ASSOCIATION · OF
COMMUNITY HEALTH COUNCILS
FOR · ENGLAND · & · WALES

30 DRAYTON PARK · LONDON N5 1PB · TEL: 01-609 8405 · FAX: 01 700 1152

To: Member CHCs

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Dear Colleague

The future role of CHCs

Member CHCs may be interested to see the attached extracts from Hansard for 7 June 1990. The House of Lords was concluding the first day of the Report Stage of the NHS and Community Care Bill and there were two short exchanges on the role of CHCs, with Baroness Blatch and Lord Henley replying for the Government.

The Government has again reiterated that CHC observer status at health authority meetings is to remain but that they will not countenance CHC observer status at NHS Trust meetings. The Government has repeated that CHCs will have visiting rights at NHS Trust hospitals. However, the answers given do not make it clear whether CHCs for all districts with patients contracted at the hospital will have visiting rights, or just the local CHC.

The Government has agreed that CHCs should be consulted along with "other interested parties on the strategic provision of services which districts are required to commission for their residents." This is an important and welcome development and presumably implies that CHCs will be consulted about a District's general plans for NHS Contracts. However, the Government has repeated that CHCs should not be involved in the day to day details of contracting.

Finally, the Government has also written into the legislation (Amendment 50 - also attached) that Regional Health Authorities shall consult the 'relevant' CHC on proposals to make an order establishing an NHS Trust. This is not new, but it is now to be formalised in the legislation.

The Bill should complete its stages in the House of Lords shortly and the Bill will then return to the House of Commons for Lords'

amendments to be considered. If any of the Lords' amendments are overturned by the House of Commons, the Bill will have to go back again to the House of Lords before Royal Assent. However, Royal Assent is still expected around the first week in July. It is not envisaged that any statement will be made about CHCs until after Royal Assent, but if any changes in Regulations are to take place before the Summer Recess then any announcement will presumably follow Royal Assent fairly rapidly.

Yours sincerely

Toby Harris
Director

10.30 p.m.

Lord Ennals moved Amendment No. 35:

After Clause 3, insert the following new clause—

("*Community Health Councils Authority*

.—(1) The Secretary of State shall by regulation set up an independent establishing authority for Community Health Councils in England and Wales, whose duty will be to represent the public's interests in the health service, and to provide resources to manage, monitor and assist Community Health Councils in the performance of their functions. The Secretary of State shall by regulation transfer the existing responsibilities of Regional Health Authorities with respect to Community Health Councils to the new independent establishing authority, and provide for the expenses of that body.

(2) The Secretary of State shall by regulation provide Community Health Councils with the power to—

(a) nominate one representative in each district to attend meetings of the relevant District Health Authority as an observer;

(b) nominate one representative to attend meetings of each NHS Trust Board within the relevant district as an observer, if such Trusts exist; and

(c) nominate one representative between them in each region to attend meetings of the relevant Regional Health Authority as an observer.

(3) The Secretary of State shall by regulation extend the existing rights of Community Health Councils with regard to entering and inspecting premises controlled by a relevant district health authority, to include all private hospitals and nursing homes within the relevant district with which any health authority has entered into a contract to treat patients.").

The noble Lord said: My Lords, there is a temptation at bedtime—this used to be thought of as bedtime—to try to reduce the presentation and not to deal seriously with issues. We are now coming onto the role of community health councils. We have not had at Committee stage any debate on the role of community health councils and, although I shall try to be brief, there case has to be set out.

The community health councils were established in 1974 with the clear purpose of being a community watchdog and, on the whole, they have done a very good job. It is our responsibility to see that we make adjustments to their role as we are making adjustments to the health service's structure. So I beg to move Amendment No. 35, standing in my name, which seeks in summary to improve the involvement of CHCs as user representatives in the health service by, first, setting up an independent establishing body for CHCs; secondly, allowing CHCs to take part in regional health authority and NHS trust meetings, as well as DHA meetings; and, thirdly, allowing CHCs to inspect private hospitals where NHS patients are treated.

Virtually all aspects of this Bill impinge in some way or other on the work of community health councils. Some of the key effects are the creation of a market system which may lead to more complex, short-term and unstable relationships between hospitals and health authorities which will require closer monitoring, partly because these arrangements are new and we must see that they work properly if they are to be established.

NHS trusts need hold only one public meeting a year and thus community health councils are effectively excluded from their decision-making process. There was a Department of Health document reported in the *Guardian*, I hope correctly, on 17th April 1990, which clearly states that trusts will not need to consult CHCs about service changes in the same way as DHAs at present do. I hope that that is not true and that we shall hear an answer to it. More use will be made, inevitably, of the private sector as health authorities contract out services to private hospitals and nursing homes.

