Judge says NHS England must involve patients in commissioning choices

Clare Dyer THE BMJ

NHS England is acting unlawfully in failing to set up arrangements for patients to be involved in primary care commissioning decisions, a High Court judge has declared. The declaration by Mr Justice Popplewell followed the admission by NHS England that it was “not yet in compliance” with the duty created by the 2012 Health and Social Care Act.

The 2012 act added a new section 13Q to the NHS Act 2006, putting NHS England under a duty to make arrangements for the involvement of patients in primary care commissioning decisions. The section came into force in April 2013.

NHS England admitted to the court that it had not yet made the arrangements but was “taking active steps to bring itself into compliance with the duty.”

An application for judicial review was brought by Danny Currie, a long time patient of the Jubilee Street general practice in Tower Hamlets, a deprived area of east London. He was funded by legal aid, but the judge ordered NHS England to pay 50% of his costs.

He brought the High Court case after the practice was threatened with closure following a decision to phase out the minimum practice income guarantee (MPIG). After a high profile campaign NHS England agreed a two year funding arrangement for the practice, but Currie’s lawyers, Richard Stein of the firm Leigh Day and the leading health law barrister David Lock QC, argued that patients should be involved in any commissioning decisions involving the services they use.

The duty requires NHS England to involve patients—whether by being consulted or provided with information in other ways—in the development and consideration of proposals for changes in commissioning arrangements that would have an effect on the way services were delivered or the range of services available.

Stein said, “NHS England have produced guidance for all the clinical commissioning groups on how to deal with this duty, but bizarrely they haven’t made arrangements themselves. They profess to be concerned with putting patients at the heart of the NHS, but this would seem to indicate that the commitment is rather thin.”

Cite this as: BMJ 2014;349:g7241

NICE advice on obesity could mean 5000 more operations a year

Jacqui Wise LONDON, UK

All obese patients with type 2 diabetes should be assessed for weight loss surgery, new guidelines from the National Institute for Health and Care Excellence (NICE) state.1 If the guidance is followed, at least 5000 more procedures would be carried out each year in the United Kingdom.

The new updated guideline recommends that bariatric surgery should be offered to everyone with a body mass index ≥35 who has recent onset type 2 diabetes, defined as diagnosed in the previous 10 years. Weight loss surgery should also be considered for people with type 2 diabetes whose body mass index is 30-34.9. Both groups of patients should be referred to a specialist (tier 3) weight management service.

The new guidelines also say that people of Asian origin with type 2 diabetes should be considered for bariatric surgery at a lower body mass index than people of other ethnic origin.

People who have had bariatric surgery should be offered follow-up care within the bariatric service for a minimum of two years. This should include monitoring of nutritional intake and mineral deficiencies; medication review; and assessment, advice, and support about diet and physical activity.

Mark Baker, director of the centre for clinical practice at NICE, said at the launch of the guidelines, “We anticipate an additional 5000 operations a year would be appropriate if the guidelines are followed, which would cost around £27m a year. But savings would start to kick in around year two.”

He added, “The financial implications of obesity are huge—10% of the NHS budget is used to treat diabetes and its complications alone. We know the NHS is facing lots of challenges at the moment. But the value of weight loss surgery for patients with diabetes is undeniable.”

Rachel Batterham, head of obesity and bariatric services at University College London Hospital NHS Trust, said, “There were half a million bariatric surgery procedures carried out worldwide last year but only 6500 operations in the UK. We lag behind France, Italy, and much of Europe, even though our rates of obesity are much higher.” She said there was a bottleneck, particularly in London, with a lack of specialty services for patients with obesity.

She added, “Bariatric surgery pays for itself for patients with type 2 diabetes. Around 60% of people with type 2 diabetes who undergo bariatric surgery are not on any diabetic medicine two years later. And the earlier you have surgery following a diagnosis of diabetes the better the chance of remission of the disease.” However, she pointed out that bariatric surgery was not a magic bullet, because patients had to change their eating habits and exercise regularly.

