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Briefing on

Social Enterprises and the NHS

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- **What is the Third Sector and what are Social Enterprises?**

Third sector organisations can be charities, volunteer organisations or **social enterprises.** 'Social enterprise' can itself be a fairly wide term and there is no rigid or fixed description, with social enterprises taking various organisational forms. Broadly though, social enterprises are profit making organisations which generally have a number of characteristics. These are;[1]

- Shared ownership, often amongst employees but can also include users and people in the wider community,
- Some restrictions on how profits are distributed - rather than between individual shareholders it may be reinvested or shared amongst employees, 'co-owners' or trustees,
- A stated 'social' aim,
- Restrictions on the use and disposal of assets.

Different areas of the Government's public sector reforms are at different stages, but underpinning the wider reform agenda is the use of the private and third sector to deliver public services, with the creation of competitive markets to act as a driver for service improvements. In the health sector in England this is being carried out through reforming and pushing NHS Trusts and Primary Care Trusts (PCTs) into being **commissioning** bodies, rather than directly providing services themselves.

- **What is Commissioning?**

Fundamental to commissioning and creating the NHS market is the **purchaser-provider split.** This divides a Trust's role to provide health services from its function of purchasing health services on behalf of patients and service users in a Trust's locality. The current reforming programme propels Trusts to divest themselves of directly providing health care. Instead, using their purchasing function, Trusts can **commission** (contract) others to provide health care services. Private companies and third sector organisations will be able to bid to run and provide services – **contesting** against current public sector provision.[2]

In January 2006 the Government published **Our Health, Our Care, Our Say: A new direction for community services**[3] which outlined a shift away from care in hospitals and towards community based healthcare wherever possible. This is a concept which Amicus broadly supports, with any transition taking account of the need to retain staff who will have invaluable skills. However, the commissioning model outlined above, with the delivery of healthcare by multiple private and third sector organisations, has falsely been presented as the only mechanism to achieve this shift.

- **How is this linked to the development of 'Payment of Results'?**

In the creation of the NHS market, competition has been embedded in the health service in two ways. Firstly, there is competition between different providers to win contracts from a Trust to provide services. Secondly, competition is introduced through the mechanism of **patient choice**. Patients are able to choose (theoretically) between different providers of the particular service they require. Through **Payment by Results** (PbR) Trusts only pay for services and procedures performed. Therefore, to secure funding providers will have to compete, and win, patients and service users. This is why the Department of Health has drawn up marketing and advertising guidelines for health services.

1 See Newchurch Consultants briefing paper, 'Healthy Social Enterprises', June 2006, www.newchurch.co.uk. (Briefing found at http://www.newchurch.co.uk/tc_domainsBin/White_Paper0038/Social_Enterprises.pdf).

2 This is also sometimes referred to by policy makers as the principle of **contestability.** You can read the Amicus briefing on 'Commissioning a Patient Led NHS' on the health sector pages of the Amicus website.

3 The Amicus briefing on 'Our Health, Our Care, Our Say' is available on the health sector pages of the Amicus website.

- **What will be the impact of commissioning and contestability?**

It is a critical moment for the NHS – if commissioning and contestability are fully implemented the impact will be far-reaching, with the privatising of NHS services on a widespread scale. This is a fundamental change in the delivery of healthcare, with the NHS becoming a brand rather than a national, public service. While the spotlight is on reforms impacting upon acute care delivered in hospitals, it is necessary to remember that 90% of vital NHS activity takes place outside of hospital. The full range of health services will feel the detrimental effects of commissioning and contestability with the main area for the privatisation reforms outlined above being community services.

In 2005 'Community Interest Companies' were specifically devised as a structure for social enterprises. Despite the language and label, such organisations are still part of the private sector and have to register at Companies House and accountable to the Department of Trade and Industry. This is an illustration of the fundamental character change that is taking place in community health care.

- **To what extent are social enterprises involved in health care?**

The Department of Health has been encouraging the development of social enterprises in order to further the programme of market reforms outlined above. This has included establishing a £73million fund over 4 years specifically for encouraging the development of social enterprises in the delivery of health and social care services. At the end of January 2007 26 'pathfinder projects' were announced, which had been able to apply for a share of a £1million start-up fund. These are currently being rolled out[4].

Central Surrey Health (CSH) was the first major social enterprise established out of a PCT deciding to hive off a large chunk of its direct healthcare provision. It was set-up by two senior staff members at the East Elmbridge and Mid Surrey PCT, who now both run Central Surrey Health which sells nursing and therapeutic services to the PCT. It was actively promoted as a 'trailblazer' initiative for the establishment of social enterprises in healthcare and how the reforms of the NHS could work. A large amount of Department of Health support and resources were provided to establish and begin running CSH, and there were large expenditures on legal and consultancy costs in the run-up to its establishment. All 650 nursing staff were transferred over and received a 1p share each, officially making them 'co-owners'. Yet, there was little staff consultation about the proposal and the potential impact upon services and their terms, conditions and pensions. A ballot of union staff members found 80% opposed being transferred out of the NHS.

