

Agenda



AGENDA for a special meeting of the HEALTH SCRUTINY COMMITTEE in the Council Chamber, County Hall, Hertford on WEDNESDAY 21 MARCH 2018 AT 10:00AM

MEMBERS OF THE COMMITTEE (20) - QUORUM 7

COUNTY COUNCILLORS (10)

S Brown; E H Buckmaster; M A Eames-Petersen; D Hart; T Howard (*substituting for F Guest*); M S Hearn; D J Hewitt; S Quilty (*Chairman*); M A Watkin (*substituting for R G Tindall*); C J White (*Vice Chairman*);

DISTRICT/BOROUGH COUNCILLORS (10)

J Birnie (Dacorum); S Deakin-Davis (*substituting for J Green (North Herts)*); B Gibbard (St Albans); K Hastrick (Watford); D Lambert (Hertsmer); G Nicholson (Broxbourne); A Scarth (3 Rivers); N Symonds (East Herts);

Meetings of the Scrutiny Committee are open to the public (this includes the press) and attendance is welcomed. However, there may be occasions when the public are excluded from the meeting for particular items of business. Any such items are taken at the end of the public part of the meeting and are listed under "Part II ('closed') agenda".

The Council Chamber is fitted with an audio system to assist those with hearing impairment. Anyone who wishes to use this should contact main (front) reception.

Members are reminded that all equalities implications and equalities impact assessments undertaken in relation to any matter on this agenda must be rigorously considered prior to any decision being reached on that matter.

Members are reminded that:

- (1) if they consider that they have a Disclosable Pecuniary Interest in any matter to be considered at the meeting they must declare that interest and must not participate in or vote on that matter unless a dispensation has been granted by the Standards Committee;
- (2) if they consider that they have a Declarable Interest (as defined in paragraph 5.3 of the Code of Conduct for Members) in any matter to be considered at the meeting they must declare the existence and nature of that interest. If a member has a Declarable Interest they should consider whether they should participate in consideration of the matter and vote on it.

PART I (PUBLIC) AGENDA

1. MINUTES [SC.8]

As this is a special meeting of the Committee there are no minutes to be agreed. Minutes of the meeting of the Committee held on 15 and 29 March will be considered at the next ordinary meeting.

2. PUBLIC PETITIONS [SC.11]

The opportunity for any member of the public, being resident in Hertfordshire, to present a petition relating to a matter with which the Council is concerned, which is relevant to the remit of this Committee and which contains 100 or more signatories who are either resident in or who work in Hertfordshire.

Members of the public who are considering raising an issue of concern via a petition are advised to contact their [local member of the Council](#). The Council's criterion and arrangements for the receipt of petitions are set out in [Annex 22 - Petitions Scheme](#) of the Constitution.

If you have any queries about the petitions procedure for this meeting please contact Elaine Manzi, by telephone on (01992) 588062 or by e-mail to elaine.manzi@hertfordshire.gov.uk.

At the time of the publication of this agenda no notices of petitions have been received.

Note: As this is a special meeting of the Committee, only petition/s which relate to the item of business listed at 3. below will be considered at this meeting.

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

4. ITEMS FOR REPORT TO THE COUNTY COUNCIL (Standing Order SC. 7(2))

To agree items for inclusion in the Committee's report to County Council. In the absence of a decision, a summary of all items will be reported

If you require a copy of any of the reports mentioned above or require further information about this agenda please contact Elaine Manzi, Democratic Services Officer, Legal, Democratic and Statutory Services, on telephone no. 01992 588062 or email elaine.manzi@hertfordshire.gov.uk

Agenda documents are also available on the internet at

<http://cmis.hertfordshire.gov.uk/hertfordshire/CabinetandCommittees.aspx>

**KATHRYN PETTITT
CHIEF LEGAL OFFICER**

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

Programme

Time*	Item	Witnesses & Evidence
10.00	Welcome and Introduction Scrutiny objective, questions and constraints, background information and outline of programme	Chairman: Seamus Quilty Head of Scrutiny: Natalie Rotherham
10.10	Herts Valleys Clinical Commissioning Group (HVCCG)	Kathryn Magson, Chief Executive HVCCG
10.40	Hertfordshire County Council Children's Services	Jenny Coles, Director of Children's Services Marion Ingram, Head of Specialist Services
11.00	East & North Herts Clinical Commissioning Group (ENHCCG)	Beverley Flowers, Chief Executive ENHCCG
11.15	Break	
11:30	Nascot Lawn parents / carers representative	Angela Kitching, parent
11.45	Carers in Herts	Roma Mills, Carers Involvement Manager Carers In Herts
11.55	Herts Parent Carer Involvement (HPCI)	Leise Cooper, Chair HPCI Carol Kelsey, Coordinator and Director HPCI
12.05	Healthwatch Herts	Michael Downing, Chair Geoff Brown, Chief Executive Healthwatch Hertfordshire
12.15	Herts Community Trust (HCT)	Marion Dunstone, Director of Operations Tricia Wren, Director of Nursing & Quality (Acting) Katy Healy, General Manager, Children & Young People's Services Anne McPherson, Non-Executive Director (Chair of Healthcare Governance Committee and Freedom to Speak Up Guardian)
12.30	Lunch	
13.30	Summary of the morning's scrutiny	Natalie Rotherham

13.45	The Health Scrutiny Chairman to open debate to members of the HSC	Members of HSC
15.45	Debate and decision	Members of HSC
16:15	Close	

* Times are approximate. Check with the Head of Scrutiny

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

Author: Natalie Rotherham, Head of Scrutiny

(Tel: 01992 588485)

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>

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

Item 3 Appendix Bi

21 February 2018

Second Floor
Hemel One
Boundary Way
Hemel Hempstead
HP2 7YU
01442 898 888

Dear parent/carers

www.hertsvalleysccg.nhs.uk

Re: Nascot Lawn Update

The Herts Valleys CCG finance and performance committee unanimously concluded at its 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. Our decision was reached after a period of extensive engagement. We also conducted detailed assessments of needs, and a wider consideration of the CCG's financial position was also important in our decision-making.

As you may be aware, three parents decided to pursue their case for continued CCG funding of the service and took this to a Judicial Review (JR). The case was heard in the high court on 6 and 7 February 2018 and the judge has now delivered his conclusion.

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.

In terms of next steps, Herts Valleys CCG will be formally consulting with HCC. 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). For your reference, please find enclosed a copy of our communication to HCC on 21 February 2018 which outlines the CCG’s consultation with the Council. The CCG is consulting with the Council on a proposal to cease annual funding of £600K for Nascot Lawn respite provision.

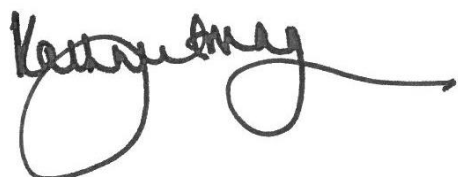
As you will see from our letter to the Council, in accordance with the requirements of regulation 23, we require the Council to provide any comments on the CCG proposal by 4 April 2018. Our timetable allows for a period of a month for the CCG to consider the Council’s response to the consultation before the Finance and Performance Committee makes its decision on 3 May 2018. Once the CCG has received the response from the Council we will share the Council’s feedback with families online. We will be asking families to contact us with comments on the Council’s 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 the Council’s consultation response and any changes in circumstances notified to us by the families.

In responding to the Council’s feedback to the CCG proposal to cease funding of Nascot Lawn we would ask both the Council and families to note the Judge’s findings on grounds B to F of the recent judicial review and not to revisit those grounds in their responses.

The CCG’s financial position continues to be very challenging and during this coming financial year 2018/19, we are expected to identify and deliver savings amounting to £30 million.

Whatever the outcome of this consultation and new decision, we continue to be concerned for the children and families who use Nascot Lawn respite services. Having made the decision last November, we had hoped this judicial review would bring the matter to a conclusion. We are committed to ensuring we comply with the judge's ruling in full and we are keen to resolve this as soon as possible, so that a greater level of certainty can be provided particularly to the children and their families. In any event this judicial decision means that the service will be funded on the current basis until at least August 2018.

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

Item 3 Appendix Bii

7 March 2018

Second Floor
Hemel One
Boundary Way
Hemel Hempstead
HP2 7YU
01442 898 888

Dear parent/carers

www.hertsvalleysccg.nhs.uk

Re: Nascot Lawn Update

Following our letter of 21 February 2018 about Nascot Lawn funding and the outcome of the judicial review, I wanted to take the opportunity to update you as part of our commitment to keep families informed over the coming few weeks.

Given the judge's decision – and the ground on which the ruling is based - we are proceeding with the consultation with the County Council in line with Regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 – SI 2013 No 218. We are committed to ensuring we comply with the regulations in full, and our consultation will remain thorough and genuine.

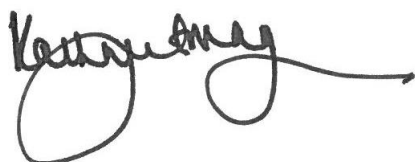
As part of this process, the council have advised us that a health scrutiny meeting will be held at County Hall on 21 March 2018.

In addition we also had a constructive and helpful meeting with officers at the council. We have discussed and agreed to work up a Hertfordshire- wide joint commissioning approach to overnight short breaks, led by the council, with the facilities they currently commission. I will make sure to report back to you further on this as our conversations progress.

I also wanted again to take this opportunity to note that the question of the future funding of Nascot Lawn has been one of the most difficult our board members have faced and we continue to be concerned for the children and families who use the services at Nascot Lawn. We are sorry that you have experienced this extended period of instability; it is our intention to do all we can to continue these productive conversations with our colleagues at the council in readiness for the CCG to make the decision at the finance and performance meeting in early May.

I hope that you have found this helpful and will be in touch again soon with more information, as this becomes available.

Yours sincerely



Kathryn Magson
Chief Executive Officer

Item 3 Appendix C

Briefing for stakeholders

Nascot Lawn - outcome of judicial review

21 February 2018

The Herts Valleys Clinical Commissioning Group (CCG) finance and performance committee unanimously concluded at its meeting on 16 November 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.

Our decision was reached after a period of extensive engagement. We had these discussions with, for example: Hertfordshire County Council, Carers in Herts; Herts Parents Carers Involvement; Healthwatch; and of course the families of children using the service. We also conducted detailed assessments of children's needs, and a wider consideration of the CCG's challenging financial position was also important in our decision-making.

Three of the parents who use the Nascot Lawn service decided to pursue their case for continued CCG funding of the service and took this to a judicial review. The case was heard in the high court earlier this month and the judge has now delivered his conclusion.

The judicial review was presented on six grounds and the judge's ruling has agreed with the families on one of those grounds and rejected the remaining five. The ground that the judge supported relates to the CCG's requirement in law to formally consult with Hertfordshire County Council (HCC), in a specific way despite the extensive engagement with HCC already undertaken, because the respite service funded by the CCG was deemed by the judge to be a health service.

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 ruling states that our decision was made on an 'incorrect legal basis', because we did not comply with that regulation. It is on that ground only, that the judge has quashed our decision to stop funding the service.

The implications of this are that the CCG now needs to follow the process outlined in Regulation 23 and formally consult the county council before making a decision on the future funding of respite services at Nascot Lawn.

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.

In terms of next steps, we will be submitting Herts Valleys CCG's formal consultation paperwork to HCC in the coming days, in full compliance with Regulation 23. We will invite HCC to comment on a proposal to withdraw funding for respite provision at Nascot Lawn. Following a six- week consultation period with HCC, we will consider their response and also make this available to the families of children receiving respite services at Nascot Lawn. Recommendations will then be made to our Finance and Performance Committee who will make a decision. We expect this will be during the early part of May.

The CCG's financial position continues to be very challenging and during this coming financial year 2018/19, we are expected to identify and deliver savings amounting to £30 million.

As we have stated previously, the question of the future funding of Nascot Lawn has been one of the most difficult our board members have faced and we continue to be concerned for the children who use Nascot respite services and their families. Having made the decision last November, we had hoped this judicial review would bring the matter to a conclusion. Given the judge's decision and the ground on which the ruling is based, we will now need to take those steps as outlined above. We are committed to ensuring we comply with these regulations in full and we are keen to resolve this as soon as possible, so that a greater level of certainty can be provided particularly to the children and their families. In any event this judicial decision means that the service will be funded on the current basis until at least August 2018.

Item 3 Appendix Di

21 February 2018

John Wood
Chief Executive
Jenny Coles
Director of Children's Services
Seamus Quilty
Chair of Health Scrutiny Committee
Hertfordshire County Council
VIA EMAIL

Second Floor
Hemel One
Boundary Way
Hemel Hempstead
HP2 7YU
01442 898 888

www.hertsvalleysccg.nhs.uk

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

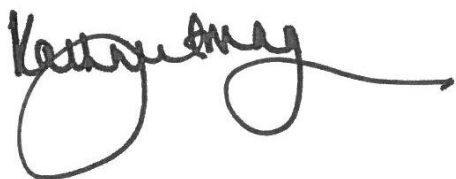
I am grateful to Jenny for agreeing to attend a meeting with the CCG next Wednesday, 28 February, in order to facilitate a collaborative dialogue regarding this consultation and in line with the recommendations agreed by all parties as documented in the Nascot Lawn scrutiny report of 20 September 2017.

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

Title of scheme: Nascot Lawn

CCGs covered by the scheme:

Herts Valleys CCG

Lead CCG:

Herts Valleys CCG

Project Lead for scheme: Liz Biggs

Senior Manager/ Executive Sponsor: David Evans

Brief description of scheme: The CCG is planning to make a decision regarding the future funding of respite provision at Nascot Lawn at the Finance and Performance Committee on 16th November 2017. This QIA will inform the impact of any potential decision to cease funding.

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.

A pre assessment checklist (Children and young people's continuing care framework CYPCCDH 2016) has been completed for all children currently accessing Nascot Lawn for either overnight or day care respite provision. The assessment has been completed by an independent children's nurse assessor. Social Care, Herts County Council have completed a Child and Family Assessment. All assessments were completed via a joint visit to the family home and/or school. All assessment were completed and sent to HCC and the families by 30th October 2017.

A total of 34 children accessing overnight care and 9 children accessing day care were assessed. 43 in total. 8 children were not assessed as they were due to leave the service.

Where appropriate, children have been referred for a full CYPCC assessment. Prior to this assessment process, one child attending Nascot Lawn, was already in receipt of a CYPCC package, in line with the Department of Health children and young people's continuing care framework. From the outset, the CCG has confirmed its responsibility to meet the health care needs of children who are eligible for CYPCC and lead on their respite provision.

Clinical Commissioning Group

For the majority of children, the assessments show the support required for the children currently attending Nascot Lawn can be provided by trained carers. For the avoidance of doubt, and as part of the CCG response to legal challenges, clinicians' within HVCCG have produced the following information:

Children and young people attending Nascot Lawn do not clinically require full time nurses to meet their needs at home. Their needs are met by the parent/carer.

Staff in HCC commissioned respite facilities; those who offer short breaks; shared care; teachers and teaching assistants are currently trained to perform tasks that parents are trained to do as non-clinicians when the child is at home. This training, will continue to be delivered by health staff (children's community nursing and children and young people's continuing care nurses) commissioned by HVCCG.

Training includes management of children with epilepsy and administration of buccal Midazolam, gastrostomy care and feeding, management of medicines, management of anaphylaxis and use of Epi pens. When requested, HCT will also offer bespoke training.

The interventions required for children at Nascot Lawn are considered 'delegated tasks' as per Royal College of Nursing (RCN) guidelines. As they are considered delegated tasks, providing the nurse doing the training has the competency to do so, any competent carer can complete these tasks.

Nascot Lawn staff do not change medications, this responsibility is retained by the GP/Paediatrician. All children will have a named paediatrician or GP who remains responsible for their medical care.

If a child is acutely unwell or their condition has deteriorated from his/her norm a parent or carer would take their child to GP/hospital/Paediatrician/Community children's nurse for medical assessment/treatment, not to Nascot Lawn.

Nascot Lawn staff do not deliver medical interventions when a child becomes unwell. A child that is unwell would not access respite care at Nascot Lawn or attend school and parents would seek a medical review as appropriate for their son/daughter.

If a child/young person becomes unwell or their condition deteriorates from their norm whilst in respite, their management may include:

- If there is an emergency situation – unit should call 999 and child should be transported to hospital.
- Call parent for advice and to see if they wish to pick child up or for ambulance to be called, dependant on child's condition.

- Call children's ward if a child has 'a passport' for direct access to the ward rather than going via A & E.
- Call community children's nursing team for advice if appropriate.
- Each situation should be risk assessed as per the individual respite unit's institutional policy and procedures.

Intended Quality Improvement Outcome/s:

An equitable short breaks offer for all eligible families in Herts Valleys CCG, via Hertfordshire County Council who have statutory responsibility for short break provision. HCC have confirmed there where appropriate they will also be offering personal budgets as an equivalent to overnights on a care home setting. It is a statutory requirement for the CCG to be in financial balance in each financial year. This duty is set out in the NHS Act 2006. 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. These regulations cover Children's Continuing Care, however they do not confer any responsibility on CCGs in relation to respite services.

Methods to be used to monitor quality impact:

Respite provision is the responsibility of Hertfordshire County Council.

The health aspects that the CCG are responsible for will be monitored by existing contract monitoring arrangements with HCT who provide the services.

	Pos/ Neg or N/A	Risk Score if N	Comments (include reason for identifying impact as positive, negative or neutral)	Full Assessment Required Yes/No (Risk > 8 Stage 2 full assessment required)

<p>Duty of Quality</p> <p>Could the options positively or negatively on any of the following:</p> <p>a) Compliance with NHS Constitution right to:</p> <ul style="list-style-type: none"> • Quality of Care and Environment • Nationally approved treatments/ drugs • Respect, consent and confidentiality • Informed choice and involvement • Complain and redress 	<p>Neut ral</p>	<p>HVCCG are currently funding and commissioning a respite service at Nascot Lawn not a health service. Given that this service is not a health service, HVCCG does not have a duty to provide this service and S14Z2 of the NHS Act 2006 does not apply. Similarly, no statutory obligation to consult arises from the NHS Constitution or section 14P(1)(a) of the NHS Act 2006. Further, the duty under section 14Z2 is one of public involvement, not consultation.</p> <p>Section 242(1B) of the NHS Act 2006 (the duty to make arrangements for involvement) does not apply.</p> <p>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. These regulations cover Children's Continuing Care, however they do not confer any responsibility on CCGs in relation to respite services. A CCG will commission the care required for any child who meets the DH framework 2016.</p> <p>Initial communication between the Chief Executives of the CCG and HCC took place following the investment committee in early February 2017.</p> <p>The CCG has been engaging with families from the 14th June 2017. The CCG has met and talked to families face to face. We have continued to offer face to face meetings with families. The CCG felt it was important and appropriate for families to meet the Chief Executive and</p>	
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			<p>Chair of the CCG.</p> <p>Below is a timeline listing all engagement with families and other organisations:</p> <ul style="list-style-type: none"> • 21.06.17 – HVCCG meeting with Carers in Herts • 23.06.17, 27.06.17 and 28.06.17 – HVCCG meeting families using Nascot Lawn • 28.06.17 – HVCCG meeting with Hertfordshire Parent Carer Involvement (HPCI) • 17.07.17 – Healthwatch update • 07.08.17 – Parent/Carers meeting • 23.08.17 – Healthwatch update • 17.09.17 – Parent/Carers meeting • 05.10.17 – Parent/Carers meeting • 06.10.17 – Parent/Carers meeting • 11.10.17 – Parent/Carers meeting • 12.10.17 – Healthwatch, HPCI and Carers in Herts meeting • 17.10.17 – Parent/Carers meeting <p>Following the meetings held in June, a question and answer briefing was produced and circulated to all families. A letter was also sent to HCC following the meeting held on the 07th August requesting further information on social worker assessments, HCC eligibility for respite, occupancy rates at the other respite centres, minimum age requirement and children's safety when attending the centres. On the 15th August, HCC confirmed there will be sufficient capacity within the HCC commissioned respite services to meet the needs of</p>	
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			<p>those children and young people with multi and complex health needs. The CCG recognised at the meeting this was a key concern for families.</p> <p>Throughout our engagement with families the CCG have acknowledged that this is an anxious time for parents and carers and we recognise the strength of feeling that has been expressed. We also acknowledged this in our stakeholder briefing and our most recent communication to families.</p> <p>Before making a new decision in respect of the funding of respite services at Nascot Lawn the CCG contacted all families and invited them to a series of engagement meetings in October. Any matters arising from our discussions with families and other stakeholders to date will feed into our new decision about funding Nascot Lawn. The CCG will also give due regard to all of the information that has been generated as a result of the recent legal proceedings and the joint needs assessments.</p> <p>The CCG was in attendance at the Full Council meeting on 18 July 2017. The CCG also participated in the Scrutiny information meeting on the 19th July 2017 and the subsequent Nascot Lawn Topic Group on the 6th September 2017. In all these meetings families' views were expressed and noted by the CCG.</p> <p>At the meeting on the 17th September 2017, attended by the CCG and the County Council family representatives shared a proposal to create a flagship 0 – 25 fully</p>	
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			<p>integrated Overnight Short Breaks service in Hertfordshire.</p> <p>HCC have accepted their statutory responsibility for providing short breaks, including respite, so it is the assumption of the CCG that respite provision will continue to be offered.</p>	
b) Partnerships	Neg	12	<p>Throughout our engagement with families the CCG have acknowledged that this is an anxious time for parents and carers and we recognise the strength of feeling that has been expressed. Negative feedback about the CCG has also been received from families.</p> <p>This has been mitigated by all family meetings and communication being led by the Chief Executive of the CCG.</p> <p>The HVCCG Corporate Risk Register has identified the following:</p> <p>Risk that the decision to cease funding respite services for families at Nascot Lawn will impact the relationship that the CCG has with its stakeholders.</p> <p>This has been mitigated by the establishment of regular meetings with HCT and HCC. Both organisations were also invited and attended the family engagement meetings.</p> <p>Although partnerships are strained during this period of time some of this has been caused by lack of clarity around responsibilities and previous funding agreements where the CCG had been informally funding respite services on a discretionary basis. The challenge to</p>	

			<p>realign responsibilities through this process is likely to strain the relationship over the short term; however once new funding arrangements for respite for families across west Herts is in place all partners will understand and be able to work to a clear framework making it less likely for disputes to be created in the future.</p> <p>The CCG's decision to address the discretionary funding of respite provision has created a tension in the system. However, it is not the wrong thing to do organisationally the CCG recognises this will have an immediate impact on partners and stakeholders whilst the decision has not been made due to the lack of clarity which is driving some of the anxiety around the feelings of families and organisations during this period.</p>	
c) Safeguarding children or adults	Neut ral		<p>All providers of respite provision would be legally required to carry out the duties set out in Section 17 of the Children Act 1989</p> <p>..... to safeguard and promote the welfare of children within their area who are in need.</p>	
NHS Outcomes Framework Could the proposal impact positively or negatively on the delivery of the five domains (assess all separately): Preventing people from dying prematurely	Neut ral		<p>Nascot Lawn staff do not deliver medical interventions when a child becomes unwell. A child that is unwell would not access respite care at Nascot Lawn or attend school and parents would seek a medical review as appropriate for their son/daughter.</p> <p>The NHS Act 2006 and the NHS Commissioning Board</p>	

			<p>and CCGs (Responsibilities and Standing Rules) Regulations 2012 set out the CCGs duties as to commissioning health services. These regulations cover Children and young people's Continuing Care, and the CCG will commission the care required for any child who meets the DH framework 2016.</p> <p>The CCG will continue to fund a range of health services to meet the needs of children, young people and their families, including mental health services, medicines, children's community nursing, palliative care for those with life-limiting conditions, speech and language therapy, physiotherapy and occupational therapy and special school nursing.</p>	
Enhancing quality of life	Neut ral		<p>Short breaks for children and young people provide their families or carers with a break from their caring responsibilities.</p> <p>HCC currently commission three respite provisions in the County and have 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.</p> <p>HCC commission three respite provisions. The three provisions are located in Rickmansworth, Welwyn and Hertford.</p> <p>The CCG acknowledges that 2 of the respite provisions are not in HVCCG geographical area. The mitigating action is HCC are currently mapping families' home</p>	

			addresses and schools with the nearest respite provision.	
Helping people recover from episodes of ill health or following injury	Neut ral		<p>Children and young people attending Nascot Lawn do not clinically require full time nurses to meet their needs at home.</p> <p>Nascot Lawn staff do not deliver medical interventions when a child becomes unwell. A child that is unwell would not access respite care at Nascot Lawn or attend school and parents would seek a medical review as appropriate for their son/daughter.</p> <p>The CCG will continue to fund a range of health services to meet the needs of children, young people and their families, including mental health services, medicines, children's community nursing, palliative care for those with life-limiting conditions, speech and language therapy, physiotherapy and occupational therapy and special school nursing.</p>	
Ensuring people have a positive experience of care	Neut ral		<p>All respite provision is regulated by statutory bodies and monitored for quality. Respite will continue to be available for families from HCC. The CCG acknowledge any transition period of care will potential have a negative impact on families.</p> <p>HCC have confirmed in a letter to families on 5th October</p>	

			2017 that they 'are talking with Nascot Lawn and the local short break providers about ways we can work together to make any future transition that may be required as smooth as possible. In the event that a new service is allocated your named worker and the provider will lead transition, we will use all expertise in making a personalised approach.'	
Treating and caring for people in a safe environment and protecting them from avoidable harm	Neut ral		<p>All respite provision is regulated by statutory bodies and monitored for quality. Respite will continue to be available for families from HCC.</p> <p>For the majority of children, the health assessments show the support required for the children at Nascot Lawn can be provided by trained carers. HCT have a regular programme of training offered to HCC respite staff to ensure they are competent and confident to meet children's need. Training includes management of children with epilepsy and administration of buccal Midazolam, gastrostomy care and feeding, management of medicines, management of anaphylaxis and use of Epi pens. When requested, HCT will also offer bespoke training.</p>	
Access Could the proposal impact positively or negatively on any of the following: a) Patient Choice	Neg	6	<p>Should the CCG decide to cease funding of respite provision provided at Nascot Lawn, there will be three respite provisions available for families. HCC state the 'majority of our overnight short break providers already support children & young people with complex health needs.'</p> <p>HCC short breaks services, include day-time and</p>	

			<p>overnight care as well as education or leisure activities and services to assist carers in the evenings, at weekends and during the school holidays. HCC have confirmed that where appropriate they will also be offering personal budgets as an equivalent to overnights on a care home setting.</p> <p>Choice will be negatively impacted by a reduction in available locations and also withdrawal of the nursing led model of care.</p> <p>All four provisions are currently being commissioned to provide respite care to enable families and carers a break from their caring responsibilities.</p> <p>Currently there are two separate pathways for families to access respite provision creating an inequitable offer. Approximately 200 families in Hertfordshire access overnight respite provision. Only 50 of these families are receiving a nurse led respite provision. Due to separate access pathways for respite provision there is also inequity in the amount of overnight respite that is offered to families.</p>	
b) Access	Neg	6	<p>Should the CCG decide to cease funding of respite provision provided at Nascot Lawn, there will be three respite provisions available for families. The three provisions are located in Rickmansworth, Welwyn and Hertford.</p> <p>The CCG acknowledges that 2 of the respite provisions are not in HVCCG geographical area. Access maybe</p>	

			<p>negatively impacted. The mitigating action is HCC are currently mapping families' home addresses and schools with the nearest respite provision. HCC will continue to fund transport costs for respite provision from either school or home.</p> <p>Nascot Lawn currently offers overnight respite from 5 – 19 years, and day care from 0 – 3. HCC Overnight Short Breaks settings are Ofsted Registered from 5–18 years. Typically HCC do not offer overnight short breaks in a residential home to children under the age of 7 or 8 however HCC do offer support at home where there is a need, or perhaps in a shared (foster care) setting. HCC offer a range of childcare option for children aged 2 – 4years old. Children's Centre's also provide support for families with children under 5 years of age.</p> <p>Families have raised concerns about access issues, in particular wheelchair access. HCC have commissioned HCT Occupational Therapy to undertake a review of Nascot Lawn and West Hyde.</p>	
c) Integration	Neut ral		<p>In HCC respite provision, children are matched so that they are supported to stay safe and risks kept to a minimum. The CCG acknowledges this is a concern for families and requested HCC to address this issue directly with families.</p>	
				Total Score: 24

Name of person completing assessment: Liz Biggs

Position: Programme Lead – Children, young people and maternity



Signature:

Date of assessment: 08.11.17

Reviewed by: David Evans

Position: Director of Commissioning



Signature:

Date of review: 31.10.17

Proposed frequency of review: Six monthly/ Quarterly/ Monthly/ Other please specify: __weekly__

(minimum monitoring is six monthly (scores 6 or below), every 4 months (scores 8-9), quarterly (scores 10- 12) and monthly (15-20), weekly or more frequent (score 25) Use boxes below to record outcome of reviews

Date of next review: by 31 December 2018

Signed off by: Clare Saunders

Position: Deputy Director of Nursing and Quality



Signature:

Date of review: 08.11.17

Requires review at Quality Committee: Y

Date considered at Quality Committee: Draft at 02nd November 2017, virtual sign off 10.11.17

Logged on spreadsheet: Y

Date: 10.11.17

Post Implementation Review

(use the template below to record outcomes of reviews- if more than one is required cut and paste the box below)

Have the anticipated quality impacts been realised? Y/N

Comments:

Have there been any unanticipated negative impacts? Y/N

Comments:

Are any additional mitigating actions required? Y/N

Comments:

Do any amendments need to be made to the scheme? Y/N

Comments:

Reviewed by:

Position:

Signature:

Date of review:

Stage 2

Escalation proforma: **Nascot Lawn**

To be completed when the initial impact assessment indicates a high risk (8 or above) and a more detailed assessment is required.

On identification of a high risk business case, commissioning decision or business plan this proforma must be submitted along with the business case to inform the decision making process and ensure informed choice. A copy of the complete impact assessment must be submitted to the next available Quality Committee to ensure scrutiny from a quality perspective.

Background and context of the decision for approval.
<p>Brief description of scheme: The CCG is planning to make a decision regarding the future funding of respite provision at Nascot Lawn at the Finance and Performance Committee This QIA will inform the impact of any potential decision to cease funding.</p> <p>Please note this quality impact assessment stage 2 remains in draft as the engagement process with families and stakeholders is continuing until 6th November 2017. All information that has been generated as a result of the recent legal proceedings, joint needs assessments and any matters arising from our discussions with families and stakeholders to date will inform any potential decision to cease funding.</p> <p>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.</p> <p>A pre assessment checklist (Children and young people's continuing care (CYPCC) framework DH 2016) has been completed for all children currently accessing Nascot Lawn for either overnight or day care respite provision. The assessment has been completed by an independent children's nurse assessor. Social Care, Herts County Council have completed a Child and Family Assessment. All assessments were completed via a joint visit to the family home and/or school. All assessment were completed and sent to HCC and the families by 30th October 2017.</p> <p>A total of 34 children accessing overnight care and 9 children accessing day care were assessed. 43 in total. 8 children were not assessed as they were due to leave the service.</p> <p>Where appropriate, children have been referred for a full CYPCC assessment. Prior to this assessment process, one child attending Nascot Lawn, was already in receipt of a children's continuing care package, in line with the Department of Health children and young people's continuing care framework. From the outset, the CCG has confirmed its responsibility to meet the health care needs of children who are eligible for CYPCC and lead on their respite provision.</p> <p>For the majority of children, the assessments show the support required for the children currently attending Nascot Lawn can be provided by trained carers. For the avoidance of doubt, and as part of the CCG response to legal challenges, clinicians' within HVCCG have produced the following information:</p> <p>Children and young people attending Nascot Lawn do not clinically require full time nurses to</p>

meet their needs at home. Their needs are met by the parent/carer.

Staff in HCC commissioned respite facilities; those who offer short breaks; shared care; teachers and teaching assistants are currently trained to perform tasks that parents are trained to do as non-clinicians when the child is at home. This training, will continue to be delivered by health staff (children's community nursing and children's continuing care nurses) commissioned by HVCCG.

Training includes management of children with epilepsy and administration of buccal Midazolam, gastrostomy care and feeding, management of medicines, management of anaphylaxis and use of Epi pens. When requested, HCT will also offer bespoke training.

The interventions required for children at Nascot Lawn are considered 'delegated tasks' as per Royal College of Nursing (RCN) guidelines. As they are considered delegated tasks, providing the nurse doing the training has the competency to do so, any competent carer can complete these tasks.

Nascot Lawn staff do not change medications, this responsibility is retained by the GP/Paediatrician. All children will have a named paediatrician or GP who remains responsible for their medical care.

If a child is acutely unwell or their condition has deteriorated from his/her norm a parent or carer would take their child to GP/ hospital/Paediatrician/Community children's nurse for medical assessment/treatment, not to Nascot Lawn.

Nascot Lawn staff do not deliver medical interventions when a child becomes unwell. A child that is unwell would not access respite care at Nascot Lawn or attend school and parents would seek a medical review as appropriate for their son/daughter.

If a child/young person becomes unwell or their condition deteriorates from their norm whilst in respite, their management may include:

- If there is an emergency situation – unit should call 999 and child should be transported to hospital.
- Call parent for advice and to see if they wish to pick child up or for ambulance to be called, dependant on child's condition.
- Call children's ward if a child has 'a passport' for direct access to the ward rather than going via A & E.
- Call community children's nursing team for advice if appropriate.
- Each situation should be risk assessed as per the individual respite unit's institutional policy and procedures.

What are the benefits?

The CCG anticipates making a minimum annual saving of approximately £500k if it ceases funding of respite services at Nascot Lawn. This figure is based on the CCG's current expenditure on Nascot Lawn of £600K minus the maximum projected spend to meet the needs of children and young people eligible for continuing care. The CCG is willing to offer up to £100k towards meeting the ongoing respite needs of children who are eligible for children's continuing care and work towards a joint funding arrangement.

It is a statutory requirement for the CCG to be in financial balance in each financial year.

This duty is set out in the NHS Act 2006. The potential ceasing of funding respite provision at Nascot Lawn will support the CCGs statutory requirement to prioritise funding for NHS Health services. The CCG has recently undertaken a consultation on a range of health services. The CCG has confirmed it will be ceasing funding on a number of NHS health services.

An equitable short breaks offer, 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 for all eligible families in Herts Valleys CCG, via Hertfordshire County Council who have statutory responsibility for short break provision. HCC have confirmed that where appropriate they will also be offering personal budgets as an equivalent to overnights on a care home setting. The CCG anticipates this will create more choice for families than their current respite offer at Nascot Lawn.

What are the risks if the decision is made to cease funding for respite provision at Nascot Lawn?

The quality impact has identified the following risks:

- Partnerships (including family feedback)
- Access
- Patient Choice

What are the high risks that the initial impact assessment indicates to quality?

- Partnerships with stakeholders and families
- Family anxiety
 - Units ability to meet children with complex health needs
 - Appropriate training of respite staff in HCC units
 - Lack of capacity in units
 - Buildings access and space
 - Children's safety whilst in the HCC units – (Mobile children with complex challenging behaviour also attend HCC respite units)
 - HCC minimum age for overnight respite is 8 years (Nascot Lawn is 5 years)
 - Transition for families and children
 - Geographical location of some HCC respite units

What plans are in place to ensure identified risks are mitigated?

Family anxiety

Mitigating actions:

All respite provision is regulated by statutory bodies and monitored for quality.

For the majority of children, the health assessments show the support required for the children at Nascot Lawn can be provided by trained carers. HCT have a regular programme of training offered to HCC respite staff to ensure they are competent and confident to meet children's need. Training includes management of children with epilepsy and administration of buccal Midazolam, gastrostomy care and feeding, management of medicines, management of anaphylaxis and use of Epi pens. When requested, HCT will also offer bespoke training.

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 document lists *'complex health needs currently accommodated within social care commissioned residential short break services.'*

The CCG wrote to HCC following a meeting with families in response, HCC confirmed in August 2017, *'the majority of the overnight short break providers already support children and young people with complex health needs.* Residential short breaks are detailed on the Hertfordshire SEND Local Offer website. The website links to each individual unit, which states either *'we provide residential short breaks supporting young people with learning disabilities and complex health needs',* or *'the centre is fully equipped to cater for complex needs'*.

In 2016 it was noted there was underutilisation of all four respite units and there was an overall reduction in demand for overnight short breaks. In August 2017, HCC confirmed *'that they will be able to increase capacity at all 3 units by 20,600 hours. We also note that where some young people are nearing adulthood, they may well be choosing to transfer to adult rather than children's' short break services. We will also be offering personal budgets as an equivalent to overnights on a care home setting. Whilst this volume falls slightly short of what is required to match the levels of support currently offered by the current configuration of respite provision within the County, our figures suggest and we hope, noting the comments above that, there will be sufficient capacity.'*

During the family meetings held in October the issue of building access and space has been raised. HCC conducted a joint visit with parent representatives and HCT staff to West Hyde and Nascot Lawn. As a result HCC have commissioned an Occupational Therapy assessment of buildings. The strategic meeting on 01.11.17 HCC confirmed that some issues were raised but they can be managed.

The CCG wrote to HCC following the families assumption that there are children with ADHD/Autism in respite provision elsewhere. There was concern about how safe the children would be if sharing the same facilities. HCC have confirmed *'our short break settings routinely meet the needs of young people with physical disabilities, learning disabilities and some with multiple and complex needs. Some of these children do display challenging behaviours. Many of the children will know each other from schools and other settings. All homes are regulated by Ofsted and monitored for quality purposes by Hertfordshire County Council. The children are matched so that they are supported to stay safe and risks kept to a minimum. We have undertaken structured conversations with our overnight short break providers to put in place plans for them to manage children & young people with complex health needs and we make sure that the matching process ensures they are safe.'*

HCC Overnight Short Breaks settings are Ofsted Registered from 5–18 years. Typically HCC do not offer overnight short breaks in a residential home to children under the age of 7 or 8 however they do offer support at home where there is a need, or perhaps in a shared (foster care) setting.

The CCG acknowledge any transition period of care will potential have a negative impact on families. HCC have confirmed in a letter to families on 5th October 2017 that they *'are talking with Nascot Lawn and the local short break providers about ways we can work together to make any future transition that may be required as smooth as possible. In the event that a*

new service is allocated your named worker and the provider will lead transition, we will use all expertise in making a personalised approach.'

The CCG acknowledges that 2 of the respite provisions are not in HVCCG geographical area. The mitigating action is HCC are currently mapping families' home addresses and schools with the nearest respite provision.

Partnerships with stakeholders and families

Mitigating actions:

Throughout our engagement with families the CCG have acknowledged that this is an anxious time for parents and carers and we recognise the strength of feeling that has been expressed. Negative feedback about the CCG has also been received from families. This has been mitigated by all family meetings and communication being led by the Chief Executive of the CCG.

The HVCCG Corporate Risk Register has identified the following: Risk that the decision to cease funding respite services for families at Nascot Lawn will impact the relationship that the CCG has with its stakeholders. This has been mitigated by the establishment of regular meetings with HCT and HCC. Both organisations were also invited and attended the family engagement meetings.

After mitigation, what are the remaining residual risks?

Although partnerships are strained during this period of time some of this has been caused by lack of clarity around responsibilities and previous funding agreements where the CCG had been informally funding respite services on a discretionary basis. The challenge to realign responsibilities through this process is likely to strain the relationship over the short term; however once new funding arrangements for respite for families across west Herts is in place all partners will understand and be able to work to a clear framework making it less likely for disputes to be created in the future. There is a remaining risk of uncertainty in respect of the future of NL and its ability to retain staff which will be addressed by (a) HCC confirming its position regarding future respite provision; and (b) the CCG then making a prompt decision in respect of future funding

Recommendations for the Quality Committee to consider.

The Quality Committee is asked to note the risks and mitigations in the CCGs planning to make a decision regarding the future funding of respite provision.

Assessment completed by

Name: Liz Biggs

Position: Programme Lead – Children, young people and maternity

Date: 08.11.17

Line Manager Review

Name: David Evans

Position: Director of Commissioning

Date: 08.11.17

Equality and Health Inequality Analysis

Title of policy, service, proposal etc being assessed:
Nascot Lawn - Future funding of respite provision at Nascot Lawn.

Background

Discussions around whether, or not, the payment to Hertfordshire Community Trust (HCT) are discretionary are part of other considerations and advice available to decision makers. Four options are being put forward for consideration, and discussion of those options is included in the main paper. The primary beneficiaries of the service are the carers and secondary beneficiaries are the CYP who attend.

Option 1

CCG cease funding of respite provision, currently provided at Nascot Lawn.

Option 2

The CCG continue full funding of respite provision, currently provided at Nascot Lawn.

Option 3

The CCG enters into joint arrangements to fund respite provision, currently provided at Nascot Lawn, whilst recognising that HCC have the statutory responsibility for short breaks.

Option 4

To consider the family representatives proposal to create a flagship 0 – 25 fully integrated Overnight Short Breaks service in Hertfordshire. HCC have confirmed in writing that they are unable to support this proposal.

Option 1 is the primary option considered in this Equality Impact Assessment, as it is where there is likely to be most impact on the recipients of the services.

