AGENDA ITEM: 5

HEALTH SCRUTINY PANEL

25 JULY 2011

DEVELOPMENTS IN HEALTH POLICY

PURPOSE OF THE REPORT

1. To appraise The Health Scrutiny Panel of the current progress of the Government's Health Reforms.

RECOMMENDATIONS

2. That the Health Scrutiny Panel notes the current progress of the Government's Health Reforms.

3. That the Health Scrutiny Panel agrees to receive updates as and when there are developments to consider.

CONSIDERATION OF REPORT

4. The Health Scrutiny Panel has been a keen observer and an active contributor to the debate about the Government's developing health policy, which essentially began with the publication of *Equity & Excellence, Liberating the NHS* in July 2010.

5. The specific proposals outlined in *Equity & Excellence,* as well as the general tenor of the document, created a particularly large amount of debate about health policy, the future funding and future configuration of the National Health Service. The Health Scrutiny Panel will recall that the most eye-catching elements of *Equity & Excellence* centred on the abolition of Strategic Health Authorities & Primary Care Trusts, as well as the creation of GP Commissioning Consortia.

6. Following a consultation period, the Government issued a Command Paper in December 2010, highlighting where the consultation process had altered its proposals and signalling its intention to legislate. As such, the Health & Social Care Bill was introduced into Parliament on 19 January 2011.

7. It would be accurate to report that the published Health & Social Care Bill attracted a great deal of comment and initiated a passionate debate, involving such organisations as the Royal College of Nursing and British Medical Association, about the future funding and configuration of health services in England. The debate even raised the hotly disputed point as to whether the NHS would be 'privatised'.

8. In response to the intense public debate about the Bill and some significant critiques of its potential implications, the Government announced that it would use a pause in the parliamentary process to 'listen and reflect'. This was a process, which was intended to listen to concerns over the Bill, assuage concerns and improve the Bill where appropriate. As such, on 6 April 2011 the Government announced that the listening exercise would have a specific focus upon[1]:

- The role of choice and competition for improving quality;
- How to ensure public accountability and patient involvement in the new system;
- How new arrangements for education and training can support the modernisation process; and
- How advice from across a range of healthcare professions can improve patient care.

9. It was also announced that leading the listening exercise would be the *NHS Future Forum*, with a specific mandate to gather and consider the views of NHS staff and patient. The NHS Future Forum was led by Professor Steve Field, a serving Birmingham based GP and past Chair of the Royal College of General Practitioners.

10. One of the most quoted reasons for proposals to reform the NHS and change the way it operates are the social and economic pressures facing the NHS, which will only become greater as time goes by. Specifically, this refers to the fact that people are living much longer, people are able to survive longer with established health problems, yet medical and technological advances mean that the relative cost of providing a healthcare system consistently increases at a rate greater than domestic inflation. This is the overriding challenge that faces the NHS (and every other developed healthcare system in the world), on which all interested parties are agreed. The issue at hand, is how that issue is best tackled.

[1] Please see http://www.dh.gov.uk/en/MediaCentre/DH_125865

What did the NHS Future Forum say?

11. The NHS Future Forum published its report on 13 June 2011[2] and made a number of significant points about the challenges facing the NHS, as well as the reforms as they had been structured. This briefing paper discusses the most significant points made by the NHS Future Forum, although a full copy of its report can be obtained from the Scrutiny Team in the Members Office in the Town Hall.

12. The NHS Future Forum welcomed the Government's focus on improving quality and ensuring high quality outcomes in healthcare. It did, however, identify that for whatever reason, the Government had not been entirely successful in putting across the rationale for its proposals, which led to a significant amount of 'deep seated concern' from people about what the proposals meant.

13. The NHS Future Forum felt that the general move towards GPs having the responsibility for planning and commissioning NHS services in their areas of responsibility, was the correct one. Nonetheless, it was felt that they should not be required to do this in isolation and their was a clear recognition that GPs would need 'multi-professional advice' to inform commissioning decisions and the redesign of patient pathways.

