

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

7 June 2018

Dear Secretary of State

## **REFERRAL TO SECRETARY OF STATE**

### ***Proposed closure of 12 bed inpatient ward at Rothbury Community Hospital and shape of existing services around a health and wellbeing centre on the hospital site*** **Northumberland County Council Health and Wellbeing Overview and Scrutiny Committee**

Thank you for forwarding copies of the referral letter and supporting documentation from Cllr Jeffery Watson, Chair, Northumberland County Council Health and Wellbeing Overview and Scrutiny Committee (HWOSC). NHS England North provided assessment information. A list of all the documents received is at Appendix One. The IRP has undertaken an assessment in accordance with our agreed protocol for handling contested proposals for the reconfiguration of NHS services that specifies that advice will be provided within 20 working days of the date of receipt of all required information.

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 may be made. The IRP provides the advice below on the basis that the Department of Health and Social Care is satisfied the referral meets the requirements of the regulations.

**The Panel considers each referral on its merits and concludes that further action locally is required to agree and implement the proposed health and wellbeing centre at Rothbury Community Hospital.**

### **Background**

Rothbury Community Hospital (RCH) lies on the outskirts of the village of Rothbury in Northumberland. It is a purpose-built, private finance initiative (PFI) funded, building that replaced the original hospital in 2007 and is one of a number of hospitals managed by Northumbria Healthcare NHS Foundation Trust which provides hospital and community health services across Northumberland and North Tyneside. Northumberland is a large and largely rural county with a widely dispersed population of over 300,000 including around

5,300<sup>1</sup> people living in Rothbury and the surrounding area. Most healthcare services for the people of Northumberland are commissioned by NHS Northumberland Clinical Commissioning Group (CCG). The CCG has been operating under NHS England directions since August 2016 due to its financial position. For 2017/18, it is expecting to report an in-year deficit of £17.3m which, together with historic debts, will result in a total deficit of £57.8m. By contrast, the Trust's forecasts a £16.7m surplus for the year.

RCH provides a range of services including midwife-led antenatal clinics, physiotherapy, podiatry, and a Parkinson's Disease clinic as well as providing a base for community health and care staff and community paramedics. Prior to its suspension in September 2016, an inpatient ward of 12 beds provided care mainly for frail older patients who required 'step up' or 'step down' care and also some palliative care. Daily inpatient management was nurse-led with 08.00 – 18.00 medical cover provided by local GPs. The staffing establishment required to cover the inpatient beds was 6.77 whole time equivalent (wte) nurses, 6.27 wte healthcare assistants and 0.56 wte nutrition assistant.

During the summer of 2016, a steering group comprising health and care professionals from the CCG and the Trust was established to look at how beds were being used in community hospitals in Northumberland. The steering group's 'initial findings' noted that from September 2015 to August 2016, on average, only half of the beds at Rothbury Community Hospital were being used at any one time.

In light of these findings, on 2 September 2016, the Trust took the decision to suspend temporarily inpatient admissions at RCH for a period of three months. The decision was supported by the CCG which committed to leading a review of the inpatient ward utilisation. A six week public engagement exercise was commenced that included three drop-in sessions at RCH. Findings from the review were presented to a public meeting on 17 November 2016 attended by over 200 members of the public. The report stated that from "*September 2015 to August 2016 Rothbury Community Hospital received a total of 123 admissions (both step up and step down) from the catchment area and 45 admissions from outside*" - equating to half of the beds being used at any one time during that year, confirming the decline in inpatient numbers at RCH and resulting in under-utilisation of the skills and expertise of nursing staff. Amongst the report's other key findings, it was noted that there had been an increase in the provision of care in the community and that no negative clinical impact on patients accessing services had been reported since the suspension of inpatient admissions. The report recognised the value placed on the hospital and its staff by the local community and acknowledged concerns amongst residents about the area's rurality, difficulties with transport and concerns for the hospital's future. It recommended that the temporary suspension of inpatient admissions be extended until a formal consultation was completed. The CCG agreed to work up options for public consultation.

