they had concerns about the financial viability of the contract.

**7 There were important gaps in the specialist procurement advice to the CCG.** The CCG engaged the Strategic Projects team, as procurement advisers for the contract, as well as specialist financial and legal expertise from Deloitte LLP and Gowling WLG.<sup>1</sup> The procurement advisers conducted a limited assessment of the viability of UnitingCare Partnership's bid. They accepted UnitingCare Partnership's assurance about the viability of its assumptions. The CCG's legal advisers highlighted a need to secure performance guarantees (incorporating parent guarantees) in the contract. However, while this advice was attached to the procurement adviser's summary report evaluating the bids, it was not mentioned in the text and its implications were not drawn out. The CCG did not go on to seek such a guarantee.

**8 The final contractual terms left the CCG exposed to significant unintended risks and potential costs.** The CCG designed a service model that intended to transfer much of the risk to the service provider. But additional contractual and termination clauses added during contract negotiation passed significant financial risk back to the CCG as the commissioner. The CCG and UnitingCare Partnership differed in their understanding of the extent that the contract clauses allowed UnitingCare Partnership to negotiate additional funding after signing the contract. In addition, the CCG's failure to secure a parent guarantee from UnitingCare Partnership left it vulnerable to having to fund any contractual losses.

<sup>1</sup> The Strategic Projects team is a business unit within a commissioning support unit hosted by NHS England.

## **Commercial expertise: negotiating the contract price**

**9 Bidders faced significant difficulties in pricing their bids accurately due to limitations in the available data.** For example:

- it was difficult to determine accurately the number of patients, the services provided and the costs of providing services from block contracts, particularly from the incumbent community services provider. This difficulty forced UnitingCare Partnership to assume when pricing its bid that the cost of the services was the same as the amount the CCG paid to the supplier for these services. However, this assumption was later proved to have significantly underestimated the cost of the community service; and
- there was some uncertainty about the precise scope of services to be included in the contract. Bidders received minor scope clarifications as late as September 2014, and the CCG continued to discuss some detailed aspects of the scope with UnitingCare Partnership even after the contract was signed.

**10 The UnitingCare Partnership bid was £726 million, some 3.5% below the CCG's maximum contract price, despite increasing demand for services.**

The CCG assessed that its maximum contract price of £752 million would be tight but achievable. The other shortlisted bidders bid at the CCG's maximum value of £752 million but UnitingCare Partnership made a tactical decision to submit a lower bid of £726 million to win the tender. This lower bid helped UnitingCare Partnership to win the contract, but neither organisation could fully assess whether the contract price was viable due to limitations in the data.

**11 There was a large number of outstanding cost and clarification issues when the CCG chose UnitingCare Partnership as its preferred bidder in October 2014.**

UnitingCare Partnership believes there were 71 outstanding issues at this time, although the CCG believes the number to be lower. Although both parties continued to work on these issues, a number of significant items were still outstanding when the contract was signed in November. Many items were critical to pricing, such as the detailed scope of services included in the contract, and a reconciliation of community services costs against recent years' funding. However, UnitingCare Partnership did not take opportunities to revise its bid price to reflect the uncertainty, stating to the CCG that it could deliver services at this price without relying on additional income.

**12 Reflecting the cost issues, UnitingCare Partnership expected to negotiate more than 20% additional funding from the CCG than its original bid price as outstanding clarifications were settled.** In January 2015, the CCG agreed to a small increase in the contract value to reflect 2014-15 activity and expenditure once known. In the same month, Cambridgeshire and Peterborough NHS Foundation Trust's business case contained an assumption that it would be able to negotiate a total increase of more than 20% to the contract price, reflecting other costs. The business case assumed that UnitingCare Partnership would agree contract variations on scope or price if it was unable to deliver the services within the agreed budget.

**13 UnitingCare Partnership agreed to begin the contract from April 2015 while continuing to negotiate on cost clarifications.** There was significant pressure from the CCG to begin the contract on 1 April 2015 even though it was aware that the contract price would change, because existing contracts expired on that date and more than 1,000 community care staff were due to transfer their employment to Cambridgeshire and Peterborough NHS Foundation Trust. Other bidders told us that they would not have proceeded with so many issues outstanding.

**14 One month into the contract, UnitingCare Partnership requested £34 million of extra funding for the first year, some 21% more than the contract price for that year.** This additional funding was requested for a number of reasons, including the expected increase to reflect 2014-15 expenditure, and additional factors such as reduced savings due to delays in starting the contract. Although both parties negotiated to reduce the funding gap, they were not able to resolve this. In the meantime, the CCG began to advance some funds to UnitingCare Partnership, which was spending more than the agreed amount.

**15 In early December 2015, UnitingCare Partnership was forced to terminate the contract when the CCG informed it that no further advance funding was available.** NHS England and Monitor mediated to allocate the £16 million of incurred unfunded costs between the CCG and the partner trusts.<sup>2</sup> The CCG agreed to pay approximately 50% of the costs, and the two trusts each paid approximately 25%. The contract signatories were not legally obliged to meet these costs but felt a moral obligation to ensure that charities and community providers were not left financially disadvantaged.