14. The Future Forum was clear that in designing and delivering a healthcare system that was capable of meeting the modern challenges facing healthcare, services would be required to change. This raises the often difficult and politically challenging argument that the location of some services needs to change in some way. The Future Forum was clear that these debates need to be clinically led and sensitively handled, but such discussions must take place.

15. A hugely contentious area of debate regarding the health reforms has been the topic of competition and the role it does and could play in the NHS. The Future Forum is clear that when used as a tool for patient's choice and thereby as an incentive to increase quality, it is very useful. The Future Forum was clear, however, that it should not be pursued as an end in itself. Further, the Future Forum was keen to see Monitor's proposed role in relation to the 'promotion' of competition significantly diluted.

16. In addition, the Future Forum was keen that patients systematically become a central part of discussions about their care, consistent with the *'no decision about me, without me'* mantra. There should be a greater focus on the integration of care for the benefit of patients, the education and development of the NHS workforce should become a

[2] Details can be obtained at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_127443

greater priority and the new system should have appropriate levels of transparency around decisions made and use of resources.

17. The Future Forum made a series of recommendations to Government, which are outlined below.

- ***The enduring values of the NHS and the rights of patients and citizens as set out in the NHS Constitution are universally supported and should be protected and promoted at all times.*** *The Bill should be amended to place a new duty on the NHS Commissioning Board and commissioning consortia to actively promote the NHS Constitution. In addition, Monitor, the Care Quality Commission, the NHS Commissioning Board and commissioning consortia should all set out how they are meeting their duty to have regard to the NHS Constitution in their annual reports.*

- ***The NHS should be freed from day-to-day political interference but the Secretary of State must remain ultimately accountable for the National Health Service.*** *The Bill should be amended to make this clear.*

- ***Patients and carers want to be equal partners with healthcare professionals in discussions and decisions about their health and care. Citizens want their involvement in decisions about the design of their local health services to be genuine, authentic and meaningful. There can be no place for tokenism or paternalism.*** *The declaration of 'no decision about me, without me' must become a reality, supported by stronger and clearer duties of involvement written into the Bill focused on the principles of shared decision-making.*

- ***Because the NHS 'belongs to the people' there must be transparency about how public money is spent and how and why decisions are made.*** *The Bill should require commissioning consortia to have a governing body that meets in public with effective independent representation to protect against conflicts of interest. Members of the governing body should abide by the Nolan principles of public life. All commissioners and significant providers of NHS- funded services, including NHS Foundation Trusts, should be required, as a minimum, to publish board papers and minutes and hold their board meetings in public. Foundation Trust governors must be given appropriate training and support to oversee their Trust's performance – until governors have the necessary skills and capability to take on this role effectively, Monitor's compliance role should continue.*

- ***GPs, specialist doctors, nurses, allied health professionals and all other health and care professionals state that there must be effective multi-professional involvement in the design and commissioning of services working in partnership with managers.*** *Arrangements for multi-professional involvement in the design and commissioning of services are needed at every level of the system. The Bill should require commissioning consortia to obtain all relevant multi-professional advice to inform commissioning decisions and the authorisation and annual assessment process should be used to assure this. In support of this, there should be a strong role for clinical and professional networks in the new system and multi-speciality clinical senates should be established to provide strategic advice to local commissioning consortia, health and wellbeing boards and the NHS Commissioning Board.*

- ***Managers have a critical role to play in working with and supporting clinicians and clinical leaders.*** *Experienced managers must be retained in order to ensure a smooth transition and support clinical leaders in tackling the financial challenges facing the NHS.*

- ***There should be a comprehensive system of commissioning consortia but they should only take on their full range of responsibilities when they can demonstrate that they have the right skills, capacity and capability to do so.*** *The assessment of the skills, capacity and capability of commissioning consortia must be placed at the heart of authorisation and annual assessment process. Where commissioning consortia are not ready, the NHS Commissioning Board should commission on their behalf but provide all necessary support to enable the transfer of power to take place as soon as possible.*