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<sup>1</sup> Save Rothbury Hospital Campaign Group quotes a figure of 7,756.

On 15 December 2016, CCG representatives met the Save Rothbury Hospital Campaign Group to discuss a proposed consultation period and seek views.

During December 2016 and January 2017, the CCG's Joint Locality Executive Board undertook an option appraisal process that identified five potential options:

- Re-open 12 inpatient beds and no change to service
- Develop a combined use of beds, sharing beds across health and social care, including end of life beds
- Develop the 12 beds as long term nursing and/or residential care beds
- Permanent closure of the 12 beds
- Permanent closure of the 12 beds and shape existing services around a health and wellbeing centre on the hospital site

The Board decided to consult on a preferred option of the permanent closure of the 12 inpatient beds and shaping of existing services around a health and wellbeing centre on the hospital site in Rothbury.

CCG and Trust representatives met the Save Rothbury Hospital Campaign Group on 25 January 2017 to discuss the Group's concerns. The CCG received Stage 2 assurance for its proposals for consultation from NHS England on 27 January 2017. A formal public consultation, *Proposed changes at Rothbury Community Hospital*, began on 31 January 2017. The consultation, whilst outlining the five options that had been considered, specifically stated that the preferred option was the only one being consulted on. A meeting of the HWOSC, scheduled to take place on 31 January 2017, and at which a report on the consultation was due to be presented, was cancelled.

On 28 February 2017, a CCG representative provided an update on the consultation to the HWOSC, covering the consultation methodology and responses to date.

Pre-election 'purdah' began on 13 April 2017 ahead of local government elections on 4 May 2017. A general election, to take place on 4 June 2017, was announced on 21 April 2017 necessitating a further period of 'purdah'. The Save Rothbury Hospital Campaign Group responded to the consultation during April 2017. Its submission referenced a petition signed by over 5,000 people calling for the re-opening of the ward with immediate effect. It also outlined an alternative way forward, *Coquetdale Cares – the Community's Vision*, described as "a combination of the CCG's Options 1 and 5". The public consultation closed on 25 April 2017.

In June 2017, the CCG produced a report, *Proposed Changes at Rothbury Community Hospital - Feedback Received During Public Consultation*. The report echoed concerns previously expressed by the public during the engagement period. On 27 June 2017, the HWOSC received a presentation from a CCG representative providing an overview of the consultation process, emerging themes and the proposed way ahead. The HWOSC was also addressed by a member of the Save Rothbury Hospital Campaign Group.

The County Council considered a Notice of Motion at its meeting on 5 July 2017 and agreed that if the HWOSC was not convinced by the evidence supporting the decision to be made it had the power to refer the matter to the Secretary of State.

At a meeting on 27 September 2017 held in public in Morpeth, the CCG Joint Locality Executive Board met to consider proposed changes at RCH. A Decision Making Report was produced for the meeting including a description of the issues, engagement and consultation processes used, feedback, future services that could be provided at the hospital site and quality, travel and equality impact assessments. Three courses of action were considered:

- re-open the inpatient ward
- re-open the inpatient ward and develop a health and wellbeing centre on the hospital site in line with the Save Rothbury Hospital Campaign Group's submission to the consultation
- permanently close the inpatient ward and shape existing services around a health and wellbeing centre on the hospital site

The Board unanimously agreed the third option<sup>2</sup>.

Healthwatch Northumberland wrote to the lay chair of the CCG on 5 October 2017 to express the views of board members following the CCG Joint Locality Executive Board meeting. The HWOSC met on 17 October 2017 to consider the CCG's decision to close the inpatient beds permanently. Representatives of the CCG provided a presentation outlining the proposed changes. A representative of the Save Rothbury Hospital Campaign Group also provided a presentation. Members considered that *"the Committee should have been consulted on all the options prior to the commencement of the public consultation..."*. They also *"stated that they did not have enough information regarding the service offer at the proposed health and wellbeing centre on the hospital site to make an assessment on whether it would benefit the whole of Northumberland"*. The HWOSC resolved by five votes to two (with one abstention) to refer the matter to the Secretary of State.

