

Wholly owned subsidiaries in the NHS

Wholly owned subsidiaries set up by NHS trusts have recently been in the news. This briefing gives an overview of their history, why they are set up and how they are set up, as well as outlining the benefits they bring. It also sets out how trusts are managing the issues associated with this type of organisational form.

Key points

- Wholly owned subsidiaries are an organisational and governance form that NHS providers can legally adopt to manage part of their organisation. They are used in the NHS for different purposes to deliver a variety of services – from catering to outpatient pharmacies and estates management.
- In many cases wholly owned subsidiaries are being used to put into operation national initiatives such as the new care models set out in the Five Year Forward View, and responding to recommendations in the Carter review on productivity in NHS hospitals by sharing services and back office functions.
- Wholly owned subsidiaries deliver a variety of benefits to the NHS. In many cases they are an alternative to outsourcing services to the private sector; it would be inaccurate and misleading to say that they are being used to avoid VAT or as a backdoor to privatisation.
- Wholly owned subsidiaries enable trusts to reinvest savings back into the NHS to improve patient care, income which would otherwise flow to the private sector.
- Wholly owned subsidiaries also offer a range of employment and pay flexibilities for staff by offering a different mix of salary and pension benefits. .
- Where a transfer of NHS staff to the subsidiary is required, unions are recognised in the negotiations and staff are extensively consulted with, ensuring that any transition is smooth and has limited impact. Terms and conditions of employment including continuity of service are protected in accordance with TUPE legislation.
- Creating a wholly owned subsidiary enables trusts to offer the flexible employment needed to attract staff who would otherwise be unwilling to work in the NHS. This is particularly the case for harder to recruit staff groups such as estates and facilities management where the NHS is competing with private sector companies.

What are wholly owned subsidiaries? Are they a new development?

Wholly owned subsidiaries (WOS) are an organisational and governance form that NHS providers can legally adopt to manage part of their organisation. In setting up a wholly owned subsidiary, NHS trusts retain 100% of the shares in the company, ensuring that the organisation, staff and the relevant funding remains within the NHS family. Contrary to some assertions, they are not a new concept in the NHS. [The](#)

legislation enabling trusts to create wholly owned subsidiaries has been in place since 2006, introduced under the last Labour government and it is only recently that concerns have been raised about their use.

Currently, only foundation trusts, as legally independent public benefit corporations, have the statutory power to set up subsidiary companies on their own. There has been growing pressure for the same freedom to be extended to NHS trusts but, at present, NHS trusts can only set up a wholly owned subsidiary with permission from the secretary of state.

Trusts have been actively setting up wholly owned subsidiaries since 2010 and they have been operating without controversy for a considerable period of time. However there has been an increase in the number of wholly owned subsidiaries being established in the NHS in recent months. This is in response to a new strategic direction in the NHS requiring trusts to support new models of service delivery, pursue system collaboration and integration and deliver operational productivity improvements. Trust leaders are clear that the use of wholly owned subsidiaries is a key tool in enabling them to respond effectively to these new requirements. Their use of wholly owned subsidiaries deliberately builds on the best practice that has developed over the last eight years.

Trusts undertake extensive due diligence before deciding to create the WOS. Trust leaders tell us that they discuss this at trust board meetings a number of times, explore alternative options and consider legitimate staff concerns carefully before a decision is made. Trusts recognise that embarking on this is a serious endeavour, and will always seek to ensure it is the most appropriate form for the function it will deliver.

Wholly owned subsidiaries are a legal and organisational form. The detail of each subsidiary – its precise purpose, its method of operation and the functions it discharges – will be specific to the trust and context concerned.

It is therefore inaccurate and misleading to say that the establishment of wholly owned subsidiaries is a new phenomenon or being pursued to avoid VAT, privatise the NHS, or to reduce terms and conditions for NHS staff.

What concerns have been expressed about wholly owned subsidiaries and are they true?

Salaries

There have been concerns that WOS are created to employ staff on lower wages. Where existing staff are transferred from a trust to a wholly owned subsidiary they will retain their current employment rights, terms and conditions, including pension rights under the current Transfer of Undertakings (Protection of Employment) Regulations (TUPE). Although new staff may be employed under different conditions, many trusts also offer existing NHS packages to new staff as well. Existing NHS staff on Agenda for Change contracts may, in some cases, also be offered a choice of whether to take up the new conditions offered by

the subsidiary and in many cases they do so. Staff will be consulted about the transfer to the new subsidiary and should they refuse to transferred under TUPE they can submit a formal objection.

Some have implied that because wholly owned subsidiaries can offer different terms and conditions to those negotiated under the NHS Agenda for Change contract trusts are using wholly owned subsidiaries as a means of degrading NHS terms and conditions. Trust leaders, on the contrary, argue that wholly owned subsidiaries provide a much needed flexibility to attract staff who would otherwise be unwilling to work in the NHS.

