

HERTFORDSHIRE COUNTY COUNCIL

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

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

Author: Kathryn Magson, Chief Executive Officer, Herts Valleys CCG, 01442 898 868

1. PURPOSE OF THE REPORT

- 1.1 To provide members with a response to the scrutiny questions to be addressed at the Special Health Scrutiny Committee taking place 21 March 2018.

2. BACKGROUND

Nascot Lawn provides respite provision for children with complex health needs and learning disability. The service has been funded by the NHS in Hertfordshire for many years: the current arrangements pre date the creation of the CCGs. The total annual running cost of Nascot Lawn is £660,000. Herts Valleys Clinical Commissioning Group ("HVCCG") (provides 90%) and East and North Clinical Commissioning Group ("ENHCCG") (provides 10%).

Hertfordshire County Council (HCC) has a statutory duty under the Children Act 1989 and the Breaks for Carers of Disabled Children Regulations 2011 to provide a range of short breaks services, including day-time and overnight care as well as education or leisure activities and services to assist carers in the evenings, at weekends and during the school holidays.

The NHS Act 2006 and the NHS Commissioning Board and CCGs (Responsibilities and Standing Rules) Regulations 2012 set out the CCGs duties as to commissioning health services. This legislation requires the CCG to arrange for the provision of a range of healthcare services including Children's Continuing Care, however they do not confer any specific responsibility on CCGs in relation to respite services. A CCG will commission the care required for any child who meets the children and young people's continuing care framework as well as meeting the health needs of children and young people through the specialist and universal services that it commissions... It is also a statutory requirement for a CCG to be in financial balance in each financial year. This duty is set out in the NHS Act 2006.

Nascot Lawn was discussed at Full Council on 18th July 2017, Health Scrutiny on 19th July 2017. The HSC held a topic group on 6th September 2017. Members examined the partnership working between HVCCG and partners, assessments carried out and the current and future funding arrangements for respite care, in Hertfordshire, for children and young people with complex health and social care needs and their carers'.

In November 2017, HVCCG informed the County Council of its decision, following the Finance and Performance meeting, ("the Decision") to withdraw £600,000 funding from Nascot Lawn. This decision was challenged in the High Court on 6th and 7th February 2018 by three parents receiving respite provision at Nascot Lawn.

On 21 February 2018, Mr Justice Mostyn quashed the Decision only on the basis that HVCCG had failed to consult Hertfordshire County Council in accordance with Regulation 23 of the Local Authority (Public Health, Health and wellbeing boards and Health Scrutiny) (SI 2013/218).

My decision is that the resolution made by the defendant on 16 November 2017 to remove funding of £600,000 annually from Nascot Lawn in Watford (a respite service for children with complex medical needs) with effect from 16 May 2018, is set aside under the first ground of challenge. The remaining five grounds are all dismissed. The consequence is that the claimant must now comply with its legal duty formally to consult Hertfordshire County Council (HCC) about its proposal to withdraw that funding. That should lead to a collaborative dialogue. I am satisfied that aside from the first ground the complaints made by the claimants about the process which led to the decision are not made out.... the services provided at Nascot Lawn are health services.....It is therefore my conclusion that the decision by the defendant to withdraw the funding of Nascot Lawn was made on an incorrect legal basis with the consequence that it has not complied with its legal obligations under regulation 23. On that basis, and on that basis alone, the decision is quashed, with the consequence that the regulation 23 path must now be followed.

The judge's ruling is set out in a lengthy judgement and he outlines in some detail the remaining 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 Article 8 of the European Court of Human Rights taken with Article 3 of the UN Convention of the Rights of the Child

He states that normal practice is not to set out a judge's response to other grounds once he has concluded that the first ground of the claim is upheld, but Mr Justice Mostyn felt that in this case, because of what he called the 'fierce criticism' that had been levelled at Herts Valleys CCG, it was right to explain why the remaining grounds for the judicial review were rejected.

So, for example, the judge rejects the assertion that the CCG failed to assess the needs of users of Nascot Lawn. He makes clear that we complied with all that would be required of us and that therefore our decision to withdraw funding was not 'irrational or perverse' due to a failure to carry out individual assessments of the affected children as stated by the claimants.

Similarly, Mr Justice Mostyn makes clear that he sees 'no merit' in the claim that Herts Valleys CCG did not comply with obligations to consult the public – indeed he states that we 'fully complied' with our legal 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, which challenged our compliance with legislation concerning equality, treatment of children and human rights, the judge found in favour of the CCG. The equality impact assessment was 'sufficient and appropriate', the children's interests were 'properly considered' and he was satisfied that there was no breach of the European Convention of Human Rights.

