What lies behind the latest push by NHS England for NHS SubCos?

Introduction

Before the Covid pandemic, a significant number of NHS Foundation Trusts (FTs) and, to a lesser extent NHS Trusts,[1] [2] set up wholly owned subsidiary companies (SubCos). This was primarily to save money or generate income in the face of chronic NHS underfunding. It meant that a range of in-house support services, associated staff and assets were transferred from Trusts to SubCos which, as private companies, could cut costs by introducing non-NHS pay, terms and conditions for new staff, and by using a tax loophole allowing refunds of Value Added Tax (VAT).

By November of 2018 the number of SubCos set up by FTs was at least 65, the number of staff employed by a SubCo varied from 6 to over 2,000 and the range of services transferred expanded rapidly and included, for example, cleaning, portering, estates management, capital planning (e.g. for new buildings); project management; pharmacy, procurement, sterile services; and medical physics.

The use of SubCos declined somewhat after 2018 following the introduction of new, tighter approval processes from NHS Improvement and extra demands on the NHS during the Covid pandemic. But now, in the face of huge financial pressures, Jim Mackey, NHS England's transitional Chief Executive Officer (CEO), has told Trusts that they should *normally* be transferring support staff to wholly-owned subsidiary companies (or expanding the scope of existing subsidiaries) to cut costs. He's encouraging this by updating (i.e. relaxing) the SubCo approval process "to reduce the burden on providers".

This time, however, Mackey says that new SubCos should offer *all* employees NHS terms and conditions, including access to the NHS Pension Scheme (so in theory removing a significant way of cutting costs). Savings should come instead from other routes, such as reduced VAT. This is puzzling as, from at least 2020, NHS Improvement warned that SubCos should not be set up to save VAT as this could look suspiciously like tax evasion. Instead, any VAT savings should be merely the coincidental by-product of a SubCo. On top of which it now seems that the Treasury is considering different VAT arrangements and it's thought that these could leave SubCos financially worse off.

We are not suggesting that SubCos should find other ways of making savings: we are strongly against the creation of these subsidiaries. Rather, Mackey's intervention begs the question that if the main ways that SubCos have cut costs has been through tax evasion and the creation of a two-tier workforce and these avenues may be closed, how does MacKey expect costs to be reduced? *Or is cost reduction really the main motive here?*

The question of staff

SubCos have serious implications for the NHS, its staff and ultimately its patients, not least by offering different terms and conditions for SubCo employees, depending on whether they are moved from the NHS or are 'new starters' directly employed by the SubCo. New starters, at least until now, have been put on less generous pay, terms and conditions than staff transferred from the NHS who are employed on Agenda for Change (AfC) terms. NHS staff due to be moved to a SubCo are usually told that their AfC terms will be protected under TUPE (Transfer of Undertakings [Protection of Employment] Regulations), but this assurance is only valid at the point of transfer. TUPE does not provide any guarantee of the same terms over time, or of long term job security. Staff can however remain in the NHS Pension Scheme.

Access to the NHS Pension Scheme has not been an option for new starters, who've usually been enrolled into alternatives, such as the government's NEST pension plan, that offer fewer benefits. For instance, SubCos employers' contributions to NEST is around 3% pa of each individual's pay, compared to NHS employers' contributions of 23.7% at current rates. Mackey's suggestion that 'new starters'

[1] For the sake of simplicity, we refer to NHS Foundation Trusts as FTs, non-Foundation Trusts as NHS Trusts, and use 'Trusts' to cover both types.

[2] NHS Trusts are more restricted than FTs and can only set up SubCos to generate income by marketing goods and services outside the NHS.

should be admitted to the NHS pension scheme would therefore mean huge new costs for SubCos. Not surprisingly, although the Department of Health and Social Care confirmed that, from 2019, new starters could join the NHS Pension Scheme, there has been little sign of this happening until now: research in 2023 showed that, of 18 Trusts applying for SubCo approval, only two offered new starters AfC pay, terms and conditions or allowed them access to the NHS Pension Scheme.

Mackey has said that it's wrong to use SubCos "to extract benefits for Trusts through the terms and conditions of poorly paid staff". But he must be aware that he cannot insist on all staff being employed on AfC terms and conditions: NHSE has no legal power to prevent FTs from establishing a subsidiary and "in consequence also cannot mandate attendant requirements". Perhaps Mackey's announcement is less to do with any twinge of conscience and more about issuing a smoke screen to discourage unions from taking action that either delays or prevents the creation or expansion of SubCos. In the past, resistance to SubCos has had considerable success: for example, proposals by both Frimley Health NHS Trust and North Bristol NHS Trust have been successfully opposed and there is now a wealth of campaigning experience to draw on. As UNISON has been quick to say of Mackey's proposals, "Any trust thinking of offloading its staff [onto a SubCo] will quickly realise its workforce is determined to stay within the NHS."

