


# Agenda Item 9

		<b>THE HEALTH SCRUTINY COMMITTEE FOR LINCOLNSHIRE</b>	
Boston Borough Council	East Lindsey District Council	City of Lincoln Council	Lincolnshire County Council
North Kesteven District Council	South Holland District Council	South Kesteven District Council	West Lindsey District Council

Open Report on behalf of Richard Wills the Director Responsible for Democratic Services

Report to	<b>Health Scrutiny Committee for Lincolnshire</b>
Date:	<b>21 September 2016</b>
Subject:	<b>Congenital Heart Services – East Midlands Congenital Heart Centre</b>

## Summary

On 20 July 2016, the Committee considered an announcement by NHS England that "subject to consultation with relevant trusts and, if appropriate the wider public" it was decommissioning congenital heart disease surgery ("Level 1 services") from the East Midlands Congenital Heart Centre (formerly known as Glenfield Hospital). The Committee concluded that the decommissioning of Level 1 services would constitute a substantial variation in health care provision for Lincolnshire residents and authorised the Chairman to write to NHS England to seek a commitment to full public consultation. This paper sets out the contents of the Chairman's letter and NHS England's response.

## Actions Required:

- (1) To determine if any further action is required at this stage.

## 1. Background

### Announcement by NHS England - 8 July 2016

As reported to the Health Scrutiny Committee on 20 July 2016, NHS England issued an announcement on 8 July 2016, which included the following statement:

*"Subject to consultation with relevant Trusts and, if appropriate, the wider public, NHS England will also work with **University Hospitals of Leicester NHS Trust** and Royal Brompton & Harefield NHS Foundation Trust to safely transfer CHD surgical and interventional cardiology services to appropriate*

*alternative hospitals. Neither **University Hospitals Leicester** or the Royal Brompton Trusts meet the standards and are extremely unlikely to be able to do so. Specialist medical services may be retained in Leicester."*

#### Decision of the Health Scrutiny Committee for Lincolnshire

The Committee unanimously agreed that to decommission Level 1 Paediatric Cardiac and Adult Congenital Heart Disease Services from the East Midlands Congenital Heart Centre would constitute a substantial variation, as defined by Regulation 23 of the *Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013*. These regulations imposed on NHS England a duty to consult as the responsible commissioner of congenital heart disease services.

The Committee also unanimously agreed that the Chairman would write to NHS England outlining the Committee's view in the paragraph above, and seeking NHS England's commitment to full public consultation.

The Committee also agreed further provisions enabling the Chairman to take further action, if NHS England declined to undertake public consultation.

#### Letter from the Chairman, Councillor Mrs Christine Talbot

On 22 July 2016, the Chairman wrote to NHS England (Simon Stevens, Chief Executive of NHS England and Will Huxter, Senior Responsible Officer for the CHD Programme, as follows: -

*"I refer to the NHS England announcement on 8 July 2016 that subject to consultation with relevant Trusts and, if appropriate, the wider public, NHS England would work with University Hospitals of Leicester NHS Trust to safely transfer CHD surgical and interventional cardiology services to appropriate alternative hospitals.*

*"In the first instance, I would like to put on record the disappointment of the Health Scrutiny Committee for Lincolnshire that NHS England did not provide any detailed information supporting this statement until 15 July 2016, when a report entitled Paediatric Cardiac and Adult Congenital Heart Disease Standards Compliance Assessment: Report of the National Panel was published, together with the CHD standards and specifications. This delay in publication raises issues of transparency and trust at a time when NHS England should be seeking to engage and involve the wider public in its proposals.*

*"Most importantly, I refer to the specific matter of consultation and the phrase in the NHS England statement: "subject to consultation with relevant Trusts and, if appropriate, the wider public". Aside from the uncertainty and ambiguity of this statement, I would draw your attention to Regulation 23 of the Local Authority [Public Health, Health and Wellbeing Boards and Health Scrutiny] Regulations 2013. This regulation places an obligation on NHS England as the responsible commissioner of CHD services to consult with local authority health overview and scrutiny committees. Failure to consult by NHS England would enable these committees to make a referral to the Secretary of State, on the basis of Regulation 23(9)(a).*

*Whilst there have been reports of NHS England's intention to consult, on behalf of the Health Scrutiny Committee for Lincolnshire I seek a full and unequivocal assurance from NHS England that it will fulfil its obligations under Regulation 23 of the Local Authority [Public Health, Health and Wellbeing Boards and Health Scrutiny] Regulations 2013 and engage in consultation with local authority overview and scrutiny committees.*

