

NHS CHECK
OLDHAM

REPORT 2

PRIVATISATION IN THE NHS

DEBBIE ABRAHAMS MP

June 2014

Acknowledgements

I would like to pay tribute to Brenda Rustidge for sharing her experience of life before and since the creation of the NHS in 1948.

Contents

Acknowledgements.....	2
Contents.....	3
1. Introduction	4
2. National Context	5
3. International Context.....	7
4. Local Situation.....	8
5. National Examples	10
6. The effects of privatisation on health and healthcare	12
7. My NHS Listening Event	13
8. The Labour Alternative	14

1. Introduction

1.1 Welcome to my second NHS Check Oldham Report, part of a regular series of reports that examine how national policies from the coalition Government are affecting local health and care services in Oldham East and Saddleworth. I committed to produce these reports as one of my top ten priorities for Oldham East and Saddleworth following your survey responses about the NHS and care services. These reports are informed by national and local statistics as well as data from other sources, such as patient experiences and Freedom of Information requests.

1.2 My second report is focusing on increasing levels of private health sector involvement in the NHS; this includes private healthcare companies both providing NHS health services and being involved in the commissioning and management of these services. It's now just over a year since the coalition Government's reorganisation of health services was implemented; a reorganisation that has wasted £3 billion¹. Within the constraints and cloak of 'commercial confidentiality', this report reveals how the Health and Social Care Act 2012 is forcing the NHS to put services out for tender and looks at the impact this is having on our local health care Trusts.

¹ <http://www.telegraph.co.uk/health/healthnews/7894203/NHS-reforms-will-cost-3bn-and-will-not-work-academic.html>

2. National Context

2.1 In 2012, David Cameron and the coalition Government passed the Health and Social Care Act in Parliament, an Act that reorganised the NHS from the top-down; in spite of no mention of this in the Coalition Agreement or in the Conservative or Liberal Democrats 2010 manifestos. The reorganisation cost over £3 billion, money that could have been spent on frontline services.

2.2. The section 75 regulations relating to the Health and Social Care Act in effect mean that local commissioners are forced to put services out to tender once the current contract expires, even if the service is performing well. In February 2013² the Government tried to convince the public that local Clinical Commissioning Groups (CCGs) would not be required to put all health services out to tender; however that is exactly what they have had to do. If contracts are not opened to the market then CCGs and their Commissioning Support Units (CSUs) feared the prospect of costly legal action from the private sector.

2.3 The Government has moved from a system of 'NHS Preferred Provider' to a system of 'Any Qualified Provider'; an initiative designed to open up NHS services to competitive tender. Even before the Health and Social Care Act was passed, the Government told Primary Care Trusts (the precursors to CCGs) to select three areas of work to be moved to the Any Qualified Provider tendering process; effectively they were forced to let private firms, not just the NHS, bid for contracts.

2.4 Bidding for contracts can be a huge undertaking. Complex tender documents can run to hundreds of pages; effectively limiting the types of organisations that can complete applications. Many local charities, small organisations and even NHS organisations simply do not have the resources.

2.5 An initial Freedom of Information request to CCGs found that the NHS spent at least £5 million³ on external competition lawyers in the six months following their establishment in April 2013. The full amount is likely to be a lot higher. The £5 million spent on lawyers would be enough to pay for over 100 A&E nurses. Work is currently underway to try and quantify the amount spent in the first full year of CCGs, though this will rely on responses to Freedom of Information requests as the data is not routinely collected.

2.6 The NHS Support Federation campaign group claimed in January this year that almost 70% of contracts for NHS services in England between April-December 2013 were won by private firms.⁴ The Federation states that clinical contracts worth a total of £5 billion were advertised in the time period, and, of those, contracts worth £510 million were actually awarded with £450 million worth awarded to non-NHS suppliers. The figures are from an analysis by the Federation of competitive tender notices on the European public procurement website.

² <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130227/debtext/130227-0001.htm#13022775001147>

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130306/debtext/130306-0001.htm#13030658000886>

³ <http://www.mirror.co.uk/news/uk-news/doctors-fork-out-5million-fight-2971561>

⁴ <http://www.bbc.co.uk/news/health-25660555>

2.7 In November 2013 at the Health Select Committee, the outgoing NHS England Chief Executive, Sir David Nicholson, highlighted the cost and frustration caused by increased competition law in the NHS. Commenting on the new rules he said, “I think we’ve got a problem, which may need legislative change... we are getting bogged down in a morass of competition law... causing significant cost in the system and great frustration for people in the service about making change happen. In which case, to make integration happen we will need to change it [the law].”