The legal service manager of the County Council wrote to the chief operating officer of the CCG on 25 October 2017 providing formal notification of the intention to refer the matter to the Secretary of State. A letter of referral was also sent on 25 October 2017.

The chief operating officer of the CCG wrote to the Secretary of State on 10 November 2017 in response to the referral. The Department of Health sought clarification of the grounds for referral on 24 November 2017. A response from the Committee Chairman was sent on 12 January 2018. A further letter from the Department of Health was sent on 12 February 2018 and was responded to by the Committee Chairman on 28 February 2018. The Secretary of State requested advice from the IRP on 9 May 2018.

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<sup>2</sup> Although not recorded in the minutes of the meeting, it is understood that the CCG decided to retain other services provided at the hospital, to introduce additional services three months post-decision and to give further consideration to the introduction of other services in the health and wellbeing centre.

## **Basis for referral**

The HWOSC's letter of 25 October 2017 states that:

*“The Committee has exercised the power to make a referral to you in accordance with section 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 on the grounds that:*

- 1 It is not satisfied with the adequacy of content of the consultation with the Committee and the time allowed; and*
- 2 It considers that the proposal would not be in the interests of health service provision in the area*

## **IRP view**

With regard to the referral by the Northumberland County Council Health and Wellbeing Overview and Scrutiny Committee, the Panel notes that:

- the IRP has been asked to comment on the impact of the proposals with regard to the public sector equality duty and family test
- equality impact assessment work was undertaken – the timing and adequacy of this work is disputed
- the HWOSC contends that the CCG's consultation with the Committee was inadequate – there is no evidence of HWOSC involvement prior to the launch of public consultation or the temporary closure of inpatient services that preceded it
- local campaigners contend that NHS England's "5<sup>th</sup> test" relating to hospital bed closures has not been complied with – and contend that the test's application to the situation at Rothbury has been disputed by the CCG
- the CCG has been operating under NHS England directions since August 2016 due to its financial position – the proposals' predicted savings are disputed by campaigners
- the CCG reports that since the closure of the ward in September 2016 no adverse clinical effects have been reported – there is little evidence of the impact on travel/cost/inconvenience for patients, families and carers
- securing the long term future of RCH is a major local concern – the services to be provided from the proposed health and wellbeing centre are yet to be agreed
- helpful advice on the way forward has been provided by Healthwatch Northumberland

## **Advice**

**The Panel considers each referral on its merits and concludes that further action locally is required to agree and implement the proposed health and wellbeing centre at Rothbury Community Hospital.**

In his commissioning letter for this advice, the Secretary of State asked the IRP to comment on *“the impact of these proposals on different groups, specifically families, and in relation to the public sector equality duty”*. Reference is also made to the requirements of the family test. The Panel understands that the family test relates to guidance for government departments in the process of policy formulation and does not apply to the NHS in the

planning or delivering of services. The Panel has therefore commented on the impact of proposals on families only in the general terms that apply to all patients and carers.

The Panel noted that the Save Rothbury Hospital Campaign Group's submission to the HWOSC of 3 October 2017 refers to "*legal defects occurring before, during and after the consultation process*" and appears to question the legality of certain aspects of the CCG's consultation. This advice is offered on the understanding that matters of legality or otherwise are for the courts to determine, not the IRP.

