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NHS companies – An enterprising approach to health

Key learnings

1. A strong business case, with a long-term, commercial business plan is essential for success. This should be supported by a detailed options appraisal setting out the benefits and risks.

2. The wider potential benefits of setting up a company should be considered, not purely the financial benefits. It is important that trusts are careful not to start with a business model and tailor their business case to fit that.

3. The most appropriate commercial structure should be used, focusing on delivery of the trust's objectives and addressing the key drivers for setting up a separate company.

4. The management of the subsidiary company should be separate from the trust board. This will allow a renewed focus on a specific service, securing change faster and ensuring commercial opportunities are maximised.

5. NHS boards should have the courage to think innovatively and allow the company to develop and expand throughout its journey.

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Foreword

As the NHS continues to face increasing financial challenges, the ability to think innovatively about these challenges is critical.

Alternative delivery models, such as NHS companies offer trusts the opportunity to develop new sources of income, work in partnership with the commercial sector, and increase efficiency while maintaining the same quality, values and ethos as the NHS.

Identifying the opportunities to be more commercial, understanding the key drivers for change and choosing the right structure are paramount to being successful.

Based on a round table discussion with a number of delegates from the NHS (held under Chatham House rules), all with significant experience of NHS companies, the next pages will explore:

- why you would set up an NHS company
- the different structures available and considerations around each one
- dealing with uncertainty
- examples of success.

We have supplemented this with a range of case studies, highlighting successful companies and some of the lessons learned. I would like to take this opportunity to thank all those who attended the discussion and provided case studies, and Emily Mayne who authored this report.

Mark Stocks
Partner, Grant Thornton UK LLP

"In this time of uncertainty, with limited resource and diminishing funds it has never been more important for the NHS to think of new ways to achieve financial stability while still delivering quality services to the country."

Mark Stocks

Executive summary

“Leaders must be ‘system architects’, using social entrepreneurial skills and innovative vision to introduce new organisational forms, collaborate and promote good practice.”

Sir David Dalton

Both NHS trusts and Foundation Trusts have been able to set up companies for over a decade. Despite having this authority, relatively few trusts have taken this opportunity. Given the challenges facing the NHS and the need to try different approaches to service improvement, we organised a round table to consider the benefits and issues surrounding NHS companies.

Our round table focused on whether NHS companies offered tangible solutions to the problems facing today’s NHS. The delegates all had significant experience of NHS companies. Some of the companies were in their infancy and just starting to deliver their purpose. Others were well-established and were seeking to expand. We have provided these as case studies to provide examples of what can be achieved.

Alternative delivery models, such as NHS companies offer trusts the opportunity to develop new sources of income, to work in partnership with the commercial sector, and to increase efficiency while maintaining the same quality, values and ethos as the NHS. As one delegate said: “There is a future for NHS companies. A commercial norm will be required throughout the NHS to drive innovation and efficiencies.”

Identifying the right business opportunity, focusing on the key drivers, and choosing the right structure are all factors in creating successful NHS companies. This has been done successfully by a number of trusts, and, as a result, the services provided by NHS companies are varied. The most common are pharmacy, and estates & property. However, there are others including GP services, respite care, diagnostic care, pathology, and equipment management companies.

While there are clear opportunities, in our experience, there are some barriers and risks.

The main barrier is the perception that NHS companies are a form of privatisation. In our experience and that of the round table delegates this is unfair. NHS companies offer trusts the opportunity to look at new solutions to the challenges they face, often in partnership with the private sector. The companies and the people we spoke to felt that they were part of the NHS and were proud to be associated with it. They felt the freedoms associated with being an NHS company had allowed them to improve the services they offered to patients, or their parent NHS trust(s).

Delegates did identify other risks such as reputational damage or financial loss. While these risks are clearly a possibility, delegates considered that they could be mitigated through appropriate planning and risk management. The key, they felt, is to sufficiently mitigate the risk without stifling innovation.

Without doubt, there are numerous factors influencing the success of the company.

Delegates highlighted factors ranging from the ‘right professional advice’ to ‘governance’, and from ‘effective leadership’ to creating a ‘commercial culture’. What did stand out from the round table was the need for a supportive Trust Board. Without this commitment success is unlikely.

It is not clear whether NHS trusts will begin to use NHS companies more. While some have used these powers, and others are still seeing this as an option for the future, there is a risk that this kind of activity will remain at the margins of NHS. Based on our own experience and that of the round tables this is a missed opportunity. Our round table concluded that NHS companies can make a significant contribution to the NHS and deliver some clear outcomes including:

- the development of efficiencies that can be shared between the company and the wider trust
- the ability to drive income generation to support NHS services
- greater commerciality, understanding and expertise
- the ability to really challenge how services are delivered.