3. International Context

3.1 Following the EU-US summit in November 2011, the Transatlantic Economic Council established a high-level working group on jobs and growth. The group published its final report in February 2013 and recommended that “a comprehensive agreement that addresses a broad range of bilateral trade and investment issues...would provide the most significant mutual benefit.”

3.2 The European Commission (EC) and US Government announced that they had agreed to initiate negotiations for a free trade agreement called the Transatlantic Trade and Investment Partnership (TTIP). The EC and US Government have said that the main aims of the TTIP are:

- Increase trade between the US and EU;
- Reduce tariff barriers;
- Align regulations and standards;
- Improve protection for overseas investors through Investor-State Dispute Settlement; and
- Increase access to services and government procurement markets by foreign providers.

3.3 I have been working on securing an exemption from TTIP for the NHS. There are very real concerns that if the NHS is included in the agreement as it stands, any future Government will be unable to effectively repeal the privatisation and competition elements of the Government’s Health and Social Care Act. The Canadian Government exempted their own health service in a recent trade agreement with the US so there is a strong precedent for such an exemption.

3.4 I raised this issue with the Prime Minister in June 2013⁵ asking to him to ensure the NHS is exempt from the agreement and have subsequently been in correspondence with him, the Department of Health and the Department for Business, Innovation and Skills. In December I quizzed the Minister for Europe on an exemption⁶, following contradictory written responses from different Government departments. In February this year, I again spoke during a debate on TTIP⁷ calling for an exemption. I have also met with colleagues in the Shadow FCO Team as well as leading academics on the negotiations. I am delighted that it is now Labour policy that the NHS should be exempt from TTIP. My colleague Andy Burnham MP, the Shadow Health Secretary, visited Brussels earlier this year to make the case for an exemption for the NHS with the EC’s negotiators and commissioners.

⁵ <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130619/debtext/130619-0002.htm#13061976001291>

⁶ <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131203/debtext/131203-0001.htm#13120348000338>

⁷ <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140225/debtext/140225-0002.htm#14022578000440>

4. Local Situation

4.1 Obtaining accurate and complete data on services being put out to tender by the myriad healthcare organisations serving Oldham East and Saddleworth is extremely difficult, as there is no centralised data collection system. In addition, many organisations cite commercial confidentiality as a reason for not providing full details of contract values or terms and conditions.

4.2 Freedom of Information requests have recently been submitted to all Heath Trusts asking about the costs to the NHS of assessing and bidding for NHS tenders.

4.3 **Pennine Care NHS Foundation Trust** in its response stated⁸:

“Over the last few months the Trust has seen a distinct rise in the number of services being put out to public procurement by both its NHS and Local Authority commissioners.

“The level of manpower required to respond to such tenders is often commensurate to the size of the service being procured, however a number of these can be considerable in size (£20+ million per annum) and the workforce input into these projects is considerable and can span up to six months and beyond.

“As a Trust we don't routinely isolate the costs by tender but we are working to identify the costs recently incurred across a number of departments in support on a £60m community services procurement and we should have that information soon. It is estimated that this would be well in excess of £100k. In addition staff ended up working prolonged hours during the week and often working weekends also to ensure that the day to day business was not affected during this process. This should also be taken into consideration with the unquantifiable element of staff being constantly aware that the outcome of the entire process may well be a move to a new provider, often outside of the NHS.

“There are further costs faced (again, currently not quantified) when the tender is either won or lost throughout the transition and implementation stages, which again can last a number of months.”

4.4 **Pennine Acute Hospitals NHS Trust** which runs the Royal Oldham Hospital, stated that one member of staff currently spends approximately 40% of their current post dealing with NHS tenders and that additional support is received on an ad hoc basis from various staff grades, the costs of which it is not possible to calculate⁹. In addition, the Trust estimates external advice, including legal advice, will cost approximately £20,000 for financial year 2013/14. Interestingly, the Trust did not spend anything on external advice in financial years 2011/12 or 2012/13.

