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13 January 2012

Dear Secretary of State

REFERRAL TO SECRETARY OF STATE FOR HEALTH
Review of Children's Congenital Cardiac Services
Yorkshire and Humber Joint Health Overview and Scrutiny Committee

Thank you for forwarding copies of the referral letter and supporting documentation from Cllr Lisa Mulherin, Chair Yorkshire and Humber Joint Health and Overview Scrutiny Committee (Joint HOSC). 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 this referral is not 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 sites 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 HOSCs and other organisations for comment. The

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final version of the standards was published in March 2010 and 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*. Also 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. The report of the Kennedy panel 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 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.

Key emerging findings from a Health Impact Assessment (HIA) were sent to HOSCs and Local Involvement Networks (LiNK) and published on the review website in June 2011. The formal public consultation closed on 1 July 2011. An independent analysis of the consultation and a report from focus groups involving parents, young people and black and minority ethnic (BAME) communities, commissioned from Ipsos MORI, was published in August 2011.

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.

On 14 October 2011, the Yorkshire and Humber Joint HOSC wrote to the Secretary of State for Health to refer the proposals. Referral was made on the basis of inadequate consultation with the Joint HOSC. Documentation provided with the referral letter evidences numerous exchanges of correspondence between the Joint HOSC and representatives of the JCPCT, *Safe and Sustainable* team and SCGs regarding invitations to attend meetings and requests for information. The referral letter specifies four pieces of information requested by the Joint HOSC, which were not received prior to the 5 October 2011 deadline for submission of HOSC responses to the consultation. These were:

- *The detailed breakdown of assessment scores for surgical centres produced by the independent Expert Panel (chaired by Sir Ian Kennedy)*
- *A finalised Health Impact Assessment report*
- *A detailed breakdown of information on the likely impacts on identified vulnerable groups across Yorkshire and the Humber referred to in the Health Impact Assessment (interim report)*
- *The Price Waterhouse Coopers report that tested the assumed patient travel flows under each of the four options presented for public consultation*

On 7 November 2011, the judgement was delivered in a 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 has been lodged. Depending on the outcome of that appeal, it is anticipated either that a final decision on the future location of surgical centres will be made by the JCPCT in spring 2012 or that a further public consultation will be necessary.

Basis for referral

The referral letter of 14 October 2011 from Cllr Mulherin, Chair, Yorkshire and Humber Joint HOSC states that:

“...on behalf of the Joint HOSC and in accordance with the provisions set out in the Health and Social Care Act (2001) (as amended) and the associated regulations [The Local Authority (OSCHSF) Regulations 2002] and guidance [Overview and Scrutiny of Health – Guidance, DH July 2003], I am writing to formally refer this matter for your consideration. This referral is on the basis of inadequate consultation with the Joint HOSC by the Joint Committee of Primary Care Trusts (JCPCT), as the appropriate NHS body.”

The letter further states:

“As such, subject to any additional information that becomes available and any future decision of the JCPCT, the Joint HOSC reserves the right to refer this matter on the grounds that the proposal would not be in the interests of local health services or the population served by such services.”

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IRP view

With regard to the referral by the Yorkshire and Humber Joint HOSC, the Panel notes that:

- The referral by the Yorkshire and Humber Joint HOSC is solely on the grounds of inadequate consultation with that HOSC – it is not on the grounds that the proposals are not in the interests of local health services
- The referral does not, therefore, require the Secretary of State (or by extension the IRP) to consider the relative merits of the options identified in the formal consultation or the rigour of either the pre-consultation public involvement work undertaken or the wider formal *public* consultation
- The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 enable the Secretary of State to direct local authorities to appoint a joint committee where appropriate – this power was not exercised in this case
- Although the proposals in question, and the consultation exercise held in relation to them, relate to services covering the whole of England, a national joint HOSC was not appointed to carry out scrutiny duties – joint HOSCs were formed in some areas of the country while individual HOSCs responded to the consultation elsewhere
- The absence of a national joint HOSC led to the delegation of responsibility for the supply of information and liaison with interested HOSCs to local representatives of the ten SCGs covering England
- The Joint HOSC acknowledges a “recent shift” in the willingness of those concerned to engage with the scrutiny process in Yorkshire and the Humber
- The crux of the matter now appears to relate to information sought by the Joint HOSC, summarised in its referral letter of 14 October 2011, which was not provided before 5 October 2011 – some of which the JCPCT has declined either to procure or to release at this stage