There was also a Department of Health report in November 1989 which stated that whether or not CHCs can inspect private hospitals in such cases will depend on the contract that the DHA negotiates and that there will be no automatic right to inspect. This would be deliberately to downgrade CHCs, and the purpose of this amendment is to set out clearly the role of CHCs in the future.

Subsection (1) of the amendment sets up an independent national establishing body for CHCs and aims to allow the development of a clearer and more independent voice to express the anxieties of users at national level. That is essential. In all the debates about membership of authorities, no

assurances have been given about the extent to which any of them will be able to represent the interests of users.

Secondly, it seeks to ensure that CHCs generally have a clearer and more consistent set of policies and priorities and a stronger sense of direction. Thirdly, it seeks to ensure that the activities, the level of resources and the staff of CHCs are more consistently and equitably spread across the regions. Fourthly, it seeks to provide better and more professional support and training for CHC members and staff across the country in order to allow a clearer relationship between CHCs and RHAs in order that users' representatives can express their views to RHAs without at the same time being dependent upon them for resources. That is a very important point. It is the whole argument behind the setting up of a national establishing body. Community health councils should not be beholden to those who fund them.

Subsection (2) will enable CHCs to attend both RHA and NHS trust meetings as well as those of DHAs. It aims to give user representatives a say in important regional meetings which shape the general strategy of health policy and co-ordinate health services and which will have a role in regulating the market. It gives to CHCs a say in trusts. Otherwise the trust boards may be able to develop or reduce services, especially non-designated services, according to contracts with the private sector and other DHAs without reference to local people. This may in turn affect what services are available in the future for local residents. The CHC observer seat—I emphasise "observer seat"—on the broad would help to ensure that patients' views are taken into account.

Finally, subsection (3) gives to CHCs the right to enter and inspect private hospitals and nursing homes which are under contract to treat NHS patients. I would not have said that if it were private hospitals which were not treating or under contract to treat NHS patients. It aims to ensure that as more and more patients are treated under contract in private hospitals, if that be the fact, they enjoy the same rights and level of representation as patients in NHS hospitals. It aims to ensure that experienced lay representatives are able to compare standards of care in private and NHS hospitals and ensure that those are adequate. It aims to ensure that the terms of DHA contracts with private hospitals do not mean that patients are discharged too quickly or that continuity of care with the NHS is impaired.

The amendment has been drawn up in consultation with the community health councils which take their responsibilities very seriously indeed. I hope that the House will give serious consideration to the future role of community health councils as we move into a differently structured NHS. I beg to move.

Baroness Blatch: My Lords, the first paragraph of the amendment puts on the Secretary of State the duty of setting up an authority to establish and fund community health councils. The National Health Service Act 1977 does much the same in Section 20 and the Secretary of State in the Community Health Councils Regulations 1985 delegates that duty to regional health authorities. Wherein therefore lies the difference between the RHA and the new body that the noble Lord seeks? It must be in the description of the new body as "independent". But the amendment does not seek to change the 1977 Act and leaves the Secretary of State responsible for setting up the new body, as he is for RHAs now.

The body that the noble Lord proposes will therefore be only as independent as regional health authorities are now. They already do what the amendment wants the new body to do. The second subsection of the amendment is looking to achieve for community health councils three legal rights which the Government agree should remain denied to them. Community health councils already have the right by agreement to send a representative to district health authority meetings as an observer. The amendment seeks to make that right statutory. But what is the purpose when the arrangement works well without statute? Is it really necessary to bring the law into areas of life which work adequately without it?

The second subsection would also give CHCs a statutory right to send observers to meetings of both National Health Service trusts and regional health authorities. But the relationship of the CHC has always been to its DHA and each DHA district has its own CHC. That relationship will be enhanced when district health authorities become purchasers rather than providers of health services as the Government lay great emphasis on DHAs seeking the views of all consumer groups on services provided. The local population's concern about services which regional health authorities or NHSTs provide will be passed to their DHA which contracted for the services. I see no need for a statutory relationship between the CHC and any body other than its DHA. I can assure noble Lords that community health councils will have visiting rights in National Health Service trusts.