**16 Upon termination of the contract, the CCG immediately took on direct commissioning of the services but told us that the cost it incurred in doing so was significantly higher than the contract value.** UnitingCare Partnership had only just started to reconfigure its services, so the anticipated efficiencies had not yet materialised. The current cost of the services, and the impact of the additional costs it incurred to protect community providers when the contract failed, means that the CCG is unable to implement all of the service changes it had planned to make in 2016-17, although it has kept some elements of the new service model.

**17 The termination of the older people's and adult community services contract indicates that the health sector may not have learned lessons about assessing and managing risk when working with a private provider, despite the earlier failure of the Hinchingsbrooke contract and experience in wider government.** The Committee of Public Accounts previously commented on the health sector's need to develop its commercial skills when it looked at the failure of the Hinchingsbrooke contract in March 2015.<sup>3</sup> We have found similar contractual mistakes in other parts of government: for example, our report on the Ministry of Justice's language services contract commented on a lack of knowledge about activity and costs.<sup>4</sup> The contract design and the negotiation process both indicate a lack of commercial expertise on the part of both the CCG and the trusts.

<sup>2</sup> Since April 2016, Monitor has been part of NHS improvement.

<sup>3</sup> HC Committee of Public Accounts, *An update on Hinchingsbrooke Health Care NHS Trust*, Forty-sixth Report of Session 2014-15, HC 971, March 2015.

<sup>4</sup> Comptroller and Auditor General, *The Ministry of Justice's language services contract: progress update*, Session 2013-14, HC 995, National Audit Office, January 2014.

## **Oversight and regulation**

**18 Under the Health and Social Care Act 2012, Monitor is the regulator for foundation trusts but its remit only covered part of the transaction.** Although UnitingCare Partnership was a limited liability partnership formed by two foundation trusts, it was a separate legal entity and subject to company law. It was not subject to regulation by Monitor or any other health sector body. In addition, Monitor's approach to risk-assessing new transactions led it to consider the implications of the contract for only one of the two trusts, Cambridgeshire and Peterborough NHS Foundation Trust. Cambridge University Hospitals NHS Foundation Trust submitted a self-certification to Monitor for its involvement in the partnership because the additional contract value did not qualify as substantial according to the thresholds set by the regulator.

**19 UnitingCare Partnership's actions to limit the trusts' financial liability were an important factor in Monitor's decision to issue an amber risk rating for Cambridgeshire and Peterborough NHS Foundation Trust's role in the transaction.** Monitor's transaction assessment took assurance from the financial protections that UnitingCare Partnership had negotiated with the CCG to allow it to negotiate a higher contract price if new information about existing costs surfaced, and to terminate the contract if in financial distress. Without these clauses, it is likely that Monitor would have issued an unfavourable risk assessment if Cambridgeshire and Peterborough NHS Foundation Trust had proposed to go ahead with the transaction.

**20 NHS England had very limited involvement in the procurement until the contract failure.** The contract fell within the CCG's commissioning responsibility. This meant that NHS England had no formal assurance role in the procurement. Although NHS England held regular update meetings with the CCG, these covered the CCG's responsibilities as a whole and did not specifically focus on this contract. The CCG did not inform NHS England of the difficulties in resolving the financial gap in the contract until October 2015. NHS England and Monitor then convened a meeting of key stakeholders, but the commissioner and the provider could not reach agreement. NHS England did not consider it appropriate to provide additional funding itself. In December 2015 NHS England recommended that the contract be terminated. Since the termination, NHS England paused similar contracts while undertaking its own review of what went wrong. It now plans to develop an assurance framework for similar procurements in future.

**21 Neither the Department of Health, nor NHS England, nor Monitor was responsible for holding a holistic view of the contract, or assessing whether the anticipated benefits would merit continued support of this innovative approach.**

CCGs and foundation trusts have significant statutory freedoms to make their own decisions. The regulators and oversight bodies acted in accordance with their statutory roles but, ultimately, regulatory checks on individual bodies' risks did not ensure that the contract was viable. Monitor took assurance from UnitingCare Partnership's actions to limit its financial contractual liability and assessed that the risk taken by Cambridgeshire and Peterborough NHS Foundation Trust was reasonable. The effect of the additional clauses was that the CCG bore more of the financial risk of the contract, without comparable scrutiny from NHS England. Each body acted within its defined role but no organisation held a holistic view of remaining risk in the system. The cost to the CCG and trusts of the set-up, bid and termination costs of the contract was £8.9 million.

**22 The Five Year Forward View encourages the health sector to use new and more joined-up ways of providing care, which may not always align with existing regulatory and oversight arrangements.** Examples of more integrated services such as in the UnitingCare Partnership contract are likely to increase. The Department of Health, NHS England and Monitor are currently developing their approach to overseeing similar models. Without closer joint working or a more holistic view, there are significant risks for the sector that individual oversight decisions will not lead to the best outcomes for patients or for the system as a whole.