*On the matter of consultation I would also add that whilst NHS England might argue that consultation took place in 2014, the 2014 consultation was limited to the standards and specifications for CHD services and did not make any reference to the decommissioning of any particular Level 1 centre and any impact such a decommissioning would have on the local population. In fact none of the centres in England performing CHD surgery were named throughout the 56 page 2014 consultation document.*

*I also inform you that on 20 July 2016, the Health Scrutiny Committee for Lincolnshire resolved that the proposed decommissioning of Level 1 Paediatric Cardiac and Adult Congenital Heart Disease Services from the East Midlands Congenital Heart Centre [University Hospitals of Leicester NHS Trust] would constitute a substantial development or variation in health service provision for the residents of Lincolnshire, as it would clearly affect the ability of Lincolnshire residents to access to Level 1 Centres.*

*Furthermore, in the event of NHS England declining to perform its duties in accordance with Regulation 23 of the Local Authority [Public Health, Health and Wellbeing Boards and Health Scrutiny] Regulations 2013, the Health Scrutiny Committee for Lincolnshire has resolved that it will invoke the procedures in Regulation 23.*

*Finally, I would like to raise the issue of governance. The report entitled: Paediatric Cardiac and Adult Congenital Heart Disease Standards Compliance Assessment: Report of the National Panel refers to decisions being made by the "Specialised Services Commissioning Committee (SSCC), a sub-committee of the NHS England Board". The NHS England website refers to the role of the SSCC as one where it: -*

*"advises the Board on development and implementation of strategy for specialised commissioning, agreeing specialised commissioning priorities and work programmes, and receiving assurance that these are delivered."*

*The website does not make reference to any powers of the SSCC to make decisions on the decommissioning of services in accordance with any agreed specialised commissioning priorities. I would therefore like you to confirm the terms of reference of the SSCC and provide information on the specific decision-making authority delegated to it by the NHS England Board. I would be grateful if you confirm whether meetings of the SSCC are open to the public and whether its papers are available to the public. If your response to these two questions is negative, I would be grateful if you could outline the legal basis for operating in this way. This again raises issues of trust and transparency.*

*"In the spirit of co-operation and transparency the resolution of the Health Scrutiny Committee for Lincolnshire on 20 July 2016 is set out below: -*

- (1) *The decommissioning of Level 1 Paediatric Cardiac and Adult Congenital Heart Disease Services from the East Midlands Congenital Heart Centre [University Hospitals of Leicester NHS Trust] constitutes a substantial development or variation in health service provision, as defined by Regulation 23 of the Local Authority [Public Health, Health and Wellbeing Boards and Health Scrutiny] Regulations 2013, which imposes on NHS England a duty to consult as the responsible commissioner of congenital heart disease services.*
- (2) *To authorise the Chairman to write to NHS England outlining the Committee's resolution in (1) above, seeking NHS England's commitment to full public consultation.*
- (3) *In the event that NHS England decline to undertake consultation, the procedures set out in Regulation 23 of the Local Authority [Public Health, Health and Wellbeing Boards and Health Scrutiny] Regulations 2013 be invoked, including the initiation of discussions with NHS England."*

#### Response of NHS England

Will Huxter, Senior Officer Response for the CHD Programme at NHS England, replied to the Chairman as follows on 9 August 2016: -

*"Thank you for your letter of 22 July 2016, addressed to Simon Stevens and myself. I welcome the opportunity to clarify the position in relation to NHS England's proposals on congenital heart disease services.*

*"The first thing to say is that no final decisions have been taken about the future of University Hospitals of Leicester NHS Trust or any of the other congenital heart diseases services in England. NHS England has set out proposals, based on the findings of the recent assessment exercise. Whether or not these proposals are taken forward will be subject to further stakeholder engagement and the outcome of public consultation, which will begin later this year.*

*"I recognise the strength of feeling of the Health Scrutiny Committee in relation to these proposals and their potential consequences. We wish to discuss with Lincolnshire and other relevant Overview and Scrutiny Committees the approach to consultation.*

*"NHS England published its new standards for CHD services in July 2015. These standards – almost 200 of them – were collaboratively developed over a two-year period, by patients and their families/carers; clinicians; commissioners, and other experts. They were the subject of extensive public consultation, and all the views put forward were considered before the standards were finalised.*

*"Information regarding consultation about our proposals will be communicated as widely as possible, well in advance of consultation starting. NHS England will make sure that the consultation takes account of those services which could be impacted by changes to CHD services, including paediatric intensive care and ECMO.*

*"NHS England is now in the pre-consultation engagement stage.*

*"You raise in your letter questions about the governance relating to NHS England's proposals. There are four main elements to this:*

