

**THE LOCAL AUTHORITY (PUBLIC HEALTH, HEALTH AND WELLBEING BOARDS AND HEALTH
SCRUTINY) REGULATIONS 2013**

HERTFORDSHIRE COUNTY COUNCIL

REPORT TO THE HERTS VALLEYS NHS CLINICAL COMMISSIONING GROUP

HERTFORDSHIRE COUNTY COUNCIL

REPORT TO THE HERTS VALLEYS NHS CLINICAL COMMISSIONING GROUP UNDER REGULATION 23(4) OF THE LOCAL AUTHORITY (PUBLIC HEALTH, HEALTH AND WELLBEING BOARDS AND HEALTH SCRUTINY) REGULATIONS 2013

Preface

In accordance with the County Council's constitution the Council's Health Scrutiny Committee is the statutory consultee for the purposes of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

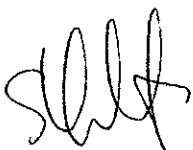
On 21 February 2018 Herts Valleys Clinical Commissioning Group gave notice to the County Council that it was consulting with the County Council in accordance with Regulation 23(1) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 in respect of a Proposal to withdraw £600,000 funding from Nascot Lawn NHS Respite Centre (the "Proposal"); this Proposal amounting to a substantial variation of the health service in Hertfordshire.

This Report has been prepared in accordance with a Resolution of Hertfordshire County Council's Health Scrutiny Committee ("HSC") made at a special meeting of the Committee where the Proposal was considered.

Summary

On 21 March 2018 the Council's HSC took written evidence and heard oral evidence from officers of the County Council, HVCCG, East & North Herts Clinical Commissioning Group, Parents of the children using the Nascot Lawn NHS Respite Centre, Hertfordshire Community NHS Trust, Healthwatch Hertfordshire, Carers in Herts and Hertfordshire Parent Carers Involvement Group. HSC took time to debate the issues and passed a resolution setting out the Committees' Comments and Recommendations on the Proposal, in accordance with Regulation 23(4) of the Local Authority (Public Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

Health Scrutiny Committee hopes the account of the evidence gathered, the Comments and the Recommendations that it has made, as set out in this report, will be accepted by Herts Valleys Clinical Commissioning Group when considering their final decision on the Proposal.



Seamus Quilty

Chairman

Health Scrutiny Committee

REPORT TO THE HERTS VALLEYS NHS CLINICAL COMMISSIONING GROUP UNDER REGULATION 23(4) OF THE LOCAL AUTHORITY (PUBLIC HEALTH, HEALTH AND WELLBEING BOARDS AND HEALTH SCRUTINY) REGULATIONS 2013

Authority for the Making of the Report

1. This Report is made under Regulation 23(4) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (**"the Regulations"**) and any reference by number to a particular Regulation is a reference to that numbered Regulation in the Regulations).
2. The making of this Report was authorised by Hertfordshire County Council's Health Scrutiny Committee at a special meeting of the Committee held on 21 March 2018, at which the Committee passed the following motion:

The Committee agrees that:

1. *A Report be prepared in accordance with Regulation 23(4) of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 setting out the issues considered by the Committee and the Recommendations being in relation to:*
 - a. *Transitional arrangements*
 - b. *Financial contribution*
 - c. *Details of nursing available for OSB*
 - d. *Type and nature of legal agreement*
 - e. *Engagement and consultation*
2. *The Chief Legal Officer be authorised to take all necessary steps to prepare and submit the report referred to in 1 above in consultation with the Chairman of Health Scrutiny Committee. Such report to be submitted to HVCCG no later 4 April 2018*
3. *The HVCCG's decision on the Proposal and Recommendations, which will be taken on 3 May 2018, is further considered at the meeting of the Health Scrutiny Committee on 9 May 2018*
4. *The Committee will consider on 9 May 2018 whether any further action is required, including but not limited to the possibility of a recommendation that Full Council refer the final decision to the Secretary of State in accordance with Regulation 23(9) of the Regulations"*

Subject Matter of the Report

3. The report relates to the scrutiny undertaken by the Council's Health Scrutiny Committee ("HSC") of the Proposal by the Herts Valleys NHS Clinical Commissioning Group ("HVCCG") on 1 to withdraw £600,000 of funding from Nascot Lawn NHS Respite Centre ("the Proposal").

