

## **Watchdog or Lapdog? - the NHS plan and patient empowerment**

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The current Labour government has demonstrated a clear fiscal commitment to the National Health Service. Gordon Brown's budget, in March, announced not only an extra £2bn for the NHS this year, but a sustained increase of 6.1% above the rate of inflation for the next four years, with the 'aspiration' of bringing funding in to line with the much-vaunted European average by 2004. Despite this fact there is a growing crisis of confidence in the NHS, in particular a widespread perception that not enough is being done to protect the vulnerable within the health service.

Patient confidence has been particularly rocked by a series of scandals resulting from either inadequate scrutiny or poor clinical judgement, notably the Shipman case, the Rodney Ledward case, the baby deaths at Bristol Royal Infirmary and the organ scandal at Alder Hey hospital.

Restoring patient confidence will require more than additional resources. The public need to be reassured that scrutiny will be intensified; that there will be greater transparency of decision making; that their complaints will be listened to and that where there are problems, as there inevitably will be, they will be detected quickly and dealt with immediately. Crucially, the public need to feel that the NHS has an effective Watchdog with the power to act on their behalf.

While the NHS Plan's stated ambition is to create 'a system designed around patients ... with more power for patients', significant concerns have been raised about the new structures for complaints, scrutiny and patient involvement outlined in Chapter 10 of the National Plan. Addressing these concerns will be central to any restoration of public confidence.

### **Independence**

The primary quality of an effective watchdog is that it is independent of those whose performance it is monitoring.

The proposals do not seem to meet many of the key requirements for patient empowerment. We are particularly concerned at the lack of independence of the replacement bodies including the patients advocacy and liaison service (PALS) and patients' forums. Independence is particularly important in relation to the advocacy role.

MIND Policy and Parliamentary Unit (16th October 2000)

### **Patient Advocacy and Liaison Service (PALS)**

According to the plan PALS will be established in every trust and perform a role that combines 'meeting and greeting' in hospital reception areas, and assisting patients with problems. They will 'steer' patients towards the complaints system 'where necessary'. Concerns about PALS include the following:

- They are to be hospital-based. Many patients would prefer to raise concerns or complaints at an independent setting away from the trust. Many are unlikely to be willing to relate details of a distressing incident in the same place that it occurred to colleagues of those who are the subject of the complaint. In October 1999 the Health Select Committee recommended that patients' advocates should be based in every CHC: "The advocates should be accountable to the regional office through the CHC...They should develop links with, but maintain their independence from the trust and health authority complaints manager."
- If PALS are employed by the trusts they cannot be considered truly independent. And most importantly patients will not perceive them to be independent. The use of the word 'advocate' could be misleading. It is commonly accepted that advocates work with individuals and that they are independent of service providers. "Advocacy must be free from conflicts of interest". Advocacy and liaison are very different functions that should not be confused.

There is a significant difference between steering patients and families toward the complaints process 'where necessary', and the proactive role that CHCs currently play in providing independent support and advice for patients and their families. Effective hospital-based patient representative schemes already exist but at present they function as a complement to CHCs, not an alternative.

If the PALS are employed by the NHS, they will struggle to be truly independent: they are likely to be biased in recognising problems or when seeking to identify solutions to the same. Moreover, they will not be seen as independent by patients. Hospital based advocates have a role and effective schemes already exist. But they are a complement to the independent support and advice provided by CHCs, not an alternative. Steps must be taken to ensure that PALS will be, and will appear to be, genuinely independent.

### **Local Authority Scrutiny**

The introduction of a scrutiny role for local authorities introduces a valuable degree of democratic involvement to NHS decision making; however, it also introduces the potential for conflicts of interest to arise and for the scrutiny process itself to be compromised. As health and social services become 'joined up', Councillors will increasingly be called upon to scrutinise services in which their local authority has joint responsibility for funding and provision. They will not, therefore, be independent of the services they are scrutinising.

CHC members are currently obliged to sign a Code of Conduct, which prohibits them from being influenced by "*personal, social, political, professional or business relationships*". It is improbable that Councillors on a local authority scrutiny committee could be subjected to a similar Code, requiring them to eschew political influence.

## **Fragmentation**

The NHS Plan fragments part of the work of CHCs across a number of new bodies and gives no indication as to who will perform other of their current functions. Concerns have been raised that the disparate bodies outlined in the plan may lack the coherence to perform their functions effectively.

