

The Rt Hon Jeremy Hunt MP
Secretary of State for Health and Social Care
39 Victoria Street
London SW1H 0EU

9 February 2018

Dear Secretary of State

REFERRAL TO SECRETARY OF STATE FOR HEALTH
Referral of the permanent closure of consultant-led maternity services
at the Horton General Hospital
Oxfordshire Joint Health Overview and Scrutiny Committee

Thank you for forwarding copies of the referral letter and supporting documentation from Cllr Arash Fatemian, Chairman Oxfordshire Joint Health Overview and Scrutiny Committee (JHOSC)¹. NHS England South East (Thames Valley and Hampshire) provided assessment information. A list of all the documents received is at Appendix One.

The IRP has assessed the referral, in accordance with our agreed protocol for handling contested proposals for the reconfiguration of NHS services. In considering any proposal for a substantial development or variation to health services, the Local Authority (Public Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 require NHS bodies and local authorities to fulfil certain requirements before a report to the Secretary of State for Health may be made. The IRP provides the advice below on the basis that the Department of Health is satisfied the referral meets the requirements of the regulations.

The Panel considers each referral on its merits and concludes that further action is required locally before a final decision is made about the future of maternity services in Oxfordshire.

Background

The history of events leading up to the referral of 14 February 2017 by the Oxfordshire JHOSC regarding the temporary closure of consultant-led maternity services at the Horton General Hospital ('the Horton') is described in the IRP's advice of 21 August 2017 to the Secretary of State, attached at Appendix 2. That advice concurred with *"the JHOSC's inference that a closure for this length of time [since October 2016] exceeds what can reasonably be considered to constitute a temporary closure"*.

In parallel with the events previously described, during 2016 work on developing a strategic vision for the future provision of health services across Oxfordshire was progressed. The Oxfordshire Clinical Commissioning Group (CCG) established the Oxfordshire Transformation Programme, which among other workstreams, incorporated a strategic review of services at the Horton Hospital by Oxford University Hospitals

¹ The Oxfordshire JHOSC consists of councillors from Oxfordshire County Council, the County's four District Councils and Oxford City Council.

Foundation Trust (OUHFT). Preparations were made for a public consultation on an Oxfordshire Health and Care Transformation Plan to be led by the CCG. Discussions with the JHOSC during the autumn of 2016 led the CCG to conclude that, in view of the wide scope of the transformation plans and the JHOSC's desire to see consultation on bed numbers begin in January 2017, the consultation should be split into two phases. This approach was agreed by the JHOSC when it considered the CCG's consultation plan at its meeting of 17 November 2016 and was formally approved by the CCG Board on 29 November 2016. Thames Valley Clinical Senate undertook a review to provide clinical assurance of the proposals, assessing their clinical quality, safety and accessibility. The 'Phase 1' proposals were formally considered by NHS England on 5 December 2016 and a letter confirming that the proposals had passed the NHS England assurance process was sent to OCCG on 10 January 2017.

The first phase of the public consultation, titled *The Big Health and Care Consultation Phase 1* was launched on 16 January 2017 to run to 9 April 2017. Phase 1 covered proposals for the following:

- Critical care at the Horton
- Acute stroke services across Oxfordshire
- Changes to bed numbers and increasing care closer to home in Oxfordshire
- Planned care services at the Horton including elective care, diagnostics and outpatients
- Maternity services – the consultation included a preferred option to create a single specialist obstetric unit for Oxfordshire and neighbouring areas at the John Radcliffe Hospital in Oxford which would also be the base for the special care baby unit and emergency gynaecology services; a permanent midwife-led unit (MLU) would be provided at the Horton (as a consequence of this proposal consultant-led maternity services at the Horton would cease permanently)

The JHOSC scrutinised the consultation proposals at a special meeting of the Committee on 7 March 2017 taking into account submissions from interested parties including local MPs, Warwickshire County Council, Northamptonshire County Council, and Cherwell and South Northamptonshire District Councils. The JHOSC provided a formal response on 13 March 2017. Amongst a number of observations made, the response commented on “*an ambiguous picture for the future of maternity services, particularly in the north of the county*” as well as “*interdependencies between Phase 1 and Phase 2*”, notably the possible effect of removing consultant-led services on the sustainability of other related services at the Horton.

On 30 March 2017, permission for a judicial review of the consultation process for Phase 1 of the CCG's Transformation Programme was sought by Cherwell District Council, South Northamptonshire Council, Stratford-upon-Avon District Council and Banbury Town Council. Permission, considered on papers, was not granted.

On 25 April 2017, Stratford-upon-Avon District Council wrote to the Secretary of State to make a referral under Regulation 23(9)(a) of the health scrutiny regulations on the basis that “*...in the District Council's opinion, the consultation process by Oxfordshire CCG was seriously flawed and that the consultation be withdrawn*”.

An independent analysis of the consultation responses, commissioned by the CCG, was completed in June 2017 and was considered by the CCG Board on 20 June 2017. The Board requested additional information with further testing of the obstetric options, including those identified during the consultation, to provide assurance that all variant options had been considered. This work informed the production of a decision making business case (DMBC) containing recommendations relating to each of the proposals consulted on.

On 1 August 2017, the Chair of the Warwickshire County Council Adult Social Care and Health Overview and Scrutiny Committee (ASCHOSC) wrote to the Secretary of State to offer support for the representations made by Stratford-upon-Avon District Council in that council's letter of 25 April 2017.