List of Documents

4. The following documents are attached to this report:

D1 – Agenda pack for Special Scrutiny Meeting

D2 – List of participants involved in the scrutiny

Summary of Comments made by HSC

5. *"The Committee notes the progress that has now been made towards partnership working and the commitment from both HVCCG and E&NHCCG to support and provide services for children with complex health needs to safely access overnight short breaks.*

However The Committee is not satisfied that the Proposal as put forward by HVCCG is in the interests of the health service but considers that it may be possible to reach an appropriate agreement with HVCCG.

The Committee has comments on the following aspects of the Proposal ("the Recommendations"):

Members raised the importance of active engagement with Parents, Carers, Carers Groups and Healthwatch in the future planning of any replacement service

Members were concerned about the financial agreement that has been reached including the issues of revenue and capital. Members also raised concerns on the amount of funding and how the sums of money would be managed to address:

- *Current and future needs,*
- *Equipment costs,*
- *Inflationary pressures*

Members raised the importance of transparent decision making and responsibilities.

Members were concerned about the availability of future respite provision and equity of location.

Members were concerned as to the impact on the wider health and social care system, the disruption and / or reduction in the level of respite service currently available.

Members were concerned about transition planning, staff costs and retention.

Members are concerned that the offer would leave any new arrangement initially underfunded and that the County Council would be required to meet the shortfall caused by the removal in funding.

Members considered that the new service should be in place before Nascot Lawn is decommissioned.

Members encouraged partnership working, putting the needs of children using respite services at the centre of decision making to provide proper health care and to avoid deviation from the Concordat.

6. Further detail in relation to these Comments is to be found at Paragraphs 47 to 50 of this report.

Statutory Process engaged in the making of the Report

7. Regulation 23 of the Regulations sets down the statutory process by which a health body is required to consult with local authorities about the provision of health services within that local authority area. So far as is relevant at this stage, Regulation 23 provides 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.

(2) Paragraph (1) does not apply to any proposals on which R is satisfied that a decision has to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff.

(3) In a case such as is referred to in paragraph (2), R must notify the authority immediately of the decision taken and the reason why no consultation has taken place.

(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).

8. On 21 February 2018 HVCCG (the “Responsible Person” (“R”) for the purpose of the Regulations) served notice on the County Council (the “authority”) in accordance with Regulation 23(1)(a) of the Regulations that it was consulting the County Council in respect of a proposal that amounts to a substantial variation in the health service in Hertfordshire. The Proposal is for HVCCG to cease its annual funding of £600,000 for Nascot Lawn.
9. In accordance with Regulation 23(1)(b)(i) HVCCG advised that it will be making a decision on the Proposal on 3 May 2018. Further and in accordance with Regulation 23(1)(b)(ii) HVCCG requested that the County Council provides comments on the Proposal by 4 April 2018.
10. The County Council’s Constitution provides that HSC is the statutory consultee for the purposes of variation and development of the health service in Hertfordshire. In order to be in a position to comply with the notified timetable HSC convened a special meeting of the Committee on Wednesday 21 March 2018.
11. HSC took both written and oral evidence and debated the Proposal; at the conclusion of the debate made Comments on the Proposal and set out a number of Recommendations.
12. This Report is made in accordance with Regulation 23(4) and sets out the comments and recommendations that HSC considers are necessary to ensure that the Proposal is in the interests of the health service in Hertfordshire, in the event that HVCCG proceeds with the Proposal on 3 May 2018.
13. HSC notes that, having made Comments and Recommendations on the Proposal as set out in the letter from HVCCG dated 21 February 2018, the requirements of Regulation 23(5) are now engaged:

(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; ...
14. HSC would be grateful if HVCCG could advise whether it is in disagreement with the Recommendations set out by HSC.
15. HSC notes that HVCCG propose to further consult with the Parents of children who currently access Nascot Lawn on the Proposal, and the Comments and Recommendations made by HSC, and that this process will be complete by 18 April 2018.

16. HVCCG have noted that the date that they propose to take their decision (3 May 2018) is the same day as local elections in a number of District Council's in Hertfordshire. HVCCG have confirmed that they will advise the County Council of their final decision on 4 May 2018.
17. HSC have agreed that HVCCG's final decision on the Proposal will be reviewed at the meeting of HSC on 9 May 2018.