The last subsection of the amendment would set in law arrangements which work perfectly well without. Most community health councils will tell you that an important part of their work is the right to inspect premises controlled by the district health authority. That right is enshrined in regulations as part of the philosophy of relating the CHC to its own DHA. Many CHCs, aware of the need for good relations with other providers of health services to NHS patients, have made arrangements with the owners or managers of private hospitals and nursing homes which take in NHS patients. They allow CHCs to enter and inspect much the same as DHAs do by statute. Those arrangements work without the law intervening. What would be the point of statutory provision? Laws which are clearly unnecessary have no place in the statute book. I urge noble Lords to resist them.

Lord Ennals: My Lords, I thank the Minister. Can she say what consultation the department and Ministers have had with community health councils and their national organisation before that reply was given? I shall speak long enough for an answer to be given. I do not believe that it would be right for the

[LORD ENNALS.]

Government to give an answer on a major amendment like this without consulting the community health councils. What is their role? If it transpires that the Government have not consulted the councils about that reply then I believe, as I have said, that there is some attempt to denigrate, lower the status and undermine the role of the councils at a time when I believe that that role needs to be enhanced.

The Minister referred to the three subsections. I thought I had made it clear why I and the community health councils think that it is important that they should not be dependent on the regional health authorities. I recognise that that is now the case. There is something very unsatisfactory about being dependent on a regional health authority which is providing the resources for their work. I said that there should be allowed a clearer relationship between community health councils and regional health authorities in order that representatives can express their views to the regional health authorities without at the same time being dependent on them for resources.

That is a very good reason for change and for some independence. If such community health councils are not to be independent then who is? They are the watchdogs of the community. If we say that they must be dependent on authorities that makes for a very difficult situation. It has always been the case that they will be dependent financially. They have been financially dependent since they were established in 1974.

The Minister also referred to the second subsection of the amendment which enables CHCs to attend RHA and NYHS trust meetings as well as those of DHAs. She said, "Why change what is working well?" The reason is partly because there have never been NHS trusts before. If we are to create such trusts, as she well knows—because we have debated the matter often enough—one of the principles of an NHS trust is that it is independent of the health authority. As it is independent of the health authority and as the Government place great emphasis on the importance of these independent trusts, then as they have in a sense opted out of the district health authority—not the National Health Service; and I shall not go into that argument—opted out of responsibility to the district health authority, we need to opt in the role of community health councils as the community watchdog.

I did not, perhaps, fully understand all that the Minister said in relation to subsection (3), but that was my fault and not hers. That subsection concerns the right to enter and inspect private hospitals and nursing homes which are under contract to treat NHS patients. I know that they have rights, but I do not know whether such rights cover all private hospitals where NHS patients are being treated. If I can get reassurance on that aspect, perhaps we may look again at that subsection. However, none of the Minister's answers about it satisfied me. But, since I have raised a number of important issues, it is only fair to give her the opportunity to reply. Moreover, even if no one else reads the report of this debate, it is also only fair to give the community health councils the opportunity to study what was said from both sides of the House. I am sure that the Government would want their case to be fairly stated. That is why I give the Minister another opportunity to respond.

10.45 p.m.

Baroness Blatch: My Lords, the noble Lord has made a number of accusations; indeed, he has certainly done so during the course of the evening. I think that he referred to the fact that we were denigrating the role of CHCs. I give him an absolute assurance that that is not what we have sought to do. My honourable friend the Parliamentary Under-Secretary made clear only two days ago that the Government have no plans for changing the role of community health councils, let alone denigrating them.

The noble Lord also asked whether we have had consultations with CHCs. The councils have made all the points which he has made to the Government. We have listened to them and the noble Lord has had the benefit of a detailed response. He also quoted back to me the reference that I made of, "Why change the rules when they are working well—and why was it necessary to put it on the statute book?" However, he applied that remark to National Health Service trusts. I made that remark in relation to observer status at district health authority meetings which I understand is working well. The comment I made was:

"Why do we need statutory provision when the observer status at district health authority level is working well?"

Regarding National Health Service trusts, I said that the CHCs will continue to have visiting rights when they are up and running. In my view that is important. It means that they will be able to go on to the premises and visit the establishments. I am not sure whether I have a specific answer to the noble Lord's final question. However, if I have not satisfied him in this respect I shall write to him on the matter.

Lord Ennals: My Lords, before the Minister sits down I must say that I did not fully understand the position with regard to visiting rights. I take it that this means that they can go on the premises. However, does that mean that they have observer status at annual meetings? Does it mean that they can visit any premises for which an NHS trust is responsible?