The question of VAT

Originally, NHS Trusts were able, indeed encouraged, to use SubCos to save on VAT. Rules allow VAT to be fully recoverable by health bodies where services are provided to them from outside the NHS (as opposed to being delivered in-house). What is essentially a tax loophole has been described as perverse because "NHS bodies are spending energy reducing VAT payments when HMRC itself has stated that the cost will come out of public expenditure".

More recently, in order to avoid the suggestion of tax avoidance, Department of Health and Social Care (DHSC) guidance has stated that plans for SubCos must show "a clear commercial strategy for the proposals which is independent of VAT treatment," a stance reiterated in a letter from NHS Improvement to Parliament's Public Accounts Committee that explicitly warned against tax avoidance arrangements under any circumstances. Despite this warning, VAT savings have remained a significant reason for creating a SubCo but they have been discretely downplayed in any business case.

Now however the Treasury is consulting on replacing current arrangements for VAT with a different, 'financially neutral' model. There is no firm outcome as yet but, according to the Healthcare Financial Management Association,,Trusts with subsidiaries that "efficiently manage their VAT position" are likely to be worse off under these arrangements.

So why are NHS SubCos being encouraged now?

If savings are less likely in future to come from reduced VAT payments or the exploitation of staff, why are new SubCos being encouraged?

Weakening union opposition

We have already suggested that, regardless of initial assurances, Mackey's statement may be an attempt to misdirect unions – i.e. that employment in a SubCo is no different to employment in the NHS. And yet once staff are transferred to a SubCo, they are employed by a private company, not the NHS. Having different employers makes it difficult, if not illegal, for SubCo employees to call on staff from the parent trust for support in any industrial action. Plus if more and more SubCos are created, with each able to determine their own terms and conditions, this will leave staff in SubCos more and more isolated.

The disposal of assets

In addition to taking over in-house support services and staff, SubCos allow publicly owned assets, such as buildings, plant and equipment, to be transferred out of the NHS. A SubCo's Board is usually different in composition to that of its parent trust, with members often chosen from the private sector to ensure a commercial ethos. This is particularly significant given that SubCos can both manage and dispose of transferred assets, a real concern given the pressure on Trusts to sell off so-called 'surplus'

land and buildings following the Naylor Review and because of the huge financial difficulties they currently experience.

For example, the political economist Richard Murphy has expressed concern about SubCos' ability to dispose of assets having looked at the Northumberland, Tyne and Wear NHS FT's plans for its SubCo, *NW Solutions*. The FT transferred six of its hospitals plus 14 other sites jointly valued at £4.8 million to *NW Solutions*. Murphy found that the financial models of the FT's business case only made sense if the true motive behind the plans was for the eventual sale of the buildings, and the service contracts associated with them, to commercial third parties.

Private investment

Besides the ability to dispose of NHS assets, consultancy firms such as Grant Thornton suggest that SubCos also provide a means of accessing funding, equity, borrowing and other external investment, while allowing a parent trust to be isolated from any financial risk.

The financial model underpinning the creation of a SubCo is complex but, at least in some cases, is based on the SubCo issuing shares that are bought by the trust. The trust then loans the SubCo funds to buy or lease assets such as buildings or equipment from the trust, in order to provide the trust with services. This loan is repaid over an agreed period at a commercial rate of interest. The trust pays a service charge for the use of the buildings and equipment it has leased (or sold) to the SubCo, plus a unitary payment for the provision of services (again at commercial rates). Any surplus profits are paid to the trust.

In the case of Northumberland, Tyne and Wear NHS FT, for example, their annual report for 2018/19 showed the value of its SubCo's shares alone stood at £12,516,000. This type of arrangement raises questions about where the funding comes from, or what form it takes.

Significantly, Magrath Consulting advises that the "deal between a trust and SubCo needs to mimic a PFI [Private Finance Initiative] deal,[3] but with the private partner being a wholly owned subsidiary rather than a third party company". Traditionally, PFI has been used by the public sector to finance public projects, like a new hospital, because capital investment was unavailable from government. At the centre of a PFI deal is a consortium of financiers, builders and service contractors that raises the necessary capital by issuing shares and borrowing. The consortium, known as a Special Purchase Vehicle (SPV) is then awarded a contract to design and build the project and operate the supporting facilities.

