HEALTH AND SOCIAL CARE
(RE-COMMITTED) BILL

Eighth Sitting
Thursday 7 July 2011
(Afternoon)

CONTENTS
Clause 55 agreed to.
Schedule 8 agreed to.
Clauses 56, 58, 59 and 63 agreed to, some with amendments.
Adjourned till Tuesday 12 July at half-past Ten o’clock.

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The Committee consisted of the following Members:

**Chairs: †MR ROGER GALE, MR MIKE HANCOCK, MR JIM HOOD, DR WILLIAM McCREA**

† Abrahams, Debbie *(Oldham East and Saddleworth)* (Lab)
† Barron, Mr Kevin *(Rother Valley)* (Lab)
† Blenkinsop, Tom *(Middlesbrough South and East Cleveland)* (Lab)
† Brine, Mr Steve *(Winchester)* (Con)
† Burns, Mr Simon *(Minister of State, Department of Health)*
† Burstow, Paul *(Minister of State, Department of Health)*
† Byles, Dan *(North Warwickshire)* (Con)
† Crabb, Stephen *(Preseli Pembrokeshire)* (Con)
† de Bois, Nick *(Enfield North)* (Con)
† James, Margot *(Stourbridge)* (Con)
† Kendall, Liz *(Leicester West)* (Lab)
† Lefroy, Jeremy *(Stafford)* (Con)
† Morgan, Nicky *(Loughborough)* (Con)
† Morris, Grahame M. *(Easington)* (Lab)
† O’Donnell, Fiona *(East Lothian)* (Lab)
† Poulter, Dr Daniel *(Central Suffolk and North Ipswich)* (Con)
† Pugh, John *(Southport)* (LD)
† Shannon, Jim *(Strangford)* (DUP)
† Smith, Owen *(Pontypridd)* (Lab)
† Soubry, Anna *(Broxtowe)* (Con)
† Sturdy, Julian *(York Outer)* (Con)
† Thornberry, Emily *(Islington South and Finsbury)* (Lab)
† Turner, Karl *(Kingston upon Hull East)* (Lab)
† Wilson, Phil *(Sedgefield)* (Lab)

Sarah Davies, Mark Etherton, Committee Clerks

† attended the Committee
Public Bill Committee

Thursday 7 July 2011

(Afternoon)

[Mr Roger Gale in the Chair]

Health and Social Care (Re-committed) Bill

1 pm

The Chair: Good afternoon, ladies and gentlemen. For ease and clarification, I inform hon. Members that as we have a fairly long sitting this afternoon, I shall, as I did last week, suspend the Committee for 15 minutes at 4 o’clock. I understand that the Minister is winding up the debate on clause 55.

Clause 55

MONITOR

Question (this day) again proposed. That the clause stand part of the Bill.

The Minister of State, Department of Health (Mr Simon Burns): Indeed I am winding up the debate, Mr Gale, and I do not intend to detain the Committee too long. I have just one or two points and will seek to keep my remarks relevant to clause 55.

One point that we debated this morning—the hon. Member for Pontypridd made a big deal about it—was about the private sector being involved in providing 5% of the health care in the NHS under the previous Government. The hon. Gentleman might like to know that the 2004 NHS improvement plan stated that “by 2008, independent sector providers will provide up to 15%.”

I think that that is three times 5%, if my mathematics is right—“of procedures on behalf of the NHS.” That rather undermines the argument that the hon. Gentleman made this morning.

This, too, might be of interest, particularly to the hon. Member for Leicester West, because she may well have written it. In 2006, Patricia Hewitt said:

“I am not going to lay down from Richmond House how many hospitals, how many beds, how many staff of each grade and each qualification, what kind or how many different providers there should be.”

That suggests that Patricia Hewitt, too, was not fixated by the figure.

Owen Smith (Pontypridd) (Lab): The Minister refers to something that I said this morning. I take it that he would not contest the fact that, whatever the projections—whatever was written on a piece of paper somewhere—the reality, as David Bennett, whom I quoted this morning, stated, is that private sector involvement accounts for only about 5% of NHS spend at the moment, in 2011.

Mr Burns: What I would not do is make the dogmatic assertions that the hon. Gentleman made this morning and the argument that he made in general about the 5% figure. It has been contradicted even by the independent sector plan published by the Labour Government, and that contradiction has been reinforced by a subsequent Labour Secretary of State at the Department of Health.

I shall move on to another point that the hon. Gentleman mentioned. He was wondering about and questioning exactly how Monitor’s powers, duties and functions had been changed. It is obvious to Government Members that they have been changed fundamentally as a result of the listening exercise and the Future Forum’s recommendations. Although the hon. Gentleman and his right hon. and hon. Friends want to be in denial on that point, we have had considerable third party endorsement from organisations that have responded to the listening exercise and the Future Forum’s recommendations; they also seem to think that what we have accepted from those recommendations significantly changes the core functions of Monitor as they were proposed initially.

To help the hon. Member for Pontypridd, may I tell him this? Probably the most important thing is that Monitor’s main duty will be to protect and promote the interests of people who use health care services. It will seek to achieve that not by promoting competition, but by promoting the economic, efficient and effective provision of health care services that maintain or improve quality for patients. That is the crucial issue—improving quality for patients and enhancing and improving outcomes. That is ultimately the most important thing.

Liz Kendall (Leicester West) (Lab): Will the Minister give way?

Mr Burns: I am between comments on the functions of Monitor. The hon. Lady may wish to wait. [Interruption.]

Liz Kendall: I hope that it is in order, Mr Gale, to intervene between comments; I wish to double check on the procedure.

What are commissioners doing if not promoting equality and efficiency for patients? Why do we need Monitor to do that?

Mr Burns: Commissioners are part of the jigsaw and the equation. They will obviously have a crucial role in improving the quality of care, promoting equality of care and improving and enhancing outcomes, but they will not be doing it on their own; many other aspects of the NHS will be working to that end. The core principle of these modernisation plans is to put patients at the centre of care, to involve them, give them choice and drive up improvements in quality of care, with the knock-on effect of improving and enhancing outcomes.

Monitor’s competition role will be clearly limited to addressing anti-competitive behaviour. The hon. Member for Pontypridd made what I consider to be the bizarre point—from their reaction, my hon. Friends seemed totally baffled—that there was no difference between promoting competition and anti-competitive responsibilities, as if they were one and the same thing. I have to tell him that they are fundamentally different. In a moment, I shall explain why.
Monitor will now have new duties to enable the integration of health care across health care services and between health care and other services, including social care services—something that we debated at considerable length on Tuesday. There will be a new duty on Monitor to involve those who use health care services and other members of the public in its work, and to ensure that it takes appropriate clinical advice in carrying out its functions—another matter that we have discussed at length on previous amendments. It will be explicit on Monitor that it should not exercise functions in order to increase or decrease the market share of any type of provider, whether public or private. Monitor will not, as originally proposed, have the power to allow one provider access to another provider’s facilities.

We have already debated most of these matters, and I suspect that we shall come back to them this afternoon, but I can tell my hon. Friend that these significant changes conform with the recommendations of the Future Forum. I find it odd that Opposition Members do not recognise that—or perhaps they do not want to recognise it. We have listened, and we have strengthened and improved the Bill.

The hon. Member for Pontypridd asked how Monitor’s role in addressing anti-competitive behaviour would be different from the role that it would have had in promoting competition.

Liz Kendall: We are looking forward to this.

Mr Burns: I am grateful to the hon. Lady, but she again interrupts me between comments.

Monitor will not be able to exercise functions with the aim of promoting competition. That is one of the core messages that we received from the listening exercise, and we have accepted and embraced it. Monitor could not, for example, choose to disapply a particular set of licence conditions in a certain group of providers to make it easier for them to enter the market. Similarly, when considering with the NHS commissioning board how services should be specified and bundled for the purposes of the national tariff, Monitor will not be able to take account of whether specifying the services in a particular way would encourage competition per se.

A number of matters were raised this morning by the right hon. Member for Rother Valley. I shall tread very carefully, however, because however interesting and relevant they were, they were not to do with clause 55. Mr Hood rose—

The Chair: Order. It is quite straightforward. Hon. Members are either in order or not. If they are out of order, I shall rule so.

Mr Burns: Right, I am grateful for that. I will press ahead and hope that I do not test your patience, Mr Gale.

One question started with the hon. Member for Pontypridd and opened up for the right hon. Member for Rother Valley: where are the amendments to put the principles and rules about co-operation and choice on to a stronger statutory footing? We do not need amendments to the Bill to give the Co-operation and Competition Panel and the Principles and Rules for Co-operation and Competition more bite. The CCP will no longer report to the Department of Health, which can choose whether to accept the panel’s recommendations. The fact that the rules will in future be set and enforced by an independent body will in itself put them on to a stronger footing.

We would expect the rules and principles to be embedded in the system by way of regulations, guidance and licence conditions under the Bill. The current rules would apply, including principle 7, which the right hon. Gentleman referred to. The aim is to provide as much continuity to the NHS as possible. We will ensure that the status of principle 7 is clarified when the principles are next updated. In anticipation of the right hon. Gentleman’s asking when that might be, I should say that we expect that to follow Royal Assent.

On the question of whether the CCP but not the Office of Fair Trading should continue to approve mergers, including foundation trusts, I am sure that we all agree that complex decisions on mergers should be taken by those with particular expertise. The current system is extremely cumbersome, with a very low threshold as to foundation trusts needing to seek CCP reviews. That disadvantages foundation trusts vis-à-vis the private sector, which I do not think the right hon. Gentleman would wish to continue.

In the new system, the OFT will review mergers but with a far higher threshold, meaning a streamlined process for foundation trusts. However, the OFT would always seek Monitor’s advice before making a decision on foundation trust mergers. Therefore, the expertise of the OFT on mergers will be combined with Monitor’s sector-specific knowledge.

Mr Kevin Barron (Rother Valley) (Lab): Will the Co-operation and Competition Panel transfer to Monitor and retain its distinct identity?

Mr Burns: Yes, it will.

Liz Kendall rose—

Mr Burns: I want to conclude my comments, but I will first give way to the hon. Lady.

Liz Kendall: If the Minister thinks that patients and clinicians should be in control and leading change, why are they not making those decisions? Why are the decisions to be made by Monitor and the OFT? With respect, there may be a clinician out there thinking that what the Minister has prescribed is almost incomprehensible. Why are clinicians not making decisions about the future of hospital services?

Mr Burns: First, I hope what I said was not incomprehensible. The hon. Lady will have the opportunity to reflect when she sees the Official Report tomorrow, which I hope will clarify the almost ex cathedra statement that I have just made to help simplify and sort out the situation. Of course, clinicians and patients have a very important role to play across the NHS, but this is a highly complex issue. To address the specific point the hon. Lady makes, I should say that she must bear in mind that Monitor has to balance patients and clinicians—a requirement covered by amendments that we will discuss at some point in future. The hon. Lady will be able to elaborate on her concerns then.
On that point, I urge my hon. Friends to support clause 55 to stand part of the Bill.

The Chair: Before we proceed, I should say that the Minister has wound up a lengthy debate. I am prepared to take comments on the Minister’s remarks, but I do not expect the entire debate to be reopened.

1.15 pm
Owen Smith: I will, of course, observe your ruling, Mr Gale. It is a pleasure to serve under your chairmanship.

I fear that the Minister has not cleared up the issues that we raised this morning, nor offered much substance in response to our direct questions. He has described me in this debate as both a snake oil salesman and a lawyer.

Mr Burns: Not a lawyer.

Owen Smith: No, that was last week. With respect to my hon. and learned Friends, I do not know which is the bigger insult.

The two key issues I raised earlier, which the Minister failed to address, were about competition and how much has changed. If there is confusion among the Opposition and the public about whether competition will apply more under the Bill, the Minister has to bear a degree of blame because he has repeatedly added to that confusion. I will simply pick out two small quotations from his previous contributions. On 15 March, he said, patronising us as ever:

“May I just explain this first? As NHS providers develop and begin to compete actively with other NHS providers and with private and voluntary providers, UK and EU competition laws will increasingly become applicable.”—[Official Report, Health and Social Care Public Bill Committee, 15 March 2011; c. 718.]

We understood that, but on many other occasions he has said, “The Bill does not extend the application of EU competition law.” Again with respect to my hon. and learned Friends, that is a lawyerly point that does not disapply what he first said—that because there are more providers in the market, competition will apply more.

The Minister went on to try to answer the questions about how much of the Bill has changed; again, if we are confused, it is with a degree of legitimacy. Paragraph 5.27 of the Government’s response to the NHS Future Forum, which addresses the extent of Monitor’s powers, states that “these changes preserve the core tenet of the Health and Social Care Bill: that properly regulated competition... has the potential to improve the efficiency... of public services”.

The core tenet of the Bill is using competition to improve public services. Why are Ministers and Government Members so coy about fessing up to that being what you believe? Not you, of course, Mr Gale. The Government believe that competition writ large across the Bill has the capacity always to improve the provision of services. We suggest that health care is different from utilities and other sectors, so extra constraints are needed.

In his response a moment ago, the Minister chose to try to explain, as he put it, the difference between promoting co-competition and preventing, restricting or distorting competition, which I still contend are one and the same; all that I said about the Competition Act 1998 shows that to be so.

A moment ago, the Minister said that, under the provisions, Monitor could no longer “choose to disapply a particular set of licence conditions in a certain group of providers to make it easier for them to enter the market.” Monitor would never have been allowed to do that, because it would be anti-competitive to shift the terms of engagement and to unlevel the playing field.

If Monitor were actively to disallow conditions to allow private providers to enter the market, it would be an anti-competitive act in the eyes of any competition lawyer. I contend, therefore, that the Minister has placed another straw man before us. It is not an adequate description of the change.

On the Co-operation and Competition Panel, it is interesting that the Minister has confirmed for the first time that the OFT will now review mergers. David Bennett did not tell us that the other day; he said that it is an interesting question. We now know that the OFT will review mergers and that the CCP will continue to exist, which we did not know before. That still prompts the question: if it continues to exist, when was that decided and how much additional money will it cost?

Dan Byles (North Warwickshire) (Con): I am not sure that the hon. Gentleman is strictly correct in what he has just quoted Dr Bennett as saying, because he actually said:

“Today, if the private sector wanted to go to the OFT and make a complaint under the Competition Act, which embodies European competition law, it could, and the OFT is indeed dealing with a complaint today.”—[Official Report, Health and Social Care (Re-committed) Public Bill Committee, 28 June 2011; c. 35, Q79.]

Owen Smith: But in a previous question Dr Bennett was asked whether the OFT should have a role in assessing mergers, and he said that that was an interesting question. Up to now, the Co-operation and Competition Panel has been the principal body that looked at mergers. That is what it has done over the past year or so since it was created. It has looked at six, and it is still looking at them. In future, it will be the OFT—not even Monitor—that does so, which in itself is interesting. If we have a sector-specific regulator with the same powers as the OFT, why is the OFT looking at the issue? Why do we not simply let the OFT regulate the health care sector? It does not make any sense.

Question put. That the clause stand part of the Bill. The Committee divided: Ayes 13, Noes 10.

Division No. 15]

AYES

Brine, Mr Steve
Burns, rh Mr Simon
Burstow, Paul
Byles, Dan
Grabb, Stephen
de Bois, Nick
James, Margot

LEFROY, Jeremy
Morgan, Nicky
Poulter, Dr Daniel
Pugh, John
Soubry, Anna
Sturdy, Julian

NOES

Abrahams, Debbie
Barron, rh Mr Kevin
Blenkinsop, Tom
Kendall, Liz
Morris, Grahame M. (Easington)

O’Donnell, Fiona
Smith, Owen
Thomson, Emily
Turner, Karl
Wilson, Phil

Question accordingly agreed to.
Clause 55 ordered to stand part of the Bill.
The Chair: Before we reach schedule 8, Mr Hood entirely properly allowed a fairly wide-ranging debate this morning, which was completely in order. The debate on the clause that we have just discussed applies in large part to schedule 8 as well. I am quite sure that the public who are listening to the broadcast of this Committee would not take kindly to the remarks being repeated all over again, in view of the considerable amount of work that we have to do later. I hope that hon. Members on both sides of the Committee will bear that in mind.

Schedule 8

MONITOR

Question proposed, That the schedule be the Eighth schedule to the Bill.

Owen Smith: Thank you, Mr Gale. Mindful of your ruling, I will ask a series of specific questions about the schedule and I will not seek to rehearse the argument that we have just had. Schedule 8 establishes the rules and regulations governing how Monitor will be made up and set up, and the arrangements for remuneration and staff. It is an important schedule given the significance of Monitor, which, as we have said, is the key point in the Bill.

The first three paragraphs relate to the establishment of the board, and we welcome them. It is a shame that the Government did not recognise that such a board with a proper constitution ought to be extended right across the legislation and applied at an earlier juncture to the commissioning consortia or the commissioning groups, because this is an excellent description of how a board should work. The schedule provides for non-executive directors, chairmen and proper rules and procedures to govern the activities of the board. We are delighted to see that the Government have moved on from thinking that such arrangements ought to apply only to Monitor and are applying them to all the other commissioning groups. We congratulate them on doing so.

Paragraph 6 relates to the non-executives: the Government have properly decided that they should be part of the board of Monitor. The provision relates particularly to payment to non-executive members. Will the Minister provide some illustration of the cost of Monitor to set the remuneration and terms and conditions for its staff? Will that read-across through the Secretary of State take place?

Paragraph 9 is about Committees. It states that committees of Monitor can have members who are members of Monitor—staff members of Monitor or, I presume, non-executives or executives of Monitor—and non-staff, non-executive members of Monitor. I wonder whether the model that we should be thinking of, to understand how that might work, is the National Institute for Health and Clinical Excellence. There are technical appraisal and various other committees with members and non-members, to provide clinical and other expertise that does not sit within that special health authority. Is that the model that is being considered?

