

# AUDIT AND GOVERNANCE COMMITTEE AGENDA



**15 March 2016**

**at 11.00 a.m. or immediately following the meeting of the Health Scrutiny Joint  
Committee whichever is the later**

**in the Council Chamber  
Civic Centre, Hartlepool**

**MEMBERS: AUDIT AND GOVERNANCE COMMITTEE**

Councillors Ainslie, S Akers-Belcher, Belcher, Cook, Lawton and Martin-Wells.

Standards Co-opted Members; Mr Norman Rollo and Ms Clare Wilson.

Parish Council Representatives: Parish Councillor J Cambridge (Headland) and Parish  
Councillor B Walker (Greatham)

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
- 3. MINUTES**
  - 3.1 To confirm the minutes of the meeting held on 5 February 2016 and reconvened on 26 February 2016.
- 4. AUDIT ITEMS**
  - 4.1 None
- 5. STANDARDS ITEMS**
  - 5.1 None



**6. STATUTORY SCRUTINY ITEMS**

- 6.1 Assisted Reproduction Unit - Service Provision – Verbal report of Chair of Health Scrutiny Joint Committee

**7. MINUTES FROM THE RECENT MEETING OF THE HEALTH AND WELLBEING BOARD**

- 7.1 None

**8. MINUTES FROM THE RECENT MEETING OF THE FINANCE AND POLICY COMMITTEE RELATING TO PUBLIC HEALTH**

- 8.1 None

**9. MINUTES FROM RECENT MEETING OF TEES VALLEY HEALTH SCRUTINY JOINT COMMITTEE**

- 9.1 None

**10. MINUTES FROM RECENT MEETING OF SAFER HARTLEPOOL PARTNERSHIP**

- 10.1 None

**11. REGIONAL HEALTH SCRUTINY UPDATE**

**12. ANY OTHER BUSINESS WHICH THE CHAIR CONSIDERS URGENT**

**ITEMS FOR INFORMATION**

**Date of next meeting – Thursday 17 March, 2016 at 10.00 am in the Civic Centre, Hartlepool**



## **AUDIT AND GOVERNANCE COMMITTEE MINUTES AND DECISION RECORD 5 February 2016**

The meeting commenced at 10.00 am in the Civic Centre, Hartlepool.

**Present:**

Councillor: Ray Martin-Wells (In the Chair)

Councillors: Jim Ainslie, Sandra Belcher and Rob Cook

In accordance with Council Procedure Rule 5.2 (ii), Councillor Paul Beck was in attendance as substitute for Councillor Stephen Akers-Belcher and Councillor Jim Lindridge was in attendance as substitute for Councillor Trisha Lawton.

Standards Co-opted Members:  
Norman Rollo

Parish Council Representatives:  
John Cambridge (Headland)

Also Present: Councillors Alan Clark, Brenda Loynes, David Riddle and Sylvia Tempest  
Gina Wells, DAC Beachcroft LLP  
Iain Wright, MP for Hartlepool  
Dr Mohamed Menabawey  
Karen Hawkins, Hartlepool and Stockton Clinical Commissioning Group  
Gregg Canning, Royal College of Nursing  
Ros Kennedy, British Medical Association  
Mike Hill, UNISON

Officers: Louise Wallace, Director of Public Health  
Peter Devlin, Chief Solicitor  
Alastair Rae, Public Relations Manager  
Ed Turner, Public Relations and Communications Assistant  
Joan Stevens, Scrutiny Manager  
Angela Armstrong, Principal Democratic Services Officer

### **103. Apologies for Absence**

Apologies for absence were received from Councillor Stephen Akers-Belcher and Trisha Lawton along with Parish Council representative Brian

Walker and Independent Person Clare Wilson.

## **104. Declarations of Interest**

Councillor Ray Martin-Wells declared a personal interest in minute 105.

## **105. Assisted Reproduction Unit – Service Provision** (Scrutiny Manager)

The Committee received, as part of its agenda documentation, a briefing report outlining the background to, and issues behind, the North Tees and Hartlepool NHS Foundation Trust's (FT) decision to close the Assisted Reproduction Unit at the University Hospital of Hartlepool (UHH) on clinical safety grounds.

The Chair informed the Committee that the management of the Trust had declined to appear in front of the Committee. The Trust's legal representative was in attendance to make a request on behalf of the Trust for an adjournment of the meeting on the following grounds:

- 1) The appropriateness, in terms of role and relevance, of the Committee's invited expert witness, Dr Mohammed Menabaway; and
- 2) The impartiality of the clinical expert in attendance.

