

For immediate release

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Judicial Review Granted on Children's Heart Surgery Consultation

Royal Brompton & Harefield NHS Foundation Trust was today granted permission for a judicial review of the 'Safe and Sustainable' consultation on the future of children's heart surgery in England. The Trust believes that the recommended options put to public consultation are fundamentally flawed, such that a consultation based on them is unlawful. Mr Justice Burnett granted permission for a judicial review later in the year, on all grounds advanced by the trust.

Mr Bob Bell, chief executive of the Trust, said: "This is extremely good news, first and foremost for patients. We have always supported the principle that all babies and children who undergo heart surgery deserve the best possible care, but decisions about the future of such vital services have to be made on the basis of sound, objective evidence, and the decision-making process must, of course, be entirely transparent. These conditions were not met by those responsible for this review, and it is with regret that we find ourselves having to take legal action to ensure that the grave inadequacies of their approach are heard in a court of law. While we are pleased that Mr Justice Burnett has granted permission for a full judicial review to take place, it is a great shame that the Joint Committee of Primary Care Trusts did not listen to our concerns in February. Had they agreed to meet us then to discuss the flaws we had discovered, we would undoubtedly not be in this position today."

The Trust highlighted a number of areas in the consultation which it identified as flawed.

They included:

- The decision to reduce the number of children's heart surgery centres in London from three to two, which did not stand up to scrutiny and was not transparent. It was based on the perception that London had to 'share the pain' of closure in an effort to show willing to other centres around the country, and was not based on any clinical evidence.

- The decision on which two centres were to keep children’s heart surgery was made by a committee that included doctors from each of the two centres which, it was decided, kept their surgery. Both were active in the decision-making process. Royal Brompton was not represented.
- The Safe and Sustainable steering group set criteria, and then ignored them when considering Royal Brompton’s fate. Royal Brompton fulfils the set criteria, with four surgeons undertaking over 400 procedures each year. It is the third largest centre for children’s heart surgery in the country, with very low mortality rates and an international reputation.
- The review panel requested information on, and then chose to ignore, the disastrous effects on other NHS services at Royal Brompton if children’s heart surgery were to be withdrawn. Information submitted by the Trust clearly stated: “The removal of paediatric cardiac services would render the PICU completely unworkable, in turn removing an essential underpinning for our paediatric respiratory services for patients with diseases such as cystic fibrosis and DMD¹. These are widely recognised as one of the leading set of services in the UK, if not Europe: the impact on patients (as well as on the Trust’s long-term financial health and reputation) would be hugely detrimental.” Recognising this error, the Joint Committee of Primary Care Trusts recently announced plans to convene an expert panel to consider the knock-on effects of removing children’s heart surgery from Royal Brompton, but the panel has not yet met despite the public consultation ending on July 1st.

Ends/

Notes to editors:

1. The Trust’s application was based on the following grounds:

Failure to consult on all viable options

- The national assessment of all centres identified **6** viable options for the reconfiguration of paediatric cardiac services, but only **4** are put forward for public consultation, each of which only includes 2 London centres. There is no adequate reason for the decision not to consult on the 2 excluded options which received *exactly the same score* as 2 other viable options included in the consultation. This exclusion is unlawful. The consultation has been deliberately structured to exclude the possibility of 3 London centres.

¹ Duchenne Muscular Dystrophy

Failure to consult at the right stage

- The consultation options are not at a formative stage. A decision has, in effect, **already been taken** for there to be only 2 London centres. The Joint Committee of Primary Care Trusts (responsible for identifying the options to be put to the public) had made up its mind by 11 January 2011:
"Mr Glyde added that JCPCT did not consider having three centres in London a viable option, so options 10 and 12 had been discounted."

Failure to consult rationally

- The consultation fails to consult rationally because it excludes Royal Brompton from any of the recommended options despite the fact that Royal Brompton already **satisfies the key criteria** underpinning the reconfiguration plan. Royal Brompton is the third largest centre in England. It is one of only 2 centres with 4 surgeons, and was found by the review to undertake 400 plus procedures each year. At the second phase of the assessment process, the hospital was awarded 464 points by the independent panel - **a higher score** than the 4 other centres which are included in the recommended options.

The consultation is flawed because its analysis:

- Failed to take into account Royal Brompton's role as a national specialist referral centre. The recommended options were based on mapping activity which assumed that patients travel to their closest centre. It also failed adequately or at all to evaluate **the impact of the closure** of paediatric cardiac services at Royal Brompton and failed adequately or at all to take into account the effect on adult congenital cardiac services.