Cite this as: BMJ 2014;349:g7246
IN BRIEF

Alert issued on naloxone: NHS England has issued a patient safety alert to warn of the risk of harm or death from inappropriate doses of naloxone in patients on long term opioid or opiate treatment. This follows three patient safety incidents after failure to follow British National Formulary guidance, two of which resulted in death. The BNF emphasises that doses used in acute opioid or opiate overdose may not be appropriate for the management of respiratory depression in patients receiving palliative care and those with long term opioid or opiate use.

Hospital emergency target performance at its lowest for 18 months: Hospital emergency departments in England saw just 92.9% of patients within the target of four hours in the week ending 16 November 2014, the lowest proportion since April 2013. The target to see 95% of emergency cases within four hours has not been met since the end of September.

Talking therapy helps reduce risk of suicide among high risk groups: Researchers tracked 5678 Danish people who had attempted suicide and who later received 6-10 counselling sessions. The results, published in Lancet Psychiatry, showed that the rate of suicide was 26% lower (70 suicides occurred, 23 avoided; odds ratio 0.74 (0.57-0.97)) after five years in this group when compared with 17 304 people who had not received talking therapy.

Care Quality Commission teams up with Silverline: The UK helpline for elderly people, Silverline, received almost 30 0000 calls in its first year. While most callers called because they were lonely, some reported abuse or neglect in their homes or residential care. The CQC’s chief inspector of adult social care, Andrea Sutcliffe, said, “Working together we will be able to improve the standards of care for older people.”

Foundation trusts should control spending on contract staff, Monitor says: NHS foundation trusts in England need to get better control over the costs of contract and agency staff, the regulator Monitor says. Foundation trusts are projected to return a deficit of £271m for 2014-15. In the six months to 30 September 2014 foundation trusts spent £831m on contract and agency staff, double the planned £377m.

71 MPs have links to private health firms

Adrian O’Dowd LONDON

A trade union has accused 71 MPs in the United Kingdom’s coalition government of benefiting from a growing role for the private sector in providing NHS services.

The union Unite published a report on 18 November in which it listed 64 Conservative and seven Liberal Democrat MPs as having links to private healthcare interests, including the prime minister, David Cameron, and the health secretary for England, Jeremy Hunt.

Unite said that this showed that these MPs were linked to companies or individuals who were seeking to profit from the reorganisation of the NHS brought about by the Health and Social Care Act, which came into force last year and which created a legal mechanism to force healthcare commissioners to put NHS services out to tender from any source, including the private and independent sectors.

The report does not say that any politicians or donors acted illegally, and the Conservative and Liberal Democrat parties have rejected the accusations of any wrongdoing and said that they had been transparent about any donations they had received.

In its detailed report, which took several months to compile, Unite said that 71 MPs who had voted for the Health and Social Care Act had recent or current financial links to companies or individuals trying to profit from what Unite called “the sell-off of the NHS.”

The MPs identified had various interests, including a role in private equity firms that fund private healthcare companies; shareholdings in those same companies; or a role as chairman, partner, adviser, or owner in companies in areas such as pharmaceuticals, care homes, private health insurance or that were involved in lobbying, media, and recruitment for the sector.

The report said that since the Health and Social Care Act was passed in 2012 more than 70% of tendered contracts had been awarded to the private sector, amounting to more than £1bn worth of NHS services. A recent investigation by Unite found that £1.5bn worth of contracts had been awarded to just 15 private companies.

Unite said that while preparing the white paper that led to the act in 2009 the then Tory shadow health secretary, Andrew Lansley, received £21 000 at his personal office from John Nash, then chairman of the private healthcare company Care UK. In 2013 96% of Care UK’s business, amounting to over £400m, came from the NHS.