The legal representative added that the issues affecting the Assisted Reproduction Unit related to recruitment and retention of specialist embryologists and that the Trust considered that there was little the clinical expert in attendance could add to that. In addition, the Trust had expressed concerns that as an ex-employee of the Trust, the clinical expert in attendance was not impartial. The Trust also had concerns that undue process had been undertaken in selecting the clinical expert in attendance, contrary to established NHS operating practices. In addition, it was highlighted that the clinical expert in attendance was retired and not licensed to practice at the current time and it was suggested that an independent clinical expert be appointed to advise the Committee by the Clinical Senate.

The Chair questioned why representatives from the Trust were not able to attend this meeting and explain those concerns to the Committee. The legal representative reiterated that she had been instructed to attend to request an adjournment of the Committee meeting and the identification of an independent expert through the Clinical Senate. The Chair expressed his concern at the non attendance of representatives from the Trust and sought a vote from the Committee on whether the meeting should be adjourned. By a show of hands, the Committee voted unanimously to refuse the request of the Trust to adjourn the Committee and receive evidence from those individuals who had made time to attend the meeting.

The Chair reiterated that the decision by the Trust not to attend this

Committee and participate in the public debate about the future of fertility services at the town's hospital was the worst example of arrogance that he had experienced. The Chair commented that everyone in this Chamber had given up their time to come together to discuss a hugely important issue and for the Trust's senior representatives to turn their backs on the very people they were employed and paid to serve was a massive slap in the face, wholly inexcusable and quite astonishing. The Chair added that for far too long the Trust had continued with the downgrading and removal of services from the University Hospital of Hartlepool and had shown total contempt for the views of local people, there was very little in the way of accountability and clearly by their non-attendance at this meeting, they did not like to face challenge.

The Chair concluded that despite the fact that the Trust was not in attendance, it was considered absolutely vital that the meeting press ahead so that the Committee can debate this hugely important issue which affected everyone in Hartlepool and the surrounding communities.

Members were fully supported of the Chair and the above comments and echoed their disappointment at the non-attendance of representatives from the Trust which showed contempt for the huge public attendance at this meeting as well as to all the other residents of the Town. A Member highlighted the statutory duty of the Local Authority to work closely with Trust in relation to child protection and added that it was becoming increasingly difficult to trust and work alongside them. It was suggested that an Extraordinary Council be called in order to ensure a full debate with all Elected Members on the future working arrangements with the Trust.

The MP for Hartlepool was in attendance and informed the Committee that the Chief Executive of the Trust had emailed him about the proposed closure of the Assisted Reproduction Unit due to the fact that the Trust had been unable to recruit enough embryologists to provide all aspects of the service safely. As a result of this, the MP had asked a parliamentary question to the Secretary of State for Health to clarify why there were problems recruiting embryologists. The Secretary of State confirmed that the Fertility and Embryology Authority had advised that they were not aware of any issues concerning the availability of embryologists in the United Kingdom. It was noted that the issue of clinical safety had been utilised previously as the rationale to remove other services from Hartlepool and the MP proposed that all previous decisions to remove services from Hartlepool be re-examined to ascertain if the issue of clinical safety had been a proven reason for the removal of those services.

The MP added that the people of Hartlepool were rightly concerned as yet another service was being removed from the UHH and suggested that the Trust should be operating a two hospital model. In conclusion, he added that there were serious questions over the leadership, management and governance of the Trust.

The Chair informed the Committee that a report had been produced on 27

November 2015 by the Fertility and Embryology Licensing Authority which confirmed that an appropriate complement of staffing was important to undertake this type of work in such a hi-tech environment and that the staffing levels in Hartlepool at the time were suitable for the activities undertaken. It was acknowledged that the Unit was currently not fully staffed but the staffing levels were reviewed regularly with consultations and treatment cycles adjusted accordingly. In summary, the Licensing Authority had concluded that it was satisfied that the Unit was fit to undertake treatment and the license therefore continued. With this in mind, the Chair indicated at this point that he would have liked to ask senior representatives from the Trust what had changed in the service provision at the Assisted Fertility Unit since the production of this report that had led to the decision to remove that service from the Unit at Hartlepool as this questioned the medical competency of the Trust along with its capability to continue to provide effective health services.