Is the model changing, in the Government’s view, given that Monitor’s responsibility will be extended to cover considering clinical matters, such as whether competition will impinge on valuable integration? How many such Committees does the Minister envisage Monitor will require, and what cost will they incur? Given that there may now be more of them, can we expect the cost of Monitor to be increased in the fabled revised impact assessment?

Grahame M. Morris: The upper level, in a figure given by the Minister himself, was between £90 million and £130 million a year. Over the lifetime of a Parliament that is of the order of £400 million or £500 million. It is a considerable sum of money.

Mr Burns indicated dissent.

Owen Smith: No, I do not think we know. I can only presume that somewhere in the Department of Health there is a document called “Design of Monitor” just as there was one on the design of the National Commissioning Board, which, apparently, we are not allowed to see, but which confirms, as my hon. Friend said, that 3,500 people to be employed by the NCB—stripped out of the 8,000 currently employed in a similar role, I presume, non-executives or executives of Monitor—and non-members of Monitor—staff members of Monitor or, I presume, non-executives or executives of Monitor—and non-executives or executives of Monitor. Is that the model that is being considered?
public sector borrowing requirement, how much money Monitor will be allowed to borrow, on what sort of terms and, crucially, to what end.

1.30 pm

Fiona O’Donnell (East Lothian) (Lab): As much as I enjoyed Mr Hood’s chairmanship this morning, it is good to have you back, Mr Gale. Despite the excellent scrutiny by my hon. Friend, could I press the Minister on a couple of further points?

What sort of targets is he setting for membership of the committees in terms of equality and diversity, people from different ethnic backgrounds, gender balance and people with disabilities? In terms of payments to non-members of Monitor who may be members of sub-committees, does he have a ceiling or limit on expenditure that will curtail the membership of those committees?

In relation to acquiring information, will all the information that Monitor may gather and keep under review be public and will Monitor be the subject of freedom of information legislation?

Mr Barron: Will the Minister explain in detail paragraph 22 of the schedule? It states:

“Monitor must respond in writing to any recommendation about its exercise of its functions that a Committee of either House of Parliament or a Committee of both Houses makes.”

I am interested to see that written in a Bill. It does not say that Monitor has to take notice of the recommendations but I am interested in the intention of the paragraph. The Minister looks quizzical, but it is in his Bill.

Mr Burns: I was looking quizzical because what Monitor has to do seems so patently obvious that I was surprised that the right hon. Gentleman was asking about it. I will come to that when I answer a number of questions.

First, schedule 8 makes various provisions about Monitor, including on its membership, procedures, borrowing and accounts. The hon. Member for Pontypridd asked a number of questions about that and when I have given an overview of the schedule, I will address them.

The schedule details the membership and appointment of the chair, chief executive and other members of Monitor, including making provision about the suspension of non-executives or the chair from office. The provisions would ensure fair treatment in such cases. Paragraph 6 requires Monitor to pay non-executive members such remuneration and allowances as the Secretary of State decides. It also enables Monitor to arrange pensions, allowances and gratuities for non-executive or former non-executive members. The Secretary of State would have to approve any such arrangements.

Paragraph 7 enables Monitor to employ staff on such pay and terms and conditions as it decides. However, before making such decisions Monitor would have to secure the approval of the Secretary of State to its policies on those matters. This provision would enable Monitor to secure the staff it needs; and the Secretary of State to ensure that the general remuneration, allowances and terms and conditions that Monitor offered its staff were appropriate.

Paragraph 8 makes provision in relation to anyone who is appointed as chair of Monitor and who is already covered by a public sector pension scheme under section 1 of the Superannuation Act 1972. The Minister for the Civil Service would be able to determine whether that person’s service as chair of Monitor would count as years of service for the purposes of that pension scheme. The provision in this paragraph would address the possibility of someone with an existing public sector pension entitlement being deterred from applying for or taking the position of Monitor’s chair because the pension arrangements would be disadvantageous compared with other employment options.

Paragraph 9 gives Monitor the power to appoint committees and sub-committees and to pay remuneration and allowances to committee members who are not members or employees of Monitor. Paragraphs 10, 11 and 12 make provision about how Monitor will exercise its functions, including that it must, and can, act effectively, efficiently and economically. Paragraph 10 allows Monitor to regulate its own procedure. Those various provisions will ensure that Monitor can make effective arrangements to discharge its functions and duties.

Paragraph 13 gives Monitor the power to borrow money temporarily by overdraft. That is another issue that the hon. Gentleman raised.

Owen Smith rose—

Mr Burns: I am going to answer the hon. Gentleman’s question. If he would like to intervene after that, I shall be more than happy to let him do so. Paragraph 13 creates a contingency provision that could be used to address any short-term cash flow problems that Monitor might encounter. Paragraph 14 allows Monitor to obtain and compile information to take informed decisions on exercising its functions. That could include commissioning or support for research. Paragraph 15 gives Monitor the power to do anything it needs to do in order to exercise its functions. Those provisions will enable Monitor to discharge its functions effectively.

Paragraph 17 concerns the accounts of NHS foundation trusts. It requires Monitor to prepare annual accounts that consolidate the annual accounts of all foundation trusts. The paragraph also enables the Secretary of State to direct Monitor to prepare a set of interim accounts consolidating the interim accounts of all foundation trusts. Paragraph 18 requires Monitor to prepare its own annual accounts in a form with the content and using methods and principles directed by the Secretary of State with the Treasury’s approval. That provision will ensure that Monitor’s accounts meet appropriate standards and are in line with those for other non-departmental public bodies.

Paragraph 21 ensures proper accountability by Monitor. It provides that Monitor must publish an annual report on how it has exercised its functions, particularly on how it has promoted economy, efficiency and effectiveness in the use of its resources. Monitor will need to lay a copy before Parliament and send a copy to the Secretary of State. The paragraph also provides that Monitor must furnish the Secretary of State with further information if he requires it. Paragraph 22 requires Monitor to respond to any recommendations about the exercise of its functions made by parliamentary Committees, as the right hon. Member for Rother Valley mentioned. Those are sensible provisions.
I would like to respond to a number of points before concluding. I will do so in no particular order. First, the hon. Member for East Lothian asked if Monitor would be covered by freedom of information law. The straightforward answer is yes.

The hon. Member for Pontypridd raised a number of issues that I will go through now. One question was about borrowing money. He asked how much money Monitor will be allowed to borrow and in what circumstances. Monitor will only be able to borrow temporarily by overdraft. That is to be done only with the specific consent of the Secretary of State, including regarding the amount to be borrowed. As the hon. Gentleman will know, Monitor can already do that. We are not talking about a new proposal to give Monitor permission to gain access to funding if it needs to by overdraft; it can already do so under the existing legislation.

The hon. Gentleman also raised a number of issues about pay. As he will appreciate from our detailed discussion of the matter in the earlier phases of the Committee, the Secretary of State will approve the policy for pay and remuneration, but not each individual’s pay and remuneration. That clearly would be nonsense. I suspect he knew that when he asked the question, because it is quite clear that the Secretary of State will need to do so.

The hon. Gentleman asked about the costs of Monitor. There have been considerable misunderstandings, to put it kindly, from the moment we first mentioned the figures, last time round.

Grahame M. Morris: Will the Minister give way?

Mr Burns: I have not even given an answer to intervene on yet, but I am more than happy to give way in a minute when I have. What I am going to say might address the hon. Gentleman’s point.

At this stage, one cannot give a figure down to the last pound and penny, so if one gives a range of figures, the Opposition will inevitably—because they are the Opposition—latch on to the top figure as a fact. I can tell the hon. Member for Leicester West that we believe it will be in the range of £50 million to £80 million a year.

Liz Kendall: With the very greatest respect, that is completely different from what the Minister told us last time:

"Future running costs are likely to be somewhere between £40 million and £130 million. It is currently £21 million."—[Official Report, Health and Social Care Public Bill Committee, 15 March 2011; c. 702.]

Has the Minister managed to do the impact assessment on this bit of the Bill and nothing else, or was he misleading us last time? I am sure he would not try to do so.

Mr Burns: The answer to both questions is no. The hon. Lady is the last person I would seek to mislead, and frankly, I do not think I would be able to. She is a wily individual.

At that point, we gave an assessment—a range—of what the figures could be. We believe that the latest figures, not subject to the impact assessment that will be ready when the Bill leaves this place for another place, will be somewhere in the range of £50 million to £80 million a year. I hope that helps, because the estimate has been refined somewhat.

Grahame M. Morris: I want to ask briefly about assessing costs. Will the Minister share any information about the salary range that will be applied to the chief executive. David Bennett, given the criticism that has been attached to salaries of chief executives in local government?

Mr Burns: What I can tell the hon. Gentleman is that we are currently developing detailed plans on remuneration of all the staff Monitor employs, which includes assessing how many staff will be required. That partly answers a question asked by the hon. Member for Pontypridd.

The hon. Member for Easington asked specifically about Monitor. If it is helpful I can give him some idea of the process regarding non-executive members. The appointments will be competitive; this also relates to a point that was raised about equal opportunities in employment. The answer is, of course, yes, because we will naturally abide by existing employment law and plans, where there is no discrimination on race, gender and so on.

With non-executive board members, it will be a competitive, open recruitment exercise, where the Appointments Commission will administer and ensure that the appointment process follows guidelines from the Office of the Commissioner for Public Appointments. It applies not only to non-executive members of the board, but to everyone, when I say that people who take up employment at whatever level within Monitor—that is what will be looked for—should be suitable candidates for the positions. They should be of the highest calibre to be able to contribute positively to the operation of the organisation and the fulfilling of its functions.

That is a generalised answer, but it is no different from the way that people are employed in other professions. It is crucial that one has relevant, top-quality people with the expertise and experience to fulfil their organisation’s function.

1.45 pm

Grahame M. Morris: Will the Minister give way?

Mr Burns: No. I am going to make some progress.

There was a question about whether we would be using the NICE model for the executive committees. We are looking at that model as the way to move forward, but it will be up to Monitor to determine how many committees it will need not only to secure clinical advice, but to be informed by best practice.

The hon. Member for Pontypridd asked, I think, whether there would be a limit on the amount that Monitor’s board members could be paid—

Owen Smith: How much.

Mr Burns: Or on how much they would be paid, which is the same thing. As the hon. Gentleman knows, Will Hutton’s review is investigating pay scales across the entire public sector, and he will make recommendations on how to ensure that no public sector manager can
[Mr Simon Burns]

earn more than 20 times the wage of the lowest-paid person in the organisation. We will have to wait for the final decision, but that will probably be the guide.

Fiona O’Donnell: I intervene in the spirit of trying to be helpful. There is one question that has not been answered, and one that has not been answered fully. I welcomed the Minister’s support for equal opportunity legislation as it relates to employment law, but I actually asked whether he would go further and promote diversity by encouraging applications for membership of the board from groups that are often excluded. I also asked whether, given that the committees do not have to be approved by the Secretary of State, there will be a limit on how much Monitor can spend on them.

Mr Burns: I hope that I can reassure the hon. Lady on her first point by saying that equalities duties will apply. On the second question about how much money Monitor can spend on the committees, the answer, off the top of my head—[Interruption. ] I will be careful. The answer is that Monitor wants to provide an effective and efficient service at a cost-effective price without cutting corners. There will therefore not be a ceiling per se, but we would expect Monitor to have the taxpayer’s interests at heart and to ensure that it does not spend excessively to fulfil the functions that it wants to accomplish. As such, it would be inappropriate for me—apart from giving a broad overview of the principles that I would expect Monitor to embrace—to start trying to micro-manage down to the last detail how Monitor will organise that aspect of its committee system. The primary rule must be efficiency and effectiveness in carrying out its duties with due consideration of the interests of the taxpayer in getting value for money. I urge my hon. Friends and Opposition Members to agree to the schedule.

Owen Smith: I thank the Minister for his attempts to answer lots of our questions, but he raised as many as he answered—let me run through a few of them. I asked a specific question about the pay of Monitor staff. Given that it will be the Secretary of State, not David Bennett, who is ultimately responsible for agreeing the terms and conditions of the staff in Monitor—I mean collectively and not individually—would he have to pay due regard to the existing terms and conditions and payment scales of NHS workers, or even those in the civil service? The Minister said that the Will Hutton inquiry would be looking at pay scales and trying to set a metric on a maximum of 20 times the pay of the lowest-paid worker within an organisation. We will have a sector-specific economic regulator that employs a lot of people regulating the NHS, so the pay differential between the NHS and Monitor is as relevant as that between the individuals working within Monitor, many of whom I imagine will be paid much more than people within the NHS, especially its lowest-paid workers. That is why I ask whether the Secretary of State will need to look at the NHS pay scale when he approves Monitor’s.

My second point was about cost. The Minister gave us an interesting update on the cost of Monitor. Previously he told us it would be between £40 million and £130 million, but we now learn that it is going to be between £50 million and £80 million, which again gives rise to several points. Even if it is the lowest amount—£50 million—it is still two and a half times Monitor’s current costs. If the figure is £80 million, that is four times the present cost. That is a lot of money.

If the Government are to be believed, they have changed the provisions of the Bill so that Monitor’s responsibilities are increased to mean that it takes account of quality, clinical and medical considerations, impact and integration. However, as David Bennett said in his evidence, Monitor does not have the staffing for those new duties, so it begsgers belief that the Government have increased its responsibilities and yet reduced its costs from £130 million to £80 million.

Mr Burns: May I help the hon. Gentleman? His hon. Friends made a big meal of this last time round and history is beginning to repeat itself. As he well knows—the hon. Member for Leicester West certainly knows this—the figure we used last time was a range. The £130 million figure was at the top of the range and was based on other sectoral regulators. We have been able to refine our figures since then and we have come up with a much lower range. I would have thought that Opposition Members would have welcomed the fact that the figure at the top of the new range is significantly lower than the previous top figure.

Let me clarify another thing. Although I answered the question about the Secretary of State and his involvement in pay, let me provide further clarification for the hon. Gentleman. The Secretary of State’s decisions on pay will, of course, be informed by both NHS and civil service pay scales.

Owen Smith: I am particularly grateful for that last clarification.

Grahame M. Morris: This is a really important point. The Minister is trying to give the impression that we are not creating a vast new bureaucracy. Estimates of Monitor’s cost under the previous Government are put at about £21 million a year. Now, even taking the Minister’s very lowest revised estimate, it will cost 10 times more. Moreover, we are dealing with an unknown quantity. We do not know how many lawyers Monitor will have to engage for consultancy if, as we suspect, European competition law applies, so the higher limit might well be correct.

Owen Smith: As ever, my hon. Friend makes an excellent point that chimes with what I said earlier. We just do not know. We do not know how often Monitor will be in court, we do not know how often the OFT will be involved and we have no idea what the ultimate cost of this huge reorganisation will be. The Minister says that Labour Members ought to be encouraged that the cost has gone down to a mere £80 million—

Mr Burns: It is £50 million.

Owen Smith: Between £50 million and £80 million. The low end has gone up by £10 million while the top end has come down by £50 million—go figure.

The key reason why we are not encouraged is that the new figures are further evidence that the Minister is making it up as he goes along. We have now heard from Wallace and Gromit that the cost last time—between
£40 million to £130 million—was practically plucked out of thin air, because it was predicated on the cost of other regulators—what Ofcom or Ofgem cost. Why we should take on trust the suggestion that the new figure is any less flimsy is beyond me.

**Mr Barron:** Is my hon. Friend as disappointed as I am? I asked only one question, which was about paragraph 12. The Minister read out what the provision says, but he did not tell us what it means. Does my hon. Friend have any idea?

**Owen Smith:** No, I have no idea. I was not going to raise that point, but I am slightly concerned that the paragraph might imply that Monitor will not have to give evidence in person to the House or to Committees of both Houses. Perhaps it implies that it will have to respond only in writing.

**Mr Burns:** The right hon. Member for Rother Valley never struck me as an over-sensitive person. I said at the time that the paragraph was so self-evident that the question did not warrant a response, but if he feels aggrieved, I shall correct that now. The paragraph means exactly what it says. Monitor will need to reply in writing to any recommendation made by a Committee of either House. I would have thought that that was self-evident.

**Owen Smith:** So if a Committee of this House makes a recommendation, Monitor has to write back to say, “Thank you very much.” The Minister is basically telling us that Monitor will say, “We’ve got the letter. Cheers!”—[Laughter.]

**Mr Burns:** It is not quite as simplistic as that, but I appreciate that at this time of the afternoon the hon. Gentleman wants to go for a cheap laugh. At the moment, as I am sure he knows—and as the right hon. Member for Rother Valley knows, as a distinguished former Chair of the Health Committee—if the Select Committee produces a report that recommends a number of things, that report goes to the Department of Health, and the Department will then respond to it in writing, usually within three months, unless the time period has changed. I cannot see any particular difference here. Given the right hon. Gentleman’s history, I would have thought that he would have seen the provision as self-evident.

**Owen Smith:** I think we have heard another suggestion about how Monitor could cut costs—clearly it will not need a very well staffed or robust correspondence unit to send back these responses.

The Minister helpfully told us that the Government are looking at the NICE model for how the proliferating committees of Monitor could be organised, as we suspected. That also gives rise to a few questions, so I have a number of recommendations for the Government. Again, what does he anticipate that the costs will be? NICE committees tend to be extensively populated with real experts—leaders in their clinical disciplines. They are standing committees that meet on an ad-hoc basis, and they are very costly. I suggest that he needs to consider the costs carefully.