The report also said that the current health secretary, Jeremy Hunt, received two donations to his constituency office from the hedge fund boss Andrew Law, who has donated more than £600 000 to the Conservatives.

The Stratford-on-Avon Conservative MP Nadhim Zahawi, who described the health act as a brilliant piece of legislation, was, said Unite, the non-executive director of the recruitment company STThree, which had gained at least £2.6m from the new commissioning groups.

Len McCluskey, Unite’s general secretary, said, “The sheer scale of this conflict of interest is staggering, but it is the ongoing sell-off of our NHS that makes this the real scandal for our democracy.”

Cite this as: BMJ 2014;349:g6592

Hospital threatens to evict medically fit patients

Ingrid Torjesen LONDON

A Dorset hospital trust has warned that it plans to give patients who no longer need to stay there for medical reasons seven days’ notice to vacate their beds, and if they do not do so it will consider “evicting” them.

The Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust told the BBC that some patients were medically fit to leave and were remaining in hospital for spurious reasons.

Katie Whiteside, clinical manager for discharge services at the Royal Bournemouth, told the BBC that one family had asked the hospital to “keep hold” of a relative while they took a two week holiday in Turkey. Others had said that they disliked the décor of care homes or the staff member who met them at the door. “Sometimes they are decorating the house or having a ‘granny annexe’ built,” said Whiteside.

Cite this as: BMJ 2014;349:g7236
**Home visits improve asthma control in adults**

**Susan Mayor** LONDON

Home visits by community health workers significantly improve asthma control and quality of life in low income adults with uncontrolled asthma, show the results of a US study on the benefits of greater support for self management.

Home based support to improve the control of asthma in children is well established, but it has not previously been tested carefully in adults. Researchers randomised 366 adults aged 18 to 65 with uncontrolled asthma, either to receive home visits from community health workers to support asthma self management or to receive usual care. All of the participants had low incomes and lived in King County, Washington state.

The health workers used motivational interviewing to help patients develop tailored asthma management plans at the first visit, and they then provided four follow-up visits and telephone or email support. Results showed that people who received home visits had significant increases in their quality of life and in the number of days when they were free of asthma symptoms. They had an average increase of two symptom-free days in every two weeks.

Cite this as: BMJ 2014;349:g7165

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**MPs back bill to curb NHS privatisation**

**Clare Dyer** THE BMJ

A bill aimed at curbing the role of the private sector in the NHS in England has received strong backing in the UK parliament.

MPs voted by 241 to 18 to give a second reading to the National Health Service (Amended Duties and Powers) Bill, a private member’s bill that would reverse elements of the coalition government’s Health and Social Care Act 2012.

The bill, tabled by the Labour MP Clive Efford, would scrap rules made under the act, introduced by the Conservative and Liberal Democrat government, that provide for contracts for NHS services to go out to competitive tender. But as a private member’s bill it stands little chance of becoming law.

The bill would also exempt the NHS from the Transatlantic Trade Investment Partnership, the free trade agreement being negotiated between the European Union and the United States. It would restore the statutory duty on the health secretary for England to provide comprehensive health services, stop NHS hospitals earning up to 49% of their income from private patients, and exclude the NHS from the provisions of the Competition Act 1998.

Labour MPs, including the party’s leader, Ed Miliband, and other frontbenchers, came out in force to support the bill, which was also backed by the two former Conservative MPs who have defected to the UK Independence Party, Douglas Carswell and Mark Reckless. Two Conservatives and seven Liberal Democrats also voted for it.

“I am delighted that my bill has been passed with the overwhelming support of Labour MPs,” said Efford. “But our fight isn’t over. Now we need to pressure the government to make sure that they take the bill straight to committee and do not use delay tactics.”

Cite this as: BMJ 2014;349:g7156
Cancer death rate in under 75s falls in England over past decade

Jacqui Wise LONDON

The death rate from cancer among people aged under 75 fell by 14.7% across England from 2003 to 2013, NHS Outcomes Framework data have shown. However, regional data showed rises in some areas of the country.