- ***Patients want to have real choice and control over their care that extends well beyond just choice of provider.*** *Building on the NHS Constitution, the Secretary of State should, following full public consultation, give a 'choice mandate' to the NHS Commissioning Board setting out the parameters for choice and competition in all parts of the service. A Citizens Panel, as part of Healthwatch England, should report to Parliament on how well the mandate has been implemented and further work should be done to give citizens a new 'Right to Challenge' poor quality services and lack of choice.*

- ***Competition should be used as a tool for supporting choice, promoting integration and improving quality and must never be pursued as an end in itself.*** *Monitor's role in relation to competition should be significantly diluted in the Bill. Its primary duty to 'promote' competition should be removed and the Bill should be amended to require Monitor to support choice, collaboration and integration.*

- ***Private providers should not be allowed to 'cherry pick' patients and the Government should not seek to increase the role of the private***

sector as an end in itself. *Additional safeguards should be brought forward.*

- ***The duties placed on the Secretary of State, the NHS Commissioning Board and commissioning consortia to reduce health inequalities are welcome. These now need to be translated into practical action.*** *The Mandate for the NHS Commissioning Board, the outcomes frameworks for the NHS, public health and social care, commissioning plans and other system levers and incentives must all be used to help reduce health inequalities and improve the health of the most vulnerable.*

- ***Local government and NHS staff see huge potential in health and wellbeing boards becoming the generators of health and social care integration and in ensuring the needs of local populations and vulnerable people are met.*** *The legislation should strengthen the role and influence of health and wellbeing boards in this respect, giving them stronger powers to require commissioners of both local NHS and social care services to account if their commissioning plans are not in line with the joint health and wellbeing strategy.*

- ***Better integration of commissioning across health and social care should be the ambition for all local areas.*** *To support the system to make progress towards this, the boundaries of local commissioning consortia should not normally cross those of local authorities, with any departure needing to be clearly justified. The Government and the NHS Commissioning Board should enable a set of joint commissioning demonstration sites between health, social care and public health and evaluate their effectiveness.*

- ***Most NHS staff are unfamiliar with the Government's proposed changes to the education and training of the healthcare workforce. Those who are aware feel that much more time is needed to work through the detail.*** *The ultimate aim should be to have a multi-disciplinary and inter-professional system driven by employers. The roles of the postgraduate medical deaneries must be preserved and an interim home within the NHS found urgently. The professional development of all staff providing NHS funded services is critical to the delivery of safe, high quality care but is not being taken seriously enough. The National Quality Board should urgently examine how the situation can be improved and the constitutional pledge to 'provide all staff with personal development, access to appropriate training for their jobs and line management support to succeed' be honoured.*

- ***Improving the public's health is everyone's business but should be supported by independent, expert public health advice at every level of the system.*** *In order to ensure a coherent system-wide approach to improving and protecting the public's health, all local authorities, health and social care bodies (including NHS funded providers) must co-operate. At a national level, to ensure the provision of independent scientific advice*

to the public and the Government is not compromised we advise against establishing Public Health England fully within the Department of Health.

- ***Clinical leaders, managers and all those who care about the success of the NHS agree that quality, safety and meeting the financial challenge must take primacy and the pace of transition should reflect this.*** *To ensure focused leadership for quality, safety and the financial challenge, the NHS Commissioning Board should be established as soon as possible.*

18. The NHS Future Forum also made significant comment about the timing of Health Reforms and their implementation. It said:

More specifically, we recommend that:

- *the NHS Commissioning Board should be established as soon as possible to ensure focused leadership for improving quality and safety as well as meeting the financial challenge during the transition;*

- *those commissioning consortia that have demonstrated they are ready to take control of budgets and the commissioning process should be allowed to do so from April 2013. Where commissioning consortia are not ready, the NHS Commissioning Board should commission services on their behalf but provide all necessary support to enable the transfer of power to take place as swiftly as possible;*

- *all areas should have shadow health and wellbeing boards as soon as possible in order to support the building of strong local relationships and to get to grips with understanding the health and care needs of local populations to inform emerging joint health and wellbeing strategies;*

- *Healthwatch England should be established as soon as possible in order to provide focussed leadership for putting patients at the heart of local reforms;*

