

## **Health & Social Care Bill 2011**

### **House of Lords Committee stage**

#### **Briefing note 5: The NHS Commissioning Board**

##### **Clause 6 and Schedule 1 (Amendments 48-59) for Wednesday 9<sup>th</sup> Nov**

This model of accountability to Parliament with a new Board supporting clinical commissioning groups (which have neither contiguous area structures nor comprehensive responsibilities) is an inadequate replacement for the existing arrangements. **It represents a dilution of the Secretary of State's duties in substance and in form.**

In substance it is inadequate because of the **severance of the duty** under the 2006 Act to 'promote' from the duty to 'provide'. In form it is inadequate because the functions of the Department of Health will now be exercised at arms length from the Secretary of State by a body that is not to be regarded as a servant or agent of the Crown (see Schedule 1(1)).

**The creation of a body independent of the Secretary of State to support a lesser duty than at present to hold health service commissioners to account is inconsistent with the current duty of the Secretary of State to provide health services throughout England.**

Furthermore, Government policy is only to establish Non Departmental Public Bodies "as **an absolute last resort.**"<sup>1</sup> The policy includes a requirement for **any proposal to create a new NDPB to be accompanied by a fully costed business case** and, among other things, evidence that "the need for a new NDPB to deliver the function or activity (as opposed to an existing body or other type of public body)." **Where is the fully costed business case and the evidence of need for a new NDPB?**

**Public support will rapidly dissipate following rationing decisions by a non-departmental public body.**

#### **Introduction**

Clause 6 establishes the NHS Commissioning Board as an arms length body with executive responsibility for the allocation of around £80 billion of annual NHS expenditure.

It radically reduces ministerial responsibility for the NHS and undermines the power of the Secretary of State to discharge his or her principal duty to promote the health service throughout England.

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<sup>1</sup> Cabinet Office: Categories Of Public Bodies: A Guide For Departments, April 2011 [http://www.civilservice.gov.uk/wp-content/uploads/2011/09/Classification-Guidance-2011\\_tcm6-38852.pdf](http://www.civilservice.gov.uk/wp-content/uploads/2011/09/Classification-Guidance-2011_tcm6-38852.pdf)

The prospective chairman of the NHS Commissioning Board, Professor Malcolm Grant, said the clause effects an “extraordinary transformation of responsibility within the NHS” that was “not delegation but passing over the responsibility.”<sup>2</sup>

However, although responsibility for major resource allocation decisions is transferred, the Board will not operate under the duties currently imposed on the Secretary of State by the 2006 Act

### **The NHS Commissioning Board will be arm’s length from the minister**

Clause 6 establishes the Board as a non-departmental public body, which is defined as “A body which has a role in the processes of national government, but is not a government department, or part of one, and which accordingly operates to a greater or lesser extent at arm’s length from ministers.”<sup>3</sup>

It will have executive responsibility for the allocation of the majority of the NHS budget.

As an independent body corporate it will have responsibility for holding CCGs to account. Schedule 1 provides that the Board is not to be regarded as a servant or agent of the Crown, and that its property is not to be regarded as property of the Crown.

### **The Clause 20 mandate**

The Government argues that the Secretary of State’s power under Clause 20 to set out a mandate for the Board means that the minister retains responsibility for the NHS. However, there are already indications that this responsibility is slipping away.

According to Professor Grant the mandate should not be an annual document: **“The mandate I think should not be for a single year but 2 years or possibly 3 years if we’re going to have the Board running properly and strategically.”**<sup>4</sup>

Furthermore, according to Professor Grant the mandate **will reduce** ministerial responsibilities:

“So far as a matter is within the mandate of the Board it’s not within the jurisdiction of the Secretary of State....”

### **Transfer of responsibilities will undermine budgetary control of health expenditure**

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<sup>2</sup> <http://www.parliamentlive.tv/Main/Player.aspx?meetingId=9174>, at 10.48:29

<sup>3</sup> Cabinet Office: Public Bodies: A Guide for Departments. Chapter 2: Policy and characteristics of a Public Body, June 2006.  
[http://www.civilservice.gov.uk/wpcontent/uploads/2011/09/2\\_policy\\_Characteristics\\_tcm6-2480.pdf](http://www.civilservice.gov.uk/wpcontent/uploads/2011/09/2_policy_Characteristics_tcm6-2480.pdf).

<sup>4</sup> <http://www.parliamentlive.tv/Main/Player.aspx?meetingId=9174>, at 10.48:29

The NHS is internationally renowned for its tight control of the global health budget. Eleven years ago, the health secretary argued that several countries with social insurance systems, where independent bodies often have budgetary control, had sought to emulate that control for fiscal reasons.<sup>5</sup>

There is currently widespread public acceptance of NHS decisions. They have legitimacy because even though they may involve rationing, they are backed by ministerial authority and rooted in the democratic system.

**Public support will rapidly dissipate following rationing decisions by a non-departmental public body.**

### **The Board would be a new Quango**

Non-departmental bodies are the most common central government body that can be described as a 'Quango'.<sup>6</sup>

When in 2010 the Government announced a "bonfire of the Quangos" its stated intention was "**to increase accountability** by bringing functions previously discharged by public bodies back in to central departments, thus making ministers directly responsible for the decisions taken."<sup>7</sup> **The establishment of the Board will have the opposite effect.**

Furthermore, Government policy is only to establish Non Departmental Public Bodies "as **an absolute last resort.**"<sup>8</sup> The policy includes a requirement for **any proposal to create a new NDPB to be accompanied by a fully costed business case** and, among other things, evidence that "the need for a new NDPB to deliver the function or activity (as opposed to an existing body or other type of public body)." **Where is the fully costed business case and the evidence of need for a new NDPB?**

**Allyson Pollock**, Professor of Public Health Research and Policy at Queen Mary, University of London

**David Price**, Senior Research Fellow at Queen Mary, University of London

**Peter Roderick**, public interest lawyer

**Tim Treuherz**, ex Head of Legal for Vale of White Horse District Council

**8<sup>th</sup> Nov 2011**

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<sup>5</sup> House of Commons. NHS Plan 2000. London: HMSO.

<sup>6</sup> [http://www.civilservice.gov.uk/wp-content/uploads/2011/09/2\\_policy\\_Characteristics\\_tcm6-2480.pdf](http://www.civilservice.gov.uk/wp-content/uploads/2011/09/2_policy_Characteristics_tcm6-2480.pdf).

<sup>7</sup> The Commons Public Administration Committee - Fifth Report - Smaller Government: Shrinking the Quango State, Jan 2011

<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpubadm/537/53703.htm>

<sup>8</sup> Cabinet Office: Categories Of Public Bodies: A Guide For Departments, April 2011

[http://www.civilservice.gov.uk/wp-content/uploads/2011/09/Classification-Guidance-2011\\_tcm6-38852.pdf](http://www.civilservice.gov.uk/wp-content/uploads/2011/09/Classification-Guidance-2011_tcm6-38852.pdf)