



The voice of NHS leadership

On the day briefing

Health and Social Care Select Committee report on NHS Long Term Plan: Legislative proposals

Background

The Health and Social Care Select Committee's 2018 inquiry into integration, said that there needed to be changes to the existing law to remove barriers to the NHS taking a more integrated approach. Responding to this, the Prime Minister asked NHS England and NHS Improvement to draw up proposals for legislative changes. In February 2019, they published a list of proposed changes to the law for consultation in the document *Implementing the NHS Long Term Plan: Proposals for possible changes to legislation*. The Health and Social Care Select Committee launched an inquiry into these proposals with a call for written evidence on 1 March 2019.

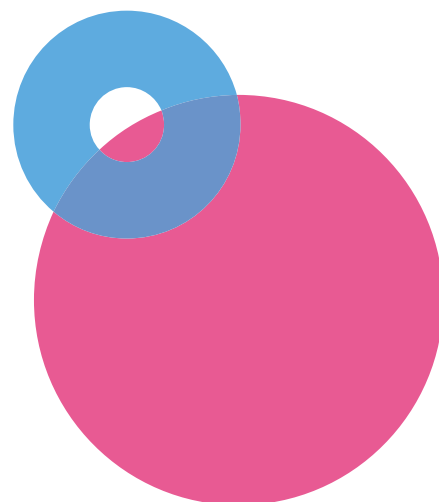
The NHS Confederation's response to the proposed changes

To inform our response, the NHS Confederation collected the views of NHS leaders through a series of interviews and an event for members with lawyers from Capsticks. Our [written response to the Select Committee Inquiry can be found here](#).

NHS Clinical Commissioners (NHSCC) held an event and a webinar to gather member input to the engagement and the inquiry. NHSCC's response can be found [here](#). The Select Committee also invited a number of national bodies and representatives of the health service to give oral evidence to the inquiry, including NHS Confederation, Independent Healthcare Providers Network (IHPN) and NHSCC. The Committee's report draws on much of the written and oral evidence we provided to the inquiry.

Report on the NHS Long Term Plan legislative proposals at a glance

- The Health Select Committee has published its report following several weeks of inquiry into the proposals for legislative change to support the Long Term Plan, put forward by NHS England/Improvement. The inquiry took evidence from a wide variety of stakeholders, including NHS Confederation, NHSCC and IHPN. The report's recommendations draw on much of what we said in written and oral evidence.
- The report was largely supportive, at least in principle, of the proposals to promote collaboration, especially the proposal to repeal section 75 of the Health and Social Care Act 2012 and revoke the regulations made under it.
- The Committee highlighted its belief that collaboration, rather than competition, is a better way for the NHS and the wider health and care system to respond to today's challenges and they emphasised the important role non-



NHS bodies from the voluntary, social enterprise and independent sector should continue to have in delivering services and helping to integrate care.

- They also raised some concerns about the proposals and they were particularly keen to highlight that more fundamental and far reaching reforms could constitute another top-down reorganisation of the NHS and their view was that reform to this degree is not warranted at this time.

The report made several key recommendations:

Promoting collaboration

- They agreed with proposals to remove the Competition and Markets Authority's role in mergers of foundation trusts, recognising that this had led to unnecessary cost and duplication for foundation trusts involved in mergers and acquisitions.

Getting better value for the NHS, repealing section 75 of the Health and Social Care Act 2012

- In principle they warmly welcomed the proposals to repeal section 75 of the Health and Social Care Act 2012, but they had some concerns that it risked deregulating, rather than de-marketising the NHS without an alternative regulatory mechanism.
- They asked the government to fully assess whether the proposed legislation would actually have the effect of deregulating competition in the NHS and to set out how it intends to ensure patients and taxpayers are protected from any adverse unintended consequences.
- The Committee supported the intent behind the proposals to ease the burden procurement rules have placed on the NHS, to ensure commissioners have discretion over when to conduct a procurement process, with the inclusion of a 'best value' test.
- However, they recommended that NHS England and NHS Improvement explore flexibilities within the existing legislative framework and they called for the Department, NHS England and NHS Improvement to work with the NHS Assembly to co-produce a 'best value' test.

