Browne Jacobson

Our analysis of the new NHS Long Term Plan

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08 January 2019

The NHS Long Term Plan has now been published following several days of snippets being fed to the media on the benefits which the Plan will seek to introduce. It sets out three main ambitions for future care provision:

- **making sure everyone gets the best start in life** – specifically looking at improving maternity and child care.
- **delivering world-class care for major health problems** – that is looking at some of the big issues such as heart attacks, strokes, cancer and mental health problems, including dementia.
- **supporting people to age well** – which means improving funding for primary and community care, to support independent living and care closer to home, as well as giving people a greater say in how they are cared for as they age.

Then it goes on to look at how these ambitions will be delivered with sustainability and transformation partnerships (STPs) and integrated care systems (ICSs), by looking at five main challenges:

1. Doing things differently: the NHS will give people more control over their own health and the care they receive, encourage more collaboration between GPs, their teams and community services, as 'primary care networks', to increase the services they can provide jointly, and increase the focus on NHS organisations working with their local partners, as 'integrated care systems', to plan and deliver services which meet the needs of their communities.

2. Preventing illness and tackling health inequalities: the NHS will increase its contribution to tackling some of the most significant causes of ill health, including new action to help people stop smoking, overcome drinking problems and avoid Type 2 diabetes, with a particular focus on the communities and groups of people most affected by these problems.

3. Backing our workforce: Increased NHS workforce, training and recruiting more professionals – including thousands more clinical placements for undergraduate nurses, hundreds more medical school places, and more routes into the NHS such as apprenticeships. The NHS will be a better place to work, so more staff stay in the NHS and feel able to make better use of their skills and experience for patients.

4. Making better use of data and digital technology: More convenient access to services and health information for patients, with the new NHS App as a digital 'front door', better access to digital tools and patient records for staff, and improvements to the planning and delivery of services based on the analysis of patient and population data.

5. Getting the most out of taxpayers' investment in the NHS: Working with doctors and other health professionals to identify ways to reduce duplication in how clinical services are delivered, make better use of the NHS's combined buying power to get commonly-used products for cheaper, and reduce spend on administration.

In terms of ICSs, the Plan envisages these will cover the country by 2021, which for the first time, sets a clear development timetable. Our experience is that no system is the same and that many have the main components in place, they just need to be set in a clear governance framework. This then enables the development and implementation of system plans in place and neighbourhood.

The digital revolution agenda, strongly advocated by Matt Hancock, also features prominently in the Plan. It is clearly integral to better care and protection, and enables the greater involvement of individuals in decisions about them. Understanding how to leverage and

procure better digital technology across regions, which can work with other systems nationally, is a major discussion point with clients to ensure the NHS pound is effectively spent. It is also important to look at existing systems and consider how from primary care/neighbourhood they can enable integrated care.

Legal overview

The expectations above are not unexpected and follow on from the shorter term framework of the Government's Mandate to NHS England published each year, which sets its objectives and budget. As to how the Long Term Plan will be met within STPs and ICSs, then each is expected to develop and implement its own strategies for the next five years. Many of our clients have anticipated this approach and are looking at effectively developing their own local Mandate to reflect local needs. This will allow multiple organisations to develop an overall plan and consider the needs which other locally developed documents, such as Joint Strategic Needs Assessment (JSNAs), have identified so they can meet their statutory and Long Term Plan objectives.

The Plan also considers the need for legislative reform as a mechanism to support more rapid progress, rather than being necessary because the current statutory framework prevents the delivery of the Plan. Specifically, it is noted that the framework encourages autonomous rather than collective working and has rules and processes for procurement, pricing and mergers that are skewed towards fostering competition rather than enabling integration. As a result the proposals put forward for change to legislation, which were invited by the Government, and which we have discussed with many clients during supporting their STP and ICS development work are (page 113 of the long term plan):

