



## Consultation in Covid Times

By Michael Imperato, Director and Head of Public & Administrative Law

*Michael Imperato, Director and Head of the Public & Administrative Law Team, highlights the dangers of NHS trusts cutting corners on public involvement in service changes during the Covid-19 pandemic.*

There are two important questions that decision makers have regularly faced during the Covid pandemic. When is public involvement in a controversial service change not public involvement, and what latitude should be allowed for decisions taken at speed in a pandemic?

A case involving a hospital reorganisation in Grantham, Lincolnshire, is a cautionary tale for any parts of the National Health Service (NHS) that think they might escape scrutiny if they cut corners on public involvement in service changes during the pandemic.

The United Lincolnshire NHS Trust was found to have acted unlawfully when it failed to properly consult service users before temporarily closing a hospital's A&E department at the peak of the first Covid wave.

In *Dawson, R (On the Application Of) v United Lincolnshire Hospitals NHS Trust* [2021] EWHC 928 (Admin) Mr Justice Linden said the defendant exhibited "wholesale failure to comply" with the obligation to secure service user involvement in the decision-making process.

### Dealing with Covid-19 challenges

In April 2020, as the first coronavirus wave began impacting hospitals, NHS Trusts were urged by NHS England – in a letter of the 29<sup>th</sup> April - to "step up" non-Covid-19 urgent services as soon as possible. In response, the trust decided to designate Grantham and District Hospital a "green site," meaning Covid patients would not be treated at the hospital. The focus was on elective surgery, chemotherapy and some diagnostics.

The A&E department would become an Urgent Treatment Centre, obliging about 20 per cent of its users to travel further afield. Other services would also require travel to more distant sites. Between 29 April and 10 May 2020, operational teams at the trust explored various options, and on 10 May, proposals were presented to an internal Gold Command meeting.