From the Rt Hon Patricia Hewitt MP
Secretary of State for Health

DH Department of Health

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0 8 DEC 2005

Dear Beverly,

Further to earlier correspondence and your phone call offering to withdraw the judicial review, we have now agreed to settle the Judicial Review you have lodged.

You have now seen the evidence we have submitted and you recognise how our policy, in relation to the provision of clinical services by PCTs has developed over the last few months. Although you acknowledge these developments, your view was that this was not clear in the service. Accordingly, this letter serves to confirm our position.

I would, therefore, like to set out clearly and unequivocally that we do not have a policy requirement or timetable for PCTs to divest themselves of provision. We will support PCTs whether or not they divest themselves of service provision, provided, that what is being offered is genuinely best for local patient care. As we have said in our evidence, this means that the Department's position on service provision by PCTs would remain what it always had been prior to the letter of 28 July sent by Sir Nigel Crisp.

We have tried to make this clear to the service indeed as I said in Parliament on 25th October *"District nurses, health visitors and other staff delivering clinical services will continue to be employed by their PCT, unless and until, the PCT decides otherwise"* and *"Any such decisions would be driven locally following our White Paper deliberations"*.

I know that you also wanted reassurances about the terms and conditions of any staff that may transfer to a new employer. We have just made a huge investment in Agenda for Change and this reflects our view of it as a model pay system. In the context of no central directive, I have stated that in the event of any transfer I would expect that the terms and conditions of employment of staff would be protected and I am aware of the legal employment protection available to staff who transfer.

I am keen to see new approaches to this issue. For example, in Surrey we are working with a group of local nurses and therapists who want to establish a 'not for profit' company but would like to retain their NHS Pensions. As you appreciate, this is a complex area but we are keen to develop workable models, which would allow this to happen. It is our intention to explore how such best practice can be utilised more extensively.

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In your correspondence and evidence, you stated you were concerned that, as we start the reconfiguration, some of the local consultations may be affected by a lack of clarity of our policy in relation to PCT provider functions. I do not believe this is the case. John Bacon wrote to SHAs in August, asking for proposals and rationale for restructuring SHAs and PCTs in terms of building the PCT commissioning function and supporting practice-based commissioning. He stated

"We will not expect firm proposals on the provision functions in October….We expect discussions on provider functions to follow the restructuring discussion, be led by the new PCTs and to take into account any conclusions from the upcoming White Paper…"

Some SHAs did however submit proposals on 15 October, which talked about divestment of provision. However, these were *proposals*, not the final documents for consultation. As we explained in our evidence, there is no reason why reconfiguration of PCTs should involve a new organisational design for reduced service provision.

John Bacon wrote again on 30 November to each SHA CEO to set out the conditionality for the consultation. He stated:

The consultation must cover the reconfiguration of organisational boundaries only.

In relation to the White Paper, its remit will be broad and will include extensive consideration of how primary care services should be provided and potential service provision models for PCTs. I would like to draw your attention to a letter I am sending to Karen Jennings as joint chair of the Social Partnership Forum about the consequent workforce issues.

I would reiterate my commitment to the important role nursing has to play in taking the reform agenda forward and as you are aware Sir Nigel Crisp has already confirmed that nursing will be represented on new SHA and PCT boards.

Now that a consent order has been agreed to in the Judicial Review proceedings, I am confident that we can quickly resume the close and collaborative working relationships that the RCN and the Department of Health have enjoyed for so long.

Best wishes,

Patricia

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