

Labour questions legal basis for abandoning NHS treatment targets – Ashworth

Labour have today questioned the basis for the downgrade of NHS treatment targets announced this week, saying the changes could contravene patients' legal rights under the NHS Constitution.

Speaking on Sky's Sophy Ridge Show this morning, Labour's Shadow Health Secretary Jonathan Ashworth said he would write to Health Secretary Jeremy Hunt seeking urgent clarification of the legal advice underpinning the move.

Jonathan Ashworth MP, Labour's Shadow Health Secretary, said:

"The NHS Constitution isn't just a pledge by politicians, it's a legal guarantee about the standards of care that patients can expect to receive in the English NHS. That includes a guarantee to treatment within 18 weeks, which NHS England have now said they can no longer provide because the Government has denied them the funding they need.

"Government ministers need to urgently clarify they are not breaching the NHS Constitution and must outline the consequences of denying patients their legal right to treatment within 18 weeks. As a first step the Secretary of State must publish his Department's legal advice urgently.

"Earlier this week NHS chiefs announced – without any public consultation or changes to the law – that the NHS will no longer be required to meet the 18 week treatment target because the financial crisis has got so bad. It's utterly unacceptable and a striking admission of how badly the Tories are running the NHS.

"Since Theresa May became Prime Minister standards of care for NHS patients have been in a rapid downward spiral. She might be prepared to ignore NHS staff and the public but she can't just ignore the NHS constitution based on legislation voted upon by Parliament.

"The Government now urgently needs to clarify the legal basis upon which the 18 week right has been jettisoned. Will they be amending the NHS Constitution to remove these rights from patients? Will they be tabling new legislation in Parliament to unpick these

commitments?

Or will they will finally give the health service the funding it so desperately needs to deliver the quality of care to which patients are entitled?"

Ends

Note To Editors

Full text of the letter to Jeremy Hunt from Jonathan Ashworth:

Dear Secretary of State,

I am writing to ask for urgent clarification about the legal basis of the changes to NHS standards announced in the update to NHS England's Five Year Forward View.

Every relevant provider is under a legal duty imposed by part 9 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 to see 92% of patients within 18 weeks of referral by a GP to a consultant . For the last 10 months on the basis of figures provided by the NHS itself this standard has been missed. The update indicates that the NHS accept this standard will further decline.

The update document says:

"Given multiple calls on the constrained NHS funding growth over the next couple of years, elective volumes are likely to expand at a slower rate than implied by a 92% RTT incomplete pathway target."

This is an acceptance the 92% requirement will be missed.

The duty to meet the 92% is absolute and is not subject to any funding constraints.

The absolute nature of this legal duty to meet the 92% is reflected in the NHS constitution.

The Government and NHS England are acting unlawfully in continuing on a course which puts them in breach of their legal duty. The only way to avoid a breach for the future is to change the duty in part 9 by further legislation. That would require the Government to obtain parliamentary approval.

In the absence of any proposal for such legislation, The action described in the update document last Friday is

unlawful. Could you publish your Department's legal advice on whether you are breaching part 9 in what is described in the update.

Will you in any event as a matter of urgency explain the basis on which you say you are entitled to ignore the legal duty in part 9?

Secondly and separately the reference to rationing of NICE approved drugs is a breach of the legal entitlement of patients pursuant to para 7 and 8 of the National Institute for Health and Care Excellence (Constitution and Functions) and the Health and Social Care Information Centre (Functions) Regulations 2013).

The effect of these paragraphs is correctly summarised in the NHS Constitution as:

"You have the right to drugs and treatments that have been recommended by NICE for use in the NHS, if your doctor says they are clinically appropriate for you."

That entitlement is not subject to financial constraints. Rationing would be a breach of the entitlement.

Could you publish as a matter of urgency the legal advice you have received on whether rationing of NICE approved drugs is lawful in the light of the 2013 regulations, and in any event explain the basis on which you say rationing of NICE approved drugs on cost grounds is not unlawful?

NHS England made clear that the reason for downgrading these guarantees is because of "real pressure from rising demand within a tight funding envelope." The funding squeeze you have imposed on the health service is now jeopardizing legally guaranteed standards of patient care.

Since Theresa May became Prime Minister standards for NHS patients have rapidly fallen. She might be prepared to ignore NHS staff and the public but she can't just ignore the law and the NHS constitution.

The public urgently need to know: will you be bringing forward legislation to amend the law and the NHS Constitution to remove these rights from patients? Or will you finally convince the Treasury to give the health service the funding it so desperately needs to deliver the quality of care to which patients are entitled?

Jonathan Ashworth MP

Shadow Secretary of State for Health