

INTERJECTIONS BY LORD OWEN IN THE HOUSE OF LORDS DEBATE
ON THE HEALTH AND SOCIAL CARE BILL COMMITTEE STAGE (DAY
7), 22 NOVEMBER 2011

3.30pm

***Clause 20 : The NHS Commissioning Board:
further provision***

Amendment 96

Moved by Lord Warner

96: Clause 20, page 15, line 37, leave out first "the" and insert "a maximum of five obligatory and five desirable"

LORD OWEN

My Lords, I support the amendment spoken to very ably by the noble Lord, Lord Hunt. The case is utterly convincing in every respect. The use of the word "mandate" is strange in parliamentary terms. It presumably owes something to the idea of legitimacy. We talk of a mandate coming from the electorate. If the Bill is to use this term, I imagine that it is in the belief that it is a mandate from the Government. It has always been recognised that if there is a mandate from the electorate going to the Government then that mandate from the Government must be checked by Parliament. It would be extraordinary if there was any period when the mandate could not be discussed. It has been widely said that the mandate will last for a year, although that has not been officially confirmed. It is essential that we hear from the Minister how long the mandate will run. But with a period of even six months it would be irresponsible for Parliament not to comment on it and have the facility to debate it.

Here we come to the nub of this whole question. We have already been there on the question of the Secretary of State's powers. Are we really considering putting this vast

block of government expenditure out into the void with no requirement or capacity for the Government to be held to account by Parliament? This is an absolutely essential amendment. Were it to be rejected, we would have a very clear idea of what the Government's views are about the role of the Secretary of State. I have said before that I call this Bill the Abdication of the Secretary of State Bill.

We can argue about this but the Government have a majority and are going to push this legislation through. For all the balmy words and the assurances we hear, this legislation will, I am sure, near the end of the day, emerge very much as it was originally presented. There is a logic to it and there is no doubt that the Secretary of State has not come to his position lightly or without thought. He was in opposition for many years and is very knowledgeable about the health service. He has a philosophical position. He wishes to take the NHS out of politics-the old slogan of the BMA for years and years. However, that position was rejected by every single Conservative Government since the Act was first introduced because they believed it was impossible to take such a large sum of money out of the realm of politics. It seems amazing that we have not yet had a single, serious argument as to why this strange new philosophy should be introduced. Where there is substantial government expenditure, which comes from taxpayers and is not owned by the Government, there should be accountability throughout the process.

I have also raised another, and, I feel, much deeper, issue. The British people, over all these years, have accepted that our spending on health-which is actually less than that of many other comparable nations-is rationed. It is no use us ducking the fact that we are making massive changes to an institution that has extraordinary levels of public support and has had such support ever since it was introduced. The fundamental reason-I can find no other justification-is that there is a sense among the British people that they have had their say in this rationing process. They have had a mechanism for feeling that the choices and distribution of finances have been debated and that therefore it is a choice they

can support. If we tamper with that process, we tamper with a very serious element—this acceptance of the rationing process and this support for the NHS.

Some measure of parliamentary accountability has to be written into the Bill at every juncture where it makes sense. This will come up in the debates on the Secretary of State's powers, which are still to come, but many of us have expressed the view—I have certainly written about it—that the health service is overcentralised, that a degree of decentralisation in decision-making is necessary, and that there needs to be less micromanagement. These issues are broadly accepted. But we come now to this mandate. I would have chosen a different word and a different mechanism. However, if that is the only mechanism we can amend, how can we reject the idea of some measure of parliamentary accountability, of writing in some other priorities and of questioning the decisions of the Minister?

Amendment 98, tabled by the noble Lord, Lord Warner, is very necessary. He and I may remember a day when the Secretary of State at the time was intent on the policy of pay beds. I was fully associated with the policy, even though I am not so sure it was the wisest policy in retrospect. It was very interesting that the then Permanent Secretary exercised his responsibility and came in and argued against the proposition. We claimed we had a mandate from the electorate as it had been in the Labour Party manifesto in the 1974 election. He nevertheless produced a rational argument why that should not be done at that particular time, following the reorganisation of the National Health Service. The noble Lord will remember this very well because he was on a committee that was looking at this very issue. The Permanent Secretary said that it was the wrong timing quite apart from the issue of principle as to whether the measure constituted the right politics. I should say in fairness to the then Secretary of State, Barbara Castle, that she gave him a proper hearing, questioned him and explained the situation. He said at the end of the day, "If you decide to go ahead with it, that is your choice and we will loyally support it". I think that few people who dealt

with those officials had any belief that they had anything other than 100 per cent commitment to the measure. They had fulfilled their constitutional responsibilities and there would have been much merit in the issue being forced out and discussed. People should have known that opinion. In our present system these opinions do not often come forward.

