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21 September 2012

Dear Secretary of State

REFERRAL TO SECRETARY OF STATE FOR HEALTH
The *Safe and Sustainable* review of children's congenital heart services
Health Scrutiny Committee for Lincolnshire
Leicester, Leicestershire and Rutland Joint Health and Overview Scrutiny Committee

Thank you for forwarding copies of the referral letters from Cllr Christine Talbot, Chair of the Health Scrutiny Committee for Lincolnshire (HSC), and from Michael Cooke, Chairman and Ruth Camomile, Vice Chairman of the Leicester, Leicestershire and Rutland Joint Health and Overview Scrutiny Committee (LLR Scrutiny Committee) The National Specialised Commissioning Team (NSCT) provided initial assessment information. A list of all the documents received 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. **The Panel concludes that these referrals are suitable for full review.**

Background

Following a higher than expected number of deaths of children receiving heart surgery between 1984 and 1995, the Bristol Royal Infirmary Inquiry report (the Kennedy report) was published in 2001 recommending that specialist expertise be concentrated in fewer surgical units in England. Further consideration by the Department of Health (DH) and relevant medical bodies followed until, in May 2008, the NSCT was asked to undertake a review with a view to reconfiguring surgical services for children with congenital heart disease. Taking into consideration concerns that surgeons and resources may be spread too thinly across the centres, the review considered whether expertise would be better concentrated on fewer sites than the current eleven in England.

The *Safe and Sustainable* team was established to manage the review process on behalf of the ten Specialised Commissioning Groups (SCG) and their local primary care trusts (PCT). In December 2008, an expert clinical Steering Group was formed to direct the process of developing a report to the NHS Management Board and DH Ministers.



Draft quality standards, against which surgical centres would be assessed, were published in September 2009 and sent directly to all health overview and scrutiny committees (HOSC) and other organisations for comment. The final version of the standards was published in March 2010. Also in March 2010, following a number of post- surgical deaths, surgery at the paediatric cardiac unit at the John Radcliffe Hospital, Oxford, was suspended.

A process of self-assessment by surgical centres commenced in April 2010. In the same month, the *Safe and Sustainable* team published *Children's Heart Surgery – the Need for Change*. Later in April 2010, the NHS Operations Board recommended to DH Ministers that PCTs delegate their consultation responsibilities and decision-making powers to a joint committee of PCTs (JCPCT). The Secretary of State for Health approved the establishment of the JCPCT in June 2010. The revised NHS Operating Framework confirmed that the *Safe and Sustainable* review was expected to deliver recommendations for consultation in the autumn of 2010.

Between May and June 2010, an expert panel, chaired by Professor Sir Ian Kennedy, visited each surgical centre to meet staff and families and to assess each centre's ability to comply with the standards. Pre-consultation engagement events commenced in June 2010. In September 2010, the case for change was supported by the National Clinical Advisory Team and proposed processes for consultation were endorsed by OGC Gateway review. The JCPCT met for the first time as a formally constituted body in October 2010. Briefings for HOSCs by SCG representatives began the following month.

In August 2010, a review conducted by South Central strategic health authority (SHA) recommended that the paediatric cardiac surgical service at the John Radcliffe Hospital, Oxford, should remain suspended pending the outcome of the *Safe and Sustainable* review.

In November 2010, on behalf of the JCPCT, a panel of experts chaired by Mr James Pollock, consultant congenital cardiac surgeon, investigated historical deaths at three surgical units in Leeds, Leicester and London (the Evelina Children's Hospital). The outcome of this investigation was presented to the Kennedy panel to consider whether it was necessary to revise its assessment of any of the three centres. The Kennedy panel found no cause to revise its assessment and the panel's report was published in December 2010.

Options for consultation were agreed by the JCPCT in February 2011 and a four-month public consultation began in March 2011. The consultation proposed concentrating clinical expertise on fewer sites by reducing the number of surgical centres from eleven to either six or seven. A judicial review of the proposal to reduce the number of surgical centres in London from three to two centres was initiated by the Royal Brompton & Harefield NHS Foundation Trust.