The representative from Hartlepool and Stockton NHS Clinical Commissioning Group indicated that they were supportive of the request to adjourn the meeting to enable an independent source of clinical expertise to be identified by the Clinical Senate to attend a future meeting of the Committee. Assurance was provided to the Committee that the CCG's priority was to ensure the safest possible service was provided for local people and they continued to work with all partners to secure future services. However, the representative from the CCG confirmed they were unable to ignore concerns raised in relation to clinical safety. The CCG highlighted that the Clinical Senate had indicated that it would take 6-8wks to identify an independent expert to attend Committee but the Chair indicated that this was not a reasonable timescale as the Unit would have closed during this time, staff would have been made redundant and the purdah period prior to the Local Government Elections would have commenced. The Chair indicated that the meeting would be reconvened before the closure of the Unit and asked the CCG to progress the request for an independent expert through the Clinical Senate.

The Chair introduced Dr Mohamed Menabawey who had been appointed to work for the Trust at the UHH in 1988. Dr Menabawey provided the Committee with an outline of his extensive experience and responsibilities including the securing of a license for the Assisted Fertility Unit in Hartlepool when it was first opened. Dr Menabawey added that he left the employ of the Trust to become a Director of one of the largest fertility centres in London. He added that he had retired from private practice two years ago and had proceeded to establish two IVF Units in Cairo and Iraq. In view of the above, Dr Menabawey was astonished to note that the Trust questioned his expertise in the field of assisted fertility. The Chair sought the view of the Committee, who by a show of hands, unanimously accepted Dr Menabawey as an expert in the field of assisted fertility. The Trust's legal representative commented that the Trust were concerned at the impartiality of Dr Menabawey as a former employee of the Trust and reiterated that independent experts were usually appointed by the Clinical Senate.

Dr Menabawey indicated that there was no evidence of a shortage of qualified embryologists as there were many national and international organisations to recruit from. The Chair commented that he was concerned that the Trust was not in attendance due to Dr Menabawey's attendance as the Committee had invited him for his expertise in the assisted fertility field of medicine. Dr Menabawey added that he was sad to note that after working for the Trust very successfully for over 20 years, the Trust did not feel able to accept his expert opinion. He added that there were numerous offers of assistance to enable the Assisted Fertility Unit to continue to operate in Hartlepool including Darlington and Gateshead Fertility Units. The Chair questioned why the current consultant operating at the Unit in Hartlepool was not one of the representatives originally identified to attend the meeting as it would have been useful to hear his opinion on the current and potential future operating arrangements of the Unit. Members were fully supportive and appreciative of Dr Menabawey and of his attendance at this meeting to provide his expert opinion on the operation of Assisted Fertility Units.

A representative from UNISON addressed the Committee and highlighted that the sad reality of the request to adjourn the meeting was that the workforce currently employed within the Assisted Fertility Unit may be redundant by the time this issue can be debated if the Trust press ahead with the timescale to close the Unit on 31 March 2016. The UNISON representative informed the Committee that they had undertaken extensive consultation with staff of the Unit details of which were included within a comprehensive report which showed that there were opportunities to recruit qualified embryologists and that the Unit was fit for purpose. However, the UNISON representative added that he was currently unable to disclose the content of the report as it was subject to some technical checks. It was highlighted that the Assisted Fertility Unit was held in high regard as it provided an excellent service with the Annual International Conference of the London Woman's Clinic held in Hartlepool. The Unit was also recognised by the Licensing Authority, HFEA as part of a national training programme for embryologists. The representative from UNISON also questioned whether patients utilising the Unit had been consulted and advised of the proposed closure in relation to the transfer of notes and the movement of materials, ie sperm and eggs. The Chair commented that there were many questions that would be directed at the Trust if they had been in attendance but it was hoped that this opportunity would be provided should they choose to attend a future meeting.

In response to a number of queries raised by the UNISON representative, the CCG representative confirmed that the proposed closure of the Assisted Fertility Unit had been driven by the Trust through the provider variation proposals due to the difficulties being experienced recruiting appropriately trained staff to sustain the service. The representative from the CCG reiterated that patient safety was taken very seriously hence the request for an independent review and confirmed that work was ongoing with other providers across the North Tees and Hartlepool area to secure service

provision for the future. In response to a question from the MP, the representative from the CCG indicated that the cost of writing to all patients who had utilised the Assisted Fertility Unit since it opened in 2008 to seek consent to move any materials stored within the Unit had not been explored. The Chair requested that these costings be provided at a future meeting of this Committee where this issue will be discussed further. Dr Menabawey provided further detail on the technical side of the services provided within an Assisted Fertility Unit.

