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30 January 2018

To whom it may concern

Yeovil District Hospital NHS Foundation Trust – breach of licence conditions

On behalf of UNISON, I submit for investigation a complaint that Yeovil District Hospital NHS Foundation Trust has acted, and continues to act, in breach of its licence conditions. Specifically, UNISON asserts that the Trust is in breach of Condition G6, the need to have regard to the NHS Constitution.

I therefore request that an investigation is undertaken as a matter of urgency. It is the union's contention that the breach is so clear that action should be taken now to prevent the Trust continuing to be in breach.

It is well established by documents that are now in the public domain that in January 2017 the Trust board agreed to proceed with a proposal to form a wholly owned subsidiary company to provide the Trust with a professional property management company and associated services.

The implications of the decision were that hundreds of staff would be transferred and that their working conditions would be varied.

The Trust has consistently maintained, including making statements in a public board meeting, that it did not consult with the staff or staff representatives on this decision – and, more importantly, that it was not required to do so.

Whilst the Trust claims that it has conducted discussions about the implications of the decision, it does not deny, and cannot given the factual records, that it did not and will not consult about the original decision.

The distinction is important: consultation and engagement about a decision is not the same as consultation and engagement about one of the consequences of the decision.

This matters as UNISON, which represents the staff, would have wished to discuss with the Trust other options for achieving the stated objective of having more professional property management (and other services) – options which would have different outcomes for the staff involved. That other options to improve these services were and are possible

is not disputed, although the Trust has accepted that it did not actually carry out an Options Appraisal.

A specific pledge in the NHS Constitution is:

“to engage staff in decisions that affect them and the services they provide, individually, through representative organisations and through local partnership working arrangements. All staff will be empowered to put forward ways to deliver better and safer services for patients and their families.”

Under Licence Condition G6 – Systems for compliance with licence conditions and related obligations – it states that:

1. The Licensee shall take all reasonable precautions against the risk of failure to comply with:

...(c) the requirement to have regard to the NHS Constitution in providing health care services for the purposes of the NHS.

This merely repeats the general obligation on Trusts under the Health and Social Care Act 2012 to have regard to the NHS Constitution. The correct interpretation of “have regard” has been well established but can be summarised as a duty to take some kind of steps to consider the requirement and to follow it unless there is a good reason not to – a reason which is reached after proper (and documented) consideration.

The facts are not in dispute. The decision in January 2017 was one which would affect staff and also affect the services they provide (these were to be made more professional) – so the pledge in the Constitution is appropriate.

There was much that could and should have been discussed with staff representatives about why the decision was felt to be necessary, what options were available and what benefits would actually be realised. UNISON was well-equipped to engage in such discussion as it has had them with other Trusts considering similar issues in many other parts of England in recent months.

There was no engagement with the staff or the staff representatives about this decision and indeed the Trust continues to refuse to engage. The Trust does not deny this, having stated publicly that it did not do so because it considered that it had no obligation to do so.

In summary, it is clear to UNISON that the Trust is in breach of its licence.

The union therefore requests that the breach is remedied by instructing the Trust not to proceed with its plans until it has engaged with staff over the decision, which must involve consideration of other options to achieve the professional services that are required.

I look forward to hearing from you.

Yours faithfully

Helen Eccles

Helen Eccles
Regional Organiser
UNISON South West