- *changes to the system of education and training must not be rushed. However, Health Education England should become operational as soon as possible to provide focus and leadership while the rest of the education and training architecture is planned. The roles of the postgraduate medical Deaneries must be preserved and an interim home within the NHS found urgently as a consequence of the planned abolition of Strategic Health Authorities;*

- *all NHS Trusts should continue to work towards achieving Foundation Trust status by 2014 as authorisation is about clinical and financial sustainability. However, 2014 should not be an absolute cut-off date in the Bill. Until NHS Foundation Trust governors have been equipped with the right skills and capability to effectively hold their boards to account, Monitor should continue to have an ongoing compliance role;*

- *the implementation of Any Qualified Provider should be guided by the principles set out in the Choice Mandate we have proposed and driven by patients;*

19. In summary, the Future Forum was very clear that, the Department of Health should move swiftly to set out a new transition timetable to provide clarity for all staff.

The Government Response

20. The NHS Future Forum submitted its final report to the Government on 13 June 2011, with the Government published an initial response on 14 June and publishing a detailed response on 20 June 2011. In his foreword to the Government's response, Andrew Lansley MP, the Secretary of State for Health says:

    "The Government accepts all of their recommendations, and believes the proposals are now much stronger, thanks to their contribution.

    I am confident that the revised plans we set out today will build an NHS that's stronger, more efficient and more accountable."

21. On the topic of accountability for the NHS, the Government has committed itself to ensuring that NHS organisations take active steps to promote the NHS Constitution and all it enshrines, as well as ensuring that Ministers retain the overall responsibility and duty to promote a comprehensive health service.

22. The Government has undertaken to make a number of modifications to the proposed GP Commissioning Consortia, including changing their names to 'Clinical Commissioning Groups'. The name change reflects the fact that they will have wider Memberships than previously articulated, including at least one registered nurse and one specialist doctor. The Government also expects them to access appropriate social care advice. They will also be required to have governing bodies, which will contain lay members and they will be obliged to hold meetings in public and place their meeting papers in the public domain.

23. The NHS Future Forum expressed the view that Clinical Commissioning Groups should have access to a wide pool of advice and expertise to properly fulfil their role. To help in this, they will be advised by *Clinical Senates*. The role of a Clinical Senate will be to

take a detailed overview of health and healthcare for any given local population and provide a source of expert support and advice, on how services best fit together. According to the Government's response, the advice would come from a range of health and social care professionals and the Government is clear that if that advice is appropriate and well grounded, it expects Clinical Commissioning Groups to follow it.

24. The Government has also committed to ensuring that greater use will be made of clinical networks around certain pathways. Clinical Networks already exist around certain conditions such as cancer, but there is a commitment that they will be put to greater use. The NHS Commissioning Board will house them.

25. Whilst these two forums will provide a significant amount of advice for the Clinical Commissioning Groups, the Government is clear that they will not detract from clinical commissioning groups pre-eminence and commissioning Boards' legal responsibilities to commission services that meet local need.

26. The Government has said that Clinical Commissioning Groups will have a governing body, about which statutory regulations will make certain core requirements in the coming months. The Government has stated that Governing bodies should include two GPs and at least two other clinicians – at least one registered nurse and one secondary care specialist, with no conflict of interest. They will also be obliged to have a link to their community in their name. The Government has confirmed that they will not be able to delegate their statutory responsibility for commissioning decisions, but they will be able to seek, for example, appropriate business support or research assistance from whomsoever they see fit. The Government has confirmed that they will only be allowed to assume commissioning responsibility when the NHS Commissioning Board is confident that they are ready and able. It has also been confirmed that the deadline of April 2013 is not as fixed as it previously was. If a Clinical Commissioning Group is ready and able to assume responsibility in April 2013, it will be able to do so. If not, the NHS commissioning board will take responsibility, if necessary, from this date until the clinical commissioning group is ready.

27. In response to concerns and some criticism about the way the proposed powers and responsibilities of Clinical Commissioning Groups were originally outlined, the Government has confirmed that they will be responsible for commissioning emergency and urgent care services, as well as services for unregistered patients.