Conclusion

The IRP offers its advice on a case-by-case basis taking account of the specific circumstances and issues of each referral. **The Panel does not consider that a full review would add any value in this instance.**

The Panel understands that the *Safe and Sustainable* consultation was the first national consultation to have been conducted since the introduction of health scrutiny by local authorities. The *Safe and Sustainable* team appears to have made efforts to inform HOSCs in advance of the intention to conduct a national consultation and to encourage the establishment of a national joint HOSC. But, for whatever reason, this did not happen and, in the absence of a national joint HOSC to scrutinise the proposals and respond to the consultation, engagement with all interested HOSCs inevitably became a complex matter. In the circumstances, the Panel considers that the decision of HOSCs across Yorkshire and the Humber to form a joint HOSC for that area was a helpful one and that, equally, the delegation of responsibility for liaising with HOSCs from the JCPCT to the ten SCGs was probably the only practical solution.

The obstacles that prevented the establishment of a national joint HOSC for the *Safe and Sustainable* consultation are unlikely to be peculiar to this review alone. The Panel understands that regional joint HOSCs were established in the north east, east midlands and the south east of England and this may be a more appropriate option for scrutiny of future national exercises. The Department of Health may wish to give further consideration to this issue and also to whether its guidance on overview and scrutiny of health – published in 2003 – would benefit from some updating.

The main issue outstanding now with regard to this referral relates to the information requested by the Yorkshire and Humber Joint HOSC and summarised in its letter of 14 October 2011. Regulation 5 (1) of the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 requires NHS bodies to provide an overview and scrutiny committee with “*such information.....as the committee may reasonably require in order to discharge its function*”. Clearly, what constitutes “reasonable” is open to some interpretation. In the Panel’s view:

- *The detailed breakdown of assessment scores for surgical centres produced by the independent Expert Panel (chaired by Sir Ian Kennedy)*
Since the detailed breakdown of assessment scores has not been seen by the JCPCT, it was not material to the production of the consultation document, nor will it be material to the decision-making process. The JCPCT’s commitment to release this information once it has made its final decisions is, in our view, reasonable.
- *A finalised Health Impact Assessment report*
Emerging findings were published in February, June and August 2011. The JCPCT states that the final version of the HIA report can only be published once the authors have themselves considered the extent to which responses to the public consultation will influence the HIA’s emerging findings. The Panel agrees with this position on the basis that the final HIA is published sufficiently in advance of the JCPCT final decision-making meeting to allow its contents to inform fully that decision.
- *A detailed breakdown of information on the likely impacts on identified vulnerable groups across Yorkshire and the Humber referred to in the Health Impact Assessment (interim report)*
The information requested was not held and, having considered the Joint HOSC’s request, the JCPCT concluded that the HIA process would not benefit from this additional analysis, nor would it be equitable to commission it for one area only. The Panel agrees with this position on the basis that the final HIA report is suitably comprehensive.
- *The Price Waterhouse Coopers report that tested the assumed patient travel flows under each of the four options presented for public consultation*
This information was not available prior to the 5 October 2011 deadline for HOSCs to submit responses to the consultation. The Panel believes that it should have been available at a much earlier stage so that it could be communicated to all interested parties. PwC’s report was published on the NSCT website in October 2011. The Panel considers that (subject to forthcoming legal judgement) any comments the Joint HOSC (or any other interested party) may wish to make with regard to this report should be

accepted by the JCPCT and considered alongside the report itself as part of its decision-making process.

The Yorkshire and Humber Joint HOSC has scrutinised this subject with considerable commitment and passion. That there appear, on occasion, to have been breakdowns in communications and relationships between the Joint HOSC and the JCPCT is disappointing, the difficult circumstances notwithstanding. While the pre-consultation engagement work undertaken by the *Safe and Sustainable* team was extensive, the suspicion remains that, in the absence of a national joint HOSC, the communications strategy for handling a large number of individual HOSCs could have been more effective. It is interesting to note that, in spite of the comprehensive and detailed content of the formal consultation document, there still appears to be some misunderstanding about how the future model of care will work. This only serves to underline the importance of face-to-face communications in such circumstances.

The Panel recognises, however, the considerable efforts of individuals to improve communications and information exchange in the latter stages of the process. The Joint HOSC has also acknowledged this and we hope this will form the basis for effective working relationships in the future.

