

Colm Gildernew MLA
Chair
Committee for Health
NI Assembly

By Email: committee.health_hscbill@niassembly.gov.uk

23/04/21

Dear Colm

Re: Health and Social Care Bill

Thank you for the opportunity to present BASW NI's views on the Health and Social Care Bill.

I note the Committee for Health's invitation to submit views explains submissions should be structured to address specific clauses and schedules of the Bill. However, I am keen to stress that BASW NI has significant concerns, firstly regarding the consultation process conducted by the Department of Health to inform the content of the Bill, and secondly, regarding the extent to which closure of the Health and Social Care Board (HSCB) will succeed in delivering the reduction in bureaucracy, increase in accountability and improvements in efficiency noted as key drivers for the planned restructuring. The majority of this letter is given over to outlining these concerns.

The Department of Health's Explanatory and Financial Memorandum published to accompany the Bill notes that a formal consultation on the policy proposals—*Getting the Structures Right*—informed the draft Bill. The consultation was carried out between 15 December 2015 and 12 February 2016. BASW NI submitted a response to this consultation under the organisation's previous name, "Northern Ireland Association of Social Workers".

In the section of the consultation headed, *New Structures*, the proposals made by DHSSPS are unhelpfully vague. While the document stated former Minister Hamilton's intention to close the HSCB, the Department did not provide sufficient detail concerning the alternatives it intended to pursue, save for stating:

*"It is likely that this approach would see the current functions of the HSC Board go either to the Department, the PHA or Trusts. **Further detailed work will of course be needed to consider the finer details of how these revised***

structures would operate. *This would include where functions would sit most effectively and how changes should be implemented.*”

It should also be noted that of the 151 responses made to the consultation, 93 (62%) disagreed or strongly disagreed with the proposals concerning restructuring. Only 28 (19%) agreed or strongly agreed.

The lack of detail provided by the Department is acknowledged in the DHSSPS Consultation Analysis Report¹. In response to the submissions made concerning the question **Do you agree that these are the right structural changes to make to streamline and simplify the Health and Social Care system?** the Department stated:

“The Department welcomes the breadth and range of response from respondents. It is recognised that insufficient detail has been provided at that stage to allow respondents to come to an informed view about the future structure.”

Despite BASW NI responding to the Department’s consultation and the DHSSPS acknowledging its failure to provide relevant information to enable stakeholders to adequately assess the appropriateness of the structures proposed to replace the HSCB, the Association has been involved in no further consultation on the matter and has received no additional information regarding the Department’s plans. It is worrying that the Department’s Explanatory and Financial Memorandum selectively highlights findings from the Consultation Report, omitting the key findings that the majority of respondents disagreed with the proposals and the Department’s acceptance that insufficient detail was provided concerning the future structure.

BASW NI is deeply concerned that the Department has since introduced legislation intended to radically alter Health and Social Care commissioning and governance structures based on this consultation. The Association believes this indicates a lack of regard for the views of the stakeholders involved.

In terms of the transfer of functions, the Explanatory and Financial Memorandum notes “the Bill provides, on closure of the Regional Board, for:

- (i) all the functions that the Regional Board currently exercises, and its oversight roles in relation to all functions exercised by HSC trusts, to go to the Department; and
- (ii) the functions which began life as Health and Social Services Boards functions, now exercisable by HSC trusts by virtue of Article 3 of the Health and Personal Social Services (Northern Ireland) Order 1994, (called the Social Care and Children functions) to become exercisable by HSC trusts on the face of the primary legislation.”

¹ Health and Social Care reform and transformation - Getting the structures right Consultation Analysis Report <https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/hsc-transormation-analysis-report.pdf>

Consultation with BASW NI members, including social workers in senior leadership positions, indicates a lack of transparency on the part of the Department concerning the transfer of functions both up—from the HSCB to the Department, and down, from the HSCB to the Trusts. BASW NI recognises that a new article (10A) of the Health and Personal Social Services (Northern Ireland) Order 1991 is detailed in the Bill which provides a definition of what is included in social care and children's functions that are currently held by HSCB or delegated to the Trusts. The Association understands the Bill will see these functions placed directly on Trusts. However, given the lack of clarity cited by our members, further work is needed on the part of the Department to explain in an unambiguous manner, precisely which functions will transfer to the HSC Trusts and which functions will transfer to the Department.

The Department has argued the Bill's transfer of duties and responsibilities previously held by the HSCB to the Department will result in clearer lines of accountability and performance management. In its current guise the HSCB is accountable to the Minister of Health for the commissioning of services, with the Minister accountable to the Assembly. BASW NI does not believe the transfer of duties and responsibilities to the Department will have any demonstrable impact in terms of enhancing accountability. Conversely, the housing of these duties directly with the Department, could lead to a reduction in transparency. In briefing the Health Committee on 15/04/21, Department of Health officials explained that the performance of, and accountability for, the functions under the direction of the senior civil servant directing former HSCB staff will be subject to the same scrutiny as the rest of the Department's business by the Departmental Board. While the publication of detailed HSCB Board meeting papers allows for close scrutiny of decision making, this level of transparency is not replicated as standard practice by the Departmental Board, for which only minutes of meetings are published.