Members were very concerned that the closure of this Unit was yet another step towards the full closure of the University Hospital of Hartlepool which may impact on the recruitment and retention of staff to a Hospital which was being systematically closed. It was important to get the message out there that the UHH was a very good hospital and was sustainable. The Chair proposed that a letter be forwarded to the Secretary of State, the content of which to be agreed between the Chair and Scrutiny Manager, requesting the Secretary of State for Health to suspend the proposed closure of the Assisted Fertility Unit at the University Hospital of Hartlepool and to refer the circumstances surrounding this proposed closure for a full investigation by Monitor. This was supported unanimously by the Committee. The MP also supported this proposal adding that the investigation should also re-examine previous decisions taken on clinical safety grounds to remove services from the UHH, including Accident and Emergency. The MP also offered to attend any future meetings arranged with the Secretary of State to discuss these issues further. The Chief Solicitor reminded Members that guidance issued by the Department of Health enabled health scrutiny to strengthen the voice of local people and was concerned at the absence of representatives of the Trust during these discussions. It was noted that the Statutory Health Scrutiny function of the Committee may require any member, employee of a responsible person to attend and answer questions as deemed necessary in relation to the discharging of a relevant function such as health scrutiny and there was a duty upon that member, employee of a responsible person to comply with such a request. The Chief Solicitor suggested therefore that the Committee may wish to adjourn and reconvene at a later date with a further invitation extended to senior representatives from the Trust along with an independent expert, to be identified by the Clinical Senate, to attend the reconvened meeting at the earliest opportunity.

The Chair thanked everyone for attending and for being patient and respectful in challenging circumstances. An invitation was extended to everyone to the reconvened meeting when this was arranged, including Dr Menabawey.

### **Recommended**

- i) To adjourn the meeting for a reasonable period to allow the identification of an independent expert to be pursued by the CCG through the Clinical Senate. All those in attendance today were to be

invited to attend the reconvened meeting (including the existing clinical lead from the Unit who the Trust refused to invite to this meeting).

- ii) That a letter be sent to the Secretary of State for Health, from the Chair and Vice Chair of the Audit and Governance Committee:
- To request that the closure of the fertility unit be postponed (and arrangements previously in place for the provision of embryologists be continued) to allow the full and proper investigation of the decision (background, reasons and justification) by the Audit and Governance Committee (with the full involvement of the Trust);
  - To notify the Secretary of State for Health of the Trust's contempt for the Council and disregard for Overview and Scrutiny in their failure to attend as required under Regulation 27 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013;
  - To request Monitor to investigate the Trust's actions in relation to:
    - The closure of the Unit (given the flaws identified in the Trusts recruitment argument);
    - Previous decisions taken by the Trust to close / move services from University Hospital of Hartlepool (including Accident and Emergency) as the Committee questioned the robustness of evidence previously provided to support decisions taken on the grounds of clinical safety.
    - The Trust's competency / capability to continue to provide health services, with reference to the outcome of the recent CQC inspection and issues identified in relation to leadership at the UHH (**Medical care** - leadership - Inadequate, **Maternity and Gynaecology** - leadership – requires improvement, **Services for Children and Young People** - leadership – requires improvement, **Outpatients and Diagnostic Imaging** - leadership – requires improvement).
  - That the Secretary of State for Health meet with Hartlepool's MP and Council representatives (including Audit and Governance Committee Chair and Vice Chair) in relation to the fertility issue and the wider issue of trust competency / capability to continue to provide health services, supported by the view expressed in the recent CQC report in relation to the provision of service (ie Medical Care - designated as requiring improvement across all headings (safety, effectiveness, caring, responsive) and inadequate in terms of leadership.

## 106. Any Other Items which the Chairman Considers are Urgent

None.

## 107. Adjournment of Meeting

The meeting stood adjourned at 3.35 pm to be reconvened at a later date.

