

Consultation over children's heart surgery was unfair to Royal Brompton, judge rules

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A consultation exercise that proposed closing the children's heart surgery unit at the Royal Brompton Hospital in London has been quashed by the High Court in London, in a landmark ruling.

The NHS's Joint Committee of Primary Care Trusts, which is conducting the consultation on "safe and sustainable children's congenital cardiac services," immediately announced its intention to appeal, claiming that the judge had "misunderstood" the review process.

The consultation came after a recommendation from the 2001 report of the public inquiry into deaths of children undergoing heart surgery at Bristol Royal Infirmary, chaired by Ian Kennedy. The report suggested an investigation to ensure that surgery should not be carried out in hospitals where the low volume of patients or other factors made it unsafe.

After a 2007 report that recommended fewer and larger paediatric surgical centres, the central proposal of the consultation was to reduce the number of units nationally from 11 to seven or eight. It proposed concentrating children's cardiac surgery in London in two centres rather than three (*BMJ* 2011;342:d1129, doi:10.1136/bmj.d1129). But the way the consultation was done was so unfair "as to lead to the conclusion that the process went radically wrong," Mr Justice Owen declared.

He rejected a range of claims by the Royal Brompton and Harefield NHS Foundation Trust, including arguments that the outcome of the consultation was predetermined and that the exercise was tainted by the appearance of bias. But the sole argument that he upheld—over the way that the trust's research was dealt with as part of the scoring of "quality"—was enough for the consultation to be deemed unlawful and quashed. The existing services were assessed by an independent panel, chaired by Professor Kennedy, for their compliance with the proposed service standards.

The consultation's preferred option was to concentrate paediatric cardiac surgery at Great Ormond Street Hospital for Children and the Evelina Children's Hospital, run by Guy's and St Thomas' NHS Foundation Trust. Both hospitals had received

higher scores on quality than the Royal Brompton, which had scored "poor" on research and innovation. However, the Brompton trust told the judge that it was led to believe that it was being asked during the review not about its research and innovation but about the application and governance of research.

Had it been scored the same on research and innovation as Great Ormond Street and Evelina, said the judge, the overall scores would have been 303 (not 264) for the Royal Brompton, 347 for Great Ormond Street, and 364 for the Evelina. That might have led more of those consulted to recommend retaining all three centres, "a configuration that would have the advantage of preserving the unique features of a specialist heart and lung hospital."

Bertie Leigh, senior partner of the law firm Hempsons, which represented the trust, said, "The crashing error was to say that the Royal Brompton's quality was inferior because its research record was inferior to [that of] other centres. This was on the basis of a hasty assessment. [The committee] was unaware that the government sponsored Rand analysis had found that the Royal Brompton doctors had published far more highly cited papers on cardiology than any other hospital in the country.

"To say that the Brompton was actually inferior in research to other centres just seemed perverse to anyone in the field. To present the result as a judgment of quality was profoundly misleading to the consultees and demonstrably poisoned the whole exercise."

Neil McKay, chairman of the Joint Committee of Primary Care Trusts, said, "I am disappointed that the judge decided to quash the consultation on an obscure technical point that had no bearing on the JCPCT's choice of consultation options. We respectfully intend to appeal the judge's decision based on his misunderstanding of the review process."

Unless the committee is successful on appeal, it will have to hold a new consultation. Dr McKay said that the committee still hoped to make a final decision by spring 2012.

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