Explanation of the Proposal Scrutinised

Background to the Proposal

18. Nascot Lawn is an NHS commissioned service operated by HCT and provides health care services for children with complex health care needs providing respite from caring responsibilities for the parents, carers and siblings of those children using the service.
19. HVCCG decided to withdraw funding from Nascot Lawn in January 2017 ("**Decision 1**") although details of Decision 1 were not made public until after the election period in June 2017.
20. Representatives of HVCCG attended the meeting of HSC on 19 July 2017 to outline the HVCCG's rationale for Decision 1. At that meeting Members reiterated to both HVCCG and officers of the County Council their view, which had been consistently expressed, that all stakeholders should have proactive and mature discussions in order to ensure that the needs of the children and their families who attended Nascot Lawn (the "**Families**"), and those with similar needs going forward, could be met on a sustainable and basis.
21. HSC also determined that the matter should be subject to a more detailed scrutiny and a Member topic group was undertaken on 7 September 2018. 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);
22. 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.

23. Decision 1 was challenged by some of the families using Nascot Lawn by way of Judicial Review ("JR1"); following the submissions of claim and defence and the preparation of skeleton arguments HVCCG withdrew Decision 1, without the need for a determination by the High Court. HVCCG accepted that, in order for it to be able to take a decision to withdraw funding from Nascot Lawn it was required to undertake a "stakeholder engagement" process and to complete Equality Impact Assessments and Health Inequality and Quality Assessments.
24. Following JR1, and after the Topic Group, HVCCG conducted a stakeholder engagement process with the Families and other relevant stakeholders in October and November 2017. HVCCG's Finance and Performance Committee met on 17 November 2017 and concluded that HVCCG was not legally required to, and could not continue to, fund the respite service for children and young people at Nascot Lawn and again decided to withdraw funding ("Decision 2"). HVCCG's decision was supported by a new Equality Impact Assessments (EqIA), and Health Inequality and Quality Assessments (HIA).
25. On 27 November 2017 further legal proceedings ("JR2") were commenced by some of the families using Nascot Lawn challenging Decision 2; the County Council was as an "interested party" to JR2.
26. The matter came before Mr Justice Mostyn in February 2018 who gave judgment on 21 February 2018. In his judgment Mr Justice Mostyn concluded that the nature of the provision at Nascot Lawn was in fact a health service, contrary to the position adopted by HVCCG that the service at Nascot Lawn was solely a social care service (and therefore exclusively the responsibility of the County Council). 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.*"
27. The judge went on to find that the removal of funding (by HVCCG) from the only unit in Hertfordshire that provided care to children with these complex health needs would amount to a substantial variation in health provision. Mr Justice Mostyn went on to determine that

HVCCG were required to, and had failed to, consult the County Council as required under the Regulations. The Judge quashed Decision 2; he further determined that no further decision on the funding of Nascot Lawn could be taken until consultation with the County Council, in accordance with the process set down in the Regulations, had taken place.

28. Mr Justice Mostyn set out that the only basis on which he had made the determination to quash Decision 2 was the failure to properly consult under the Regulations. Although there was no legal requirement for him to do so Mr Justice Mostyn went on to comment on the other grounds on which the Families had challenged Decision 2; and made it clear that, in his view, the other grounds were not made out. For example the Judge considered that HVCCG had complied with the requirement of the health service to engage with those using NHS services.

The Proposal

29. Immediately following the judgment HVCCG wrote to the County Council giving formal notification of consultation on the Proposal (i.e. to withdraw £600,000 funding from Nascot Lawn in accordance with regulation 23 of the Regulations). The Proposal and the timetable was set out in correspondence dated 21 February 2018. HVCCG set out, in their letter, that:

29.1 the Proposal is at a formative stage and that the Proposal will be approached with an open mind;

29.2 there was a significant amount of information available for an informed consultation to take place, and indicated that they would be willing to provide further information if requested;

29.3 they considered that the timeframe set out for consultation was adequate;

29.4 they would conscientiously take the outcome of the consultation into account.

