

Dr Bryan Harris
House of Commons

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12 June 2002

David Evans

NHS Reform Bill and the PPI Provisions

Thank you very much for meeting with Hazel and I yesterday. I hope you found the discussions helpful in clarifying some of your outstanding issues. As promised I set out below some further detail, which I hope you will also find helpful.

1. *Expansion of Independent Complaints Advocacy support by PCT Patients' Forums*

As Hazel confirmed yesterday the Bill now provides for PCT Patients' Forums to be both commissioners and providers of ICAS. As commissioners, PCT forums will also be able to commission additional support as local needs determine, for example specialist services such as bi-lingual advocacy. The intention with this amendment is to enable PCT forums to be the core providers of ICAS but retaining the flexibility to ensure a comprehensive service which fits local needs.

2. *Making available advice and information on complaints about policies as well as services*

You queried the amendment relating to the 'one stop shop' aspect of the PCT forum. As I understand it your query was to confirm that although the wording of the amendment only specifies 'services' this should encompass range of services and policies and practices adopted by the NHS.

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In drafting this amendment we took on board the helpful comments of ALCHEW in issue that these wider issues were encompassed. The critical element of the amendment is the wording 'making of complaints relating to services'. Parliamentary Counsel drafted on the basis that this means advice and information on complaints in the wider sense as you have indicated.

3. Power for the Commission to initiate legal proceedings

The CPPH as a corporate body has the power to initiate legal proceedings in its own name. There is no doubt that the Commission has the power to take such action as it thinks fit - this is made clear by the broad power in Sch 6 para 2. Whether it will have locus standi (legal standing) to bring an action in any particular matter depends on the nature of the matter and of the action. This is determined by existing general law rules. However, the width of its functions and the courts' increasingly liberal approach to questions of standing in judicial review cases, means that it is highly likely to have standing to bring judicial review proceedings in health service related cases where it felt this to be necessary. As discussed yesterday this is certainly likely to be the case in relation to complaints from Patients' Forums as the CPPH's functions are so much tied up with those of forums.

4. Flexibility over Configuration of PCT Patients' Forums and Consultation

You expressed concern over the issue of forums working together, in particular the prospect of unnecessary duplication of effort and resources and working in a complementary way were issues for you.

As you know the provisions now enable an ideal platform for flexibility of structure to reflect subject and geographical circumstances. The critical issues therefore are to ensure that without losing that flexibility we put in place arrangements that as you say make best use of resources and have the greatest impact for patients and the public. We intend to involve stakeholders fully in the development of the working arrangements for forums. We intend there to be partnership arrangements developed whereby one PCT forum takes a lead on a specific issue, for example the commissioning of ICAS. One important example that I know you are concerned about might be a PCT forum taking the lead in collecting and analysing the data relating to a specific cross-boundary scrutiny exercise being undertaken by a Social Services Authority Overview and Scrutiny Committee.

I think the important issue to stress is that these arrangements will need to be developed through effective communication and will result from the continuous development of partnership working right across the system. The CPPH will perform the critical role of developing best practice and providing resource material on how to ensure effective practices and outcomes are achieved.



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What does
this mean?

I think it is important to remember that Patients' Forums are independent bodies. It will be up to Forum members to decide the exact nature of their collaboration. The regulations that will be prescribed will provide the structure for that collaboration, and it will be vital that we test out real life scenarios in the formulation of those regulations. I certainly think the simulation idea we discussed would be an excellent way to unpack some of the complexities that inevitably result from crossing political, geographical and service specific boundaries.

3. Consulting on the Merger of PCT Forums

As I understand it you are concerned that any plan to merge PCTs should also include the consequential issues of merging PCT forums.

As Hazel made absolutely clear yesterday it could not be the case that one could be divorced from the other. Patient and public involvement is not to be taken as an adjunct; it is and will be at the heart of any decisions about health services. For this reason consultation will need to be extensive and must certainly include those bodies with specific functions in relation to changes in health services, notably of course Overview and Scrutiny Committees. But as Section 11 of the Health and Social Care Act makes clear there will also be a specific duty on NHS bodies to involve and consult the public and representatives of the public on changes that will impact on services.

If following consultation it was decided that two or more PCTs should be merged, it would then follow that the relevant Patients' Forums would merge too because the legislation requires that PFs shall be based on PCTs, one PF for each PCT. But the point I am making is that such a decision would only be taken following consultation in which the merger of the PFs would be just as much an issue as the merger of the PCTs.

5. Consultation

You asked for clarification about how the existing consultation arrangements that currently exist in relation to CHCs will be fully reflected in the new arrangements.

As I have mentioned above the Health and Social Care Act provides fully for the involvement and consultation of the public and its representatives on the planning of the provision of services, development and consideration of proposals for changes in the way those services are provided, and decisions to be made by that body affecting the operation of those services.

Additionally there is a duty on NHS bodies to consult OSC [on substantial variations and developments in services.]

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These duties do not replicate the LHC provisions. This is deliberate. What we have provided for is a cultural change whereby the PPI system is actually part and parcel of the decision-making process. At the same time we have put in place appropriate involvement and consultation duties to ensure that no changes to services to patients and the public can be made without patients and the public having their views sought first.

7. Independence of the Commission for Patient and Public Involvement in Health

You sought confirmation that the amendment to allow the CPPIH to undertake national reviews would not preclude it from taking appropriate action on receipt of referrals from Patients' Forums.

