Written evidence submitted by UNISON (HSC0886)

Executive summary

- UNISON welcomes the fact that the era of the damaging Health and Social Care Act is finally coming to an end.
- But the government has complicated matters by adding a series of other elements to its proposed legislative package.
- The union welcomes the desire in the white paper to move away from the current adversarial system by, for example, removing the need for NHS Improvement to "prevent anti-competitive behaviour" and by cutting right back the role of the Competition and Markets Authority.
- UNISON welcomes the confirmation in the white paper that the "Section 75" regulations governing NHS procurement will be abolished and that commissioners will now have greater discretion about whether to use competition or not.
- It is also welcome that the key criteria quoted in the proposed provider selection regime include "service sustainability and social value".
- However, the proposed regime does not go as far as the pre-2012 system, and non-clinical services would still be subject to the more regressive current procurement regime.
- The focus on integration is welcome, though there are a number of flaws, particularly the fact that the NHS would be seeking to integrate with woefully underfunded local government partners.
- UNISON welcomes the decision to allow for new trusts to be established as a way of ensuring ICSs can set up Integrated Care Providers from within the public sector.
- But the union has major concerns about the fact that ICS Health and Care Partnerships could include private companies amongst their membership.
- Establishing ICSs in legislation is a way of avoiding the problems around accountability that have been experienced with Sustainability and Transformation Partnerships.
- But there is a risk that other reforms on accountability distract attention from the task of removing the worst aspects of the current competition regime, on which there is much greater consensus.
- The plans to handle organisational change do offer some reassurance, but the staff protections on offer need to be in place for a meaningful length of time after transfers or other employment changes take place.
- The failure again to provide any suggestion of meaningful reform for social care not only affects those working in and receiving care, but it also places a major question mark against the central plans of the white paper to bring about greater integration.
- Some of the more incremental social care changes are welcome, such as improving data collection and extending the CQC's remit to commissioners of care.
- Proposals to bring about national standards for hospital food are welcome, though extra funding will also be needed.
- Plans to reform professional regulation appear to be rooted in cost savings and the suggestion that some professions could be removed from regulation will stoke fears about deregulation.
- There is little in the white paper on workforce, highlighting the continued absence of a fully-funded comprehensive workforce strategy for the NHS – and any sort of workforce plan for social care.
- The government's proposals will not produce the desired outcomes unless extra money is found, particularly given the problems the NHS has to confront around tackling a vast backlog of procedures with a depleted, exhausted workforce.

About UNISON

1. UNISON is the UK's largest union, with more than 1.3 million members providing public services – in the NHS, local government, education, the police service and energy. They are employed in the public, private and voluntary sectors.

Introduction

2. UNISON was one of the earliest and most vociferous critics of the *Liberating the NHS* white paper in 2010 and the subsequent Health and Social Care Act 2012.[1] The union is therefore glad to see that this era is now coming to an end. While it is fair to say that not all of the worst fears associated with the 2012 Act have come to pass, it still contains the potential to cause more widespread problems for the NHS and has impeded the ability of the wider system to function as effectively as it could.

3. Many of the more positive aspects of the *Integration and Innovation* white paper align directly with the legislative change work undertaken by NHS England since 2019, on which UNISON has previously submitted evidence to the Committee.[2] While the white paper has the potential to improve the deeply flawed system we currently have, the government has chosen to complicate matters by adding a series of other elements to its proposed legislative package, and there are several areas that UNISON hopes can be addressed either before or during the legislative passage of the planned Health and Care Bill.

Competition and markets

4. The white paper appears to have accepted the contention of UNISON and others that a major cause of bureaucracy in the NHS is the cumbersome and unnecessary market system. As a result, the government will remove those elements of the 2012 Act which established the current system of "economic regulation", with the role of the Competition and Markets Authority cut right back and NHS Improvement no longer expected to "prevent anti-competitive behaviour". UNISON particularly welcomes the desire to "allow the NHS to shift away from an adversarial and transactional system centred on contracting and activity payments to one that is far more collaborative and dedicated to tackling shared problems." It is just unfortunate that it has taken ten years for the government to finally arrive at this conclusion – a wasted decade of the NHS having to work around the legislation to get things done.

5. Previous work by NHS England suggested that a more integrated NHS could ultimately mean an end to the divide between commissioners and providers of care – the so-called "purchaser-provider split" on which the NHS market has been based for 30 years. While the white paper states that it will "retain a division of responsibility between strategic planning and funding decisions on the one hand, and care delivery on the other", there are also plans to allow ICSs (that will take on commissioning functions) to "delegate significantly to place level and to provider collaboratives", and it is unclear how a separation of functions will be achieved when local providers will also be board members of the ICS NHS Body. UNISON is of the view that such developments should be used to break down the boundaries between commissioner and provider, allowing genuine integration within the NHS, free from the divisions of the market.