The written judgement notes the CCG's need to balance priorities and our constrained financial position. There are references to our requirement to consider the sometimes competing interests of individuals and the wider community.

Timeline

In order for HVCCG to comply with the requirement of Regulation 23, below details the timeline.

- 21 February 2018 - HVCCG issue letter to HCC informing HCC of formal consultation in line with Regulation 23 of the Local Authority (Public Health, Health and wellbeing boards and Health Scrutiny) Regulations 2013 (SI 2013/218)

- 21 February 2018 - HVCCG issue letter to parents requesting them to contact us with comments on the Council's feedback regarding the CCG proposal by 5pm on 18 April 2018
- 27 February 2018 - HCC response to HVCCG letter - *'The council accepts your letter of 21 February as a valid notice of Consultation under Regulation 23 and is grateful for the opportunity to provide a formal response'...this matter will now be referred to the Councils Health Scrutiny Committee'* Health scrutiny committee 21 March 2018. Council note that HVCCG request a response to the Consultation by 4 April 2018
- 28 February 2018 - HCC and HVCCG face to face meeting to discuss consultation
- 02 March 2018 – HVCCG letter to HCT confirming that the CCG withdraws the notice of termination of funding dated 17 November 2017
- 07.03.18 – Nascot Lawn Strategic Meeting
- 07.03.18 - HVCCG letter to parents
- 09.03.18 – Nascot Lawn Operational Meeting
- 21st March 2018 HCC Health Scrutiny meeting
- 04th April 2018 – HCC to respond to HVCCG on consultation
- 18th April 2018 – Families to respond to HVCCG with comments on the HCC response to the consultation
- 03 May 2018 – Finance and Performance meeting when a new decision will be made
- 04th May 2018 – HVCCG communication to families and stakeholders of decision made by Finance and Performance Committee

2.1 Members will be seeking information to address the following questions

2.1.1 Is the Proposal in the interests of health services in Hertfordshire?

The Herts Valleys CCG finance and performance committee unanimously concluded at its Finance and Performance meeting on 16 November 2017 that the CCG would not continue to fully fund the respite service at Nascot Lawn. This difficult decision was made in the context of a very challenging financial environment, and having to assess priorities in order to meet the financial requirements placed on us by statute. The decision was reached after a period of extensive engagement. The CCG conducted detailed assessments of needs, and a wider consideration of the CCG's financial position was also important and considered in the decision-making.

It is a statutory requirement for a CCG to be in financial balance in each financial year. This duty is set out in the NHS Act 2006. In the summer of 2016 the CCG highlighted that it was unlikely to meet its 2016/17 financial plan and was required by NHS England to prepare a financial recovery plan that included consideration of which planned investments could be stopped or deferred. The financial position continued to worsen and the CCG was placed in formal financial turnaround in November 2016. The CCG eighteen month recovery plan, assured by NHSE, has identified potential savings of £8.5million plus £600K for Nascot Lawn, across both 2017/18 and 2018/19 if the CCG ceases funding the services that it is not statutorily required to provide, specifically this referred to social care and funding for respite. HVCCG has secured financial balance this year, however, savings of £30m are needed for 2018/19.

Through 'Let's Talk', the CCG has been consulting with stakeholders and the public on the best use of money available so that we can help as many people as possible to live healthier longer lives. This consultation has now concluded and the CCG has confirmed it will be ceasing funding on a number of NHS health services.

The proposal on which HVCCG is consulting HCC is to cease funding of respite provision, currently provided at Nascot Lawn and to enter into joint arrangements to fund respite provision whilst recognising that HCC have the statutory responsibility for short breaks. The CCG anticipates an annual saving of approximately £500k with this proposal. In order to achieve this objective HVCCG will provide HCC with £100,000 per annum to support OSBs for children and young people with complex health needs. East and North Herts CCG will also match this agreement. The application or not of annual inflation is to be agreed by the partners.

HVCCG will continue to fund a range of health services to meet the needs of children, young people and their families, including children and young people with SEND who are accessing HCC respite care. Full access to clinical care in community; acute and tertiary health services will also continue to be commissioned. Training of care staff in HCC respite units will continue to be offered via the clinical services commissioned by the CCG. This offer is made across the whole of Hertfordshire with the same offer from E&NH CCG ensuring that there is equity.

2.1.2 Are there any alternative service proposals available to HVCCG and the County Council that would address the current and future needs of CYP with complex health and social care needs requiring respite care in Hertfordshire?