At least under the system in place at that time there was constant scrutiny of the Secretary of State through Parliament. In this situation where the Secretary of State, having issued his mandate, will pull out of any form of day-to-day accountability in Parliament, scrutiny becomes ever more necessary. The transparency has to be on both sides. The officials-in this case, the Commissioning Board-have a perfectly reasonable right to make clear to Secretaries of State that they think the mandate that has been pushed on to them is not deliverable. That should then be made known to the public. Similarly, the commission and the Secretary of State should know what Parliament's view of the issue is. I await the Minister's response, which will flavour a lot of one's attitude to other important debates about the powers of the Secretary of State which we have still to resolve. The Government should indicate whether this is a totally "geek" Bill with the strange philosophical position that Parliament must never put its dirty fingers on any aspect of the National Health Service. Are we to have a grown-up, adult debate about the degree of decentralisation and the degree of management that will be devolved, or are we going to have a clear-cut line whereby Parliament in effect has no responsibilities at all?

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It sounds very reasonable, but effectively the pre-consultation period will involve the board, HealthWatch England and such other persons as the Secretary of State allows. Parliament will not always be fobbed off with the answer that the Minister is still considering the issue. That

is perfectly reasonable; we all know that a normal consultation period is required by all ministries, and certainly the Department of Health has observed this over many decades. It is when the Minister makes up his mind that Parliament will know what the policy is-and if it is in legislation it will be at that stage that there will be an intervention from Parliament with the right to challenge it. Therefore, it is perfectly reasonable to ask Parliament to come in after the consultation period because then it will know what the Secretary of State is proposing.

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The procedure in another place is deliberately very limited in terms of getting to a legislative change. This mandate has many of the qualities of legislation. It lasts for a year. It is going to be a fixed statement. Is the Minister really telling us that the Secretary of State will not be saying that, because the mandate has been given, this is a question for the commission or the board-one which would he would normally accept on the Floor of the House? Past experience is that he will pass that responsibility on the Floor of the House to, in this case, the commission. This is what concerns many people: there will be a change in procedure in how questions are answered in the House of Commons. The Minister has still not answered the question. This amendment allows a substantive change in the mandate that would stay for a year to be instituted by Parliament after it knows what is in the Minister's mind, and he appears to be rejecting that. Is he rejecting that?

Amendment 102

Moved by Lord Warner

102: Clause 20, page 17, line 14, at end insert-

"(2) In discharging its duty under this section the Board shall establish an independent panel to formulate minimum standards of-

- (a) financial,
- (b) performance, and
- (c) asset,

management information to be included in the audited accounts for all bodies to which this subsection applies.

(3) Subsection (2) applies to all bodies commissioning or providing NHS services under annual contracts of at least £500,000.

(4) The independent panel shall be established-

- (a) within 6 months of this Act receiving Royal Assent, and
- (b) jointly with Monitor on a basis agreed by the National Audit Office.

(5) The standards formulated by the panel shall be kept under review by the Board and Monitor and, in doing so, they will pay particular regard to the extent to which the standards have ensured levels of public accountability similar to those required of bodies providing comparable services."

Lord Owen (Crossbench)

My Lords, I had not expected to intervene in this debate, but some of the things that I want to say may fit more naturally under this issue. The idea of having a standardised method of comparison right across the National Health Service is a very good one and it has merit if it comes initially from an independent group.

The Government have a special responsibility here, because, very soon after taking office, they encouraged the noble Lord, Lord Green, to look at all these areas, of

which land and asset management was a very important part. We all know that this has not been coherently done in the past and that there are substantial land assets throughout the NHS.

As we go to smaller and more fragmented units, it is even more important that there is some structure which looks at land management across the board; otherwise it will be seen in a very narrow context. There may be a sale of some land asset which might quite appropriately have been offered to a neighbouring organisation, whether it is a commissioning group or a foundation hospital. The proposed body would cover all aspects, not just commissioning groups but foundation hospitals as well, and so I am very attracted to it.

The report of the noble Lord, Lord Green, said that not only did government not utilise the efficiencies of having an overall look at land management but also that it had no coherent way of achieving its procurement gains. Any large organisation looks across these areas and maximises the advantages that are available. Procurement has not been done very well in the National Health Service, so there is room for improvement whatever structure is implemented. In the past, regional health authorities had procurement functions and were able to negotiate substantially improved contracts because of the size of the procurement agency. I do not quite know what is going to happen in the procurement field. I therefore put the matter to the Minister so that he can perhaps indicate where he thinks it would be appropriate to raise the issue of procurement in future. Again, I say that the work needs to be done by independent people. That was the advantage of the Green report: he got his people from many different fields and focused on government as a whole. He did not look very closely at the NHS, but there is merit on both these questions of land and procurement in seeing whether we can achieve some economies of scale and in taking a fresh and independent look, which we have not had for some time.