NHS England and NHS Improvement Board meetings held in common

Paper Title:	**The NHS's recommendations to Government and Parliament for an NHS Integrated Care Bill**
Agenda item:	
Report by:	Ian Dodge, National Director: Strategy and Innovation
Paper type:	For approval

Summary/recommendation:
In February 2019 NHS England and NHS Improvement launched public and stakeholder engagement on proposals for NHS primary legislation, building on the outline proposals that arose from the NHS Long Term Plan process. On 24 June Parliament's cross-party Health and Social Care Select Committee published the findings of their parallel inquiry, which has helped shape NHS England and Improvement's response. **Today we publish our final recommendations to Parliament and Government, subject to the approval of both Boards**.

Scale and scope of our engagement

1. We sought views on each of our individual proposals. **192,806 organisations and individuals responded to our engagement document.**

2. By far the biggest proportion of these responses came from individuals identifying themselves as a member of the general public, patient, NHS staff, clinician or healthcare professional. Respondents also included carers, charities, local authorities, local NHS Foundation Trusts, NHS Trusts, NHS Clinical Commissioning Groups, integrated care systems, lawyers, academics, think tanks, commercial organisations, and professional and representative bodies including royal colleges and trade unions.

3. In addition to the written engagement, NHS England and NHS Improvement ran over 30 targeted roundtable discussions and webinars with NHS and local authority staff, representative bodies and leaders, voluntary groups, and community organisations. We also held two national events held in Leeds and London, attended predominantly by local commissioners and providers.

4. The Health and Social Care Select Committee inquiry also received just under 60 written submissions and took oral evidence from a range of representatives in four oral sessions.

5. NHS England and NHS Improvement have also discussed the Committee's report with a wide range of different organisations, who have helped shape the

final recommendations and intend to submit a letter of support to the Secretary of State for Health and Social Care.

Our recommendations to Government and Parliament

6. An NHS Bill should be introduced in the next session of Parliament. Its purpose should be to free up different parts of the NHS to work together and with partners more easily. Once enacted, it would speed implementation of the 10-year NHS Long Term Plan.

7. We now have a clear and strong consensus about what this Bill should - and should not - contain. Our recommendations directly reflect and respond to the Health and Social Care Select Committee's report and recommendations.

8. A highly targeted Bill would command widespread support from the public and the NHS. Conversely, we found minimal appetite for primary legislation that would now trigger yet another wholesale administrative reorganisation of the NHS.

9. The Competition and Markets Authority's (CMA) roles in the NHS, as provided for by the 2012 Act, should be repealed. There is strong public and NHS staff support for scrapping section 75 of the Health and Social Care Act 2012 and for removing the commissioning of NHS healthcare services from the jurisdiction of Public Contract Regulations 2015. Taken together, these changes would remove the presumption of automatic tendering NHS healthcare services over £615k. Monitor's specific focus and functions in relation to enforcing competition law should also be abolished.

10. We agree with the cross-party Select Committee that we should find a better name for the 'best value' test. We propose that the future regime that sets rules about if and how NHS goes out to procurement is co-produced with stakeholders including the NHS Assembly, and that it is published in draft alongside the Bill to inform Parliamentary consideration.

11. The new regime must ensure transparency. A range of factors must be considered including quality of care, integration with other services, patient choice, access and inequalities, and social value. We agree with the Select Committee that we must avoid services becoming 'an airless room' so protection of patient choice should be included in the Bill. There should continue to be independent recourse and oversight of patient choice, by NHS England and NHS Improvement.

12. Given clear support, the Bill should also contain the specific flexibilities we originally proposed on tariff including the ability to set a 'blended tariff' using a national formula, rather than only being able to set a fixed national price. Taken together, the operation of the tariff changes and the new procurement regime will help respond to the Select Committee's recommendation to guard against the risk of introducing competition solely on price as opposed to quality.

13. A new ‘triple aim’ of better health for the whole population, better quality care for all patients and financially sustainable services for the taxpayer should be introduced, as reciprocal goals for NHS commissioners and providers alike. The NHS improves wellbeing as well as health, and as recommended by the Select Committee, that goal should be appropriately reflected on the face of the Bill.

14. The triple aim duty should reflect the need to engage local communities, and build on the existing duties of local authorities and CCGs to engage patients and citizens, to collaborate in the performance of their functions, to integrate care delivery, and to improve the health and wellbeing of residents. Successful implementation of the NHS Long Term Plan requires the NHS to forge strong links with its communities, citizens and local government partners, not just to improve the planning and delivery of NHS services, but to promote physical and mental health and wellbeing, support the design of healthy communities, tackle inequalities, connect people better to relevant local community assets, and act as anchor institutions. We did not hear of specific NHS legislative barriers that hinder community co-production. Instead it may be possible to embed the principles of community co-production more clearly within the main text of the NHS Constitution.

