

Further Details of the JHOSC Complaint

1. A Joint Health Overview and Scrutiny Committee (JHOSC) provides a statutory mechanism whereby local authorities, acting together, can scrutinise decisions by national health service organisations.
2. JHOSC (Yorkshire & the Humber) was established in response to a national review of paediatric cardiac surgery that started in May 2008. The committee is reviewing a decision by the Joint Committee of Primary Care Trusts (JCPCT) to close the Paediatric Cardiac Surgery Unit at Leeds General Infirmary. JCPCT is managed by the NHS Specialised Commissioning Team (NSCT) and includes representatives from each Strategic Health Authority. JCPCT is attempting to concentrate provision onto fewer sites, and presently intends to close existing units in Leeds, Leicester and the Royal Brompton Hospital in London.
3. Most JCPCT meetings took place in private, although there do not appear to be any convincing reasons for this. The proposals have proved highly contentious, leading to a series of parliamentary questions and debates, and two separate applications for Judicial Review. There have been numerous complaints that JCPCT merely acted as a “rubber stamp” and that the real decisions were taken by various advisory groups which were even less open to scrutiny. Some JHOSC members suspect that some of the JCPCT decisions may have been undermined by faulty arithmetic and personal bias, so the scrutiny committee has good reason to check the original data. Arguments about disclosure have continued for some time and JHOSC (Yorkshire & the Humber) has unsuccessfully sought additional information from JCPCT since the summer of 2011. JCPCT previously undertook to release more information after their final decision was announced, but such disclosure has proved inadequate, making it extremely difficult, if not impossible, for JHOSC (Yorkshire & the Humber) to properly perform its statutory functions.
4. This complaint is about partial disclosure. JHOSC is in any event entitled to see information from NSCT under Regulation 5 of the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002. The required information is inexpensive and easy to identify. None of this information appears to be confidential, and it should **also** be available to the committee and to the public under the terms of the Freedom of Information Act. JCPCT has already released a substantial amount of data (~150MB) either directly to JHOSC or via their website. Unfortunately NSCT appears to have selectively omitted precisely that information that is required for effective scrutiny of the JCPCT decisions.
5. A relevant parliamentary exchange took place on 29 October 2012:

Stuart Andrew: *To ask the Secretary of State for Health*

(1) whether the Joint Committee for Primary Care Trusts has met to consider the submission from the Joint Health and Overview Scrutiny Committee for Yorkshire and the Humber to the Safe and Sustainable Review of Children's Heart Surgery Services;

(2) if he will direct the Joint Committee for Primary Care Trusts to publish the minutes of its meeting on 14 December 2011;

(3) *whether the Joint Committee of Primary Care Trusts is subject to the Code of Practice on Openness in the NHS in respect of disclosure of documents material to the decision on the future of children's heart surgery services in England and Wales; [125128]*

(4) *what the scores were from each assessor for each assessment criterion for each children's heart surgery centre awarded by the Independent Expert Panel as part of the Safe and Sustainable Review.*

Anna Soubry: *My hon. Friend will be aware that the Safe and Sustainable review of children's congenital heart services is a clinically-led, national health service review, which is independent of Government. It is, therefore, for the Joint Committee for Primary Care Trusts (JCPCT) to decide what information to release regarding minutes of meetings held or details about the process of the review.*

The NHS Code of Practice on Openness was superseded by the Freedom of Information (FOI) Act, which provided equivalent access to information but as a legal right rather than a voluntary code. The bodies that participated in the JCPCT are all public bodies subject to the FOI legislation. Any complaints about their compliance should be referred to the Information Commissioner, the statutory regulator for FOI and Data Protection legislation.

We understand that the JCPCT considered the submission from the Joint Health and Overview Scrutiny Committee for Yorkshire and the Humber at its meeting, held in public, on 4 July 2012. It considers that the points raised by the scrutiny committee are addressed in the Decision Making Business Case which has been published.

6. It therefore appears that JHOSC should seek its remedy through ICO. **There is a degree of urgency to this complaint**, because the Secretary of State for Health has referred the JCPCT decision to the Independent Reconfiguration Panel (IRP). JHOSC has been asked to make its main submission to IRP by mid-November 2012. The IRP decision is expected by mid-February 2013, so there will be very limited opportunity to submit additional or supplementary information to IRP if the requested disclosure by NSCT is unduly delayed.
7. The JCPCT decisions now under review were taken at a "meeting in public" held in London on 4 July 2012, although this process now appears to have been a formal consolidation of earlier decisions made in private. On the following day I wrote to Sir Neil McKay (who chairs the JCPCT) in the following terms:

"As Chair of the Joint HOSC I would also ask you provide the agendas, reports and minutes of any (formal or informal) meeting of the JCPCT and its secretariat, associated with the drafting and agreement of the Decision-Making Business Case document. In my view, such information may form a key part of the Joint HOSC's consideration of yesterday's formal decision and the processes leading up to it."
8. My complete letter is attached. On 5 July it was difficult to be more specific, since most of the JCPCT business had previously been conducted in private. It was, however, reasonably obvious that I sought **reports** on behalf of JHOSC as well as

