

## **Health and Social Care Bill – Committee Stage Day 5 - Summary**

Amendment 46 was moved by Lord Patel of Bradford

Lord Patel of Bradford (Lab) moved an amendment requiring the government to report to Parliament within a year on the VAT situation for charities providing healthcare services.

"A major inequality exists with respect to irrecoverable VAT for charities providing healthcare services" he said.

"Under current legislation, when services are transferred from the NHS to the charity sector, there is a VAT gap that needs to be filled either by charitable funds or by the local primary care trust (PCT)."

He gave the example of Sue Ryder Care, explaining how its hospices would be able to recover 57 per cent of the £44,000 in VAT it incurs each year.

"It is surely unreasonable to expect those who give charitable donations to organisations such as Sue Ryder to pay tax twice-their donations are from income that is already being taxed, yet the vital services which their donations go towards supporting are then taxed again for VAT."

A number of peers including Lord Noon (Lab) agreed that a level playing field was needed in respect of VAT.

"We should not expect charities to take up an extra burden in providing these vital services by expecting them to take on costs that do not currently apply to the NHS" argued Lord Noon.

However, Baroness Barker (LD) warned that if the issue was straightforward, it would have been resolved long ago, and stressed the need for the answer to suit all charities across the board, and not just those providing hospices.

Shadow health minister Lord Beecham noted how the anomaly also had implications for social enterprises.

He urged the minister to accept the amendment which would relieve charities of a burden "which reduces nobody's profits but does reduce the capacity of the sector to provide a better and wider-ranging service to the people whom it seeks to serve".

Health minister Earl Howe said the issue was firmly on the government's agenda, and acknowledged the valuable work done by Sue Ryder.

He said the Treasury were already working with representatives from the voluntary sector to explore the VAT treatment of charities supplying the NHS, taking into account the legal limitations and the potential complexities around possible solutions.

"However, the introduction of an artificial one-year timetable, as this amendment proposes, would limit the scope for a full and thorough discussion and consideration of this issue. I cannot commit to that limitation."

He emphasised that the government were working on the complex issue as fast as possible.

Division on Amendment 46

Contents 195; Not-Contents 183.

Amendment 46 agreed.

Amendment 47A was moved by Lord Kakkar (CB) explained that amendment 47A established Health Education England, charged with the responsibility of ensuring and maintaining high standards of education and training of the NHS healthcare workforce.

"Education is at the heart of delivering effective healthcare" he said, and called for the Bill to include "absolute clarity" over education and training.

Ongoing interaction and engagement with the academic sector had to be addressed, and the planning and organising arrangements for the healthcare workforce to be appropriately trained and educated had to be ensured.

"It is critical that there is an obligation on Health Education England to have an appropriate level of engagement and interaction with the royal colleges in medicine and other professional colleges" he added.

Lord Warner (Lab) noted the NHS Employers briefing on the issue, which said there was "huge uncertainty" below the national level about how education and training would be managed when the strategic health authorities were abolished in 2013.

Baroness Emerton (CB) stressed that silos should be avoided so that an integrated approach could be established to the education and training of the workforce.

Lord Ribeiro (Con) welcomed the probing amendment but said Health Education England should not be rolled out before the full Future Forum report had been heard, as it was still a work in progress.

Shadow health minister Baroness Thornton said she had been struck by the Royal College of Nursing's briefing on the matter, and particularly its concerns that Medical Education England would dominate the new organisation, HEE.

Earl Howe said the government would publish detailed proposals for the education and training system ahead of the Bill's report stage where the government would describe how this duty would be enacted in practice.

"We have appointed a senior responsible officer to drive this forward and inject pace into the design and development of Health Education England" he said, and gave some initial detail of the government's proposals.

"We will publish our detailed proposals before report and we will publish draft clauses on education and training for pre-legislative scrutiny in the second session" he clarified.

Amendment 47A withdrawn.

Amendment 47B was moved by Lord Warner, required Health Education England's budget to be calculated on the basis of a formula related to the total health service expenditure.

Amendment 47B not moved.

Clause 6: The NHS Commissioning Board

Amendment 48 was moved by Lord Hunt of Kings Heath

Lord Hunt of Kings Heath's (Lab) amendment allowed the government to give a direction to the NHS Commissioning Board.

There was political intervention in the NHS, because the NHS was one of the most important services that the government delivered, he said:

"Surely there is political intervention because, in the end, the public require it."

He argued that external influence would remain in the governance of the NHS, even with the health secretary removed from the picture.

"The idea that if you remove the secretary of state from reconfiguration proposals all will be sweetness and light, with rational bodies making rational decisions and a grateful public acquiescing to those decisions, does not seem to be in the real world."

"There should be a clear hierarchy and the hierarchy should be the clear accountability of the secretary of state" he stated.