Hertfordshire County Council funds three respite provisions in the county. An HCC report in 2015 noted 'all three social care provisions are commissioned to deliver provision to severely disabled children and young people with complex health needs, including those with life limiting conditions, the technology child, those requiring palliative care, and those with moving and handling needs that will require equipment and adaptations.' Appendix 2 of the HCC report lists 'complex health needs currently accommodated within social care commissioned residential short break services.'

A 0-25 SEND Overnight's Short Breaks Re-commissioning options paper was jointly produced September 2016 by HCC and HVCG with a primary aim to streamline and optimise use of OSB services based on analysis of the provision of current services across the county. Overnight Short Breaks (OSB) are residential services for CYP with SEND and complex health needs that live in Hertfordshire and or have a Hertfordshire GP. The report highlighted that the four existing overnight short break centres were all under- utilised and utilisation of HCC OSB had fallen significantly and services could meet capacity and operate out of three Buildings. The CCG are aware of the adaptations HCC need to undertake to their buildings to expand their capacity. This report also confirmed that three units could meet the needs of the current children.

HVCCG will continue to fund a range of health services to meet the needs of children, young people and their families, including children and young people with SEND who are accessing HCC respite care. Full access to clinical care in community; acute and tertiary health services will also continue to be commissioned. This includes the following (and is already available to all children whose families' access respite provision):

- Palliative care for CYP with life limiting conditions (which may include overnight respite and or symptom care within the hospice environment),
- Children's continuing care, for those CYP assessed as eligible, (which may include overnight health care within the children and young person's own home)
- Children's community nursing, (which provides nursing care, advice and support for CYP within their own homes, schools or nurseries)

- Special school nursing, (nursing care and support in the school environment) In addition, children who meet the Department of Health 2016 Framework for Children and young people's continuing care eligibility will continue to receive a package of care.

The CCG also commissions a Designated Medical Officer (DMO) to support the CCG in meeting its statutory responsibilities for children with SEN or disabilities between the age of 0 – 25.

One child in HVCCG meets eligibility for Children and Young People's Continuing Care (CYPCC) and has overnight respite at Nascot Lawn. In December 2017, following the Continuing Care Panel meeting, an additional child has also met CYPCC eligibility. This child does not currently access overnight respite due to age (3 years of age).

Currently, only one child from HVCCG who meets CYPCC eligibility requests overnight out of home respite the remaining nine families do not request out of home respite in addition to their CYPCC package of care. Typically, continuing care packages are provided overnight in the families own home with care being delivered by a trained carer.

Transfer arrangements for HVCCG children and young people to HCC respite units

An operational group chaired by HCC and consisting of HCC commissioners; HVCCG commissioners and the Providers of current respite provision units West Hyde; Nascot Lawn; The Pines and Peartree have been meeting fortnightly since January 2018. This group is facilitating the safe transfer of children from Nascot Lawn to HCC respite units.

Each child is individually tracked, monitored and discussed including their equipment, training and care needs.

Competency based training of HCC respite staff is being carried out by the HCT Aiming High team for each individual child. The HVCCG Nursing and Quality team undertook an audit to provide assurance that the children transferring from Nascot Lawn to alternative HCC short break facilities will be transitioned safely and that the providers have received competency based training from HCT "Aiming High" to manage the children's ongoing care needs.

The Children's Community Nursing team (provided by HCT and commissioned by HVCCG) will, when requested by a respite provision will provide bespoke competency based training for an individual child.

The Aiming High team consider that it is the provider's responsibility to ensure that all staff working for them are competent to deliver safe appropriate care, based on the child's care plan and risk assessment. The overall accountability is the responsibility of the care manager in the respite service.

HCT have an executive level task and finish Nascot Lawn group, chaired by a non-executive, with director of nursing representation and leadership. The purpose of the group is to provide oversight of a safe and effective closure

2.1.3 How will the integration and joint responsibilities between HVCCG and the County Council be arranged and managed going forward?

HVCCG are currently consulting with HCC regarding the proposal to cease funding of Nascot Lawn. This is in line with Regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (SI 2013 No. 218). Should the decision be made by HVCCG to cease funding, this agreement will come into effect on a pro rata basis once both CCGs cease funding of Nascot Lawn.

The two Hertfordshire CCGs and the County Council have agreed three shared priorities in relation to children and young people. These shared priorities are also reflected in the Health and Wellbeing Strategy 2016-2020.

