

North Central London NHS Watch

Dear Dr Christian

I write on behalf of NCL NHS Watch, an umbrella group working on behalf of groups in the five London boroughs in North Central London campaigning for an NHS which is publicly funded, publicly delivered and publicly accountable, and available to all on the basis of clinical need.

We are very concerned about proposed changes to the governance of all five CCGs in North Central London, published in August 2019 on the website of North London Partners under the title *Delivering improved outcomes for North Central London residents: Changing the way we work together*.

This proposal is to merge the five CCGs, following commitments set out in the NHS Long Term Plan produced by NHS England. North London Partners proposes to make this change by April 2020, submitting an application to do this to NHS England this month. We believe that under law the changes contemplated must be regarded as either the dissolution of the CCGs and the creation of a single new CCG, or a major constitutional change. According to the NHS England guidance, for such a dissolution or constitutional change of CCGs, North London Partners must show that they have taken steps to engage the public whose health care may be affected by this change. Each CCG must supply NHSE with evidence of the stakeholder engagement it has undertaken and how the CCG has taken the views of stakeholders into account. The current survey (<https://feedback.camdenccg.nhs.uk/camden-ccg/nhs-long-term-plan-ncl/>) is inadequate for this purpose.

The specific requirement is to provide evidence of having sought the views of individuals to whom any relevant health services are being or may be provided, what those views are, and how the CCG has taken them into account (see Legislation and Regulations appended below). This means CCGs must consider the views of the whole population covered by their service, whether currently a patient or not.

It is our contention that the co-terminosity of CCGs and relevant local authorities has been a critical factor in making CCGs fully consider the needs of their populations. Changes to the governance to centralise decision-making will inevitably loosen the relationships with local authorities who are accountable to local populations, and therefore entail a risk that CCGs will be less likely to be responsive to local needs. Consequently we believe that CCGs cannot legally make these changes without full public consultation as required in the Act.

If the CCGs go further with this application, they will be at risk of being outside the law in our view. We expect therefore they will pull back from doing so. We note that the eight CCGs in North West London have announced in the last few days that they have changed

their original plan of going for this change in the first wave of CCGs submitting an application in September.

We look forward to your reply.

Yours faithfully

Alan Morton

Chair, North Central London NHS Watch

Letter sent to the chairs of the five CCGs in North Central London

Copied to:

- **The leaders of the five London Boroughs**
- **The chair and vice-chairs of the JHOSC**
- **The chief operating officer of North London Partners**

Copies made available to the media

Appendix

I quote below from informal advice received from lawyers by health campaigners

Dissolution of existing CCGs and the creation of a new one

The relevant legislation is contained in the 2006 NHS Act, as amended by the 2012 Health and Social Care Act, which legislated for the creation of CCGs:

<http://www.legislation.gov.uk/ukpga/2006/41>

The relevant regulations are s9(2) and (3) and then Schedule 2(f) and Schedule 3(e) of the National Health Service (Clinical Commissioning Groups) Regulations 2012, which came into force immediately after the commencement of section 25 of the Health and Social Care Act 2012. http://www.legislation.gov.uk/uksi/2012/1631/pdfs/uksi_20121631_en.pdf

NHS Act 2006

Section 14G of the NHS Act 2006 says that merger of CCGs entails the dissolution of the pre-existing CCGs and the formation of a new CCG.

14G Mergers

(1) Two or more clinical commissioning groups may apply to the Board for—

- (a) those groups to be dissolved, and
- (b) another clinical commissioning group to be established under this section.

This is followed by section 14H of the Act governing applications to the Board (NHS England) for CCG dissolution.

Regulations related to dissolution of CCGs

Regulations s9(3) and Schedule 3(e) say that if a CCG is applying to the Board for dissolution then the Board has to take into account *the extent to which the CCG has sought the views of individuals to whom any relevant health services are being or may be provided, what those views are, and how the CCG has taken them into account. It defines relevant health services as health services pursuant to arrangements made by the CCG in the exercise of its functions.* This means the views of the whole population for which the CCG is responsible must be sought, and that would require public consultation.

Constitutional change to CCGs to extend the area covered

In addition, *and in case it were to be argued that CCG merger does not entail CCG dissolution, but rather a change to the CCG constitution* to vary the area or list of members, then section 14E of the Act (Applications for variation of constitution) and related regulations s9(2) and Schedule 2(f) would apply. This would also require public consultation.

For completeness the relevant parts of the Regulations are quoted below:

Variation of CCG constitution and dissolution of CCG: factors etc.

9.—(1) This regulation applies if a CCG applies to the Board—

- (a) under section 14E of the 2006 Act, to vary its constitution, or
- (b) under section 14H of the 2006 Act, for the group to be dissolved.

(2) Schedule 2 sets out factors which the Board must take into account when determining whether to grant an application under section 14E.

(3) Schedule 3 sets out factors which the Board must take into account when determining whether to grant an application under section 14H.

Schedule 2 Factors relating to applications to *vary CCG constitution*

2(f) *The extent to which the CCG has sought the views of individuals to whom any relevant health services are being or may be provided, what those views are, and how the CCG has taken them into account.*

“Relevant health services” means any services which are provided as part of the health service pursuant to arrangements made by the CCG in the exercise of its functions.

Schedule 3 Factors relating to applications for *CCG dissolution*

3(e) *The extent to which the CCG to be dissolved has sought the views of individuals to whom any relevant health services are being or may be provided, what those views are, and how the CCG has taken them into account.*

“Relevant health services” means any services which are provided as part of the health service pursuant to arrangements made by the CCG in the exercise of its functions.