# What left for HEALTHWATCH?
# Clarifying the impact of the Lords amendments to the Health and Social Care Bill

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**Malcolm Alexander, Chair**
**30 Portland Rise, London, N4 2PP**
**Tel: 0208 809 6551 or 07817505193** **NALM2008@aol.com**

**Ruth Marsden, Vice Chair**
**The Hollies, George Street, Cottingham,**
**East Yorkshire, HU16 5QP**
**Tel: 01482849980 or 07807519933**
**Ruth@myford@karoo.co.uk**

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**COMPANY LIMITED BY GUARANTEE COMPANY REGISTERED IN ENGLAND**
**COMPANY NO: 06598770 . CHARITY NO: 1138181**

**NALM2008@aol.com**
**www.nalm2010.org.uk**

**REGISTERED OFFICE:**
**6 GARDEN COURT, HOLDEN ROAD, WOODSIDE PARK, LONDON, N12 7DG**

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# What left for HEALTHWATCH?
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## Consequences of the government's plans for Healthwatch

### Background

**1) The government's intention in creating Healthwatch was to renew the system of public involvement and to restore some of the powers and influence to the public that were lost following the abolition of CHCs and Patients' Forums.**

**2) LINks were intended to evolve and go through a transition to LHW.**

**3) Local Healthwatch was supposed to be led by local people.**

**4) The LHW seat on the Health and Wellbeing Board was intended to give it additional clout in relation to strategic commissioning, planning of local services and influencing the JSNA.**

**5) LHW was to be a statutory body in the public sector and was expected to be an independent and assertive champion of local people.**

**6) An independent Healthwatch England is intended to have influence on behalf of LHW and other community and public interests, with the Secretary of State, Monitor, the NHS Commissioning Board and the CQC in relation to major problems regarding the safety, adequacy and quality of health and social care services.**

**7) So what's left?**

# 1.0 What has been decided by the House of Lords and the government?

**1.1 The government will abolish LINks**

**1.2 LHW will have no statutory status but will have some statutory activities, including enter and view.**

**1.3 LHW will be a contractor to the local council which will be able to subcontract some or all of the LHW activities to other bodies. The statutory activities which remain will be operated by the contractor or the subcontractor/s.**

**1.4 LHW will be a social enterprise run by a private or voluntary sector contractor or sub-contractor/s.**

**1.5 A local authority can engage only one contractor for the supply of services for monitoring, influencing services, involving the public and providing advice. But the contractor can sub-contract all or some of the statutory activities.**

**1.6 LHW need have no members. It will be up to the local authority, the contractors/subcontractors and local people to decide if they want their LHW to have members and be member-led.**

**1.7 Contractors and sub-contractors will collectively represent the diversity of the community for the purposes of LHW activities in any local authority area.**

**1.8 The LHW contractor/sub-contractor/s will be able to employ staff (which could include current Host staff).**

**1.9 The Healthwatch brand issued by the CQC will be licensed for use by designated contractors and sub-contractors.**

**1.10 The LHW organisation contracted by the council cannot be one of the following:**

**- Local authority; National Health Service trust; NHS foundation trust**

**1.11 LHW funding arrangements cannot be made with National Health Service Commissioning Board**

**1.12 The duty to be subject to the public sector equality duty in part 1 Schedule 19 of the Equalities Act is removed.**

**1.13 There will be a LHW duty to act in accordance with the Freedom of Information Act and the Public Bodies and Admissions to Meetings Act, but only in relation to the specific statutory activities of the LHW.**

**1.14 Guidance will be produced by the Secretary of State about the avoidance of conflicts of interest. Local authorities and local Healthwatch will need to "have regard to" this Guidance.**

**1.15 ICAS should be able to investigate complaints against a local authority (in relation to social care services) if the complainant is also to have an NHS complaint investigated using the services of ICAS. [i.e. the complaint relates to both NHS and social care concerns]**

**1.16 There is a duty for the CQC to have regard to the views of LHW. The remit of LHW is widened in respect of the duty of the CQC to additionally have regard to its views outside its immediate area.**

**1.17 There will be a duty for Foundation Trusts to consult with LHW if a process of de-authorisation is contemplated (more information below).**

## 2.0 Consequences of the Lords amendments

**2.1 All LHW activities could be carried out by private sector (for profit) bodies.**

**2.2 Many LHWs will have no coherent identity (apart from the logo) as a result of Healthwatch activities being divided amongst several contractors and sub contractors.**

