HEALTHWATCH AND PUBLIC INVOLVEMENT ASSOCIATION

A HAPIA GOOD PRACTICE GUIDE:

2017

HEALTHWATCH AND THE RIGHT TO CAMPAIGN

Company Limited by Guarantee . Company Registered in England
Company No: 0658770 Charity No: 113181
Registered Office: 6 Garden Court, Holden Road, Woodside, London, N12 7D
HAPIA – the Healthwatch and Public Involvement Association

HEALTHWATCH AND PUBLIC INVOLVEMENT ASSOCIATION

www.HAPIA2013.ORG
HAPIA2013@aol.com

HAPIA CHAIR

Malcolm Alexander
30 Portland Rise
LONDON, N4 2PP
HAPIA2013@aol.com
020 8809 6551

HAPIA VICE CHAIR

Ruth Marsden
The Hollies
George Street
COTTINGHAM, HU16 5QP
Ruth@myford.karoo.co.uk
01482 849980

Aims and Objectives of HAPIA

1) **Supporting the development of Local Healthwatch and Healthwatch England [HWE] as powerful and effective bodies which enable the public to monitor, influence and improve health, social care and public health services.**

2) **Promoting democratic and accountable public involvement organisations across England, which genuinely empower patients, care receivers, carers, and all individuals and communities to influence planners, commissioners and providers of health, social care and public health services, in order to create safe and effective services.**

3) **Investigating, challenging and influencing health, social care and public health bodies which fail to provide, commission and develop safe, effective, compassionate and accessible services.**

4) **Holding the government to account for its legislative and policy commitments to enable the public to influence health, social care and public health services.**

5) **Collaborating with other community and voluntary sector bodies, patients and service users to achieve the Association's objectives.**

HEALTHWATCH <u>IS</u> A CAMPAIGNING ORGANISATION

INTRODUCTION

Despite clear statements in Parliament from the Health Minister at the time Earl Howe, and supporting statements from Healthwatch England, there is a view amongst some that Healthwatches campaigning is not permitted as a means of changing local health and social care policy.

This seeks to explain the role of Local Healthwatch as a campaigning body and the source of the right of Healthwatch to campaign.

THE HISTORY

Before Healthwatch was established in 2013, the Government produced Regulations: The NHS Bodies and Local Government Regulations 2012 No. 3094, which can be seen in Appendix 1 below.

These Regulations were written in a very confusing way and led to some concern about whether they could be understood by lay people. As a result of campaigning by HAPIA and other bodies, the House of Lords held a debate on 05 February 2013, which was attended by a large number of members of the House of Lords and was subject to a motion moved by Lord Collins of Highbury and voted on by 250 Peers.

Every Peer who spoke in the debate opposed the Regulations, because of the obscure way in which they were written, but the Motion was lost because Peers voted through party loyalty. Nevertheless, the principle of 'freedom to campaign' for Healthwatch was upheld by the Health Minister, Lord Freddie Howe.

WHAT WAS SAID IN THE HOUSE OF LORDS DEBATE?

LORD HARRIS OF HARINGEY

"Ministers could decide, having listened (to the debate), not to press on with the Regulations. They could say that they should be withdrawn. There are two good reasons why they should do that.

<u>Firstly</u>, the Regulations are appallingly drafted and in practice unworkable -and will be unworkable when they are interpreted in several hundred different ways around the country.

Secondly, tomorrow we will hear the Report on Mid Staffordshire. I suspect that one of the strongest lessons that will emerge from the Report is the need for strong, local representation of the interests of local users of the health service. That means strong and effective local Healthwatch organisations.

These regulations will not give us strong and effective local Healthwatch organisations, so if the Government is serious - in whatever they say - in response to tomorrow's Francis Report, it ought to withdraw the Regulations tonight and come forward with sensible regulations that will give us the sort of local Healthwatch organisations that the country needs."

LORD FREDDIE HOWE – THE HEALTH MINISTER

"It would not be in anybody's interests not to enable local Healthwatch organisations to speak out. They will be able to speak out, and they will be able to campaign. Specifically, and typically, they will be able to campaign for changes in services in their own localities. However, there might be an issue of regional or national relevance on which they wished to make their voice heard. That would be fine as well...

Regulation 36 does something very simple. In plain terms, it says that a local Healthwatch can campaign and can speak out as part and parcel of its role as the local consumer voice. In other words, it can campaign on things that are directly connected to what local people are concerned about, based - as I have said - on robust evidence, and where the changes being campaigned on are inspired and supported by local people.

Such campaigns might, or might not, have a political flavour to them. To take the example given by the noble Lord, Lord Harris of Haringey, a local Healthwatch could campaign as vociferously as it liked on the reorganisation of a diabetes service. What a local Healthwatch cannot do, is conduct campaigns of a political nature where such campaigns are not connected to what local people are saying or thinking, that are not evidence-based, and that do not carry a credible degree of local support. Nor can a local Healthwatch make such campaigning its main 'raison d'être'.

Campaigning on any issue has to flow seamlessly from the local Healthwatch's main activity, which is to act as the voice of local people and to make that voice count towards improving health and care services."

WHAT DID LORD HOWE SAY AFTER THE DEBATE?

On 27 February 2013, Lord Howe wrote to Lord Collins who had initiated the 05 February 2013 debate in the House of Lords, and gave the following assurances:

"Perhaps the single most important criticism levelled at the Regulation was that they failed adequately to reflect commitments made during the passage of the Health and Social Care Act 2012, that local Healthwatch would be free to conduct campaigns relating to its Section 221 activities.

A good many speakers expressed dissatisfaction with the wording of Regulation 36, not only because of its perceived lack of clarity, but also - and more substantively - because it was seen as watering down or negating earlier Ministerial assurances.

I do understand why the wording of this part of the Regulation should have given rise to anxiety. However, I would - once again - like to assure you that the net effect of the Regulation is to deliver precisely those powers to local Healthwatch, which noble Lords were keen to see conferred. The reason why the Regulation is framed as it is, relates simply to the status of local Healthwatch as a social enterprise.

An important part of the role of any social enterprise is to act so as to deliver benefit to the community in which it operates. In the case of local Healthwatch, it will be gathering the views of patients and the public locally and acting as their public voice.

That ability of local Healthwatch to speak out publicly, is an absolutely critical part of its role, and in some circumstances, it will mean local Healthwatch making pronouncements of a political nature. However, it comes with a caveat, because in exercising its public voice, local Healthwatch has to ensure that it is indeed <u>reflecting a body of local opinion</u>. What it cannot do, is engage in campaigning that merely reflected the political views of those running it, as opposed to those of local patients and people … or campaign on a scale that exceeds that of the activities relating to its primary role, as set out in the Act.

In those circumstances, a local Healthwatch would become, in effect, a branch of a political party, rather than the representative voice of local people; and that would not be an activity to which public funding could be properly directed.

Accordingly, the Regulation is drafted in such a way as to prevent local Healthwatch from engaging in ‘political’ activity, other than where such activity is integral, and subsidiary, to its principal role.

This restriction is not new. Provisions such as those in Regulation 36 can be found in existing Legislation concerning social enterprises and are, therefore, well established and well understood. Examples of this are Regulation 3 of the Health and Social Care (Financial Assistance) Regulations 2009 (‘the 2009 Regulations’), and Regulation 3 of the Community Interest Company Regulations 2005 (the 2005 Regulations). Similar principles apply to the ‘charitable purpose’ test for Charities, which is one form of social enterprise.

WHAT POSITION DID HEALTHWATCH ENGLAND TAKE?

Healthwatch England was a bit slow to act, but three hours before the Debate they sent a briefing to members of the House of Lords, which was consistent with the Regret motion put forward by Lord Collins on 05 February.

They published their briefing which can be found Appendix Three. The main points on this issue were as follows:

“The Regulations ensure that local Healthwatch has the necessary freedom to undertake campaigning and policy work related to their core activities. However, the Regulations should have been worded more appropriately in order to avoid any potential confusion.

Healthwatch England proposes that it works with the Department of Health and the Local Government Association to produce guidance for local Healthwatch and local authorities, to assist them to correctly interpret the regulations. Healthwatch England would welcome that these concerns be resolved in future statutory instruments.

Healthwatch England’s view is that Section 36 (2) ensures local Healthwatch has the necessary freedom to undertake campaigning and policy work related to its core activities. However, Healthwatch England understands why there could be some confusion, because of the wording in Section 36 (1a & 1b).

This Section should have been worded more appropriately to avoid any potential confusion, around the active role local Healthwatch will have in undertaking policy and campaigning work on behalf of consumers of health and social care services in their areas.”

MEETING WITH HEALTH MINISTER NORMAN LAMB

A meeting also took place with Health Minister, Norman Lamb on 13 March 2013 (attended by Malcolm Alexander, Dr Brian Fisher, Dr Amit Bhargava, Neil Nerva and Phil Baker), where the points discussed above were again raised. The Minister wrote on June 11th making the following points:

- He refused to rewrite the Regulations to make them comprehensible and claimed that the obscure language used in the Regulations was to promote "certainty and precision" in the way they are written and understood.
- Confirmed that local Healthwatch can promote changes to Government or local Government policies through campaigning activities.
- Local Healthwatch cannot make campaigning for a single policy change it main activity.
- Emphasised that local Healthwatch must not be involved in party politics or involved in politics as its main activity.
- Agreed to produce a publication jointly with Local Government Association (not Healthwatch England!) to ensure that the Regulations are easier to understand: "Local Healthwatch Regulations Explained – lay and volunteer involvement and restrictions on activities of a political nature.

www.local.gov.uk/sites/default/files/documents/local-healthwatch-regulat-1b7.pdf

CONCLUSION

Ministers have made clear that local Healthwatches have the right to campaign on issues of concern to the communities they represent and that they can do this locally, regionally and nationally. Being able to demonstrate that the issue being campaigned on is of concern to the community, is essential.

There is no prohibition on Healthwatches working with politicians and political parties as this furthers the campaigning objectives of Healthwatch. They must not act on behalf of or promote the activities of political parties. The campaigning activity must not dominate the work of Healthwatch, but it can be one of a number of high level objectives. There is no prohibition on campaigning that seeks to improve local services.

