Local Government Group

**LG Group Executive**
13 January 2011

**Item 4**

# Equity and excellence: Liberating the NHS – Progress report on the NHS White Paper and LG Group responses

## Purpose of report

To report on recent developments on the NHS reforms, their implications for local government and to seek further direction on the Group's response to them.

## Summary

This report:

1. summarises recent announcements on the proposed reforms to the NHS
2. summarises the LG Group's responses to date
3. seeks direction on the main areas for attention during the progress of the Bill after it is published this month
4. seeks agreement for the LG Group, on behalf of local government, to support the work of the Department of Health's Responsibility Deal, encouraging employers and manufacturers to help people make healthier life choices.

## Recommendations

1. The Group Executive endorses the Group's proposed activity in response to the NHS and Social Care Bill; and
2. confirms LG Group support for the Department of Health's Responsibility Deal.

## Action

The LG Group's response is developed in consultation with councils and stakeholders.

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## Background

1. The White Paper, *Equity and excellence: Liberating the* NHS, published on 12 July, outlined the Government's proposals for the future of health services and improving health outcomes. The key proposals were:
2.
   - 2.1 a major restructuring, not just of health services but also of council's responsibilities in relation to health improvement and the coordination of health and social care
   - 2.2 the abolition of Strategic Health Authorities and Primary Care Trusts and the creation of GP commissioning consortia to commission the majority of health treatment
   - 2.3 the creation of an independent NHS Commissioning Board to oversee GP commissioning and commissioning some health services, such as community maternity services and specialised health services
   - 2.4 a lead role for local authorities in public health and leading the coordination of health and wellbeing through the creation of high-level Health and Wellbeing Boards, in partnership with local health commissioners and providers
   - 2.5 greater integration in the planning, commissioning and provision of health, wellbeing and care services
   - 2.6 the abolition of health overview and scrutiny committees
   - 2.7 creation of a national Health Watch for England as the national voice of patients and the public and the transition of Local Involvement Networks (LINks) to local Health Watch
   - 2.8 new roles for Monitor and the Care Quality Commission (CQC) with Monitor becoming the economic regulator for all health and social care providers and CQC becoming the quality inspectorate for providers.

3. Since the publication of the White Paper, the Chairman, senior members and officers have met with a number of Ministers, the NHS Confederation, the BMA and much other health professional bodies to explore issues of common interest, particularly GP led commissioning and public health.

4. During November and December, the Department of Health responded formally to issues raised in the White Paper consultation through the Command paper. It published a Public Health White Paper, and consulted on outcomes frameworks for the NHS, public health and social care. In addition it issued a suite of papers that provided more detail on aspects of the reforms.

5. This report summarises the key issues from them for local government ahead of the anticipated publication of a Health and Social Care Bill later this month.

**Liberating the NHS: Legislative framework and next steps**

6. The Government published its response to the consultation on the NHS White Paper as a Command Paper. The Local Government Group had submitted an extensive response to the White Paper, based on issues previously reported to the Group Executive.

7. We are pleased to see that the Government has accepted several of the changes we proposed in our response, and they have adjusted their proposals. Below is a summary of the changes from the original proposals in *Equity and Excellence: Liberating the NHS*, that will be reflected in the forthcoming Health and Social Care Bill, due to be published in January 2011.

**Main changes to the original White Paper proposals**

8. Extend the transition period for health providers, in particular, retaining some of Monitor's current controls over foundation trusts.

9. Significantly strengthen the role of health and wellbeing boards, introduce a new statutory responsibility to develop a "joint health and wellbeing strategy" to local authority and NHS commissioner will be required to have regard to.

    9.1 The LG Group proposed that Health and Wellbeing Board be put on a statutory footing with additional powers and duties.

10. Introduce a phased approach to GP commissioning by setting up a 'pathfinder' programme.

    10.1 The LG Group proposed that the Government build on existing good practice and, wherever possible, to 'test bed' new arrangements.