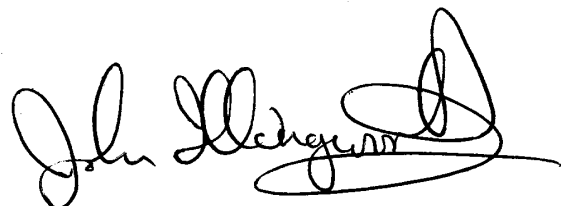
agendas and minutes, in accordance with normal local government practice. I am also seeking information on the numerous groups that advised or regulated the JCPCT, since JHOSC members have realised that this was where many important decisions were actually taken. To my present knowledge the relevant groups are:

- a) The Joint Committee of Primary Care Trusts (JCPCT)
- b) The JCPCT steering group (advising the JCPCT)
- c) The Standards Working Group (advising on care standards)
- d) The Independent Expert Panel chaired by Sir Ian Kennedy
- e) The NCS Expert Panel on Nationally Commissioned Services
- f) The Health Impact Assessment Steering Group
- g) The National Specialised Commissioning Group (NSCG)
- h) The National Commissioning Group (NCG)
- i) The Advisory Group for National Specialised Services (AGNSS)

9. There was considerable overlap between the members of these various groups. The first six of these groups (a) to (f) were concerned almost exclusively with the reconfiguration of children's cardiac surgery, the last three (g) to (i) had numerous other responsibilities and only a small proportion of their business was directly related to cardiac surgery.
10. NSCT responded by publishing a substantial volume of material on their website, which took some time to read and digest. As we did this, it became apparent that the disclosure was incomplete: for example, minutes of the JCPCT steering group are publicly available, but not the minutes of the JCPCT itself. NSCT sent JHOSC paper copies of the earlier JCPCT minutes, plus electronic copies of the minutes from later meetings, but we have very few **reports** from any source, other than those published at the two "meetings in public". Although we have 25 drafts of the Health Impact Assessment, we have no information whatsoever about the activity of the Health Impact Assessment Steering Group, despite an earlier assurance given by JCPCT during public consultation in 2011 that these minutes would be published on the project website.
11. The NSCT website is deeply unsatisfactory, because there is no index or table of contents, and users must rely on a fairly primitive search engine to locate relevant material. This creates serious problems when the original business was conducted in private, because it is difficult to guess relevant keywords. There are significant gaps in the published data. NSCT seems to suggest that information is posted promptly on the website, but the creation dates for many electronic documents are sometimes long after the relevant meetings took place. Long delays in publication exacerbate the problems with the search engine. Users may only discover that new information has been made available by repeatedly conducting random speculative searches.
12. JHOSC is currently seeking the following specific information:
 - a) The individual scores, awarded by each of the eight assessors in the expert panel chaired by Sir Ian Kennedy, under each assessment criterion, and for

each of the institutions that the team visited in 2010. [This is same material sought by Stuart Andrew MP in his parliamentary question, above.] Each of the eleven institutions initially conducted a self-assessment exercise, which was then scored by each panel member independently before they visited the site. NSCT has already provided consensus “group” scores that were agreed by the Kennedy Panel after the site visits, but not the individual scores that were awarded earlier in response to the institutions’ self-assessment reports.

- b) Agendas and minutes for the Health Impact Assessment Steering Group.
 - c) All **reports** considered by the six groups listed at paragraph 8 (a) – (f).
 - d) All the minutes from the last three groups 8 (g) – (i) since December 2007, plus any relevant **reports**. Each group was only active for part of this period. Many of these documents have already been published on the NSCT website, but the sequence is incomplete. NSCG was the body originally tasked with the paediatric surgery review by Sir Bruce Keogh in 2008.
13. I have attached an extended email correspondence with Sir Neil McKay and Jeremy Glyde at NSCT, from which it appears that JCPCT officials wish to restrict JHOSC scrutiny to the formal meeting in public on 4 July, and prevent any effective inquiry into the preceding events. I can see no good reason to confine the committee in this way, and continue to seek a full set of all the relevant agendas, reports and minutes for the JCPCT and its various associated bodies.
14. My position on behalf of JHOSC is that none of the requested material satisfies any of the exemptions listed in Part 2 of the Freedom of Information Act. It can all be readily identified and it is easy and inexpensive to prepare. Large quantities of very similar material have already been published by NSCT. There is no need for JHOSC to invoke any special powers to view these records, because any member of the public is entitled to receive copies of the information that we seek.
15. I ask the Information Commissioner to move with all speed to enforce the law. Such action would facilitate the democratic process and promote an informed public debate. It would greatly expedite the work of JHOSC (Yorkshire & the Humber) and the work of the Independent Reconfiguration Panel.



Councillor John Illingworth

In a personal capacity and on behalf
of JHOSC (Yorkshire & the Humber)