

BODY POLITIC **Nigel Hawkes**

A pair of ragged clauses: the health bill in the Lords

The House of Lords' attention to the details of the health reform bill is impressive

Opposition to the Health and Social Care Bill has created some odd paradoxes. It sets a health secretary who wants to give powers away against those who, years of protesting about ministerial interference notwithstanding, want him to retain them. And the same people who grumble that Andrew Lansley's bill is one top-down reform too many clamour, nevertheless, for it to be amended so that his powers for yet more top-down reforms remain entrenched. As Hilaire Belloc put it, always keep ahold of nurse, for fear of finding something worse.

The argument over ministerial power and accountability has now taken centre stage, and there are distinct signs that the government is getting rattled. The committee stage of the bill in the House of Lords has already seen two clauses kicked temporarily into the long grass: clause 1, which covers the health secretary's duties and obligations, and clause 4, which gives a generous measure of autonomy to NHS organisations by declaring that any person exercising functions or providing services in the NHS is free to do so "in the manner that it considers most appropriate."

Opposition and Liberal Democrat amendments on these clauses have been lengthily discussed but not put to the vote. The minister responsible for shepherding the bill through the House of Lords, Earl Howe, has instead suggested some form of private discussion to try to resolve the differences, and the movers have withdrawn their amendments. In the case of clause 1 it is possible that a form of words may be devised that divides the bill's opponents and allows it to slip through, but clause 4 presents a tougher challenge for the drafters. The Liberal Democrat peer Shirley Williams has indicated that she will vote to eliminate the clause entirely, given a chance, and so will Labour.

Meanwhile those with the energy left to continue discussion of the bill in the Lords have to move on to other clauses without any clarity over these

two important areas. As the Labour peer Norman Warner, a former health minister, put it in debate over clause 4 on 9 November: "We are getting into rather strange territory where, as we wander through the bill, we find that, when the government find themselves under pressure with regard to bits of the bill, they sweep those bits aside to have another go in some procedure which is less than clear to the House and promise to come back later."

It is not clear whether Earl Howe, whose amiability in these exchanges remains irreproachable, has a cunning plan or not. Is this a case of drawing back so as to get a better jump forward or simply an undignified scuttle concealed behind a gentlemanly facade?

At least nobody can argue that they weren't warned. As early as October 2006 I remember a briefing where Mr Lansley first outlined his plan for an NHS Board and his desire to shed powers. To a question from me he replied in a manner that implied I would support the idea if I were bright enough to understand it. My objections were twofold: firstly, that without ministers to drive the system, the NHS would slump into stasis; and secondly, that you cannot spend countless billions of public money without being answerable to parliament for it. Both objections have force, but I think the first has more. It is possible to run services—the armed services, for example—without ministers being responsible for every tank or armoured personnel carrier. But it is less easy to see how the NHS—as classic a case of "producer capture" as we are likely to encounter—would ever reform itself from within.

Mr Lansley puts his faith in clinicians, but they have hardly been in the vanguard in identifying failings or vocal in their condemnation of poor standards. Nor have they proved, with some exceptions, powerful advocates of change to provide better value for money. They have tended to hunker down in their silos, shrugging their shoulders and turning a blind eye to poor



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care. This is small wonder when you see how the NHS treats whistleblowers; but even when due allowance is made for that, past experience does not inspire great confidence.

So while autonomy may be desirable, it is not sufficient. And it is hard to dissent from those peers who pointed out in the debate that an absolute right to autonomy could lead to some decisions with which ministers might disagree but be unable to influence without risking a lawsuit. One body that does seem to disagree is the House of Commons select committee on health, which recently published a report on public health (*BMJ* 2011;343:d7099). Its chairman, Stephen Dorrell, a former Conservative health minister, insisted that complete autonomy—"visible and operational independence of ministers"—was vital for the new organisation Public Health England. He said, "It must demonstrate that it is able to, and regularly does, speak 'truth unto power.'" But what if it speaks untruth unto power? That's not unknown. The committee simultaneously, and without apparent irony, called for more clarity about who would be in charge in the case of a public health emergency such as a flu pandemic.

It's plain that navigating a course between ministerial control and complete autonomy in commissioning and delivery of services is an issue far more complex than the carelessly drafted bill pretends. We all want autonomy, to give professionals the room to innovate and improve. But we also want a minister answerable when things go wrong, and many also want to set limits on autonomous action so that the NHS remains a national service. But at least this is a proper argument about principles, unlike much of the scaremongering and special pleading that has accompanied this unhappy bill on its odyssey through parliament. It's impressive how hard the Lords are trying to find an answer.

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