11. Accelerate the introduction of health and wellbeing boards through the early implementers programme.

    11.1 The LG Group proposed that the DH should 'pilot' Health and Wellbeing Boards in a sample of areas to develop a greater understanding of the barriers and drivers for a more integrated, council-led approach to health improvement.

12. Create a more distinctive identity for Health Watch England, led by the Care Quality Commission.

13. Increase transparency in GP commissioning, by requiring all consortia to have a published constitution in line with the principles of good governance.

14. Maternity services to be commissioned locally.

    14.1 The LG Group made this proposal.

15. Health scrutiny powers to be retained and expanded.

    15.1 The LG Group argued for health overview and scrutiny powers and duties to be retained separately from the Health and Wellbeing Board as an essential component of local democratic accountability.

16. Phased introduction of local authority commissioning of complaints and advocacy services and the flexibility to commission from a range of organisations.

    16.1 The LG Group proposed that councils should be able to commission complaints advocacy from the most appropriate and cost effective provider.

17. A formal role for GP commissioning consortia in support the NHS Commissioning Board.

18. All arms-length bodies to co-operate in carrying out their functions – in particular, the NHS Commissioning Board and Monitor will work jointly in setting prices for health treatment.

**Implications for local government**

19. The LG Group response to the Liberating the NHS included some of the most significant modifications to the proposals. Most notable among these are our call for Health and Wellbeing Boards to have a statutory footing, to retain a separate health overview and scrutiny function, independent of the Board, for local commissioners to commission maternity services and to make far more use of piloting and existing good practice to inform developments.

20. We welcome some of the new proposals. In particular, the extension of duties in relation to health scrutiny to all providers and commissioners of health services; and the new duty on GP consortia and Health and Wellbeing Boards to develop a joint health and wellbeing strategy that spans health, social care, public health, health inequality and health improvement, and may also address wider determinants of health.

21. We will be working with key council stakeholders to identify any further implications for councils in order for us to inform our lobbying on the Health and Social Care Bill when it is published in January 2011.

22. We will thoroughly scrutinise the Health and Social Care Bill when it is released to ensure that it mirrors the Government's stated intention of freeing up councils and communities to decide how best to improve health and wellbeing locally.

***Healthy Lives, Healthy People:* consultation on the funding and commissioning routes for public health**

23. The Public Health White Paper reiterates the core principle that functions should be devolved to the local level wherever possible. That means local authorities will take on primary responsibility for health improvement and where practical and appropriate, exercise some health protection function and take on some specific preventative services.

24. The document assumes that directors of public health (DsPH), employed by the local authorities but jointly appointed by PHE, will play the leading role in discharging local authorities' public health functions.

**Funding**

25. There are no hard figures for the money that will be allocated and the split between Public Health England (PHE) and local government. Early estimates suggest that current spend on areas that are likely to be the responsibility of PHE could be over £4bn. Key points are:

    25.1 ensure that the ring-fenced grant to councils is 'an appropriate size and where provision of a service is mandatory and will become a statutory function of local authorities, it will be supported by the transfer of the necessary resources, following the New Burdens principle.

    25.2 three principles routes of funding –

        25.2.1 PHE will fund public health by allocating funding to local authorities
        25.2.2 PHE will commission services via the National Commissioning Board
        25.2.3 PHE will commission or provide services itself.

26. The White Paper is clear that the decisions as to how services would be best commissioned will determine how much funding flows through the different parts of the system. It says the majority of the public health budget will be spend on local services, either commissioned via the NHS Commissioning Board (who may

choose to pass the responsibility down to GP consortia) acting on behalf of Public Health England, or led by local authorities through a ring-fenced grant.

27. It makes a distinction between the public health grant that local authorities will receive from DH/PHE, and other funding that local authorities already receive via the existing funding settlement to carry out a range of health protection functions and other functions that have a bearing on public health such as leisure, housing, education and social care. It says that local authorities will be free to integrate the management of these functions with their new public health responsibilities, should they wish.