28. The Government has also advised Clinical Commissioning Groups against cutting across local authority boundaries and a clear explanation will be required, should it occur. The Clinical Commissioning Groups will also have a duty to promote integrated health and social care.

Local Health & Wellbeing Boards

29. The Panel will recall that it during the consultation phase of considering the Health Reforms, the Panel submitted views on the role and powers of Local Health and Wellbeing Boards.

30. The Panel will recall that the Government proposed to create statutory health and wellbeing boards in every upper tier local authority, to improve health and care services, and the health and wellbeing of local people. Health and wellbeing boards are intended to bring together locally elected councillors with the key commissioners in an area, including representatives of clinical commissioning groups, directors of public health, children's services and adult social services, and a representative of local HealthWatch. Health and wellbeing boards are intended to assess local needs (through the joint strategic needs assessment) and develop a shared strategy (in the form of a new joint health and wellbeing strategy) to address them, providing a strategic framework for commissioners' plans.

31. The Future Forum strongly supports the idea of health and wellbeing boards, but recommends that they are somewhat strengthened. The Future Forum & Government are of the view that once strengthened, they will be "focal point for decision-making about local health and wellbeing". It is hoped that they will enable local authorities to work in partnership with clinical commissioning groups and other community partners, to deliver meaningful joint health and wellbeing strategies and maximise opportunities for integrating health and social care. The Government has confirmed that in response to the Forum's recommendations, it will make a number of changes designed to strengthen the role of health and wellbeing boards and increase public and patient involvement.

32. The Government is confident that the boards will provide the vehicle for local government to work in partnership with commissioning groups, to develop robust joint health and wellbeing strategies, which will in turn set the local framework for commissioning of health care, social care and public health.

33. The Government is keen to point out that Health & Wellbeing Boards will not be solely interested in assessments and strategies. The Government asserts that Health and wellbeing boards will have a stronger role in promoting joint commissioning and integrated provision between health, public health and social care. They can be the vehicle for "lead commissioning" for particular services, for example social care for people with long-term conditions – with pooled budgets and joint commissioning arrangements where the relevant functions are delegated to them.

34. The Government has also stated that we will give health and wellbeing boards a stronger role in leading on local public involvement. Health

and Wellbeing Boards will be responsible for identifying local needs and developing a joint health and wellbeing strategy to meet those needs.

35. In addition, the Government has moved to assuage concerns about the evidence and accountability for the Commissioning Plans of Clinical Commissioning Groups. The Government has confirmed that it will strengthen the Bill to make clear that health and wellbeing boards should be involved throughout the process as clinical commissioning groups develop their commissioning plans. In addition, there will be a stronger expectation, set out in statutory guidance, for the plans to be in line with the health and wellbeing strategy. The Government goes on to say that although they will not have a veto, health and wellbeing boards will have a clear right to refer plans back to the group or to the NHS Commissioning Board for further consideration, if they think that the plans are not taking proper account of the strategy. Where the commissioning plans vary significantly from the joint strategy, if challenged, the group will need to be able to amend or explain and justify why. The NHS Commissioning Board will also have to take health and wellbeing boards' view into account in their annual assessment of commissioning groups.

36. The Panel will recall that in a submission to the consultation process, it expressed concern about the configuration of health and wellbeing boards and what, the Panel thought, would be the under-representation of Executive Members. In its response to the Future Forum report, the Government has confirmed that:

"it will be for local authorities to determine the precise number of elected members on a health and wellbeing board, and they will be free to insist upon having a majority of elected councillors. The requirements for other members of health and wellbeing boards will remain the same"[3]

37. As such, the number of Executive Members with a seat on the local health and wellbeing board is a matter for the local authority to debate and resolve.

38. The Government also covers the enhanced role of Health Scrutiny, saying:

Members of health and wellbeing boards will be subject to oversight and scrutiny by the existing statutory structures for the overview and scrutiny of local authority or health functions. The existing statutory powers of local authority overview and scrutiny functions will continue to apply. In line with the principles of the Localism Bill, local authorities will have greater discretion over how to exercise their health scrutiny powers.

