Leeds
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Your ref
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Date 27 August 2013

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Sent by e-mail only

Dear John,

Children's Heart Surgery - Freedom of Information

Thank you for your letter dated 21 August 2013. In the meantime there has been a significant additional disclosure from NHS England on 22 August of all the emails sent and received by Sir Bruce Keogh around the temporary closure of the Leeds Children's Heart Unit in April this year. I shall therefore try to deal with all the outstanding FoI issues in one letter.

1) I realise that you inherited these problems from the National Specialised Commissioning Team and that you are doing your best to resolve them within corporate guidelines. None of my criticism applies to you personally, but I do feel that NSCT were the author of their own misfortunes. Had they organised things rather better we would not be having this discussion today. In particular, if they had actually followed the provisions of the Public Bodies Admission to Meetings Act (which applied to much of their business) and if they had followed the Guidance from ICO and established an effective Publication Scheme, then many of these questions would not be necessary. Most of the information that I am seeking would have been automatically published by any local authority on its website, without anybody needing to ask for it. Where it was necessary to ask a question, most would have been asked years ago by my predecessors rather than me, and the whole issue would have been resolved long before we came to the present impasse.

2) I also feel that NSCT have compounded their difficulties by not answering my questions immediately, but waiting until their organisation had been broken up. This was bound to make retrieval more complex. My first question in the present series was emailed on 6 January 2013, and was originally very easy to answer if people looked in the right place. Most of it could have been resolved by providing a directory listing from the NSCT web server, an action requiring only seconds, and what I originally envisaged they would do. My reason for asking the question was that I noticed that many files were loaded in large bundles, **sometimes years after the event**. It was easy to establish where they came from, by asking the colleagues who did it from a nearby desk. NHS England claims that my question would now take more than 18 hours to answer, well, whose fault is that?

3) Nevertheless, I still believe that it is possible to respond to all my questions (which are currently grouped into three batches) in less than 18 hours per batch, as the law requires. The 18 hour limit does not include “redaction time”, which should not be necessary in any event. I have always envisaged electronic searches of email servers and network drives as your principal search mechanism, and only occasionally should it be necessary to interrogate a personal computer. My IT colleagues tell me that “e-discovery” software is widely used for legal, forensic and safeguarding investigations, that some NHS staff have experience of running these searches, and that skilfully designed queries allow a large proportion of relevant documents to be located in a single pass.

4) That is my current “fallback position” – a competent person could complete the job in less than 18 hours per batch, using electronic methods. NHS England might not find every last record, but they would find most of them, and I would be content. If NHS England wishes to dispute this time estimate then we can call on ICO and the House of Commons Public Administration Committee to adjudicate.

5) Nevertheless there is also an obligation on us all to be helpful and to cooperate and that is something I would much prefer to do. Although the FoI legislation completely ignores the participants’ motives, if we aim to negotiate an efficient solution then it is sensible to consider what we are trying to achieve. Most of the people that I strive to represent are driven fundamentally by a desire for truth and fair play. They do not believe everything that they are told. They want to test things, to identify the most reliable elements. They are exercising their right to receive unbiased clinical advice under the NHS Constitution. They are less concerned about tracing every last document than they are in inspecting a fair and representative sample of these exchanges: not some artificial selection that has been “weeded” to alter the meaning, or to remove potentially embarrassing material.

6) For most parts of the UK, the “Safe and Sustainable” Review of Children’s Heart Surgery resulted in little change, but people in Yorkshire and the Humber, Leicester and (more recently) Northern Ireland were warned of serious flaws in the service that they received. They were told that these flaws could only be mended by transporting seriously ill children for long distances, and treating them far from their homes, while simultaneously depriving their locality of emergency cover and provision for adults. Very few of us were convinced this was true. Campaigners from Yorkshire and the Humber challenged the arbitrary rules which Safe and Sustainable often applied in irrational and inconsistent ways. Noting that the “successful” heart units had more representatives on the various advisory committees, local residents asked whether the unsatisfactory solution proposed for Yorkshire and the Humber reflected the almost total exclusion of Yorkshire and Humber representatives from the analysis and decision-making process.

7) You raise the question of electronic versus paper disclosure. My problems with paper are the bulk and inconvenience, and concealing all the metadata from the files. The lack of “authentic-looking” metadata makes me doubt the reliability of some records downloaded from the NSCT / Safe and Sustainable web server. NSCT papers released at Christmas could not be checked. I want to assist disclosure, but NHS England should reflect on its future credibility if it insists on supplying paper material which cannot be authenticated.