HAPIA was active in ensuring that the right of Healthwatch to campaign was well publicised in Parliament and with voluntary sector organisations.
The Regulations:

The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012, were poorly written, which is a serious failure for Regulations written to promote public involvement.

The fact that nobody outside Whitehall was content with the way the Regulations were written, service to demonstrate the failure of the Government to appreciate for whom Regulations are written. That numerous members of the House of Lords agreed that the Regulations were poorly written, strengthens our case for Regulations to be written for the public, not for lawyers and Ministers.

The House of Lords 'Secondary Legislation Scrutiny Committee' reported that: "The Regulations may imperfectly achieve their policy objective", i.e. they were badly written.

Lord Howe and Norman Lamb refused to rewrite the Regulations, despite pressure from the House of Lords, HAPIA, Healthwatch England and numerous other organisations. The did agree, however, to produce a document with the Local Government Association, which clarified the meaning of the Regulations. Healthwatch England also produced clarification and committed to getting the Regulations rewritten, but this has never happened.

Lord Howe confirmed the commitments made during the passage of the Health and Social Care Act 2012, that local Healthwatch would be free to conduct campaigns in relation to its statutory (s221) activities. He added that: "The ability of LHW to speak out publicly is an absolutely critical part of its role ... LHW has to ensure it is indeed reflecting a body of local opinion". He made it clear in the House of Lords, that Healthwatch campaigning activities were lawful and should be encouraged, provided they were for the purpose of improving services.

REFERENCE DOCUMENTS

www.local.gov.uk/sites/default/files/documents/local-healthwatch-regulat-1b7.pdf

APPENDIX ONE

REGULATIONS RELATING TO THE RIGHT OF HEALTH TO CAMPAIGN

The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012
http://www.legislation.gov.uk/uksi/2012/3094/pdfs/uksi_20123094_en.pdf

STATUTORY INSTRUMENTS

2012 No. 3094

NATIONAL HEALTH SERVICE, ENGLAND

SOCIAL CARE, ENGLAND

PUBLIC HEALTH, ENGLAND

The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012

PART 6 - LOCAL HEALTHWATCH

Interpretation

34. (1) In this Part-

"the 2007 Act" means the Local Government and Public Involvement in Health Act 2007; "authorised representative" means an authorised representative within the meaning of section 225(5) of the 2007 Act(b) (duties of services-providers to allow entry by Local Healthwatch organisations or contractors);

"care services" has the meaning given in section 221(6) of the 2007 Act(c) (local arrangements in relation to health services and social services);

"health or social care professional" means (subject to paragraph (2)) an individual who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(d) (the Professional Standards Authority for Health and Social Care);

"lay person" means an individual who is not—
(a) a health or social care professional; or

(b) an employee of a Local Healthwatch organisation(e);
“local authority arrangements” means arrangements made by a local authority(f) under section 221(1) of the 2007 Act (health services and social services);

“Local Healthwatch arrangements” has the meaning given by section 222 of the 2007 Act(g) (arrangements under section 221(1): Local Healthwatch organisations);

“Local Healthwatch contractor” has the meaning given by section 223 of the 2007 Act(h) (prescribed provision to be included in arrangements under section 221(1));

(a) See section 115(6) of the 2003 Act for the meaning of “statutory complaints procedure”.
(b) Section 225(5) is amended by section 186(6) and (7) of the 2012 Act.
(c) There are no relevant amendments to section 221(6).
(d) 2002 c.17. Section 25 was amended by section 113 of, and paragraphs 16 and 17 of Schedule 10 to, the Health and Social Care Act 2008 (c.14) (“the 2008 Act”), section 222 of, and paragraphs 56 and 62 of Schedule 15 to, the 2012 Act, and S.I. 2010/231. See also section 25(3A) and the related provision in regulation 34(2) of these Regulations.
(e) See section 222(2A) of the Local Government and Public Involvement in Health Act 2007 (c.28) (“the 2007 Act”) for the meaning of “Local Healthwatch organisation”. Subsection (2A) is substituted by section 183(1) and (2) of the 2012 Act.
(f) See section 229 of the 2007 Act for the definition of “local authority”.
(g) Section 222 is amended by section 183 of the 2012 Act. See in particular section 222(2B) which is substituted by section 183(2) of the 2012 Act, and the definition of “local authority” in section 229(1) of the 2007 Act.
(h) Section 223 is amended by section 184 of the 2012 Act. The definition of “Local Healthwatch contractor” is inserted by section 184(1) and (6) of that Act – see section 223(3).

“overview and scrutiny committee” has the meaning given by section 226(8) of the 2007 Act(a) (referrals of social care matters);

“responsible person” has the meaning given by section 224(2) of the 2007 Act(b) (duties to respond to Local Healthwatch);

“section 221 activities” means activities specified in section 221(2) of the 2007 Act(c) (patient and public involvement in health and social care);

“services-provider”, except in regulation 47, has the meaning given by section 225(7) of the 2007 Act(d) (duties of services-providers to allow entry by Local Healthwatch organisations and contractors);

"social care workers in England" has the meaning given in section 60 of the Health Act 1999(e) (regulation of health professions, social workers and other care workers);

"the relevant section 221 activities" means—
(a) in relation to a Local Healthwatch organisation, the section 221 activities that that organisation is to carry on under local authority arrangements; and
(b) in relation to a Local Healthwatch contractor, the section 221 activities that that contractor is to carry on under Local Healthwatch arrangements;

"the social work profession in England" has the meaning given in section 60 of the Health Act 1999(f);

"volunteer" means, in relation to a Local Healthwatch organisation or Local Healthwatch contractor, a person who without being paid (except for travel or other expenses)

(a) is a member or director of, or otherwise participates in the governance of, the organisation or contractor, or
(b) is engaged in the carrying-on of the relevant section 221 activities by that organisation or contractor;

"working day" means any day except for a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking and Financial Dealings Act 1971(g).

(2) In the definition of "health or social care professional" in paragraph (1), the reference to a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 is to be read as including a reference to the Health and Care Professions Council(h), or a regulatory body within section 25(3)(j) of that Act(i), so far as it has functions relating to

(a) the social work profession in England; or
(b) social care workers in England.

(a) There are no relevant amendments to section 226(8). Section 21 of, and Schedule 2 to, the Localism Act 2011 (c.20) inserted new Part 1A into the Local Government Act 2000 (c.22) (arrangements with respect to local authority governance in England) which replaces Part 1 of that Act in relation to England. Overview and scrutiny committees are provided for in section 9F(1) of that Act for authorities operating executive arrangements, and in section 9JA for authorities operating a committee system.
(b) Section 224(2) is amended by paragraphs 148 and 150 of Schedule 5 to the 2012 Act.
(c) Section 221(2) is amended by section 182(1) to (4) of the 2012 Act.
(d) Section 225(7) is amended by paragraphs 148 and 151 of Schedule 5 and paragraphs 103 and 106 of Schedule 14 to the 2012 Act.

(e) 1999 c.8. See section 60(2ZB) and (2ZC) which is inserted by section 209(1) and (6) of the 2012 Act.
(f) See section 60(2ZA) which is inserted by section 209(1) and (5) of the 2012 Act.
(g) 1971 c.80.
(h) The Health and Care Professions Council was formerly known as the Health Professions Council and is continued in existence by section 214 of the 2012 Act. The Council was established under article 3 of the Health and Social Work Professions Order 2001 (S.I. 2002/254). The Order is so re-named by section 213(4) and (6) of the 2012 Act and has been amended by paragraph 8 of Schedule 12 to the Health and Social Care (Community Health and Standards) Act 2003 (c.43), Schedule 9 and paragraph 48 of Schedule 8 to the Health Act 2006 (c.28), paragraph 15 of Schedule 10 to the 2008 Act, by virtue of section 81(5) of the Policing and Crime Act 2009 (c.26), by sections 213(1) to (6), 214(2) to (4), 215, 216, 218 and 219 of the 2012 Act and S.I. 2003/3148, 2004/2033, 2007/3101, 2009/1182, 2010/233, 2011/1043 and 2012/1479.
(i) Section 25(3)
(j) was substituted by paragraph 17 of Schedule 10 to the 2008 Act.

Criteria concerning social enterprises

35. (1) For the purposes of section 222(8)(b) of the 2007 Act (Local Healthwatch: social enterprises) the criteria prescribed are that the constitution of the body must—
(a) state, or contain provisions which ensure, that not less than 50 per cent of its distributable profits in each financial year will be used or applied for the purpose of the activities of that body;
(b) contain a statement or condition that the body is carrying on its activities for the benefit of the community in England; and
(c) where appropriate, contain provisions relating to the distribution of assets which take effect when that body is dissolved or wound up, as specified in paragraph

(2). The provisions referred to in paragraph (1)(c) are ones which—
(a) require that the residual assets of the body be distributed to those members of the body (if any) who are entitled to share in any distribution of assets on the dissolution or winding up of that body according to those members' rights and interests in that body;
(b) in the case of a company not limited by guarantee and registered as a charity in England and Wales, provide that no member shall receive an amount which exceeds the paid-up value of the shares which the member holds in the company; and
(c). designate another social enterprise (within the meaning of section 222(8) of the 2007 Act) to which any remaining residual assets of the body will be distributed after any distribution to members of the body.

(3) The criteria prescribed in paragraph (1) do not apply to the following bodies—

(a) a company limited by guarantee and registered as a charity in England and Wales;
(b). a community interest company registered as a company limited by guarantee; and
(c) a charitable incorporated organisation (within the meaning of Part 11 of the Charities Act 2011(a) (charitable incorporated organisations)).

