

TRANSCRIPT

Bonus episode – Health and Care Act 2022



Paul Parsons - I'm Paul Parsons.

Caroline Latta - And I'm Caroline Latta

Jonny Williams - And I'm Jonny Williams.

Paul Parsons - Welcome to Not a Consultation Extra, where it's just us talking about patient and public involvement and NHS service change. And for the first time, welcoming Jonny Williams to not a consultation as a host. Jonny's been working with us at Stand for more than half the year now and it's not their first time on the podcast. Jonny was a guest back in early 2022 telling us about their work at NHS England to develop the then new major service change handbook. We'll put a link to that episode in the show notes. It's really worth a listen. So welcome, Jonny.

Jonny Williams - Hello. Thank you, it's very lovely to be here.

Caroline Latta - And we're delighted to have you here, Jonny. So welcome to geeking and nerding on all things NHS service change.

Jonny Williams - Well, you know, I love to geek and nerd about NHS service change, so I'm very, very happy to be here.

Caroline Latta - And what a topic we've got today.

Paul Parsons - So, Caroline and Jonny, we've been getting loads of questions from clients about some changes to the scrutiny regulations that are coming up soon. They've been asking us about what's going to happen and what they can expect. So I just

wondered, Jonny, if it would be helpful for listeners to just give a quick summary of what changes we're expecting and why.

Jonny Williams - Yeah, absolutely. I think that's a good place to start. So, the Health and Care Act has introduced new regulations that change some of the requirements of formal service change programmes. So the first is called the notification duty, and what we know so far from that is that systems who are going through a process of formal change one way or another, are going to have to notify the Secretary of State of those proposals. So previously there was no sort of requirement to formally notify the Department of Health and Social Care or the Secretary of State, but that's changing as part of these regulations. The other part that's being introduced is what's being referred to as the call in power. So that's going to give the Secretary of State for Health and Social Care the ability to call in any of these notified proposals. Again, we don't know the detail of how that call in will work in practise, but what we do know from the regulations is that the Secretary of State will have the power to make recommendations on the back of that call in power. There's a third part that isn't directly related to service change, like the notification duty and the call in power are, but that might have an impact on service change, and that's called the catalyst power.

So this, from what we can understand in the regulations, is sort of a new power for the Secretary of State to mobilise some kind of action as a result to issues that are present in the system. Like the notification duty, we don't yet know the detail of that, but we can sort of infer that that's for systems that are presenting with persistent issues, perhaps. And it's a power that enables the Secretary of State to direct something to happen. And one of those things may be for the Secretary of State to ask the system to consider major service change as part of their resolution to the issue that's led to the need to use that power. So those are the three new sort of parts of the regulation that are coming into effect soon.

Paul Parsons - Excellent. Thank you. That's really helpful. The question that we're getting is, how does this affect the powers that the overview and scrutiny committees have? We've had a duty to notify our local authority, health overview and scrutiny committees for 20 years. That's similar to the notification duty Jonny's just talked about. And the new

duty is likely to build on the features of the process behind that existing duty. So probably not much change there. The big change will be that scrutiny committees will lose the power to refer contested proposals to the Secretary of State for review. The government's been clear on that. They've trailed it. They already had the power to change those regulations, so the change didn't need to be included in the health and care bill, so it's not in the new legislation. This is a power that scrutiny committees have held for 20 years and one which many scrutiny committee members think is critical for them to be able to do their job.

Caroline, you've been working with overview and scrutiny committees for many years and have been involved in some quite contentious proposals that have been referred. So what impact do you think removing the power to refer is going to have on scrutiny and the way local councils are involved in health service change decisions?

