

## **Colin Leys – the Coalition’s Pause for Thought**

The pause announced by Andrew Lansley in the parliamentary passage of the Health and Social Care Bill indicates the serious trouble that opposition to the Bill is causing the Coalition. It is intended to give a noticeably isolated Lansley time to find compromise amendments which will allow Cameron and himself to say they have responded to public opinion, to allow the Lib Dem leadership to say they have secured concessions, and to still allow Lansley and the private sector to replace the NHS as a comprehensive and universal service with a healthcare market.

Cameron now knows he has allowed a well-informed but tunnel-vision privatiser, who is close and deeply obligated to the private health industry, to push ahead with a bill that risks major electoral penalties. He will wait to see whether Lansley can buy off enough opposition. For both Lansley and Cameron the question is whether they can keep the Lib Dem leadership in the Coalition when the Lib Dem rank and file are pressing to make the defence of the NHS a final sticking-point.

The fact that the story has kept changing day by day shows that the task is seen as quite problematic. At first Lansley said there would be two months of ‘listening’. But he made it so clear that he meant we would be listening to him that the story then had to be changed to one in which he would do the listening, but only to health professionals; and then the idea occurred of listening only those likely to support the Bill. Cameron, accompanied by Lansley, personally announced the creation of a Listening Forum, consisting of patients as well as nurses and doctors. The Forum has since developed into a Futures Panel of five, to be assisted by a forum of 40 doctors, who in turn will listen to ‘grassroots GPs’ around England, and will be chaired by the outgoing chair of the Royal College of GPs (RCGP), Dr Field, a long-term proponent of marketisation.

As the incoming chair of the RCGP, Dr Gerada, immediately pointed out, the main grounds of opposition to the bill are well known; the ‘listening’ exercise is an exercise in flak-catching. While the Panel holds meetings with the British Medical Association and the RCGP and others (to ‘shatter myths and misunderstandings’), the real action will take place in behind-the-scenes negotiations between the Coalition partners. What defenders of the NHS need to focus on is what the Bill provides for, and what difference any of the current proposals for amending it would make.

### **What the Health and Social Care Bill will do**

The Bill removes the existing obligation on the Secretary of State for Health to provide a comprehensive health service, and does not lay that obligation on anyone else. Commissioning Consortia will be free to decide what services should be available on the NHS for their patients, and to set fees even for some of these. Patients will be free to choose private providers and private for-profit providers will be able to bid to provide any service that they can make a profit from, leaving NHS hospitals with the unprofitable remainder and forcing many of them to close. The private sector is now well placed to start doing this and has been in close contact with Lansley about the prospects. Any attempt by consortia to preserve local hospitals by giving them preference in making contracts will be open to challenge (one private company, Circle Health, has already challenged a Primary Care Trust for doing this); and the healthcare market regulator, Monitor, is mandated to promote competition.

GPs and Consortia are free not to accept patients, and patients who are not registered with a GP will not be entitled to NHS services. Some patients who are costly or difficult, and people such as asylum seekers and undocumented immigrants, will be

forced to rely on local authorities to get treatment, which will not be free. What is implied is a set of services increasingly provided either by private providers, or by NHS foundation trusts, which all NHS providers have to become by 2013, and which are nominally public but which will be forced by competition to act like private ones. Free services will be limited by what each unaccountable local GP consortium decides to pay for, with fees charged for what they consider extras – and otherwise no option but private treatment (for those who can afford it). A raft of current policies is already pushing the NHS towards the US model of care. The Bill will complete the process.

#### Proposed amendments to the Bill

Various interested parties have proposed amendments to the Bill. These are 1) the Lib Dem rank and file; 2) the House of Commons Health Committee; 3) NHS managers; and 4) academics sympathetic to the Bill's main aims. Only the Lib Dem rank and file seriously oppose the Bill's fundamental aims.

#### **The Lib Dem conference**

At their Sheffield conference in March the Lib Dem rank and file's dismay at what many of them saw as serial policy betrayals by their leadership in the Coalition (including on student fees and the banks) led to an almost unanimous vote for a motion calling for major changes to the Bill, namely:

I) More democratically accountable commissioning.

II) A much greater degree of co-terminosity between local authorities and commissioning areas.

III) No decision about the spending of NHS funds to be made in private and without proper consultation, as can take place by the proposed GP consortia.

IV) The complete ruling out of any competition based on price to prevent loss-leading corporate providers under-cutting NHS tariffs, and to ensure that healthcare providers 'compete' on quality of care.

