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Judgement day

The past five years have seen monumental changes to the British healthcare system, but to what end asks Sunniva Davies-Rommetveit

"Damaging and distracting", "bewilderingly complex" and "a strategic error". Thus goes the verdict of health thinktank The King's Fund on the coalition's Health & Social Care (H&SC) Act 2012. The report 'The NHS under the coalition government' accuses the coalition – and in particular former health secretary Andrew Lansley – of burdening the healthcare system with added layers of unneeded bureaucracy.

It also argues that, while noxious NHS privatisation claims have been "exaggerated", the ambiguities that arose from the Act's 'section 75 regulations' meant there was additional uncertainty about when services should be put out to tender.

Many experts agree that the coalition's five-year reign has seen the biggest rearrangement of the NHS since its inception. Whether this was needed in the first place has been bitterly contested ever since.

Indeed, Lansley's 2010 white paper 'Equity and excellence: Liberating the NHS' – seemed to be everything that David Cameron had previously pledged would not happen. Not only did Cameron promise no top-down restructuring of the NHS in 2006, the coalition's official policy document, 'The coalition: Our programme for government', which predated the white paper by six weeks, made no hint of the changes Lansley wanted.

A messy process

Aside from this political hypocrisy, the reason for implementing the Act was twofold. Firstly, the coalition wanted a more streamlined, accountable and independent health service – hence giving more independence to Monitor and taking monetary power away from the Department of Health (DH). Secondly, it wished to increase competition (and as a result private providers' involvement) to drive efficiencies and change.

However at various points when going through parliament, the bill seemed to have something for everyone in the sector to complain about. NHS stalwarts argued that a revamping of the NHS could be achieved without top-down intervention. Advocating competition also attracted a lot of criticism, much to the private sector's dismay.

Embarrassingly for Lansley (and the coalition government as a whole) concern levels in the House of Lords reached such heights that the bill was "paused". After this unprecedented step the NHS Future Forum was set up which, among other things, watered down Monitor's role as the NHS' economic watchdog. This included changing the description of Monitor's role from a body which would encourage competition, to one that would discourage anti-competitive practices.

The dust settles

After the bill was finally passed, more powers were transferred from the DH to a non-departmental organisation now called NHS England (formerly the NHS Commissioning Board). This was in order to avoid "political micromanagement" from the secretary of state and included the board being put in charge of allocating and overseeing resources for consortia of GPs, and being encouraged to speak on behalf of the NHS' overall interests.

Generally the move was positive in that it created more freedom for NHS England to develop policy at arm's length from DH ministers. David Owens, partner at law firm Bevan Brittan, points to the recent 'Five year forward view' (FYFV) by NHS England chief executive Simon Stevens as a good example of this. "Possibly for the first time we've had an apolitical view on the NHS and where it should go in future," he says.

Another positive of the coalition's health policies has emerged recently. Beccy Baird, policy manager at The King's Fund, thinks the second half of the coalition's time in office is "characterised by a welcome shift away from the technocratic changes contained in the H&SC Act to concentrate on safety and quality of care". Indeed, there has been more emphasis on integrated care and pooled budgets for health and social care. This came as a result of findings in the NHS Future Forum which sowed the seeds of the widely-welcome Care Act 2014. Baird says the Care Act "created the legal framework for a fairer system of long-term care".

Experts, including Baird, think that a focus on personalised care and on integrating the health and social care system should have been a top priority for the coalition from the beginning.

The far-reaching repercussions of the H&SC Act 2012 have continued to make waves throughout the coalition's time in government, though. Some experts have questioned the extent to which transferring powers away from DH has helped make the system more apolitical and reduced bureaucracy. For example



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current problems in the system – such as acute hospitals missing four-hour waiting targets – have increasingly seen current health secretary Jeremy Hunt in the NHS driving seat once again.

Equally, the removal of some of the secretary of state's powers through the old Strategic Health Authorities (SHAs) and Primary Care Trusts (PCTs) meant the new structure became "overladen with regulations" according to Owens. This was due to the introduction of new committees to replace what would have previously been dealt with by DH. Clinical senates and health and wellbeing boards just added another layer of bureaucracy.

When Lansley scrapped PCTs to replace them with clinical commissioning groups (CCGs), moreover, people did not start anew, but simply transferred from one body to another. Rick Muir, associate director for public service at thinktank IPPR, says it was a similar story with employees transferring from defunct SHAs to NHS England (which as of March 2014 employed 15,291 staff). "I think the coalition definitely failed in their attempt to reduce bureaucracy - people from the old system were just absorbed into the new one," he explains.