The DMBC was shared with the JHOSC at its meeting on 7 August 2017. The JHOSC supported proposals for critical care subject to assurances that there would be no 'knock-on' effects for the Horton. Proposals for stroke services were supported subject to clarification on ambulance response times and availability of rehabilitation beds in addition to those at the John Radcliffe Hospital in Oxford. The Committee supported plans to close 110 beds but did not support further changes without seeing improvement on delayed transfers for care and plans for community hospitals. The principle of planned care changes was supported and further discussion was invited when a fully developed plan was available. The JHOSC opposed the recommendation to close permanently consultant-led maternity services at the Horton and resolved, that should the CCG approve that recommendation, it would refer the matter to the Secretary of State.

The DMBC was considered by the governing body of the CCG on 10 August 2017. All recommendations were approved including the creation of a single specialist obstetric unit for Oxfordshire and neighbouring areas at the John Radcliffe Hospital in Oxford and to introduce a permanent MLU at the Horton (and permanently close consultant-led maternity services at the Horton).

The JHOSC wrote to the Secretary of State on 30 August 2017 referring the decision to close permanently consultant-led maternity services at the Horton.

The claimants seeking a judicial review of the consultation process applied for an oral permission hearing which was held on 6 September 2017. The judge granted a full review to be heard on 6 and 7 December 2017. The claimant's case asserted that the consultation was unfair and defective. It cited six main grounds in support of that position and sought a ruling that the consultation be declared unlawful and re-run with *Phases 1 and 2* merged. The approved judgment of the Court was published on 21 December 2017 in which the judge dismissed grounds for the claim.

The Secretary of State wrote to the IRP Chairman, Lord Ribeiro, on 10 January 2018 to commission advice on the referral from the JHOSC. The commissioning letter specifically asked the IRP to consider:

- The scope of enquiries in relation to neighbouring local authorities
- Correspondence relating to Cherwell District Council and from Stratford-upon-Avon District Council and Warwickshire County Council

- The issue of which local authorities have oversight and scrutiny responsibilities and how CCGs can address challenges arising
- Whether the proposals for consultant-led maternity services at the Horton need to be looked in the wider context of changes across the STP generally and, if so, how that could be done

Basis for referral

The Oxfordshire JHOSC Chairman's letter of 30 August 2017 states that:

“...it is with the deepest regret that I am writing to you again following a special meeting of the OJHOSC held on Monday 7 August 2017. At that meeting, the OJHOSC unanimously agreed to refer the Oxfordshire Clinical Commissioning Group's (OCCG) proposal to permanently close consultant-led maternity services at the Horton General Hospital in Banbury ('the Horton') to you, as the Secretary of State for Health, should the OCCG Board agree the proposal at its meeting on Thursday 10 August. The proposal was subsequently agreed by the Board, therefore the OJHOSC makes this referral pursuant to Regulation 23(9)(a) and (c) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.”

IRP view

With regard to the referral by the Oxfordshire JHOSC, the Panel notes that:

Regulatory issues

- The 2013 Regulations and associated guidance set out how the NHS must consult local authorities with powers of health scrutiny including where proposals affect more than one such local authority
- A joint health scrutiny committee of all the affected local authorities was not formed – scrutiny was instead delivered through the Oxfordshire JHOSC

Consultation issues

- The JHOSC agreed a two stage consultation with the CCG
- The two stage process for consultation, focussing on five separate proposals in Phase 1, has been challenged by various parties and through a judicial review
- The JHOSC opted not to refer the decisions about four of those proposals and resolved only to refer the proposal concerning the future of obstetrics at the Horton

Issues relating to obstetrics at the Horton

- Since 2008, training accreditation for junior doctors has been removed from the Horton and other staffing models attempted – the failure of these models to provide a sustainable service led to the temporary closure of obstetrics at the Horton from October 2016
- The JHOSC believes that alternative models suggested through consultation have not been properly considered

Issues relating to the future of the Horton's services and more widely

- The implications of the changes proposed at the Horton for other services are strong features of the consultation response – the future of the Horton in general is a significant local concern
- In the light of its experience with the Phase 1 consultation, the CCG is considering how better to progress the work of the Oxfordshire Transformation Programme

Advice

The IRP offers its advice on a case-by-case basis taking account of the specific circumstances and issues of each referral. **The Panel considers that further action is required locally before a final decision is made about the future of maternity services in Oxfordshire.**

Regulatory issues

The Secretary of State asked the IRP to consider the issue of which local authorities have oversight and scrutiny responsibilities. Given the Panel's remit, we have only considered powers of *health* scrutiny. In doing so, we do not offer a legal opinion and rely on our understanding of the relevant regulations and Department of Health guidance on the subject.

The Local Authority (Public Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 and associated Department of Health guidance, *Local Authority Health Scrutiny* (June 2014) describes those local authorities that have powers of scrutiny, essentially those councils with social services responsibilities². These are "upper tier" authorities and include "*county councils, district councils (other than lower-tier district councils) and London Borough councils*". The Panel understands that lower tier authorities including, for example, Stratford-upon-Avon District Council, do not have powers of health scrutiny vested in them by the 2013 Regulations unless a local authority that does hold health scrutiny powers has arranged for those powers to be discharged to another local authority. In this case, Warwickshire County Council (which holds health scrutiny powers) has confirmed that it did not make such an arrangement with Stratford-upon-Avon District Council. It is, therefore, unclear to the IRP how Stratford-upon-Avon District Council came to the conclusion that it had powers of referral as stated in its letter to the Secretary of State of 25 April 2017. The letter of 1 August 2017 from Warwickshire County Council ASCHOSC does not appear to be a referral in its own right since it professes only to offer "*support for the representations made to yourself by Stratford-upon-Avon District Council*". However, the Panel, in offering its advice on the referral by Oxfordshire JHOSC, has taken note of the contents of both letters.

