The NHS Accountable Care System

At this year’s Retired Members Conference I gave a report on the Accountable Care System. There has now been a judicial review held on the 23/24th May challenging the legality of the introduction of ACOs. Below.

The judicial review of government plans for a large scale and long-term handover of NHS responsibilities from local commissioners to contracted “Accountable Care Organisations” (ACOs) was scheduled at the Royal Courts of Justice in London on 23rd and 24th May 2018.

The five claimants are now four [2], following the death of Professor Stephen Hawking in March, but we continue to be inspired by how he continued to fight for the NHS right up to the end of his life.

Here is what he helped to achieve:

When the case started in December 2017, NHS England was planning to introduce the first ACOs by April 2018. The Government was planning to rubber stamp swathes of regulations so that ACOs could operate.

Following massive public support for judicial review of their plans [3], NHS England promised a full national consultation on the plans. And the Government said it will not make the regulations until after the consultation. That satisfied 2 of our 4 grounds for judicial review – our first victory.

But, at worst, ACOs and the regulations have only been delayed by one year. The policy to introduce ACOs is still very much in place.

At the heart of our concerns is that, as envisaged in the policy, ACOs would need to take on most of the functions of Clinical Commissioning Groups (CCGs). It would be ACOs, not the CCGs that would be responsible for making most of the decisions about providing health and care services.

But ACOs could be wholly or partly private organisations. Unless the changes are blocked we could end up with for-profit health organisations making behind the scenes decisions on long term NHS provision. We are arguing that the law which says clinical commissioning groups must make those decisions is being subverted and that in planning and supporting ACOs, the Secretary of State for Health and Social Care and NHS England have fallen below public law standards of openness and transparency.

The thousands of people who have supported this JR demonstrate how important it is it to maintain the NHS, to be involved in its decision making and not to allow control and decision making to be handed over from bodies which the people, through parliament, entrusted with the future of the NHS.

Win or lose, support for the JR has demonstrated that the public is not willing to hand over their NHS neither to unaccountable, unelected organisations nor to the private sector and the campaign will go on.

In the meantime, cuts and closure of services are occurring across the country, NHS buildings and land are being sold at knock-down prices and non-clinical staff are being transferred from NHS employment into newly-formed companies. Those plans continue whatever the outcome of this
judicial review, so it is important to support local and national campaigns resisting this asset-stripping.

Keep Our NHS Public has supported JR4NHS from the word go and our members are participants in the legal challenge.

KONP sees this judicial review taken by the JR4NHS team as an important legal milestone for campaigners in our efforts to prevent the NHS being broken up into autonomous business units, with 10-15 year contracts worth tens of billions and open to tender to be run by private – or public/private – consortia or ‘special purpose vehicles’ managing the accountable care organisations (ACOs). These will not be accountable to local populations nor to Parliament, but they will be motivated by accountancy and managed by financiers. And in sharp contrast to ‘care organisation’ in the title, the delivery of safe, effective and accessible health care will be very much secondary.

We hope the outcome of the JR will be successful and will conclude that both Jeremy Hunt and NHS England have been working outside the current legal framework and have attempted to bypass the parliamentary scrutiny that these dangerous, systemic changes to the NHS demand.

A quick update to say that the hearing of the judicial review has finished. After hearing our argument that the ACO policy is unlawful – and NHS England’s and the Secretary of State’s arguments that there’s no policy outside the proposed contract which is just another contract, that there’s no duty of transparency in these circumstances, and that the judicial review challenge is both too early and too late – Mr Justice Green reserved judgment.

There is likely to be at least a 4-6 week wait before Mr Justice Green gives his judgement on this JR (judicial review).

Win or lose, the JR challenge has had a huge impact, extracting significant concessions from Hunt and the Government, forcing Jeremy Hunt to agree to a public consultation on the ACO contract and to agree to delay any secondary regulations until after the consultation, with a postponement of all ACOs until this process is completed. The consultation is likely to await the outcome of the JR. Jeremy Hunt originally planned, once he had been forced to agree to any consultation, to launch it in February. Whatever the outcome on the legality of ACOs and the contract, the important issues have been aired publicly and we await what Mr Justice Green has to say in the detailed response he has promised.