An SPV is a shell company that may be set up to raise finance or hide debt: its assets, liabilities and equity are only recorded on the SPV's balance sheet, and not on that of the parent company. SPVs are used in venture capitalism, typically to make a single investment into a business. They have more operational freedom because they aren't burdened with as many regulations as the parent company. SPVs may have legitimate uses but they have also played a role in several financial and accounting scandals.

The business plans of some Trusts have gone so far to describe SubCos as SPVs.[4] Notably, both SubCos and SPVs are separate financial entities created for a specific objective, and both isolate risk. Both involve the creation of a single long-term contract that bundles together various commitments such as service charges, and levels of service provision and both fragment the control of public provision between the public sector and private companies.

As NHSE itself has noted, especially where whole-site hospitals have been transferred into a subsidiary, there's the potential for finance to be raised against a SubCo's assets, ultimately risking their transfer to a third party. Consultancy corporation Grant Thornton also flags up that Trusts may come under

[3] A PFI (Private Finance Initiative) is a contract between a public body and a private company, in which the private sector makes a capital investment in the assets required to deliver services.

[4] For example, see the Business Case for Airedale NHS FT.
https://bradford.moderngov.co.uk/documents/s19600/Hlt22MarDocAGapp.pdf

pressure to sell their shares in a SubCo, especially where a Trust is in deficit and the SubCo has high value assets. It also suggests that one of the benefits of SubCos is the potential to achieve a capital gain at sale.

This is a major concern as research[5] suggests that Trusts may have few safeguards in place to protect their subsidiaries from being sold. Responses to FOI requests show, for example, that a decision to sell could simply rest on a vote by a Trust's Board of Governors or by the Trust Board. Even more remarkably perhaps, in the case of Salisbury NHS FT, its SubCo's Articles of Association stated that shares were under the control of *the SubCo's* directors who could dispose of shares "as they [saw] fit".

Conclusion

The creation of SubCos has long been seen as a 'back door' way of privatising the NHS and fragmenting its workforce. What is new is Mackey's direction to Trusts to set up SubCos in order to cut costs while ostensibly arguing against one of the main ways of doing this (the two-tier workforce), and proposing the alternative of tax avoidance. This plan makes no sense, raising questions about what is really driving the latest push for SubCos.

We know that there are growing financial pressures on the NHS, and that the government is eager to work 'in partnership' with the private sector to secure investment for infrastructure. In this context, among the possible motives for creating new SubCos are the opportunities they provide for disposing of assets that have been transferred from the NHS, or because of the access to funding, equity, borrowing and other external investment that SubCos provide. While continuing to support staff facing transfer to a SubCo or unfair pay, terms and conditions, we also need to look at what is happening behind the scenes.

Suggested actions

- If you work for a Trust that is considering setting up a SubCo, make sure you belong to a union, preferably the one that is most active within the Trust.
- Find out what local trades unions know about the SubCo, what action they are taking and what support they want.
- Find out what local campaign groups are doing and how to become involved – or set up a local group if there isn't one already.
- If not already in the public domain, request the Trust's Business Case and Impact Assessment for the SubCo to find out, for example, which assets are to be transferred and what guarantees will be in place to stop the SubCo or its assets from being sold.
- If proposals suggest a two-tier workforce, demand to see the SubCo's Equalities Policy and how it addresses the issue of different payment for the same work.
- If the trust is reluctant to provide information, send a Freedom of Information request (go to the Trust's website and find its page giving information on who to write to).
- Hold a public meeting to spread information and gain support. Make sure you get local press coverage.
- Write to local and national media about your concerns.
- Write to your local MP or visit them in their surgery.

Useful resources

- The forthcoming photographic exhibition "*How come we didn't know about NHS SubCos*" will available for borrowing (without charge) to show in your local library, union branch, community centre or at a public meeting. Contact nhssubcos@gmail.com for more details. For the in-depth report informing the exhibition, see here.
- Unison have provided a useful 'bargaining guide' with information on how to challenge SubCo employment plans, questions to ask, and how to organise to win.

[5] Research carried out for *How come we didn't know about NHS SubCOs? A photographic exhibition on the growing use of NHS-owned private companies. This study looked, e.g., at* Trust Board minutes, FOIs, and Trust business cases of 19 NHS Trusts and NHS Foundation Trusts (FTs) that were either planning a SubCo, or had paused or abandoned plans for a subsidiary. See 'Resources' for more details.

- Unison have also produced "SubCos – a briefing on NHSE guidance' (March 2025) with, e.g. useful details of the key criteria that Trusts must satisfy on which they might be challenged.
- For more in-depth information from research into 19 proposed, rejected or existing SubCos, see https://keepournhspublic.com/wp-content/uploads/2025/05/How-come-we-didnt-know-about-NHS-SubCos2.pdf