

‘Clinical Senate Reviews And The Judicial Review Process’ – A case study

Ben Clark

Senate Manager (interim), Northern England Clinical Senate

AD – Clinical Strategy, NHS England: North (Cumbria and the North East)

Greater Manchester Healthier Together

PRIMARY CARE

THE SERVICES YOU GET FROM GP SURGERIES, DENTISTS, PHARMACISTS AND OPTOMETRISTS

A MOVEMENT OF PATIENT CARE AWAY FROM HOSPITALS INTO LOCAL PRIMARY AND COMMUNITY CARE SERVICES

AN INCREASE IN INVESTMENT IN PRIMARY AND COMMUNITY CARE

CHANGES TO THE WAY TECHNOLOGY IS USED



A VISIT TO A&E CAN COST THE NHS OVER 3X MORE THAN AN APPOINTMENT WITH A GP

JOINED UP CARE

NHS, LOCAL COUNCILS, VOLUNTARY ORGANISATIONS AND OTHER PUBLIC SECTOR ORGANISATIONS WORKING TOGETHER TO DELIVER MORE JOINED UP CARE

PREVENTION AND EARLY INTERVENTION

SETTING UP LOCALLY BASED TEAMS

SUPPORTING PEOPLE TO LOOK AFTER THEMSELVES

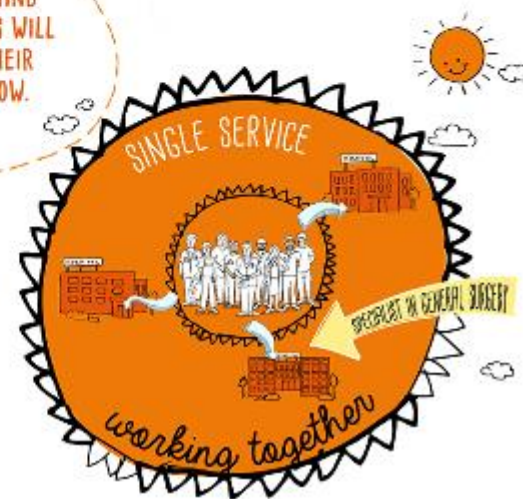
CREATING A SINGLE POINT OF CONTACT

HOSPITALS

HOSPITALS WILL WORK IN PARTNERSHIP TO FORM SHARED 'SINGLE SERVICES'. THIS WILL MEAN CARE WILL BE PROVIDED BY A TEAM OF MEDICAL STAFF WHO WILL WORK TOGETHER ACROSS A NETWORK OF LINKED HOSPITALS.

ONE OF THE HOSPITALS WITHIN EACH OF THE SINGLE SERVICES WILL SPECIALISE IN EMERGENCY MEDICINE AND ABDOMINAL SURGERY FOR PATIENTS WITH LIFE THREATENING CONDITIONS.

ALL HOSPITALS WILL BE IMPROVED TO ENSURE THEY MEET THE QUALITY AND SAFETY STANDARDS. ALL HOSPITALS WILL CONTINUE TO PROVIDE CARE TO THEIR LOCAL POPULATION AS THEY DO NOW.



Overview of key assurance milestones

Informal NCAT review visit

"The panel expressed support for the ambition, scale and development of the strategy and programme although there are specific issues to be addressed before the formal NCAT review takes place prior to formal public consultation"

Greater Manchester, Lancashire and South Cumbria Clinical Senate Review

1. Review the extent to which the recommendations made in the NCAT formal review have been implemented
2. Making an assessment of the supporting evidence for remedial action taken by Healthier Together in light of the NCAT recommendations
3. Provide independent clinical advice; highlighting issues where further thinking is required.

