

NHS Confederation submission to the Communities and Local Government Select Committee inquiry into the Government's Cities and Local Government Devolution Bill, September 2015

Executive Summary

- With improvements in care and changes in demographics there are rising numbers of people living with long term conditions, sometimes more than one. To better tackle pressures resulting from rising demand for care, the NHS is working in different ways. Leaders need to be supported to look beyond the boundaries of their individual organisations, develop shared priorities for their area and work collaboratively with other partners, not least local authorities, to improve the health outcomes of their community.
- In this context our members welcome the devolution agenda. The importance of local flexibility, genuine partnership and effective joint working with local government cannot be overstated, if necessary changes to local services are to be achieved. There are clearly many lessons that can be taken from the example of Greater Manchester as part of this. This includes the importance of having space, time and stability to develop strong local partnerships.
- However, our members have consistently told us that the Greater Manchester model should not be used as a blueprint for change in other areas. Local leaders will need the freedom to develop solutions which are right for their individual situations. In some cases this will mean formal devolution arrangements that the Cities and Local Government Devolution Bill looks to facilitate. Other areas may instead choose to utilise existing freedoms and mechanisms, or develop completely new models of care, such as Accountable Care Organisations. Various new models are already being set up in many different places. It is important that national and local leaders do not become overly focused on formal devolution agreements and fail to use existing or more appropriate means of pooling resources and sharing decision making, which may better meet their needs.
- Our members see the Bill as an important legislative framework, better enabling the move towards an increasingly locally overseen and integrated health and social care economy. The Bill must allow a permissive approach to changes in local services which does not disrupt existing partnerships. It is vital that the Bill does not have the effect of disenfranchising local leaders by imposing one particular set of devolution arrangements on all localities seeking formal devolution arrangements. We welcome the reassurance the Government has given on this point during the debates in the House of Lords and we look forward to further scrutiny.
- We welcome the safeguards which the Bill puts in place around local devolution deals, ensuring that the deals receive parliamentary and government scrutiny. It will be important to ensure scrutiny does not lead to unnecessary delays in the deals being agreed. We want the Government to give further consideration to the need to provide proper scrutiny and speedy agreement for the large number of local devolution deals that we are aware are currently at planning stage.

- There are a number of implications of devolution and the Bill where we need further consideration and public debate:
 - Regulation and accountability: Policy makers and national bodies involved in regulating health and care services must start to think about the way that they regulate emerging new models of care including large scale integration and devolved arrangements. We need to develop a more system-wide lens to regulation, recognising that accountability for services is becoming increasingly blurred and more integration means that the effects of one service will be more readily felt by another.
 - Variation in NHS accessibility: Devolution could create increased variation between areas in the prioritisation of different services. Whilst it is important that local leaders can prioritise services to most effectively meet the specific needs of their local populations, it is also vital that the NHS remains a national service with all people endowed with the same rights to access a service, regardless of how their local services are organised. The Government should encourage local areas to make clear that they will adhere to the NHS constitution and NHS Mandate in their local devolution plans.
 - Cross border implications: Decisions about some services may affect service users beyond the boundaries of an area with devolved powers. Local leaders may therefore only be democratically accountable to part of the population affected by a decision. We urge national policy makers and local leaders to consider this factor when developing devolution agreements, learning lessons from cross border arrangements with Wales and Scotland.
- Our members are clear - devolution will not be a silver bullet to solve the significant financial challenges facing either health or social care. Devolution of health and care will not necessarily improve financial sustainability unless funding issues across the system are addressed in the forthcoming spending review. Until this happens, our members fear that all devolution may be achieving is making a national funding problem a local funding problem.
- Whether or not a formal devolved status is being sought, we strongly recommend that one key focus for local partnerships should be the role of the NHS in driving jobs and growth. By becoming a valued local investment partner, the NHS can improve its service to the community, have a much greater say in devolved strategic discussions and secure long-term, additional funding into the health and care system.