A briefing for HOSCs, informing them of the forthcoming launch of the consultation, had been issued in February 2011. Earlier communications to HOSCs, notably a Centre for Public Scrutiny briefing in April 2010, had alerted them to the intention to conduct a formal

consultation and encouraged them to consider the need for a joint committee. In recognition of changes to membership resulting from local elections in May 2011, the deadline for receipt of consultation responses from HOSCs was extended to 5 October 2011. In the event, no national joint committee was formed and arrangements for scrutiny varied around the country with a mixture of individual and area and regional joint committees ultimately responding to the consultation.

Representatives of East Midlands SCG provided a presentation on the *Safe and Sustainable* review to a meeting of the LLR Scrutiny Committee on 21 March 2011 and Lincolnshire HSC in April 2011 and to two Deliberative Stakeholder Events in Lincoln and Sleaford in May 2011.

On 22 June 2011, it was announced that an independent panel of national and international experts, chaired by Adrian Pollitt, had been appointed to advise the JCPCT on the potential impact of the children's congenital heart proposals on other services at the Royal Brompton Hospital.

The formal public consultation closed on 1 July 2011 (except for HOSCs). An independent analysis of the consultation, commissioned from Ipsos MORI, was published in August 2011. That analysis acknowledged that the impact of the proposed changes on other services had been raised as an issue during consultation.

During August 2011, representatives of East Midlands SCG provided briefings for East Midlands HOSCs about responses to the public consultation and on a draft final Health Impact Assessment. Further briefings were held in the run-up to the JCPCT decision-making meeting in July 2012.

In September 2011, the *Safe and Sustainable* Steering Group considered clinical issues raised during the consultation and advised the JCPCT to agree the quality standards and model of care as set out in the consultation document. A supplementary report in response to issues raised during the consultation was published by the Kennedy panel in October 2011.

The Report of the Independent Panel on the Relationship of Interdependencies at the Royal Brompton Hospital (the "*Pollitt Report*") was published on 15 September 2011. It stated that "... although there would be an impact on the range of activity at the RBH the panel has concluded that paediatric respiratory services would remain viable at the RBH site in the absence of an on-site PICU".

The formal consultation with HOSCs concluded on 5 October 2011. Also in that month, at the JCPCT's request, the Kennedy panel published a supplementary report in response to issues raised during consultation. The panel clarified that University Hospital of Leicester NHS Trust did not meet the requirement for the co-location of core paediatric services.

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The Yorkshire and Humber Joint Health Overview and Scrutiny Committee (Joint HOSC) referred the *Safe and Sustainable* review of children's congenital cardiac services to the Secretary of State on 14 October 2011. The referral was particularly concerned with services currently provided at Leeds General Infirmary and the potential effects of the proposals on patients and residents in Yorkshire and the Humber.

On 7 November 2011, the judgement was delivered in the judicial review brought by the Royal Brompton & Harefield NHS Foundation Trust. The judge, whilst rejecting a number of the arguments put forward, found against the JCPCT on a matter of process. An appeal against the judgement was lodged.

Later in November 2011, the JCPCT invited the 11 centres providing children's congenital heart services to submit new evidence demonstrating their compliance with the national quality standards relating to innovation and research.

The IRP submitted its initial assessment advice on the referral by the Yorkshire and Humber Joint HOSC on 13 January 2012. As well as commenting on the consultation process and on communication and relationships between the Joint HOSC and the JCPCT, the Panel offered advice in relation to a number of outstanding requests for information sought by the Joint HOSC. The Secretary of State announced on 23 February 2012 that he had accepted the Panel's advice in full.

The Royal Borough of Kensington and Chelsea Health Environmental Health and Adult Social Care (HEHASC) Scrutiny Committee referred the *Safe and Sustainable* review of children's congenital cardiac services to the Secretary of State on 27 March 2011. The referral was particularly concerned with services currently provided at the Royal Brompton Hospital and the potential effects of the proposals on patients and residents in west London and south east England.

On 19 April 2012, the Court of Appeal announced its decision, dismissing the grounds raised by the Royal Brompton & Harefield NHS Foundation Trust and finding the public consultation to be lawful and proper.

The IRP submitted its initial assessment advice on the referral by the Kensington and Chelsea HEHASC Scrutiny Committee 23 May 2012. The Panel offered comments on the JCPCT's efforts to address concerns raised by respondents to the consultation process that would inform the JCPCT ahead of its forthcoming decision-making meeting. The Secretary of State announced on 15 June 2012 that he had accepted the Panel's advice in full.

