HEALTH SCRUTINY REFERRALS TO THE SECRETARY TO STATE

BRIEFING NOTE – WHAT HAPPENS NEXT?

Statutory Basis

Regulation 23 (of the Local Authority [Public Health, Health and Wellbeing Boards and Health Scrutiny] Regulations 2013) enables local authorities, via their health scrutiny functions, to "report to the Secretary of State in writing" in specified circumstances, in relation to consultations on substantial development or substantial variations in health provision, where there is disagreement between the local NHS and the local authority.

Stage 1 – Preparing the Report to the Secretary of State

The first stage is to prepare a report to the Secretary of State. The Secretary of State’s guidance\(^1\) summarises what is required to meet the requirements of Regulation 23, as follows:

“When making a referral to the Secretary of State, certain information and evidence must be included. Health scrutiny will be expected to provide very clear evidence-based reasons for any referral to the Secretary of State. These requirements are new since the previous Regulations, so they are given here in full. Referrals must now include:

- An explanation of the proposal to which the report relates.
- An explanation of the reasons for making the referral.
- Evidence in support of these reasons.
- Where the proposal is referred because of inadequate consultation, the reasons why the health scrutiny body is not satisfied of its adequacy.
- Where the proposal is referred because there was no consultation for reasons relating to safety or welfare of patients or staff, reasons why the health scrutiny body is not satisfied that the reasons given for lack of consultation are adequate.
- Where the health scrutiny body believes that proposals are not in the interests of the health service in its area, a summary of the evidence considered, including any evidence of the effect or potential effect of the proposal on the sustainability or otherwise of the health service in the area.
- An explanation of any steps that the health scrutiny body has taken to try to reach agreement with the relevant NHS body or health service provider.
- Evidence that the health scrutiny body has complied with the requirements which apply where a recommendation has been made.
- Evidence that the health scrutiny body has complied with the requirements which apply where a recommendation has not been made, or where no comments have been provided on the proposal.”

Under the previous regulatory framework (prior to April 2013 regulations) referrals were automatically passed by the Secretary of State to the Independent Reconfiguration Panel. However, this no longer applies. The Secretary of State’s Guidance\(^2\) states that "The Secretary of State may ask for advice from the

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1. Paragraph 4.7.11 of Local Authority Health Scrutiny – Guidance to Support Local Authorities and Their Partners to Deliver Effective Health Scrutiny – Department of Health – June 2014.

2. Paragraph 4.7.2 of Local Authority Health Scrutiny – Guidance to Support Local Authorities and Their Partners to Deliver Effective Health Scrutiny – Department of Health – June 2014.
Independent Reconfiguration Panel (IRP), an advisory non-departmental public body" and "The IRP will undertake an initial assessment of any referral to the Secretary of State for Health where its advice is requested." The implication in these two statements is confirmed by the IRP's own procedure note\(^3\), which states: "The IRP will undertake an initial assessment of any referral to the Secretary of State for Health where our advice is requested. However, this does not mean that all referrals to the Secretary of State for Health will automatically be reviewed in full by the IRP."

There is no readily available information on health scrutiny committees where a referral has not been passed to the IRP.

**Stage 2 – Initial Assessment by the Independent Reconfiguration Panel**

The IRP comprises a mixture of lay members; clinical members; and managerial members. Information on membership and the IRP in general is available at [www.gov.uk/government/organisations/independent-reconfiguration-panel](http://www.gov.uk/government/organisations/independent-reconfiguration-panel)

The IRP procedure note sets out the IRP process for initial assessments:

"On receipt of the appropriate documentation, the IRP will carry out an **initial assessment** of the referral and assess its suitability for full IRP consideration. This usually takes 20 working days. The initial assessment process is largely based on documentary evidence and the IRP does not usually, at this stage, seek information from other interested parties or arrange to take oral evidence from the parties involved. The information required for the IRP to carry out an initial assessment is:

* the referral letter and supporting documentation from the referring body
* an **IRP initial assessment template providing relevant background information completed by NHS England.**"

There are two possible outcomes from initial assessments:

1. **A recommendation that the referral is not suitable for full IRP review** - The IRP will explain why and, where possible, provide advice to the Secretary of State on further action to be taken locally. The Secretary of State will make the final decision about what happens next. This usually takes around one month.

2. **A recommendation that the referral is suitable for full IRP review** - The Secretary of State will then decide whether to commission a full review. Once a full review has been requested, specific terms of reference and a timetable for reporting will be agreed. Again, this may take around one month. The timescale for the review itself will depend on the scale and complexity of the proposals under consideration but a "typical" review may take around three months.

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Since the implementation of the new regulations in 2013, all twenty-two initial assessments have concluded with a recommendation that the referral is not suitable for a full review, although in one instance the IRP recommended further work by the CCGs on the proposals. In each case the Secretary of State has accepted the IRP’s advice. The following table outlines the topics and referring local authorities.