Procurement and provider selection

6. UNISON welcomes the confirmation in the white paper that the "Section 75" regulations governing NHS procurement will be abolished, meaning that commissioners will no longer be operating under a default assumption of using competition to arrange services and will instead have greater discretion about whether to do so or not.

7. UNISON will respond in detail to the separate consultation on the provider selection regime that will establish a new procurement system for the NHS. To summarise, the union welcomes the fact that the new regime should make it easier for commissioners to continue with existing service provision where this is working well, and that contracts could also now be awarded for new services without the need for tendering. Though there will also be a need for robust transparency arrangements to avoid the cronyism that has unfortunately been a prominent feature of procurement during the Covid-19 pandemic. It is also welcome that the key criteria listed to help decision-makers determine the appropriate provider include "service sustainability and social value". It remains to be seen how strong these considerations will be in practice (particularly when they come up against other criteria focused more clearly on cost and choice considerations), but they do include important features such as the need to consider the financial stability of local services and the impact on the local healthcare workforce.

8. On the downside, the proposed regime does not go as far as the pre-2012 system in which the NHS was to be considered the "preferred provider" in decisions around service delivery, and the Any Qualified Provider (AQP) system remains in place. The proposed new regime will not apply to non-clinical services either, meaning that areas of importance for UNISON members such as hospital cleaning and catering (and of course social care) would not benefit from the more progressive approach outlined above.

ICSs and integration

9. UNISON supports the goal of more joined up services and better integration between different parts of the health and care system, while recognising that governments have often struggled to demonstrate a robust evidence base for the benefits of integration.[3] There are likely to be a number of similarities between ICSs and the structural attempts to promote integration elsewhere the UK, however there does not appear to be any suggestion that England will look to understand the reasons why such initiatives have succeeded or failed in the devolved nations. Nor is there much in the white paper to show that lessons have been learned from the many previous attempts at bringing the NHS and local government together in England – attempts that have generally led to little concrete progress. Substantial hurdles still need to be overcome, such as the different cultures, funding models and accountability arrangements between the two sectors. Moreover, the perilous funding situation of local councils risks lessening the ability of the various bodies to operate together effectively, not just on social care (see below) but also on public health measures. Unless these problems are tackled, integration seems likely to remain a minority pursuit.

10. The proposals do give local government a more obvious role in ICSs, the importance of Health and Wellbeing Boards is reasserted, and the white paper stresses the flexibility for each system to decide exactly how it will operate. However, such localism is tempered by the reinstatement of central government powers over the NHS (see below) and new powers to direct NHS England to take on public health functions currently undertaken by local authorities.

11. Having two ICS boards may also produce confusion, certainly for local people wanting to know who is taking the key decisions in their area. And the fact there will be two separate parts of an ICS in operation may in itself work against the desire for better joined-up service delivery. Contrary to an earlier leak of the white paper[4], the final version restates the autonomy of foundation trusts within the new system and the ICS NHS Body will not have the power to direct providers, so it seems highly likely that, for better or worse, the real power in new health systems will remain with the biggest local NHS providers. The proposed "duty to collaborate" would need to be very robust to counter the existing financial incentives of foundation trusts.

12. The desire for coterminosity between ICS and local authority boundaries is something that, on the face of it, makes a lot of sense if there is to be true joined up working between local NHS and council services. But ICSs are already operating in nascent form with no such requirement, meaning that as many as 18 may have to undergo further geographical realignment to conform to this latest demand.[5] The picture is further complicated when CCGs are taken into account: the aim is to have only one CCG for each of the 42 ICS areas, but by April 2021 there will still be 106 CCGs (even after the latest range of mergers)[6], meaning that much further consolidation will be required in the coming months.

13. The white paper includes confirmation of a positive move that UNISON had called for with proposals for the government to have the ability to establish new trusts. This is one way of ensuring that any ICS wishing to establish a new body to deliver its integrated care can now do so from the public sector (a small number have already considered setting up a so-called "Integrated Care Provider"). However, there are still ways in which healthcare companies could play an inappropriate role in the way ICSs operate. There is nothing ruling out companies being part of the joint committees that can be established between ICSs and NHS providers; and, more explicitly, "independent sector partners" are included in the list of organisations who could be members of the new ICS Health and Care Partnerships. This creates the possibility of a company bidding for contracts from an ICS where it is also part of that ICS's Health and Care Partnership.

Accountability issues

14. Enshrining ICSs in legislation may head off some of the problems that unions and campaigners experienced with the development of STPs. Regardless of whether they were aiming to bring about reasonable changes or not, the perception persisted that STPs were operating without proper accountability to national government (due to the fact they did not exist in legislation) or to local government (due to the minimal role that councils were able to play in most STPs).