If Option 1 is not the option chosen, Options 2,3 and 4 would reduce or remove any impact on recipients of the services as, certainly for Options 2 and 3, the services would continue to be provided.

Nascot Lawn provides respite provision for children with complex health needs and a 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. Herts Valleys CCG (HVCCG) provides 90 per cent of the funding with East and North Hertfordshire CCG providing the remainder.

The service is run by Hertfordshire Community Trust and currently supports a total of 58 families – 42 of these have a GP in HVCCG. 33 families have children accessing overnight care and 9 accessing day care – total 42. The remainder includes those registered with GP in E&N Herts.

The service provides overnight respite care to children aged 5-19 years and a day respite to children aged 0-3 years (term time).

The overnight service provides 1-4 nights per month of respite to support carers of children with highly complex health needs and a learning disability. This gives carers a break from constant caring responsibilities in order for them to be able to undertake other activities, such as spending time with other children. The day care service provides 4 hours per week term time only to families.

For the disabled CYP it is an opportunity for them to spend time away from their family with peers and to be able to socialise.

The primary beneficiaries of the service are the carers and secondary beneficiaries are the CYP who attend.

Herts Valleys CCG is facing financial challenges. Last year the CCG was placed in formal 'financial turnaround' by the regulator, NHS England. The CCG needs to identify approximately £45m worth of savings this year and must continue working with this reduced expenditure in future years to meet its financial targets.

It is considered that the CCG's funding of short breaks at Nascot Lawn is discretionary funding and therefore an opportunity to consider for potential savings. HCC has statutory responsibility for commissioning of short breaks.

The Equality and Human Rights Commission guidance on making fair financial decisions states that

"The public sector equality duty (the equality duty) does not prevent you from making difficult decisions such as reorganisations and relocations, redundancies, and service reductions, nor does it stop you from making decisions which may affect one group more than another group. The equality duty enables you to demonstrate that you are making financial decisions in a fair, transparent and accountable way, considering the needs and the rights of different members of your community. This is achieved through assessing the impact that changes to policies, procedures and practices could have on people with different protected characteristics."

The equality impact assessment supports the CCG to be able to consider the possible impact of proposals on the different equality groups and weigh those against other countervailing factors, such as budget.

As already stated, the primary beneficiaries are the families and carers of CYP with complex health needs and a learning disability.

Carers are not a separately protected group under the Equality Act 2010. Their protection under the Act comes from their association with a disabled person.

Disabled people, as a broad grouping, are the secondary beneficiaries of the services provided at Nascot Lawn, and are a specifically protected group under the Equality Act.

There is no suggestion that Option 1, to end the discretionary funding for Nascot Lawn is because the CYP are disabled.

Where a whole group of people affected by a proposal share a protected characteristic under the Equality Act it can be useful to consider if someone joining that group who didn't have that protected characteristic would have a different outcome from the proposal than the main group. In this case it is clear that a non-disabled CYP and their family using the respite services would have the same outcome as the disabled CYP and their family should the service close. This would suggest that there is no discrimination because of the CYP having a disability.

The CCG recognises that as, currently, the major funder of services at Nascot Lawn any decision to end the discretionary funding may lead to decisions to close the service.

The CCG cannot decide to close the service. That decision can only be made by the provider and any proposal by them to close the service should include equality impact assessments looking at the impact on service users and staff.

As part of the recognition of the influence of the CCG funding, this equality impact assessment does start to look at the possible impact on the protected equality groups should a decision to close the service be taken at any point. This will help the CCG decision makers to see the possible impact of the proposal in front of them in a broader context and will form part of the consideration of equalities alongside the other countervailing factors.

What are the intended outcomes of this work? Include outline of objectives and function aims

The intended outcome is to ensure that all the 4 Options are given full consideration at the Financial and Planning meeting on 16th November 2017. To make savings from the HVCCG budget to help meet budget challenges and to ensure that health funding is spent on health care needs only. It is considered that the respite service at Nascot Lawn is a social care service, not a health service, and, as such is the statutory responsibility of Hertfordshire County Council (HCC), not the NHS.

How will these outcomes be achieved? What is it that will actually be done?

Funding for respite care at Nascot Lawn by HVCCG may cease or a joint funded option may be agreed upon.

Who will be affected by this work? e.g. staff, patients, service users, partner organisations etc. If you believe that there is no likely impact on people explain how you've reached that decision and send the form to the equality and diversity manager for agreement and sign off

- Parents/carers of children and young people attending Nascot Lawn for overnight short breaks .
- Parents/carers of children attending Nascot Lawn for day care.
- CYP currently attending Nascot Lawn as they and their families will need to be reassessed by HCC and move to another respite unit offered by HCC or another form of respite ie personal budgets.
- Parents of CYP 5-7years, and CYP 5-7years of age will not meet HCC criteria for overnight

respite unit provision – HCC overnight respite provision is offered to CYP 8 years of age and over. The HCC units are registered with Ofsted and can take children from 5 years of age, however they are currently commissioned by HCC to offer overnight respite to families of children of 8 years and over. However, this group of CYP may meet HCC criteria for an alternative respite provision.

- Herts Community Trust staff working in Nascot Lawn
- East and North Herts CCG, (ENHCCG) who also commission Nascot Lawn as part of their block contract with HCT (currently have 11 CYP in the unit)
- Hertfordshire County Council as commissioners of overnight short breaks for children and young people

Evidence

What evidence have you considered? Against each of the protected characteristics categories below list the main sources of data, research and other sources of evidence (including full references) reviewed to determine impact on each equality group (protected characteristic).

This can include national research, surveys, reports, research interviews, focus groups, pilot activity evaluations or other Equality Analyses. If there are gaps in evidence, state what you will do to mitigate them in the Evidence based decision making section on page 9 of this template.

If you are submitting no evidence against a protected characteristic, please explain why.

Age Consider and detail age related evidence. This can include safeguarding, consent and welfare issues.

Overnight respite care in Nascot Lawn is offered to families of CYP 5-19 years of age. Day care is offered to families of children 0-3 years of age.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Disability Detail and consider disability related evidence. This can include attitudinal, physical and social barriers as well as mental health/ learning disabilities.

All of the CYP who attend Nascot Lawn have a Learning Disability and additional complex healthcare needs.

Should the decision be made to cease funding this will impact on these disabled CYP. The services they access are valued and reports indicate that they improve independence and social skills. Both of which are important in the development of CYP with disabilities.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Gender reassignment (including transgender) Detail and consider evidence on transgender people. This can include issues such as privacy of data and harassment.

No data is held on gender reassignment intentions of the CYP who attend Nascot Lawn. Any gender reassignment needs that the CYP have would be dealt with through other NHS services.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Marriage and civil partnership Detail and consider evidence on marriage and civil partnership. This can include working arrangements, part-time working, caring responsibilities.

Is not likely to be applicable for the CYP who attend Nascot Lawn.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Pregnancy and maternity Detail and consider evidence on pregnancy and maternity. This can include working arrangements, part-time working, caring responsibilities.

Is not likely to be applicable for the CYP who attend Nascot Lawn.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Race Detail and consider race related evidence. This can include information on difference ethnic groups, Roma gypsies, Irish travellers, nationalities, cultures, and language barriers.

The breakdown of the ethnic origin of the CYP, where known, is as follows:

White 62%

Mixed 5%

Asian 2%

Black 2%

Other 14%

Not stated 14%

Even with the 14% not stated, it does not appear that there will be a disproportionate impact on people of a particular race.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Religion or belief Detail and consider evidence on people with different religions, beliefs or no belief. This can include consent and end of life issues.

The breakdown of the religion and belief of the CYP, where known, is as follows:

Catholic 14%

Church of England/Christian 14%

Islam 5%

Hindu 2%

None 2%

Not stated/not known 62%

Because of the large not stated/unknown percentage it is not possible to identify if there may be a disproportionate impact on people of a particular religious belief, or no belief. There is no indication that any impact is because of a person's religion or belief.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Sex Detail and consider evidence on men and women. This could include access to services and employment.

57% of CYP are Female.

Sexual orientation Detail and consider evidence on heterosexual people as well as lesbian, gay and bisexual people. This could include access to services and employment, attitudinal and social barriers.

Is not likely to lead to differential impact for the CYP who attend Nascot Lawn.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Carers Detail and consider evidence on part-time working, shift-patterns, general caring responsibilities.

As previously stated, carers are not a separately protected group under the Equality Act 2010. The CCG does, however, routinely consider the impact on carers as if they were a protected group.

For carers the benefits of respite care include;

- It improves the sense of well-being for both carer and the person being cared for
- It reduces any stress which can occur between the carer and the person being cared for
- It provides additional support
- It allows the carer to spend time socialising and interacting with their loved ones
- It strengthens the carers ability to care, and reduces the risk of neglect or abuse

Should there be a decision to close the service:

Impact on parents/carers -

- They will be required to engage with HCC assessment process
- Parents/carers of CYP aged 5-7 years of age may be offered an alternative respite solution rather than out of home overnight care as HCC only offer out of home respite care to CYP 8 years and older.
- Parents/carers of Children aged 0-3 years may be offered an alternative respite solution rather than out of home day care for 4 hours per week term time only.
- Parents and carers hold respite care at Nascot Lawn in high regard (previous parent/carer survey conducted by HCC in conjunction with HVCCG/E&NHCCG - 2016) and may be anxious about change
- Parents/carers will be required to support their CYP through a change in respite provision in conjunction with HCC

Other identified groups Detail and consider evidence on groups experiencing disadvantage and barriers to access and outcomes. This can include different socio-economic groups, geographical area inequality, income, resident status (migrants, asylum seekers).

N/A

Engagement and involvement

How have you engaged stakeholders with an interest in protected characteristics in gathering evidence or testing the evidence available?

Regular face to face meetings with families of CYP with learning disability and complex health

needs attending Nascot Lawn for parental respite have taken place in June and October which have been led by the CEO and Director of Commissioning of HVCCG. HCC Operations Director Specialist Services and Head of 0-25 Together services have also attended and participated in these meeting with families. HCT Director of Operations and General Manager, Children & Young People have attended and contributed to the meetings. HPCI; Healthwatch; Carers in Herts have attended and contributed to the meetings. The disabled children and their siblings were invited and attended the face to face meetings.

Individual assessment of each CYP's health needs carried out by an independent health care assessor by home and/or school visits to the child and family.

Letters to individual families; MP's and HPCI; Healthwatch and Carers in Herts.

Emails to individual families; MP's and HPCI; Healthwatch and Carers in Herts.

Telephone calls HVCCGCEO- Director of Children's Services HCC;

How have you engaged stakeholders in testing the policy or programme proposals?

Face to face meetings; letters; requests for written feedback from families and from stakeholders has been requested by the CCG.

Families have submitted a paper '*Proposal for the continuation of a nurse-led respite service at Nascot Lawn to support children eligible for Children's Continuing Health Care and to contribute to Public Health support for children in need*'.(Option 4)

HCC have been asked to comment on a proposal to enter into joint funding arrangements for respite currently provided at Nascot Lawn. (Option 3) As of completion of this paper on 10/11/17 HCC have not responded with a clear offer, despite CEO contacting them again for clarification.

For each engagement activity, please state who was involved, how and when they were engaged, and the key outputs:

Engagement with HCC commenced in February 2017 by CEO-CEO email; telephone conversation; face to face meeting and letters and is ongoing; Engagement with families and other stakeholders commenced on 14th June 2017 and has continued until Nov 6th 2017 by letter; telephone; email and face to face meetings.

Who; Families of CYP who attend Nascot Lawn for respite; MP's; HCC; HCT; HPCI; Healthwatch; Carers in Herts

How: engagement document; face to face meetings; requests for comments via email/letters from families by 6/11/17 response to proposals in engagement document; request to HCC for comments on the options in engagement paper and their proposals for future respite provision; HCT for comments on the options appraisal by 6/11/17 . As of completion of this paper on 10/11/17 HCC have not responded with a clear offer, despite CEO contacting them again for clarification. Regular

strategic and operational meetings with HCC and HCT commenced 22nd August and ongoing.

Face to face meetings with HPCI; Healthwatch and carers in Herts and either HVCCG CEO and/or Director of Commissioning.

Key outputs:

Families and stakeholders have commented directly to the CCG their views on the funding options and these views have contributed to the decision making process of Finance and Planning committee. Families have clearly identified their distress and anxiety around the potential cessation of funding of Nascot Lawn and the impact this may have on them and their families and the siblings (young carers).

To try to mitigate against the families anxiety should the outcome of the funding decision be Option 1, as the Option that will have the most impact on the families, the CCG has ensured that each child that uses Nascot Lawn has clearly identified each individual child's care needs; training that may be required for HCC respite unit staff and training programmes are already being offered by HCT to HCC staff; equipment required for each child and agreement that this can be moved to other units should this be necessary; identification of a lead professional in HCT for each child who will liaise with HCC respite staff to ensure safe and timely transition once a unit/provision is named by HCC. Regular training sessions offered by HCT to all HCC respite unit staff to cover most of the common care needs of the children ie enteral feeding; epilepsy management; medicines management. Bespoke training will be offered for CYP whose care needs fall outside of these parameters. HCC have also carried out a Child and Family assessment on all families.

Summary of Analysis

Considering the evidence and engagement activity you listed above, please summarise the impact of your work. Consider whether the evidence shows potential for differential impacts, if so state whether adverse or positive and for which groups and/or individuals. How you will mitigate any negative impacts? How you will include certain protected groups in services or expand their participation in public life?

The summary below covers all 4 options:

- Parents and carers of CYP with LD and complex health needs will no longer be able to benefit from overnight or day care respite care for their CYP at Nascot Lawn if Option 1 is chosen. Options 2,3 and 4 would reduce or remove any impact on recipients of the services
- CYP with LD and complex health needs will no longer be able to access overnight and day respite care at Nascot Lawn. If Option 1 is chosen. Options 2,3 and 4 would reduce or remove any impact on recipients of the services
- HCC will be required to offer families of CYP who currently access a respite service at Nascot Lawn an assessment for HCC respite provision. If Option 1 is chosen. Options 2,3 and 4 would reduce or remove any impact on recipients of the services
- HCC will be required to commission and fund the provision if CYP meet their assessment criteria. If Option 1 is chosen. Options 2,3 and 4 would reduce or remove any impact on

recipients of the services

There is no evidence that there is direct or indirect discrimination because a CYP or their carer has a protected characteristic under the Equality Act.

Should a decision be made to stop funding by the CCG which may result in a decision by HCT to close down the service there will be an impact both on CYP and their carers where their protected characteristic group could be relevant. Mitigating actions will need to be put in place by the providers to ensure that the impact is reduced or removed.

The county council funds and makes available a range of different solutions for children and their families. These include activities such as shared care, camping trips and giving families the flexibility to use personal budgets to pay for their own bespoke respite care or pooling personal budgets with other families to provide care for a small group of children. The county council will be speaking to families who currently access their three short breaks respite units to find out if they still want overnight respite in these units or if they might like to try something different.

The clinical care of children and young people (CYP) will continue, with full access to clinical care in community; acute and tertiary health services. This includes the following (and is already available to other families in similar circumstances):

- Palliative care for CYP with life limiting conditions (which may include overnight respite including symptom care within the hospice environment),
- Children and young people's continuing care, for children who meet eligibility (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)
 - Admission/treatment at local district general hospital and tertiary hospitals

In addition further mitigating actions include the following whole system offers for families who currently access Nascot Lawn:

- CYP aged 8-19 years who currently attend Nascot Lawn for parental respite will be highly likely to meet HCC respite care provision criteria.
- CYP who are 5-8 years who currently attend Nascot Lawn for parental respite will be highly likely to meet HCC eligibility for other respite support options such as direct payments
- CYP who currently access Nascot Lawn will be eligible for assessment for overnight respite in a HCC provision.
- The county council will provide transport to any new respite care or short breaks placement in line with assessed need.
- HCC are currently 'matching' CYP's address of home and school to offer respite as close to home/school as possible.
- CYP who are under 5 years of age will receive a Families First assessment (Early Help by a Families First Coordinator or a Family Intervention Worker from the Intensive Family Support Service –this is a whole family assessment. If the assessment identifies that they would benefit from additional support, they would organise a team around the family and identify a lead agency to coordinate the support which would include anything the health assessment identifies – at this point they would end their involvement. If the needs are complex it may go to the Intensive Family Support Team if there are a number of issues in

the family, or they may escalate to social care 0-25 Together team for further assessment.

Now consider and detail below how the proposals could support the elimination of discrimination, harassment and victimisation, advance the equality of opportunity and promote good relations between groups (the General Duty of the Public Sector Equality Duty).

Eliminate discrimination, harassment and victimisation

There is no evidence to suggest that should the Finance and Planning Committee on 16th November make the decision to choose Option 1 and stop funding or any future decision to close the service will lead to an increase in discrimination, harassment or victimisation. Should the funding cease and the service close the mitigating actions proposed will help to ensure that a similar type of service is available to the families and CYP involved.

Advance equality of opportunity

The duty to advance equality of opportunity includes:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.

Should the decision be made to cease funding which results in closing down the service the mitigating actions proposed will meet these requirements.

Promote good relations between groups

It's not clear where there may be an impact because of the proposal that disadvantages good

relations between groups, for example disabled and non-disabled people. However there is an element of disabled CYP mixing with non-disabled staff at Nascot Lawn. This mixing with non-disabled staff is likely to continue, albeit with different staff, should the decision to cease funding which results in closing the service be made and the mitigating actions put into place.

Next Steps

Please give an outline of what you are going to do, based on the gaps, challenges and opportunities you have identified in the summary of analysis section. This might include action(s) to eliminate discrimination issues, partnership working with stakeholders and data gaps that need to be addressed through further consultation or research. This is your action plan and should be SMART.

This equality impact assessment considers the 4 options, if the Option 1 is chosen I for HVCCG to stop funding Nascot Lawn and the possible outcome of those services being closed. Options 2,3 and 4 would reduce or remove any impact on recipients of the services. Depending on the decision made, the Governing Body may wish to monitor the outcomes for disabled CYP and carers to identify the impact of the decision and, should the service close, the impact on the CYP and their carers of the changes to the services received.

How will you share the findings of the Equality analysis? This can include sharing through corporate governance or sharing with, for example, other directorates, partner organisations or the public. The completed EqIA will be published on the Herts Valleys CCG website either as part of the report on the proposals or separately on the equality and diversity pages.

- Sharing through corporate governance
- Commissioning Executive
- Children, young people's and maternity leadership group
- Herts Valleys CCG website

Health Inequalities Analysis

Evidence

1. What evidence have you considered to determine what health inequalities exist in relation to your work? List the main sources of data, research and other sources of evidence (including full references) reviewed to determine impact on each equality group (protected characteristic). This can include national research, surveys, reports, research interviews, focus groups, pilot activity evaluations or other Equality Analyses. If there are gaps in evidence, state what you will do to mitigate them in the Evidence based decision making section on the last page of this template.

In relation to the Health Inequalities Duty CCGs have duties to:

- Have regard to the need to reduce inequalities between patients in access to health services and the outcomes achieved (s.14T);
- Exercise their functions with a view to securing that health services are provided in an

integrated way, and are integrated with health-related and social care services, where they consider that this would improve quality, reduce inequalities in access to those services or reduce inequalities in the outcomes achieved (s.14Z1);

Option 1 is the primary option considered in this Equality Impact Assessment, as it is where there is likely to be most impact on the recipients of the services.

If Option 1 is not the option chosen, Options 2,3 and 4 would reduce or remove any impact on recipients of the services as, certainly for Options 2 and 3, the services would continue to be provided.

The proposals and the mitigations actions needed should Option1, be chosen will support the CCG to meet its health inequality duties. Options 2,3 and 4 would reduce or remove any impact on recipients of the services

The CCG has committed to continue to meet the healthcare needs of both the disabled CYP and the carers affected by any proposals. The proposals are based on the effective integration of health and social care services.

In addition:

- There is no CCG statutory requirement to fund the provision of overnight respite care for children and young people with learning disabilities and complex health needs.
- CCGs in the region do not fund standalone overnight respite care units for children and young people with learning disability and complex health needs.
- Under the Children and Families Act 2014, from September 2014 CCGs must:
 - commission services jointly for children and young people (up to age 25) with SEND (Special Educational Needs and Disability), including those with Education Health and Care plans (EHCP)
 - work with the local authority to contribute to the Local Offer of services available - <https://directory.hertfordshire.gov.uk/kb5/hertfordshire/directory/localoffer.page>
 - have mechanisms in place to ensure practitioners and clinicians will support the integrated EHC needs assessment process, and
 - agree Personal Budgets where they are provided for those with EHCPs
- Nascot Lawn respite provision is an additional service to children and young people who meet the Department of Health (2016) criteria for Continuing Health Care will continue to receive care packages to support their clinical needs.

The CCG does not have health inequality or socio-economic data for disabled CYP or their carers. This is likely to be held by HCC as part of the Carer's Assessment.

The CCG may wish to monitor the impact on disabled CYP and their carers of any changes to services to identify if there is an impact on their own health and to identify any patterns arising from the proposals.

Impact

2. What is the potential impact of your work on health inequalities? Can you demonstrate

through evidenced based consideration how the health outcomes, experience and access to health care services differ across the population group and in different geographical locations that your work applies to?

The CCG does not have health inequality or socio-economic data for disabled CYP or their carers. This is likely to be held by HCC as part of the Carer's Assessment.

The CCG may wish to monitor the impact on disabled CYP and their carers of any changes to services to identify if there is an impact on their own health and to identify any patterns arising from the proposals.

3. How can you make sure that your work has the best chance of reducing health inequalities?

Children and young people will continue to have full access to clinical care in community; acute and tertiary health services.

The CCG may wish to monitor the impact on disabled CYP and their carers of any changes to services to identify if there is an impact on their own health and to identify any patterns arising from the proposals.

Monitor and Evaluation

4. How will you monitor and evaluate the effect of your work on health inequalities?

All HVCCG commissioned clinical services for children and young people will continue to be delivered and monitored as part of existing contract and quality monitoring arrangements.

The CCG may wish to monitor the impact on disabled CYP and their carers of any changes to services to identify if there is an impact on their own health and to identify any patterns arising from the proposals.

Name of person(s) who carried out these analyses:

Paul Curry, Equality and Diversity Lead, Herts Valleys CCG

Date analyses were completed: 10.11.17



**Chief Legal Officer:
Kathryn Pettitt, Solicitor**

Ms K Magson
Chief Executive Officer
Herts Valleys Clinical Commissioning Group
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Email: simon.banks@hertfordshire.gov.uk
Contact: Simon Banks
My ref: SB / 009640
Your ref:
Date: 27 February 2018

Dear Ms Magson

Proposal to withdraw £600,000 annual funding from Nascot Lawn

Consultation under Regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (SI 2013 / 218) (the 2013 Regulations)

I write further to your letter dated 21 February 2018 giving notice of Herts Valleys Clinical Commissioning Groups' intention to formally consult the Council, pursuant to Regulation 23 of the 2013 Regulations, on a proposal to withdraw £600,000 annual funding from Nascot Lawn (the "**Proposal**").

I understand, from your letter that the date on which you propose to take a decision on the Proposal, in accordance with Regulation 23(1)(b)(i), is 3 May 2018 and, in accordance with Regulation 23(1)(b)(ii), the date by which you have requested the Council to respond to the Consultation is 4 April 2018.

The Council accepts your letter as valid notice of Consultation under Regulation 23, and is grateful for the opportunity to provide a formal response.

In accordance with the Council's Constitution this matter will now be referred to the Council's Health Scrutiny Committee (HSC) for consideration under Regulation 23; it is anticipated that Members of HSC will hold a meeting of the Committee no later than Friday 23 March 2018.

The scope of the scrutiny and a call for evidence will be made in accordance with the Council's usual procedures. Please note that, notwithstanding the comments of Mostyn J on Grounds to B to F of the recent judicial review claim, it will be entirely a matter for Members to determine the evidence that they consider to be relevant to the issues.

I will write further once a date for a meeting of HSC has been agreed by Members.

Yours sincerely



Simon Banks
Assistant Chief Legal Officer

Elaine Manzi

From: Simon Banks
Sent: 02 March 2018 13:36
To: 'kathryn.magson@hertsvalleysccg.nhs.uk'
Cc: John Wood; Jenny Coles
Subject: Regulation 23 Consultation - Health Scrutiny Committee meeting
Attachments: 180319 Public Notice.doc

Tracking:	Recipient	Read
	'kathryn.magson@hertsvalleysccg.nhs.uk'	
	John Wood	Read: 02/03/2018 13:36
	Jenny Coles	

Dear Ms Magson

I write further to my emailed letter dated 27 February 2018. I can confirm that a special meeting of the Health Scrutiny Committee will be held on Wednesday 21 March 2018 in the Council Chamber at County Hall at 10 am (I have attached a copy of the notice of public meetings for your ease of reference). The scope of the scrutiny will be sent out in the usual way by the County Council's Scrutiny Officers.

Whilst writing you should be aware that the date on which you have indicated that you will be taking a final decision on the Proposal to withdraw funding from Nascot Lawn (3 May 2018) is the same day as local elections for a number of wards and Councils in Hertfordshire's Districts.

You should be aware that Members of this Authority have raised concerns about the timetable you have adopted and that the majority of the time allowed for consultation will be during the pre-election or "purdah" period. I thought it prudent to bring to your attention the very considerable concerns that have been expressed by local politicians about the timeframe within which you have chosen to consult and the date you propose to make a decision.

Your sincerely

Simon Banks
Assistant Chief Legal Officer
Legal Services
Resources
My Ref: SB/009640/01919083
Hertfordshire County Council, County Hall, Pegs Lane, Hertford SG13 8DN
t: 01992 555638 Comnet/Internal: 25638

Please note that we no longer subscribe to DX delivery services

Hertfordshire - County of Opportunity

****Disclaimer****

Public Notice of Meetings



The meetings listed below are open to the public. The meetings take place at County Hall, Hertford (unless otherwise indicated) at the date and time shown.

Date	Meeting	Time
Monday, 19 March 2018	CABINET	2:00 Committee Room B
	EMPLOYMENT COMMITTEE	2:30 Committee Room A
Tuesday, 20 March 2018	PENSIONS BOARD (LGPS)	10:30 Committee Room B
Wednesday, 21 March 2018	HEALTH SCRUTINY COMMITTEE	10:00 Council Chamber
Thursday, 22 March 2018	PENSIONS COMMITTEE	10:00 Committee Room B
Friday, 23 March 2018	PENSIONS BOARD (HFRS)	10:00 Committee Room A

Papers for meetings can be obtained from Democratic Services at County Hall (01992 555427), main Public Libraries, or from the Council's website www.hertfordshire.gov.uk/councilmeetings

KATHRYN PETTITT
CHIEF LEGAL OFFICER

Item 3 Appendix Dviii

8 March 2018

Simon Banks
Assistant Chief Legal Officer
Hertfordshire County Council
VIA EMAIL

Second Floor
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Hemel Hempstead
HP2 7YU
01442 898 888

www.hertsvalleysccg.nhs.uk

Dear Simon

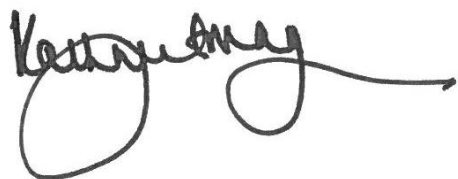
Thank you for your email of 2 March 2018. We acknowledge the confirmation of the Health Scrutiny Committee on 21 March 2018.

I note that your email indicates that Members of the Authority have raised concerns about the timetable the CCG has adopted regarding the Nascot Lawn consultation time frame falling during the purdah period.

We have sought legal advice on this which confirms that for the election in May 2018, the latest date the pre-election period can start is 27 March 2018. Therefore the scrutiny meeting that has been scheduled for 21 March will take place before the purdah period commences. Whilst the final date for Hertfordshire County Council (HCC) to respond to our consultation is after the purdah period will have commenced, the CCG considers that if HCC has undertaken its public scrutiny of the proposal prior to the commencement of purdah it can continue to compile its formal response to the proposal and submit this during purdah.

We note the concern you raise about the decision being made on 3 May 2018, the same day as local elections, but this is in line with the CCG meeting schedule and we see no reason to change the date of an internal CCG committee meeting because of the local elections. In light of this, we will not communicate our decision until 4 May.

Yours sincerely



Kathryn Magson
Chief Executive Officer

By Email Only

Andy Saunders
Acting Head of Contracts
Hertfordshire Community NHS Trust
14 Tewin Road
Welwyn Garden City, AL7 1BW

Herts Valleys CCG
Hemel One
Boundary Way
Hemel Hempstead
HP2 7YU

Contracts.hvccg@nhs.net

2nd March 2018

Contract Reference: 06N-RY4-201719

RE: Nascot Lawn

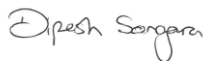
Dear Andy

Following the handing down of the judicial review judgement on 21st February 2018, I confirm that the CCG withdraws the notice of termination of funding dated 17th November 2017.

The CCG will maintain its current level of funding of respite services at Nascot Lawn pending any further decision about future funding. That decision will be taken by no later than 3rd May 2018. The CCG expectation is that a full service will continue to be delivered in line with the current level of funding. The CCG will continue to monitor performance in line with contractual arrangements via our Contract and Quality Review Meetings held between the CCG and HCT.

As we are aware from your communication to families on 17th January 2018, whilst the respite provision at Nascot Lawn is continuing, we note this is on a significantly reduced basis and families are only being offered respite within the three opening nights of Tuesday, Wednesday and Thursdays. We note that the respite nights *'have been carefully planned to ensure that the right staff are available on each of these nights to safely provide the care for your child,'* and in addition that you *'may also need to cancel nights that are offered ... if there are unforeseen circumstances such as staff sickness.'* In view of this information and that the service currently being provided by HCT is not consistent with contractual requirements of 11 nights per fortnight with the closure of one week at Christmas and an additional closure of one week at the end of June/beginning of July, we now therefore require a plan detailing how delivery will return to commissioned levels by 15th March 2018.

Please let me know if you have any queries.



Yours sincerely

Dipesh Songara
Senior Contracts Manager

Cc
Kathryn Magson – Chief Executive Officer, Herts Valleys CCG
David Evans – Director of Commissioning, Herts Valleys CCG
Liz Biggs - Programme Lead – Children, Young People and Maternity, Herts Valleys CCG
Kevin Curnow - Acting Director of Finance, Hertfordshire Community NHS Trust



Appendix 1

Agreement between Herts Valleys CCG (HVCCG), East and North Herts CCG (ENHCCG) and Hertfordshire County Council (HCC)

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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.

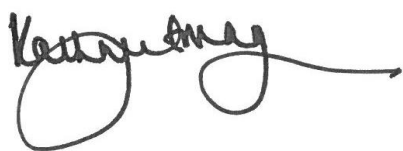
- Early childhood
- 0-25 integration for children and young people with additional needs
- Emotional wellbeing and mental health transformation

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.



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Chief Executive Officer, Herts Valleys CCG



Beverley Flowers

Chief Executive Officer, East and North Hertfordshire CCG



Jenny Coles

Director of Children's Services, Hertfordshire County Council

21.03.18

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HERTFORDSHIRE COUNTY COUNCIL

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

**BACKGROUND PAPER FROM HERTFORDSHIRE COUNTY COUNCIL
CHILDREN'S SERVICE 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: Marion Ingram, Operations Director Specialist Services
Author's telephone number: 01992 588620

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

- 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?

Without a sustainable alternative proposal in place between Herts Valleys Clinical Commissioning Group (HVCCG), East and North Herts Clinical Commissioning Group (E&NHCCG) and the council to meet the respite needs of children with complex health needs in Hertfordshire, this proposal is not in the interests of health services in Hertfordshire. Importantly, it would not be in the interests of the children, young people and families who are receiving care through Nascot Lawn short breaks services.

It would also be setting aside the agreement reached as a result of the Overnight Short Breaks Review and agreed by the council and HVCCG and E&NHCCG in the Autumn of 2016. The Agreement being that four Overnight Short Breaks (OSB) settings would reduce to three, and all three settings would deliver an integrated offer in order that both the health and care needs of children could be met in their local setting in all but exceptional cases.

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?

There has been an ongoing dialogue between the council and HVCCG, E&NHCCG on the issue of how best to meet the health needs of these children

and their families since April 2017 .This has resulted in the agreement which has been signed by all three parties attached as Appendix 1. Through the resources which have been committed, the council and its CCG partners will seek to work with parents to develop an integrated offer for OSB across Hertfordshire. Appropriate clinical input will be sought to inform service development ensuring that the service is safe and best meets the health needs of children receiving OSB.

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

In 2015 the County Council and its CCG partners signed up to a co-produced Special Educational Needs and Disabilities (SEND) Integrated Commissioning Strategy 2015 - 2018. This strategy is currently under review and the agreed OSB proposals will be built into the revised strategy. The implementation of the component elements of the Strategy are considered in a variety of forums including the 0 – 25 Programme Board, the SEND Commissioning Programme Board and the SEND Executive, the HVCCG Children, Young People and Maternity Leadership Group and the E&NHCCG Joint Programme Board. All three parties are represented in these conversations.

Overall, the Strategy sits within the work programme of the Children and Young People's Integrated Commissioning Executive (CYPICE) and any difficulties will be discussed and resolved within this arena. CYPICE, in turn, reports in to the Health and Wellbeing Board where strategic oversight will be applied.



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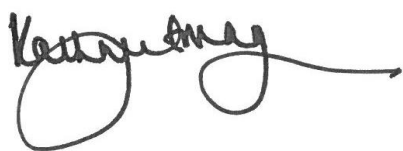
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Health Scrutiny Committee – 21 March 2018 - Parents' Evidence

Introduction

Evidence has been drawn from the experience of many families who have provided their input throughout the campaign to save Nascot Lawn. However in this report we have particularly focused on the families whose children have very high health needs - some receiving Children's Continuing Healthcare (CHC), others not - because we believe these children should set the standard by which medically supported respite can be judged. If we cannot deliver respite for these children and their families in Hertfordshire, then we cannot say we live in a County of Opportunity.

Questions

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

No. It would leave the County without a facility for overnight respite for its most medically complex children. This is evidenced by the experience of one family (in receipt of Continuing Healthcare (CHC)) who since the threatened closure of Nascot Lawn have had Richard's House Hospice and Haven House Hospice (which has limited capacity and so no room to increase care packages if a child's situation deteriorates) suggested to them as suitable alternatives, they are outside the county boundaries of Hertfordshire. Another suggestion, Aurora Meldreth Manor is a children's home and is situated in Royston, a long way from families based in Watford. It currently has no capacity to admit additional children for respite. Herts Valleys Clinical Commissioning Group (HVCCG's) first evidence paper to the Health Scrutiny Committee Topic Group of 8 September 2017 suggested that Keech Hospice in Bedfordshire could provide respite care to Herts Valleys children in receipt of CHC. HVCCG have now acknowledged in correspondence with parents that this is not a possible respite care location. Also, during the Judicial Review, The Hon Mr Justice Mostyn commented that HVCCG's suggestion that respite should take place in a hospice setting was "inappropriate".

Another child (not in receipt of CHC) has been placed out of county for respite. Their experience of booking nights is that it is the policy of the provider to book nights for all the families from the other county first and then to consider the requests made by their family - they are last in line because they are from Hertfordshire.

Please do not allow this proposal to go unchallenged, families whose children have high health needs will not have a suitable respite centre within the County to meet their needs. It is unacceptable that those with the highest needs should have the furthest to travel and should be last in the queue when it comes to family support.

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?

We are aware that since the families' Judicial Review, Hertfordshire County Council, Herts Valleys CCG and East and North Herts Clinical Commissioning Group (ENHCCG) have acknowledged their joint responsibilities for providing respite support to our children and are working together to produce a proposal to meet our needs. It is appalling that it has taken legal action to force this interaction to take place and gives us very little confidence that all parties truly have the interests of our children and families at heart. We would like you to judge any alternative joint service proposal against the following principles:

The need for a Registered Nurse

Many of the children who use Nascot Lawn currently benefit from the presence of a Registered Nurse leading the planning and delivery of their care - but **some children cannot be safely left in respite care without a Registered Nurse present**. We would like the Health Scrutiny Committee to note that the national criteria for Children's Continuing Healthcare is not a sufficient measure by which a decision could be made about whether a child required the presence of a Registered Nurse. So when Health Scrutiny Committee members consider the numbers of children who require respite overseen by the Registered Nurse they should not rely solely on the numbers of children who currently qualify for CHC. In East and North Herts CCG, a 'sister' service to the CHC team recognises and provides nursing support in respite to a wider group of children who do not qualify for CHC but still have a very high level of medical need and a number of procedures requiring a Registered Nurse, because it is recognised that this service keeps children out of emergency hospital care.

The accounts of the medical care which must be delivered by a Registered Nurse which follow belong to children who do and do not qualify for CHC:

What care does a Registered Nurse provide for your child?

Child 1 meets CHC criteria:

Seizure management & recovery, gastrostomy and jejunum feeding, specialist feed management, port-a-Cath management, recent Nissen fundoplication re-do, medication administration (regular, PRN, rescue), oxygen delivery (routine and emergency), suction (oral and nasal pharyngeal), universal precautions due to MRSA colonisation, chest physiotherapy, oxygen saturation and heart rate monitoring, nebulisers (asthmatic and antibiotic), AirVo 2 (optiflow) specialist oxygen delivery equipment, pain management.

Child 2 does not meet CHC criteria:

Seizure management and emergency medication administered (midazolam). Be able to assess and administer extra morphine for breakthrough pain in addition to slow release morphine. To be aware of risks and treatment of Haemophilia. I have been informed by school that MST slow release morphine and liquid morphine can only be given if two trained nurses are present.

Child 3 meets CHC criteria:

Seizure management (recovery), oxygen (seizures), saturation & heart rate monitoring (seizures), medication administration (regular, PRN, rescue), occasional need for NG tube due to seizures.

Child 4 meets CHC criteria:

Emergency care of Hickman Line including what to do in event of break in line, protocol to follow if eloped a temperature, recognising signs of sepsis. Trouble shooting problems on Bodyguard pump that infuses TPN. Preparing JPEG feeds and administering. Giving of medication via JPEG. Introducing a catheter into JPEG site if the tube fell out to keep stoma open until he can get to hospital and have it put back in under General Anaesthetic. Cleaning and redressing the Hickman Line site. At no time would a person who is not a qualified nurse be allowed to access Hickman line. This protocol is set out by the hospital we are under.



One month's medication for a child who does not meet CHC criteria. In a respite setting, all medication which needs administering would have to be overseen by a Registered Nurse:

The importance of 'local'

As noted above, the alternative respite solutions currently proposed to the families of children who have high medical need are either out of County, or are a children's home at the northeast apex of the County (this is not a respite setting and is full). The current suggestion of putting additional medical equipment into The Pines, Peartree or West Hyde has not yet materialised and there are reports going back to 2011 highlighting the inadequacy of West Hyde for wheelchair users of larger postural support chairs. When one family asked about the specialist cot bed their child would require being put into an alternative setting (The Pines) in order to make it suitable, the child's parent was told, "the cot required would block the room and render it unusable by anyone else". It does not seem likely that without significant building work to increase capacity and make the physical space suitable for high needs children, Hertfordshire currently has a respite care centre that is physically able to take the most disabled children and meet their respite needs.

The desire for a respite centre to be local to families who currently use Nascot Lawn is not just a preference, it is vital to the safety of their children. Children with high medical needs, even with the best care, do often need to travel to hospital as an emergency. In this case, having their families close by and therefore able to meet the ambulance as it arrives at A&E, being able to call up a child's medical notes quickly and communicate complex information crucial to their care is very important to the safety of the child. One of the Nascot families says that 7 volumes of their child's medical notes are at Watford General - vital information which could not be quickly transferred. Doctors in acute services rely on parental expertise to help guide their treatment when a child has complex needs. The location of any future nurse led respite centre should also be within close transfer distance to the child's usual hospital.

The families whose children have high medical needs all highlight how unhappy they would be about the distances they would have to travel and ask their children to endure (many of these children cannot regularly use school transport services because their medical needs are too great for a long journey 'on the bus') unless an alternative respite centre were close to home.

It is vital that any future high medical needs respite should be 'local' for an easy transfer to the child's usual hospital. As yet, there is no alternative overnight respite setting suitable and available to high medical need children within Hertfordshire County Council's overnight respite offer.

Centres under pressure

We ask the Health Scrutiny Committee to consider the pressure placed on the three remaining overnight respite centres if Nascot Lawn closes. In addition a children's home has been suggested as a suitable respite location for some children, one parent was invited to visit it, "When I got there it became apparent, very quickly that there was no way my child could go as it is undergoing major changes and building works. I asked when they thought there would be capacity and the staff member couldn't tell me. I asked for rough ball park figure, for example weeks, months or years and was told maybe 2 to 3 years." We also know that West Hyde is struggling to recruit staff to meet the current allocated hours of its users.

Given that our children will all require complex care plans, transitional arrangements and are likely to have a high hours allocation, are Health Scrutiny members confident that Hertfordshire County Council would be able to provide an equivalent level of respite care to all of the eligible children (Nascot Lawn users and other existing overnight respite users)? This is particularly pertinent because high medical needs children cannot be integrated in the same setting as behaviourally challenging children so wholly separate timetables will need to be drawn up.

