

Date: 10th June 2019
Our Ref: OJHOSC/SoS/PET-CT SCAN

**Oxfordshire Joint Health Overview
and Scrutiny Committee
County Hall
New Road
Oxford
OX1 1ND**

Seema Kennedy MP
Parliamentary Under Secretary of
State for Health and Social Care
Department of Health
Richmond House
79 Whitehall
LONDON SW1A 2NS

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Dear Minister,

**Re: Referral of the decision to name a preferred bidder and award the contract for
PET CT scanning services in Oxfordshire**

I confirm receipt of your letter dated the 5th of June regarding NHS England's decision to make In-Health the preferred bidder of Cancer PET-CT scanning in Oxfordshire. I have grave concerns about your initial judgement on our grounds for referral.

Specifically, I have concerns about the disregard of our concerns about the 'procurement process' we have brought to your attention. The committee disagrees with your interpretation that the lack of NHS England's engagement and consultation is simply a concern about the procurement process. We see this as a legitimate issue, coming within the Regulations governing NHS service change. Furthermore, it is difficult to understand how you deem that a process must come to an end before sufficient recourse to the contraventions of the Regulations which define the process (not the outcome) can be sought.

The committee referred the NHSE decision to name InHealth as preferred bidder and award the contract for the provision of PET-CT scanning services in Oxfordshire on the following grounds:

- Regulation 23(9)(a) – consultation on any proposal for a substantial change or development has been adequate in relation to content or time allowed
- Regulation 23(9)(b)- a decision has been taken without consultation and it is not satisfied that the reasons given for not carrying out consultation are adequate
- Regulation 23(9)(c) - the decision is not in the best interests of the health service or local residents;

As pointed out previously, the committee is well aware of the need to attempt a local settlement to address outstanding concerns however, the approach taken by NHS England has meant the public and this committee has not been engaged nor consulted but has been presented with an outcome. OJHOSC feels that there has been a complete disregard for legislative requirements for public engagement and scrutiny from NHS England throughout this process and has no confidence that this approach will change on this, or any such future issues. With NHS England having already arrived at a decision there are no local steps we can take to resolve this matter and the committee seeks your urgent investigation of this matter. The ongoing conversations between the commissioner

and provider that you refer to in your letter are not including OJHOSC; thereby further illustrating the point about consultation throughout the process.

Given your initial judgement that there is insufficient grounds for referral, may I draw your attention to the 2013 Regulations (enclosed) and associated guidance which sets out how the NHS must consult local authorities with powers of health scrutiny. In particular, I refer to where there is consideration of a proposed change, namely:

23.(1) where the responsible body considering a change must—

(a) consult the authority;

(b) when consulting, provide the authority with—

(i) the proposed date by which the responsible body intends to make a decision as to whether to proceed with the proposal; and

(ii) the date by which the responsible body 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.

The committee therefore believes, as evidenced from information previously submitted to the Secretary of State in my letter dated the 7th of May 2019, that NHSE has contravened Regulation 23, section 1a, 1bi, 1bii, 1c and 1d by not notifying OJHOSC at all of the proposed change they continue to consider. The OJHOSC referral is therefore not merely seeking recourse regarding the outcome, but we seek recourse on the improper process followed by NHS England. We request your urgent attention on this matter to prevent further contraventions of the Regulations.

I also draw your attention to where proposals affect more than one such local authority. In line with advice previously issued to this committee by the Secretary of State in support of Independent Reconfiguration Panel (IRP) (Ref POC_1097166), consultation on services in the future should not be constrained by administrative boundaries. We believe NHSE is specifically in contravention of Regulation 30(5) which 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...”*.

Given the request for scrutiny of this issue came from OJHOSC itself, rather than the NHS, and following confirmation that some neighbouring authorities have not been engaged, I am confident that the other local authorities with health scrutiny powers sitting within Lot 4 of this procurement process were similarly not consulted on this change in service. I can confirm that a joint health scrutiny committee of all the affected local authorities has not been formed, scrutiny has hitherto been delivered through the Oxfordshire JHOSC at its own request. The committee therefore believe NHSE has failed in its duty to consult the relevant authorities and we again, urge your investigation of this issue.

The committee would be very concerned if this matter was not investigated further. This would set a very dangerous precedent on the requirement for consultation for service changes and would allow organisations to disregard their statutory duties to involve Health and Scrutiny Committee's at an early stage in the process. This would in turn prevent effective scrutiny, better outcomes for patient's, and has the potential to lead to many more referrals to the Secretary of State across the country. This is likely to be the case if organisations come to decisions around service change and only involve public scrutiny at the last moment. Involving scrutiny from the beginning enables transparency, robust policy development and better outcomes for patients.

I would also highlight that it should be of concern that the outcome of the process which was followed was of such an unsatisfactory nature that NHS England felt obliged to engage in subsequent conversations with OUHT about partnership working.

Conclusions

As outlined above, OJHOSC feels that NHS England has already contravened the Regulations by the process it has followed, where it has not consulted the relevant local authority and scrutiny committee(s) on the proposals for change it was considering. The committee acknowledges there are discussions ongoing which may alter the outcome; namely the maintenance of the services at the OUH site, but as previously stated, we believe the Regulations legislate for not just the outcome, but the process of considering service change. Given the position of NHS England as a commissioner of significant, specialised services nationally, it is the belief of this committee that they need to lead by example, adhering to Regulations in the strictest possible way to ensure they are dutifully upheld.

As such, for the reasons outlined above, I would urge you in the strongest possible terms to urgently review your initial decision and investigate NHS England's contraventions to the Regulations to date. I would ask that the IRP undertake an initial review as a first next step and I further request that you instruct NHS England to halt further progression of the contract award. This is specifically pertinent in that NHS England has not, in line with aforementioned regulations that they have not notified OJHOSC of the dates involved, or developments in the partnership negotiations and has not consulted neighboring authorities.

NHSE's first response was to ignore the outcome of this referral and to press on with the decisions they have made. Despite further communication, they continue to ignore the OJHOSC, further highlighting a fundamental lack of understanding of statutory duties.

The public in Oxfordshire deserve better, and HOSCs around the country need reassurance that the statutory powers are robust, apply to all organisations, and are in place for more than just appearances sake.

I look forward to hearing your response.

Best regards,

A handwritten signature in black ink, appearing to read 'Arash Fatemian', followed by a long horizontal line extending to the right.

Cllr Arash Fatemian
Chairman of Oxfordshire's Joint Health Overview and Scrutiny Committee

Enc.

1. Regulation 23 detail