Dear Andy, Liz and Debbie,

I am writing this on behalf of the Save Lewisham Hospital Campaign.  I am delighted that the Efford Private Members Bill was passed last week. We can use it as a campaigning tool till the next election.

We appreciate that this Bill will not become law. However, this Bill may be a precursor to one that the Party would propose in a new government after the election. If so, there is a perception amongst campaigners and others that there are a number of flaws that could be eliminated. I am therefore writing with suggestions for changes that could be incorporated into any future Bill – or a clear explanation for why these may not be needed . I am not a lawyer, so I have taken these suggestions from others, mainly from Allyson Pollock’s critique, that I presume will also be sent to you.

Here they are:

**Section 75 is not expressly revoked.** It should be made crystal clear.

**The Bill would not re-establish the SoS’s legal duty** to provide NHS services in England because

* Clause 1 says: “duty to exercise functions to secure provision” rather than “duty to provide or secure provision.”
* Clause 3 says: “duty to arrange provision” rather than “duty to provide” and “throughout England”

The 'duty to arrange provision' is parlance for duty to commission. This phrase retains the break in responsibility for actual provision of services, passing that on to commissioners. We need to see the SoS directly responsible for the provision of a comprehensive health service, not simply responsible for commissioning arrangements where CCGs, or what is threatened, a privatised commissioning support service, can make their own individual commissioning decisions on what they can provide, for whom they provide it, and from whom they commission it.

**The Bill keeps important elements of the competitive infrastructure**. It requires the SoS to ensure that commissioners promote patient choice and do not engage in anti-competitive behaviour. The term “patient choice” has been used to underpin competition as part of the internal market. Why do we need a phrase that prevents anti-competitive behaviour if we are eliminating competition as a driver for the NHS? If the term is being used, then it should be made clear that it refers to patients being able to choose aspects of the management of their condition, not only where they get referred. This has always been seen as a major driver for the internal market.

**The Bill may allow EU Competition Law to still impact on the NHS** through the phrase “services of a general economic interest” in Clause 1(2)b. The EU has made clear that health services would be excluded from competition law if they are “non-economic activities of a purely social nature”. Why include the phrase when the second part of the sentence “on the basis of social solidarity” would be very likely to take the NHS out of EU competition law. It seems perverse and contradictory.

**CCGs could still decide to stop providing some NHS services** despite Clause 3 and 5. It needs to be made clear that that CCGs must provide a full range of NHS services at all times.

**Foundation Trusts would remain and be extended to all Trusts**. We need to get rid of the FT independent status while retaining and strengthening their patient and public involvement processes. The FTs are key parts of the competition infrastructure.

**The provisions on TTIP may not be effective.**

* They seem to kick in only after signing the Treaty
* It seems to apply to the obligations of NHS bodies rather than the UK NHS as a whole
* It is not clear whether it would apply to commissioners and providers

I hope these are helpful comments. I repeat, we are not lawyers. There may be legally-based reasoning behind the inclusion of some of the above wording. However, they give rise to serious outside criticism of the Bill and possible future Labour legislation. They appear to undermine the aim of the bill to recapture the NHS under public ownership and under direct governmental responsibility.  Clarification would be welcome. The Campaign would be happy to work with you on that.

Yours,

**Brian Fisher**

On behalf of the Save Lewisham Hospital Campaign