Earl Howe said it was a core principle of the government's reforms that politicians should step back from day-to-day interference in the NHS to allow clinicians to take the lead in developing services that were built around the needs of patients.

"That would simply not be possible if the secretary of state retained broad powers of direction over the NHS Commissioning Board" he said.

He stated that the Bill did not dilute the health secretary's overarching duty.

Amendment 48 withdrawn.

Amendment 49 not moved.

Amendment 50 was moved by Lord Warner

Amendment 50 sought to ensure that the national Commissioning Board had at least one member who is a public health specialist, Lord Warner explained.

"This amendment is intended to help the board in its deliberations. It is essential that it has ready access to public health expertise."

Various peers agreed that the make-up of the board would be extremely important, though Baroness Cumberlege (Con) warned of the "nightmare" of attempting to reach

consensuses with large boards.

Lord Hunt argued that, along with a finance director and a medical director, a nursing director had to be appointed to the board.

He asked for details on the size of the Commissioning Board, as well as what its regional and local structure was likely to be.

The Archbishop of York warned against over-specification of members of the board, illustrating the point that "numbers are always dangerous" by describing the fluctuating numbers of Jesus' disciples.

He suggested that greater discretion should be given to the health secretary and the board itself to decide on the relevant experience that was required.

Baroness Hussein-Ece (Lib Dem) supported the amendment, arguing that expertise in public health was important to ensure that the NHS had expertise on prevention and improving health rather than focusing simply on treatment.

She also spoke to amendment 52C, saying that it was important to have somebody "who can bring the voice of the patient and the public to this board".

Opposition spokesman Lord Beecham said that the probing amendments had proven that "there is a great deal to probe".

He called the provisions relating to the NHS Commissioning Board "skeletal" and said that it needed "flesh on the bones".

He agreed that there needed to be a public health specialist on the board, though they did not need to be a serving specialist.

He also agreed with Lord Harris that the chief medical officer should attend meetings of the board without being a member of it.

Lord Beecham told peers that he was "a bit ambivalent" about the size of the board, agreeing that a prescription of the number of members could be a mistake, but agreed that it could not possibly "reflect every conceivable interest".

Lord Greaves (Lib Dem) asked how the "new galaxy, or kaleidoscope, of new bodies within the health service are going to relate to each other and how it is going to work".

He spoke to amendment 153ZA, tabled by Lord Hunt of Kings Heath, on the reduction of bureaucracy, namely that the amendment would ensure that there were fewer clinical commissioning groups than there were primary care trusts (PCTs) on April 1 2011.

Lord Greaves questioned how the number of commissioning groups would develop in the future, given that the number of PCTs had been revised, according to former health minister in the Labour government Lord Warner, from 300 PCTs to around 50 PCT clusters.

Ultimately, he said, there was a difference between a GP commissioning treatment for a

patient and the commissioning of services on a wider scale.

"You need bodies on a larger scale to do that. The idea that practices on their own or small groups of practices could commission that kind of undertaking on a wider scale is nonsense."

Health minister Earl Howe explained that the NHS Commissioning Board would have to ensure that it obtained "sufficient advice and input" from clinicians, public health and other health professionals, as well as from the public and patients.

Nonetheless, it was "an important principle to maintain that [the board] should have autonomy of decision-making on matters such as its own membership and its structures and procedures, as far as possible, to determine how best to exercise its functions".

He rejected the amendments that would ensure that certain professions were members of the board and went on to say that it would not be appropriate to have someone on the board with a "different purpose or remit", including the chairman of HealthWatch England or the chief medical officer.

The number of members would also be decided by the board, the minister explained, saying that the final decision would be agreed between the chairman and the non-executive members of the board.

That said, it was "envisaged that the other executive members besides the chief executive will include a nursing and a medical director, a director of finance, of performance and operations and of commissioning development."

Regarding the amendments on bureaucracy, Earl Howe said that the government would reduce the amount of spending on bureaucracy, reiterating the government's commitment to reduce administration costs by a third in real terms by 2014/15.

He pointed to Sir David Nicholson's assessment of the board, saying that it would have around 3,500 staff, compared to the 8,000 staff performing the same function in the Department of Health and other bodies like PCTs.

Finally, he argued that it would not be worth while to include an explicit duty to consult on the board's draft business plan, saying that other parts of the legislation would cover scrutiny of the board's work.

He pointed to the recommendation of the NHS Future Forum that the "autonomy of the board needs to be respected".

Lord Warner withdrew amendment 50 but said that he would reflect on Earl Howe's remarks in a later debate.

Amendment 51

Lord Patel (CB) moved amendment 51, which probed the government's proposals for establishing a clinical senate and clinical networks.

He expressed his support for professional networks, saying that they were "a good idea" and should be embedded into the health system, noting the importance of the cancer and cardiac networks.

Lord Patel questioned whether the government were clear on the purpose of the clinical networks and senates, given that Dr Kathy McLean was apparently being asked to consult on their role.

