

CABINET

18 DECEMBER 2018

KENT AND MEDWAY HYPER ACUTE AND ACUTE STROKE SERVICES REVIEW

Portfolio Holder: Councillor David Brake, Adults' Services

Report from: Neil Davies, Chief Executive

Author: Perry Holmes, Chief Legal Officer
James Williams, Director of Public Health

Summary

The NHS in Kent and Medway is establishing three Hyper-Acute Stroke Units (HASUs). Medway Council believes that the sites that have been selected are not in the best interests of the health service in Kent and Medway. Furthermore, Medway Council believes that there were flaws in the way that the Joint Committee of Clinical Commissioning Groups was led to choose the selected sites.

The Cabinet is asked to agree to delegate authority to the Chief Legal Officer, in consultation with the Leader and the Portfolio Holder for Adults' Services, to apply for a Judicial Review of any decision by the Joint Committee of Clinical Commissioning Groups which excludes Medway Hospital as a site for a Kent and Medway Hyper Acute Stroke Unit.

1. Budget and Policy Framework

- 1.1 Medway's vision for Adult Social Care is 'We will support the people of Medway to live full, active lives, to live independently for as long as possible, and to play a full part in their local communities'.
- 1.2 Our vision for Adult Social Care supports the delivery of Council Plan priorities, in particular 'Supporting Medway's people to realise their potential'; 'Older and disabled people living independently'; and 'Healthy and active communities'.
- 1.3 The proposed changes will have an impact on the delivery of stroke services for the residents of Kent and Medway.
- 1.4 The Cabinet is asked to accept this as an urgent item given that the final decision on the future configuration of Hyper Acute Stroke Services for Kent and Medway is scheduled to be made on 10 January 2019, which is before

the next Cabinet meeting. This would enable the Council to apply for a Judicial Review, if necessary, at the earliest opportunity.

2. Background

- 2.1 The NHS in Kent and Medway wishes to establish three new specialist Hyper-Acute Stroke Units (HASUs) to “reorganise services so that specialist stroke staff can more consistently deliver high quality care around the clock, and in so doing reduce deaths and long-term disability from stroke *for local people*.”¹
- 2.2 On 17 September 2018, the NHS in Kent and Medway published its preferred option for the three new units, with units in William Harvey Hospital (Ashford), Maidstone Hospital and Darent Valley Hospital.
- 2.3 A Joint Health Scrutiny Committee (originally comprising of representatives from Medway Council and Kent County Council with the later addition of East Sussex County Council and Bexley Council when it was established by the NHS that a proportion of the populations in those areas would be affected by the review) (Joint HOSC) has been set up, as required by legislation, to exercise the power available to local authorities to comment to the NHS (and/or make recommendations) on this substantial change to the health service in the four areas. The Joint HOSC will meet on 14 December 2018 to comment on the Decision Making Business Case (DMBC).
- 2.4 The Kent and Medway Joint Health and Wellbeing Board will also meet on the 14 December 2018 to consider the questions raised by Medway and to comment on the likelihood that Option D (which would locate HASUs at Medway Maritime, Tunbridge Wells and William Harvey Hospitals), would have emerged as the preferred option had questionable changes to the methodology and selection criteria not been introduced at a late stage in the process.

3. Advice and analysis

- 3.1 Medway Council is concerned that the decision is not in the best interests of the health service in Kent and Medway and about how the Joint Committee of Clinical Commissioning Groups (JCCCGs) were led to make the decision. These concerns have been described in letters to the NHS (see Appendix 1) and the South East Clinical Senate (see Appendix 2).
- 3.2 Briefly, the concerns raised by Medway about the decision are that it fails to recognise that Medway is the largest and fastest growing urban area outside of London and that a larger proportion of stroke admissions in Medway are under the age of 75 than in Kent. The location of the HASUs outside of Medway will increase health inequalities. Nationally, there is clear evidence of inequalities in stroke incidence and outcomes, with higher rates in more deprived areas.
- 3.3 Secondly, Medway has raised concerns about capacity. It is understood that ambulance crews take patients to the nearest hospital, and it will not be possible to limit the number of patients that may come from outside of Kent

¹ <https://kentandmedway.nhs.uk/latest-news/identification-of-preferred-option-is-a-step-closer-to-improving-stroke-outcomes-in-kent-and-medway/>

and Medway to Darent Valley Hospital. Assurance is yet to be provided that there will be sufficient capacity for Kent and Medway patients in this scenario.

- 3.4 The independent review panel highlighted concerns about clinical leadership at two of the selected hospitals, and praised the clinical leadership at Medway hospital.
- 3.5 Medway has also raised a number of concerns about the process that led to this decision. These are described in detail in Appendices 1 and 2 and relate to changes in the way the selection criteria were evaluated and the process by which this change came about. In response to an FOI enquiry from Medway, see Appendix 3, it has been clarified that the decision makers were provided with inadequate time (less than 24 hours in a succession of meetings) to carefully consider the impact of fundamental changes to selection sub-criteria and decision-making methodology.
- 3.6 The changes appear to have been made to provide assistance to areas outside of Kent and Medway, in particular the Princess Royal University Hospital (PRUH), even though the NHS in Kent and Medway has said that the HASUs are being established to improve quality of care “*for local people*” (see 2.1 above).
- 3.7 The PRUH was included in some options but not others, after the public consultation, and then failed to deliver an implementation plan. This meant that any option that included the PRUH was penalised severely. As the PRUH had no intention of providing an implementation plan it should have been excluded from the evaluation of these options; the Kent and Medway patients that would have been affected by this could then have been reallocated to one of at least two other hospitals in Kent and Medway that are well within the desired travel-window.
- 3.8 Medway Council has submitted the letter in Appendix 1 to the regulator, NHS England, and have been told that the letter has been forwarded for response to the Chief Executive Officer of the Kent and Medway STP. Medway Council is yet to receive a response to the questions that have been posed in this letter.
- 3.9 For the sake of completeness, the Cabinet is also provided with the statement the Council made to the Joint HOSC at appendix 4, which includes an external review of the process followed to date from Jon Gilbert of Enodatio Consulting Limited. Jon is a procurement and contracts expert with over 15 years' experience. He has extensive experience running multi-million pound tenders for the public sector and has provided advice across a range of projects to local authorities, NHS trusts, NHS England and the private sector.