- Early childhood
- 0-25 integration for children and young people with additional needs
- Emotional wellbeing and mental health transformation

The partners are looking to achieve a position whereby all children in Hertfordshire who have been assessed as requiring an overnight short break (OSB) service are able to access their local OSB setting. In order to achieve this objective HVCCG will provide HCC with £100,000 per annum to support OSBs for children and young people with complex health needs. East and North Herts CCG will also match this agreement. The application or not of annual inflation is to be agreed by the partners.

It is anticipated that most children with complex health needs will have their needs met by trained carers who are part of the team that staff the OSB settings. This will be confirmed by health assessments which will identify any specific or additional training needs. Training for carers can be accessed from a range of providers, including the Aiming High Teams from Hertfordshire Community Trust for Herts Valleys children and East and North Hertfordshire NHS trust for children in East and North Herts. Partners will work towards delivering a more consistent offer moving forward.

A small number of children may require additional health care in order to be able to access their local OSB setting. In such cases the child will need to be referred for a Children and Young People's Continuing Care (CYPCC) assessment and be presented at the CYPCC panel.¹ The panel will consider any request for additional 'top up' funding or support. At present both CCGs have their own CYPCC Panel at which the Local Authority is represented.

It is not anticipated that children will receive OSB out of county other than in exceptional circumstances. Any such request will relate to a child who meets eligibility for CYPCC, and the request will be considered by the CYPCC panel. The agreement of any out of county placements will not impact on the financial arrangement above.

Summary:

HVCCG recommends ceasing funding of respite provision, currently provided at Nascot Lawn and enters into joint arrangements to fund respite provision whilst recognising that HCC have the statutory responsibility for short breaks. An offer of £100k was available to HCC initially to support OSB's at Nascot Lawn. Full access to clinical care in community; acute and tertiary health services will also continue to be commissioned by the CCG. Training of care staff in HCC respite units will continue to be offered via the clinical services commissioned by the CCG. This offer is made across the whole of Hertfordshire with the same offer from E&NH CCG ensuring that there is equity.

HVCCG will continue to fund a range of health services to meet the needs of children, young people and their families, including children and young people with SEND who are accessing HCC respite care. This includes the following (and is already available to all children whose families' access respite provision):

¹ The panel process confirms if a child meets eligibility for children and young people's continuing care as set out in the DH guidelines 2016.' The assessment of the level of need must recognise that where a child or young person requires constant supervision or care which is largely provided by family members, there will be a need for professional support to allow the family time off from their caring responsibilities, and this may require a social care assessment, and agreement, between the CCG and the local authority (which is usually the commissioner of respite care), of the respective contribution.' P26 (137)

- Palliative care for CYP with life limiting conditions (which may include overnight respite and or symptom care within the hospice environment),
- Children's continuing care, for those CYP assessed as eligible, (which may include overnight health care within the children and young person's own home)
- Children's community nursing, (which provides nursing care, advice and support for CYP within their own homes, schools or nurseries)
- Special school nursing, (nursing care and support in the school environment) In addition, children who meet the Department of Health 2016 Framework for Children and young people's continuing care eligibility will continue to receive a package of care.

Hertfordshire County Council funds three respite provisions in the county all three provisions are commissioned to deliver respite to severely disabled children and young people with complex health needs, including those with life limiting conditions, the technology child, those requiring palliative care, and those with moving and handling needs that will require equipment and adaptations.

A 0-25 SEND Overnight's Short Breaks Re-commissioning options paper highlighted that the four existing overnight short break centres were all under- utilised and utilisation of HCC OSB had fallen significantly and services could meet capacity and operate out of three Buildings.

The partners are looking to achieve a position whereby all children in Hertfordshire who have been assessed as requiring an overnight short break (OSB) service are able to access their local OSB setting. In order to achieve this objective HVCCG will provide HCC with £100,000 per annum to support OSBs for children and young people with complex health needs. East and North Herts CCG will also match this agreement.

Full access to clinical care in community; acute and tertiary health services will also continue to be commissioned by CCG. Training of care staff in HCC respite units will continue to be offered via the clinical services commissioned by the CCG.

Appendices

Appendix 1

Signed agreement on integration and joint responsibilities between HVCCG; E&NHCCG and the County Council

21.02.18 - HVCCG letter to HCC
 21.02.18 - HVCCG letter to Parents
 27.02.18 – HCC letter to HVCCG
 08.03.18 – HVCCG letter to HCC
 02.03.18 - HVCCG letter to HCT
 07.03.18 - HVCCG letter to parents