DHSS

Department of Health and Social Security
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D Kenny Esq
Regional Administrator
North West Thames RHA
40 Eastbourne Terrace
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W2 3QR

Your reference

Our reference FPU/9

Date
27 January 1984

Dear Mr Kenny

Attached is a copy of advice given by South West Thames legal adviser, Mr Capstic to the Richmond, Twickenham and Roehampton Health Authority. Mr Capstick is recorded in the minutes of the meeting as advising that both South West Thames and North West Thames had thoroughly investigated the appropriate statutes, from which an orthodoxy had emerged which was widely followed by the NHS. I am writing now to set out the Department's views in case there is any misunderstanding about the need to comply with Mr de Peyer's letter of 7 December 1979.

Mr de Peyer's letter of 7 December 1979 contains purely administrative guidance and was not expressed to be, nor intended to be, any form of Direction with which there is any legal obligation to comply. It was issued following the judgements in 2 High Court cases on 12 October 1979 (Griffiths J) and 15 November 1979 (Woolf J) relating respectively to decisions of the Commissioners for Lambeth, Southwark and Lewisham Area Health Authority to close respectively St John's Hospital, Morden Hill and St Olave's Hospital, Rotherhithe. There were four reasons why it was considered necessary to give further advice at that time. In the first place the Secretary of State wished to make it clear that consultation, even briefly, was always desirable and the cases had established clearly that the time allowed for consultation could be very brief indeed if circumstances made this necessary. Secondly it had become apparent that the earlier advice in Circular HSC(IS)207 had been open to misunderstanding as suggesting that a temporary closure or change of use is never a substantial variation and the letter made plain that this is not the case. Thirdly the letter made plain, as Mr Justice Griffiths had decided, that the need to implement savings immediately so as to avoid running out of money before the end of the financial year can amount to taking a decision without allowing time for consultation "in the interests of the health service". Finally the letter sought to ensure that authorities took steps to ensure that documentary evidence was available as evidence to establish the basis on which any decision to take action without consulting a CHC had been made.

On the question of consultation, the statutory requirements set out in the National Health Service (Community Health Council) Regulations 1973 (SI 1973 No 2217) do not apply to a proposal where in the interest of the health service an urgent decision on a substantial variation in service has to be taken but a health authority is required to notify the Council immediately of the decision taken and the reason why no consultation has taken place.

prescribed in regulations nor is there any statutory requirement on health authorities to use a particular form of wording in any resolution they may choose to adopt concerning a variation in service. Mr de Peyer's letter does however contain administrative guidance to health authorities on what the Department regards as good practice. A health authority must satisfy itself that a decision to close a hospital without consultation is necessary by reason of urgency in the interest of the health service and that there is in fact material upon which an authority properly directing itself could have come to such a decision. In the case heard before Griffiths J referred to above, the Commissioners, who had decided on closure without consultation because it was not a substantial variation, cancelled that decision and substituted another decision on closure without consultation by reason of urgency. Their subsequent decision was upheld by the Court. In the case before Woolf J where the proposal was sent to the CHC for consultation on 20 September 1979 and comments or alternative proposals were required by 1st post on 29 October 1979 the Court held that a decision taken within a few hours of the receipt of the CHC response on 29 October to make the proposed closure was valid compliance with regulation 20(1) of the CHC Regulations.

Irrespective of the statutory requirements, the Secretary of State expects consultation to be undertaken on all closures wherever practicable. The urgency of the situation will not always rule out the possibility of consultation and while the full period of consultation or procedures prescribed may not be practicable, a health authority should do what it can in the time available and consider carefully whether there is scope for a brief period, perhaps even of weeks rather than months, for consultation on the proposal before taking a final decision. If a substantial temporary closure has to be implemented without any prior consultation and if there is a possibility that the authority might eventually wish - or be forced - to make the closure permanent, the authority is expected to undertake full formal consultation immediately the temporary closure has been made. The Secretary of State also expects authorities to look ahead and anticipate whenever possible the need for urgent action so that proposals are brought forward in sufficient time for consultation to be carried out.

I have also written to the other Thames Regional Administrators.