Increasing the flexibility of national NHS payment systems

- The Committee supported the intention to provide greater local flexibility over the use of the national tariff system. They requested that the Department, together with NHS England and NHS Improvement, outline how they plan to avoid and/or mitigate the concern that these changes could result in price competition.

Integrating care provision

- The committee supports the proposal to allow the Secretary of State to set up new NHS trusts to deliver integrated care across a given area. However, they said that this power

must not be used to impose a form of integration on local health and care services or as threat to incentivise organisations to collaborate.

- They recommended that National Implementation Plan/framework should include proposals to increase the uptake of existing contractual options and/or further extend the ways organisations can work collaboratively.
- The Committee said that legislation should rule out the option of non-statutory providers holding an Integrated Care Providers (ICP) contract. They felt this would allay fears that ICP contracts provide a vehicle for extending the scope of privatisation in the English NHS.

Managing resources better

- The Committee didn't support proposals to give NHS Improvement targeted powers to direct mergers or acquisitions involving NHS foundation trusts, or to set annual capital spending limits. They said that if similar proposals were included in the draft bill, they would expect to see the bill specify the limited circumstances in which these powers can be exercised.
- They recommended the government's forthcoming review of VAT exemptions on central government should also make recommendations for how VAT exemptions covering the NHS and local government can be protected and/or extended so as to ensure neither body is worse off as a result of integration.

Every part of the NHS working together – joint clinical commissioning groups, NHS trust committees

- The Committee agrees that clinical commissioning groups (CCGs) and NHS trusts and foundation trusts should be given the ability to create joint committees. They were also keen that mistakes of the past shouldn't be repeated where non-statutory alternatives are shut out. Furthermore, they recommended that additional proposals should be developed that enable local authorities to participate.

Patient choice

- The Committee supports the intention to strengthen patient choice and evidence from the inquiry suggests that practical considerations like geography have a bigger impact on people's ability to exercise choice than legislation. However, they were clear that those developing legislative proposals should ensure they don't unintentionally, negatively impact on the ability of patients to exercise choice.

Shared responsibility for the NHS

- They welcomed the proposal introduce a new shared duty, that requires organisations that plan services in a local area (CCGs) and NHS providers of care to promote the 'triple aim' proposal but felt it was too 'NHS-centric', with particular reference to the aim 'better

health'. They suggested that the triple aim should be rephrased to include the term 'wellbeing'.

Joined-up leadership

- They supported the proposal to merge NHS England and NHS Improvement into a single body, but await clarity on the implications of the creation of a single organisation. In particular, they expressed concern about the degree of central control that would result from this merger.

Next steps

While we await the response of the government and NHS England and Improvement to these recommendations, we will continue to engage with NHS England and Improvement on their response. We will also get involved in pre-legislative scrutiny to reflect our members' views and to try and get the changes secured.

Comments and recommendations of the Health Select Committee in more detail

Proposed change	Committee support	Committee comment/ recommendation
Remove the Competition and Market's Authority's (CMA) role in mergers of foundation trusts.	Yes	They shared our view that the involvement of the CMA had led to unnecessary cost and duplication for foundation trusts involved in mergers and acquisitions.
Repeal section 75 of the Health and Social Care Act 2012, and revoke the regulations made under it in order to ease the burden procurement rules have placed on the NHS, ensuring commissioners have discretion over when to conduct a procurement process, with the inclusion of a 'best value' test.	Yes	<p>In principle, they warmly welcomed these proposals but they still had some concerns that the proposals risked deregulating, rather than de-marketising the NHS without an alternative regulatory mechanism.</p> <p>Recognising our feedback to this proposal, they called on the government to set out its assessment of the likelihood that the proposed legislation would have the effect of deregulating competition in the NHS and how it intends to ensure patients and taxpayers are protected from any adverse unintended consequences.</p> <p>The Committee supported the intent behind the proposal to ensure that commissioners can exercise discretion over when to conduct a procurement process. This is useful as NHSCC members flagged that the</p>