There are a wide range of different ways in which this flexibility has been used with examples including:

- Offering higher salaries than would be allowed under standard NHS terms to attract staff with specialist skills in areas of shortage
- Offering bonuses for personal and corporate performance
- Attracting younger employees by offering a different mix of salary and pension benefits, recognising that some younger employees would prefer to take the higher pension contributions as salary. This enables the NHS to compete with private sector employers working directly in the same field, e.g. in estates and facilities management

Privatisation

Some believe that these subsidiaries are back-door privatisation. However rather than privatisation through the backdoor, creating a wholly owned subsidiary is an alternative to outsourcing services to the private sector. They are separate legal entities but they are 100% owned by NHS organisations and it is often the case that trust board members also sit on the subsidiary board. Many wholly owned subsidiaries continue to use the NHS logo and staff employed by the subsidiary are often treated as one directorate within the trust.

Trusts tell us that unless they can recruit staff in specialist areas like estates and facilities management through a wholly owned subsidiary that the only realistic and viable alternative is to outsource. Different trusts take different views on the pros and cons of outsourcing services and those who wish to retain these services in house are clear that wholly owned subsidiaries are a key tool to do so.

Financial and tax savings

There have been concerns that trusts are setting up WOS to save money and avoid paying VAT. NHS trusts have long argued that VAT rules in certain key areas of their operations disadvantage them compared to similar organisations operating in the private sector. So, in some areas (e.g. pharmacy – see below) use of a wholly owned subsidiary will enable a trust to make VAT savings and enable these savings to be reinvested in frontline care.

This is, however, completely different to a trust setting up a wholly owned subsidiary solely or primarily to obtain VAT savings. In line with the Department of Health and Social Care and other guidance, trusts

would not look to create a wholly owned subsidiary for the primary purpose of avoiding tax or use this as a key driver for exploring the use of this organisational form.

How does the NHS use wholly owned subsidiaries?

Wholly owned subsidiaries are set up for many reasons in the NHS. These vary depending on local circumstances and needs. The table below provides some examples.

Service	Examples
Estates management	<p>Maintaining and upgrading an expensive and varied NHS estate is a difficult and complex task, particularly given current constraints on capital expenditure and investment. A significant number of trusts have established wholly owned subsidiaries to manage their estate. This enables trusts to attract the right number and type of staff with the specialist expertise required in what has often been and remains an area of substantial recruitment difficulty. The establishment of a WOS also enables a dedicated governance and management focus in a highly specialised area that a trust wide board and management team are unable to provide.</p> <p>Wholly owned estates management companies can support the spreading of good practice. For example, following the successful negotiation of a PFI buy-out, one trust company now actively offers its services to other trusts looking to renegotiate their PFI contracts, helping to save money across the NHS.</p>
Facilities management and catering	<p>In order to improve the environment for patients and staff, some trusts have set up wholly owned subsidiaries to manage their facilities, including catering, waste management, and cleaning services. Rather than outsourcing these services to the private sector, a WOS can retain expertise and skills in house and avoid expensive agency and service charges.</p> <p>Subsidiaries also present an opportunity to generate additional income for the NHS through developing economies of scale and delivering the services to other organisations, which NHS trusts are being encouraged to do (e.g. by providing catering and facilities management to local councils and colleges). One trust's wholly owned subsidiary company recently won an HSJ award for its facilities management and procurement work.</p>
Outpatient pharmacy services	<p>Many trusts have set up wholly owned subsidiaries to manage their outpatient pharmacies.</p>

	<p>Since VAT was introduced in 1973, private pharmacies have been exempt from this tax. Despite protracted lobbying the NHS is unable to benefit from this exemption. In setting up a wholly owned subsidiary, many trusts see themselves levelling the playing field when it comes to managing these services. Rather than outsourcing to commercial retail pharmacies, wholly owned subsidiary companies set up by trusts ensure all VAT savings are brought back into the NHS and can be directed to fund patient care.</p> <p>In one trust an outpatient pharmacy subsidiary was able to dispense GP and community prescriptions, something the trust had been previously unable to do, leading to a more integrated system and experience for patients.</p>
<p>Shared clinical services, such as pathology</p>	<p>Following Lord Carter’s review of NHS pathology services in 2008, some trusts have looked to established wholly owned subsidiary companies in response to the review’s recommendations to consolidate pathology services, and to ensure better integration across neighbouring organisations. A wholly owned subsidiary brings dedicated focus and appropriate governance to a complex and difficult task.</p>
<p>Putting new care models in to operation</p>	<p>Wholly owned subsidiaries offer a model for organisations to collaborate horizontally and vertically, establishing the new models of care set out in the Five Year Forward View and addressing workforce challenges.</p> <p>For example, a community trust is currently developing a wholly owned subsidiary to employ local GPs who wish to become part of the trust but do not want to become salaried employees on Agenda for Change terms. The structure of the wholly owned subsidiary provides the governance to appropriately involve GPs, which would not have been possible at a whole trust level.</p>
<p>Invest and support innovation and technological advances</p>	<p>A number of trusts have set up wholly owned subsidiaries to develop and bring innovations to market. This mirrors the approach used in university sector which also invests in innovation and tech start up companies. This organisational form allows appropriate reward and provides incentives to those developing innovative products.</p> <p>A wholly owned subsidiary of this type also uses its governance structure to include innovators from other sectors on the board. This approach would not be appropriate for a main trust board.</p>
<p>Shared back office functions</p>	<p>In separating core and non-core services, trusts are able to allow clinicians and board members to focus on quality, care and patients, while also ensuring the best quality support services.</p>