<table>
<thead>
<tr>
<th>Subject</th>
<th>Health Overview and Scrutiny Committee</th>
<th>Date of Referral Letter</th>
<th>Date of IRP Advice</th>
<th>Date of Publication of IRP Advice</th>
<th>Outcome</th>
</tr>
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<tbody>
<tr>
<td>Acute Hospital Services</td>
<td>Windsor and Maidenhead Adult Services and Health Overview and Scrutiny Panel</td>
<td>6 Sept 13</td>
<td>1 Nov 13</td>
<td>20 Nov 13</td>
<td>Not Suitable for Full Review</td>
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<tr>
<td></td>
<td></td>
<td>56 days + 19 days = 75 days</td>
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<tr>
<td>Acute Mental Health Inpatient Services</td>
<td>Medway Health and Adult Social Care Overview and Scrutiny Committee</td>
<td>3 Sept 13</td>
<td>1 Nov 13</td>
<td>20 Nov 13</td>
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<tr>
<td>Neonatal Services</td>
<td>Wakefield and Kirklees Joint Health Scrutiny Committee</td>
<td>10 Oct 13</td>
<td>19 Feb 14</td>
<td>6 Mar 14</td>
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<td>132 days + 15 days = 147 days</td>
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<tr>
<td>Rehabilitation Beds</td>
<td>South Gloucestershire Public Health and Health Scrutiny Committee</td>
<td>2 Oct 13</td>
<td>10 Dec 13</td>
<td>17 Mar 14</td>
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<tr>
<td>Hospital Closure</td>
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<td>21 Feb 14</td>
<td>17 Mar 14</td>
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<td>North Yorkshire Scrutiny of Health Committee</td>
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<td>28 May 14</td>
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<td></td>
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<td>17 days + 13 days = 30 days</td>
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<td>Walk-in Centre</td>
<td>North Somerset Health Overview and Scrutiny Panel</td>
<td>3 Feb 14</td>
<td>2 May 14</td>
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<td>88 days + 26 days = 114 days</td>
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<td>Walk-in Centre</td>
<td>South Tyneside Overview and Scrutiny Coordinating and Call-in Committee</td>
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<td>6 Feb 15</td>
<td>20 Feb 15</td>
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<td>South Gloucestershire Public Health and Health Scrutiny Committee</td>
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<td>7 Apr 15</td>
<td>11 Jun 15</td>
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<td>67 days + 65 days = 132 days</td>
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<td>Intermediate Care</td>
<td>Redbridge Health Scrutiny Committee</td>
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<td>31 Dec 15</td>
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<td>Devon Health and Wellbeing Scrutiny Committee</td>
<td>21 July 16</td>
<td>23 Sept 16</td>
<td>28 Sept 16</td>
<td>Not Suitable for Full Review</td>
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<tr>
<td></td>
<td></td>
<td>64 days = 5 days = 69 days</td>
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<tr>
<td>Alternative Provider of Medical</td>
<td>Ceremonial Mayor of Hartlepool on behalf of Audit and 2</td>
<td>3 Nov 16</td>
<td>7 March 17</td>
<td>20 Mar 17</td>
<td>Not Suitable for Full Review</td>
</tr>
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<td>Subject</td>
<td>Health Overview and Scrutiny Committee</td>
<td>Date of Referral Letter</td>
<td>Date of IRP Advice</td>
<td>Date of Publication of IRP Advice</td>
<td>Outcome</td>
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<td>Governance Committee</td>
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<td>11 April 17</td>
<td>3 July 17</td>
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<td></td>
<td></td>
<td>62 days + 83 days = 145 days</td>
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<tr>
<td>Accident and Emergency</td>
<td>Health Scrutiny Committee for Lincolnshire</td>
<td>15 Dec 16</td>
<td>23 Mar 17</td>
<td>3 Aug 17</td>
<td>Not Suitable for Full Review</td>
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<tr>
<td></td>
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<td>98 days + 133 days = 231 days</td>
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<td>Maternity Services</td>
<td>Oxfordshire Joint Health Scrutiny Committee</td>
<td>14 Feb 17</td>
<td>21 Aug 17</td>
<td>26 Sep 17</td>
<td>Not Suitable for Full Review</td>
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<tr>
<td></td>
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<td>188 days + 36 days = 224 days</td>
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<td>Scanning Services</td>
<td>Thurrock Health and Wellbeing Overview and Scrutiny Committee</td>
<td>12 Oct 16</td>
<td>1 Sept 17</td>
<td>18 Oct 17</td>
<td>Not Suitable for Full Review</td>
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<td>324 days + 47 days = 371 days</td>
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<td>Maternity Services</td>
<td>Cumbria Health Scrutiny Committee</td>
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<td>4 Oct 17</td>
<td>23 Nov 17</td>
<td>Not Suitable for Full Review</td>
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<tr>
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<td>175 days + 50 days = 225 days</td>
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<td>Urgent Care</td>
<td>East Riding of Yorkshire Health, Care and Wellbeing Overview and Scrutiny Sub-Committee</td>
<td>28 April 17</td>
<td>11 Oct 17</td>
<td>23 Nov 17</td>
<td>Not Suitable for Full Review</td>
</tr>
<tr>
<td></td>
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<td>166 days + 43 days = 209 days</td>
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<tr>
<td>Hospital Discharge Support</td>
<td>Stoke-on-Trent Adults and Neighbourhoods Overview and Scrutiny Committee</td>
<td>26 Jan 17</td>
<td>18 Oct 17</td>
<td>19 Dec 17</td>
<td>Not Suitable for Full Review</td>
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<tr>
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<td>265 days + 62 days = 333 days</td>
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<tr>
<td>Maternity Services</td>
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<td>30 Aug 17</td>
<td>9 Feb 18</td>
<td>7 Mar 18</td>
<td>Not Suitable for Full Review</td>
</tr>
<tr>
<td></td>
<td></td>
<td>163 days + 26 days = 189 days</td>
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<tr>
<td>InVitro Fertilisation Treatment</td>
<td>Croydon Health &amp; Social Care Scrutiny Sub-Committee</td>
<td>27 Jun 17</td>
<td>5 Jan 18</td>
<td>16 Mar 18</td>
<td>Not Suitable for Full Review</td>
</tr>
<tr>
<td></td>
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<td>192 days + 70 days = 262 days</td>
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<tr>
<td>Hospital and Community Health Services</td>
<td>Calderdale and Huddersfield Joint Health Scrutiny Committee</td>
<td>1 Sept 17</td>
<td>9 Mar 18</td>
<td>11 May 18</td>
<td>Not Suitable for Full Review</td>
</tr>
<tr>
<td></td>
<td></td>
<td>189 days + 63 days = 252 days</td>
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</table>
The IRP advice letters typically include a conclusion that the "referral is not suitable for full review because further local action by the NHS with the Council can address the issues raised."

Stage 3 – Full Review by the Independent Reconfiguration Panel

As indicated above, there have been no full IRP reviews since the implementation of the 2013 regulations. The processes for full reviews are detailed in the IRP’s procedure note, and include visits and hearings, where members of the IRP can gather oral evidence in addition to written submissions from any interested parties.

The IRP states that it aims to submit its advice in 60 working days (though more time may be required for particularly large or complex reviews). The full IRP will meet and agree their recommendations to the Secretary of State.

Stage 4 – Secretary of State Decision on Full Review

On receipt of the full IRP advice, the Secretary of State may choose to accept all, some or none of the IRP’s findings. Clearly, as there have been no full reviews, there have been no instances of a decision by the Secretary of State.

In terms of overall timings, it should be noted that to complete all four stages would take a minimum of six months.
STATEMENT IN SUPPORT OF REPORT TO THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE BY THE HEALTH SCRUTINY COMMITTEE FOR LINCOLNSHIRE

GRANTHAM AND DISTRICT HOSPITAL ACCIDENT AND EMERGENCY SERVICES

Introduction

In accordance with Regulation 23(9)(a) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, the Health Scrutiny Committee for Lincolnshire is making a report to the Secretary of State for Health and Social Care in relation to the closure of Accident and Emergency Services at Grantham and District Hospital between 6.30 pm and 8.00 am. This referral is made on the basis that the Committee has found that consultation on the continued closure has not been adequate.

A unanimous decision to make this report to the Secretary of State for Health and Social Care was made by the Health Scrutiny Committee on 17 January 2018.

This referral follows a previous referral by the Health Scrutiny Committee for Lincolnshire on 15 December 2016. This led to a determination by the Secretary of State for Health on 2 August 2017, based on advice from the Independent Reconfiguration Panel dated 22 March 2017. [Enclosures 1A-1E and 2A-2B contain the background information].

Grantham and District Hospital – Closure of Accident and Emergency Department Background

The background information on Grantham and District Hospital is included in the previous referral documentation and is therefore not repeated here. [Please refer to Enclosures 1A-1E and 2A-2B].
Developments Between December 2016 and August 2017

Since the statement in support of a report to the Secretary of State was initially made on 15 December 2016, there have been regular reports to the board of United Lincolnshire Hospitals NHS Trust (ULHT). The main elements of the Trust Board's consideration are as follows:

• 7 February 2017 – The ULHT Board made a decision to reduce the period of overnight closure of Grantham A&E, so that it would be open from 6.30 pm to 8 am (instead of 9 am), and extended the temporary closure for a further three months.

• 7 March 2017 – The ULHT Board confirmed the February decision to reduce the period of the overnight closure of Grantham A&E, with the new closure hours of 6.30 pm to 8 am becoming effective from 27 March 2017.

• 9 May 2017 – The ULHT Board extended the temporary closure of Grantham A&E for a further three months.

• 1 August 2017 – The ULHT Board supported the continued overnight closure of Grantham A&E and decided to continue with the current opening hours of 8 am - 6.30 pm, implemented on 27 March 2017. The Board agreed to review the overnight closure in three months. The Board also agreed to work with the Clinical Commissioning Groups to explore an interim service model for a 24 hour emergency/ out of hours service.

A key element of the ULHT Board’s consideration on each of these dates is the staffing level of middle-grade doctors. A middle grade threshold had been set of 21 substantive or long term locum middle grade doctors, against a funded establishment of 28. Between August 2016 and August 2017, the reports to the Board indicated the progress in the recruitment of middle grade doctors from 11.6 full time equivalents in August 2016 (the time of the initial decision to close Grantham A&E overnight) to 18.6 full time equivalents in July 2017. This gradual increase in staffing reflected the work undertaken by ULHT to recruit to the vacant posts.