1. Introduction

- 1.1. The NHS Confederation represents all types of organisations that commission and provide NHS services. It is the only membership body to bring together and speak on behalf of the whole NHS.
- 1.2. We welcome the Committee's inquiry into the Cities and Local Government Devolution Bill, which our members see as an important legislative framework, better enabling the move towards an increasingly locally overseen and integrated health and social care economy. Our submission is intended to highlight their views on the potential implications of the Bill itself and our concerns around the successful implementation of devolution plans. Our submission is not intended as a point by point analysis of any specific local devolution plans, such as those being enacted in Greater Manchester. Instead, we have sought to reflect our

members' overall views, highlighting their cautious support for the devolution of health and social care alongside the many practical concerns and queries it raises for them, particularly regarding changes to the regulatory landscape that they operate in.

2. Greater Manchester devolution agreement

- 2.1. The devolution agenda has been gathering pace ever since the Greater Manchester Agreement was secured in November 2014. This became more specifically relevant to the NHS prior to the general election, when it was announced in a memorandum of understanding that the Greater Manchester deal would include bringing together health and social care budgets totalling £6 billion, thus facilitating continued integration of health and social care.
- 2.2. We welcomed the Greater Manchester agreement and memorandum of understanding, which stemmed from substantial groundwork by local leaders who worked hard to agree a deal across 37 different organisations, including NHS commissioners and providers.
- 2.3. Changes in Manchester are being locally driven, rather than centrally imposed. Manchester's plan is an example of changes resulting from good partnership working and strong relationships between health and care leaders, built up over time and now showing that they can put the interests of the local population ahead of their own organisations. There are clearly many lessons that can be taken from this example, not least the importance of having space, time and stability in order to enable the right cultures to develop that facilitate good partnership working across local organisations.

3. Freedom and flexibility for local leaders to develop local solutions to improve services

- 3.1. It is important to recognise what our members have consistently told us, that the Greater Manchester model won't be right for the differing local needs of other areas. Local leaders will need the freedom to develop solutions which are right for their individual situations. The needs of rural Shropshire will not be the same as the needs of inner-city Sheffield. Our members believe that it is therefore very important that the Cities and Local Government Devolution Bill and any accompanying guidance or processes involved in its implementation do not become overly prescriptive, or overly reliant on using the Greater Manchester devolution model as a blueprint.
- 3.2. It is vital that the Bill does not have the effect of disenfranchising local leaders by enforcing one particular set of devolution arrangements on all localities seeking formal devolution arrangements. We believe strongly that local leaders need to be able to create the best type of partnership working arrangements for them. These will be based on real local relationships, with the right structures to better enable them to take decisions together about how best to spend money and configure services based on their combined knowledge of local population health needs and wishes.

4. Agreement and scrutiny of local devolution plans

- 4.1. Devolution has for some of our members 'taken on a life of its own'. Whilst recognising its potential, they have suggested that in some cases developing and agreeing devolution arrangements is taking considerable amounts of their time and energy. It is important that

this is taken into account and that areas are not pushed down the formal devolution arrangement route, where there may be other existing or more appropriate arrangements.

- 4.2. We cautiously welcome the clarifications made by the government regarding the scrutiny of individual devolution plans, specifically where NHS functions are being transferred. Our members believe that proper scrutiny of any transfer of NHS functions is essential in order to ensure that NHS standards are protected. We are pleased that Ministers have given assurances that transfers of NHS functions would be made by affirmative order. This would imply parliamentary protection for NHS functions, as NHS standards could be protected in the order. However, we still have some concerns about the level of protection this allows in practice. In reality, MP's only powers are to agree or not to agree, as they are not able to change the wording of the order and there are in fact very few examples of affirmative orders having been vetoed.
- 4.3. Furthermore, given the relatively high number of local devolution plans expected. We also have some concerns about the capacity of Ministers, government departments and Parliament to properly consider and scrutinise the high number of affirmative orders that may be brought forward. This is especially true if they are expected to ensure that any transfer of functions maintains some consistent standards nationally. Where deals are not reached, this could represent significant amounts of time and energy wasted on the part of local leaders, which we are keen to avoid.
- 4.4. With these concerns in mind, we urge national and local leaders to carefully consider whether devolution is the most effective option, or whether the same outcomes could be achieved using the existing structures and mechanisms. Moreover, we seek further reassurance from Government that there will be both the ability and capacity in central government and Parliament to scrutinise any transfers of NHS functions properly.

