

THE NEWCASTLE UPON TYNE HOSPITALS NHS FOUNDATION TRUST

COUNCIL OF GOVERNORS

'SAFE AND SUSTAINABLE' PAEDIATRIC CARDIAC SURGERY REVIEW

1. BACKGROUND

Governors will recall that a four month public consultation period on the future disposition of children's heart surgery ended in early July 2011. Four reconfiguration options were proposed, resulting in either six or seven centres, with Freeman Hospital featuring in the three top-scoring options, and Leeds replacing Freeman Hospital in the fourth model.

Governors will also recall that the Royal Brompton & Harefield Hospital NHS Foundation Trust was seeking a judicial review of that consultation. This paper describes the recent outcome of the review.

2. CHALLENGE BY ROYAL BROMPTON HOSPITAL

In parallel to the consultation process, an attempt was made by the Royal Brompton Hospital to halt the review. The four consultation options recommended two of three centres remaining in London, of which the Brompton was not one. A judge ruled in September 2011 that the Safe and Sustainable process would be allowed to continue, given that consultees had been asked whether they agreed that two sites should remain in London, and were asked which two sites these should be, therefore not unfairly ruling out Brompton in the options. The Royal Brompton's case (particularly the concerns about effects on other services) were to be reviewed by an independent panel at a full hearing in late September 2011.

On 7<sup>th</sup> November 2011 a determination was made by the High court judge, as follows. In his judgement, Mr Justice Owen concluded that the consultation on the 'Safe & Sustainable' review of children's heart surgery was unlawful. Justice Owen stated that Royal Brompton & Harefield NHS Foundation Trust's challenge to the consultation succeeded on the grounds that the consultation process had been unfair to the Trust: "...the unfairness being of such a magnitude as to lead to the conclusion that the process went radically wrong". He concluded: "...in my judgement the consultation exercise was unlawful, and must therefore be quashed."

Mr Justice Owen's judgement centred on the assessment of Royal Brompton's 'research and innovation' score in the exercise that determined which centres were included in the options to be put to public consultation. Two separate analyses of each centre were undertaken as part of the Safe & Sustainable programme. The first included self-assessment exercises and visits to all centres from an independent panel led by Sir Ian Kennedy.

The second 'configuration evaluation' was carried out some months later by management consultants KPMG, and was used to identify suitable configurations of surgical centres around the country. These configurations became the four options in the public consultation.

The assessment stage concentrated on the safety and sustainability of each centre and did not ask centres for, or include an evaluation of, paediatric cardiac research output and quality (its main focus being clinical services). So, detailed information on Royal Brompton's paediatric cardiac research output and programme was not supplied, because it was not asked for.

It was not until a public meeting on 16<sup>th</sup> February 2011 that representatives from the hospital became aware that a score which rated Royal Brompton's paediatric cardiac research programme had been used during the second 'configuration evaluation' exercise. On investigation it became apparent that this score had been determined using information supplied for the first, unrelated assessment, despite the fact that it had been made clear that the two would be separate exercises. No specific information on the hospital's paediatric cardiac research programme had ever been requested and without the benefit of relevant information, a low score was given. According to Justice Owen, the consequence was to "...seriously distort the consultation process. Those responding to the Consultation Document would inevitably have proceeded on the premise that the RBH Trust's capacity for research and innovation was poor..."

In fact, Royal Brompton, along with its primary research partner Imperial College, has an internationally-respected research programme and frequently leads league tables in both cardiac and respiratory medicine.

The Joint Committee of Primary Care Trusts, which is to make the final decision on the configuration of children's heart surgery, is to appeal against the outcome of the judicial review. This is likely to delay the decision making process even further.

### 3. CAPACITY REVIEW

During June 2011, all centres were required to complete a capacity plan template for each of the possible options. For Newcastle, this meant proposing the staff, ward, ITU and outpatient capacity that would be required should the Trust's number of cases increase to 406 (under option A) or 526 (under options B and C). Trusts were also required to submit capital proposals and drawings that would allow sites to be configured as necessary.

With the phased opening of the Institute of Transplantation from late October 2011, the Trust was able to say with confidence that with modifications, capacity would be available to provide an expanded service in the Cardiothoracic block.

Sites were also required to estimate their legacy costs, should an option be chosen where surgery was moved away from the site (including lost income). This would be significant for Newcastle, with the loss of national services being factored into such a scenario.

4. RECOMMENDATION

To i) receive the briefing ii) note the current position iii) note that work continues to plan capacity and iv) note the uncertainty over timescales for decisions.

**David Allison**  
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**10<sup>th</sup> November 2011**