V) New private providers to be allowed only where there is no risk of 'cherry picking' which would destabilise or undermine the existing NHS service relied upon for emergencies and complex cases, and where the needs of equity, research and training are met.

VI) NHS commissioning being retained as a public function in full compliance with the Human Rights Act and Freedom of Information laws, using the skills and experience of existing NHS staff rather than the sub-contracting of commissioning to private companies.

VII) The continued separation of the commissioning and provision of services to prevent conflicts of interests.

VIII) An NHS, responsive to patients' needs, based on co-operation rather than competition, and which promotes quality and equity not the market.'

While several of these demands were loosely formulated their thrust is clear: the conference was opposed to using private companies in commissioning; to allowing private providers to cherry-pick services and destabilise NHS providers; to introducing price competition in place of payment based on a fixed tariff; and in general, to basing the NHS on competition and the promotion of competition, rather than quality and equity. Since all these things are part and parcel of the Bill, this amounted to outright opposition to it.

A subsequent set of 'essential amendments' to the Bill has been spelled out by supporters of the motion, led by a former Lib Dem shadow Secretary of State for Health, Dr Evan Harris. The amendments go a good deal further in spelling out the

radical opposition between the views of the Lib Dem activists concerned and those of Andrew Lansley. To give just a few examples:

1) The Secretary of State should remain responsible for providing a comprehensive health service, as at present, not just for promoting one, as the Bill proposes. The change involved is crucial to Lansley's aim to let market forces, not government, shape publicly-financed health services in England. His Bill leaves each Consortium free to decide what services we should have, in light of what competing providers will offer at a given price. The universal right to a comprehensive service would disappear.

2) The Secretary of State alone should be able to impose new or higher charges for health services, whereas the Bill allows Consortia to impose them. As a major aim of the government has been to make more elements of care subject to payment via 'top-ups' – i.e. fees – this is a key issue. The amendment would make the government responsible for eroding the principle of free comprehensive care, instead of it happening through the decisions of Consortia, pleading financial difficulty.

3) The Lib Dems also want to make Consortia responsible for providing services to everyone in a given area, and funded to cover everyone who lives in that area, whereas under the Bill they will only be responsible for people registered with one of the practices in the Consortium. This too is essential to the preservation of a universal comprehensive service.

The Sheffield conference also declared that the Bill was incompatible with the party's manifesto and the Coalition agreement, saying: "Conference regrets that some of the proposed reforms have never been Liberal Democrat policy, did not feature in our manifesto or in the agreed Coalition Programme, which instead called for an end to large-scale top-down reorganisations."

### **Amendments that do not challenge the aims of the Bill**

The other sources of proposed amendments are basically invitations to the Coalition to modify the bill in ways that reflect the particular interests or concerns of those making the proposals.

The Commons Health Committee is evenly balanced between Conservative and Labour MPs plus one Liberal Democrat. Because the Labour Party has been responsible for so much that makes Lansley's Bill possible (foundation trusts, payment by results, private providers competing for NHS patients, etc), and since Miliband has now declared (a) that New Labour's record on the NHS was 'excellent', and (b) that the status quo cannot be preserved, it is not surprising that the committee's proposals merely tweak those aspects of the Bill that were not part of the New Labour agenda – i.e. the new Commissioning Consortia.

The Committee calls for the Consortia to include local government representatives and other clinicians and not be confined to GPs; to have explicit models of governance laid down for them; and to be more clearly financially accountable than the Bill makes them. It also says that whatever the Bill may say, the Secretary of State will be held responsible by the public for the provision of health services, and so the Bill should recognise this and not pretend otherwise by saying he merely has a duty to 'promote' them.

The Committee was worried that the Bill did not make it clear that commissioners' decisions over what was best for patients would have precedence over the principle that patients could choose 'any willing provider', but did not press its concerns to a clear conclusion; it ended by accepting the mutually contradictory assurances of Lansley and the new chair of Monitor (McKinsey's Dr David Bennett) on this point.

It was clear that neither the Conservative nor the Labour members of the Committee wanted to make difficulties. Their recommendations leave ample scope for the government to seem to be bowing to informed opinion without giving up anything of significance.