[3] para 4.13

We are already taking action to extend local authority health scrutiny powers to facilitate effective scrutiny of any provider of any NHS-funded service, as well as any NHS commissioner. Local authorities will also still be able to challenge any proposals for the substantial reconfiguration of services, and we will retain the Government's four tests for assessing service reconfigurations. Proposals for reconfiguration will need to continue to demonstrate:

i) support from clinical commissioning groups;
ii) strengthened public and patient engagement;
iii) clarity on the clinical evidence base; and
iv) consistency with current and prospective patient choice[4].

39. The Panel will also recall that it has previously argued that Foundation Trusts should not be able to hold entire board meetings in private and should continue to operate within the public domain, with only specific items being discussed privately. The Government has confirmed that, following extensive public feedback on this matter, the Health & Social Care Bill will be amended to ensure that Foundation Trusts hold their Board meetings in public.

Choice & Competition

40. The Panel will be aware that a significant proportion of the criticism aimed at the Health & Social Care Bill centred upon the perceived intention of the Government to 'privatise' the NHS.

41. The Future Forum argued that whilst competition within the NHS can be beneficial for patients and actually increase quality, competition should not be pursued as an end in itself. The Government has accepted this position and has stated that Monitor, the regulator for Foundation Trusts, will not have the promotion of competition as its raison d'être as previously mooted. Instead, Monitors key role will be to protect and promote the interests of patients.

42. The Government has also said that

It is clear from the Future Forum's report that some people had genuine fears about the Government's long-term intentions for the NHS. Some questioned whether increased competition between NHS, private and voluntary providers could spell the end for the tax-funded, comprehensive service we all rely on. Others opposed on principle the involvement of private companies in the provision of NHS services.

To put our position beyond doubt, we will bring forward a series of amendments to our proposals and to the Health and Social Care Bill.

[4] See 4.14 and 4.15

While the Bill in its current form does nothing to permit the privatisation of NHS services, it equally fails to prevent new functions and powers being used with the aim of increasing the market share of the private – or indeed any other – sector. Therefore, we will outlaw any policy to increase or maintain the market share of any particular sector of provider. This will prevent current or future Ministers, the NHS Commissioning Board or Monitor from having a deliberate policy of encouraging the growth of the private sector over existing state providers – or vice versa. What matters is the quality of care, not the ownership model. This change will complement the Government amendment already made to the Bill to prevent Monitor from setting different prices for providers because they are public or private sector.[5]

43. The Panel will also be interested in the Government's comments on the perceived danger of competition on price and providers 'cherry picking' the 'easiest' cases, with the NHS being left with the most complex cases, which could then unsettle the financial viability of NHS centres. The Government has said:

We fully agree with the NHS Future Forum's recommendation that we need to do more to guard against providers competing on price for NHS services and being able to cherry-pick the profitable, "easy" cases, as this could undermine quality, and potentially destabilise services.

The Government's position is unequivocal: competition should be on quality, not price. Ahead of the listening exercise, we took action by placing a new legal duty on the NHS Commissioning Board and Monitor to develop standardised pricing "currencies" for the national tariff. The more services are paid for at a fixed tariff, the less risk of the variations in price we see at the moment under competitive tendering.

However, the Forum recommended that additional precautions could and should be taken to minimise the risk of cherry-picking. We are therefore introducing a suite of additional safeguards, including:

- *a specific duty on Monitor in setting the national tariff, to ensure that efficient providers are paid fairly, taking into account the clinical complexity of the cases that they treat;*

- *a duty on the NHS Commissioning Board to extend the use of standardised pricing currencies to services not yet covered by national prices;*

- *a fixed tariff (national or local) for each service offered under Any Qualified Provider;*

- *undertaking a piece of work with the Royal Colleges to identify the procedures most at risk of cherry picking and prioritising work on Payment*

[5] See para 5.7

by Results to ensure that fair prices are set for these procedures from 2013/14 onwards;

- *requiring commissioners to follow "best value" principles when tendering for non-tariff services, rather than simply choosing the lowest price;*