28. Local authorities and directors of public health will have freedom to pool and align budgets locally as part of local application of community (place based) budgets where this is the best route to improving health and wellbeing outcomes.

29. There will be shadow allocations to local authorities for this budget in 2012/13 and the full budget will go live in all areas in 2013/14. The independent Advisory Committee on Resource Allocation (ACRA) to be asked to support the detailed development of Department of Health's approach to allocating resource to local authorities in due course.

**Implications for local government**

30. The DH intends to propose in the Health and Social Care bill that local authorities should be the lead commissioner for certain activities, to be funded by public health budget, including:

    30.1 Weighing and measuring of children
    30.2 Dental public health
    30.3 Fluoridation
    30.4 Medical inspection of school children

31. For everything else they are consulting on the activity which should be funded by the public health budget in each area. Their current suggestions for the division of responsibility are set out in **Appendix A**.

32. The Health and Social Care Bill will provide that secondary legislation could set out that local authorities should be mandated to provide or commission a particular service. It will not specify in significant detail how such services should be provided. The DH wants to make such a list of services as short as possible in order to give councils the maximum possible freedom. The consultation document poses the questions: which services should be mandatory for local authorities to provide or commission?

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**Item 4**

**The Operating Framework for the NHS 2011/12 and local government**

33. On 15 December, the DH published the Operating Framework for the NHS for 2011/12, the first full year of transition for these NHS reforms. As part of this PCTs will receive £648m to support the delivery of social care in 2011/12, in addition to the £150m for reablement services which is in their baseline funding. Further allocations of £622m and £300m respectively for social care and reablement are expected for 2012/13. PCTs and local authorities should work together on determining the most appropriate areas for investment as part of their Joint Strategic Needs Assessment (JSNA) process.

34. There Framework sets out a number of new commitments, previously trailed, to increase the number of health visitors by 4200 by April 2015 and to double the capacity of Family Nurse Partnerships by April 2015. There are other commitments on autism, military and veteran health, carers, dementia and cancer drugs.

35. Other key messages are:

    35.1 PCTs are expected to form 'cluster' arrangements by June 2011 to mitigate the risk of loss of capacity, while also helping fledgling GP pathfinder consortia to get established.
    35.2 PCTs should involve all GP practices in the 2011/12 commissioning process.
    35.3 PCTs must continue to consult with overview and scrutiny committees about substantive changes during the transition process.
    35.4 Shadow health and wellbeing boards should be established during 2011/12 prior to full implementation from April 2012.
    35.5 The £20bn efficiency challenge for the NHS has now been extended by one year to the end of 2014/15.
    35.6 GP consortia will not be responsible for tackling PCT debt accrued prior to 20121/12.

**Public Health Responsibility Deal**

36. David Cameron introduced the idea of "Responsibility Deals" in 2008 to tackle challenges that cannot be solved by regulation and legislation alone. He described them as: "a partnership between Government and business that balances proportionate regulations with corporate responsibility".

37. The coalition government has endorsed the idea and is proposing "light touch" regulation in return for co-operation from business and commerce. This has been described as "joint-ownership, not concessions for industry". The approach is based on shared responsibility rather than state regulation.

38. The first deal concerned waste, and the draft of the second one (Deal 2) addresses the public health problems associated with poor diet, lack of exercise and alcohol abuse.

39. John Ransford was invited by the Secretary of State to represent local government on the national responsibility board, and officers from relevant parts of the LG Group sit on thematic groups. The Secretary of State's objectives for the board are as follows:

    39.1 to enable, encourage and incentivise consumers to adopt a better diet and increase their levels of physical activity as part of a positive decision to lead a healthier lifestyle.
    39.2 to enable and encourage people to drink sensibly and responsibly.
    39.3 to extend the scope and effectiveness of occupational health services especially in small and medium-sized businesses – promoting a healthier lifestyle and reducing sickness absence.