(4) In this regulation—
"charity" has the meaning given in section 1(1) of the Charities Act 2011;

"community interest company" means a company as referred to in section 26 of the Companies (Audit, Investigations and Community Enterprise) Act 2004(b);

"constitution" means—
(a). in the case of a company, the company's memorandum and articles of association; and
(b) in the case of any other body, a written instrument which sets out the purpose, objectives, proposed activities and provisions for the governance of the body, including any provisions relating to the membership of the body and the distribution of profits and assets;

"distributable profits" means—
(a) in relation to a company, the company's profits available for distribution, within the meaning of section 830 of the Companies Act 2006(c); and
(b) in relation to any other body, its accumulated, realised profits, so far as not previously utilised by distribution, less its accumulated, realised losses, so far as not previously written off;

"financial year" means the 12-month period that a body uses for accounting purposes; "realised losses" and

"realised profits" means the losses or profits of the business carried on by the body as fall to be treated as realised in accordance with generally accepted accounting practice

---

(a) 2011 c.25.
(b) 2004 c.27. Section 26 was amended by S.I. 2006/242 and S.I. 2007/1093.
(c) 2006 c.46.

"residual assets" means, in relation to the dissolution or winding up of a body, the assets of the body which remain after satisfaction of the body's liabilities.

Political activities not to be treated as being carried on for the benefit of the community

36. (1) For the purposes of section 222(9) of the 2007 Act (social enterprises: activities for the benefit of the community) and regulation 35(1)(b), the following activities are to be treated as not being activities which a person might reasonably consider to be activities carried on for the benefit of the community in England—

(a) the promotion of, or opposition to, changes in—
 (i) any law applicable in the United Kingdom or elsewhere; or
 (ii) the policy adopted by any governmental or public authority in relation to any matter;

(b) the promotion of, or opposition (including the promotion of changes) to, the policy which any governmental or public authority proposes to adopt in relation to any matter;

(c) activities which can reasonably be regarded as intended or likely to—
 (i) provide or affect support (whether financial or otherwise) for a political party or political campaigning organisation; or
 (ii) influence voters in relation to any election or referendum.

(2) But activities of the descriptions prescribed in paragraph (1) are to be treated as being activities which a person might reasonably consider to be activities carried on for the benefit of the community in England if—

(a) they can reasonably be regarded as incidental to other activities, which a person might reasonably consider to be activities carried on for the benefit of the community in England; and
(b) those other activities cannot reasonably be regarded as incidental to activities of the descriptions prescribed in paragraph (1).

(3) In this regulation— “governmental authority” includes—
(a) any national, regional or local government in the United Kingdom or elsewhere, including any organ or agency of any such government;
(b) the EU(a), or any of its institutions or agencies; and
(c) any organisation which is able to make rules or adopt decisions which are legally binding on any governmental authority falling within paragraph (a) or (b) of this definition;

“political campaigning organisation” means any person carrying on, or proposing to carry on activities—

(a) to promote, or oppose, changes in any law applicable in the United Kingdom or elsewhere, or any policy of a governmental or public authority (unless such activities are incidental to other activities carried on by that person); or
(b) which could reasonably be regarded as intended to affect public support for a political party, or to influence voters in relation to any election or

referendum (unless such activities are incidental to other activities carried on by that person);

"political party" includes any person standing, or proposing to stand, as a candidate at any election, and any person holding public office following election to that office; "public authority" includes—

(a) a court or tribunal; and
(b) any person certain of whose functions are functions of a public nature;

(a) See section 5 of, and Schedule 1 to, the Interpretation Act 1978 (c.30) for the definition of "the EU". The definition was substituted by the Schedule to the European Union (Amendment) Act 2008 (c.7).

"referendum" includes any national or regional referendum or other poll held in pursuance of any provision made by or under the law of any state on one or more questions or propositions specified in or in accordance with any such provision.

Section of the community

37. For the purposes of section 222(8)(a) and (10) of the 2007 Act (social enterprises: activities for the benefit of the community including a section of the community) and regulation 35(1)(b), any group of individuals may constitute a section of the community if—
(a) they share a readily identifiable characteristic; and
(b) other members of the community of which that group forms part do not share that characteristic.

Criterion to be met by bodies to be Local Healthwatch organisations

38. For the purposes of section 222(2) (b) of the 2007 Act (arrangements under section 221(1): criteria to be satisfied by social enterprises which are to be Local Healthwatch organisations), the criterion prescribed is that the governance arrangements of the body must include provision for the involvement of lay persons and volunteers in the governance of the body.

Regulations 40 to 43 - application and interpretation

39. (1) Regulations 40 to 43 apply to any local authority arrangements.
(2) In those regulations, in relation to local authority arrangements—

"A" refers to the local authority which made the arrangements;

"L" refers to the Local Healthwatch organisation with which the arrangements were made;

"relevant Local Healthwatch arrangements" means any Local Healthwatch arrangements made by L pursuant to section 222(2B) of the 2007 Act;

"the relevant contractor", in relation to each set of relevant Local Healthwatch arrangements, means the Local Healthwatch contractor with whom those arrangements

APPENDIX TWO

HEALTHWATCH ENGLAND GUIDANCE ON CAMPAIGNING

Healthwatch England's position on the Statutory Instruments 2012 No, 3094 "The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012. Part 6 Local Healthwatch."

Established on 01 October 2012, Healthwatch England is the new, independent statutory consumer champion for health and social care in England.

We will represent the interests of individuals who use health and social care services.

We will work with emerging local Healthwatch organisations to help build a national picture of the trends and issues that matter most to people.

We will use the evidence we gather to identify national trends and issues, and to influence national policy.

The Healthwatch network will hold all organisations to account for how they involve consumers and users in their decision-making.

Healthwatch will challenge organisations to do better and remind them of their responsibilities.

Whether it's the service providers, CCGs, NHS Commissioning Board, the Care Quality Commission or indeed the Secretary of State, Healthwatch will be the constant reminder that engaging people in their care, its planning and delivery is a necessity.

A summary of Healthwatch England's views on the Statutory Instruments 2012 No, 3094 "The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012. Part 6 Local Healthwatch.

There are a number of issues relating to the Legislation pertaining to the Regulations that should be improved and addressed.

The Regulations ensure that local Healthwatch has the necessary freedom to undertake campaigning and policy work related to their core activities. However, the regulations should have been worded more appropriately to avoid any potential confusion.

Healthwatch England proposes that it works with the Department of Health and the Local Government Association to produce guidance for local Healthwatch and Local Authorities to assist them to correctly interpret the regulations.

As a recipient of public money and a champion of the needs of consumers of health and care services, the social enterprise that is local Healthwatch should be seeking to invest as much of any distributable profit as feasible into the activities of the local Healthwatch.

Local Healthwatch reliance on the Freedom of Information Act 2000, which is an intensely administrative process, to get information from private providers that are in receipt of public funds may prove problematic. Consideration should be given to introducing a more straight forward and simpler duty on service providers to respond to requests for information from local Healthwatch.

Healthwatch England's detailed views on the Statutory Instruments 2012 No, 3094 "The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012. Part 6 Local Healthwatch.

The following briefing sets out the more detailed views of Healthwatch England in relation to the Statutory Instruments 1, which were made on 12 December 2012 and subsequently laid before Parliament. This response focuses on those areas where Healthwatch England has the strongest views, namely the wording of Sections 36, 35 and omissions from the Regulations.

Section 36. Political activities not to be treated as being carried on for the benefit of the community.

Local Healthwatch is the independent champion of consumers of health and social care. The independence of local Healthwatch is crucial to ensure that consumers feel that they can share their views and experiences and that these will be acted on appropriately without undue influence. Healthwatch England welcomes Section 36 (1c) of the Regulations, which ensures that local Healthwatch remains independent and cannot undertake activities intended to affect support for a political party, or influence voters in relation to an election.

Healthwatch England's view is that Section 36 (2) ensures local Healthwatch has the necessary freedom to undertake campaigning and policy work related to its core activities. However, Healthwatch England understands why there could be some confusion because of the wording in Section 36 (1a & 1b). This section should have been worded more appropriately to avoid any potential confusion, around the active role local Healthwatch will have in undertaking policy and campaigning work on behalf of consumers of health and social care services in their areas.

Healthwatch England would welcome that these concerns be resolved in future Statutory Instruments. In the interim, Healthwatch England proposes that it works with the Department of Health and the Local Government Association, to produce guidance for local Healthwatch and Local Authorities to assist them to correctly interpret the regulations.

1 Statutory Instruments 2012 No, 3094 "The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012. Part 6 Local Healthwatch."
2 P16., Summary report, Issues Relating to local Healthwatch regulations, Department of Health. July 2012.
3 P8. Summary report, Issues Relating to local Healthwatch Regulations, Department of Health. July 2012.

Section 35. Criteria concerning social enterprises

Local Healthwatch is the consumer champion for users of health and social care services in a locality. Healthwatch England believes that local Healthwatch should be focussed on maximising its impact on behalf of consumers in its area of operation.

Regulation 35 (1A) allows that the Social Enterprise that is local Healthwatch, has to "ensure that not less than 50 per cent of its distributable profits" will be "used or applied for the purpose of the activities" of the local Healthwatch social enterprise. Healthwatch England's view is that this % is too low.

As a recipient of public money and a champion of the needs consumers of health and care services, the social enterprise that is local Healthwatch should be seeking to invest as much of any distributable profit as feasible into the activities of the local Healthwatch.

Omissions from the regulations: Duty on service providers to respond to requests for information from local Healthwatch.

Section 221 (6) of the Local Government and Public Involvement in Health Act 2007, sets out the definition of "local care services" as meaning;

- Care services provided in the Authority's area, and
- Care services provided, in any place, for people from the area

It is possible that some of these publicly funded health and care services will be subcontracted to private providers to deliver. Section 224 (1a) of the aforementioned Act allows the Secretary of State to impose duties on a service provider to respond to requests for information from the local Healthwatch.

The Department of Health consulted about the local Healthwatch regulations between April and June 2012, and subsequently reported that "the Department also prefers not to impose a duty to respond to information requests. This in part appeared to reflect the view of respondents that "in the light of availability of FOIA requests, a duty to respond to information requests would be unnecessary."