- **Give Clinical Commissioning Groups (CCGs) and NHS providers shared new duties to promote the 'triple aim' of better health for everyone, better care for all patients, and sustainability, both for their local NHS system and for the wider NHS.** These statutory duties on CCGs and trusts would further support them to work in tandem with their neighbours for the benefit of their local population and wider NHS. These new reciprocal duties would also contribute to supporting the wider goal of securing a stronger chain of accountability for managing public money within and between local NHS organisations.
- **Remove specific impediments to 'place-based' NHS commissioning.** The 2012 Act creates some barriers to ICSs being able to consider the best way of spending the total 'NHS pound'. Lifting a number of restrictions on how CCGs can collaborate with NHS England would help, as would NHS England being able to integrate Section 7A public health functions with its core Mandate functions where beneficial.
- **Support the more effective running of ICSs** by letting trusts and CCGs exercise functions, and make decisions, jointly. This is simpler and less expensive than creating an additional statutory tier of bureaucracy. It would mean giving NHS foundation trusts the power to create joint committees with others. It would allow – and encourage – the creation of a joint commissioner/provider committee in every ICS, which could operate as a transparent and publicly accountable Partnership Board. To manage conflicts of interest, any procurement decisions – including whether to procure – would be reserved to the commissioner only.
- **Support the creation of NHS integrated care trusts.** Since the repeal of NHS trust legislation in 2012, the NHS has limited options if it wants to create a new NHS integrated care provider (ICP), for example to deliver primary care and community services for the first time under a single, streamlined ICP contract. Remedying this would both reduce administration costs and help with clinical sustainability. It should also be easier for proposed organisational mergers to progress, without diluting any of the current safeguards on frontline service changes.
- **Remove the counterproductive effect that general competition rules and powers can have on the integration of NHS care.** Removing the Competition and Markets Authority's (CMA) duties, introduced by the 2012 Act, to intervene in NHS provider mergers, and its powers in relation to NHS pricing and NHS provider licence condition decisions. This would not affect the CMA's critical investigations work in tackling abuses and anti-competitive behaviour in health-related markets such as the supply of drugs to the NHS. It is also proposed that Monitor's 2012 Act competition roles should be dispensed with, so that it could focus fully on NHS provider development and oversight.
- **Cut delays and costs of the NHS automatically having to go through procurement processes.** This proposal seeks to free up NHS commissioners to decide the circumstances in which they should use procurement, subject to a 'best value' test to secure the best outcomes for patients and the taxpayer. The current rules lead to wasted procurement costs and fragmented provision, particularly across the GP/urgent care/community health service workforce. This would mean repealing the specific procurement requirements in the Health and Social Care 2012 Act. It is also proposed to free the NHS from wholesale inclusion in the Public Contract Regulations. Instead the Government should set out its own statutory guidance for the NHS to follow. At the same time, patient choice and control should be protected and strengthened, including through the wider programme to deliver personalised care.

- **Increase flexibility in the NHS pricing regime.** This would provide further flexibility in the setting of national prices, support the move away from activity-based tariffs where that makes sense, facilitate better integration of care and make it easier to commission Section 7A public health services as part of a bundle with other related services, on a nationally consistent basis.
- **Make it easier for NHS England and NHS Improvement to work more closely together.** As a minimum it is proposed that, NHS England and NHS Improvement should be free to establish a joint committee and subcommittees to exercise their functions, with corresponding streamlining of non-executive and executive functions.

The view is that in undertaking the above reform then the Government will meet the views espoused by Aneurin Bevan in 1946 when he said:

"That is always the process of legislation in this country. It starts off by voluntary effort, it starts off by empirical experiment, it starts by improvisation. It then establishes itself by merit, and ultimately at some stage or other the State steps in and makes what was started by voluntary action and experiment a universal service."

How can we help?

Browne Jacobson LLP has been supporting STPs and ICSs across the country for a number of years and we have worked with a number of organisations to enable the NHS to better understand how to operate within the statutory framework and meet the new expectations of national bodies and Government.

With our clients we have been at the forefront of developing innovative new ways of working to meet STP plan expectations and we are always happy to share our knowledge with both existing and new clients.

Contact Gerard Hanratty to discuss how we can help you with your STP plan and integrated working.

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Related expertise

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