



Leicester  
City Council

MINUTES OF THE MEETING OF THE  
LEICESTERSHIRE, LEICESTER AND RUTLAND JOINT HEALTH SCRUTINY  
COMMITTEE

Held: FRIDAY, 28 SEPTEMBER 2018 at 2.00 pm

P R E S E N T:

Councillor Cutkelvin – Chair of the Committee  
Mrs J Richards CC – Vice Chair of the Committee

Leicester City Council

Councillor Cleaver  
Dr Moore

Councillor Fonseca  
Councillor Pantling

Councillor Sangster

Leicestershire County Council

Mr T Barkley CC

Dr Bremner CC (substitute for Mr Harrison C.C.)  
Dr Eynon C.C. (substitute for Mrs Hack C.C.)  
Mrs Seaton C.C. (substitute for Dr Feltham C.C.)

Mrs M Wright CC

Rutland County Council

Councillor Miss G Waller

In attendance

Dr Janet Underwood – Healthwatch Rutland  
Harsha Kotecha – Chair of Healthwatch Leicester and Leicestershire

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#### **14. APOLOGIES FOR ABSENCE**

Members were asked to note the following:

Dr Feltham C.C, the Vice Chair submitted his apologies. Mrs Richards C.C. was the Vice Chair for the meeting and Mrs Seaton C.C. was Dr Feltham's substitute.

Mr Harrison C.C. submitted his apologies; Dr Bremner C.C. was his substitute for the meeting.

Mrs Hack C.C. submitted her apologies; Dr Eynon C.C. was her substitute for the meeting.

Apologies were also received from Councillor Chaplin, Councillor Conde and Dr Hill C.C.

#### **15. CHAIR'S ANNOUNCEMENTS**

The Chair explained that she had agreed that some additional information from Dr Sally Ruane could be circulated to Members, as it contained information which she considered to be significant.

#### **16. DECLARATIONS OF INTEREST**

Members were asked to declare any interests they may have in the business on the agenda.

Dr Janet Underwood declared that she was a co-author of a report that had been sent out and she had also sent a critique to Councillors before the previous meeting held 4 September 2018. Dr Underwood added that she was not a campaigner and everything she would say at the meeting would be in her capacity as a member of Healthwatch Rutland.

Dr Eynon C.C. declared that she was a registered medical practitioner. She was not currently in practice and did not work for any of the NHS organisations represented at the meeting.

Dr Bremner C.C. declared that he was a colleague of Dr Sally Ruane at De Montfort University, but in relation to this meeting they had not had any discussion regarding the papers.

Councillor Cutkelvin declared that she had spoken to NHS bosses in respect of their report and Dr Ruane in respect of her paper as circulated. She had not been lobbied by Dr Ruane and they had only spoken about the technicalities of her attending the meeting.

It was agreed that these declarations of interest did not mean that Dr Underwood and Members could not continue with the upcoming debate.

## 17. THE CONSOLIDATION OF LEVEL 3 INTENSIVE CARE

John Adler, Chief Executive of the University Hospitals Leicester (UHL) NHS Trust introduced a report on the Consolidation of Level 3 Intensive Care and Dependent Services. The report, which the Chair had agreed to accept as additional information, had been submitted by the Leicester City, East Leicestershire and Rutland, and West Leicestershire Clinical Commissioning Groups.

Points made during Mr Adler's presentation included the following:

- The UHL and the CCGs collectively regretted the position they were in. This was by accident rather than design; and the situation would inform the way they would like to do things in the future.
- In 2015, the issue had been brought to both the Leicester and Leicestershire Scrutiny Commissions. Apologies had been given that the issue had not been taken to Scrutiny in Rutland at the time, but that had since been rectified.
- There had been a significant delay in implementing the plans due to what was in effect a moratorium on capital expenditure. However, in the Spring 2017 budget, approximately £300m was allocated nationally and the UHL received approximately 14% of that national allocation. This was in recognition of the urgency needed to proceed with the plans to move the Level 3 Intensive Care Unit (ICU) and Dependent Services from the Leicester General Hospital (LGH).
- The award of the funding and the plans were made known and well publicised. There was positive reaction to the news.
- Since then, considerable work had been undertaken in going through the process to implement the plans. As part of this, the business case had been considered by the CCGs at public Board Meetings. They were now at the stage for work on the plans to begin before Christmas 2018.
- Mr Adler acknowledged that there had been concerns about an absence of formal consultation. They had taken legal advice which had stated that it would be inappropriate to carry out a consultation. The advice given was that the consultation should be meaningful, but a consultation at such a very late stage of the process would not be meaningful and would leave the UHL open to accusations of a 'sham'. A further issue was that delaying for a consultation could also be very expensive and would have a detrimental effect by introducing a significant delay at this stage on the UHL's efforts to improve the service. A delay would also have an extremely detrimental effect on the morale of the staff who work in those services and would impact on recruitment and retention.
- For these reasons, the CCGs and the Trust had concluded that it was

