

Item 3 Appendix Bi

21 February 2018

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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.

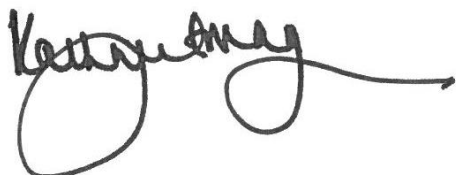
In responding to the Council’s feedback to the CCG proposal to cease funding of Nascot Lawn we would ask both the Council and families to note the Judge’s findings on grounds B to F of the recent judicial review and not to revisit those grounds in their responses.

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