5. Accountability and Regulation

- 5.1. Clause six of the Bill potentially has the greatest implication for NHS organisations, as it seeks to allow local authorities to take on or share the functions of other public authorities. During the Bill's passage through the House of Lords, the Government confirmed this does include all NHS bodies, both commissioners and providers.
- 5.2. The NHS Five Year Forward View, produced by NHS England and other national bodies in the NHS, articulates a real need for changes to the model of care delivery offered by the NHS and its partners. This is necessitated by a growth in demand for services from people with increasingly long term needs and complex conditions. The document describes various models of care which could be provided in the future, defining the actions required at local and national level to support delivery. This is acting as a catalyst to many of our members, who are in the midst of redesigning services locally.
- 5.3. In this context, it is increasingly important that any future amendments to the Bill do not have the effect of freezing the accountability and regulatory system in a way that will make it unsuitable for regulating the changing and ever more joined up system our members are working in. Equally, the Government must ensure that any transfer of functions doesn't mean that our members are subject to any top down re-organisation of structures and accountabilities, potentially creating confusion and instability in the system.

- 5.4. It is vital that regulation and lines of accountability are suitable and appropriate for the new models of care that are emerging. These models often involve pooling resources and sharing decision making with local authority partners and others. The increasingly cross-sector nature of planning and delivering health and care services will have implications for their regulation, meaning we can no longer look at organisations in isolation. For example, 99 per cent of our members say cuts in adult social care have put increased pressure on their organisations, potentially resulting in the delayed discharge of patients from NHS hospitals¹.
- 5.5. It necessary to take a broader, system-wide approach to regulation. We believe that the regulatory model is increasingly no longer fit for purpose, in a system where separate organisations' ability to meet quality standards and remain financially viable are so clearly interconnected and interdependent of one another.
- 5.6. Our members recommend policy makers and national bodies involved in regulating health and care services consider how they will regulate emerging new models of care, particularly where there are devolved arrangements. They need to develop a system wide lens to regulation, recognising that accountability for services is becoming increasingly blurred and more integration means that the effects of one service will be more readily felt by another.
- 5.7. This will mean different things in different places, depending on the nature of the model of care, organisational forms or devolved arrangements. We will be looking at this in more detail with our members, with the aim of trying to better identify what good system regulation would look like.

6. Geographies, combined authorities and directly elected mayors

- 6.1. Our understanding of the Bill, as it currently stands, is that it no longer limits devolution to metropolitan areas but also applies to non-metropolitan counties and districts. In short, it applies to any combined authority, as defined by the Local Democracy, Economic Development and Construction Act 2009. Amendments made to the Bill in the House of Lords mean that the Government's original intention, that only areas with democratically elected mayors should receive devolved powers, no longer applies. We welcome both these changes, with the view that the Bill should not prescribe the structures or cooperative arrangements that local areas adopt. It is important that the structures that emerge are based on real relationships on the ground, with local areas who want directly elected mayors able to opt for this arrangement.
- 6.2. Our members have clearly highlighted to us that some of the combined authorities that are being proposed have a diversity of geographies, including both rural and urban areas, often with an array of differing health needs across the different populations living within their boundaries. It is therefore very important that the footprint of any combined authority is not determined centrally. Instead, we are keen to see local knowledge and understanding being used to ensure that the geographies of areas with devolved powers reflect some kind of local coherence, ensuring that the planning and delivering of services isn't made even more complicated by the creation of completely new regional entities that bear little relationship to local people and their needs.

¹ [National survey of NHS leaders](#), NHS Confederation, 2015

7. Cross-border impact of devolved decisions

- 7.1. We are already beginning to see that combined authorities with devolved powers will have a unique identity, with clearly defined borders in which they control decisions about services. The cross-border impact of devolved decisions on areas which are next to those combined authorities with additional powers also needs to be considered carefully. For example, we know that many NHS specialist services are located in big teaching hospitals, often operating in large urban centres. These services are relied upon by people from across a much larger regional footprint than that covered by any devolved combined authority. Therefore, the leaders of local bodies to which functions are devolved may not necessarily be democratically accountable to all patients their decisions will impact.
- 7.2. We urge national policy makers and local leaders to consider this factor when developing devolution agreements, so that where appropriate the means to cooperate and include representations from surrounding local authorities and CCGs are developed, enabling all service users to be involved in decisions made by the local body accountable for those particular services. Lessons need to be taken from the experience of cross-border arrangements with Scotland and Wales.