It is a reality that NHS companies are not the sole answer to the NHS financial crisis. However, they do provide another viable tool with which NHS trust boards can drive the changes needed to make the NHS sustainable.

Why set up an NHS company?

> “It is clear that setting up NHS companies is becoming an increasingly important topic as the options for delivering affordable services reduce.”

What types of services do NHS companies provide?

The round table discussed the different types of services provided by NHS companies. The consensus was that these are quite varied but the most common ones are: estates & property, GP services, respite care, medical services such as diagnostic care or pathology, pharmaceutical companies, and equipment management companies. Delegates noted that pharmacy companies are the most common but felt that there was now a sufficient variety of companies to give the wider NHS confidence that commercial ventures are a successful option.

Key drivers for setting up an NHS company

Ostensibly, many NHS companies provide services that could be provided within the trust, so why make the change? Delegates identified four key categories of drivers: reducing expenditure, increasing income, improving services, and managing risk. We have summarised these in the diagram below.

At the round table there was a general consensus from the delegates that to achieve ‘buy-in’ from stakeholders, these drivers needed to be combined and clearly articulated in any business case. Financial drivers are usually the initial catalyst, but these must be supplemented by service drivers focusing on better outcomes for patients.

Interestingly, one of the key drivers highlighted was the benefit arising from separating the management of a subsidiary company from the trust board. This separation allows either a renewed or completely different focus on a specific service, securing change much faster. In turn this new focus can ensure that commercial opportunities are maximised and allow additional expertise to be introduced as required.

Key learning

Separating management of the subsidiary company from the trust board allows a renewed focus on a specific service, securing change faster and ensuring commercial opportunities are maximised.

Reducing expenditure

- Creating efficiencies
- Greater economies of scale
- Commercial regulatory advantages
- Changing the way services are delivered
- Impacting positively on the financial culture of the service

Increasing income

- Expanding core services
- Diversifying revenue streams
- Bidding for other services
- Raising external finance

Improving services

- Reinvesting surpluses
- Attracting new resources
- Introducing commercial expertise
- Supporting failing NHS organisations
- Investing longer-term

Managing risk

- Positive experiences from previous ventures
- Expanding core services
- Diversifying revenue streams
- Protecting the trust’s assets
- Separating management, focusing on core business but retaining control

"Our initial drivers for setting up the company were around financial savings, but there were other advantages such as being able to offer services over more hours and improving discharge speed, both of which improved the service received by our patients."

What benefits can an NHS company deliver?

Delegates agreed that all the benefits listed below were achievable, adding that a mixture of these benefits can lead to a culture of innovation, agility and dynamism. Many of the delegates had practical experience of these benefits and had experienced improved services, efficiencies and profits since the establishment of their NHS company.

Benefits of setting up a commercial structure

People

- Align ethos and objectives – private sector freedoms with public sector values
- Allow greater flexibility in staff incentives and rewards
- Retention of learning and experienced staff
- Attract specialist staff to drive service improvement
- Develop a more agile and innovative culture

Financial

- Manage as a separate financial unit, reporting a clear profit and loss, alongside patient objectives
- Greater flexibilities for management of cash
- Deliver savings through efficiencies and economies of scale
- Obtain commercial regulatory advantages
- Access funding, grants, equity, borrowing, or other external investment

Management

- Maintain a level of control through a company structure rather than outsourcing
- Ability to ensure strong governance framework over services
- Isolate the trust from risks
- Attract commercial expertise
- Ability to test the water – taking more risk, but being ring-fenced and controlled

Service

- Delivery of an improved service (you need to continually demonstrate this to HMRC)
- Create something bespoke and relevant for the local economy – hybrid of different service models
- Develop a specialised service or product by transferring dedicated staff or attracting more highly skilled staff
- Identifying gaps in the neighbouring market to increase geographical coverage and build a more resilient service
- Ensure sustainability

Growth

- Bid for other services
- Expand core areas, allowing the trust to invest and diversify and seek business in new areas not available to the NHS
- Join with another body as a separate venture
- Market the service at a distance from the trust, with a separate identity and brand; or benefit from using the NHS brand
- Exit strategy – achieve a capital gain at sale

“You need to identify the problem and then work out the solution – the problem is the key driver [for setting up a company].”

