

20 September 2013

THE WORK OF HEALTHCARE INSPECTORATE WALES

Consultation by the National Assembly for Wales' Health and Social Care Committee

Response from BMA Cymru Wales

INTRODUCTION

BMA Cymru Wales is pleased to provide a response to the consultation by the National Assembly for Wales' Health and Social Care Committee on the work of Healthcare Inspectorate Wales.

The British Medical Association represents doctors from all branches of medicine all over the UK; and has a total membership of over 150,000 including more than 3,000 members overseas and over 19,000 medical student members.

The BMA is the largest voluntary professional association of doctors in the UK, which speaks for doctors at home and abroad. It is also an independent trade union.

BMA Cymru Wales represents some 7,000 members in Wales from every branch of the medical profession.

RESPONSE

The effectiveness of HIW in undertaking its main functions and statutory responsibilities.

BMA Cymru Wales believes that this is something that is more a matter for the Wales Audit Office (WAO) to properly judge, as any views that our members could provide would ultimately be the subject of opinion rather than an objective assessment. We would note, however, that Healthcare Inspectorate Wales (HIW) reported on concerns about Betsi Cadwaladr University Health Board just as the profession was giving notice to the health board that it was considering referring to HIW serious concerns about the way it was being run and, in this sense, we consider that HIW fulfilled its role.

A general comment from a number of BMA Cymru Wales members is that it is insufficiently clear to them from the information provided on HIW's website, who constitutes HIW and what its precise remit is. An important concern, as we see it, is therefore the need to clarify to whom HIW is accountable and who sets its remit.

The investigative and inspection functions of HIW, specifically its responsibility for making sure patients have access to safe and effective services, and its responsiveness to incidences of serious concern and systematic failures.

As far as we interpret its current function, HIW appears to us to have become accountable to the Chief Executive of NHS Wales who, in effect, is able to decide its work plan, i.e. who it reviews, when and for what reason or purpose. On the one hand, this means HIW's potential criticism of the NHS as a whole may be muted (as it would otherwise be vicariously criticising its sponsor), and on the other hand we would note

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that this means it can be directed to investigate a particular unit which the centre of NHS Wales might be unhappy with or has a particular view upon that it is wishing to reinforce. We are concerned this therefore risks creating a culture where clinicians are effectively 'blamed' for the failure of operational or strategic initiatives, at a time when we believe the primary focus of NHS Wales should be the delivery of a comprehensive approach to making health care safer and more effective.

If the inspectorate is directly accountable to the senior management of NHS Wales, it might fail in our view to add as much value as it could otherwise be capable of doing in the wider public interest – as might be the case if it was more independent and accountable to, say, the National Assembly as a whole or the Assembly's cross party Health and Social Care Committee.

It is unclear to our members how HIW's investigative and inspection functions are co-ordinated and prioritised – and how these might fit in with the governance arrangements of *all* health care providers in Wales. There is an inherent requirement for everyone connected with the provision of health and social care in Wales to do their best within the resources available, to a standard that they would wish to receive themselves. It is the duty of the employer (or other health care organisation) and Welsh Government to provide the resources, environment and staffing to do this – or to be open when this cannot be achieved. The role of HIW may therefore be to expose the gap that opens up when these competing pressures threaten patient safety, and we consider that an 'arms-length' arrangement with Welsh Government would therefore be beneficial in such circumstances.

There are several aspects to monitoring safe services. However, in a country the size of Wales, any report of local deficiencies should consider (and be free to comment on or criticise) the wider system that has led to such a situation arising. This is because the aim must be to a) make the NHS in Wales both safer and of the highest quality possible and b) make practical and realistic recommendations (across, political, geographical and ideological boundaries) on how this can be achieved. Otherwise we believe that what we see as a silo mentality, which in our view is crippling our ability to move forwards on health and social care in Wales, will inevitably continue.

The overall development and accountability of HIW, including whether the organisation is fit for purpose.

We observe that, because of the way it was set up, few of the people currently steering HIW appear to have directly served patients within a clinical setting. As such, we consider there is a possibility of HIW being not being sufficiently conversant with the service it is monitoring. We believe there is a risk that HIW operates in a manner that is too narrowly focussed, and is therefore unable to effectively consider wider issues. We also believe there is a danger in having an advisory board with a composition that may be inappropriately weighted towards members with no, or limited, direct clinical experience. The recent NHS staff survey indicated that most staff in the NHS do not have any faith in their senior management teams. This in effect means HIW has an advisory board that would not necessarily engender confidence amongst most NHS staff that it has the capability to respond to problems in a manner which is sufficiently prioritised towards patient care.