The meeting reconvened at 10.00 am on Friday 26 February 2016  
in the Civic Centre, Hartlepool

### Present:

Councillor Ray Martin-Wells (In the Chair)

Councillors: Jim Ainslie, Stephen Akers-Belcher, Sandra Belcher, Rob Cook and  
Trisha Lawton

Standards Co-opted Members:  
Clare Wilson

Parish Council Representatives:  
John Cambridge (Headland)

Also Present: Councillors Christopher Akers-Belcher (Leader), Paul Beck,  
Kevin Cranney, Marjorie James, Jim Lindridge, Brenda Loynes,  
David Riddle, Paul Thompson  
Gina Wells, DAC Beachcroft LLP  
Dr David Emerton, Hartlepool and North Tees NHS Foundation  
Trust  
Iain Wright, MP for Hartlepool  
Dr Mohamed Menabawey  
Ali Wilson, Hartlepool and Stockton Clinical Commissioning  
Group  
Gregg Canning, Royal College of Nursing  
Mike Hill, UNISON

Officers: Louise Wallace, Director of Public Health  
Peter Devlin, Chief Solicitor  
Alastair Rae, Public Relations Manager  
Ed Turner, Public Relations and Communications Assistant  
Joan Stevens, Scrutiny Manager  
Angela Armstrong, Principal Democratic Services Officer

## 108. Apologies for Absence

Apologies for absence were received from Norman Rollo, Independent  
Person and Brian Walker, Parish Council representative.

## 109. Declarations of Interest

There were no further declarations of interest made at this meeting.

## **110. Assisted Reproduction Unit – Service Provision** (Scrutiny Manager)

The Committee received, as part of its agenda documentation, additional supplementary information to inform the discussions on North Tees and Hartlepool NHS Foundation Trust's (Trust) decision to close the Assisted Reproduction Unit at the University Hospital of Hartlepool (UHH) on clinical safety grounds (with effect from 31 March 2016).

The Chair sought an explanation from the Trust's representative of why senior representatives from the Trust, who had been invited, had not attended when this meeting was first convened on 5 February 2016 and why were also not in attendance at this reconvened meeting. The Legal representative of the Trust confirmed that their position at the original meeting had been to seek an adjournment to allow the matter to be considered by a Joint Health Scrutiny Committee. In addition to this, the Trust's representative who was in attendance at the reconvened meeting was here to answer questions and it was hoped that along with the various correspondence between the Council and the Trust, this matter could be progressed. The Chair indicated his disappointment and disgust that, despite a discussion with the Trust's senior representatives who had requested that this meeting did not reconvene during half term week to assist their attendance, the senior representatives who had been invited had failed to attend. With this in mind, and in recognition of the Trust's continued contempt for the Committee, the Chair sought a view on requiring all 33 members of the Council of Governors for the North Tees and Hartlepool NHS Foundation Trust to attend a meeting of the Audit and Governance Committee to explain why they feel they could ignore a formal request to attend a meeting of the Audit and Governance Committee. This proposal was agreed unanimously by the Committee.

In response to a question from the Chair, the representative from the Trust reiterated their insistence that the proper route for consideration of this matter would be through a Joint Scrutiny Committee consisting of representatives from Hartlepool, Stockton and Durham Councils and the Trust would prefer to answer questions through this body. The Chair confirmed that Durham County Council and Stockton on Tees Borough Council had already declined in writing to participate in a Joint Committee. The Chair sought clarification of how meaningful the consultation with a Joint Scrutiny Committee would be, as he was aware that the notice had been given to employees of their impending redundancy due to the closure of the Assisted Fertility Unit was going ahead on 31 March 2016. Attention was also drawn to the letter sent by the Trust to the Trade Union refusing to maintain the status quo of the Unit to allow it to continue to operate while the ongoing grievance is investigated. The representative from the Trust confirmed that consultation with employees was ongoing in view of its commitment to keep staff fully briefed and added that there was some flexibility on the proposed closure date of 31 March 2016. The

representative added that the Trust was trying to achieve the model of care that was best for patients, clinically safe, sustainable and as local as possible. The uncertainty for employees was recognised by the Trust and they were working with other providers with the aim of keeping unlicensed services local as well as licensed where it was possible to do so. The Chair questioned how engagement and consultation could be meaningful without a predetermined outcome when employees were still being issued with redundancy notices due to the proposed closure of the Unit on 31 March. The Legal representative from the Trust indicated that the Trust was willing to be flexible with the proposed date of closure of the Unit to enable engagement with patients, stakeholders and a Joint Committee and reassured Members that the Trust was aware of its obligations to its employees.

