Court of Appeal grants NHS campaign group permission to appeal against NHS England’s new Integrated Care Provider contract

The Court of Appeal has granted permission to appeal on ALL 7 GROUNDS, with capped costs. This is despite NHS England's dismissive claim to the Court of Appeal that there was no merit in any of the 7 grounds for our appeal.

The immediate impact of this ruling is that NHS England's consultation on the Accountable Care Organisation contract (rebranded as the Integrated Care Provider contract) is taking place about a contract that may not even be lawful.

[https://calderdaleandkirklees999callforthenhs.wordpress.com/2018/08/17/court-of-appeal-grants-nhs-campaign-group-permission-to-appeal-against-nhs-englands-new-integrated-care-provider-contract/](https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcalderdaleandkirklees999callforthenhs.wordpress.com%2F2018%2F08%2F17%2Fcourt-of-appeal-grants-nhs-campaign-group-permission-to-appeal-against-nhs-englands-new-integrated-care-provider-contract%2F&data=02%7C01%7C%7Ce9ca7dd8a2ce40239c7e08d6068cc521%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C636703598998723782&sdata=y2wGuQL8hPSunUhdiHULujKdUBVgsNoE0z4JCWEN2XU%3D&reserved=0)

**Court of Appeal grants NHS campaign group permission to appeal against NHS England’s new Integrated Care Provider contract**

The Court of Appeal has issued an order granting campaign group 999 Call for the NHS permission to appeal the ruling against their Judicial Review of the proposed payment mechanism in NHS England’s Accountable Care Organisation contract.

The Accountable Care Organisation Contract (now rebranded by NHS England as the Integrated Care Provider contract) proposes that healthcare providers are not paid per treatment, but by a ‘Whole Population Annual Payment’, which is a set amount for the provision of named services during a defined period. This, 999 Call for the NHS argues, unlawfully shifts the risk of there being an underestimate of patient numbers from the commissioner to the provider and endangers service standards.

In April, the High Court ruled against the campaign group’s legal challenge to NHS England’s Accountable Care Organisation contract – but the group and their solicitors at Leigh Day and barristers at Landmark Chambers found the ruling so flawed that they immediately applied for permission to appeal.

Although fully aware of this, on Friday 3rd August – the day Parliament and the Courts went on holiday – NHS England started a public consultation on the Accountable Care Organisation contract – now renamed the Integrated Provider Organisation contract.

The consultation document asserts that the payment mechanism in the ACO/ICP contract is lawful, because:

“The High Court has now decided the two judicial reviews in NHS England’s favour.”

Steve Carne, speaking for 999 Call for the NHS, said

“It beggars belief that NHS England is consulting on a contract that may not even be lawful.

And a lot of public funds is being spent on developing the ACO model – including on the public consultation.

We are very pleased that 3 judges from the Court of Appeal will have time to consider the issues properly.

We shall shortly issue our stage 5 Crowd Justice appeal for £18k to cover the costs of the Appeal.

We are so grateful to all the campaigners and members of the public who have made it possible for us to challenge the lawfulness of NHS England’s attempt to shoehorn the NHS into an imitation of the USA’s Medicare/Medicaid system.

We will not see our NHS reduced to limited state-funded health care for people who can’t afford private health insurance.”

Jo Land, one of the original Darlo Mums when 999 Call for the NHS led the People’s March for the NHS from Jarrow to London, added,

“All along we have been warning about the shrinkage of the NHS into a service that betrays the core principle of #NHS4All – a health service that provides the full range of appropriate health care to everyone with a clinical need for it, free at the point of use.

Since we first started work two years ago on bringing this judicial review, there have been more and more examples of restrictions and denials of NHS care, and the consequent growth of a two-tier system – private for those who can afford it, and an increasingly limited NHS for the rest of us.”

Jenny Shepherd said

“NHS England’s rebranded Accountable Care Organisation contract consultation is a specious attempt to meet the requirement to consult on a significant change to NHS and social care services.

We don’t support the marketisation of the NHS that created the purchaser/provider split and requires contracts for the purchase and provision of services.

Integration of NHS and social care services, in order to provide a more straightforward process for patients with multiple ailments, is not aided by a system that essentially continues NHS fragmentation.

This new proposed contract is a complex lead provider contract that creates confusion over the respective roles of commissioner and provider. It requires multiple subcontracts that are likely to need constant wasteful renegotiation and change over the duration of the lead provider contract. This is just another form of fragmentation, waste and dysfunctionality.

The way to integrate the NHS and social care is through legislation to abolish the purchaser/provider split and contracting; put social care on the same footing as the NHS as a fully publicly funded and provided service that is free at the point of use; and remove the market and non-NHS bodies from the NHS.

Such legislation already exists in the shape of the NHS Reinstatement Bill.”

The campaign team say they are determined in renewing the fight to stop and reverse Accountable Care. Whether rebranded as Integrated Care or not, they see evidence that it is the same attempt to shoehorn the NHS into a limited role in a two-tier healthcare system that feeds the interests of profiteering private companies.

Steven Carne emphasised,

“It is vital that we defend the core NHS principle of providing the full range of appropriate treatments to everyone with a clinical need for them.”

999 Call for the NHS hope the 2-day appeal in London will happen before the end of the year. The Appeal will consider all seven grounds laid out in the campaign group’s application – with capped costs.

David Lock QC and Leon Glenister represent 999 Call for the NHS, instructed by Rowan Smith and Anna Dews at Leigh Day.