Health Scrutiny Committee Consideration – 13 September 2017

On 13 September 2017, a report was submitted to the Health Scrutiny Committee for Lincolnshire, which advised the outcome of the Secretary of State’s decision on 2 August 2017 and included the report of the Independent Reconfiguration Panel. [Enclosures 2A and 2B]. The Committee resolved that:

(1) That the determination of the Secretary of State for Health on the referral of the overnight closure of Accident and Emergency Department at Grantham A & E, and the content of the advice from the Independent Reconfiguration Panel be noted.

(2) That pursuant to the advice of the Independent Reconfiguration Panel, the Committee put on record its position that full, meaningful and transparent public consultation be undertaken on the future of A & E services across Lincolnshire by all appropriate sections of the NHS, to address the issues raised in the report of the Independent Reconfiguration Panel.
(3) That the latest information from the United Lincolnshire Hospitals NHS Trust, regarding their staffing levels for emergency care be noted.

Of particular relevance to the Health Scrutiny Committee’s report is part (2) of the resolution, where the Committee’s wish for a full, meaningful and transparent public consultation was recorded. No such consultation has taken place or is immediately planned. [Enclosure 3 contains the full minutes extract.]

ULHT Board Consideration and Decision – 7 November 2017

On 7 November 2017, the ULHT Board considered a report [Enclosure 4A], which contained the following four recommendations, as follows:

(1) Based on the evidence provided in the report, the Trust Board is asked to support the re-opening of the Grantham A&E department 24/7 provided it is assured that three departmental A&E rotas can be staffed 24/7 for a reasonable prospective period. This will be subject to a safety review of the A&E services staffing model, which will the Trust will be supported by NHSE and NHSI to complete.

(2) NHSI has requested that the Trust Board delay their final decision to reopen the department for a period of one month to allow time for the safety review to be completed.

(3) We continue to work with CCGs and partners to find a more sustainable model in light of our inability to guarantee that we may need to close again in the future.

(4) To review the position on a monthly basis.

The report indicated that as of 11 October 2017, 22.0 middle grade doctors were in post (comprising 14.0 substantives and 8.0 long term locums). This led to the decision below, as set out in the minutes of the ULHT Board meeting [Enclosure 4B].

RESOLVED

The Board agreed that:

• Subject to the safety review by NHS Improvement the Trust would move to a decision to reopen at the December Trust Board meeting.
• The Trust would continue to work with CCGs and partners to find a more sustainable model.'

Increase in Funded Establishment

Page 6 of the report to the Board on 7 November 2017 made the first reference to the overall increase in establishment funding for A&E middle grade doctors: -

'It is also important to highlight that the funding for establishment has been increased since the previous papers submitted to the Trust Board. The funded establishment for middle grade posts has been increased to 38.0 whole time equivalent, an increase of 10.0 whole time equivalent since the last paper that was submitted to the Trust Board.

‘Funding for middle grade establishment will further increase from 1/1/2018 to a total of 42.0, and again from 1/4/2018 to a total of 44.0.’
Whilst the body of the report contained the above information, it was not brought forward into the recommendations or decision of the Board. However, paragraph 866/17 of the Board's minutes [Enclosure 4B] refer to consideration of the increased funded medical establishment, but the minutes do not show that a link was made with the Board's decision of 76 November 2017.

Publication of ULHT Board Paper – 12 December 2017

On 12 December 2017, the ULHT Board paper for its meeting on 15 December was published, including the report of the East of England Clinical Senate and an advisory letter from NHS Improvement [Enclosure 5A]. This was reported to the Health Scrutiny Committee on 13 December as a Supplementary Chairman's Announcement [Enclosure 5B].

The Clinical Senate's report included the following recommendation: -

- The Panel does not support the reopening of the 24/7 A&E department at Grantham Hospital on the grounds of potential adverse impact on patient safety at A&E Departments at all three United Lincolnshire NHS Trust Hospitals.

The Committee passed the following resolution on 13 December 2017:

RESOLVED


(2) That the Health Scrutiny Committee's opposition to the first recommendation in the East of England Clinical Senate report (Review of Accident and Emergency Services at Grantham and District Hospital – report of the Independent Clinical review panel – 22 November 2017) be recorded, on the basis that acceptance of the first recommendation would prejudice any future consultation on A & E Services at Grantham and District Hospital and the current restricted opening hours would in effect be made permanent; and the consultation exercise would be based on these opening hours as the status quo, rather than the previous 24/7 service.

(3) That the Board of United Lincolnshire Hospitals NHS Trust be requested to defer its planned decision on 15 December 2017 in relation to the East of England Clinical Senate report to its next meeting on 26 January 2018, as this would enable the Health Scrutiny Committee to give detailed consideration to the Clinical Senate’s report and recommendations at its next Committee meeting on 17 January 2018.

(4) That representatives from NHS Improvement, United Lincolnshire Hospitals NHS Trust, the Clinical Commissioning Group and the East of England Clinical Senate be invited to the next meeting of the Committee scheduled for the 17 January 2018.
In accordance with part (3) of the resolution, Councillor Carl Macey, the Chairman of the Health Scrutiny Committee for Lincolnshire, wrote on 14 December 2017 to Jan Sobieraj, the Chief Executive of ULHT \(\text{Enclosure 5C}\). The letter requested that the Board defer consideration of the Grantham A&E overnight closure until its next meeting on 26 January 2018, as the Committee was seeking to explore the implications of the report at its own meeting on 17 January 2018, to which the Committee would be inviting representatives from ULHT as well as the CCGs, NHS Improvement and the Clinical Senate. The Chairman confirmed in this letter that such an approach would be in accordance with the overall conclusion of the Independent Reconfiguration Panel on 22 March 2017 that 'local action' between the NHS and the Committee could address the issues raised by the overnight closure of Grantham A&E.

The Chairman also indicated that the Health Scrutiny Committee was disappointed with the Clinical Senate's recommendations and recorded its opposition to the first recommendation, which advised against any overnight re-opening, or even the extension of the opening hours, at Grantham A&E. The Committee's view was that acceptance of this first recommendation would prejudice any future consultation on A&E services at Grantham, as this would mean that the current restricted opening hours would in effect be made permanent and the consultation exercise would be based on these opening hours as the status quo, rather than the previous 24/7 service.

Consideration by ULHT Board on 15 December

The ULHT Board considered the report and its consideration is summarised in the minutes \(\text{Enclosure 5D}\). These include a statement (paragraph 949/17) that one of the non-executive directors recognised the request for the Board to defer any decision until the senate report had been considered by the Health Scrutiny Committee. The same paragraph also states that ULHT's Medical Director stated that NHS Improvement took direction from the Secretary of State which requires NHS Improvement to hold trusts to account and give them direction. Trusts are required to have regard to this direction from NHS Improvement. The Medical Director explained that the Trust had received direction in the form of a letter from NHS Improvement and had no option but to comply with that direction.

Consideration by the Health Scrutiny Committee - 17 January 2018

The Health Scrutiny Committee considered the matter on 17 January 2018 and unanimously decided to pass the following resolution:

RESOLVED (Unanimously)
The Health Scrutiny Committee for Lincolnshire notes that on 15 December 2017 United Lincolnshire Hospitals NHS Trust Board acted as the 'responsible' person in considering a proposal concerning the opening hours at Grantham and District Hospital Accident and Emergency Department including a proposal to re-open Grantham and District Hospital Accident and Emergency Department 24 hours per day seven days per week; and as a result the Board was considering a proposal for a substantial development of the health service or a substantial variation in the provision of such a service (in accordance with Regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013);

In accordance with Regulation 23(9)(a) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, a referral be made to the Secretary of State for Health and Social Care on the basis that the Committee is not satisfied that the consultation on the decision by the United Lincolnshire Hospitals NHS Trust Board on 15 December 2017 not to re-open Grantham and District Hospital Accident and Emergency Department 24 hours per day seven days per week was adequate in both its content and the time allowed; and

That a report be brought to a future Health Scrutiny Committee for Lincolnshire to present plans for the future of Grantham and District Hospital Accident and Emergency Department.