The Council's Scrutiny of the Proposal

30. On 27 February 2018 the County Council accepted that HVCCG had provided valid notice of consultation and confirmed that the Proposal would be referred to HSC in accordance with its constitutional arrangements. On 2 March 2018 HVCCG was advised that a special meeting of the Committee had been summonsed for 21 March 2018. A scoping document for the special scrutiny was prepared in the usual way and those providing evidence were asked to consider the following questions when making submissions:

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

Are there any alternative services proposals available to HVCCG and the County Council that would address the current and future needs of CYP [children and young people] with complex health and social care needs requiring respite care in Hertfordshire?

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

31. HSC received written evidence from:

- 31.1 HVCCG
- 31.2 Hertfordshire County Council Children's Services (CS) Department
- 31.3 East & North Herts Clinical Commissioning Group (E&NHCCG)
- 31.4 Nascot Lawn Parents
- 31.5 Hertfordshire Community NHS Trust (HCT)
- 31.6 Healthwatch Hertfordshire (Healthwatch)
- 31.7 Carers in Herts (CinH)
- 31.8 Herts Parent Carer Involvement (HCPI)

32. HSC received oral evidence from:

- 32.1 Dr Nicholas Small, Kathryn Magson, Dr Rami Eliad, David Evans (HVCCG)
- 32.2 Marion Ingram, Jenny Coles, Dr Jim McManus (Hertfordshire County Council)
- 32.3 Beverley Flowers (E&NHCCG)
- 32.4 Angela Kitching (parent)
- 32.5 Roma Mills (CinH)
- 32.6 Carol Kelsey (HCPI)
- 32.6 Michael Downing, Geoff Brown (Healthwatch)
- 32.7 Marion Dunstone, Tricia Wren, Anne McPherson (HCT)

33. Appended to the written submissions of HVCCG, E&NHCCG and CS was a signed written agreement ("**the Agreement**").

34. The Agreement sets out that the three organisations (referred to as Partners) “have agreed three shared priorities in relation to children and young people: *early childhood, 0-25 integration for children and young people with additional needs and emotional wellbeing and mental health transformation*”.
35. The Agreement goes onto set out that the three organisations are seeking to ensure that all children in the County, assessed as needing an overnight short break (“OSB”) are able to access a local OSB setting.
36. As part of the Agreement both HVCCG and E&NHCCG have each committed to providing £100,000 per annum to support OSBs for children and young people with complex health needs – though no agreement had been reached on the issue of inflation.
37. The Agreement goes on to record how the three organisations anticipate that complex health needs would be met and that those children requiring additional health needs would be assessed for Children and Young People’s Continuing Care and “top-up” funding considered. Equally, whilst not anticipated to be an issue, should a child or young person need to access a service out of county, and have additional complex health needs, these cases would not impact on the financial arrangements set out in the arrangement.

Summary of the oral evidence

38. HVCCG advised HSC:
 - 38.1 that they accepted the Court’s findings that the services provided at Nascot lawn were health services;
 - 38.2 that the Court had ruled in favour of HVCCG on 5 other grounds;
 - 38.3 that they had approached the decisions to withdraw funding with humility, respect and professionalism;
 - 38.4 they apologised, to the Families, for the continued uncertainty;
 - 38.5 that they had continued to meet with Hertfordshire County Council CS and E&NHCCG on a regular basis to look at a future proposal;
 - 38.6 that they would approach the new decision in May with an open mind having listened to views and taking the outcome of the consultation fully into consideration when reaching a decision on the Proposal;

- 38.7 that the decision would be taken by the Finance and Performance Sub-committee of the HVCCG Board, which has the full powers of the Board;
- 38.8 that the Agreement amounted to a positive way forward following good collaboration between HVCCG, CS and E&NHCCG;
- 38.9 that they continued to face considerable financial challenges, despite considerable progress in the last 12 months, which required savings in all areas;
- 38.10 that Community Children's Nurses are commissioned by HVCCG to support children and families with complex health needs and end of life care, and that this support is available to the Families;

In response to Members questions of clarification HVCCG advised

- 38.11 that the figure of £100,000 as set out in the Agreement was based on their experience of the costs of providing continuing health care funding for 5 to 6 children annually;
- 38.12 that HVCCG was not required to pay all the costs of JR2.

