Editorial

Environmental Audit Committee inquiry into the National Health Service (NHS)

Throughout its history the NHS has been administered largely in isolation from national environmental policies. Its annual budget dwarfs anything ever invested by the Treasury in national pollution control and nature conservation, with £134 billion planned for 2014–2015 (compared to Defra's £2 billion).[1] Over the past 60 years or so that equates to a dangerously large expenditure to leave to chance when it comes to the natural environment. Thus, it is surprising that the inquiry of the Environmental Audit Committee (EAC) into sustainable development governance and operations in the NHS, launched in January 2015, is the first of its kind, albeit that it is very welcome.[2] The focus is on implementation of the NHS England's strategic document entitled *Sustainable, Healthy, Resilient People and Places* (the Strategy).[3]

This is the mischief of the Strategy: 'Whether we consider our demographics, our use of resources, or the financial forecasts, it is widely accepted that the NHS is unsustainable without radical transformation'.[4] 'Radical transformation' is a strong phrase, but the drafters appear to match that rhetoric with robust planned action. In particular, 'Goal 1' of the Strategy is 'a healthy environment'.[5] The goal is sub-divided into three areas: natural resources (their better valuing and enhancement); pollution (its reduction); and climate change (adaptation and mitigation).[6]

Although these areas are treated as being of equal importance in principle, it is the climate change limb (as it were) that is the subject of much of what detail there is in the Strategy. Three (again) aspects are demarcated under the heading of NHS carbon emission 'hotspots'. These are the manufacture of pharmaceuticals, energy and travel. Collectively, they are the subject of an internal target of 34 per cent reduction, taking 2013 as the baseline and 2020 as the end date. That is ambitious. Given that until 2008 NHS carbon emissions have been rising, the commitment to reduce emissions by 4–5 per cent each year could not be more demanding.

It is not explained how reductions of this order will be achieved, and that is something one would expect the EAC to seek to clarify. One of the case studies (Houghton le Spring Primary Care Centre, Sunderland) highlights capital investment in a building that is highly energy efficient, but there are surely limits on how far capital investment in NHS building stock can deliver the reductions aimed at. Indeed, it is pharmaceuticals that are considered in the Strategy to be the main bulk of the NHS's carbon budget.

In this regard, it is acknowledged that NICE (the National Institute for Clinical Excellence) does not currently take into account any facet of the environmental impact of medicinal drugs, whether at the point of production, carriage or secretion into the environment (through waste water).[7] There is the risk here of false, or more neutrally 'externalised', accounting. This goes beyond the issue of the NHS not paying the price of carbon emissions, but of the price also of pollution of a more classic variety. For example, it is well known that some persistent pharmaceuticals are extremely difficult for sewage undertakings to treat. When secreted into waste water – as they are in greatest quantity in the South East of England – they pass into rivers and estuaries with potentially serious impacts on fauna and flora.[8]

Tensions of this and other kinds between health services and 'environmental protection services' are the subject of a fertile debate in the US of the kind that has been lacking in the UK. Echoing Mishan's *The Costs of Economic Growth*,[9] Ivan Illich published *The Limits of Medicine* in 1976.[10] 'Useless medical treatments', 'medical monopoly', 'the pharmaceutical invasion' and 'medicalisation of the budget' are among the subjects covered in the book, which remains a strong seller even in its fourth edition (published in 2010). A British audience was introduced to broadly similar critical ideas in the latest BBC Reith Lectures 2014, delivered by Dr Atul Gawande. Collectively entitled 'The future of medicine', these lectures cover 'the messy intersection between science and human fallibility'.[11] A particularly memorable theme is the blurred boundary between the treatment of illness and the treatment of mortality (presented in the lecture 'The problem of hubris').

The issue before the EAC is therefore one of great delicacy, bringing to the fore the remark of Hoffmann LJ in *Bland* that: 'modern medicine faces us with fundamental and painful decisions about life and death that cannot be answered on the basis of normal everyday assumptions'.[12] It is rather disappointing that the questions put to the NHS witnesses in the first evidence session (11 May 2015) do not reflect that. They concentrate on prosaic issues of stakeholder engagement with the topic in a

1 HM Treasury '2014 public expenditure: statistical analyses' (HMSO London 2014) 30.
2 Press Release (5 March 2015) http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news/sustainability-nhs/.
3 *Sustainable, Healthy, Resilient People and Places: A Sustainable Development Strategy for the NHS, Public Heath and Social Care System* (Sustainable Development Unit London 2014).
4 ibid 2.
5 The Strategy outlines a vision and three goals; Goal 2 is: 'Communities and services are ready and resilient for changing times and climates'; Goal 3 is: 'Every opportunity contributes to healthy lives, healthy communities and healthy environments'.
6 ibid 5.
7 ibid.
8 *Pharmaceuticals in the Environment: a Growing Threat to our Tap Water and Wildlife* (Chemicals Trust 2014) http://www.chemtrust.org.uk/wp-content/uploads/CHEM-Trust-Pharma-Dec14.pdf.
9 E J Mishan *The Costs of Economic Growth* (Staples Press, London 1967).
10 I Illich *The Limits of Medicine: Medical Nemesis – The Expropriation of Health* (Marion Boyars London 1976).
11 http://www.bbc.co.uk/programmes/articles/6F2X8TpsxrJpnsq82hggHW/dr-atul-gawande-2014-reith-lectures. Gawande is author of *Being Mortal: Illness, Medicine and What Matters in the End* (Profile Books London 2014).
12 *Airedale NHS Trust v Bland* [1993] AC 789, 825.

manner that rather presupposes that everyone can agree on what the problem is and can thus set about translating a common will into practice. However, values are extremely important, particularly in the context of an ageing population that is increasingly reliant on drugs for the last years of life. According to the Royal Commission on Environmental Pollution (RCEP) – a body that was well known for its candid comments about delicate issues until falling victim to the Coalition's austerity measures – the aged in modern Western society have a disproportionately high ecological footprint overall.[13]

Free from the constraints of an electoral mandate associated with MPs on the EAC, members of the RCEP in the above-mentioned report covered other sensitive topics, such as 'health miles', 'pharmaceuticals in the environment' and, most sensitively of all, 'limiting the growth in the aggregate population'. In that latter regard, the RCEP heard evidence that 'less than 30 million might be a sustainable population!'[14] It was quickly acknowledged that regulation of population quantity is 'not feasible in a democracy'(!), but possibly there was an opportunity to influence debate that was being neglected here. Today, there is a growing 'democratic' feeling about the specific matter of dignity in old age and in illness more generally, as we become *medically* more advanced. Medical prolongation of life is becoming more and more controversial in human rights terms, with environmental implications that it would be helpful to have examined.

If the NHS is to be 'greened', therefore, it may involve a debate of greater depth than that which the EAC is currently contemplating. As well as the nuts and bolts, issues of energy efficiency are more profound ones that go to the heart of the founding assumptions of the service, touching on the implications of the changing scientific and ecological contexts of medicine and health and social care in the 21st century. Environmental lawyers from a wide variety of perspectives are well placed to contribute. It would be particularly interesting to hear what wild law has to offer, under the heading, say, of 'NHS: an Earth jurisprudence'.

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13 Royal Commission on Environmental Pollution *Demographic Change and the Environment* (Cm 8001 HMSO 2011) 43–47.

14 ibid 80.