



briefing

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Harnessing the benefits of the independent sector: priorities for the next government

Key points

The following policy changes are needed to harness the benefits of the independent sector:

- ensure publication of comparative quality data to support choice
- abandon the preferred provider policy and require periodic competitive challenge
- create a level playing field
- put the NHS competition regime and the Cooperation and Competition Panel onto a statutory basis
- enforce full cost allocation and accounting in public sector providers
- establish proportionate, genuinely even-handed regulation
- build a new relationship with GPs
- simplify (standard) contracting arrangements
- promote and encourage the adoption of new technologies to provide advice and assistance to patients and consumers and to support new models of care.

NHS Partners Network (NHSPN) represents independent sector healthcare companies, both for-profit and not-for-profit, that provide healthcare services on behalf of the NHS. Within the framework of a pluralist, managed provider market, NHSPN members are proud of the contribution they make to the NHS and are wholly committed to the values and principles of the NHS Constitution.

This Briefing focuses on the key policy changes required to ensure that the independent sector can continue to deliver on these values and principles.

Background

In the context of the challenges now facing the NHS, the independent sector is uniquely placed to help develop innovative approaches to healthcare that drive quality and patient satisfaction up, increase productivity, and thus ensure that the unprecedented funding pressures on the NHS do not lead to a decline in the quality of care available in England.

For the independent sector to be able to continue to help the NHS achieve these goals, it is essential that the process of NHS market reform instituted in the second term

of the Blair government is revitalised. Doing so is crucial to the creation of a genuinely patient-centred NHS and equally vital to the goal of enabling clinicians to give of their best in all parts of the system. It is also essential that the rules under which the 'managed market' is run are such as to give long-term confidence to independent sector providers and above all to the investors who stand behind them, without whom the process of reform cannot be taken forward.

NHSPN has identified a programme of key changes in policy which are essential to revitalise the reform agenda in the way needed. These are set out below.

Ensure publication of comparative quality data to support choice

All main political parties are committed to improving consumer/patient information. The debate is not about the principle but about the means of delivery. The original NHS Choices website, although a step in the right direction, had a number of failings, many of which persist in the newer version. Policy Exchange has suggested that the site should be run by an independent organisation such as Which?. NHS traditionalists may argue for a single (carefully controlled) source in order to avoid confusing the public. The reality, however, is that in an age of almost unlimited information, the concept of a single 'approved' or 'official' source of patient information is already outdated. Multiple sources are inevitable and indeed desirable.

NHSPN's view is that encouraging multiple information providers is desirable, not least because different patients will wish to give different weightings to the various types of information. The 'information standard' programme – a kitemark scheme for independent patient information sources – needs to be rolled out further and promoted more widely to patients to ensure they utilise reputable sources of information.

It is also important that data collected by the Department of Health itself is made fully available, aggregated where necessary to avoid breaches of confidentiality. It is wrong that data collected by the government, at considerable expense to the providers, should be withheld from the public and from analysts and presenters who can help the public make sense of it.

The independent sector is already committed to a major step forward in publishing its own data relating to clinical outcomes, in addition to the extensive patient satisfaction data that is already available. The first published outputs from the sector's data benchmarking project will start to come on-stream from summer 2010 and will increase in volume and coverage thereafter. They will support clinicians with revalidation as well as greatly improving information available to the public.

Abandon the preferred provider policy and require periodic competitive challenge to ensure best value

The current government's preferred provider policy is fundamentally anti-competitive and as such is at odds

Key statistics and figures

The scale of the independent sector

- The number of patients now choosing to go to independent sector providers at the point of referral increased from 8,928 (2.3 per cent of Choose and Book referrals) to 26,733 (5.5 per cent) between April 2008 and September 2009.¹
- Primary care trusts spent £71.2 billion on commissioned healthcare in 2007/8; less than 5 per cent (£3.4 billion) of this was spent on commissioning care from the independent sector.²
- Only 3.6 per cent of elective surgeries are publicly financed and privately supplied.³