Regulation 23(1) of the 2013 Regulations requires that where the NHS has under consideration "*any proposal for a substantial development of the health service in the area of the authority or a substantial variation in the provision of such a service*", it must consult the authority. Regulation 30(5) requires that "*Where a responsible person (normally the NHS body) consults more than one local authority pursuant to regulation 23, those local authorities must appoint a joint overview and scrutiny committee for the purposes of the consultation...*".

In this case, the proposals consulted on by the CCG in Phase 1 impacted not only on the services and residents of Oxfordshire but also those of Warwickshire and Northamptonshire and possibly elsewhere. In the Panel's view, while the Oxfordshire JHOSC was the primary body to consult, the other affected authorities with powers of health scrutiny should have

² Regulation 20(1)(b) of the Local Authority (Public Health and Wellbeing Boards and Health Scrutiny) Regulations 2013

Local Authority Health Scrutiny: Guidance to support local authorities and their partners to deliver effective health scrutiny (June 2014), paragraphs 1.2.1 and 2.1.1.

been engaged with the requirement to form a joint scrutiny committee. It is unclear to the Panel where responsibility lies for appointing an appropriately constituted joint health scrutiny committee but the wording of the Regulations suggests that it lies with the local authorities themselves.

The CCG's consultation plan states that it had shared information with Warwickshire and Northamptonshire County Councils. However, there is insufficient evidence for the IRP to assess whether the CCG contacted all potentially affected local authorities with health scrutiny powers or whether those authorities considered the requirement to form a joint committee. In the event, scrutiny was delivered through the Oxfordshire JHOSC which sought and received submissions from, among others, the Warwickshire County Council ASCHOSC, of which Stratford-upon-Avon District Council is a member. As a constituent member of the JHOSC, Cherwell District Council was part of the body consulted under the 2013 Regulations and, in conjunction with South Northamptonshire Council, made its own submission to the JHOSC.

The paragraphs above suggest misunderstanding about the process for consulting with affected local authority scrutiny bodies on the Oxfordshire Health and Care Transformation Plan. That plan is, of course, only one part of the wider Sustainability and Transformation Partnership (STP) covering Oxfordshire, Bedfordshire and Buckinghamshire. The complexity of consulting on issues on this scale is not to be underestimated and requires a level of preparation, co-operation and exchange of information that many NHS bodies and their local authority counterparts may not previously have faced. As has always been the case, it is important that consultation about the future of services, on whatever scale, takes account of patient flows and is not constrained by administrative boundaries.

In the Panel's view, the health scrutiny regulations provide the means to engage with health scrutiny effectively when properly understood and followed. Nevertheless, lack of knowledge or inexperience seems to be preventing this in some places. It is essential moving forward that all parties are aware of their responsibilities and follow the relevant regulations and associated guidance. The Department of Health and NHS England should consider whether the regulations and guidance are sufficiently understood and used effectively by all parties, particularly in the current context of STPs and "systems of care" rather than "organisations".

Consultation issues

Oxfordshire JHOSC has referred this matter to the Secretary of State on two grounds – that the consultation undertaken was inadequate and that the proposal would not be in the interests of the health service in its area. In considering issues of inadequate consultation, the 2013 Regulations relate to consultation with the scrutinising body rather than wider consultation with patients, the public and stakeholders. The concerns expressed by the JHOSC and others about the lack of consultation with interested parties are addressed in this advice on the basis of their not being in the interests of the health service generally. The Panel's comments in this section are offered in the knowledge that the judge presiding over the judicial review dismissed grounds for the claim of an inadequate *public* consultation.

The JHOSC contends that the CCG failed to engage with local partners, including with Cherwell District Council in which the Horton is situated. A failure to engage with partners is different to and separate from the requirement to consult the relevant local authorities holding scrutiny powers. Nevertheless, it is self-evidently in the interests of the health service locally that all stakeholders should feel they have been involved in the development of proposals for change. If this was not true of the past, the CCG must ensure that it is so moving forward.

The JHOSC further contends that the two phase consultation process was inadequate. Yet documentation confirms that the Committee agreed this approach at its meeting of 17 November 2016 prior to the consultation launch. The findings of the judicial review, published on 21 December 2017 and which considered the public consultation process as a whole rather than just the future of obstetrics at the Horton, rejected the assertion that the public consultation – including the two stage process and the consultation with south Warwickshire residents – was either unfair or defective. The Panel notes that four of the five proposals consulted on have not been disputed, albeit that further work is required. As previously commented, consulting on multiple issues across a wide geographical area is a complex undertaking. While holding one large consultation covering all issues may appear desirable, the rationale for splitting matters into discrete packages and consulting in two phases equally holds some logic.

In this case, with the benefit of hindsight it might have been better to have divided the issues up between phases in a different way, in particular, whether it would have been more sensible to consult on obstetrics services at the Horton as part of Phase 2. As it is, splitting the consultation in the way that was done has added more to the confusion and suspicion than helped move matters forward. In the Panel's view, decisions about the future of obstetrics at the Horton must inevitably influence proposals that remain to be consulted on, including around the future provision of MLUs in Oxfordshire. As the JHOSC commented, a clear picture is lacking for countywide maternity services as result of the two-phased consultation. The same is true with regard to the future provision of children's services at the Horton as indeed is an overall vision for the Horton moving forward.

