

Dear Members of Oxfordshire JHOSC

The impact of the Health and Care Bill on JHOSC

A. The role of scrutiny

The Health and Care Bill is likely to change the functions of local HOSCs. The government wants its legislation to be implemented from April 2022. Until then HOSCs will exist in their current form. According to existing law, HOSC may scrutinise and challenge any change in the provision of health care which it considers may have an effect on the health of its local population. *21. (1) A local authority may review and scrutinise any matter relating to the planning, provision and operation of the health service in its area.* [Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.]

If the proposed legislation remains unchanged, we would see a power shift from local authorities to the system level, with a resulting loss of local accountability.

The Centre for Governance and Scrutiny (CFGs) is concerned that *'a reduction in local accountability, and the drawing of increased intervention power into DHSC and the Secretary of State, will make the design and delivery of services more remote and less relevant to local people's needs. This may be exacerbated by the drawing of commissioning up to the system level.'*

<https://www.cfgs.org.uk/wp-content/uploads/2021-02-19-health-wp-explainer-final.pdf>

Question 1. What concerns about health scrutiny and the role of HOSCs, as proposed in the NHS Bill, does the committee have?

B. Referral powers

The Secretary of State is currently able to intervene only in such cases upon receiving a local authority referral. Most service changes are delivered and implemented locally – planned reconfigurations are developed at local or regional levels by commissioners. The current system for reconfigurations works well for the majority of changes, and this will be left in place for many day-to-day transactions.

These proposed reforms will add a new discretionary power to the NHS Act 2006 for the Secretary of State to give a direction to NHS bodies or providers **requiring a reconfiguration to be referred to him instead of being dealt with locally**. The Secretary of State will be able to use this call-in power at any stage of the reconfiguration process.

The proposals to extend the Secretary of State's powers have been controversial. Dr Jennifer Dixon, Chief Executive of the Health Foundation, has said that the new powers are 'politically driven and risks taking healthcare backwards.' <https://commonslibrary.parliament.uk/research-briefings/cbp-9232/>

The Local Government Association (LGA) is concerned that the proposal to extend the powers of the Secretary of State to intervene in NHS reconfigurations, may undermine or by-pass the existing powers and duties of local authority HOSCs in relation to local NHS reconfigurations, and continues to seek assurances from the Department for Health and Social Care (DHSC) that the existing powers and duties of local government will survive. <https://local.gov.uk/parliament/briefings-and-responses/health-and-care-bill-second-reading-house-commons-14-july-2021>

Contentious changes to hospitals could see our JHOSC sidelined, and local opinion ignored. The independent think tank, the Kings Fund has also expressed concern that *'Extensive new powers for the*

Secretary of State to intervene in local service reconfigurations bring the risk of political expediency trumping clinical judgement and a decision-making log jam – a far cry from the government’s stated ambition to reduce bureaucracy.’ And would create ‘*one of the biggest bureaucratic burdens in recent memory.*’ https://www.kingsfund.org.uk/publications/health-care-bill-house-commons-second-reading-briefing?utm_source=The%20King%27s%20Fund%20newsletters%20%28main%20account%29&utm_medium=email&utm_campaign=12509773_NEWSL_CS%202021-07-21&dm_i=21A8,7G4LP,MSY45B,U9KPL,1

The chief executive of the think tank the Nuffield Trust, Nigel Edwards, has added his voice to growing unease over the proposed new power for the Secretary of State to intervene at any stage of changes to NHS services, warning that ‘*It risks gridlock and a lack of innovation, and ministers themselves might come to feel it as a millstone around their necks.*’ <https://www.nuffieldtrust.org.uk/news-item/nuffield-trust-response-to-health-and-care-bill>

Earlier this year, Parliament’s Health and Social Care Committee called for clear criteria to be set out in the Bill on the proposed use of the Secretary of State’s powers to intervene in reconfigurations. However, according to the new Health Secretary, Sajid Javid, the Independent Reconfiguration Panel will be maintained, and ‘*will help to ensure that Ministers receive the necessary advice and information before making decisions.*’ <https://commonslibrary.parliament.uk/research-briefings/cbp-9232/> (p30)

Question 2. What impact will the proposed extension of the SoS’s discretionary powers to intervene directly in reconfigurations have on the functions of JHOSC?