- *The adoption of the standards for congenital heart disease was a decision of the NHS England Board.*
- *The outcome of the assessment of each centre against those standards was a decision of the Specialised Services Commissioning Committee (SSCC), under delegated authority of the Board.*
- *Any revision to a provider's assessment following consideration of its further submissions was a decision of the national Director of Specialised Commissioning.*
- *The final decisions at the end of the service change process will be taken by the NHS England Board.*

*"Although meetings of the SSCC are not open to the public, a report from each of its meetings is provided to the full NHS England Board (which is held in public) and is published.*

*"NHS England, through its regional specialised commissioning team and the national congenital heart disease programme team, will follow up on your letter to discuss the detail of the approach to public consultation in relation to these important services."*

#### Assessment of NHS England Response

Whilst NHS England has indicated that consultation will begin "later this year" there is no indication on the NHS England website to this effect, and there are no details of the precise timing of this consultation. As of 12 September 2016, the website still included the following statement: -

*"The proposals in the National Panel's report remain subject to the outcome of service change processes in relation to each of the proposed changes. Over the summer of 2016, NHS England will be working with the Trusts concerned, and other stakeholders as necessary, to draw up plans to make the changes proposed."*

Given the above statement and that NHS England's announcement on 8 July referred to "if-appropriate" consultation with the wider public, the Committee may wish to reflect on the extent to which NHS England is fully committed to wide public consultation. NHS England refers to discussions on "the detail of the approach to public consultation". Since the receipt of the letter, no further approach has been received from NHS England on any discussions.

In terms of the governance and transparency issues raised in the correspondence, NHS England held a Board meeting on 26 July 2016. The agenda included a report from the Specialised Services Commissioning Committee (SSCC) in relation to its meetings on 31 May and 27 June 2016. This three-page report referred to several issues. Congenital Heart Disease was covered by a single paragraph: -

*"The national and regional panel assessments of Congenital Heart Disease (CHD) centres against key standards in the new service specification, which came into effect on 1 April 2016, were completed in June 2016. Following these assessments, the Committee agreed with the recommendation that centres assessed as 'not satisfactory and highly unlikely to meet service standards' should be served notice that NHS England was minded to cease to contract their services. Providers were informed of these assessments at the end of June 2016. Any necessary public involvement would be undertaken before service changes were implemented."*

The NHS England Board also revised new terms of reference for the SSCC, which are as follows: -

#### "Purpose

1. The Specialised Services Commissioning Committee purpose is to assure the Board that allocation for specialised commissioning in 2016/7 is utilised to maximise value, improve patient and population outcomes and ensure sustainability and transformation as part of wider programmes across the NHS.
2. The Committee's work programme should align with implementation of the required changes in how specialised services are to be commissioned and provided, specifically: delivery of place and population based systems of care, reforms at the national level to enable local flexibility, and ensuring financial sustainability

#### Delegated Responsibilities

3. The Committee operates on behalf of and reports to the Board. The following summarises the scope of responsibilities of the Committee:
  - Agree NHS England's work programme for specialised services and receive assurance about its delivery, with associated risks identified and mitigated
  - Promote the development and implementation of the strategic framework for specialised commissioning, being led by the Director of Specialised Commissioning
  - Ensure alignment of Specialised Commissioning strategy development with wider sustainability and transformation work across the overall commissioning system
  - Assure in-year and end-of-year financial balance, and to ensure necessary action – internally and with external bodies – is taken to ensure financial sustainability
  - Assure the work of the Specialised Commissioning Oversight Group and the Cancer Drugs Fund Investment Group."

## Other Health Scrutiny Committees in the East Midlands

The Health Scrutiny Committee for Lincolnshire was the first health overview and scrutiny committee in the East Midlands to consider this matter on 20 July. Other health scrutiny committees are also considering this matter during September: -

13 Sept Nottingham City and Nottinghamshire Joint Health Scrutiny Committee  
19 Sept Derbyshire County Council's Health Scrutiny Committee

The outcomes of these meetings will be reported. In addition, a date is also due to be arranged for the Leicestershire, Leicester and Rutland Joint Health Scrutiny Committee, which is likely to be after 21 September.

### **2. Conclusion**

The Committee is requested to consider the information presented and to determine if any further action is required at this stage

### **3. Consultation**

The issue of consultation is pertinent to this item, as the initial announcement by NHS England on 8 July 2016 failed to acknowledge NHS England's obligations in relation to public consultation, as set out in the regulations.

### **4. Background Papers**

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

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