		<p>current procurement regime can be onerous without adding value.</p> <p>Our members were also keen that more was done to explore the existing flexibilities in the current legal framework. With this in mind, the Committee recommended that NHS England and NHS Improvement should explore whether there are more flexibilities within the existing legislative framework than are currently being used and they called for the Department, NHS England and NHS Improvement to work with the NHS Assembly to co-produce a 'best value' test.</p>
Allow greater flexibility locally over the use of the national tariff system	Yes	<p>The Committee supported the intention to provide greater local flexibility over the use of the national tariff system and said that providing more flexibility could help local providers and commissioners to remove perverse incentives, especially in managing patients with multiple long-term conditions.</p> <p>They requested that the Department, together with NHS England and NHS Improvement, outline how they plan to avoid and/or mitigate the concern that these changes could result in price competition, which was a concern that we had raised with them.</p>
The law should be clarified so that the Secretary of State can set up new NHS trusts to deliver integrated care across a given area.	Yes	<p>The Committee supports the proposal. However, they said that this power must not be used to impose a form of integration on local health and care services or as threat to incentivise organisations to collaborate.</p> <p>They recommended that the Secretary of State must not be allowed to exercise this power without a request from the local clinical commissioning group(s) and that a</p>

		<p>request to the Secretary of State must follow a robust assessment and public consultation.</p> <p>They also suggested that more work is needed to understand why some services are currently unable or unwilling to make use of existing arrangements that enable integration and recommended that the National Implementation Plan/ framework should include proposals to increase the uptake of existing contractual options and/ or further extend the ways organisations can work collaboratively.</p> <p>They strongly recommended that legislation should rule out the option of non-statutory providers holding an ICP contract. They felt that doing so would allay fears that ICP contracts provide a vehicle for extending the scope of privatisation in the English NHS.</p>
<p>NHS Improvement should have targeted powers to direct mergers or acquisitions involving NHS foundation trusts, in specific circumstances only, where there are clear patient benefits;</p> <p>NHS Improvement should have powers to set annual capital spending limits for NHS foundation trusts, in the same way that it can currently do for NHS trusts.</p>	No	<p>The committee didn't support these proposals in their current form. They said that if similar proposals were included in the draft bill, they would expect to see the bill specify the limited circumstances in which these powers can be exercised.</p> <p>They recommended that the design of these powers should focus on:</p> <ul style="list-style-type: none"> a) removing barriers to integrated care b) empowering and encouraging local systems to resolve disputes over the configuration of services and the management of resources, including capital resources, themselves. <p>They did recognise that there could be circumstances in which national intervention</p>

		<p>is necessary to ensure one local partner is not, unreasonably, frustrating system-wide efforts and they agreed that NHS England and NHS Improvement should have powers in reserve for such circumstances, but said that such powers should only be used as a last resort.</p> <p>The NHS Confederation specifically raised concerns with regard to these proposals and we are pleased to see the Committee has taken them on board.</p>
Organisations [CCGs and NHS trusts and foundation trusts] should be given the ability to create joint committees.	Yes	<p>While they supported the change in the law to allow joint committees, they were concerned that the proposals were “too NHS-centric”. They were clear that “Integrated care systems shouldn’t repeat mistakes of the past and become unresponsive monopolies or ‘airless rooms’ where non-statutory alternatives are shut out.”</p> <p>They recommended that additional proposals should be developed that enable local authorities to participate as equal partners in joint committees with clinical commissioning groups and NHS providers.</p> <p>This echoes what NHSCC set out, as we know that many CCGs have good working arrangements with local authorities and they should be a key stakeholder in partnership working.</p> <p>The HSC committee did not cover the proposal to allow joint appointments, which we flagged as a concern if conflicts of interest were not well managed.</p>

<p>A new shared duty should be introduced that requires those organisations that plan services in a local area (CCGs) and NHS providers of care to promote the 'triple aim' of better health for everyone, better care for all patients, and efficient use of NHS resources, both for their local system and for the wider NHS.</p>	<p>Yes</p>	<p>The Committee welcomed this proposal but felt it was too NHS-centric, with particular reference to the aim 'better health'. They suggested that the triple aim should be rephrased to include the term "wellbeing" instead, which was seen by many witnesses as a more inclusive term reflecting the contribution local government and the voluntary and community sector make to people's lives.</p>
<p>NHS England and NHS Improvement should be brought together more closely beyond the limits of the current legislation</p>	<p>Yes</p>	<p>They supported the proposal to merge NHS England and NHS Improvement into a single body but await clarity on the implications of the creation of a single organisation. In particular, they expressed concern about the degree of central control that would result from this merger.</p>