The latest NHSE guidance<sup>3</sup> is clear about the need to consider the impact of any proposals on different groups and health inequalities, stating that "*Commissioners should also pay due regard to the duties placed on them under the Equality Act 2010 regarding the public sector equality duty ('PSED') and the duty to reduce health inequalities, and duties under the NHS Act 2006 (as amended by the HSCA 2012)*". Annex 4 of the guidance (Stage 2 Assurance<sup>4</sup> Checkpoint sample questions) poses the question "*Has an equality impact assessment taken place?*" Similar requirements were included in the previous version of the guidance that was in place at the time of the matters under consideration here.

Stage 2 assurance of the CCG's proposals for consultation was provided by NHS England on 27 January 2017 and makes reference to "*...non-publishable analysis to understand the needs of patients that have typically required an inpatient stay at Rothbury...*". Whether or not that analysis amounts to an equality impact assessment, the IRP is unable to comment on. The equality impact assessment provided to the IRP, as required by the Panel's information template completed by the NHS, is dated September 2017. The Panel concludes that no publicly available equality impact assessment was carried out prior to public consultation. NHS England may wish to reflect on whether the "*proportionate assurance approach*" adopted in this case was appropriate.

With regard to the content of the equality impact assessment completed in September 2017, the Panel noted that it uses a standard format and is included at Appendix F of the CCG's decision-making report (pages 342-364). It assesses potential inequalities arising from the proposals that may impact on groups protected by the Equality Act 2010. It identifies those most likely to be affected as "*people living in Rothbury and the surrounding area, mainly those who are frail and the older population who require direct admission to a community hospital for step up or step down care and their partners/carers*". The proposals would also impact on a small number of patients receiving care who are nearing the end of their lives. The assessment recognises that, for the families and carers of patients that will require

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<sup>3</sup> Planning, assuring and delivering service change for patients, NHS England, updated March 2018 available at <https://www.gov.uk/government/organisations/independent-reconfiguration-panel/about>

<sup>4</sup> "*Takes place in advance of any wider public involvement or public consultation process or a decision to proceed with a particular option.*" Planning, assuring and delivering service change for patients, NHS England.

inpatient care in other local hospitals, there would be an impact for some in terms of additional travelling and transport.

The HWOSC contends that the content of the CCG's consultation with the Committee and the time allowed [to respond] was inadequate. The 2013 Regulations require NHS bodies to consult a local authority on any proposal under consideration for a substantial development of the health service in its area or a substantial variation in the provision of such a service. The Panel has seen no evidence that any discussion took place between the two bodies about whether or not the matter was deemed to be a substantial development or variation. The minutes of the HWOSC meeting on 17 October 2017 state that "*The decision, to permanently close the 12 inpatient beds... was regarded by the CCG as a 'substantial variation' to the provision of health services within the county of Northumberland*". We could find no other prior documentation to support this statement but, if that was the case, the Panel would have expected the CCG to have approached the HWOSC at an early stage as part of its preparations for public consultation. It appears that no discussion with the HWOSC occurred about the future of RCH prior to the launch of consultation in January 2017. The reasons for this are difficult to understand, all the more so given that the CCG did meet the newly formed Save Rothbury Hospital Campaign Group in December 2016.

Nor does there appear to have been any discussion with the HWOSC regarding the CCG's earlier decision to support the temporary suspension of inpatient admissions at RCH. If the permanent closure was, indeed, held by the CCG to be a substantial variation logic suggests that the temporary suspension of inpatient admission that preceded it in September 2016 should similarly have been regarded as substantial and the HWOSC informed in advance of the proposed action. The Panel considers that the events of that time do not fall within the ambit of Regulation 23(2) of the 2013 Regulations which allows an NHS body to take a decision without consulting the scrutiny body because of a risk to safety or welfare of patients or staff.

As the IRP has commented on in advice previously<sup>5</sup>, the 2013 Regulations do not define what constitutes a substantial development or variation to services. Well established good practice is that *joint* consideration through protocols agreed locally between scrutiny committees and the NHS can help. The HWOSC and local NHS bodies should examine their current arrangements for exchanging information and consideration of issues and ensure that mechanisms are fit for purpose.