I can confirm that this amendment does not restrict in any way the existing function to act in relation to matters of concern about the safety or welfare of patients as drafted in clause 19(6). In fact the amendment to allow Patients' Forums to refer directly to the CPPIH strengthens further the existing function.

8. Powers of Direction Over the Commission

You were concerned that the powers of direction in the Bill could be inappropriately used to fetter the work of the CPPIH, and indeed restrict any work it did that might reveal criticisms of Government policy.

As Hazel confirmed yesterday these direction-making powers would not relate to such matters. The Secretary of State's direction making power is only in respect of functions it carries out that are ancillary to its core functions: it is not a general direction making power. It is a power to make the carrying out of ancillary actions subject to directions and is therefore of a limiting nature only. It could be used for example if the Secretary of State thought that the CPPIH was "carrying out additional actions that were not necessary or expedient for the purposes of or in connection with the exercise of its functions."

9. Independence of PCT Patients' Forums

Although it did not come up in our discussions yesterday I know that ACHFW and others are concerned about the ability of PCT forums to speak on their own behalf on matters relating to wider health issues such as health determinants and health inequalities - and not just represent the views of the public.

The Bill is quite explicit about this. As you know the primary purpose of all forums is to enable patients and the public to voice their own views and opinions. However, you will see from the wording of clause 15(2)(c) it is clear that Forums can make reports etc to the trust about matters relating to services and not just on the services themselves; and clause 15(4) is equally wide as under that Forums will be able to make representations or

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referrals to whoever they consider most appropriate about any matter of which they become aware in the course of exercising their general functions

10. PCT Forums Distinguishing Independence

We agree that it is important for PCT forums, with their new functions, to be clearly identifiable to the public, and indeed distinct from the PCT itself. As we confirmed yesterday this is a matter that we intend to consult widely upon, using the TAB in particular, but more extensively too. Certainly involving all those who responded to the 'listening exercise' would be a good starting point for this.

This specific issue is part of a much larger programme of work - communicating the whole system to patients and the public, as well as to the NHS, to local government and the voluntary sector, and all other stakeholders. We are currently working on the development of the communication strategy and will be consulting the TAB and others on this as it develops.

II. Accommodation for PCT Forums

As we discussed yesterday we have to make sure that PCT Forums are in a location where members of the public can access them and it might be that some offices of the PCT might be for example, in community hospitals, health centres etc. There will be other options too e.g. using vacated CHC premises, but there are only 184 of these and we will need over 300 offices. If we decide to use PCT premises we would ensure that the PCT Forum was clearly identified as separate from the PCT so as not to compromise its independence from the NHS.

I need hardly emphasise the practical issues - there will be a finite source of money for setting up the CPPH and Patient Forums. We will need to weigh up using premises that could be free of charge and recruiting more staff to the system, against spending large sums of money on new accommodation at the expense of staff to populate it.

12. PCT Forums and Their Wider Role in Relation to Commissioned Services

As I understand it you are querying how the PCT forums will, on the one hand perform their role of monitoring and reviewing services that the PCT provides, whilst on the other take a clear view of services it commissions but which are monitored by other forums. In particular I think you were querying whether a committee structure was appropriate?

This will be a matter for the resources pack we produce for Patients' Forums - on which we will seek the views of stakeholders. The legislation does not preclude Forums from having sub committees [reg 6 can provide for it under 18(2)(f)]. Additionally, through a

sub-committee arrangements specific subjects or services could be looked at across trust boundaries - pulling in the views of relevant forums.

However we are trying to move away from a model based on a plethora of committees and will be encouraging forums to work in a way that is inclusive as well as practical.

As we discussed yesterday the way by which many of these issues will be addressed in practice will be through flexible membership arrangements. The Bill provides for membership on the PCT forum to include forum members from other trusts within the PCT area, but as was suggested yesterday co-opting for specific issues or activities from other relevant trusts will also be appropriate. Again, consultation when regulations are being formulated will be extremely helpful on these issues.

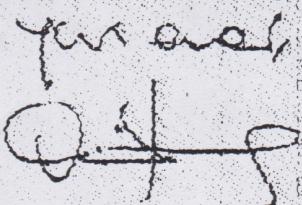
13. Resources

I completely understand your concern here. However, the issue of financial resources available for the whole system is still subject to the Spending Review process, and unfortunately I am simply not in a position to give a definite response to your legitimate concern. You asked what a baseline figure might be but again I hope you will understand that it would surely not be fair of me to give a baseline for this area of spending without offering news about baselines for other areas of spending which other people are equally concerned about. I should say that it would not help the cause of securing maximum resources for patient and public involvement were I to go ahead and pre-empt decisions now.

Nevertheless it is our stated commitment to ensure that the new arrangements are resourced so that they work successfully in practice. It is not our intention to under-resource this area of spending.

You also asked about staffing levels. They will of course be determined by the resources available and what is spent on the capital costs of setting up the system. Much as I would like to, I am afraid that I cannot give you staffing levels now.

I hope you find this letter helpful. I am sure you will agree with me that it is high time to get the whole system underway, we believe that the Parliamentary process has produced a very strong outcome, and it is now time to make it work for patients and the public.

Yours sincerely,


David Lammy

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