Had Healthwatch England been in existence at this time, we would have highlighted to the Department that the FOIA requests are only likely to be used as a last resort, potentially where the service provider is not willing to collaborate with the local Healthwatch. In such circumstances, the local Healthwatch may struggle to get information using the FOIA 2000. This is because, when a Local Authority - or health provider - outsources provision of services to a private company, then the information held by the private provider may not necessarily be accessible using the FOIA 2000.

This is for two reasons:

- Firstly, the Public Authority would need to have complied with its own statutory duty to put contractual mechanisms in place to ensure the activities set out in S.221 (2) can be carried on.
- Secondly, only parties to that contract, rather than the local Healthwatch, are able to enforce the provisions. This means the local Healthwatch will have to make requests via the Public Authority.

As private companies are aware of this, commercial contracts between private companies and public bodies try to limit any FOIA disclosure so far as is possible. This is achieved by placing an obligation on the public body to try and rely on exemptions, eg. the commercial interests' exemptions and confidential information exemptions, or by using third party rights exclusion clauses and the rules on privity of contract.

Healthwatch England believes that reliance on the FOIA 2000, which is an intensely administrative process to get information from private providers that are in receipt of public funds, may prove problematic. Consideration should be given to introducing a more straightforward and simpler duty on service providers to respond to requests for information from local Healthwatch.

Summary

There are a number of issues relating to the Legislation pertaining to the Healthwatch network that should be improved and addressed. These include the issues about the use of distributable profits by social enterprises, the ability to get information from providers, and the wording around political activities.

Healthwatch England would welcome that these concerns be resolved in future Statutory Instruments.

In the interim, Healthwatch England proposes that it works with the Department of Health and the Local Government Association to produce guidance for local Healthwatch and Local Authorities to assist them to correctly interpret the regulations.

APPENDIX THREE

HOUSE OF LORDS DEBATE ON HEALTHWATCH CAMPAIGNING

https://publications.parliament.uk/pa/ld201213/ldhansrd/text/130205-0002.htm#13020573000440

DEBATE ON THE RIGHT OF HEALTHWATCH TO CAMPAIGN ON NON-POLITICAL ISSUES

NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012

23rd Report from the Secondary Legislation Scrutiny Committee

Motion to Regret

7.53 pm

Moved by ***Lord Collins of Highbury***

That this House regrets that the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 (SI 2012/3094) fail to guarantee sufficient representation of local patient interests and, despite Government assurances given to the House at Committee stage of the Health and Social Care Bill on 15 December 2011, have - through restrictions on campaigning - deliberately tied the hands of Local Healthwatch bodies from giving public voice to those patient interests.

Relevant document: 23rd Report from the Secondary Legislation Scrutiny Committee.

Lord Collins of Highbury:

My Lords, this is my second Motion of Regret in relation to the Regulations on Healthwatch, the body - or perhaps I should say the brand - created in the Health and Social Care Act.

A central theme in the Act is that local people should be able to influence improvements to local health and social care.

To succeed, Healthwatch needs the trust and confidence of the public. To win that trust and to become an effective organisation for patients, it must have independence from the providers, Commissioners and Regulators of health services, because a patient’s complaint may involve the need to challenge any or all three of those interests. It must also have genuine grass-roots representation from groups and individuals, no top-down organisation, and work and comments derived from sound local information.

In our previous debate on Healthwatch England, I welcomed the appointment of Anna Bradley as its new Chair. She has the right skills and experience, and I do not doubt her commitment to try to make the organisation work.

However, the fact remains that it is a sub-committee of the CQC and it does not have anywhere near the same levers to pull, or incentives to lose, to drive changes in the system. It simply does not have the power and authority of the three big players in the NHS: the Commissioning Board, the Care Quality Commission and Monitor.

In the Regulations that we are considering tonight, that problem is mirrored locally. Local Healthwatch is potentially a powerful mechanism, but it is structurally weak because it relies on Local Authorities for funding, and it is Local Authorities that provide the social care that it is meant to monitor.

However, my real concern tonight is that, when local Healthwatch eventually opens its doors, it will be bound and gagged by these regulations. This is contrary to the comments and commitment given by the noble Baroness, Lady Northover, to my noble friend Lord Warner on the sixth day of Report of the Health and Social Care Bill, when she made the following statement:

> "The noble Lord, Lord Warner, asked again about campaigning. I said Qin Committee that Healthwatch England and local Healthwatch can campaign. I followed that up with a letter confirming that, which I hope he got—but perhaps he did not—and I reiterate it here. I hope that that is of help to the noble Lord." [*Official Report*, 8/3/12; col. 1958.]

No one would condone a local Healthwatch campaigning against or for a political party, but these Regulations go well beyond that. They effectively ban local Healthwatch from leading campaigns to change poor services and amend Legislation. As Healthwatch England has said in its briefing today, its independence is crucial to ensure that patients and NHS users can share their views and experience, and to ensure that those will be acted on appropriately without undue influence.

The noble Earl the Minister will no doubt tell us tonight that the words used in the Regulations do not have the meaning that I am placing on them—that in Section 36(2) local Healthwatch has the necessary freedom to undertake campaigning and policy work related to its core activities.

However, I am not alone in expressing concern at the actual wording of the regulations.

Healthwatch England's briefing states that paragraphs (a) and (b) of Section 36(1):

> "should have been worded more appropriately to avoid any potential confusion around the active role local Healthwatch will have in undertaking policy and campaigning work on behalf of consumers of health and social care services in their areas".

It goes on to say:

> "Healthwatch England would welcome that these concerns be resolved in future Statutory Instruments. In the interim, Healthwatch England proposes that it works with the Department of Health and the Local Government Association to produce guidance for local Healthwatch and Local Authorities to assist them to correctly interpret the regulations".

I say - for once- why can we not have Regulations that mean what they say? Coming just before the publication of the Francis Report on the disasters at Mid Staffordshire hospital, in moving these Regulations, the Government is putting at risk the one pre-requisite that Healthwatch needs to do its job … that is the trust of patients and the public. It will undermine the effectiveness of local Healthwatch as the people's watchdog in health and social care.

Where, too, is the level of independence in the governance of local Healthwatch, promised to this House, again by the noble Baroness, Lady Northover, on Report of the Health and Social Care Act, when she said:

> "We will use the power of the Secretary of State to specify criteria, which local Healthwatch must satisfy, to include strong involvement by volunteers and lay members, including in its governance and leadership. This will have the effect that a Local Authority cannot award a local Healthwatch contract to a social enterprise unless this condition is satisfied".
>
> [*Official Report* 8/3/12; col. 1990.]

Do the Regulations meet those intentions?

Section 34(1) gives two definitions for lay involvement:

- One that excludes health and social care professionals, but not paid managers and other staff in those services;
- Volunteers, as unpaid members of the governance of local Healthwatch or its contractors.

The definition of a volunteer fails to define who might or might not be included as a volunteer, so could include staff employed at any level in health, social care or local government.

If the Government intended that only members of the public - who are engaged in seeking out the views of the public about services and monitoring of services should have designated governance roles - these regulations fail.

There are a number of questions that I want to put to the Minister before I conclude.

- Who was consulted before the draft Regulations were published?
- At what point were the views of Healthwatch England sought?
- If they were sought, what consideration was given to those views?
- Will the Minister accept the proposal that the Department should work with Healthwatch England and the Local Government Association to produce guidance for local Healthwatch and Local Authorities to assist them to interpret the regulations correctly?

I conclude with the issue on which I started: public perception, understanding, and confidence in the independence of local Healthwatch. We need local Healthwatch bodies that everyone can rely on to be genuine patient representatives.

I am afraid that these regulations, as presently worded, will fail to deliver that.

Lord Harris of Haringey

My Lords, I am becoming increasingly of the view that the Government has mis-sold the concept of Healthwatch.

When we first started on this long journey and the Health and Social Care Bill was coming before Parliament, the Government promised that we would get an effective patient-user voice.

- They promised that we would have a coherent structure.
- They promised that Healthwatch would ensure that patients' interests and the voice of users would be heard centrally in the new NHS structures.

But that is not what we are getting!

I spent 12 years as Director of the national statutory body representing patients' interests in the NHS, and I learned a number of things during that experience … one of which was that however well argued or well informed the case made on behalf of the users of services in the National Health Service might be, it is not automatically listened to.

The powerful vested interests within health militate against that. Let us be clear: there is a power imbalance between the user and the provider of the health service. There is an imbalance in information and in what they can do.

For the voice of the users to become as central as repeated Government policy has said it should be, that voice has to be substantial and loud. That means that the bodies representing the interests of users have to be able to make waves. They have to make people listen and, on occasion, they have to be a nuisance.

That is why, when the Bill was going through Parliament, we asked repeatedly in your Lordships' House whether Healthwatch would be able to campaign in the interests of the users of the service that they were representing.

We asked in Committee - and the noble Baroness, Lady Northover, assured us that users would be able to campaign. We asked again on Report, and again the noble Baroness, Lady Northover, assured us that that would be the case - Healthwatch would be able to campaign in support of the interests of local health service users.

As is widely known, I defer to no one in my respect for the noble Baroness, Lady Northover. To mis-speak once may be regarded as a misfortune; to mis-speak twice begins to look like carelessness. Either the noble Baroness was being extremely careless - repeatedly, both in Committee and on Report - or policy has changed.

Despite the intent that these would be vibrant, effective, campaigning voices on behalf of patients, somewhere along the line, someone in the Department of Health took a decision and said,

> "No, we mustn't allow them to have any sort of effectiveness whatever. They mustn't be allowed to make waves; they mustn't be allowed to cause trouble; they mustn't be allowed to be a nuisance", because that is what the Regulations do."

What are we to make of Regulation 36(1)(a)(ii)? It is unequivocal.

Healthwatch will not be allowed to do anything that promotes or opposes changes in,

> "the policy adopted by any governmental or public authority in relation to any matter".

I find it difficult to know what a local Healthwatch organisation will say about the change in the organisation of, say, diabetes services in a particular area that will not be “in relation to any matter”, or determined by a “public authority” or a “policy adopted by” a public authority, so the local Healthwatch cannot object or campaign against it.