The relevant extract of the minutes of the Committee is in Enclosure 6.

ABSENCE OF CONSULTATION

Decision on Overnight Closure of Grantham Hospital Accident and Emergency Department

The Health Scrutiny Committee for Lincolnshire contends that the Board of ULHT did not need to make a decision on 15 December 2017, and could have waited until its next Board meeting on 26 January 2018. Deferral of the Board's decision would have enabled the Health Scrutiny Committee for Lincolnshire to consider the matter prior to a decision by the ULHT Board. Whilst NHS Improvement had 'directed' the ULHT Board to make a decision on the closure on 15 December 2017, deferral of the Board's decision would have had no impact on the level of service provided to patients.

Implementation of Independent Reconfiguration Panel's Advice

The Committee would also like to emphasise to the Secretary of State for Health and Social Care the following concluding paragraph from the initial advice of the Independent Reconfiguration Panel (22 March 2017):

"The Panel considers that the time has come for an open and honest appraisal, both of the options for future emergency care delivery at Grantham and more widely across Lincolnshire. An alternative to the current approach is needed that reflects the prospective staffing position for emergency care provided by the Trust. Recognising that the staffing threshold currently required to restore the service at Grantham is unlikely to be achieved in a sustainable way CCGs, as commissioners must as a matter of urgency work with the local providers (including mental health care and community providers as well as ULHT) and the HSC to engage and consult the public across Lincolnshire on current services and what might be achievable and sustainable in the future. Drawing on the work already done for the
sustainability and transformation plan for the area, a plan of action for the whole health economy is required that will implement safe and sustainable urgent and emergency services and bring about an early end to the current uncertainty.”

The Health Scrutiny Committee for Lincolnshire argues that consultation has not taken place on the future of the Grantham A&E. The Committee understands that consultation is unlikely to take place in the immediate future. This continues the uncertainty for the residents of Grantham and the surrounding area.

Clinical Commissioning Groups

As indicated in the referral statement of 15 December 2016, Lincolnshire East Clinical Commissioning Group (CCG) continues as the lead commissioner of services from United Lincolnshire Hospitals NHS Trust on behalf of the four clinical commissioning groups in Lincolnshire. [The four clinical commissioning groups are: Lincolnshire East CCG; Lincolnshire West CCG; South Lincolnshire CCG; and South West Lincolnshire CCG.] Grantham and District Hospital is located within the South West Lincolnshire CCG area, and it is understood that this CCG takes a lead on commissioning the services provided at the hospital.

CONCLUSION

The Health Scrutiny Committee for Lincolnshire believes that the decision by the Board of ULHT on 15 December 2017 to continue with the overnight closure of Grantham A&E was taken without any consultation with the Health Scrutiny Committee for Lincolnshire. The Committee should have been consulted, as the full and unqualified acceptance of the recommendations in the report of the East of England Clinical Senate in effect established the overnight closure of Grantham A&E as permanent. Furthermore the increase in the funded staffing establishment for consultants and middle grade doctors now makes it impossible for Grantham A&E to open overnight in the foreseeable future.

The Committee further argues that both commissioners and providers in Lincolnshire should seek to implement the advice of the Independent Reconfiguration Panel and initiate an honest and open appraisal for the future options for the delivery of urgent care.

The uncertainty continues for the residents of Grantham and the surrounding area, in terms of what emergency care is available to them, and it is now eighteen months since overnight services were first withdrawn from Grantham A&E. The Committee does not believe this should continue.

Councillor Carl Macey
Chairman of the Health Scrutiny Committee for Lincolnshire

31 January 2018
Lincolnshire County Council has delegated its health scrutiny functions, as set out in section 244 of the National Health Act 2006 and Regulations 20 – 29 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 to the Health Scrutiny Committee for Lincolnshire. This includes all the functions set out in Regulation 23.

There are 16 members of the Health Scrutiny Committee for Lincolnshire. Eight of these are Lincolnshire County Councillors. Seven are Lincolnshire District Councillors, representing each of the seven district council areas in Lincolnshire. One member of the Committee represents the Lincolnshire Local Involvement Network.

The decision to make the referral was made at a meeting of the Committee held on 17 January 2018.
List of Enclosures

Enclosure 1A  Statement in support of a Report to the Secretary of State for Health by the Health Scrutiny Committee for Lincolnshire – 15 December 2016

Enclosure 1B  Report to the Health Scrutiny Committee for Lincolnshire on 21 September 2016 by United Lincolnshire Hospitals NHS Trust on Emergency Care.

Enclosure 1C  Relevant Extract from the Minutes of the Health Scrutiny Committee for Lincolnshire - 21 September 2016.

Enclosure 1D  Report to the Health Scrutiny Committee for Lincolnshire on 23 November 2016 by United Lincolnshire Hospitals NHS Trust on Emergency Care Services at Grantham and District Hospital

Enclosure 1E  Relevant Extract from the Minutes of the Health Scrutiny Committee for Lincolnshire 23 November 2016.

Enclosure 2A  Letter from Lord Ribeiro, CBE, Chair of Independent Reconfiguration Panel to the Rt Hon Jeremy Hunt, MP, the Secretary of State for Health – 22 March 2017

Enclosure 2B  Letter from Rt Hon Jeremy Hunt, MP, the Secretary of State for Health to the Chairman of the Health Scrutiny Committee for Lincolnshire – 2 August 2017

Enclosure 3  Relevant Extract of the Minutes of the Health Scrutiny Committee for Lincolnshire - 13 September 2017.

Enclosure 4A  Report (dated 31 October 2017) to the United Lincolnshire Hospitals Trust Board on 7 November 2017 on Emergency Care Services Current Position


Enclosure 5A  Report (dated 6 December 2017) to United Lincolnshire Hospitals NHS Trust Board on 15 December 2017 on Emergency Care Services at ULHT, including the following appendices:

- Letter (dated 5 December 2017) from Jeffrey Worrall, Delivery & Improvement Director - Central & South Midlands to Jan Sobieraj, Chief Executive of United Lincolnshire Hospitals NHS Trust (Appendix B).
Enclosure 5B  Supplementary Chairman's Announcement to the Health Scrutiny Committee for Lincolnshire (13 December 2017) - United Lincolnshire Hospitals NHS Trust - Grantham and District Hospital A&E Department - Additional Information

Enclosure 5C  Letter (dated 14 December 2017) from Councillor Carl Macey, Chairman of the Health Scrutiny Committee for Lincolnshire to Jan Sobieraj, Chief Executive of United Lincolnshire Hospitals NHS Trust.

Enclosure 5D  Relevant Extract of the Minutes of the United Lincolnshire Hospitals NHS Trust Board Meeting – 15 December 2017.

Enclosure 6  Relevant Extract from the Minutes of the Health Scrutiny Committee for Lincolnshire 17 January 2018. (Subject to confirmation by the Committee on 21 February 2018)

END OF STATEMENT IN SUPPORT OF REPORT TO THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

BY THE HEALTH SCRUTINY COMMITTEE FOR LINCOLNSHIRE
3. Letter to Sec of State from Cllr Carl Macey, 31 Jan 2018

The Rt Hon Jeremy Hunt, MP
The Secretary of State for Health and Social Care
Department of Health
Richmond House, 79 Whitehall
London
SW1A 2NS

County Offices
Newland
Lincoln
LN1 1YL

31 January 2018

Dear Mr Hunt

REPORT TO THE SECRETARY OF STATE BY HEALTH SCRUTINY COMMITTEE FOR LINCOLNSHIRE - GRANTHAM AND DISTRICT HOSPITAL

In accordance with Regulation 23(9)(a) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, the Health Scrutiny Committee for Lincolnshire is making a report to the Secretary of State for Health and Social Care in relation to the closure of Accident and Emergency Services at Grantham and District Hospital between 6.30 pm and 8.00 am. This referral is made on the basis that the Committee has found that consultation on the continued closure has not been adequate.

