

John Beanland (DTUS Chair),
Karen Didovich (Senior Employment Relations Adviser at
Royal College of Nursing),
Christina McAnea (Unison National Secretary for Health)

05 July 2011

Dear Sir/Madam

I am writing to seek the views of those you represent on the proposed establishment of two special health authorities – the NHS Commissioning Board special health authority and the Health Research Authority special health authority, and would welcome your response by 16th August.

These special health authorities are intended only as preparatory vehicles to support a smooth and safe transition, for the establishment of non-departmental public bodies which are still subject to primary legislation.

The NHS Future Forum recommended that, “to ensure focused leadership for quality, safety and the financial challenge, the NHS Commissioning Board should be established as soon as possible”. We therefore plan, subject to your views, to establish the preparatory NHS Commissioning Board in October 2011. We also plan to establish of the Health Research Authority special health authority in October.

A special health authority is established by an order and regulations made by the Secretary of State. The order and regulations must be laid before Parliament at least 28 days before the date of establishment. In the case of the NHS Commissioning Board special health authority, this means laying an establishment order in early September. Any consultation on establishment needs to have been conducted before the establishment order is made. We were unable to begin consultation until the Government had heard the Future Forum’s recommendations, and this is the reason for the slightly shorter than normal consultation period.

The NHS Commissioning Board

As stated in the Government response to the Future Forum’s report, the NHS Commissioning Board special health authority would continue until a period between July and October 2012 only. At this point, the Health and Social Care Bill should be enacted and the full executive non-departmental public body would be established with responsibility for establishing and authorising the Clinical Commissioning Groups (currently referred to as commissioning consortia in the Bill). This would be

followed, in April 2013, by the executive non-departmental public body taking on its full suite of responsibilities. The special health authority would therefore only have a preparatory role, as set out in annex A.

The Health Research Authority

As set out in the 'Plan for Growth', published earlier this year, we will create a health research authority to combine and streamline the approvals for health research which are at present scattered across many organisations. This will reduce the regulatory burden on firms, improve the timeliness of decisions about clinical trials and hence the cost-effectiveness of their delivery in the UK. The proposal has clear support from the Academy of Medical Sciences Review of health research regulation and governance. As a first step, we plan to establish the Health Research Authority as special health authority, with the National Research Ethics Service as its core. The details are set out in annex B.

I am formally seeking your views, in accordance with section 28(7) of the NHS Act 2006, on these proposals, as representatives of those who may be transferred to either of the proposed special health authorities or affected by such transfers. In particular, I am seeking your views on:

1. the functions it is proposed the special health authorities will carry out,
2. whether we have identified the appropriate staff groups to transfer, and
3. the potential implications for those staff and others who may be affected by the transfer.

If you are aware that I have inadvertently overlooked any recognised Trade Union who represents any affected staff, could I please ask that you make me aware or forward this letter on to them.

NHS, DH and Arm's Length Body (ALB) Unions along with the HR Transition Partnership Forum have been formally consulted about the respective HR Frameworks and the all encompassing (DH, ALB, NHS) HR Transition Framework. I know you have raised issues via these consultations, which HR colleagues have taken on board. All parties (Management Side and Union Side) have been engaged in this process on the understanding that these frameworks would govern the HR changes arising from the *Equity and Excellence; Liberating the NHS* White Paper and the Report on the ALB Review. There is a separate Assignment Framework covering the movement of NHS staff to clinical commissioning groups (CCGs).

Given these wider issues which you have already been engaged on, I hope it is clear that this letter is seeking your views on proposals only around these two special health authorities and not on:

- the establishment of any statutory bodies (non-departmental public bodies) proposed in the new system under the Health and Social Care Bill;
- the People Transition Policy for each new organisation that will set out the detail of how staff will be appointed to any special health authorities and non-departmental public bodies throughout the transition period;
- the detail of the different organisations' proposed functions once established as statutory non-departmental public bodies;

- which staff are to transfer to any statutory non-departmental public bodies; or
- the wider proposals for NHS reform.

Summary

In accordance with the NHS Act 2006 and in the spirit of the partnership principles of the HR framework, I am seeking the views of those you represent on the proposals for two special health authorities; the preparatory NHS Commissioning Board and the Health Research Authority. This detail can be found in the annexes to this letter.