On a six-monthly basis, HSC Trusts report to the HSCB on those statutory functions which have been delegated by the HSCB to Trusts. These updates incorporate reporting on the Corporate Parenting responsibilities of the Trusts. *The Delegated Statutory Functions* reports published annually by the HSCB provide detailed information, for example, on the numbers of Looked After Children, the number of Children in Need and the number of Children on the Child Protection Register, along with trends over time. Availability of these statistics is vital to accurately scrutinise the suitability of services commissioned. In his statement to the Assembly on 16 March 2021, the Minister of Health stated, "the Bill provides that the trusts must, at the very least annually, submit for the Department's approval a scheme detailing how they are exercising the social care and children functions of the Department." To ensure there is no reduction in accountability it is essential that this information published annually by the Department following the closure of the HSCB.

The *Getting the Structures Right* consultation stressed the importance of reducing bureaucracy within HSC and the Explanatory and Financial Memorandum reiterates the Department's intention to deliver on this goal. It is not clear, however, how closure of the HSCB and the transfer of its staff to the Business Services Organisation will have any demonstrable impact in terms of reducing bureaucracy.

In addition, to date no detail has been provided to quantify the impact that closure of the HSCB will have in terms of improving efficiency. It is notable that the annual

financial savings expected from the closure of the HSCB are £0.4 million, less than one per cent of the £57 million net expenditure on Board administration in 2019/20, £31 million of which covered staff salaries².

There also remains a need for the Department to demonstrate how the new arrangements will improve decision-making. *Getting the Structures Right* noted “the current structures provide for a complex decision-making process (for instance, from LCG, with decisions then considered by HSCB and then PHA professional staff, and sometimes by the Department)”. The Department has not outlined its plans to replace the Local Commissioning Groups which will close along with the HSCB in accordance with clause one of the Bill. Neither has it explained how it will replace the independent expertise of the HSCB’s Chair and Non-Executive Directors.

In his statement to the Assembly on 16 March, Minister Swann stressed “*the need for local intelligence and input into the planning decisions*”, explaining “*work has begun on looking at how we plan and manage services based on collaboration and integration and in a way that is built on local need and local input.*” However, as new mechanisms are developed to replace the local commissioning groups it is vital lessons are learned and services are not planned solely on local commissioning arrangements.

The approach to planning mental health services outlined in the draft Mental Health Strategy 2021 – 2031 is a key example of a regional approach to provision of services and is one BASW NI fully supports. Not only does a regional approach to service provision support best practice across NI, it also improves services for individuals who move between Trust areas and avoids a “postcode lottery” in terms of service provision.

Schedule 1, paragraph 143 (page 25) of the Bill would amend the Health and Personal Social Services (Northern Ireland) Order 1991 to enable the Department of Health to “by direction provide for specified functions of the Department to be exercisable, in relation to the operational area of a specified HSC trust, by that trust on behalf of the Department.” BASW NI seeks clarity concerning the functions the Department expects this provision to cover.

The amendment to the Health and Personal Social Services (Northern Ireland) Order 1991 outlined in paragraph of 143 of the Bill also states:

“(5) An HSC trust is—

(a) entitled to enforce any rights acquired in the exercise of any delegated functions, and

(b) liable in respect of any liabilities incurred (including any liabilities in tort) in the exercise of any delegated functions”.

² Health and Social Care Board 2019/20 Annual Report and Accounts
<http://www.hscboard.hscni.net/download/PUBLICATIONS/CORPORATE%20AND%20FINANCIAL/Annual-Report-and-Accounts-2019-2020.pdf>

BASW NI seeks clarification concerning whether the amendment to the Order will result in any substantive changes to the liability of HSC Trusts concerning the exercise of delegated functions.

The Bill contains repeated amendments to the *Health and Personal Social Services (Northern Ireland) Order 1972* and the *Health (Miscellaneous Provisions) Act (Northern Ireland) 2008* requiring references to “directions” to be substituted with “a scheme” or “any scheme”, “give directions as to” to be substituted with “make a scheme providing for” and references to “giving a direction” to be substitute with “making a scheme”. BASW NI seeks clarification concerning the reason for the amended terminology and the implications it will have.

The Bill also contains repeated amendments to the *Health and Personal Social Services (Northern Ireland) Order 1972* and a single amendment to the *Health (Miscellaneous Provisions) Act (Northern Ireland) 2008* substituting “the Department” with “a prescribed body”. BASW NI seeks clarity concerning the organisation the Department considers the appropriate prescribed bodies in each instance.

If it would be of benefit to the Committee, I and colleagues would be happy to provide an oral briefing on these issues.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Carolyn Ewart'.

CAROLYN EWART
National Director, BASW Northern Ireland