In line with the IRP's initial assessment advice on the referrals by Yorkshire and Humber Joint HOSC and by Kensington and Chelsea HEHASC Scrutiny Committee, further work was undertaken and completed to inform the JCPCT before its decision-making meeting.

The JCPCT held its decision-making meeting on 4 July 2012 and agreed that seven managed clinical networks should be established across England (and serving Wales). Each network would be led by a surgical centre - based in the Freeman Hospital Newcastle (north), Alder Hey Children's Hospital Liverpool (north west and north Wales), Birmingham Children's Hospital (midlands), Bristol Royal Hospital for Children (south west and south Wales), Southampton General Hospital (south central) and Great Ormond Street Hospital for Children and Evelina Children's Hospital (London, East Anglia and the south east).

On 13 July 2012, the Secretary of State for Health, having accepted the advice of the Advisory Group for National Specialised Services, designated Birmingham Children's Hospital as a nationally commissioned provider of ExtraCorporeal Membrane Oxygenation (ECMO) services for children with respiratory failure – in place of the existing unit at Glenfield Hospital, Leicester.

The Lincolnshire HSC referred the *Safe and Sustainable* review of children's congenital cardiac services to the Secretary of State on 27 July 2012. The referral was particularly concerned with services currently provided at Glenfield Hospital, Leicester and the potential effects of the proposals on patients and residents in Lincolnshire.

The LLR Scrutiny Committee referred the *Safe and Sustainable* review of children's congenital cardiac services to the Secretary of State on 7 September 2012. The referral was particularly concerned with services currently provided at Glenfield Hospital, Leicester and the potential effects of the proposals on patients and residents in Leicester, Leicestershire and Rutland.

Basis for referral

The referral letter of 27 July 2012 from Cllr Talbot, Chair of the Lincolnshire HSC states that:

“This referral is made pursuant to Regulation 4(7) of the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, which means that the proposal is not in the interests of the health service in Lincolnshire.

The referral is made with the following supporting grounds:-

- (1) the impact of the closure of the Glenfield Children's Heart Surgery Unit on Lincolnshire families, in terms of clinical safety and accessibility;*
- (2) the impact of the removal of the ExtraCorporeal Membrane Oxygenation equipment from Glenfield to the Birmingham Children's Hospital;*

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(3) the decision making process of the Joint Committee of Primary Care Trusts.”

The documentation supplied with the referral letter of 7 September 2012 from Michael Cooke, Chairman and Ruth Camomile, Vice Chairman of the LLR Scrutiny Committee states that:

“This referral is made pursuant to regulation 4(7) of the Local Authority (Overview and Scrutiny Health Scrutiny Functions) Regulations 2002.

The LLR Scrutiny Committee supports the principles of the Safe and Sustainable Review but is concerned at the outcome, believing that the decision of the JCPCT is not in the best interest of the local health service and the population it serves. The grounds for challenge are summarised below.

- (a) The JCPCT prediction of demand and capacity at Birmingham Children’s Hospital;*
- (b) The impact of moving ECMO services and increased mortality;*
- (c) Impact on paediatric intensive care capacity in the Midlands*
- (d) Impact on medical research at University Hospitals of Leicester NHS Trust and Leicester University;*
- (e) Accessibility of services;*
- (f) The decision-making process of the JCPCT.”*

IRP view

With regard to the referrals by the Lincolnshire HSC and LLR Scrutiny Committee, the Panel notes that:

- The proposals have aroused considerable national interest
- These are the third and fourth referrals to date relating to the *Safe and Sustainable* proposals for children’s congenital cardiac services
- It is understood that further referrals are anticipated
- Common themes have been raised in the referrals so far received, including
 - the impact on patients and residents in the localities concerned, notably travel times and use of post code analysis to assess the likely impact
 - the impact on other services provided by the hospitals affected in those localities, including possible impact on staff retention
 - the consultation and decision-making process adopted by the JCPCT
 - the impact on medical research

Conclusion

The IRP offers its advice on a case-by-case basis taking account of the specific circumstances and issues of each referral.