BMA Cymru Wales has reservations and concerns about the transparency, accountability and governance arrangements of HIW. We consider that the responsibility of HIW should be to the public in Wales, as represented by an independent board whose members are appointed in a sufficiently transparent manner (in line with Nolan principles) so as to allay any possible suggestions that they may have been appointed more for any political or other affiliation than their suitability to undertake the role. Whoever comprises HIW, we would suggest that the recruitment process, the CVs of those appointed and any affiliations they may have should be made clear and explicit. We believe that appointments should also be made through open competition, with appropriate back-filling of other roles or duties being undertaken if required.

Wales cannot afford to duplicate processes that appear to be being undertaken by more than one organisation, particularly so in the present financial climate, and we therefore would suggest the role of HIW should be matched to the expertise that is available to it. Collaboration with other agencies, and transparency of their relationships, should in our view be employed to streamline HIW's working and reporting mechanisms, so that each organisation works to its particular strengths.

We would further suggest that a worthwhile element of each inspection might be to ask a random selection of staff at each institution when they last saw each member of the executive working at or near the front line. We say this because we consider that those institutions whose leaders regularly work close to the front line, undertaking tasks such as directly supporting patient care, tend to have better staff morale, better satisfaction scores amongst patients/customers and fewer complaints.

The effectiveness of working relationships, focusing on collaboration and information sharing between HIW, key stakeholders and other review bodies.

Everyone living and working in Wales has an interest in ensuring that the provision of health and social care that is sustainable, high quality and safe. We make such an obvious statement, because we consider that the people of Wales have a long tradition of 'caring'. It also highlights that there is never, in our view, such a thing as a truly independent view and, thus, we would suggest that the pragmatic way forward is to be open about competing interests and specific about how decisions are arrived at. Obvious concerns would be the need to maintain political impartiality in appointments, as well as a level playing field when reporting deficiencies and errors. We observe, for instance, that Betsi Cadwaladr University Health Board was given a pre-publication opportunity to reply as part of a previous HIW report about care in North Wales¹, included as an appendix in the report, when failings were in fact on-going and subsequently detailed in a later report².

In our view, HIW has the potential for several strands of working including:

- periodic reports/inspections
- reports/investigations to specific concerns for organisations
- responding to whistle-blowing concerns raised by individuals or external organisations
- 'mystery shopper' reviews of services

We challenge the view that a regular inspection regime, checking procedures against a pre-defined list, always ensures high quality care. Such an inspection regime was originally designed to detect financial irregularity and deviation from 'standard' procedures in accounting practice; in that field it was an effective and useful process but, as *Enron, Lehman Bros, Goldman Sachs, Barings, UBS, Credit Nationale, Bank of Crete, BCCI, Royal Bank of Scotland, HBOS, Northern Rock* etc have shown, even in its own proven field the modern accountancy approach has been found to be lacking validity and has failed in the primary function of giving shareholders a clear indication of the value of their stock. We see no inherent reason, therefore, why such an approach should work any better in the field of health and social care.

The essence of good quality health care is fitting the available treatments to the particular patient's requirements. In our view this is safer, more effective and cheaper than current attempts, often led or supported by many Royal Medical Colleges, to impose what we would see as an inappropriate uniformity on the provision of care when more bespoke solutions may be required.

The roles and functions of HIW overlap in particular with the work of the Wales Audit Office (WAO) and Community Health Councils (CHCs), and therefore we believe there should be a greater opportunity for collaboration between these agencies, as well as with those providing services. It is unclear to us whether this means that any part of the role of HIW could or should be taken over by these other bodies, since this depends on who HIW reports to. However, a failure to collaborate; a lack of detailed clinical information on mortality, morbidity and other clinically important outcomes in Wales; and a general feeling of impotence amongst frontline clinical staff in many places in Wales, is in our view a sign of an endemic disconnect between patients, the staff caring for them and those tasked with service provision in our communities, health boards and government. Whatever mechanism exists to look objectively and independently at this, the aim should be to reduce duplication of cost and effort, and increase both the effectiveness and safety of patient care.