- *strengthening safeguards to ensure providers are only able to turn away patients on clinical grounds if there are strong and legitimate reasons for doing so. Such grounds should normally be agreed in advance;*

- *requiring Monitor to include a standard condition in the licence to ensure transparency in the use of any patient referral or eligibility criteria;*

- *strengthening contractual terms to require providers to accept patients referred to them unless there are genuine and overriding clinical concerns; and*

- *obliging commissioners to make public any variations to national tariff prices.*

44. Members of the Health Scrutiny Panel may have already seen that the parts of the Health & Social Care Bill requiring substantive change, have already being recommitted to the Parliament and have been the subject of scrutiny by the Public Bill Committee at meetings in early July. A detailed exploration of what aspects of the Bill have been recommitted can be accessed in the Department of Health's relevant document.[6]

45. The Government's response to the NHS Future Forum report contains a useful timeline chart for the implementation of the reforms. It is reproduced overleaf[7].

[6] Please see *Government response to the NHS Future Forum report: Briefing notes on amendments to the health & Social Care Bill*. Can be accessed at www.dh.gov.uk

[7] It can be seen on page 60 of the detailed Government response to the NHS Future Forum.

Timetable for change Planned date	Commitment
October 2011	• NHS Commissioning Board established in shadow form as a special health authority
During 2012	• Health Education England and the NHS Trust Development Authority are established as special health authorities, but in shadow form, without full functions
April 2012	• The next step in extending the choice of Any Qualified Provider, which will be phased in gradually
By October 2012	• NHS Commissioning Board is established as an independent statutory body, but initially only carries out limited functions – in particular, establishing and authorising clinical commissioning groups
October 2012	• Monitor starts to take on its new regulatory functions • HealthWatch England and local HealthWatch are established
1April 2013	• SHAs and PCTs are abolished and the NHS Commissioning Board takes on its full functions • Health Education England takes over SHAs' responsibilities for education and training • The NHS Trust Development Authority takes over SHAs' responsibilities for the foundation trust pipeline and for the overall governance of NHS trusts • Public Health England is established • A full system of clinical commissioning groups is established. But the NHS Commissioning Board will only authorise groups to take on their responsibilities when they are ready
April 2014	• Our expectation is that the remaining NHS trusts will be authorised as foundation trusts by April 2014. But if any trust is not ready, it will continue to work towards FT status under new management arrangements
April 2016	• Monitor's transitional powers of oversight over foundation trusts will be reviewed (except for newly authorised FTs, where Monitor's oversight will continue until two years after the authorisation date if that is later)

46. The Health Scrutiny Panel may feel as though the Health Reforms were largely 'on hold' during the listening exercise. Largely, this is true, although the Panel should be aware that movements have being taking place to ensure that the NHS is able to respond to the Government's agenda. In a letter (from 13 April 2011) from the NHS Chief Executive to local NHS Chief Executives, it is said that:

Last week, the Secretary of State set out the intention to use a natural break in the passage of the Health and Social Care Bill to pause, listen, reflect and improve the Government's plans. That is a very important process, of which I will say more below, but I want to stress very firmly that we need to continue to take reasonable steps to prepare for implementation and maintain

momentum on the ground. Those who are leading the change at local level, particularly pathfinder consortia, should be at the heart of the engagement process.[8]

It goes on to say that

For planning purposes, and subject to the results of the listening exercise and the passage of the Bill, the proposed timeline for completing the key elements of the transition at local level remains unchanged. So, GP consortia would take control of commissioning from April 2013 following authorisation by the NHS Commissioning Board. Health and Wellbeing Boards would also take on their full statutory powers and PCTs would be abolished by April 2013. And we continue to aim for completion of the Foundation Trust pipeline by April 2014[9].

Indeed, NHS Tees has already made a total of 170 redundancies at the end of 2010, as a contribution towards required management savings of £6.6m by April 2012. Whilst it is reported that none of the posts affected delivered direct patient care, it certainly demonstrates that the NHS is going ahead and responding to some of the challenges posed by the Government's health agenda. Further, this appears to be very much in line with the Department of Health's expectations.