The fragmentation of the monitoring function, currently performed by CHCs, means that it will not be possible for a single body to monitor the whole of a patient's experience. Many patients have complex problems involving a number of services. For example, the elderly patient whose problems may span from acute care, to primary care, to community care and even to residential care. A fragmented system, such as that proposed, will mean that those seeking advice or help with a complaint will be required to seek assistance/redress from a range of different bodies. At present one body, the CHC, is able to deal with the full complexity of a patient's experience.

The danger in separating scrutiny and monitoring from complaints work is that the broader patterns which emerge from individual complaints, or from problems in local health service provision, will never come to light. This could mean that medical blunders such as those associated with the Ledward case fall through the gaps.

Too often confidence in public bodies is undermined by the perception of poor administrative efficiency. The proposed fragmentation of CHCs' role has led to concerns about the administrative and resource efficiency of the new bodies. Each of the new bodies: PALS, Patients' Forums, Independent Local Advisory Forums, and scrutiny committees will need to be adequately resourced if they are to function effectively. In addition, the new bodies will need the support of a professional secretariat and in many cases additional staff with specialist health experience. They will also all need to have in place mechanisms for sharing concerns and exchanging good practice. If the new structures are not to be cumbersome and ineffective it would make sense both fiscally and operationally for all/some of these functions to be undertaken by the same independent body.

A joined up watchdog may better serve a 'joined-up' health service.

## **Statutory Powers**

Statutory regulations issued in 1996 detail the specific rights and responsibilities of CHCs. These include the right to be consulted, the right to require information from health authorities, the right to inspect and report on hospital and other facilities in which NHS patients receive treatment or care, and the right to refer contested plans to the Secretary of State for Health. Despite widespread awareness that these rights required extension, specifically to the primary care and independent sectors, they, or in some cases the threat of legal action based on them, have been powerful tools in gaining a fair deal for patients and local communities. The NHS Plan makes no mention of statutory rights for any of the new bodies. If the current legal powers of CHCs are not attached to the new bodies, patients' rights in the new NHS will be diminished rather than strengthened. In particular, the Patients Forums and independent advisory forums could prove to be little more than 'sounding boards' or focus groups, whose suggestions and recommendations can be easily ignored.

## **National co-ordination**

There is a lack of provision in the NHS Plan for a national overview of patient representation and involvement. No single body will be responsible for identifying national patient concerns, and representing these concerns to both the Department of Health and other national bodies.

"There is a strong case for a national network of organisations to promote the public interest in health care...ACHCEW has been effective in raising important points of concerns about the standard of care provided by the NHS. Other national organisations may not have the same independence of central government, or, therefore, contribute in the same way to the accountability of the NHS."

Sir Donald Irvine CBE – President, General Medical Council

There is a clear requirement for a national body to take on a range of functions including: training of staff and volunteers, exchange of best practice, establishing performance standards, the provision of expert advice, legal services, human resources, and research and publications.

Without a national body taking on a co-ordinating role for each of these functions administrative efficiency will be poor and it is likely that there will be significant inconsistencies in the quality of patient representation and involvement throughout the country. Patients and the public should be able to expect the same standards of representation regardless of where they happen to live.

## **Conclusion**

A range of eminent bodies has addressed the issues surrounding complaints work and patient representation over the past year and each of them has recommended an enhanced role for CHCs:

- In July 1999 the Health Select Committee recommended that 'the remit of Community Health Councils should be extended to include the activity of the independent sector.' Later in the year the Committee recommended a further expansion in the role of CHCs including a clearer remit for giving support and advice to patients and relatives with complaints.
- Following an evaluation of the effectiveness of the NHS complaints procedure, conducted last year, the Public Law Project also recommended a formal role for CHCs in assisting complainants.
- In April 2000 an independent commission chaired by Will Hutton raised concerns about how the interests of the public are represented in the NHS. The Commission considered evidence from patients' representatives, members of the public, and NHS organisations and staff. In its final report the Commission recommended that 'The network of community health councils should be strengthened by extra public funding and an enhanced statutory role as patient watchdogs and advocates'.

Across the health community there is a clear consensus that the NHS needs a trusted, effective, independent Watchdog. The Government's commitment to patient empowerment is a welcome development in this context and many of the 'changes for patients' proposed in the NHS Plan have enormous potential. However, if patients and the public are to be meaningfully empowered, the new systems for complaints, patient representation and involvement will need to be independent of the management structures of the trusts, the NHS and the Department of Health. They will need to be integrated both locally and nationally, and they will need to be given sufficient statutory powers to fulfil their duties effectively. As currently proposed, the new bodies do not meet these essential criteria.