Lincolnshire County Council has delegated its health scrutiny functions, as set out in section 244 of the National Health Act 2006 and Regulations 20 – 29 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 to the Health Scrutiny Committee for Lincolnshire. This includes all functions in Regulation 23. The decision to make the referral was made by the Committee on 17 January 2018.

The following documents are enclosed with this letter:

Statement in Support of Report to the Secretary of State for Health and Social Care by the Health Scrutiny Committee for Lincolnshire – Grantham and District Hospital Accident and Emergency Services

Enclosure 1A Statement in support of a Report to the Secretary of State for Health by the Health Scrutiny Committee for Lincolnshire – 15 December 2016
Enclosure 1B  Report to the Health Scrutiny Committee for Lincolnshire on 21 September 2016 by United Lincolnshire Hospitals NHS Trust on Emergency Care.

Enclosure 1C  Relevant Extract from the Minutes of the Health Scrutiny Committee for Lincolnshire - 21 September 2016.

Enclosure 1D  Report to the Health Scrutiny Committee for Lincolnshire on 23 November 2016 by United Lincolnshire Hospitals NHS Trust on Emergency Care Services at Grantham and District Hospital

Enclosure 1E  Relevant Extract from the Minutes of the Health Scrutiny Committee for Lincolnshire 23 November 2016.

Enclosure 2A  Letter from Lord Ribeiro, CBE, Chair of Independent Reconfiguration Panel to the Rt Hon Jeremy Hunt, MP, the Secretary of State for Health – 22 March 2017

Enclosure 2B  Letter from Rt Hon Jeremy Hunt, MP, the Secretary of State for Health to the Chairman of the Health Scrutiny Committee for Lincolnshire – 2 August 2017

Enclosure 3  Relevant Extract of the Minutes of the Health Scrutiny Committee for Lincolnshire - 13 September 2017.

Enclosure 4A  Report (dated 31 October 2017) to the United Lincolnshire Hospitals Trust Board on 7 November 2017 on Emergency Care Services Current Position


Enclosure 5A  Report (dated 6 December 2017) to United Lincolnshire Hospitals NHS Trust Board on 15 December 2017 on Emergency Care Services at ULHT, including the following appendices:

- Letter (dated 5 December 2017) from Jeffrey Worrall, Delivery & Improvement Director - Central & South Midlands to Jan Sobieraj, Chief Executive of United Lincolnshire Hospitals NHS Trust (Appendix B).
If you wish to receive electronic copies of the enclosed documentation, please contact Simon Evans, Health Scrutiny Officer, Lincolnshire County Council: Simon.Evans@lincolnshire.gov.uk

I look forward to your consideration of this matter.

Yours sincerely,

Councillor Carl Macey
Chairman of the Health Scrutiny Committee for Lincolnshire
(Email: CllrC.Macey@lincolnshire.gov.uk)

END of Letter to Sec of State from Cllr Carl Macey, 31 Jan 2018
Dear Councillor Macey,

Grantham and District Hospital

Thank you for your letter of 31 January about the closure of A&E services at Grantham and District Hospital

Having carefully considered your letter, I have come to the conclusion that the referral does not meet the requirements of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013. In particular you have not included a written report which addresses all of the matters required by regulation 23(11). The report must include:-

- an explanation of the proposal to which the report relates;
- where the proposal is being referred because of inadequate consultation, the reasons why the scrutiny body is not satisfied of its adequacy;
- where the proposal is referred because there was no consultation for reasons relating to safety or welfare of patients or staff, the reasons why the health scrutiny body is not satisfied that the reasons given for lack of consultation are adequate;
- where the referral is made because the scrutiny body believes that proposals are not in the interests of the local health service in its area, a summary of the evidence considered, including any evidence of the effect
or potential effect of the proposal on the sustainability or otherwise of the health service in the area;

• an explanation of any steps that the health scrutiny body has taken to try to reach agreement with the relevant NHS body or health service provider;

• where the scrutiny body has made a recommendation to the NHS body, evidence that paragraph (10) has been complied with;

• where the scrutiny body has not made a recommendation to the NHS Body, evidence that paragraphs (7) and, if applicable, (8) have been complied with.

• an explanation of the reasons for making the report and any evidence in support of those reasons.

These requirements are also set out in the Heath Scrutiny Guidance which is available here.


You have explained that Lincolnshire Health Scrutiny Committee has decided to make the referral on the grounds that:-

• It is not satisfied with the adequacy of content of the consultation or the time allowed.

However, you do not appear to have provided details of the steps you have taken to try to reach an agreement with the CCG as required by the regulations.

In considering any further response on this issue, you should bear in mind that, in accepting the IRP’s advice about your previous referral, the Secretary of State was mindful of their finding that:

“The HSC is seeking a commitment that A&E services at Grantham and District Hospital will re-open between 18.30 and 09.00 (to be 08.00) and the level of service provided will be same as those in place prior to 17 August 2016. However, the Committee also accepts that this cannot happen without sufficient staff to operate the service. The Panel agrees that in the interests of safety the A&E service at Grantham and District Hospital should not re-open 24/7 unless sufficient staff defined by the threshold can be recruited and retained.”

You do not appear to have provided any evidence that conditions have changed.
Your report, should you wish to make one, will also need to set out how you have worked with the CCG and other partners to fulfil the Secretary of State’s request that “… the staffing threshold currently required to restore the service at Grantham is unlikely to be achieved in a sustainable way CCGs, as commissioners of these services, must as a matter of urgency work with the local providers (including mental health care and community providers as well as ULHT) and the HSC to engage and consult the public across Lincolnshire on current services and what might be achievable and sustainable in the future.”

Yours sincerely,

Neil Townley

End of letter from Dept of Health 12.2.18
5. Cllr Carl Macey response to Dept of Health, 21.2.18

Mr Neil Townley,
Adult Care and Provider Policy Team
Department of Health
5th Floor, North Wing
39 Victoria Street
London
SW1H 0EU

21 February 2018

Dear Mr Townley

GRANTHAM AND DISTRICT HOSPITAL – OVERNIGHT CLOSURE OF A&E

Thank you for your letter of 12 February 2018, in which you set out your conclusion that the referral of the overnight closure of Grantham A&E does not meet the requirements of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, in particular Regulation 23(11).

I have interpreted your letter as a request for clarification of the referral rather than a determination by the Secretary of State for Health and Social Care on the substance of the referral, so I will be addressing the issues which you have raised in your letter.

Requirements of Regulation 23(11)

I set out below how the requirements of Regulation 23(11) are satisfied by the referral.

(a) An Explanation of the Proposal

On 17 August 2017, United Lincolnshire Hospitals NHS Trust (ULHT) implemented what effectively became the permanent closure of Grantham and District Hospital A&E between the hours of 6.30 pm and 9.00 am. This closure occurred following a decision by the ULHT Board on 2 August 2018.

The proposal which is the subject of the Committee's referral is the further proposal considered by the ULHT Board on 15 December 2017 to reopen Grantham A&E between the hours of 6.30 pm and 8.00 am. The original referral document set out in detail the background to ULHT's decision-making at its meeting on 15 December 2017, from which it is clear that the ULHT Board as a responsible person had under consideration a proposal to extend the opening hours at Grantham or re-open it 24/7. That proposal is for a substantial
development of the health service or a substantial variation in the provision of such a service in the same way that the proposal to reduce the hours at Grantham was a substantial variation. ULHT was obliged to consult the Committee and did not do so.