The *Safe and Sustainable* proposals for children’s congenital heart services have already been the subject of two referrals to the Secretary of State for Health. The IRP provided initial assessment advice on referrals from the Yorkshire and Humber Joint HOSC on 13

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January 2012 and from the Kensington and Chelsea Health HEHASC Scrutiny Committee on 23 May 2012. Both referrals were made prior to final decisions being made by the JCPCT. In both cases, the Panel offered advice designed to enable the consultation process to be completed prior to the JCPCT's decision-making meeting to be held on 4 July 2012.

In addition to the referrals referenced above, and these referrals from the Lincolnshire HSC and the LLR Scrutiny Committee, the Panel is aware that the Yorkshire and Humber Joint HOSC has written to the Secretary of State advising of its intention to refer the proposals again following the JCPCT's decision of 4 July 2012. The Panel has been advised that referrals from other HOSCs are also expected.

Further, the Panel understands that a letter before action has been issued to the JCPCT on behalf of a Leeds based charity prior to making an application for a judicial review of the JCPCT's decision of 4 July 2012. The JCPCT's concern, that further legal proceedings may lead to delay in making changes to services, is noted.

Clearly, these developments mean that there is a high risk of uncertainty for the services concerned. Alongside the considerable public interest in this, the first national consultation to have been conducted since the introduction of health scrutiny by local authorities, the IRP considers that the issues raised merit further consideration. The Panel believes that a full review would be appropriate and stands ready to undertake such a review if requested.

Yours sincerely



Lord Ribeiro CBE
IRP Chairman

APPENDIX ONE

LIST OF DOCUMENTS RECEIVED

Health Scrutiny Committee for Lincolnshire

- 1 Letter of referral from Cllr Talbot, Chair, Health Scrutiny Committee for Lincolnshire to Secretary of State for Health, 27 July 2012

Attachment:

- 2 Document in support of submission produced by Health Scrutiny Committee for Lincolnshire

Leicester, Leicestershire and Rutland Joint Health and Overview Scrutiny Committee

- 1 Letter of referral from Cllr Cooke, Chairman, and Cllr Camomile, Vice-Chairman, Leicester, Leicestershire and Rutland Joint Health and Overview Scrutiny Committee to Secretary of State for Health, 7 September 2012

Attachment:

- 2 Document setting out evidence gathered by LLR Scrutiny Committee in support of referral to the Secretary of State for Health, with supporting appendices:
- 3 Projected demand
- 4 Capacity at Birmingham Children's Hospital
- 5 Effect of the Review on ECMO Provision
- 6 Impact on Paediatric Care Services
- 7 Evidence provided by the University of Leicester
- 8 purpose and Scope of the Review
- 9 Initial letter to the Secretary of State for Health
- 10 Minutes of Leicester City Council's Health and Community Involvement Scrutiny Commission, 26 July 2012
- 11 Minutes of Leicester City Council meeting, 28 June 2012
- 12 Minutes of Leicestershire County Council Cabinet meeting, 23 July 2012
- 13 Report to the University Hospitals of Leicester Trust Board, 26 July 2012
- 14 Leicester LINK email to east Midlands MPs and LINK briefing paper
- 15 Report of Dr Nichani, Consultant paediatric Intensivist, University Hospitals of Leicester
- 16 Report to the University Hospitals of Leicester Trust Board, 30 August 2012
- 17 Responses of east midlands health and overview scrutiny committees
- 18 Minutes of the Leicester, Leicestershire and Rutland Health Overview Scrutiny Committee, 4 September 2012

National Specialised Commissioning Team

- 1 Lincolnshire HSC specific IRP template for providing initial assessment information
- Links and attachments:
- 2 Referral from the Lincolnshire OSC to the Secretary of State for Health, 27 July 2012
 - 3 Response to the consultation from the Lincolnshire OSC (via response form)