Issues relating to obstetrics at the Horton

The IRP notes comments from various quarters that the needs of mothers (to be) in north Oxfordshire and the surrounding areas have not changed since the Panel's review of 2008. The Panel conducts its reviews on a case-by-case basis taking account of the circumstances present at the time. The needs of the population are one of several variables to be considered. That was true of our 2008 review and remains true in offering this advice.

The heart of the matter for the JHOSC regarding the future of obstetrics at the Horton is that not all options have been properly explored in the context of maternity services across the county. In considering this issue, the Panel's view is based on two observations about the current circumstances. First, that action to consider alternative options is needed because the problems with sustaining the obstetric service at the Horton that led to its temporary closure in 2016 are real and the prospects for returning to the earlier status quo are poor given a national shortage of obstetricians, exacerbated by the local workforce recruitment challenges. Secondly, that this consideration must be driven by what is desirable for the future of maternity and related services and all those who need them

across the wider area of Oxfordshire and beyond rather than a search for any possible way to retain an obstetric service at the Horton. This necessarily brings into play potential trade-offs between meeting the needs of higher risk mothers in specialised services, access to more local services, sustainability of staffing and the best use of finite NHS resources.

The consultation response provided a number of suggested options which can be characterised as arguing for a larger volume of births at the Horton (through population growth and an artificial shift of catchment south towards Oxford) to provide a platform from which to recruit and retain the medical staff required on a sustainable basis. The CCG decided to examine the options, using the same criteria as they had for the consultation options, before making its final decision. The results of this evaluation are recorded in the DMBC. The IRP recognises that a considerable amount of work has been done but whether the analysis underlying the conclusions reached has drawn on all the available evidence and been explained sufficiently is less clear. In this respect, the Panel agrees with the JHOSC's view that the consideration of options between consultation and decision fell short.

In the Panel's view, a further, more detailed appraisal of the options, including those put forward through consultation, is required and needs to be reviewed with stakeholders before a final decision is made. This appraisal should incorporate the findings of the latest Clinical Senate review, now underway, considering the temporary Horton MLU and dedicated ambulance service. Equally important, there is an opportunity to learn from the experiences of mothers, their families and staff who have been involved in the temporary arrangements for more than a year now. This work should also address all the recommendations of the original Clinical Senate Report from November 2016 and the implementation issues that have been left outstanding, in particular how antenatal care is organised and how recommendations to address travel and parking issues will be carried through in practice. Whatever option eventually emerges, it should demonstrate that it is the most desirable for maternity services across Oxfordshire and all those who will need them in the future.

The Panel appreciates the desire of many to reach a final decision on the future of obstetrics at the Horton following the extended period of uncertainty both for the CCG and OUHFT and for local users of maternity services. The obstetric unit has been closed since October 2016 and must remain closed unless sufficient doctors with the necessary skills and experience can be recruited. The Panel accepts that this will be difficult in the current climate but attempts to recruit should continue until a final decision is made.

Issues relating to the future of the Horton more widely

While this referral from Oxfordshire JHOSC has focussed on the future of obstetrics at the Horton, it appears to the Panel that the key question for the population of Banbury and the surrounding area is '*what does the future hold for the Horton?*'

The proposals consulted on in Phase 1 are at the same time only one part of the Oxfordshire Transformation Programme and only one part of the future of the Horton Hospital. The Panel's view is that both these need to be pursued in tandem and, building on work done already, brought to a conclusion. The 2016 OUHFT Strategic Review provides a comprehensive view of the Horton's services and offers a coherent vision for the future of the hospital which needs to be debated and, if necessary, refined. Unsurprisingly, lifting the

obstetric element out of this approach has raised questions about the impact on other services.

The Panel has noted, both in documentation provided by the CCG and in the Court judgment, the view that a decision to close the obstetric service at the Horton does not undermine decisions yet to be made about other services provided at the Horton. Whilst this is one view of the issue, the Panel considered an alternative perspective. Following consultation, were the decision to be taken to retain an obstetric service at the Horton, this would influence decisions about other services since, for example, it would be necessary also to seek to sustain paediatric services on the same site. In the Panel's experience of examining these matters, obstetrics and paediatrics in district general hospital settings are services that 'travel together'. A decision about the future of one necessarily influences the future of the other. If the effect can be said to flow through also into A&E services, then the picture of what the Horton will look like in the future remains unclear, at least to the residents of Banbury and the surrounding area who continue to be concerned that issues of population growth and access to services have not been fully taken into account.

The decision by the CCG, with JHOSC support, to include obstetrics at the Horton in the first of a two stage consultation - thus separating it from the future of paediatrics and other related services at the Horton along with maternity services elsewhere in the county - has served to highlight the interdependencies that must be tackled together to move forward successfully. Under all scenarios, the further detailed work on obstetric options at the Horton, advised above, is required. In parallel, the dependency that exists between those options and other services can be taken into account. Both pieces of work would benefit from a further external review from a clinical senate to provide assurance and confidence to stakeholders.