I am sure that, in trying to defend the extraordinary wording that is placed before us tonight, the Minister will try to tell us that paragraph (2) makes it all right. I am aware that the noble and learned Lord, Lord Mackay, is with us - so I hesitate to say that it seems to be a lot of legal gobbledegook. Apparently, it will be all right if it,

> “can reasonably be regarded as incidental to other activities, which a person might reasonably consider to be activities carried on for the benefit of the community in England.”

And …

> “those other activities cannot reasonably be regarded as incidental to activities of the descriptions prescribed in paragraph (1)”

which is the bit I read out.

That is very clear. I am sure that all the guidance that can emerge from the Department of Health in the future will make it clearer still. But even if you take that as trying to mitigate a blanket effect of forbidding any campaigning that might conceivably be regarded as:

> “a policy adopted by … any … public authority on any matter”,

What does it actually mean? What is incidental to other activities?

It is not incidental to other activities to say that the reorganisation of diabetes clinics in a particular area is inappropriate. That is what the Healthwatch organisation is there to say on behalf of local users; it is not incidental to something else that it should be doing. What is this meant to mean?

Healthwatch England, all of three hours ago, sent us its comments on the Regulations. It said that they could have been worded more appropriately.

There is an understatement! I wonder what it really meant. I do not think that the question is one of more appropriate wording. I wonder how much room for manoeuvre Healthwatch England had - given how independent we know that its structure enables it to be - to say what it really thought about the nonsense of the wording.

It did feel strongly enough to tell us that it hoped that future Regulation in Statutory Instruments might get it right. That is very interesting!

The definition of an 'institution' that is a political campaigning organisation is any person carrying on, or proposing to carry on, activities to promote or oppose changes in any law applicable in the United Kingdom.

Healthwatch England, by the definition in these Regulations, is a politically campaigning organisation. Therefore, no local Healthwatch organisation will be allowed to act in support of a policy that has emerged from the national body representing patients.

I am sure that, however malign the intent was of those who drafted these regulations, and of the Ministers who instructed them to do so, they did not mean them to be quite so destructive.

I do not know who writes these things. I do not know what they are trying to achieve. However, we should be clear that there will not be one point of contact so that a local Healthwatch would know where to go to be given clear and consistent guidance, because the structure that the Government is creating, is fragmented.

Each Local Authority will commission an organisation to provide local Healthwatch services. Individually, around the country, people will try to interpret what the Regulations mean - yet they are virtually incapable of being sensibly interpreted.

Of course, there is an answer to this. Ministers could decide, having listened, not to press on with the Regulations. They could say that they should be withdrawn. There are two good reasons why they should do that.

- **First, the Regulations are appallingly drafted and in practice unworkable - and will be unworkable when they are interpreted in several hundred different ways around the country.**
- **The second good reason is that tomorrow we will hear the Report on Mid Staffordshire.**

I suspect that one of the strongest lessons that will emerge from the Report is the need for strong, local representation of the interests of local users of the health service. That means strong and effective local Healthwatch organisations.

These Regulations will not give us strong and effective local Healthwatch organisations, so if the Government are serious in whatever it says in response to tomorrow's Francis Report, they ought to withdraw the Regulations tonight, and come forward with sensible Regulations that will give us the sort of local Healthwatch organisations that the country needs.

Lord Warner:

My Lords, I support the points made by my two noble friends in their eloquent speeches. I speak as someone who was given assurances about campaigning on Report by the noble Baroness, Lady Northover.

My filing system is not up to discovering whether she sent me a letter, but I have no recollection that she withdrew her assurances in any way. The set of Regulations in Regulation 36(1) and (2) of Part 6, taken together, totally neuter the ability of local Healthwatch organisations to campaign effectively.

As my noble friend said, the extraordinary thing is that the Government has chosen, with absolutely brilliant timing, to bring this before the House on the day before publication of the Francis report.

My noble friend was wise. He did not know when the Francis Report was coming out, but the Government had an opportunity to offer the chance to defer these Regulations. It is very odd that we are having this debate when, no doubt, tomorrow there will be an unleashing - a positive avalanche - of rhetoric about the need to put the patient at the centre of the NHS.

There was a warm-up on "Newsnight" yesterday. We can see it coming. Now we have a set of Regulations that will set up local Healthwatch alongside Healthwatch England. The organisations will be totally unable to campaign against policies that they regard as not in patients' interests.

I will spend a few moments on the text of the Regulations. The Explanatory Note on page 38 of the Regulations states:

> "Regulation 36 sets out certain political activities which are not to be treated as carried out for the benefit of the community".

This is an extraordinary statement, but Regulation 36(1) and (2) go rather wider than that. The Explanatory Note does not accurately reflect what is in the Regulations. Consideration needs to be given to the quality of the drafting of either the Explanatory Note or of Regulation 36(1)(a) and (b), interrelated with Regulation 36(2).

Regulation 36(1)(a) and (b) prevents a local Healthwatch organisation promoting, or opposing, changes in the policy adopted by any governmental or public body in relation to any matter, including the promotion of changes to the policy, unless under Regulation 36(2)(a) they can reasonably be regarded as incidental to other activities which are acceptable.

So, it is left to a multitude of small local social enterprises around the country to make a judgment, day-by-day, about whether what they are doing offends the provisions in Regulation 36(1)(a) and (b), as modified by Regulation 36(2)(a).

Even if we assume that there is some scope under that wording for them to campaign - which I very much doubt on any reasonable interpretation of the words - they will be in a state of uncertainty, and they will be expected to resolve that uncertainty with the minuscule amounts of money they have to carry out their operations. So, if the Government want them to be effective with the small amounts of money there is likely to be, why do they want them to be tied-up by and concerned about obscure Regulations which call into question their right to do the sane and sensible thing, on behalf of patients in their area?

This House operates on the basis that one can accept assurances from Government spokesmen, while Legislation is going through, and we do not pursue matters when we are given them. However, as an individual Member of this House, I take umbrage about the assurances we were given on our ability to campaign.

And not only me - the point about campaigning was repeated by my noble friend Lady Pitkeathley, and again we were given assurances. We did not press this point further at Third Reading but, had we not been given those assurances, I am sure we would have come back to this issue at that stage.

The Government has some explaining to do about why those assurances were not reflected in the wording of these Regulations.

I support the point made by my noble friend Lord Collins, about the extraordinary definition of a ‘lay person’. As other interests said to the Secondary Legislation Scrutiny Committee, this definition of ‘lay person’ and ‘lay involvement’ creates a situation in which it is possible to have people in local Healthwatch organisations who could be said to be in a position to manipulate discussion. They could also debate on behalf of the very people that a local Healthwatch organisation is supposed to be monitoring and looking into.

Finally, I draw attention to the requirement provisions in Regulations 40 to 43. If one looks at these as a normal human being, they again pose a bureaucratic nightmare that will be excessively burdensome for the small organisations which will have to understand what it all means. I do not think it is beyond the wit of the Department of Health, Ministers and Civil Servants, to produce proportionate regulations in relation to small bodies which spend relatively small amounts of public money.

These Regulations are totally disproportionate to what they are trying to regulate in the interests of patients.

The best thing the Government can do is graciously withdraw the Regulations - think about what is going to happen tomorrow - reflect on this - and, after further consultation with stakeholders, come back with Regulations which live up to the promises that the Government made and are more appropriate for the organisations being regulated.

Baroness Jolly:

My Lords, just under a year ago on 08 March 2012 we were asked, during the passage of the Health and Social Care Act, to accept a last-minute change of structure of local Healthwatch because, as the Minister put it at the time, on reflection the Government realised that greater flexibility was needed over the organisational form of local Healthwatch.

It was not entirely clear what lay behind this sudden realisation, which happened after the Bill had been through the Commons. The House was given only five working days within which to make sense of 50-plus Government amendments that were put down at the time to achieve this change.

This was a very unusual action for the Government to have taken, and very little explanation was given.

Stakeholders in patient and public engagement were not consulted; we were asked, effectively, to give the Government the benefit of the doubt. We continued to put our faith in the Government's intention, as stated in the White Paper, *Equity and Excellence*, which aimed to strengthen the collective voice of patients through a new independent consumer champion within the Care Quality Commission - manifested at a local level as local Healthwatch with a strong local infrastructure.

During the debate on Report, the Minister described Healthwatch as, indeed, the voice of the people. At that time, we were dealing with the third reform of the way in which local communities influenced their NHS in three years, and there was a general view that, for their sake, we needed to get on with it.

To avoid switching off the power for local communities to have a say in local services for too long, we felt the turbulence of further reform needed to be kept to a minimum.

We hoped that secondary legislation would give the system its real shape and we would have an opportunity to ensure that the essentials were in place, changes in structure notwithstanding.

This secondary Legislation, which is among the most difficult to fathom, really fails to reassure.

My noble friend Lady Cumberlege, will deal with freedom of speech and action. I would like to ask my noble friend, the Minister, about two issues relating to who will make local Healthwatch's decisions on what it does and how it does it, and what type of involvement lay people or volunteers will have in those decisions.

Local Healthwatch must be a social enterprise contracted by a Local Authority and may have many subcontracts with other organisations - which may or may not be local or social enterprises - to support or carry out its statutory functions. To try to cut through this structural tangle and preserve the essence of local Healthwatch as the Minister intended it to be—the "collective voice of patients" operating through a "strong local infrastructure" - in March 2012, we focused on who would be involved. We debated the independence of local Healthwatch from the Local Authority that contracts it, and similarly the independence of Healthwatch England from the CQC, of which it is a committee.

We felt that if local people, wholly outside the health and social care system, were leading this new structure, they would make it work properly, despite any inherent inadequacies which we were not afforded the time to correct. Therefore, we were pleased when on Report, the Minister gave a clear and unambiguous undertaking on behalf of the Secretary of State.

She said:

> "I have listened to the concerns expressed about the need for local Healthwatch to have strong lay involvement. I completely agree. This will be vital to the success of local Healthwatch. Therefore, I confirm to the House today that we will use the power of the Secretary of State to specify criteria, which local Healthwatch must satisfy, to include strong involvement by volunteers and lay members, including in its governance and leadership. This will have the effect that a Local Authority cannot award a local Healthwatch contract to a social enterprise unless this condition is satisfied. I hope that that provides reassurance to noble Lords". [*Official Report*, 8/3/12; col. 1990.]

