

FOR IMMEDIATE RELEASE

#Justice4NHS campaigners seek Supreme Court hearing after Court of Appeal rules cost-cutting NHS contract is lawful

Campaign group 999 Call for the NHS are applying to the Supreme Court for permission to appeal the recent Court of Appeal decision that NHS England's contentious new Accountable Care Organisation contract is lawful.

999 Call for the NHS say the Court of Appeal ruling has not properly addressed vital public interest issues and legal points about the cost-cutting contract's pricing methods.

Thousands of people around the country support the campaign group's case, which aims to protect the NHS, and the public who rely on it, from a damaging new contract that is explicitly designed to "manage demand" for healthcare.

The campaign group say this means restricting patients' access to treatments. This would abandon the core principle that the NHS provides a comprehensive service for everyone. Which is why they cannot give up now.

In order to cover the costs of the application, 999 Call for the NHS will shortly launch a new crowdfunding appeal, via the online CrowdJustice platform.

Over the past 18 months, the 999 Call for the NHS legal challenge against the Accountable Care Organisation contract has been crowdfunded in five stages by thousands of members of the public.

In the Court of Appeal on 20th November, the group's barrister David Lock QC presented the group's case in an intellectually rigorous argument where the public benefit was the paramount concern. The contested new block contract for an area's whole healthcare system would permit providers to bid for it on the basis of competition on price. This would create a race to the bottom, worsening existing restrictions on patients' access to NHS treatments.

NHS England told the Court of Appeal that legislation about NHS contracts and pricing is so flexible and permissive that it permits just about anything. And they claimed the new contract's cost-cutting payment method promotes 'innovation and integration', which are statutory goals for the NHS. But they didn't explain HOW the payment arrangement promotes innovation and integration. Nor did the judges ask them to.

999 Call for the NHS campaigner Jenny Shepherd said,

"The judges may not have been bothered - but outside the court, NHS England's smokescreen of "innovation and integration" has people worried. A GP told me it is all about cost cutting and NOT in the public interest!

In her experience, NHS England's version of innovation means getting someone with less qualifications to do the job. And integration means getting one person to do the work of two people (and letting the other one go)."

Fellow 999 Call for the NHS campaigner Steve Carne said,

"The Court of Appeal judgement against us is pretty scathing. But we can't see that it has grappled with the case, or provided proper reasons why what we have said is wrong. So we hope that the Supreme Court will accept there is still the need for a judgement that really engages with the important public interest issues that our case is based on."

999 Call for the NHS Chair, Joanne Land, confirmed,

"Vital public interest issues about patients' access to NHS care have been swept under the carpet by the judgement from the Court of Appeal. That's why we have to apply now to the Supreme Court for permission to appeal.

After the Judicial Review and the Court of Appeal rulings, we are hoping for third time lucky in 2019!"

The campaign group's legal team is Rowan Smith and Anna Dews from the public law firm Leigh Day, and David Lock QC and Leon Glenister from Landmark Chambers

FOR MORE INFORMATION & Photos please contact Jenny Shepherd
E: info@999callfornhs.org.uk Mob: 07474 373 774

NOTES FOR EDITORS

1. 999 Call for the NHS is a grassroots, volunteer-run campaign organisation. Since 2014, when it organised the 300 mile Jarrow to London People's March for the NHS, it has been actively campaigning to restore the NHS as a properly funded, publicly owned, managed and provided comprehensive health service that is free at the point of need for everyone with a clinical need. <http://999callfornhs.org.uk/>
2. Along with scores of local NHS campaign groups across England, for the last three years the group has been fighting NHS cuts and sell offs that are being carried out under the aegis of 44 local Sustainability and Transformation Plans, on the orders of the government quango NHS England. Serious damage to the health of many patients has been caused by these Plans, as well as NHS frontline staff exhaustion and demoralisation.
3. In 2016, the imposition of Sustainability and Transformation Plans prompted a GP to ask 999 Call for the NHS if they would investigate the possibility of a legal challenge to stop these non-statutory plans. The GP was worried about the damage to the NHS, patients and staff from shrinking the NHS into 44 local health services that would cut £22bn from NHS spending by 2020/21 and increase "opportunities" for private health companies.
4. In response, 999 Call for the NHS initiated a Judicial Review of NHS England's Accountable Care Organisation (ACO) contract - which the quango has re-branded as the Integrated Care Provider contract. NHS England had intended to implement this contract in April 2018 for use by some "advanced" Sustainability and Transformation Partnerships, but widespread public opposition - including this legal challenge - has prevented this.
5. The campaign group are concerned that this contract, if implemented, would threaten patient safety and force hospitals and doctors to restrict treatment, making decisions