40. Achieving these objectives will require "responsibility, innovation and partnerships within local communities" as well as nationally, hence the importance of local government involvement.

**Some implications for local government**

41. partnership members are expected to take an active role in helping the Responsibility Board to endorse a final version of the Deal, to which industry members will be invited to sign up.

42. local government is being seen as part of the challenge function on the Board, as a counterweight to retailers, trade associations and food/drink producers councils will be encouraged to support local responsibility deal strategies and industry engagement building on the national responsibility deal – this features in the Public Health White Paper.

43. there will be extra costs to local government, and the response is likely to be that these will be incorporated in the Public Health budgets.

44. many councils are likely to see the Responsibility Deal as a helpful extension of their current work with local businesses, and welcome the absence of new regulation.

45. some councils, however, may feel uneasy about the "light touch" approach to regulation, e.g., in relation to food labelling, food content, unit pricing of alcohol and aspects of licensing (the LGA is developing its position re the Home Office consultation on licensing, with an emphasis on the concentration of premises).

46. the local government sector, of course, has a great deal of experience in relation to all three pillars, which spread much further than public health units e.g. HR/occupational health, consumer protection, leisure, sport and culture.

**LG Group endorsement for the Responsibility Board's work**

47. The LG Group has been asked, as part of its membership of the Board, to support the key parts of the Deal and associated pledges. While this does not commit individual councils, it sets the framework for national and local collaboration.

48. By supporting the national negotiation and local implementation of the deal, local government can make use of the knowledge gained in the process to develop the resource argument around the Public Health White Paper.

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**Financial Implications**

49. There are major financial implications for councils from the White Paper proposals and we will work with our finance advisers to highlight them in lobbying and influencing strategy. These include:

    49.1 the level and nature of public health budgets to be transferred and staffing transfer arrangements
    49.2 the costs of Boards and Local Health Watch
    49.3 future arrangements for joint commissioning and pooled budgets, particularly children's services, learning disabilities and mental health, carers support and homelessness
    49.4 financial accountability arrangements for GP consortia and practices – including any overspending
    49.5 the NHS, flexibilities and community budgets
    49.6 the long term funding of social care and reablement services.

**Implications for Wales**

50. These proposed NHS reforms cover England only.

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## APPENDIX A

### Proposed Division of Responsibilities for Public Health Functions

| | |
|---|---|
| Weighing and measuring of children | Local authorities (LAs) |
| Dental public health | LAs |
| Fluoridation | LAs |
| Medical inspection of school children | LAs |
| Infectious disease | Public Health England (PHE) with support from LAs |
| All sexual health services | LAs (apart from contraceptive services which and screening will be commissioned by NHS Commissioning Board) |
| Immunisation | NHS Commissioning Board plus LAs to commission school programmes such as HPV and teen boasters |
| Standardisation and bio-medicines | PHE |
| Seasonal mortality | LAs |
| Environmental hazards | PHE with support from LAs |
| Screening | NHS Commissioning Board |
| Accidental injury prevention | LAs |
| Public mental health | LAs |
| Nutrition | PHE and some LA activity |
| Physical activity | LAs |
| Obesity programmes | LAs |
| Drug, alcohol and tobacco misuse | LAs |
| NHS health check programme | LAs |
| Health at work | LAs |
| Reduction and preventing birth defects | LAs and PHE |
| Prevention and early presentation | LAs |
| Dental public health | LAs with support from PHE |
| Emergency preparedness | PHE with support from LAs |
| Health intelligence | PHE and LAs |
| Children's public heath for under 5s | NHS Commissioning Board |
| Children's public health for 5-19 | LAs |
| Community safety and violence prevention | LAs |
| Social exclusion | LAs |
| Public health for prisoners | NHS Commissioning Board |