necessary to proceed with the scheme.

- Mr Adler said that they were aware that the CCGs and the Trust were not in a good place regarding public perception of the openness of the NHS in this area. He said that they regretted the position they were in but stressed that it was not by design. As such, the report included details of their commitment to a major engagement exercise on these changes and the wider reconfiguration of Leicester, Leicestershire and Rutland's acute hospitals. Those wider plans however could not be formally consulted upon until it was known whether the funding was confirmed, but there would be full public consultation when they were permitted to carry it out.
- Mr Adler added that the report made it clear that the changes were urgent, but it did not mean that those changes would undermine the future viability of the LGH as a whole.

The Chair thanked Mr Adler for his presentation.

Under Part 4E of the constitution, Scrutiny Procedure Rule 8, the Chair invited Dr Sally Ruane to the table to speak to a representation that had been sent to Members.

Points made by Dr Ruane included the following:

- The report that Mr Adler referred to was said to be a joint paper from the UHL and CCGs but the CCGs had not offered any information or explained why they did not fulfil their legal duty in involving the public in consultation.
- The UHL had omitted Rutland from consultations with Scrutiny Commissions in 2015. The consultation should have been taken to a mandatory Leicestershire, Leicester and Rutland (LLR) Joint Health Scrutiny and not the individual Health Scrutiny Commissions in Leicester and Leicestershire. The LLR Joint Committee alone had the legitimacy to comment on a matter that involved people in more than one local authority area. The decision, she believed had a problematic status as it appeared that it was taken by the CCGs without fulfilling their legal duty.
- The decision was being taken on clinical grounds, and Dr Ruane accepted that was important, but it did not take into account the future of the LGH. Dr Ruane believed that the removal of a core service would affect the future of that hospital, in the context that there was an aim to close the LGH as an acute hospital.
- People had been told that there would be engagement on those issues, but engagement fell a long way short of consultation. The removal of the Level 3 ICU at the LGH provided a perfect opportunity to consult with the public and allow them to express their anxieties, views and knowledge; some of the public were knowledgeable.
- The consultation would have cost implications, but it would have cost money

anyway. There would be a financial 'hit' but that was because local decision makers had not fulfilled their legal duty.

- Dr Ruane said that there would be an impact on the Children's Heart Centre, but she was sure this could be managed.
- Dr Ruane said that there had been references made to the possibility of losing the £30m funding; she expressed a view that this would be an interesting development when taking into account the requirement for NHS England and NHS Improvement to ensure that all the legal requirements had been fulfilled before signing off the project.
- The fact that the decision had been taken in 2015, did not invalidate a public consultation at this stage, as she believed that the decision appeared to have been taken in a way that did not have a legal footing. Dr Ruane said that the best course of action was to reverse the decision and hold a consultation to allow the public to express their views, ask questions and view the equality impact assessments.

The Chair thanked Dr Ruane for her submission.

Mr Adler in response said that although Dr Ruane had stated that it would be appropriate for the UHL to consult on this issue, that was not the legal position as they saw it having taken professional legal advice.

The Head of Law from Leicester City Council was invited to clarify the position regarding consultation with scrutiny committees and the public. The Head of Law stated that the issue of public consultation was a matter for the CCGs and they had sought their own independent legal advice, so she could not comment on that. The CCGs however had a duty to consult with scrutiny and scrutiny's power lay in deciding whether adequate consultation had taken place with them.

