

## Item 3 Appendix Di

21 February 2018

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Chief Executive  
Jenny Coles  
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Seamus Quilty  
Chair of Health Scrutiny Committee  
Hertfordshire County Council  
VIA EMAIL

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Dear John, Jenny and Seamus

**Re: Regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013. (SI 2013 No 218)**  
**CCG consultation with HCC regarding CCG recommendation to cease annual funding of Nascot Lawn**

Following the ruling made by Mr Justice Mostyn, after the Judicial Review on 6 and 7 February 2018, this communication serves as notification that the CCG wishes to consult with Hertfordshire County Council on the future funding of Nascot Lawn. This consultation is being carried out in accordance with regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013. (SI 2013 No 218).

In accordance with the requirements of regulation 23, I confirm the following:

- (i) the proposed date by which the CCG intends to make a decision as to whether to proceed with the proposal is 3 May 2018; and
- (ii) the date by which the CCG requires Hertfordshire County Council to provide any comments about the proposal is 4 April 2018.

**Background**

The recent Judicial Review of the CCG's previous decision to withdraw funding for respite services at Nascot Lawn was presented on six grounds and the Judge's ruling has upheld one of those grounds and rejected the remaining five. The decision to remove funding of £600,000 annually from Nascot Lawn with effect from 16 May 2018 has now been quashed under the first ground of challenge.

Mr Justice Mostyn has directed us to the legal requirement that any substantial changes to health services need to be consulted on in a way that is prescribed and in accordance with a specific legal regulation: Regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (SI 2013 No. 218).



The ground that the judge upheld relates to the CCG's requirement in law to formally consult with Hertfordshire County Council, because the service funded by the CCG was deemed by the judge to be a health service. As you know, we had proceeded on the basis that the commissioning of respite services was primarily for the benefit of families and carers, and as such did not require formal consultation under regulation 23.

The judge's ruling outlines the five grounds for the judicial review that he dismissed.

B: Failure to assess the needs of users

C: Failure to consult

D: Breach of the Public Sector Equality Duty set out in section 149 of the Equality Act 2010.

E: Breach of section 11 of the Children Act 2004

F: Breach of Art 8 of the ECHR taken with Art 3 of the UNCRC

With regard to ground B, the judge concluded that there was no duty to provide individual assessments of the affected children, and in any event was satisfied that there was "a wealth of material about each of the relevant children" available to the Finance and Performance Committee of the CCG when it met on 16 November 2017. He therefore concluded that our previous decision to withdraw funding was not 'irrational or perverse' as stated by the claimants.

Similarly, Mostyn J. made it clear that the claim that Herts Valleys CCG did not comply with its obligations to consult the public was "meritless" – indeed he states that we 'fully complied' with our obligations and that 'there was very full public involvement in the proposal to withdraw funding'.

In terms of the remaining three grounds upon which the judicial review had been brought, (grounds D, E and F) these were also rejected by the Judge. In particular, the Judge found that the CCG's equality impact assessment was 'sufficient and appropriate'; the children's interests were 'properly considered' and there was no breach of European Convention of Human Rights.

The judgement notes the CCG's need to balance priorities and its constrained financial position, and in this respect the council are aware of the CCG's need to meet a similar level of savings in 18/19 as in the financial year 17/18. There are references in the judgement to the CCG's requirement to consider the competing interests of individuals and the wider community.

### **The CCG's consultation with the Council**

The CCG is consulting with the Council on a proposal to cease its annual funding of £600K for Nascot Lawn respite provision.

In undertaking this consultation, the CCG will adhere to the "Gunning principles" of lawful consultation in the following way:

#### **1. When proposals are still at a formative stage**

Although there is a long history to this matter as noted by the Judge in the recent judicial review, I can assure you that the CCG has an open mind as to the outcome of this consultation and the decision that will ultimately be reached by the Finance and Performance Committee. The committee has a majority of GP and lay members, as well as officers of the CCG, and they will make their decision carefully having considered all of the available information, including the Council's response to this consultation.



## **2. Sufficient reasons for proposals to permit 'intelligent consideration'**

The Judge noted in the recent judicial review that the CCG's decision of 16 November 2017 "did not come out of a clear blue sky." There have been many discussions between the CCG and the Council about the funding of Nascot Lawn over the last year, and extensive correspondence including the provision of the engagement document that the CCG shared with families, and the pack of papers that was considered by the Finance and Performance Committee at its meeting on 16 November 2017. Details of the financial position of the CCG have also been shared with the Council. In view of this, we are not proposing to provide the Council with any further information in support of this consultation, but if you believe that further information will assist you in preparing your response, please let us know by no later than 7 March 2018 so we can consider your request and make available any further information in ample time to allow you to respond.

Please find enclosed a copy of our EQIA to support the Council in making 'an informed and intelligent choice and input into the process' as noted in the Gunning principles. The Judge noted the EQIA lays 'out sufficiently and appropriately the impact of the proposal, including the mitigating steps that the CCG had taken to address the anxiety of the parents and carers including the health assessment process, training programme for carers, identification of a lead professional in HCT to liaise with HCC and set out the alternative respite options that would be available.'

## **3. Adequate time for consideration and response**

We believe there are good reasons for the CCG to make a final decision regarding future funding of respite services at Nascot Lawn promptly. As you know, Hertfordshire Community Trust which is responsible for the provision of respite services at Nascot Lawn has raised concerns on a number of occasions that the service is becoming increasingly fragile due to staff shortages. In addition, considerable work has already been carried out by all parties to facilitate the transition of children from the respite service at Nascot Lawn to alternative County Council provision. We do not think it is in anyone's interests for there to be a further lengthy period of uncertainty as to future respite provision for these children whilst awaiting a decision from the CCG on future funding.

As you will be aware, the Cabinet Office Consultation Principles Consultations indicate that consultation should last for a proportionate amount of time taking into account the nature and impact of the proposal. We are proposing to consult with the Council for a period of 6 weeks, which we consider is ample time given the lengthy history of this matter to date. If the Council considers that a shorter period of consultation will be sufficient given the concerns highlighted above please let us know.

## **4. Product of consultation must be conscientiously taken into account**

Our timetable allows for a period of a month for the CCG to consider the Council's response to the consultation before the Finance and Performance Committee makes its decision. Once that response is received we will share the Council's feedback on our consultation with families online. We will be asking families to contact us with comments on your feedback regarding the CCG proposal by 5pm on 18 April 2018. We will also update our impact assessment to take account of any new matters raised in your consultation response and any changes in circumstances notified to us by the families.

In responding to the consultation we would ask the Council to note the Judge's findings on grounds B to F of the recent judicial review and not to revisit those grounds in its response.



**Next steps**

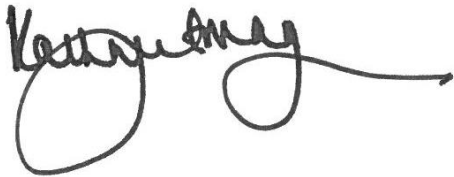
I am grateful to Jenny for agreeing to attend a meeting with the CCG next Wednesday, 28 February, in order to facilitate a collaborative dialogue regarding this consultation and in line with the recommendations agreed by all parties as documented in the Nascot Lawn scrutiny report of 20 September 2017.

Following this meeting I formally request that the council provides a written response to the CCG's proposal to cease funding respite services at Nascot Lawn by 5pm on 4 April 2018.

I look forward to meeting you to discuss further.

Kind regards

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kathryn Magson', with a long horizontal flourish extending to the right.

**Kathryn Magson**  
Chief Executive Officer

Encs – EQIA