39 Hertfordshire County Council's Children's Services advised HSC:

- 39.1 that they aimed to deliver OSBs in local settings integrated with health services;
- 39.2 that the Agreement reached with HVCCG and E&NHCCG supported that aim;
- 39.3 that where children had continuing health care and had a need for a nurse lead service – these cases would be dealt with on an individual basis;
- 39.4 that for other children accessing OSBs, who did not specifically need nursing services, care would be delivered by carers who had been specially trained by and with support of health colleagues;
- 39.5 that 8 of the children accessing Nascot Lawn had now transitioned to other services, 19 were in the process of transitioning to other services and 16 were yet to start the process;
- 39.6 that the viability of an extension to West Hyde Short Breaks Unit was being explored to increase capacity;

In response to Members questions of clarification:

- 39.7 that there was an offer of £100,000 per annum each from HVCCG and E&NHCCG to support the OSB proposal;
- 39.8 that in all cases the care provided in alternative County Council commissioned settings would be as good as that provided at Nascot Lawn;
- 39.9 that where exceptional funding was required for nursing care this would be assessed and considered by the continuing health care panels and any funding would be over and above the funding agreed in the Agreement;
- 39.10 that CS worked with families during transition and were confident that any concerns or complaints would be picked up;
- 39.11 that children and families who would need to access OSB services in the future would benefit from a single county wide process, as opposed to the two routes have been in place to date.

40. E&NHCCG advised HSC:

- 40.1 that they were continuing to work with CS and the Families;
- 40.2 that they were participating in wider discussions on health personalisation and individual budgets as well as supporting pooled budgets for OSBs

In response to Members questions of clarification:

- 40.3 that inflation was yet to be agreed but that this would be reviewed in line with the Agreement;
- 40.4 that their contribution was over and above that which they currently contributed to Nascot Lawn, but that £100,000 was the right initial investment which would need to be reviewed as it was a good starting estimate of the level of support required.

41. Angela Kitching, who had been invited to represent the views of the Families advised HSC:

- 41.1 that it had been necessary for the Families to take HVCCG to court twice in order to challenge both Decision 1 and 2;

- 41.2 that the Families did not have faith in the scrutiny process as HVCCG had previously ignored the outcome of previous scrutiny meetings;
- 41.3 that any service offered to the Families required
- 41.3.1 access to a registered nurse;
 - 41.3.2 safe transfers to hospital;
 - 41.3.3 access for all children;
 - 41.3.4 a clear 0-25 pathway for all children;
 - 41.3.5 Nascot Lawn to remain open until a full transition of service could take place;
- 41.4 that the services offered to the Families were now less than they were previously receiving and entitled to and that a number of the Families were now in crises with at least one child now only being able to access respite on a hospital ward.
- Members debated Mrs Kitching's evidence and discussed points of clarification as Mrs Kitching was unable to attend for the debate in the afternoon, the discussions covered:*
- 41.5 whether new children and families were able to access Nascot Lawn and the lack of clarity amongst professionals on how to access respite services;
- 41.6 whether, in Mrs Kitching's opinion the care at the alternative sites would be at least as good as at Nascot Lawn, Mrs Kitching advised that it was too early to know as the service was not fully designed, but if nursing provision was not in place it would be likely that the service would not be as good;
- 41.7 that it was likely that there was an increase in access to acute care and mental health services as a result of the uncertainty surrounding Nascot Lawn as a result of HVCCGs previous decisions;
- 41.8 that following JR2 there had been engagement with CS but not with HVCCG;
- 41.9 that respite services should ideally be no more than 20 minutes from the child's home (a 40 minute round trip), as this would support the Families "vital role" of "advocate" for the child in question – the person / people with the most knowledge of the child and their complex needs;

- 41.10 the effect of a closure in Nascot Lawn would have a very significant and serious effect on the Families using that services, including family breakdown, an inability to plan holidays and effects on siblings and their ability complete studies;
- 41.11 that the children using Nascot Lawn have a range of complex needs, some of which can only be met by a nurse;
- 41.12 that the children using Nascot Lawn should not be the last in line for the provision of services.

