

The Rt Hon Andrew Lansley CBE MP
Secretary of State for Health
Richmond House
79 Whitehall
London SW1A 2NS

23 May 2012

Dear Secretary of State

REFERRAL TO SECRETARY OF STATE FOR HEALTH
The Safe and Sustainable review of “Children’s Congenital Heart Service in England”
and its effects on Royal Brompton and Harefield NHS Foundation Trust
The Royal Borough of Kensington and Chelsea Health Environmental Health and
Adult Social Care Scrutiny Committee

Thank you for forwarding copies of the referral letter from Cllr Mary Weale, Chair of the Royal Borough of Kensington and Chelsea Health Environmental Health and Adult Social Care (HEHASC) Scrutiny Committee. The National Specialised Commissioning Team (NSCT) provided initial assessment information. We also received correspondence from Hempsons solicitors, acting for the Royal Brompton & Harefield NHS Foundation Trust. 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 health overview and scrutiny committees (HOSC) and other organisations for comment. The 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 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 the London SCG attended a meeting of the Kensington and Chelsea HEHASC Scrutiny Committee on 11 May 2011 to discuss the *Safe and Sustainable* proposals. The minutes record that discussion included the potential impact of the proposals

on respiratory services provided at the Royal Brompton Hospital. The Scrutiny Committee submitted its formal response to the consultation in June 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. This followed concerns raised by the hospital and others about potential knock-on effects for diagnostic bronchoscopy and children's respiratory services in the absence of a paediatric cardiac surgical service and viable paediatric intensive care unit (PICU). The accompanying press release confirmed that "*The issues must be considered now because the impact on these services was not raised as a major topic for discussion by any of the London hospitals before consultation started*".

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.

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".

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.

The Kensington and Chelsea HEHASC Scrutiny Committee wrote to the Secretary of State for Health on 27 March 2012 to refer the matter.

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. In a press release responding to the Court's decision, the JCPCT Chair, Sir Neil McKay, welcomed "*the public engagement that is being held on [paediatric respiratory services at the Royal Brompton Hospital] by London Specialised*

Commissioning Group... and I encourage all those involved with an interest to take part, to inform a report that will be delivered by the SCG to the JCPCT in June”.

Basis for referral

The referral letter of 27 March 2012 from Cllr Weale, Chair of the Kensington and Chelsea HEHASC Scrutiny Committee states that:

“If the proposal is implemented without further consultation it would breach the Local Authority (Overview and Scrutiny Health Scrutiny Functions) Regulations 2002 – prepared under section 38 of the local Government Act 2000 – specifically Section 4(5) (a) and (b) dealing with inadequate consultation and Section 4(7) dealing with proposals not being in the interests of health services in the area.

The consultation by Joint Committee of Primary Care Trusts was inadequate because it did not consider the knock-on effects of their proposal on the medical and financial viability of Royal Brompton and Harefield NHS Trust. In particular, there was a lack of consultation on the impact on their respiratory services. This should have been a consideration in the decision-making process. However, Safe & Sustainable only commissioned a panel, led by Adrian Pollitt, to look at the knock on effects on respiratory medicine after the public consultation.”

IRP view

With regard to the referral by the Kensington and Chelsea HEHASC Scrutiny Committee, the Panel notes that:

- The Scrutiny Committee asserts that Regulations 4 (5)(a) and (b), and 4 (7) *would* be breached if the proposal is implemented without further consultation – it does not assert that these regulations *have yet* been breached
- However, it also asserts that consultation was inadequate because an expert panel to consider the potential impact on paediatric respiratory services provided by the Royal Brompton & Harefield NHS Foundation Trust was only commissioned after the public consultation had concluded – the Panel has taken this to mean that referral is based on Regulation 4 (7) that the proposals are not in the interests of the health service by virtue of inadequate involvement by patients, the public and stakeholders in the planning and development of the proposals (paragraph 10.6.7 of DH *Overview and Scrutiny of Health Guidance* refers)
- 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
- 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 and a national joint HOSC was not appointed to carry out scrutiny duties
- In the absence of a national joint HOSC, the supply of information and liaison with interested HOSCs was undertaken by local representatives of the ten SCGs covering