The benefits delivered by the independent sector

- 96 per cent of patients taking part in independent sector treatment centre (ISTC) surveys rate their care as 'excellent' or 'very good', whilst the corresponding figure in NHS hospitals is 78 per cent.⁴
- 92 per cent of patients rate their room and ward in the ISTC as 'very clean'.⁴ MRSA is only in 0–0.04 per cent of ISTC patients, whereas it is in 0.06 per cent of NHS patients.⁵
- The Healthcare Commission found length of stay and rates of readmission to hospital to be consistently and significantly lower in ISTCs than the national average.⁵
- NHS productivity declined by 4 per cent between 1997 and 2007, whereas average private sector productivity increased by 23 per cent in the same period.⁵

with wider government procurement policies. It also places commissioners in considerable difficulties given their obligation to secure the best value for money – essentially the best combination of quality and price.

The principle of value for money should be the overriding one guiding all NHS commissioners. It should be followed regardless of which sector potential providers come from. Any willing provider who meets NHS standards should be eligible, on a non-discriminatory basis, to offer services. It is also important that the next government clarifies what constitutes 'NHS standards'. These need to be the requirements set out by the Care Quality Commission (CQC), not variants or additions devised by primary care trusts, strategic health authorities, an NHS board or the Department of Health.

The next government should immediately make clear that commissioners should not discriminate between different types of provider, under any circumstances, but should be guided by their overriding duty to commission on the basis of value for money. This would immediately send powerful signals back into the NHS system and the marketplace. The next government will need to make clear that this applies to primary care and community services as well as to the acute and elective sector.

Even more compelling would be a commitment that, over appropriate periods of time, all NHS services should be exposed to competitive challenge so as to ensure that opportunities for maximising value and embracing innovation are not overlooked. In the next phase of market development there will inevitably, however, be some services for which competitive challenge is not realistic because

'The independent sector has to operate with a cost disadvantage of around 14 per cent relative to public sector providers'⁶

the provider market is still under-developed. This should be objectively recognised and reflected in practice, but not abused or used as an excuse for restricting the use of competition. There will be circumstances when taking a broader view of alternative ways in which services can be provided may well result in there being a wider pool of potential providers than is at first apparent. Commissioners need to be more aware that the surest way of demonstrating they have secured best value is by using open, non-discriminatory tendering processes wherever practical.

Create a level playing field for healthcare providers

With increasing pressure on tariff, and the likelihood of some form of renewed price competition in the future, resolving the major outstanding level playing field issues is a strategic necessity if independent sector and investor participation in the NHS is to be sustainable. Independent economic analysis has established that the independent sector currently has to operate with a cost disadvantage of around 14 per cent relative to public sector providers.⁶ The largest element of the un-level playing field (roughly half of the total) is the pensions imbalance created by the NHS pension scheme. Unless this aspect of the playing field is levelled it is likely that over time the pitch will become unplayable for the independent sector.

It needs to be clearly understood, however, that this does not entail any higher costs for the taxpayer. The problems arise because a substantial part of the pension costs are carried by central government not by NHS provider organisations themselves. This puts the public sector at a competitive advantage over the independent sector, but the taxpayer ultimately still has to foot the whole bill.

The current government may agree arrangements for pension 'portability' with the trade unions, thus helping with inequalities and workforce flexibility issues. However, doing this will not wholly resolve the problem as it will still leave independent sector providers at the same disadvantage in competitive tendering situations. To deal with this it will be necessary to ensure that public sector bidders are assessed on the basis of their full cost to the taxpayer. This might be done either by increasing the percentage of their pension costs which they have to bear directly (which has been done before) or by applying a 'shadow' weighting factor which forces commissioners into making a truer comparison when assessing bids.

Put the NHS competition regime and the Cooperation and Competition Panel onto a statutory basis

There has been scepticism from a number of quarters about the powers and effectiveness of the Cooperation and Competition Panel (CCP). It has been pointed out that the CCP has no statutory powers or legal teeth and can only make recommendations, and in recent months it has become clear that its rules can be rewritten by its sponsors.