The figures, published by the Health and Social Care Information Centre, showed that cancer is still the biggest killer of people under 75. A total of 63 458 deaths from cancer occurred in England’s under 75s in 2003, falling to 62 132 in 2013. In every 100 000 people in England 1/2 died from cancer in 2013, down from 166 in 2003.

Regional analysis showed that of the 326 local authority areas, the death rate from cancer fell in 298 areas and rose in 28. Clusters of local authorities with high cancer mortality rates were seen in the North West, North East, and West Midlands, and around the Thames estuary. Salford had the highest cancer mortality rate in 2013, at 201.3 deaths in 100 000, followed by Blackpool, Manchester, Gosport, and Copeland.

The most common forms of cancer leading to death in men and women were cancers of the digestive organs and cancers of the respiratory and intrathoracic organs. The third most common forms were breast cancer in women and cancers of the genital organs in men.

The statistics showed a 10.2% increase in deaths from cancer of the digestive organs among women over the past decade, up from 5856 in 2003 to 6451 in 2013. And deaths from the respiratory and intrathoracic organs increased by 15.7%, from 5617 in 2003 to 6497 in 2013. However, deaths from breast cancer fell by 13.3% during the same period.

Among men deaths from cancers of the digestive organs increased by 3% over the past decade, from 10 630 in 2003 to 10 948 in 2013. However, the data showed a 7% fall in deaths among men from cancers of the respiratory and intrathoracic organs and a 9.7% fall in deaths from cancers of the genital organs from 2003 to 2013.

The under 75 mortality rates from cancer and from cardiovascular disease both fell during 2012-13. Mortality from cancer fell by 2.1%. Cite this as: BMJ 2014;349:g7069

Two month target for cancer treatment is breached for third quarter in a row by trusts

Jacqui Wise LONDON

NHS trusts in England have breached the 62 day wait target for cancer treatment for the third consecutive quarter, latest figures show. The operational standard specifies that 85% of patients should wait no more than 62 days to begin their first definitive treatment after an urgent referral by their GP for suspected cancer.

In the quarter from July to September 2014 a total of 33 404 patients began the first definitive treatment for cancer after an urgent GP referral. The latest figures from NHS England show that 83.5% of these patients were treated within 62 days, down from 86.8% in the same quarter in 2013-14. This is the third consecutive quarter in which the target has been missed: the previous two quarterly figures were 84.1% and 84.4%. Of 156 providers 67 failed to meet the 62 day wait target.

Cite this as: BMJ 2014;349:g7026

NICE publishes draft guide to help GPs identify signs of more than 200 cancers

Jacqui Wise LONDON, UK

The National Institute for Health and Care Excellence (NICE) has published draft updated guidance to help general practitioners spot early signs of cancer in a bid to improve rates of early diagnosis.

The guideline uses tables to clearly set out which signs and symptoms best predict different cancers together with recommendations for tests and referral to specialist services. It also sets out how long people should wait to be seen by a specialist once they have been referred to hospital.

NICE says a quarter of all people who eventually had cancer diagnosed in England had to visit their doctor at least three times before being referred to hospital for tests. Last year the Organisation for Economic Cooperation and Development (OECD) said many countries, including the UK, were not doing well enough at diagnosing cancer early.

Mark Baker, NICE’s clinical practice director, said: “A lot of cancer symptoms can be very general and similar to those of other conditions.” He added that with more than 200 types of cancer it is unrealistic to expect GPs to know every sign and symptom for each one, when they only see a handful of new cases a year.

The guidance also includes updated recommendations about safety nets, which set out how and when to review patients with a symptom associated with an increased risk of cancer but who do not meet the criteria for referral. It also includes advice on reassuring and supporting those who do not meet the criteria for referral. It also includes advice on reassuring and supporting those who do not meet the criteria for referral.