The question that then remains for the CCG and its partners is how to link further work and a final decision about maternity services to the next steps for the future of the Horton's other services and the rest of the Oxfordshire Transformation Plan. The experience of the Phase 1 consultation provides cause for some reflection and the need to learn from the experience for the NHS, the JHOSC and other interested parties. It is the Panel's view that the challenges facing the health and care system in Oxfordshire, in terms of the sustainability and quality of services, must be confronted honestly by all parties. This requires renewing a joint commitment to learn from recent experience, work together better and create a vision of the future that sustains confidence amongst local people and users of services. It is in everyone's interest that the next phase is commenced as soon as is practicable.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ribeiro', with a large, sweeping flourish above the name.

Lord Ribeiro CBE
Chairman, IRP

APPENDIX ONE

LIST OF DOCUMENTS RECEIVED

Oxfordshire Joint Health Overview and Scrutiny Committee

- 1 Letter to Secretary of State for Health from Cllr Arash Fatemian, JHOSC Chairman, 30 August 2017
Attachments:
- 2 The Oxfordshire Big Health Care Consultation Document Phase 1
- 3 OJHOSC minutes of meeting, 17 November 2016
- 4 OJHOSC minutes of meeting, 02 February 2017
- 5 OJHOSC minutes of meeting, 07 March 2017
- 6 OJHOSC chronology of Oxfordshire Transformation Plan scrutiny
- 7 OCCG - Phase 1 - Decision Making Business Case
- 8 Mott MacDonald Integrated Impact Assessment Report
- 9 Mott Macdonald - hospital car parking survey
- 10 Healthwatch Oxfordshire – people’s experiences of travelling to hospitals in Oxford and Banbury (Travel Parking Survey Report)
- 11 OJHOSC letter to Oxfordshire CCG - Phase 1 consultation proposals, 13 March 2017
- 12 Oxfordshire CCG response to HOSC on consultation, 23 March 2017
- 13 Draft OJHOSC minutes of Oxfordshire Transformation Plan consultation discussion at meeting, 22 June 2017
- 14 Draft OJHOSC minutes of meeting, 07 August 2017
- 15 OJHOSC notification to Oxfordshire CCG of intention to refer Horton maternity decision, 10 August 2017

NHS

- 1 IRP template for providing initial assessment information
Attachments:
- 2 Clinical Senate report, 30 November 2016
- 3 Pre-consultation business case, 10 January 2017
- 4 The Big Health and Care Consultation
- 5 Paper outlining consultation methodology
- 6 The Big Health and Care Consultation report, May 2017
- 7 Decision making business case, 10 August 2017
- 8 Cover paper to Board with DMBC, 10 August 2017
- 9 NHS England Stage two Assurance Checkpoint Review letter, 10 January 2017
- 10 NHs England Patient care test letter, 31 July 2017
- 11 Minutes of Oxfordshire CCG Board meeting, 10 August 2017
- 12 Oxfordshire Maternity Strategy, 15 August 2016
- 13 report on the Contingency Plan for Maternity and Neonatal Services, OUHFT Board paper, 31 August 2016
- 14 OUHFT Horton Strategic Review, Additional Obstetric Options Table, May 2016
- 15 Equality Impact Assessment, Horton Hospital
- 16 Care Quality Commission report
- 17 Strategic Review of the Horton General Hospital, October 2016, OUHFT
- 18 PCBC Appendix 7.6. Clinical evidence base and best practice for maternity services, Oxfordshire CCG

- 19 Letter to Cherwell District Council and South Northants Council from Oxfordshire CCG, 1 September 2017
- 20 Maternity Group obstetric Phase 1 evaluation

Other evidence submitted

- 1 Letter to Secretary of State for Health from Cllr Tony Jefferson, Chairman Overview and Scrutiny Committee, Stratford-upon-Avon District Council, 25 April 2017
- 2 Letter to Secretary of State for Health from Cllr Wallace Redford, Chair Adult Social Care and Health Overview and Scrutiny Committee, 1 August 2017
- 3 Letter to Oxfordshire CCG from Legal Service Manager, Warwickshire County Council, 25 May 2017
- 4 Stratford-on-Avon District Council Response to the Oxfordshire Clinical Commissioning Group's Big Consultation Stage 1 Process, 06 April 2017
- 5 Letter to Secretary of State for Health from Victoria Prentis MP for Banbury, North Oxfordshire, 18 September 2017
- 6 Approved judgment in the High Court of Justice, Queen's Bench Division Administrative Court before Mr Justice Mostyn between Cherwell District Council & Others and Oxfordshire CCG, 21 December 2017
- 7 Copy of email exchange between officials from NHS England regarding status of Stratford-on-Avon District Council, 11 January 2018
- 8 Briefing note for Department of Health from Oxfordshire CCG re Transformation Plan Phase 1, 11 October 2017
- 9 Letter to IRP Chairman from Victoria Prentis MP for Banbury, North Oxfordshire, 26 January 2018

APPENDIX 2

157 – 197 Buckingham Palace Road
London
SW1W 9SP

The Rt Hon Jeremy Hunt MP
Secretary of State for Health
Richmond House
79 Whitehall
London SW1A 2NS

21 August 2017

Dear Secretary of State

REFERRAL TO SECRETARY OF STATE FOR HEALTH
Referral of the temporary closure of consultant-led maternity services
at the Horton General Hospital
Oxfordshire Joint Health Overview and Scrutiny Committee

Thank you for forwarding copies of the referral letter and supporting documentation from Cllr Yvonne Constance OBE, Chairman Oxfordshire Joint Health Overview and Scrutiny Committee (JHOSC). NHS England and Oxford University Hospitals NHS Foundation Trust provided initial assessment information. A list of all the documents received is at Appendix One.