This means that the families' choice of nights will be limited to the 'medical needs nights' of any given centre and it is also likely to affect a family's ability to book a number of nights in one block, allowing them to take siblings on short holidays or get essential building work done without exposing a child with high medical needs to potentially harmful dust and painting work. As one family said, "My family do not live close by and my father is not in good health. It is extremely difficult to take my child away because of the equipment he needs so if I didn't have this care I would feel isolated from my family."

We ask Scrutiny members to ensure any alternative proposals would guarantee families the ability to have short block bookings of time and ensure it will be possible to allow families some flexibility in the days of the week they book respite for.

Daycare

Currently Nascot Lawn provides a day care service for children from birth to 5 years old (or whenever they transition to school). Alternative service proposals must consider a service commitment to these children as all other County Council respite settings currently are restricted by Ofsted requirements that the children should be aged over 5 years. We are not proposing an overnight service should be available for children aged under-5 but a respite service involving a Registered Nurse where appropriate should be developed in an appropriate setting for children aged 0 - 5 years. **Councillors should ensure any plans relating to this service have clear delivery timescales as currently, in Herts Valleys area of the County, no such services exist, whereas in East and North Herts CCG's area, there are some appropriate day care settings.**

18 - 25 year olds

The 0 - 25 Service is so named because it is supposed to consider the needs of children and young people who are aged 0 - 25 years. Some of the young people aged over 18 with high medical needs who leave Nascot Lawn are placed out of County in full time residential settings. This is very expensive to Hertfordshire County Council. There is no nurse led respite service for 18 - 25 year olds in Hertfordshire. Any future service proposals should consider the overnight respite needs of young people aged between 18 - 25 years this may allow more young people with high medical needs to stay at home, this would save Hertfordshire County Council money and would save families having to make difficult 'snap' decisions based on a young person's date of birth rather than solely on their best interests.

A time line for the development of an 18 - 25 service should be agreed by Scrutiny as part of this process.

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

Transition support

We, the Nascot Lawn families, have been the ones who have borne the full brunt of HVCCGs ultra vires and destabilising decision to halt a process of transitional talks and announce the cut in funding for Nascot Lawn. Many families are now receiving as little as 25% of the agreed allocation of respite care in their care packages as a direct result of this action. Many are just about coping, some are not: We have requested that some families receive emergency support from the County Council because they are breaking down. The impact on siblings' mental health and school grades has been particularly distressing to note. Siblings, young carers, have one chance to sit their SATs, their 11+, their GCSEs and having severely reduced respite support means they have suffered as their parents have to spend more time managing their disabled child and less time supporting revision or providing a quiet place to work.

Whatever is agreed as a future plan for respite, **Nascot Lawn should remain open until all of its families have successfully transitioned to a new setting and are in receipt of their allocated care package. We believe this may take until March 2020** (as building works and other arrangements take time) and an explicit funding commitment should be sought by Health Scrutiny until this date to allow the provider to plan the service and recruit staff.

The 'lost' children

New children have not, with a couple of exceptions, been admitted to Nascot Lawn since the first decision by Herts Valleys CCG to close the centre. We are very concerned that children who would previously have been judged eligible to attend Nascot Lawn are being 'lost' in the uncertainty created by this decision because paediatricians and other professionals have nowhere to refer them to. An account drawn from an interview with one such family follows:

"Summer time was relatively uneventful with the child having her usual seizures but nothing that warranted hospital. From September, the child's seizures started getting worse and worse with admissions ranging from every two weeks to every two days until she was finally admitted to Great Ormond Street's Koala Ward High Dependency Unit over the Christmas holidays. Life was tough in between and still on-going today. The child had another admission on Sunday 4 March for seizure exacerbation. The child's health has deteriorated meaning there is no predicting her response to rescue medications; there is no continuity. The family cannot plan anything, have cancelled trips/holidays, and Christmas

was cancelled. This is all having a massive impact on the family.

The child has qualified for Children's Continuing Healthcare. The child's mother has spoken to social services about a care package but is unclear what exactly that will be and when it will commence.

The child has been referred to West Hyde by her paediatrician but it is unclear when she will be accepted. The family have been told this referral to West Hyde is because of the uncertainty around Nascot Lawn. The child's response to rescue medication varies from visit to visit. It means that only professionals that know the child should be handling her secondary care."

Families and professionals urgently need clarity on where high medical needs children can be referred to - some of their situations are urgent. Amongst other families we have spoken to, there are children with life limiting conditions whose position is deteriorating, they cannot wait for a decision to take its course. We ask Health Scrutiny to require the CCGs and County Council to lay out a referral pathway for professionals who wish to refer families to existing respite services in and out of County. We also believe a full survey of relevant professionals should take place before new services are designed and capacity considered because there is no current information on how many high medical needs children are not known to respite centres.

The details matter

Throughout this process the families have been in touch with each other as best we can, but we know that we are not reaching all of the families who use Nascot Lawn through our informal groups. From the 30-40 families we are reaching, we are hearing that as transition to new settings takes place, some families are getting different allocations from panel than others, some families receive a lot of contact from family practitioners, others have none.

We believe that fewer than 10 children since the original announcement in May / June 2017 have actually managed to have their care allocated to another respite centre. Even this is not an equivalent level of care. One child with complex health needs has had their care successfully transferred to an out of county hospice. Other children who need emergency respite are ending up spending extended time in hospital to allow their families respite - which Herts Valleys CCG assured Health Scrutiny and the parents would not happen. Some 'Shared Care' arrangements (where a trained foster carer provides families with support in their own home) have broken down, one family said, "[Shared Care] has now been pulled so my child no longer attends any setting outside of home, unless myself or a nurse is present... This means my child cannot stay [independently] overnight anywhere at the moment except Nascot Lawn". We have been explicitly encouraging families to make progress with transitioning to other respite facilities as quickly as possible - but we ask Health Scrutiny members to look at how little has been achieved in the past 9 months. Please don't be fooled that changes to respite can be made quickly.

Getting the transition right, getting the details and communication right and giving your County officers adequate resources to do this job well is vital. Children are falling through the administrative gaps - the details of what is happening to each family matters.

Conclusion

Our evidence makes it clear that not enough progress has yet been made for our families to be confident that their children are going to receive respite care that is equivalent to that currently offered by Nascot Lawn.

We ask members of Health Scrutiny Committee to consider carefully the principles we have laid out for any alternative service offer.

The people who run the NHS in Hertfordshire, and our County Councillors, speak of putting the care of our children first. But it is time for action not words. Nascot families have been pushed around for nine months, and many are at breaking point. Today we call upon the NHS in Hertfordshire and our County Councillors to commit to funding Nascot Lawn until March 2020, giving all parties enough time to develop and implement a sustainable plan for respite care in the County.

It is particularly important for those families whose children have very high medical needs. They should be first in the queue, not treated as an afterthought. As one foster carer said of her high medical needs child:

“Overnight respite is not a luxury it's a necessity. Without it this child may well have to go into residential care which would be devastating for him. He had a dreadful start in life and we are the only stability he has ever known, we want to be able to continue to care for him.”

Please don't accept any proposal that cuts our respite care, puts the most vulnerable to the back of the queue or puts us under such pressure that we are no longer able to cope. As a County, as health care providers, as responsible Councillors, you have a duty to support families like ours who give all we can to keep our children at home.

Carers in Hertfordshire

Submission to the Health Scrutiny Committee

Wednesday 21 March 2018



1	Introductions
1.1	A carer is a person who provides unpaid care and support to a relative or friend who could not manage without their help. This includes parents caring for a disabled child - often described as 'parent carers' and young carers aged 18 years or younger who support an ill or disabled relative - usually a parent or sibling.
1.2	Carers in Hertfordshire (CinH) is a countywide Charity, which was set up by carers in 1995. The organisation's aims include: <ul style="list-style-type: none"> ➤ Enabling carers to participate in service planning and decision making ➤ Providing a platform for the voice of carers
1.3	25,718 adult carers are currently registered with CinH, 4,214 of these identify as parent carers. We are also in touch with 1,436 young carers, many of whom have a disabled brother or sister.
2	Question 1: Is the Proposal in the interests of health services in Hertfordshire?
2.1	When considering the possible consequences for local health services it is important to recognise the negative impact of caring on the health and well-being of parent carers –
2.1i	The NHS Commitment to Carers 2014 acknowledges that: <i>Caring responsibilities can have an adverse impact on the physical and mental health, education and employment potential of those who care, which can result in significantly poorer health and quality of life outcomes. These in turn can affect a carer's effectiveness and lead to the admission of the cared for person to hospital or residential care.</i>
2.1ii	The Carers UK 2017 national <i>State of Caring Survey</i> (p.7) found that: <i>People looking after a disabled childwere more likely to report stress and anxiety as a result of caring than other groups. They were also more likely to say that caring had impacted upon them having a balanced diet and their ability to do exercise. People caring for a disabled child were the most likely group to report having suffered from depression because of their caring role (54%).</i>

2.1iii	The CinH 2018 <i>State of Caring Survey Hertfordshire</i> has just closed but early findings report that <i>66% of parent carers of children with higher or complex needs said they had neglected their own health; 49% had missed or not made a health appointment for their own needs and 85% said that they felt isolated.</i>
2.1iv	In terms of general well-being, we know that caring can have a negative impact on family relationships: <i>Research (Contact a Family 2004, No Time for Us) shows that parents with disabled children are more likely to experience a relationship breakdown than parents of non-disabled children.</i>
2.1v	It is also important to recognise the impact of having a disabled brother or sister: <i>Siblings of children with disabilities are at a greater risk than average of developing emotional issues, anxiety, and stress....they may face peer problems, as well as a lack of engagement in extracurricular activities and academic issues as a result of limited time and money.</i> (Psychology Today, <i>What About Me?</i> June 2014).
2.2	We know that the right support can make a positive difference for families with a disabled child and mitigate the impact of caring on their health and well-being –
2.2i	Parent carers responding to the 2018 CinH Survey said that <i>Access to Short Breaks</i> would make the most difference to their health and wellbeing. This is reflected in the Carers UK 2017 Survey which reported: <i>Respondents were asked what would make the most difference to improving their health and wellbeing. Regular breaks from caring was the most popular choice, with 42% placing access to breaks in their top three things.</i>
2.2ii	<i>Research shows short breaks are one of the most effective ways of improving the quality of life for disabled children and their families (Parliamentary Hearings on Services for Disabled Children 2006).</i>
2.2iii	It is accepted that having a regular break enables parent carers to carry on caring safely and well and to spend valuable time with other children in the family. However they need to be confident that the staff providing the break have the right knowledge, skills and attributes to understand and respond appropriately to the needs of the child or young person they care for. Carers will not otherwise use the service.
2.3	Nascot Lawn has provided an NHS funded nurse-led overnight and day-care service for children with complex health needs for many years (see the CinH submission to the Nascot Lawn Respite Centre Funding Topic Group, 6/09/2017 for the history of the service). The building is well equipped to meet the needs of children with significant physical disabilities and has the space to accommodate wheelchairs, specialist beds and hoists.

	<p>We are concerned that unless an equivalent service can be provided to those families currently using Nascot Lawn and to those other families awaiting a referral to that service, the health and well-being of the parents, siblings and of the disabled children themselves will be adversely affected. This will inevitably have an impact on the wider health and social care system in Hertfordshire both in the short and longer term. In respect of young carers/siblings in particular, we are concerned that the opportunities to '<i>Thrive</i>' and to '<i>Take Part</i>' would be significantly compromised by any reduction in the breaks provided.</p> <p>We are aware that the current group of families who have received a service from Nascot Lawn have had their allocations reduced and that there are continuing issues about capacity, space and staff training at some other services.</p>
3	<p>Question 2: Are there any alternative service proposals available to Herts Valleys Clinical Commissioning Group 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?</p>
3.1	<p>It is evident that the County Council and HVCCG had been in discussions about the future of overnight short breaks services prior to HVCCG's decision to cease funding Nascot Lawn. The briefing paper provided by the Director of Children's Services to HCC about the Nascot Lawn petition (18 July 2017) referred to a review of overnight short breaks services, carried out in 2015, which reported a reduced demand for overnight short breaks to meet social care needs but no reduction in the number of children with complex medical needs who would need to access such a service. That briefing also stated:</p> <p><i>On 22 September 2016 a report was prepared by Herts Valleys CCG (HVCCG) and the County Council which was taken through the respective programme/management boards. The paper made the following recommendation: To jointly commission a fully integrated Overnight Short Breaks service model for health and social care. The recommendation was agreed by both programme boards.</i></p> <p>Work to progress this decision was presumably put on hold when HVCCG made the decision to cease funding Nascot Lawn in December 2016/January 2017 (HVCCG Background Paper for the Nascot Lawn Topic Group, 6/09/218) although there is some disagreement between HVCCG and HCC about when that decision was communicated to County officers. We are however aware that discussions have since continued and in a letter to parents dated 7 March 2018 Mrs Kathryn Magson of HVCCG noted</p>

‘we had a constructive and helpful meeting with officers at the council. We have discussed and agreed to work up a Hertfordshire-wide joint commissioning approach to overnight short breaks, led by the council, with the facilities they currently commission.’

It appears that the intention is to reduce the number of overnight short breaks services in Hertfordshire to three, i.e. based on the facilities that HCC currently commissions. We note the findings of the 2015 review mentioned above but our experience is that parent carers currently struggle to access overnight short breaks. Findings from the very recent CinH 2018 *Hertfordshire State of Caring Survey* report show that:

- 36% of parent carers had not had a day off in 5 years
- 47% of parent carers had not had a weekend off in 5 years
- 74% of parent carers had not had a week off in 5 years

We are also aware of a survey that was undertaken by Herts Parent Carer Involvement with families in 2016 focussing on overnight short breaks where a third of the respondents were not satisfied with the number of ‘overnights’ allocated to their child.

We are therefore not confident that a reduction to three units will provide sufficient capacity to meet the needs of families in Hertfordshire. We are also concerned that the locations of the HCC commissioned services – The Pines in Hertford, Peartree in Welwyn Garden City and West Hyde in Rickmansworth – will require lengthy journeys for some children and families accessing, for example, after-school tea visits, mid-week stays or day-care. When we asked families in 2009 what they considered a reasonable travel time to and from a respite care unit, the overwhelming preference was for a 20 minute journey each way. This was predicated on a having five respite units in the county, the closure of Wilbury House in 2013 clearly impacted on journey times for families in North Herts and this proposed further reduction will mean that journey times may be difficult for many families.

We recognise that short breaks include a range of provision including sitting services, buddying or befriending services, clubs, play schemes, shared care as well as overnight respite. We also recognise that some families do not need or want overnight breaks for their children and find the other services sufficient to meet their family’s needs. However the aim of the Aiming High for Disabled Children programme in 2008/09, which led to a re-organisation of overnight short breaks services was to improve short break provision specifically for:

- a) Children and young people with complex health needs, and
- b) Children and young people with learning disability (with or without autism) and challenging behaviour

	And it is these children and their families who we believe, continue to need overnight respite. We support a further review of the current and predicted number of children/young people in these two categories with input from the Special Schools and from the Positive behaviour, Autism, Learning disability and Mental health Service (PALMS) to ensure that there is sufficient provision within county to meet the need.
	Question 3: How will the integration and joint responsibilities between HVCCG and the County Council be arranged and managed going forward?
3.1	This is primarily a matter for HVCCG and HCC. However current commitments to Co-production suggest that those families who are either currently using the services which are to be delivered via an integrated system or who are likely to be referred to them, should have the opportunity to be directly involved in the design, development and delivery processes.
4	Conclusion
	Carers in Hertfordshire is keen to work with the County Council and the two Clinical Commissioning Groups to develop a high quality overnight short breaks Hertfordshire offer for the two groups of children and families mentioned above. We are appending a check list of what parents have told us they would want and expect from such a service which we trust will be helpful.

Carers in Hertfordshire



What would you expect from an overnight respite service?

1	Responses from parent carers of children with complex health needs and parent carers of children with learning disabilities (with or without autism) and challenging behaviour.
a	A consistent staff team with the appropriate skills, qualifications and training and with a 'can do' attitude that shows a willingness to take on further training.
b	A structured introduction to the service with the opportunity for tea visits and weekend visits prior to starting day care and/or overnight stays.
c	Day care available for children aged 2 years and over where this is appropriate to meet the child's and the family's needs.
d	Overnight stays available for children aged 5 – 19 years where this is appropriate to meet the child's and the family's needs.
e	Systems in place to enable families to book daycare and overnight stays up to 6 months in advance.
f	Systems in place to allow families to block book part of their allocation of overnight stays up to a seven day period.
g	Systems in place to allow an emergency stay for a child in an overnight service that they are already familiar with.
h	Travel times to and from the family home/the child's school and the respite care service to be no more than 20 minutes.

i	Systems that ensure that children and young people with complex medical needs and children and young people with challenging behaviours are not sharing the same space/service at the same time.
j	A sensory room for time-out/relaxation
k	Homely, comfortable accommodation with a large lounge and spacious dining room for children and young people to eat together in.
l	Overnight stays can give disabled children and young people the opportunity to meet up with 'friends' from their school in much the same way as other children and young people enjoy 'sleepovers' with friends. It would be good if there were systems in place to offer particular dates to those from the same school or playscheme.
2	Responses specific to parent carers of children with complex health needs
a	Nurse supervision on site
b	Fully accessible, spacious building with appropriate toileting and bathing facilities
c	Up to 4/5 individual bedrooms each with its own wet room and a communal bathroom.
d	Appropriately equipped bedrooms with ceiling tracking and sufficient space for staff support either side of the bed
e	Plenty of electric points for equipment
f	Accessible outdoor paved and garden area
3	Responses specific to parent carers of children with LD/ASC and challenging behaviour

a	A safe, well fenced outdoor space with climbing, trampoline and other play equipment
b	An autism-friendly environment inside the unit
c	Quiet spaces for time out
d	Sessions with drumming and music

This is not an exhaustive list but simply the result of some 'brainstorming' with parent carers.

HERTFORDSHIRE COUNTY COUNCIL

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

**BACKGROUND PAPER FROM HEALTHWATCH HERTFORDSHIRE 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: Geoff Brown, Chief Executive, Healthwatch Hertfordshire
Telephone number: (01707 275978)

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

- 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?

In the view of Healthwatch Hertfordshire (HwH), the decision to remove the funding from Nascot Lawn was not in the interest of health services in Hertfordshire

This is our view for the following reasons:

- The service at Nascot Lawn demonstrated health and social care partners focusing on the needs of children and families. It was seen as providing very effective partnership and coordinated working.
- The decision was predominantly made in relation to *financial* pressures and the legal point that respite care is a local authority responsibility. The Finance committee of Herts Valleys Clinical Commissioning Group (HVCCG) was very clear that these factors determined their decision rather than whether the *service* was valuable or necessary.
- We do not believe that there was sufficient exploration of the needs of the users and how these would be met at other locations. Involvement of families has predominantly related to the removal of funding, rather than using their expertise to help respite care services to change and develop. As acknowledged the approach did lead to huge worry and stress for the families involved.

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 children and young people with complex health and social care needs requiring respite care in Hertfordshire?

At this stage our knowledge of potential proposals is limited but we understand that there is a very welcome approach between the council and both the clinical commissioning groups (CCG's) to work together to develop a model of respite care with funding from all three organisations to make this happen.

HwH's view is that the model must address opportunities for learning from good practice at Nascot Lawn and other respite facilities and look to build on these through

- Developing opportunities for child centred collaborative working
- Understanding the challenges of location and premises for families
- Involvement of families using all respite services and being clear about impacts of service changes across all locations and for all families receiving a service
- Transparency about funding and provision, especially if the total amount of funding for respite care is reduced.

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

We look forward to answers from the council and the CCGs on this key matter.

HERTFORDSHIRE COUNTY COUNCIL**SPECIAL HEALTH SCRUTINY COMMITTEE
WEDNESDAY, 21 MARCH 2018 AT 10.00AM****BACKGROUND PAPER FROM HERTFORDSHIRE COMMUNITY NHS TRUST 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/s: Clive Appleby, Company Secretary
Marion Dunstone, Director of Operations
Katy Healy, General Manager, Children & Young People's Services

Authors' telephone number: 01707 388000

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

- 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 Trust considers that the question of whether the Herts Valleys Clinical Commissioning Group's (HVCCG) decision is ultimately in the interests of health services in Hertfordshire is essentially a commissioning issue and the Trust is neutral in respect of this question, provided that:

- (1) Alternative models of care to the children and parents currently using Nascot Lawn (and in the future) and which provide a safe and sustainable service and which comply with statutory responsibilities can be agreed and implemented or
- (2) The services are retained at Nascot Lawn in current form or as re-modelled.

What has and continues to be detrimental to "the interests of health services in Hertfordshire" is the protracted and current uncertainty around the future of Nascot Lawn and the services provided. However, the Trust understands that the CCGs and the Council may now be close to agreement on a way forward.

Contractually, and in line with the judgement handed down by Mr Justice Mostyn on 21st February, the current position for the Trust is to continue to provide the service at Nascot Lawn as though HVCCG's decision in November 2017 to withdraw funding had never been made. Should the CCG make a further decision to withdraw their funding, the Trust is contractually entitled to

six months' notice, but would consider earlier termination if agreement is in place which is to the satisfaction of all parties.

Two notices of withdrawal of funding and their subsequent rescission in 2017 and 2018 have made it very difficult for the Trust to retain and recruit staff at Nascot Lawn in such an uncertain environment and it has thereby been difficult to staff the service sustainably to the full commissioned levels". (The precarious staffing position has been repeatedly raised with all parties throughout the judicial review processes).

The staffing position and need to maintain a safe service has invariably impacted upon the level of service which the Trust has been able to provide.

The Trust would however like to acknowledge the recognition of the difficulties by all parties, including the parents. The Trust also publicly expresses our appreciation for the continued commitment and the care given by the staff at Nascot Lawn.

The Trust has employed its best efforts and wide-ranging initiatives to recruit and retain staff and continues to do so and, HVCCG has also requested that the Trust submit a plan by 15th March 2018 detailing "how delivery will return to commissioned levels".

The current position is that the Trust is reasonably confident that a safe, sustainable service can be maintained at Nascot Lawn until the middle of May 2018, but the position is currently uncertain beyond that point, despite the Trust continuing with best endeavours.

Members of the Scrutiny Committee are requested to note that in the event that the Trust has no choice but to give notice to the Clinical Commissioning Groups (CCG's) that it has to close Nascot Lawn on the grounds of being unable to provide a safe service and that there is no time for consultation because of a risk to safety or welfare of patients or staff, it is the Trust's understanding that s.23 of the Local Authority (Public Health & Wellbeing Boards and Health Scrutiny Regulations) 2013 will have further relevance.

Such closure would constitute "substantial variation" under the Regulations. However, formal consultation with the Local Authority (as currently being undertaken by virtue of the current scrutiny) would not be required, but the CCG as commissioner will need to notify the Council immediately of the decision taken and the reason why no consultation has taken place.

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?*

The Trust considers that this is an issue for HVCCG and the council (and to a lesser extent East & North Herts CCG as “minority funder”) to agree and resolve. The Trust has to date, and will continue to be a party to negotiations and will be responsive and supportive to any agreed way forward between the CCGs and the Council.

The Trust also recognises a duty of care and will continue to support the children and their families as commissioned and as far as reasonably possible and practicable in the context of any agreed service model, setting or transitional arrangements.

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

Please see 2.1.2 above.

Item 3 Appendix J

The Consultation Institute Newsletter

CCG loses judicial review for failure to consult Overview & Scrutiny February 22, 2018

A High Court judgment* this week against the NHS in Hertfordshire is a timely reminder to all CCGs in England that a failure to consult Overview & Scrutiny Committees have serious consequences.

The full story is described in a press release from the Claimants' lawyers and concerns the withdrawal of funding for a respite centre for disabled children in Watford, called Nascot Lawn. The case is probably the first time that part of the NHS has tried to justify by-passing a local authority and sought to defend a failure to observe the 2013 Regulations on Health Scrutiny.

The rules are well-established and state that when the NHS is considering a substantial development or 'substantial variation' to a service, it must formally notify the Council and 'take such steps as are reasonably practicable' to reach agreement. If they fail, the Council can refer the matter to the Secretary of State on one of three grounds: – a failure to consult, inadequate consultation or a 'catch-all' formula that the proposals 'would not be in the interests of the health service in the area'.

In this particular case, lawyers argued that the cuts to this service were unlawful for several other reasons.

It alleged a failure to consult and a breach of the Public Sector Equality duty, and on both counts, the Judge found in favour of the CCG. This will give NHS Managers a degree of comfort, but a note of caution is in order. In suggesting that the CCG had sufficiently 'engaged' on the subject, the Court did not use the test of S.14Z2(2) which is the duty to involve (whether by being consulted or provided with information etc) but merely found that there had been 'public engagement' as would satisfy the terms of a consent order agreed by the defendant when a Court previously quashed the decision to withdraw funding.

Had the CCG acted lawfully and consulted the Council, who knows what consultation it would have requested?

Having found that the CCG were in the wrong in not consulting the Council, the Judge could – and maybe should have dismissed all the other claims without being considered. It may be helpful to see his conclusions, but without knowing what consultation would have been requested, it is impossible to be sure that the engagement undertaken on this occasion would have been sufficient.

To many readers, this all sounds like legal nit-picking. But the situation is: –

- Here is a case where the CCG has clearly had poor advice, and where the need to have a dialogue with the Scrutiny function of the Council seems cut and dried.
- The case should never have gone to Court and makes the NHS look heartless and unresponsive with probable erosion of trust with the local community.
- The CCG clearly has an enormous financial challenge and needs to engage with multiple stakeholders in order to mitigate the impact of potential closure.

* R (ex parte K, T & M) v Hertfordshire Valleys CCG [2018] EWHC 267

NASCOT LAWN

**To examine the decision by Herts Valley's Clinical
Commissioning Group to withdraw funding from
Nascot Lawn respite provision**

Report of the Topic Group

6 SEPTEMBER 2017

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REPORT OF THE NASCOT LAWN RESPITE CENTRE TOPIC GROUP

1.0 Purpose of Report

- 1.1 This is the report of the Nascot Lawn Respite Centre Topic Group. The Group examined the partnership working, assessments carried out and current and future funding arrangements for respite care of Children & Young People (CYP) with complex health and social care needs and their carers.
- 1.2 The Topic Group addressed the following questions:
- 1a. What are the responsibilities of both Hertfordshire County Council (HCC) and the NHS to provide respite care for Children and Young People (CYP) with complex care needs and their carers?
 - 1b. How will the needs of these CYP be met from Oct 2017 and in the future?
 - 2a. To what extent were the needs of the CYP and their carers considered in reaching the decision to cease funding?
 - 2b. To what extent was the impact of the decision (to cease funding Nascot Lawn) on the health and social care system considered?
 - 2c. To what extent was the evidence obtained from the outcomes of the impact assessments considered in the decision making process?
 - 2d. To what extent were the consequences (including costs) to the health and social care system considered?
 - 3. What lessons have been learned to ensure more effective partnership working in the future?
- 1.3 The scoping document can be seen at **Appendix 1**. Associated papers issued to Members can be found at: [LINK](#)

2.0 Recommendations

Each of these recommendations should be read in conjunction with the paragraphs referenced in brackets. The responses should reflect the paragraphs as itemised.

- 2.1 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. (3.10, 3.11, 3.16, 4.1, 4.3, 4.5, 4.6)
- 2.2 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. (3.3, 3.18, 3.19, 3.20, 4.1, 4.3, 4.4, 4.5, 4.6)

- 2.3 That services for our most vulnerable residents are commissioned, resourced and provided utilising a sound and authoritative evidence base. (3.4, 3.7, 3.8, 3.9, 4.1, 4.2, 4.4, 4.6)
- 2.4 Using this experience (as outlined in recommendations 2.1, 2.2, 2.3) to inform future working and decision making. (3.11, 3.17, 3.22, 3.24, 3.25, 3.27, 4.1, 4.2, 4.3, 4.5, 4.6)

3.0 Evidence

- 3.1 The Nascot Lawn Respite Centre in Hertfordshire provides care services to children and young people (CYP) with complex health and social care needs. There are 52 CYP who access the services provided at Nascot Lawn. The total annual running cost of £660k which is proportionately funded by HVCCG (90%) and East and North Clinical Commissioning Group (ENHCCG) (10%). The percentage split has always been based on historical usage. The current levels of usage have changed during that time.
- 3.2 In the morning session, members heard from Healthwatch Hertfordshire (HWH), Nascot lawn parent and carer representatives, Carers in Herts (CiH), Herts Parent Carer Involvement (HPCI) and Hertfordshire Community Trust (HCT).
- 3.3 It was made clear that communications with and from HVCCG have always been of a high standard; however, on this occasion pre-decision engagement with all partners had not taken place. In response to the decision to withdraw funds, HWH had seen an increase in the comments and feedback they received from parents and carers.
- 3.4 HWH, CiH, HPCI and Nascot Lawn parents and carers all stated that the impact assessment and Equality Impact Assessment (EqIA) concerning the decision on CYP and their carers were insufficient to inform the decision made by the HVCCG. The initial assessment of the decision taken did not include the financial impact to the wider health and care system, such as the possibility of increased A&E attendance, additional pressure on social care (adult and children's) and referrals to mental health services. The original EqIAs conducted by HVCCG did not assess the impact on the wellbeing of parents, carers and siblings. Members were informed that the EqIAs are iterative yet there was little evidence that the wider impact on parents and siblings now feature in the assessments.
- 3.5 Prior to the decision being made, engagement and awareness raising regarding the withdrawal of funding from Nascot Lawn by HVCCG with partners was not undertaken. This approach was different from HVCCG's normally open approach with partners about the challenges it

faces and the changes that are being considered. Following this it was reinforced that lessons needed to be learned from this experience, to involve partners as early on as possible in the pre-decision process, particularly where changes are sensitive and have a high impact.

- 3.6 It was suggested by HWH that a reason for the limited consultation was due to the sensitivity, complexity and impact on families as well as the belief by HVCCG that the care provided was solely social care. This stance would mean that expectation for consultation would be with HCC. However, regardless of the nature of the care provided, good practice suggests that early and on-going engagement with users and residents is advisable and necessary.
- 3.7 HWH and HCT provided evidence that Nascot Lawn has a range of specialist health professionals trained to work with CYP. Members heard that Nascot Lawn was commissioned as a nurse led service. This is the model that has continued to be commissioned.
- 3.8 Nascot Lawn parent and carer representatives emphasised that the high level of skilled care provided by the staff is necessary because of the significant range of complex needs that CYP have during overnight or day time stays. This is a view is also shared by Carers in Herts, i.e. that it is not a simple matter of training health assistants to provide this care. Parents know their children and their needs in great depth. HCT maintained that nursing staff were needed to ensure that the different needs of CYP attending Nascot Lawn at any one time were covered. Professionals are trained to provide care for all needs and this complements the knowledge and understanding provided by the parents. Together this helps to prevent hospital admissions.
- 3.9 Parents also highlighted their concern over the impact on immediate staffing issues at Nascot Lawn. The removal of funding and consequent closure of the service meant that members of staff are seeking alternative employment and some have already planned to leave from October 2017 (the original date for HVCCG funding withdrawal). Parents proposed that to stabilise the workforce as well as providing an adequate transition timeframe that consideration should be given to maintain funding to keep the centre open until March 2019.
- 3.10 When parent and carer representatives were asked how much contact they had with commissioners it was stated that three meetings were arranged shortly after the letter notifying parents was received (15 June 2017). However, the meetings were held the week immediately following the letter and none were held at Nascot Lawn. There had been no contact with parents before the June letter.
- 3.11 Questions were raised regarding Continuing Healthcare (CHC) and how many children are currently in receipt of this. Further clarification was sought as to the number known to require CHC but not yet in receipt of it or where it was a possible requirement but an assessment

had not yet taken place. An example was given of one child, known to need CHS, who had not yet been assessed; however, there are a number of CYP on the border line to qualify for CHC, who have not been assessed; therefore the actual numbers of CHC are not settled. Members were informed that CHC assessments are not straightforward and whilst there is a national framework there are different interpretations both nationally and within Hertfordshire. Members were also informed that the national framework required consideration of the severity of the condition(s) that a child experienced and that this could vary greatly during any given period

- 3.12 Additional questions were raised about the Keech Hospice provision and how it supported parents when CYP were unable to attend Nascot Lawn. It was confirmed that there are 4 requirements to access this service which provides only three to five beds to serve the 300 families on its books:-

1. End of life (palliative care)
2. Symptom management stay,
3. Step down from hospital stay
4. Last minute respite stay

It was also established that this is not a service that can be booked in advance. Keech Hospice is not designed to support large numbers of CYP with complex care needs. It serves the populations of Herts, Beds and Milton Keynes. Its primary purpose is to serve the needs of children with life-limiting and terminal illnesses within a hospice setting.

- 3.13 In the afternoon members heard from HVCCG, Children's Services and ENHCCG. HVCCG stated that the organisation is in financial turnaround and therefore all funding is being carefully reviewed to make £45m savings by the end of this financial year. One of the areas identified is the CCG's obligation to provide discretionary funding as it has been advised by its auditors that the focus should be on statutory services only. Nascot Lawn is seen by the CCG to fall into the discretionary category.

- 3.14 HVCCG accepts the statutory responsibility in respect of public engagement and has a strong record for the quality of its engagement. However, the CCG has been advised that it did not need consult with regard to services at Nascot Lawn as the provision of respite care is social care and therefore the responsibility of the county council. Healthcare treatment within these settings remains the responsibility of the CCGs. Therefore if any CYP from the west of the county, while at a respite centre, requires a medical intervention then HVCCG continues to be obliged to provide it.

- 3.15 HVCCG affirmed that if the savings are not achieved, the CCG will be instructed by NHS England to make the savings and there will be no choice as to where those savings are made.

- 3.16 The timeline provided by the CCG in the written evidence stated that conversations were held between HVCCG and the Council in February. However it was not clear what specifics had been discussed during these discussions. HVCCG gave its contractual six months' notice to HCT in April 2017 that it would cease funding in October 2017. When asked why additional information had not been known or shared earlier than April with HCC and HCT, and prior to June for parents and carers, HVCCG stated that the pre-election period (purdah) had restricted such conversations. However, the instruction around how work is carried out during purdah is 'business as usual' and while contact with elected members is limited, contact between officers in partner organisations continues. Now that the deadline for the withdrawal of funding is known, Children's Services confirmed that time is a significant challenge to ensuring a continued service from October 2017.
- 3.17 HVCCG confirmed that 20 assessments had been completed most of which were joint with Children's Services. A further seven appointments have been made and two are still to be booked. All assessments should be completed by 21 September 2017.
- 3.18 When members asked HVCCG about its duty to consult, the commissioner maintained that it does not have to consult on services that the CCG has no statutory duty to provide. However, on-going engagement with users and residents is regarded as good practice. Nevertheless, HVCCG made clear that it does have a responsibility to provide respite care to any CYP who is in receipt of CHC.
- 3.19 Children's Services are currently planning for the transition of CYP to the three other respite services commissioned by the county council. It was specified by the CCG that other respite services already have some of the required equipment and any specialist equipment will be transferred as part of the transition. This has been communicated to all parents.
- 3.20 Members queried the medical provision during and after transition. The CCG indicated that part of this process included training so that individuals who are not qualified nurses can provide care, such as catheters although no timeframe was provided for this training to be completed.
- 3.21 Members queried the conclusions of the Investment Committee at HVCCG as to the level of savings that would be achieved by removing nurses from this setting. The CCG clarified that until all assessments were completed the full level of savings will not be known.
- 3.22 Since informing Children's Services of the decision to withdraw funding in April 2017 HVCCG has been speaking to the service on a fortnightly basis. The CCG Chief Executive has spoken to the HCC Chief Executive about a HCC funding proposition beyond October 2017. This

proposal is an agreement between HCC, HVCCG & ENHCCG to jointly fund Nascot Lawn for a further 3 months. This is to allow time for the joint assessments and support packages to be put in place for the CYP currently receiving a service from Nascot Lawn.

- 3.23 Members were informed that the main difference between the assessments conducted by Children's Services and those carried out by HVCCG are that Children's Services take into account the needs of carers, parents and siblings.
- 3.24 Members heard that Children's Services is looking at multidisciplinary models. One of the respite centres in the east of the county provides a high level of care support. The service considers the possibility that the need for nursing oversight may well continue. To clarify this Children's Services needs to review provision of overnight support but welcomed the assurance from health colleagues that care workers will be upskilled to the required level.
- 3.25 The topic group heard from ENHCCG. Here, one approach that is being considered is the use of personal health budgets. This would provide parents with greater control over the care provided for short breaks being delivered, as specified in **Appendix 3**.
- 3.26 ENHCCG stated that it was not planning to withdraw the funding for the service, but as a minority partner could not keep the centre open. It is committed to using the funding designated for CYP currently using Nascot Lawn to support them in the future by putting in place packages to support any changing needs after closure of the service.
- 3.27 When members questioned ENHCCG as to why it does not commission this service to the level of HVCCG, it was confirmed that HVCCG have commissioned services from HCT whilst ENHCCG commissions the majority of its services from the East and North Herts Trust (ENHT) to provide integrated acute and community care even though the Trust is not a standard provider of community care.

4.0 Conclusions

- 4.1 Members expressed grave concern that HVCCG had decided to withdraw funding from Nascot Lawn without fully understanding or taking into account the impact of the decision on children, parents and the wider system (health and social care). Furthermore, it had not undertaken analysis to assess the possible consequential impact on other services it commissions such as mental health. Members recognise the financial pressures faced by HVCCG. They are surprised that the CCG has not calculated the actual savings and were unable to provide a baseline figure as the costs of transition, potential Continuing Healthcare (CHC) and the funding and training of unskilled carers are still to be established. (2.1, 2.2, 2.3, 2.4)

- 4.2 A significant number of questions were raised about the robustness of the assessments as they did not capture all the information required. Members did not believe that sufficient weight had been given to areas such as the wellbeing of families. It is inconsistent with the approaches for greater collaborative working between health and social care. To be effective going forward members proposed that all partners should consider a review of how joint assessments are conducted and what information should be recorded. (2.3, 2.4)
- 4.3 To further collaborative working, the significant gap in the quality of the communication plans ahead of decision making and implementation has to be addressed as a matter of urgency. The written evidence provided as well as that heard on the day led members to the conclusion that information sharing and discussions had taken place at too late a stage to provide sufficient advance warning to all parties involved to identify alternative arrangements. This was exacerbated by the confirmation of funding withdrawal taking place in year after organisational budgets have been confirmed for the financial year and funds have already been committed. (2.1, 2.2, 2.4)
- 4.4 Members queried the evidence base for decision making and challenged HVCCG on what financial information it had included other than the need to make a saving this financial year. Members were troubled to learn that financial calculation would take place after the assessments of CYP at Nascot Lawn had been completed. Members expressed their frustration on hearing this as it is contrary to the usual financial management approach. Moreover, the decision was taken without a sound financial evidence base and any potential savings may not materialise once the costs for equipment, transition and upskilling staff etc. has been completed. This may require HCC to take on significant extra unbudgeted costs and Children's Services are not able to calculate the financial impact at this point. (2.2, 2.3)
- 4.5 Members were pleased that the majority of assessments had been completed. However, this is against a background that if earlier discussion had taken place with Children's Services, a more organised joint effort in arranging these assessments would have occurred and conceivably the assessments would have been completed much sooner. The Topic Group was anxious and welcomes the completion of these assessments as soon as possible. Members were assured by HVCCG that the last assessments will be done by 21 September 2017. The HSC Implementation of Scrutiny Sub Committee (ISSC) would be apprised of the work undertaken. (2.1, 2.2, 2.4)
- 4.6 Members were disturbed by the insecurity of staffing at Nascot Lawn in the immediate future and by the longer term implications to the care provision for the CYP affected by this decision. Members were made aware that staff are seeking alternate employment from October 2017. This jeopardises the stability of the service at Nascot Lawn and any transitional arrangements. As a result, members were not assured that

the appropriate frameworks were in place to retain staff and to complete the upskilling of staff when funding has been removed.

