

Accountability and scrutiny must be central to NHS reforms

(A response to the Government listening exercise / NHS Future Forum by Mike Cooper on behalf of Tamarind Chambers, May 2011)

Any reforms to the NHS must follow the key principle that decisions on all publicly funded commissioning and provision should be taken by publicly accountable and open bodies, and should be subject to local authority scrutiny.

It is welcome that in their response to the consultation on the Health White Paper, the Government has confirmed that that health scrutiny should remain independent from the executive, and that both commissioning bodies and Health and Wellbeing Boards will be subject to scrutiny by local authority scrutiny committees.

However, for this commitment to be put into effect the current powers of health scrutiny and duties on NHS bodies need to be retained and explicitly applied to the proposed new bodies; this could be achieved most readily by the names of bodies in the current regulations etc - eg PCT - simply being changed to the give the names of the new bodies - eg GP Consortia.

Commissioning bodies need to be subject to independent scrutiny, regardless of the composition of the boards themselves; and Health and Wellbeing Boards cannot provide that effective scrutiny - they are part of the executive function, and they themselves should be subject to independent scrutiny.

There is a need for proper governance and transparency of commissioning consortia and of Health and Wellbeing Boards, with membership including elected councillors and representatives of local patients and the public; but regardless of who is made members of these bodies, there is still a need for separate and independent scrutiny of both commissioning consortia and Health and Wellbeing Boards, by local authority scrutiny bodies.

It is a key strength and advantage of scrutiny that it is separate from the strategy and commissioning decisions, and is not responsible for taking the decisions or the delivery of services, so it does not need to be defensive of those decisions, and it does not have cover everything, but can focus on what it thinks is important for its local community.

Health scrutiny's power of referral to the Secretary of State needs to be retained as a power of the health scrutiny committee, not having to refer via the Council; and the power of referral should not be restricted by making it only apply to 'designated services', but should also be available for other services where the scrutiny committee believes that there will be a significant impact on the local community. This is an important and symbolic way in which scrutiny retains its independence from the local authority executive and retains a strong relationship with the NHS.

Strategy, as proposed for Health and Wellbeing Boards, commissioning as proposed for commissioning consortia, scrutiny by local authority scrutiny committees, and engagement with the community through HealthWatch are all valid and distinct roles, and it is helpful to have different bodies with different members and perspectives undertaking them.

The Health and Wellbeing Board does have an important and distinct role, in taking an

overview across both health and social care, agreeing joint policies and strategies, integrating health and social care and raising the profile of public health; and in ensuring that commissioners are following the agreed assessments of needs and strategies.

Health and Wellbeing Boards are in the direct line of executive accountability; they are distinct from and additional to the 'parallel' role of independent scrutiny and their role is not to provide 'scrutiny' of commissioning bodies. Health and Wellbeing Boards require some real power to ensure that commissioners do follow the agreed strategies, and that primarily policies and strategies are agreed, and disputes resolved, locally.

It has been suggested that Health and Wellbeing Boards should follow the local authority model, with 'members' of the Boards being appointed representatives of the decision-makers of the commissioning body(ies) and local (executive) Councillors; and officers of the council and commissioning professionals should act as officer support to the Board and not be 'members'. This would be sensible model, as the Boards will be a local authority responsibility.

The boards of commissioning bodies should have non-executive members, like PCTs have, and these should include elected councillors, but elected councillors need not make up the majority; and they should also have representatives of other health professions, not just GPs.

There is concern about how Health and Wellbeing Boards will work with Commissioning Consortia that cross local authority / Health and Wellbeing Board boundaries, and in particular how commissioning consortia that cross boundaries will be held accountable for following the agreed strategies of different Health and Wellbeing Boards. It would be preferable if commissioning bodies / boards matched local authority areas.

Distinctive engagement of patients and the public needs to take place at every level, from the strategic Health and Wellbeing Board, through commissioners, to actual service delivery. And the simplistic approach of having a few councillors and a representative of HealthWatch as members of a board does not fully address the issue.

The role of HealthWatch on behalf of the wider community, and in particular in commissioning and strategy, does not remove the need for individual commissioners and providers to establish effective engagement mechanisms, like ppi forums, that can inform decisions and service provision, and be a more effective way for those interested in particular services and for patients and carers groups to become involved.

Further, by being a 'member' of the board a councilor or rep of HealthWatch may be compromised, by their duty as a 'member' to act in the interests of the board/body, or perceived to be compromised or complicit in the board's final decision, and therefore unable to act in the interests of their constituents or of HealthWatch. The experience of some scrutiny committees and LINKs is that they are better served retaining their independence by having access to papers and a 'place at the table' without being a 'member', being able more effectively to scrutinise and make representations to the board from 'outside'