4.5 **Oldham CCG** was also asked about its costs for putting services out to tender and stated that in 2013/14 to date it had spent £67,261 on external advice, including legal costs and estimated the final year's bill to be £92,948.¹⁰

⁸ Fol response 20/02/2014

⁹ Fol response 12/02/2014

¹⁰ Fol response 12/03/2014

4.6 The Board of Directors of **Pennine Acute NHS Trust** earlier this year were considering proposals to outsource key payroll, pensions and human resource functions to private sector companies based outside of the North West. UNISON North West organised a petition¹¹ calling on the Trust to ensure that all NHS services and functions at Pennine Acute continue to be provided by NHS public sector staff and organisations. I fully supported the aims of the UNISON campaign and was delighted that earlier this month an alternative option to keep these services in house was approved by the board, saving 24 local jobs. How much extra though did this process cost?

4.7 It is extremely concerning to see the effect of the Health and Social Care Act on our local healthcare services. Our NHS Trusts should not have to spend scarce funds on competition lawyers and tendering experts in order to provide services that were previously covered under NHS Preferred Provider and were high quality, producing excellent patient outcomes. The more services that are put out to competitive tender, and Pennine Care's response clearly states there has been a distinct increase in services put out to tender, the harder it will be to reverse the damaging effects of the Health and Social Care Act and I have real concerns that capacity in the NHS may be lost that will be extremely difficult to reinstate.

¹¹ http://www.unisonpennine.org.uk/media/pdf/PA_OutsourcingPetition.pdf

5. National Examples

5.1 During the passage of the Health and Social Care Bill a single example, that exemplified the new arrangements, gained media attention. A group of GPs in **Hackney**, London, offered to run out-of-hours services for their area. Yet they were turned down by commissioning authorities who said they could not be considered unless they were prepared to join a competitive tendering process at an estimated cost of £50,000. The Government's 'GP's in control' mantra failed to materialise.

5.2 In September 2013 the **Cambridgeshire and Peterborough** CCG announced¹² the ten groups being invited to submit bids for an Older People's Services contract worth nearly £1 billion. Of the invited bidders, only three were wholly NHS Foundation Trusts. In March 2014 the CCG announced the four shortlisted bidders, of which three wholly or partly comprised profit making companies.¹³ Local campaigners are pressing for local healthcare leaders to ensure that they do not put cost before quality.

5.3 A contract worth £687 million over 10 years for the design and provision of cancer services in the **East Midlands** was recently advertised on the Supply 2 Health website and reported in the British Medical Journal¹⁴. Should a private provider secure the contract any surplus funds will of course go to shareholders rather than being ploughed back into NHS services. In addition, the unusual length of the contract (NHS contracts are usually for 3-5 years) means reversing contracting out of services will be much harder.

5.4 Another contract in the early stages of being put out to tender is in **Stoke and Staffordshire** for cancer and end of life care. The contract is worth £1.2 billion and again is offered for 10 years. The contract amounts to 5% of Staffordshire's total NHS budget and questions need to be asked about which organisations have the capacity to submit a tender.

5.5 Recent research undertaken by the Health Services Journal has shown that GP led CCGs are being **forced to put health services out to tender** despite Government assurances that would not happen. The research showed that 29.1% of the leaders of 93 CCGs which responded to a survey said they had opened up or were opening up services to competition which they would not have done if they were not concerned about the impact of new rules in the Health and Social Care Act.¹⁵ The survey also found that 20% of CCGs had encountered formal challenges under the new competition rules to a decision they had taken about the commissioning of services, and 57% had experienced "informal challenge or questioning".

¹² <http://www.cambridgeshireandpeterboroughccg.nhs.uk/News/next-stage-of-integrated-Older-Peoples-services-procurement.htm>

¹³ <http://www.cambridge-news.co.uk/Health/Health-news/Cambridgeshire-healthcare-commissioners-announce-final-four-contenders-for-countys-elderly-care-contract-amid-warnings-of-predatory-bids-20140308064439.htm>

¹⁴ <http://blogs.bmj.com/bmj/2014/03/28/david-wrigley-standing-up-against-the-fragmentation-of-the-english-nhs/>

¹⁵ BMJ 2014; 348:g2628

5.6 Analysis by the Health Services Journal in April 2014 has shown a £21 million **overspend** in NHS England's budget for independent sector mental health providers, 5% more than its planned spend in this sector. In contrast, the organisation's overspend on its NHS mental health provider budget was just £650,000 – 0.06 per cent of its planned spend.¹⁶

¹⁶ <http://www.hsj.co.uk/news/mental-health/independent-sector-profits-from-lack-of-nhs-secure-beds/5070098.article?blocktitle=&contentID=0>

6. The effects of privatisation on health and healthcare

6.1 There is now conclusive evidence of the harmful effects of a privatised or marketised health system. Recent reviews¹⁷ of the international academic literature showed that in privatised or marketised health systems health equity worsens. There is also evidence of a negative impact on staff morale, where there may be conflicts in the values and ethos of a health system founded for social good and, for example, some workers are financially rewarded for quality improvements and others are not.