The IRP has undertaken an initial assessment, in accordance with our agreed protocol for handling contested proposals for the reconfiguration of NHS services. In considering any proposal for a substantial development or variation to health services, the Local Authority (Public Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 require NHS bodies and local authorities to fulfil certain requirements before a report to the Secretary of State for Health may be made. The IRP provides the advice below on the basis that the Department of Health is satisfied the referral meets the requirements of the regulations.

The Panel considers each referral on its merits and concludes that **this referral is not suitable for full review.**

Background

Horton General Hospital ('the Horton') in Banbury, Oxfordshire is part of the Oxford University Hospitals NHS Foundation Trust (OUHT) along with the John Radcliffe Hospital, the Churchill Hospital and the Nuffield Orthopaedic Centre in Oxford. The Horton provides a range of district general hospital services for approximately 170,000 people in north Oxfordshire, south Northamptonshire and south Warwickshire.

Maternity services for Oxfordshire are provided by OUHT on five sites. The John Radcliffe Hospital provides obstetric care and also has an alongside midwifery-led unit (MLU). Obstetric care was provided at the Horton until its temporary cessation on 3 October 2016. The hospital currently provides a midwifery-led service only. There are three other stand-alone MLUs in Oxfordshire, at Wallingford and Wantage to the south of the county and at Chipping Norton in the north. Beyond Oxfordshire, maternity services are available in neighbouring counties including in Cheltenham, Warwick, Northampton and Milton

Keynes. Prior to its temporary closure, the obstetric unit at the Horton was one of the smaller units in the country. In 2015/16, there were slightly over 1,400 deliveries at the hospital, of which approximately 400 required obstetric-led care.

Maternity and related services at the Horton have been the subject of a referral to the Secretary of State for Health previously. In 2006, the then Oxford Radcliffe Hospitals NHS Trust proposed moving inpatient paediatric and gynaecology services, consultant-led maternity services and the special care baby unit from the Horton to the John Radcliffe Hospital. Oxfordshire JHOSC referred the proposals and the Secretary of State commissioned a review from the Independent Reconfiguration Panel. The IRP's report, submitted on 18 February 2008 recommended that the Trust's proposals be rejected because they failed to provide an accessible or improved service for local people. The Panel recommended that further work be carried out to identify the arrangements and investment necessary to retain and develop the services involved at the Horton. The Secretary of State accepted the Panel's recommendations in full.

Consequently, consultant-led maternity services were maintained at the Horton supported by a training programme for junior doctors working in obstetrics. However, in 2012, post-graduate obstetric training accreditation at the Horton was withdrawn predominantly because of the low numbers of births at the hospital which resulted in only limited exposure to complex cases for those on the programme. A Clinical Research Fellow programme, based on eight posts, was then developed by the Trust in conjunction with the University of Oxford to support consultant-led services but the programme closed in December 2015 due to difficulties in recruiting staff to fill the posts. In April 2016, a new nine person, middle grade obstetric rota was developed allowing participating doctors the opportunity to get experience at the John Radcliffe Hospital as well as at the Horton. Despite advertisements for obstetricians being placed both nationally and internationally at monthly intervals from April 2016 onwards, and offering an enhanced remuneration package, difficulties in recruiting staff continued. Alternative solutions, including rotating staff between the John Radcliffe Hospital and the Horton and the employment of locum staff, were attempted but maintaining the rota of nine doctors required to staff the Horton unit safely on a consistent basis remained problematic.

In July 2016, in light of continuing recruitment difficulties and the resignation of existing staff, OUHT prepared contingency plans for the continued provision of maternity services at the Horton. Staff working in the maternity unit were briefed on 18 July 2016. On the same day, the JHOSC Chairman held an informal meeting with the Trust Director of Clinical Services to be advised of the immediate pressures affecting obstetrics services at the hospital and the contingency plans to be put in place. The Chairman was advised that of the eight resident doctors at the Horton specialising in obstetrics only three would still be in place by October 2016 following a number of resignations. Adverts for agency staff were being placed to recruit to vacant posts and midwives at the Horton would be trained in a midwifery-led approach to providing care should the consultant-led service have to cease. It was agreed that an update on the situation should be provided to the next JHOSC meeting in September 2016.

Workshops attended by representatives of the district and county council, local MPs and GPs, the Oxfordshire Clinical Commissioning Group (CCG) and local public and patient

groups were held on 20 July and 24 August 2016 to discuss the issue. During August 2016, further meetings took place with local MPs and GPs and representatives of the public including members of the Keep the Horton General Campaign. The Trust attended a public meeting in Banbury on 25 August 2016 and also responded to direct communications from the public.