The Explanatory Notes (EN) accompanying the publication of the NHS Bill state that HOSCs will still have ‘involvement’ in reconfigurations. To support this intervention power, the current Local Authority referral power, which is set out in regulations under the NHS Act 2006 will be amended to reflect the new process. However, according to the EN, ‘*This does not remove the local Health Oversight and Scrutiny Committee (HOSC) role or the requirement to involve them in reconfigurations.*’ <https://publications.parliament.uk/pa/bills/cbill/58-02/0140/en/210140en.pdf> (p62)

Question 3. What would ‘involvement’ in reconfigurations look like under the proposed Bill?

The Centre for Governance and Scrutiny says ‘*An NHS anchored by the needs of local people is an accountable NHS – health scrutiny provides a strong part of this accountability. We are going to continue to fight hard to ensure that health scrutiny is eventually bolstered, rather than diminished, by this legislation.*’ <https://www.cfgs.org.uk/an-update-on-the-health-and-care-bill/>
<https://www.cfgs.org.uk/?publication=possible-legislative-provisions-on-scrutiny-in-the-health-bill>

The House of Commons Public Bill Committee, which will scrutinise the Health and Care Bill, is now inviting written evidence from people with ‘*relevant expertise and experience or a special interest in the Health and Care Bill*’. <https://www.parliament.uk/business/news/2021/july/have-your-say-on-the-health-and-care-bill/>

Question 4. Will JHOSC make a submission to the House of Commons Public Bill Committee detailing its opposition to the removal of existing referral powers and making the case for not only preserving current functions but also extending HOSC scrutiny and overview duties, as set out in the Centre for Governance and Scrutiny papers? (see links above)

Question 5. What additional actions will JHOSC take to ensure that ‘health scrutiny is eventually bolstered, rather than diminished, by this legislation.’?

<https://www.cfgs.org.uk/an-update-on-the-health-and-care-bill/>

C. Local Democracy

The Local Government Association is rightly concerned that ‘no consideration [in the NHS Bill] is given to increasing accountability of the NHS to local people.’ They go on to urge the Government ‘to ensure that any new powers will not undermine local democratic accountability mechanisms.’

<https://local.gov.uk/parliament/briefings-and-responses/health-and-care-bill-second-reading-house-commons-14-july-2021>

Question 6. What impact will the proposed changes have on local democracy and the capacity of local councillors to determine what is in the best interests of their residents?

Question 7. What impact will the proposals have on transparency, openness and accountability of decision making across the Buckinghamshire, Oxfordshire and Berkshire West Integrated Care System (BOB ICS)?

Question 8. The BOB ICS, which will be put on a statutory footing if this Bill becomes law, has already decided that a two-tier scrutiny function will operate across the geographical area. What impact will this have on Oxfordshire HOSC to carry out its current functions, in the interests of improving the health of residents?

D. Public involvement and consultation

The Explanatory Notes say that a new section (14Z44) sets out requirements on Integrated Care Boards (ICBs) for involving the public (whether by consultation or otherwise). ICBs must make arrangements to involve individuals to whom services are being or may be provided in the commissioning process. Under 14Z44(2), individuals must be involved in planning commissioning arrangements; in developing and considering proposals for changes in the commissioning arrangements, where those proposals would have an impact on how services are provided or the range of health services available; and in decisions that would likewise have a significant impact.

Significantly, this section also contains the following proviso:

‘Under 14Z44(3), this duty does not apply in cases where a trust special administrator drafts a report concerning an NHS Trust or Foundation Trust and NHS England and the Secretary of State have already made decisions about actions to take. <https://publications.parliament.uk/pa/bills/cbill/58-02/0140/en/210140en.pdf> (p64)

Question 9. What impact would this new section have on the functions of JHOSC?

Question 10. What impact would the proposed changes have on the involvement, engagement and participation of local people in the decisions that affect their health care?

We look forward to the committee’s answers to our questions.

Yours sincerely

Bill MacKeith
Secretary, Oxfordshire Keep Our NHS Public