THE QUEEN ON THE APPLICATION OF ANNA HINSULL v NHS DORSET CLINICAL COMMISSIONING GROUP

Summary of the judgment of Sir Stephen Silber handed down on 5 September 2018.

NOTE: This summary is provided to help in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.bailii.org.uk

The figures in square brackets are the relevant paragraph numbers in the judgment

1. Anna Hinsull seeks to challenge the decision of the Dorset Clinical Commissioning Group ("the CCG") of 20th September 2017 which made significant changes to the configuration of health services in the Dorset area. The CCG is responsible for commissioning and paying for NHS services in that area. [1]

2. Like many similar bodies, it had been facing pressure on its funds to continue providing healthcare in the way that it had been provided previously as it was spending more money than it received, and it was facing a shortfall of some £158 million each year by 2020/2021. It became clear that for the CCG " doing nothing is not an option because by staying the same our healthcare would get much worse" [9]

3. National evidence, particularly the comprehensive review of NHS emergency and urgent care published in 2014 by the NHS Medical Director, Sir Bruce Keogh, showed that many people, who then attended A&E Departments could achieve better outcomes and less disruption to their lives by receiving urgent care in community settings, while patients with more serious or life-threatening emergency care needs had to be treated in specialist emergency care centres so as to maximise the chance of survival and good recovery.[11].

4. The CCG took a series of decisions ("the Decisions") which are the subject of the present application. Before the Decisions were made, Poole Hospital was one of three hospitals in Dorset giving acute care which is short-term treatment for patients with any kind of illness or injury. The other two acute hospitals in Dorset were the Royal Bournemouth Hospital ("Bournemouth Hospital") and the Dorset County Hospital ("Dorset Hospital") in Dorchester. The Decisions meant that Poole Hospital would no longer be an emergency hospital as it would become a "planned hospital" and its Accident and Emergency ("A& E") Department would be downgraded to a GP-led "urgent care centre" with emergency care only being available at Bournemouth Hospital and at Dorset Hospital. There was to be a new regime to provide care closer to people's home using teams based at local community hubs; this would enable many people to be treated without going to hospital, while many of those who were admitted to hospital would be released earlier than under the previous arrangements because more treatment and care can be provided outside hospitals. [29]

5. These decisions are of particular importance to the Claimant, who sadly suffers nineteen different health conditions and who has regularly needed access to Poole Hospital which is quite close to her home. She is very troubled about the additional time required under the new regime for travelling from her home to Bournemouth Hospital, rather than to Poole Hospital when Bournemouth Hospital becomes a specialist emergency care hospital. [2] and [4]

6. How were these decisions reached? These decisions were reached after very lengthy and detailed discussions with doctors, nurses, social care professional and other frontline workers from Dorset's health and care organisations as well as local authorities. This led to the launching of a formal consultation on 1st December 2016, which lasted for 12 weeks, closing on 28th February 2017. Two options were put forward in respect of acute hospital services. Option A had Poole Hospital as the major emergency care hospital with Dorset Hospital as a planned and emergency care hospital and Bournemouth Hospital as the major planned care hospital. Under Option B, Poole Hospital was to be the planned care hospital with Dorset Hospital as a planned and emergency care hospital and Bournemouth Hospital as the major emergency care hospital. Option B was the preferred option of the CCG because it was rated more highly on the issues of access and affordability than Option A in the consultation paper. [22] and [23].

7. As a result of the responses, the CCG commissioned additional work including from the South West Ambulance Trust on the effect of the proposed reconfiguration on emergency ambulance services. In addition, a detailed programme of events and workshops was organized between July and September 2017 to ensure that the consultation responses were shared and considered by the CCG's governing body and key partnership organisations during their detailed deliberations in preparation for the decision making meeting body on 20th September 2017. Some changes were made to the proposals but the recommendation for Option B remained the same. The Governing Body approved the recommendations. [26] to [29].