8) We all agree on the need to minimise the amount of work involved, and to avoid perverse search algorithms when there are easier ways to establish the truth. Unfortunately there appear to be parallel attempts by NHS England to steer us away from difficult areas, and to focus attention on those aspects that are less likely to yield interesting results. There are *three problem areas* where disclosure has so far been inadequate. It makes sense to deploy the available resources to address these issues first.

9) *Problem area one:* **the public consultation materials**. The basic issue is that the NHS has no objective scientific evidence to support the primary thesis that fewer, larger units would improve clinical outcomes in the UK. When I recently suggested that such analysis should be included in the HQIP stratified risk research programme, this was the only one of my suggestions to be rejected. It appears that key people realised what unsatisfactory and unwelcome answers they were likely to get. The public consultation materials did not adequately reflect this fundamental uncertainty at the core of the reorganisation proposals and there appears to have been a corporate attempt to mislead the public.

10) The NSCT / Safe and Sustainable website can be analysed for bias. When I started work as a Health Scrutiny Chair, I noticed that numerous documents had been added to this server at a very late stage, many of them with recent creation dates. There seemed to have been an attempt to re-write history, and construct the appearance of a robust public consultation process which had not actually taken place. In order to test my hypothesis, I submitted an FoI request on 6 January 2013 for a comprehensive survey of the web file creation dates. From the labyrinthine attempts to avoid answering this simple question, anyone might reasonably conclude that my hypothesis has proved correct. I will give you another opportunity to prove me wrong: please send me a forensic image of the server-side directories for the NSCT / Safe and Sustainable website, *taking care to preserve the original file upload and creation dates.* It will take NHS technicians only a few minutes to do this. The entire website, including client-side and server-side scripts and documents for download, should fit onto a CD [or possibly a DVD]. We will see what it shows.

11) *Problem area two:* **the professional advisory groups**. Not only are there serious problems with the unrepresentative nature of the various advisory groups, but they also appear to have conducted much of their business in private, without properly recording what they had done. The public in Yorkshire and the Humber have long suspected that this might be happening, but they had no means to discover what was going on. It seems that extensive discussions were conducted by email outside the formal meetings, and this is where some of the most important decisions effectively took place.

12) On 15 March 2013 I submitted an FoI request for access to this email correspondence. I suspect that this overlaps to some extent with my earlier requests for disclosure of the recruitment processes and the correspondence with the Royal Colleges and professional bodies, however my final request gets closer to the root of the problem. We can see, for example, our professional advisors engaging with the really difficult issues of treating very young, seriously ill children a long way from home. This is a problem for the entire family, including parents, grandparents and school-age siblings, not just the affected child. It is difficult to see how tiny babies from parts of Yorkshire and the Humber could be taken to remote surgical centres in time. None of these doubts were adequately disclosed to the Judicial Review, or to the public, who were denied any opportunity to comment.

13) There are some very significant people omitted from the lists in your letter, and these are the members of the various professional groups who advised the JCPCT: the Steering Committee, the Standards Working Group (largely a sub-set of the Steering Committee), the Kennedy Panel, the NCS Expert Panel and the Health Impact Assessment Working Group. I have also requested details of how these expert panels were constituted and recruited, and whether any of their terms of reference have changed. The reason for this is explained in paragraphs 2 and 10 above – many of the documents released by “Safe and Sustainable” have surprisingly recent creation dates, suggesting that they might be modern afterthoughts or updated derivatives of the original versions.

14) It is not necessary to search for every name on these advisory panels, because for many discussions the participants hit “reply to all” and copied in the entire group. In addition, the chairs of the various advisory groups must know how their own groups were constituted, how they and the other members were recruited, and whether any of their terms of reference have been changed. I have listed some key members below:

Steering committee: Dr Patricia Hamilton (Chair), Ms Deborah Evans, Mr Chris Reed, Mr William Brawn, Professor Shakeel Qureshi, Ms Catherine Griffiths, Professor Martin Elliott, Dr Sally Nelson, Dr Ian Jenkins, Dr Graham Stuart, Ms Maria von Hildebrand, Ms Anne Keatley-Clarke, Dr Susan Hobbins, Dr Catherine Grebenik, Dr Tony Salmon and Ms Fiona Smith.

