

The initial communication to the public via the Chief Executive's interview with BBC Radio Lincolnshire on 3 June 2020 when he mentioned it in passing. A press release was then issued to the media, and published on the trust's website on 8 June 2020. It advertised the forthcoming board meeting, which was to discuss the matter, and provided a link to the board papers, as well as the email to stakeholders. The board meeting on 11 June 2020 was live streamed, with members of the public able to submit written questions in advance.

The planned service change was not popular. Many of the hospital's users were vulnerable or elderly, not well off, and did not have cars. As is often the case in a service change, a big issue for the public was travel. The decision meant that the claimant had to travel 27 miles each way to Boston rather than 7 miles each way to Grantham for her consultant appointments.

The trust's breaches

The claimant argued that the trust breached section 242(1B)(b) and (c) of the National Health Service Act 2006 by failing to make arrangements that meant service users were involved in the proposals for designating the hospital as a green site and in the decision making itself.

The trust denied this. It argued that the pandemic put extraordinary demands on trust personnel. Deadlines presented by NHS England were too tight to allow more involvement from the public in the decision-making process, and their plans were undergoing a constant process of modification and might not have proceeded.

The trust added that that the decision was only temporary, and was to be kept under review while service users were given the opportunity to express their views after the decision was announced.

However, Mr Justice Linden determined that the trust breached both section 242 (1B) (b) and (c) of the National Health Service Act 2006 Act. Mr Justice Linden said that the three-day period (8th to 11th June) was not enough time for service users to understand the proposal or respond. He also found that the ways that users were able to respond were limited and did not constitute "meaningful involvement" in the making of the decision.

"I do not consider that the fact that a proposal or decision is said to be temporary, of itself, is the important consideration in deciding the adequacy of arrangements for service user involvement. What matters is what impact the decision will have and for how long. I have dealt with the former and, in relation to the latter, the Decision was to take effect for "at least" 9 months. That seems to me to be a

significant period of time, with no guarantee that there would be no extension."

Mr. Justice Linden emphasised the rationale for proper involvement of people in decision making, adding "the perspective and concerns of the consumer of the services will lead to better informed decisions and it will increase the likelihood that the human impact and implications of plans, proposals and decisions are taken into account.

Mr Justice Linden said '.....that none of these steps could sensibly be said to be arrangements to secure involvement in the "development" of the Green site proposal which, I have found, was under consideration and development by the trust from 10 May 2020.....On this basis, there was a total failure on the part of the trust to comply with one of the requirements of section 242(1B)(b).

Later in the judgement, Mr Justice Linden stated that 'by 12 May 2020 at the latest..., steps could and should have been taken to involve service users in the development and consideration of the proposal. There was no good reason why the steps which the Trust eventually took in terms of publicity for the proposal, virtual public meetings, surveys etc could not have been taken at this stage.'

Could the pandemic be relied on by the trust to avoid finding a breach of the section for this reason alone? Absolutely not concluded the court. In my view, considerable caution should be exercised in relation to an argument that trust personnel were, in effect, "too busy with other things" to comply with section 242.

Such an argument runs contrary to the purpose and importance of the section. I would not be minded to accept such an argument in the absence of clear evidence that a trust would be unable to comply with others of its duties were it to devote resources, or more resources, to compliance with section 242. Even if the question squarely arose as to which statutory duty a trust should breach, it would not follow that section 242 should be sacrificed given its importance. Neither did the fact that the changes were said to temporary assist, the Mr Justice Linden stated that;

The present case also illustrates how failure to involve service users in decision making will foster a sense of injustice or, worse still, undermine confidence in the good faith of the decision maker," said Mr. Justice Linden.

This case was not the first time in the pandemic that the courts signalled the dangers of the perception of cutting corners in engagement for the reason of