42. Carers in Herts advised HSC:

- 42.1 that a lack of respite care is significant for all carer groups, causes high levels of stress and anxiety and has a significant impact on siblings who do not have time to spend with their parents;
- 42.2 that it is also important for the child with a disability to have alternative experiences to the sole care of their parents;
- 42.3 that CinH were concerned that will not be enough capacity to meet the respite needs of all children accessing services both those with complex health needs and those with challenging behaviours;
- 42.4 that a reduction from 4 respite centres to 3 could not realistically be described as the provision of local services;
- 42.5 that there would be a reduction in the provision of day care services;

In response to Members questions of clarification:

- 42.6 that CinH were aware of a reduction in service to all Nascot Lawn parents and that it was unlikely to be practical for many of the Families to access increased support at home as they would be unable to accommodate the necessary additional adults;
- 42.7 that CinH were of the impression that it was difficult to access the OSB service for children with behavioural needs until those children were teenagers;
- 42.8 that CinH had not been consulted by HVCCG on the Proposal, but that they had provided with information and been advised as to what was happening. The County Council has been looking at how to move matters forward.

43 Herts Parent Carer Involvement advised HSC:

- 43.1 that they were a parent carer forum who were funded by the Department for Education to assist with the development, commencement and review of new services to understand the needs of the users of services;
- 43.2 that they had been working with the County Council on the OSB Service before the initial decision to withdraw funding (Decision 1) was made;
- 43.3 that they supported all the points that had been put forward by Mrs Kitching on behalf of the Families and CinH;
- 43.4 that it was important for all concerned to work together and close the gap between the “theory and the practicality” of any revision to respite services and to deal with the reality of future capacity concerns.

In response to Members questions of clarification:

- 43.5 that HPCI had not been included as part of the consultation process but have been invited to and attended at meetings;
- 43.6 that HPCI were building trust with relevant stakeholder groups and were forging effective relationships;
- 43.7 that there good and consistent relationships with the County Council and E&NHCCG but not with HVCCG. HPCI did however seek to “inject” their views even when not directly sought;
- 43.8 that HPCI considered that the manner in which the previous decisions had been taken could have been handled more considerately as a number of the Families were “on the edge”.

44 Healthwatch Hertfordshire advised HSC:

- 44.1 that they considered this issue to be one of real significance for those using the service and of the need to ensure integrated working in Hertfordshire, and that their response was based on discussions with the County Council, HVCCG and the Families;
- 44.2 that there was a positive message about moving forward to find a solution that would address the needs of the Families;

In response to Members questions of clarification:

- 44.3 that there needed to be engagement with carers and families groups;
- 44.4 that they were concerned about the impact of reduced respite services on the whole health system and that whilst there was now a positive opportunity to develop an OSB service - that service would need to be adequately resourced and consideration given to how it would work in practice;
- 44.5 that they had been briefed, informed and communicated with by HVCCG but had not been consulted;
- 44.6 that the Families had provided them with a full briefing on the implications of changes to respite care;

45 Herts Community NHS Trust advised HSC:

- 45.1 that their key priority was to maintain the services at Nascot Lawn but this was not straightforward given the uncertainty of the position and the effect on staff;
- 45.2 that they will continue to support the service and any future service;
- 45.3 that there was a positive message about moving forward to find a solution that would address the needs of the Families;

In response to Members questions of clarification:

- 45.4 that they would deliver any service that was required by their Commissioners, including the training of staff who may work in other units;
- 45.5 that the Nascot Lawn building is owned by HCT and there had not been any discussions as to its future use;
- 45.6 that they could provide a service at Nascot Lawn if funded and that they were working to ensure that the level of service at Nascot is being provided in accordance with contractual requirements;
- 45.7 that they were working to provide an individualised service to meet each child's clinical needs including group and individualised training for those carers and staff working with the Families;

- 46 At the conclusion of the evidence session HVCCG responded to some of the comments made, including commenting on what HVCCG considered to be factual inaccuracies concerning the extent of their consultation and issues of acute services and respite services.

Comments from HSC

47. HSC took time to debate the Proposal and input from witnesses was welcomed as part of the debate. It was clarified, as part of the debate, that:
- 47.1 the difference in funding between the current level and the commitment as set out in the Agreement (£460,000) would be met by the County Council.
 - 47.2 the County Council could not use the building at Nascot Lawn as part of a Children's Service lead OSB Service as the building could not be adapted to provide single bedrooms for each child – which is a requirement of OFSTED registration;
 - 47.3 alternatives were available for those using respite and OSB services in the form of direct payments.