8. Potential for local variation in access to NHS funded services

- 8.1. We welcome and strongly support the Government Ministers' statement highlighting that important national NHS standards, specifically the NHS Constitution² and Mandate³ still apply to NHS services in areas with formal devolution arrangements. However we still have some concerns about the possible impacts of devolution on local variation in access to NHS funded services. We can see that devolution leaves open the potential for increased variation between areas in both the prioritisation of different services and indeed the overall level of services provided. We could for example see some local authorities, faced with large cuts in their overall funding from central government, shifting funding away from health to social care in order to replace existing social care funding and free up funds for other purposes.
- 8.2. Our members have told us it is important that local areas are able to make service changes locally to ensure that they are better meeting the specific needs of their populations; this will mean different services will be prioritised in different areas. At the same time, members believe strongly that the NHS must remain a national service, with a consistent set of rights to access its services, held by all citizens, regardless of where they live. In order to ensure this, we would encourage local areas to make their continuing adherence to the NHS Constitution explicit in their individual agreements. Greater Manchester has done this and we believe that it is important that the government encourages all local areas to make a

² NHS Constitution, <https://www.gov.uk/government/publications/the-nhs-constitution-for-england> .The NHS Constitution establishes the principles and values of the NHS in England. It sets out rights for patients, public and staff. All NHS bodies and private and third sector providers supplying NHS services are required by law to take account of this constitution in their decisions and actions.

³ NHS Mandate

The NHS Mandate between the government and NHS England sets out the ambitions for the health service. The current Mandate runs from April 2015 to March 2016. <https://www.gov.uk/government/publications/nhs-mandate-2015-to-2016>

statement highlighting this in their own agreements as well as setting out clearly what actions it would take to ensure that this is enforced.

9. Existing mechanisms for local shared decision making

- 9.1. The importance of having local flexibility, genuine partnership and effective joint working between the NHS and local government cannot be overstated if necessary changes to local services are to be successful. For some areas, this partnership may be achieved through formal devolution arrangements. However, our members have highlighted to us that there are a variety of ways this kind of partnership can be achieved. Many of the freedoms and mechanisms enabling leaders to design the system around local needs and to pool resources already exist and are being made full use of by both NHS and local authorities.
- 9.2. The joint LGA and NHSCC paper 'A Shared Agenda: creating an equal partnership with CCGs in health and wellbeing boards⁴' highlights some strong examples of the way a shared approach to planning services and pooling resources is already taking place, led by CCGs and local authorities. The case studies highlight that health and wellbeing boards (HWBs) have a significant role to play in the development of healthy populations, using local partnership working to facilitate a change in outcomes for local people. CCGs have a pivotal role in this given their frontline clinical expertise, knowledge of local communities, the mandate they have been given from their member practices and experience in local commissioning.
- 9.3. Our members are clear that it is vital to engage with providers of care in the planning of services. HWBs are one existing body that could provide the space for local NHS providers to be engaged properly in changes to local services. Currently, the engagement of NHS providers, along with Healthwatch and public health, in HWB structures varies from area to area. The experience of our members suggests that HWB sub-groups can offer some short-term solutions here. Sitting outside the high-pressure public arena, they sift issues for the HWB and influence its agenda. They are also able to involve those who may be otherwise excluded from the HWB structure to participate meaningfully. They may be especially useful for involving providers, whose inclusion on HWBs may raise conflicts of interest during commissioning discussions but whose exclusion sits oddly with the HWBs' remit to take a "whole-system" view.
- 9.4. The NHS Confederation encourages all local areas, including those seeking formal devolution arrangements, to ensure that they have the right local structures and mechanisms to allow for proper meaningful engagement with local providers. All areas will also need to develop the right culture to enable dialogue about difficult decisions. Without this culture, successful locally led service change will be even more challenging.