¹ <http://www.hiw.org.uk/Documents/477/Betsi%20Cadwaladr%20-%20Report%20-%20Glan%20Clwyd%20Report%20-%20English%20-%20PDF.pdf>

² http://www.wao.gov.uk/assets/englishdocuments/Betsi_Cadwaldr_Joint_Review_HIW_and_WAO.pdf

As a body for regulating otherwise unmonitored activity – e.g. nursing/care homes and elements of hospital infrastructure – HIW clearly has an important function. However, we do not believe it should intrude into areas which operationally are properly the remit of LHBs, or professionally the remit of regulatory bodies such as the General Medical Council (GMC). However, we note that a nursing and care home inspectorate could fall within the public health remit of health boards; such a duty used to lie with health authorities under the Director of Public Health in the case of nursing homes, and local authorities under their designated Directors of Social Services in the case of care homes.

We further believe that the current structure provides insufficient engagement with external expert medical advice as part of the process under which reviews are conducted.

Consideration of the role of HIW in strengthening the voice of patients and the public in the way health services are reviewed.

In the face of shrinking resources and expanding demands, we believe that determining the way forward regarding the provision of health and social care services needs to be placed above considerations of what may be seen as being politically expedient. We recognise there may at times be conflict between the need to take decisions that can ensure services are provided sustainability to an appropriate quality standard, and the at times comparatively short-term focus of elected representatives. Such conflict can mitigate against longer term strategic planning owing to the inherent conflict it may pose for politicians as a result of participating in such decisions. Ironically this can lead to decisions be taken that are not in the long-term best interests of patients or the people of Wales, even though it is the people of Wales who make demands on the very services under consideration in the first place. Whereas the NHS was viewed at its inception as something for which to be grateful, many members of the public now appear disillusioned and critical of the services they receive and are generally seen as more demanding and holding higher expectations. It is a challenge for HIW to review services on behalf of a public unsure of what they aspire to, and what they are prepared to pay for (through general taxation or other charges) or go without.

It is the view of BMA Cymru Wales that the work of HIW should not cut across the work of other bodies, such as CHCs, which already offer patient advocacy and support. There is a view that appropriately constituted CHCs, acting as an independent voice of patients, could take on some of HIW's remit. Each CHC would in our opinion need to have the funds to employ someone on a suitable clinical contract who has broad general clinical experience (hence almost certainly not a pure academic) as well as epidemiological population health training to advise them on clinical inspections.

Safeguarding arrangements, specifically the handling of whistleblowing and complaints information.

In view of the recent Francis and Keogh reports, we would strongly contend that there must be greater protection from reprisals for those raising legitimate concerns. We do recognise, however, that there can be a fine balance between the rights of patients and rights of staff. We also believe that professional organisations, such as BMA Cymru Wales, have a role to play in brokering and mediating the transmission of concerns in a manner that is already employed within the RCN in Wales.

Ideally, concerns should be identified and acted on through a standardised and transparent process without any need for anyone to resort to whistle-blowing. Typically, those organisations needing such arrangements are those which ultimately make it less effective for whistle-blowing to occur.

It is disturbing to see continued reference to a need to support whistle-blowers. In our view, if any organisation needs such robust whistle-blower protection then the leadership and culture of that organisation must have failed in some way. Relying on people to put their necks on the line is not a way to make for a happy and effective service. Whistle-blowing is an experience that is not undertaken lightly and is often dreadful for the person who undertakes it, frequently leaving them permanently emotionally scarred as a result.

Conclusions

BMA Cymru Wales believes that HIW should be a properly independent inspectorate with a duty to report annually to the Senedd on how well it perceives the NHS in Wales, and all its component parts, are discharging their duty to the public in Wales to provide a comprehensive and effective health service. We consider that such a role should be similar to that of Her Majesty's Inspectors of Prisons and Constabulary, or the old fashioned concept of school inspectors – all experienced workers in the field, with a staff drawn from the relevant professions and trades. (Alternatively, some of our members have suggested that a better method for achieving the intended aims of HIW might be the introduction of responsible autonomy aided by a peer-led, professional advisory team.)

We consider that HIW should concentrate its reporting more on how it assesses the performance of the leadership within the NHS in Wales rather than the performance of individual units. In our view, staff would welcome a chance to raise appropriate concerns about their managers and we believe that if HIW was able to publicly report to Welsh Government how ineffectively some management teams sometimes perform, morale amongst frontline staff would undoubtedly improve.

BMA Cymru Wales also believes that HIW could also then act as a mechanism for sharing best practice, i.e. suggestions of how other units have managed to improve services between units.

We observe that, in a changing world, organisations able to sense and change with it are more likely to offer good service. In keeping with this, we would support a system which promotes greater local responsiveness to need, even though we note that some might perceive such an approach as creating a 'postcode lottery'.

BMA Cymru Wales suggests that an additional role could be given to HIW to report on the extent to which progress is being made in addressing reported health inequities between different population groups within Wales.

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