The Chair referred to correspondence sent to the Council on behalf of the Trust and sought clarification on the CCG's responsibilities. The representative from the Trust indicated that the CCG's operating in areas affected by the proposals would be involved in a meeting of a Joint Committee should this go ahead as well as working closely with the Trust to look at alternative options of moving forward with a sustainable service. The representative from the Trust reiterated that the Trust were willing to be flexible with the proposed closure date of Unit of 31 March 2016 provided the Unit could be operated by appropriately qualified medical and embryology staff. In view of the above comments in relation to the CCG's involvement, the Chair sought clarification on when the Trust had informed the CCG of its proposal to close the Unit. The representative from the CCG informed the Committee that an informal telephone call had been received from the Chief Operating Officer of the Trust which indicated that the service was in a dire position and closure of the Unit was being considered. The representative from the Trust confirmed this. The CCG representative added that as the proposed closure was due to concerns over safety through the lack of appropriately qualified clinicians, the CCG was unable to stop the proposed closure. However, the usual process would be for the Trust to submit a variation proposal and, to date, the CCG had not received this. In response to a question from the Chair, the representative from the Trust confirmed that the current service could continue whilst the appropriately qualified embryologist from Newcastle was able to support it.

A Member expressed his disappointment and disgust that the senior representatives of the Trust, who had been invited, had not attended to answer the questions/concerns of the Members and the public in attendance. The MP for Hartlepool reiterated that the whole stance of the Trust had been disgraceful and contemptuous to the Committee and the member of the public in attendance adding that the service provided at the Unit was either safe or unsafe and should not be used as a bargaining chip.

The Chair referred back to agreement by the Committee at the end of the meeting on 5 February 2016, that the Council would be willing to participate in a Joint Scrutiny Committee, subject to assurances that the Trust would, in view of the ongoing engagement/consultation being undertaken:-

- (a) Rescind the decision to cease providing licensed fertility treatment at the ARU as of the end of March 2016;
- (b) Inform affected staff of this decision, and cease consulting with the trade unions and staff (as this would no longer be necessary) and withdrawn any notices of termination that may have been issued; and
- (c) Confirm that the Trust will consult with affected local authorities in accordance with the regulation 23 (2) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (“the 2013 Regulations”), and will not cease the licensed treatment services at the ARU until after the conclusion of the consultation process.

The Chair was exasperated that the Trust had not responded to the Committee’s requests before the reconvened meeting, as requested, and had instead in its response of the 25 February, demanded that the Council:

- Not initiate Judicial Review proceedings;
- Not refer the matter to the Secretary of State; and
- Refer the matter immediately to a Joint Committee, whose activities would be completed before 30 March.

In the absence of prior notification, the Chair sought clarification as to the Trust’s position on the Committee’s request and was advised by the Legal representative from the Trust that redundancy notices will not be withdrawn. The Trust was aware of its obligations to its employees and she would take this request back to the Trust and that the licensed treatment would be maintained whilst the additional support currently being provided by an embryologist from Newcastle Hospital continued. It was reiterated that further engagement/consultation with a Joint Committee may enable more viable long term solutions to be identified. The Legal representative from the Trust confirmed that the Trust would look at all options available to them to ensure effective advertising was undertaken when recruiting appropriate qualified staff to operate the Unit.

As it appeared that the Trust had a predetermined view and was therefore issuing redundancy notices prior to a full and meaningful engagement/consultation process, the Chair sought the Committee’s view on:-

- A formal referral of the Trust’s actions, and decision, in relation to the closure of the ARU to the Secretary of State, with approval of this course of action through an Extraordinary meeting of Council, in accordance with the requirements of the Council’s Constitution. This was unanimously agreed by the Committee.
- In view of the timescales involved and the proposed closure of the

Unit on 31 March 2016, the issuing a 'letter before action' to the Trust and instruction of the Chief Solicitor to instigate formal legal proceedings in the High Court to stop the closure of the Unit. This was unanimously agreed by the Committee.

A Member expressed his disappointment that the invited senior representatives of the Trust had failed to attend this meeting and considered that sending a Legal representative could be deemed as intimidation tactics. In view of this appalling behaviour, it was proposed that the Trust's representation on the Council's Health and Wellbeing Board be removed. The Chief Solicitor suggested that consideration of this proposal be deferred to the Extraordinary meeting of Council requested above to enable the full consideration of the legal implications of this proposal. A discussion ensued during which Members of the Committee considered that the proposed closure of this Unit was a deliberate attempt to increase the number of services removed from the University Hospital of Hartlepool (UHH) and therefore result in the operation of the hospital as a whole being less viable.