I return now to the point about district health authorities. I was not implying that there was something new in this respect. However, if we are establishing a new pattern, I think that it would be absurd not to include those things which are already happening. With this amendment I was trying to set up a pattern which, of course, includes aspects of the process which are working well; that is, in the relationship between CHCs and DHAs.

In relation to the Minister's first response, I was glad that the Government had considered the representations made by CHCs. Clearly, what I was saying was in line with what CHCs feel. The Government presumably disagree with the representations that have been made by CHCs at

district, regional and national level. That is serious. The views of CHCs as the consumers' watchdog should not just be taken seriously; some action should follow.

The Government seem to think that they are right about everything and that it is enough to say, "We have heard the views, and we disagree with them". I have heard the Minister's views, and I disagree with them. Again, I am not going to press the amendment to a Division. There is no point at this stage. I have stated my case. I disagree with the answer, but I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Lord Carter moved Amendment No. 41:

Page 4, line 40, at end insert:

("( ) Except in such circumstances as may be determined by order by the Secretary of State, a health service body shall take all reasonable steps to consult any relevant community health council before entering into an NHS contract.").

The noble Lord said: This amendment ensures that the acquirers of health care consult local community health councils before entering into contracts while making allowances for emergencies where such consultation may not be possible.

As we know, all the Government's proposed reforms rest on the contracting system. Therefore, we feel that it is rather surprising that there is no formal consultation procedure in the Bill regarding the placing of contracts. As we also know, there is no statutory role for the consumer. In passing, one notes that it is a curious marketplace which excludes the ultimate consumer.

We feel that it is crucial that proper consultation is built into the contracting process to ensure that patient choice as envisaged in the White Paper is truly exercised. This amendment is intended to ensure that consumer input is built into the contracting process by ensuring that there is proper consultation with community health councils. I beg to move.

Lord Henley: My Lords, establishing close links with the community they serve will be a key aspect of the DHA's new role. However this does not mean

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that bodies like CHCs should play a part in the day to day details of contracting.

CHCs are essentially local bodies whose task is to represent the interests of their local population in the health service. Under the new arrangements a CHC's remit will relate to all services purchased by its DHA for that district's resident population, regardless of whether the services are provided by a district managed unit, an NHS trust, or the private sector.

The Government expects that NHS management will take account of the consumers' interest in all its activities, and the views of CHCs should be sought, along with those of other interested parties, on the strategic provision of services which districts are required to commission for their residents, especially taking account of such factors as the accessibility and convenience of services being commissioned by the DHA. This means that CHCs may require information about a district's objectives and be able to express views as DHAs formulate plans to meet priority needs or consider what might be done to meet these needs more economically and effectively. They may also have views to offer on standards and quality.

We agree therefore that CHCs should expect to be consulted along with other interested parties on the strategic provision of services which districts are required to meet in response to their agreed objectives. We do not agree however that CHCs should be involved in the day to day details of contracting. Therefore, I hope that the noble Lord will feel able to withdraw his amendment.

Lord Carter: My Lords, I thank the Minister for that disappointing but revealing answer. We felt that it was important that there should be a formal procedure built into the Bill. We hope that the Government's expectations regarding the role of community health councils is fulfilled. The answer was disappointing but, at this hour, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendment No. 42 not moved.*]

[Amendment not to be moved]

Baroness Hooper moved Amendment No. 50:

Page 6, line 14, at end insert:

("(1A) In any case where the Secretary of State is considering whether to make an order under subsection (1) above establishing an NHS trust and the hospital, establishment or facility concerned is or is to be situated in England, he shall direct the relevant Regional Health Authority to consult, with respect to the proposal to establish the trust,—

(a) the relevant Community Health Council and such other persons or bodies as may be specified in the direction; and

(b) such other persons or bodies as the Authority considers appropriate;

and, within such period (if any) as the Secretary of State may determine, the relevant Regional Health Authority shall report the results of those consultations to the Secretary of State.

(1B) In any case where the Secretary of State is considering whether to make an order under subsection (1) above establising an NHS trust and the hospital, establishment or facility concerned is or is to be situated in Wales, he shall consult the relevant Community Health Council and such other persons and bodies as he considers appropriate.

(1C) In subsections (1A) and (1B) above—

(a) any reference to the relevant Regional Health Authority is a reference to that Authority in whose region the hospital, establishment or other facility concerned is, or is to be, situated; and

(b) any reference to the relevant Community Health Council is a reference to the Council for the district, or part of the district, in which that hospital, establishment or other facility is, or is to be, situated.")

On Question, amendment agreed to.

[Amendments Nos. 51 and 52 not moved.]