A booklet to help people identify possible signs of cancer and encourage them to visit their doctor at least three times before being referred to hospital at least three times before being referred to hospital. Last year the Organisation for Economic Cooperation and Development (OECD) said many countries, including the UK, were not doing well enough at diagnosing cancer early.

The areas with the highest and lowest rates of cancer deaths in England were Salford and Hart, Hampshire.
Doctor fails to stop GMC being given unused material from his trial

Clare Dyer THE BMJ

A doctor who was found not guilty of sexual assault by a jury has failed in a bid to stop the police handling over to the General Medical Council material that was not used in his trial. The ruling by High Court judge Mrs Justice Cox in the case brought by Ali Izzet Nakash was described by the GMC’s counsel Jain Steele as “an important judgment on the balance between an individual’s right to privacy and the public interest in regulators having access to potentially relevant material.”

Nakash, originally from Iraq, was a specialist registrar in obstetrics and gynaecology who had been working at the Royal Free Hospital in north London for around four years when he performed transvaginal ultrasonography on a 24-year-old woman on 5 June 2011. He initially asked a female nurse to be present as a chaperone but invited her to leave at some stage during the procedure.

Later that day the patient, named only as M, made a complaint of sexual assault, the Metropolitan Police were contacted, and Nakash was suspended from work. The next morning he contacted the Medical Defence Union, who told him not to say anything to his employers or the police without legal advice.

On 6 June police arrived at his home to arrest him. He was not informed that he was being arrested nor of the grounds for his arrest, which meant that the arrest was unlawful. Computers were seized, but this was unlawful too, since seizure powers can be exercised only after a lawful arrest. He was taken to the police station, where he was interviewed without a legal representative present, and gave full and detailed answers. “At times the questions asked by the police were improper, both in form and in substance,” said Cox. Police also told the GMC that Nakash had been arrested.

He was charged after a lengthy delay.

The proportion of patients starting their first definitive treatment within 62 days varied by provider from 50% to 100%. The breakdown of wait to first treatment by cancer type shows that 95.1% of patients with breast cancer but only 73.6% of patients with lung cancer and 73.3% of those with lower gastrointestinal cancers began treatment within 62 days.

Sarah Woolnough, Cancer Research UK’s executive director of policy and information, said, “This isn’t just about missed targets—consecutive breaches mean thousands of patients are being failed. Today’s figures show that more than a third of all NHS trusts in England have breached the 62 day target.”

She added, “These targets exist to ensure swift diagnosis of cancer and access to treatment, which is vital if we’re serious about having the best survival rates in the world. Patients want confidence that suspected cancer is taken seriously and prioritised by the NHS. These breaches have become a trend.”

Cite this as: BMJ 2014;349:g7038

NHS volunteers fly to west Africa to help tackle Ebola

Annabel Ferriman THE BMJ

The first group of NHS volunteers left Britain for Sierra Leone on Saturday to help in the fight against the outbreak of the Ebola virus. The group of around 30 GPs, nurses, psychiatrists, and emergency medicine consultants will train for a week in the capital, Freetown, before moving to treatment centres across the country. The Ebola virus has killed more than 5000 people in the current outbreak, including 1267 in Sierra Leone.

Cite this as: BMJ 2014;349:g7229

First TV advertisement for e-cigarettes prompts complaints to the ASA

Adrian O’Dowd LONDON

The first television advertisements in the United Kingdom to promote electronic cigarettes have prompted complaints to the Advertising Standards Authority.

The BMA said that the commercials for VIP e-cigarettes, first shown on 10 November, breached guidelines by glamourising so called “vaping”—the act of using an e-cigarette—and by targeting children. The association has written to the Advertising Standards Authority saying that the advertisements sexualised and glamorised e-cigarettes, in direct contravention of regulations that state that marketing for e-cigarettes must be socially responsible and must not appeal to non-smokers.

