

Bury the bill

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The proposed reforms to the Health and Social Care Bill would leave it unfit for any purpose

In January we judged it too early to let the Health and Social Care Bill out of the lab.⁽¹⁾ Its proposals had no clear rationale, lacked coherence, and looked like costing more than they would save. Since then, the bill's flaws have become only more obvious. Instead of further tinkering, it would be better for the NHS, the government, and the people of England to sweep the bill's mangled remains into an unmarked grave and move on.

Activity over the past five months has continued at the same frenetic pace set by the publication of the white paper *Equity and Excellence: Liberating the NHS*, two months after last year's general election. This activity has included the bill's second reading in the House of Commons, a two month committee stage, and (in response to growing criticism) an unusual stopping of the legislative clock for an eight week "listening exercise." The group set up to do the listening, the NHS Future Forum, formally reported on 13 June, and the next day the government accepted the bulk of its recommendations. Amendments to the bill will return to the Commons, and an amended bill is expected to clear the house before it rises for the summer recess on 19 July.

Dead man walking

Surprisingly, it was the mild mannered grandees of the UK Future Forum who administered the coup de grâce. Competition was the beating heart of the bill, and the forum ripped it out. The bill had originally envisaged turning Monitor, the regulator of foundation trusts, into an economic regulator for the entire health and social care sectors. Its main duty would have been to promote competition where appropriate and regulate where necessary. Substantial tracts of the bill were devoted to how the rejigged Monitor would work and how competition would be promoted.

The forum had other ideas and called for the promotion of competition to be dropped as Monitor's primary duty. Instead, "competition should be used as a tool for supporting choice, promoting integration and improving quality and must never be pursued as an end in itself." Private providers should not be allowed to cherry pick the most profitable patients, and the

government should not seek to increase the role of the private sector as an end in itself.⁽²⁾ The government accepted all this⁽³⁾—but with such alacrity and so little obvious soul searching that some have doubted the government’s good faith.

Despite this fatal blow, the forum had come not to bury the bill but to address its weaknesses. Some of its recommendations were to leave well alone; others were to slow down the pace of reform. But, worryingly, the forum also recommended stripping in new layers of bureaucracy. Worst affected would be the new clinical commissioning groups (previously known as GP consortiums, the replacement for primary care trusts). The groups would now have to include a hospital doctor and nurse and to consult clinical senates, clinical networks, patients, and local health and wellbeing boards. Local authorities can still appeal against their decisions over major service changes, and a new citizen’s panel will examine how choice and competition are working.⁽⁴⁾ Taken with the forum’s other recommendations, this would have left the NHS with a proportion of bureaucrats similar to that in the Austro-Hungarian empire on the eve of the first world war—and about as flat footed.

Just as no one believed the white paper’s claim that 45% of NHS management costs would be saved while GP consortiums and a National Commissioning Board were swapped for primary care trusts and strategic health authorities, now no one can understand how the managerial costs in an NHS refashioned along the lines suggested by the Future Forum wouldn’t exceed what they are now.⁽⁴⁾⁽⁵⁾

And still the most urgent problem facing the NHS—the need to make £20bn (€23bn; \$32bn) in efficiency savings over four years—goes unaddressed. Instead we have reforms that “look like a (highly complex) solution in search of a problem.”⁽⁶⁾ We are left asking the same question we did five months ago: what is the rationale for the changes proposed in the bill?

Looking forward and back

Dropping the bill doesn’t mean that some of the good ideas that have emerged over the past year can’t be implemented; the secretary of state for health has already acknowledged that much was possible without legislation. Primary care trusts could still be reformed to put the GPs in the driving seat, as was originally intended, thus obviating the need for vastly more disruptive, and costly, structural change. Choice of any qualified provider could still be limited to services covered by tariffs to ensure that competition is based on quality. Mr Lansley can still give free rein to his appetite for greater transparency and openness. Laws don’t need amending to require that foundation trusts hold their board meetings in public or that details of their contracts with primary care trusts are published. The gradual evolution

towards a mixed economy of providers, initiated by a previous Labour government, can continue without the bill.

The government agreed with criticisms that more work was needed on its plans for education and training—and will undertake further consultation before publishing more details later in the year. Similarly, the raft of public health reforms in the bill could be “parked,” pending the outcome of the consultation that followed the publication of the public health white paper, *Healthy Lives, Healthy People*. If legislation is needed it can be introduced—in good time.

So what lessons can we salvage from this past sorry year? Firstly, “once in a generation” opportunities to reform the NHS are now seized on once every government. Secondly, dreaming up the reforms can’t be entrusted to one person, no matter how long he or she has observed the NHS from the opposition benches. (The fact that the new bill was several times longer than the original bill setting up the NHS should have sounded warning bells.) Thirdly, reality testing, such as that provided by the Future Forum at the 11th hour, should have been scheduled much earlier in the process. And lastly, the breakneck speed that has characterised the legislative programme since the beginning has been both unnecessary and counterproductive.

Only a handful of companies in the world exceed the £100bn turnover of the English NHS; none would have embarked on change in this harebrained fashion. This is the take home message for the next government that spots a once in a generation opportunity to reform the NHS.

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