Delegates were keen to highlight how setting up a company helps retain control and expertise. Many felt that establishing a company could be a better option than outsourcing. The round table noted that there are examples of trusts outsourcing services, only to find that performance does not meet the required standards of the contract. Similarly delegates noted that the process of transferring services to another trust can lead to a loss of core knowledge and key staff. Staff retention and the greater level of control over the company’s business were considered to be particular advantages of the NHS company model.

Key learning

Trusts should consider the wider potential benefits of setting up a company, not only the financial benefits. It is important trusts are careful not to start with a business model and tailor their business case to fit that. Trusts should have the courage to think innovatively and allow the company to develop and expand throughout its journey.

The round table noted that NHS companies can often deliver services in a more tax efficient manner, particularly with the supply of pharmacy services. While this is a useful benefit, it was noted by those around the table that trusts should not build a business case solely on tax, and should instead take an overview of all the potential benefits. There are examples in the NHS and other parts of the public sector where tax legislation has changed, leaving organisations in a position where they have to restructure or change their business model to ensure the viability of their service. The company may also be subject to corporation tax if it is not structured appropriately.

“A detailed option appraisal is imperative: tax is only one part of this, and VAT is only a small part of that.”

Barriers to setting up an NHS company

Adequate thought and resource must go into business planning and risk management to achieve success. In particular, the lack of appropriate business skills or experience was seen as the number one barrier to setting up an NHS company. Delegates felt that more could be done either nationally or by groups of trusts to develop business skills and share best practice.

The round table identified two other key barriers:

1 NHS companies could be perceived by some stakeholders as ‘privatisation’ of the NHS
2 A reluctance of staff to transfer to the company

We looked at these in detail. The round table agreed that setting up a NHS company was not privatisation. Companies allowed NHS boards to protect and retain control of services as well as driving benefits for NHS patients. As the companies would be either wholly or partly owned by NHS trusts the perceived risk of NHS ‘privatisation’ was felt to be adequately mitigated.

Another key barrier was the possible reluctance of staff to join the company. One solution is employing people directly into the new company and not to transfer people from the trust. However, this solution is not always an option or can be costly. In most circumstances staff will need to be transferred to enable service continuity, retain skills, or avoid redundancy costs.

Case note

SWFT Clinical Services
SWFT Clinical Services Ltd runs the outpatient pharmacy for South Warwickshire NHS Foundation Trust. The transfer has allowed the outpatient pharmacy team to focus on highly efficient dispensing, reducing average dispensing times from 45 minutes to 10 minutes.

When transferring staff, delegates felt better articulation of the benefits of the move, would help overcome resistance. The round table considered what the benefits and opportunities would be for the people employed by an NHS company:

1. **Continuing Professional Development (CPD) and wider education opportunities** – the ability to ring-fence and better protect development budgets
2. **Reward** – create pay scales reflecting market conditions, making them attractive to both NHS employees and the private sector
3. **Freedom and empowerment** – offer a fresh environment where staff can innovate and seek commercial solutions but remain part of the NHS family
4. **A renewed focus on client care** – offer an opportunity to refocus on patient care over savings and efficiencies

Choosing the right structure

Round table delegates were clear that you cannot pick a structure and make it fit your business requirements. Boards need to link business objectives to the most appropriate structure, and be clear on why that model was chosen. One delegate said: "You cannot identify a successful model elsewhere in the country and use that without understanding how it will support your objectives. Every locality is different and will require a different solution – there is no 'one-size-fits-all'."

The key is to identify which structure will provide the greatest level of benefit and flexibility when it comes to delivering your business plan. We have set out some of the more common commercial structures and examples of those using them here.

Commercial structures

Companies limited by shares (often for support and clinical services)

- South Warwickshire NHS Foundation Trust (SWFT Clinical Services Ltd)
- Salisbury NHS Foundation Trust (Odstock Medical Ltd)
- Birmingham and Solihull Mental Health Foundation Trust (Summerhill Supplies Ltd)
- QE Gateshead NHS Foundation Trust (QE Facilities Ltd)
- Sheffield Health & Social Care NHS Foundation Trust (Seven Hills Care and Support Ltd)
- Nottingham University Hospitals NHS Trust (Hospital Pharmacy Services (Nottingham) Limited trading as Trust Pharmacy)
- Barnsley Hospital NHS Foundation Trust (Barnsley Hospital Support Services Ltd (BHSS))

Companies limited by guarantee

- The Clatterbridge Cancer Centre NHS Foundation Trust (PropCare)
- Dorset Healthcare NHS Foundation Trust (New Waves Integrated Care)
- Moorfields Eye Hospital NHS Foundation Trust (Moorfields Eye Charity)
- Great Ormond Street Hospital for Children NHS Foundation Trust (Great Ormond Street Hospital Children's Charity)
- Nottingham University Hospitals NHS Trust (NUH Charity)

"The trust made a decision to use an LLP as it gave the advantage of not having a board so decision making sat with 'Members'. We picked a commercial partner to provide other benefits and growth potential."