At the conclusion of the debate the Chairman and Group Leaders took advice from County Council Officers; HSC's comments in the debate were summarised in the motion presented at the conclusion of the debate.

48. HSC noted the progress that had been made towards partnership working and the commitment from both HVCCG and E&NHCCG to support and provide services for children with complex health needs to safely access overnight short breaks. However HSC was not satisfied that the Proposal, as put forward by HVCCG, is in the interests of the health service in Hertfordshire. HSC considers that it may be possible to reach an appropriate agreement with HVCCG.
49. HSC made the following comments on the Proposal which set out the basis of HSC's recommendations ("**the Recommendations**") pursuant to Regulation 23(4).
- 49.1 Members raised the importance of active engagement with Parents, Carers, Carers Groups and Healthwatch in the future planning of any replacement service.
 - 49.2 Members were concerned about the financial agreement that has been reached including the issues of revenue and capital. Members also raised concerns on the amount of funding and how the sums of money would be managed to address:
 - Current and future needs,

- Equipment costs,
 - Inflationary pressures
- 49.3 Members raised the importance of transparent decision making and responsibilities.
- 49.4 Members were concerned about the availability of future respite provision and equity of location.
- 49.5 Members were concerned as to the impact on the wider health and social care system, the disruption and / or reduction in the level of respite service currently available.
- 49.6 Members were concerned about transition planning, staff costs and retention.
- 49.7 Members are concerned that the offer would leave any new arrangement initially underfunded and that the County Council would be required to meet the shortfall caused by the removal in funding.
- 49.8 Members considered that the new service should be in place before Nascot Lawn is decommissioned.
- 49.9 Members encouraged partnership working, putting the needs of children using respite services at the centre of decision making to provide proper health care and to avoid deviation from the Concordat.

Recommendations from HSC

50. HSC made the following recommendations:

50.1 Transitional arrangements

The Committee considers that the Proposal should not take effect until alternative respite / OSB provision is in place and that this would require funding to be provided for Nascot Lawn, at its current rate, until such time as the new OSB service is in a position to be operational.

The Committee seeks assurance on the issue of staff retention and details of how the transition from Nascot Lawn to the OSB Service will be planned and delivered.

50.2 Financial contributions

The Committee notes and welcomes the position taken by both HVCCG and E&NHCCG as set out in the Agreement. The Committee is concerned, however, that the County Council will be required to fund the shortfall in the costs of the Service and is required to make capital investment in the alternative OSB service units to increase capacity.

The Committee considers that further funding commitments are required to address: the current and future needs of all children and families, with complex health needs, who require access to respite care, the requirement for specialist equipment, capital costs for adaptations, staffing costs (including additional training costs) and inflation.

50.3 Details of nursing available for OSB

The Committee heard evidence that the Families were concerned that the complex health needs of the children currently using Nascot Lawn would require significant nursing input and in some cases nursing lead care.

The Committee considers that it is necessary for HVCCG, E&NHCCG and the County Council to set out the detail of the nursing that will be available in the OSB Service and how the complex health needs of those children attending will be met.

50.4 Type and nature of legal agreement

As noted above the Committee welcomes the Agreement that has been reached between HVCCG, E&NHCCG and CS (on behalf of the County Council). The Committee received evidence that the agreed funding (£100,000 per annum from each CCG and addition continuing health care funding as required) was not time limited. The Committee heard evidence that it was necessary to resolve the issue of inflation and that the agreed financial commitment represented a good start.

The Committee considers that a formal and legally binding agreement should be entered into by HVCCG, E&NHCCG and the County Council so as to secure, amongst other matters:

50.4.1 the relevant financial contributions, including those issues as set out in 50.2 above;

50.4.2 the duration of the Agreement, including responsibilities on termination;

50.4.3 procedures for giving notice to terminate and to resolve any disputes that may arise between the parties to the Agreement;

50.4.4 procedures to ensure that the Committee is, and Services Users are, fully informed of, and consulted with, in respect of any material change in the Agreement.

50.5 Engagement and consultation

The Committee notes that HVCCG have accepted that they are under a legal duty to consult with the County Council under the Regulations in the current case. The Committee heard evidence that HVCCG were not yet engaging as effectively as possible with the Families and relevant stakeholders (including HPCI and Healthwatch).

