

3 November 2010

White paper team
Room 601
Department of Health
79 Whitehall
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Dear colleagues

Equity and excellence: liberating the NHS

This short note constitutes the Consumer Focus response to the NHS white paper and the suite of associated consultation documents. Thank you for agreeing to accept our contribution after the end of the original deadline.

In responding, we are drawing on our cross-sectoral expertise in both regulation and consumer representation. Last year we published a major report, *Rating Regulators*, which assessed six leading regulators from a consumer perspective. We have deep expertise in energy and postal services regulation, and we have also contributed in recent times to regulatory reviews in sectors such as financial services, water and airports.

We do not comment here on the core proposal for developing a market-based approach to healthcare; others are best placed to analyse this. Rather, we focus on aspects of the proposals that relate to regulation and patient representation.

The most striking thing in the papers is how little seems to have been learned from other sectors, and the extent to which these proposals do not appear to be tied in with or aligned to parallel initiatives across Government.

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The proposed approach to regulation

When we undertook our *Rating Regulators* research, we developed around 20 criteria for effective regulatory bodies¹. These are set out in annex 1 and we consider that they are highly relevant to the proposed system of healthcare regulation.

Experience in other sectors suggests that regulators are often poor at exchanging information and insight, and they struggle to work effectively together, especially where there is insufficient clarity about their respective roles. The establishment of two regulators, Monitor and the Care Quality Commission (CQC), whose roles are inextricably linked, is therefore inevitably a cause for concern.

The consultation document on regulation considers whether and when providers should be able to appeal regulatory decisions. There is a growing body of thought that someone should be able to appeal in the user interest too – this has for example been considered recently in relation to airport regulation. We propose that Healthwatch England should be given the right to appeal. We would not expect it to use this right often, but possessing the power will strengthen its position and also the hand of the regulator in seeking fair outcomes for providers and users alike.

The proposals are almost entirely silent on any consumer interest in regulation. This is a rather old-fashioned approach which was once prevalent across the economic regulators but has now thankfully been remedied to at least some degree in most, leaving the proposals here looking substantially out of date. Better regulation and inspection², one of a series published by the National Consumer Council – one of our predecessor bodies – sets out some of the practical steps required to embed the role of service users in the regulatory framework.

We are concerned by the proposal to put Healthwatch England into the CQC. We return to this below, but in the context of regulation the point is that where there are two regulators and the patient body is located in one, inevitably it will be drawn towards the work of its 'home' regulator and find it hard to focus on and influence the work of the other. The proposal to locate Healthwatch England within the CQC will inevitably centre the patient interest on quality at the expense of input to wider strategic issues about the system. We therefore consider this proposal to be seriously flawed. It risks missing an opportunity to put patient interests in the right place to be most effective.

Patient representation

The Institute for Government reports that Government far too often sets up new bodies rather than seeing whether an existing body could perform the desired role. The coalition Government

¹ Consumer Focus, *Rating regulators*, 2009

² *Putting people into public services: better regulation and inspection*, NCC, 2008

has pledged to be different, but it would appear that in this instance the Department of Health has fallen into a familiar trap.

The BIS Structural Plan sets out plans for a cross-governmental review of consumer bodies, with plans being developed in the Public Bodies Bill. Yet there is no indication that the proposals for local Healthwatch and Healthwatch England have been considered in the context of this review, nor are they obviously connected in terms of philosophy. This is an apparent failure to achieve joined-up government policy which in our view should be urgently corrected.

We would be happy to discuss these issues and our other work on regulation and consumer representation in more detail.

Yours faithfully,

Philip Cullum
Deputy Chief Executive

Annex 1

Assessment Criteria

In our response to this consultation we will be using a set of analytical criteria developed as part of a robust review of regulators conducted by Consumer Focus last year. *Rating Regulators*³ analysed six key regulators, including the Financial Services Authority, Food Standards Agency, Ofcom, Ofgem, Ofwat and Postcomm.

Our assessment framework consists of twenty indicators which together form the essential building blocks of a consumer-focused regulator. These are:

Legal framework

- statutory objectives and duties enable the regulator to adequately promote the interests of all consumers
- responsibilities between different actors are clearly defined, without gaps or overlaps
- structures are sensitive to devolved contexts
- the right tools for the job

Culture and accountability

- translates statutory objectives into consumer-focused priorities and values
- embeds a consumer focus across all levels of the organisation
- transparent about its activities
- accessible to the general public, including disabled users
- works effectively in a devolved setting

State of readiness

- identifies likely sources of consumer detriment, both now and in the future which shape work priorities
- uses effective mechanisms to understand the consumer perspective and translate this insight into sound decisions
- works effectively with others, including with consumer organisations
- influences the wider regulatory agenda

³ Consumer Focus, *Rating regulators*, 2009

State of action

- empowers consumers to help achieve regulatory outcomes
- has effective incentives to encourage compliance with its rules
- chooses the appropriate regulatory approach in the circumstances, and intervenes in a timely fashion when needed
- gives priority to, and intervenes effectively on behalf of, consumers who are vulnerable
- uses enforcement tools when necessary to protect consumers

Impact and learning

- defines and measures its impact on consumers in terms of outcomes
- evaluates its work and embeds learning