Limited liability partnerships (LLP)

- Guy's and St Thomas' NHS Foundation Trust (Enterprises Ltd and Essentia Ltd)
- The Royal Free London NHS Foundation Trust, University College London Hospital NHS Foundation Trust (UCLH) and The Doctors Laboratory (Health Services Laboratories LLP)
- Cambridge University Hospitals NHS FT and Cambridge & Peterborough NHS FT (Uniting Care Partnership LLP)

Jointly owned enterprises, which are a separate legal entity

- Burton Hospitals NHS Foundation Trust and Health Innovation Partners Ltd (Stride)
- Sheffield Teaching Hospitals NHS Foundation Trust and the University of Sheffield (Zilico)
- Sheffield Teaching Hospitals NHS Foundation Trust and Burkert Fluid Systems Ltd
- Frimley Health NHS Foundation Trust, Ashford and St. Peter's Hospitals NHS Foundation Trust, Royal Surrey County Hospital NHS Foundation Trust and Royal Berkshire NHS Foundation Trust (Berkshire & Surrey Pathology Service (BSPS))

Key learning

Whatever venture is entered into, the trust should ensure that the most appropriate vehicle is used, focusing on delivery of the trust's objectives and addressing the key drivers for setting up a separate company. A detailed business case should be prepared to enable the trust and the company to have a clear vision in the initial months. This should include a clear exit strategy with triggers relating to the key risks and ensuring continuity of service should circumstances change.

In conclusion, there are numerous opportunities for trusts to set up companies including pharmacy companies, estates companies, and clinical services companies. All offer the opportunity to drive both service and financial efficiencies. On the following page, we have set out the case study of a new company and the benefits the trust and company envisage over the next few years.

Case notes

Viapath

Guy's and St Thomas' NHS Foundation Trust set up the pathology company Viapath as a joint venture in 2009 with SERCO and subsequently in 2010 King's College Hospital NHS Foundation joined the venture. The choice of a commercial partner to work alongside them was deliberate, not only complementing their NHS pathology expertise but also establishing a commercial brand which had, in their opinion, a better opportunity for growth. Viapath has become successful and has a turnover of around £100 million. It is majority owned by the NHS (66.6%) but has the commercial freedom to invest in growth and innovation. Choosing the right model and partner had a significant impact on the venture's success.

Summerhill Supplies Ltd

Birmingham and Solihull Mental Health NHS Foundation Trust set up Summerhill Supplies Ltd in December 2012 to provide estate management functions for the trust across their estate portfolio. The trust chose a subsidiary company instead of outsourcing this function as they felt that any savings made by the latter would benefit the private sector rather than being retained within the NHS family. They also ultimately maintained control over where savings were made and the level of savings made which could complement their existing business model. The trust's motivation was to raise quality standards, achieve savings, delivering any profits back to the parent trust and keep them within the NHS. In setting up, the subsidiary company, the trust emphasised that it was interested in reducing costs but that it would also focus on quality and value for money for the service user and public sector.

PropCare

The Clatterbridge Cancer Centre NHS Foundation Trust is one of the largest NHS specialist cancer treatment facilities in the UK, registering over 9,500 new patients each year. It cares for more than 30,000 patients per year with in excess of 220,000 patient contacts for treatment/appointments. It has 10 sites across Merseyside and Cheshire and employs more than 1,000 staff, providing non-surgical oncology treatments including pioneering chemotherapy, radiotherapy, and the only UK source of proton therapy for eye cancer. The Care Quality Commission released an inspection report in February 2017 which rated the Clatterbridge Cancer Centre as ‘Outstanding’, with outstanding practice identified in the End of Life, Radiotherapy and Chemotherapy services.

The trust has big plans for the future, with a new hospital due to open in the centre of Liverpool in 2019 which will make treatment more accessible to patients that live in the more deprived areas of Merseyside. In order to achieve its plans the trust has recently established a wholly owned subsidiary company, which will trade under the name of ‘PropCare’. This new company will be responsible for providing and managing all of the trust’s estate and facilities, including grounds, gardens, car parking management, security, catering, cleaning, portering, waste management, transport and laundry. PropCare is also providing strategic estates advice and consultancy services in respect of the planned new hospital.