The Committee reiterated its belief that partnership working is in the best interests of the health service in Hertfordshire and encourages full and meaningful engagement by and with all those connected to and affected by the Proposal. The Committee considers that the Families and other Stakeholders need to be involved in the planning and delivery of any new OSB Service.

Resolution of HSC

51. HSC passed the following resolution unanimously:

"The Committee notes the progress that has now been made towards partnership working and the commitment from both HVCCG and E&NHCCG to support and provide services for children with complex health needs to safely access overnight short breaks.

However The Committee is not satisfied that the Proposal as put forward by HVCCG is in the interests of the health service but considers that it may be possible to reach an appropriate agreement with HVCCG.

The Committee has comments on the following aspects of the Proposal ("the Recommendations"):

Members raised the importance of active engagement with Parents, Carers, Carers Groups and Healthwatch in the future planning of any replacement service

Members were concerned about the financial agreement that has been reached including the issues of revenue and capital. Members also raised concerns on the amount of funding and how the sums of money would be managed to address:

- *Current and future needs,*
- *Equipment costs,*
- *Inflationary pressures*

Members raised the importance of transparent decision making and responsibilities.

Members were concerned about the availability of future respite provision and equity of location.

Members were concerned as to the impact on the wider health and social care system, the disruption and / or reduction in the level of respite service currently available.

Members were concerned about transition planning, staff costs and retention.

Members are concerned that the offer would leave any new arrangement initially underfunded and that the County Council would be required to meet the shortfall caused by the removal in funding.

Members considered that the new service should be in place before Nascot Lawn is decommissioned.

Members encouraged partnership working, putting the needs of children using respite services at the centre of decision making to provide proper health care and to avoid deviation from the Concordat.

The Committee agrees that:

1. *A Report be prepared in accordance with Regulation 23(4) of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 setting out the issues considered by the Committee and the Recommendations being in relation to:*
 - a. *Transitional arrangements*
 - b. *Financial contribution*
 - c. *Details of nursing available for OSB*
 - d. *Type and nature of legal agreement*
 - e. *Engagement and consultation*
2. *The Chief Legal Officer be authorised to take all necessary steps to prepare and submit the report referred to in 1 above in consultation with the Chairman of Health Scrutiny Committee. Such report to be submitted to HVCCG no later 4 April 2018*
3. *The HVCCG's decision on the Proposal and Recommendations, which will be taken on 3 May 2018, is further considered at the meeting of the Health Scrutiny Committee on 9 May 2018*

4. *The Committee will consider on 9 May 2018 whether any further action is required, including but not limited to the possibility of a recommendation that Full Council refer the final decision to the Secretary of State in accordance with Regulation 23(9) of the Regulations”*

Request for Response


52. Regulation 23(5), so far as relevant, provides that:

(5) Where the authority's comments under paragraph (4) include a recommendation to R and R disagrees with that recommendation—

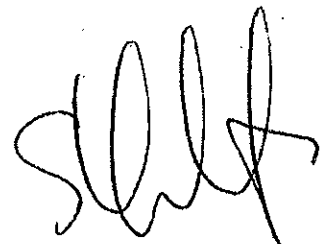
(a) R must notify the authority of the disagreement;

(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; ...

53. This Report sets out the Comments and Recommendations made by HSC in accordance with Regulation 23(4) to the Responsible Person (R). HSC notes that, that being the case, HVCCG is required as the Responsible Person (R) to inform the County Council whether it disagrees with the Comments and Recommendations and if it does so it will be necessary for HVCCG and the County Council to take reasonably practicable steps to reach an agreement.
54. HSC requests, therefore, that HVCCG notify the County Council and the Chairman of HSC if they are in disagreement with the Comments and Recommendations as set out in paragraph 48 above. HSC understands that HVCCG will be seeking the views of Families and other stakeholder by 18 April 2018, HSC requests that HVCCG confirm whether there is any disagreement on the Recommendations by Wednesday 25 April 2018.



Simon Banks
For and on behalf of Kathryn Pettitt
Chief Legal Officer
Hertfordshire County Council
4 April 2018



Seamus Quilty
Chairman
Heath Scrutiny Committee
Hertfordshire County Council