In response to a Member question on the issue of decision making within the Purdah period, the Chief Solicitor responded that it would be preferred if all matters relating to a Joint Committee could be concluded before the Purdah period commenced on 24 March 2016. The Chief Solicitor clarified that the purdah period commenced on the date notice of the Local Government Elections was given, which in this case was 24 March 2016, and ended on the day of the Local Government Elections on 5 May 2016. The Purdah period was to ensure Local Authority resources were not utilised to promote specific organisations and political parties.

The Leader of the Council expressed his disappointment that Stockton Borough Council were not willing to participate in a Joint Committee when they had previously agreed to do that. He added that it was abhorrent of the Trust to absolve themselves of the formal obligation to consult and engage with stakeholders including its employees and the residents of Hartlepool. The Leader continued by indicating his full support for any legal action required to ensure services continue to be provided within the Unit along with the request to remove the Trust's representation from the Council's Health and Wellbeing Board.

As an expert in the field of assisted fertility, Dr Menabawey had been invited to attend the Committee and commented that even if only the licensed element of treatment was removed from the services provided within the Unit, this would render the remainder of the services provided there as not sustainable. Dr Menabawey referred to the excellent service that had been provided by the Unit for a number of years which was reinforced by a report produced on 27 November 2015 by the Fertility and Embryology Licensing Authority which confirmed that an appropriate complement of staffing was important to undertake this type of work in such a hi-tech environment and that the staffing levels in Hartlepool at the time were suitable for the activities undertaken and it was satisfied that the Unit was fit to undertake

treatment and the license therefore continued. Dr Menabawey commented that he did not feel that the advertising for appropriately qualified embryologists undertaken recently had been as effective as it could have been.

The MP for Hartlepool commented that the non attendance of the senior representatives of the Trust for a second time was utterly contemptuous of the highest possible order. He continued to indicate his support for the request for a Joint Committee, however as highlighted earlier in the meeting, neither Stockton on Tees Borough Council nor Durham County Council were willing to participate. The MP expressed his concern that whilst the threat of redundancy was held over employees of the Unit, there was a strong chance they would be looking for alternative employment in order to protect their careers and livelihoods and this would affect the staffing levels at the Unit. It was highlighted to the Committee that the MP for Hartlepool raised a question in the House of Commons on the apparent shortage of appropriately qualified embryologists in the United Kingdom where he was informed that there was not a shortage of embryologists. In view of this, the MP questioned the effectiveness of the recruitment process undertaken by the Trust to recruit appropriately trained embryologists. With this in mind, the MP strongly urged that the Extraordinary meeting of Council requested earlier in this meeting consider referring this issue to the Secretary of State for Health.

The UNISON representative addressed the Committee and expressed the union's disappointment that senior Trust representatives had failed to attend this reconvened meeting of the Committee. In addition, he added that it was disgraceful that it was proposed to close the Unit on 31 March 2016 which did not leave sufficient time for meaningful engagement/consultation to be undertaken with either employees or stakeholders.

A representative from the Royal College of Nursing (RCN) addressed the Committee by indicating that he had a number of questions that he would have liked to put to the senior representatives of the Trust had they been present at the meeting. However, he highlighted that discussions with the Trust had only commenced on the 11 February at the insistence of the Royal College and felt strongly that discussions/engagement/consultation should have commenced before the closure decision was taken. There was also frustration that other Trusts/bodies did not have the same problem in recruiting embryologists and the Trust had refused to retain the status quo (as indicated earlier in the meeting) whilst the ongoing grievance lodged by the Trade Unions was being investigated. The RCN shared the Committee's concerns that the proposed closure of the Unit was destabilising the current operation of the Unit when the provision of appropriately trained embryologists would bring about the stability the Unit needed. The representative from the RCN went on to question the effectiveness of the recruitment process that had been undertaken as it was this reason given for the proposed closure and not the level of service provided from within the Unit.

The Chair sought clarification from Members on the creation of a Joint Committee with Stockton on Tees Borough Council and Durham County Council would be useful to this process. The Committee agreed unanimously that further approaches be made to Stockton on Tees Borough Council and Durham County Council to create a Joint Committee to look at the effect on the surrounding areas of the proposed closure of this Unit.