- England - representatives of the London SCG attended a meeting of the Kensington and Chelsea HEHASC Scrutiny Committee to discuss the proposals
- Concerns about clinical interdependencies at the Royal Brompton Hospital raised by the Trust, the Kensington and Chelsea HEHASC Scrutiny Committee and others led to the establishment of an expert panel to consider the issue and report back to the JCPCT (the “Pollitt” report)
 - The Court of Appeal, in its judgement of 19 April 2012, found the JCPCT’s process for public consultation to be lawful and proper – it also found that the decision to constitute the Pollitt panel was an appropriate response to representations made by a number of respondents
 - The London SCG is holding public engagement on paediatric respiratory services with interested parties and will report to the JCPCT in June 2012
 - No decision has yet been made – all evidence submitted in response to the consultation, and other analysis and reports prepared as part of the exercise, will inform the decision-making meeting of the JCPCT due to take place on 4 July 2012

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 has previously commented on the arrangements made and the difficulties that arose during what, we were informed, was the first national consultation to have been conducted since the introduction of health scrutiny by local authorities (our advice of 13 January 2012 refers). We remain of the view that arrangements for scrutiny of national exercises would benefit from some review taking account of the difficulties that arose during this exercise and that the Department of Health should consider whether its guidance on overview and scrutiny of health – published in 2003 – requires updating.

While it appears that the absence of a national joint HOSC may have complicated lines of communication, it is clear to the IRP that the *Safe and Sustainable* team made a considerable effort to explain the proposals, the reasoning behind them and the means by which options for consultation were formulated. This is evident from extensive activity in the pre-consultation engagement phase, during the consultation itself and from work commissioned as a result of feedback from the consultation – most notably the expert panel chaired by Adrian Pollitt.

The consultation has been the subject of a judicial review which, ultimately, the Court of Appeal found to have been a lawful process. The Court commented that *“the decision to constitute the Pollitt panel was an appropriate response to representations made by the RBH Trust, and serves to demonstrate the manner in which the process of consultation can and should work”*.

The Panel concurs with the view that steps were, and are continuing to be, taken to address concerns raised during the consultation, in particular those about the impact on paediatric respiratory services at the Royal Brompton Hospital. Engagement work on this issue is continuing with interested parties invited to contribute to a report that we understand will be submitted to the JCPCT in June 2012. With the JCPCT decision-making meeting scheduled to take place on 4 July 2012, the opportunity exists to consider what, if any, impact the withdrawal of paediatric cardiac surgery from the Royal Brompton Hospital would have on the provision of paediatric respiratory services at the hospital. Depending on the nature of that impact, the JCPCT will also have the opportunity to consider what, if any, further engagement work is required in the context of its decision.

Yours sincerely



Nick Naftalin
OBE, FRCOG
IRP member and Chair for this initial assessment

APPENDIX ONE

LIST OF DOCUMENTS RECEIVED

Royal Borough of Kensington and Chelsea Health Environmental Health and Adult Social Care Scrutiny Committee

- 1 Letter of referral from Cllr Weale, Chair, Kensington and Chelsea HEHASC Scrutiny Committee to Secretary of State for Health, 27 March 2012

