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Councillor Illingworth
By email

8 November 2013

Dear Councillor Illingworth

Thank-you for your letter of 11 October 2013, on behalf of the Yorkshire and Humber JHOSC. For ease of reference I will respond to the points you raise using the same headings/numbering as in your letter.

(1) New Congenital Heart Disease Review: Task and Finish Group

I do not accept your suggestion that there is a "general lack of clarity around governance" of the programme. On the contrary, the governance of the programme has been clearly set out and placed in the public domain, most recently in the Programme Initiation Document which post-dates your letter, but also in the papers that preceded it. The terms of reference for each of the programme's governance and advisory groups set out the arrangements clearly and at an appropriate level of detail.

You asked about the basis of delegating authority to a Task and Finish Group. At its meeting on 3 May, the Board of NHS England formally established the Task and Finish Group. The right to establish task and finish groups in this way is covered in the board's standing orders (available here: http://www.england.nhs.uk/wp-content/uploads/2013/05/pol-0001.pdf) which explain that this right derives from paragraph 13, Schedule A1 of the NHS Act 2006.

It is usual in the NHS for the terms of reference of a group or committee to be discussed by that group or committee as well as by the group that formally sets it up. Since proposals to amend the terms of reference may arise as part of this process, final sign-off is not normally achieved until after this stage. The Task and Finish Group has agreed its terms of reference and we expect them to be approved by the full Board at its meeting on 8 November 2013.

(2) Openness and transparency

I welcome your committee's acknowledgement that a greater level of openness and transparency has been achieved. In part this has been a response to the JHOSC's helpful advice that a greater level of prospective publication could avoid subsequent requests for information under the scrutiny and Freedom of Information regulations.

(3) Notification of the meeting

You expressed concern about the advance notice of our board's Task & Finish Group meeting on 30 September 2013. Unlike NHS England's main Board meetings, we do not believe that this Group's meetings are covered by the provisions of the Public Bodies (Admission to Meetings) Act 1960 to which you refer. We agree that it is in everyone's interests that we give as much notice as possible of the work we are doing and the papers we are considering. I am happy to concede that in an ideal world, the papers would have been published further in advance of the meeting, but it was not possible to do so on this occasion, because we are trying to strike a balance between pace and inclusivity. Our timing was in accordance with our publication scheme (which commits to publishing the agenda and papers) and the Group's own terms of reference, which state: "The agenda and papers will be published on the NHS England website in advance of the meeting". Of course we can always do better. But I also believe that in publishing the papers for the review's working groups in this way we provide a practical example of our commitment to openness and transparency. You state that the first notification of the meeting was late on 27 September 2013. This is not correct. While papers for the meeting were published on 27 September 2013, the date of the meeting was publicised in my blog dated 23 September 2013 (http://www.england.nhs.uk/2013/09/23/john-holden-7/).

The Task and Finish Group considered the question of meeting in public at its meeting on 30 September 2013, as recorded in the draft minutes (http://www.england.nhs.uk/wp-content/uploads/2013/10/item2.pdf):

> *"The Chair invited the Group to consider whether it was important in the interests of transparency and openness for it to conduct its meetings in public. The Group was of the opinion that it would be normal for a working group of any organisation to hold its meetings in private, subject to it always reporting publicly the substance of its discussions. The Group's meetings would be about the nuts and bolts of the review and transparency and openness would be amply achieved in the ways Mr Holden had described. The proper management of any possible conflicts of interest would be critically important."*

It is important to note that the role of the Task and Finish Group is to oversee the review, to provide assurance to the Board and to provide strategic direction to the programme on behalf of the Board. In this capacity the group will take decisions on the direction and running of the review. Decisions affecting the commissioning and delivery of congenital heart disease services as a result of the review will be taken by the main Board, which as you know meets in public.

(4) Requests for comments

You expressed concern about the amount of time stakeholders were given to provide views on the review's scope. I think that the willingness to open up the debate on scope should be seen and acknowledged as an important contribution to running an open and transparent process. In the past, the NHS would simply have determined the scope of a review such as this, with no debate. That is not the approach we have taken; we have invited comments on scope and I believe we will have a better review as a result, but in some ways it makes the job harder. I acknowledge that 10 days was a relatively short time to allow people to respond, and that is why we were happy to agree to requests for an extended deadline, up to 11 October 2013. But in giving stakeholders the maximum possible amount of time to respond (from 27 September to 11 October 2013), we inevitably allowed less time for the analysis of their responses before submission to the Clinical Advisory Panel (CAP). This meant that the paper on scope which CAP considered was not completed or published until just before the meeting, which gave Panel members less time to consider the paper, and which could also have been cause for complaint from stakeholders. This illustrates the trade-offs that have to be made at every step of this process. There is no right answer. NHS England's Board has an ambition for an implementable solution within a year, because of the acknowledged vulnerability of the service arising from continual review, and the need to deliver rapid improvements for patients. Against this, the only way to develop a lasting solution will be by meaningfully engaging stakeholders, which takes time. We will not always get the balance right but we are doing our best.

Despite the relatively tight timescale, we received over 40 responses which were very helpful to the Clinical Advisory Panel in considering its recommendations.

(5) Engagement with Health Overview and Scrutiny bodies

I note the points you have raised, most of which are addressed elsewhere in this letter. I am sorry that you doubt my integrity. I will continue to do my best to run the process as fairly, openly and honestly as I can. The information I presented to JHOSC on 13 September 2013 and the answers I provided – about the scope of the review and numerous other matters - were given in good faith. There was no intention to mislead or to manipulate the process, and I do not think any of the points you make in your letter of 11 October 2013 prove otherwise.