Healthier Together Public Consultation

July –
Sep 2014

May
2015

Decision-
making

Sep 2013

Dec 2013

June 2014

Formal NCAT review

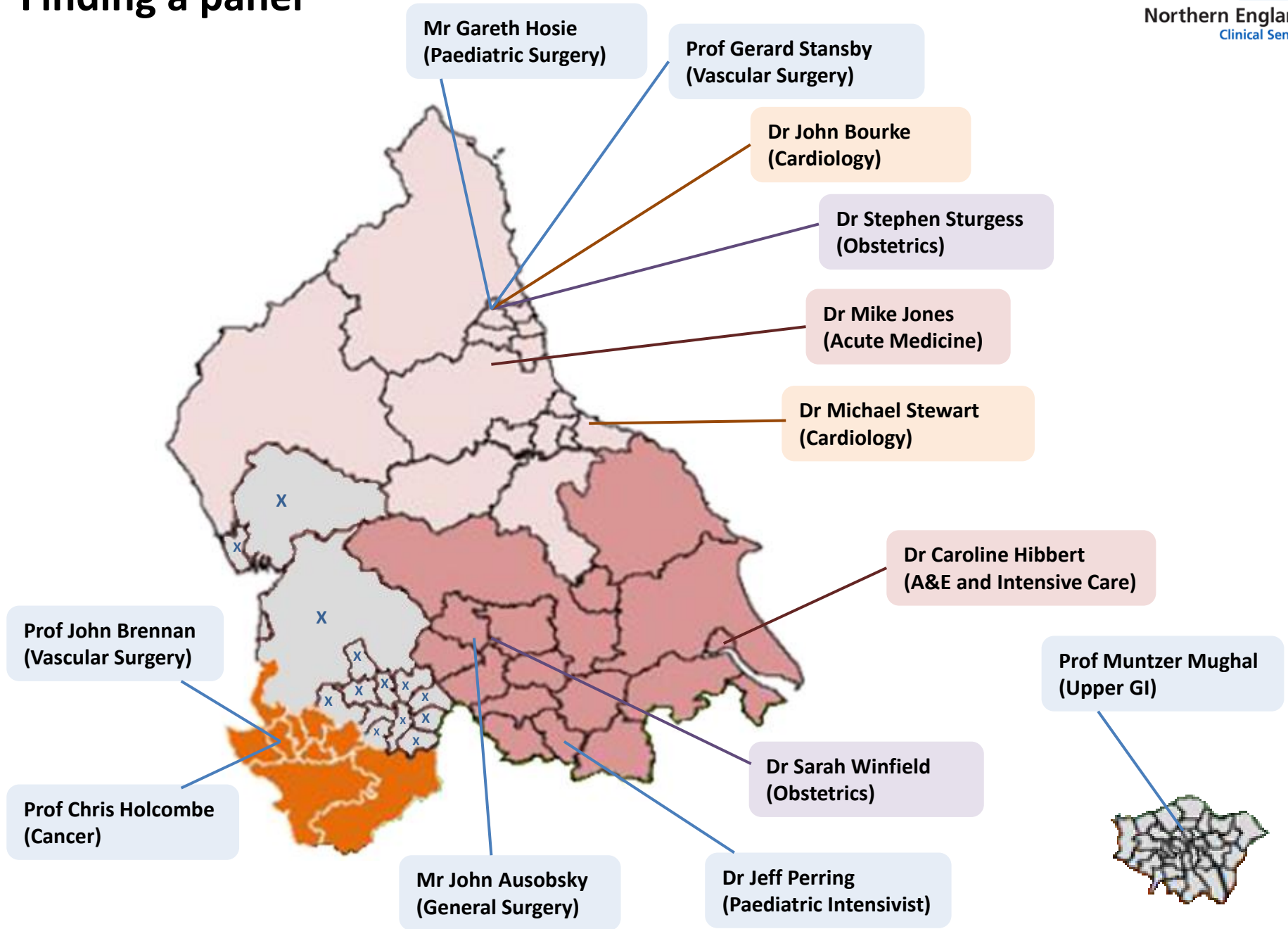
"The unanimous opinion of the NCAT panel is to strongly support the programme and to give clinical assurance that the programme can proceed to public consultation"

NHS England
Assurance Gateway 2

NHS England Post
Consultation Confirm and
Challenge



Finding a panel



Overview of key assurance milestones

Informal NCAT review visit

"The panel expressed support for the ambition, scale and development of the strategy and programme although there are specific issues to be addressed before the formal NCAT review takes place prior to formal public consultation"

Greater Manchester, Lancashire and South Cumbria Clinical Senate Review

1. Review the extent to which the recommendations made in the NCAT formal review have been implemented
2. Making an assessment of the supporting evidence for remedial action taken by Healthier Together in light of the NCAT recommendations
3. Provide independent clinical advice; highlighting issues where further thinking is required.

Healthier Together Public Consultation

July –
Sep 2014

May
2015

Healthier Together CiC Decision-making date

Dec 2013

Sep 2013

June 2014

June
2015

July
2015

Formal NCAT review

"The unanimous opinion of the NCAT panel is to strongly support the programme and to give clinical assurance that the programme can proceed to public consultation"

NHS England Assurance Gateway 2

NHS England Post Consultation Confirm and Challenge

NHS England ESRO meeting

NHS England Sign Off

Northern Clinical Senates post-consultation review

Based on the feedback received the Healthier Together during the public consultation, review the clinical interdependencies of the following specialties:

- Upper GI
- Paediatric Surgery
- Vascular Surgery

FOR HEALTHCARE LEADERS
HSJ

Greater Manchester reconfiguration to face judicial review

11 NOVEMBER, 2015 | BY LAWRENCE DUNHILL

STRUCTURE: The controversial shake-up of emergency services in Greater Manchester will be subject to a judicial review, after the High Court agreed to hear a legal challenge from a group of doctors.