NCS Expert Panel: Dr Patricia Hamilton (Chair), Dr Martin Ashton-Key, Professor James Neuberger, Dr Kenneth Palmer and Professor John Wallwork

Kennedy Panel: Professor Sir Ian Kennedy (Chair), Ms Ros(alind) Banks (KPMG), Ms Maria von Hildebrand, Mr James Monro, Ms Julia Stallibrass, Dr Michael Godman, Dr David Mabin, Dr Neil Morton, and Ms Sally Ramsay.

Health Impact Assessment Steering Group: Professor Michael Simmonds (Chair), Ms Deborah Evans, Ms Sophia Christie and Ms Stephanie Newman.

15) The key clinical advisors <u>named</u> by NSCT in relation to Safe & Sustainable were (in approximate order of importance) Mr Leslie Hamilton, Dr Martin Ashton-Key, Professor Roger Boyle and Dr Shiela Shribman. Three other NSCT clinical advisors were also involved to a lesser extent: Dr Edmund Jessop, Dr Bill Gutteridge and Dr Tom Kenny.

16) To these I would add Sir Neil McKay as chair of the JCPCT. There were numerous other participants who appear to have played a much smaller part in the proceedings. Many names on my list do not appear on your list, although you may be intending to bring them in as Royal College representatives. If NHS England confines its searches to your present list of names then it will miss several important documents. It should not be necessary to search separately for every individual name. There is considerable overlap and a single well-crafted SQL inquiry (or its equivalent) would reveal most of the required information.

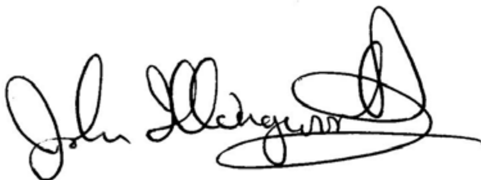
17) *Problem area three:* **the attempts to denigrate Leeds**. In Yorkshire people suspect that Leeds was identified for closure from an early stage in the Safe and Sustainable process, and this objective has been pursued, with varying degrees of subtlety, over the last four years. It culminated in the occasionally farcical events in April this year. Three people sought disclosure of the relevant email correspondence with Sir Bruce Keogh, but the documents that have recently been released fall a long way short of what is required. NHS England recently made great play upon transparency, particularly in relation to “failing” trusts, but senior staff should remember that transparency begins at home.

18) There are too many redactions in the ‘Keogh’ emails. We agree that innocent bystanders should not be caught in the cross-fire, and that junior staff are entitled to some privacy at work, but we also feel that people who volunteer to serve on national panels (who often maintain their own public-facing web sites, Linked-in, Facebook and Twitter accounts) are hardly the wilting violets whose names cannot be mentioned in public. Several continue to play significant roles in public life. Many of these names have already been published by NSCT / Safe and Sustainable, both on official NHS websites and in publicly distributed paper documents. Significant personal details were frequently included. Where this has happened there is no convincing reason to redact the authors’ and recipients’ names in the recent NHS email disclosures.

19) In addition to the “disputed” FoI inquiries, where NHS England aggregated all my requests over extended periods, I have also pointed out to the Information Commissioner that there are several long-standing requests that remain unanswered from outside the aggregation periods. Foremost among these is my request for an accurate version of Table 4.2 from the Health Impact Assessment showing the redistribution of patients under the various reorganisation options. We all agree that the published version doesn’t add up correctly and must be seriously in error. Implicit in my request is a requirement for accurate data on where most patients live, and which hospitals they currently attend. This basic information will be useful in any event, not least for performing accurate Health Impact Assessments, pioneered by Dr Mark Darowski in Leeds, which are based on real patients undertaking real journeys. It is amazing that we have reached this point without knowing the answers to such very basic questions. While we are engaged with this, a member of the public has pointed me to some apparently serious problems properly counting balloon septostomies and other neonatal procedures. He questions whether NHS England has accurate data for the youngest and sickest babies who are most at risk from long-distance emergency travel to a remote surgical centre. Please could you help with this?

20) Up to this point I have discussed the FoI inquiries, but Health Scrutiny Boards also have additional legal rights to examine NHS material that goes beyond the public entitlement. If NHS England insists that some material remains confidential then the Scrutiny Board can meet in private to consider it. Please will you therefore send me in confidence a complete non-redacted version of the recent ‘Keogh’ emails, specifically for the use of both Health Scrutiny Boards, and similar non-redacted versions of any subsequent FoI disclosures so that we can consider them in private, if required?

Yours sincerely



Councillor John Illingworth
Chair, Joint Health Overview and Scrutiny Committee, Yorkshire and the Humber

Cc: Yorkshire & Humberside Councillors and MPs.