An Extraordinary Meeting of the OUHT Board was held on 31 August 2016 to consider the single issue of maternity and related services at the Horton and to discuss the contingency plans. The plans included:

- The temporary establishment of a midwife-led birth unit (MLU) at the Horton
- The temporary cessation of obstetric care at the Horton and its transfer to the John Radcliffe Hospital
- The temporary cessation of the special care baby unit at the Horton and its transfer to the John Radcliffe Hospital
- The temporary cessation of the inpatient emergency gynaecology service and the establishment of a seven day ambulatory emergency gynaecology unit at the Horton
- The temporary withdrawal of the dedicated obstetric anaesthetic rota from the Horton General Hospital

The Trust Board was advised that the CCG, the Care Quality Commission and NHS Improvement had been advised of the risks posed by impending shortages of medical staff. The Board heard from clinicians that impending staffing shortages in the obstetric services at the Horton represented a risk to patient safety. It was reported that the Trust already had experience of running MLUs with protocols in place for safe operation of the service and that the temporary establishment of a MLU at the Horton would offer choice for local pregnant women whose deliveries had been assessed as low risk. Evidence of the efforts to recruit both permanent and locum staff was presented and further urgent work would be undertaken to review the enhanced remuneration package already available to aid recruitment. As part of the contingency plan, an ambulance would be available 24 hours a day at the Horton to ensure quick and safe transport of any woman requiring transfer to the John Radcliffe obstetric unit. Arrangements would be put in place for the John Radcliffe Hospital to accommodate up to an additional 1,000 births.

The Trust Board voted unanimously:

- *“that the continuation of the services of the Obstetric Unit at the Horton General Hospital was unsafe beyond 3 October 2016”*
- in favour of *“the temporary establishment of an MLU at Horton General Hospital from 2 October 2016”*
- to approve *“the Report on the Contingency Plan for Maternity and Neonatal Services”*

At a meeting of the Oxfordshire JHOSC on 15 September 2016, OUHT representatives presented the contingency plan and informed the Committee of the intention to temporarily close consultant-led maternity services at the Horton with effect from 3 October 2016. The Committee requested that OUHT representatives attend a special meeting of the JHOSC on 30 September 2016 to discuss specific issues including travel times, recruitment options and reasons for the observed decrease in birth numbers at the hospital.

The JHOSC Chairman met informally with the Trust Director of Clinical Services on 27 September 2016 to discuss the items for presentation at the forthcoming meeting.

The JHOSC meeting on 30 September 2016 further scrutinised OUHT's contingency plan. This included evidence of the Trust's efforts to maintain consultant-led maternity services at the Horton and discussion of the impact of the temporary closure and associated risks. The Committee accepted that the Trust had provided satisfactory reasons for invoking the temporary closure of consultant-led maternity services at the Horton without prior consultation. On the basis of the evidence provided, assurances given by the Trust that the closure would be temporary and the plan to increase staffing levels by March 2017, it was agreed that the matter should not be referred to the Secretary of State at that stage. The Committee requested that regular updates be provided to monitor service provision and recruitment progress.

Updates on maternity services at the Horton were provided by OUHT on 10 November, 5 December and 23 December 2016. The update of 23 December 2016 stated that, with three obstetricians in post at that time and the maximum number of doctors likely to be in post by March at five, there would not be enough experienced and skilled medical staff in post to reopen the Horton obstetric unit in March 2017 as planned.

At a meeting of the JHOSC on 2 February 2017, members considered the continued temporary closure of the Horton obstetrics unit and the proposals contained within Phase 1 of the Oxfordshire Transformation Plan (see below). A motion was unanimously agreed to refer the temporary closure of the consultant-led obstetrics unit at the Horton to the Secretary of State for Health. OUHT was notified by email of the JHOSC's decision on 3 February 2017. A letter of referral was sent to the Secretary of State on 14 February 2017 stating that the JHOSC believed the material grounds for not referring the matter had changed, that is, that the Trust's recruitment plan had failed and the closure would be longer than envisaged. Clarification of the procedural steps taken by the Committee to comply with the requirements of the 2013 Regulations was sought by the Department of Health by letter of 10 April 2017. The JHOSC Chairman responded providing additional information in a letter of 26 April 2017.

In parallel with the actions and events described above, the first phase of a public consultation on the Oxfordshire Health and Care Transformation Plan, led by Oxfordshire CCG, was launched on 16 January 2017. A two-phase approach to consultation had previously been agreed with the JHOSC in autumn 2016. The consultation included a preferred option to create a single specialist obstetric unit for Oxfordshire and neighbouring areas at the John Radcliffe Hospital which would also be the base for the special care baby unit and emergency gynaecology services. A permanent midwife-led unit would be provided at the Horton. The JHOSC scrutinised the consultation proposals at a special meeting of the Committee on 7 March 2017. The Chairman of the Council responded to the consultation on 3 April 2017 expressing its opposition to the proposals and rejecting the consultation. A decision-making business case, including a recommendation to remove obstetric care from the Horton and provide a permanent midwife-led unit, was presented to the governing body of the Oxfordshire CCG on 10 August 2017. All recommendations were approved including the one relating to maternity care at the Horton. Were such a

decision to be made, the JHOSC had already declared at its meeting on 7 August 2017, to refer the matter to the Secretary of State and this is now awaited.

Basis for referral

The JHOSC Chairman's letter of 14 February 2017 states:

"... at its meeting on 2 February, the Committee resolved to refer the matter to the Secretary of State under Regulation 23(9)(b) of the 2013 Regulations and to ask that you refer the issue of provision of maternity services at the Horton General Hospital to the Independent Reconfiguration Panel."