The trust set up PropCare because they recognise the importance of strong estates and facilities management and the contribution it makes to the overall quality of patient care. They believe that the best way to secure this is through the establishment of an organisation which has a clear and specific role to deliver the best estates and facilities services possible, and which is staffed and resourced to achieve this aim. The trust has used the same model as previously adopted for PharmaC, a wholly owned limited company established in 2013 to deliver outpatient pharmacy dispensing services. Buoyed by the success of PharmaC, the trust is looking to take advantage of similar opportunities through the development of PropCare.

The trust is the sole shareholder in PropCare, and they control appointments to the board. Like other NHS limited companies, this structure reduces the financial risk to the trust resulting from its commercial activities. It also presents the trust with considerable financial freedom to explore cost efficiency options, such as employing staff at market rates. The company’s board is made up of a mixture of internal and external representatives, capitalising on the opportunity to appoint people with both NHS and commercial experience.

The trust believe that PropCare will enable them to:

- create an appropriately staffed organisation with a specific estates focus, allowing the trust to concentrate on the delivery of clinical services
- follow best practice by separating clinical services from property risk and management, enabling PropCare to compete on an equal footing with private sector organisations
- provide an opportunity to generate and seek additional income from commercial activity
- use any financial contribution from the company to reinvest in supporting the delivery of high quality patient care.

Dealing with uncertainty

> "Individual members of the board are at different places on this journey. Some see commercialisation as part of the day job. Some are still uncomfortable with the risk and uncertainty. It helps to ensure that the NEDs have the appropriate skills and backgrounds to support your business models. We need more architects and accountants rather than bankers."

Getting the business case right

The NHS deals with patient, service and financial risks on a daily basis. While there are uncertainties and risks associated with establishing a new company, in our experience, this is not beyond the usual risk appetite demonstrated by most trust boards.

The delegates at the round table agreed that planning was essential in managing any uncertainty or risk. This included developing a strong business case, with a long-term, commercial business plan. Delegates commented that this should include a detailed options appraisal setting out the benefits and risks associated with the various commercial structures. The business plan should cover ongoing management, ownership, staffing, funding, use of surpluses and the exit strategy. This is particularly important where key personnel may change.

At the planning stage it is also important to ensure that the objectives of the trust and the company are aligned and that there is a clear 'purpose' for the company. This could be to enhance core services, support the trust to perform new services, or to provide access to efficiencies and flexibilities not available to the NHS trust. There should be a sound commercial rationale looking at the potential risks and benefits.

The choice of commercial structure will determine the trust's exposure to risk and how this can be managed and mitigated.

Obviously, these risks will change as the company becomes established and seeks to expand. Understanding risks and taking appropriate action will remain important throughout the life of the company. Commercial markets are dynamic and the company needs sufficient agility to be able to respond appropriately.

Key learning

A strong business case, with a long-term, commercial business plan is essential for success. This should be supported by a detailed options appraisal setting out the benefits and risks.

Mitigating risks

The use of a company or other commercial structure offers more protection from risk than if the trust entered into a partnership or similar structure without limited liability. One of the round table members commented: "Our first commercial venture was… not a company so we took all the risk. Further ventures used the company model to shelter the trust from the risk."

Although isolating risk from the trust is a potential benefit of setting up a company, delegates agreed that it is not clear whether that would work. For example, if someone wanted to take legal action against the company, they might include associated entities including the trust. In particular, there may be an attraction to taking action against an NHS trust as they usually hold more assets.

It is also important to consider the reputational damage and how the trust board would react in this situation. One panel member commented: "If we thought something was going to fail we would bring it back in-house. We would not switch to another provider – our pride would want to make it work".

Delegates agreed that the core risks of setting up a new company were:

- **Strategic** – misjudging the market, not having a focus on the wider objectives of the company, and not maintaining a commercial agility can impact long-term success
- **Reputational** – service or financial failure, or tax avoidance can cause significant reputational damage
- **Operational** – poor transfer of services or fast growth can impact on service standards and potentially the viability of the company
- **Legislative** – there are a number of laws which govern the ability of NHS trusts to passport contracts to their companies, and which govern the ability of the NHS company to trade or to utilise tax exemptions. Non-compliance with legislation is a core risk
- **Financial** – companies can make losses. Poor planning or financial management can create a significant liability

Delegates acknowledged the risks associated with a company. They agreed all risks were manageable and the benefits from setting up a company outweighed the risks.

Below we have provided some more detail on risks.