I would appreciate your response as soon as possible and by no later than Tuesday 16th August.

If anything in this letter is not clear to you or you would like the opportunity to discuss any of the establishment proposals, please do not hesitate to contact:

Abigail.Merrett@dh.gsi.gov.uk (0207 210 5835) about the NHS Commissioning Board proposals (detailed at annex A),
Glynn.Shaw@dh.gsi.gov.uk (0113 254 6166) about the Health Research Authority (detailed at annex B)

The Future Forum also recommended that we establish Health Education England as soon as possible. I will therefore be writing to you in a similar vein in due course on the establishment proposals.

I am copying this letter to Sarndrah Horsfall at the National Patient Safety Agency, Yve Buckland at the NHS Institute for Innovation and Improvement and David Nicholson who will ensure that relevant NHS organisations are aware of this consultation.

I look forward to hearing your thoughts with regard to these proposals.

If you have any queries, please do not hesitate to contact
Glynn.Shaw@dh.gsi.gov.uk (0113 254 6166)

Yours sincerely



RICHARD DOUGLAS CB

DIRECTOR-GENERAL POLICY, STRATEGY & FINANCE, DH

Annex A - Proposals for the NHS Commissioning Board Special Health Authority

The Government plans, subject to the passage of the Health and Social Care Bill, to establish an NHS Commissioning Board in 2012, which will be an executive non-departmental public body.

The Government also plans to establish a special health authority under section 28 of the NHS Act 2006. This special health authority would act as a preparatory NHS Commissioning Board to prepare for the future establishment of the executive non-departmental public body.

We are approaching the staffing of the special health authority in two phases. The first phase will run from its establishment to the end of 2011. The second phase will run during 2012. We are clearer about the functions and staffing implications in phase one as set out below.

The functions of the special health authority in phase one fall into the following categories:

Business preparation including establishing the business model, agreeing discharge of functions, agreeing the sub national arrangements, and practical issues concerned with the establishment of a new organisation, e.g. estates, IT, governance, finalising HR processes and limited recruitment of staff.

In partnership with DH, **designing the commissioning landscape** including agreeing the method for establishing, authorising and running Clinical Commissioning Groups (CCGs)¹, and managing the production of commissioning guidance in 2011/12.

It is expected that the special health authority will directly employ or second the following groups of staff:

- senior team including non executives, and executive directors;
- support staff for the senior team;
- staff to work on policy and corporate development, including both on design of functions and on practical establishment issues;
- staff currently working in the NHS Commissioning Board implementation team in the DH;
- staff developing clinical commissioning groups and commissioning support;
- a limited number of staff across the remaining portfolios to undertake business preparation and the functions outlined above.

Staff will be seconded where they are undertaking time limited preparatory functions and will then return to their original employer on completion of these and by the special health authority abolition.

Staff will be directly employed where their functions are about delivery and will transfer to the NHS Commissioning Board when it becomes an executive non-departmental public body.

¹ Currently referred to as commissioning consortia in the Bill

It is estimated that this might be around 150 staff with the majority at or shortly after establishment. Provision may be needed for some staff to perform functions in existing organisations (e.g. DH or SHAs) alongside their special health authority responsibilities.

The functions of the special health authority in phase two are less clear and will be taken by the special health authority management team once in place. We will provide further details on these once they are confirmed and alongside the revised People Transition Policy for staff joining the special health authority in 2012. Functions that we anticipate being taken on by the special health authority in 2012 include:

Planning for 2013/14 including preparation of operating guidance to the NHS that the NHS Commissioning Board would issue as an executive non-departmental public body and working in partnership with the DH to develop the commissioning outcomes framework for CCGs and take forward the negotiation of GP contract along with other primary care contracts.

Patient safety. Due to the abolition of the National Patient Safety Agency currently scheduled for July 2012, the special health authority will take on operational patient safety responsibilities including providing overall strategy for patient safety, providing guidance for commissioning and provision of safer care through the use of data via the National Reporting and Learning System [NRLS]. It will also oversee the running of the NRLS which will be hosted by a separate NHS organisation.

Making appointments of SHA and PCT Non-Executive members, to take over from the Appointments Commission during 2012.

