

HERTFORDSHIRE COUNTY COUNCIL

**SPECIAL HEALTH SCRUTINY COMMITTEE
WEDNESDAY, 21 MARCH 2018 AT 10.00AM**

Agenda Item No

3

**SCRUTINY OF HERTS VALLEYS CLINICAL COMMISSIONING GROUP'S
PROPOSAL TO WITHDRAW £600,000 FUNDING FROM NASCOT LAWN NHS
RESPITE CENTRE (THE "PROPOSAL")**

Report of the Head of Scrutiny

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1. Purpose of report

- 1.1 To provide members with the context for the special meeting called by the Health Scrutiny Committee.

2. Summary

- 2.1 Herts Valleys Clinical Commissioning Group (HVCCG) made a decision to withdraw its £600,000 contribution to respite services delivered at Nascot Lawn, Watford from January 2017. The matter was considered at Health Scrutiny Committee (HSC) on 19 July 2017 and a scrutiny topic group held in September 2017.
- 2.2 Parents and carers of children and young people (CYP) challenged the grounds on which HVCCG made its original decision by way of Judicial Review. The County Council was an interested party i.e. any person or organisation (other than the claimant and defendant) that is directly affected by the claim. The HVCCG withdrew its decision before the Judicial Review hearing in which had been listed for 3 October 2017 on the grounds that it had received inaccurate legal advice.
- 2.3 HVCCG board considered further the proposal of its funding for Nascot Lawn to cease funding at a meeting in November 2017. At that meeting it affirmed the decision to give notice under its contract with Herts Community NHS Trust (HCT) to withdraw its £600,000 contribution; that decision would then take effect in May 2018. The CCG informed the County Council of that decision in December 2017.
- 2.4 A second claim for Judicial Review was issued by parents with the County Council as an interested party. The hearing was held 6 and 7 February 2018. The judgement found that HVCCG's proposal was a substantial variation in the health service and therefore the HVCCG should have consulted the County Council. The Court also found that the respite services provided at Nascot Lawn were health provision and not social care as argued by HVCCG.

- 2.5 The County Council received correspondence from HVCCG (dated 21 February 2018) notifying it that HVCCG wished to carry out a consultation in accordance with regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (SI 2013 / 218) (the Regulations).
- 2.6 To meet the notification timeframe set by the HVCCG a special meeting of HSC was called to be held 21 March 2018.

3. Recommendations

- 3.1 The Committee agrees with the Proposal and makes no further comment on it.

or

- 3.2 The Committee is not satisfied that the Proposal as put forward by HVCCG in the interests of the health service but considers that an appropriate agreement could be reached with HVCCG.

- 3.2.1 A Report be prepared in accordance with Regulation 23(4) of the Regulations setting out the issues considered by the Committee and any Recommendations made by the Committee in response to the Proposal

- 3.2.2 The Chief Legal Officer be authorised to take all necessary steps to prepare and submit the report referred to in 3.2.1 above in consultation with the Chairman of Health Scrutiny Committee

or

- 3.3 The Committee is not satisfied that the Proposal as put forward by HVCCG in the interests of the health service and wishes to refer the matter to full Council, without comment or Recommendation.

- 3.3.1 Full Council is recommended to consider referring the Proposal to the Secretary of State for Health and Social Care, in accordance with Regulation 23 (6), (7) and (9).

- 3.3.2 The Committee recommends that Council refers the Proposal in accordance with Regulation 23(9)(c) of the Regulations – that the Proposal would not be in the interests of the health service in Hertfordshire.

4. Background

- 4.1 Representatives of HVCCG attended the Health Scrutiny Committee meeting on July 2017 to outline the HVCCG's rationale for the decision to cease funding services at Nascot Lawn. Members reiterated to both HVCCG and officers of the County Council their view, which had been consistently expressed whenever this decision had been considered, that all stakeholders should continue to have proactive and mature discussions in order to ensure that the needs of the children and their families who attended Nascot Lawn and those with similar needs going forward could be met on a sustainable and agile basis.