8. The first challenge to the Decisions was that the CCG failed to have regard to the relevant consideration of whether there would be a sufficient care force to deliver the new integrated model of community service. I rejected this challenge as there is ample evidence that the CCG considered appropriately whether there would be a sufficient care force for that purpose and worked out a strategy for ensuring that there would be sufficient social care workforce along the lines advocated by Dorset CC and considered all the material issues including that the workforce demands would depend on an uncertain matter which was "the readiness of the services and the timescales for changes in the CSR implementation plan". [91]

9. I am fortified in reaching that conclusion as first, there was no complaint from the local authorities on this issue. In addition, the local authority had a crucially important power under rule 23(9) of the Local Authority (Public Health, Health and Wellbeings Board and Health Scrutiny) Regulations 2013 to make a reference to the Secretary of State where it considers either that local authorities have not been adequately consulted on proposals for the substantial development of the health service in the area, or that the proposals are not "in the interests of the health service in its area". In this case, if the local authorities had concerns about whether there would be a sufficient social care workforce to deliver the CCG's new integrated model of community service, this would have been a matter of crucial importance to them as without a sufficient workforce, they would have been unable to comply with their obligations. They had not invoked the power at the time of the Decisions or in the 11months since then. [86]- [88].

10. The second challenge is that the CCG failed adequately to investigate and reach a conclusion on whether alternative community provision could be put in place before deciding to close hospital beds. I was unable to accept this point for a number of

reasons including that the CCG had considered numerous models and 65 potential options and there is nothing to suggest that there was a superior or a more effective alternative community provision that could have been put in place. [101].

11. The third challenge is that the CCG failed to comply with a requirement made by NHS England in the Bed Closure Test that required the CCG to show that significant bed closures could satisfy one of three new conditions before NHS England would approve them to go ahead. In this case, NHS England, who were the arbiters of whether the conditions were complied with, were satisfied that it had been complied with and that is determinative of the issue. The Governing Body was not entitled or required to look behind it and so this challenge fails[123]-[125].

12. The fourth challenge is that the CCG failed to consider adequately the impact of increased travel times in emergency cases to Bournemouth Hospital rather than Poole Hospital which was the more centrally located hospital. The Ambulance Trust analysed 21,944 cases and concluded that in 0.6% of those cases "the extended journey time may increase the clinical risk" (emphasis added). Against that, there is undisputed evidence that lives of patients with heart problems and stroke victims would be saved by the better facilities at Bournemouth Hospital on becoming an emergency care hospital as compared with those offered at Poole Hospital. In addition, the Chief Executive of Poole NHS Trust reported that some of the more seriously ill patients from Dorset - that is, those suffering from heart attacks or vascular problems - including residents of Purbeck, have been treated at Bournemouth Hospital and those arrangements have been deemed safe by Commissioners and Regulators and that those acutely ill patients received treatment within an acceptable time period. There was also evidence that for most people the impact of changes on travel times would be negligible and where patients may be subject to longer travel times, they would experience better outcomes. These and other factors led to me rejecting this claim and concluding that the CCG had secured an improvement in the services provided to the residents of Dorset. [155]- [157].

13. The fifth challenge is that the CCG did not provide sufficient information to consultees and the consultation was misleading in respect of two matters. The first matter was that consultation document indicated 24/7 consultant care was promised but these were stated to be ambitions. Second, it is said that the consultation document did not say that there would be large scale bed closures, but this point fails to appreciate that the CCG does not commission beds. In any event, there was much evidence that it was widely known that there would be bed closure. In addition, the consultation process was subject to scrutiny by the Consultation Institute's Independent Quality Assurance process and it was deemed to have reached Best Practice status. The consultation responses were independently analysed and reported on by Opinion Research Services and quality assured by the Consultation Institute. The Consultation Institute awarded the CCG "best practice" accreditation for the CSR consultation. In addition, the CCG's approach to consultation was also commended by Opinion Research Services. In any event, a consultation document "which is flawed in one, or even in a number of respects, is not necessarily so procedurally unfair as to be unlawful" (**Greenpeace**). These complaints fail by a substantial margin to reach the threshold for being unlawful

14. The Claimant's application for permission to appeal was refused.