NHS Commissioning Board

47. As a conclusion to this briefing paper, some information is laid out below about the emerging NHS Commissioning Board, which will have a crucial role to play in the reformed NHS organisational structure. A document published in early July by the Chief Executive of the NHS[10] highlights the following as the core functions of the NHS Commissioning Board[11]

- *To agree and deliver **improved outcomes** and account to Ministers and Parliament for progress. There will be a clear mandate, setting out expectations for the Board and the broader commissioning system;*
- *To oversee the **commissioning budget**, ensuring financial control and value for money;*
- *To develop and oversee a comprehensive system of **clinical commissioning groups** with responsibility for commissioning the majority of healthcare services;*

[8] Please see page 5 of Letter entitled *Equity & Excellence: Liberating the NHS – Managing the Transition.* Can be accessed at www.dh.gov.uk - Gateway Reference 15966.
[9] See Page 6, ibid.
[10] Please see *Developing the NHS Commissioning Board*, July 2011. Please see http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_128196.pdf
[11] The bold type in the following is the Department of Health's emphasis

- *To **commission directly** around £20bn of servicesincluding specialised services and primary care services (including holding around 35,000 contracts for primary care services);*
- *To support **quality improvement** by promoting consistent national Quality Standards, a culture which promotes research and innovation and providing world class support for clinically led service improvement and leadership;*
- *To promote innovative ways of demonstrating how care can be made more **integrated for patients**;*
- *To promote **equality and diversity** and the **reduction of inequalities** in all its activities;*
- *To develop **commissioning guidance**, standard contracts, pricing mechanisms and information standards;*
    - *To engage with the public, patients and carers, **champion patient interests** and ensure patients have access to a wider range of information about services;*
    - *To develop a framework to make **choice a reality for patients**, setting out guidance in consultation with Monitor about how choice and competition should be applied to particular services;*
    - *To oversee planning for **emergency resilience** and lead the NHS operational response to significant emergencies; and*
    - *With its partners, develop a medium term **strategy** for the NHS, which alongside the local priorities developed through health and wellbeing boards, helps form the basis for local commissioning plans.*

48. In the same document, the NHS Commissioning Board sets out a likely timeframe for progress in its establishment. That likely timeframe is set out below. It is pointed out that all of the proposals of course remain subject to the passage of the *Health and Social Care Bill* and agreement with the members of the Board.

Looking forward, we are anticipating the following timeline for further developing and establishing the Board:

- *July 2011: Arrangements for senior and priority appointments published. Summer/Autumn 2011: Further detail published about the proposed operating model of the Board including its key processes.*
- *Autumn 2011: Further publication setting out proposed structure for the Board in more detail.*
- *October 2011: Start date for Board in shadow form as a Special Health Authority.*

- *October 2011 – October 2012: Shadow running phase and further recruitment of staff. In 2012, further information published about the process for staff appointments.*

- *By October 2012: Subject to the passage of the Health and Social Care Bill, the Board would be established as an independent statutory body and take on some formal statutory accountabilities from this date such as the authorisation of clinical commissioning groups and the planning for 2013/14.*

- *April 2013: Subject to the passage of the Health and Social Care Bill, the Board would take on its full formal statutory accountabilities.*

49. The purpose of this paper is to ensure that the Health Scrutiny Panel has a good working knowledge of the Health Reforms and the current state of affairs with those Health Reforms.

50. The Panel is asked to consider how it would like to be kept appraised of developments to Health Policy, as the Health & Social Care Bill works its way through Parliament. The Panel is also asked to note that it is scheduled to receive a progress update on the local implementation of the reforms at its August 2011 meeting.

BACKGROUND PAPERS

Please see

- *Developing the NHS Commissioning Board* © Office of the NHS Chief Executive, July 2011

- NHS Future Forum Report on Proposed Changes to the NHS, June 2011

- Government Response to the NHS Future Forum Report: Briefing Notes on Amendments to the health & Social Care Bill, June 2011

- Government Response to the NHS Future Forum Report, June 2011

Please note that all of the above are accessible via www.dh.gov.uk

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