- **What are the potential issues around Social Enterprises? How will it affect people's work and employment?**

The key thing to bear in mind is that social enterprises – like other health providers - would be operating in an increasingly competitive and hostile environment, and competing against large, multi-national firms for contracts. The creation and opening up of the NHS market is potentially very lucrative. Large multi-national firms have the resources to easily move into a dominant market position. There is no guarantee of success for staff that establish, enter or are pulled into social enterprises. Future employment would be dependent on the success of the business. The Social Enterprise Coalition (SEC) has noted that "…moving out of the public sector and setting up in business is a challenging process, and social enterprises that have done so have had to undergo a major process of culture change to instil a **commercial focus** across the organisation"[5].

Even when social enterprises are initially established with the best intentions of wishing to develop better services for patients, service users and staff, in the future these organisations may be vulnerable to being bought by others, including large, multinational firms.

As mentioned above, the listed social enterprise 'characteristics' can be embodied in many different corporate structures and objectives. For example, Bupa can be classified as a social enterprise[6]. A social aim does not necessarily have to be one that is widely recognised as a 'good thing' – public schools can also be classified as social enterprises. Also, while there may be some restrictions on how profits are distributed, for example, only to employees, there are no regulations or policies on which employees and how much. It is possible to divide profits in the form of bonuses just amongst high level management, or board members. Although greater staff involvement in decision making is often touted as a positive feature of social enterprises, as explained above this is not a guaranteed or inherent feature of social enterprises. The same frustrations may simply be transferred over to the new organisation along with services.

A social enterprise, or any third sector organisation or private company, when awarded a contract to provide healthcare services will be outside of the public sector. Therefore, **staff will no longer be employed by the NHS.** In the future this could have a profound impact upon terms and conditions, pension, and even trade union recognition.

Employment outside of the NHS means Agenda for Change terms and conditions would not necessarily be adopted. Terms and conditions for transferred staff would be covered under TUPE legislation, but these are not set in stone[7]. A provider would only have to ensure a 'broadly comparable' pension for staff transferred across from the NHS. There would be no such guarantees for new staff, raising the spectre of a two-tier workforce developing.

To negotiate pay, terms and conditions on behalf of staff, trade unions need to be recognised by employers. There is nothing to compel the myriad of different providers which would be providing health services to recognise trade unions, and it can often be a lengthy process to secure recognition agreements with employers. With the fragmentation of health services between varieties of providers across the country it may become impossible to sustain a national agreement. We know from the leaked Department of Health workforce document that the desired future is one of local pay bargaining and greater use of temporary workers. While some employees may be able to secure higher wages, Amicus believes the splintering of trade union strength will leave many worse off.

There are many associated costs involved in managing and contracting with multiple organisations with fragmented health services. Potential issues stretch beyond employment and pensions, but also to exactly what services a social enterprise may wish to deliver and how it will deliver them. There may also be quite complex negotiations to be carried out with PCTs and commissioners over the contracted healthcare services to be delivered, requiring a great deal of expertise in contracting and involving a large expenditure on legal advice and consultancy.

- **How will it affect the services they deliver?**

Ultimately, the quality of a service such as healthcare depends upon the experiences and encounters patients and service users have with frontline staff. The need to win service contracts from Trusts in order to secure future funding may lead to an erosion in the number of staff, their terms and conditions and the resources available to those staff. This will directly impact upon the quality of service. Amicus believes the goodwill and commitment of staff to ensuring users receive good quality services should not be taken advantage of to pay low wages and reduce costs by lowering terms and conditions, and cutting training and resources. It is widely recognised that rewarded, motivated and valued staff are key aspects of delivering public services.

4 For names and locations of schemes, and the funding allocations, see the Department of Health press release. 'Social Enterprise schemes discover funding allocations', 4th April 2007, which can be viewed on the Government News Network, www.gnn.gov.uk

5 Healthy Business: A Guide to Social Enterprise in Health and Social Care, Social Enterprise Coalition and Hempsons Solicitors, March 2007, page 8 (our emphasis).

6 See Newchurch Consultants briefing paper, 'Healthy Social Enterprises', June 2006

7 A copy of the Amicus guide to TUPE - Transfer of Undertakings (Protection of Employment) Regulations 2006 can be downloaded from the Amicus website.