4. Risk management

- 4.1 In 2016 the South East Clinical Senate published a review of the potential clinical implications for local hospitals not designated a HASU in any stroke reconfiguration. The evidence from this review highlighted a number of specific risks to the population of Medway as a result of the decision not to award HASU status to Medway Maritime Hospital.

4.2 Key risks include:

4.2.1 **Diagnosis and Treatment** - All specialist stroke physicians and nurses will be transferred from Medway Maritime Hospital to a HASU. This could impact on the initial treatment and care patients receive. Good practice in managing stroke requires all patients with symptoms of an acute stroke, to be urgently assessed and then discussed with the HASU. This initial triage requires maintenance of the appropriate clinical skills amongst the medical and nursing staff in the receiving specialties of the local hospital (mainly in A&E, acute medicine and elderly care). Failure to establish clear pathways between Medway Maritime Hospital and the designated HASU's could lead to disruption to the continuity of care, potentially causing slower recovery, greater clinical risk, and a longer length of inpatient stay.

4.2.2 **Early supported discharge (ESD)** - The aim of a HASU is to ensure appropriate treatment and care is provided in the acute phase of a stroke. Once patients are stabilised and deemed fit for discharge, they need to be transferred either home or to a suitable community setting for recovery. Medway social care teams will need to establish a mechanism to facilitate ESD for Medway residents at all 3 HASUs. This may impact on social care capacity to facilitate ESD within Medway Maritime and other Hospitals, for non-stroke patients.

4.2.3 **Rehabilitation** - The South East Clinical Senate review recommended that the provision of high quality, fully staffed and skilled specialist stroke rehabilitation services, is essential for good stroke care and patient outcomes. The new configuration of HASU's and movement of stroke care away from Medway Maritime Hospital, is likely to have an impact on Medway Council social care pathways for long term recovery (care home placement and supported living).

4.2.4 **Workforce** - Removing specialist stroke services, may impact on Medway Maritime Hospital ability to recruit clinical and therapy staff. This in turn could destabilise remaining services (e.g. elderly care and therapies). This would have a negative impact on council social care services and performance, for example Delayed Transfer of Care (DToC) targets.

4.2.5 **Family and carers** - It is anticipated there will be increased travel requirements for Medway families visiting relatives in a HASU. Additional travel costs will have a disproportionate impact on people from the most disadvantaged communities who may not be in a position to pay fuel, taxi, public transport costs.

5. Financial implications

5.1 The cost of a Judicial Review could be as much as £50,000 which could be met from existing budgets, however if this is not possible this would need to be funded from the Council's reserves.

6. Legal implications

6.1 A Joint Health Overview and Scrutiny Committee of Kent County Council, Medway Council, East Sussex County Council and Bexley Council (Joint

HOSC) has been established to meet the requirements of health scrutiny legislation in relation to consultation by the NHS with these local authorities on proposed changes to Hyper Acute and Acute Stroke Services in Kent and Medway and it will be this Joint HOSC that will comment on the final decision making business case ahead of the Joint Committee of CCGs reaching a decision on the future configuration of Hyper Acute Stroke Services for Kent and Medway on 10 January 2019. (Regulations 23 and 30, Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013).

- 6.2 The four Councils involved in the Joint HOSC each have the ability to contest the proposed reconfiguration by referral of the matter to the Secretary of State for Health either because the Authority is not satisfied that consultation with Overview and Scrutiny on the proposal has been adequate in relation to content or time allowed or the Authority considers the proposal would not be in the interests of the health service in its area.
- 6.3 Once a final decision is made by the Joint Committee of Clinical Commissioning Groups (CCGs), which has delegated authority from each CCG, challenge is also possible by each Local Authority through the High Court exercising a review jurisdiction in judicial review. Any such challenge should be made within 12 weeks of the decision. The Court will exercise a review jurisdiction in circumstances where the decision has been made ultra vires (outside the powers of the decision maker), is “Wednesbury unreasonable” (no reasonable decision maker could have made the decision) or results in a breach of natural justice.

7. Recommendation

- 7.1 The Cabinet is asked to agree to delegate authority to the Chief Legal Officer, in consultation with the Leader and the Portfolio Holder for Adults’ Services, to apply for a Judicial Review of any decision by the Joint Committee of Clinical Commissioning Groups which excludes Medway Hospital as a site for a Kent and Medway Hyper Acute Stroke Unit.

8. Suggested reasons for decisions

- 8.1 The Council on 11 October 2018 formally resolved to oppose any proposal which would not see Medway Maritime Hospital become a HASU.

Lead officer contact

Perry Holmes, Chief Legal Officer

T: perry.holmes@medway.co.uk

E: 01634 332133

Appendices

Appendix 1: Letter from the Leader of Medway Council to NHS England and the reply

Appendix 2: Letter from the Leader of Medway Council to the South East Clinical Senate and the reply

Appendix 3: Freedom of Information request to NHS after September 2018 meeting at which Option B was selected and responses from the NHS.
(Excluding pack of papers and scores/summary scores referenced in questions 1 and 2 of FOI request)

Appendix 4: Medway Council Statement to Joint HOSC

Background papers

None