The JHOSC Chairman's letter to the Department of Health dated 26 April 2017 cites the grounds for referral as:

*"(1) the Committee believed that the material grounds for not referring the matter had changed, ie the Trust's recruitment plan had failed and the closure would now be longer than envisaged; and
(2) it considered that nothing could be gained by further discussion at a local level with the Trust."*

IRP view

With regard to the referral by the Oxfordshire JHOSC, the Panel notes that:

- Referral is made under Regulation 23(9)(b) of the 2013 Regulations relating to not being satisfied with the reasons given for not consulting with the JHOSC
- The JHOSC had previously accepted the reasons put forward by OUHT but asserts that the material grounds for not referring have changed – due to the failure of the recruitment plan and extended closure of the obstetric unit
- The obstetric unit at the Horton was closed on 3 October 2016 on grounds of safety due to the inability to recruit and retain sufficient doctors with the necessary skills and experience
- Failure to recruit additional staff meant that the obstetric unit could not be reopened in March 2017
- Safety of services must always be the primary consideration for any healthcare provider
- Events have now been overtaken by the decision of the CCG governing body to permanently locate obstetrics at the John Radcliffe Hospital and replace consultant-led maternity care at the Horton with a midwife-led service
- The JHOSC has declared its intention to refer this decision to the Secretary of State

Advice

The IRP offers its advice on a case-by-case basis taking account of the specific circumstances and issues of each referral. **The Panel does not consider that a full review in relation to this referral would add any value.**

The Oxfordshire JHOSC has chosen to refer this matter under the somewhat obtuse Regulation 23(9)(b) of the 2013 Regulations. Regulation 23(1) requires NHS bodies to consult relevant scrutinising authorities on any proposal for a substantial development of the health service or a substantial variation in the provision of the service. Regulation 23(2)

provides for circumstances in which an NHS body makes a decision without prior consultation with the scrutinising authority because of a risk to safety or welfare of patients or staff. Regulation 23(9)(b) states that *“in a case where paragraph (2) applies, the authority [may make a report to the Secretary of State where it] is not satisfied that the reasons given by R (a responsible person, that is, the NHS body) are adequate”*. This regulation was relevant in autumn 2016 when the decision was taken by OUHT, without prior consultation with the JHOSC, to introduce a temporary cessation of consultant-led maternity services at the Horton on grounds of patient safety. The Committee scrutinised that decision in September 2016 and accepted that the reasons for doing so were valid. Whether the same regulation continued to be relevant in February 2017, when this referral was made, is for legal minds to ponder rather than the IRP. However, the Panel recognises that, faced with the prospect of the Horton obstetric unit remaining closed for more than six months, local concern about if and when the unit would reopen inevitably grew. That concern developed not least because a consultation was launched during the same period by the CCG that contained a preferred option to close the unit permanently.

In the circumstances, it is not surprising that scepticism exists in some quarters about the extent of the Trust’s efforts to attract the skilled and experienced staff required to reopen the unit. As recorded in the background section to this advice, several creative staffing models have been used since the IRP’s report in 2008. Whether more could have been done is, for now, a matter of speculation.

The obstetric unit at the Horton has, at the time of writing, been closed for some 10 months. The July report to the OUHT Board indicated that seven posts had been filled. This represents progress but still falls short of the nine required to fill the rota and safely staff the unit. Safety must always be the primary consideration in the provision of healthcare. The Panel accepts, as did the JHOSC in September 2016, that the Trust was correct to close the unit in the absence of enough doctors to staff the unit safely and that the unit could not be reopened until sufficient staff had been recruited. Nevertheless, the Panel concurs with the JHOSC’s inference that a closure for this length of time exceeds what can reasonably be considered to constitute a temporary measure.

Subsequent events have now overtaken the substance of this referral. The governing body of the CCG decided on 10 August 2017 to remove obstetric care from the Horton and replace it with a permanent midwife-led unit. The Panel understands from press reports that the Oxfordshire JHOSC has declared its intention to refer that decision to the Secretary of State. When that referral materialises, the IRP stands ready to offer advice if requested.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. Ribeiro', with a stylized flourish above the name.

Lord Ribeiro CBE
Chairman, IRP

APPENDIX ONE

LIST OF DOCUMENTS RECEIVED

Oxfordshire Joint Health Overview and Scrutiny Committee

- 2 Letter to Secretary of State for Health from Cllr Yvonne Constance OBE, JHOSC Chairman, 14 February 2017
Attachments:
- 2 Oxford University Hospitals NHS Foundation Trust (OUHT) report to JHOSC Contingency plan for maternity and neonatal services, September 2016
- 3 Oxford University Hospitals NHS Trust updates on maternity at the Horton General Hospital, 10 November 2016, 5 December 2016 and 23 December 2016
- 4 Oxfordshire JHOSC minutes of meetings, 15 and 30 September 2016
- 5 Oxfordshire Health and Care Transformation Phase 1 consultation document
- 6 Letter to Department of Health Cllr Yvonne Constance OBE, JHOSC Chairman, 26 April 2017
Attachments:
- 7 Note of meeting between JHOSC chair and NHS official, 18 July 2016
- 8 Note of meeting between JHOSC chair and NHS official, 27 September 2016
- 9 Oxfordshire JHOSC minutes of meeting, 2 February 2017
- 10 Email to NHS representatives notifying of intention to refer matter, 3 February 2017

NHS

- 1 IRP template for providing initial assessment information
Attachments:
- 2 Contingency plan for maternity and neonatal services
- 3 OUHT equality analysis for maternity services
- 4 Geography of Oxfordshire and Oxfordshire CCG
- 5 OUHT minutes of Extraordinary Trust Board meeting, 31 August 2016

Other evidence considered

- 1 OUHT briefing on obstetrics at the Horton General Hospital in Banbury, Oxfordshire, 7 February 2017
- 2 OUHT Trust Board update paper, 12 July 2017
- 3 Decision-making business case, CCG governing body meeting, 10 August 2017