In partnership with DH, establishing and making operational the new **NHS Leadership Academy**, the national focus for leadership development across the health system.

You will be aware that the Departments review of Arms Length Bodies, published in 2010 stated that the **NHS Institute for Innovation and Improvement** will be abolished. We are still considering what functions currently carried out by the NHS Institute may transfer to the special health authority preparatory NHS Commissioning Board

In addition to the functions to be undertaken directly by the special health authority, there may be a period directly prior to the establishment of the executive non-departmental public body where the special health authority may act as a host organisation for the induction of staff into the executive non-departmental public body. This would apply to functions that the executive non-departmental public body would take up as soon as it was established, for example, establishment and authorisation of clinical commissioning groups. Further details on these functions and groups of staff will follow in 2012.

Our proposal is that anyone permanently employed by the Special health authority at the point of abolition will transfer into the new organisation when it is established as a statutory executive non departmental public body in 2012 (subject to Parliament),

with the associated employment protection including terms and conditions and continuity of service. Other staff will be seconded to the special health authority on a short-term basis to support its establishment. The process will adhere to the HR Transition Framework and the NHS Commissioning Board people transition policy. The People Transition Policy is due for publication in July and will initially apply to the first phase of appointments of the senior team and first staff groups to be employed in the SpHA when it is established and during its first few months. The People Transition Policy will be reviewed in partnership with the trade unions through the HR Transition Partnership Forum and the revised People Transition Policy, applying to the remaining and majority of staff employed by the preparatory special health authority and NHS Commissioning Board executive non-departmental public body, will be published in 2012. Both are being jointly developed with the trade unions.

The legislation and our proposed arrangements would allow for those who take up permanent positions to transfer from their existing organisation into the special health authority and then into the statutory NHS Commissioning Board in 2012. In accordance with section 28(7) of the NHS Act 2006, a further consultation with staff would take place for any proposed abolition of the Special health authority.

Current plans suggest that NHS Commissioning Board would have its main base in Leeds with an additional presence in London.

Prior to establishment of the special health authority, we would have published proposals for the top tier structure of the NHS Commissioning Board and the people transition policy.

Please note that the suggested name of the special health authority is yet to be confirmed.

If you have any queries, please do not hesitate to contact
Abigail.Merrett@dh.gsi.gov.uk
(0207 210 5835).

Annex B - Proposals for the Health Research Authority Special Health Authority

The Government plans to establish the Health Research Authority in 2011 as a special health authority under section 28 of the NHS Act 2006. This special health authority would take on the functions of the National Research Ethics Service (NRES) and prepare for the establishment of the Health Research Authority as a non-departmental public body following primary legislation this Parliament.

The work of the special health authority would be focused on the functions of the National Research Ethics Service (NRES). The NRES head office is currently a division of the National Patient Safety Agency, with other NHS bodies contracted for hosting NRES staff in regional centres.

The NRES functions are:

- Making arrangements for the appointment of administrative and other staff for research ethics committees;
- Establishing sufficient provision for research ethics committee review;
- Ensuring standard practice across research ethics committees;
- Handling appeals against the unfavourable opinions of research ethics committees;
- Managing a national training programme for research ethics committee members and administrative staff;
- Developing standard operating procedures for research ethics committees and providing advice and support to research ethics committees' on procedural issues;
- Operating a quality assurance programme;
- Providing advice to the UK Health Departments on the practical implications of implementing legislation, policy and guidance;
- Appointing and supporting a National Research Ethics Advisers' Panel to help optimise research ethics committee reviews by offering strategic leadership on matters including development of the Service, operational policy, training, quality assurance, ethical arguments and debates and stakeholder engagement; and
- Acting for UKECA to undertake its functions in relation to research ethics committees for the purposes of the Clinical Trials Regulations.

It is proposed that a small core group of staff currently based in the NRES division at the National Patient Safety Agency and in the NRES regional centres will move to the special health authority on establishment. Depending on the functions the HRA takes on ahead of and following primary legislation, it will be decided when to reassess the senior roles, and there is a likelihood that these senior posts will eventually change sufficiently to make them subject to open competition.

Current plans suggest that the Health Research Authority would be based in London but most of its staff will continue to work at centres outside London, as they do now.