15. The Select Committee agreed that NHS commissioners and providers should be newly allowed to form joint decision-making committees on a voluntary basis, rather than the alternative of creating ICS as new statutory bodies, which would necessitate a major NHS reorganisation. We propose that NHS England and NHS Improvement should not have any new and additional powers of intervention in relation to such committees beyond those that exist in relation to CCGs and NHS providers. The law should make it permissible for NHS England and Improvement’s regional teams to participate for example in relation to specialised commissioning. It is also important to note that we propose to maintain current statutory duties to assess and report on CCG performance and = to oversee providers, albeit in ways that better reflect system working and the new triple aim duty.

16. Joint committees should be flexible enough to serve two different and distinct purposes. The first purpose is to enable closer collaboration and decision making between separate providers. The second is to assist and further the work of Integrated Care Systems which will cover the whole of England.

17. Closer collaboration between commissioners and providers is essential for implementing the NHS Long Term Plan. Every CCG governing body must presently include a clinician from an NHS provider but only from outside that CCG’s area. This restriction should be lifted. Closer collaboration and decision making between NHS commissioners and providers also brings increased risks of conflicts of interest which will need managing through updated NHS England and NHS Improvement statutory guidance. Application of the new procurement regime should continue to be reserved to the CCG and not be delegable to the ICS joint committee.

18. Whilst we are only making proposals for NHS legislation, we also agree with the Select Committee that closer collaboration with and from local government is needed. Health and Wellbeing Boards will continue to have an important role in assessing local needs and developing joint health and wellbeing strategies. And local authorities should not only be able but actively encouraged to join ICS joint committees. Their full membership would assist implementation of the NHS Long Term Plan, whilst not introducing a new local government veto over the NHS's discharge of its own financial duties: for example, in making budgetary decisions about how best to live within a system-level NHS commissioner and provider resource limit set by Parliament.

19. NHS England and NHS Improvement should develop statutory guidance on governance of ICS joint committees. To increase transparency, ICS joint committees should not only meet in public, as recommended by the Select Committee, but also hold an annual general meeting, and publish an annual report. Their decisions would also be subject to scrutiny by Local Authority Overview and Scrutiny Committees.

20. Our targeted proposals to help join up NHS commissioning were strongly supported and should be included in the Bill.

21. The 2012 Act made provision for the repeal of the Secretary of State's power to establish new NHS trusts. Whilst this provision has yet to be commenced, the continued use of the NHS trust model was clearly not envisaged by Parliament. We propose that this is reversed, to support the creation of integrated care providers. In addition, we also support the recommendation of the Select Committee, that only statutory NHS providers should be permitted to hold NHS Integrated Care Provider contracts. This will only be possible once the NHS is outside the Public Contracts Regulations 2015. Part of the assurance process for letting ICP contracts should demonstrate (i) improved care for patients, (ii) value for taxpayers, and (iii) engagement with all relevant parties, and local buy in and support, which does not necessarily mean complete unanimity. As the British Medical Association (BMA) rightly states, GP partners cannot be forced to give up independent contractor status and to do so must always be their own free choice. There are many ways in which GPs can collaborate with other providers, including through primary care networks.

22. NHS Improvement's proposed power to direct mergers between Foundation Trusts was rejected by the Select Committee, NHS Providers and the NHS Confederation. It was also discussed, and not supported, by the NHS Assembly. It not should not be included in the draft Bill.

23. The proposed power for NHS Improvement to set annual capital spending limits for NHS FTs should also be circumscribed on the face of the Bill as a narrow 'reserve power' only. Each use of the power should only apply to a single named FT individually and automatically cease at the end of the current financial year. The newly merged NHS England and NHS Improvement should be required to explain why use of the power was necessary; describe what steps it had taken to avoid its use; and also include the response of the FT. To ensure transparency, this information would be published.

24. NHS England and NHS Improvement should be permitted to merge fully, as requested by both their boards, and strongly supported in the consultation responses. Monitor and the Trust Development Authority should be abolished, with their functions added as necessary to the existing legislative basis of NHS England. In response to the Select Committee's recommendations, we are not requesting that the merged body has any new powers over local NHS organisations apart from the new highly circumscribed 'reserve power' in relation to capital.

25. The proposal to allow the Secretary of State the same kind of flexibility enjoyed prior to the Health and Social Care Act 2012 to transfer or require the delegation of functions between national bodies received a mixed response, including from a number of those bodies such as the Care Quality Commission. The Select Committee said that the case was unclear, and that more detail – and safeguards - would be required should the Government decide to proceed. There is no consensus which enables us to recommend the original proposal be progressed.

26. The Royal College of Nursing (RCN) sponsored a petition calling for clearer accountability and enough funding to ensure sufficient staff in the NHS. UNISON has also made the same points. In responding to the RCN and UNISON, we recommend that the Government should now revisit with partners whether national responsibilities and duties in relation to workforce functions are sufficiently clear.

27. Finally, we recommend that the Government adopts an inclusive process to preparing the Bill, prior to its presentation to Parliament. In this way, the strong consensus generated through our process, aided by the Select Committee, would be maintained.