 **HEALTHWATCH & PUBLIC INVOLVEMENT ASSOCIATION**

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25th February 2016

Dear Sue,

**Re: Public Consultation on Detention Centre KPIs**

You will recall the commitment made by NHS England on June 23rd 2015 to: “engage in additional patient involvement and wider consultation as part of an ongoing and evolving process within the organisation, with a view to informing subsequent refinements to the IRC service specification in the future”. We were also told that: "There is a review of the breadth of the participation of existing patient and patient advocacy groups within NHS England’s ongoing stakeholder consultation activity for IRC service specification development”. NHSE said that this approach would: “ensure that Medical Justice and the Healthwatch and Public Involvement Association (HAPIA) can join those bodies that are already taking part in this activity going forward”. NHSE also told us that: “**All parties proactively commit to seek out additional ways to engage in collegiate, joint working going forward”.**

I must say that your response regarding the KPIs does not appear to show due regard to the commitment that was clearly made by NHSE. You have had plenty of time since June 2015 to involve service users, Medical Justice and HAPIA in the KPI process and we could also have been involved in the development of HJIPS and HNAs. Your failure to adequately and appropriately involve us, does have potentially serious implications for people detained in IRCs and for NHSE.

With reference to the email correspondence with Christine Hogg from Medical Justice on behalf of Oxford NGOs on this matter, we would like to see the methodology you have used and outcomes of your work with detainees. This is a very sensitive piece of work and we need to ensure that appropriate quality assurance methods and techniques have been used in gathering information and data from service users in detention. We would also like to see what information you have received back from detainees through healthcare providers. You vaguely stated that you are doing work on ‘patient voice’ but you do not state what work you are doing. NHSE clearly has a duty to involve both patients and the public and we are not convinced by the evidence you have provided that any significant work has been carried out with patients in detention in relation to the KPIs.

The fact that you do not have meetings voluntary organisations at IRCs is a sign of poor practice and weak governance which must be improved. We will continue to press for effective PPI, and evidence of compliance with NHSE strategy, policy and relevant legislation and case law.

To clarify our understanding as to your duty to consult; we expect this to be done in recognition of your statutory duties and for you to act fairly. Refusing to meet local people working with detainees and asylum seekers in Oxford in relation to the development of KPIs would not in our view be considered consistent with that duty. The Guidance as to how those issues should be addressed can be found in the Cabinet Office Consultation Principles and relevant case law. The Cabinet Office’s view is that:

“The governing principle is proportionality of the type and scale of consultation to the potential impacts of the proposal decision being taken, and thought should be given to achieving real engagement rather than following bureaucratic process”.

Both the Cabinet Office’s Principles, and case law, have emphasised that consultation requirements will vary from one context to another and should be assessed on an individual basis. In that respect the Cabinet Office Principles augment but do not displace the Gunning Principles as to how consultations should be conducted. These state that:

* Consultation should occur when proposals are at a formative stage;
* Consultations should give sufficient reasons for any proposal to permit intelligent consideration;
* Consultations should allow adequate time for consideration and response;

There must also be clear evidence that you have has considered the consultation responses before taking a relevant decision - there is no evidence that this has been done in relation to the development of KPIs.

The Gunning Principles were recently re-affirmed by the court in the case of Draper v Lincolnshire CC (involving consultation on a proposed programme of library closures in Lincolnshire) and in the recent case of Moseley v Haringey, the Supreme Court also endorsed the Gunning principles and added two further general principles:

* The degree of specificity regarding the consultation should be influenced by those who are being consulted;
* The demands of fairness are likely to be higher when the consultation relates to a decision which is likely to deprive someone of an existing benefit.

Consultation should have taken place when the KPIs were being developed to enable Medical Justice, HAPIA and service users to exercise influence and you must also be able to produce evidence that views are genuinely taken into account. This process should have been initiated at the earliest opportunity, but it is also appropriate to consult at varying points in your decision making process. Consultation must take place at a time when the views of NHSE are still open to change and can therefore be influenced by responses to the consultation.

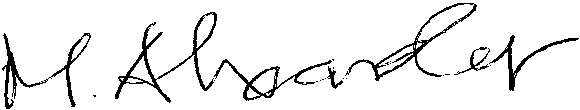
Consultations should also provide sufficient information to ensure the process is fair. You must have due regard to the form of the consultation in the light of the characteristics of the consultee group. You must also demonstrate good decision making and that you give ‘conscientious consideration’ to the outcome of the consultation process. You will no doubt recall that the case of the Royal Brompton & Harefield NHS Foundation v Joint Committee of Primary Care Trusts which demonstrated the importance of adopting great care and a robust approach to the analysis of consultation responses - particularly where the subject matter is highly technical.

You must be able to show that you have considered the outcome of the consultation process carefully and be prepared to change course in response to the outcome of consultation, if appropriate. At the moment it appears that you have failed to carry out your statutory duty in this respect and therefore need to start a new process of consultation on the KPIs.

I hope we can now move forward by meeting to agree an appropriate and adequate process of consultation on the KPIs and how the outcome of your PPI processes will influence the development of the KPIs going forward.

I also hope you will be able to attend the Academy for Justice Commissioning’s Manchester Seminar: “Commissioning better public services through user engagement” on 15th March, 2016.

Best wishes



Malcolm Alexander

Chair

HAPIA

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