The Save Rothbury Hospital Campaign Group contends that NHS England's '5<sup>th</sup> test', relating to hospital bed closures, has not been complied with and further contends that the relevance of the application of the test in this instance has been disputed by the CCG. The latest guidance published by NHS England (see footnote 3) states that the test applies to

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<sup>5</sup> See Advice on Deer Park Medical Centre, Witney, IRP, 11 April 2017 at <https://www.gov.uk/government/publications/irp-deer-park-medical-centre-witney-initial-assessment>

*“any proposal including plans to significantly reduce hospital bed numbers...”*. In this case, while a reduction of 12 beds may not seem to be a significant number in the context of Northumberland, it does represent a 100 per cent reduction in the inpatient beds available at RCH. NHS England may wish to clarify its intentions with regard to the application of this test.

The paragraphs above illustrate flaws in the engagement and consultation processes that were undertaken by the CCG in the lead up to the decision-making meeting of 27 September 2017. The question now is how to proceed in the interests of health services in the area?

The financial problems facing the CCG are evident – savings clearly need to be made somewhere, though the Panel noted that the CCG’s predicted deficit was almost matched by the Trust’s predicted surplus. The CCG has been clear that its decision to close the 12 beds at RCH is to achieve better use of the finite resources, both financial and staffing, that are available. The cost savings arising from the closure predicted by the CCG have been disputed by the local campaign group. Since the ward has now been closed for some 20 months, it occurs to the Panel that some hard evidence on the issue should by now be available. The CCG should share this information with the HWOSC and interested parties.

The CCG reports that since the closure of the ward in September 2016 no adverse clinical effects have been reported. While this is welcome news, it tells only part of the story. There is little evidence relating to the experience of the patients affected in the intervening period, both those who have continued to receive care at RCH and those who have had to travel to other locations. Similarly, there is little evidence that the impact on additional travel, costs and inconvenience for the families and carers of those affected was fully taken into consideration in deciding to consult on only one option. Again, in the 20 months since the ward’s closure, there has been ample time to examine the impact in these regards. The CCG and the HWOSC should jointly undertake an appropriate assessment.

The outcome of that piece of work notwithstanding, the Panel considers that it is unrealistic to re-open the inpatient ward at this late stage. The primary concern of the local community is to ensure the long term future of RCH. While all parties are agreed that a health and wellbeing centre could be a useful addition to local services, the Panel agrees with the view expressed in the HWOSC referral letter that there is, as yet, little firm detail of what additional services would be provided in the centre. Earlier work to understand the health needs of the local population, to establish the case for change and to consider fully the impact of the changes on travel and accessibility can, at best, be described as ‘thin on the ground’. There is an opportunity now for the NHS (CCG and Trust), working in tandem with the HWOSC and the local community, to address past deficiencies. With imagination and creativity, Rothbury Community Hospital has the potential to be an excellent local facility – one that makes best use of the building both clinically and cost-effectively for the



benefit of local people<sup>6</sup>. The CCG and Trust in collaboration with the HWOSC and local community should concentrate their efforts in refining the current ‘possible’ and ‘probable’ lists of services into something more tangible. A comprehensive health needs assessment for the locality is essential for the process. Changes in population numbers and profile should be monitored and taken account of as a normal part of the CCG’s planning activities.

Finally, the Panel has noted the fractious tone of some of the evidence and correspondence submitted with this referral. This is in contrast to the measured response and helpful comments contained in the Healthwatch Northumberland letter of 5 October 2017 to the lay chair of the CCG. Sound advice was offered such as to focus on those most affected, to consider the impact on families and carers of travelling further afield and to engage fully with the community as the health and wellbeing centre is developed. The CCG and HWOSC would do well to heed this advice as they move forward in implementing and overseeing change at RCH.