Finally, he expressed concern that the senates would simply add another layer of bureaucracy to the reforms.

Lord Hunt of Kings Heath (Lab) argued that regional leadership was necessary in the reforms, and said that the informal networks proposed by the government "could easily be ignored" unless they were set out in a more structured approach.

Baroness Murphy (CB) said that the clinical senates were a "great solution" and pointed to the success of the New York mental health commissioning services, where specialists were respected for their expertise and their recommendations were followed.

She warned that the clinical networks should not turn out like the "dreadful regional medical advisory groups".

Shadow health spokesman Lord Warner expressed his support for clinical networks, but said that there needed to be a "really good explanation of what [clinical senates] are out to do".

Lord Kakkar (CB) asked the minister what relationship there would be between the clinical senates and the academic science and health networks and partnerships.

He questioned why the proposed role of the clinical senates could not be undertaken by the academic health partnerships or the current academic health science centres.

"I wonder whether this is one of the occasions where the organogram that we were discussing previously in committee might be helpful" suggested crossbencher Baroness Finlay of Llandaff.

Earl Howe explained that the clinical senate would "give expert advice to commissioners" but did not support amendment 224A, tabled by Lord Hunt, which would specify the roles of the networks and senates.

Specification in legislation, he argued, "would restrict the range of ways in which they can operate, which in turn would limit the value that is delivered for patients".

The senates would not be statutory organisations, so would have "much needed flexibility maximising benefits for patients while minimising bureaucracy".

He also pointed out that the NHS Commissioning Board would be obliged to "obtain appropriate advice", which would include consultation with clinical networks and senates. A similar duty would be put upon clinical commissioning groups.

The minister went on to reassure peers that the senate would not be ignored, due to their role as non-statutory organisations that could determine the best way to give advice as required.

Lord Patel withdrew amendment 51, agreeing that the thinking on senates was a "work in progress" and so would need to be seen in greater detail in the future.

Clause 6 agreed.

Amendments 52-57 not moved.

Schedule 1: The NHS Commissioning Board.

Amendment 57A was moved by Baroness Jolly, which would establish a complaints-handling authority.

She argued that in the past, NHS boards had a complaints convenor to report back to the management boards, and that complaints could serve as a barometer of the effectiveness of health services.

Baroness Wheeler (Lab) set out her party's opposition to the dismantling of the National Reporting and Learning Service (NRLS), asking how the smaller bodies that would replace the NRLS could mirror the same service.

Earl Howe told peers that the existing bodies such as the health ombudsman would continue to allow redress of patients' complaints.

He tried to reassure his colleagues that the "system of handling complaints will therefore continue to operate largely as it does now".

The minister agreed with Baroness Wheeler that there should be transparent information and data on patient complaints.

Baroness Jolly withdrew amendment 57A.

Amendments 58 and 59 not moved.

Schedule 1 agreed.

Clause 7: Clinical commissioning groups.

Lord Whitty (Lab) moved amendment 59A, which would encourage equal boundaries of clinical commissioning groups with local authorities.

He argued that this would encourage a relationship between health services and local authorities, developing the public health functions of the NHS reforms.

Lord Hunt of Kings Heath agreed with Lord Kakkar that there needed to be more robust structures in place to ensure good corporate governance in the commissioning groups.

He went on to ask whether it was appropriate for groups to have members of the local

authorities as members of the group boards, questioning how otherwise the groups would be held to account.

Baroness Williams of Crosby argued that "the major guarantee of the behaviour of a clinical commissioning group will be transparency".

She urged members of the groups to disclose all of their financial interests and to recue themselves from decisions that led to a conflict of interests.

Lord Warner warned of several other difficulties that might be encountered in the commissioning groups, including a lack of clarity on accountability. He warned that the groups were "untested" and "different in kind from many other public bodies that there have been".

Baroness Finlay of Llandaff argued that coterminosity would ensure greater oversight of the work of the groups and allow for fewer cases to fall between the cracks of accountability.

Earl Howe argued that the Bill contained many provisions that would ensure the good conduct of a commissioning group, and pointed out that the NHS Commissioning Board could specify minimum standards of financial and performance information to be published by all commissioning groups.

He said that the government had accepted the NHS Future Forum's recommendations that the boundaries of commissioning groups "should not normally cross those of local authorities".

Finally, he said that the government agreed in principle that there should be no conflicts of interest between members of commissioning groups and the services they commissioned, but said that an absolute ban on shareholders being members of the commissioning groups would not be appropriate.

"We listened to the Future Forum when it said that there is a balance to be struck between the need for good governance and the need to avoid over prescription."

Lord Whitty welcomed the minister's comments, but said that the brief coverage may force the House of Lords to consider the amendments again.

He withdrew amendment 59A.

Amendment 60 was not moved.

<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111114-0001.htm#1111145000723>