New rules governing the advertising of e-cigarettes were published last month by the Committee of Advertising Practice, which writes and maintains the UK Advertising Codes. The rules came into effect on 10 November.

Mark Porter, chair of the BMA council, said, “We have repeatedly highlighted our concerns that the promotion of e-cigarettes may have an adverse impact by re-normalising smoking and indirectly promoting tobacco smoking, and advertising rules should ensure that the marketing of e-cigarettes does not appeal to children. Therefore it is deeply concerning that these rules are being completely ignored so soon after coming into force. We believe that this advert breaches the new advertising rules by glamourising and sexualising vaping and by appealing to non-smokers including children and young people.”

The charity ASH (Action on Smoking and Health) has also lodged a complaint about the same commercials.

Cite this as: BMJ 2014;349:g7100

TOLGA AKMEN/AFP
Kim Holt
Championing whistleblowers

KIM HOLT drank deep of the bitterest draught the NHS can offer. She was kept on “special leave” by the Great Ormond Street Hospital trust after she warned, along with three colleagues, that its paediatric services in Haringey posed a serious risk to patient safety. The death of Peter Connelly (Baby P) at the hands of his parents in 2007 justified those fears, but not until 2011 did the hospital apologise for Holt’s treatment. She is one of a rare group of NHS whistleblowers who held onto their jobs, luck having played a part when services were transferred to Whittington Health. She has advised the Care Quality Commission on its inspection methodology to better support whistleblowers, and she currently works in Haringey as the designated doctor for children in care.

Do you have any regrets about becoming a doctor?
“...My only regret is the impact that it has had on my children, as they had to endure a number of years where I was very unhappy and anxious, as I wondered whether I would work again. They are now proud of me, but we lost those years.”

What was your best career move?
Agreeing to advise the CQC [Care Quality Commission] about how to respond to whistleblowers. I think my input is beginning to make a difference in some areas to how people feel when the inspectors arrive. Staff should be safe in raising their concerns to the CQC, and patients will be safer as a result.

Who is the person you would most like to thank and why?
Tim Donovan—a journalist with integrity, who got the bit between his teeth and identified how a report by Jo Sibert, the paediatrician, was the key to exposing efforts to hide health failings after the death of Baby P. He stuck with it for years, and it is thanks to him that I am still working as a paediatrician.

To whom would you most like to apologise?
My family.

If you were given £1m what would you spend it on?
Setting up a children’s centre in memory of Peter Connelly, as a centre of excellence in Haringey.

Where are or were you happiest?
When my children were small and I hadn't yet seen the darker side of how the NHS can treat its staff. We were in Derbyshire and Sheffield—lovely places to live.

What single unheralded change has made the most difference in your field in your lifetime?
Sadly, we are really struggling with how to support children and families and ensure that all children have at least a chance of reaching their potential. There is still a very long way to go, and it’s why I campaign.

Do you support doctor assisted suicide?
Yes, I think so. With strict parameters, to me it seems kind.

What book should every doctor read?
Wilful Blindness: Why We Ignore the Obvious at our Peril, by Margaret Heffernan.

What poem, song, or passage of prose would you like read at your funeral?
Read All About It by Emili Sandé.

What is your guiltiest pleasure?
Watching The X Factor; I love it!

What, if anything, are you doing to reduce your carbon footprint?
Trying to walk and cycle.

What personal ambition do you still have?
To be part of a real cultural change in the health services and to implement some really meaningful interventions.

Summarise your personality in three words
Determined, empathic, and conscientious.

Where does alcohol fit into your life?
I try to be controlled. A glass of champagne is always a lovely treat.

What is your pet hate?
Bullying.

Do you have any regrets about becoming a doctor?
My only regret is the impact that it has had on my children and how they had to endure a number of years where I was very unhappy and anxious, as I wondered whether I would work again. They are now proud of me, but we lost those years.

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