10. Local authority and NHS finances

- 10.1. The move to devolution of health and social care comes at a time when the supply of funding for both is struggling to match growing demand. NHS resources are under additional pressure from the need to change the way care is delivered. The NHS is expected to make £22bn per annum of efficiency savings by 2020, to enable it to meet rising demand.

⁴ [A shared agenda: creating an equal partnership with CCGs in health and wellbeing boards](#), NHS Clinical Commissioners, October 2014

- 10.2. Equally, local authorities are under immense financial pressure. There have been five years of funding reductions in council adult social care totalling £4.6 billion and representing 31 per cent of real terms net budgets. This year (2015/16), adult social care budgets will reduce by a further £0.5 billion⁵ in cash terms. Taking the growth in numbers of older and disabled people into account, this means that an additional £1.1 billion would be needed just to provide the same level of service as last year.
- 10.3. This year, councils have started running out of new efficiency savings they can make and will be forced to reduce spending by £420 million, through cuts to services provided to people and carers needing care and support. The LGA estimate that the funding gap for social care will grow by a minimum of £700 million a year on average, chiefly as a result of rising demand.
- 10.4. Our major survey of members found that more than 99 per cent of NHS leaders surveyed believe that social care cuts are directly affecting patient care in their organisations. We have said that in order for the NHS to have a successful and sustainable future, the Government must be open and honest with the public about the need for service change and address the funding issues in social care as well as in the NHS.
- 10.5. Senior NHS leaders have already publically shared concerns about the funding for social care services to support people in greatest need. We share a desire for better co-ordinated care, an increased focus on prevention and services that enable people to be well and independent at home, with as much care and treatment provided in the community as possible. Furthermore, in principle we support the pooling of health and social care budgets, as an enabler of planning and delivering more integrated care.
- 10.6. The NHS Confederation is convinced that it is important to make clear to politicians and policy makers that devolution with pooled health and care budgets will not be the single panacea or silver bullet to solve the finances of either health or social care. Sector leaders have clearly told us that the act of pooling the budgets of health with social care does not in itself solve the financial problems that both NHS and local authorities are facing.
- 10.7. We therefore urge the Government to ensure that social care funding is protected, including making provision for the gap in social care funding by 2020 alongside the £8 billion gap in health service funding over the same period. We believe strongly that devolution of health and care will not necessarily improve the financial sustainability of the health and care system unless funding issues across the system are addressed. Until this happens, our members fear that all devolution may be achieving is shifting the political accountability for the consequences of national funding decisions on to local leaders.

11. Devolution and local Growth

- 11.1. The central tenet of devolution, which is that local communities in England can take greater control over how money is not only spent but also raised in their local areas, could also help enable greater cooperation and coordination between the public and private sectors around the local growth agenda.
- 11.2. We are already seeing increased engagement at local level between the NHS and local leaders of economic growth, with several proposals and initiatives which are explicit

⁵ ADASS budget survey 2015

about their economic development intentions. This represents a better understanding, from both within the health sector and amongst our partners, of the NHS' significant role in the local economy as a good local employer, ensuring a healthy, resilient and productive population, and stimulating new markets for technologies and other valuable innovations.

- 11.3. Furthermore, we are pleased to note that many of the 39 Local Enterprise Partnerships (LEPs) in England now reference the NHS in their local Strategic Economic Plan, with several having jointly undertaken significant investments. This relationship between local leaders and LEPs is important, as it acknowledges the role the NHS can have in driving inward investments into a specific region, with the subsequent expectation that the NHS can match-fund associated projects that improve service delivery and patient care.
- 11.4. An important catalyst for this is the NHS Five Year Forward View, which was published in October 2014 and sets out a vision for the future of the NHS developed by the partner organisations that deliver and oversee health and care services. It describes how the health service needs to change over the next five years in order close the widening gaps in the health of the population, quality of care and the funding of services.
- 11.5. We strongly believe that whether or not a formal devolved status is being sought by a local area, local partnerships focused on the role of the NHS in driving jobs and growth should be encouraged and supported by government, national bodies and by local leaders sharing best practice. We believe that by becoming a valued local investment partner, the NHS can improve its service to the community, have a much greater say in devolved strategic discussions and also secure long-term, additional external funding for the health service.