- 4.7 The Topic Group was interested to hear of the joint commissioning between ENHCCG and Children's Services. It has the potential to provide a viable way forward for health and social care services. For this to be most effective members believed a joint review of these arrangements would prevent decisions being made in this way again, provide greater security and advanced warning as well as establish greatly improved communication. (2.1, 2.2, 2.3, 2.4)

5.0 Members and Witnesses

Members of the Topic Group

Barbara Gibson
 Dave Hewitt
 David Lambert
 Eric Buckmaster (Chairman)
 Mark Watkin
 Nigel Bell
 Susan Brown

Other Members in Attendance

Colette Wyatt-Lowe
 Fiona Hill
 Seamus Quilty
 Terry Hone
 Teresa Heritage

Witnesses

Andy Lawrence	Specialist Services Management, Children's Services
Angela Kitching	Nascot Lawn Parent
Angela Murphy	Nascot Lawn Parent
Beverley Flowers	Chief Executive ENHCCG
Carol Kelsey	Herts Parent Carer Involvement Coordinator
David Evans	Programme Director HVCCG
Geoff Brown	Chief Executive Healthwatch Herts
Jenny Coles	Director of Children's Services
Kate Barker	ENHCCG Assistant Director for Maternity, Children and Young People's Commissioning
Kathryn Magson	Chief Executive HVCCG
Leise Cooper	Herts Parent Carer Involvement Chair
Maria Kiely	Parent Carer Support and Development

	Worker Carers in Herts
Marion Dunstone	HCT Director of Operations
Nicolas Small	Chair HVCCG
Nuray Ercan	Operational Manager Healthwatch Herts
Phil Bradley	HCT Director of Finance
Roma Mills	Policy and Engagement Manager Carers in Herts
Su Johnston	HCT

Officers

Michelle Diprose
Charles Lambert

Democratic Services Officer
Scrutiny Officer

APPENDIX 1

NASCOT LAWN RESPITE CENTRE TOPIC GROUP

OBJECTIVES:

To examine

- 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)

BACKGROUND:

Nascot Lawn has been funded by the NHS for many years and the current arrangements pre-date the creation of the clinical commissioning groups (CCGs). The majority (90%) of the funding is provided by Herts Valleys CCG. East & North Herts CCG (ENHCCG) provide the remainder. HVCCG has been placed in formal 'financial turnaround' and it needs to identify approximately £45m worth of savings this financial year. HVCCG's funding of Nascot Lawn will cease on 31Oct 2017 as part of its identified savings programme (the CCG consider this spending to be discretionary).

QUESTIONS TO BE ADDRESSED:

- 1a. What are the responsibilities of both Hertfordshire County Council (HCC) and the NHS to provide respite care for children and young people (CYP) with complex care needs and their carers?
- 1b. How will the needs of these CYP be met from Oct 2017 and in the future?
- 2a. To what extent were the needs of the CYP and their carers considered in reaching the decision to cease funding?
- 2b. To what extent was the impact of the decision (to cease funding Nascot Lawn) on the health and social care system considered?
- 2c. To what extent was the evidence obtained from the outcomes of the impact assessments considered in the decision making process?
- 2d. To what extent were the consequences (including costs) to the health and social care system considered?
1. What lessons have been learned to ensure more effective partnership working in the future?

OUTCOMES:

- That the needs of CYP with complex needs and their carers continues to be supported by HCC and the NHS in accordance with statutory requirements, Care Act (parents/carers) and duty of care.
- The responsibilities of both HCC and the NHS are clarified
- Lessons are learned about effective partner and stakeholder engagement and the undertaking of robust impact assessment

CONSTRAINTS:

- The scrutiny will only address respite provision currently at Nascot Lawn

RISK & MITIGATION AFFECTING THIS SCRUTINY: i.e. how confident are members that the department/organisation has identified risks, impact to services, the budget proposals and has mitigation in place.

RISK/S:

MITIGATION: *e.g. what mitigation does the department/organisation have in place if a partner pulls out?*

WITNESSES i.e. individuals	EVIDENCE i.e. organisations e.g. HCS
Kathryn Magson	Council for Disabled Children
Marion Ingram	HVCCG turnaround director
David Law	Healthwatch Herts
Nicolas Small	ENHCCG
Jenny Coles	Carers in Herts
	HCT

	Nascot Lawn Action Group rep
	Hertfordshire Parent Carers Involvement (HPCI)

METHOD: 1 day Topic Group **DATE:** 6 September 2017

SITE VISIT: Nascot Lawn **DATES:** 22 August 2017

MEMBERSHIP: Eric Buckmaster (Chairman); Susan Brown; Nigel Bell; Barbara Gibson; Mark Watkin; Dave Hewitt; David Lambert

SUPPORT:

Scrutiny Officer: Charles Lambert

Lead Officer/s: Natalie Rotherham

Democratic Services Officer: Michelle Diprose

HCC Priorities for Action: how this item helps deliver the Priorities *delete as appropriate*

1. Opportunity To Thrive ✓
2. Opportunity To Prosper ✓
3. Opportunity To Be Healthy And Safe ✓
4. Opportunity To Take Part ✓

CfPS ACCOUNTABILITY OBJECTIVES: *delete as appropriate*

1. Transparent – opening up data, information and governance ✓
2. Inclusive – listening, understanding and changing ✓
3. Accountable – demonstrating credibility ✓

Appendix 2

Glossary

HCC	Hertfordshire County Council
HCS	Health & Community Services is a HCC department. HCS is responsible for the council's older people, physical disability, learning disability and mental health services.
HCT	Herts Community Trust
HVCCG	Herts Valleys Clinical Commissioning Group
OSC	Overview & Scrutiny Committee (a HCC scrutiny committee)
ENHCCG	East & North Herts Clinical Commissioning Group
EqlA	Equality Impact Assessment
ENHT	East and North Herts Trust
CHC	Continuing Healthcare
CYP	Children and Young People

Appendix 3 Possible alternate care options

Care in another setting with CYP and family

1. Under 5s who might go to their local Children's Centre with a parent for a stay and play or coffee morning session. The Children's Centre would also support parents with issues such as benefit advice, housing advice and support with any siblings.

Care in another setting with CYP but no family present.

2. Children aged two, three or four will be entitled to receive 15 hours per week of free early education and some children will be entitled to access an additional 15 hours of free childcare if they meet a national eligibility criteria. Free early education and childcare is available at approximately 1000 settings, consisting of schools, preschools, day nurseries and childminders. These providers are inclusive and would also be able to access appropriate training delivered by health professionals to ensure all children's individual needs can be met.

Short breaks offer disabled children and young people the chance to spend time out with others socialising and doing fun activities, giving their families a break and providing them with the confidence their child is well supported by a trained worker. They range from play and leisure activities provided through community groups and leisure providers to overnight stays.

Some young people, with learning disabilities and complex health needs, may be eligible for a **residential short break** especially if they have needs throughout the night. Children and young people can stay overnight during the week and/or at weekends depending on their assessed needs. A residential short break may be provided in a community residential setting or the home of an approved carer.

A residential short break is a specialist service, available only once a social work assessment of need has been done. This assessment would be arranged via a referral through the County Council's 0-25 Together Service.

There are three across the county:

- West Hyde – provided by Action for Children
- The Pines (Hertford) - provided by Action for Children
- Peartree - provided by Jubilee House Care Trust

Shared care is family-based care that provides short breaks to Disabled Children and Young People from 4-18 years of age. The scheme specifically recruits carers to support children who have

additional needs. Our carers are from a wide variety of ethnic, religious and cultural backgrounds. They can be individuals or couples, male or female, with or without children and may have pets, some carers work others may be retired. All carers will have completed training before they are approved, will have a DBS (Disclosure and Barring Service check) and will continue to have regular supervision and training updates from members of the shared care team. When a service is offered each carer is closely matched to fit the needs of the child.

The breaks can be provided:

- in the child's home as a sitting service to enable parents to go out/ have some free time, or
- as day care in the carers home, or
- out in the community to access activities.

Care at home with professionals (i.e. not day to day care from parents)

3. Parents can access care at home by paid staff where this is agreed as an assessed need by 0-25 Together Service following a child and family assessment. They can also access a Direct Payment so that they can arrange the support at a time that suits them. Direct Payments are for families to buy services or employ a paid worker to support their child or young person.

The Queen -on the application of- Gurpreet Kaur Juttla (a child, by her litigation friend Satnam Kaur), Sienna Scott (a child, by her mother and litigation friend Emma Turner), Liam Murphy (a child, by his mother and litigation friend Angelina Murphy) v Hertfordshire Valleys Clinical Commissioning Group v Hertfordshire County Council, Hertfordshire Community NHS Trust, East and North Hertfordshire Clinical Commissioning Group

Case No: CO/5906/2017

High Court of Justice Queen's Bench Division Administrative Court

21 February 2018

[2018] EWHC 267 (Admin)

2018 WL 01035858

Before: Mr Justice Mostyn

Date: 21/02/2018

Hearing dates: 6-7 February 2018

Representation

Jenni Richards QC & Sian Davies (instructed by Irwin Mitchell) for the Claimants.
Eleanor Grey QC & Ms Nicola Greaney (instructed by Capsticks) for the Defendant.
Clive Sheldon QC & Hannah Slarks (instructed by County Solicitor) for the 1st Interested Party.
The 2nd & 3rd Interested Parties did not attend and were not represented.

Approved Judgment

Mr Justice Mostyn:

1 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 defendant 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. If no agreement is reached HCC can refer the controversy to the Secretary of State who has far-reaching powers to make a merits-based decision on the issue. 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.

2 The defendant is Hertfordshire Valleys Clinical Commissioning Group. Clinical

commissioning groups were created by the [Health and Social Care Act 2012](#) , and replaced Primary Care Trusts on 1 April 2013. They are clinically-led statutory NHS bodies responsible for the planning and commissioning of health care services for its local area. There are now 207 clinical commissioning groups in England. The defendant is one of the bigger clinical commissioning groups. It is in financial trouble. In the first two years of its existence (2013-14, and 2014-15) it met its financial targets. In the third year (2015-16) it was only able to do so by taking a number of special non-recurrent measures and by exiting the year with an underlying deficit. In the summer of 2016, that is to say about a third of the way through that financial year, it was obvious that the position of the defendant had deteriorated. It was spending far more in that year than it had in the previous year. In the year 2014-15 the defendant spent £668 million. In the year 2015-16 it spent £711 million. And in the year after that, 2016-17, it spent £761 million.

3 In the summer of 2016 the defendant disclosed the financial problems to NHS England and was placed in formal "financial turnaround". This unwelcome status required certain measures to be taken. A "turnaround director" was appointed to examine the defendant's expenditure to help achieve a balanced position for the financial year. Further, the defendant also established an Investment Committee.

4 For the year 2017-18 the defendant has been allocated an increase of £20 million or 2.73% on the previous year's allocation. Plainly, this will not come close to meeting the historic rate of increase of expenditure. Taking into account the expected growth in demand for services, inflationary pressures and changes to things that the defendant is required to commission, its financial plan has concluded that there is a gap between allocated funding and expected expenditure of £34 million in the current financial year, 2017- 18, and a further shortfall on top of that of £23 million in the following year. Therefore, savings have to be made of around £47 million. Therefore, painful though it will be, some services in the local area will have to be cut.

5 Nascot Lawn has been providing a respite care service for children with complex health needs and their parents since at least 1986. The defendant inherited Nascot Lawn from its predecessor primary care trust. Around 35 (the figure varies) children use the overnight service. Three of them are the claimants in these proceedings. These children suffer from very severe physical and mental impairments; they are truly some of the most disadvantaged individuals with whom the defendant has to deal. There are around 20 staff. Half of that number are nurses; the other half are trained health care support workers. The children stay for short breaks; four nights a month is not unusual. Obviously, the primary benefit is respite for the parents who otherwise have round-the-clock care of these severely impaired children. But plainly when they are at Nascot Lawn the children are receiving health services.

6 The defendant is the principal funder of Nascot Lawn. Two other neighbouring clinical commissioning groups also contribute funds but in much smaller amounts. The £600,000 per annum provided by the defendant represents the great majority of Nascot Lawn's funding. Without it closure is inevitable. It is common ground that closure would be very distressing not only to the children but particularly to their parents.

7 The defendant has decided that part of the £47 million saving it must make will come

from the withdrawal of funding from Nascot Lawn. The members of the Investment Committee who made that decision on 16 November 2017 were well aware of how upsetting the impact of the decision would be; the statements from the parents were described by one member as "heart-rending, unsettling and humbling", by another as "heart-rending". A principal justification for the decision that had to be made was that arrangements could be made for respite care to be continued elsewhere in the county for these children. Nascot Lawn is one of four such facilities in Hertfordshire. The other three are all provided by HCC and are in, respectively, Rickmansworth, Welwyn Garden City and Hertford. Each of these caters for some children with complex health needs, although in each facility that cohort is in a minority. Care in those facilities is provided by trained carers and not by nurses. There is capacity in the other three facilities for the children who will be displaced by the closure of Nascot Lawn, although realistically having regard to the geography for most of the affected children the only feasible alternative is the facility in Rickmansworth.

8 Unfortunately, HCC does not have the money to enter into a partnership with the defendant in order to secure the continuation of the funding.

9 The first ground of challenge (**Ground A**) contests the defendant's view that it is not funding a "health service" within the terms of [sections 3 and 3A of the National Health Service Act 2006](#) . These provide:

3 Duties of clinical commissioning groups as to commissioning certain health services

(1) A clinical commissioning group must arrange for the provision of the following to such extent as it considers necessary to meet the reasonable requirements of the persons for whom it has responsibility–

(a) hospital accommodation,

(b) other accommodation for the purpose of any service provided under this Act,

(c) medical, dental, ophthalmic, nursing and ambulance services,

(d) such other services or facilities for the care of pregnant women, women who are breastfeeding and young children as the group considers are appropriate as part of the health service,

(e) such other services or facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness as the group considers are appropriate as part of the health service,

(f) such other services or facilities as are required for the diagnosis and treatment of illness.

...

3A Power of clinical commissioning groups to commission certain health services

(1) Each clinical commissioning group may arrange for the provision of such services or facilities as it considers appropriate for the purposes of the health service that relate to securing improvement—

(a) in the physical and mental health of the persons for whom it has responsibility, or

(b) in the prevention, diagnosis and treatment of illness in those persons.

...

10 On any view nursing services are being provided at Nascot Lawn as well as services for the care of persons suffering from illness. Ms Grey QC is realistic enough to recognise that looked at literally what is happening at Nascot Lawn is the provision of health services as described in the 2006 Act. But she argues that this does not mean that they ought to be considered to be meeting 'health' needs, or viewed as health services which fall properly within the responsibilities of the defendant. Perhaps recognising the weakness of that argument, she quickly moved to an alternative one namely that even if it is a health service the same decision would reasonably and lawfully have been taken anyway. That may be true, but it does not address the point that if the funding of Nascot Lawn is the provision of a health service then a specific legal obligation formally to consult HCC arises, as I shall explain.

11 Looked at from first principles it seems to me obvious that even if the primary

motive or objective is to provide respite for the parents that the services being provided are health services nonetheless. But the matter is put beyond doubt by authority. In [*R \(on the application of T & Ors v London Borough of Haringey* \[2005\] EWHC 2235 \(Admin\)](#) Mr Justice Ousley was concerned with a three-year-old child who needed tracheostomy care. There was a dispute as to the amount of respite care that should be provided and whether this was the responsibility of the local authority or the relevant NHS body. In the course of his judgment Mr Justice Ousley stated at [65]–[67]:

65. To my mind, it also shows how the purpose of the care should be regarded. It is spoken of as respite care for the mother. From one viewpoint, the purpose of its provision is so that the mother can have a few nights of unbroken sleep per week or some time by herself a week or to look after T. That could be seen as social care for the mother. But its nature and purpose is to provide medical care for D; the intention behind the provision of that medical care is her safety while her mother enjoys respite. There is nothing different in quality or care about the disputed provision.

66. The gravity of the consequences of a failure in care, the duration of the care need, which required her carer always to be present lest something had to be dealt with rapidly, underscores the medical rather than social service nature of the provision.

67. It has in fact always been provided by nurses except where the mother has had specific training. The reluctance of others, whether teachers, close relatives or health care assistants, to be trained in the particular procedures serves only to emphasise the medical nature of the provision without itself being determinative. The nurses themselves require specific training in tracheostomy care. While it is possible for others to be trained in that specific care, it would still clearly be an important medical procedure in which they were trained.

The fact that the care happened to be provided by nurses was not determinative. On this reasoning, with which I fully agree, there can be no doubt that the services provided at Nascot Lawn are health services.

12 [Regulation 23 of the Local Authority \(Public Health, Health and Wellbeing Boards and Health Scrutiny\) Regulations 2013](#) (SI 2013 No. 218), falls within Part 4 of the Statutory Instrument which is entitled "**Health Scrutiny by Local Authorities**". That Part establishes a scheme whereby local authorities will be fully and formally consulted on any major health service changes in their area, will have the opportunity to scrutinise them, and in the absence of agreement will have the opportunity of seeking redress from the Secretary of State. [Regulation 23](#) provides, so far as is relevant to this case, that:

(1) Subject to paragraphs (2) and (12) and [regulation 24](#), where a responsible person ("R") has under consideration any proposal for a substantial development of the health service in the area of a local authority ("the authority"), or for a substantial variation in the provision of such service, R must -

- (a) consult the authority;
 - (b) when consulting, provide the authority with -
 - (i) the proposed date by which R intends to make a decision as to whether to proceed with the proposal; and
 - (ii) the date by which R requires the authority to provide any comments under paragraph (4);
 - (c) inform the authority of any change to the dates provided under paragraph (b); and
 - (d) publish those dates, including any change to those dates.
- ...
- (4) Subject to [regulation 30\(5\)](#) (joint committees) and any directions under [regulation 32](#) (directions as to arrangements for discharge of health scrutiny functions), the authority may make comments on the proposal consulted on by the date or changed date provided by R under paragraph (1)(b)(ii) or (c).
- (5) Where the authority's comments under paragraph (4) include a recommendation to R and R disagrees with that recommendation -
- (a) R must notify the authority of the disagreement;
 - (b) R and the authority must take such steps as are reasonably practicable to try to reach agreement in relation to the subject of the recommendation; and
 - (c) in a case where the duties of R under this regulation are being discharged by the responsible commissioner pursuant to paragraph (12), the authority and the responsible commissioner must involve R in the steps specified in sub-paragraph (b).
- (6) This paragraph applies where -
- (a) the authority has not exercised the power in paragraph (4); or
 - (b) the authority's comments under paragraph (4) do not include a recommendation.
- (7) Where paragraph (6) applies, the authority must inform R of -
- (a) its decision as to whether to exercise its power under paragraph (9) and, if applicable, the date by which it proposes to exercise that power; or
 - (b) the date by which it proposes to make a decision as to whether to exercise that power.
- (8) Where the authority has informed R of a date under paragraph (7)(b), the authority must, by that date, make the decision referred to in that paragraph and inform R of that decision.
- (9) Subject to paragraph (10), the authority may report to the Secretary of State in writing where -
- (a) the authority is not satisfied that consultation on any proposal referred to in paragraph (1) has been adequate in relation to content or time allowed;
 - (b) in a case where paragraph (2) applies, the authority is not satisfied that the reasons given by R are adequate; or
 - (c) the authority considers that the proposal would not be in the interests of the health service in its area.
- (10) The authority may not make a report under paragraph (9) -
- (a) in a case falling within paragraph (5), unless the authority is satisfied that -
 - (i) the steps specified in paragraph (5)(a) to (c) have been taken, but agreement has not been reached in relation to the subject of the recommendation within a reasonable period of time;
 - (ii) R has failed to comply with its duty under paragraph (5)(b) within a reasonable period of time; or
 - (b) in a case to which paragraph (6) applies, unless the authority has complied with the duty in paragraph (7) and, where applicable, paragraph (8).
- (11) A report made under paragraph (9) must include -
- (a) an explanation of the proposal to which the report relates;

- (b) in the case of a report under paragraph (9)(a) or (b), the reasons why the authority is not satisfied of the matters set out in paragraph (9)(a) or (b);
- (c) in the case of a report under paragraph (9)(c), a summary of the evidence considered, including any evidence of the effect or potential effect of the proposal on the sustainability or otherwise of the health service in the area of the authority;
- (d) an explanation of any steps the authority has taken to try to reach agreement with R in relation to the proposal or the matters set out in paragraph (9)(a) or (b);
- (e) in a case falling within paragraph (10), evidence to demonstrate that the authority has complied with the applicable condition in that paragraph;
- (f) an explanation of the reasons for the making of the report; and
- (g) any evidence in support of those reasons.

...

13 If a report is made under paragraph 9 to the Secretary of State then by virtue of [regulation 26](#) he can make a decision on the issue which may either require further consultation or a determination of the issue in a particular way. Therefore, in this case were the question of the withdrawal of the funding of Nascot Lawn to be referred to the Secretary of State then he could, on the merits, direct that the funding be continued.

14 Ms Grey QC did not seriously dispute that if what was happening at Nascot Lawn was the provision of a health service then the proposal to withdraw most of its funding amounted to a substantial variation of it.

15 Ms Grey QC argued that by virtue of some rather desultory correspondence sent by the defendant to HCC the duty to consult under [regulation 23](#) had been fulfilled. I cannot accept that, and the position of HCC is that they have never been formally consulted under [regulation 23](#). Indeed, they have written correspondence pointing out to the defendant its legal obligations. Plainly, the [regulation 23](#) process has not happened. If a consultation pursuant to [regulation 23](#) were to take place then I would expect that the consultation document plainly states that it has been prepared and sent pursuant to that regulation. It is obvious from the position of HCC, the interested party in these proceedings, that were the [regulation 23](#) process to be gone through they would be seeking an agreement which provided for the continuance of the funding of Nascot Lawn, and in default of reaching such an agreement would intend to refer the matter to the Secretary of State seeking a decision from him that the funding be continued.

16 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.

17 Having reached this primary conclusion, it is strictly speaking unnecessary, and arguably otiose, for me to pronounce on the remaining five grounds. It is a core tenet of judicial review law that relief will not be granted if there is an alternative remedy. I have decided that there is an alternative remedy. It could be said, therefore, that it would be wrong for me even to consider the remaining five grounds. However, given that the remaining grounds contain fierce criticism of the defendant it is only right that I should give my views on those arguments, lest failure to do so might leave behind a lingering belief that the criticisms were in fact merited. But I can do so in rather more abbreviated form than would have been the case had I not decided that the first ground

succeeded.

18 The remaining grounds are:

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

19 Although at times it appeared that Ms Richards QC was arguing that Nascot Lawn was somehow immune from closure in any circumstances, it is right that I record that she accepted, on being pressed by me, that it would have been possible for the defendant to have reached a decision to withdraw funding lawfully. But even where the financial difficulties are formidable she rightly argues that a decision such as the one with which I am concerned must be taken lawfully, and she says that for the five reasons set out above this one was not.

20 So far as the **Ground B** is concerned I emphasise that this court is not conducting a de novo review of whether sufficient material had been gathered in order to make a sound decision. The claimant must show by reference to the classic public law tests that the deficit of information was so extreme that the boundary of irrationality or perversity was crossed.

21 The claimant's statement of facts and grounds says: "the defendant's decision to cease funding Nascot Lawn was irrational because of the failure to carry out adequate individual assessments of the affected children". I agree with Miss Grey QC that there is no duty to provide individual assessments of potentially affected users to decision makers in a situation such as this. There is clear authority to this effect. In [R v North and East Devon Health Authority ex parte Coughlan \[2001\] QB 213](#) , the Court of Appeal held at [103] that:

"In the absence of special circumstances, normally we would expect it to be unrealistic and unreasonable, on grounds of prematurity alone, for the health authority in all cases to make assessments of patients and to take decisions on the details of placement ahead of a decision on closure. Neither the statutory provisions nor the guidance issued expressly require assessments to be made or decisions on alternative placements to be taken before a decision to close can be lawfully made."

22 Notwithstanding the absence of any duty to assess potentially affected individuals it is clear, however, that there was a wealth of material about each of the relevant children available to the officials preparing the agenda pack for the meeting on 16

November 2016. They included detailed impact assessments. These assessments were summarised sufficiently in the paperwork for the committee.

23 It cannot be said that either in fact or law there was a failure to assess individually the affected children and that therefore the decision reached on 16 November 2017 was irrational or perverse.

24 I am equally satisfied that **Ground C** is meritless. The scope of the duty to involve the public in this case is prescribed by the [National Health Service Act 2006](#) in a number of separate places. There is no general common law duty to consult. The common law may supply a requirement to consult where Parliament has not spoken and where the facts cry out for public involvement. But I do not need to consider the ramifications of that doctrine as I am certain that it would be constitutionally aberrant for a court to start using the common law to augment, or worse still, alter, the scope of an obligation to involve the public defined by statute.

25 The 2006 Act provides:

14J Publication of constitution of clinical commissioning groups

(1) A clinical commissioning group must publish its constitution.

...

14P Duty to promote NHS Constitution

(1) Each clinical commissioning group must, in the exercise of its functions—

(a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and

(b) promote awareness of the NHS Constitution among patients, staff and members of the public.

....

14Z2 Public involvement and consultation by clinical commissioning groups

(1) This section applies in relation to any health services which are, or are to

be, provided pursuant to arrangements made by a clinical commissioning group in the exercise of its functions ("commissioning arrangements").

(2) The clinical commissioning group must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—

(a) in the planning of the commissioning arrangements by the group,

(b) in the development and consideration of proposals by the group for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and

(c) in decisions of the group affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.

(3) The clinical commissioning group must include in its constitution—

(a) a description of the arrangements made by it under subsection (2), and

(b) a statement of the principles which it will follow in implementing those arrangements.

...

26 The Constitution of the defendant states:

6.2.2 Public Involvement

In carrying out its functions the CCG shall make arrangements to secure public involvement in the planning, development and consideration of proposals for changes and decisions affecting the operation of commissioning arrangements by ensuring that the views of individuals to whom the services commissioned

are being or may be provided are represented:

- In the planning of the CCG commissioning arrangements.
- In the development and consideration of the proposals by the CCG for changes in the commissioning arrangements.
- In the decisions of the CCG affecting the operation of commissioning arrangements where the decisions would, if made, impact on the manner in which the services are delivered to the individuals or the range of health services available to them.

27 The NHS Constitution states (on page 9):

You have the right to be involved, directly or through representatives, in the planning of healthcare services commissioned by NHS bodies, the development and consideration of proposals for changes in the way those services are provided, and in decisions to be made affecting the operation of those services.

28 Therefore, by three distinct routes the 2006 Act explicitly requires public involvement in this case as follows:

- i) Under the defendant's constitution: the right to public involvement in the planning, development and consideration of proposals for changes.
- ii) Under the NHS constitution: the right to be involved in the development and consideration of proposals for changes.
- iii) Under [section 14Z2\(2\)](#) : the right to have arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways).

In my judgment these rights compendiously define the scope of the duty to "consult". There is no room for the common law to augment, let alone alter, these rights.

29 The decision of 16 November 2017 did not come out of a clear blue sky. On 19 January 2017 the Investment Committee had in fact decided to cease funding Nascot Lawn, but this was on a clearly legally erroneous, and therefore unlawful, basis. That decision was quashed by consent on 9 October 2017. The consent order recorded that that the defendant agreed that prior to making a further decision it would "(i) carry out public engagement including engagement with affected families, HCC, HCT and ENHCCG, (ii) conduct a fresh Equalities Impact Assessment, and (iii) complete assessments in respect of the children funded by the CCG that use Nascot Lawn". In my judgment the agreement by the defendant to carry out "public engagement" (which terminology was agreed by the claimants) correctly reflects the scope and nature of the obligations which I have set out above.

30 I am satisfied that the defendant fully complied with its obligations, and its agreement. There had been much engagement with the public including meetings and

correspondence with the parents, carers and community interest groups. These are fully set out in the evidence before the court. On 10 October 2017 a document was sent out seeking comments on the proposal in effect to close Nascot Lawn by 23 October 2017, later extended to 6 November 2017.

31 I have to say that the highly sophisticated argument that somehow the defendant failed to comply with its obligations is groundless. There was a very full public involvement in the proposal to withdraw funding. The defendant fully complied with its statutory obligations. The claimants may have felt that that their protests were no more than beating the air and that there was an inevitability about the decision eventually made. That may be true, but the savings had to be made so the closure proposal was always likely to be the one reached.

32 **Grounds D, E and F** all assert breach of statutory duty. There is a significant human rights element to each ground. The alleged breaches have given rise to hundreds of pages of written evidence; dozens of legal authorities; and many pages of sophisticated legal argument. The decision in question was made by a committee of eight comprising employees of the defendant, GPs, and lay members. None was legally qualified. Their decision was recorded in minutes. As I listened to the submissions of Ms Richards QC about these grounds I gained the impression that she was saying that in dealing with these duties the committee should have rendered a decision as detailed, erudite, perfect and complete as a judgment from one of the higher courts.

33 I cannot accept that. In my judgment when the Administrative Court scrutinises a decision such as the one here it should afford the decision as much latitude, and indeed probably more given the high level of wrongness that needs to be shown, as an appellate court extends to a lower court whose exercise of discretion is under review. In the famous case of [Piglowka v Piglowski \[1999\] 1 WLR 1360](#) Lord Hoffmann stated at 1372:

"The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case ... These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in [section 25\(2\) \[of the Matrimonial Causes Act 1973\]](#) . An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."

34 Citing this passage in [Re F \(Children\) \[2016\] EWCA Civ 546](#) at [23] Sir James Munby P stated:

"It is not the function of an appellate court to strive by tortuous mental gymnastics to find error in the decision under review when in truth there has been none. The concern of the court ought to be substance not semantics. To

adopt Lord Hoffmann's phrase, the court must be wary of becoming embroiled in 'narrow textual analysis'."

This approach applies equally where the challenge in question asserts that the decision-maker failed to grapple with a Human Rights Act claim: see [Broadland District Council v Brightwell \[2010\] EWCA Civ 1516](#) . It is noteworthy that in the case of [Zoumbas v Secretary of State for the Home Department \[2013\] UKSC 74](#) Lord Hodge dismissed a sustained challenge to the Secretary of State's admittedly succinct decision letter, saying at [23]: "In our view, the Secretary of State does not have to record and deal with every piece of evidence in her decision letter."

35 I have to say that in relation to these three grounds the court has experienced "tortuous mental gymnastics to find error in the decision under review when in truth there has been none".

36 **Ground D** alleges breach of the well-known Public Sector Equality Duty. This is expressed in [section 149\(1\) of the Equality Act 2010](#) , which provides:

A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This is a key provision in the corpus of anti-discrimination law. Breach of it is a serious matter. Allegations of breach of it should not be lightly made.

37 The obligation on every public authority is to "have due regard to the need to" eliminate or advance or foster the goals that then follow. The noun "need" supplies an imperative quality. The noun "regard" means no more than to have in mind. The adjective "due" means "such as is necessary or requisite; of the proper quality or extent; adequate, sufficient", as in "driving without due care and attention". Therefore, the public authority must have sufficiently in mind, when exercising its functions, the necessity of achieving these goals. This has been explained by Lord Neuberger in the Supreme Court in [Hotak v London Borough of Southwark \[2015\] UKSC 30, \[2015\] 2 WLR 1341](#) at [74] – [75]:

"74. As Dyson LJ emphasised, the equality duty is "not a duty to achieve a result", but a duty "to have due regard to the need" to achieve the goals identified in [paras \(a\) to \(c\) of section 149\(1\)](#) of the 2010 Act. Wilson LJ explained that the Parliamentary intention behind [section 149](#) was that there should "be a culture of greater awareness of the existence and legal

consequences of disability". He went on to say in para 33 that the extent of the "regard" which must be had to the six aspects of the duty (now in [subsections \(1\) and \(3\) of section 149](#) of the 2010 Act) must be what is "appropriate in all the circumstances". Lord Clarke suggested in argument that this was not a particularly helpful guide and I agree with him. However, in the light of the word "due" in [section 149\(1\)](#), I do not think it is possible to be more precise or prescriptive, given that the weight and extent of the duty are highly fact-sensitive and dependant on individual judgment.

75. As was made clear in a passage quoted in *Bracking*, the duty "must be exercised in substance, with rigour, and with an open mind" (per Aikens LJ in [R \(Brown\) v Secretary of State for Work and Pensions \[2008\] EWHC 3158 \(Admin\), \[2009\] PTSR 1506](#), para 92. And, as Elias LJ said in *Hurley and Moore*, it is for the decision-maker to determine how much weight to give to the duty: the court simply has to be satisfied that "there has been rigorous consideration of the duty". Provided that there has been "a proper and conscientious focus on the statutory criteria", he said that "the court cannot interfere ... simply because it would have given greater weight to the equality implications of the decision".

38 Therefore, any challenge can only be to process and not to outcome. The 2010 Act does not provide for a statutory right of appeal against any alleged breach, but left any challenge to judicial review proceedings. Therefore, the classic judicial review standards of irrationality or perversity must be satisfied if a challenge is to succeed. I fully agree with Mr Justice Flaux in [R \(on the application of Ghulam & Ors\) v Secretary of State for the Home Department & Anor \[2016\] EWHC 2639 \(Admin\)](#) where he stated at [329]:

"...what is required is a realistic and proportionate approach to evidence of compliance with the PSED, not micro-management or a detailed forensic analysis by the court. Second, it is clear that the PSED, despite its importance, is concerned with process, not outcome, and the court should only interfere in circumstances where the approach adopted by the relevant public authority is unreasonable or perverse."

39 In this case an Equality Impact Assessment (EIA) was undertaken by the defendant. Such an assessment is not mandated by the 2010 Act but as Mr Justice Wyn Williams stated in *R (Diocese of Menevia) v City and County of Swansea Council* [2015] EWHC 1436 at [98]:

"The fact that a public body has produced an EIA in appropriate form in advance of the decision in question is, usually, convincing evidence that it has had regard to its public sector equality duties when making the relevant decision."

40 I reject the suggestion that the EIA in this case was "facile". On the contrary, I consider that it laid out sufficiently and appropriately the impact of the proposal. I agree with Miss Grey QC that the EIA

- i) recognised that the Defendant was the major funder of Nascot Lawn and any decision to end discretionary funding "may lead to decisions to close the service";
- ii) focussed on analysing the impact of a decision which culminated in the unavailability of Nascot Lawn as a respite service;
- iii) set out the mitigating steps that had been taken by the defendant to address the anxiety of parents and carers including the health assessment process, training programme for carers, identification of a lead professional in HCT for each child to liaise with HCC; and
- iv) set out the alternative respite options that would be available and noted that HCC would provide transport to any new respite care or short breaks placement in line with assessed need.

41 The EIA was given proper and conscientious consideration by the committee on 16 November 2017. The criticisms made of the process have descended into the types of micro-management and detailed forensic analysis which is not the work of a court undertaking a judicial review of performance of the PSED. What has to be shown is, within the decision-making process, either irrationality or perversity. The criticisms made by the claimants do not come close to meeting these standards.

42 **Ground E** alleges breach of [section 11 of the Children Act 2004](#). This falls within Part 2 which is entitled "Children's Services in England". [Section 11\(1\)\(bb\)](#) states that it applies to a clinical commissioning group. [Section 11\(2\)\(a\)](#) states: "each person and body to whom this section applies must make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children."

43 This is conceptually similar to [section 149](#) of the 2010 Act. When discharging its functions a clinical commissioning group must have made arrangements which "have regard" to the need to safeguard and promote the welfare of children. It is noteworthy that when enacting [section 11](#) Parliament chose not to incorporate verbatim article 3 of the 1989 United Nations Convention on the Rights of the Child (UNCRC), which provides:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Rather, Parliament enacted a lesser duty which requires as part of the process of decision making that regard is had to the need to safeguard and promote the welfare of children. That is a long way from requiring public bodies to ensure that in all aspects of its decision-making the best interests of any affected child shall be a primary consideration. This point was made in [Nzolameso v City of Westminster \[2015\] UKSC 22](#) at [28] where Lady Hale stated " [section 11](#) does not in terms require that the children's welfare should be the paramount or even a primary consideration." In [29]

she stated: "We have not heard argument on the interesting question of whether, even where no Convention right is involved, [section 11](#) should nevertheless be construed consistently with the international obligations of the United Kingdom under article 3 of the UNCRC. That must be a question for another day." It has not been suggested that I should in this case so construe [section 11](#) . Therefore, the issue is whether the defendant is in breach of the limited duty stipulated by the literal words of [section 11](#) .

44 Ms Richards QC states:

"The foreseeable consequence of the withdrawal of funding is that Nascot Lawn, a service provided to the most disabled and vulnerable of children, will close. It was plainly incumbent upon the defendant to have specific regard to the need to safeguard and promote the welfare of the children using Nascot Lawn when taking its decision. It is equally plain from the contemporaneous documentation that the defendant did not have any such regard and thus breached the [section 11](#) duty."

I disagree. The EIA had sufficient regard to the welfare of the children, and their interests were considered properly by the committee. Further, as Ms Grey QC rightly says, the defendant has been involved in discussions with the local authority and the provider in order to facilitate the next steps for the respite provision for the families, children and young people affected.

45 **Ground F** alleges a breach of Article 8 of the European Convention on Human Rights (ECHR) taken with Article 3 of the UNCRC. It is interesting that notwithstanding that Parliament explicitly declined to incorporate verbatim Article 3 of the UNCRC, and that refusal has been endorsed by the Supreme Court, it is nonetheless argued that Article 3 is in play through the medium of Article 8 of the ECHR . This argument is articulated by Ms Richards QC thus:

"In particular, the Claimants submit there was a failure to treat their best interests as a primary (or indeed any) consideration in the decision making, pursuant to article 3 of the UNCRC. It is widely accepted that a breach of an unincorporated Convention article can support a finding of a breach of an incorporated ECHR right; see for example [Mathieson v SSWP \[2015\] UKSC 47](#) at [44] and [Zoumbas v SSHD \[2013\] 1 WLR 3690](#) at [10] ("the best interests of a child are an integral part of the proportionality assessment under article 8 of the Convention")."

46 It is said that Article 8 of the ECHR is engaged in this case because:

"In the present context, however, the provision of respite care to the Claimants is a discharge of the positive obligation to promote the right to family and private life for these severely disabled children. Furthermore, there is a real risk that the cessation of funding for Nascot Lawn may lead to a breakdown of the Claimants' respective family lives, as the witness statements powerfully

demonstrate. It is the potential impact on the family and private life of the Claimants that brings this particular case squarely within the scope of Article 8 ."

Therefore, it is argued that Article 3 of the UNCRC is in play.

47 In the deportation case of [Zoumbas v SSHD](#) at [10] Lord Hodge stated that:

"(1) The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR ;

(2) In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;

(3) Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant; ..."

However, the Supreme Court upheld the decision in that case that it was not contrary to the interests of those children, aged seven years, four years and five months, all born in the UK, to return to the Democratic Republic of the Congo with their parents.

48 In this case I agree with Ms Grey QC that Article 8 is not engaged. In my judgment it does not arise where a statutory body is responsible for providing a particular service but reduces the care package provided to an individual. If it were otherwise then the limited terms of [section 11](#) of the 2004 Act would be routinely outflanked by the deployment of an Article 8 ECHR argument which brings in Art 3 of the UNCRC by its coat-tails.

49 If I am wrong about this, and Article 8 is engaged, then I agree with Ms Grey QC that there is no violation by virtue of the wide margin of appreciation afforded to the state where there is a balance to be struck between the competing interests of the individual and the community as a whole, particularly where there is a need to assess priorities in the context of the allocation of limited resources.

50 That concludes this judgment.

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Agenda



AGENDA for a special meeting of the HEALTH SCRUTINY COMMITTEE in the Council Chamber, County Hall, Hertford on WEDNESDAY 21 MARCH 2018 AT 10:00AM

MEMBERS OF THE COMMITTEE (20) - QUORUM 7

COUNTY COUNCILLORS (10)

S Brown; E H Buckmaster; M A Eames-Petersen; D Hart; T Howard (*substituting for F Guest*); M S Hearn; D J Hewitt; S Quilty (*Chairman*); M A Watkin (*substituting for R G Tindall*); C J White (*Vice Chairman*);

DISTRICT/BOROUGH COUNCILLORS (10)

J Birnie (Dacorum); S Deakin-Davis (*substituting for J Green (North Herts)*); B Gibbard (St Albans); K Hastrick (Watford); D Lambert (Hertsmere); G Nicholson (Broxbourne); A Scarth (3 Rivers); N Symonds (East Herts);

Meetings of the Scrutiny Committee are open to the public (this includes the press) and attendance is welcomed. However, there may be occasions when the public are excluded from the meeting for particular items of business. Any such items are taken at the end of the public part of the meeting and are listed under "Part II ('closed') agenda".

The Council Chamber is fitted with an audio system to assist those with hearing impairment. Anyone who wishes to use this should contact main (front) reception.

Members are reminded that all equalities implications and equalities impact assessments undertaken in relation to any matter on this agenda must be rigorously considered prior to any decision being reached on that matter.

Members are reminded that:

- (1) if they consider that they have a Disclosable Pecuniary Interest in any matter to be considered at the meeting they must declare that interest and must not participate in or vote on that matter unless a dispensation has been granted by the Standards Committee;
- (2) if they consider that they have a Declarable Interest (as defined in paragraph 5.3 of the Code of Conduct for Members) in any matter to be considered at the meeting they must declare the existence and nature of that interest. If a member has a Declarable Interest they should consider whether they should participate in consideration of the matter and vote on it.

PART I (PUBLIC) AGENDA

1. MINUTES [SC.8]

As this is a special meeting of the Committee there are no minutes to be agreed. Minutes of the meeting of the Committee held on 15 and 29 March will be considered at the next ordinary meeting.

2. PUBLIC PETITIONS [SC.11]

The opportunity for any member of the public, being resident in Hertfordshire, to present a petition relating to a matter with which the Council is concerned, which is relevant to the remit of this Committee and which contains 100 or more signatories who are either resident in or who work in Hertfordshire.

Members of the public who are considering raising an issue of concern via a petition are advised to contact their [local member of the Council](#). The Council's criterion and arrangements for the receipt of petitions are set out in [Annex 22 - Petitions Scheme](#) of the Constitution.