The next steps in this process are entirely dependent on the outcome of the forthcoming appeal against the Court judgement of the consultation process. If the judgement is overturned, effective relationships and lines of communication with the Joint HOSC must be maintained and reinforced to aid their understanding and involvement in the run-up to the JCPCT's final decision-making. If the judgement is upheld, and the consultation is to be repeated in its entirety, the opportunity will arise to consider the lessons learnt that will be equally relevant on a national scale.

Yours sincerely



Dr Peter Barrett CBE DL
Chair, IRP

APPENDIX ONE

LIST OF DOCUMENTS RECEIVED

Yorkshire and Humber Joint Health Overview and Scrutiny Committee

- 1 Letter of referral from Cllr Mulherin, Chair, Yorkshire and Humber Joint HOSC to Secretary of State for Health, 14 October 2011

Attachments:

- 2 Scrutiny Inquiry Report: Review of Children's Congenital Cardiac Services, Joint Health Overview and Scrutiny Committee (Yorkshire and Humber), October 2011

National Specialised Commissioning Team

- 1 IRP template for providing initial assessment information

Attachments:

- 2 Circular: NHS Review of Paediatric Cardiac Surgical Services in England, The Centre for Public Scrutiny, 15 April 2010
- 3 Circular: Safe and Sustainable Children's Heart Surgery: A Briefing, August 2010
- 4 Circular: Review of Children's Heart Surgery services in England: An Update, November 2010
- 5 Circular: Review of Children's Heart Surgery services in England: Briefing 3, Spring 2011
- 6 Leeds Teaching Hospitals NHS Trust: Staffing – numbers as at 30 November 2009
- 7 National Clinical Advisory Team – NCAT: Safe and Sustainable Paediatric Cardiac Surgery Services, Desktop Review – Chris Clough
- 8 Health Gateway Review: Safe and Sustainable Paediatric Cardiac Surgery Service – Review 0: Strategic assessment, Department of Health/OGC Gateway, 9 September 2010
- 9 Letter to Teresa Moss, chief executive, National Specialised Commissioning Group, from Alastair Finney, Deputy Director – Strategy and Commissioning Development, NHS London, 8 February 2011 and Assurance of the consultation on the proposed reconfiguration of children's congenital cardiac services in England: 8 February 2011
- 10 Various correspondence (emails and letters) between representatives of NSCT and Yorkshire and Humber Joint HOSC – 9 and 18 November 2010, 8 April 2011, 8 and 14 April 2011, 9 May 2011, 24 May to 9 June 2011, 22 August 2011, 26 August 2011 (x2), 26 and 31 August 2011, 7 September 2011, 12 September 2011, 14 September 2011, 16 September 2011, 23 September 2011, 27 September 2011, 18 November 2011, 5 December 2011, 9 December 2011.
- 11 JCPCT's response to the Yorkshire and the Humber Joint HOSC's request for information
- 12 Additional information provided by NSCT regarding consultation
- 13 URL links to other relevant documentation:
 - Report of the Public Inquiry into children's heart surgery at the Bristol Royal Infirmary 1984-1995: Learning from Bristol, July 2001

- Children's Heart Surgery in England – the need for change, April 2011
- Papers from PCPCT meeting, 16 February 2011
- Pre-consultation Business Case, February 2011
- Consultation document, February 2011
- Better care for your heart – a summary, March-July 2011
- Consultation document and questionnaire in Welsh, March-July 2011
- Consultation document and questionnaire in minority languages, March-July 2011
- Consultation document – improving children's congenital heart services in London, March-July 2011
- National Clinical Advisory Team (NCAT) report, September 2010
- Health Impact Assessment – Key Emerging Findings, 21 June 2011
- Health Impact Assessment – Interim Report, 5 August 2011
- Testing assumptions for future patient flows and manageable clinical networks for Safe and Sustainable (PWC), October 2011
- Report of the Independent Panel on the relationship of interdependencies at the Royal Brompton Hospital ("Pollit Report"), 15 September 2011
- Report from Sir Ian Kennedy's independent expert panel to JCPCT, 17 October 2011
- Report to the OCPCT by Dr Patricia Hamilton CBE, Chair of the Safe and Sustainable steering Group, on behalf of Steering group members, 17 October 2011
- 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
- Children's Heart Surgery Centres in England: Comments on Draft Service Specification, 17 February 2010