

Report of the Head of Scrutiny and Member Development

Report to the Joint Health Overview and Scrutiny Committee (Yorkshire and the Humber)

Date: 10 April 2013

Subject: Review of Children’s Congenital Heart Services in England: Judicial Review outcome and implications

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Not applicable Appendix number: Not applicable	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

- Following the review of Children’s Congenital Cardiac Services in England, at its meeting on 4 July 2012, the Joint Committee of Primary Care Trusts (JCPCT) agreed consultation Option B for implementation. The JCPCT also agreed the designation of congenital heart networks led by the following surgical centres:
 - Newcastle upon Tyne Hospitals NHS Foundation Trust
 - Alder Hey Children’s Hospital NHS Foundation Trust
 - Birmingham Children’s Hospital NHS Foundation Trust
 - University Hospitals of Bristol NHS Foundation Trust
 - Southampton University Hospitals NHS Foundation Trust
 - Great Ormond Street Hospital for Children NHS Foundation Trust
 - Guy’s and St. Thomas’ NHS Foundation Trust
- At its meeting on 24 July 2012, the Joint Health Overview and Scrutiny Committee (Yorkshire and the Humber) (the JHOSC) agreed to refer the matter to the Secretary of State for Health and submitted its final report in this regard in November 2012 (having provided an earlier report in October 2011).
- At that time, the Secretary of State for Health had asked the Independent Reconfiguration Panel (IRP) to undertake a review of the JCPCT’s decision and provide its advice by 28 March 2013.
- Quite separate to the work of the JHOSC, the Leeds based organisation, Save Our Surgery Ltd. (SOS Ltd.), sought to bring forward a Judicial Review of the JCPCT’s

decision. In summary, SOS Ltd. challenged the JCPCT's decision on the following grounds:

- That the scores produced by Sir Ian Kennedy's Independent Expert Panel should have been made available during the public consultation (March 2011 – July 2011) to allow consultees to provide full informed responses.
- Given the significance attached to the scores produced by Sir Ian Kennedy's Independent Expert Panel, by the JCPCT meeting, the JHOSC agreed to consider regular updates and issues associated with the implementation phase of the review.

5. The High Court hearing took place over the course of three days (11, 12 and 18 February 2013). The full judgement was passed down on 7 March 2013 and found in favour of SOS Ltd. on both claims. The full judgement is attached at Appendix 1 for information.
6. On 15 March 2013, the Secretary of State for Health wrote to the Chair of the IRP, extending the deadline for its report to 30 April 2013. A copy of that letter is attached at Appendix 2. In that letter, the Secretary of State outlined that:

'Extending the deadline will allow the Panel and other to take account of the Judge's decision on redress on 27 March 2013 and to consider what implications this may have in moving forward.'

7. On 27 March 2013, a further 'remedy hearing' took place to consider the redress in response to the previous judgement. At the time of compiling this report, the outcome redress outcome had not been published. However, it is understood that on the basis of fundamental unfairness on the quality scoring, decisions 15-17 (as outlined in recommendations 15-17 of the decision making business case) were quashed. These are detailed below:

Recommendation 15:

Agree the proposed scoring of options against the weighted criteria.

Recommendation 16:

Option B is consistently the highest scored option when sensitivity tests are applied

Recommendation 17:

Agree option B for implementation and the designation of congenital heart networks led by the following surgical centres:

- Newcastle upon Tyne Hospitals NHS Foundation Trust
- Alder Hey Children's Hospital NHS Foundation Trust
- Birmingham Children's Hospital NHS Foundation Trust
- University Hospitals of Bristol NHS Foundation Trust
- Southampton University Hospitals NHS Foundation Trust
- Two surgical units in London

8. It is understood that it was also held that any future decision would need review and/or reflect any new evidence.
9. The full implications/ ramifications of this redress are not yet known, however it is intended that appropriate representatives attend the meeting to allow the JHOSC to

consider such matter in more detail. Representatives from the following bodies have been invited to attend the meet:

- The NHS National Commissioning Board (NHS England)
- Save Our Surgery Ltd.
- Leeds Teaching Hospitals NHS Trust

Recommendations

10. That the JHOSC considers the information presented and determines any appropriate actions and/or scrutiny activity at this stage including, but not limited to, any further submission it may wish to make to the Independent Reconfiguration Panel.

Background documents¹

11. None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.