National Specialised Commissioning Team

- 1 IRP template for providing initial assessment information
- Links and attachments:
- 2 Report of the Public Inquiry into children's heart surgery at the Bristol Royal infirmary 1984-1995: Learning from Bristol, July 2001
 - 3 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, February 2010
 - 4 Children's Heart Surgery Centres in England: Comments on Draft Service Specification Standards (Comments received up to 17 February 2010), February 2010
 - 5 Papers from the JCPCT meeting in public (launch of the consultation), 16 February 2011
 - 6 Pre-consultation Business Case, February 2011
 - 7 Consultation document, March-July 2011
 - 8 Better care for your heart – a summary (consultation document for young people), March-July 2011
 - 9 Consultation document and questionnaire in Welsh, March-July 2011
 - 10 Consultation document and questionnaire in minority languages
 - 11 Consultation document – improving children's congenital heart services in London, March-July 2011
 - 12 National Clinical Advisory Team (NCAT) report, September 2010
 - 13 OGC Gateway Report, September 2010
 - 14 NHS London's approval to launch consultation, 8 February 2011
 - 15 NHS London's assurance report, 8 February 2011
 - 16 Health Impact Assessment – Key Emerging Findings, 21 June 2011
 - 17 Health Impact Assessment, 5 August 2011
 - 18 Testing assumptions for future patient flows and manageable clinical networks for Safe and Sustainable (PWC), October 2011
 - 19 Report of the Independent Panel on the relationship of interdependencies at the Royal Brompton Hospital ("Pollitt Report"), 15 September 2011
 - 20 Report from Sir Ian Kennedy's independent expert panel to the JCPCT, 17 October 2011
 - 21 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

- 22 Report of Sir Ian Kennedy’s Panel in response to the additional evidence submitted in relation to “innovation and research”, 14 February 2012
- 23 Summary from consultation events in London, Cambridge and Gatwick, August 2011
- 24 Judgement – High Court, 7 November 2011
- 25 Judgement – Court of Appeal, 19 April 2011
- 26 Letter from Cllr Christopher Buckmaster, Chair, Health scrutiny Committee, to Jeremy Glyde, Programme Director, safe and Sustainable, 8 September 2010
- 27 Cystic Fibrosis Trust, Asthma UK, PCD Family Support Group and Muscular Dystrophy Campaign, 17 January 2012
- 28 Response from Sir Neil Mackay, Chair of the JCPCT, to Cystic Fibrosis Trust, Asthma UK, PCD Family Support Group and Muscular Dystrophy Campaign, 17 January 2012
- 29 Report on respiratory services discussed at the meeting of the RB of Kensington and Chelsea’s Health, Environmental Health and Adult Social Care Scrutiny Committee, 11 May 2011
- 30 Minutes of the meeting of the RB of Kensington and Chelsea’s Health, Environmental Health and Adult Social Care Scrutiny Committee, 11 May 2011
- 31 Heartnews, March 2012
- 32 Press release, Adrian Pollitt to lead independent panel on Brompton services, 22 June 2011
- 33 Response to the consultation – The Royal Borough of Kensington and Chelsea, July 2011
- 34 Response to the consultation – The Royal Brompton and Harefield NHS Foundation Trust, July 2011
- 35 Response to the consultation – Asthma UK, July 2011
- 36 Response to the consultation – Cystic Fibrosis, July 2011
- 37 Response to the consultation – Cardiac Risk in the Young, July 2011
- 38 Response to the consultation – Hillingdon Overview and Scrutiny Committee, July 2011
- 39 Response to the consultation – The Brompton Foundation, July 2011
- 40 Response to the consultation – Harefield Tenants and Residents Association, July 2011
- 41 Response to the consultation – Parent representatives of Cystic Fibrosis at the Royal Brompton, July 2011
- 42 Response to the consultation – Ruislip Residents Association, July 2011
- 43 Response to the consultation – The Community Voice, July 2011
- 44 Freedom of information request, 20 July 2011
- 45 Ipsos MORI – Safe and Sustainable Review of Children’s Congenital Heart Services in England: Report of the public consultation, 24 August 2011
- 46 Responses from family organisations to an independent report on family travel analysis, 24 April 2012

Other evidence received

- 1 Letter from Hempsons solicitors on behalf of the Royal Brompton & Harefield NHS Foundation Trust, 22 May 2012