Despite the evident good intentions behind this undertaking, something seems to have gone wrong with its execution. There is a serious legal contortion in the Regulations around the definition of “lay persons and volunteers”. Suffice to say, it can include staff of health and social care commissioners or providers, as long as they are not clinicians.

This brings me to the role of the Secondary Legislation Scrutiny Committee of your Lordships’ House. It considered this SI on 15 January and its 23rd Report draws these Regulations to the specific attention of the House,

> “on the grounds that they give rise to issues of public policy likely to be of interest to the House, and that they may imperfectly achieve their policy objective”.

The Committee noted that staff could be decision-makers in local Healthwatch. The Department did not dispute this in its response to the Committee, which therefore concluded that,

> “the current wording may leave Local Healthwatch vulnerable to manipulation”.

The Committee has been unequivocal in highlighting the errors it perceives in the secondary legislation, saying:

> “The Department has offered a legal and policy response, but that may not be enough: The Department needs to address urgently the points raised to the satisfaction of the public, because without trust in the basic structure the Department, simply may not get the volunteers it wants”.

These Regulations do not deliver on the undertaking we were given. There is no assurance of independence, credibility or a strong collective voice for patients. Local Healthwatch could be a mere proxy voice spoken by others - indeed, those others are the very people against whom that voice may wish to speak.

To help reassure both this House and the Committee, perhaps the Minister could help me with two scenarios.

- Firstly; could the Manager of a Care Home sit on its local Healthwatch? If he or she did so, how confident would local people be in the conclusions of that local Healthwatch about the quality of services both at that Care home and others?

- Secondly; could a local profit-making provider of primary care be a local Healthwatch contractor?
  If so, could its Manager sit on the local Healthwatch decision-making group? How confident would local people be in the information they obtained from local Healthwatch in helping them choose a GP?

Moving on; what exactly constitutes “involvement”? The Regulations require, “a procedure for involving lay persons or volunteers”, although the distinction is unclear. As the Secondary Legislation Scrutiny Committee points out, “involvement” is not defined. The main problem is that in paragraph 38 the regulations deliver:

> “the involvement of lay persons and volunteers in the governance”,

but not participation in decision-making, which one would have expected to see in Regulation 40(4).

We know from Sections 23 and 26 of the Health and Social Care Act, which relate to the national Commissioning Board and CCGs, that involvement in the context of patient and public involvement may simply mean giving information. There are no criteria for when more is required.

The Department advised the Committee that, although involvement does not necessarily require full consultation or participation in all aspects of an activity, it still requires the taking of steps by the body on which the obligation to involve falls.

The appropriate level of involvement will depend on the matter in question, so, in most cases, the plain provision of information would not be sufficient to comply with the obligation to involve. The committee notes the qualifying phrase, “in most cases”.

The Department’s interpretation of lay involvement in leadership and governance, boils down to the foot soldier role, with the grown-up work of making decisions about what matters to patients and the public and what to do about it left to paid staff, including those to whom those decisions may relate.

Those arrangements contrast sharply with the community rights created by the Localism Act, described by the Department for Communities and Local Government’s community rights website as:

> “a set of powers which give you more control over your community. You can now have a say in what happens to important local amenities such as shops, parks and pubs”.

We seem to have given local people a say in how their pub, but not their health and social care, is run.

I pose a final question to my noble friend, within the framework of the regulations, to try to obtain further assurance that this is not so. Could the decisions listed in paragraph 42 be made by a decision-making body within a local Healthwatch composed of a majority of people who happened also to be health or social care managers in their day job, provided that they sent copies of the Minutes to the people in the local Healthwatch?

I conclude as I started. All of us in this House is committed to a strong patient voice. Those who will be that voice, and the public whom they will serve, need clarity in the areas of governance that I have outlined to the House. I hope that my noble friend will be able to allay my concerns.

Baroness Masham of Ilton:

My Lords, it is with regret that we are here this evening regretting that the Government has, through restrictions on campaigning, deliberately tied the hands of local Healthwatch bodies from giving public voice to those patients' interests.

The Regulations seem muddled and unclear. I am surprised that the noble Earl, Lord Howe, has not managed to do better.

Over the years, he has witnessed the difficulties that the bodies representing patients have had, ever since the closure of the Community Health Councils. This time around, I feel that the Government is missing an opportunity. I support the view - I always have - that it is essential that local Healthwatch be independent - and led by the service users and the public - if it is to have credibility and influence. It must not be a tool of those whom it monitors and inspects.

With the Francis Report to be published tomorrow, I am sure that it will become evident that a clear, independent voice supporting patients and users of care homes is vital. There should be trust. The dangerous culture of cover-up and not listening to family and friends must be rectified.

At the moment, the Patients Association is asked to comment when there is a problem.

- We need good, dynamic Healthwatches to ensure that disasters do not happen.
- We need people who know the needs of their local population.
- We need safety and a good standard of all health and social care.

Healthwatch England is there to help and support local groups, but the local Healthwatch should have freedom to do the very best for those whom it should be protecting and supporting.

I hope that the Government will realise what is needed and do better before it is too late.

Baroness Cumberlege:

My Lords, I suspect that my noble friend has got the message now, that we are not totally enamoured of these Regulations.

I think back to when we had the White Paper, which was published in July 2010. I remember, as my noble friend Lady Jolly has said, how excited I was then by the fact that in local Healthwatch we were to have an organisation that really would be the collective voice of patients. There was a mechanism so that it would have a very strong infrastructure at the local level.

So far so good, but throughout the passage of the Bill, Members of your Lordships' House fought strongly to get that policy enacted. We were given assurances, as noble Lords have said, and they were given in good faith. Yet now we have the Regulations in this Statutory Instrument, we are not only disappointed, but deeply concerned.

I share the grave concern of the House's Secondary Legislation Scrutiny Committee, which says that there is a very real possibility that local Healthwatch is in danger of being manipulated. But our concerns do not stop there.

The Government is right to want local people to have control of local Healthwatch, but there is a genuine fear about it being subjected to such complex and 'draconian' restrictions on what it will be able to say and do. It is not entirely clear to us what value local Healthwatch can add to the accountability framework of the NHS.

This view is shared by Healthwatch England which, as the noble Lord, Lord Collins, has said, suggests that this could be dealt with by guidance. However, the trouble with guidance is that it does not have any statutory force. It could use its powers to sharpen the way in which local Healthwatch operates - as an independent champion through the trademark which all local Healthwatches must have and have to own. I have not given my noble friend any notice of this, but perhaps he might like to think about that and take it away.

Paragraph 36 of the Regulations prohibits local Healthwatch from opposing or promoting changes to any national or EU law, any national policy, any policy by

a local public authority—including both Local Authorities, the NHS or "any organ or agency" of either—and any planned or actual changes in any of these. In addition, it prohibits influencing;

> "voters in relation to any election or referendum".

These prohibited activities may be undertaken only if they are incidental to what could be called the core purpose of local Healthwatch - that is, giving people a say in local health and social care - unless that core purpose is incidental to the prohibited activities.

This is mind-stretching. That seems to be something of a circular definition whereby X is allowed if it is incidental to Y, unless Y is incidental to X. This is pretty difficult. I have said that it is mind-stretching, but I really fear that it will be unworkable. What is certain is that it will be incomprehensible to local people, who are expected to participate in local Healthwatch.

The impact of this provision is likely to have a chilling effect, and to negate the aims of Healthwatch. Why should any committed volunteer get involved in local Healthwatch, giving freely of their time and energy to try to influence things for the better, if they risk being penalised for doing so?

I shall describe three situations to the Minister to test this with him, and I hope that he will reassure me on these points.

Firstly: say that there was a controversial policy to close an A&E Department in order to save money.

- o Would local Healthwatch be permitted to provide evidence to campaigners of how good the patient experiences had been at that threatened Department?
- o Would that be banned under Regulation 36 as the promotion of changes to a policy that a public authority proposes to adopt?
- o If the Minister says no, how could local Healthwatch be confident that the local NHS decision-makers would share this view?

Secondly: could people who had been active in a national campaign to improve quality and accountability in the NHS, be decision-makers in local Healthwatch?

- o Would local Healthwatch have to avoid any connections to an organisation seen as intending "to affect public support for a political party", that was in power?
- o Again, if the Minister says no, and decisions on such matters are to be delegated to Local Authorities, how could local Healthwatch be confident of that?

Thirdly: during a local election campaign, would local Healthwatch be subject to purdah, like democratically elected bodies such as local authorities or the Government themselves?

- Would that apply even if it discovered serious abuses of vulnerable people with learning disabilities in a residential home during this period?
- Such a discovery would not reflect well on the Local Authority Commissioners, who are "an organ or agency" of local Government under the Regulations.
- Would the local Healthwatch have to keep such concerns secret or risk being penalised by that very same local authority?

The very fact that we have to ask these questions demonstrates that we do not have the right set of safeguards for the independence of local Healthwatch.

The fact that local Healthwatch is funded and controlled by Local Authorities, which it is supposed to be scrutinising, is pretty uncomfortable.

The added constraints of Regulation 36 threaten its freedom to speak and to act in the interests of patients and the population. These very complex restrictions seem designed to protect those in politics or in the provision of services who have something to hide. They impoverish the debate on health and social care, whether it is about controversial reconfigurations or a Baby P tragedy. Patients could not care less about politics and just want someone to speak up for them when they themselves cannot.

I urge my noble friend to consider modifying, redrafting or, if possible, removing these restrictions, or to find a mechanism to ensure that they are not implemented in the way that I have outlined and the way that I fear.

To me, it is not clear whom they are really designed to protect, but I fear that it is certainly not patients.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):

My Lords, I thank the noble Lord, Lord Collins, for raising his concerns and other noble Lords for following in his footsteps in sometimes very trenchant terms.