A discussion ensued during which the representative from the CCG indicated that the CCG needed to work with the Trust to understand what the issues were and what the service needed to be completely reinstated and sustainable. The CCG had made every effort to secure the advice of an independent expert via the Clinical Senate but had unfortunately been unable to identify anyone at the current time. The CCG had given a commitment to continuing to source an independent expert via a wider catchment of Clinical Senates and was awaiting responses. Dr Menabawey sought clarification on this issue as the Human Fertilisation and Embryology Authority (HEFA) which was established through an Act of Parliament and therefore governed by Parliament which meant it did not require the opinion of an independent expert. In addition the HEFA had undertaken the inspection of the Unit in November 2015 which involved clinicians and had granted the continuation of the license to practice the provision of assisted fertility. Dr Menabawey added that it was only the failure to recruit an appropriately qualified embryologist that made the service level unsafe according to the Trust, if an appropriate embryologist was recruited this would not be the case.

The Scrutiny Manager read out to the Committee a submission from a representative from the Save our Hospital campaign who was unable to attend due to ill-health. The Chair opened up the discussion to the members of the public who were in attendance including a doctor who had previously been employed as a consultant at the University Hospital of Hartlepool.

A lengthy discussion took place during which it was noted that the University Hospital of Hartlepool had been an excellent performing hospital across a number of service areas until recent years. This change had been brought about by the methodical transfer of services from this hospital to other hospitals in the north east region. In addition, it was the view of a number of people that there were difficulties recruiting posts to the UHH as employees were reluctant to move their careers to a hospital where service provision was constantly reducing. The Committee's attention was drawn to the recruitment process which was currently only undertaken on the NHS jobs website. It was considered that this limited the field of applicants, as the majority of higher qualified specialised clinicians used the specialist recruitment process that was undertaken in professional magazines and websites and not the NHS jobs website. In response to a question from a member of the public, the representative from the CCG confirmed that where a proposal was submitted to remove or change a

service, potentially through a variation proposal, the CCG engaged specialist clinician advice and reviewed all the information presented to them before a decision was taken.

There were several residents in the public gallery who wished to convey their thanks to the Assisted Fertility Unit and its team as they had helped them achieve a family. However, it was noted that some people who had undertaken treatment at the Unit would have frozen embryos and eggs stored within the Unit and clarification was sought on what would happen to these as there had been no correspondence with any of the patients. The representative from the Trust gave a guarantee that all materials stored in Hartlepool would remain there through a robust agreement and should anything need to be transferred anywhere, full consultation through a very strict procedure would be undertaken with all patients. An unreserved apology was given to anyone for the breakdown in communication which had led to people not receiving any communication from the Trust informing them of the proposed changes to the way the Unit operated. The MP for Hartlepool commented that it was unforgiveable that people who had frozen embryos and eggs stored within the Unit had not been contacted as this should be dealt with in the most sensitive and appropriate way.

A number of concerns were expressed by members of the public in attendance as they considered the non attendance of senior Trust representatives at this public meeting as an absolute contemptuous and immoral stance. The public in attendance were supportive of the Committee's proposal to refer this matter to the Secretary of State for Health and seek further retribution through the Courts, however, it was recognised that the reduction in service provision at the UHH had been ongoing for some time. The Chair commented that on this occasion, the Committee were in the fortunate position of having the advice and guidance on an expert in this particular field on medicine which had assisted the Committee in reaching informed recommendations. Further discussion ensued on the potential of purchasing services from other Trusts outside the North Tees and Hartlepool NHS Foundation Trust area.

## Recommended

- 1) The Committee requiring the complete Council of Governors for the North Tees and Hartlepool NHS Foundation Trust to attend a meeting of the Audit and Governance Committee to explain why they feel they could ignore a formal request to attend a meeting of the Committee.
- 2) The Trust's actions and decision in relation to the closure of the ARU be formally referred to the Secretary of State, with approval of this course of action sought through an Extraordinary meeting of Council, in accordance with the requirements of the Council's Constitution;
- 3) In view of the timescales involved and the proposed closure of the Unit on 31 March 2016, the Chief Solicitor be instructed to instigate formal legal proceedings in the High Court to stop the closure of the Unit on 31 March 2016.
- 4) That consideration be given to the removal of the Trust's

- representation on the Council's Health and Wellbeing Board.
- 5) That Stockton on Tees Borough Council and Durham County Council be approached again to seek confirmation of their views on participation in a Joint Committee to look at the effect on the surrounding areas of the proposed closure of the Assisted Fertility Unit.

**111. Any Other Items which the Chairman Considers are Urgent**

None.

Meeting concluded at 11.45 am

CHAIR