If you have any queries about the petitions procedure for this meeting please contact Elaine Manzi, by telephone on (01992) 588062 or by e-mail to elaine.manzi@hertfordshire.gov.uk.

At the time of the publication of this agenda no notices of petitions have been received.

Note: As this is a special meeting of the Committee, only petition/s which relate to the item of business listed at 3. below will be considered at this meeting.

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

4. ITEMS FOR REPORT TO THE COUNTY COUNCIL (Standing Order SC. 7(2))

To agree items for inclusion in the Committee's report to County Council. In the absence of a decision, a summary of all items will be reported

If you require a copy of any of the reports mentioned above or require further information about this agenda please contact Elaine Manzi, Democratic Services Officer, Legal, Democratic and Statutory Services, on telephone no. 01992 588062 or email elaine.manzi@hertfordshire.gov.uk

Agenda documents are also available on the internet at

<http://cmis.hertfordshire.gov.uk/hertfordshire/CabinetandCommittees.aspx>

**KATHRYN PETTITT
CHIEF LEGAL OFFICER**

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

Programme

Time*	Item	Witnesses & Evidence
10.00	Welcome and Introduction Scrutiny objective, questions and constraints, background information and outline of programme	Chairman: Seamus Quilty Head of Scrutiny: Natalie Rotherham
10.10	Herts Valleys Clinical Commissioning Group (HVCCG)	Kathryn Magson, Chief Executive HVCCG
10.40	Hertfordshire County Council Children's Services	Jenny Coles, Director of Children's Services Marion Ingram, Head of Specialist Services
11.00	East & North Herts Clinical Commissioning Group (ENHCCG)	Beverley Flowers, Chief Executive ENHCCG
11.15	Break	
11:30	Nascot Lawn parents / carers representative	Angela Kitching, parent
11.45	Carers in Herts	Roma Mills, Carers Involvement Manager Carers In Herts
11.55	Herts Parent Carer Involvement (HPCI)	Leise Cooper, Chair HPCI Carol Kelsey, Coordinator and Director HPCI
12.05	Healthwatch Herts	Michael Downing, Chair Geoff Brown, Chief Executive Healthwatch Hertfordshire
12.15	Herts Community Trust (HCT)	Marion Dunstone, Director of Operations Tricia Wren, Director of Nursing & Quality (Acting) Katy Healy, General Manager, Children & Young People's Services Anne McPherson, Non-Executive Director (Chair of Healthcare Governance Committee and Freedom to Speak Up Guardian)
12.30	Lunch	
13.30	Summary of the morning's scrutiny	Natalie Rotherham

13.45	The Health Scrutiny Chairman to open debate to members of the HSC	Members of HSC
15.45	Debate and decision	Members of HSC
16:15	Close	

* Times are approximate. Check with the Head of Scrutiny

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

Author: Natalie Rotherham, Head of Scrutiny

(Tel: 01992 588485)

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.

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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>

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

Item 3 Appendix Bi

21 February 2018

Second Floor
Hemel One
Boundary Way
Hemel Hempstead
HP2 7YU
01442 898 888

Dear parent/carers

www.hertsvalleysccg.nhs.uk

Re: Nascot Lawn Update

The Herts Valleys CCG finance and performance committee unanimously concluded at its 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. Our decision was reached after a period of extensive engagement. We also conducted detailed assessments of needs, and a wider consideration of the CCG's financial position was also important in our decision-making.

As you may be aware, three parents decided to pursue their case for continued CCG funding of the service and took this to a Judicial Review (JR). The case was heard in the high court on 6 and 7 February 2018 and the judge has now delivered his conclusion.

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.

In terms of next steps, Herts Valleys CCG will be formally consulting with HCC. 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). For your reference, please find enclosed a copy of our communication to HCC on 21 February 2018 which outlines the CCG’s consultation with the Council. The CCG is consulting with the Council on a proposal to cease annual funding of £600K for Nascot Lawn respite provision.

As you will see from our letter to the Council, in accordance with the requirements of regulation 23, we require the Council to provide any comments on the CCG proposal by 4 April 2018. 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 on 3 May 2018. Once the CCG has received the response from the Council we will share the Council’s feedback with families online. We will be asking families to contact us with comments on the Council’s 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 the Council’s consultation response and any changes in circumstances notified to us by the families.

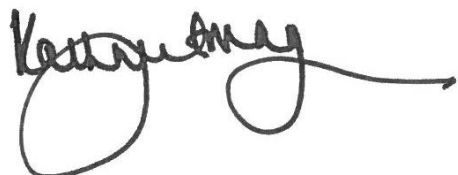
In responding to the Council’s feedback to the CCG proposal to cease funding of Nascot Lawn we would ask both the Council and families to note the Judge’s findings on grounds B to F of the recent judicial review and not to revisit those grounds in their responses.

The CCG’s financial position continues to be very challenging and during this coming financial year 2018/19, we are expected to identify and deliver savings amounting to £30 million.



Whatever the outcome of this consultation and new decision, we continue to be concerned for the children and families who use Nascot Lawn respite services. Having made the decision last November, we had hoped this judicial review would bring the matter to a conclusion. We are committed to ensuring we comply with the judge's ruling in full and we are keen to resolve this as soon as possible, so that a greater level of certainty can be provided particularly to the children and their families. In any event this judicial decision means that the service will be funded on the current basis until at least August 2018.

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

Item 3 Appendix Bii

7 March 2018

Second Floor
Hemel One
Boundary Way
Hemel Hempstead
HP2 7YU
01442 898 888

Dear parent/carers

www.hertsvalleysccg.nhs.uk

Re: Nascot Lawn Update

Following our letter of 21 February 2018 about Nascot Lawn funding and the outcome of the judicial review, I wanted to take the opportunity to update you as part of our commitment to keep families informed over the coming few weeks.

Given the judge's decision – and the ground on which the ruling is based - we are proceeding with the consultation with the County Council in line with Regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 – SI 2013 No 218. We are committed to ensuring we comply with the regulations in full, and our consultation will remain thorough and genuine.

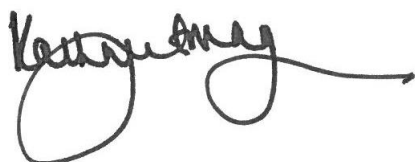
As part of this process, the council have advised us that a health scrutiny meeting will be held at County Hall on 21 March 2018.

In addition we also had a constructive and helpful meeting with officers at the council. We have discussed and agreed to work up a Hertfordshire- wide joint commissioning approach to overnight short breaks, led by the council, with the facilities they currently commission. I will make sure to report back to you further on this as our conversations progress.

I also wanted again to take this opportunity to note that the question of the future funding of Nascot Lawn has been one of the most difficult our board members have faced and we continue to be concerned for the children and families who use the services at Nascot Lawn. We are sorry that you have experienced this extended period of instability; it is our intention to do all we can to continue these productive conversations with our colleagues at the council in readiness for the CCG to make the decision at the finance and performance meeting in early May.

I hope that you have found this helpful and will be in touch again soon with more information, as this becomes available.

Yours sincerely



Kathryn Magson
Chief Executive Officer

Item 3 Appendix C

Briefing for stakeholders

Nascot Lawn - outcome of judicial review

21 February 2018

The Herts Valleys Clinical Commissioning Group (CCG) finance and performance committee unanimously concluded at its meeting on 16 November 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.

Our decision was reached after a period of extensive engagement. We had these discussions with, for example: Hertfordshire County Council, Carers in Herts; Herts Parents Carers Involvement; Healthwatch; and of course the families of children using the service. We also conducted detailed assessments of children's needs, and a wider consideration of the CCG's challenging financial position was also important in our decision-making.

Three of the parents who use the Nascot Lawn service decided to pursue their case for continued CCG funding of the service and took this to a judicial review. The case was heard in the high court earlier this month and the judge has now delivered his conclusion.

The judicial review was presented on six grounds and the judge's ruling has agreed with the families on one of those grounds and rejected the remaining five. The ground that the judge supported relates to the CCG's requirement in law to formally consult with Hertfordshire County Council (HCC), in a specific way despite the extensive engagement with HCC already undertaken, because the respite service funded by the CCG was deemed by the judge to be a health service.

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 ruling states that our decision was made on an 'incorrect legal basis', because we did not comply with that regulation. It is on that ground only, that the judge has quashed our decision to stop funding the service.

The implications of this are that the CCG now needs to follow the process outlined in Regulation 23 and formally consult the county council before making a decision on the future funding of respite services at Nascot Lawn.

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.

In terms of next steps, we will be submitting Herts Valleys CCG's formal consultation paperwork to HCC in the coming days, in full compliance with Regulation 23. We will invite HCC to comment on a proposal to withdraw funding for respite provision at Nascot Lawn. Following a six- week consultation period with HCC, we will consider their response and also make this available to the families of children receiving respite services at Nascot Lawn. Recommendations will then be made to our Finance and Performance Committee who will make a decision. We expect this will be during the early part of May.

The CCG's financial position continues to be very challenging and during this coming financial year 2018/19, we are expected to identify and deliver savings amounting to £30 million.

As we have stated previously, the question of the future funding of Nascot Lawn has been one of the most difficult our board members have faced and we continue to be concerned for the children who use Nascot respite services and their families. Having made the decision last November, we had hoped this judicial review would bring the matter to a conclusion. Given the judge's decision and the ground on which the ruling is based, we will now need to take those steps as outlined above. We are committed to ensuring we comply with these regulations in full and we are keen to resolve this as soon as possible, so that a greater level of certainty can be provided particularly to the children and their families. In any event this judicial decision means that the service will be funded on the current basis until at least August 2018.

Item 3 Appendix Di

21 February 2018

John Wood
Chief Executive
Jenny Coles
Director of Children's Services
Seamus Quilty
Chair of Health Scrutiny Committee
Hertfordshire County Council
VIA EMAIL

Second Floor
Hemel One
Boundary Way
Hemel Hempstead
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01442 898 888

www.hertsvalleysccg.nhs.uk

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

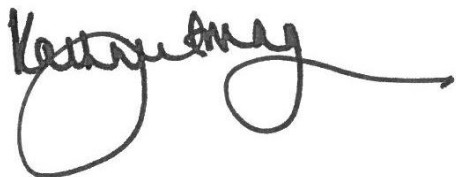
I am grateful to Jenny for agreeing to attend a meeting with the CCG next Wednesday, 28 February, in order to facilitate a collaborative dialogue regarding this consultation and in line with the recommendations agreed by all parties as documented in the Nascot Lawn scrutiny report of 20 September 2017.

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

Title of scheme: Nascot Lawn

CCGs covered by the scheme:

Herts Valleys CCG

Lead CCG:

Herts Valleys CCG

Project Lead for scheme: Liz Biggs

Senior Manager/ Executive Sponsor: David Evans

Brief description of scheme: The CCG is planning to make a decision regarding the future funding of respite provision at Nascot Lawn at the Finance and Performance Committee on 16th November 2017. This QIA will inform the impact of any potential decision to cease funding.

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.

A pre assessment checklist (Children and young people's continuing care framework CYPCCDH 2016) has been completed for all children currently accessing Nascot Lawn for either overnight or day care respite provision. The assessment has been completed by an independent children's nurse assessor. Social Care, Herts County Council have completed a Child and Family Assessment. All assessments were completed via a joint visit to the family home and/or school. All assessment were completed and sent to HCC and the families by 30th October 2017.

A total of 34 children accessing overnight care and 9 children accessing day care were assessed. 43 in total. 8 children were not assessed as they were due to leave the service.

Where appropriate, children have been referred for a full CYPCC assessment. Prior to this assessment process, one child attending Nascot Lawn, was already in receipt of a CYPCC package, in line with the Department of Health children and young people's continuing care framework. From the outset, the CCG has confirmed its responsibility to meet the health care needs of children who are eligible for CYPCC and lead on their respite provision.

Clinical Commissioning Group

For the majority of children, the assessments show the support required for the children currently attending Nascot Lawn can be provided by trained carers. For the avoidance of doubt, and as part of the CCG response to legal challenges, clinicians' within HVCCG have produced the following information:

Children and young people attending Nascot Lawn do not clinically require full time nurses to meet their needs at home. Their needs are met by the parent/carer.

Staff in HCC commissioned respite facilities; those who offer short breaks; shared care; teachers and teaching assistants are currently trained to perform tasks that parents are trained to do as non-clinicians when the child is at home. This training, will continue to be delivered by health staff (children's community nursing and children and young people's continuing care nurses) commissioned by HVCCG.

Training includes management of children with epilepsy and administration of buccal Midazolam, gastrostomy care and feeding, management of medicines, management of anaphylaxis and use of Epi pens. When requested, HCT will also offer bespoke training.

The interventions required for children at Nascot Lawn are considered 'delegated tasks' as per Royal College of Nursing (RCN) guidelines. As they are considered delegated tasks, providing the nurse doing the training has the competency to do so, any competent carer can complete these tasks.

Nascot Lawn staff do not change medications, this responsibility is retained by the GP/Paediatrician. All children will have a named paediatrician or GP who remains responsible for their medical care.

If a child is acutely unwell or their condition has deteriorated from his/her norm a parent or carer would take their child to GP/hospital/Paediatrician/Community children's nurse for medical assessment/treatment, not to Nascot Lawn.

Nascot Lawn staff do not deliver medical interventions when a child becomes unwell. A child that is unwell would not access respite care at Nascot Lawn or attend school and parents would seek a medical review as appropriate for their son/daughter.

If a child/young person becomes unwell or their condition deteriorates from their norm whilst in respite, their management may include:

- If there is an emergency situation – unit should call 999 and child should be transported to hospital.
- Call parent for advice and to see if they wish to pick child up or for ambulance to be called, dependant on child's condition.

- Call children's ward if a child has 'a passport' for direct access to the ward rather than going via A & E.
- Call community children's nursing team for advice if appropriate.
- Each situation should be risk assessed as per the individual respite unit's institutional policy and procedures.

Intended Quality Improvement Outcome/s:

An equitable short breaks offer for all eligible families in Herts Valleys CCG, via Hertfordshire County Council who have statutory responsibility for short break provision. HCC have confirmed there where appropriate they will also be offering personal budgets as an equivalent to overnights on a care home setting. It is a statutory requirement for the CCG to be in financial balance in each financial year. This duty is set out in the NHS Act 2006. 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. These regulations cover Children's Continuing Care, however they do not confer any responsibility on CCGs in relation to respite services.

Methods to be used to monitor quality impact:

Respite provision is the responsibility of Hertfordshire County Council.

The health aspects that the CCG are responsible for will be monitored by existing contract monitoring arrangements with HCT who provide the services.

	Pos/ Neg or N/A	Risk Score if N	Comments (include reason for identifying impact as positive, negative or neutral)	Full Assessment Required Yes/No (Risk > 8 Stage 2 full assessment required)

<p>Duty of Quality</p> <p>Could the options positively or negatively on any of the following:</p> <p>a) Compliance with NHS Constitution right to:</p> <ul style="list-style-type: none"> • Quality of Care and Environment • Nationally approved treatments/ drugs • Respect, consent and confidentiality • Informed choice and involvement • Complain and redress 	<p>Neut ral</p>	<p>HVCCG are currently funding and commissioning a respite service at Nascot Lawn not a health service. Given that this service is not a health service, HVCCG does not have a duty to provide this service and S14Z2 of the NHS Act 2006 does not apply. Similarly, no statutory obligation to consult arises from the NHS Constitution or section 14P(1)(a) of the NHS Act 2006. Further, the duty under section 14Z2 is one of public involvement, not consultation.</p> <p>Section 242(1B) of the NHS Act 2006 (the duty to make arrangements for involvement) does not apply.</p> <p>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. These regulations cover Children's Continuing Care, however they do not confer any responsibility on CCGs in relation to respite services. A CCG will commission the care required for any child who meets the DH framework 2016.</p> <p>Initial communication between the Chief Executives of the CCG and HCC took place following the investment committee in early February 2017.</p> <p>The CCG has been engaging with families from the 14th June 2017. The CCG has met and talked to families face to face. We have continued to offer face to face meetings with families. The CCG felt it was important and appropriate for families to meet the Chief Executive and</p>	
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			<p>Chair of the CCG.</p> <p>Below is a timeline listing all engagement with families and other organisations:</p> <ul style="list-style-type: none"> • 21.06.17 – HVCCG meeting with Carers in Herts • 23.06.17, 27.06.17 and 28.06.17 – HVCCG meeting families using Nascot Lawn • 28.06.17 – HVCCG meeting with Hertfordshire Parent Carer Involvement (HPCI) • 17.07.17 – Healthwatch update • 07.08.17 – Parent/Carers meeting • 23.08.17 – Healthwatch update • 17.09.17 – Parent/Carers meeting • 05.10.17 – Parent/Carers meeting • 06.10.17 – Parent/Carers meeting • 11.10.17 – Parent/Carers meeting • 12.10.17 – Healthwatch, HPCI and Carers in Herts meeting • 17.10.17 – Parent/Carers meeting <p>Following the meetings held in June, a question and answer briefing was produced and circulated to all families. A letter was also sent to HCC following the meeting held on the 07th August requesting further information on social worker assessments, HCC eligibility for respite, occupancy rates at the other respite centres, minimum age requirement and children's safety when attending the centres. On the 15th August, HCC confirmed there will be sufficient capacity within the HCC commissioned respite services to meet the needs of</p>	
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			<p>those children and young people with multi and complex health needs. The CCG recognised at the meeting this was a key concern for families.</p> <p>Throughout our engagement with families the CCG have acknowledged that this is an anxious time for parents and carers and we recognise the strength of feeling that has been expressed. We also acknowledged this in our stakeholder briefing and our most recent communication to families.</p> <p>Before making a new decision in respect of the funding of respite services at Nascot Lawn the CCG contacted all families and invited them to a series of engagement meetings in October. Any matters arising from our discussions with families and other stakeholders to date will feed into our new decision about funding Nascot Lawn. The CCG will also give due regard to all of the information that has been generated as a result of the recent legal proceedings and the joint needs assessments.</p> <p>The CCG was in attendance at the Full Council meeting on 18 July 2017. The CCG also participated in the Scrutiny information meeting on the 19th July 2017 and the subsequent Nascot Lawn Topic Group on the 6th September 2017. In all these meetings families' views were expressed and noted by the CCG.</p> <p>At the meeting on the 17th September 2017, attended by the CCG and the County Council family representatives shared a proposal to create a flagship 0 – 25 fully</p>	
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			<p>integrated Overnight Short Breaks service in Hertfordshire.</p> <p>HCC have accepted their statutory responsibility for providing short breaks, including respite, so it is the assumption of the CCG that respite provision will continue to be offered.</p>	
b) Partnerships	Neg	12	<p>Throughout our engagement with families the CCG have acknowledged that this is an anxious time for parents and carers and we recognise the strength of feeling that has been expressed. Negative feedback about the CCG has also been received from families.</p> <p>This has been mitigated by all family meetings and communication being led by the Chief Executive of the CCG.</p> <p>The HVCCG Corporate Risk Register has identified the following:</p> <p>Risk that the decision to cease funding respite services for families at Nascot Lawn will impact the relationship that the CCG has with its stakeholders.</p> <p>This has been mitigated by the establishment of regular meetings with HCT and HCC. Both organisations were also invited and attended the family engagement meetings.</p> <p>Although partnerships are strained during this period of time some of this has been caused by lack of clarity around responsibilities and previous funding agreements where the CCG had been informally funding respite services on a discretionary basis. The challenge to</p>	

			<p>realign responsibilities through this process is likely to strain the relationship over the short term; however once new funding arrangements for respite for families across west Herts is in place all partners will understand and be able to work to a clear framework making it less likely for disputes to be created in the future.</p> <p>The CCG's decision to address the discretionary funding of respite provision has created a tension in the system. However, it is not the wrong thing to do organisationally the CCG recognises this will have an immediate impact on partners and stakeholders whilst the decision has not been made due to the lack of clarity which is driving some of the anxiety around the feelings of families and organisations during this period.</p>	
c) Safeguarding children or adults	Neut ral		<p>All providers of respite provision would be legally required to carry out the duties set out in Section 17 of the Children Act 1989</p> <p>..... to safeguard and promote the welfare of children within their area who are in need.</p>	
NHS Outcomes Framework Could the proposal impact positively or negatively on the delivery of the five domains (assess all separately): Preventing people from dying prematurely	Neut ral		<p>Nascot Lawn staff do not deliver medical interventions when a child becomes unwell. A child that is unwell would not access respite care at Nascot Lawn or attend school and parents would seek a medical review as appropriate for their son/daughter.</p> <p>The NHS Act 2006 and the NHS Commissioning Board</p>	

			<p>and CCGs (Responsibilities and Standing Rules) Regulations 2012 set out the CCGs duties as to commissioning health services. These regulations cover Children and young people's Continuing Care, and the CCG will commission the care required for any child who meets the DH framework 2016.</p> <p>The CCG will continue to fund a range of health services to meet the needs of children, young people and their families, including mental health services, medicines, children's community nursing, palliative care for those with life-limiting conditions, speech and language therapy, physiotherapy and occupational therapy and special school nursing.</p>	
Enhancing quality of life	Neut ral		<p>Short breaks for children and young people provide their families or carers with a break from their caring responsibilities.</p> <p>HCC currently commission three respite provisions in the County and have 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.</p> <p>HCC commission three respite provisions. The three provisions are located in Rickmansworth, Welwyn and Hertford.</p> <p>The CCG acknowledges that 2 of the respite provisions are not in HVCCG geographical area. The mitigating action is HCC are currently mapping families' home</p>	

			addresses and schools with the nearest respite provision.	
Helping people recover from episodes of ill health or following injury	Neut ral		<p>Children and young people attending Nascot Lawn do not clinically require full time nurses to meet their needs at home.</p> <p>Nascot Lawn staff do not deliver medical interventions when a child becomes unwell. A child that is unwell would not access respite care at Nascot Lawn or attend school and parents would seek a medical review as appropriate for their son/daughter.</p> <p>The CCG will continue to fund a range of health services to meet the needs of children, young people and their families, including mental health services, medicines, children's community nursing, palliative care for those with life-limiting conditions, speech and language therapy, physiotherapy and occupational therapy and special school nursing.</p>	
Ensuring people have a positive experience of care	Neut ral		<p>All respite provision is regulated by statutory bodies and monitored for quality. Respite will continue to be available for families from HCC. The CCG acknowledge any transition period of care will potential have a negative impact on families.</p> <p>HCC have confirmed in a letter to families on 5th October</p>	

			2017 that they 'are talking with Nascot Lawn and the local short break providers about ways we can work together to make any future transition that may be required as smooth as possible. In the event that a new service is allocated your named worker and the provider will lead transition, we will use all expertise in making a personalised approach.'	
Treating and caring for people in a safe environment and protecting them from avoidable harm	Neut ral		<p>All respite provision is regulated by statutory bodies and monitored for quality. Respite will continue to be available for families from HCC.</p> <p>For the majority of children, the health assessments show the support required for the children at Nascot Lawn can be provided by trained carers. HCT have a regular programme of training offered to HCC respite staff to ensure they are competent and confident to meet children's need. Training includes management of children with epilepsy and administration of buccal Midazolam, gastrostomy care and feeding, management of medicines, management of anaphylaxis and use of Epi pens. When requested, HCT will also offer bespoke training.</p>	
Access Could the proposal impact positively or negatively on any of the following: a) Patient Choice	Neg	6	<p>Should the CCG decide to cease funding of respite provision provided at Nascot Lawn, there will be three respite provisions available for families. HCC state the 'majority of our overnight short break providers already support children & young people with complex health needs.'</p> <p>HCC short breaks services, include day-time and</p>	

			<p>overnight care as well as education or leisure activities and services to assist carers in the evenings, at weekends and during the school holidays. HCC have confirmed that where appropriate they will also be offering personal budgets as an equivalent to overnights on a care home setting.</p> <p>Choice will be negatively impacted by a reduction in available locations and also withdrawal of the nursing led model of care.</p> <p>All four provisions are currently being commissioned to provide respite care to enable families and carers a break from their caring responsibilities.</p> <p>Currently there are two separate pathways for families to access respite provision creating an inequitable offer. Approximately 200 families in Hertfordshire access overnight respite provision. Only 50 of these families are receiving a nurse led respite provision. Due to separate access pathways for respite provision there is also inequity in the amount of overnight respite that is offered to families.</p>	
b) Access	Neg	6	<p>Should the CCG decide to cease funding of respite provision provided at Nascot Lawn, there will be three respite provisions available for families. The three provisions are located in Rickmansworth, Welwyn and Hertford.</p> <p>The CCG acknowledges that 2 of the respite provisions are not in HVCCG geographical area. Access maybe</p>	

			<p>negatively impacted. The mitigating action is HCC are currently mapping families' home addresses and schools with the nearest respite provision. HCC will continue to fund transport costs for respite provision from either school or home.</p> <p>Nascot Lawn currently offers overnight respite from 5 – 19 years, and day care from 0 – 3. HCC Overnight Short Breaks settings are Ofsted Registered from 5–18 years. Typically HCC do not offer overnight short breaks in a residential home to children under the age of 7 or 8 however HCC do offer support at home where there is a need, or perhaps in a shared (foster care) setting. HCC offer a range of childcare option for children aged 2 – 4years old. Children's Centre's also provide support for families with children under 5 years of age.</p> <p>Families have raised concerns about access issues, in particular wheelchair access. HCC have commissioned HCT Occupational Therapy to undertake a review of Nascot Lawn and West Hyde.</p>	
c) Integration	Neut ral		<p>In HCC respite provision, children are matched so that they are supported to stay safe and risks kept to a minimum. The CCG acknowledges this is a concern for families and requested HCC to address this issue directly with families.</p>	
				Total Score: 24

Name of person completing assessment: Liz Biggs

Position: Programme Lead – Children, young people and maternity



Signature:

Date of assessment: 08.11.17

Reviewed by: David Evans

Position: Director of Commissioning



Signature:

Date of review: 31.10.17

Proposed frequency of review: Six monthly/ Quarterly/ Monthly/ Other please specify: __weekly__

(minimum monitoring is six monthly (scores 6 or below), every 4 months (scores 8-9), quarterly (scores 10- 12) and monthly (15-20), weekly or more frequent (score 25) Use boxes below to record outcome of reviews

Date of next review: by 31 December 2018

Signed off by: Clare Saunders

Position: Deputy Director of Nursing and Quality



Signature:

Date of review: 08.11.17

Requires review at Quality Committee: Y

Date considered at Quality Committee: Draft at 02nd November 2017, virtual sign off 10.11.17

Logged on spreadsheet: Y

Date: 10.11.17

Post Implementation Review

(use the template below to record outcomes of reviews- if more than one is required cut and paste the box below)

Have the anticipated quality impacts been realised? Y/N

Comments:

Have there been any unanticipated negative impacts? Y/N

Comments:

Are any additional mitigating actions required? Y/N

Comments:

Do any amendments need to be made to the scheme? Y/N

Comments:

Reviewed by:

Position:

Signature:

Date of review:

Stage 2

Escalation proforma: **Nascot Lawn**

To be completed when the initial impact assessment indicates a high risk (8 or above) and a more detailed assessment is required.

On identification of a high risk business case, commissioning decision or business plan this proforma must be submitted along with the business case to inform the decision making process and ensure informed choice. A copy of the complete impact assessment must be submitted to the next available Quality Committee to ensure scrutiny from a quality perspective.

Background and context of the decision for approval.
<p>Brief description of scheme: The CCG is planning to make a decision regarding the future funding of respite provision at Nascot Lawn at the Finance and Performance Committee This QIA will inform the impact of any potential decision to cease funding.</p> <p>Please note this quality impact assessment stage 2 remains in draft as the engagement process with families and stakeholders is continuing until 6th November 2017. All information that has been generated as a result of the recent legal proceedings, joint needs assessments and any matters arising from our discussions with families and stakeholders to date will inform any potential decision to cease funding.</p> <p>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.</p> <p>A pre assessment checklist (Children and young people's continuing care (CYPCC) framework DH 2016) has been completed for all children currently accessing Nascot Lawn for either overnight or day care respite provision. The assessment has been completed by an independent children's nurse assessor. Social Care, Herts County Council have completed a Child and Family Assessment. All assessments were completed via a joint visit to the family home and/or school. All assessment were completed and sent to HCC and the families by 30th October 2017.</p> <p>A total of 34 children accessing overnight care and 9 children accessing day care were assessed. 43 in total. 8 children were not assessed as they were due to leave the service.</p> <p>Where appropriate, children have been referred for a full CYPCC assessment. Prior to this assessment process, one child attending Nascot Lawn, was already in receipt of a children's continuing care package, in line with the Department of Health children and young people's continuing care framework. From the outset, the CCG has confirmed its responsibility to meet the health care needs of children who are eligible for CYPCC and lead on their respite provision.</p> <p>For the majority of children, the assessments show the support required for the children currently attending Nascot Lawn can be provided by trained carers. For the avoidance of doubt, and as part of the CCG response to legal challenges, clinicians' within HVCCG have produced the following information:</p> <p>Children and young people attending Nascot Lawn do not clinically require full time nurses to</p>

meet their needs at home. Their needs are met by the parent/carer.

Staff in HCC commissioned respite facilities; those who offer short breaks; shared care; teachers and teaching assistants are currently trained to perform tasks that parents are trained to do as non-clinicians when the child is at home. This training, will continue to be delivered by health staff (children's community nursing and children's continuing care nurses) commissioned by HVCCG.

Training includes management of children with epilepsy and administration of buccal Midazolam, gastrostomy care and feeding, management of medicines, management of anaphylaxis and use of Epi pens. When requested, HCT will also offer bespoke training.

The interventions required for children at Nascot Lawn are considered 'delegated tasks' as per Royal College of Nursing (RCN) guidelines. As they are considered delegated tasks, providing the nurse doing the training has the competency to do so, any competent carer can complete these tasks.

Nascot Lawn staff do not change medications, this responsibility is retained by the GP/Paediatrician. All children will have a named paediatrician or GP who remains responsible for their medical care.

If a child is acutely unwell or their condition has deteriorated from his/her norm a parent or carer would take their child to GP/ hospital/Paediatrician/Community children's nurse for medical assessment/treatment, not to Nascot Lawn.

Nascot Lawn staff do not deliver medical interventions when a child becomes unwell. A child that is unwell would not access respite care at Nascot Lawn or attend school and parents would seek a medical review as appropriate for their son/daughter.

If a child/young person becomes unwell or their condition deteriorates from their norm whilst in respite, their management may include:

- If there is an emergency situation – unit should call 999 and child should be transported to hospital.
- Call parent for advice and to see if they wish to pick child up or for ambulance to be called, dependant on child's condition.
- Call children's ward if a child has 'a passport' for direct access to the ward rather than going via A & E.
- Call community children's nursing team for advice if appropriate.
- Each situation should be risk assessed as per the individual respite unit's institutional policy and procedures.

What are the benefits?

The CCG anticipates making a minimum annual saving of approximately £500k if it ceases funding of respite services at Nascot Lawn. This figure is based on the CCG's current expenditure on Nascot Lawn of £600K minus the maximum projected spend to meet the needs of children and young people eligible for continuing care. The CCG is willing to offer up to £100k towards meeting the ongoing respite needs of children who are eligible for children's continuing care and work towards a joint funding arrangement.

It is a statutory requirement for the CCG to be in financial balance in each financial year.

This duty is set out in the NHS Act 2006. The potential ceasing of funding respite provision at Nascot Lawn will support the CCGs statutory requirement to prioritise funding for NHS Health services. The CCG has recently undertaken a consultation on a range of health services. The CCG has confirmed it will be ceasing funding on a number of NHS health services.

An equitable short breaks offer, 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 for all eligible families in Herts Valleys CCG, via Hertfordshire County Council who have statutory responsibility for short break provision. HCC have confirmed that where appropriate they will also be offering personal budgets as an equivalent to overnights on a care home setting. The CCG anticipates this will create more choice for families than their current respite offer at Nascot Lawn.

What are the risks if the decision is made to cease funding for respite provision at Nascot Lawn?

The quality impact has identified the following risks:

- Partnerships (including family feedback)
- Access
- Patient Choice

What are the high risks that the initial impact assessment indicates to quality?

- Partnerships with stakeholders and families
- Family anxiety
 - Units ability to meet children with complex health needs
 - Appropriate training of respite staff in HCC units
 - Lack of capacity in units
 - Buildings access and space
 - Children's safety whilst in the HCC units – (Mobile children with complex challenging behaviour also attend HCC respite units)
 - HCC minimum age for overnight respite is 8 years (Nascot Lawn is 5 years)
 - Transition for families and children
 - Geographical location of some HCC respite units

What plans are in place to ensure identified risks are mitigated?

Family anxiety

Mitigating actions:

All respite provision is regulated by statutory bodies and monitored for quality.

For the majority of children, the health assessments show the support required for the children at Nascot Lawn can be provided by trained carers. HCT have a regular programme of training offered to HCC respite staff to ensure they are competent and confident to meet children's need. Training includes management of children with epilepsy and administration of buccal Midazolam, gastrostomy care and feeding, management of medicines, management of anaphylaxis and use of Epi pens. When requested, HCT will also offer bespoke training.

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 document lists *'complex health needs currently accommodated within social care commissioned residential short break services.'*

The CCG wrote to HCC following a meeting with families in response, HCC confirmed in August 2017, *'the majority of the overnight short break providers already support children and young people with complex health needs.* Residential short breaks are detailed on the Hertfordshire SEND Local Offer website. The website links to each individual unit, which states either *'we provide residential short breaks supporting young people with learning disabilities and complex health needs',* or *'the centre is fully equipped to cater for complex needs'*.

In 2016 it was noted there was underutilisation of all four respite units and there was an overall reduction in demand for overnight short breaks. In August 2017, HCC confirmed *'that they will be able to increase capacity at all 3 units by 20,600 hours. We also note that where some young people are nearing adulthood, they may well be choosing to transfer to adult rather than children's' short break services. We will also be offering personal budgets as an equivalent to overnights on a care home setting. Whilst this volume falls slightly short of what is required to match the levels of support currently offered by the current configuration of respite provision within the County, our figures suggest and we hope, noting the comments above that, there will be sufficient capacity.'*

During the family meetings held in October the issue of building access and space has been raised. HCC conducted a joint visit with parent representatives and HCT staff to West Hyde and Nascot Lawn. As a result HCC have commissioned an Occupational Therapy assessment of buildings. The strategic meeting on 01.11.17 HCC confirmed that some issues were raised but they can be managed.

The CCG wrote to HCC following the families assumption that there are children with ADHD/Autism in respite provision elsewhere. There was concern about how safe the children would be if sharing the same facilities. HCC have confirmed *'our short break settings routinely meet the needs of young people with physical disabilities, learning disabilities and some with multiple and complex needs. Some of these children do display challenging behaviours. Many of the children will know each other from schools and other settings. All homes are regulated by Ofsted and monitored for quality purposes by Hertfordshire County Council. The children are matched so that they are supported to stay safe and risks kept to a minimum. We have undertaken structured conversations with our overnight short break providers to put in place plans for them to manage children & young people with complex health needs and we make sure that the matching process ensures they are safe.'*

HCC Overnight Short Breaks settings are Ofsted Registered from 5–18 years. Typically HCC do not offer overnight short breaks in a residential home to children under the age of 7 or 8 however they do offer support at home where there is a need, or perhaps in a shared (foster care) setting.

The CCG acknowledge any transition period of care will potential have a negative impact on families. HCC have confirmed in a letter to families on 5th October 2017 that they *'are talking with Nascot Lawn and the local short break providers about ways we can work together to make any future transition that may be required as smooth as possible. In the event that a*

new service is allocated your named worker and the provider will lead transition, we will use all expertise in making a personalised approach.'

The CCG acknowledges that 2 of the respite provisions are not in HVCCG geographical area. The mitigating action is HCC are currently mapping families' home addresses and schools with the nearest respite provision.

Partnerships with stakeholders and families

Mitigating actions:

Throughout our engagement with families the CCG have acknowledged that this is an anxious time for parents and carers and we recognise the strength of feeling that has been expressed. Negative feedback about the CCG has also been received from families. This has been mitigated by all family meetings and communication being led by the Chief Executive of the CCG.

The HVCCG Corporate Risk Register has identified the following: Risk that the decision to cease funding respite services for families at Nascot Lawn will impact the relationship that the CCG has with its stakeholders. This has been mitigated by the establishment of regular meetings with HCT and HCC. Both organisations were also invited and attended the family engagement meetings.

After mitigation, what are the remaining residual risks?

Although partnerships are strained during this period of time some of this has been caused by lack of clarity around responsibilities and previous funding agreements where the CCG had been informally funding respite services on a discretionary basis. The challenge to realign responsibilities through this process is likely to strain the relationship over the short term; however once new funding arrangements for respite for families across west Herts is in place all partners will understand and be able to work to a clear framework making it less likely for disputes to be created in the future. There is a remaining risk of uncertainty in respect of the future of NL and its ability to retain staff which will be addressed by (a) HCC confirming its position regarding future respite provision; and (b) the CCG then making a prompt decision in respect of future funding

Recommendations for the Quality Committee to consider.

The Quality Committee is asked to note the risks and mitigations in the CCGs planning to make a decision regarding the future funding of respite provision.

Assessment completed by

Name: Liz Biggs

Position: Programme Lead – Children, young people and maternity

Date: 08.11.17

Line Manager Review

Name: David Evans

Position: Director of Commissioning

Date: 08.11.17

Equality and Health Inequality Analysis

Title of policy, service, proposal etc being assessed:
Nascot Lawn - Future funding of respite provision at Nascot Lawn.

Background

Discussions around whether, or not, the payment to Hertfordshire Community Trust (HCT) are discretionary are part of other considerations and advice available to decision makers. Four options are being put forward for consideration, and discussion of those options is included in the main paper. The primary beneficiaries of the service are the carers and secondary beneficiaries are the CYP who attend.

Option 1

CCG cease funding of respite provision, currently provided at Nascot Lawn.

Option 2

The CCG continue full funding of respite provision, currently provided at Nascot Lawn.

Option 3

The CCG enters into joint arrangements to fund respite provision, currently provided at Nascot Lawn, whilst recognising that HCC have the statutory responsibility for short breaks.

Option 4

To consider the family representatives proposal to create a flagship 0 – 25 fully integrated Overnight Short Breaks service in Hertfordshire. HCC have confirmed in writing that they are unable to support this proposal.

Option 1 is the primary option considered in this Equality Impact Assessment, as it is where there is likely to be most impact on the recipients of the services.

If Option 1 is not the option chosen, Options 2,3 and 4 would reduce or remove any impact on recipients of the services as, certainly for Options 2 and 3, the services would continue to be provided.

Nascot Lawn provides respite provision for children with complex health needs and a 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. Herts Valleys CCG (HVCCG) provides 90 per cent of the funding with East and North Hertfordshire CCG providing the remainder.

The service is run by Hertfordshire Community Trust and currently supports a total of 58 families – 42 of these have a GP in HVCCG. 33 families have children accessing overnight care and 9 accessing day care – total 42. The remainder includes those registered with GP in E&N Herts.

The service provides overnight respite care to children aged 5-19 years and a day respite to children aged 0-3 years (term time).

The overnight service provides 1-4 nights per month of respite to support carers of children with highly complex health needs and a learning disability. This gives carers a break from constant caring responsibilities in order for them to be able to undertake other activities, such as spending time with other children. The day care service provides 4 hours per week term time only to families.

For the disabled CYP it is an opportunity for them to spend time away from their family with peers and to be able to socialise.

The primary beneficiaries of the service are the carers and secondary beneficiaries are the CYP who attend.

Herts Valleys CCG is facing financial challenges. Last year the CCG was placed in formal 'financial turnaround' by the regulator, NHS England. The CCG needs to identify approximately £45m worth of savings this year and must continue working with this reduced expenditure in future years to meet its financial targets.

It is considered that the CCG's funding of short breaks at Nascot Lawn is discretionary funding and therefore an opportunity to consider for potential savings. HCC has statutory responsibility for commissioning of short breaks.

The Equality and Human Rights Commission guidance on making fair financial decisions states that

"The public sector equality duty (the equality duty) does not prevent you from making difficult decisions such as reorganisations and relocations, redundancies, and service reductions, nor does it stop you from making decisions which may affect one group more than another group. The equality duty enables you to demonstrate that you are making financial decisions in a fair, transparent and accountable way, considering the needs and the rights of different members of your community. This is achieved through assessing the impact that changes to policies, procedures and practices could have on people with different protected characteristics."

The equality impact assessment supports the CCG to be able to consider the possible impact of proposals on the different equality groups and weigh those against other countervailing factors, such as budget.

As already stated, the primary beneficiaries are the families and carers of CYP with complex health needs and a learning disability.

Carers are not a separately protected group under the Equality Act 2010. Their protection under the Act comes from their association with a disabled person.

Disabled people, as a broad grouping, are the secondary beneficiaries of the services provided at Nascot Lawn, and are a specifically protected group under the Equality Act.

There is no suggestion that Option 1, to end the discretionary funding for Nascot Lawn is because the CYP are disabled.