The NHS Confederation ('the voice of NHS leadership' – i.e. of NHS managers) offers a rather similar set of amendments responding to what it says are concerns expressed by others, but which are evidently things that worry NHS managers too. In particular it thinks the role of competition should be more carefully defined and limited, and that it should be introduced only gradually, after assessing trials, and 'as a means to an end'. It wants Commissioning Consortia to be publicly accountable for their decisions, with specified modes of accountability. It wants amendments to prevent conflicts of interest between GPs as commissioners and GPs as operators of firms. It is also worried about the speed of change, calling for flexibility in the timetable for the introduction of the new law. Much of this could clearly be accommodated without sacrificing anything essential to Lansley's Plan.

Finally there are proposals from academics who have been sympathetic to the marketisation drive over the past decade, who fear that 'growing professional opposition to some aspects could undermine the reforms', and who want to 'help the government to make its reforms work'. The Chief Executive of the King's Fund, Professor Chris Ham, and Professor Kieran Walshe, an adviser to the Commons Committee, follow the Health Committee in suggesting that Consortium boards should not be restricted to GPs but should include community health clinicians, hospital doctors, patients and local authority representatives; and like the Confederation they urge that competition should be a means to an end and not be forced on Consortia by Monitor.

Also like the Confederation, Ham and Walshe call for the governance of Consortia to be laid down in the Bill, rather than leaving them free to design their own structure and rules, and say they should meet in public (the Bill makes no such requirement). They also think that to secure better integration of primary and secondary care, Consortia should be responsible for commissioning primary care as well as secondary care (under the Bill GP services would be commissioned by the all-England Commissioning Board).

In one significant respect Ham and Walshe go further than the Confederation, calling for an amendment to allow Consortia 'to balance their duty to the individual patient to offer free choice against their duties to the wider population to plan and provide effective and efficient health services... that offer advantages to the community'. But the Bill gives Consortia no duties to the wider population. In writing as though it did, the authors betray their awareness that this particular suggestion (which is close to the Lib Dems's conference motion point VIII) is fundamentally at odds with Lansley's aim, which is to get away from planning based on the needs of the population and let market forces decide what services are available.

How the Coalition sees the pause

Lansley has already made it clear he will make the fewest and most minor modifications to his Bill that he can get away with, whereas Cameron has said he is open to 'major' changes. But in practice both will be inclined to accept some amendments from each of the last three sets of proposals, in order to be able to claim that they have made sufficient concessions. The reality is that only the 'essential amendments' put forward by the Lib Dem rank and file really challenge the Bill's privatisation agenda. The Lib Dem leadership have to balance the wish to settle for

minor amendments against the risk of forfeiting what is left of their credibility with their party membership.

A clear sign of the sort of game to be played is the over-dramatised announcement by Lib Dem MP Norman Lamb, a Coalition whip and senior parliamentary adviser to Nick Clegg, that Lib Dem MPs will 'be unable to support' the Bill if their concerns are ignored, and that he will resign. But all he demanded was that the process should be slowed down and that GPs should not be forced to join Consortia.

Two points seem worth making here. First, the idea of some GPs deciding, via their control of Commissioning Consortia, what kind of NHS services patients can have, while others have it decided for them by someone else (by whom is hard to envisage) is a muddle which Lansley would have no trouble dismissing as silly. Second, an argument over this could very effectively distract attention from the fact that these ideas, which Lamb claims are so critical for Lib Dem MPs, have nothing whatever to do with what the Lib Dem conference considered essential amendments. Almost any of the Bill-friendly amendments proposed by the Commons Health Committee, the NHS Federation or pro-market academics is likely to play the same obfuscating role. Nick Clegg has said he will not support privatisation of the NHS but he has repeatedly shown himself ready to sacrifice popularity with his supporters for the sake of his wider political ambitions, and Cameron and Lansley maintain that the Bill is not about privatisation, leaving Clegg plenty of room for fudge. The political calculation that he and Lib Dem MPs have to make in deciding whether to let Lansley get away with a fudge is going to be complicated. A key dimension will be how far they think the electorate will forget and forgive them if they allow the NHS to be eviscerated for the sake of their other goals.

Using the pause to defend the NHS

The task for defenders of the NHS is therefore to use Lansley's pause to make it clear that amendments which leave the essence of the Bill intact will be seen for the diversions they are. This message needs to reach Lib Dems at all levels, from local councillors to the Lords. Peers of all parties and none are especially important (even some Conservatives, such as Lord Tebbit, are unhappy with the Bill). Reasoned but uncompromising pressure on every kind of representative will be crucial. The Coalition need to fear that if they allow the substance of the Bill to become law they will be forever tagged with responsibility for destroying the NHS, and will pay an enduring electoral price.

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