2 pm

Secondly—this is a recommendation—the Minister is considering NICE as a model, and of course, NICE has lay members on its committees. It has, in effect, members of the public, expert patients, serving on those committees and providing the patient perspective. If Monitor is now to consider clinical issues, the Minister may need at some point to amend the legislation to reflect the fact that it might be desirable to have, in addition to non-execs, lay members, or perhaps that can be captured in the regulations.

Lastly, NICE has, in order to ensure once more that it is accountable to the public, given that it makes decisions about the availability of medicines—at some level, Monitor will also be engaged in that type of discussion—a citizens panel. It meets annually—in fact, I think it might even meet twice a year. It is very extensive and, I would imagine, very expensive. The Minister might also want to consider that in the next iteration of the Bill.

**Question put and agreed to.**

**Schedule 8 accordingly agreed to.**

**Clause 56**

**General duties**

**Mr Burns:** I beg to move amendment 148, in clause 56, page 74, line 37, leave out from ‘services’ to end of line 2 on page 75 and insert

(by promoting provision of health care services which—

(a) is economic, efficient and effective, and

(b) maintains or improves the quality of the services.’.

**The Chair:** With this it will be convenient to discuss the following:

Amendment 40, in clause 56, page 75, line 1, leave out paragraphs (a) and (b) and insert

(by promoting collaboration and integration within health services in England’.

Government amendments 149 to 152, 154 and 155.

Clause stand part.

Government amendment 158.

Amendment 43, in clause 67, page 82, line 7, leave out from ‘(to)’ to end of line 9 and insert

‘prevent collaboration or integration in the provision of health care services for those purposes.’.

Amendment 44, in clause 67, page 82, line 16, leave out paragraph (a) and insert—

‘(a) promoting collaboration and integration within the provision of services, and’.

Government amendments 159 and 161.

Amendment 45, in clause 101, page 101, line 33, leave out ‘competition’ and insert ‘collaboration or integration’.

Government amendments 189 and 191.

Government new clause 5—General duties: supplementary.

**Mr Burns:** This is the core of today’s debate because it deals with so many crucial issues that Opposition Members in particular have been referring to in the course of our debates. I shall therefore speak about the whole group of amendments, both Government and Opposition, and deal with them thematically, rather than consecutively by number.
I hope that Government amendments 148 and 149 will finally put to rest the misapprehension that has dogged much of the discussion about part 3 of the Bill. I reiterate what I said in Committee on 15 March:

“Many of the questions that arose in the debate are based on a fundamental misconception of the Government’s policy—that we are promoting competition for its own sake. That is not the case, as the clause makes abundantly clear. We are talking about competition only in the interests of patients. If competition does not promote or protect the interests of people who use health services, it will not be the role of Monitor to promote it. I hope that that clarifies the basic premise within the context of the debate.”—[Official Report, Health and Social Care Public Bill Committee, 15 March 2011; c. 769.]

However, the Government accept the conclusion of the NHS Future Forum that we did not clarify the issue sufficiently first time round. The forum’s “Choice and Competition” report recommended

“Greater clarity on Monitor’s role on regulating competition, including...changes...to...remove Monitor’s primary duty ‘to promote competition’ and be clear that their primary duty should be to protect and promote the interests of the patient”.

and

“clarify that Monitor’s role should support choice, competition and integrated care”.

These amendments respond to that recommendation.

Monitor’s overriding duty should continue to be “to protect and promote the interests of people who use health care services”.

However, we propose removing the reference to Monitor achieving that “by promoting competition where appropriate and through regulation where necessary”.

We agree with the Future Forum that competition is a means, not an end—a means of improving quality of care and increasing choice for patients. We acknowledge that the language of “promoting competition” has been misconstrued and has not communicated fully the Government’s intention that competition should be pursued only in the interests of patients, never as an end in itself.

Under amendment 148, Monitor’s amended duty will focus instead on the outcomes that we expect Monitor to secure: economy, efficiency and effectiveness in the provision of services. Monitor’s licensing and pricing functions and its roles addressing anti-competitive behaviour and supporting commissioners in securing continuity of services would be to that end. Monitor’s amended duty would also make it clear absolutely that efficiency improvements must not be at the expense of quality.

The removal of the words “promoting competition” from Monitor’s main duty creates a need for the Bill to set out in other terms what Monitor’s competition role will be. It would not be sensible to leave the position ambiguous, so amendment 149 introduces a duty for Monitor to act with a view to enabling integration of care, access for patients or efficiency.

I want to draw the Committee’s attention to one particular point on the Government’s proposed integration duty on Monitor in amendment 149. The amendment relates not only to integration across health care services, but to integration between health care and other relevant services, including social care services. It might help the right hon. Member for Rother Valley, given his question on Tuesday, if I say now that those services could include pharmaceutical services and dentistry.

Amendment 40 does not cover integration between health care and other services, but I hope Opposition Members agree that it is an important aspect of what we are trying to achieve.

Finally, amendment 40 refers to collaboration, which is not provided for by the Government amendments. We have, however, separately proposed a further requirement for Monitor to have regard to the importance of providers co-operating with one another. We are due to debate that amendment, Government amendment 156, when we reach clause 58.

In the light of my comments, I hope Opposition Members will agree that it is an important aspect of what we are trying to achieve.

Opposition amendment 40 also seeks to remove “promoting competition” from Monitor’s main duties. The common ground between us is broader than that, because amendment 40 also seeks to create a duty for Monitor to promote “collaboration and integration within health services in England”.

The Government fully support the principle of that amendment. We will not break up or hinder integrated care; we will extend and improve it. But to achieve that, we need to look across the system as a whole. We need to establish the appropriate role for each of the main players in developing integration and collaboration. The drive for more integrated services must come from commissioners.

The Future Forum’s “Choice and Competition” report says:

“If commissioners want to commission integrated care they will only succeed in doing this by creating a new market in integrated care services and stopping the current commissioning of episodic services from different NHS organisations.”

That is not to say that Monitor does not have a role in the NHS’s development of integrated services, far from it, but the role is to support and enable the commissioning of integrated services. It is not for Monitor to decide which services should be integrated, nor to promote integration at all costs, irrespective of what works for patients. That is why Government amendment 149 requires Monitor to act with a view to enabling integration of health care services where it would improve quality of care, access for patients or efficiency.

Amendment 40 does not cover integration between health care and other services, but I hope Opposition Members agree that it is an important aspect of what we are trying to achieve.

Finally, amendment 40 refers to collaboration, which is not provided for by the Government amendments. We have, however, separately proposed a further requirement for Monitor to have regard to the importance of providers co-operating with one another. We are due to debate that amendment, Government amendment 156, when we reach clause 58.

In the light of my comments, I hope Opposition Members will agree that Government amendments 148 and 149 and the Government amendment on co-operation between providers, which we will discuss when we reach clause 58, reflect the principle of amendment 40. On that basis, I ask Opposition Members not to press their amendment but to support amendments 148 and 149 and the minor and consequential amendment 151.

The removal of “promoting competition” from Monitor’s main duty needs to be reflected in other places in the Bill. As a result, we have both Government and Opposition amendments to clause 58 and 101, and a Government amendment to clause 100. The difference between the Government and the Opposition amendments is what should replace the references to promoting competition.
The Government’s view, which is supported by the Future Forum, is that if competition is properly managed, it supports the improvement of services for patients. The Future Forum report established that:

“we are clear that choice and competition, when tailored to circumstances, can drive better quality.”

Debbie Abrahams (Oldham East and Saddleworth) (Lab): The Minister has mentioned that a few times, but I was not quick enough on my feet to intervene. Will he publish—or perhaps he or one of his civil servants has this to hand—the evidence on which he bases his assertion that competition will lead to improved quality? In addition, on what evidence does he base his assertion that competition will reduce health inequalities?

While I am at it, will the long-awaited impact assessment contain a full bibliography? The initial impact assessment did not include one, so I do not know the evidence on which the analysis was made. If any change has been made to the assertions in the original impact assessment, I would be keen to know exactly the scientific evidence behind those changes.

Mr Burns: I am grateful to the hon. Lady for that question, because throughout our deliberations on the Bill she has made plain her deep concern about, and interest in, reducing inequalities in health care. The evidence comes from a range of sources. First, it comes from practical experience of what is going on in the health service from those who work in the health service, the PCTs, the SHAs and the providers, where they seek to reduce inequalities and to improve and enhance patient care. On top of that, a range of academic studies are carried out by people who have a particular interest in the subject, to monitor what is going on and to ascertain not only where improvements have been made but how, they believe, such improvements should be achieved.

On the question of whether we will publish a bibliography, because one was not published with the original impact assessment, I will be quite frank; at this stage, I do not know. I assume that we will publish the impact assessment in the same way as we did last time. Given that the hon. Lady has raised that point, however, I will make sure that her views are fed in. As to whether it is possible to publish the bibliography, I give no commitments.

The hon. Lady also asked what the evidence was for the benefits of competition. She mentioned inequality, but I think she also said competition—

Debbie Abrahams: To quality.

Mr Burns: Yes, to quality. Part of my answer about the evidence on inequalities applies to the effects of competition on quality; again, the evidence comes from what is happening on the ground in the NHS, and policy making from a range of organisations and individuals who are particularly concerned about, and interested in, this important area. From the introduction of choice-based competition with fixed pricing to elective care, evidence is also emerging about delivering improvements in quality.

Similarly, the hon. Lady may be familiar with a major study by researchers at the London School of Economics, which found that hospitals in areas where patients have more choice of provider achieve shorter lengths of stay and lower death rates than those in less competitive markets. A growing body of evidence is emerging to show that this is happening, as well as evidence of what is being seen on the ground.

2.15 pm

Debbie Abrahams rose—

Mr Burns: To be fair, I have answered the hon. Lady, and I said that I would give way to my hon. Friend before making progress.

Nicky Morgan (Loughborough) (Con): I thank my right hon. Friend for his answer to that intervention; it was a good question. He rightly said that what is happening on the ground is important. I refer him to an e-mail that I received earlier this week from a physiotherapist in my constituency. She speaks about collaborative working with GP surgeries and Loughborough hospital. She ends by saying:

“My own personal view is therefore that competition, at the level that I experienced it, was a very valuable and important part of helping all involved in the provision of Outpatient Physiotherapy services to focus on standards, and most importantly, patients had access to better services and expressed very high levels of satisfaction.”

The difficulty with today’s debate, which we have had all through the Committee, is that it is all very much in the ether and that we are losing sight of what is happening on the ground and what benefits patients.

Mr Burns: I am extremely grateful to my hon. Friend for that very good intervention. It highlights the fact that research is important in driving the debate forward and finding new solutions to problems. However, one must not lose sight of the fact that what is happening on the ground is just as important, if not more so. That is what most directly affects patients. Both sides of the equation are important, but what is happening and how the improvements are reflected in the care of patients is crucial. If that is not happening in some parts of the country or with some providers, they must learn from the experience of places that are improving health outcomes, reducing inequalities and increasing the quality of care, so that the all the NHS in England can benefit.

I return to the amendments. Government amendments 158, 159 and 161 replace references in clause 67, 100 and 101 to preventing or promoting competition, with formulations reflecting our view that Monitor could still have a role in addressing anti-competitive and potentially anti-competitive behaviour that acts against patients’ interests. Opposition amendments 43 and 45 remove the references in clauses 67 and 101 to either preventing or promoting competition, but they replace those references with requirements to ensure and promote “collaboration or integration”.

Opposition amendment 44 to clause 67 also removes the provision that the Secretary of State’s regulations on procurement by commissioners could cover competitive tendering. That provision should not be removed. We have rules governing competitive tendering to ensure that it achieves value and that patients’ interests are protected. We will need such protections in future, as Professor Ham noted when giving evidence:
It is not as though we are starting from a position where there is one uniform set of prices for a certain range of services all over the country.”—[Official Report, Health and Social Care Public Bill Committee, 28 June 2011; c. 26, Q59.]

I have already said that we believe that the board and the clinical commissioning groups should drive integration. Indeed, Future Forum concluded that “The NHS Commissioning Board needs to ensure commissioners and providers develop a mainstream of integrated care”. Our view is therefore that it would be inappropriate to create, as amendment 45 would do, an explicit power for Monitor to require providers to do or not to do certain things to promote collaboration or integration. At best, it would create uncertainty about where the onus lay for driving integration, and at worst it would create confusing requirements for providers, with contracts requiring one thing and licence conditions another.

There has been much discussion, including by the Committee in March and by Future Forum, about whether, and if so how, competition and integration sit side by side. The Government have always been clear that they are not mutually exclusive. Future Forum took the same view, stating: “We have also heard many people saying that competition and integration are opposing forces. We believe this is a false dichotomy. Integrated care is vital, and competition can and should be used by commissioners as a powerful tool to drive this for patients.”

I referred earlier to the fact that to achieve a focus on integration of health care services, we need to look across the system. We do not think that the Secretary of State’s regulations on procurement practice are the best mechanism for getting commissioners to develop integrated services. That is why the Government tabled amendments 73, 74 and 117, which we debated earlier, that create new and strengthened duties on integration directly on commissioners. Hence, we think it unnecessary to make explicit provision for the clause 67 regulations to be able to cover integration and collaboration.

I therefore ask Opposition Members to withdraw amendments 43, 44 and 45 and to support Government amendments 158, 159 and 161. I also ask them to support Government amendment 189, which is a consequential, minor amendment that ensures consistency by noting that the definition of “anti-competitive behaviour” to be applied in these clauses is the same as that set out in the amendments to Monitor’s main role and duties.

The group of amendments we are discussing includes Government amendments 150 and 152, both of which raise very important issues. Government amendment 150 relates to patient and public involvement. The NHS Future Forum has set out an ambition for achieving genuine patient and public involvement at all levels of the system. We share that ambition, and the purpose of the amendment is to strengthen those requirements in relation to Monitor.

As hon. Members will be aware, there are a number of requirements set out in the Bill for Monitor to consult a range of organisations and persons on the proposals. Those would include, for example, consulting each relevant licence holder, the NHS commissioning board, clinical commissioning groups, the Care Quality Commission and HealthWatch England on modifications to standard licence conditions; and clinical commissioning groups, licence holders and others it thinks appropriate on the national tariff.

We have also put in place, through clause 178(4), arrangements with HealthWatch England for it to provide Monitor with information and advice about the views of patients and the public, and about the views of local healthwatch organisations. That is an important provision, in that HealthWatch England can advise Monitor independently of both the Department and the CQC, and Monitor must respond in writing to HealthWatch England on its advice.

However, as the NHS Future Forum said, involvement of patients and the public needs to go further than that. The Government want to ensure that patient and public involvement is embedded at every level of the health care system. We want patients and the public to be involved in the development of proposals and in the wider work of Monitor, not just in responding to one-off consultation exercises. We want the dialogue between Monitor and patients and the public to be ongoing and meaningful. That is why we are proposing to make this clearer in the Bill by placing, in amendment 150, a specific duty on Monitor and strengthening its responsibilities in that regard.

We recognise the importance of the relationship between HealthWatch England and Monitor, and do not want to change that. However, we feel that this specific duty is needed for Monitor to be truly able to take account of the views of patients and the public in its work.

Government amendment 152 responds to another of the four key themes adopted by the NHS Future Forum: clinical advice and leadership. The Committee has already debated our proposals for strengthening clinical advice and leadership in relation to commissioning. However, as the Government noted in their response to the Future Forum’s report, Monitor will also need advice from a range of appropriate professionals. Government amendment 152 would place a new duty on Monitor to obtain appropriate clinical advice in the discharge of its functions. That duty would be consistent with those on the NHS commissioning board and on clinical commissioning groups. In exercising the duty, Monitor would be required to seek advice on clinical matters from a range of relevant health care professionals as appropriate. That could range from, for example, advice from expert medical committees or the Royal Colleges to develop the tariff, or an individual clinician on a specific disease or condition-related issue. I therefore commend amendment 152 to the Committee.

I will briefly mention Government amendments 154, 155, 191 and new clause 5. They are technical amendments, consequential on the changes proposed in the other amendments in this group, which provide necessary definitions and tidy up the drafting of this part of the Bill.

The Government’s listening exercise highlighted that there was misapprehension about the role that Monitor would have under our modernisation plans. The Future Forum recommended greater clarity about Monitor’s role. That is why we need clause 56 in the Bill. The clause sets out the main duties of Monitor. It provides that, in exercising its functions, Monitor must do so in a way consistent with the performance by the Secretary of State of his duty to promote a comprehensive health service. For clarity, the clause specifies that Monitor’s role is in relation to the provision of services. Where a provider of services buys goods in order to deliver services—for example, prostheses to be used in hip
replacements—Monitor’s role would only be in relation to the service. It would not be required to do anything in relation to the supply of goods to the provider of that service.

On Monitor’s duties, the Government amendments propose that Monitor’s main duty would be to protect and promote the interests of NHS users. Monitor would achieve that by using its functions—including licensing and pricing—to promote economic, efficient and effective provision of NHS services. It would work alongside other organisations to secure sustained and improved quality of care. It would have the statutory powers needed to address anti-competitive and potentially anti-competitive practices that could act against the interests of NHS users. Last, but by no means least, it would also work with commissioners to promote integration of health care services and between health and health-related or social care services, where that was in the best interests of patients. That is a clear role for Monitor, in line with the recommendations of the Future Forum.

The Chair: While listening to that debate, I noticed that the Minister moved up into the 170s and a bit of clause 115 territory. That is all relevant and I do not mind that. However, I am sure that Mr Hancock will take that into account when we get to that on Tuesday.