The Chair stated that consultation with the public was therefore a different issue to consulting with scrutiny. The committee could decide whether the CCGs had discharged their duty to consult scrutiny, however the committee could only make recommendations for the CCGs to undertake public consultation.

The Chair invited comments from Members. Points made and responses received included the following:

- When people were ill, there was a moral imperative for clinicians and health professionals to give them the best care possible. The UHL and CCG had already apologised and they should now proceed with the decision. Patient safety was more important than the public consultation.
- Dr Underwood, representative of Healthwatch Rutland commented that the CCGs should have consulted in the first place, and they should have brought the issue to the LLR Joint Health Scrutiny; the first time this particular

committee was approached was in September 2018. Karen English, Managing Director, East Leicestershire and Rutland CCG responded that as a health group, they had worked as a partnership and followed the rules that the UHL had wanted to take. They had got it wrong and had apologised. Once the issue of failing to consult Rutland had been raised; UHL had asked Rutland Council as to the best way forward and Rutland had said that they wanted the issue to be brought back to their own committee.

- Dr Underwood stated that they had been told that the reconfiguration of the Level 3 ICU was not part of the STP, but it was funded through the STP. Ms English replied that that there was some misconception as everything in health was part of the STP. This was part of the overall strategy going forward and that information was in the public domain. In response to some confusion expressed over the issue, Mr Adler added that the STP was the name given nationally to the local plans going forward. The reconfiguration of the Level 3 ICU was a free- standing set of changes but was consistent with the general direction of the travel, which was also part of the STP and had been stated publicly many times. The STP would be still be subject to full consultation once the funding was assured.
- The Chair expressed concerns that the committee had not been given enough reassurance that the reconfiguration of the Level 3 ICU would not impact on other services at the LGH.
- Concerns were raised that the UHL / CCG had had three years in which to consult with the public and a reminder was given that the public had helped to fight to retain the Children's Heart Unit in Leicester. Comments were made that the public and elected Members were not happy with the situation. Local authorities carried out consultation on relatively small issues and the UHL / CCG should have consulted on this.
- Views were expressed that the consolidation was necessary and should go ahead, but the public's annoyance was understandable. However, the UHL and CCG were urged to learn lessons from what had happened.
- A question was asked as to where it was written down that the UHL / CCG could not consult on projects until the funding was assured. Ms England responded that she would share that document with Members. A Member commented that the committee might wish to use that document to challenge the Secretary of State, for making it so difficult for the CCGs to carry out consultations.
- A Member commented that she was dissatisfied with the response from the NHS officers; it was noted that that apologies had been given, but the Member wanted to see that something was changing now. Mr Adler responded that they could not go back and having taken legal advice, the view was that it could be unlawful now to consult.
- The Member added that UHL were saying that national recruitment was difficult, but this was not an issue for deciding whether to consult and had

proper consultation taken place, the same decision might not have been reached. Mr Adler responded that it was difficult to recruit for the LGH because it did not have the variety of cases to attract staff. In trying to recruit, the UHL was competing against the rest of the country and if people did not like what was on offer at the LGH they would go elsewhere.

- Concerns were raised that consultation was rarely carried out in Rutland, but when the issue of the reconfiguration of the Level 3 ICU was brought to Rutland scrutiny in April 2018, Members did believe that a consultation would be carried out. Although this had not been included in the minutes of that meeting, but Members expected that it would happen. A Member requested that the UHL made firmer commitments about future consultation. Mr Adler said that there would be full engagement in areas including Rutland and dates had already been put in diaries. They could not yet consult however until funding was confirmed.
- A Member commented that he recognised that the staffing and patient needs were acute but the UHL and CCGs had been subject to very strong criticism. He questioned how well the public knew officers in the CCGs and whether there was a good Director to lead those communications with members of the public.
- The Member asked about the timeline for the building work and was told that the UHL were hoping to start in October / November 2018 and for the project to complete by March 2020.
- A Member commented that she would not want to have patients' lives jeopardised and she believed that the committee would be letting the public down if they did not move forward. The Member also asked whether the funding could be lost if the project was delayed. Mr Adler said that he did not have the answer to that, but it didn't help if projects were delayed and there was a risk that the funding could be re-allocated as there were many demands for investment for capital projects.