Where a whole group of people affected by a proposal share a protected characteristic under the Equality Act it can be useful to consider if someone joining that group who didn't have that protected characteristic would have a different outcome from the proposal than the main group. In this case it is clear that a non-disabled CYP and their family using the respite services would have the same outcome as the disabled CYP and their family should the service close. This would suggest that there is no discrimination because of the CYP having a disability.

The CCG recognises that as, currently, the major funder of services at Nascot Lawn any decision to end the discretionary funding may lead to decisions to close the service.

The CCG cannot decide to close the service. That decision can only be made by the provider and any proposal by them to close the service should include equality impact assessments looking at the impact on service users and staff.

As part of the recognition of the influence of the CCG funding, this equality impact assessment does start to look at the possible impact on the protected equality groups should a decision to close the service be taken at any point. This will help the CCG decision makers to see the possible impact of the proposal in front of them in a broader context and will form part of the consideration of equalities alongside the other countervailing factors.

What are the intended outcomes of this work? Include outline of objectives and function aims

The intended outcome is to ensure that all the 4 Options are given full consideration at the Financial and Planning meeting on 16th November 2017. To make savings from the HVCCG budget to help meet budget challenges and to ensure that health funding is spent on health care needs only. It is considered that the respite service at Nascot Lawn is a social care service, not a health service, and, as such is the statutory responsibility of Hertfordshire County Council (HCC), not the NHS.

How will these outcomes be achieved? What is it that will actually be done?

Funding for respite care at Nascot Lawn by HVCCG may cease or a joint funded option may be agreed upon.

Who will be affected by this work? e.g. staff, patients, service users, partner organisations etc. If you believe that there is no likely impact on people explain how you've reached that decision and send the form to the equality and diversity manager for agreement and sign off

- Parents/carers of children and young people attending Nascot Lawn for overnight short breaks .
- Parents/carers of children attending Nascot Lawn for day care.
- CYP currently attending Nascot Lawn as they and their families will need to be reassessed by HCC and move to another respite unit offered by HCC or another form of respite ie personal budgets.
- Parents of CYP 5-7years, and CYP 5-7years of age will not meet HCC criteria for overnight

respite unit provision – HCC overnight respite provision is offered to CYP 8 years of age and over. The HCC units are registered with Ofsted and can take children from 5 years of age, however they are currently commissioned by HCC to offer overnight respite to families of children of 8 years and over. However, this group of CYP may meet HCC criteria for an alternative respite provision.

- Herts Community Trust staff working in Nascot Lawn
- East and North Herts CCG, (ENHCCG) who also commission Nascot Lawn as part of their block contract with HCT (currently have 11 CYP in the unit)
- Hertfordshire County Council as commissioners of overnight short breaks for children and young people

Evidence

What evidence have you considered? Against each of the protected characteristics categories below list the main sources of data, research and other sources of evidence (including full references) reviewed to determine impact on each equality group (protected characteristic).

This can include national research, surveys, reports, research interviews, focus groups, pilot activity evaluations or other Equality Analyses. If there are gaps in evidence, state what you will do to mitigate them in the Evidence based decision making section on page 9 of this template.

If you are submitting no evidence against a protected characteristic, please explain why.

Age Consider and detail age related evidence. This can include safeguarding, consent and welfare issues.

Overnight respite care in Nascot Lawn is offered to families of CYP 5-19 years of age. Day care is offered to families of children 0-3 years of age.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Disability Detail and consider disability related evidence. This can include attitudinal, physical and social barriers as well as mental health/ learning disabilities.

All of the CYP who attend Nascot Lawn have a Learning Disability and additional complex healthcare needs.

Should the decision be made to cease funding this will impact on these disabled CYP. The services they access are valued and reports indicate that they improve independence and social skills. Both of which are important in the development of CYP with disabilities.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Gender reassignment (including transgender) Detail and consider evidence on transgender people. This can include issues such as privacy of data and harassment.

No data is held on gender reassignment intentions of the CYP who attend Nascot Lawn. Any gender reassignment needs that the CYP have would be dealt with through other NHS services.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Marriage and civil partnership Detail and consider evidence on marriage and civil partnership. This can include working arrangements, part-time working, caring responsibilities.

Is not likely to be applicable for the CYP who attend Nascot Lawn.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Pregnancy and maternity Detail and consider evidence on pregnancy and maternity. This can include working arrangements, part-time working, caring responsibilities.

Is not likely to be applicable for the CYP who attend Nascot Lawn.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Race Detail and consider race related evidence. This can include information on difference ethnic groups, Roma gypsies, Irish travellers, nationalities, cultures, and language barriers.

The breakdown of the ethnic origin of the CYP, where known, is as follows:

White 62%

Mixed 5%

Asian 2%

Black 2%

Other 14%

Not stated 14%

Even with the 14% not stated, it does not appear that there will be a disproportionate impact on people of a particular race.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Religion or belief Detail and consider evidence on people with different religions, beliefs or no belief. This can include consent and end of life issues.

The breakdown of the religion and belief of the CYP, where known, is as follows:

Catholic 14%

Church of England/Christian 14%

Islam 5%

Hindu 2%

None 2%

Not stated/not known 62%

Because of the large not stated/unknown percentage it is not possible to identify if there may be a disproportionate impact on people of a particular religious belief, or no belief. There is no indication that any impact is because of a person's religion or belief.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Sex Detail and consider evidence on men and women. This could include access to services and employment.

57% of CYP are Female.

Sexual orientation Detail and consider evidence on heterosexual people as well as lesbian, gay and bisexual people. This could include access to services and employment, attitudinal and social barriers.

Is not likely to lead to differential impact for the CYP who attend Nascot Lawn.

HVCCG does not hold this information for the parents/carers of the disabled CYP, nor is it necessary for the CCG to hold this information for the provision of care to the CYP. The information is likely to be held by HCC as part of their carer's assessment.

Carers Detail and consider evidence on part-time working, shift-patterns, general caring responsibilities.

As previously stated, carers are not a separately protected group under the Equality Act 2010. The CCG does, however, routinely consider the impact on carers as if they were a protected group.

For carers the benefits of respite care include;

- It improves the sense of well-being for both carer and the person being cared for
- It reduces any stress which can occur between the carer and the person being cared for
- It provides additional support
- It allows the carer to spend time socialising and interacting with their loved ones
- It strengthens the carers ability to care, and reduces the risk of neglect or abuse

Should there be a decision to close the service:

Impact on parents/carers -

- They will be required to engage with HCC assessment process
- Parents/carers of CYP aged 5-7 years of age may be offered an alternative respite solution rather than out of home overnight care as HCC only offer out of home respite care to CYP 8 years and older.
- Parents/carers of Children aged 0-3 years may be offered an alternative respite solution rather than out of home day care for 4 hours per week term time only.
- Parents and carers hold respite care at Nascot Lawn in high regard (previous parent/carer survey conducted by HCC in conjunction with HVCCG/E&NHCCG - 2016) and may be anxious about change
- Parents/carers will be required to support their CYP through a change in respite provision in conjunction with HCC

Other identified groups Detail and consider evidence on groups experiencing disadvantage and barriers to access and outcomes. This can include different socio-economic groups, geographical area inequality, income, resident status (migrants, asylum seekers).

N/A

Engagement and involvement

How have you engaged stakeholders with an interest in protected characteristics in gathering evidence or testing the evidence available?

Regular face to face meetings with families of CYP with learning disability and complex health

needs attending Nascot Lawn for parental respite have taken place in June and October which have been led by the CEO and Director of Commissioning of HVCCG. HCC Operations Director Specialist Services and Head of 0-25 Together services have also attended and participated in these meeting with families. HCT Director of Operations and General Manager, Children & Young People have attended and contributed to the meetings. HPCI; Healthwatch; Carers in Herts have attended and contributed to the meetings. The disabled children and their siblings were invited and attended the face to face meetings.

Individual assessment of each CYP's health needs carried out by an independent health care assessor by home and/or school visits to the child and family.

Letters to individual families; MP's and HPCI; Healthwatch and Carers in Herts.

Emails to individual families; MP's and HPCI; Healthwatch and Carers in Herts.

Telephone calls HVCCGCEO- Director of Children's Services HCC;

How have you engaged stakeholders in testing the policy or programme proposals?

Face to face meetings; letters; requests for written feedback from families and from stakeholders has been requested by the CCG.

Families have submitted a paper '*Proposal for the continuation of a nurse-led respite service at Nascot Lawn to support children eligible for Children's Continuing Health Care and to contribute to Public Health support for children in need*'.(Option 4)

HCC have been asked to comment on a proposal to enter into joint funding arrangements for respite currently provided at Nascot Lawn. (Option 3) As of completion of this paper on 10/11/17 HCC have not responded with a clear offer, despite CEO contacting them again for clarification.

For each engagement activity, please state who was involved, how and when they were engaged, and the key outputs:

Engagement with HCC commenced in February 2017 by CEO-CEO email; telephone conversation; face to face meeting and letters and is ongoing; Engagement with families and other stakeholders commenced on 14th June 2017 and has continued until Nov 6th 2017 by letter; telephone; email and face to face meetings.

Who; Families of CYP who attend Nascot Lawn for respite; MP's; HCC; HCT; HPCI; Healthwatch; Carers in Herts

How: engagement document; face to face meetings; requests for comments via email/letters from families by 6/11/17 response to proposals in engagement document; request to HCC for comments on the options in engagement paper and their proposals for future respite provision; HCT for comments on the options appraisal by 6/11/17 . As of completion of this paper on 10/11/17 HCC have not responded with a clear offer, despite CEO contacting them again for clarification. Regular

strategic and operational meetings with HCC and HCT commenced 22nd August and ongoing.

Face to face meetings with HPCI; Healthwatch and carers in Herts and either HVCCG CEO and/or Director of Commissioning.

Key outputs:

Families and stakeholders have commented directly to the CCG their views on the funding options and these views have contributed to the decision making process of Finance and Planning committee. Families have clearly identified their distress and anxiety around the potential cessation of funding of Nascot Lawn and the impact this may have on them and their families and the siblings (young carers).

To try to mitigate against the families anxiety should the outcome of the funding decision be Option 1, as the Option that will have the most impact on the families, the CCG has ensured that each child that uses Nascot Lawn has clearly identified each individual child's care needs; training that may be required for HCC respite unit staff and training programmes are already being offered by HCT to HCC staff; equipment required for each child and agreement that this can be moved to other units should this be necessary; identification of a lead professional in HCT for each child who will liaise with HCC respite staff to ensure safe and timely transition once a unit/provision is named by HCC. Regular training sessions offered by HCT to all HCC respite unit staff to cover most of the common care needs of the children ie enteral feeding; epilepsy management; medicines management. Bespoke training will be offered for CYP whose care needs fall outside of these parameters. HCC have also carried out a Child and Family assessment on all families.

Summary of Analysis

Considering the evidence and engagement activity you listed above, please summarise the impact of your work. Consider whether the evidence shows potential for differential impacts, if so state whether adverse or positive and for which groups and/or individuals. How you will mitigate any negative impacts? How you will include certain protected groups in services or expand their participation in public life?

The summary below covers all 4 options:

- Parents and carers of CYP with LD and complex health needs will no longer be able to benefit from overnight or day care respite care for their CYP at Nascot Lawn if Option 1 is chosen. Options 2,3 and 4 would reduce or remove any impact on recipients of the services
- CYP with LD and complex health needs will no longer be able to access overnight and day respite care at Nascot Lawn. If Option 1 is chosen. Options 2,3 and 4 would reduce or remove any impact on recipients of the services
- HCC will be required to offer families of CYP who currently access a respite service at Nascot Lawn an assessment for HCC respite provision. If Option 1 is chosen. Options 2,3 and 4 would reduce or remove any impact on recipients of the services
- HCC will be required to commission and fund the provision if CYP meet their assessment criteria. If Option 1 is chosen. Options 2,3 and 4 would reduce or remove any impact on

recipients of the services

There is no evidence that there is direct or indirect discrimination because a CYP or their carer has a protected characteristic under the Equality Act.

Should a decision be made to stop funding by the CCG which may result in a decision by HCT to close down the service there will be an impact both on CYP and their carers where their protected characteristic group could be relevant. Mitigating actions will need to be put in place by the providers to ensure that the impact is reduced or removed.

The county council funds and makes available a range of different solutions for children and their families. These include activities such as shared care, camping trips and giving families the flexibility to use personal budgets to pay for their own bespoke respite care or pooling personal budgets with other families to provide care for a small group of children. The county council will be speaking to families who currently access their three short breaks respite units to find out if they still want overnight respite in these units or if they might like to try something different.

The clinical care of children and young people (CYP) will continue, with full access to clinical care in community; acute and tertiary health services. This includes the following (and is already available to other families in similar circumstances):

- Palliative care for CYP with life limiting conditions (which may include overnight respite including symptom care within the hospice environment),
- Children and young people's continuing care, for children who meet eligibility (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)
 - Admission/treatment at local district general hospital and tertiary hospitals

In addition further mitigating actions include the following whole system offers for families who currently access Nascot Lawn:

- CYP aged 8-19 years who currently attend Nascot Lawn for parental respite will be highly likely to meet HCC respite care provision criteria.
- CYP who are 5-8 years who currently attend Nascot Lawn for parental respite will be highly likely to meet HCC eligibility for other respite support options such as direct payments
- CYP who currently access Nascot Lawn will be eligible for assessment for overnight respite in a HCC provision.
- The county council will provide transport to any new respite care or short breaks placement in line with assessed need.
- HCC are currently 'matching' CYP's address of home and school to offer respite as close to home/school as possible.
- CYP who are under 5 years of age will receive a Families First assessment (Early Help by a Families First Coordinator or a Family Intervention Worker from the Intensive Family Support Service –this is a whole family assessment. If the assessment identifies that they would benefit from additional support, they would organise a team around the family and identify a lead agency to coordinate the support which would include anything the health assessment identifies – at this point they would end their involvement. If the needs are complex it may go to the Intensive Family Support Team if there are a number of issues in

the family, or they may escalate to social care 0-25 Together team for further assessment.

Now consider and detail below how the proposals could support the elimination of discrimination, harassment and victimisation, advance the equality of opportunity and promote good relations between groups (the General Duty of the Public Sector Equality Duty).

Eliminate discrimination, harassment and victimisation

There is no evidence to suggest that should the Finance and Planning Committee on 16th November make the decision to choose Option 1 and stop funding or any future decision to close the service will lead to an increase in discrimination, harassment or victimisation. Should the funding cease and the service close the mitigating actions proposed will help to ensure that a similar type of service is available to the families and CYP involved.

Advance equality of opportunity

The duty to advance equality of opportunity includes:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.

Should the decision be made to cease funding which results in closing down the service the mitigating actions proposed will meet these requirements.

Promote good relations between groups

It's not clear where there may be an impact because of the proposal that disadvantages good

relations between groups, for example disabled and non-disabled people. However there is an element of disabled CYP mixing with non-disabled staff at Nascot Lawn. This mixing with non-disabled staff is likely to continue, albeit with different staff, should the decision to cease funding which results in closing the service be made and the mitigating actions put into place.

Next Steps

Please give an outline of what you are going to do, based on the gaps, challenges and opportunities you have identified in the summary of analysis section. This might include action(s) to eliminate discrimination issues, partnership working with stakeholders and data gaps that need to be addressed through further consultation or research. This is your action plan and should be SMART.

This equality impact assessment considers the 4 options, if the Option 1 is chosen I for HVCCG to stop funding Nascot Lawn and the possible outcome of those services being closed. Options 2,3 and 4 would reduce or remove any impact on recipients of the services. Depending on the decision made, the Governing Body may wish to monitor the outcomes for disabled CYP and carers to identify the impact of the decision and, should the service close, the impact on the CYP and their carers of the changes to the services received.

How will you share the findings of the Equality analysis? This can include sharing through corporate governance or sharing with, for example, other directorates, partner organisations or the public. The completed EqlA will be published on the Herts Valleys CCG website either as part of the report on the proposals or separately on the equality and diversity pages.

- Sharing through corporate governance
- Commissioning Executive
- Children, young people's and maternity leadership group
- Herts Valleys CCG website

Health Inequalities Analysis

Evidence

1. What evidence have you considered to determine what health inequalities exist in relation to your work? List the main sources of data, research and other sources of evidence (including full references) reviewed to determine impact on each equality group (protected characteristic). This can include national research, surveys, reports, research interviews, focus groups, pilot activity evaluations or other Equality Analyses. If there are gaps in evidence, state what you will do to mitigate them in the Evidence based decision making section on the last page of this template.

In relation to the Health Inequalities Duty CCGs have duties to:

- Have regard to the need to reduce inequalities between patients in access to health services and the outcomes achieved (s.14T);
- Exercise their functions with a view to securing that health services are provided in an

integrated way, and are integrated with health-related and social care services, where they consider that this would improve quality, reduce inequalities in access to those services or reduce inequalities in the outcomes achieved (s.14Z1);

Option 1 is the primary option considered in this Equality Impact Assessment, as it is where there is likely to be most impact on the recipients of the services.

If Option 1 is not the option chosen, Options 2,3 and 4 would reduce or remove any impact on recipients of the services as, certainly for Options 2 and 3, the services would continue to be provided.

The proposals and the mitigations actions needed should Option1, be chosen will support the CCG to meet its health inequality duties. Options 2,3 and 4 would reduce or remove any impact on recipients of the services

The CCG has committed to continue to meet the healthcare needs of both the disabled CYP and the carers affected by any proposals. The proposals are based on the effective integration of health and social care services.

In addition:

- There is no CCG statutory requirement to fund the provision of overnight respite care for children and young people with learning disabilities and complex health needs.
- CCGs in the region do not fund standalone overnight respite care units for children and young people with learning disability and complex health needs.
- Under the Children and Families Act 2014, from September 2014 CCGs must:
 - commission services jointly for children and young people (up to age 25) with SEND (Special Educational Needs and Disability), including those with Education Health and Care plans (EHCP)
 - work with the local authority to contribute to the Local Offer of services available - <https://directory.hertfordshire.gov.uk/kb5/hertfordshire/directory/localoffer.page>
 - have mechanisms in place to ensure practitioners and clinicians will support the integrated EHC needs assessment process, and
 - agree Personal Budgets where they are provided for those with EHCPs
- Nascot Lawn respite provision is an additional service to children and young people who meet the Department of Health (2016) criteria for Continuing Health Care will continue to receive care packages to support their clinical needs.

The CCG does not have health inequality or socio-economic data for disabled CYP or their carers. This is likely to be held by HCC as part of the Carer's Assessment.

The CCG may wish to monitor the impact on disabled CYP and their carers of any changes to services to identify if there is an impact on their own health and to identify any patterns arising from the proposals.

Impact

2. What is the potential impact of your work on health inequalities? Can you demonstrate

through evidenced based consideration how the health outcomes, experience and access to health care services differ across the population group and in different geographical locations that your work applies to?

The CCG does not have health inequality or socio-economic data for disabled CYP or their carers. This is likely to be held by HCC as part of the Carer's Assessment.

The CCG may wish to monitor the impact on disabled CYP and their carers of any changes to services to identify if there is an impact on their own health and to identify any patterns arising from the proposals.

3. How can you make sure that your work has the best chance of reducing health inequalities?

Children and young people will continue to have full access to clinical care in community; acute and tertiary health services.

The CCG may wish to monitor the impact on disabled CYP and their carers of any changes to services to identify if there is an impact on their own health and to identify any patterns arising from the proposals.

Monitor and Evaluation

4. How will you monitor and evaluate the effect of your work on health inequalities?

All HVCCG commissioned clinical services for children and young people will continue to be delivered and monitored as part of existing contract and quality monitoring arrangements.

The CCG may wish to monitor the impact on disabled CYP and their carers of any changes to services to identify if there is an impact on their own health and to identify any patterns arising from the proposals.

Name of person(s) who carried out these analyses:

Paul Curry, Equality and Diversity Lead, Herts Valleys CCG

Date analyses were completed: 10.11.17



**Chief Legal Officer:
Kathryn Pettitt, Solicitor**

Ms K Magson
Chief Executive Officer
Herts Valleys Clinical Commissioning Group
Second Floor
Hemel One
Boundary Way
Hemel Hempstead
HP2 7YU

By email to:
kathryn.magson@hertsvalleysccg.nhs.uk

**LEGAL SERVICES
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Hertfordshire County Council
County Hall
Hertford
Herts SG13 8DE**

Tel: 01992 555638
Minicom: 01992 556611
Fax: 01992 555541
Email: simon.banks@hertfordshire.gov.uk
Contact: Simon Banks
My ref: SB / 009640
Your ref:
Date: 27 February 2018

Dear Ms Magson

Proposal to withdraw £600,000 annual funding from Nascot Lawn

Consultation under Regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (SI 2013 / 218) (the 2013 Regulations)

I write further to your letter dated 21 February 2018 giving notice of Herts Valleys Clinical Commissioning Groups' intention to formally consult the Council, pursuant to Regulation 23 of the 2013 Regulations, on a proposal to withdraw £600,000 annual funding from Nascot Lawn (the "**Proposal**").

I understand, from your letter that the date on which you propose to take a decision on the Proposal, in accordance with Regulation 23(1)(b)(i), is 3 May 2018 and, in accordance with Regulation 23(1)(b)(ii), the date by which you have requested the Council to respond to the Consultation is 4 April 2018.

The Council accepts your letter as valid notice of Consultation under Regulation 23, and is grateful for the opportunity to provide a formal response.

In accordance with the Council's Constitution this matter will now be referred to the Council's Health Scrutiny Committee (HSC) for consideration under Regulation 23; it is anticipated that Members of HSC will hold a meeting of the Committee no later than Friday 23 March 2018.

The scope of the scrutiny and a call for evidence will be made in accordance with the Council's usual procedures. Please note that, notwithstanding the comments of Mostyn J on Grounds to B to F of the recent judicial review claim, it will be entirely a matter for Members to determine the evidence that they consider to be relevant to the issues.

I will write further once a date for a meeting of HSC has been agreed by Members.

Yours sincerely



Simon Banks
Assistant Chief Legal Officer

Elaine Manzi

From: Simon Banks
Sent: 02 March 2018 13:36
To: 'kathryn.magson@hertsvalleysccg.nhs.uk'
Cc: John Wood; Jenny Coles
Subject: Regulation 23 Consultation - Health Scrutiny Committee meeting
Attachments: 180319 Public Notice.doc

Tracking:	Recipient	Read
	'kathryn.magson@hertsvalleysccg.nhs.uk'	
	John Wood	Read: 02/03/2018 13:36
	Jenny Coles	

Dear Ms Magson

I write further to my emailed letter dated 27 February 2018. I can confirm that a special meeting of the Health Scrutiny Committee will be held on Wednesday 21 March 2018 in the Council Chamber at County Hall at 10 am (I have attached a copy of the notice of public meetings for your ease of reference). The scope of the scrutiny will be sent out in the usual way by the County Council's Scrutiny Officers.

Whilst writing you should be aware that the date on which you have indicated that you will be taking a final decision on the Proposal to withdraw funding from Nascot Lawn (3 May 2018) is the same day as local elections for a number of wards and Councils in Hertfordshire's Districts.

You should be aware that Members of this Authority have raised concerns about the timetable you have adopted and that the majority of the time allowed for consultation will be during the pre-election or "purdah" period. I thought it prudent to bring to your attention the very considerable concerns that have been expressed by local politicians about the timeframe within which you have chosen to consult and the date you propose to make a decision.

Your sincerely

Simon Banks
Assistant Chief Legal Officer
Legal Services
Resources
My Ref: SB/009640/01919083
Hertfordshire County Council, County Hall, Pegs Lane, Hertford SG13 8DN
t: 01992 555638 Comnet/Internal: 25638

Please note that we no longer subscribe to DX delivery services

Hertfordshire - County of Opportunity

****Disclaimer****

Public Notice of Meetings



The meetings listed below are open to the public. The meetings take place at County Hall, Hertford (unless otherwise indicated) at the date and time shown.

Date	Meeting	Time
Monday, 19 March 2018	CABINET	2:00 Committee Room B
	EMPLOYMENT COMMITTEE	2:30 Committee Room A
Tuesday, 20 March 2018	PENSIONS BOARD (LGPS)	10:30 Committee Room B
Wednesday, 21 March 2018	HEALTH SCRUTINY COMMITTEE	10:00 Council Chamber
Thursday, 22 March 2018	PENSIONS COMMITTEE	10:00 Committee Room B
Friday, 23 March 2018	PENSIONS BOARD (HFRS)	10:00 Committee Room A

Papers for meetings can be obtained from Democratic Services at County Hall (01992 555427), main Public Libraries, or from the Council's website www.hertfordshire.gov.uk/councilmeetings

KATHRYN PETTITT
CHIEF LEGAL OFFICER

8 March 2018

Simon Banks
Assistant Chief Legal Officer
Hertfordshire County Council
VIA EMAIL

Second Floor
Hemel One
Boundary Way
Hemel Hempstead
HP2 7YU
01442 898 888

www.hertsvalleysccg.nhs.uk

Dear Simon

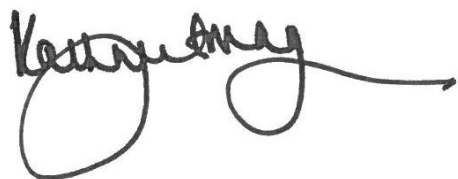
Thank you for your email of 2 March 2018. We acknowledge the confirmation of the Health Scrutiny Committee on 21 March 2018.

I note that your email indicates that Members of the Authority have raised concerns about the timetable the CCG has adopted regarding the Nascot Lawn consultation time frame falling during the purdah period.

We have sought legal advice on this which confirms that for the election in May 2018, the latest date the pre-election period can start is 27 March 2018. Therefore the scrutiny meeting that has been scheduled for 21 March will take place before the purdah period commences. Whilst the final date for Hertfordshire County Council (HCC) to respond to our consultation is after the purdah period will have commenced, the CCG considers that if HCC has undertaken its public scrutiny of the proposal prior to the commencement of purdah it can continue to compile its formal response to the proposal and submit this during purdah.

We note the concern you raise about the decision being made on 3 May 2018, the same day as local elections, but this is in line with the CCG meeting schedule and we see no reason to change the date of an internal CCG committee meeting because of the local elections. In light of this, we will not communicate our decision until 4 May.

Yours sincerely



Kathryn Magson
Chief Executive Officer

By Email Only

Andy Saunders
Acting Head of Contracts
Hertfordshire Community NHS Trust
14 Tewin Road
Welwyn Garden City, AL7 1BW

Herts Valleys CCG
Hemel One
Boundary Way
Hemel Hempstead
HP2 7YU

Contracts.hvccg@nhs.net

2nd March 2018

Contract Reference: 06N-RY4-201719

RE: Nascot Lawn

Dear Andy

Following the handing down of the judicial review judgement on 21st February 2018, I confirm that the CCG withdraws the notice of termination of funding dated 17th November 2017.

The CCG will maintain its current level of funding of respite services at Nascot Lawn pending any further decision about future funding. That decision will be taken by no later than 3rd May 2018. The CCG expectation is that a full service will continue to be delivered in line with the current level of funding. The CCG will continue to monitor performance in line with contractual arrangements via our Contract and Quality Review Meetings held between the CCG and HCT.

As we are aware from your communication to families on 17th January 2018, whilst the respite provision at Nascot Lawn is continuing, we note this is on a significantly reduced basis and families are only being offered respite within the three opening nights of Tuesday, Wednesday and Thursdays. We note that the respite nights *'have been carefully planned to ensure that the right staff are available on each of these nights to safely provide the care for your child,'* and in addition that you *'may also need to cancel nights that are offered ... if there are unforeseen circumstances such as staff sickness.'* In view of this information and that the service currently being provided by HCT is not consistent with contractual requirements of 11 nights per fortnight with the closure of one week at Christmas and an additional closure of one week at the end of June/beginning of July, we now therefore require a plan detailing how delivery will return to commissioned levels by 15th March 2018.

Please let me know if you have any queries.



Yours sincerely

Dipesh Songara
Senior Contracts Manager

Cc

Kathryn Magson – Chief Executive Officer, Herts Valleys CCG
David Evans – Director of Commissioning, Herts Valleys CCG
Liz Biggs - Programme Lead – Children, Young People and Maternity, Herts Valleys CCG
Kevin Curnow - Acting Director of Finance, Hertfordshire Community NHS Trust



Appendix 1

Agreement between Herts Valleys CCG (HVCCG), East and North Herts CCG (ENHCCG) and Hertfordshire County Council (HCC)

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.

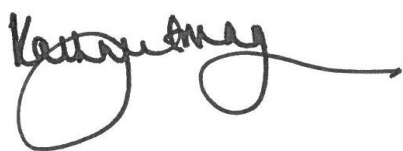
- Early childhood
- 0-25 integration for children and young people with additional needs
- Emotional wellbeing and mental health transformation

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.



Kathryn Magson

Chief Executive Officer, Herts Valleys CCG



Beverley Flowers

Chief Executive Officer, East and North Hertfordshire CCG



Jenny Coles

Director of Children's Services, Hertfordshire County Council

21.03.18

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)

HERTFORDSHIRE COUNTY COUNCIL

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

**BACKGROUND PAPER FROM HERTFORDSHIRE COUNTY COUNCIL
CHILDREN'S SERVICE 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: Marion Ingram, Operations Director Specialist Services
Author's telephone number: 01992 588620

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

- 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?

Without a sustainable alternative proposal in place between Herts Valleys Clinical Commissioning Group (HVCCG), East and North Herts Clinical Commissioning Group (E&NHCCG) and the council to meet the respite needs of children with complex health needs in Hertfordshire, this proposal is not in the interests of health services in Hertfordshire. Importantly, it would not be in the interests of the children, young people and families who are receiving care through Nascot Lawn short breaks services.

It would also be setting aside the agreement reached as a result of the Overnight Short Breaks Review and agreed by the council and HVCCG and E&NHCCG in the Autumn of 2016. The Agreement being that four Overnight Short Breaks (OSB) settings would reduce to three, and all three settings would deliver an integrated offer in order that both the health and care needs of children could be met in their local setting in all but exceptional cases.

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?

There has been an ongoing dialogue between the council and HVCCG, E&NHCCG on the issue of how best to meet the health needs of these children

and their families since April 2017 .This has resulted in the agreement which has been signed by all three parties attached as Appendix 1. Through the resources which have been committed, the council and its CCG partners will seek to work with parents to develop an integrated offer for OSB across Hertfordshire. Appropriate clinical input will be sought to inform service development ensuring that the service is safe and best meets the health needs of children receiving OSB.

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

In 2015 the County Council and its CCG partners signed up to a co-produced Special Educational Needs and Disabilities (SEND) Integrated Commissioning Strategy 2015 - 2018. This strategy is currently under review and the agreed OSB proposals will be built into the revised strategy. The implementation of the component elements of the Strategy are considered in a variety of forums including the 0 – 25 Programme Board, the SEND Commissioning Programme Board and the SEND Executive, the HVCCG Children, Young People and Maternity Leadership Group and the E&NHCCG Joint Programme Board. All three parties are represented in these conversations.

Overall, the Strategy sits within the work programme of the Children and Young People's Integrated Commissioning Executive (CYPICE) and any difficulties will be discussed and resolved within this arena. CYPICE, in turn, reports in to the Health and Wellbeing Board where strategic oversight will be applied.



Appendix 1

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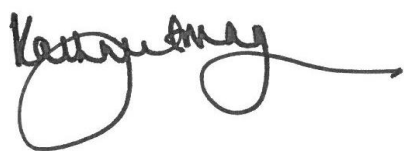
- Early childhood
- 0-25 integration for children and young people with additional needs
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The partners are looking to achieve a position whereby all children in Hertfordshire who have been assessed as requiring an overnight short break (OSB) service 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.



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Chief Executive Officer, Herts Valleys CCG



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Director of Children's Services, Hertfordshire County Council

21.03.18

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Health Scrutiny Committee – 21 March 2018 - Parents' Evidence

Introduction

Evidence has been drawn from the experience of many families who have provided their input throughout the campaign to save Nascot Lawn. However in this report we have particularly focused on the families whose children have very high health needs - some receiving Children's Continuing Healthcare (CHC), others not - because we believe these children should set the standard by which medically supported respite can be judged. If we cannot deliver respite for these children and their families in Hertfordshire, then we cannot say we live in a County of Opportunity.

Questions

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

No. It would leave the County without a facility for overnight respite for its most medically complex children. This is evidenced by the experience of one family (in receipt of Continuing Healthcare (CHC)) who since the threatened closure of Nascot Lawn have had Richard's House Hospice and Haven House Hospice (which has limited capacity and so no room to increase care packages if a child's situation deteriorates) suggested to them as suitable alternatives, they are outside the county boundaries of Hertfordshire. Another suggestion, Aurora Meldreth Manor is a children's home and is situated in Royston, a long way from families based in Watford. It currently has no capacity to admit additional children for respite. Herts Valleys Clinical Commissioning Group (HVCCG's) first evidence paper to the Health Scrutiny Committee Topic Group of 8 September 2017 suggested that Keech Hospice in Bedfordshire could provide respite care to Herts Valleys children in receipt of CHC. HVCCG have now acknowledged in correspondence with parents that this is not a possible respite care location. Also, during the Judicial Review, The Hon Mr Justice Mostyn commented that HVCCG's suggestion that respite should take place in a hospice setting was "inappropriate".

Another child (not in receipt of CHC) has been placed out of county for respite. Their experience of booking nights is that it is the policy of the provider to book nights for all the families from the other county first and then to consider the requests made by their family - they are last in line because they are from Hertfordshire.

Please do not allow this proposal to go unchallenged, families whose children have high health needs will not have a suitable respite centre within the County to meet their needs. It is unacceptable that those with the highest needs should have the furthest to travel and should be last in the queue when it comes to family support.

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?

We are aware that since the families' Judicial Review, Hertfordshire County Council, Herts Valleys CCG and East and North Herts Clinical Commissioning Group (ENHCCG) have acknowledged their joint responsibilities for providing respite support to our children and are working together to produce a proposal to meet our needs. It is appalling that it has taken legal action to force this interaction to take place and gives us very little confidence that all parties truly have the interests of our children and families at heart. We would like you to judge any alternative joint service proposal against the following principles:

The need for a Registered Nurse

Many of the children who use Nascot Lawn currently benefit from the presence of a Registered Nurse leading the planning and delivery of their care - but **some children cannot be safely left in respite care without a Registered Nurse present**. We would like the Health Scrutiny Committee to note that the national criteria for Children's Continuing Healthcare is not a sufficient measure by which a decision could be made about whether a child required the presence of a Registered Nurse. So when Health Scrutiny Committee members consider the numbers of children who require respite overseen by the Registered Nurse they should not rely solely on the numbers of children who currently qualify for CHC. In East and North Herts CCG, a 'sister' service to the CHC team recognises and provides nursing support in respite to a wider group of children who do not qualify for CHC but still have a very high level of medical need and a number of procedures requiring a Registered Nurse, because it is recognised that this service keeps children out of emergency hospital care.

The accounts of the medical care which must be delivered by a Registered Nurse which follow belong to children who do and do not qualify for CHC:

What care does a Registered Nurse provide for your child?

Child 1 meets CHC criteria:

Seizure management & recovery, gastrostomy and jejunum feeding, specialist feed management, port-a-Cath management, recent Nissen fundoplication re-do, medication administration (regular, PRN, rescue), oxygen delivery (routine and emergency), suction (oral and nasal pharyngeal), universal precautions due to MRSA colonisation, chest physiotherapy, oxygen saturation and heart rate monitoring, nebulisers (asthmatic and antibiotic), AirVo 2 (optiflow) specialist oxygen delivery equipment, pain management.

Child 2 does not meet CHC criteria:

Seizure management and emergency medication administered (midazolam). Be able to assess and administer extra morphine for breakthrough pain in addition to slow release morphine. To be aware of risks and treatment of Haemophilia. I have been informed by school that MST slow release morphine and liquid morphine can only be given if two trained nurses are present.

Child 3 meets CHC criteria:

Seizure management (recovery), oxygen (seizures), saturation & heart rate monitoring (seizures), medication administration (regular, PRN, rescue), occasional need for NG tube due to seizures.

Child 4 meets CHC criteria:

Emergency care of Hickman Line including what to do in event of break in line, protocol to follow if eloped a temperature, recognising signs of sepsis. Trouble shooting problems on Bodyguard pump that infuses TPN. Preparing JPEG feeds and administering. Giving of medication via JPEG. Introducing a catheter into JPEG site if the tube fell out to keep stoma open until he can get to hospital and have it put back in under General Anaesthetic. Cleaning and redressing the Hickman Line site. At no time would a person who is not a qualified nurse be allowed to access Hickman line. This protocol is set out by the hospital we are under.



One month's medication for a child who does not meet CHC criteria. In a respite setting, all medication which needs administering would have to be overseen by a Registered Nurse:

The importance of 'local'

As noted above, the alternative respite solutions currently proposed to the families of children who have high medical need are either out of County, or are a children's home at the northeast apex of the County (this is not a respite setting and is full). The current suggestion of putting additional medical equipment into The Pines, Peartree or West Hyde has not yet materialised and there are reports going back to 2011 highlighting the inadequacy of West Hyde for wheelchair users of larger postural support chairs. When one family asked about the specialist cot bed their child would require being put into an alternative setting (The Pines) in order to make it suitable, the child's parent was told, "the cot required would block the room and render it unusable by anyone else". It does not seem likely that without significant building work to increase capacity and make the physical space suitable for high needs children, Hertfordshire currently has a respite care centre that is physically able to take the most disabled children and meet their respite needs.

The desire for a respite centre to be local to families who currently use Nascot Lawn is not just a preference, it is vital to the safety of their children. Children with high medical needs, even with the best care, do often need to travel to hospital as an emergency. In this case, having their families close by and therefore able to meet the ambulance as it arrives at A&E, being able to call up a child's medical notes quickly and communicate complex information crucial to their care is very important to the safety of the child. One of the Nascot families says that 7 volumes of their child's medical notes are at Watford General - vital information which could not be quickly transferred. Doctors in acute services rely on parental expertise to help guide their treatment when a child has complex needs. The location of any future nurse led respite centre should also be within close transfer distance to the child's usual hospital.

The families whose children have high medical needs all highlight how unhappy they would be about the distances they would have to travel and ask their children to endure (many of these children cannot regularly use school transport services because their medical needs are too great for a long journey 'on the bus') unless an alternative respite centre were close to home.

It is vital that any future high medical needs respite should be 'local' for an easy transfer to the child's usual hospital. As yet, there is no alternative overnight respite setting suitable and available to high medical need children within Hertfordshire County Council's overnight respite offer.

Centres under pressure

We ask the Health Scrutiny Committee to consider the pressure placed on the three remaining overnight respite centres if Nascot Lawn closes. In addition a children's home has been suggested as a suitable respite location for some children, one parent was invited to visit it, "When I got there it became apparent, very quickly that there was no way my child could go as it is undergoing major changes and building works. I asked when they thought there would be capacity and the staff member couldn't tell me. I asked for rough ball park figure, for example weeks, months or years and was told maybe 2 to 3 years." We also know that West Hyde is struggling to recruit staff to meet the current allocated hours of its users.

Given that our children will all require complex care plans, transitional arrangements and are likely to have a high hours allocation, are Health Scrutiny members confident that Hertfordshire County Council would be able to provide an equivalent level of respite care to all of the eligible children (Nascot Lawn users and other existing overnight respite users)? This is particularly pertinent because high medical needs children cannot be integrated in the same setting as behaviourally challenging children so wholly separate timetables will need to be drawn up.

This means that the families' choice of nights will be limited to the 'medical needs nights' of any given centre and it is also likely to affect a family's ability to book a number of nights in one block, allowing them to take siblings on short holidays or get essential building work done without exposing a child with high medical needs to potentially harmful dust and painting work. As one family said, "My family do not live close by and my father is not in good health. It is extremely difficult to take my child away because of the equipment he needs so if I didn't have this care I would feel isolated from my family."

We ask Scrutiny members to ensure any alternative proposals would guarantee families the ability to have short block bookings of time and ensure it will be possible to allow families some flexibility in the days of the week they book respite for.

Daycare

Currently Nascot Lawn provides a day care service for children from birth to 5 years old (or whenever they transition to school). Alternative service proposals must consider a service commitment to these children as all other County Council respite settings currently are restricted by Ofsted requirements that the children should be aged over 5 years. We are not proposing an overnight service should be available for children aged under-5 but a respite service involving a Registered Nurse where appropriate should be developed in an appropriate setting for children aged 0 - 5 years. **Councillors should ensure any plans relating to this service have clear delivery timescales as currently, in Herts Valleys area of the County, no such services exist, whereas in East and North Herts CCG's area, there are some appropriate day care settings.**

18 - 25 year olds

The 0 - 25 Service is so named because it is supposed to consider the needs of children and young people who are aged 0 - 25 years. Some of the young people aged over 18 with high medical needs who leave Nascot Lawn are placed out of County in full time residential settings. This is very expensive to Hertfordshire County Council. There is no nurse led respite service for 18 - 25 year olds in Hertfordshire. Any future service proposals should consider the overnight respite needs of young people aged between 18 - 25 years this may allow more young people with high medical needs to stay at home, this would save Hertfordshire County Council money and would save families having to make difficult 'snap' decisions based on a young person's date of birth rather than solely on their best interests.