Liz Kendall: It is nice to have you back in the Chair, Mr Gale. We are sorry that you missed Tuesday’s special NHS 63rd birthday. We had some cakes from the TUC; I do not know how you would have felt about that. I am sure you are devastated. We all enjoyed those cakes.

The Chair: Order. I am sure I missed something really enjoyable, but I cannot help thinking that my health benefited from my not having been there.

Liz Kendall: I do not think we should talk about what this Committee is doing for our health—or, indeed, the health of the NHS.

I shall start with an apology, in advance of what will be a relevant but long speech. As the Minister rightly said, this matter goes to the heart of what has happened over the past few months—the unprecedented pause and “listening exercise”. Like the Minister, I would like to proceed thematically, covering the Government’s core claim that they have fundamentally changed Monitor from last time round.

Hon. Members will not be surprised that I do not agree with that. In fact, I agree with my hon. Friend the Member for Pontypridd that this is a series of smoke and mirrors. By going through each set of amendments, which supposedly change promoting competition to anti-competition and supposedly promote integration and patient and public involvement, and by addressing the clause stand part debate, I hope to show why the amendments do not fundamentally change the Government’s true intention for Monitor.

2.30 pm

I start with Government amendment 148, which is about the primary duty of Monitor, as set out in clause 56. Paragraph 5.14 of the Government’s response to Future Forum states:

“Monitor’s core duties should be re-oriented away from promoting competition as though it were an end in itself and focused instead on taking action in the interests of patients to tackle anti-competitive behaviour. We will amend the Bill accordingly. In carrying out its functions, Monitor’s core duty will be to protect and promote patients’ interests, by promoting value for money and quality in the provision of services.”

Amendment 148 deletes subsections (1)(a) and (b), which state that Monitor’s main duty is “promoting competition where appropriate, and through regulation where necessary”, and moves up subsection (3), which states that Monitor must “promote the economic, efficient and effective provision of health care services”.

First, as I said to the Minister when I intervened on him earlier, is not that what commissioners should be doing? Is that not the primary purpose of what we now call NHS England, aka the NHS commissioning board, should be doing? If commissioners are not the ones responsible for leading the promotion of quality, and also value for money and services, what are they doing? The Minister replied that everybody is doing this and that we need all these people to be doing it.

Mr Burns: To have a role.

Liz Kendall: To have a role. The fundamental question that the Government have not answered is what Monitor is for. Why do we need Monitor? I suggest that this is a policy in search of a problem. It is not about identifying an issue and then establishing the best way to tackle it, but about changing the NHS and remodelling it. I will not go through this again, Mr Gale. You were lucky to miss out on my very long speech on why health is different from gas, electricity and the railways—that is, not just because it is a different type of good, but because it is more complex, there are far more varied providers and there are asymmetries of information.

Why do we need an economic regulator? There are two possible answers. The Government’s answer would be that they need Monitor to protect the NHS from the full force of competition law. But it is the Government’s own Bill that guarantees the full force of competition law on the NHS. We have never said that these 12 clauses change what competition law is out in the wider economy, but they enshrine it in primary legislation on the NHS for the first time.

As the hon. Member for Southport said, the NHS in this country and health services across Europe have tended to be protected from the force of competition law that is applied in other areas, because they are not seen as undertakings. Hospitals are seen not as undertakings, but as social bodies because they have social aims and objectives. The Bill and the Government’s policy make it more likely that providers, and possibly also commissioners, will be counted as economic undertakings.

One example is getting rid of the private patient cap so that hospitals can generate and make money. That is likely to mean that they will no longer be counted as social bodies and entities, but as economic undertakings because they are specifically going out to make money.

On 15 March, the Minister, who was recorded by the fabulous Hansard, said that “in a future where the majority of providers are likely to be classed as undertakings for the purposes of EU competition law, that law and the protections it offers against anti-competitive behaviour will apply.”—[Official Report, Health and Social Care Public Bill Committee, 15 March 2011; c. 718.]
The Government have probably convinced some people to think, “Gosh, we must have Monitor because otherwise the NHS will be subject to a new competition law.” Yet it is the Government’s policy and this Bill that is doing that.

Dr Daniel Poulter (Central Suffolk and North Ipswich) (Con): I am interested that the hon. Lady asks why we need Monitor. It was a Labour Government who created Monitor in the first place. As she was a special adviser to that Government at the time, she can probably explain why Monitor was created.

Liz Kendall: Monitor currently regulates foundation trusts: it is not an economic regulator. It ensures that the trusts are financially viable and that they have the right governance bodies and structures in place. Its functions are totally different from those of an economic regulator. Perhaps we can have another discussion in a different forum about that. The Government are setting up something to protect themselves from their own policy.

The other reason why the Government might set up Monitor is that they need some other body with all these powers to drive competition into parts of the NHS because they believe that it cannot reform itself. There are many different opinions about the role of competition and choice. As I have said in this Committee before, I support competition where there is evidence that it improves care for patients and value for money.

Why can clinical commissioning groups not decide where competition may or may not improve quality, value for money and efficiency? If the Government want that, why are they setting up this huge complicated body? They are doing it not for the reasons that they are now claiming, but because they believe that the NHS cannot reform itself. As my hon. Friend the Member for Pontypridd said, there are Government Members who believe that competition is the way to drive changes in public services.

However, a full market is not the way to do that. There are real consequences of competition that have to be managed. For example, when care is shifted out of hospitals, it has to be managed and it must be done following clear standards—we call them targets—to make sure that people do not suffer. If Government Members do not want such duties managed and they want a full market, which is what many of them do want, why not have the courage to argue for that? Instead, they are tying themselves in knots trying to pretend that they are not doing something when they really are.

John Pugh (Southport) (LD): Why does the hon. Lady think that the previous Government set up the Co-operation and Competition Panel with appreciable powers? What was the rationale for that? Was it completely redundant?

Liz Kendall: No. In other countries, such as Spain, cases have gone to the courts to see whether competition law should apply, and it was decided that it should not. We decided that we would have a body that could look at such issues. However, Monitor is being set up in a context where it will be forced to act because of the Government’s legislation. I believe that amendment 148 would not fundamentally change Monitor’s role or the context in which it works.

Government amendments 149, 158, 159, 161 and 189—I think I have got those right—would, as the Minister said, purport to remove parts relating to promoting competition, instead substituting that “anti-competitive behaviour” would be prevented. New clause 5 attempts to define anti-competitive behaviour:

“Anti-competitive behaviour” means behaviour which would (or would be likely to) prevent, restrict or distort competition and a reference to preventing anti-competitive behaviour includes a reference to eliminating or reducing the effects (or potential effects) of the behaviour.”

To put it mildly, I am not convinced that there is a huge difference between promoting competition and preventing anti-competitive behaviour. I am aware that we have discussed this matter before, but I want to pick up on one phrase that the Secretary of State used in evidence to the Committee, which my hon. Friend the Member for Pontypridd has also mentioned. The Secretary of State said that we were moving from an “ex ante intervention” to an “ex post examination”. At that point, I wished that I had listened to my mother all those years ago and studied Latin—as opposed to attempting German, not being very good at it, then giving it up—because I would have known what he meant.

Essentially, as hon. Members know, he meant a change from “before the event” to “after the event”. However, what does “after the event” mean now? It may mean moving from looking out there, thinking, “We’re going to promote competition in advance”, to doing so after the event—but after what event? We have our services as they are now. Many services will be set up that could easily, under this legislation, be considered anti-competitive—for example, if one hospital serves people in an entire city, such as my own.

In future, many hospitals will look to develop vertical integration, which is a terrible piece of policy jargon. A hospital could have a lot of diabetes patients turning up in A and E having a severe episode, if that is the right phrase. The hospital might decide, “To deliver the best quality care for our diabetes patients, we want to run some community nurses who help patients manage their conditions better by helping them to take their drugs properly, encouraging them not to eat TUC birthday cakes and advising them to take exercise.”

The hospital might then decide, “Well, we should also run some diabetes testing in the pharmacy”—I do not know whether you have had such a test, Mr Gale, but after pricking your finger, they can tell whether you have diabetes. I am trying to describe this in a way that makes it real. The hospital, therefore, has decided, “We’re going to provide all those services in a certain area.”

However, a pharmacy—Lloyd’s Pharmacy, for example—could then say, “Hang on a minute. We don’t want you coming in here, sweeping up all the diabetes testing for the whole of Leicester”, or a private company that runs GP appointments might say, “We don’t want you running our diabetes nurses”. They would challenge what was happening.
2.45 pm

Would that be an example of something anti-competitive? The problem is that the Government will not provide such examples, and they will not tell us whether they have received any legal advice. We had a long exchange during the previous Committee stage about whether the Government had taken any advice about competition. I asked the Minister:

"will he tell me whether he has taken legal advice on the compatibility of the Bill with EU competition law? Has he taken advice on what it would mean for commissioners and providers? If so, will he publish that evidence to the Committee?"

The Minister replied:

"The straightforward answer is yes."—[Official Report, Health and Social Care Public Bill Committee, 15 March 2011; c. 719.]

My hon. Friend the Member for Islington South and Finsbury said, “Publish it.” The Minister then wrote to me on 12 April confirming that he did not intend to publish the legal advice, because it was a privileged communication to Ministers.

My hon. Friend the Member for West Lancashire (Rosie Cooper) asked the Secretary of State in a written question whether he would reverse his decision not to publish the legal advice, but the Minister replied stating that

“no separate legal advice was commissioned by officials.”—[Official Report, 28 April 2011; Vol. 149, c. 602W]

There are some lawyers on this Committee. We are debating whether the Bill changes everything; my hunch is that if it is as big as it is, with that many clauses introducing competition, it will. If the Minister has not asked for independent legal advice, he is being remiss in his duties. We need to see and understand that advice, including what the difference is between anti-competitive and competitive behaviour.

Owen Smith: My hon. Friend’s speech is clarifying the extent to which competition law may well apply. Further to the point that she just made, does she agree that it would be fundamentally remiss of the Government not to have sought legal advice in order to understand—I will take the example that she used—whether a vertically integrated set of services between hospitals and primary care might be viewed under competition law as collusive or cartel behaviour—which would, therefore, be anti-competitive?

Liz Kendall: I absolutely agree with my hon. Friend. As we discussed in the previous Committee, it is interesting that many concerned providers are taking legal advice about what the Bill might mean. I again ask the Minister to clarify once and for all whether legal advice has been taken on the impact of the Bill on how competition law is applied within the NHS. More specifically, is it likely that both providers and commissioners will be more likely to be considered as economic undertakings? Has he asked for that advice?

I move on to Government amendment 149, which states that Monitor must act with a view to enabling health services to be provided in an integrated way and to enable health services to be integrated with social care services. During the previous Committee, Opposition amendment 481 would have required Monitor to enable collaboration and integration between health and social care. The Government voted against it. Our new amendments 40, 43, 44 and 45 would again seek to guarantee that Monitor promotes collaboration both within health services and between health and social care. I should state for the record that we do not agree with Monitor and how it is being set up. We will vote against it, but if it does go through, this is our way of trying to ensure that integration really happens.

As the Minister said, Opposition amendments 43 and 44 would amend clause 67, which addresses procurement. What the Minister said about that was interesting. Clause 67 will give the Secretary of State the power to issue regulations to impose any requirement on how the NHS commissioning board and clinical commissioning groups procure services. That is a huge power. But the Minister said that procurement is not the way to promote integration, which amazes me. If he argues that it is possible to promote both competition and integration, why would a body procuring services not want to promote integration? I find that astonishing.

The Minister is right that members of the Future Forum and other consultees say that integration and competition are not necessarily always mutually exclusive, but that is not to say that there are not tricky balances and trade-offs. It is not simple and straightforward to decide whether, as in my example of diabetes care, something represents integration, because others, possibly including the new head of Monitor, might see it as monopolistic and anti-competitive. The Government need to recognise that such issues are not simple and straightforward.

I move on to Government amendment 150, which addresses patient and public involvement. It is important that I read out the amendment, because the Minister made a big thing of how patient and public involvement is now at Monitor’s heart:

“Monitor must secure that people who use health care services, and other members of the public, are involved to an appropriate degree”—

I have underlined those words, because that is where the emphasis is—

in decisions that Monitor makes about the exercise of its functions (other than decisions it makes about the exercise of its functions in a particular case)."

The amendment really says that it is up to Monitor to decide whether it is appropriate to involve patients and the public. Although Monitor will involve patients and the public in the exercise of its general functions, it will not involve them in specific cases, such as where a hospital or any other service might be behaving anti-competitively.

Patients and the public want to be involved in decisions about services that affect them, but that is not what the amendment says; it says that they will be involved only with discussions on Monitor’s functions. Many Members who have issues with hospital units, if not whole hospitals, community services or other services in their constituencies, will find that the issues end up being considered by Monitor without patients and the public having a say. That is a great concern.

In the original Committee, Opposition amendment 480 stated:

“Monitor must…involve and engage patients and the public.”

The amendment did not mention anything about “to an appropriate degree” or “only on its general functions, not in a specific case”. In the end, specific cases are the only things that matter to patients and the public. The Minister told me that
“amendment 480 is unnecessary. To deliver its general duties to protect and promote the interests of people who use health services, Monitor will be expected to take into account the views of patients and the public.”—[Official Report, Health and Social Care Public Bill Committee, 15 March 2011; c. 696.]

One of my many questions to the Minister is what does “to an appropriate degree” mean? If patients and the public have to be involved “to an appropriate degree”, the Government must have a sense of what an “appropriate degree” is, otherwise the words would not be there. Do the Government decide what is appropriate, or is it Monitor?

Emily Thornberry (Islington South and Finsbury) (Lab): Perhaps another way of posing the question would be to ask the Minister to explain what involving the public to an inappropriate degree might look like.

Liz Kendall: Indeed, it is a very woolly phrase. I am not convinced. I think this is a sop and a way to put a provision in the legislation without actually involving patients and the public in any significant decisions. That is why I am concerned.

As my hon. Friend the Member for Pontypridd mentioned, there are wider concerns about the accountability of Monitor itself. Amendment 488 to the original Bill provided that Monitor’s board should meet in public and hold public annual meetings, especially as it is spending up to £130 million of taxpayers’ money a year. The Minister has apparently revised that figure down to £80 million, but it remains to be seen whether that is accurate. It is worrying that we are still unclear about how a body with such power—Monitor—will be held to account, particularly if it is to make such important decisions about services.

Government amendment 152 is about Monitor obtaining “advice appropriate for enabling it effectively to discharge its functions from” people who have a broad range of expertise in “the prevention, diagnosis or treatment of illness” and “the protection or improvement of public health.”

Does that mean that Monitor will have to include clinicians only in decisions about exercising its general functions, or will it involve them in specific cases? When Monitor looks and says, “This hospital or service is behaving anti-competitively,” will it involve clinicians in that individual decision, or will they simply be broadly involved on the board? That is an important question.

Finally, I want to make a broader comment on Monitor’s general duties as part of the clause stand part debate. A big concern that people have voiced is about Monitor’s role in designating services. I remember very long conversations about that in the first Committee proceedings, when the Minister made some interesting comments about which services would or would not be designated. The Opposition’s concern was that the process was wholly opaque. It should not be up to what appears to be an unaccountable body to make decisions about which services will and will not fail. In paragraph 5.45 of their response to the NHS Future Forum report, the Government say:

“We have heard concerns”—

I love the mild language of the civil service—

“about the practicality of our proposals for designating which services should be subject to additional regulation.”

In the next paragraph, they say that they will withdraw their

“proposal for commissioners to apply to Monitor to designate in advance which services would be subject to additional regulation.”

That means, which services will or will not be allowed to fail.

None of the clauses on designation, which is a key duty of Monitor, have been deleted. Clauses 76 to 84 all remain in the Bill. Have they been deleted or amended? [Interjection.] The Minister says, “Not yet”, and I know that because I asked him about that in the evidence session. He replied the Government were still figuring out the failure regime and it would be brought back on Report for MPs to consider, so the clauses remain in the Bill. Will they be deleted or just amended? Designation—deciding which services are and are not allowed to fail—is absolutely fundamental. [Interjection.] I wonder whether the Minister has just been passed the failure regime in that very large envelope.

I remind the Committee that Sue Slipman, director of the Foundation Trust Network, said that she had major concerns about this aspect of the Government’s plans and about

“how services will be protected, and the implications of that, particularly for foundation trusts, for access to affordable capital.”

Monitor’s David Bennett said that

“The biggest gap at the moment is the replacement for the original proposals on designation.”—[Official Report, Health and Social Care (Re-committed) Public Bill Committee, 28 June 2011; c. 31, Q66.]

This may sound dry and boring, but it is about a real and current issue, which is the trusts that are in severe financial difficulty. I have mentioned my local trust, which is already £6 million in the red only two months into the financial year, and other hospitals are facing huge problems. In their response to the Future Forum, the Government said that they would end

“the culture and practice of hidden bailouts”.

Does that mean that the Government will not bail out trusts any more, or simply that they will be open about doing so? There has been a lot of spinning about ending bail-outs, but if they do so, lots of hospitals will close. It would be good to get some clarity on that.

We know from what David Nicholson told the Public Accounts Committee that between 20 and 25 NHS trusts are in severe financial difficulty. I have asked the Minister to publish a list of those trusts, but he has said that he will not. When I asked David Bennett during the evidence session how many trusts were in that position, he replied:

“It is the Department’s role, of course, to get the non-FTs to FT status. We don’t have a direct insight into the challenges that those trusts face.”—[Official Report, Health and Social Care (Re-committed) Public Bill Committee, 28 June 2011; c. 39, Q88.]