(b) The Reasons the Health Scrutiny Committee for Lincolnshire is not Satisfied that the Consultation on the Proposal has been Adequate

(1) On 7 November 2017, the Board of United Lincolnshire Hospitals NHS Trust agreed that subject to a safety review by NHS Improvement, ULHT would move to a decision to reopen at the next Trust Board meeting on 15 December 2017.

On 12 December 2017, the ULHT Board paper for its meeting on 15 December was published, including the report of the East of England Clinical Senate and an advisory letter from NHS Improvement. The Committee had been given no prior notice of this decision and had not been consulted in any way.

The ULHT Board paper was reported to the Health Scrutiny Committee on 13 December 2017. Following consideration of this, the Committee requested that the ULHT Board defer its planned decision from 15 December 2017 to 26 January 2018, as this would enable the Health Scrutiny Committee to be consulted on the Clinical Senate’s report and any potential ULHT Board decision. The Committee would be able to consider this at its next Committee meeting on 17 January 2018.

The Committee’s request was reported to the ULHT Board. However, the Board made the decision to accept in full the report of the East of England Clinical Senate without any further reference to the Committee.

In the view of the Committee the consultation was inadequate in all respects, because no consultation took place even after a direct request from the Committee to ULHT to engage with it.

(2) On 22 March 2017, the Independent Reconfiguration Panel stated in its Report on the referral of the closure proposal:

"Patients, the public and stakeholders need to know what to expect from their local health services. Their elected representatives have a right to be kept advised of developments, including potential pressures that may affect the provision of services. The report presented to the Trust Board on 2 August 2016 emphasised that “this report is a culmination of a series of circumstances that have led to a crisis situation within our Emergency Departments”. The report explains that over previous months, emergency departments were safely staffed by asking consultants to work extra shifts to cover gaps in the middle-grade doctor rota and by securing as many agency doctors as possible. New ways of working were also piloted to improve performance. Clearly the crisis that arose did not happen overnight yet it appears the HSC was only advised of circumstances once decisions had been made and action taken. The Panel would have expected that, as part of the exchange of information that should be taking place regularly, the HSC would have been advised of the situation earlier. The absence of ongoing
communication might have helped to fuel the view that the temporary closure was to be continued indefinitely until made permanent."

Notwithstanding this clear statement of the importance of the health service engaging with elected representatives through the Committee, the ULHT Board failed to do so for the second time in relation to the same service change despite a request from the Committee to do so.

(3) Again in its Report of 22 March 2017 the Independent Reconfiguration Panel stated:

"The Panel considers that the time has come for an open and honest appraisal, both of the options for future emergency care delivery at Grantham and more widely across Lincolnshire. An alternative to the current approach is needed that reflects the prospective staffing position for emergency care provided by the Trust. Recognising that the staffing threshold currently required to restore the service at Grantham is unlikely to be achieved in a sustainable way CCGs, as commissioners must as a matter of urgency work with the local providers (including mental health care and community providers as well as ULHT) and the HSC to engage and consult the public across Lincolnshire on current services and what might be achievable and sustainable in the future. Drawing on the work already done for the sustainability and transformation plan for the area, a plan of action for the whole health economy is required that will implement safe and sustainable urgent and emergency services and bring about an early end to the current uncertainty."

The Health Scrutiny Committee for Lincolnshire argues that consultation has not taken place on the future of the Grantham A&E. The Committee understands that consultation is unlikely to take place in the immediate future. As stated on 31 January 2018, this continues the uncertainty for the residents of Grantham and the surrounding area.

It is the Committee's view that there could not be a clearer example of lack of consultation than that presented by the actions of ULHT in relation to its 15 December 2017 decision and it is that failing in the light of the clear statements of the Independent Reconfiguration Panel that has led to the referral.

(c)  This provision does not apply to this referral.

(d) Any Steps Taken to try to Reach Agreement on the Proposal

(1) The Committee is not referring the substantive proposal but the failure to consult, so no steps have been taken to reach agreement on it.

(2) The Health Scrutiny Committee's request of 13 December that it be consulted on the proposed decision of the ULHT Board and the content of the East of England Clinical Senate report was not met. To be clear, the Committee was not requesting that Grantham A&E be opened, it was simply requesting that the decision of the ULHT Board be deferred from 15 December 2017 to 26 January 2018 so that the Committee could be properly consulted. During this time, there
would have been no immediate impact on the operations of Grantham A&E. The Committee was therefore effectively prevented from reaching any agreement on the proposal by ULHT’s failure to consult the Committee on the proposal despite a specific request from the Committee to do so.

(3) The Health Scrutiny Committee is receiving quarterly updates on the Lincolnshire STP. One of the seven priorities in the Lincolnshire STP is acute service reconfiguration, and proposals for the future of Grantham A&E would form part of any plans for reconfiguration. However, as yet there has been no consultation in accordance with the recommendations of the Independent Reconfiguration Panel.

(e) **This provision does not apply to this referral.**

(f) **Explanation of the Reasons for the Making of the Report**

Please refer to this letter as a whole for the full explanation.

(1) As stated above, although the ULHT Board considered the request of the Health Scrutiny Committee to defer its decision from 15 December 2017 to 26 January 2018, the ULHT Board made the decision, not allowing any consultation to take place with the Health Scrutiny Committee for Lincolnshire at its next meeting no 17 January 2018.

(2) As stated elsewhere in this letter, this failure is contrary to the clear recommendations in the initial advice of the Independent Reconfiguration Panel (22 March 2017).

(3) The effect of the ULHT Board’s acceptance of the East of England Clinical Senate’s report, on the strong advice of NHS Improvement, effectively rejected the proposal to reinstate 24/7 services in Grantham and by so doing effectively establishes the overnight closure of Grantham A&E as the status quo, as the basis for any future consultation.

(4) ULHT was required by the Regulations to consult the Committee and simply did not do so despite being requested to do so by the Committee.

(g) **Any Evidence in support of those Reasons**

The evidence in support of those reasons was detailed in the statement submitted on 31 January 2018, together with the enclosures provided with that statement. If further copies of the statement and enclosures are required, please contact Simon Evans, who can be contacted via telephone 01522 553607 or email: Simon.Evans@lincolnshire.gov.uk

**Other Matters**

I set out below my response to the other specific points in your letter of 12 February, 2018.

(1) **Evidence that Conditions have Changed**
In your letter of 12 February 2018, you state that the Health Scrutiny Committee does not appear to have provided any evidence that conditions have changed. Regulation 23 does not make any reference to a requirement to demonstrate changes in conditions in order to make a referral. Throughout Regulation 23, reference is repeatedly made to the term 'proposal' and it is failure of ULHT to consult on the proposal considered by the Board of United Lincolnshire Hospitals NHS Trust on 15 December 2017, which is the focus of this referral. For this reason I disagree with your assertion that the onus is on the Health Scrutiny Committee for Lincolnshire to provide evidence of change in conditions, as there is no basis for this requirement in the Regulations. To introduce such a requirement would mean that the Committee would have itself to address the merits of the proposal as a condition of enforcing its right to be consulted. That cannot be right and there is no such requirement in the Regulations

(2) Work with CCGs and Other Partners

The concluding paragraph of the initial advice of the Independent Reconfiguration Panel (22 March 2017) has already been quoted in this letter (and was also cited in the Committee's referral statement submitted of 31 January 2018). In the concluding paragraph of your letter, you also quote from this paragraph and state the report will also need to set out how the Health Scrutiny Committee has worked with CCGs and other partners to fulfil the Secretary of State's request that:

"...the staffing threshold currently required to restore the service at Grantham is unlikely to be achieved in a sustainable way CCGs, as commissioners must as a matter of urgency work with the local providers (including mental health care and community providers as well as ULHT) and the HSC to engage and consult the public across Lincolnshire on current services and what might be achievable and sustainable in the future."

