Dear Colleagues.

This is an update on the judicial review on the challenge in the High Court on the introduction Accountable Care Systems.

Rod Downing

RMAC

JUDICIAL REVIEW JUDGEMENT: THE CAMPAIGN MOVES ON

Today the High Court handed down its judgement on the judicial review we brought against the Secretary of State for Health and Social Care and NHS England on their introduction of Accountable Care Organisations (ACOs). We had originally brought our claim on four grounds – two on the lack of proper consultation, one on the legality of the idea itself, and one on grounds of lack of clarity and transparency. We withdrew our claim on the consultation grounds when our opponents conceded that they would not proceed without a full national consultation, so this success was in the bag.

Unfortunately, the Court has found against us on the law on the other two grounds.

On legality – whilst making clear that he was not deciding on the merits of ACOs, and acknowledging that we raised "perfectly good and sensible questions … about the ACO policy and the limitations of the terms and conditions in the draft ACO Contract" – Mr Justice Green decided that the ACO policy is lawful because the Health and Social Care Act 2012 gives very broad discretion to Clinical Commissioning Groups when commissioning services.

And on clarity and transparency – whilst resoundingly rejecting the government's argument that the principle did not apply "in relation to what by common accord is intended to amount to radical and transformational changes in the way in which health and social care is delivered" – he decided that the principle was not yet engaged.

We have decided not to appeal against this decision for several reasons.

Apart from the extra costs involved, our opponents have already been forced to change their plans. In order to win the case, they had to argue that ACO contracts were just like other provider contracts and not the fundamental change to the governance of the NHS that we know they intended. If you take the time to read the judgment which should soon be published on https://www.judiciary.uk/judgments/ you will see that the judge recounts in detail how their position changed as they began to appreciate the power of our claim. The commissioning functions of CCGs were to be – illegally – delegated to ACOs – but instead are now reinforced, and if the government wishes to continue on the original path to creating ACOs, primary legislation will be needed and CCGs will have to retain sufficient staff and resources. The Health and Social Care Select Committee has called for legislation, and the Prime Minister included the possibility of new legislation for the NHS in her speech a couple of weeks ago. In addition, the promised consultation will have to be lawfully conducted, and any eventual ACO contract – in Dudley, Manchester or wherever – will have to be lawfully entered into. 999 Call for the NHS are still engaged in legal action, seeking leave to appeal the decision in their judicial review, but for us, the campaign moves

out of the courtroom – at least for now – and continues in the local and political arenas, and on to the consultation.

We are extremely grateful to the thousands of people who have allowed us to bring this challenge. Thank you again from the bottom of our hearts for all your encouragement and financial support. We do not believe that this has been wasted, and we hope you agree. We deeply regret the judgement and we imagine you will share our disappointment.

But we hope its effect will be to strengthen resolve to hold the government to account during the consultation, and raise public awareness of the issues at stake if contracts for billions of pounds of public money lasting ten or more years are awarded to new bodies not established by statute, which could be partly or wholly private companies, and which could outsource all their services if they wished.

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