NHS company risk considerations

Strategic risks

- Managing the speed of growth
- Business failure and appropriateness of exit strategy
- Clarity over processes for agreeing changes to the strategy
- Protecting intellectual property

Reputational risks

- Strength of relationship between trust and company – need to balance freedoms with control exerted
- Benefits and purpose not clearly communicated
- Poor relationships with staff
- Poor relationships with local community and service users
- Branding not maximising commercial activities (still link to NHS or not?)

Operational risks

- Lack of governance arrangements
- Transfer of undertakings (protection of employment) (TUPE) and staff management
- Union negotiations
- Commissioner support and length of support or initial contracts
- Appropriateness of back office functions if the company grows

Legislative and market change risks

- Potential changes in taxation or legislation
- Competition regulations and consultation with the Co-operation and Competition Panel (CCP)
- Market changes impacting the business' direction

Financial risks

- Potential losses and how these are covered
- The amount of financial guarantee required
- Negative impact on the trust's EBITDA, net surplus and financial risk rating
- Pension liabilities
- Redundancy costs if wound up

Balancing risk and innovation

The management of risk needs to be balanced against allowing the company room to innovate. One delegate said: "To get the best out of companies, you have to give them the flexibility they need. But if it is part of your family, it is ultimately your reputation. That dynamic is difficult. We haven't yet learned how to be owners and [give that flexibility]."

Creating a commercial culture needs to be one of the key aims of the new company. This can be difficult if staff are used to NHS practices. We spoke with a company that did not transfer staff from the trust, instead employing new people to foster a commercial and dynamic culture. Coupled with the business model and service delivery, this has been a successful strategy.

From an operational perspective, there is a risk of trying to take on too much too quickly. There will be many opportunities, so the entity needs a clear strategy on what to focus on, how quickly things will be delivered and how outcomes will be identified and measured. The business plan must set this out in a realistic and achievable way. It needs to find a balance and get the pace right so rewards can be seen early but risk mitigated.

There are also risks with regard to intellectual property. One delegate stated, "You need to get the initial set up right – giving individuals intellectual property rights which provide too great a share in the first place can dilute the company's ability to grow and develop."

Setting up an NHS company still presents risks for NHS trusts, regardless of planning. The level of unknowns or variables provides a dynamic environment which means that things can and sometimes do go wrong. We have provided a brief case note of what can go wrong.

Case note

Cambridge University Hospitals NHS FT and Cambridge & Peterborough NHS FT

Cambridge University Hospitals NHS FT and Cambridge & Peterborough NHS FT formed UnitingCare Partnership to provide community, mental health and social care with an ambitious £800 million five-year contract that promised to promote efficiencies and save millions of pounds. Cambridgeshire and Peterborough Clinical Commissioning Group entered into a contract with Uniting Care, which was a limited liability partnership, from 1 April 2015. However, it collapsed in December 2015, after only eight months. Whilst contract procurement commenced in July 2013, negotiations lasted up to the day before the contract started on 1 April 2015 and then continued until the contract was terminated in December 2015.

The reported reasons for failure include:

- too many information gaps around the delivery of community services
- lack of reconciliation of the financial envelope of the CCG to the current expenditure levels
- additional VAT costs
- the mobilisation period being insufficient to make the planned financial savings that were required in the first year
- the contract value not being absolutely agreed at the date the contract commenced.

The conclusion of the various reviews were that the contract should not have commenced on 1 April 2015 with the level of uncertainties, both financial and operational, still unresolved.

Source: National Audit Office

Planning your exit

The absence of an exit strategy with triggers was considered a key risk, even for successful companies. Trusts do have to consider the possibility of selling their interest, but this is a complex decision and requires planning.

Trusts may come under pressure to sell their shares. The discussion around the table highlighted a number of NHS companies with high value assets. Increasing the debt associated with the company to allow additional dividend payments, or selling the company in its entirety may be appealing where trusts are in deficit. The delegates felt that this needed to be balanced against long-term profits and other service objectives for the company. The company's commercial partner may also sell its share if its interests change. For example, if it thought it was no longer adding value or it was not receiving the planned return on its investment.

Whichever commercial structure is used, the trust (and its partners) need to agree an exit mechanism to manage any circumstantial changes. This needs to include the transfer of services, people, and intellectual property rights.

In conclusion, there are risks associated with any commercial venture. However, delegates at the round table were confident that these could be mitigated and overcome through proper planning and risk management.

We have detailed the SWFT clinical services case study which sets out how they have managed risk.

