

**LEICESTER, LEICESTERSHIRE AND RUTLAND JOINT HEALTH OVERVIEW AND
SCRUTINY COMMITTEE**

FRIDAY 24 JANUARY 2020

**REPORT OF THREE CLINICAL COMMISSIONING GROUPS IN LEICESTER,
LEICESTERSHIRE AND RUTLAND AND
UNIVERSITY HOSPITALS OF LEICESTER NHS TRUST**

**SUPPLEMENTARY PAPER ON CONCERNS RELATING TO THE LOCAL RESPONSE
TO THE NHS LONG TERM PLAN AND CONSULTATION ON PROPOSALS TO
INVEST £450MILLION IN IMPROVING LEICESTER'S HOSPITALS**

1. INTRODUCTION AND OVERVIEW

This supplementary paper provides a summary of the Clinical Commissioning Groups' ("CCGs") and University Hospitals of Leicester NHS Trust's ("UHL's") position in respect of the briefing paper submitted to the Joint Health Overview and Scrutiny Committee ("JHOSC") by the Leicester Mercury Patients' Panel and Rutland Health and Social Care Policy Consortium ("the briefing paper"). The briefing paper outlines perceived legal and process breaches "during the process of planning health services" in the area and recommends that the JHOSC take certain actions to remedy these alleged defects. It should be noted at the outset that neither the CCGs nor UHL agrees with the arguments advanced by the report's authors.

This document addresses the points raised in the briefing paper, which we believe fundamentally misunderstands NHS policy and, potentially, the duties of Scrutiny.

Importantly, it is our firm belief that the briefing paper confuses the process for the publication of the local response to the NHS Long Term Plan with the processes required in regard to the proposed reconfiguration of services. These are two separate processes.

On one hand it is intended that the Leicester, Leicestershire and Rutland response to the NHS Long Term Plan will be published in mid-March once it has received appropriate assurance from NHS England and Improvement. This response sets out the strategic intent of how local partners propose to respond to the national policy requirements set out in the NHS Long Term Plan.

Meanwhile, the pre-consultation business case on the proposed £450 million investment in to Leicester's hospitals requires approval at a local, regional and national level prior to the commencement of formal public consultation. It is anticipated that this process will be completed during the next two months, which should allow consultation to commence during either late March or April 2020.

The briefing paper submitted to the JHOSC suggests that there needs to be a consultation on the local response to the NHS Long Term Plan before any consultation on plans to improve hospital services in Leicester can take place. There is no sound legal or policy basis to support this view.

The local response to the NHS Long Term Plan has been informed by engagement undertaken locally by Healthwatch Leicester and Leicestershire and Healthwatch Rutland, as well as extensive insights from patients and the public based on engagement over a number of years. The local response to the NHS Long Term Plan builds upon the principles and priorities set out in the Leicester, Leicestershire and Rutland Better Care Together plan published in late 2016, and the Next Steps document published in August of 2018. At its heart remains the same commitment to keeping people well and out of hospital, delivering more care closer to home, improving care in a crisis, and delivering better specialist care.

A key element of our response to the NHS Long Term Plan are our plans to reconfigure acute and maternity services in Leicester through the investment of £450 million – which we believe would help address vital clinical and financial sustainability issues that have arisen as a result of historical legacy issues and through decades of capital under-investment in our hospital infrastructure. Our plans for acute services also directly align to plans for community and primary care services which are also articulated through our response to the NHS Long Term Plan

In any event, it is our expectation that both the local response to the NHS Long Term Plan, and the full pre-consultation business case for the proposed significant investment in to our hospitals will be in the public domain prior to the commencement of the public consultation. This will, we believe, ensure that all interested persons have access to all appropriate information in order to contribute to the consultation in an informed way.

2. CONSULTATION ON SERVICE RECONFIGURATION

The CCGs have already set out in their primary paper a summary of their proposal to consult the public on their plan to reconfigure the three hospitals in Leicester. That consultation will take place in the coming months pursuant to the duty placed on the CCGs by reason of s.14Z2 of the NHS Act 2006 (as amended) (“the Act”). The CCGs have asked JHOSC to provide feedback on the proposed approach to consultation to inform the final consultation document and plan. This dialogue takes place under the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (“the 2013 Regulations”) and is separate to the s.14Z2 of the Act public consultation duty.

Regular discussions have taken place with the local authorities, councillors and the Health Overview and Scrutiny Committees throughout the development of the service reconfiguration proposals over a number of years. However, we believe that it is wholly inaccurate for the briefing paper to suggest that the CCGs require the approval of the JHOSC before proceeding to public consultation.

The CCGs also have a separate duty to consult the local authorities on substantial developments or variation in health services under s.244 of the Act. The CCGs plan to discharge this responsibility by returning to JHOSC during the formal consultation period to discuss the detail of the proposal, during which time members will have access to the local response to the NHS Long Term Plan and the acute and maternity services pre-consultation business case.