6.2 It also revealed that there is no compelling evidence that competition, privatisation or marketisation improves healthcare quality; in fact there is some evidence that it actually impedes quality, including increasing hospitalisation rates and mortality. After 25 years of an internal market, it is striking that there is no strong evidence that it has contributed to improvements in the quality of healthcare in the NHS. However, there is strong evidence that the additional transaction costs associated with a 'purchaser/provider' split, exceed savings made elsewhere in the system.

6.3 The Health Inquiry¹⁸ which I convened and chaired and which these reviews fed into, made a number of recommendations to the Labour Party policy review process including the need to define the parameters within which private healthcare providers could be used in the NHS.

¹⁷ Footman et al 2014 & Bambra et al 2014

¹⁸ Abrahams 2014

7. My NHS Listening Event

7.1 Last November, I organised a listening event for local people to meet with me and share their stories and experiences of the NHS and social care, as patients and staff. There were some incredibly powerful stories, some of which I reported in my first NHS Check Oldham report.

7.2 Brenda Rustidge's experience of the pre-NHS health system of the early 1940s was so poignant I asked her if she would record her memories so we could share them more widely. Here is her video <http://youtu.be/voqyFgokY3A>

Brenda's story

Brenda's story starts when she is a child in the 1940s. Her family, who were poor because her father was unemployed after the war, had to hide under the window when the local doctor's secretary came to their house for payment every Friday afternoon. She described the fear and shame she felt. With the introduction of the NHS in 1948 Brenda's parents slowly paid off what they owed to the doctor and could then get free health care. The creation of the NHS and a move to a council house with a large garden on the edge of Oldham meant life 'blossomed' for Brenda and her family.

Three of Brenda's five children needed intensive care after birth but all survived thanks to the NHS. Four of them being boys she would make numerous visits to A&E in the following years! Recently Brenda herself needed A&E treatment for an eye problem and she describes how she was attended to quickly and the problem was solved. In the most touching part of the video Brenda talks about her husband undergoing treatment, including two major operations, for cancer and spending 6 weeks in intensive care and a high dependency unit. Brenda said: "All this treatment was free on the NHS. Now I think without the NHS he wouldn't have been here. Thankfully he's now fit and running about and hopefully that's it. But this was wonderful for us and we couldn't have afforded it. One operation, possibly, but two? Impossible!"

8. The Labour Alternative

8.1 Multiple, unconnected providers in any system leads to poorer care, due to fragmentation and a lack of communication between providers. This can only spell bad news for patients who want continuity of care.

8.2 In Government, Labour used the private sector to add capacity to the NHS to help bring down waiting lists but within a planned, managed NHS system. We introduced the policy of NHS Preferred Provider to give the NHS the first chance to change services which enabled the NHS, where necessary, to improve its services before being opened up to the full competitive tendering process.

8.3 This policy was designed to avoid the break-up and fragmentation of the NHS that we are currently seeing, whilst raising standards and the quality of patient outcomes.

8.4 Sir John Oldham was recently commissioned by the Labour Party to look at how to deliver 'whole person care'. His report argues that to integrate care we will need professionals and care providers to collaborate, and states that we should scrap the competition framework imposed by the current Government, which risks fragmenting care and discouraging collaboration.

8.5 Labour has committed to repeal the competition elements of the Health and Social Care Act, including section 75 regulations on competitive tendering, and reinstate the principle of NHS Preferred Provider to ensure that NHS services are not needlessly destabilised by competition.

8.6 Labour has also called for the NHS to be exempted from the ongoing negotiations on the Transatlantic Trade and Investment Partnership deal between the EU and US which we believe could see the NHS subject to international competition law. My colleague Andy Burnham, Shadow Health Secretary, recently visited Brussels to press the case with Commissioners, Officials and the negotiating team about the need for an exemption for the NHS.