A time line for the development of an 18 - 25 service should be agreed by Scrutiny as part of this process.

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

Transition support

We, the Nascot Lawn families, have been the ones who have borne the full brunt of HVCCGs ultra vires and destabilising decision to halt a process of transitional talks and announce the cut in funding for Nascot Lawn. Many families are now receiving as little as 25% of the agreed allocation of respite care in their care packages as a direct result of this action. Many are just about coping, some are not: We have requested that some families receive emergency support from the County Council because they are breaking down. The impact on siblings' mental health and school grades has been particularly distressing to note. Siblings, young carers, have one chance to sit their SATs, their 11+, their GCSEs and having severely reduced respite support means they have suffered as their parents have to spend more time managing their disabled child and less time supporting revision or providing a quiet place to work.

Whatever is agreed as a future plan for respite, **Nascot Lawn should remain open until all of its families have successfully transitioned to a new setting and are in receipt of their allocated care package. We believe this may take until March 2020** (as building works and other arrangements take time) and an explicit funding commitment should be sought by Health Scrutiny until this date to allow the provider to plan the service and recruit staff.

The 'lost' children

New children have not, with a couple of exceptions, been admitted to Nascot Lawn since the first decision by Herts Valleys CCG to close the centre. We are very concerned that children who would previously have been judged eligible to attend Nascot Lawn are being 'lost' in the uncertainty created by this decision because paediatricians and other professionals have nowhere to refer them to. An account drawn from an interview with one such family follows:

"Summer time was relatively uneventful with the child having her usual seizures but nothing that warranted hospital. From September, the child's seizures started getting worse and worse with admissions ranging from every two weeks to every two days until she was finally admitted to Great Ormond Street's Koala Ward High Dependency Unit over the Christmas holidays. Life was tough in between and still on-going today. The child had another admission on Sunday 4 March for seizure exacerbation. The child's health has deteriorated meaning there is no predicting her response to rescue medications; there is no continuity. The family cannot plan anything, have cancelled trips/holidays, and Christmas

was cancelled. This is all having a massive impact on the family.

The child has qualified for Children's Continuing Healthcare. The child's mother has spoken to social services about a care package but is unclear what exactly that will be and when it will commence.

The child has been referred to West Hyde by her paediatrician but it is unclear when she will be accepted. The family have been told this referral to West Hyde is because of the uncertainty around Nascot Lawn. The child's response to rescue medication varies from visit to visit. It means that only professionals that know the child should be handling her secondary care."

Families and professionals urgently need clarity on where high medical needs children can be referred to - some of their situations are urgent. Amongst other families we have spoken to, there are children with life limiting conditions whose position is deteriorating, they cannot wait for a decision to take its course. We ask Health Scrutiny to require the CCGs and County Council to lay out a referral pathway for professionals who wish to refer families to existing respite services in and out of County. We also believe a full survey of relevant professionals should take place before new services are designed and capacity considered because there is no current information on how many high medical needs children are not known to respite centres.

The details matter

Throughout this process the families have been in touch with each other as best we can, but we know that we are not reaching all of the families who use Nascot Lawn through our informal groups. From the 30-40 families we are reaching, we are hearing that as transition to new settings takes place, some families are getting different allocations from panel than others, some families receive a lot of contact from family practitioners, others have none.

We believe that fewer than 10 children since the original announcement in May / June 2017 have actually managed to have their care allocated to another respite centre. Even this is not an equivalent level of care. One child with complex health needs has had their care successfully transferred to an out of county hospice. Other children who need emergency respite are ending up spending extended time in hospital to allow their families respite - which Herts Valleys CCG assured Health Scrutiny and the parents would not happen. Some 'Shared Care' arrangements (where a trained foster carer provides families with support in their own home) have broken down, one family said, "[Shared Care] has now been pulled so my child no longer attends any setting outside of home, unless myself or a nurse is present... This means my child cannot stay [independently] overnight anywhere at the moment except Nascot Lawn". We have been explicitly encouraging families to make progress with transitioning to other respite facilities as quickly as possible - but we ask Health Scrutiny members to look at how little has been achieved in the past 9 months. Please don't be fooled that changes to respite can be made quickly.

Getting the transition right, getting the details and communication right and giving your County officers adequate resources to do this job well is vital. Children are falling through the administrative gaps - the details of what is happening to each family matters.

Conclusion

Our evidence makes it clear that not enough progress has yet been made for our families to be confident that their children are going to receive respite care that is equivalent to that currently offered by Nascot Lawn.

We ask members of Health Scrutiny Committee to consider carefully the principles we have laid out for any alternative service offer.

The people who run the NHS in Hertfordshire, and our County Councillors, speak of putting the care of our children first. But it is time for action not words. Nascot families have been pushed around for nine months, and many are at breaking point. Today we call upon the NHS in Hertfordshire and our County Councillors to commit to funding Nascot Lawn until March 2020, giving all parties enough time to develop and implement a sustainable plan for respite care in the County.

It is particularly important for those families whose children have very high medical needs. They should be first in the queue, not treated as an afterthought. As one foster carer said of her high medical needs child:

“Overnight respite is not a luxury it's a necessity. Without it this child may well have to go into residential care which would be devastating for him. He had a dreadful start in life and we are the only stability he has ever known, we want to be able to continue to care for him.”

Please don't accept any proposal that cuts our respite care, puts the most vulnerable to the back of the queue or puts us under such pressure that we are no longer able to cope. As a County, as health care providers, as responsible Councillors, you have a duty to support families like ours who give all we can to keep our children at home.

Carers in Hertfordshire

Submission to the Health Scrutiny Committee

Wednesday 21 March 2018



1	Introductions
1.1	A carer is a person who provides unpaid care and support to a relative or friend who could not manage without their help. This includes parents caring for a disabled child - often described as 'parent carers' and young carers aged 18 years or younger who support an ill or disabled relative - usually a parent or sibling.
1.2	Carers in Hertfordshire (CinH) is a countywide Charity, which was set up by carers in 1995. The organisation's aims include: <ul style="list-style-type: none"> ➤ Enabling carers to participate in service planning and decision making ➤ Providing a platform for the voice of carers
1.3	25,718 adult carers are currently registered with CinH, 4,214 of these identify as parent carers. We are also in touch with 1,436 young carers, many of whom have a disabled brother or sister.
2	Question 1: Is the Proposal in the interests of health services in Hertfordshire?
2.1	When considering the possible consequences for local health services it is important to recognise the negative impact of caring on the health and well-being of parent carers –
2.1i	The NHS Commitment to Carers 2014 acknowledges that: <i>Caring responsibilities can have an adverse impact on the physical and mental health, education and employment potential of those who care, which can result in significantly poorer health and quality of life outcomes. These in turn can affect a carer's effectiveness and lead to the admission of the cared for person to hospital or residential care.</i>
2.1ii	The Carers UK 2017 national <i>State of Caring Survey</i> (p.7) found that: <i>People looking after a disabled childwere more likely to report stress and anxiety as a result of caring than other groups. They were also more likely to say that caring had impacted upon them having a balanced diet and their ability to do exercise. People caring for a disabled child were the most likely group to report having suffered from depression because of their caring role (54%).</i>

2.1iii	The CinH 2018 <i>State of Caring Survey Hertfordshire</i> has just closed but early findings report that <i>66% of parent carers of children with higher or complex needs said they had neglected their own health; 49% had missed or not made a health appointment for their own needs and 85% said that they felt isolated.</i>
2.1iv	In terms of general well-being, we know that caring can have a negative impact on family relationships: <i>Research (Contact a Family 2004, No Time for Us) shows that parents with disabled children are more likely to experience a relationship breakdown than parents of non-disabled children.</i>
2.1v	It is also important to recognise the impact of having a disabled brother or sister: <i>Siblings of children with disabilities are at a greater risk than average of developing emotional issues, anxiety, and stress....they may face peer problems, as well as a lack of engagement in extracurricular activities and academic issues as a result of limited time and money.</i> (Psychology Today, <i>What About Me?</i> June 2014).
2.2	We know that the right support can make a positive difference for families with a disabled child and mitigate the impact of caring on their health and well-being –
2.2i	Parent carers responding to the 2018 CinH Survey said that <i>Access to Short Breaks</i> would make the most difference to their health and wellbeing. This is reflected in the Carers UK 2017 Survey which reported: <i>Respondents were asked what would make the most difference to improving their health and wellbeing. Regular breaks from caring was the most popular choice, with 42% placing access to breaks in their top three things.</i>
2.2ii	<i>Research shows short breaks are one of the most effective ways of improving the quality of life for disabled children and their families (Parliamentary Hearings on Services for Disabled Children 2006).</i>
2.2iii	It is accepted that having a regular break enables parent carers to carry on caring safely and well and to spend valuable time with other children in the family. However they need to be confident that the staff providing the break have the right knowledge, skills and attributes to understand and respond appropriately to the needs of the child or young person they care for. Carers will not otherwise use the service.
2.3	Nascot Lawn has provided an NHS funded nurse-led overnight and day-care service for children with complex health needs for many years (see the CinH submission to the Nascot Lawn Respite Centre Funding Topic Group, 6/09/2017 for the history of the service). The building is well equipped to meet the needs of children with significant physical disabilities and has the space to accommodate wheelchairs, specialist beds and hoists.

	<p>We are concerned that unless an equivalent service can be provided to those families currently using Nascot Lawn and to those other families awaiting a referral to that service, the health and well-being of the parents, siblings and of the disabled children themselves will be adversely affected. This will inevitably have an impact on the wider health and social care system in Hertfordshire both in the short and longer term. In respect of young carers/siblings in particular, we are concerned that the opportunities to '<i>Thrive</i>' and to '<i>Take Part</i>' would be significantly compromised by any reduction in the breaks provided.</p> <p>We are aware that the current group of families who have received a service from Nascot Lawn have had their allocations reduced and that there are continuing issues about capacity, space and staff training at some other services.</p>
3	<p>Question 2: Are there any alternative service proposals available to Herts Valleys Clinical Commissioning Group 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?</p>
3.1	<p>It is evident that the County Council and HVCCG had been in discussions about the future of overnight short breaks services prior to HVCCG's decision to cease funding Nascot Lawn. The briefing paper provided by the Director of Children's Services to HCC about the Nascot Lawn petition (18 July 2017) referred to a review of overnight short breaks services, carried out in 2015, which reported a reduced demand for overnight short breaks to meet social care needs but no reduction in the number of children with complex medical needs who would need to access such a service. That briefing also stated:</p> <p><i>On 22 September 2016 a report was prepared by Herts Valleys CCG (HVCCG) and the County Council which was taken through the respective programme/management boards. The paper made the following recommendation: To jointly commission a fully integrated Overnight Short Breaks service model for health and social care. The recommendation was agreed by both programme boards.</i></p> <p>Work to progress this decision was presumably put on hold when HVCCG made the decision to cease funding Nascot Lawn in December 2016/January 2017 (HVCCG Background Paper for the Nascot Lawn Topic Group, 6/09/218) although there is some disagreement between HVCCG and HCC about when that decision was communicated to County officers. We are however aware that discussions have since continued and in a letter to parents dated 7 March 2018 Mrs Kathryn Magson of HVCCG noted</p>

	<p><i>‘we had a constructive and helpful meeting with officers at the council. We have discussed and agreed to work up a Hertfordshire-wide joint commissioning approach to overnight short breaks, led by the council, with the facilities they currently commission.’</i></p> <p>It appears that the intention is to reduce the number of overnight short breaks services in Hertfordshire to three, i.e. based on the facilities that HCC currently commissions. We note the findings of the 2015 review mentioned above but our experience is that parent carers currently struggle to access overnight short breaks. Findings from the very recent CinH 2018 <i>Hertfordshire State of Caring Survey</i> report show that:</p> <ul style="list-style-type: none"> • 36% of parent carers had not had a day off in 5 years • 47% of parent carers had not had a weekend off in 5 years • 74% of parent carers had not had a week off in 5 years <p>We are also aware of a survey that was undertaken by Herts Parent Carer Involvement with families in 2016 focussing on overnight short breaks where a third of the respondents were not satisfied with the number of ‘overnights’ allocated to their child.</p> <p>We are therefore not confident that a reduction to three units will provide sufficient capacity to meet the needs of families in Hertfordshire. We are also concerned that the locations of the HCC commissioned services – The Pines in Hertford, Peartree in Welwyn Garden City and West Hyde in Rickmansworth – will require lengthy journeys for some children and families accessing, for example, after-school tea visits, mid-week stays or day-care. When we asked families in 2009 what they considered a reasonable travel time to and from a respite care unit, the overwhelming preference was for a 20 minute journey each way. This was predicated on a having five respite units in the county, the closure of Wilbury House in 2013 clearly impacted on journey times for families in North Herts and this proposed further reduction will mean that journey times may be difficult for many families.</p> <p>We recognise that short breaks include a range of provision including sitting services, buddying or befriending services, clubs, play schemes, shared care as well as overnight respite. We also recognise that some families do not need or want overnight breaks for their children and find the other services sufficient to meet their family’s needs. However the aim of the Aiming High for Disabled Children programme in 2008/09, which led to a re-organisation of overnight short breaks services was to improve short break provision specifically for:</p> <ol style="list-style-type: none"> a) Children and young people with complex health needs, and b) Children and young people with learning disability (with or without autism) and challenging behaviour
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	<p>And it is these children and their families who we believe, continue to need overnight respite. We support a further review of the current and predicted number of children/young people in these two categories with input from the Special Schools and from the Positive behaviour, Autism, Learning disability and Mental health Service (PALMS) to ensure that there is sufficient provision within county to meet the need.</p>
	<p>Question 3: How will the integration and joint responsibilities between HVCCG and the County Council be arranged and managed going forward?</p>
3.1	<p>This is primarily a matter for HVCCG and HCC. However current commitments to Co-production suggest that those families who are either currently using the services which are to be delivered via an integrated system or who are likely to be referred to them, should have the opportunity to be directly involved in the design, development and delivery processes.</p>
4	<p>Conclusion</p>
	<p>Carers in Hertfordshire is keen to work with the County Council and the two Clinical Commissioning Groups to develop a high quality overnight short breaks Hertfordshire offer for the two groups of children and families mentioned above. We are appending a check list of what parents have told us they would want and expect from such a service which we trust will be helpful.</p>

Carers in Hertfordshire



What would you expect from an overnight respite service?

1	Responses from parent carers of children with complex health needs and parent carers of children with learning disabilities (with or without autism) and challenging behaviour.
a	A consistent staff team with the appropriate skills, qualifications and training and with a 'can do' attitude that shows a willingness to take on further training.
b	A structured introduction to the service with the opportunity for tea visits and weekend visits prior to starting day care and/or overnight stays.
c	Day care available for children aged 2 years and over where this is appropriate to meet the child's and the family's needs.
d	Overnight stays available for children aged 5 – 19 years where this is appropriate to meet the child's and the family's needs.
e	Systems in place to enable families to book daycare and overnight stays up to 6 months in advance.
f	Systems in place to allow families to block book part of their allocation of overnight stays up to a seven day period.
g	Systems in place to allow an emergency stay for a child in an overnight service that they are already familiar with.
h	Travel times to and from the family home/the child's school and the respite care service to be no more than 20 minutes.

i	Systems that ensure that children and young people with complex medical needs and children and young people with challenging behaviours are not sharing the same space/service at the same time.
j	A sensory room for time-out/relaxation
k	Homely, comfortable accommodation with a large lounge and spacious dining room for children and young people to eat together in.
l	Overnight stays can give disabled children and young people the opportunity to meet up with 'friends' from their school in much the same way as other children and young people enjoy 'sleepovers' with friends. It would be good if there were systems in place to offer particular dates to those from the same school or playscheme.
2	Responses specific to parent carers of children with complex health needs
a	Nurse supervision on site
b	Fully accessible, spacious building with appropriate toileting and bathing facilities
c	Up to 4/5 individual bedrooms each with its own wet room and a communal bathroom.
d	Appropriately equipped bedrooms with ceiling tracking and sufficient space for staff support either side of the bed
e	Plenty of electric points for equipment
f	Accessible outdoor paved and garden area
3	Responses specific to parent carers of children with LD/ASC and challenging behaviour

a	A safe, well fenced outdoor space with climbing, trampoline and other play equipment
b	An autism-friendly environment inside the unit
c	Quiet spaces for time out
d	Sessions with drumming and music

This is not an exhaustive list but simply the result of some 'brainstorming' with parent carers.

HERTFORDSHIRE COUNTY COUNCIL

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

**BACKGROUND PAPER FROM HEALTHWATCH HERTFORDSHIRE 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: Geoff Brown, Chief Executive, Healthwatch Hertfordshire
Telephone number: (01707 275978)

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

- 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?

In the view of Healthwatch Hertfordshire (HwH), the decision to remove the funding from Nascot Lawn was not in the interest of health services in Hertfordshire

This is our view for the following reasons:

- The service at Nascot Lawn demonstrated health and social care partners focusing on the needs of children and families. It was seen as providing very effective partnership and coordinated working.
- The decision was predominantly made in relation to *financial* pressures and the legal point that respite care is a local authority responsibility. The Finance committee of Herts Valleys Clinical Commissioning Group (HVCCG) was very clear that these factors determined their decision rather than whether the *service* was valuable or necessary.
- We do not believe that there was sufficient exploration of the needs of the users and how these would be met at other locations. Involvement of families has predominantly related to the removal of funding, rather than using their expertise to help respite care services to change and develop. As acknowledged the approach did lead to huge worry and stress for the families involved.

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 children and young people with complex health and social care needs requiring respite care in Hertfordshire?

At this stage our knowledge of potential proposals is limited but we understand that there is a very welcome approach between the council and both the clinical commissioning groups (CCG's) to work together to develop a model of respite care with funding from all three organisations to make this happen.

HwH's view is that the model must address opportunities for learning from good practice at Nascot Lawn and other respite facilities and look to build on these through

- Developing opportunities for child centred collaborative working
- Understanding the challenges of location and premises for families
- Involvement of families using all respite services and being clear about impacts of service changes across all locations and for all families receiving a service
- Transparency about funding and provision, especially if the total amount of funding for respite care is reduced.

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

We look forward to answers from the council and the CCGs on this key matter.

HERTFORDSHIRE COUNTY COUNCIL**SPECIAL HEALTH SCRUTINY COMMITTEE
WEDNESDAY, 21 MARCH 2018 AT 10.00AM****BACKGROUND PAPER FROM HERTFORDSHIRE COMMUNITY NHS TRUST 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/s: Clive Appleby, Company Secretary
Marion Dunstone, Director of Operations
Katy Healy, General Manager, Children & Young People's Services

Authors' telephone number: 01707 388000

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

- 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 Trust considers that the question of whether the Herts Valleys Clinical Commissioning Group's (HVCCG) decision is ultimately in the interests of health services in Hertfordshire is essentially a commissioning issue and the Trust is neutral in respect of this question, provided that:

- (1) Alternative models of care to the children and parents currently using Nascot Lawn (and in the future) and which provide a safe and sustainable service and which comply with statutory responsibilities can be agreed and implemented or
- (2) The services are retained at Nascot Lawn in current form or as re-modelled.

What has and continues to be detrimental to "the interests of health services in Hertfordshire" is the protracted and current uncertainty around the future of Nascot Lawn and the services provided. However, the Trust understands that the CCGs and the Council may now be close to agreement on a way forward.

Contractually, and in line with the judgement handed down by Mr Justice Mostyn on 21st February, the current position for the Trust is to continue to provide the service at Nascot Lawn as though HVCCG's decision in November 2017 to withdraw funding had never been made. Should the CCG make a further decision to withdraw their funding, the Trust is contractually entitled to

six months' notice, but would consider earlier termination if agreement is in place which is to the satisfaction of all parties.

Two notices of withdrawal of funding and their subsequent rescission in 2017 and 2018 have made it very difficult for the Trust to retain and recruit staff at Nascot Lawn in such an uncertain environment and it has thereby been difficult to staff the service sustainably to the full commissioned levels". (The precarious staffing position has been repeatedly raised with all parties throughout the judicial review processes).

The staffing position and need to maintain a safe service has invariably impacted upon the level of service which the Trust has been able to provide.

The Trust would however like to acknowledge the recognition of the difficulties by all parties, including the parents. The Trust also publicly expresses our appreciation for the continued commitment and the care given by the staff at Nascot Lawn.

The Trust has employed its best efforts and wide-ranging initiatives to recruit and retain staff and continues to do so and, HVCCG has also requested that the Trust submit a plan by 15th March 2018 detailing "how delivery will return to commissioned levels".

The current position is that the Trust is reasonably confident that a safe, sustainable service can be maintained at Nascot Lawn until the middle of May 2018, but the position is currently uncertain beyond that point, despite the Trust continuing with best endeavours.

Members of the Scrutiny Committee are requested to note that in the event that the Trust has no choice but to give notice to the Clinical Commissioning Groups (CCG's) that it has to close Nascot Lawn on the grounds of being unable to provide a safe service and that there is no time for consultation because of a risk to safety or welfare of patients or staff, it is the Trust's understanding that s.23 of the Local Authority (Public Health & Wellbeing Boards and Health Scrutiny Regulations) 2013 will have further relevance.

Such closure would constitute "substantial variation" under the Regulations. However, formal consultation with the Local Authority (as currently being undertaken by virtue of the current scrutiny) would not be required, but the CCG as commissioner will need to notify the Council immediately of the decision taken and the reason why no consultation has taken place.

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?*

The Trust considers that this is an issue for HVCCG and the council (and to a lesser extent East & North Herts CCG as “minority funder”) to agree and resolve. The Trust has to date, and will continue to be a party to negotiations and will be responsive and supportive to any agreed way forward between the CCGs and the Council.

The Trust also recognises a duty of care and will continue to support the children and their families as commissioned and as far as reasonably possible and practicable in the context of any agreed service model, setting or transitional arrangements.

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

Please see 2.1.2 above.

Item 3 Appendix J

The Consultation Institute Newsletter

CCG loses judicial review for failure to consult Overview & Scrutiny February 22, 2018

A High Court judgment* this week against the NHS in Hertfordshire is a timely reminder to all CCGs in England that a failure to consult Overview & Scrutiny Committees have serious consequences.

The full story is described in a press release from the Claimants' lawyers and concerns the withdrawal of funding for a respite centre for disabled children in Watford, called Nascot Lawn. The case is probably the first time that part of the NHS has tried to justify by-passing a local authority and sought to defend a failure to observe the 2013 Regulations on Health Scrutiny.

The rules are well-established and state that when the NHS is considering a substantial development or 'substantial variation' to a service, it must formally notify the Council and 'take such steps as are reasonably practicable' to reach agreement. If they fail, the Council can refer the matter to the Secretary of State on one of three grounds: – a failure to consult, inadequate consultation or a 'catch-all' formula that the proposals 'would not be in the interests of the health service in the area'.

In this particular case, lawyers argued that the cuts to this service were unlawful for several other reasons.

It alleged a failure to consult and a breach of the Public Sector Equality duty, and on both counts, the Judge found in favour of the CCG. This will give NHS Managers a degree of comfort, but a note of caution is in order. In suggesting that the CCG had sufficiently 'engaged' on the subject, the Court did not use the test of S.14Z2(2) which is the duty to involve (whether by being consulted or provided with information etc) but merely found that there had been 'public engagement' as would satisfy the terms of a consent order agreed by the defendant when a Court previously quashed the decision to withdraw funding.

Had the CCG acted lawfully and consulted the Council, who knows what consultation it would have requested?

Having found that the CCG were in the wrong in not consulting the Council, the Judge could – and maybe should have dismissed all the other claims without being considered. It may be helpful to see his conclusions, but without knowing what consultation would have been requested, it is impossible to be sure that the engagement undertaken on this occasion would have been sufficient.

To many readers, this all sounds like legal nit-picking. But the situation is: –

- Here is a case where the CCG has clearly had poor advice, and where the need to have a dialogue with the Scrutiny function of the Council seems cut and dried.
- The case should never have gone to Court and makes the NHS look heartless and unresponsive with probable erosion of trust with the local community.
- The CCG clearly has an enormous financial challenge and needs to engage with multiple stakeholders in order to mitigate the impact of potential closure.

* R (ex parte K, T & M) v Hertfordshire Valleys CCG [2018] EWHC 267

NASCOT LAWN

**To examine the decision by Herts Valley's Clinical
Commissioning Group to withdraw funding from
Nascot Lawn respite provision**

Report of the Topic Group

6 SEPTEMBER 2017

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REPORT OF THE NASCOT LAWN RESPITE CENTRE TOPIC GROUP

1.0 Purpose of Report

- 1.1 This is the report of the Nascot Lawn Respite Centre Topic Group. The Group examined the partnership working, assessments carried out and current and future funding arrangements for respite care of Children & Young People (CYP) with complex health and social care needs and their carers.
- 1.2 The Topic Group addressed the following questions:
- 1a. What are the responsibilities of both Hertfordshire County Council (HCC) and the NHS to provide respite care for Children and Young People (CYP) with complex care needs and their carers?
 - 1b. How will the needs of these CYP be met from Oct 2017 and in the future?
 - 2a To what extent were the needs of the CYP and their carers considered in reaching the decision to cease funding?
 - 2b. To what extent was the impact of the decision (to cease funding Nascot Lawn) on the health and social care system considered?
 - 2c. To what extent was the evidence obtained from the outcomes of the impact assessments considered in the decision making process?
 - 2d To what extent were the consequences (including costs) to the health and social care system considered?
 - 3 What lessons have been learned to ensure more effective partnership working in the future?
- 1.3 The scoping document can be seen at **Appendix 1**. Associated papers issued to Members can be found at: [LINK](#)

2.0 Recommendations

Each of these recommendations should be read in conjunction with the paragraphs referenced in brackets. The responses should reflect the paragraphs as itemised.

- 2.1 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. (3.10, 3.11, 3.16, 4.1, 4.3, 4.5, 4.6)
- 2.2 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. (3.3, 3.18, 3.19, 3.20, 4.1, 4.3, 4.4, 4.5, 4.6)

- 2.3 That services for our most vulnerable residents are commissioned, resourced and provided utilising a sound and authoritative evidence base. (3.4, 3.7, 3.8, 3.9, 4.1, 4.2, 4.4, 4.6)
- 2.4 Using this experience (as outlined in recommendations 2.1, 2.2, 2.3) to inform future working and decision making. (3.11, 3.17, 3.22, 3.24, 3.25, 3.27, 4.1, 4.2, 4.3, 4.5, 4.6)

3.0 Evidence

- 3.1 The Nascot Lawn Respite Centre in Hertfordshire provides care services to children and young people (CYP) with complex health and social care needs. There are 52 CYP who access the services provided at Nascot Lawn. The total annual running cost of £660k which is proportionately funded by HVCCG (90%) and East and North Clinical Commissioning Group (ENHCCG) (10%). The percentage split has always been based on historical usage. The current levels of usage have changed during that time.
- 3.2 In the morning session, members heard from Healthwatch Hertfordshire (HWH), Nascot lawn parent and carer representatives, Carers in Herts (CiH), Herts Parent Carer Involvement (HPCI) and Hertfordshire Community Trust (HCT).
- 3.3 It was made clear that communications with and from HVCCG have always been of a high standard; however, on this occasion pre-decision engagement with all partners had not taken place. In response to the decision to withdraw funds, HWH had seen an increase in the comments and feedback they received from parents and carers.
- 3.4 HWH, CiH, HPCI and Nascot Lawn parents and carers all stated that the impact assessment and Equality Impact Assessment (EqIA) concerning the decision on CYP and their carers were insufficient to inform the decision made by the HVCCG. The initial assessment of the decision taken did not include the financial impact to the wider health and care system, such as the possibility of increased A&E attendance, additional pressure on social care (adult and children's) and referrals to mental health services. The original EqIAs conducted by HVCCG did not assess the impact on the wellbeing of parents, carers and siblings. Members were informed that the EqIAs are iterative yet there was little evidence that the wider impact on parents and siblings now feature in the assessments.
- 3.5 Prior to the decision being made, engagement and awareness raising regarding the withdrawal of funding from Nascot Lawn by HVCCG with partners was not undertaken. This approach was different from HVCCG's normally open approach with partners about the challenges it

faces and the changes that are being considered. Following this it was reinforced that lessons needed to be learned from this experience, to involve partners as early on as possible in the pre-decision process, particularly where changes are sensitive and have a high impact.

- 3.6 It was suggested by HWH that a reason for the limited consultation was due to the sensitivity, complexity and impact on families as well as the belief by HVCCG that the care provided was solely social care. This stance would mean that expectation for consultation would be with HCC. However, regardless of the nature of the care provided, good practice suggests that early and on-going engagement with users and residents is advisable and necessary.
- 3.7 HWH and HCT provided evidence that Nascot Lawn has a range of specialist health professionals trained to work with CYP. Members heard that Nascot Lawn was commissioned as a nurse led service. This is the model that has continued to be commissioned.
- 3.8 Nascot Lawn parent and carer representatives emphasised that the high level of skilled care provided by the staff is necessary because of the significant range of complex needs that CYP have during overnight or day time stays. This is a view is also shared by Carers in Herts, i.e. that it is not a simple matter of training health assistants to provide this care. Parents know their children and their needs in great depth. HCT maintained that nursing staff were needed to ensure that the different needs of CYP attending Nascot Lawn at any one time were covered. Professionals are trained to provide care for all needs and this complements the knowledge and understanding provided by the parents. Together this helps to prevent hospital admissions.
- 3.9 Parents also highlighted their concern over the impact on immediate staffing issues at Nascot Lawn. The removal of funding and consequent closure of the service meant that members of staff are seeking alternative employment and some have already planned to leave from October 2017 (the original date for HVCCG funding withdrawal). Parents proposed that to stabilise the workforce as well as providing an adequate transition timeframe that consideration should be given to maintain funding to keep the centre open until March 2019.
- 3.10 When parent and carer representatives were asked how much contact they had with commissioners it was stated that three meetings were arranged shortly after the letter notifying parents was received (15 June 2017). However, the meetings were held the week immediately following the letter and none were held at Nascot Lawn. There had been no contact with parents before the June letter.
- 3.11 Questions were raised regarding Continuing Healthcare (CHC) and how many children are currently in receipt of this. Further clarification was sought as to the number known to require CHC but not yet in receipt of it or where it was a possible requirement but an assessment

had not yet taken place. An example was given of one child, known to need CHS, who had not yet been assessed; however, there are a number of CYP on the border line to qualify for CHC, who have not been assessed; therefore the actual numbers of CHC are not settled. Members were informed that CHC assessments are not straightforward and whilst there is a national framework there are different interpretations both nationally and within Hertfordshire. Members were also informed that the national framework required consideration of the severity of the condition(s) that a child experienced and that this could vary greatly during any given period

- 3.12 Additional questions were raised about the Keech Hospice provision and how it supported parents when CYP were unable to attend Nascot Lawn. It was confirmed that there are 4 requirements to access this service which provides only three to five beds to serve the 300 families on its books:-

1. End of life (palliative care)
2. Symptom management stay,
3. Step down from hospital stay
4. Last minute respite stay

It was also established that this is not a service that can be booked in advance. Keech Hospice is not designed to support large numbers of CYP with complex care needs. It serves the populations of Herts, Beds and Milton Keynes. Its primary purpose is to serve the needs of children with life-limiting and terminal illnesses within a hospice setting.

- 3.13 In the afternoon members heard from HVCCG, Children's Services and ENHCCG. HVCCG stated that the organisation is in financial turnaround and therefore all funding is being carefully reviewed to make £45m savings by the end of this financial year. One of the areas identified is the CCG's obligation to provide discretionary funding as it has been advised by its auditors that the focus should be on statutory services only. Nascot Lawn is seen by the CCG to fall into the discretionary category.

- 3.14 HVCCG accepts the statutory responsibility in respect of public engagement and has a strong record for the quality of its engagement. However, the CCG has been advised that it did not need consult with regard to services at Nascot Lawn as the provision of respite care is social care and therefore the responsibility of the county council. Healthcare treatment within these settings remains the responsibility of the CCGs. Therefore if any CYP from the west of the county, while at a respite centre, requires a medical intervention then HVCCG continues to be obliged to provide it.

- 3.15 HVCCG affirmed that if the savings are not achieved, the CCG will be instructed by NHS England to make the savings and there will be no choice as to where those savings are made.

- 3.16 The timeline provided by the CCG in the written evidence stated that conversations were held between HVCCG and the Council in February. However it was not clear what specifics had been discussed during these discussions. HVCCG gave its contractual six months' notice to HCT in April 2017 that it would cease funding in October 2017. When asked why additional information had not been known or shared earlier than April with HCC and HCT, and prior to June for parents and carers, HVCCG stated that the pre-election period (purdah) had restricted such conversations. However, the instruction around how work is carried out during purdah is 'business as usual' and while contact with elected members is limited, contact between officers in partner organisations continues. Now that the deadline for the withdrawal of funding is known, Children's Services confirmed that time is a significant challenge to ensuring a continued service from October 2017.
- 3.17 HVCCG confirmed that 20 assessments had been completed most of which were joint with Children's Services. A further seven appointments have been made and two are still to be booked. All assessments should be completed by 21 September 2017.
- 3.18 When members asked HVCCG about its duty to consult, the commissioner maintained that it does not have to consult on services that the CCG has no statutory duty to provide. However, on-going engagement with users and residents is regarded as good practice. Nevertheless, HVCCG made clear that it does have a responsibility to provide respite care to any CYP who is in receipt of CHC.
- 3.19 Children's Services are currently planning for the transition of CYP to the three other respite services commissioned by the county council. It was specified by the CCG that other respite services already have some of the required equipment and any specialist equipment will be transferred as part of the transition. This has been communicated to all parents.
- 3.20 Members queried the medical provision during and after transition. The CCG indicated that part of this process included training so that individuals who are not qualified nurses can provide care, such as catheters although no timeframe was provided for this training to be completed.
- 3.21 Members queried the conclusions of the Investment Committee at HVCCG as to the level of savings that would be achieved by removing nurses from this setting. The CCG clarified that until all assessments were completed the full level of savings will not be known.
- 3.22 Since informing Children's Services of the decision to withdraw funding in April 2017 HVCCG has been speaking to the service on a fortnightly basis. The CCG Chief Executive has spoken to the HCC Chief Executive about a HCC funding proposition beyond October 2017. This

proposal is an agreement between HCC, HVCCG & ENHCCG to jointly fund Nascot Lawn for a further 3 months. This is to allow time for the joint assessments and support packages to be put in place for the CYP currently receiving a service from Nascot Lawn.

- 3.23 Members were informed that the main difference between the assessments conducted by Children's Services and those carried out by HVCCG are that Children's Services take into account the needs of carers, parents and siblings.
- 3.24 Members heard that Children's Services is looking at multidisciplinary models. One of the respite centres in the east of the county provides a high level of care support. The service considers the possibility that the need for nursing oversight may well continue. To clarify this Children's Services needs to review provision of overnight support but welcomed the assurance from health colleagues that care workers will be upskilled to the required level.
- 3.25 The topic group heard from ENHCCG. Here, one approach that is being considered is the use of personal health budgets. This would provide parents with greater control over the care provided for short breaks being delivered, as specified in **Appendix 3**.
- 3.26 ENHCCG stated that it was not planning to withdraw the funding for the service, but as a minority partner could not keep the centre open. It is committed to using the funding designated for CYP currently using Nascot Lawn to support them in the future by putting in place packages to support any changing needs after closure of the service.
- 3.27 When members questioned ENHCCG as to why it does not commission this service to the level of HVCCG, it was confirmed that HVCCG have commissioned services from HCT whilst ENHCCG commissions the majority of its services from the East and North Herts Trust (ENHT) to provide integrated acute and community care even though the Trust is not a standard provider of community care.

4.0 Conclusions

- 4.1 Members expressed grave concern that HVCCG had decided to withdraw funding from Nascot Lawn without fully understanding or taking into account the impact of the decision on children, parents and the wider system (health and social care). Furthermore, it had not undertaken analysis to assess the possible consequential impact on other services it commissions such as mental health. Members recognise the financial pressures faced by HVCCG. They are surprised that the CCG has not calculated the actual savings and were unable to provide a baseline figure as the costs of transition, potential Continuing Healthcare (CHC) and the funding and training of unskilled carers are still to be established. (2.1, 2.2, 2.3, 2.4)

- 4.2 A significant number of questions were raised about the robustness of the assessments as they did not capture all the information required. Members did not believe that sufficient weight had been given to areas such as the wellbeing of families. It is inconsistent with the approaches for greater collaborative working between health and social care. To be effective going forward members proposed that all partners should consider a review of how joint assessments are conducted and what information should be recorded. (2.3, 2.4)
- 4.3 To further collaborative working, the significant gap in the quality of the communication plans ahead of decision making and implementation has to be addressed as a matter of urgency. The written evidence provided as well as that heard on the day led members to the conclusion that information sharing and discussions had taken place at too late a stage to provide sufficient advance warning to all parties involved to identify alternative arrangements. This was exacerbated by the confirmation of funding withdrawal taking place in year after organisational budgets have been confirmed for the financial year and funds have already been committed. (2.1, 2.2, 2.4)
- 4.4 Members queried the evidence base for decision making and challenged HVCCG on what financial information it had included other than the need to make a saving this financial year. Members were troubled to learn that financial calculation would take place after the assessments of CYP at Nascot Lawn had been completed. Members expressed their frustration on hearing this as it is contrary to the usual financial management approach. Moreover, the decision was taken without a sound financial evidence base and any potential savings may not materialise once the costs for equipment, transition and upskilling staff etc. has been completed. This may require HCC to take on significant extra unbudgeted costs and Children's Services are not able to calculate the financial impact at this point. (2.2, 2.3)
- 4.5 Members were pleased that the majority of assessments had been completed. However, this is against a background that if earlier discussion had taken place with Children's Services, a more organised joint effort in arranging these assessments would have occurred and conceivably the assessments would have been completed much sooner. The Topic Group was anxious and welcomes the completion of these assessments as soon as possible. Members were assured by HVCCG that the last assessments will be done by 21 September 2017. The HSC Implementation of Scrutiny Sub Committee (ISSC) would be apprised of the work undertaken. (2.1, 2.2, 2.4)
- 4.6 Members were disturbed by the insecurity of staffing at Nascot Lawn in the immediate future and by the longer term implications to the care provision for the CYP affected by this decision. Members were made aware that staff are seeking alternate employment from October 2017. This jeopardises the stability of the service at Nascot Lawn and any transitional arrangements. As a result, members were not assured that

the appropriate frameworks were in place to retain staff and to complete the upskilling of staff when funding has been removed.

- 4.7 The Topic Group was interested to hear of the joint commissioning between ENHCCG and Children's Services. It has the potential to provide a viable way forward for health and social care services. For this to be most effective members believed a joint review of these arrangements would prevent decisions being made in this way again, provide greater security and advanced warning as well as establish greatly improved communication. (2.1, 2.2, 2.3, 2.4)

5.0 Members and Witnesses

Members of the Topic Group

Barbara Gibson
 Dave Hewitt
 David Lambert
 Eric Buckmaster (Chairman)
 Mark Watkin
 Nigel Bell
 Susan Brown

Other Members in Attendance

Colette Wyatt-Lowe
 Fiona Hill
 Seamus Quilty
 Terry Hone
 Teresa Heritage

Witnesses

Andy Lawrence	Specialist Services Management, Children's Services
Angela Kitching	Nascot Lawn Parent
Angela Murphy	Nascot Lawn Parent
Beverley Flowers	Chief Executive ENHCCG
Carol Kelsey	Herts Parent Carer Involvement Coordinator
David Evans	Programme Director HVCCG
Geoff Brown	Chief Executive Healthwatch Herts
Jenny Coles	Director of Children's Services
Kate Barker	ENHCCG Assistant Director for Maternity, Children and Young People's Commissioning
Kathryn Magson	Chief Executive HVCCG
Leise Cooper	Herts Parent Carer Involvement Chair
Maria Kiely	Parent Carer Support and Development

	Worker Carers in Herts
Marion Dunstone	HCT Director of Operations
Nicolas Small	Chair HVCCG
Nuray Ercan	Operational Manager Healthwatch Herts
Phil Bradley	HCT Director of Finance
Roma Mills	Policy and Engagement Manager Carers in Herts
Su Johnston	HCT

Officers

Michelle Diprose
Charles Lambert

Democratic Services Officer
Scrutiny Officer

APPENDIX 1

NASCOT LAWN RESPITE CENTRE TOPIC GROUP

OBJECTIVES:

To examine

- 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)

BACKGROUND:

Nascot Lawn has been funded by the NHS for many years and the current arrangements pre-date the creation of the clinical commissioning groups (CCGs). The majority (90%) of the funding is provided by Herts Valleys CCG. East & North Herts CCG (ENHCCG) provide the remainder. HVCCG has been placed in formal 'financial turnaround' and it needs to identify approximately £45m worth of savings this financial year. HVCCG's funding of Nascot Lawn will cease on 31Oct 2017 as part of its identified savings programme (the CCG consider this spending to be discretionary).