15. But the area where the white paper most diverges from NHS England's previous proposals for legislative reform – and the area that has so far attracted most controversy – is the government's plan to take back some of the power currently exercised by NHS England. The latest plans would bring accountability for the NHS more clearly back to the Secretary of State and, by extension, Parliament. However, it is also notable that during the pandemic the areas over which the government has had direct control – such as Test & Trace and PPE supply – have been marked by major failings[7], particularly when compared with the vaccine rollout that NHS England has taken charge of. Moreover, there is a risk that contentious reform in this area serves to distract attention from the task of removing the worst aspects of the current competition regime, on which there is much greater consensus.[8]

Organisational change

16. Any reform agenda of this size is bound to cause disruption and there will be few in the NHS looking forward to another round of reorganisation, even if the ultimate endpoint makes more sense than the current system. Further to NHS England's recent consultation on Integrated Care, however, the white paper and associated documents suggest a more sensible approach is possible this time around. The white paper includes a recognition of the importance of supporting staff through change and the need "to provide stability of employment". The confirmation in accompanying documents of an intention to introduce an "employment commitment" for staff affected by the legislative proposals[9] is welcome. As is the acknowledgement elsewhere of the need to avoid distracting staff from their "day job", with the aim being to "promote best practice in engaging, consulting and supporting the workforce during a carefully planned transition, minimising disruption to staff".[10]

17. UNISON has, however, already pointed out to NHS England (in its December 2020 engagement exercise on integrating care) that for such protections to provide the reassurance that is intended, they would need to be in place for a meaningful length of time after transfers or other employment changes take place.

Social care

18. By describing the white paper as a "health and care" document, the government has again raised expectations only to dash them immediately. *Integration and Innovation* is essentially an NHS document with social care included merely as an add-on.

19. The lack of vastly improved funding and meaningful reform for the sector not only affects those working in and receiving social care, but it also places a major question mark against the central plans of the white paper to bring about greater integration. It is impossible to expect integration between health and social care to be a success when one half of the partnership continues to operate in crisis mode, without even a potential route map to a more sustainable future.

20. There are some more incremental steps that are welcome. The pandemic has brutally exposed the government's inability to keep a handle on the state of local care provision, so improving systems for data collection is much needed. UNISON has also repeatedly called for the Care Quality Commission to be given powers to scrutinise local authority commissioning of social care in addition to their existing duty to assess providers' delivery of care. However, this proposal would need to be accompanied by increased funding for councils and by ensuring that the CQC had the capacity to carry out this additional function.

Other issues

21. In other areas of significance to UNISON, the decision to impose capital spending limits on foundation trusts removes one aspect of the two-tierism that exists between trusts and foundation trusts. However, there is nothing to reverse the measures in the 2012 Act that permitted foundation trusts to earn up to half of their income from private patients.

22. The proposals to bring about national standards for hospital food are consistent with the aims of UNISON's "Better Hospital Food" campaign, though extra funding will also be needed.

23. Less positively, the plans to reform professional regulation explicitly refer to the "financial and efficiency savings" to be found in reducing the number of regulators, and suggesting that some professions could be removed from regulation is bound to stoke fears about deregulation (despite the insistence in the white paper to the contrary).

24. There is little generally on workforce and certainly nothing to tackle the worrying shortages that have opened up in recent years (rendered even more concerning by the government's recent mistaken decision to propose that pay rises for NHS staff should be restricted to 1%). Perhaps this was never likely to feature in a white paper largely concerned with addressing the structural mistakes of the past, but with 2020's NHS People Plan amounting to a relatively short-term set of laudable aspirations, it does again highlight the lack of a fully-funded comprehensive workforce strategy for the NHS – and any sort of workforce plan for social care.

25. Finally, as always, none of the government's proposals will produce the desired outcomes unless extra money is found. Social care remains chronically underfunded and the recent Budget confirmed the continuation of inadequate funding settlements for the NHS, which will now be expected to deal with a massive backlog of procedures – and all with a depleted, exhausted workforce that has just worked through the most harrowing year imaginable.

Submission produced by the UNISON Policy Unit.

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[1] UNISON, NHS: More Than Just A Brand, 2010
[2] House of Commons Health and Social Care Committee, NHS Long Term Plan Legislative Proposals Inquiry, UNISON written evidence, 2019
[3] National Audit Office, Health and Social Care Integration, 2017
[4] Health Policy Insight, Exclusive – Government's new Health White Paper draft text, February 2021
[5] Health Service Journal, 'Retrograde' white paper rule will spark '18 months of arguments over ICS boundaries', February 2021
[6] Health Service Journal, Number of CCGs to be cut by a fifth next month, March 2021
[7] House of Commons Public Accounts Committee, Covid-19: Government procurement and supply of Personal Protective Equipment, February 2021; House of Commons Public Accounts Committee, Covid-19: Test, track and trace (part 1), March 2021
[8] Letter to Secretary of State, Recommendations for an NHS Bill, September 2019
[9] NHS England and NHS Improvement, Integrated Care Systems: Next Steps letter, February 2021
[10] NHS England and NHS Improvement, FAQs on NHS England and NHS Improvement's legislative recommendations on ICSs, February 2021