Apparent bias

- It appears that the choice of the 2 preferred London centres (**GOSH and Evelina**) was made by the Steering Group, membership of which included Dr Shakeel Qureshi, Consultant Paediatric Cardiologist at Guy's and St Thomas's (**Evelina**), and Prof. Martin Elliott, Consultant Paediatric Surgeon at **GOSH**. There was no member of the Steering Group from Royal Brompton. From the minutes of the Steering Group, it is apparent that Prof. Elliott and Dr Qureshi were **important contributors** to debate and decision making.
- Once the decision had been taken to include only 2 London centres, the 3 London scores, unlike the other 8 centres, were scored again. It is unclear what justifies the London centres being, at the pre-consultation stage, subjected to this head to head scoring process. It is also unclear which persons or entities were involved in carrying out the exercise. Despite the fact that GOSH and the Royal Brompton **received the same score** for quality from the Independent Panel Assessment, the former was given a higher score in this **second exercise**.

Breach of the Trust's legitimate expectation; abuse of power

- It was made clear that the criteria and scoring in the assessment undertaken by the Independent Assessment Panel would be "*separate*" from the configuration evaluation, to be undertaken later: "*[t]he information supplied in the assessment stage of the process will not have any direct bearing on the scoring of the configuration evaluation process*". In fact the Steering Group (endorsed by the JCPCT) relied on the Independent Panel's analysis in choosing among the 3 London centres. The Steering Group (endorsed by the JCPCT) also relied directly on the Independent Assessment Panel's analysis when considering the criterion of "Quality" in reducing the 6 'viable options' to the 4 Recommended Options.

2. Royal Brompton & Harefield NHS Foundation Trust is the largest specialist heart and lung centre in the UK and among the largest such centres in Europe. It operates two sites, Royal Brompton Hospital (the "Royal Brompton") in Chelsea, West London and Harefield Hospital near Uxbridge. Royal Brompton has an international reputation for specialist paediatric services. Its performance is rated '**excellent**' by the Care Quality Commission, and its record in children's heart services is particularly strong. It is the third largest UK centre for paediatric cardiac surgery and the largest UK centre for congenital heart services.

3. Our experts promote the principle of ‘shared care’ and are involved in an expanding programme of **outreach clinics**, at which they see patients with paediatric colleagues at 30 hospitals across the South East, covering Essex, Sussex, Surrey, Hertfordshire and Middlesex. A complete range of paediatric services is also provided in collaboration with Chelsea and Westminster Hospital and Imperial College Healthcare NHS Trust, and collaboration with colleagues is supported by a series of ‘virtual’ telemedicine clinics through which expert opinion is available when needed, **around the clock**. Royal Brompton is also a partner in the Children’s Emergency Transport Service (CATS) with St Mary’s and Great Ormond Street.
4. Responding rapidly to critically ill children is part of the daily work of the paediatric team, which is a **national specialist referral centre** for children with heart and lung disorders – the largest in the country for those with heart rhythm problems. Children come to us from all over the UK. Our multi-disciplinary team approach, involving cardiologists, surgeons, intensive care specialists, anaesthetists, specialist nurses, physiotherapists and other health professionals, ensures our younger patients get the best possible care in a clean, safe environment. Our record in infection prevention and control is one of the best in the country.
5. The Trust is the largest centre in Europe for **adult congenital heart disease** and is a significant provider of **fetal cardiology** services, covering 10 per cent of all babies born in England. The majority of these babies are referred by maternity hospitals across the UK, from the routine “20 week” ultrasound scan. Our clinicians work with experts in fetal medicine units at partner hospitals, to provide the best possible care for pregnant woman. Thus, the hospital offers a **seamless transition** of patients from fetal life through infancy, into childhood, adolescence and adulthood, providing the highest standards of care through all stages of life.
6. Royal Brompton experts sit on, and chair, international advisory panels and professional bodies, are keynote speakers at conferences throughout the world and share their knowledge through **teaching** both in the UK and abroad. They raise awareness of their profession, and of the high standard of paediatric care and expertise available in the NHS. Their research collaborations cross international boundaries.
7. The JCPCT was established in September 2010 by and on behalf of the 10 Specialised Commissioning Groups (“SCGs”) for England and their constituent Primary Care Trusts (“PCTs”). It was established as the body to conduct formal consultation in respect of the proposed reconfiguration of the provision of paediatric cardiac services in England. At the end of the consultation period, the JCPCT is due to make a final decision on the national reconfiguration of paediatric cardiac services in England.

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