SWFT Clinical Services Limited

In March 2010, shortly after South Warwickshire NHS Foundation Trust was awarded FT status, it became one of the first trusts in the country to set up a limited company as a wholly owned subsidiary. SWFT Clinical Services Ltd was established to operate:

- outpatient pharmacies at Warwick and Stratford Hospitals, serving c.300,000 patients
- a private consulting and day surgery clinic in Stratford
- a suite at Warwick Hospital which provides NHS patients with the choice to pay for a private room.

The company's primary purpose is to generate income for the trust through its commercial activities, with profits being reinvested in the business or returned to the trust for the development of healthcare services.

The trust established SWFT Clinical Services Ltd to run the outpatient pharmacy because it was convinced that NHS companies are an effective way of improving patient care, while also meeting the growing financial pressure from commissioners to operate the NHS at market rates. The ability of national pharmacy chains to purchase medicines under zero rated tax rules gave them a comparative advantage so the trust responded by creating their own subsidiary, enabling them to compete on a level playing field.

The trust considered a number of different business models before opting to take the social enterprise route. This approach enabled them to develop the commercial acumen and mindset needed for success, while also generating profits to invest in NHS healthcare.

The company has recruited people directly, focusing on customer service, process and delivery skills. New recruits are on different terms and conditions from the NHS but have greater flexibility with regard to pay bandings. They also receive more training and professional development than the average NHS worker.

Integration levels between the trust and its subsidiary are considered greater than an outsourcing arrangement with a third party provider. This has resulted in a more stable and cohesive work force and the ability to generate a greater return. Any potential business opportunity is evaluated on whether it will fulfil social good and generate income that will return a profit.

Following the success of the outpatient pharmacy, the company expanded by taking on the trust's continence service. Learning from its commercial experience they focused on the logistics part of the continence service, providing an efficient ordering and delivery service for continence products for both patients and care homes, reaching over 5,000 people in Warwickshire. Previously, the service had inefficiencies and it was identified that customer satisfaction could be improved. The company used its commercial, customer service expertise to focus on the service user. They answered the phone and spoke to patients about their requirements, identifying that many customers required reassessment. Eighteen months after taking over the service, it now has new logistics systems and software infrastructure aimed at better customer service for patients, which generated significant savings.

The organisation's social enterprise status allows it to continue to enjoy the benefits of limited company status (reduced risk of financial liability and the ability to generate profit) while emphasising its public sector origins and ethos. The managing director is clear that the company is part of the trust and is there to help the trust to explore new approaches to service delivery. Both the trust and the company are clear that they share the same ethos. The managing director commented: "It is important that the subsidiary is seen as a valid and ethical contributor to the work of the Foundation Trust".

SWFT's management team point to a number of improvements from the transfer of services. Patients have benefitted as the outpatient pharmacy team now focus on highly efficient dispensing, with average dispensing times reduced from 45 minutes to 10 minutes. The trust has benefitted because they are the owners of a commercially focused social enterprise, which is generating profits to re-invest in NHS healthcare. The community has also benefitted as the company has distributed around £200,000 in support of social purposes, such as the £100,000 profits from the pharmacy shop which were gift aided to a local affiliated health charity in 2016. The company has also become the first UK Pharmacy and the first NHS company to be awarded the Social Enterprise Mark.

In conclusion, South Warwickshire has successfully combined a greater commerciality, with improved service and reduced costs.

How subsidiary companies have achieved success

"Commerciality is taking services from around the trust and bringing in commercial expertise to drive improvements, efficiencies and savings. Otherwise you may as well leave things within the trust."

There are different ways of measuring success. It was agreed that if the business delivers a comparative or better standard service than the trust for the same or lower cost it was considered a success. However, the round table agreed that there were other qualitative measures to consider.

Measuring success

1. Delivering in line with the business plan
2. Being financially independent from the trust and providing a contribution back to the trust
3. Having a strong relationship with the trust
4. Supporting the same ethos and values across the trust structure
5. Developing the right business leadership with the right commercial and market facing skills
6. Day-to-day business running smoothly allowing time for strategic planning
7. Being clear on what the business wants to achieve and having a clear vision of the future which is agreed by the trust and the company
8. Establishing an appropriate company structure and governance arrangements to support the business

Delegates were clear, success always includes the NHS company making a profit. One delegate questioned: "How much profit are NHS companies actually generating? There is an understanding that investment is made [by the NHS trust] to improve services, but how is this measured? What does success look like?"

Clearly it is important that NHS companies make a profit. Discussions with delegates and our own experience indicate that the following areas are key determinants of a companies success.

The right professional advice

All of the NHS companies we canvassed have sought specialist advice either at the initial set up stage, or as the business started to grow. This included financial, legal and property based advice. Some commented that they had received advice along the way, and this had been updated as the market around them changed. Utilising professional and specialist insight is important, to obtain guidance and provide a reality check and best practice from the sector.