Caroline Latta - Yeah, Paul. I mean, as you say, they've had this referral power for over 20 years, so losing this ability is going to be a big change for elected members. I've worked really closely with overview scrutiny committees across the years and I know that elected members are really passionate about how they take their scrutiny responsibility really seriously and they want to be able to effectively review and scrutinise how the proposals are developed, especially the involvement of patients, the public and staff, and as well as how that consultation with them, and also, if there's a public consultation as well, and they take that really seriously. So I think there's probably going to be, rightly, some concerns that scrutiny committee elected members might be less able to effectively represent the interests of their residents in discussions about NHS services in their area because of it. So I think it's something that's going to have to play out, really. I mean, thinking about sitting around the NHS officers and clinicians sitting around the scrutiny table certainly will have to make sure they're having even earlier conversations with the scrutiny officers in the first instance, and then definitely with scrutiny chairs to understand what their requirements will be in terms of their scrutiny role.

But I think it's yet to be determined. I've observed across the years scrutiny using that power really effectively. And in a way, it's a political power, isn't it? Often used as the last resort because they feel that they need to make sure that their residents are heard

effectively. So it does make you wonder what other recourse elected representatives may feel they need to go to. And it makes me concerned that we may see an increase in other forms of recourse, such as, like mounting a judicial review. I think this is something we need to watch really carefully. What does that mean? It means, I suppose, what my advice would be to our clients would be around making sure there's really effective involvement, engagement plans, that all the due process is done properly and clearly and transparently. And one would hope that there would be, even earlier close working and collaboration between the NHS, local government, commissioners, providers and, of course, with local authority in its different guises.

Paul Parsons - That's really helpful. I think we need to be careful not to point to overview and scrutiny committees as a one issue forum. The scrutiny regulations cover a lot more than just service change. Obviously, our focus is on service change because that's what we support our clients with. But what you were saying there, Caroline, this is probably the most high profile part of their jobs. When they're sitting there scrutinising proposals for change that aren't very popular locally and that referral for them, that's political power coming together and using a legislative power to raise it to a national level to be reviewed. You've called it the political get out of jail free card. If the effect of the current regulations is to corral that political power locally into a standard format, is there a danger that removing the power to refer and the process that goes with it then becomes a much more difficult to manage freestyle process than a formal written down process?

Jonny Williams - I think that's the million dollar question when we're thinking about how this is going to play out in practice, isn't it? Because I can completely empathise with the notion that this is going to be perceived as a restriction or a reduction of power on the part of local authority scrutiny committees. But I can also see it as an opportunity for our healthcare commissioners, who are still responsible for updating overview scrutiny committees, working with them to address some of the things that might have driven committees in the past to utilise that legislative power. So in my experience of the referral power being used, it's often because there is a legitimate issue in either the development of consultation plans or in the way in which a consultation with the public has been conducted. But it's also been used as an expression of a lot of the trepidation that members of the public, whom committee members represent, feel about some of these

changes. So I'm trying to think of it as an opportunity for commissioners and scrutiny members to work more closely together at earlier developmental stages of these proposals, so that the need for a referral power, regardless of whether or not it's there, is significantly reduced.

But that asks as many questions as it answers, doesn't it? How do we do that successfully? How do we see that running out successfully? And how do we make sure we continue to legitimise the role that scrutiny plays in delivering really effective service change?

Paul Parsons - I think it speaks to the point Caroline was making about earlier involvement and informing people.

Caroline Latta - So we know from experience, don't we, from working in the NHS and working with our clients as well now, that the best change programmes are the ones that have really good leadership at the heart of it, that want to engage with local authority scrutiny, because they know that working in partnership is the right thing to do. And obviously, the establishment of integrated care systems and boards as a result, seek to drive that relationship, that close, supportive relationship. Jonny's comment, you're correct. But for me, it boils down to really embracing that early development and coproductive approaches that the NHS has been asked to do in the people and communities guidance in relation to patient public involvement and discharging its involvement duty would be a much better way, and a constructive way, which would bolster the benefits of the regulatory changes that are being proposed. So for me, it comes back to the really important reasons why we involve patients in the public and stakeholders in these changes is because we know we get better results as a result, that the options, the proposals and the endpoint is better. So ultimately, for me, I'll be watching closely.