Mills & Reeve partner Julian Smith describes the period of transition from PCTs to CCGs (in 2013) and in particular the final months of the PCTs as "like swimming in treacle". Paradoxically, a system aimed at levelling the playing field between private and public providers became bogged down in slow moving procurement processes as people tried to figure out their new roles. Things were confused further by lack of clarity on which services should actually be put out to tender.

Indeed, one of the most controversial ideas advocated by the coalition was the notion that competition could drive efficiencies and successes in the NHS. Though the idea wasn't new, the extent to which the government pushed this ideology was. For instance Lansley's paper repeated the idea that Monitor and the then-NHS Commissioning Board would improve the system by "promoting competition".

Though the language surrounding competition was diluted thanks to the NHS Future Forum, Labour pounced on the coalition for introducing market forces into the NHS with section 75 of the H&SC Act. In 2013, the section 75 regulations were redrafted in an attempt to clarify the government's position on which services should go out to tender. But this failed to have the intended effect and confusion remains to this day about when services should or shouldn't be put out. This has added an increasingly toxic and unhelpful dynamic to the debate about the private sector's role in the NHS.

"This is one area where I would be critical of the government," Owens says. "Despite Monitor stating on numerous occasions that it is not compulsory for services to be put out to tender, the examples it has given are unclear to say the least."

As a result of this he believes that there is a fear of introducing change into the system: "If you do that, you may have to go through a costly procurement process. Quite a lot of community contracts have just been extended and extended as a result."

Jury's in

Five years later and the privatisation debate is synonymous with the NHS. Experts have unanimously echoed The King's Fund's very mixed report on the coalition's changes to the health system. Meanwhile, Labour has been vociferous in criticising them and many of the government's policies would almost definitely be in jeopardy if there is a Labour minority or coalition government come May.

Recent events have also seen the odds stacked against the government's pro-competition stance. The Circle-Hinchingsbrooke franchise – once the government's poster boy for public private partnerships – fell over very publicly this year. This is while the ongoing NHS tariff disagreement has left questions hanging over Monitor's financial oversight and ability to be an effective economic regulator for the NHS.

Such events mean that if either the Conservatives or the Liberal Democrats won the election, they would likely shy away from addressing the top-down changes introduced in 2012. They would instead continue their focus on preventative and personalised patient care, along with integrating health and social care budgets - both of which were introduced with the Care Act 2014.

In hindsight, moving financial clout away from central government to bodies such as NHS England, Monitor, local authorities and CCGs, could have been implemented much more effectively. An increased focus on health and social care integration should also have been something the coalition addressed much sooner in its time in office.

While some feel that the NHS super tanker has simply taken time to change direction, many view the numerous glitches along the way as fundamental flaws that can only be resolved by repealing the H&SC Act in part or entirely. The coalition's top-down reorganisation of the NHS, therefore, perhaps felt more like painstakingly rearranging the deck chairs on the Titanic.

Timeline

May 2010 Coalition sets out NHS policy in its report 'The Coalition: our programme for government'

July 2010 Lansley White Paper 'Equity and excellence: Liberating the NHS' published. Government met with criticism for introducing top-down NHS restructuring

June 2011 'NHS Future Forum: recommendations to government on NHS modernisation' published during unprecedented 'pause' in bill going through parliament

October 2011 NHS Commissioning Board Special Health Authority (NHS CBSHA) established

March 2012 Health & Social Care bill receives royal assent to become Health & Social Care Act 2012. Monitor given additional powers to become the NHS economic regulator

October 2012 NHS Commissioning Board (NHS CB) established as an executive non-departmental public body, replacing NHS CBSHA

February 2013 Department of Health releases regulations 257, commonly known as the section 75 regulations. These aimed to clarify section 75 of the Health & Social Care Act 2012, which is concerned with procurement, patient choice and competition.

April 2013 NHS England replaces NHS CB

April 2013 152 primary care trusts are replaced by 211 clinical commissioning groups. Strategic health authorities abolished as of 31 March 2013

June 2013 £5.3 billion Better Care Fund (formerly the Integration Transformation Fund) announced to facilitate pooled budgets for health and social care

May 2014 Care Act 2014 receives royal assent



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