

HEALTHWATCH AND PUBLIC INVOLVEMENT ASSOCIATION



Malcolm Alexander,
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Professor Nick Harding,
Chair, Sandwell & West Birmingham CCG,
Kingston House,
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November 28th 2018

Dear Professor Harding,
I wrote to you on September 3rd concerning your failure to comply with your statutory duties under the Health and Social Care Act 2012.

You failed to reply to this letter, except via Lucie Carrington, Deputy Associate Director for Engagement, Communications & Marketing. She wrote on October 9th 2018

“I am sure Professor Harding and the CCG will want to respond formally in due course”.

That was the last response received from your CCG.

We have asked you to provide evidence of how the CCG has complied with its statutory duties, but have been unable to get a response.

Instead of entering into public consultation you referred the proposed closure to the HOSC. I do not believe there is a legal hierarchy in relation to the extensive duties of the CCG to involve, engage and consult, and those in relation to the democratic functions of the Council. Because the HOSC accepted your arguments for closure of the Halcyon, you are not relieved of the CCGs statutory duties to consult, involve and engage with users and the public.

We also believe you have a statutory duty to involve the community in any transition and transformation of the service, and in relation to determining local needs, by listening to service users and acting to ensure that their clinical needs are met.

It appears that you have ignored your statutory duties and ignored service users and the public, and instead took your plans to close the Halcyon to local authority scrutiny. It appears that this was a calculated move to prevent patients and the public from influencing your plans to close the Halcyon and to avoid any genuine public consultation.

May we remind you of the following?

- 1) CCGs as commissioners have a statutory public duty under the Health & Social Care Act 2012 (Section 26) to involve, engage with and consult patients and the public before making decisions on changes to health services.
- 2) A major duty placed on the CCG under 14Z2, section 26 of the Health and Social Care Act 2012, states that in relation to any services which are provided by the CCG that: “The CCG 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 CCG.
 - (b) In the development and consideration of proposals by the CCG 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.
- 3) 14Z2(3) of the Act also requires all CCGs to include in their constitution:
 - (a) A description of their public engagement arrangements and
 - (b) A statement of the principles that they will follow when implementing them.

Please provide a copy your Constitution as referred to in subsection 3

- 4) Other requirements relevant to your s26 public involvement duties include:

To promote the NHS Constitution – 14P which states:

‘The NHS pledges to provide the public with information and support needed to influence and scrutinise the planning and delivery of NHS services.’

To secure continuous improvements in safety and quality of NHS services – 14R.

To reduce inequalities in access to services and outcomes of care – 14T.

To promote patient choice in the provision of services – 14V.

5) The Secretary of State’s 4 tests for service reconfiguration (in the Operating Framework) are also relevant and include requirements for:

- Strengthened public and patient engagement
- Clarity on the clinical evidence base
- Consistency with current and prospective patient choice

6) I also wish to remind you of your **Public Sector Equality Duty (PSED)**, which requires, when you are proposing changes that will affect people with protected characteristics, to have regard to the PSED (s149 (1) of the Equality Act 2010)?

The needs of those with protected characteristics must be met before or at the time any policy is being considered. Courts refer to it as being an “essential preliminary” and not a “rear-guard action”. Therefore, you must:

- Remove or minimise any disadvantage that might be suffered by persons with protected characteristics.
 - Take steps to meet the needs of those with protected characteristics.
 - Undertake equality impact analyses in order to demonstrate compliance with the PSED, and evidence that people with protected characteristics have influenced the decision-making process of the CCG regarding the Halcyon Birthing Centre.
- 7) You are also required to ensure that you engage Healthwatch fully in any proposal to change or close the Halcyon Birthing Centre. Their statutory duties include the promotion and support for the involvement of local people in the commissioning, provision and scrutiny of local care services (s221 (2) Local Government and Public Involvement in Health Act 2007).

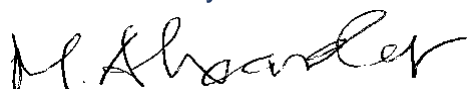
8) Finally, you are required to comply with NHS England's Mandate which identifies the following priorities in relation to significant service changes:

- a) Strategic sense check: explore the case for change and level of consensus for change; ensure full range of options are considered and risks identified.
- b) Assurance check: obtain formal assurance from your Board and other key players for your proposals before initiating wider public consultation.
- c) No decision to proceed with a particular option until the proposals have been fully consulted on.

We offered to enter into discussions with you to initiate and design a consultation process on the future of the Halcyon Birth Centre, but you did not respond to our request. We would expect there to be an opportunity to look at options for the proposed service reconfiguration, followed by consultation on options and for the CCG to demonstrate transparency, an open mind and a clear willingness to genuinely take views of patient and the public into account. You have not demonstrated compliance with any of these essential underpinning duties and principles.

We look forward to meeting with you in the near future to discuss the withdrawal of your current proposals for the Halcyon Birth Centre and the development of a consultation process with full public involvement and options for service development.

Yours sincerely



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Cc: Ranjit Sondhi, CBE, Independent Lay Adviser

14P. Duty to promote NHS Constitution

Each Clinical Commissioning Group must, in the exercise of its functions—

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.

14R Duty as to improvement in quality of services

Each CCG must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness. The outcomes include those which show—

- (a) The effectiveness of the services.
- (b) The safety of the services, and
- (c) The quality of the experience undergone by patients.

14T Duties as to reducing inequalities

Each CCG must, in the exercise of its functions, have regard to the need to—

- (a) Reduce inequalities between patients with respect to their ability to access health services, and
- (b) Reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

14U Duty to promote involvement of each patient

Each CCG must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—

- (a) The prevention or diagnosis of illness in the patients, or
- (b) Their care or treatment.

14V Duty as to patient choice

Each CCG must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

14Z1 Duty as to promoting integration

Each clinical commissioning group must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—

- (a) Improve the quality of those services (including the outcomes that are achieved from their provision).

(b) Reduce inequalities between persons with respect to their ability to access those services, or

(c) Reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

14Z2 Public involvement and consultation by CCGs

1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by a CCG in the exercise of its functions (“commissioning arrangements”).

(2) The CCG 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.

(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.