QUESTIONS TO BE ADDRESSED:

- 1a. What are the responsibilities of both Hertfordshire County Council (HCC) and the NHS to provide respite care for children and young people (CYP) with complex care needs and their carers?
- 1b. How will the needs of these CYP be met from Oct 2017 and in the future?
- 2a. To what extent were the needs of the CYP and their carers considered in reaching the decision to cease funding?
- 2b. To what extent was the impact of the decision (to cease funding Nascot Lawn) on the health and social care system considered?
- 2c. To what extent was the evidence obtained from the outcomes of the impact assessments considered in the decision making process?
- 2d. To what extent were the consequences (including costs) to the health and social care system considered?
1. What lessons have been learned to ensure more effective partnership working in the future?

OUTCOMES:

- That the needs of CYP with complex needs and their carers continues to be supported by HCC and the NHS in accordance with statutory requirements, Care Act (parents/carers) and duty of care.
- The responsibilities of both HCC and the NHS are clarified
- Lessons are learned about effective partner and stakeholder engagement and the undertaking of robust impact assessment

CONSTRAINTS:

- The scrutiny will only address respite provision currently at Nascot Lawn

RISK & MITIGATION AFFECTING THIS SCRUTINY: i.e. how confident are members that the department/organisation has identified risks, impact to services, the budget proposals and has mitigation in place.

RISK/S:

MITIGATION: *e.g. what mitigation does the department/organisation have in place if a partner pulls out?*

WITNESSES i.e. individuals	EVIDENCE i.e. organisations e.g. HCS
Kathryn Magson	Council for Disabled Children
Marion Ingram	HVCCG turnaround director
David Law	Healthwatch Herts
Nicolas Small	ENHCCG
Jenny Coles	Carers in Herts
	HCT

	Nascot Lawn Action Group rep
	Hertfordshire Parent Carers Involvement (HPCI)

METHOD: 1 day Topic Group **DATE:** 6 September 2017

SITE VISIT: Nascot Lawn **DATES:** 22 August 2017

MEMBERSHIP: Eric Buckmaster (Chairman); Susan Brown; Nigel Bell; Barbara Gibson; Mark Watkin; Dave Hewitt; David Lambert

SUPPORT:

Scrutiny Officer: Charles Lambert

Lead Officer/s: Natalie Rotherham

Democratic Services Officer: Michelle Diprose

HCC Priorities for Action: how this item helps deliver the Priorities *delete as appropriate*

1. Opportunity To Thrive ✓
2. Opportunity To Prosper ✓
3. Opportunity To Be Healthy And Safe ✓
4. Opportunity To Take Part ✓

CfPS ACCOUNTABILITY OBJECTIVES: *delete as appropriate*

1. Transparent – opening up data, information and governance ✓
2. Inclusive – listening, understanding and changing ✓
3. Accountable – demonstrating credibility ✓

Appendix 2

Glossary

HCC	Hertfordshire County Council
HCS	Health & Community Services is a HCC department. HCS is responsible for the council's older people, physical disability, learning disability and mental health services.
HCT	Herts Community Trust
HVCCG	Herts Valleys Clinical Commissioning Group
OSC	Overview & Scrutiny Committee (a HCC scrutiny committee)
ENHCCG	East & North Herts Clinical Commissioning Group
EqlA	Equality Impact Assessment
ENHT	East and North Herts Trust
CHC	Continuing Healthcare
CYP	Children and Young People

Appendix 3 Possible alternate care options

Care in another setting with CYP and family

1. Under 5s who might go to their local Children's Centre with a parent for a stay and play or coffee morning session. The Children's Centre would also support parents with issues such as benefit advice, housing advice and support with any siblings.

Care in another setting with CYP but no family present.

2. Children aged two, three or four will be entitled to receive 15 hours per week of free early education and some children will be entitled to access an additional 15 hours of free childcare if they meet a national eligibility criteria. Free early education and childcare is available at approximately 1000 settings, consisting of schools, preschools, day nurseries and childminders. These providers are inclusive and would also be able to access appropriate training delivered by health professionals to ensure all children's individual needs can be met.

Short breaks offer disabled children and young people the chance to spend time out with others socialising and doing fun activities, giving their families a break and providing them with the confidence their child is well supported by a trained worker. They range from play and leisure activities provided through community groups and leisure providers to overnight stays.

Some young people, with learning disabilities and complex health needs, may be eligible for a **residential short break** especially if they have needs throughout the night. Children and young people can stay overnight during the week and/or at weekends depending on their assessed needs. A residential short break may be provided in a community residential setting or the home of an approved carer.

A residential short break is a specialist service, available only once a social work assessment of need has been done. This assessment would be arranged via a referral through the County Council's 0-25 Together Service.

There are three across the county:

- West Hyde – provided by Action for Children
- The Pines (Hertford) - provided by Action for Children
- Peartree - provided by Jubilee House Care Trust

Shared care is family-based care that provides short breaks to Disabled Children and Young People from 4-18 years of age. The scheme specifically recruits carers to support children who have

additional needs. Our carers are from a wide variety of ethnic, religious and cultural backgrounds. They can be individuals or couples, male or female, with or without children and may have pets, some carers work others may be retired. All carers will have completed training before they are approved, will have a DBS (Disclosure and Barring Service check) and will continue to have regular supervision and training updates from members of the shared care team. When a service is offered each carer is closely matched to fit the needs of the child.

The breaks can be provided:

- in the child's home as a sitting service to enable parents to go out/ have some free time, or
- as day care in the carers home, or
- out in the community to access activities.

Care at home with professionals (i.e. not day to day care from parents)

3. Parents can access care at home by paid staff where this is agreed as an assessed need by 0-25 Together Service following a child and family assessment. They can also access a Direct Payment so that they can arrange the support at a time that suits them. Direct Payments are for families to buy services or employ a paid worker to support their child or young person.

The Queen -on the application of- Gurpreet Kaur Juttla (a child, by her litigation friend Satnam Kaur), Sienna Scott (a child, by her mother and litigation friend Emma Turner), Liam Murphy (a child, by his mother and litigation friend Angelina Murphy) v Hertfordshire Valleys Clinical Commissioning Group v Hertfordshire County Council, Hertfordshire Community NHS Trust, East and North Hertfordshire Clinical Commissioning Group

Case No: CO/5906/2017

High Court of Justice Queen's Bench Division Administrative Court

21 February 2018

[2018] EWHC 267 (Admin)

2018 WL 01035858

Before: Mr Justice Mostyn

Date: 21/02/2018

Hearing dates: 6-7 February 2018

Representation

Jenni Richards QC & Sian Davies (instructed by Irwin Mitchell) for the Claimants.
Eleanor Grey QC & Ms Nicola Greaney (instructed by Capsticks) for the Defendant.
Clive Sheldon QC & Hannah Slarks (instructed by County Solicitor) for the 1st Interested Party.
The 2nd & 3rd Interested Parties did not attend and were not represented.

Approved Judgment

Mr Justice Mostyn:

1 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 defendant 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. If no agreement is reached HCC can refer the controversy to the Secretary of State who has far-reaching powers to make a merits-based decision on the issue. 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.

2 The defendant is Hertfordshire Valleys Clinical Commissioning Group. Clinical
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commissioning groups were created by the [Health and Social Care Act 2012](#) , and replaced Primary Care Trusts on 1 April 2013. They are clinically-led statutory NHS bodies responsible for the planning and commissioning of health care services for its local area. There are now 207 clinical commissioning groups in England. The defendant is one of the bigger clinical commissioning groups. It is in financial trouble. In the first two years of its existence (2013-14, and 2014-15) it met its financial targets. In the third year (2015-16) it was only able to do so by taking a number of special non-recurrent measures and by exiting the year with an underlying deficit. In the summer of 2016, that is to say about a third of the way through that financial year, it was obvious that the position of the defendant had deteriorated. It was spending far more in that year than it had in the previous year. In the year 2014-15 the defendant spent £668 million. In the year 2015-16 it spent £711 million. And in the year after that, 2016-17, it spent £761 million.

3 In the summer of 2016 the defendant disclosed the financial problems to NHS England and was placed in formal "financial turnaround". This unwelcome status required certain measures to be taken. A "turnaround director" was appointed to examine the defendant's expenditure to help achieve a balanced position for the financial year. Further, the defendant also established an Investment Committee.

4 For the year 2017-18 the defendant has been allocated an increase of £20 million or 2.73% on the previous year's allocation. Plainly, this will not come close to meeting the historic rate of increase of expenditure. Taking into account the expected growth in demand for services, inflationary pressures and changes to things that the defendant is required to commission, its financial plan has concluded that there is a gap between allocated funding and expected expenditure of £34 million in the current financial year, 2017- 18, and a further shortfall on top of that of £23 million in the following year. Therefore, savings have to be made of around £47 million. Therefore, painful though it will be, some services in the local area will have to be cut.

5 Nascot Lawn has been providing a respite care service for children with complex health needs and their parents since at least 1986. The defendant inherited Nascot Lawn from its predecessor primary care trust. Around 35 (the figure varies) children use the overnight service. Three of them are the claimants in these proceedings. These children suffer from very severe physical and mental impairments; they are truly some of the most disadvantaged individuals with whom the defendant has to deal. There are around 20 staff. Half of that number are nurses; the other half are trained health care support workers. The children stay for short breaks; four nights a month is not unusual. Obviously, the primary benefit is respite for the parents who otherwise have round-the-clock care of these severely impaired children. But plainly when they are at Nascot Lawn the children are receiving health services.

6 The defendant is the principal funder of Nascot Lawn. Two other neighbouring clinical commissioning groups also contribute funds but in much smaller amounts. The £600,000 per annum provided by the defendant represents the great majority of Nascot Lawn's funding. Without it closure is inevitable. It is common ground that closure would be very distressing not only to the children but particularly to their parents.

7 The defendant has decided that part of the £47 million saving it must make will come

from the withdrawal of funding from Nascot Lawn. The members of the Investment Committee who made that decision on 16 November 2017 were well aware of how upsetting the impact of the decision would be; the statements from the parents were described by one member as "heart-rending, unsettling and humbling", by another as "heart-rending". A principal justification for the decision that had to be made was that arrangements could be made for respite care to be continued elsewhere in the county for these children. Nascot Lawn is one of four such facilities in Hertfordshire. The other three are all provided by HCC and are in, respectively, Rickmansworth, Welwyn Garden City and Hertford. Each of these caters for some children with complex health needs, although in each facility that cohort is in a minority. Care in those facilities is provided by trained carers and not by nurses. There is capacity in the other three facilities for the children who will be displaced by the closure of Nascot Lawn, although realistically having regard to the geography for most of the affected children the only feasible alternative is the facility in Rickmansworth.

8 Unfortunately, HCC does not have the money to enter into a partnership with the defendant in order to secure the continuation of the funding.

9 The first ground of challenge (**Ground A**) contests the defendant's view that it is not funding a "health service" within the terms of [sections 3 and 3A of the National Health Service Act 2006](#) . These provide:

3 Duties of clinical commissioning groups as to commissioning certain health services

(1) A clinical commissioning group must arrange for the provision of the following to such extent as it considers necessary to meet the reasonable requirements of the persons for whom it has responsibility–

(a) hospital accommodation,

(b) other accommodation for the purpose of any service provided under this Act,

(c) medical, dental, ophthalmic, nursing and ambulance services,

(d) such other services or facilities for the care of pregnant women, women who are breastfeeding and young children as the group considers are appropriate as part of the health service,

(e) such other services or facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness as the group considers are appropriate as part of the health service,

(f) such other services or facilities as are required for the diagnosis and treatment of illness.

...

3A Power of clinical commissioning groups to commission certain health services

(1) Each clinical commissioning group may arrange for the provision of such services or facilities as it considers appropriate for the purposes of the health service that relate to securing improvement—

(a) in the physical and mental health of the persons for whom it has responsibility, or

(b) in the prevention, diagnosis and treatment of illness in those persons.

...

10 On any view nursing services are being provided at Nascot Lawn as well as services for the care of persons suffering from illness. Ms Grey QC is realistic enough to recognise that looked at literally what is happening at Nascot Lawn is the provision of health services as described in the 2006 Act. But she argues that this does not mean that they ought to be considered to be meeting 'health' needs, or viewed as health services which fall properly within the responsibilities of the defendant. Perhaps recognising the weakness of that argument, she quickly moved to an alternative one namely that even if it is a health service the same decision would reasonably and lawfully have been taken anyway. That may be true, but it does not address the point that if the funding of Nascot Lawn is the provision of a health service then a specific legal obligation formally to consult HCC arises, as I shall explain.

11 Looked at from first principles it seems to me obvious that even if the primary

motive or objective is to provide respite for the parents that the services being provided are health services nonetheless. But the matter is put beyond doubt by authority. In [*R \(on the application of T & Ors v London Borough of Haringey* \[2005\] EWHC 2235 \(Admin\)](#) Mr Justice Ousley was concerned with a three-year-old child who needed tracheostomy care. There was a dispute as to the amount of respite care that should be provided and whether this was the responsibility of the local authority or the relevant NHS body. In the course of his judgment Mr Justice Ousley stated at [65]–[67]:

65. To my mind, it also shows how the purpose of the care should be regarded. It is spoken of as respite care for the mother. From one viewpoint, the purpose of its provision is so that the mother can have a few nights of unbroken sleep per week or some time by herself a week or to look after T. That could be seen as social care for the mother. But its nature and purpose is to provide medical care for D; the intention behind the provision of that medical care is her safety while her mother enjoys respite. There is nothing different in quality or care about the disputed provision.

66. The gravity of the consequences of a failure in care, the duration of the care need, which required her carer always to be present lest something had to be dealt with rapidly, underscores the medical rather than social service nature of the provision.

67. It has in fact always been provided by nurses except where the mother has had specific training. The reluctance of others, whether teachers, close relatives or health care assistants, to be trained in the particular procedures serves only to emphasise the medical nature of the provision without itself being determinative. The nurses themselves require specific training in tracheostomy care. While it is possible for others to be trained in that specific care, it would still clearly be an important medical procedure in which they were trained.

The fact that the care happened to be provided by nurses was not determinative. On this reasoning, with which I fully agree, there can be no doubt that the services provided at Nascot Lawn are health services.

12 [Regulation 23 of the Local Authority \(Public Health, Health and Wellbeing Boards and Health Scrutiny\) Regulations 2013](#) (SI 2013 No. 218), falls within Part 4 of the Statutory Instrument which is entitled "**Health Scrutiny by Local Authorities**". That Part establishes a scheme whereby local authorities will be fully and formally consulted on any major health service changes in their area, will have the opportunity to scrutinise them, and in the absence of agreement will have the opportunity of seeking redress from the Secretary of State. [Regulation 23](#) provides, so far as is relevant to this case, that:

(1) Subject to paragraphs (2) and (12) and [regulation 24](#), where a responsible person ("R") has under consideration any proposal for a substantial development of the health service in the area of a local authority ("the authority"), or for a substantial variation in the provision of such service, R must -

- (a) consult the authority;
 - (b) when consulting, provide the authority with -
 - (i) the proposed date by which R intends to make a decision as to whether to proceed with the proposal; and
 - (ii) the date by which R requires the authority to provide any comments under paragraph (4);
 - (c) inform the authority of any change to the dates provided under paragraph (b); and
 - (d) publish those dates, including any change to those dates.
- ...
- (4) Subject to [regulation 30\(5\)](#) (joint committees) and any directions under [regulation 32](#) (directions as to arrangements for discharge of health scrutiny functions), the authority may make comments on the proposal consulted on by the date or changed date provided by R under paragraph (1)(b)(ii) or (c).
- (5) Where the authority's comments under paragraph (4) include a recommendation to R and R disagrees with that recommendation -
- (a) R must notify the authority of the disagreement;
 - (b) R and the authority must take such steps as are reasonably practicable to try to reach agreement in relation to the subject of the recommendation; and
 - (c) in a case where the duties of R under this regulation are being discharged by the responsible commissioner pursuant to paragraph (12), the authority and the responsible commissioner must involve R in the steps specified in sub-paragraph (b).
- (6) This paragraph applies where -
- (a) the authority has not exercised the power in paragraph (4); or
 - (b) the authority's comments under paragraph (4) do not include a recommendation.
- (7) Where paragraph (6) applies, the authority must inform R of -
- (a) its decision as to whether to exercise its power under paragraph (9) and, if applicable, the date by which it proposes to exercise that power; or
 - (b) the date by which it proposes to make a decision as to whether to exercise that power.
- (8) Where the authority has informed R of a date under paragraph (7)(b), the authority must, by that date, make the decision referred to in that paragraph and inform R of that decision.
- (9) Subject to paragraph (10), the authority may report to the Secretary of State in writing where -
- (a) the authority is not satisfied that consultation on any proposal referred to in paragraph (1) has been adequate in relation to content or time allowed;
 - (b) in a case where paragraph (2) applies, the authority is not satisfied that the reasons given by R are adequate; or
 - (c) the authority considers that the proposal would not be in the interests of the health service in its area.
- (10) The authority may not make a report under paragraph (9) -
- (a) in a case falling within paragraph (5), unless the authority is satisfied that -
 - (i) the steps specified in paragraph (5)(a) to (c) have been taken, but agreement has not been reached in relation to the subject of the recommendation within a reasonable period of time;
 - (ii) R has failed to comply with its duty under paragraph (5)(b) within a reasonable period of time; or
 - (b) in a case to which paragraph (6) applies, unless the authority has complied with the duty in paragraph (7) and, where applicable, paragraph (8).
- (11) A report made under paragraph (9) must include -
- (a) an explanation of the proposal to which the report relates;

- (b) in the case of a report under paragraph (9)(a) or (b), the reasons why the authority is not satisfied of the matters set out in paragraph (9)(a) or (b);
- (c) in the case of a report under paragraph (9)(c), a summary of the evidence considered, including any evidence of the effect or potential effect of the proposal on the sustainability or otherwise of the health service in the area of the authority;
- (d) an explanation of any steps the authority has taken to try to reach agreement with R in relation to the proposal or the matters set out in paragraph (9)(a) or (b);
- (e) in a case falling within paragraph (10), evidence to demonstrate that the authority has complied with the applicable condition in that paragraph;
- (f) an explanation of the reasons for the making of the report; and
- (g) any evidence in support of those reasons.

...

13 If a report is made under paragraph 9 to the Secretary of State then by virtue of [regulation 26](#) he can make a decision on the issue which may either require further consultation or a determination of the issue in a particular way. Therefore, in this case were the question of the withdrawal of the funding of Nascot Lawn to be referred to the Secretary of State then he could, on the merits, direct that the funding be continued.

14 Ms Grey QC did not seriously dispute that if what was happening at Nascot Lawn was the provision of a health service then the proposal to withdraw most of its funding amounted to a substantial variation of it.

15 Ms Grey QC argued that by virtue of some rather desultory correspondence sent by the defendant to HCC the duty to consult under [regulation 23](#) had been fulfilled. I cannot accept that, and the position of HCC is that they have never been formally consulted under [regulation 23](#). Indeed, they have written correspondence pointing out to the defendant its legal obligations. Plainly, the [regulation 23](#) process has not happened. If a consultation pursuant to [regulation 23](#) were to take place then I would expect that the consultation document plainly states that it has been prepared and sent pursuant to that regulation. It is obvious from the position of HCC, the interested party in these proceedings, that were the [regulation 23](#) process to be gone through they would be seeking an agreement which provided for the continuance of the funding of Nascot Lawn, and in default of reaching such an agreement would intend to refer the matter to the Secretary of State seeking a decision from him that the funding be continued.

16 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.

17 Having reached this primary conclusion, it is strictly speaking unnecessary, and arguably otiose, for me to pronounce on the remaining five grounds. It is a core tenet of judicial review law that relief will not be granted if there is an alternative remedy. I have decided that there is an alternative remedy. It could be said, therefore, that it would be wrong for me even to consider the remaining five grounds. However, given that the remaining grounds contain fierce criticism of the defendant it is only right that I should give my views on those arguments, lest failure to do so might leave behind a lingering belief that the criticisms were in fact merited. But I can do so in rather more abbreviated form than would have been the case had I not decided that the first ground

succeeded.

18 The remaining grounds are:

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

19 Although at times it appeared that Ms Richards QC was arguing that Nascot Lawn was somehow immune from closure in any circumstances, it is right that I record that she accepted, on being pressed by me, that it would have been possible for the defendant to have reached a decision to withdraw funding lawfully. But even where the financial difficulties are formidable she rightly argues that a decision such as the one with which I am concerned must be taken lawfully, and she says that for the five reasons set out above this one was not.

20 So far as the **Ground B** is concerned I emphasise that this court is not conducting a de novo review of whether sufficient material had been gathered in order to make a sound decision. The claimant must show by reference to the classic public law tests that the deficit of information was so extreme that the boundary of irrationality or perversity was crossed.

21 The claimant's statement of facts and grounds says: "the defendant's decision to cease funding Nascot Lawn was irrational because of the failure to carry out adequate individual assessments of the affected children". I agree with Miss Grey QC that there is no duty to provide individual assessments of potentially affected users to decision makers in a situation such as this. There is clear authority to this effect. In [R v North and East Devon Health Authority ex parte Coughlan \[2001\] QB 213](#) , the Court of Appeal held at [103] that:

"In the absence of special circumstances, normally we would expect it to be unrealistic and unreasonable, on grounds of prematurity alone, for the health authority in all cases to make assessments of patients and to take decisions on the details of placement ahead of a decision on closure. Neither the statutory provisions nor the guidance issued expressly require assessments to be made or decisions on alternative placements to be taken before a decision to close can be lawfully made."

22 Notwithstanding the absence of any duty to assess potentially affected individuals it is clear, however, that there was a wealth of material about each of the relevant children available to the officials preparing the agenda pack for the meeting on 16

November 2016. They included detailed impact assessments. These assessments were summarised sufficiently in the paperwork for the committee.

23 It cannot be said that either in fact or law there was a failure to assess individually the affected children and that therefore the decision reached on 16 November 2017 was irrational or perverse.

24 I am equally satisfied that **Ground C** is meritless. The scope of the duty to involve the public in this case is prescribed by the [National Health Service Act 2006](#) in a number of separate places. There is no general common law duty to consult. The common law may supply a requirement to consult where Parliament has not spoken and where the facts cry out for public involvement. But I do not need to consider the ramifications of that doctrine as I am certain that it would be constitutionally aberrant for a court to start using the common law to augment, or worse still, alter, the scope of an obligation to involve the public defined by statute.

25 The 2006 Act provides:

14J Publication of constitution of clinical commissioning groups

(1) A clinical commissioning group must publish its constitution.

...

14P Duty to promote NHS Constitution

(1) Each clinical commissioning group must, in the exercise of its functions—

(a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and

(b) promote awareness of the NHS Constitution among patients, staff and members of the public.

....

14Z2 Public involvement and consultation by clinical commissioning groups

(1) This section applies in relation to any health services which are, or are to

be, provided pursuant to arrangements made by a clinical commissioning group in the exercise of its functions ("commissioning arrangements").

(2) The clinical commissioning group must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—

(a) in the planning of the commissioning arrangements by the group,

(b) in the development and consideration of proposals by the group for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and

(c) in decisions of the group affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.

(3) The clinical commissioning group must include in its constitution—

(a) a description of the arrangements made by it under subsection (2), and

(b) a statement of the principles which it will follow in implementing those arrangements.

...

26 The Constitution of the defendant states:

6.2.2 Public Involvement

In carrying out its functions the CCG shall make arrangements to secure public involvement in the planning, development and consideration of proposals for changes and decisions affecting the operation of commissioning arrangements by ensuring that the views of individuals to whom the services commissioned

are being or may be provided are represented:

- In the planning of the CCG commissioning arrangements.
- In the development and consideration of the proposals by the CCG for changes in the commissioning arrangements.
- In the decisions of the CCG affecting the operation of commissioning arrangements where the decisions would, if made, impact on the manner in which the services are delivered to the individuals or the range of health services available to them.

27 The NHS Constitution states (on page 9):

You have the right to be involved, directly or through representatives, in the planning of healthcare services commissioned by NHS bodies, the development and consideration of proposals for changes in the way those services are provided, and in decisions to be made affecting the operation of those services.

28 Therefore, by three distinct routes the 2006 Act explicitly requires public involvement in this case as follows:

- i) Under the defendant's constitution: the right to public involvement in the planning, development and consideration of proposals for changes.
- ii) Under the NHS constitution: the right to be involved in the development and consideration of proposals for changes.
- iii) Under [section 14Z2\(2\)](#) : the right to have arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways).

In my judgment these rights compendiously define the scope of the duty to "consult". There is no room for the common law to augment, let alone alter, these rights.

29 The decision of 16 November 2017 did not come out of a clear blue sky. On 19 January 2017 the Investment Committee had in fact decided to cease funding Nascot Lawn, but this was on a clearly legally erroneous, and therefore unlawful, basis. That decision was quashed by consent on 9 October 2017. The consent order recorded that that the defendant agreed that prior to making a further decision it would "(i) carry out public engagement including engagement with affected families, HCC, HCT and ENHCCG, (ii) conduct a fresh Equalities Impact Assessment, and (iii) complete assessments in respect of the children funded by the CCG that use Nascot Lawn". In my judgment the agreement by the defendant to carry out "public engagement" (which terminology was agreed by the claimants) correctly reflects the scope and nature of the obligations which I have set out above.

30 I am satisfied that the defendant fully complied with its obligations, and its agreement. There had been much engagement with the public including meetings and

correspondence with the parents, carers and community interest groups. These are fully set out in the evidence before the court. On 10 October 2017 a document was sent out seeking comments on the proposal in effect to close Nascot Lawn by 23 October 2017, later extended to 6 November 2017.

31 I have to say that the highly sophisticated argument that somehow the defendant failed to comply with its obligations is groundless. There was a very full public involvement in the proposal to withdraw funding. The defendant fully complied with its statutory obligations. The claimants may have felt that that their protests were no more than beating the air and that there was an inevitability about the decision eventually made. That may be true, but the savings had to be made so the closure proposal was always likely to be the one reached.

32 **Grounds D, E and F** all assert breach of statutory duty. There is a significant human rights element to each ground. The alleged breaches have given rise to hundreds of pages of written evidence; dozens of legal authorities; and many pages of sophisticated legal argument. The decision in question was made by a committee of eight comprising employees of the defendant, GPs, and lay members. None was legally qualified. Their decision was recorded in minutes. As I listened to the submissions of Ms Richards QC about these grounds I gained the impression that she was saying that in dealing with these duties the committee should have rendered a decision as detailed, erudite, perfect and complete as a judgment from one of the higher courts.

33 I cannot accept that. In my judgment when the Administrative Court scrutinises a decision such as the one here it should afford the decision as much latitude, and indeed probably more given the high level of wrongness that needs to be shown, as an appellate court extends to a lower court whose exercise of discretion is under review. In the famous case of [Piglowska v Piglowski \[1999\] 1 WLR 1360](#) Lord Hoffmann stated at 1372:

"The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case ... These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in [section 25\(2\) \[of the Matrimonial Causes Act 1973\]](#) . An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."

34 Citing this passage in [Re F \(Children\) \[2016\] EWCA Civ 546](#) at [23] Sir James Munby P stated:

"It is not the function of an appellate court to strive by tortuous mental gymnastics to find error in the decision under review when in truth there has been none. The concern of the court ought to be substance not semantics. To

adopt Lord Hoffmann's phrase, the court must be wary of becoming embroiled in 'narrow textual analysis'."

This approach applies equally where the challenge in question asserts that the decision-maker failed to grapple with a Human Rights Act claim: see [Broadland District Council v Brightwell \[2010\] EWCA Civ 1516](#) . It is noteworthy that in the case of [Zoumbas v Secretary of State for the Home Department \[2013\] UKSC 74](#) Lord Hodge dismissed a sustained challenge to the Secretary of State's admittedly succinct decision letter, saying at [23]: "In our view, the Secretary of State does not have to record and deal with every piece of evidence in her decision letter."

35 I have to say that in relation to these three grounds the court has experienced "tortuous mental gymnastics to find error in the decision under review when in truth there has been none".

36 **Ground D** alleges breach of the well-known Public Sector Equality Duty. This is expressed in [section 149\(1\) of the Equality Act 2010](#) , which provides:

A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This is a key provision in the corpus of anti-discrimination law. Breach of it is a serious matter. Allegations of breach of it should not be lightly made.

37 The obligation on every public authority is to "have due regard to the need to" eliminate or advance or foster the goals that then follow. The noun "need" supplies an imperative quality. The noun "regard" means no more than to have in mind. The adjective "due" means "such as is necessary or requisite; of the proper quality or extent; adequate, sufficient", as in "driving without due care and attention". Therefore, the public authority must have sufficiently in mind, when exercising its functions, the necessity of achieving these goals. This has been explained by Lord Neuberger in the Supreme Court in [Hotak v London Borough of Southwark \[2015\] UKSC 30, \[2015\] 2 WLR 1341](#) at [74] – [75]:

"74. As Dyson LJ emphasised, the equality duty is "not a duty to achieve a result", but a duty "to have due regard to the need" to achieve the goals identified in [paras \(a\) to \(c\) of section 149\(1\)](#) of the 2010 Act. Wilson LJ explained that the Parliamentary intention behind [section 149](#) was that there should "be a culture of greater awareness of the existence and legal

consequences of disability". He went on to say in para 33 that the extent of the "regard" which must be had to the six aspects of the duty (now in [subsections \(1\) and \(3\) of section 149](#) of the 2010 Act) must be what is "appropriate in all the circumstances". Lord Clarke suggested in argument that this was not a particularly helpful guide and I agree with him. However, in the light of the word "due" in [section 149\(1\)](#), I do not think it is possible to be more precise or prescriptive, given that the weight and extent of the duty are highly fact-sensitive and dependant on individual judgment.

75. As was made clear in a passage quoted in *Bracking*, the duty "must be exercised in substance, with rigour, and with an open mind" (per Aikens LJ in [R \(Brown\) v Secretary of State for Work and Pensions \[2008\] EWHC 3158 \(Admin\), \[2009\] PTSR 1506](#), para 92. And, as Elias LJ said in *Hurley and Moore*, it is for the decision-maker to determine how much weight to give to the duty: the court simply has to be satisfied that "there has been rigorous consideration of the duty". Provided that there has been "a proper and conscientious focus on the statutory criteria", he said that "the court cannot interfere ... simply because it would have given greater weight to the equality implications of the decision".

38 Therefore, any challenge can only be to process and not to outcome. The 2010 Act does not provide for a statutory right of appeal against any alleged breach, but left any challenge to judicial review proceedings. Therefore, the classic judicial review standards of irrationality or perversity must be satisfied if a challenge is to succeed. I fully agree with Mr Justice Flaux in [R \(on the application of Ghulam & Ors\) v Secretary of State for the Home Department & Anor \[2016\] EWHC 2639 \(Admin\)](#) where he stated at [329]:

"...what is required is a realistic and proportionate approach to evidence of compliance with the PSED, not micro-management or a detailed forensic analysis by the court. Second, it is clear that the PSED, despite its importance, is concerned with process, not outcome, and the court should only interfere in circumstances where the approach adopted by the relevant public authority is unreasonable or perverse."

39 In this case an Equality Impact Assessment (EIA) was undertaken by the defendant. Such an assessment is not mandated by the 2010 Act but as Mr Justice Wyn Williams stated in *R (Diocese of Menevia) v City and County of Swansea Council* [2015] EWHC 1436 at [98]:

"The fact that a public body has produced an EIA in appropriate form in advance of the decision in question is, usually, convincing evidence that it has had regard to its public sector equality duties when making the relevant decision."

40 I reject the suggestion that the EIA in this case was "facile". On the contrary, I consider that it laid out sufficiently and appropriately the impact of the proposal. I agree with Miss Grey QC that the EIA

- i) recognised that the Defendant was the major funder of Nascot Lawn and any decision to end discretionary funding "may lead to decisions to close the service";
- ii) focussed on analysing the impact of a decision which culminated in the unavailability of Nascot Lawn as a respite service;
- iii) set out the mitigating steps that had been taken by the defendant to address the anxiety of parents and carers including the health assessment process, training programme for carers, identification of a lead professional in HCT for each child to liaise with HCC; and
- iv) set out the alternative respite options that would be available and noted that HCC would provide transport to any new respite care or short breaks placement in line with assessed need.

41 The EIA was given proper and conscientious consideration by the committee on 16 November 2017. The criticisms made of the process have descended into the types of micro-management and detailed forensic analysis which is not the work of a court undertaking a judicial review of performance of the PSED. What has to be shown is, within the decision-making process, either irrationality or perversity. The criticisms made by the claimants do not come close to meeting these standards.

42 **Ground E** alleges breach of [section 11 of the Children Act 2004](#). This falls within Part 2 which is entitled "Children's Services in England". [Section 11\(1\)\(bb\)](#) states that it applies to a clinical commissioning group. [Section 11\(2\)\(a\)](#) states: "each person and body to whom this section applies must make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children."

43 This is conceptually similar to [section 149](#) of the 2010 Act. When discharging its functions a clinical commissioning group must have made arrangements which "have regard" to the need to safeguard and promote the welfare of children. It is noteworthy that when enacting [section 11](#) Parliament chose not to incorporate verbatim article 3 of the 1989 United Nations Convention on the Rights of the Child (UNCRC), which provides:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Rather, Parliament enacted a lesser duty which requires as part of the process of decision making that regard is had to the need to safeguard and promote the welfare of children. That is a long way from requiring public bodies to ensure that in all aspects of its decision-making the best interests of any affected child shall be a primary consideration. This point was made in [Nzolameso v City of Westminster \[2015\] UKSC 22](#) at [28] where Lady Hale stated " [section 11](#) does not in terms require that the children's welfare should be the paramount or even a primary consideration." In [29]

she stated: "We have not heard argument on the interesting question of whether, even where no Convention right is involved, [section 11](#) should nevertheless be construed consistently with the international obligations of the United Kingdom under article 3 of the UNCRC. That must be a question for another day." It has not been suggested that I should in this case so construe [section 11](#) . Therefore, the issue is whether the defendant is in breach of the limited duty stipulated by the literal words of [section 11](#) .

44 Ms Richards QC states:

"The foreseeable consequence of the withdrawal of funding is that Nascot Lawn, a service provided to the most disabled and vulnerable of children, will close. It was plainly incumbent upon the defendant to have specific regard to the need to safeguard and promote the welfare of the children using Nascot Lawn when taking its decision. It is equally plain from the contemporaneous documentation that the defendant did not have any such regard and thus breached the [section 11](#) duty."

I disagree. The EIA had sufficient regard to the welfare of the children, and their interests were considered properly by the committee. Further, as Ms Grey QC rightly says, the defendant has been involved in discussions with the local authority and the provider in order to facilitate the next steps for the respite provision for the families, children and young people affected.

45 **Ground F** alleges a breach of Article 8 of the European Convention on Human Rights (ECHR) taken with Article 3 of the UNCRC. It is interesting that notwithstanding that Parliament explicitly declined to incorporate verbatim Article 3 of the UNCRC, and that refusal has been endorsed by the Supreme Court, it is nonetheless argued that Article 3 is in play through the medium of Article 8 of the ECHR . This argument is articulated by Ms Richards QC thus:

"In particular, the Claimants submit there was a failure to treat their best interests as a primary (or indeed any) consideration in the decision making, pursuant to article 3 of the UNCRC. It is widely accepted that a breach of an unincorporated Convention article can support a finding of a breach of an incorporated ECHR right; see for example [Mathieson v SSWP \[2015\] UKSC 47](#) at [44] and [Zoumbas v SSHD \[2013\] 1 WLR 3690](#) at [10] ("the best interests of a child are an integral part of the proportionality assessment under article 8 of the Convention")."

46 It is said that Article 8 of the ECHR is engaged in this case because:

"In the present context, however, the provision of respite care to the Claimants is a discharge of the positive obligation to promote the right to family and private life for these severely disabled children. Furthermore, there is a real risk that the cessation of funding for Nascot Lawn may lead to a breakdown of the Claimants' respective family lives, as the witness statements powerfully

demonstrate. It is the potential impact on the family and private life of the Claimants that brings this particular case squarely within the scope of Article 8 ."

Therefore, it is argued that Article 3 of the UNCRC is in play.

47 In the deportation case of [Zoumbas v SSHD](#) at [10] Lord Hodge stated that:

"(1) The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR ;

(2) In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;

(3) Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant; ..."

However, the Supreme Court upheld the decision in that case that it was not contrary to the interests of those children, aged seven years, four years and five months, all born in the UK, to return to the Democratic Republic of the Congo with their parents.

48 In this case I agree with Ms Grey QC that Article 8 is not engaged. In my judgment it does not arise where a statutory body is responsible for providing a particular service but reduces the care package provided to an individual. If it were otherwise then the limited terms of [section 11](#) of the 2004 Act would be routinely outflanked by the deployment of an Article 8 ECHR argument which brings in Art 3 of the UNCRC by its coat-tails.

49 If I am wrong about this, and Article 8 is engaged, then I agree with Ms Grey QC that there is no violation by virtue of the wide margin of appreciation afforded to the state where there is a balance to be struck between the competing interests of the individual and the community as a whole, particularly where there is a need to assess priorities in the context of the allocation of limited resources.

50 That concludes this judgment.

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HERTFORDSHIRE COUNTY COUNCIL

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

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

Author/s: Beverley Flowers- Accountable Officer
Kate Barker- Assistant Director

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

- 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 proposal is in the interests of health services in Hertfordshire. It is important that the delivery of services are regularly reviewed to ensure they meet the needs of the local population and deliver good value for money.

- 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?

The County Council and both CCGs are currently reviewing alternative service proposals on an individual needs led basis.

There is an opportunity for all three organisations to collaborate together with interested parties to co-produce a sustainable local offer for respite services (which includes overnight short breaks) The integrated commissioning of both complex health and social care needs, would include both current and future needs of children and young people 0-25. To start this process all three organisations have agreed to establish a joint budget to support the delivery of respite care should the outcome of the consultation result in the closure of Nascot Lawn

There are examples from other local areas where health and social care have jointly commissioned alternative respite services for children with complex health and social care needs, eg, Oxfordshire County Council with Oxfordshire CCG have commissioned Barnardos to manage three respite centres in Oxfordshire, which include an integrated social care and nursing workforce, for children with complex physical Health and learning disabilities.

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

East & North Hertfordshire CCG is willing to work with both Herts Valleys CCG and the County Council to explore and develop further integrated opportunities going forward.

Beverley Flowers
Accountable Officer- ENHCCG
March 2018

HERTFORDSHIRE COUNTY COUNCIL

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

BACKGROUND PAPER FROM HPCI – Herts Parent Carer Involvement FOR THE COMMITTEE’S SCRUTINY OF HERTS VALLEYS CLINICAL COMMISSIONING GROUP’S PROPOSAL TO WITHDRAW £600,000 FUNDING FROM NASCOT LAWN NHS RESPIRE CENTRE (THE “PROPOSAL”)

Author/s: Carol Kelsey – Coordinator

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

- 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?

In the considered view of HPCI the withdrawal of funding from Nascot Lawn would not be in the interests of health services in Hertfordshire. From our knowledge of how services work across health, social care and education we feel this will have a negative impact on the following four groups:

1. Children/Young People with complex health needs who currently access Nascot. Why?

They will not have direct nursing care at the HCC respite units and the skill level of other care staff will take time to build up but will never be as complete as a trained experienced nurse. This will result in an added health risks for those children/young people and the most likely result is more admissions to hospital as the non-nursing staff’s ability to assess and deliver an intervention will not be on par with a nurse. This will result in ambulance calls and emergency admissions to hospital increasing. There is no evidence that the other children’s health services have the ‘spare’ capacity to deliver more to the Nascot Lawn CYP indeed we already have evidence that Continuing Health Care cannot meet all it’s existing packages.

2. The health needs of future children/young people with complex health needs Why?

With the limited capacity at the three LA respite units and without nursing care the same issues will apply to them. The complexity of the health needs of these children is increasing over time not decreasing so that skill levels have to rise with them. Pathways will not be as clear and could lead to damaging delays for families that will have other knock on effects.

3. The parents and siblings of these children/young people.

Why?

The anxiety and stress on parents will be (and indeed currently is) affected by being unsure that the skills levels needed are in place. There will be reduced flexibility on the length of breaks and when they can be taken which will in turn impact parents mental health in delivering such complex care for longer periods. This leaves them with less time to spend with siblings and with siblings needing to help more. The effects of stress and mental health on physical health are well known. Continuity of care between specialist hospitals and children's wards with the LA respite units will be more challenging as they will not have nurse led care and even more of that responsibility will inevitably fall on parents.

4. Children/Young people without complex health needs Why?

Predicted increased levels and lengths of admission to hospital by children with complex health needs will result in other children having to wait longer for admission/procedures with the potential for conditions worsening or being sent further afield. With other children's health services having to deliver to even more children with complex health needs this will reduce capacity to deliver to those with 'lesser' needs which in some cases will lead to an increase/escalation of health needs.

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?

Work had begun on looking at alternative service proposals before the original decision to withdraw funding by the CCG was made public. This work stopped as a result and progressed no further. Any future service proposals would need to be worked on jointly by all partners including parents.

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

Steps need to be taken to repair the working relationships that have been damaged by this situation.

Be clear about what the legal frameworks and duties are on all sides and look to national guidance and successful working arrangements elsewhere in the country.

Have clear binding financial commitments

Ensure that the needs of children and young people are a higher priority across all partners than they currently are especially with the changing demographics.