

Implementing the NHS Long Term Plan

GMB response to NHS England consultation



Introduction

- 1.1. GMB, the UK's general union, is pleased to have the opportunity to respond to NHS England's consultation on potential legislative changes to the Health and Social Care Act 2012.
- 1.2. GMB represents thousands of workers who deliver NHS services in direct NHS employment and in outsourced service areas. We are the largest union in ambulance services.
- 1.3. This response concentrates on the proposal to repeal Section 75 and associated regulations and replace them with an alternative 'Best Value' framework. The comments made here are additional to a response to the consultation questionnaire which GMB has already submitted.

Background

- 2.1 GMB has long campaigned against the outsourcing of NHS services. In our experience, whatever promises are made at the outset, outsourcing is detrimental to the interests of the NHS, patients, and the NHS workforce. The NHS should be the clear preferred provider of healthcare services.
- 2.2 It is well known that the wages and terms and conditions of outsourced workers tends to be seriously undermined over time. Contracting out has been associated with a number of high-profile contract failures. One example was the collapse of the Sussex patient transfer service contract after seven acrimonious months of service delivery failures, patient safety issues, and mismanagement of staff and contractors.¹ According to one academic study, the risk of MRSA

infection is 50 per cent higher in wards where cleaning services have been outsourced.²

2.3 GMB rejected the current three year pay offer which in our view was inadequate after nearly a decade of real-terms pay cuts, unduly complex, and contained unacceptable attacks on terms and conditions (particularly around unsocial hours working). Outsourced workers are not even entitled to Agenda for Change pay rates, which has driven down their standard of living at an even faster rate than that of directly employed NHS workers. It is vital that the two-tier workforce that has been enabled through outsourcing in the NHS is ended.

2.4 Section 75 of the Health and Social Care Act 2012, and its associated regulations, opened Pandora's box by vastly increasing the scope for privatisation of NHS services. Among other things, Section 75 makes it difficult for GP commissioners to avoid putting services out to tender, and it allows foundation-trust hospitals to generate up to half of their income from non-NHS work. Many of the leading private healthcare firms which stand to benefit from this legislation make widespread use of tax havens to minimise their UK tax liability.

2.5 We recognise that NHS England is not proposing to end outsourcing. However, the proposal to repeal Section 75 is a necessary and welcome step in the right direction. Thousands of people have signed GMB's petition in support of the proposal to remove Section 75.³

2.6 Support for ending Section 75 does not necessarily equate to support for the system that may replace it, and we believe that NHS England should provide further details in certain important areas. We ask that NHS England takes the following comments into account.

The 'Best Value' test

3.1 The consultation document does not set out what the 'Best Value' framework would look like in practice. This phrase has negative

connotations for many of our members, and we would prefer it if an alternative could be used (which might be 'Public Value'). Whatever name is used, it is vital that this proposed framework is subject to further scrutiny and consultation, including with the NHS trade unions.

3.2 If outsourcing is to continue, it is important that any Best Value assessment must include a significant weighting that relates to employment standards. Such a 'good employment' weighting should cover compliance with relevant national agreements (in this case, Agenda for Change) and non-use of zero hours contracts.⁴

3.3 The Best Value criteria must be set nationally. It would not be acceptable for NHS commissioners to vary the weightings on a local or regional basis, which would perpetuate the current inconsistent patchwork approach to employment standards within outsourced NHS services.

The decision to outsource

4.1 We are concerned that the consultation document does not appear to envisage a standardised decision-making process around the contracting out of services. It states that:

'To achieve best value commissioners should have discretion, subject to a best value test, as to when to seek interest from other potential healthcare providers, rather than arrange for NHS organisations to provide services.' (Paragraph 11)

4.2 Under a reformed model, it would not be acceptable for outsourcing decisions to be made without a clear and challengeable process which should be subject to clearly defined national criteria. These criteria should be widely consulted on before adoption, including with NHS trade unions.

4.3 To proceed with outsourcing without clear processes and criteria would leave the NHS out of step with wider public sector policy

developments, such as the recent adoption of ‘make or buy’ guidance for central government procurement.⁵

4.4 There is limited transparency around outsourcing decisions within the NHS, including in relation to its effects on wages, and terms and conditions. One useful measure (the reporting of facilities management outsourcing expenditure through the ERIC dataset) has been discontinued in recent years. To better inform decision making processes and the public debate, NHS England should collect workforce information for outsourcing providers on the same basis as NHS employers, and report on compliance with Agenda for Change.

Integration

5.1 We accept that a lack of integration between health and social care services continues to hold the NHS back. We support sensible measures to improve co-ordination of services, including through the commissioning process.

5.2 We note however that there is a growing disparity between employment conditions in the NHS and the care sector, including for directly comparable roles. For example, registered nurses’ average earnings are 9.4 per cent higher in the NHS than they are in the care sector.⁶

5.3 It is crucial that future integrated contracts seek to ‘level-up’ pay and terms and conditions. Agenda for Change must continue to apply to integrated healthcare contracts. NHS commissioners must not be party to widespread employment abuses in the care sector (including non-compliance with national minimum wage legislation). Savings achieved through an integrated model must be used, at least in part, to improve the pay and terms and conditions of care workers who are employed through integrated contracts.

Conclusion

6.1 GMB supports an end to the outsourcing of public services, as set out in our [GoPublic campaign](#).

6.2 Scrapping Section 75 is a step in the right direction, and to that end the proposal set out in NHS England's consultation has our support.

6.3 This support is conditional on the new 'Best Value' system being better for NHS workers being better than the regime it replaces. GMB has set out a number of sensible and achievable suggestions that would help achieve that goal.

6.4 New legislation is an opportunity to address other problems that require a statutory solution (such as safe staffing levels). NHS England should consult with NHS trade unions on the scope of new legislation.

Contacts

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Consultation contacts

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References

¹ GMB Southern Region, GMB call for new laws in protecting the NHS from private piracy, 13 April 2019 <https://www.gmb-southern.org.uk/news/gmb-call-for-new-laws-protect-nhs-private-piracy>

² University of Oxford, NHS hospitals that outsource cleaning 'linked with higher rates of MRSA, 20 December 2016 <http://www.ox.ac.uk/news/2016-12-20-nhs-hospitals-outsource-cleaning-%E2%80%98linked-higher-rates-mrsa%E2%80%99>

³ See link to GMB Union petition <https://www.gmb.org.uk/campaign/scrap-section-75>

⁴ For more information see Uni Europa, Selecting Best Value: A Guide for Private and Public Organisations Awarding Contracts for Cleaning Services, April 2017 http://www.cleaningbestvalue.eu/uploads/1/6/7/9/16796136/en_cleaningbestvalueguide.pdf

⁵ See Cabinet Office, The Outsourcing Playbook: Central Government Guidance on Outsourcing Decisions and Contracting, February 2019 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/780361/20190220_OutourcingPlaybook_6.5212.pdf (please note that endorsement should not be inferred from this reference)

⁶ According to the latest figures, on an FTE basis, nurses earn £32,174 in the NHS and £29,400 in the care sector (average gross earnings).

Figures taken from NHS Digital, NHS Staff Earnings Estimates – December 2018, and the Skills for Care National Minimum Dataset.