3. THE LOCAL RESPONSE TO THE NHS LONG TERM PLAN

The six main NHS organisations in Leicester, Leicestershire and Rutland, working alongside the three principal local authorities, have developed a Five Year Plan which sets out how they propose to deliver the aims of the NHS Long Term Plan - which is a national policy and guidance document.

This plan, which is currently undergoing assurance by NHS England and Improvement, outlines the strategic intent on how the partners will work together to improve outcomes for the local population, of which the acute and maternity reconfiguration is integral. In support of this, operational plans will be produced each year setting out the detail of delivery in the coming year.

The development of the local response to the NHS Long Term Plan has been informed by extensive engagement, including specific feedback and insights from more than 13,500 people since the end of 2017. This has been consolidated with, and cross-checked against, the findings of bespoke engagement undertaken by Healthwatch Leicester and Leicestershire and Healthwatch Rutland in 2019 as part of work commissioned nationally by NHS England and Improvement to support the development of local responses to the NHS Long Term Plan. The full insights report will be published alongside our local response.

The timing of the approval and publication of the local response to the NHS Long Term Plan is a matter for NHS England. It is currently expected that in Leicester, Leicestershire and Rutland this will be published in mid-March. However, in the event that it is not published before the consultation has commenced then a draft will be made available for the public and other interested persons to consider in conjunction with the other consultation documents.

Contrary to what is suggested in the briefing paper, there was no legislative or common law duty to formally consult on the local response to the NHS Long Term Plan. Of course, the CCGs, in accordance with their statutory duties, will involve the public and other stakeholders on any particular service changes *arising from* the plan.

4. RECOMMENDATIONS PROPOSED BY THE BRIEFING PAPER

The briefing paper advances six recommendations for the JHOSC to consider. The CCGs and UHL respond to these as follows, recognising that JHOSC will be well aware of its remit and limitations:

- (1) The CCGs and UHL welcome the JHOSC's view on the proposed overall approach to consultation. However, in law, it is the remit of the CCGs to make the final decision as to whether to proceed to public consultation pursuant to its obligations under s.14Z2 of the Act.
- (2) The Consultation Institute has provided advice to the NHS in regard to early drafts of the consultation document and the communications and engagement plan. The CCGs intend to request updated advice on the final draft version prior to consultation commencing.
- (3) It is the remit of NHS England and Improvement to provide the timeline for the publications of the local response to the NHS Long Term Plan. Notwithstanding this, the CCGs and UHL have committed to ensuring that the local response and the detailed pre-consultation business case are made available in the public domain prior to the commencement of consultation.
- (4) It is a matter for the JHOSC to decide if and how it wishes to scrutinise the local response to the NHS Long term Plan. However, the CCGs and UHL believe that it is important not to confuse any such scrutiny with the duties placed on the JHOSC in respect of service reconfiguration. They are two separate matters. Stakeholders,

including the public, will have the opportunity to comment on the proposals for the hospitals in Leicester during the proposed consultation period.

(5) As per point (4) above.

(6) Whilst the CCGs welcome any feedback from the JHOSC on the proposed consultation plan, this is not something that requires the agreement of the JHOSC.

5. CONCLUSIONS

Contrary to what is broadly asserted in the briefing paper, there has been no failure by the CCGs or UHL to follow any legal requirement or national guidance in respect of the proposed consultation on service reconfiguration.

The CCGs have a statutory duty to consult and will do so. In effect, therefore, the briefing paper submitted by the Leicester Mercury Patients Panel and the Rutland Health and Care Policy Consortium is a premature challenge to a consultation that has yet to take place.

The very purpose of the consultation is to allow members of the public to consider the detail of the proposed changes and raise any concerns. The public will have a minimum of 12 weeks to consider the consultation materials and respond. During this time interested persons will also have access to supporting information including the local response to the NHS Long Term Plan and the detailed pre-consultation business case relating to the proposals to invest £450 million in improving and modernising Leicester's hospitals. Any concerns raised by the public will be considered by the CCGs before deciding how to proceed.

In closing there has, understandably, been vociferous calls from the public and other interested parties for the CCGs and UHL to commence formal consultation on plans for the three hospital sites in Leicester at the earliest possible opportunity.

After years of fighting hard to secure funding for much-needed investment to transform Leicester's hospitals, we are delighted to have been promised £450 million to deliver changes we believe will offer improved NHS healthcare for local people for generations to come. We are nearing the stage, subject to NHS England approval of our pre-consultation business case, where we can formally consult the public on those proposals.

As such, the CCGs and UHL do not believe that there is any legitimate reason to delay consultation which has been promised for many years.

6. RECOMMENDATIONS

The JHOSC is respectfully asked to discuss the response of the CCGs and UHL to the briefing paper.