



Rt Hon Jeremy Hunt MP  
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*Dear Jeremy*

As you know, the judicial review brought by four councils and the Keep the Horton General campaign group against Oxfordshire Clinical Commissioning Group was heard at the beginning of the month.

We were not successful, but the judge took the opportunity to criticise the CCG on a number of matters, including the split nature of the consultation, the unwillingness of the CCG to provide data at an earlier point, and the lack of consultation following the introduction of NHS England's fifth patient test:

**Paragraph 25:** *"The conclusions I have reached thus far should not be taken to signify that I personally approve of the decision to split this consultation. It was said that the reason it was done in this way was because of the urgency of the matters covered by phase 1. But they were not urgent. The obstetric unit had already been closed, albeit temporarily. The number of Level 3 critical care and stroke victims was tiny compared to overall activity. And in any event, it proposed that phase 2 should follow very shortly after phase 1 – the papers mention the consultation for phase 2 beginning in April 2017. Miss Morris QC argued that to leave the obstetric unit temporarily closed without a definitive decision was bad for morale, but that was mere assertion and did not, in my opinion, justify taking the risks in splitting..."*

**Paragraph 26:** *"I can well see why in the absence of hard data the claimants and the interested party would assert that as a matter of principle decisions made following phase 1 would queer the pitch when the phase 2 consultation came around. However, as I have demonstrated, the hard data shows quite clearly that the decisions on the very small number of cases involved will have no material effect on the scope of the phase 2 consultation. It is a mystery to me why that data was not supplied sooner."*

**Paragraph 40:** *"It can be seen that this new test arose in the middle the phase 1 consultation. The defendant's initial stance was that this new test did not apply retrospectively to a consultation already underway. Plainly, the new test would be operative at the time that any decision following the consultation was made. It seems to me that if it was considered apt to consult on the original test then it was equally apt to amend or supplement the consultation document to consult on the new additional test. It is agreed that the public were not consulted on this new additional test. I do not accept the arguments of Miss Morris at paras 71-71 of her*

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*skeleton. I cannot see why the later acceptance that the test was met by NHS England or the Clinical Senate has any bearing on the question whether the public should have been asked about it.*

**Paragraph 41:** *“Therefore, the consultation was flawed but the question is whether the flaw is sufficiently serious to justify a finding either that the consultation was unfair, or quite apart from the question of fairness, was vitiated by this omission.”*

**Paragraph 44:** *“In my judgment, the omission, while regrettable, and somewhat troubling, was not sufficiently material to lead to a finding that the consultation was unfair, let alone that it is vitiated.”*

I enclose a copy of the full judgment for you to read properly. You will note that in his concluding remarks, Mr Justice Mostyn has made clear that you have wide ranging powers at your disposal, which include the ability to make “a direction that the public consultation to be re-run, or that the decision to make permanent the closure of the obstetric unit be reversed.” I write to ask you to exercise these powers now. The judgment has reinforced my profound discomfort at the way in which the CCG ran phase 1 of their consultation. We still have little idea when phase 2 will take place. We really do need to start the consultation process again.

Finally, you are well aware of my concerns about the lack of leadership in our CCG, particularly in light of their inability to recruit a new chief Executive. I hope you will use your influence to do what you can to ensure we get the leadership we need.

I know my colleagues in neighbouring constituencies and I would welcome a meeting to discuss these matters early in the New Year.

Yours

Victoria

**Victoria Prentis MP**