David Bennett has said that it is the Department of Health’s responsibility to know which NHS trusts are going to have real difficulty getting to FT status, and I think that they should keep a list of those trusts. I tabled a parliamentary question about that when I learned that the strategic health authorities were providing the Department with an assessment of which hospital trusts
were likely to get foundation trust status. The Under-Secretary of State for Health, the hon. Member for Guildford (Anne Milton), replied on 3 December 2010:

“The returns from the strategic health authorities are being considered by officials in the Department in discussion with the local national health service and are therefore work in progress at this time. It is anticipated that by April 2011 the returns will have been validated and the agreed information will then be placed in the Library.”—[Official Report, 3 December 2010; Vol. 519, c. 1074W.]

We have no information about these trusts. The information is extremely important, because one of Monitor’s key functions is designating which services must continue to provide care for patients and the public in their local communities. We know that some trusts are in severe financial difficulty, and we need to know what the Government’s regime is for dealing with that.

I conclude by asking the Minister a series of questions about the so-called failure regime. He says that he will present his proposals on the failure regime in time for Report, or at least that any amendments will be tabled by then. Will the failure regime be ready for Report stage, which I assume will be in September? Will it include the failure of whole NHS trusts? Will it include how to deal with the failure of individual district hospitals which are part of those trusts? Will it include how to deal with the failure of individual units or individual wards? What criteria will be used to come up with a solution? Who will be involved in setting those criteria? Will there be independent verification of the criteria? Crucially, who will administer the failure regime? Will Monitor do that? These are all difficult questions. They need to be answered.

We all feel strongly about services in our constituencies on which our constituents rely. The Government have said that got their proposals wrong. They have promised that this is an urgent matter for the NHS? Many hospitals are in trouble and they will be in even worse trouble because of the efficiency savings and the big reorganisation. They do not know whether they will keep their jobs. They are not going to get proper time to scrutinise them—

3 pm

Mr Burns indicated dissent.

Liz Kendall: We will not have time in the Committee to properly scrutinise the failure regime. It is hard enough scrutinising the legislation in a Committee, let alone on the Floor of the House.

May I say with the greatest respect to the Minister that this is an urgent matter for the NHS? Many hospitals are in trouble and they will be in even worse trouble because of the efficiency savings and the big reorganisation. People are totally distracted from that pressing problem because of the massive reorganisation. They do not know whether they will keep their jobs. They are not getting the GPs and the other people around the table to take the difficult decisions because the Government are going through with this crazy Bill and this huge reorganisation.

The Government should be getting on with this real job. It is a real problem that we do not know what that failure regime will be and we will not have time to scrutinise it. The Government have been spending so much time dealing with the cock-up they have created in the Bill that they have not got on with their job, which would be to sort that out. They have been totally distracted by a problem of their own making. They would have done far better never to have gone through all of this and to have got on and grasped the difficult issue that we all face and that is ultimately what matters most to our constituents.

Debbie Abrahams: I start by thanking the Minister for his remarks about my commitment to reducing inequalities and his response to my request for the evidence of the relationship between competition and improving quality and reducing health inequalities. I also thank the hon. Member for Loughborough.

First, the evidence that was supplied would generally be regarded weak, consisting of single studies and anecdotal evidence. It would generally be regarded as poor-quality evidence on which to base the massive changes that have been proposed in the Bill.

Nick de Bois (Enfield North) (Con): Perhaps I can help the hon. Lady. At a future date, she may wish to look out the study from the centre for economic performance at the LSE which examined whether hospital competition can improve efficiency. The answer was a resounding yes. I am happy to refer her to the details.

Debbie Abrahams: I am grateful. If I remember correctly, that study was not a systematic review, it was not a review of a review, and it did not include international evidence. It is still generally regarded as poor evidence.

Secondly, in terms of our debate on what we have been calling ex ante and ex post, we are considering a new health system—developing a new health system and changing our national health system very dramatically. The Government did not look at that new system. It was looking at evidence from previous work. The transferability and the validity of what was being suggested are therefore in question. The evidence is weak and not generally transferable. We need to take a much broader view.

I challenge Minister, who is no longer in his seat, not only to publish the bibliography for the impact assessment, which should consider these points, but to subject it to peer review. If it has changed significantly with regard to the evidence used in the previous impact assessment, that would be of real interest. The challenge is to publish and subject to peer review. We do not want a policy, a Bill—a law, potentially—that is based on weak evidence; That is not evidence-based policy.

Graham M. Morris: I do not propose to rehearse all the arguments, but we need to consider and put in context a number of important issues. The Opposition’s real concern relates to part 3 of the Bill in particular the transformation of Monitor from a fairly modest role overseeing the NHS foundation trusts into a driver for competition that would fundamentally alter the nature of the NHS.

Looking at the work undertaken during the exercise to pause, listen and reflect and the report of Future Forum, it seemed on the surface that substantial changes had been made. I thought that perhaps the many hours we had spent in Committee had not been completely wasted. Although the Government would not accept a single Opposition amendment or make a single concession during the course of the original Committee stage, perhaps they had had a chance to reflect on some of the
excellent arguments made and had brought back a modified Bill. On closer inspection, though, the substantial changes we hoped for are not there.

On that basis, I have concerns and questions to put to the Minister, to which I hope for answers. Those concerns are shared by a range of organisations. I am sure that all Committee members have received representations; I met some representatives of the Royal College of Nurses yesterday. The written evidence from the eminent Nuffield Trust, numbered HSR 11, includes the following comment.

“We note that the original proposals to give Monitor concurrent powers with the OFT to implement competition law remain apparently unchanged.”

That is fundamentally our concern.

Despite Ministers’ assurances to the contrary, that the thrust of the Bill is not about introducing the rigours of competition into our treasured NHS, we have to ask why almost a third of the Bill—more than 80 clauses—is devoted to competition. The Bill changes the architecture of the NHS; in itself, it exposes the NHS to European competition law. In truth, as the chief executive of Monitor said in evidence, echoed by others, we do not know the precise implications. We do not know the effect of the private sector organisations that are going to use the mechanism and may feel aggrieved, having been heavily lobbied and advised of a potentially lucrative market. They are not philanthropic; their purpose is to make profit for shareholders. Our concern is that this element of the Bill—the clause setting out the functions of Monitor—is crucial.

3.15 pm

I attended the Health Committee on Tuesday to hear the Secretary of State’s account of the Future Forum recommendations and his perspective on how they will be implemented. I was surprised by how sanguine he was, given that he has been preparing the Bill for seven years. He has consulted at length and is confident of the thrust of the Bill, and he made it clear that he thinks no red lines have been crossed by the Future Forum’s recommended changes and the Government’s response of 14 June. The implication was that there has been little fundamental change.

On 15 June, the Secretary of State told a conference of GPs that

“those of you concerned that the listening exercise represents a tearing up of our plans to modernise the NHS, don’t be. For those of you worried that in places the detail of the Bill was at odds with the principles of reform, be reassured.”

He was booed by that audience, but Opposition Members agreed on the monolithic monster and a waste of money.

My hon. Friend has twice asked what is Monitor actually for?

Mr Barron: My hon. Friend has twice asked what Monitor is for. The Secretary of State said in evidence to the Committee last week:

“In so far as Monitor will have licensing responsibilities, it will be able to exercise ex ante licensing provisions, the purpose of which is to support the NHS. As a consequence, that will make less likely the intervention of any competition provisions, which tend to fragment and distort what would otherwise be the NHS’s approach.”—[Official Report, Health and Social Care (Re-committed) Public Bill Committee, 28 June 2011; c. 92, Q191.]

The simple answer is surely that Monitor is there to defend the NHS against competition.

Grahame M. Morris: I agree with my right hon. Friend. It is a strange tale. There are so many contradictions in the arguments that were deployed when we started and the Government’s response. I have not even touched
on why the functions that are being undertaken by Monitor cannot be transferred to the Co-operation and Competition Panel for a fraction of the cost. If memory serves me, the hon. Member for Southport raised that issue in the previous Committee stage, and it seems bizarre that we are creating this new bureaucracy.

Amendment 149 creates a new series of duties for Monitor starting with

"preventing anti-competitive behaviour in the provision of health care services"

where that is

"against the interests of people who use such services."

I presume that that means patients. How great is the difference between promoting competition and preventing anti-competitive behaviour? That is not pure sophistry; it is an important question. According to the amendment, Monitor must also exercise its functions with a view to enabling NHS health care services to be provided in an integrated way where that would improve quality or reduce inequalities of access or outcomes; a similar duty applies to the integration of health with social care. The difference between the general duties set out in the clause to prevent anti-competitive behaviour and to promote integration needs to be clarified. We need further explanation from the Minister. The wording and context seem to imply that preventing anti-competitive behaviour is somehow more proactive, because that can be enforced, whereas integration needs only to be enabled, but even then it must be justified against tests of quality and inequalities.

Perhaps more interesting than what the clause and the amendments say is what they do not do. It is worth noting that there is no mention of a duty to reduce inequalities in the list in clause 58 of matters to which Monitor must have regard.

Jeremy Lefroy (Stafford) (Con): I am very interested in the contrast between promoting competition and preventing anti-competitive behaviour. I shall give a small example from my constituency. A social enterprise found it extremely difficult under existing competition regulations introduced by the previous Government to bid for a contract. Although it subsequently won the contract and has been very successful—it has cut waiting lists tremendously compared with the previous NHS provider—having a body that was able to prevent the sort of anti-competitive behaviour that, consciously or unconsciously, took place would have been of great benefit.

Grahame M. Morris: It is an interesting example and I am sure all of this is relevant. I am not opposed to innovation where it improves the NHS. I am in favour of co-operative enterprises, such as the organisation the hon. Gentleman mentions, but I am against any form of privatisation that becomes a race to the bottom, where the terms and conditions of staff are threatened, where the benefits in terms of quality are dubious and where the private sector can cherry-pick and choose to exclude more complex cases, people with comorbidities and older patients.

Liz Kendall: To respond to the hon. Member for Stafford’s question, why would commissioners not be able to prevent that behaviour, if they were really working in the best interests of patients? They could see who would provide a better service. Why set up a huge new body costing hundreds of millions of pounds over the next four years? Given that commissioners are supposed to be leading the NHS in the best interests of patients, why are they not able to do the job?

Grahame M. Morris: On reflection, I think that is an excellent point. If the health and well-being boards and the commissioners are working effectively, can determine local need and have the proper evidence base, perhaps the CCGs can legitimately make that decision.

Owen Smith: Further to that point and the example given by the hon. Member for Stafford, is it not interesting that ultimately the social enterprise was successful in winning the contract and delivering the service? Even if doing so was difficult, that example proves that we do not need an enormous great new monolithic system.

Grahame M. Morris: I am grateful for that very good point, which does not need further response.

I cannot recall if it was the hon. Member for Stafford or one of his colleagues, but questions were raised about the number of private patients or the role of the private sector. I took the trouble to look up the information, and I found that in 2003-04 the private sector treated less than 1%—0.7%—of NHS patients and in 2009-10, which is the last year for which figures are available, the figure had risen to only 2.14%. The number of patients treated is therefore not a huge or significant element in the NHS.

I am not arguing against private sector involvement where we do not have capacity—for example, for cataract and hip and knee replacement surgery. I am long enough in the tooth to remember very long waiting lists, when it was not uncommon for people to wait more than 12 or sometimes 18 months or longer for such operations. Capacity did not exist in the NHS despite our best efforts to go overseas. I worked in a hospital for some years and served on the management board of one in the north-east. We made strenuous efforts to recruit from countries that had surplus staff, particularly of skilled nursing staff. As a short-term measure, we recruited quite a number of staff in South Africa and the Philippines because it took several years for medics to come through the training schools and nurses to come through nursing school.

3.30 pm

Margot James (Stourbridge) (Con): I feel that the hon. Gentleman accepted a little too readily the protestations of his hon. Friends about how easy it is for services to be commissioned in the interests of patients, as per the example of my hon. Friend the Member for Stafford. May I direct the hon. Gentleman to the website of the Co-operation and Competition Panel, where he will find numerous examples of PCTs throughout the country that have stood in the way of such ventures so that they could prop up uncompetitive loss-making units in their hospitals?

Grahame M. Morris: The point I was responding to from the hon. Member for Stafford was about the system in the Bill. My hon. Friend the Member for
Leicester West contended that there is already a mechanism to deal with that in CCGs. If they work effectively with the health and well-being boards, as set out in the Bill, there will be no need to enforce such a route of access through Monitor. My argument is that Monitor is superfluous. We do not need to create that huge new bureaucracy. There are other methods of achieving the aim.

I have already mentioned concerns about ensuring that a duty to reduce inequalities is in any list of matters to which Monitor should have regard in exercising its functions. The amendment seems to limit the consideration of inequality rather than expand it.

Amendment 152 strengthens the duty on Monitor to take advice from health professionals, which is welcome but still not specific. I am fully aware that previously when we have discussed the role of the senates and the clinical networks, the Minister has said that there is a duty to consult, but that the CCG, or whatever body is involved, is not obliged to take the advice. A similar issue arises with regard to Monitor consulting the clinical community, either through the royal colleges or the senates.

The Command Paper mentions as an example that Monitor could seek advice from the clinical networks and senates, hosted by the NHS commissioning board—that is a mechanism that could be used—but it appears that Monitor will be able to determine for itself how it fulfils its duty. It is like one of those tick-box exercises mentioned by my hon. Friend the Member for Leicester West in its duty. It is like one of those tick-box exercises mentioned by my hon. Friend the Member for Leicester West in relation to how it will respond and be held accountable.

Amendment 158 changes the scope of regulations that may be issued on competition. As has been said, there are 84 clauses on competition in the Bill. Those regulations may no longer be issued to ensure that commissioners “do not...prevent, restrict or distort competition” but they may designed to ensure that they “do not engage in anti-competitive behaviour”.

I am well aware that we debated that point this morning.

John Pugh: I am interested to know the hon. Gentleman. Gentleman can show me the 84 clauses, because I checked while he was speaking and there are 11 clauses on competition; if I include all those on Monitor I get to only 20; and there are 29 clauses on foundation trusts. I wonder what the hon. Gentleman is including.

Grahame M. Morris: A word search for “competition” on TheyWorkForYou.com comes up with 84 clauses. That is how I arrived at that number. Whether it is 84 or 65, it is a major part of the Bill and one that the Opposition are worried about because of the implications for our treasured national health service, the way it operates, its architecture and because of the consequences of exposing it to the icy blast of competition law.

Again, I come back to my original question: what is the point of Monitor? What is its raison d’être? Why do we need to invest so much time and effort on creating this monolith when there are other mechanisms that we can use? If we are to believe the Minister that the duties are being scaled down massively, how much money will be wasted on such a pointless bureaucracy when, frankly, the issues that he highlighted earlier could quite easily be taken up by the Co-operation and Competition Panel?

John Pugh: Some interesting points have been made and I did not altogether disagree with the last sentence of the hon. Member for Leicester West, but I feel that we are making slightly heavy weather of this. The poor old Minister was accused of being in favour of properly regulated competition; I am not sure whether he should have been in favour of improperly regulated competition or non-regulated competition. I understand that the Labour party is largely in favour of regulated competition of some kind and the difference is probably worth discussing, but it was not discussed in those terms. The argument was put across in a very black and white way.

May I explain very quickly how I see it, how I think the Bill presented its dangers and how I think those have been remedied? There is a real threat of not having a sector-specific regulator. The hon. Member for Leicester West was slightly disingenuous in saying that there was not a real reason for the Labour party to set up a competition and collaboration panel. The downside of not having a sector-specific regulator is that clinical services will be exposed to the same sort of regime as non-clinical services are. There are the Official Journal of the European Communities rules and there is the right of appeal to the Office of Fair Trading. The contracting process will be complex and laborious; it will squeeze out small local and innovative suppliers; it will be subject to constant legal threat from the big firms, which know how to operate in this environment; it will not secure best value for the NHS; and the main thrust in terms of commissioning would simply be, as it is now, a case of acute hospitals complying with the rules rather than securing best value.

That is why the BMA says in response to the latest changes:

“We believe the measures to narrow Monitor’s powers over anti-competitive behaviour (Clauses 56 & 67) are acceptable. In areas where it has been agreed that choice and competition are appropriate, there need to be rules to prevent anti-competitive behaviour. These are currently exercised by the Office of Fair Trading (OFT) and we believe it is more appropriate for those powers to be exercised by an exclusive health regulator.”

The BMA then goes on to endorse the dilution of Monitor’s role. There is a quite clear perception there that if there are to be multiple providers—nobody has said that there will not be—and if there is to be any sort of regulation, it is best done by a specific health regulator. That is why there is a case for having either Monitor or the Co-operation and Competition Panel, but having something rather than nothing. We can discuss whether we want to have a Co-operation and Competition Panel that stands alone or whether we want it to be incorporated into Monitor, and we can discuss how big Monitor should be. The point about having a sector-specific regulator was well made, however, not by me but by the BMA. That is how it sees the world.

Grahame M. Morris: Will the hon. Gentleman explain what is different? We are scrutinising the changes that the Government have introduced as a result of the listening exercise and the Future Forum report, but what is different? Surely Monitor and the Co-operation
Government Benches.

The team not only to obey the offside rule but to play were asking it to do a lot more than simply to be a we were asking the referee to promote competition, we are the ones that we do not see much in the game. My licences are applied; and it applies rules. The best referees appeal mechanism; it is a licenser; it polices how the night and day by every decision of every PCT. Co-operation and Competition Panel are not troubled will take place seamlessly and will go right past it. structure the life of the NHS, because most NHS activity fundamentally, is that of a regulator. It is not going to Monitor will not be running the NHS; its role, be running the NHS. However big and well funded it is, integration of services. We are getting a bit obsessed, many other people have made: we need to be mindful of the sentiment. She is basically making the point that the hon. Member for Leicester West, I sympathise with them. They? Their function and their activities were always within the health field. If the hon. Gentleman can explain what is different in the current proposals, I would be obliged.