**2.3 The Healthwatch 'brand' will be the only common/consistent factor that identifies all contractors and sub-contractors.**

**2.4 LHW may be substantially weakened because the model chosen by the Lords will create in some areas a complex set of services, which will be confusing and difficult to coordinate' creating a diffuse and opaque system with no consistent public identity, except for the Healthwatch logo.**

**2.5 Instead of the LINk evolving into strong powerful body to hold health and social care providers and commissioners to account, it may well be a cluster of charities and companies contacted to carry out LHW functions.**

**2.6 The financial value of this change of heart by the government to the voluntary and private sector is significant. If 60millions were to be divided between 450 organisations (assuming that each council area had three LHW contractors/subcontractors) each would benefit by 400,000 pounds over a three year period.**

**2.7 The possibility of the NHS Commissioning Board having an independent role in the commissioning of LHW is removed. The NHSCB is the only independent statutory body that could independently fund LHW.**

**2.8 Conflicts guidance will be produced in response to the fundamental concerns that the commissioning and funding of LHW by local authorities generates a major conflict of interest and undermines the status and independence of LHW.**

**2.9 A local authority could make a contract with a LHW contractor even though other activities of the contractor/sub-contractor were incompatible with the independence of a LHW**

# 3.0 Healthwatch England

**3.1 The government intends that HWE will be a Committee of the CQC. It will have little independence and its effectiveness will depend very much on the power and influence of the HWE Chair.**

**3.2 We are currently waiting for the HWE Chair's post to be advertised.**

**3.3 HWE can only be able to give "general advice" to LHW about its statutory activities.**

**3.4 HWE can only be able to give general advice to local authorities about arrangements to establish LHW.**

**3.5 HWE will have the power to give an opinion to a local authority when a LHW is failing in its duties to monitor and influence local services and involve local people. But there is no duty to take action beyond giving an opinion.**

# 4.0 INFORMATION NOTES

**4.1 SOCIAL ENTERPRISE**
**A social enterprise it will be an organisation that applies business strategies to achieving philanthropic goals and can be structured as a for-profit or non-profit organisation. A social enterprise is a body that might reasonably be considered to act for the benefit of the community in the private or community sector.**

**4.2 FREEDOM OF INFORMATION ACT**

**http://www.legislation.gov.uk/ukpga/2000/36/schedule/1**

**4.3 NHS ACT 2006 – INDEPENDENT ADVOCACY SERVICES (ICAS)**

**http://www.legislation.gov.uk/ukpga/2006/41/part/13/crossheading/independent-advocacy-services**

**4.4 FOUNDATION TRUST CONSULTATION**

**Section 65H, s16, the 2006 Act as amended by the Health Act 2009. http://www.legislation.gov.uk/ukpga/2009/21/section/16**

**(e)a person carrying on, in pursuance of arrangements made by any local authority under subsection (1) of section 221 of the Local Government and Public Involvement in Health Act 2007, activities specified in subsection (2) of that section (local involvement networks);**

**4.5 HEALTH AND SOCIAL CARE ACT 2008 – DUTIES OF THE CQC**

**Four Matters to which the CQC must have regard**

**(1) In performing its functions the Commission must have regard to—**

**(a) views expressed by or on behalf of members of the public about health and social care services,**

**(b) experiences of people who use health and social care services and their families and friends,**

**(c) views expressed by local involvement networks about the provision of**

**health and social care services in their areas,**

**4.6) LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT, 2007**

**Health services and social services: local involvement networks**
**(1)Each local authority must make contractual arrangements for the purpose of ensuring that there are means by which the activities specified in subsection (2) for the local authority's area can be carried on in the area.**

**(2)The activities for a local authority's area are—**

**(a) promoting, and supporting, the involvement of people in the commissioning, provision and scrutiny of local care services;**

**(b)enabling people to monitor for the purposes of their consideration of matters mentioned in subsection (3), and to review for those purposes, the commissioning and provision of local care services;**

**(c) obtaining the views of people about their needs for, and their experiences of, local care services; and**

**(d) making—**

**(i) views such as are mentioned in paragraph (c) known, and**

**(ii) reports and recommendations about how local care services could or ought to be improved,**

**to persons responsible for commissioning, providing, managing or scrutinising local care services.**
**End**