Yours sincerely

S F Thorpe-Tracey
Assistant Secretary
Regional Liaison Division

Appendix 5

Department of Health and Social Security
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Telephone 01-388 1188 ext

Mr A D H Liddell
District Administrator
Hammersmith and Fulham Health Authority
Secretariat House
116 Fulham Palace Road
LONDON
W6 9PH

Your reference

Our reference

Date 2 April 1984

Dear Alastair

Thank you for your letter of 12 March about the proposed closure of WLH and Rothschild Wards at the West London Hospital.

Your Authority has quite rightly drawn attention to the apparent requirement in HSC(IS)207 for the CHC to submit a constructive and detailed counter-proposal where it wishes to register its objection to the changes proposed by the Authority. However the circular also draws attention to the fact that Ministers may in other circumstances wish to approve the closure or change of use proposals and they have made it clear on many occasions that ministerial approval is required in every case where the CHC objects to the proposals. The most recent statement of this was made by Mr Clarke in a Written Answer on 7 December 1983 in the course of which he said 'no doubt many proposals will be resolved locally but, in every case where the community health council opposes the closure, a ministerial decision will be required before closure can take place.'

There is no doubt that CHCs who choose not to submit a counter-proposal seriously weaken the strength of their objection to the authority's proposals, if only because the Minister - who inevitably lacks the broad experience of local circumstances available to the CHC - is thereby necessarily deprived of information relevant to the consideration of alternative options. However, for the reasons I have already mentioned, where the CHC objects to the Authority's proposals Ministerial involvement is inevitable and a decision will be made on the basis of all the information available and all representations made to him.

Yours sincerely

Steve Catling

S D Catling
Regional Principal

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Telephone 01-388 1188 ext

D J Kenny Esq LLB AHA
Regional General Manager
North West Thames RHA
40 Eastbourne Terrace
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W2 3QR

Your reference

Our reference

Date 9 January 1985

Dear Mr Kenny

HOSPITAL CLOSURE PROCEDURES

We have become aware at the Department that authorities are not always clear about the approach Ministers expect to hospital closure consultations. In view of the importance Ministers place on proper consultation taking place, all regional principals have been asked to write to their regions to draw specific attention to some aspects of the procedures to be followed. I am sure you will do whatever is necessary not only to inform all concerned at regional HQ, but to ensure that DHAs in your region are conscious of these points and are acting accordingly, and that they let CHCs know that we have written along these lines.

i. Presentation of the case for a proposal

Ministers recently rejected a proposal in which they felt that the authority had not presented its case sufficiently clearly in the consultation exercise in terms of benefits to patients. Ministers wish authorities to know that they will be unable to accept proposals unless authorities have clearly paid thorough attention to deciding, and setting out convincingly, the advantages their proposal has for patients compared with other feasible options.

It is therefore essential that authorities consult all those with a legitimate interest including in particular any CHC having a significant share of the catchment population.

The consultation document must contain comprehensive and clear information, including the use to which savings will be put, so that it is plainly demonstrated how patients and the community will benefit by the closure. It goes without saying that reasonable time must be allowed for the response.

ii. Separate consultation

Authorities cannot meet the requirements to consult by doing so solely as part of the consultation on their annual programmes. This could serve as the preliminary to the full formal consultation, for which a separate exercise is still required as under Circular HSC(IS)77.

iii. Temporary and Urgent Closures

I am enclosing two answers to recent PQs, which repeat guidance issued to authorities in Mr de Peyer's letter of December 1979 (copy attached). These state that (a) no permanent closure may take place without full consultation ie any closure decision has only temporary status until then; and (b) authorities should carry out full consultation once there is a possibility of their wishing to make a temporary closure permanent. Point (b) will be particularly relevant for any authorities where hospitals have been "temporarily" closed for a considerable time. Another point worthy of note in Mr de Peyer's letter is that just because a closure is temporary does not mean it need not be consulted on. A further point on which advice has been given in particular instances concerns temporary closures, made without prior consultation, and for which permanent closure is not envisaged. In these cases authorities should consult after the event on arrangements for re-opening and providing a service in the interim.

iv. Maps

To round off on a relatively minor point, Ministers have asked that all proposals coming to them for decision are illustrated by a map of the district showing all facilities relevant to the proposal.

Yours sincerely

S D Catling
Regional Principal

Appendix 4

CARICODE
Health Building Procedures Welsh Office Nov 1986

Consultation

1.14 All major developments must be the subject of appropriate professional and public consultation at local level before a formal AIP Submission is made to the health authority or the Department. Health authorities have a statutory duty to ensure that local Community Health Councils (CHC) are consulted on any proposals for substantial development or variations in service including new developments and replacement facilities.