**John Pugh:** The Bill has travelled a fair way from its beginnings, and I think it was originally envisaged—the Minister may wish to state otherwise—that this regulator would deal with price. Effectively, however, Monitor is now gradually morphing itself into the sort of thing that the Co-operation and Competition Panel was going to be. I think we need a sector regulator, and if people think differently, they can argue with the BMA if they want to.

The second real threat that many of us saw in the original legislation was that commissioners who were sensibly trying to commission services in an integrated fashion might, it seemed, be trumped by an appeal to an organisation, Monitor, which had a simple mandate to promote competition. Many people saw that as disruptive. We know that sometimes competition can be disruptive, and we know equally that it can be beneficial. I, like the hon. Member for Oldham East and Saddleworth, would look at the evidence, and there is evidence to support different views. In certain contexts, competition may be appropriate and improve services; in other contexts it may not. I have explained the two threats. The Government have endeavoured to address both the threat of not having a sector regulator and the threat of having one that interferes with patterns of behaviour of the commissioners.

When I look at amendment 40, which was tabled by the hon. Member for Leicester West, I sympathise with the sentiment. She is basically making the point that the Future Forum has made, that I have made and that many other people have made: we need to be mindful of the integration of services. We are getting a bit obsessed, however, with what we think Monitor may end up being. We are giving the impression that this beast will be running the NHS. However big and well funded it is, Monitor will not be running the NHS; its role, fundamentally, is that of a regulator. It is not going to structure the life of the NHS, because most NHS activity will take place seamlessly and will go right past it. Monitor will not be troubled, in the same way as the Co-operation and Competition Panel are not troubled night and day by every decision of every PCT.

Monitor’s role is analogous to a referee. It is an appeal mechanism; it is a licenser; it polices how the licences are applied; and it applies rules. The best referees are the ones that we do not see much in the game. My initial concern when I read the legislation was that when we were asking the referee to promote competition, we were asking it to do a lot more than simply to be a referee. It was as though the referee should encourage the team not only to obey the offside rule but to play like Barcelona rather than Stoke—or Stoke rather than Barcelona, if the Committee would prefer it that way.

**Jeremy Lefroy:** Will my hon. Friend accept that in fact Monitor doing its job is just what Stoke City do, year in year out? [Laughter.]  

**John Pugh:**: There are at least two of us. Without being pedantic and saying, “This is what I said first time round,” what I complained about in previous discussions was that I did not want Monitor to play a strategic role. I wanted Monitor’s role to be constrained, and I wanted it to have a narrow and proper focus. I am perfectly happy for it to have the role of promoting the general good of patients, because what other institution in the NHS would not do that?

**Fiona O’Donnell:** I wonder why the hon. Gentleman thinks we should have any confidence in his vision and definition of the new Monitor when it is clear—the Minister was shaking his head—that he had the definition of the original Monitor wrong.

**John Pugh:**: The Minister can speak for himself, and indeed he will. I think there will be a strong degree of consensus.

**Tom Blenkinsop** (Middlesbrough South and East Cleveland) (Lab): I would like to take up the analogy of the football pitch. Monitor is the referee, but it is obvious that, before the referee gets on the pitch, the Government, by including the provisions of Enterprise Act 2002 and the Competition Act 1998, have lopsided the pitch considerably and taken away several players from the opposing team.

**John Pugh:** I am not going to persist with football analogies; we may get into trouble there. Essentially, the Government have done what I and the Future Forum would require them to do, which is to have Monitor collaborate properly, having taken into account the right considerations such as integration. I fundamentally do not want Monitor promoting anything. I want it to do its job, in terms of licensing and, as it were, refereeing the system. I have no evidence to think it has any degree of competence in playing a strategic leadership role in the NHS.

**Jeremy Lefroy:** Will my hon. Friend accept that in fact Monitor doing its job is just what Stoke City do, year in year out? [Laughter.]

**John Pugh:**: To my surprise, they have stayed in the premier league without seeming to play particularly good football.

Let us look at the people on Monitor. I have made comments in the press about the deputy chairman, Chris Mellor, who had been sacked by Anglian Water, I think, and then got into trouble at Northern Ireland Water—I have a quote here somewhere. He and Monitor people generally do not seem to be the sort of people we would be completely comfortable with playing a strategic role in the NHS, so they should not play that role; they should play the proper adjudicating role we think they ought to play, which the Co-operation and Competition Panel played as well.

**Owen Smith** rose—

**Mr Burns:** Please do not mention Cardiff.
Owen Smith: I am absolutely not going to mention Cardiff, although they did rather well—they almost went up—though not quite as well as Swansea who did go up to the premiership, I am grateful to say.

The hon. Gentleman says that he does not want Monitor to play a strategic role. He now seems to have doubts about the calibre of people in Monitor and their ability to play a strategic role. Does he think we ought to be spending £50 million to £80 million of public money a year on something that will not have a strategic role? It will be something fiddling at the edges and not terribly important.

John Pugh: Clearly, one has to pay the right amount of money to get the service wanted; I do not know what that figure is. In response to the hon. Member for Leicester West’s amendment, we are all up for integration and want to see collaboration. We do not want to see Monitor involved in the strategic decision making.

A final thought: there was some discussion about the twin pillars of integration and competition, or collaboration and competition. The Minister said they were not necessarily antithetical or opposed. That is true: they are not necessarily opposed, but in certain contexts they can be. That means in most real-time situations, which are affected by our deliberations, a balance has to be struck for the sake of the local health economy, but who should strike it? I think the commissioners should do it—and not only that they should but that they will, as long as they do not have a competition authority over them, with a job to promote competition as opposed to apply appropriate rules. If the local commissioners get it wrong, it is not just Monitor they have to answer to. There are also the health and well-being boards in their own areas.

If people out there in the real world, away from this room, think that this arrangement will not get things right in the locale, they will write to us. They will contact the Minister and all of us over the summer and say that it is not going to work, that it will not be a framework in which people can get the balance right. However, I think we are near getting a framework that will get the balance right.

3.50 pm
Sitting suspended.

4.5 pm
On resuming—

Fiona O’Donnell: Thank you, Mr Gale. I appreciate that members of the Committee, especially the Opposition, might have tested your patience at times, so I shall try my best to keep in order.

However, I am finding the process of having to talk about isolated amendments, but not about how Monitor is shaped under the Bill and what it will do, quite frustrating. Under the original Bill, the purpose of Monitor was at least clear: it was to promote competition. We now have amendments that would change positive statements simply into double negative statements. We will be able to discuss some amendments and clauses, while some we cannot discuss until the Bill is debated on Report. Information on the impact assessment is not available, and I am finding it difficult to scrutinise the clause properly.

Hopefully, the hon. Member for Southport will return soon; he is possibly in need of more comfort than other members of the Committee. I held out some hope when he said that he would give us an example of what was different in this Bill. I do not know about other members of the Committee, but I spent the lunch break digesting not just my lunch, but the analogy that the hon. Gentleman offered. Perhaps I can regurgitate it.

The analogy referred to the Spanish civil war. The hon. Gentleman spoke about the fact that some people went out to fight Franco in the name of socialism, but others went out to fight Franco not in the name of socialism. I struggled with that, because it seemed that, if the outcome and what happened on the ground was the same, why the motive? Presumably, the motive equated to the changing of the terminology in respect of promoting competition and not getting in the way of anti-competition—not; I think I need to add a third negative. I really did not find that analogy helpful.

I have a final appeal to the Minister. He will not be able to help me with the hundreds of e-mails that I am now receiving about Rupert Murdoch, but will he help me to respond to the many e-mails that I have received from constituents in East Lothian asking about the Government’s purpose for Monitor and expressing fears about it? If he is about to offer me an example now, that will be most helpful.

Mr Burns: I am surprised that the hon. Lady is receiving so many letters or e-mails from her constituents about such matters. I thought that she would ask about the purpose of the Bill. It is to put patients at the heart of patient care where they are involved; to drive up standards and quality; to improve outcomes; and to free the NHS from political micro-management.

Fiona O’Donnell: The Minister has slightly misunderstood my question. I wanted an illustrative example of how what the Government proposed previously in respect of Monitor varies from what they are saying now. Will he give me an example of what will be different?

Mr Burns: I am grateful that the hon. Lady clarified her question. I am sure that she listens attentively to our proceedings all the time, so she will have heard me read out the list in our debate this morning.

Fiona O’Donnell: I have to express continuing disappointment. I still do not feel able to respond to my constituents. What is the difference between promoting competition and not being anti-competitive? We started off with a clear sign of what Monitor will do; we have now ended up with the Government trying to respond to the many organisations and networks throughout the UK that have expressed concerns about the provisions—including the Arab spring that was the Lib Dem conference. Although the hon. Member for Southport has spent a great deal of time interpreting the approach of the Opposition, we have not really had a clear definition of the Liberal Democrat position.
I say to the Minister that, after all those years of waiting to come into power, the Government are not doing a good enough job with their proposals for the NHS. It is not good enough for patients, organisations that represent patients, or my constituents, and I hope that we will have some clarity. I still think that it is a bad Bill that has not been improved, and I remind the hon. Member for Southport of what his own leader, the Deputy Prime Minister, said—it is better to have no Bill than a bad one.

The Chair: Order. Before we proceed, I am sure that hon. Members recall from last week that any amendments required for Tuesday have to be tabled by the rise of the House. We are now on the Adjournment debate in the main Chamber, so if any Member wishes to table an amendment to be debated on Tuesday, it will have to be handed to the Clerk by the time the House adjourns, at the very latest.

Emily Thornberry: I want to address a narrow aspect of Monitor’s functions, in relation to its role with social care. The clause that we are debating is about Monitor’s general duties, and I would like to hear what the Minister has to say about a number of things that have happened recently.

As the Committee will remember, I raised social care and Monitor’s duties on 15 March; it is reported in Hansard, starting at the end of column 773. I questioned the Minister’s intentions behind clause 53—now clause 57—but I believe that Monitor’s general role is also important. I said that there were huge concerns about what would happen to Southern Cross, because its shares had dived from £600 before Christmas to £5 and it had unsustainable debts. I also wanted to know the Government’s thoughts about designating some social care services, if Monitor were to have a role in designating services.

We need to grapple with the problem of what we do with failing social care providers, and I made the point that it was wrong that if a social care provider were to crash in the private sector, the administrator’s duties would be primarily to the creditors and not to the elderly—to the 31,000 vulnerable elderly who live in Southern Cross homes.

I do not think that I have mystic powers; it was clear to anyone that there would be a problem with Southern Cross, and that problem is becoming more pressing. Since our debate, at Prime Minister’s questions, the Prime Minister gave this answer to a question on Southern Cross from my hon. Friend the Member for Blaenau Gwent (Nick Smith):

“The Health Department, the Treasury and the Department for Business, Innovation and Skills are following this very closely. We are taking powers in the Health and Social Care Bill to make sure that we regulate these organisations properly. Local authorities have the necessary powers to take over the running of care homes if required, so I believe that we are planning for all contingencies in the correct way.”—[Official Report, 29 June 2011; Vol. 530, c. 952.]

In a statement on the long-term care review, the Secretary of State said:

“We have also made it clear that we will take action to ensure proper oversight of the market in social care. That is why we are seeking powers through the Health and Social Care Bill to extend to social care the financial regulatory regime that we are putting in place in the NHS, if we decide that that is needed as part of wider reform.”—[Official Report, 4 July 2011; Vol. 530, c. 1233.]

The debate seems to have moved on since we last had it. The Minister might remember that he stated that the social care powers likely to be given to Monitor by the Government were much more narrowly drawn than is now claimed by the Prime Minister and the Secretary of State. In answer to me, in the debate of 15 March, the Minister said:

“The clause enables that phased approach. It does not provide that Monitor’s functions will be extended to adult social care, only that they could be. A joint review by the Department of Health and the Department for Communities and Local Government is considering proposals for a role for Monitor in regulating adult social care services. We anticipate that any such role would be limited to anti-competitive behaviour and/or provider failure.”—[Official Report, Health and Social Care Public Bill Committee, 15 March 2011; c. 775.]

4.15 pm

I am interested in what the Minister will say, but it appears that his leader has taken the issue much further, according to the answer given in PMQs, and that the Secretary of State has taken it further, in his statement to the House, yet we still do not really know what is in the Department of Health’s mind. What will it do with Monitor? What will Monitor’s role be in social care? Can the Minister explain further and in more detail how Monitor’s functions could be used to prevent a situation such as Southern Cross recurring?

The Secretary of State talked about the financial regulation of social services, so will Monitor’s competition functions apply in social care? Will Monitor have functions to do with designated social care services? We will be grateful for a detailed answer but, if the Minister cannot reply today, I will be more than happy for him to write to me. The matter is of huge importance, and we need to have a better understanding of the Minister’s view.

Can the Minister also help on the subject of the powers granted to GP commissioning consortia if the Bill is enacted? Will the consortia then be in control of the properties from which they operate? Could they, as Southern Cross did, separate the operating company from the property company? Might we find ourselves in a Southern Cross situation, with the operating company in a sweetheart deal with the property company and having to pay more and more rent, which would challenge the financial viability of the GP commissioning consortia?

Mr Barron: I echo what my hon. Friend said about Southern Cross. I have two such homes in my constituency; I am not claiming any perceived threat at the moment, although quite clearly someone would have to pick up responsibility immediately if anything adverse were to happen to the company. I join my hon. Friend in asking for an explanation of what will happen—perhaps not in Committee, but on Report or in another place. Hopefully, that will become clear at some stage.

The clause is about the general duties of Monitor. My hon. Friend on the Front Bench questioned the cost of setting up the organisation, but I question how Monitor’s proposed powers appear to have changed quite substantially since we set off on the journey with the Bill. In their immediate response to the NHS Future Forum, on choice and competition, the Government said:

“Monitor’s core duty will be to protect and promote patients’ interests”— which I am happy and glad about. They went on:
“We will remove Monitor’s powers to ‘promote’ competition as if it were an end in itself. Monitor will be limited to tackling specific abuses and unjustifiable restrictions that demonstrably act against patients’ interests, to ensure a level playing field between providers...The NHS Commissioning Board, in consultation with Monitor, will set out guidance on how choice and competition should be applied to particular services, guided by the mandate set by Ministers. This includes guidance on how services should be bundled or integrated...We will narrow Monitor’s powers over anti-competitive purchasing behaviour so that these are more proportionate and focus on preventing abuses rather than promoting competition...We will remove Monitor’s powers to open up competition by requiring a provider to allow access to its facilities to another provider...We will maintain the existing competition rules for the NHS introduced by the last Government (the Principles and Rules for Co-operation and Competition), and give them a clearer statutory underpinning. The body that applies them, the Co-operation and Competition Panel will transfer to Monitor and retain its distinct identity”—confirmed by the Minister in Committee earlier today. Finally:

“We will retain our proposals to give Monitor concurrent powers with the Office of Fair Trading”.

It seems that the general duties of Monitor, as perceived in the Bill published many months ago, have substantially changed with the Future Forum and what the Government have said about them. That raises the question of whether we need the organisation on the scale that was perceived, at the public expense that it will cost. I know that there is still speculation, but we are talking about tens of millions for an organisation that is now restricted compared with what the Government originally wanted it to do. Should that not be looked at further? Is there a need to have it on the size and scale that was envisioned at first, given the power that has been taken away in recent weeks with the Future Forum?

I remind the Committee of what the Secretary of State said about the matter, which I mentioned in a brief intervention on my hon. Friend the Member for Easington earlier. In answer to two points that I posed to the Secretary of State in the second sitting of the Committee on the re-committed Bill, he said:

“On the first point, the intention is that Monitor should take responsibility as a health sector regulator for the application of competition law in health and social care services.”

That is not what the Bill says now. He continued:

“To that extent, the NHS Future Forum has helpfully looked at precisely that question. It agreed that the NHS was given greater reassurance by that, because otherwise exactly the same competition law would be applied by a competition authority that did not necessarily understand and appreciate how the health service worked, which is what Monitor is charged to do...In so far as Monitor will have licensing responsibilities, it will be able to exercise ex ante licensing provisions, the purpose of which is to support the NHS. As a consequence, that will make less likely the intervention of any competition provisions, which tend to fragment and distort what would otherwise be the NHS’s approach.”

If that is what the Secretary of State is saying, what power is Monitor going to have? We have to pose that question. Does the Minister agree with the Secretary of State on that analysis of what he said to us? Does he agree that it is less likely that any intervention of any competition provisions will happen? Does he agree that competition provisions tend to fragment and distort what would otherwise be the NHS’s approach?

Exactly what was the Secretary of State telling the Committee last week? Can he put it in the context of Monitor, regarding its size, its changing general duties and its disempowerment, if we are to believe everything that I have read out in the Government’s response to the Future Forum? Is it necessary to have such a large organisation, which has been disempowered in the past few weeks?

The Secretary of State continued:

“On mergers, it is now the case that the Co-operation and Competition Panel examines mergers, but it does so in a more intrusive way than the way that will result from the Bill. We are looking to legislation that—as would in any case apply if mergers relate to enterprises under it—will relate simply, as I am sure you know, to where the boundary of an enterprise or an undertaking cannot be established in the Bill.”—[Official Report, Health and Social Care (Re-committed) Public Bill Committee, 28 June 2011; c. 93, Q191.]

It seems that the role that Monitor was going to play when the Bill was published many months ago has been severely restricted. Once again, we are considering amending some of Monitor’s general duties. It is right to question whether Monitor fits—even on the scale envisaged now—rightly and properly as a sector regulator when it has been so disempowered by the Government that it will be unable to introduce competition in any effective way.

