Written evidence submitted by The King's Fund (HSC001)

Our written evidence is structured around the key sections of the White Paper, plus consideration of some cross-cutting issues. The King's Fund intends to publish a fuller analysis of the proposals in the coming weeks.

At the heart of the White Paper is an ambition to better integrate care. When assessing the proposals to improve collaboration, we believe it important to recognise:

- the limitations of what can be achieved through legislation. The proposals represent a welcome shift in emphasis towards more integrated working, but that ambition is critically dependent on culture and behavioural change.
- the importance of local flexibility. The White Paper places a welcome emphasis on 'enabling' local collaboration and it will be important to resist too much granular specificity on how this collaboration should work.
- the importance of implementation. The significant pressure on health and care services, plus the need for behaviour change to underpin many of the legislative changes, necessitate careful implementation and support over time.

Working together and supporting integration

We strongly welcome the move away from the old legislative focus on competition, towards a new model of collaboration and integration. We have long championed the need for integrated care to support the increasing number of people living with multiple conditions who rely on the support of different services. The proposals are widely supported within the NHS and by stakeholders. To ensure widespread public support, it will be important to develop a strong narrative around the benefits the reforms will bring to patient care.

We strongly support the proposed duty to collaborate as well as the duty on NHS organisations to have regard to the 'Triple Aim' of better health and wellbeing for everyone, better quality of health services for all individuals, and sustainable use of NHS resources. The proposals build on existing work to integrate care and we endorse the flexible and enabling approach they outline. The government and Parliament should resist the urge to specify in legislation granular detail about how improved collaboration should be achieved, as this would risk undermining the local flexibility that is critical for integrated working.

The importance of partnership at the 'place' level

The White Paper emphasises the primacy of the 'place' level of working, which is a smaller footprint than that of an Integrated Care System (ICS), often similar to that of a local authority. We support this emphasis, as experience suggests that much of the heavy lifting of integration and improving population health will be driven by organisations collaborating over smaller geographies within ICSs. But there are questions about how this will work in practice.

There is a risk that newly formalised ICS bodies inadvertently drag attention away from the more local 'place' level where collaboration can be most fruitful. It will be important to retain the approach of ICSs building up from 'places', and to ensure they don't lose sight of local place priorities by focusing too much on requests coming down from national bodies.

ICSs should primarily look out to the needs of their local population, rather than looking up to the demands of Whitehall. This shift in focus cannot be legislated for and underlines the importance of culture, behaviour change, and the careful implementation of these proposals more generally.

The relationship between new bodies

Legislation alone cannot unlock integrated working. The proposed structures will leave some issues unresolved, particularly how the ICS NHS Body and the ICS Health and Care Partnership will relate to one another. At the system level, there is a risk that the ICS Health and Care Partnership lacks the powers to drive change and that the ICS NHS Body is too narrowly focused on the NHS at the expense of other partners.

Looking across the proposals, they risk a proliferation of overlapping plans from different bodies and partnerships at different levels: the ICS NHS Body plan and the ICS Health and Care Partnership plan; and joint health and wellbeing strategies from Health and Wellbeing Boards at the more local place level. It will be important to clarify how these various plans align.

Culture and behaviours

Ministers and senior NHS leaders should recognise the limitations of what legislative change can achieve. The proposals seek to facilitate wider system-working, which will be critically dependent on collaboration between leaders and teams across health and care organisations. While legislation can remove some barriers to this, it cannot deliver the changes in behaviour that are needed to fully harness the benefits of integrated working.

Too often, aggressive, top-down, organisation-by-organisation performance management by NHS England and Improvement discourages collaborative working. Achieving the ambition of the White Paper will require the recognition of, and investment in, behaviour change, including in NHS national bodies. While it is not possible to legislate for a more collective, inclusive and compassionate leadership culture, plans to improve behaviours and culture should be set out alongside the legislation to help understanding of how this new system is intended to work.

Reducing bureaucracy

A reduced focus on competition is welcome. Healthcare in England has never been a truly competitive market and evidence for the benefits of competition is equivocal at best. As we have seen throughout the pandemic, collaboration between organisations is key to driving innovation and improvement.

Many of the legislative proposals in the White Paper go with the grain of existing health and care strategy and policy. Since the publication of the NHS Five Year Forward View, the NHS in England has been moving away from competition and policy based on organisation-by-default, to collaboration and policy based on system-by-default.

It is worth noting that the proposals would lessen, but do not fully remove, competition from the process of procuring services for the NHS. Many areas of procurement – including non-clinical services – will remain within the scope of existing procurement processes. We believe this is sensible and will ensure appropriate checks and balances on the procurement of external services such as catering and management consultancy. The new approach needs to mitigate the risk that contracts are automatically handed out to incumbent providers, and ensure a diversity of provision from voluntary sector, social enterprise, and NHS organisations.

Enhancing public confidence and accountability

Merging NHS England, Monitor and the NHS Trust Development Authority

The proposals would simplify and clarify how Monitor, the Trust Development Authority and NHS England are already operating through workarounds. It would reduce (although not completely remove) complexity in the status quo rather than creating additional structures. We believe it is sensible to remove the excessive complexity of the current arrangements at national level.

Secretary of State powers of direction

The establishment of NHS England is seen as one of the successes of the 2012 Health and Social Care Act and has taken some of the politics out of NHS decision making. However, the 2012 Act envisaged a world where multiple national bodies of similar importance would share oversight of the NHS, with market forces intended to guide the system. Nearly a decade on, an unelected NHS England stands alone as the most powerful body overseeing an NHS that most agree is not a market, but a managed system.