1.15 Organisations such as local authorities (and especially in their capacity as social services, planning and highway authorities), local transport authorities, family practitioner committees, public utilities and voluntary organisations who are likely to be affected by the development should be consulted. Health authorities must consult with the relevant university on all proposed teaching hospital schemes.

1.16 During the process of consultation and obtaining Approval in Principle it is important that capital investment in new and improved facilities, together with any consequent closures, is considered and presented as part of a coherent and viable pattern of service development. In some cases it will be sensible to combine the formal closure consultation required by Service Planning Paper 5, with subsequent guidance issued on 23.1.80, with the consultation on the package of changes which include the new scheme. Even where formal consultation is reserved to a later stage, it will make sense at this earlier stage to seek the CHC's agreement in principle to any closure that is part of the package of changes in provision. If the closure is subsequently contested by the CHC and Ministers are asked to decide whether it should happen, they should be informed of the views and/or comments made by the CHC during the process of consultation on the AIP, and the reasons for any change of view.

Appendix 5

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Brian Edwards Esq
Regional General Manager
Trent Regional Health Authority
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Old Fulwood Road
SHEFFIELD S10 3TH

Your reference

Our reference

Date

1 May 1987

Dear Brian

CLOSURE DOCUMENTS

I wrote to you recently about Leicestershire Health Authority's practice of wherever possible incorporating their consultation documents for hospital closures in their draft short term programme. We also had a word about the consultation document for the proposed closure of the Roundhill Maternity Home. There is, of course, a great deal of guidance about the preparation and form of consultation on closures as well as the more specific requirements set out in HSC(IS)207 and subsequent letters from the Department. I think it would be helpful for future consultation if I highlighted one or two points which seen to me to be particularly important in the light of recent consultation exercises in Leicestershire. As I mentioned in my earlier letter, proposed closures which are subsequently submitted by authorities to Ministers are very much at risk of being summarily rejected if the consultation has not been adequately conducted. This would of course require the District Health Authority to go back to the beginning of the process with all that that would entail for service and financial plans.

Clearly our concern is that consultation should be open and genuine. It follows from this that all interested parties should be given sufficient information in a consultation document to enable them to reach their own judgement on the options proposed by the authority. They should also be made fully aware that they are being consulted on a specific proposal. The normal practice envisaged by HSC(IS)207 is that there will be "informal consultation" on the closures/changes of use intended as part of an authority's consultation on short term or strategic plans but that subsequently free standing and full consultation documents would be issued about specific closures/changes of use. It is therefore good practice not to include closure documents as an integral part of a short term programme but instead to keep it separately identifiable. This helps to avoid misunderstandings, and clearly identifies the proposed closure. In any case, the kind of detail which we would normally expect to see in a consultation document would unbalance the short term programme.

So far as the document itself is concerned, we expect each issue to be dealt with in sufficient depth to enable informed judgements to be made. Interested parties should not normally need to refer to other documents or for example to have intimate knowledge of the authority's plans or policies, the activity of the unit concerned or its staffing or the local transport arrangements in order to interpret the document and decide whether the proposals are reasonable in the circumstances.

By way of illustration, if the proposed closure of Roundhill Maternity Home needed to be submitted to the Department we would expect interested parties to have had an opportunity to consider the issue in the light of, for example, the overall planned changes in maternity provision, the benefits to patients of the change, more detailed background statistical material on staffing, activity and costs, the proposed dates for closing the home and for opening the new unit at Leicester Royal Infirmary, the ability of the LRI to cope with the additional workload, the options for the future use of the site, more detailed consideration of transport facilities, the possibility of continuing to provide a GP service (it is not entirely clear to me as a layman what kind of service the new unit would provide) and a more detailed factual assessment of the implications for staff. The list is by no means exhaustive but I think it serves to make the point.

It is also clearly important that the consultation document should not be seen to pre-judge the issue so that the authority appears to have a closed mind and that any comments are likely to be dismissed by them.

Finally, on a minor more general point, HSC(IS)207 notes that where there has not been advance informal consultation on a proposed closure the Region's and Department's permission should be sought before a full consultation document is issued. I cannot readily think of any circumstances where permission would be refused. But it is, as you recognise, always very helpful to have advance warning before a document is issued

Yours

Andy

A J McKeon