The Secretary of State said that competition tends to “fragment and distort what would otherwise be the NHS’s approach.”—[Official Report, Health and Social Care Public Bill Committee, 28 June 2011; c. 92, Q191.] It is relevant, therefore, to question the Minister and I hope that he will respond in detail.

Karl Turner (Kingston upon Hull East) (Lab): I do not propose to keep the Committee long, but I shall make some remarks in support of amendment 40.

Clause 56 deals with Monitor and competition. Understandably, it has caused the most controversy in our debates. The Government previously attempted to drive through a clause that would have prioritised competition over crucial concerns that many organisations expressed about the Bill, and they seemed to ignore the concerns of hon. Members in Committee. I was surprised to see the expressions on Government Members’ faces—they looked across to the Opposition in shock and horror that we should be challenging them. The Bill has been a complete and utter mess from start to finish in my respectful submission.

What is Monitor for? I am confused. My right hon. Friend the Member for Rother Valley rightly mentioned the Secretary of State’s remarks and ex ante support for NHS licensing powers. My right hon. Friend said from a sedentary position that Monitor is to protect the NHS from the Government, which is probably right. What is the difference between promoting competition and not being anti-competitive?

If Monitor is to protect the NHS from the Government, that reminds me of a story, which I hope you will allow me to relate, Mr Gale. During the 2001 election campaign, my predecessor, Lord Prescott, who was then the right hon. John Prescott, Deputy Prime Minister, was involved in an unfortunate incident in Wales. I was an active member of the Labour party at that time, and I remember that before the incident he had one or two special security officers with him; after it, he had about two dozen. A newspaper remarked—probably accurately—that
the protection officers were not to protect the Deputy PM from the public, but to protect the public from him. Is that what Monitor is about?

The Government have tabled an amendment that obliges Monitor to promote the provision of services that are “economic, efficient and effective” and that “maintains or improves the quality of the services.”

The Opposition disagree with the Government’s solution. Our amendment 40, however, would alter the Bill to ensure that Monitor’s main focus would be to promote “collaboration and integration”, which is what the Future Forum has said it wants. Integration is vital for the NHS, but where is it? It is a key concern of many long-term ill, who are by far the largest users of the NHS.

4.30 pm

In a contribution to our proceedings when the Bill was first in Committee, I quoted from written evidence submitted by National Voices:

“One of the strongest demands of patients, service users, their families and carers is for ‘joined-up’ services. Patients want continuous care, integrated around the patient”.

That statement still holds true today; nothing has changed. But for the apparent listening exercise, and the pretend U-turn, nothing has changed. The demands and requirements of NHS service users remain the same. I see no possible reason why all hon. Members would not support our amendment. If integration and collaboration is such a priority, it should have a place in the Bill that reflects it.

MrBurns: I listened to the hon. Member for Kingston upon Hull East with great interest. I see splits beginning to appear on the Opposition Benches. He has slavishly and loyally followed his Front Bench on the line of what this does or does not do, whereas his colleague sitting next to him, the right hon. Member for Rother Valley, seemed to suggest that there were fundamental changes. I suggest they might have a chat together to sort it out.

TomBlenkinsop: If the Minister has concluded that there might be different interpretations over here as to what Monitor is to do, there are several interpretations on his own side, particularly with the hon. Member for Southport’s interpretation of Monitor. That proves that no one has any definitive idea about what Monitor actually does and the danger is that that will allow litigation to explode on this very subject.

MrBurns: I am very grateful to the hon. Gentleman for that, but sadly he is wrong on a number of points. The fundamental one was that the difference I was pointing out was not about what Monitor does; it was that the right hon. Member for Rother Valley seemed to suggest that there were significant changes to the role or powers of Monitor through these amendments, whereas the hon. Members for Kingston upon Hull East and for Pontypridd were trying to suggest there were no changes at all, or very little change, which is the direct opposite.

My hon. Friends can see that there are significant changes as a result of our listening, during the listening process, and accepting the recommendations made by the Future Forum; it suggested that we needed to change, and we did. If the hon. Gentleman had been listening carefully to my opening speech, he would vividly remember some fairly cogent extracts from comments made by the Future Forum; in particular, welcoming the fact that we have listened and accepted that it recommended to improve and strengthen the Bill.

I will begin by answering two factual points on procedures that the hon. Lady for Leicester West raised. One of them concerned the failure regime and the fact that the Bill still has clauses dealing with designation. The answer is that they will still be there, because we will deal with them when the failure regime amendments are tabled and the House is ready to debate them. She asked when that would be and, as I said during the evidence session, we are not going to rush this because it is extremely complex and we want to get it right. I know, with some justification, that she would be the first to criticise us if we rushed it just for some artificial time scale and got it wrong. I told her we would bring forward the amendments either on Report or in another place. We have been working extremely hard on this; work will continue and I am confident that we will bring forward the amendments in time for them to be debated on Report.

The other factual issue, which the hon. Lady addressed in great detail last time around, is about trusts that currently have difficulty seeking foundation trust status. She asked me, for example, whether Sir David Nicholson’s figure of about 20 was accurate, and I confirm that it is. I also confirm that considerable work is being done with a number of trusts, including those 20, to get them into a position to seek foundation trust status. As she knows, that work is being done at local level between strategic health authorities, providers and officials.

The hon. Lady also asked whether we would publish the list, but I fear that I have to disappoint her. There is nothing to be gained from putting names into the public domain. As I told her, the relevant bodies are working extremely hard to help trusts successfully to seek foundation trust status. The additional publicity that would come if we published the names of the organisations would not be helpful, nor would it assist the process. I hope that she accepts that as a reasonable way to proceed.

I will come back to the hon. Member for Leicester West, because she raised a number of issues, but I now want to address two issues raised by the hon. Member for Oldham East and Saddleworth. She asked whether we will publish a bibliography with the impact assessment that will be published when the Bill has completed its passage. I confirm that we are prepared to publish a bibliography.

The hon. Lady also asked whether we will submit the impact assessment to peer review. At this point we do not think peer review will be necessary nor have much
[Mr Simon Burns]

value. When the impact assessment is published, it will be looked at closely by a range of people, particularly researchers and academic institutions, who will form their own views on the evidence and the comments, as they have on the Future Forum’s work. There are a range of Government mechanisms to ensure that the impact assessment is a robust document, and I urge the hon. Lady to wait for its publication. I am sure she will not be disappointed by its content.

A number of Members asked what is the point of Monitor and whether it is too large, given its functions under the amended Bill. I do not think that those Members are listening, because we have covered that issue in great depth. We have explained the differences from our proposals before the listening process. There have been considerable changes, as shown by the difference in opinion between the right hon. Member for Rother Valley, who in his interesting speech seemed to be making the point that there were significant changes, and the hon. Member for Pontypridd, aided and abetted by the hon. Member for Kingston upon Hull East, who seemed to suggest that there were not.

Monitor’s competition role has been restricted, as we all know from the Government amendments, but Members have overlooked the fact that Monitor will perform a number of crucial functions. It will be price setting, licensing providers and protecting the continuance of services. Those are three crucial areas where Monitor is still needed, and it has to be resourced to be able to carry out its functions.

The hon. Member for East Lothian asked for examples of how things will be different. In my opening comments, I gave a list that showed how Monitor’s role will be addressing anti-competitive behaviour and will be different from its role in promoting competition. I do not want to detain the Committee by going through it all in great detail, but I will give her one example in passing. The most important thing is that Monitor will not be able to exercise its functions with the aim of promoting competition. I then went on to say that, for example, it could not choose to disapply a particular set of licence conditions to a certain group of providers in order to make it easier for them to enter the market. That very clear-cut example answers the hon. Lady’s points.

Owen Smith: Would the Minister give way?

Mr Burns: Can I just finish? I have found another example for the hon. Lady, just to give her more to think about. She asked what would be different about moving away from promoting competition, as defined in the earlier part of the legislation. Commissioners can commission integrated services without fearing that Monitor might break them up in the spirit of promoting competition. Again, that is important, given that we are trying to concentrate on improving and enhancing an integration of services, because that is clearly in the best interests of patients.

Owen Smith: I rise because the Minister has again used the example that he gave earlier, which I challenged, on how things have changed—that now Monitor would not be able to disapply a set of licence provisions to a set of providers in order to allow them to enter the market. Can he point to where, in the earlier unamended Bill, there is a line that previously allowed Monitor to do that? What has been removed that now disallows Monitor from doing it? Which is the line in the text?

Mr Burns: I am sorry that the hon. Gentleman is constantly coming back to this point, for one very simple reason. The whole thing was part and parcel of the whole ethos of the competition agenda in the legislation to start with. We have now—quite clearly, on the face of the Bill through our amendments—changed it so that it will not be promoting competition, so that goes by the board. We then have to focus on what Monitor is going to be doing in its role of price setting, licensing and so on.

If I can now move to the hon. Member for Easington’s questions, he asked why commissioners could not oversee competition. The straightforward answer is because patients’ interests need to be safeguarded by ensuring that commissioners do not collude with local providers to exclude innovative services or restrict choice. That requires oversight by Monitor, or an outside body rather than them. Their functions are to devote their time to commissioning good quality care for their patients. I hope that the hon. Gentleman will recognise that.

4.45 pm

Grahame M. Morris rose—

Mr Burns: I was hoping that answering the question would not encourage the hon. Gentleman to come back. May I just answer his two other questions and then he can have a brief intervention? I do not think that the Committee want to spend all day on this, given that there are other clauses and other amendments to be considered.

The hon. Gentleman also said that clause 58 does not require Monitor to have regard to the need to reduce inequalities. It does have a role to play and we have discussed this crucially important matter on numerous occasions. The hon. Lady the Member for Oldham East and Saddleworth has contributed to our debates and we are united in recognising the importance of doing all we can to reduce and minimise inequalities within health care. That is why we are putting the duty to seek to do that in the Bill. If the hon. Gentleman looks at 101(1)(d), it requires Monitor to have regard to the need to perform that role. Monitor must also have regard to “the need for commissioners of health care services for the purposes of the NHS to ensure that the provision of access to the services for those purposes operates fairly.”

I hope that those provisions in the Bill reassure the hon. Gentleman.

The hon. Gentleman also said that concurrency remains. That is because we have written to the Future Forum, and there were some who were strongly in favour of such issues being considered by a body that understands the NHS and the issues it faces. Rather reassuringly, because it is always good when a third party agrees with what one is doing, the Nuffield Trust agrees that there should be a sectoral regulator, as stated by Dr Jennifer Dixon at last week’s evidence sessions. If the hon. Gentleman wants a specific reference in the Bill, I suggest he looks at clause 101(1)(c).
The right hon. Member for Rother Valley asked whether I agreed with the Secretary of State in his evidence at the beginning of last week. I say from the outset that as he would expect, I always agree with my right hon. Friend the Secretary of State. He is doing a fantastic job and I am honoured to be able to help him in whatever modest way that I can to achieve an improvement and enhancement of the National Health Service, fit for the 21st century in a modernised form to improve the quality of care and outcomes.

My right hon. Friend said that ex ante regulation would help to prevent restrictions on competition from arising. Monitor will be able to set licence conditions to enable integration in a way that benefits patients and does not improperly restrict competition. As a result, the need for a competition regulator to intervene and apply competition law is less likely, therefore reducing the risk that competition law would be applied in a way that fragmented services that had not been integrated appropriately, and which restricted competition to the detriment of patients.

Questions were asked about who Monitor would account to. Monitor is, and will remain, a non-departmental public body, accountable to Parliament through the Secretary of State. It will be accountable to the public through parliamentary scrutiny, including investigations by Select Committees, I suspect most prominently by the Health Committee, I assume by the Public Accounts Committee and, possibly the Public Administration Committee. Parliament’s ability to assess and question Monitor’s activities and behaviour regularly will ensure its accountability.

The hon. Member for Leicester West talked about procurement regulations. The Secretary of State already issues guidance to commissioners on procurement best practice and law, and commissioners are expected to comply with that. That was started by the previous Government through their PCT procurement guidance.

The hon. Lady made some valid remarks about diabetes to illustrate her point about integration. I assure her that commissioners will be expected to promote integration when it benefits patients. They could commission an integrated pathway for diabetes patients as long as it is procured fairly and openly, and Monitor would be expected to enable such integration. The Bill would not stop the provision of integrated diabetes care; the driving force is what benefits the patient most and best.

The hon. Lady asked about Monitor intervening on anti-competitive grounds. It would have to be confident that the interests of patients were being harmed, and it could be challenged by patients, commissioners or others if they disagreed.

The hon. Lady also talked about promoting competition versus tackling anti-competitive behaviour. I think she used the immortal words, “smoke” and “mirrors”, which the hon. Member for Pontypridd introduced to our proceedings today. We discovered this morning that instead of clearing the fog, the hon. Gentleman, albeit wittily, made it thicker, leaving many of my hon. Friends and I baffled after his virtuoso performance.

The hon. Lady keeps going on about the matter, and complaining about it, but I would like to pray in aid of our side of the argument a number of third party endorsements that I think command respect. For example, Steve Field said:

“I think the wording changes completely the emphasis...we wanted to say that we felt Monitor should exist, but should not have promoting competition as its prime aim.” —[Official Report, Health and Social Care (Re-committed) Public Bill Committee, 28 June 2011; c. 12, Q16-17.]

If the hon. Member for Pontypridd is not happy with that quote—he is chuntering from a sedentary position—let me pray in aid an organisation the he is probably far keener on, the British Medical Association. It is always good to have the BMA on side. It said:

“We welcome the shift in the role of Monitor away from promoting competition.”

That is good. The Royal College of Surgeons said:

“The College welcomes the Government’s change in emphasis...to encourage ‘integration not competition’ between all providers of health and social care.”

Those are powerful, strong and certainly welcome comments for the Government, and I hope that they strike a chord with Opposition Members.

Mr Steve Brine (Winchester) (Con): Will the Minister give way?

Mr Burns: I will, but if my hon. Friend will forgive me, I will give way first to the hon. Member for Leicester West, unless she does not want me to, and we can save time. Perhaps the moment has passed.

Liz Kendall: The moment has certainly not passed. Will the Minister confirm whether the quotes he read out from the Royal College of Surgeons and the BMA relate to their response to what the Government put out after the Future Forum, or to the amendments in the Bill?

Mr Burns: I am more than happy to do that—the former. The Future Forum published its recommendations, and the Government then accepted them. Steve Field is the chair of the Future Forum. The other two endorsements were made after that, but—

Liz Kendall rose—

Mr Burns: But, but, but—let me finish please—the response appeared for us to see in the written evidence. The hon. Lady and I may argue, but to be fair, the response was given after the Future Forum, and we accepted the recommendations. I am trying to be fair, and I could argue that it was taking into account or anticipating how we would table amendments to honour our commitment. The hon. Lady may well say that the Future Forum wrote that prior to seeing the amendments on the Order Paper. I think that that saved her a further intervention.

Liz Kendall: No, it has not.

Mr Burns: No? Come on.

Liz Kendall: For the record, the Minister will remember what happened last time. The Government published a White Paper and claimed everyone supported it, but when people saw what was happening in the Bill, they knew that it was not what they supported. We are
[Liz Kendall]

scrutinising the amendments. What are the Government actually doing? They are not doing what they said they would do in response to the Future Forum. The Minister should not claim that people support the amendments to the Bill when that is not what they said.

Mr Burns: I will claim that, actually, for this reason: we got the recommendations of the Future Forum and we accepted them. We have now brought forward amendments to reflect our acceptance of the recommendations of the Future Forum.

Emily Thornberry: Will the Minister give way?

Mr Burns: No, I am going to give way to my hon. Friend.

Mr Brine: No, we have been here long enough.

Mr Burns: Then I shall make progress, by coming on to the points made by the hon. Member for Islington South and Finsbury, if she thinks that would be helpful.

The hon. Lady raised a number of issues, but I will start with the fundamental one about how the Government will bring social care within the ambit of the legislation vis-à-vis Monitor. She quoted the Prime Minister, the Secretary of State and me from an earlier debate. We are all in agreement on the way forward. As a Government and individually, we have always said that considerable work and further consultation is required before making a full decision on the future role of Monitor as regards social care, although in principle we believe that there is a role for it to play.

We need, however, to carry out further work. There is provision within the legislation, as I said during our earlier debates, under clause 57, which allows the Secretary of State powers via regulations to give Monitor a role in adult social care. We are all in agreement on the way forward. As a Government and individually, we have always said that considerable work and further consultation is required before making a full decision on the future role of Monitor as regards social care, although in principle we believe that there is a role for it to play.

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The hon. Member for Islington South and Finsbury also raised the issue of Southern Cross and how it disposed of its assets and homes. She asked whether CCGs could do that with their property. I completely reassure the hon. Lady that they will not be able to, because the CCGs are groups of GP practices, which will not own or run the premises within the CCG. That will remain the responsibility of GPs as providers. I hope the hon. Lady has got that. The GPs will own or run the premises, but, by grouping together, they are a CCG. The CCG does not own the premises; the GPs do. They will not be able to dispose of the properties in the way that Southern Cross did.

I am looking through the plethora of notes to ensure that I have answered all the questions. I think that I have, but if I have not, if any hon. Member lets me know, I will write to them. I urge hon. Members to support the amendment.

Amendment 148 agreed to.

Amendment proposed: 40, in clause 56, page 75, line 1, leave out paragraphs (a) and (b) and insert ‘by promoting collaboration and integration within health services in England’.—(Liz Kendall.)

Question put. That the amendment be made.

The Committee divided: Ayes 10, Noes 11.