As submitted in the referral statement of 31 January 2018, the Health Scrutiny Committee for Lincolnshire’s position is that consultation has not taken place on specific proposals considered by ULHT on 15 December 2017 as to the future of the Grantham A&E. There is no requirement in the Regulations that as a condition of making that referral the Committee must have complied with the recommendation set out in the quote.

The emphasis in the above paragraph is, in any event, on commissioners undertaking engagement and consultation. It quite clearly states that it is for the CCGs to work with the Committee. It in no way requires the Committee to show how it has worked with the CCGs as a condition of making a referral. The Committee will seek to work with health commissioners and providers to achieve engagement and consultation. That is what the Committee was doing when it wrote to ULHT requesting that it postpone its decision of 15 December 2017 to enable consultation and engagement to take place. ULHT did not do so.

It is also the Committee's intention to invite the CCGs and ULHT to its meeting on 21 March 2018 to initiate discussion on the future of emergency services. However,
it is not the responsibility of the Health Scrutiny Committee to initiate and undertake engagement and consultation. That is the duty of the health bodies concerned. When they do not do so, the Committee is entitled to refer their failure to do so to the Secretary of State.

I again take the opportunity to quote from the final paragraph of the IRP’s advice to the Secretary of State, where the remaining sentence of the paragraph reads:

"Drawing on the work already done for the sustainability and transformation plan for the area, a plan of action for the whole health economy is required that will implement safe and sustainable urgent and emergency services and bring about an early end to the current uncertainty."

To date, the Health Scrutiny Committee is unaware of any plan of action to implement safe and sustainable urgent and emergency services. It is faced with ad hoc decisions about specific services at Grantham. It is entitled to be consulted on those decisions. In the case of the current referral it was not consulted on the proposal despite requesting it and despite a clear recommendation from the IRP about engagement with the Health Scrutiny Committee as the elected representatives of local people. That is the basis of the referral.

There is no end in sight to the current uncertainty for the residents of Grantham and I look forward to the Secretary of State’s determination of this referral.

Yours sincerely

Councillor Carl Macey
Chairman of the Health Scrutiny Committee for Lincolnshire

END OF Cllr Carl Macey response to Dept of Health, 21.2.18
Dear Councillor Macey,

Grantham and District Hospital

Thank you for your further letter of 20 February.

You have provided evidence of what has been proposed/done by the Trust, and an apparent lack of consultation with the Health Scrutiny Committee for Lincolnshire. However, I cannot see what, if any, communication you have had with them or, perhaps more importantly, the CCG. That is not in keeping with the scrutiny regime. The guidance states that:

In a case where a health scrutiny body has not commented on the proposal or has commented without making a recommendation, the health scrutiny body may not refer a proposal unless:

- It has informed the relevant NHS body or health service provider of-
  - its decision as to whether to exercise its power of referral and, if applicable, the date by which it proposed to exercise that power, or
  - the date by which it proposes to make a decision as to whether to exercise its power of referral.
- In a situation where it informed the relevant NHS body or health service provider of the date by which it proposed to decide whether to exercise the
power of referral, it has made that decision by that date and informed the body or provider of the decision.

It is not clear to me whether the Trust and/or CCG are aware of your referral. It would also be useful if you could include any correspondence with them in which they put their side of the story. For me to progress this case, therefore, you will need to speak to them direct and submit a report to me with your account of how your discussion with them has gone and where (assuming that to be still the case) the remaining areas of disagreement are.

Yours sincerely,

Neil Townley

END OF Dept of Health response to Cllr Carl Macey 27.2.18
Dear Mr Townley

GRANTHAM AND DISTRICT HOSPITAL – OVERNIGHT CLOSURE OF A&E

Thank you for your letter of 27 February 2018.

I note that you have made reference to an extract from paragraph 4.7.5 of the Secretary of State's guidance on Local Authority Health Scrutiny. However the words you quote in effect only paraphrase Regulation 23(7) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 without any of the context as to how Regulation 23(7) fits into the overall scheme set out in Regulation 23.

Once that context is taken into account it is clear that you have misunderstood the requirements of the regulations, as Regulation 23(7) applies only in circumstances defined by Regulation 23(6), which states:

"(6) This paragraph applies where –

(a) the authority has not exercised the power in paragraph (4);  
(b) the authority's comments under paragraph (4) do not include a recommendation."

28 February 2018
Thus the application of Regulation 23(6) is in turn dependent on Regulation 23(4), which states:

"(4) Subject to regulation 30(5) (joint committees) and any directions under regulation 32 (directions as to arrangements for discharge of health scrutiny functions), the authority may make comments on the proposal consulted on (my emphasis) by the date or the changed date provided by R under paragraph (1)(b)(ii) or (c)."

Regulations 23(1)(b)(ii) and 23(1)(c) make reference to dates by which comments on a proposal are required from the authority, when the health body is consulting. However, the basis for this referral by the Health Scrutiny Committee for Lincolnshire is precisely that it was not consulted on the proposed decision by United Lincolnshire Hospitals NHS Trust on 15 December 2017 in relation to Grantham A&E; and there has been no consultation on the future provision for Grantham A&E, in accordance with the report of Independent Reconfiguration Panel (22 March 2017).

Regulation 23(7) cannot apply to a referral made on the basis that there was no consultation since the requirements of Regulation 23(7) only apply where the power in Regulation 23(4) arises and that power only arises where the Committee has been consulted on a proposal.

Further, the Health Scrutiny Committee did not receive any notification of a consultation date under either Regulation 23(1)(b)(ii) or Regulation 23(1)(c) by which it could make comments for the same reason. On this basis, Regulations 23(4), 23(6) and 23(7) do not apply, and this referral cannot be deemed invalid on the basis of non-compliance with these regulations.

I note that on the basis of this misunderstanding of paragraph 4.7.5 of the Secretary of State’s (non-statutory) guidance on Local Authority Health Scrutiny, you have raised a number of points. I have interpreted these as requests for further information with which I am happy to assist. This information is set out below.

Communication with United Lincolnshire Hospitals NHS Trust

The grounds for this referral are the absence of consultation. I therefore reiterate that on 14 December 2017, I wrote to the Chief Executive of United Lincolnshire Hospitals NHS Trust (ULHT) asking him to pass on a request from the Health Scrutiny Committee for Lincolnshire to the Board of ULHT to defer a decision on the Grantham A&E overnight closure on 15 December 2017, to enable the Health Scrutiny Committee for Lincolnshire to give full consideration to matter on 17 January 2018. (This letter is set out as Enclosure 5C of the Committee’s submission of 31 January 2018.)
On 15 December 2017, the United Lincolnshire Hospitals NHS Trust decided not to re-open Grantham A&E overnight, but in so doing accepted all the recommendations of the East of England's Clinical Senate report. *(The relevant extracts of the Board's minutes are set out as Enclosure 5D of the Committee's submission of 31 January 2018.)*

Again, I would draw your attention to Recommendation 1 of the East of England Clinical Senate's report *(Review of Accident and Emergency Services At Grantham and District Hospital [United Lincolnshire Hospitals NHS Trust] - Report of Independent Clinical Senate Review Panel – 22 November 2017)*, the third part of which states:

"The Panel recommends that the Trust should continue to provide an A&E service at Grantham and District Hospital on the current opening hours of 08.00-18.30, seven days a week until a more definitive long term urgent and emergency care plan was developed and agreed."