The case will be heard on 9-10 December, and could delay the landmark Healthier Together process by several months.



Clinicians from University Hospital of South Manchester Foundation Trust issued legal proceedings against the reconfiguration in September.

This followed a decision in July [that the trust's Wythenshawe Hospital](#)

Judicial Review

Brought by Keep Wythenshawe Special group (established by body of consultants from University Hospital of South Manchester)

The Claim advances the following grounds each of which is responded to in order below:

- i. That the change in boundaries was unlawful because it made the needs of residents outside GM determinative.
- ii. That only the travel and access criteria were relied upon and other criteria ignored.
- iii. That there was a flawed assumption about equally high clinical standards being achieved across all designated hospitals.
- iv. That there was a failure to consider a disproportionate negative impact on residents in deprived areas of GM.
- v. That the transport methodology used by the Defendants was flawed
- vi. That the Defendants failed to take into account co-dependent services at Wythenshawe.**
- vii. That the Defendants made their decision upon an inaccurate and unjustified assumption as to affordability.

1. Clinical Senates *are* independent (and they're not)

- The Senate was not influenced in any way in the submission of the evidence to the Judicial Review process
- However, whilst Clinical Senates are non-statutory, advisory bodies, NHS England (as the host organisation) will put them forward as witnesses should they enter themselves as an interested party in Judicial Review proceedings

2. Clear Terms of Reference

- Getting the Terms of Reference right was key in presenting our evidence against the claimants arguments
- “Not within the scope of the review”
- Looking at the future model of care, not current model of care
- Not talking about where services would be delivered, focused on model of care

3. The stronger your review panel, the easier the JR process

- We had worked incredibly effectively across senate councils in the North to identify the range of reviewers with the requisite knowledge and experience to meet the terms of reference
- Strength of their expertise made addressing the issues raised in the Judicial Review straight-forward.

4. Remember that lawyers are people too (almost)

- The NHS England solicitors have deadlines to meet for submission of evidence to the court (these most probably haven't been developed with your diary commitments in mind).
- They have limited understanding of the role of the Senate and less of the background of the service changes and past history of the programme / area
- The QC for NHS England comes in at the last minute and starts the process off from the beginning (and is looking for arguments to make in court which can lead to a degree of discussion on their interpretation of your evidence).

5. There is a workload associated with submitting evidence

- Significant time commitment in drafting (and re-drafting evidence statements)
- Need to clear diary at short notice in case required in court to give evidence
- Decision to refer for JR can come up to three months from decision being made (and many months after you've undertaken the work). As time passes your reliance on notes made at the time grows.

6. Start with the end in mind

- If you accept that your work could be part of the evidence considered through a Judicial Review process, it will help your preparation and planning at the outset of your work.

FOR HEALTHCARE LEADERS

HSJ

Manchester medics lose court battle over landmark reconfiguration

7 JANUARY, 2016 | BY LAWRENCE DUNHILL



A high court judge has ruled in favour of health leaders in Greater Manchester, concluding there was “no legal error” in a major consultation process relating to emergency services.

“The generality of the claimant’s casethat they were not co-dependent upon the services within the scope of the HT initiative to the extent that their provision would be unharmed by the proposals, was one which was unsupported by the evidence”

Outcome of the Judicial Review

Commenting on today's High Court decision on the Greater Manchester Healthier Together programme, Simon Stevens, Chief Executive of NHS England said:

"Lives will be saved by this welcome ruling, which is a decisive vindication of the leadership being shown by NHS commissioners across Greater Manchester, working in close partnership with hospitals and local councils.

"Today's result rejects the spurious claim that better emergency care for patients in Greater Manchester, Derbyshire and Cheshire should have been sacrificed to advance one hospital's mistakenly conceived institutional self-interest.

"That's a wider lesson that the whole of the NHS will need to learn from, as we kick off the process for developing shared Sustainability and Transformation Plans locally to implement the Five Year Forward View."

Having said all that.....

- The focus of the Healthier Together and the majority of other major review we've seen in Cumbria and the North East has been around reconfigurations related to in-hospital services
- In particular we are seeing a lot of reviews with either an acute, maternity or paediatric focus
- This is probably because the service issues referred to us are the ones requiring public consultation so fit more clearly with the NHS England guidance on service change assurance
- This doesn't necessarily mean that they are the most important service changes that will be underway within our STP areas