Division No. 16]

AYES

Abrahams, Debbie
Barron, rh Mr Kevin
Blenkinsop, Tom
Kendall, Liz
Morris, Grahame M. (Easington)

NOES

Brine, Mr Steve
Burns, rh Mr Simon
Burstow, Paul
Byles, Dan
Crabb, Stephen
de Bois, Nick

Question accordingly negatived.

The Chair: If the Opposition wish to oppose the Government amendments, I have to take them individually. If the Opposition do not wish to, I can group them. Does the Opposition wish to oppose the Government amendments?

Liz Kendall: No.

Amendments made: 149, in clause 56, page 75, line 4, at end insert—

‘(2A) Monitor must exercise its functions with a view to preventing anti-competitive behaviour in the provision of health care services for the purposes of the NHS which are against the interests of people who use such services.

(2B) Monitor must exercise its functions with a view to enabling health care services provided for the purposes of the NHS to be provided in an integrated way where it considers that this would—

(a) improve the quality of those services (including the outcomes achieved for them) or the efficiency of their provision, or

(b) reduce inequalities between persons with respect to their ability to access those services, or

(c) reduce inequalities between persons with respect to the outcomes achieved from their provision.

(2C) Monitor must exercise its functions with a view to ensuring that the provision of health care services provided for the purposes of the NHS is integrated with the provision of health-related services or social care services where it considers that this would—

(a) improve the quality of those health care services (including the outcomes that are achieved from their provision) or the efficiency of their provision,
(b) reduce inequalities between persons with respect to their ability to access those health care services, or
(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those health care services.

(2D) Monitor must, in carrying out its duties under subsections (2B) and (2C), have regard to the way in which—

(a) the National Health Service Commissioning Board carries out its duties under section 13J of the National Health Service Act 2006, and
(b) commissioning consortia carry out their duties under section 140C of that Act.'.

Amendment 150, in clause 56, page 75, line 4, at end insert—

‘( ) Monitor must secure that people who use health care services, and other members of the public, are involved to an appropriate degree in decisions that Monitor makes about the exercise of its functions (other than decisions it makes about the exercise of its functions in a particular case).’.

Amendment 151, in clause 56, page 75, line 5, leave out subsection (3).

Amendment 152, in clause 56, page 75, line 6, at end insert—

‘( ) Monitor must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—

(a) the prevention, diagnosis or treatment of illness (within the meaning of the National Health Service Act 2006), and
(b) the protection or improvement of public health.’.

Amendment 153, in clause 56, page 75, line 9, at end insert—

‘( ) Monitor must not exercise its functions for the purpose of causing a variation in the proportion of health care services provided for the purposes of the NHS that is provided by persons of a particular description if that description is by reference to—

(a) whether the persons in question are in the public or (as the case may be) private sector, or
(b) some other aspect of their status.’.

Amendment 154, in clause 56, page 75, line 9, at end insert—

‘( ) In this section—

“health-related services” means services that may have an effect on people’s health but are not health care services or social care services;

“social care services” means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).’

Amendment 155, in clause 56, page 75, line 10, leave out subsections (5) to (8).—(Mr Simon Burns.)

Question put, That the clause, as amended, stand part of the Bill.

The Committee divided: Ayes 11, Noes 10.

Division No. 17]

AYES

Brine, Mr Steve  Lefroy, Jeremy
Burns, rh Mr Simon  Morgan, Nicky
Burstow, Paul  Poulter, Dr Daniel
Byles, Dan  Pugh, John
Crabb, Stephen  Sturdy, Julian
de Bois, Nick

NOES

Abrahams, Debbie  O'Donnell, Fiona
Barron, rh Mr Kevin  Smith, Owen
Blenkinsop, Tom  Thornberry, Emily
Kendall, Liz  Turner, Karl
Morris, Grahame M. (Easington)  Wilson, Phil

Question accordingly agreed to.

Clause 56, as amended, ordered to stand part of the Bill.

The Chair: To clarify the position, the system is quite simple. All the related amendments are grouped and debated together, but only the lead amendment is moved initially. In this case we took the clause stand part debate with the group of amendments, and other amendments relating to other clauses that come later and the new clause, which will be voted upon later. We move the amendments relating to this particular clause and when they are carried, we move the Question that the clause stand part as amended.

I hope that is clear. It is important that Members understand what we are doing and why. It may be standard practice, but it is arcane and sometimes not that easy to understand.

Clause 58

MATTERS TO HAVE REGARD TO IN EXERCISE OF FUNCTIONS

Mr Burns: I beg to move amendment 156, in clause 58, page 76, line 11, at end insert—

‘( ) the desirability of persons who provide health care services for the purposes of the NHS co-operating with each other in order to improve the quality of health care services provided for those purposes.’

I shall be extremely brief, as I know the Committee wants to make progress. The Future Forum report made it clear that to deliver responsive care for the changing needs of our population, a different approach to care and treatment is needed, in particular to provide a better service for the growing number of people with long-term health conditions. We have made amendments elsewhere to address those concerns, for example by putting a new duty on CCGs, and a strengthened duty on the NHS commissioning board to promote integrated services for patients, both within the NHS and between health, social care and other local services.

Monitor will also be required to enable integrated services for patients, where this would improve quality of care or reduce inequalities for patients or improve efficiency. However, in addition, the amendment would place a specific duty on Monitor to have regard to the desirability of providers co-operating in the delivery of services across organisational boundaries. For example, following a complex hip replacement operation, a patient would transfer from secondary care to receiving physiotherapy in primary care, or community-based aftercare provided at home. Providers need to co-operate to ensure that patients transfer from one service provider to another smoothly and without any apparent break in treatment that would be detrimental to the patient. The amendment supports that co-operation.
Mr Simon Burns:

One of the practical differences that could be supported through the amendment would be the use of tariffs along a care pathway, involving a number of providers, rather than tariffs for individual episodes of care within a provider. That will deliver better co-ordinated care for patients and maximise their recovery.

Owen Smith:

I, too, do not intend to speak for long. However, I cannot resist letting the words “We told you so” pass my lips for the first time as a Front Bencher. I have no occasion to say that recently; my hon. Friend the Member for Leicester West has been able to do so many times so far.

When we last debated the clause, we discussed extensively an amendment tabled by my Front-Bench colleagues, which said pretty much the same as the Government’s amendment. It talked about the need to improve collaboration and integration. It said that putting a clear requirement on Monitor to have particular regard to the need to support integration and collaboration—integration about which we have heard the Minister talk—would help allay the fears that some have about fragmentation. In response, the Minister used a phrase that became extremely familiar during our 28—or was it 38?—sittings:

“Although I understand and appreciate the sentiment of the amendment, I believe it is not necessary.”—[Official Report, Health and Social Care Public Bill Committee, 15 March 2011; c. 777.]

Clearly it was necessary, which is why we have the amendment before us today, and we are happy to support it.

Amendment 156 agreed to.

Clause 58, as amended, ordered to stand part of the Bill.

Clause 59

Conflicts between functions

Question proposed, That the clause stand part of the Bill.

Owen Smith:

The clause deals with conflicts of interest. We did not have an occasion last time to talk about conflicts of interest as they relate to CCGs. That was a shame, as that is an area where we see significant conflicts of interest. The conflicts of interests in respect of Monitor are perhaps less significant than those that we would have debated at some length, had we sufficient time to do so during the re-committed Bill’s passage. It is a crying shame that we have not had sufficient time to look at conflicts of interests between clinicians who might be commissioning care from themselves.

When the Government last amended the clause—there is no amendment to it today—they wanted to emphasise the need for Chinese walls, as the Minister put it, between the part of Monitor that will be responsible in the so-called interim period for dealing with foundation trusts, and the part that will be responsible for promoting competition. That prompts a number of questions. First, given that the Minister now seems to think that promoting competition is not really an issue, is the Chinese wall analogy still applicable? I suggest that it is, because I do not think that significant changes have been made concerning competition. It is absolutely pertinent, therefore, for the Chinese walls to remain in place.

Secondly, the interim period before all the FTs are up and running has now been extended, so it is even more important that those Chinese walls are maintained. The Minister has helpfully confirmed that about 20 trusts are in difficulty of the sort that would currently prevent them from attaining foundation trust status. That only adds to the Opposition’s concerns about the huge weight that will be placed on Monitor in the interim period. It will have to prepare for promoting competition or preventing anti-competition; get all the trusts ready to assume FT status; and oversee their transition to management elsewhere in the NHS. Chinese walls are, therefore, still extremely important.

Mergers also provide clear potential for conflicts of interest. The Co-operation and Competition Panel has been responsible for assessing the importance and impact of mergers between different parts of the publicly funded, publicly owned NHS, and we assumed that Monitor would take a greater role in that. We now know, however, that the OFT will effectively do that, in collaboration and consultation with Monitor. After the transition period, that will be the area with the most acute potential for conflict of interest. In his remarks about this clause last time around, the Minister highlighted two areas that might give rise to conflicts of interest. One concerned Monitor’s main duty, which he described as:

“to protect and promote the interests of people who use health care services by promoting competition where appropriate, and through regulation where necessary. Monitor must also promote the economic, efficient and effective provision of NHS health care services and, among other things, have regard to the need for commissioners to ensure fair access.”—[Official Report, Health and Social Care Public Bill Committee, 17 March 2011; c. 806.]

He went on to say that the gap in fair access, or the potential conflict between ensuring fair access on the one hand and promoting competition or preventing anti-competition on the other, was the big issue. That has not gone away. The clause, in precluding conflict of interest, is relatively weak.

The second area in which the clause is relatively weak, and on which we would welcome greater clarity from the Minister, given his recognition of the significant need for Chinese walls, is how such walls will work when trusts fail. I will paraphrase, I hope accurately, the example given by the Minister: if a trust is failing, and Monitor has a role in engaging with that trust and putting in place the failure regime that we now know will be changed somehow, Monitor must stop itself from attaining foundation trust status. That only adds to the Opposition’s concerns about the huge weight that will be placed on Monitor in the interim period. It will have to prepare for promoting competition or preventing anti-competition; get all the trusts ready to assume FT status; and oversee their transition to management elsewhere in the NHS. Chinese walls are, therefore, still extremely important.

Amended, the clause poses real questions. Given that we do not know how the failure regime will work, but that there will be one, will that failure regime still allow Monitor to disapply its principal function on competition in future?

Owen Smith:

The Minister says wait and see. We will, yes.

Mr Burns: Wait until the amendments are published.

Owen Smith:

The Minister says wait and see. We will, but the clause may need subsequent amendments to reflect the changes that the Minister says will be made
to the failure regime. The Minister highlighted this potential area on 17 March 2011, *Official Report*, column 806, and said that when the failure regime is being looked at Monitor needs to disapply its competition hat, which means that it must not judge whether a trust is acting anti-competitively or failing properly to promote competition when looking at why it is failing. We may need to return to the clause at a later stage, and I urge the Minister to think about that.

We of course would like to be able to trust the Government on all of the proposals, but had we had a chance to debate the clause relating to conflicts of interest and consortia we would have asked the Minister why the Government refused to accede to the Future Forum’s recommendation to give HealthWatch a job in identifying and dealing with conflicts of interest in consortia. The Government have not had a chance to tell us why they did not agree to that. Despite them apparently being so keen on the Future Forum’s recommendations, they chucked out recommendation 16. If he would like to, will the Minister try to answer that? If not, will he assure us that he will think carefully about conflicts of interest as they apply to Monitor and perhaps return to the clause if it needs to be changed on Report or at any other time?

Mr Burns: The clause, as the hon. Member for Pontypridd has alluded to, makes various provisions about how Monitor should handle potential conflicts of interest in relation to its functions. Before going into the detail, it may be helpful if I say something about where such conflicts might arise. Clauses 56 and 58 create several general duties on Monitor. As we have already discussed, its main duty is to protect and promote the interests of people who use healthcare services by promoting the economic, efficient and effective provision of such services, and, among other things, to have regard to the need for commissioners to ensure fair access to services for those who need them. In many cases, those duties will be synergic, but, in theory at least, there could be a scenario where the most economic, efficient and effective provision did not deliver fair access. For example, that could be because that access was limited to certain days, times or locations. Hence, this clause creates a general duty on Monitor to make arrangements for resolving any conflicts of interest between any of its general duties. This provision makes it clear that, in cases where the general duties conflicted, there would be no external authority to which Monitor could or should turn to for resolution.

Subsection (2) is about how Monitor would achieve its main role as regulator of healthcare services alongside its continuing roles in relation to NHS foundation trusts. Once Monitor has taken on the role of sectoral regulator, its long-term function in relation to foundation trusts will be that of registrar, keeping basic information and enacting changes on the request of foundation trusts, as set out in chapter 5, part 2 of the NHS Act 2006, as amended by part 4 of this Bill, which we will come to later. That will include, in the short-term only, determining what foundation trusts must include in their annual reports.

During the transition, Monitor will also have functions in relation to authorising new foundation trusts arising from the time-limited intervention powers in clauses 112 and 113. The intervention powers will allow Monitor to appoint and remove board members of foundation trusts, as is now the case, to allow time for the internal governance arrangements in foundation trusts to become fully effective. Monitor will need Chinese walls, as the hon. Gentleman pointed out during my speech the last time round, in relation to its role as sector regulator and its specific functions in relation to foundation trusts.

Similarly, subsection (3) provides that, when carrying out its competition, licensing and pricing functions, Monitor must ignore the functions that would enable it to intervene in NHS foundation trusts for a limited time period during the transition. That includes ignoring its power to impose additional licence conditions in cases where it considers that there is a significant risk of a foundation trust failing to meet its principal purpose. Therefore, under the subsection, Monitor could not take account of the fact that it was intervening in a foundation trust when considering whether there had been a breach of competition law involving the same foundation trust.

Subsections (4) to (7) cover conflicts between Monitor’s general duties under clauses 56 and 58 that are significant in the ways specified in those clauses. The provision also applies to any other conflicts of interest that Monitor considers are of unusual importance. In all such cases, Monitor must publish a statement setting out the nature of the conflict, the manner in which Monitor has decided to resolve it and the reasons for that decision. It is an important provision in relation to transparency and public accountability.

Taken as a whole, the clause makes provision for real-life conflicts of interest that Monitor might encounter in exercising its functions, and it will ensure that Monitor is clear about how it should deal with them. It will also ensure that there is transparency in cases where there might be significant public interest.

To respond to the comments of the hon. Gentleman, we have not seen the failure regime yet because the Government amendments have not been tabled. We will have to wait until they have been published for us to debate them later in our proceedings. He asked whether, if in that debate it becomes obvious and necessary to amend the Bill, we would be willing to do so. I will not give a 100% categorical assurance that we would amend the Bill, because that would be misconstrued, but if, in the debate on the failure regime, it becomes apparent to the Government that this or any other part of the Bill needs to be changed, I give him that commitment.

The hon. Gentleman asked whether the Chinese walls were still necessary. I hope, from what I have just said, that he will accept that I believe that they are still necessary, which is why we have kept them. He also said, and I want to reassure him on this, that getting trusts ready for foundation trust status would place a huge weight on Monitor. I have to tell him that that is a misunderstanding, because it is not Monitor’s job to prepare trusts for FT status. That will be the job of the NHS trust development authority, so the hon. Gentleman can rest assured that it will not be a huge weight on Monitor, which will be able to concentrate on the duties and functions given to it in the Bill. I hope that I have convinced Opposition Members that the clause should stand part.

Question put and agreed to.

Clause 59 accordingly ordered to stand part of the Bill.
Clause 63

Failure to perform functions

Mr Burns: I beg to move amendment 157, in clause 63, page 79, line 29, leave out ‘a function’ and insert ‘any function of Monitor’s’.

The Chair: With this it will be convenient to discuss Government amendment 225.

Mr Burns: I will be brief, because I think that the Committee wants to make progress.

I will start with the immortal words, which struck a chord when the hon. Member for Halton (Derek Twigg) was taking part in our proceedings: these amendments are minor and technical. If the hon. Member for Pontypridd would like me to sit down now, I will. But if he does not I will tell him exactly what they are. If he wants the speech, he can have the speech.

Amendment 157 concerns the wording of the Secretary of State’s powers to direct Monitor as to the exercise of its functions. Clause 63 currently provides that he can use these powers if Monitor fails to perform a function. The Bill includes similar powers for the Secretary of State to intervene in relation to the commissioning board. Under clause 19 the Secretary of State may give a direction if the board is failing or has failed to discharge any of its functions. The wording in relation to the NHS commissioning board makes it clearer that it is a function of the board that is relevant. It also makes it clear that the Secretary of State’s power covers a failing or failure to deliver any of the board’s functions.

For the avoidance of doubt, the amendment therefore proposes changing the wording in relation to the Secretary of State’s power to direct Monitor so that it specifically refers to “Monitor’s” functions, and covers “any” of those functions.

Amendment 225 relates to the provision in subsection (3) that the Secretary of State cannot direct Monitor as to the exercise of its functions in particular cases. The provision in subsection (3) means, for example, that the Secretary of State could not intervene to require that a particular licence condition be placed on a particular provider. Another example would be that the Secretary of State could not intervene to require Monitor to act or act in a particular way in relation to a commissioner who had failed to comply with regulations about procurement. There is also general provision in clause 295 about the exercise of the Secretary of State’s powers to give directions. The amendment makes it clear that the provision in clause 63(3) applies and, if there were doubt in any particular circumstance, would over-ride the general provision in clause 295 about the circumstances in which the Secretary of State could use the powers of direction he would have from the Bill.

Amendment 157 agreed to.

Clause 63, as amended, ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.

—(Stephen Crabb.)

5.28 pm

Adjourned till Tuesday 12 July at half-past Ten o’clock.