Comments on the reports/papers considered by the Task and Finish Group

Item 2 - Notes of meeting of Board CHD sub group – 29 July 2013

You asked about *A Call to Action* - this describes the context within which the NHS is working and is NHS England's means of building a common understanding about the need to renew our vision of the health and care service. It describes the challenges of the future and gives people an opportunity to

contribute their thinking on how the values that underpin the health service can be maintained in the face of future pressures as well as ideas and potential solutions for the future. It asks, for example, 'how can we improve the quality of NHS care?' and 'how we can we maintain financial sustainability?' Naturally NHS England wants to ensure that there is strategic coherence between its programmes.

The 'specialised commissioning approach' is the way in which NHS England undertakes its direct commissioning responsibilities for specialised services. The intention in referring to this is to affirm that the way in which congenital heart services will be commissioned will be congruent with the usual specialised commissioning operating model - more information is available here: http://www.england.nhs.uk/wp-content/uploads/2012/11/op-model.pdf. This is assured through the presence of the Director of Commissioning (Corporate) on the review's Programme Board, and the National Clinical Director of Specialised Services, on both the Programme Board and the clinical advisory panel.

Item 4 - Terms of reference

Your view - that the outcomes of the judicial review and Independent Reconfiguration Panel should be explicitly referenced in the review's documentation – has been noted. The absence of explicit reference should not be taken to imply that our review is not cognisant of the recommendations of these two reviews. Rather, their recommendations are reflected in the substance of our approach. When our review is complete we will need to be able to describe how we have addressed the findings of the IRP and judicial review. But we are under no obligation to incorporate them now into our documentation or to "provide a full response to the IRP report". The IRP report was, of course, addressed to the Secretary of State and not to NHS England, and his response was, effectively, the statement he made to Parliament on 12 June 2013.

You are concerned that "the draft document makes reference to Phase 3 of the review …. without any reference to Phases 1 and 2 and what these might consist of.". The three phases are those described in the July Board paper (available here: http://www.england.nhs.uk/wp-content/uploads/2013/07/180713-item13.pdf) which set out a high level programme plan and indicative timetable. You were present at the Board meeting in London on 18 July 2013 when this paper was considered and discussed in public.

There is a specific reference to 'the end of Phase 3' because at that point the Task and Finish Group will be required to make recommendations to the Board on the actions to be taken as a result of the review, in particular decisions affecting the commissioning and delivery of congenital heart disease services. The Task and Finish Group is then also expected to provide a recommendation to the Board in respect of ongoing governance arrangements in light of any decisions made and plans for implementation.

You requested a copy of the "procedural rules document" as referred to in the Terms of Reference including details of its status / official standing, where and when it was agreed and where it is publically available. I will respond to this point in a separate communication to you.

Item 5 - Scope and interdependencies

The JHOSC's comments on the proposed scope and interdependencies of the review have been noted and were taken into account by the Clinical Advisory Panel in making its recommendations.

Item 6 - Proposed governance and decision-making arrangements

All substantive information about the review has been and will continue to be published. This will, in due course, include the terms of reference for the engagement groups listed. These have not yet been published because they have not yet been written. The lists of organisations invited to participate in these groups have been published through my blog as have planned meeting dates. Papers for these and the review's governance and advisory groups will continue to be published in accordance with our publication scheme. We have attempted to be exhaustive in publishing everything of any relevance to the review, but if you manage to spot an omission please let us know and we will rectify it.

The facility for the Clinical Advisory Panel to discuss issues electronically or meet virtually recognises that it will not always be possible for its work to be confined to scheduled physical meetings. I am happy to provide an assurance that the advice of the Clinical Advisory Panel will be made publicly available.

I have provided a full response to the Children's Heart Surgery Fund on the issues they raised. It would not be appropriate for me to share that correspondence solely with a single third party. That would not be in line with our desire to ensure that all stakeholders are treated in a fair and even handed way. As soon as the facility exists to do so, this and other correspondence will be published on our website as set out in our publication scheme.

NHS England will continue to support all scrutiny committees in the discharge of their statutory functions. We have set out our intention to convene a meeting with representatives from local government to further discuss appropriate engagement with the whole of local government including scrutiny.

Item 7 - Proposed stakeholder participation and engagement arrangements

We have noted your comments.

Item 8 - Developing the proposition

The draft minutes of the Task and Finish Group held on 30 September 2013 have been published, and all minutes of all this group and the programme board and clinical advisory panel will continue to be published in accordance with our publication schedule.

The JHOSC's views on factors likely to influence surgical outcomes are noted.

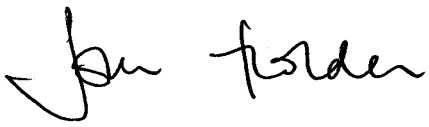
Item 9 - Highlight Report

Future meeting dates will be published as soon as they are confirmed. The JHOSC is not alone in wishing that more information on meeting dates was available at an earlier date, but the absence of this information is simply a reflection of the difficulty of establishing a large number of meetings and the need to work with a number of people with very congested diaries.

In summary

I am sorry that the JHOSC considers that the new CHD review's approach to engagement "feels like … a top-down process". That is certainly not our intention and we are working very hard to run a fair, robust, open and transparent process. We know that the success of the review depends on it, and that the review will fail if we cannot persuade stakeholders that this is the case. I hope that we can now all move on from the antipathy and scepticism linked to the previous process, and work together to give the new review the best prospect of success. I want the JHOSC to be able to give an assurance to the people of Yorkshire and the Humber that they can have confidence in the review and in its outcomes. Unless we can all find a way to change the prevailing dynamic, the review will be weakened, perhaps fatally. I would welcome your thoughts on how we can change the nature of the relationship, in the interests of people with congenital heart disease who are depending on us to improve their care.

Yours sincerely



John Holden
Director of System Policy