12. Implementation of devolution plans locally

- 12.1. Our members have highlighted to us the importance of the implementation stages of creating new models of care, including large scale integration and formal devolution arrangements. Notably, we recognise what our members have told us are the keys to success. These are by and large about forging local relationships and agreeing shared priorities, based on a shared understanding of the population's health needs. Creating the culture to enable this type of relationship takes both time and effort.
- 12.2. We are keen to understand some of the universal principles behind forging a conducive culture and environment. Our members tell us that trust is a key element of this. In practice, this means involving *all* local health and care organisations in the development of proposals – local authorities, commissioners and providers all engaging with each other, and the local population regarding their plans.
- 12.3. Equally, local people need to be able to trust that devolution arrangements have been developed in partnership with patients and the public, reflecting people's understanding of their own needs and aspirations. It is therefore vital that devolution agreements are discussed with the local community and that local people are seen to be fully engaged in the plans for them to be agreed.

13. Workforce

- 13.1. The devolution agenda also comes at a time when both the NHS and local authorities are facing significant workforce challenges. This involves changing the workforce model we currently have to suit the new models of care, which shift the focus from individual episodes of care to the long term management of complex conditions, more routinely managed at home or in community settings. Alongside this, there are significant workforce supply issues across health and social care. Through enabling a more integrated approach to workforce planning, devolution may offer some solutions to better addressing these challenges at a local level, by aligning workforce plans with the specific needs of local populations and enabling all of the local and community workforce assets available across a local area to be taken into account in the plan.
- 13.2. Our members have told us that if devolution is to work properly, successfully enabling the redesigning of models of care to better suit people's needs, then it will be vital to have the right workforce across health and social care. Central to achieving this will be engaging with HR Directors and Senior HR Managers in the NHS about devolution plans from the outset. Some of our members from the HR community have suggested that this is not currently happening everywhere. They feel that they have been bought into some discussions too late, given the obvious importance of having the right workforce and given the time it takes to train and recruit staff. We would like to see local areas that are agreeing devolution plans properly engaging with senior HR leaders as early as possible to ensure that workforce issues are fully discussed and considered as part of any devolution agreement.
- 13.3. To improve workforce planning there also needs to be better information available locally on workforce numbers, including the regular, routine collection of workforce numbers of health and social care staff locally. National bodies such as Health Education England have a role to play in improving this.
- 13.4. We also understand the concerns that we heard expressed, around the potential for transfers of staff from one public body to another, created by Clause 6 of the Bill. We would urge those local and national bodies involved in devolution agreements to consider carefully whether or not they need to formally transfer staff. Recognising that formal transfers take time and cause disruption, we are convinced that in many cases informal agreements and new ways of working across health and care sectors can often be more efficient and less disruptive, particularly where good working relationships already exist.
- 13.5. We know of many examples where local authorities and the NHS are already utilising staff across the sectors, without the need for formal contract changes. Members who have working arrangements which allow this type of cross-sector working highlight that its success is reliant on having the right culture, with trust and good working relationships between staff from different disciplines. We would encourage those charged with training and developing the health and care workforce to ensure that learning the skills needed to work in multi-disciplinary teams is part of training and development. Furthermore, leaders need to be supported to create the right environment to enable this type of working to flourish.
- 13.6. It will be important that staff across health and care are properly engaged in discussions about changes to the way they are working. Our members recognise the real value that can be gained from engaging staff in planning new models of care delivery. It will often be staff who have the innovative ideas and insights on how to improve care for

patients. We therefore encourage leaders to discuss plans with their workforce at the earliest opportunity, recognising the real benefits this can bring.

14. Inclusive leadership

- 14.1. A key workforce challenge also comes in the form of ensuring that devolved areas have the right sort of leaders. Leaders in the NHS need proper support and development to move from being a leader of a single organisation to being a system leaders who puts the needs of the population at the heart of what they are doing.
- 14.2. Those involved with training and developing leaders in both the NHS and local authorities need to ensure that their recruitment and training includes developing system leadership skills. These will enable people to lead cross-sector teams, break down cultural barriers and make decisions on the basis of what improves population health.

We are pleased to submit evidence to the Committee. For further information please contact Matthew Macnair-Smith Matthew.Macnair-Smith@nhsconfed.org