Yours sincerely



Lord Ribeiro CBE  
Chairman, IRP

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<sup>6</sup> See, for example, Advice on Torrington Community Hospital, 23 September 2016 at <https://www.gov.uk/government/publications/irp-torrington-initial-assessment>

## APPENDIX ONE

### LIST OF DOCUMENTS RECEIVED

#### Northumberland County Council Health and Wellbeing Overview and Scrutiny Committee

- 1 Referral letter to Secretary of State from Cllr Jeffery Watson, Chair, Northumberland County Council Health and Wellbeing Overview and Scrutiny Committee (HWOSC). Attachments:
- 2 Draft minutes of the Health and Wellbeing Overview and Scrutiny Committee of 17 October 2017, together with addresses made to that Committee by the Save Rothbury Community Hospital Campaign Group and Councillor Steven Bridgett (Local Member)
- 3 Agenda for the above meeting and Report of the Democratic Services Manager
- 4 Draft minutes of the Northumberland Clinical Commissioning Group's (CCG) Joint Locality Executive Board meeting, Wednesday 27 September 2017 (to be ratified at meeting to be held 25 October 2017)
- 5 Copy of presentation given by Northumberland CCG to the Health and Wellbeing Overview and Scrutiny Committee meeting, 17 October 2017
- 6 Northumberland CCG Decision Making Report following public consultation, September 2017
- 7 Save Rothbury Community Hospital Campaign Group's response to the proposed changes at Rothbury Community Hospital
- 8 Save Rothbury Community Hospital Campaign Group's report to the Health and Wellbeing Overview and Scrutiny Committee of 17 October 2017 entitled '*An analysis of the Decision Making report of NHS Northumberland Clinical Commissioning Group*'
- 9 Care and Wellbeing OSC Minutes, 28 February 2017
- 10 Health and Wellbeing OSC Minutes, 27 June 2017
- 11 Council letter of 25 October 2017 to Chief Operating Officer of the NHS Northumberland Clinical Commissioning Group

#### NHS

- 1 IRP template for providing assessment information  
Attachments:
- 2 Northumberland CCG letter to Secretary of State, 10 November 2017
- 3 Review of Rothbury bed utilisation, November 2016
- 4 Rothbury Community Hospital public consultation document, January 2017
- 5 Report by SRCH Campaign Group, April 2017
- 6 Rothbury Community Hospital consultation feedback report, June 2017
- 7 Rothbury Community Hospital decision making report, September 2017
- 8 Northumberland CCG-NHSE Rothbury beds final assurance, 27 January 2017
- 9 Minutes of Northumberland CCG Public JLEB decision making meeting, 27 September 2017

- 10 Rothbury Community Hospital future options paper
- 11 Rothbury Community Hospital option appraisal against the ‘three Es’ paper
- 12 NHS England directions to Northumberland CCG, 25 August 2016
- 13 Rothbury Community Hospital Travel Impact Analysis, July 2017
- 14 Care Quality Commission, quality report Northumbria Healthcare NHS Foundation Trust, 5 May 2016
- 15 Draft minutes of the HWOSC meeting, 17 October 2017

## **Other evidence**

- 1 Save Rothbury Community Hospital Campaign letter to IRP, 28 November 2017
- 2 Campaign group list of supporting organisations
- 3 Save Rothbury Community Hospital Campaign letter to DH, 19 March 2018
- 4 Healthwatch Northumberland letter to NHS Northumberland CCG Lay Chair, 5 October 2017
- 5 Save Rothbury Community Hospital Campaign emails, 16 and 17 May 2018
- 6 DH letter to Cllr Watson, HWOSC Chair, 24 November 2017
- 7 Cllr Watson, HWOSC Chair, letter to DH, 12 January 2018
- 8 DH letter to Cllr Watson, HWOSC Chair, 12 February 2018
- 9 Cllr Watson, HWOSC Chair, letter to DH, 28 February 2018
- 10 Open letter from 38 Degrees, London EC1R, 9 April 2018