	<p>Establishing separate boards for wholly owned subsidiaries gives focus to some services which have traditionally been neglected but that make an important contribution to the overall patient experience.</p> <p>Trusts are being encouraged to share back office services across a number of different trusts. This was one of the recommendations in Lord Carter’s review on productivity. Wholly owned subsidiaries offer the opportunity to share ownership between the trusts and develop a form that reflects common values and purpose.</p>
--	--

What are the benefits to the NHS?

Focus, leadership and governance: NHS trusts are highly complex organisations; they deliver a wide range of services, employ tens of thousands of staff and can manage billion pound budgets. In setting up a wholly owned subsidiary and separating the management of a subsidiary from the trust board, change can be achieved much faster through a focus on a specific service. For example, a trust CEO told us that their estates management company has created an opportunity for developing a strategic estates management programme, for which it would have been difficult to dedicate the required senior management time at the trust board.

Supporting patient care: Trusts tell us that establishing a wholly owned subsidiary can support the development of responsive and high quality services. For example, a new outpatient pharmacy subsidiary was able decrease average dispensing times from 45 to 10 minutes. Many subsidiaries are held to account through a detailed contracts, specifications and quality KPIs - this provides greater scrutiny, accountability and continuous improvement in the delivery of these services which would not have been in place before.

Reinvestment of income into NHS: Wholly owned subsidiaries are 100% owned by trusts ensuring that profits are reinvested back into the NHS. One trust’s wholly owned subsidiary has even received a social enterprise award for the benefits it has brought to its local community and the public more generally. For example, a trust has told us that their wholly owned subsidiary has invested £1.4m in developments on an existing site to deliver new clinical services, as well as investing in new technology in the pharmacy to improve performance.

Employment flexibility: Wholly owned subsidiaries offer a range of opportunities, employment flexibilities and benefits for both the trust and staff. Within the existing Agenda for Change contracts, many trusts struggle to recruit staff with the necessary experience and expertise for roles in areas such as estates and facilities. Establishing a subsidiary allows trusts to create pay scales that are more flexible and often more attractive. By creating pay scales that reflect market conditions, many trusts report improved recruitment rates from both the NHS and the private sector. Where existing trust staff on Agenda for Change terms and conditions move to the subsidiary via the TUPE process, trusts will ensure there is meaningful engagement and dialogue with staff and unions throughout the process, as well as taking legal advice.

Alternative to outsourcing: Wholly owned subsidiaries provide an opportunity for trusts to access, develop and retain specialist expertise. This means they can improve efficiency in-house and run a service or function more effectively as it is solely focused on providing high quality services to meet the needs of the Trust. The alternative would be to outsource to the private sector. Creating a WOS also provides an opportunity to bring previously outsourced services back into the trust, which some trusts refer to as 'in-sourcing'. This brings benefits for the trust and also the staff who then feel part of the trust and no longer fear the uncertainty of their jobs when services are tendered at the end of a contract.

Staff engagement and training: Engagement with staff can be higher when they are employed by a wholly owned subsidiary, particularly estates and facilities management staff. One trust has told us that in a recent staff survey they found that 90% of the staff in their WOS for these services felt part of the trust. In addition to investing savings or additional income into patient care, many trusts also invest in the training and development of the staff employed by the wholly owned subsidiary. It is important to remember that staff employed by wholly owned subsidiaries are still working within the NHS family. From attending social events and all staff meetings to using the staff car parking pass, many staff do not see changes to their day to day jobs.

Operational productivity: Setting up a wholly owned subsidiary must be seen in the wider financial context of the current NHS funding squeeze. This year trusts are expected to make savings worth £3.7bn, or 4.3% of turnover, despite all the evidence suggesting the provider sector cannot deliver in excess of 2% efficiency a year. Nevertheless, the NHS is already delivering productivity gains of 1.8%, nine times that of the wider economy. In setting up wholly owned subsidiaries, trusts are acting on all the recent reviews that recommended significant service reconfigurations needed to maximise quality and value for money.

Summary

Trust leaders are clear that wholly owned subsidiaries are a key tool to deliver the current strategic requirements expected of them. This organisational form is used for many different purposes and each wholly owned subsidiary will vary in its purpose, delivery model and function depending on the trust, the context and local needs. Developing a wholly owned subsidiary delivers a variety of benefits to trusts, staff, patients and the broader NHS. It is therefore inaccurate and misleading to say that the establishment of wholly owned subsidiaries, is being pursued to avoid VAT, privatise the NHS, or to reduce terms and conditions for NHS staff.