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- Response form (for reference)
- 4 Letter from Cllr Mrs Christine Talbot, Chair of the Health Scrutiny Committee for Lincolnshire, 24 May 2012
- 5 Letter from Dr Kevin Harris, Medical Director, University Hospitals of Leicester NHS Trust to Jo Sheehan, Deputy Director, NSCT, 26 October 2012
- 6 Letter from Mr Giles Peek, Director, Paediatric and Adult ECMO programme, Glenfield Hospital, to Teresa Moss, Director, NSCT, 11 June 2012
- 7 Ipsos MORI report of the public consultation, August 2011
- 8 *Safe and Sustainable* Steering Group – membership, 2010
- 9 Decision Making Business Case, Appendix LL – *Safe and Sustainable* Capacity Review, May 2012
- 10 NSCT’s statement on children’s respiratory ECMO
- 11 Statement: ECMO and children’s congenital heart services, 10 July 2012
- 12 *Safe and Sustainable* general IRP template for providing initial assessment information
- Links and attachments:
- 13 Report of the Public Inquiry into children’s heart surgery at the Bristol Royal infirmary 1984-1995: Learning from Bristol, July 2001
- 14 The relation between Volume and Outcome in Paediatric Cardiac Surgery. A Literature Review for the National Specialised Commissioning Group. Henrietta Ewart, Consultant in Public Health Medicine, PHRU, Oxford, September 2009
- 15 Children’s Heart Surgery Centres in England: Comments on Draft Service Specification Standards (Comments received up to 17 February 2010), February 2010
- 16 Letter from Cllr Christopher Buckmaster, Chair, Health Scrutiny Committee, the Royal Borough of Kensington and Chelsea, to Jeremy Glyde, Programme Director, *Safe and Sustainable*, 8 September 2010
- 17 Children’s Heart Surgery in England – A Need for Change, April 2011
- 18 Papers from the JCPCT meeting in public (launch of the consultation), 16 February 2011
- 19 Pre-consultation Business Case, February 2011
- 20 Consultation document, February 2011
- 21 Better care for your heart – a summary (consultation document for young people), March-July 2011
- 22 Consultation document and questionnaire in Welsh, March-July 2011
- 23 Consultation document and questionnaire in minority languages
- 24 Consultation document – improving children’s congenital heart services in London, March-July 2011
- 25 National Clinical Advisory Team (NCAT) report, September 2010
- 26 OGC Gateway Report, September 2010
- 27 NHS London’s approval to launch consultation, 8 February 2011
- 28 NHS London’s assurance report, 8 February 2011
- 29 Health Impact Assessment – Key Emerging Findings, 21 June 2011

- 30 Health Impact Assessment – draft final report (interim report), 5 August 2011
- 31 Ipsos MORI – *Safe and Sustainable* Review of Children’s Congenital Heart Services in England: Report of the public consultation, 24 August 2011
- 32 Report of the Independent Panel on the relationship of interdependencies at the Royal Brompton Hospital (“Pollitt Report”), 15 September 2011
- 33 Report from Sir Ian Kennedy’s independent expert panel to the JCPCT, 17 October 2011
- 34 Testing assumptions for future patient flows and manageable clinical networks for *Safe and Sustainable* (PWC), October 2011
- 35 Report to the JCPCT by Dr Patricia Hamilton CBE, Chair of the *Safe and Sustainable* Steering Group, on behalf of Steering Group members, 17 October 2011
- 36 Judgement – High Court, 7 November 2011
- 37 Report of Sir Ian Kennedy’s Panel in response to the additional evidence submitted in relation to “innovation and research”, 14 February 2012
- 38 Judgement – Court of Appeal, 19 April 2012
- 39 Responses from organisations to an independent report on family travel analysis, 24 April 2012
- 40 *Safe and Sustainable*: Implementation Plan during 2012/13 and Transfer into the NHS Commissioning Board for April 2013, August 2012
- 41 Papers presented at the JCPCT meeting in public, 4 July 2012
- 42 Transcript from the JCPCT’s decision-making meeting in public, 4 July 2012
- 43 Letter from professional associations regarding the JCPCT’s decision on the future configuration of children’s congenital heart services

Other information received

- Information forwarded by Dr Peter Barry, Department of Child Health, Leicester Royal Infirmary:
- 1 Document: Congenital Heart Surgery Review – The clinical case for keeping surgery at Glenfield Hospital, Leicester
 - 2 Letter to Sir Neil McKay CB, Chair Joint Committee of Primary Care Trusts, from Dr Peter Carter, Chief executive and General Secretary, Royal College of Nursing, 7 September 2012
 - 3 Email from Dr W Lynch, Chairman Extracorporeal Life Support Organisation, 17 September 2012
 - 4 Email from Mrs Nicky Morgan, MP for Loughborough, 18 September 2012