The CCP needs to have teeth and become independent of political

influence. A firmly established regime for managed competition, sustainable but also capable of evolution over time, has emerged as one of the vital reforms needed if investors are to be persuaded to return to the UK NHS market after the events of the past two years. Without this clear assurance of the ‘rule of law’, the UK will inevitably miss out on hugely valuable investment, which will instead be channelled to more favourable health economies.

There are a number of options for putting the CCP onto a more secure footing. These include:

- combining it with a statutorily established economic regulator
- giving it statutory independence
- rolling it into the Office of Fair Trading (OFT).

Any of these would be satisfactory, although the first option, which would probably entail a development of the role of Monitor, would need to avoid the conflict of interest that would arise from Monitor’s sponsorship role for foundation trusts.

Enforce full cost allocation and accounting in public sector providers

One of the biggest inhibitors of a fair comparison between potential providers and of the effective use of NHS outsourcing is the weakness within the NHS itself of internal accounting and cost allocation. This of course links closely to the level playing field issue but is important in its own right as it could greatly help the case for outsourcing and for adopting different delivery models. It is also an indispensable step towards increasing efficiency

and productivity within the NHS – something that must be a high priority for the next government.

Establish proportionate, genuinely even-handed regulation

The CQC has not yet started to address the independent sector and is not planning to do so until the autumn. The next government must ensure when doing so that it applies the same standards and the same degree of proportionality to all types of provider. This needs to be achieved through a levelling up, not down, of requirements, even if the consequences for parts of the NHS and in terms of handling public opinion are difficult.

For all sectors an urgent review of what really needs to be regulated, and removal of the many overlapping and duplicate forms of regulation, is vital. The case for this has been well documented. Without this review, the system will increasingly be perceived as ineffective, wasteful and bureaucratic.⁷

Build a new relationship with GPs

GPs are the lynchpins of the whole NHS system, and it is important to recognise this and work constructively with the GP community. There are, however, a number of major problems for which solutions are still needed.

First, many GPs will face an increasing conflict of interests involving their duty to their patients, their duty to the system (as gatekeepers and potentially commissioners) and their commercial interests as independent

‘There will need to be a new GP contract which incentivises change and high performance’

sector partnerships or small businesses. Inherent in the GP model is a perpetuation at primary care level of commissioner-provider integration, rather than the split which is generally seen as beneficial for healthcare systems.

Second, those GP practices that scale up to carry out broader commissioning functions will almost inevitably become more dominant in their local markets, thus reducing patient choice, making market entry more difficult and further reinforcing the advantages they already have in the marketplace.

Third, the various forms of GP contract mean that many GPs operate under arrangements which do not incentivise them to drive change and which create obstacles to innovation. There will need to be a new GP contract which incentivises change and high performance, with corresponding measures of quality, thus recognising that the structure of primary care needs to move with the times, along with the rest of NHS provision.

These are aspects of the level playing field that have so far received little attention. However, GP practices, as private sector businesses, are already subject to OFT jurisdiction. The OFT should look into the changing nature of the GP market and consider what changes might be appropriate to avoid excessive market dominance and reduce barriers to entry.

'The next government should facilitate the 'any willing provider' model in all sectors, reducing transaction costs and encouraging innovation'

Simplify (standard) contracting arrangements

It is a characteristic of the contracts in the NHS standard contracts suite that they start from a one-size-fits-all mindset, aimed at securing standardisation of the way in which the NHS delivers its various services. But as NHSPN and the third sector have consistently argued, there is a need for simpler, more proportionate contracts for services that genuinely differ from the core (essentially public sector) NHS circumstances. Current problems include:

- disproportionate requirements which deter smaller providers and new entrants, including specialist and not-for-profit organisations
- models which tend to perpetuate historic delivery patterns rather than encourage innovation
- change of control provisions which do not make sense in the private sector marketplace
- failure to adequately recognise the position of national providers operating across multiple primary care trusts and strategic health authorities
- an incoherent approach to the new additional Commissioning for Quality and Innovation (CQUIN) and quality accounting aspects

- undeliverable insurance requirements (in the absence of the Clinical Negligence Scheme for Trusts).

