



020 7947 6655/6802/6330

Urgent,

- for the attention of the Court Manager of the Queen's Bench Division of the Administrative Court,
- in relation to a hearing on 21st November 2012,
- R on the application of SAVE OUR SURGERY LIMITED v JOINT COMMITTEE OF PRIMARY CARE TRUSTS.

Please ring Heather White for any queries 0207 972 6179 or email heather.white@dh.gsi.gov.uk

20 November 2012

Quarry House
Quarry Hill
Leeds LS2 7UE

IN THE MATTER OF:

**JUDICIAL REVIEW PROCEEDINGS
AND SAVE OUR SURGERIES LIMITED**

Points for a letter to Court

The Department of Health is aware of the current judicial review proceedings brought by Save Our Surgery (SOS) which seek to challenge the basis of the consultation carried out by JCPCT before they reached their decision in July 2012 to ("the proceedings").

The Department is also aware that there is a case management discussion listed for 21 November 2012 at which SOS will seek to have the proceedings stayed pending the outcome of the referral of the matter to the Independent Reconfiguration Panel (IRP) and following the Secretary of State's for Health decision.

In writing this letter to all parties and to the Court, the Secretary of State for Health is not seeking to intervene in the proceedings. However, the Department considers that the Court may find it helpful to understand its view on the impact of granting a stay on the decision making process which is currently taking place, and explain why the view has been taken that the final IRP report should await the outcome of the judicial review.

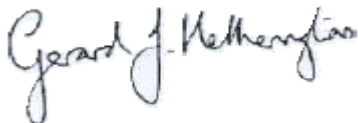
The Department considers that there is some overlap between the Terms of Reference of the Secretary of State's for Health referral to the IRP and the SOS's claim for judicial review. One of the criteria on which an Overview and Scrutiny Committee may refer a matter to the Secretary of State for Health is that the consultation carried out by a local NHS body has been inadequate (Reg 4(5) of the 2002 Regs). The Department's view is that this overlap between the proceedings and the terms of the IRP review makes it important that the judicial review should conclude before the IRP completes its review and submits its report to the Secretary of State for Health for final decision. This was reflected in the IRP's Terms of Reference and the Secretary of State's for Health letter commissioning a full review from the IRP (which made it clear that the end February deadline for IRP advice was subject to any further instruction the Secretary of State for Health might issue if the judicial

review had not concluded by that time). (The IRP were asked to *start* their review, rather than delay until after the outcome of the proceedings were known, because of the public interest in resolving the matter as soon as possible.)

The question of whether the Joint Committee of Primary Care Trusts (JCPCT) consultation was adequate cannot be resolved conclusively as a matter of law by a decision of the IRP or the Secretary of State for Health. It can only be conclusively resolved by the determination of the legal proceedings. It is only if the outcome of the IRP review is that the JCPCT consultation was inadequate **and** should be carried out again **and** if the Secretary of State for Health accepts that view, that the IRP process will provide an answer to these proceedings. However, if the IRP concludes that the JCPCT consultation was adequate **or** that any inadequacy does not undermine the JCPCT's decision and the Secretary of State for Health accepts that view, the issues in these proceedings would remain unresolved, although the judicial review would then logically be of the Secretary of State for Health decision not the JCPCT's. The fact that the Secretary of State for Health's decision would supersede that of the JCPCT in these circumstances is a further reason not to stay these proceedings.

If the proceedings are not resolved by the IRP review, the decision-making process will be unnecessarily lengthened. This will have a detrimental effect on the public interest in ensuring that paediatric heart surgery services are made available in their optimal form (whatever that is) as early as possible.

The Department has no view about the outcome of the proceedings. However, it hopes that this letter may assist the Court in exercising its discretion on the question of whether or not to grant a stay.

A handwritten signature in dark ink, appearing to read 'Gerard J. Hetherington', written in a cursive style.

Gerard Hetherington
Director of Clinical Programmes

Direct Line 0113 254 6032
Email: Gerard.hetherington@dh.gsi.gov.uk

Chronology of events

- 2001 - Bristol Royal Infirmary Inquiry report (the Kennedy report) was published in recommending that specialist expertise be concentrated in fewer surgical units in England.
- May 2008 - the National Specialist Commissioning Team asked to undertake a review to reconfigure surgical services for children with congenital heart disease.
- December 2008 - expert clinical Steering Group was formed to direct the process of developing a report to the NHS Management Board and DH Ministers.
- Between May and June 2010, an expert panel, chaired by Professor Sir Ian Kennedy, visited each surgical centre to assess each centre's ability to comply with the quality standards.
- February 2011 - options for consultation were agreed by the JCPCT
- March 2011 - four-month public consultation began
- March 2011 - 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.
- 22 June 2011, announcement of 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.
- 1 July 2011 - formal public consultation closed (except for HOSCs who had until October 2011).
- 15 September 2011 - The Report of the Independent Panel on the Relationship of Interdependencies at the Royal Brompton Hospital (the "*Pollitt Report*") was published
- 5 October 2011 - formal consultation with HOSCs concluded
- 14 October 2011 - 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
- 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.
- 8 December 2011 - the Secretary of State commissions initial advice from IRP on the referral by the Yorkshire and Humber Joint HOSC
- 13 January 2012 - the IRP submitted its initial assessment advice on the referral by the Yorkshire and Humber Joint HOSC. 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.
- 23 February 2012 - The Secretary of State announced that he had accepted the Panel's advice in full.
- 27 March 2012 - 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

- 19 April 2012, the Court of Appeal found the public consultation to be lawful and proper.
- 24 September – the Secretary of State commissions initial advice from the IRP
- 23 May 2012 - the IRP submitted its initial assessment advice on the referral by the Kensington and Chelsea HEHASC Scrutiny Committee
- 15 June 2012 - the Secretary of State announced on that he had accepted the Panel's advice in full.
- 4 July 2012 - the JCPCT held its decision-making meeting and agreed the Freeman Hospital Newcastle, Alder Hey Children's Hospital Liverpool, Birmingham Children's Hospital, Bristol Royal Hospital for Children, Southampton General Hospital, Great Ormond Street Hospital for Children and Evelina Children's Hospital would continue to provide children's congenital heart surgery services. .
- 13 July 2012 - the Secretary of State for Health, having accepted the advice of the Advisory Group for National Specialised Services, agreed to move the nationally commissioned ExtraCorporeal Membrane Oxygenation (ECMO) services for children with respiratory failure from Glenfield Hospital, Leicester to Birmingham Children's Hospital
- 27 July 2012 - the Lincolnshire HSC referred the *Safe and Sustainable* review of children's congenital cardiac services to the Secretary of State
- 8 August 2012 – Secretary of State commissions initial advice from IRP on the referral from Lincolnshire HSC
- 7 September 2012 - the Leicester, Leicestershire and Rutland Scrutiny Committee referred the *Safe and Sustainable* review of children's congenital cardiac services to the Secretary of State
- 13 September 2012 – Secretary of State commissions initial IRP advice on the referral from the Leicester, Leicestershire and Rutland Scrutiny Committee
- 21 September 2012 – IRP submitted initial advice to Secretary of State for Health on the referrals from Lincolnshire HSC and Leicester, Leicestershire and Rutland Scrutiny Committee
- 2 October – Save Our Surgery (a Leeds based charity) made an application for judicial review
- 22 October 2012 - Secretary of State for Health accepted the Panel's advice for the IRP to conduct a full review