A number of concerns have been raised about these Regulations during the course of the debate, and I will now do my best to address them in turn. A number of noble Lords reminded us of the critical importance of lay involvement in local Healthwatch and questioned why the wording of the Regulations do not,

therefore, prohibit employees of a Local Authority, or indeed of the NHS, from taking roles in the leadership and governance of a local Healthwatch.

Indeed, your Lordships' Scrutiny Committee suggested that this might leave a local Healthwatch in some way vulnerable to manipulation or threaten its independence.

That concern was picked up by one or two noble Lords. I can, I hope, provide reassurance on this. Indeed, I am sorry that despite the department's clarificatory submission to the Scrutiny Committee, it still remains a source of concern...

The other main issue of concern to the noble Lord, Lord Collins, and others, is that of campaigning by a local Healthwatch.

I am afraid that there has been a considerable amount of unnecessary misunderstanding on this point. I am particularly sorry that the Government's good faith on our assurances to the House should be called into question.

To go back to the beginning, Healthwatch is the new consumer champion for health and social care. This gives it a major role in gathering views in the locality, building the evidence and, from that evidence, formulating reports and recommendations that will improve services and the quality of care. In doing this, it would not be in anybody's interests not to enable local Healthwatch organisations to speak out. They will be able to speak out, and they will be able to campaign. Specifically, and typically, they will be able to campaign for changes in services in their own localities. However, there might be an issue of regional or national relevance on which they wished to make their voice heard. That would be fine as well.

Noble Lords and others have read Regulation 36 and have concluded that it is incomprehensible or unworkable - or, indeed, both.

In fact, Regulation 36 does something very simple. In plain terms, it says that a local Healthwatch can campaign and can speak out as part and parcel of its role as the local consumer voice. In other words, it can campaign on things that are directly connected to what local people are concerned about, based - as I have said - on robust evidence, and where the changes being campaigned on, are inspired and supported by local people.

Such campaigns might, or might not, have a political flavour to them. To take the example given by the noble Lord, Lord Harris of Haringey, a local Healthwatch could campaign as vociferously as it liked on the

reorganisation of a diabetes service. What a local Healthwatch cannot do, is conduct campaigns of a political nature where such campaigns are not connected to what local people are saying or thinking, that are not evidence-based, and that do not carry a credible degree of local support. Nor can a local Healthwatch make such campaigning its main 'raison d'être'.

Campaigning on any issue has to flow seamlessly from the local Healthwatch's main activity, which is to act as the voice of local people, and to make that voice count towards improving health and care services.

Lord Harris of Haringey:

The noble Earl has been extraordinarily helpful in telling us what Regulation 36 is meant to mean.

My first question is:

- Why does it not say that, as opposed to producing a formulation? Your Lordships are used to this sort of stuff. If every noble Lord who has spoken in this debate, apart from the noble Earl, has found it difficult to follow, I find it difficult to see how people around the country are going to be able to interpret this with the clarity with which the noble Earl has provided us.

Secondly;

- The noble Earl then said what local Healthwatch organisations can do. He said that they can campaign, provided it is evidence-based and draws upon the opinions of local people.
    - Who is to decide that?
    - Is it, for example, the Local Authority, which might not like the campaign that is being mounted?
    - Is it then going to say, "Well, you are not actually speaking on behalf of the communities you claim to be"?

Earl Howe:

The noble Lord's first point is a fair one.

I was coming on to address it as it is quite clear that at least part of the wording of these Regulations has seemed complicated and unfathomable to many noble Lords. I have to acknowledge that that is the case.

To address the noble Lord's other point, we are talking about the difference between being a genuine voice for local people, and simply being an adjunct of a political party.

Local Healthwatch organisations should not be swayed or influenced by the activities of any political party. They must act independently. The only influence that matters to them is that of local patients and the public, in seeking ways to improve the quality of care for people.
In that sense, the Regulations tie down a local Healthwatch no more, and no less, than any other social enterprise. The wording of the Regulations has been constructed in a very similar manner to the wording applied to other social enterprises in regulations.

Regulations 36(1) and (2), against which so many missiles have been hurled this evening, are designed simply to reflect the standard community benefit test.

Lord Collins of Highbury:

My Lords, if I have read Healthwatch England's briefing correctly, it says that social enterprises are being treated differently in this statutory instrument, particularly as regards the 50% that could be retained.

Perhaps the Minister could clarify that.

Earl Howe:

I am surprised to hear that. My understanding is that that is not so and that local Healthwatch, as a social enterprise, is being treated on the same footing.

My advice is as any other, but if I am wrong about that, naturally I will write to apologise to the noble Lord - and copy all speakers into my letter.

As I have said, I completely understand that the wording of parts of these Regulations appears complicated. In answer to the noble Lord, Lord Collins, I should say that, for that reason, I can commit to my officials working with Healthwatch England and the Local Government Association, to publish clarificatory material on this.

Having said that, I was slightly surprised that the noble Lord, Lord Warner, cast aspersions on Regulation 41.

He asked how small organisations could understand the requirements set out in it. The matters set out in Regulation 41 are matters to be included in Local Authority Contracts with local Healthwatch. In fact, these are based largely on the existing Regulations on LINks. I have to say that it has not been previously suggested to us that these have been difficult to understand - or are disproportionate.

The noble Lord, Lord Collins, asked me who was consulted before the Draft Regulations were published, and whether Healthwatch England was consulted.

We consulted a range of stakeholders, including LINks, Local Authorities, voluntary and community organisations, NALM, Social Enterprise UK, the Charity Commission, and providers on the issues relating to the drafting of the local Healthwatch Regulations. That included the Healthwatch England Interim Team.

Baroness Farrington of Ribbleton:

I have listened very carefully to the Minister, who I know is trying to be helpful to your Lordships' House. But I still do not understand who exactly judges, in the cases to which he has referred, whether particular campaigns are appropriate, local or acceptable, or whether it would refer to anyone apart from those who may have a role in funding or developing policy to which Healthwatch may object.

Earl Howe:

The activities of Healthwatch will be governed by a Contract with the Local Authority.

The Local Authority's duty will be to hold the local Healthwatch to account according to that Contract. If the local Healthwatch were to stray outside the boundaries that I have set out as to what a reasonable person would interpret as legitimate activities, and stray into the territory of being a political party adjunct, it would be the duty of the Local Authority to make a judgment about that.

It would be a matter of judgment, but it would be important for the Local Authority to make its views rapidly known to the local Healthwatch, in order to ensure that it retained the role that it should have - which is a role that primarily involves community benefit.

There are checks and balances in the system, and those responsibilities are held primarily by the Local Authority.

Lord Warner:

I am sorry to interrupt the Minister, but I must follow up my noble friend's comments.

The noble Earl seems to be saying that, if the Local Authority takes against what a particular Healthwatch is doing locally, the Local Authority can say, "Hey guys, your Contract's up and we're going to retender".

Earl Howe:

That is not what I am saying.

As I said earlier, it will be important for a local Healthwatch in any Campaigning, or public statements, to assure itself that it is truly representing local people and patients and has the evidence to back that up.

If it does, and if it can show that what it is saying is genuinely supported by local people, it has nothing to fear. It is only where the Healthwatch may latch on to one or other political party, without reference to local people, that it may be vulnerable.

Baroness Farrington of Ribbleton:

I am sorry, my Lords, but the noble Earl is not answering the point about who makes the judgment.

The noble Lord, Lord Greaves, and I have served on the same Local Authority. I can think of occasions when, had he or I joined Healthwatch and formed a campaign, it is quite possible that either he or I - on the Local Authority - could have taken a totally different view about what was happening.

I want to know who the independent arbiter is of whether the local Healthwatch is actually doing something that it should not do, or something that the noble Lord, Lord Greaves, or I did not happen to like, because they are two very different things.

Earl Howe:

They are two different things, and I say to the noble Baroness that we are dealing here with a relationship that she may characterise as overly arm's length.

It is in the direct interests of a Local Authority to make sure that it has a good, thriving relationship with its local Healthwatch, but that it is not tarnished by party political considerations that are irrelevant to the concerns of local people.

The very fact that a local Healthwatch comes out with a political statement is not to damn its activity. What makes it vulnerable is if that local Healthwatch cannot show that it is truly representing local people as it speaks out. That is a matter of evidence and of fact.

The independent arbitration that the noble Baroness talks about should not be necessary. The matter could, in the final analysis, be decided in a court, although one hopes that that would never happen. However, in the end, the

Local Authority has to exercise its judgment, and in doing so, has to act reasonably and in good faith as a public authority. If it does not, it is acting unlawfully. hope that that is of help to the noble Baroness.

I was asked a number of other questions by my noble friends Lady Jolly and Lady Cumberlege.

My noble friend Lady Cumberlege asked me whether, if there were a controversial policy, say, to close an A&E Department, a local Healthwatch would be permitted to provide evidence about patient experiences to campaigners on that issue.

Yes. In that scenario, we would envisage a local Healthwatch taking those very views and evidence of good standards of service directly to the commissioners or decision-makers. A local Healthwatch can also make a referral to the health scrutiny function of the Local Authority, which would be required to keep a local Healthwatch informed of any action taken.

If a local Healthwatch thought, as part of its Section 221 activities - patients' public involvement activities - that local people need to know what their community's experience of its A&E is, we would certainly expect the local Healthwatch to be transparent and make that evidence known.

My noble friend asked whether people who had been active in a national campaign could be decision-makers in local Healthwatch organisations.

The regulations do not set out membership of a local Healthwatch, so it will be down to the local Healthwatch to decide whether such people can add value to the outcomes that it wishes to achieve for its local people. Local Healthwatch has to be different; it has to build up its reputation and credibility in order to secure the public's confidence that it can have a mature relationship with local authorities, which was the point that I made just now.

The regulations seek to ensure that local Healthwatch does not carry out the relevant political activities as its only or main activity. That would not meet the community benefit test.

Would local Healthwatch be subject to purdah? No, it would not. I repeat that it has been set up to be the local consumer champion, and as such its role becomes very important in getting people's serious concerns listened to and acted upon.

My noble friend, Lady Jolly, asked me several questions. She expressed the fear that the Regulations would render local Healthwatch a mere proxy voice.