The next government should immediately order a review of the contracting mechanisms in the interests of facilitating the 'any willing provider' model in all sectors, reducing transaction costs and encouraging the greater innovation that the NHS will need in the next few years.

Promote and encourage the adoption of new technologies to provide advice and assistance to patients and consumers and to support new models of care

The use and development of new information technologies not just to support but to deliver healthcare services is only in its infancy, yet potentially it offers a multitude of opportunities. There are a few examples of innovation in the UK – mostly run by the independent sector – but there remains deep suspicion of the approach, partly because of the threat it brings to incumbents, but also because of concerns about the risks and the quality of services.

However, the risks of not actively encouraging (and managing) this area of innovation are far greater, as it is in the nature of the internet in particular that information and services develop regardless of governmental views. Better, therefore, to have a strategy for establishing appropriate standards and safeguards.

In addition, the reality of increased financial pressure on the NHS means that it is even more important that individuals play an active role in managing their health and well-being, and adopt healthy behaviours that reduce their risk of developing long-term conditions. Effective management of the financial challenge of the next few years will not be enough. The financial challenge is in fact a demand challenge, one that government shares with the population of the UK, and each needs to play their part in helping reduce demands on the NHS. An important part of encouraging this change will be harnessing the value of new communication channels and new technologies that can catalyse action within the general population, across public and private sectors.

This is an area in which the private sector – encompassing businesses well outside the normal healthcare providers – ought to be able to move faster and more creatively. The next government should immediately move to establish collaborative work to study the options and the opportunities.

NHS Partners Network viewpoint

NHSPN members are proud of their contribution to the NHS and it is evident that their involvement in healthcare delivery has brought significant benefits both for patients and taxpayers. To ensure that these benefits continue to be harnessed a number of policy changes are required to encourage independent investment and fully embed the independent sector

within the NHS. A supporting paper to this *Briefing* is in preparation, drawing together examples –

clinical and economic – of what the independent sector has already shown it can deliver.

For more information on the issues covered in this *Briefing*, please contact abigail.stapleton@nhsconfed.org

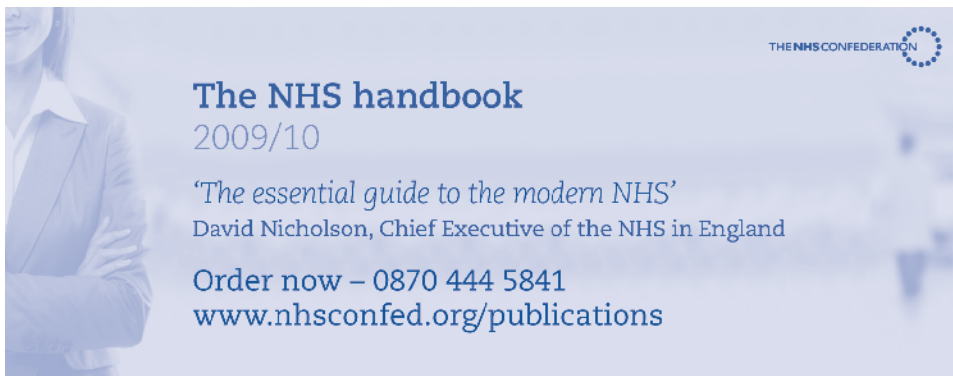
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NHS Partners Network

NHS Partners Network (NHSPN) was established in 2005 and incorporated into the NHS Confederation in June 2007. NHSPN is an alliance of independent (commercial and not-for-profit) healthcare providers involved in all aspects of NHS care at primary, secondary or acute level, including diagnostic and specialist treatment centres. We aim to help independent sector providers become a fully accepted part of a mixed economy NHS that seeks to offer greater patient choice and value for money for patients and taxpayers.

The NHS Confederation is the only independent membership body for the full range of organisations that make up today's NHS. Its ambition is a health system that delivers first-class services and improved health for all. As the national voice for NHS leadership, the NHS Confederation meets the collective needs of the whole NHS as well as the distinct needs of all of its parts through its family of networks and forums. NHS Partners Network is one of these.



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