4.2 The Committee also determined that the matter should be subject to scrutiny. A Member topic group was set up to undertake detailed scrutiny on 7 September. It examined:

- the current and future funding arrangements of respite care for Children & Young People (CYP) with complex care needs and their carers;
- the extent and quality of consultation with partner organisations and other stakeholders in reaching the decision to cease funding for Nascot Lawn;
- the assessments supporting the decision to cease funding including financial, risk assessment, Equality Impact Assessment (EQIA) and Health Impact Assessments (HIAs);

4.3 In conclusion the topic group made four recommendations:

1. That all partners agree and use protocols that are already in place more consistently to ensure effective, timely and thoughtful engagement to both understand the needs of users, stakeholders and partners and how this informs service delivery and development.
2. That all partners develop and use mechanisms already in place more consistently to ensure partnership working operates maturely at a time of financial pressure within a challenged system and provide examples of how this will be achieved and measured.
3. That services for our most vulnerable residents are commissioned, resourced and provided utilising a sound and authoritative evidence base.
4. Using this experience (as outlined in recommendations 1, 2 and 3) to inform future working and decision making.

4.2 Following the first claim for Judicial Review, and after the Topic Group, HVCCG conducted a stakeholder engagement process with parents and carers of CYP that used Nascot Lawn for respite care in October 2017. HVCCG's Finance and Performance Committee met on 17 November 2017 and concluded that HVCCG could not fund the respite service for children and young people at Nascot Lawn and reaffirmed the original decision to withdraw funding. HVCCG's decision was supported by a new Equality Impact Assessments (EqIA), and Health Inequality and Quality Assessments (HIA).

4.3 On 27 November 2017 a pre action protocol letter was issued on behalf of parents and carers of CYP that used Nascot Lawn for respite care challenging HVCCG's decision of 17 November 2017, and judicial review proceedings were commenced. The County Council took part in the judicial review claim as an "interested party".

- 4.4 On 21 February 2018 the High Court gave judgment: in his judgment the judge (Mr Justice Mostyn) stated: “*on any view nursing services are being provided at Nascot Lawn as well as services for the care of persons suffering from illness.*” Therefore services delivered at Nascot Lawn fall in to the category of a health provision. During the hearing the judge had noted that the removal of funding from the one unit in the County that provided care to children with these complex health needs would amount to a substantial variation in health provision. It followed that HVCCG were required to, and had failed to, consult the County Council as required under the Regulations. The Judge quashed the CCG’s decision of 16th November 2017 to cease its funding for Nascot Lawn until consultation with the County Council, in accordance with the process set down in the Regulations, had taken place.
- 4.5 Following the judgment HVCCG wrote to the County Council giving formal notification of consultation on the Proposal (to withdraw £600,000 funding from Nascot Lawn) in accordance with regulation 23 of the Regulations.
- 4.6 A special meeting of the HSC has been arranged for 21 March 2018. This was to meet the 4 April 2018 deadline set by HVCCG for the County Council to provide any comments about, and (if the Committee considers appropriate) make Recommendations on, the Proposal. HVCCG will make a decision as to whether to proceed with the Proposal on 3 May 2018.
- 4.7 At the special meeting Members will hear from the witnesses that addressed the topic group. This will provide members with a range of evidence from commissioners, the provider, carer groups and parents. Each has been asked for a written report (appended to this report) and have been offered a slot to address the Committee (as per programme outlined within the agenda pack)

5. Financial Implications

- 5.1 There are no financial implications arising from this report.

Background Information

Herts Valleys CCG Board Papers – 8 November 2017:

<http://hertsvalleysccg.nhs.uk/publications/board-documents/board-papers/9-november-2017>

Health Scrutiny Committee papers - 19 July 2017:

<http://cmis.hertfordshire.gov.uk/hertfordshire/Calendarofcouncilmeetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/612/Committee/12/Default.aspx>