The effect of the ULHT Board's acceptance of the above recommendation is that there can be no change in the opening hours of Grantham A&E until a consultation on any proposals is undertaken, and the Committee has concluded that the status quo for any consultation would be no overnight A&E services in Grantham.

The Chief Executive of ULHT was present at the meeting of the Health Scrutiny Committee on 17 January 2018, when the decision to refer was made. The minutes of the meeting of 17 January were sent to the Chief Executive, as part of the agenda for the meeting of the Committee on 21 February 2018. It is therefore clear that ULHT is aware of the Committee's referral.

**ULHT's Viewpoint**

Insofar as the Committee is aware of the ULHT viewpoint I would make two comments.

My first point is specific and relates to the decision made by the Board of ULHT on 15 December 2017. A report (prepared by the County Council's Health Scrutiny Officer) was submitted to the Health Scrutiny Committee on 17 January 2018. This report was circulated prior to publication in draft to the Chief Executive of ULHT, whose request for the inclusion of the following paragraph in the final report was met:

"The Chief Executive of ULHT has asked that the Health Scrutiny Committee is made aware of the obligations of the ULHT Board, which were set out in the report to the Board. The Single Oversight Framework / NHS Provider Licence for ULHT states that NHS Trusts are exempt from the requirement to hold the NHS provider licence, but directions from the Secretary of State require NHS Improvement to ensure that NHS Trusts comply with conditions equivalent to the licence as it deems appropriate. This includes giving direction to an NHS Trust where necessary to ensure compliance. The general licence conditions require trusts to have regard to guidance from the regulators.

"ULHT Standing Orders state that the Trust has powers to make arrangements for the exercise of functions on behalf of the Trust in each case subject to the restrictions and conditions as the Trust thinks fit or as the Secretary of State may direct."

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This particular extract of the report could be construed as meaning that the decision of the ULHT Board was strongly influenced by NHS Improvement.

My second point is general and relates to ULHT's viewpoint on Grantham A&E, which is contained in its reports to its Board (Enclosures 4A and 5A of the Committee's submission of 31 January 2018) and the minutes of these Board meetings (Enclosures 4B and 5D of the Committee's submission of 31 January 2018). In essence ULHT's viewpoint is summed up in Enclosure 5D, as this sets out the Board's decision on Grantham A&E on 15 December 2017.

Communication with Lincolnshire Clinical Commissioning Groups (CCGs)

The Senior Responsible Officer (SRO) of the Lincolnshire STP was present at the meeting of the Health Scrutiny Committee on 17 January 2018, when the decision to make a referral was made. A copy of the minutes of the meeting on 17 January 2018 was sent to the SRO as part of the agenda for the Committee's meeting on 21 February 2018. The SRO of the Lincolnshire STP is the Chief Officer of South Lincolnshire CCG and South West Lincolnshire CCG. It is therefore clear that the CCGs are aware of the Committee's referral.

As stated in my letter of 20 February 2018, the Committee receives quarterly updates on the Lincolnshire STP, which are presented to the Committee by the Senior Responsible Officer for the Lincolnshire STP. This represents evidence of communication between the CCGs and the Health Scrutiny Committee for Lincolnshire.

On 17 January 2018, the quarterly update report on the Lincolnshire STP included the following statement:

"1.3.7 Acute Care Reconfiguration / Acute Service Review

"Lincolnshire has been considering how to achieve clinical and financial sustainability notably since 2014 as part of Lincolnshire Health and Care (LHAC) and in the last 12 months as part of the Sustainability and Transformation Partnership (STP). Work has been ongoing with Women and Children’s Services, hyper acute stroke services, breast care services and Grantham A&E services. These four areas of work have previously been reported as part of acute service reconfiguration and this work continues today.

"Since the last progress report to this Committee, the Lincolnshire Coordinating Board agreed that the current STP plan is not ambitious enough to address quality, staffing and finances and that in addition to delivering the above six key priorities, an Acute Services Review is required to fully address sustainability of services for our population. This is partly as a response to the deteriorating quality and financial position and the magnitude of the scale of change required in Lincolnshire to achieve sustainable services.

"The Acute Service Review (ASR) will answer the following question;

“What is the optimum configuration of ULHT services and the role of neighbouring acute trusts, in order to achieve a thriving acute hospital service in Lincolnshire and for the population as a whole and to deliver clinical, staffing and financial sustainability across the Lincolnshire NHS health economy?”
"This ASR has commenced and is building on all the previous work completed, whether that be through LHAC [Lincolnshire Health and Care], work completed for the original STP submitted in October 2016 or the work underway today as part of the acute care reconfiguration, e.g. women and children’s services etc. By assimilating all previous work, completing the work where there are gaps (i.e. planned care) and creating a list of options for the optimum configuration of hospital services on hospital sites, the aim is to be able to identify what acute hospital services are required for the whole population.

"The ASR will be operating using the principles identified in Appendix A and initial propositions will be identified at the end of February 2018.

"Any options that suggest significant change to hospital services will go through NHS England assurance processes and public consultation before service changes are made."

As a point of explanation, the reference in the statement to the 'end of February 2018' refers to the submission of initial propositions by the Lincolnshire STP to NHS England. The Acute Services Review is not yet a public document, and it is not clear when it is going to be released into the public domain, as this may be a decision by NHS England. I do not need to advise you of the 'NHS England assurance processes', but these can also take several months, leading to further uncertainty in the Grantham area.

The above statement confirms any consultation on Grantham A&E would form part of the consultation on other aspects of the Lincolnshire STP. I understand it is unlikely that consultation on the STP will begin before September 2018, and even following consultation, there is always a delay before the implementation of any decisions, and changes to service provision.

In term of evidence of communication with the CCGs, one representative of the four Lincolnshire CCGs attends each month's agenda planning meeting for the Health Scrutiny Committee, which involve the Chairman and Vice Chairman of the Committee. This CCG representative is either the SRO for the STP or the Chief Clinical Officer for Lincolnshire West CCG. These agenda planning meetings provide an opportunity for the CCG representative to raise and discuss issues.

Area of Disagreement

The positions of the CCGs and ULHT are already documented, and there is no evidence that these will change, especially as they are extensively influenced by NHS England and NHS Improvement respectively.

Furthermore, both the regulations and guidance were drafted prior to the introduction of top-down STP process, which appears to be centrally-driven; and overseen and managed by NHS England. This makes is difficult for health overview and scrutiny committees to enter a meaningful dialogue with local CCGs and provider trusts, if their hands are tied by other parts of the NHS.

The principal area of concern for the Committee is the need for an early public consultation on the future of Grantham A&E, including its overnight provision. As already stated, the Committee understands that proposals for Grantham A&E would form part of the
consultation on the wider Lincolnshire STP, which is not expected until September 2018 at
the earliest, and could even be later depending on the outcomes of the Acute Services
Review. All this could extend the period of uncertainty and in effect could condemn the
residents of Grantham to at least 30 months without a local overnight A&E. I would ask
whether the Secretary of State believes this is acceptable.

There is a potential way to progress matters: separating the consultation on emergency
and urgent care provision (including Grantham A&E) in Lincolnshire from the consultation
on the rest of the Lincolnshire STP. However, the Committee understands that such a
decision is outside the remit of the Lincolnshire CCGs, and rests with NHS England. I
would like to know if the Secretary of State as part of his determination of this referral
could indicate if he has a view on accelerating the emergency and urgent care elements of
the STP consultation.

**Determination by the Secretary of State**

You refer to the need for further meetings between representatives of the Health Scrutiny
Committee and the CCGs and ULHT, in order to attempt to resolve any disagreements. I
have commented on this above. You state that this is necessary for you to progress the
Council’s referral. I do not accept that this is the case. There is no such requirement in the
Regulations.

END OF  *Cllr Carl Macey’s response to Dept of Health 28.2.18*