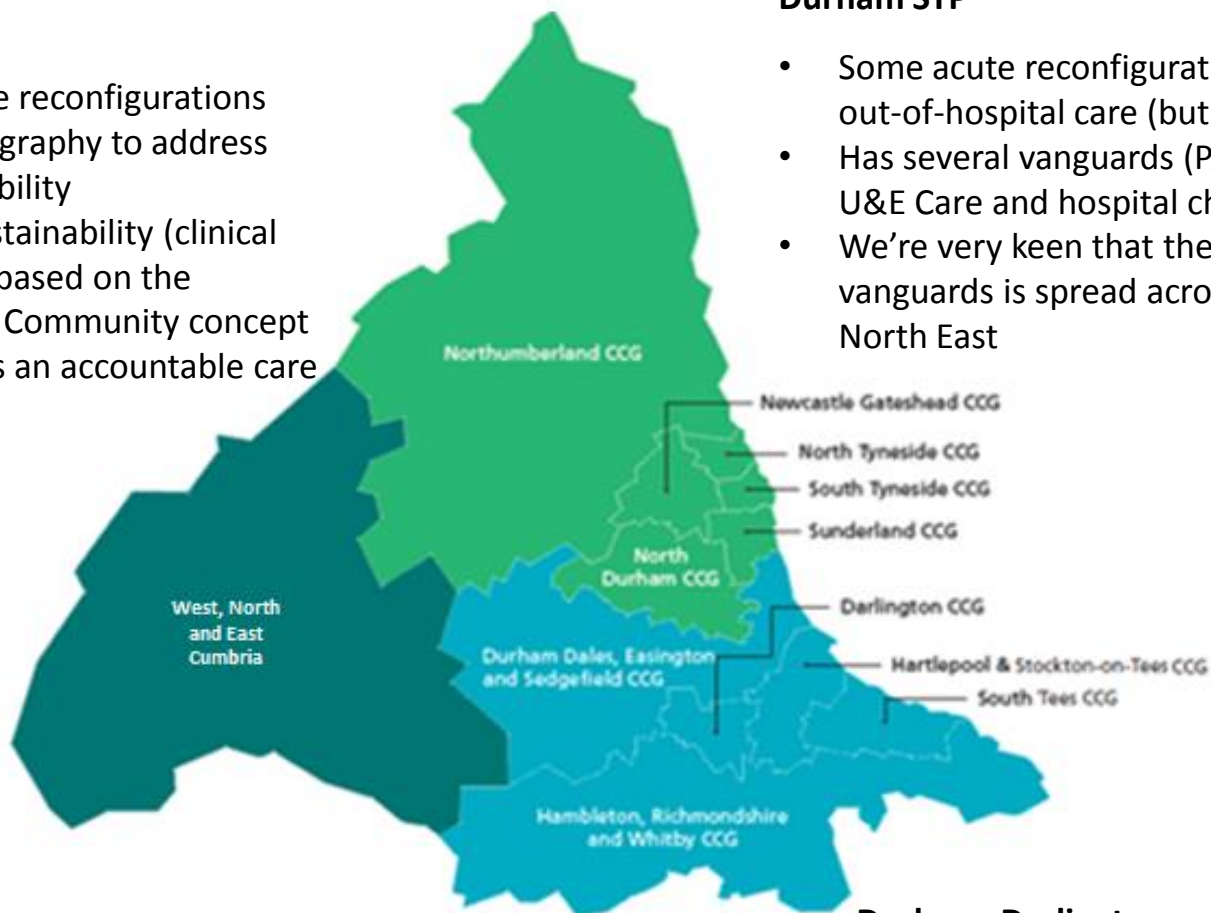
STP focus in Cumbria and the North East

West, North and East Cumbria STP / Success Regime

- A series of acute reconfigurations across rural geography to address clinical sustainability
- Longer term sustainability (clinical and financial) is based on the Integrated Care Community concept
- Moving towards an accountable care system

Northumberland, Tyne and Wear including North Durham STP

- Some acute reconfiguration but matched by out-of-hospital care (but not universally)
- Has several vanguards (PACs/ACO, MCP, ECCH, U&E Care and hospital chains)
- We're very keen that the learning from these vanguards is spread across Cumbria and the North East



Cumbria and the North East-wide

- Increased pressure universally across Cumbria and the North East for primary care and social care
- LPN piloting Community Pharmacy Referral Scheme

Durham, Darlington and Tees inc. Hambleton, Richmondshire and Whitby STP

- Better Health Programme
- Initially acute focused but working to level-up plans for out-of-hospital care following Senate advice

How we're responding as a clinical senate

- Being clearer on our offer to the system on how we can help:
 - Formally – Clinical Assurance Reviews
 - Informally – honest broker role, directly supporting the development of clinical models and bringing in clinicians from areas that have delivered change to support the areas a bit further behind in the journey
- Refreshed our senate council to have a better balance of areas of expertise and specialisms, particularly in regards to out-of-hospital services
- Continuing to work across the wider-North senate network to broaden the pool of expertise available to use and to be able to discharge both our functions without conflicts of interest getting in the way.

Thank you and questions