The Chair drew the discussion to a conclusion and her summary included the following points:

- The Chair stated that she thought the whole committee regretted that consultation did not take place, but she believed the committees in 2015, had arrived at the right recommendation with the information provided. However, she felt that the bosses from the NHS appeared to have hidden behind that recommendation.
- The Chair also believed that the UHL and CCG had misrepresented scrutiny by saying they had approved the decision not to consult, but scrutiny did not have the remit to approve or otherwise. This was a disservice to scrutiny. She also believed that the UHL and CCGs were hiding behind their own most recent legal advice; decisions made could be undone to allow for a consultation and then a new decision made.

- The Chair said that there had been a gross breach of trust in misrepresenting on several occasions, what had been agreed at the meeting of the LCC Health Scrutiny Commission in March 2015 as the commission had not agreed that there was no need to consult. The Chair added that some work was needed to restore that trust.
- The Chair stated that none of the arguments about financial implications and managing timelines, or the possibility of losing national funding, which she did not believe would happen, had convinced her that they had fulfilled the principle of public engagement which they needed to have done.
- The issue of consultation on the reconfiguration of the Level 3 ICU, was an issue that went beyond that raised by campaigners, it was a matter that had involved local M.P.s and had resulted in a petition with over 3000 signatures so far. The matter was therefore an appropriate subject for scrutiny to consider.
- On several occasions, the UHL had presented a clinical case as to why the reconfiguration needed and while there was huge respect for the clinicians, it should be recognised that society and public discussion had moved on significantly over the last 20 years and all members sitting round the table were able to assess the arguments put forward and decide whether something made sense or not. The Chair asked in future that the UHL and CCGs refrained from sitting behind those clinicians' arguments assuming that if the clinicians said something, it must be true.
- The Chair said that she believed that the UHL and CCGs had discharged their duty to consult with the LLR Joint Health Scrutiny Committee so there was no desire to refer this to the Secretary of State, but this did not mean that there could not be a short pause in the process to carry out a full consultation. She believed that they had misread the public's mood as there was a great deal of affection for the LGH. There was also however sympathy for the financial situation and by going out to consultation there would be an opportunity to involve the public and bring them alongside.
- People needed the opportunity to discuss changes to their local services, to be reassured that the services would not be adversely affected. The NHS needed to recognise that with the level of change they were about to embark upon, it was necessary to engage with the public in a more meaningful way.

It was AGREED that:

- 1) This Committee recognises the strong argument in clinical case to consolidate level 3 Intensive Care Services at the Leicester Royal Infirmary and Glenfield Hospital, and understands the proposals to move the service.
- 2) The Committee also believes that the CCGs and UHL have now fulfilled their statutory duty to consult scrutiny via this Committee and



it would therefore be inappropriate to refer to the Secretary of State on these grounds.

- 3) It is not for the Committee to comment on whether the CCGs and UHL have discharged their duty to consult the public. This may be a matter, that the Committee notes, could be tested by a Judicial Review against the CCG's decision.
- 4) There is deep regret that the CCGs and UHL did not listen to public calls for increased engagement/consultation after the business case had been passed by the Board in November 2017. The Committee believe it was an oversight not to go to public consultation whilst they were in the formative stage of their proposals.
- 5) This committee therefore requests the UHL Trust and CCG to:
  - a) Provide the Committee with a detailed project plan for the relocation of services.
  - b) Provide regular updates on the progress of works and any variations to the plans.
  - c) To meet with the Committee or its representatives if there are any concerns raised by them about the implementation of the proposals.
  - d) Provide the Committee more detailed information around the sustainability of existing services at the Leicester General Hospital once the Level 3 services have been removed, and more detail around the escalation process.
  - e) Immediately undertake public engagement on the major reconfiguration plans.
  - f) Undertake as soon as possible formal public consultation on the major reconfiguration plans.

A further vote was then taken, and it was agreed that:

- g) Despite all the information provided to the committee by the CCGs and UHL, the committee are not convinced that any of the reasons given preclude their responsibility to carry out public consultation. As such, in the interests of openness and transparency, the committee recommend that the CCGs and UHL undertake public consultation before continuing with the proposals.

## **18. CLOSE OF MEETING**

The meeting closed at 3.38 pm.