I know we all will. We'll see the best systems who understand that and have the authentic leadership at the heart of their change programmes will probably manage these changes in the best way.

Paul Parsons - So if the fundamentals of the process, even in just a small way, are changing, that means, as you've both said, that the way in which we work on behalf of our clients and the way that our clients work has to change as well. So what would you each say are the most important things for our clients to be thinking about at the moment as we run up to these changes being made?

Jonny Williams - Auditing and evidence. I keep coming back to this point. I think we all know from the experience of going through referrals and judicial reviews about the value of good evidence in defending what we've done so far, but we've got A: a regulatory requirement for it. So at some point a notification will have to be submitted that will require a certain amount of evidence to be able to demonstrate that what we're talking about is a formal public change. But the next that we haven't really spoken about so much is that there kind of is a new player on the board, so to speak, in the Secretary of State, who, prior to these regulations, could only intervene once a referral has been made. Now, we don't yet know the scope of the call in power. It might be enacted from the day a notification has been made. So what's going to be fundamental for the future of successful service change programmes, I think is having a really strong PMO to support the programme delivery, so that at any point in the development of your proposals, should you be called in or should there be fractious relationships with local stakeholders, you'll be able to easily access banks of evidence to support how you've been developing this programme.

I think that potentially is going to be more important than ever, not just to meet the new duties, but to be able to navigate the programme as successfully as you can, knowing that we have a change in the relationship or a change in the dynamic between local government and health bodies and between local systems and the Secretary of State.

Caroline Latta - I agree with Jonny in terms of a strong programme management approach and as we always say to our clients, don't we, if it isn't written down, it isn't real. Planning and reporting discipline, being able to demonstrate clearly how activities have influenced the development of proposals, having that development stage really clearly documented. The other thing that we haven't discussed is also the impact it may have on local members of parliament as well, and what that might mean in terms of the local

political landscape beyond that of the local authority and whether or not there'll be, well we've seen the headlines before, don't we, where members of parliament will be setting out a very strong opposition to potential change to the reconfiguration of local services, often things like maternity or accident and emergency or others, and the ability for them to directly lobby the Secretary of State. And we haven't seen that intervention before that goes beyond the local authority scrutiny power and the political mechanism for a referral to the Secretary of State in the way that we've become familiar with. So I think we're going to have to watch that quite carefully. That'll obviously be down to the way that, particularly the local NHS, in bringing proposals forward, works with members of parliament and does that stakeholder engagement as well, to help them really understand the benefits to patients and the public, to any potential changes.

And again, what does that lever back to? It levers back to getting your patient public involvement right in the first place and working with communities in the true spirit of the people and communities guidance in coproducing those solutions for change, and working with them to identify the challenges and issues in the first place for the solutions to be developed.

Paul Parsons - Three new powers, two of them are related to service change, some changes to the old powers, some uncertainty around the politics of that at a local level, some new players on the board, the Secretary of State who can intervene at any time, and MPs who are in all probability going to have a greater role in lobbying the Secretary of State for some kind of intervention where they used to be head of a local campaign, but now they will have access to potentially get a review. So the next few months are going to be exciting, aren't they, as we find out exactly how these powers and regulations are going to land and what impact they will have. And exciting for us as well, there will be lots more learning over the next couple of years about how the new regulations are implemented and how they work in practice. So thank you very much. Thank you very much, both of you. Great conversation. I'm sure we'll have loads more for you all very soon. Thanks for listening.

Callum Currie - Not a Consultation is powered by Stand - stakeholder involvement, strategic communications and programme support for health service change. Check

them out at WeAreStand.co.uk. Not a Consultation is written, hosted and produced by Caroline Latta and Paul Parsons with assistance from Jonny Williams and me, Callum Currie. Get in touch at listen@notaconsultation.com and follow us on, now X, formerly Twitter [@notconsultation](https://twitter.com/notconsultation). All of our episodes are available at notaconsultation.com.