Given the amount of public money that NHS England controls, there is a strong case that the Secretary of State should have some ability to intervene if needed. The Secretary of State already has some powers to direct the NHS and exerts significant influence behind the scenes. As a minimum, the White Paper proposals would tidy up some inconsistencies and clarify that ministers cannot realistically be totally hands-off.

Whilst it is appropriate for the Secretary of State to have powers of direction, much more specificity is needed on the scope of these powers and the (exceptional) circumstances in which they would be used. Above all, more consideration should be given to the oversight and scrutiny of decisions to issue directions and how their use will be reviewed.

The NHS Mandate

The process for the current annual Mandate does not work well and needs revision. The NHS planning cycle has not aligned with the requirement for an annual Mandate. The White Paper increases flexibility by proposing that there must always be a Mandate in place, without a specified duration. In theory, the proposals would allow the Mandate to remain in place for many years, or to chop and change within a year.

The White Paper does not propose any checks or balances on how decisions to revise the Mandate or not will be made, and on how those decisions will be reviewed. Such checks and balances are needed to make sure that neither the Mandate's purpose, nor Parliament's ability to hold the NHS to account, are diluted.

Reconfigurations intervention power

Allowing the Secretary of State to intervene at any stage of a reconfiguration process seems to contradict the White Paper's stated ambition to "maintain clinical and day to day operational independence for the NHS." Reconfiguration decisions should not be politicised and should be determined locally, with local communities' interests and concerns having central importance. NHS England already has powers to support and, where necessary, compel local organisations to collaborate. In the exceptional event that all opportunities for local decision-making have been exhausted, some cases may require escalation to a national level. In these circumstances, decisions should continue to be informed by the existing Independent Review Panel or a new independent panel.

Arm's length bodies transfer of functions

The White Paper proposes new powers for the Secretary of State to transfer functions to and from specified arm's length bodies, without the need for primary legislation. It is hard to justify giving the Secretary of State powers that are not currently needed just in case they may be in the future. The proposed changes could erode the autonomy of arm's length bodies. If this proposal goes forward, arrangements for review and accountability after use of the powers should be included as well as arrangements for consultation before their use.

Workforce accountability

The White Paper proposes a duty for the Secretary of State to publish a document every five years which sets out roles and responsibilities for workforce planning and supply in England. The NHS and social care workforces are in crisis with continuing high levels of vacancies and excessive stress, absence, bullying and inequality. The

proposal for a five-yearly report is a wholly inadequate response to such significant challenges. The Department of Health and Social Care (DHSC) have not set out how they believe the systemic gaps in the oversight of the health and care workforce can be closed. The government could, for example, require national workforce strategies for the NHS and social care, together with arrangements for reporting progress.

Cross-cutting issues

Timing of the legislation

There are legitimate questions as to whether now is the right time for large-scale organisational change, when the health and care system is still responding to Covid-19 and will then need to focus on recovery and renewal. Given previous attempts at reorganisations have overstated the benefits and understated the cost and disruption of change, there will need to be a very careful approach to implementation to avoid these recurring pitfalls. As NHS England have themselves requested the organisational change of NHS structures, it is reasonable to ask its senior leadership how they intend to approach implementation of Parts 1 and 2 of the proposed legislation in a way that minimises disruption. Similarly, information should be sought from DHSC about their approach to implementing the proposals.

Broad enabling powers

Throughout the White Paper, there is a tendency towards creating broad enabling powers for the Secretary of State. These are explained as being needed to increase the flexibility of the Secretary of State to respond to fast-changing circumstances, which DHSC claim was demonstrated during the pandemic. However, it is not clear why such an urgent pace of change would be needed outside a pandemic (or other emergency situation), and nor is it clear that the case is strong enough to justify the proposed reduction in accountability to Parliament.

The White Paper proposals will change the nature and extent of parliamentary scrutiny of the NHS through a significant shift from primary to secondary legislation at the same time as power is being moved from previously independent arm's length bodies to the Secretary of State. It will be important to address these issues as the Bill progresses through Parliament so that an appropriate balance is struck between parliamentary oversight and reasonable flexibility for the health service.

Health and care system reform in totality

The reforms in the White Paper are predominantly reforms to the NHS – focussing on integrating services, collaborating with partners and the relative balance of power between national players in the NHS. The DHSC is clear that the White Paper is not intended to be the place to set out reforms to the structure of public health in light of Public Health England's abolition (expected shortly), or to commit to the long promised and overdue plans to reform the adult social care system (once again promised for later this year).

The NHS does not work in isolation - public health, social care and the NHS are closely connected. There is clearly a risk that setting out fixed plans for the NHS limits the options for reforming public health and social care. A clear overall vision for all three arms of the health and care system at national, regional and local levels would help position the NHS reforms within this wider picture. However, such a vision is missing from the White Paper.

About The King's Fund

The King's Fund is an independent charity working to improve health and care in England. We achieve this by helping to: shape policy and practice through research and analysis; develop individuals, teams and

organisations; promote understanding of the health and social care system; and bring people together to learn, share knowledge and debate. Our vision is that the best possible care is available to all.

Our submission draws on.

- Policy research: including our work on integrated care, place-based care, sustainability and transformation partnerships (STPs) and integrated care systems (ICSs), as well as our work on payment reform, the role of competition, and patient choice.
- Work with ICSs: over the past three years we have provided leadership and organisational development support to ICSs, working closely with local leaders.
- Leadership and development work with other local systems, including through our integrated care learning networks.

February 2021