I emphasise to her, in the strongest terms, that that is not so. As I have explained, we have sought - through the Regulations - to be as inclusive as possible of people who may wish to give up their time to do what they feel passionately about doing. To be frank, LINks, which is the arrangement that we have at the moment, have all too often been associated with white, middle-class men, and we need local Healthwatch to embrace diversity much better.

Could the Manager of a Care Home sit on its local Healthwatch? Yes, he or she could get involved in their local Healthwatch, but it would be good practice for the Healthwatch - in its governance arrangements - to have procedures for a Code of Conduct, and, as set out in Regulation 40, it would be required to have, and publish, procedures before making any relevant decisions. That is essentially about transparency.

Could a local profit-making provider of primary care be a local Healthwatch contractor, and could its Manager sit on the local Healthwatch decision-making group? Again, it would be up to the local Healthwatch whom it wishes to contract with for their expertise to help it deliver its statutory activities.

On the role of local Healthwatch to provide information and signpost people to choices, the decision rests with that individual seeking out the options available to them.

We would expect Local Authorities' arrangements with local Healthwatch to be robust, so that it acts effectively. The Local Authority will be under a duty to seek to ensure that the arrangements are operating effectively, and provide value for money.

My noble friend suggested that the Department's interpretation of lay involvement boils down simply to the foot soldier role. I do not agree. It would be a wrong picture to paint to the public about how a local Healthwatch discharged its obligations. The obligations are quite clear. Engagement, consultation and participation are all words that can be used to describe different types of involvement activity. Referring to "involvement" therefore provides for flexibility, as I indicated earlier.

Could the decisions listed in Regulation 40(2) be made by a decision-making body within a local Healthwatch composed of a majority of people who happen to be health or social care managers?

No. Regulation 40(2) must be read with Regulations 40(3), 40(4) and 40(1)(a). The requirement to be imposed on local Healthwatch in the Contracts, is to

have and publish a procedure for involving lay persons or volunteers in such decisions.

As stated in the advice to the Secondary Legislation Scrutiny Committee, the plain provision of information would not, in most cases, comply with the obligation to involve; the involvement has to be in the making of the decisions.

I hope that I have covered satisfactorily all the questions put to me, and I hope that the noble Lord, Lord Collins, will be sufficiently reassured to withdraw his Motion.

Lord Collins of Highbury:

I thank all noble Lords, and particularly my noble friends, for their comments.

I also express my appreciation to the noble Baronesses, Lady Jolly and Lady Cumberlege, who drew attention to some fundamental issues here. They are fundamental in relation to the conflicts of interests, particularly in local authorities.

The noble Baroness, Lady Cumberlege, referred to the ‘draconian’ restrictions, and reminded us that guidance does not have statutory force. Here I take the words of Healthwatch England:

> “The Department of Health could, and should, have done better with these Regulations.”

In my opinion, they have failed. I am afraid that the Minister has not given me satisfactory reassurances - certainly not in relation to the issues that the noble Baronesses, Lady Jolly and Lady Cumberlege, have raised.

In the light of that, and of the briefing we had from Healthwatch England itself, it is important that the Department should think again. The only way I can do that is to ensure that we pass this Motion of Regret and, therefore, I would like to test the opinion of the House.

9.10 pm

Division on Motion. Contents 113; Not-Contents 145. Motion disagreed.

Division No. 3

CONTENTS

Adams of Craigielea, B.
Ahmed, L.
Anderson of Swansea, L.
Bakewell, B.
Bassam of Brighton, L. [Teller]
Bath and Wells, Bp.
Beecham, L.
Berkeley, L.
Blackstone, B.
Bradley, L.
Brookman, L.
Brooks of Tremorfa, L.
Browne of Belmont, L.
Browne of Ladyton, L.
Campbell-Savours, L.
Carter of Coles, L.
Clancarty, E.
Clark of Windermere, L.
Collins of Highbury, L.
Colville of Culross, V.
Corston, B.
Crawley, B.
Davies of Oldham, L.
Davies of Stamford, L.
Donaghy, B.
Drake, B.
Dubs, L.
Elder, L.
Elystan-Morgan, L.
Emerton, B.
Farrington of Ribbleton, B.
Faulkner of Worcester, L.
Finlay of Llandaff, B.
Foulkes of Cumnock, L.
Gale, B.
Gibson of Market Rasen, B.
Golding, B.
Gordon of Strathblane, L.
Grantchester, L.
Greaves, L.
Grocott, L.
Hardie, L.
Harris of Haringey, L.
Harrison, L.
Haworth, L.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hereford, Bp.
Howells of St Davids, B.
Hoyle, L.
Hughes of Stretford, B.
Hughes of Woodside, L.
Hunt of Chesterton, L.
Hunt of Kings Heath, L.
Jones, L.
Jones of Whitchurch, B.
Jordan, L.
Judd, L.
Kennedy of Southwark, L.
Kirkhill, L.
Layard, L.
Lea of Crondall, L.
Leitch, L.
Lister of Burtersett, B.
McAvoy, L.
McConnell of Glenscorrodale, L.
McDonagh, B.
McFall of Alcluith, L.
McIntosh of Hudnall, B.
MacKenzie of Culkein, L.
McKenzie of Luton, L.
Mar, C.
Masham of Ilton, B.
Massey of Darwen, B.
Maxton, L.
Morris of Handsworth, L.
Nye, B.
O'Loan, B.
O'Neill of Bengarve, B.

Patel, L.	Smith of Leigh, L.
Pendry, L.	Stone of Blackheath, L.
Pitkeathley, B.	Taylor of Bolton, B.
Prescott, L.	Thornton, B.
Prosser, B.	Tonge, B.
Quin, B.	Truscott, L.
Ramsay of Cartvale, B.	Tunnicliffe, L. [Teller]
Rendell of Babergh, B.	Uddin, B.
Robertson of Port Ellen, L.	Wall of New Barnet, B.
Rooker, L.	Walpole, L.
Rosser, L.	Warner, L.
Rowlands, L.	Warwick of Undercliffe, B.
Royall of Blaisdon, B.	Watson of Invergowrie, L.
Sawyer, L.	Wheeler, B.
Sherlock, B.	Whitaker, B.
Simon, V.	Whitty, L.
Smith of Basildon, B.	Wilkins, B.

NOT CONTENTS

Addington, L.	Cotter, L.
Ahmad of Wimbledon, L.	Courtown, E.
Alderdice, L.	Cumberlege, B.
Allan of Hallam, L.	De Mauley, L.
Anelay of St Johns, B. [Teller]	Deighton, L.
Ashton of Hyde, L.	Dholakia, L.
Astor of Hever, L.	Dixon-Smith, L.
Attlee, E.	Dobbs, L.
Bates, L.	Eccles, V.
Berridge, B.	Eden of Winton, L.
Bew, L.	Elton, L.
Black of Brentwood, L.	Falkner of Margravine, B.
Bonham-Carter of Yarnbury, B.	Faulks, L.
Brittan of Spennithorne, L.	Fellowes of West Stafford, L.
Brooke of Sutton Mandeville, L.	Fink, L.
Brougham and Vaux, L.	Flight, L.
Byford, B.	Fookes, B.
Caithness, E.	Forsyth of Drumlean, L.
Cathcart, E.	Fowler, L.
Cavendish of Furness, L.	Fraser of Carmyllie, L.
Clement-Jones, L.	Freud, L.
Colwyn, L.	Garden of Frognal, B.

Cope of Berkeley, L.	Gardiner of Kimble, L.
Garel-Jones, L.	Howe, E.
Geddes, L.	Howe of Aberavon, L.
German, L.	Hunt of Wirral, L.
Green of Hurstpierpoint, L.	Inglewood, L.
Hamwee, B.	James of Blackheath, L.
Hanham, B.	Jolly, B.
Harris of Richmond, B.	Knight of Collingtree, B.
Heyhoe Flint, B.	Lang of Monkton, L.
Higgins, L.	Lester of Herne Hill, L.
Hill of Oareford, L.	Lexden, L.
Hodgson of Astley Abbotts, L.	Lingfield, L.
Home, E.	Linklater of Butterstone, B.
Hooper, B.	Lothian, M.
Howard of Lympne, L.	

5 Feb 2013 : Column 230

Lucas, L.	Razzall, L.
Luke, L.	Rennard, L.
McColl of Dulwich, L.	Roberts of Llandudno, L.
Mackay of Clashfern, L.	Roper, L.
McNally, L.	Scott of Needham Market, B.
Maddock, B.	Seccombe, B.
Magan of Castletown, L.	Selborne, E.
Maginnis of Drumglass, L.	Selkirk of Douglas, L.
Mar and Kellie, E.	Sharp of Guildford, B.
Marks of Henley-on-Thames, L.	Sharples, B.
Mayhew of Twysden, L.	Shaw of Northstead, L.
Meacher, B.	Shephard of Northwold, B.
Miller of Chilthorne Domer, B.	Shipley, L.
Moore of Lower Marsh, L.	Shutt of Greetland, L.
Morris of Bolton, B.	Smith of Clifton, L.
Nash, L.	Spicer, L.
Neville-Jones, B.	Stedman-Scott, B.
Newby, L. [Teller]	Stephen, L.
Noakes, B.	Stewartby, L.
Northover, B.	Stoneham of Droxford, L.
O'Cathain, B.	Storey, L.
Parminter, B.	Stowell of Beeston, B.
Perry of Southwark, B.	Strasburger, L.

Phillips of Sudbury, L. Popat, L. Randerson, B. Teverson, L. Thomas of Gresford, L. Tope, L. Tordoff, L. Trefgarne, L. Trenchard, V. True, L. Tyler of Enfield, B. Ullswater, V. Verma, B.	Taylor of Goss Moor, L. Taylor of Holbeach, L. Tebbit, L. Vinson, L. Wallace of Saltaire, L. Wallace of Tankerness, L. Walmsley, B. Walton of Detchant, L. Wei, L. Wheatcroft, B. Wilcox, B. Williams of Crosby, B. Younger of Leckie, V.