based on money not clinical judgement. They believe that this new contract is unlawful under current NHS legislation.

This is because the new ACO contract does not link payment to the number of patients treated and/or the complexity of the medical treatment they need, as required by the 2012 Health and Social Care Act. Instead, it is based on a fixed budget for an area's population. This budget would be geared to helping to meet the £22bn+ funding shortfall by 2021 that the government imposed on the NHS in England.

6. Accountable Care Organisations are based on a business model imported from the USA's Medicare/Medicaid system. This provides limited state-funded healthcare for people who can't pay for private health insurance.

Accountable/Integrated Care aims to reduce patient demand for healthcare and to cut costs through a variety of "innovations." In NHS England's plans, these include:

- New models of care that aim to keep frail and chronically ill patients out of hospital, offer huge opportunities for privatisation and rely on digitisation and sharing of confidential patient data.
- The importation from the USA of new grades of lower skilled and less qualified health workers.
- Reliance on unqualified voluntary sector workers and family and friends.
- The complete reorganisation of primary and community health care into superpractices or networks serving populations of 30k-70K, offering services formerly provided by hospitals.
- "Industrial scale" behaviour change programmes aimed at people with chronic illnesses that are strongly associated with economic and social deprivation - without tackling the social, economic and environmental causes of these long term illnesses, and while the government is making huge cuts to Public Health spending.

Accountable/Integrated Care is hugely problematic as it leads to cherry picking patients who are cheapest to treat and whose treatment offers the best return on investment. Evidence also suggests that shifting hospital services into primary and community care is generally more expensive if done properly - and if not done properly, it risks patient safety and creates more work for already overburdened healthcare staff.

7. A Judicial Review is a process of examining in court whether the government and/or its agencies are acting lawfully. The 999 Call for the NHS Judicial Review was held in Leeds High Court on 24th April. The Judge ruled against the campaign group, who then gained Permission to Appeal to the Court of Appeal, on the basis of the public importance of their case. The Court of Appeal Hearing was scheduled to take place over two days, but the Judges only heard the Appeal for a cursory few hours on the first day allocated to the case.

8. 999 Call for the NHS are not advocating the 2012 Health and Social Care Act as a desirable piece of legislation. Their legal challenge simply points out that public bodies like NHS England are required to act according to the law, and 2012 HSCA is the law at the moment.

Their preferred form of payment - and what they have campaigned for since 2014 - is to reinstate the NHS by passing the NHS reinstatement bill. This private members' bill

removes commissioning and privatisation from the NHS and uses non-contract payment methods based on needs assessment and proper funding.

9. Funding to cover the costs of the Judicial Review and Appeal was donated by thousands of people via CrowdJustice - the leading crowdfunding platform for legal action. <https://www.crowdjustice.com/>. CrowdJustice has established legal crowdfunding as a powerful tool for citizens to access justice and lawyers take cases that otherwise would not be heard. CrowdJustice is democratising the justice system by empowering people and communities to champion and build support for legal issues that matter to them. CrowdJustice has raised more than £4 million from over 100,000 backers to support legal action in the courts.

ENDS

Thank you and kind regards,

The 999 Team

999 Call for the NHS

Website: www.999callforNHS.org.uk

Facebook: [@999callforNHS](https://www.facebook.com/999callforNHS)

Twitter: [@999CallforNHS](https://twitter.com/999CallforNHS)