Trust and communication

Building a relationship between the trust and the company at both an executive and operational level is key. To operate commercially, a company requires a different mindset and the ability to operate in a flexible and agile way.

Equally important is positive and transparent communication to the people in the trust and the company. Preventing suspicion and a 'them and us' mentality was felt to be vital for sharing learning and best practice. Shared values were thought to support this 'coming together' by those around the table. One delegate commented : "There is a suspicion – are company employees getting inflated salaries or shares?"

Effective leadership

Delegates at the round table felt that getting the right leadership in place was essential. This included having the support of the trust board chair. One representative of a subsidiary company said: "Initially some people [in the trust] did not approve of the subsidiary, but having our chair on the board of the trust was so useful to keep momentum at a senior level. Now [trust] staff realise they couldn't have delivered their cost improvement plan last year without us. They see the benefits and we often talk about being one family. [Getting there was about] having the right leaders at the right level in the organisation on both sides."

> "If you want quick change, think carefully about whether you want to TUPE staff across."

Delegates said that appointing a commercially-minded managing director is crucial. One delegate referred to having appropriate commercial leaders in the company as being the 'grit in the oyster that is needed' to drive success. In our own experience, having separate management appointments supports company staff to focus on their business. One delegate commented "If we just employed a manager from the trust [to do the same job], they would struggle because they would get sucked into all those meetings." Another delegate commented: "There are many functional, operational people managing [companies] but we are now starting to see more managing directors, we had one of the first and that really helped."

Managing people

Patient-led services require a high level of customer satisfaction, and managing people effectively is crucial. Factors such as low staff morale inevitably have an impact on the quality of service delivered. Time needs to be taken to consult and support staff transferring into the company under TUPE. If time isn't taken at the beginning of the process, the first few years can be taken up dealing with staffing issues. One delegate commented: "If you want quick change, think carefully about whether you want to TUPE staff across."

As discussed earlier, some NHS companies employ staff on different terms and conditions. Delegates said any tensions created by these conditions were surmountable, and provided significant potential benefits to staff. An example of benefits to include financial savings in areas such as sick pay. The companies we spoke to noted significantly reduced levels of staff absence, which they considered arose from greater staff commitment. It also allows benefits to be aligned to staff need through pay, non-financial benefits, or training.

SWFT Clinical Services Ltd commented: "There are other ways of giving people enthusiasm and job satisfaction that are not about money. For example, one important way to maintain staff buy-in is to invest in their education." The company ring-fenced their training budget and have won awards for investing in people as a result of this approach to their staff.

Culture

Promoting cultural change in the new company was seen by delegates as more than a 'nice to have' – it is a necessity. A culture that embraces customer service, entrepreneurial skills, good leadership, an appetite for calculated risk and a desire to collaborate is critical to a company's success.

Delegates felt that key factors included:

Viewing the patient as a customer
People working in the NHS see their job as a vocation, and they care deeply about their patients. Delegates felt that establishing a company had helped people to redefine their patients as customers, linking both great patient care and service delivery.

A focus on key outcomes
The NHS has multiple targets and deliverables. Delegates commented that forming their company helped to focus on a specific area and enhanced their ability to make improvements, which in turn provides a culture of success and optimism.

Creation of a commercial mind-set
Delegates agreed that a commercial mindset was critical to success. This is raising the profile of finance among clinicians and helping leaders to see the benefit from their 'profits' as they are invested into the service. One delegate commented: "Staff can often provide the best services, but if they don't get the commercial view they won't maximise the opportunities."

The main objectives of a subsidiary company are generating income and creating efficiencies for the trust by fostering a more commercial culture. There is significant scope for taking peripheral services from the acute clinical trust and driving efficiencies from those within a commercial vehicle. For many, this remains an untapped opportunity. But this is only achievable with the right culture. Holding on to the NHS values and beliefs but accepting that delivery needs to have a more commercial focus, will influence the behaviours and customs of that team's delivery.

Structures and purposes

Implementing the right structure and making the purpose of the company clear is important for patients, staff, and other stakeholders.

One delegate commented, "Making money and charging for services made some people feel uncomfortable." Their solution was to create a social enterprise. This requires reinvesting a proportion of all profit back in to the trust, so there is a direct link between success and people's core values.

They also aligned the purpose of the company to that of the trust, "50% [of profits] have to be reinvested back to the trust which has helped to describe the benefits of the company to the trust, its staff and the company staff. The direct feedback of profits is now clear and people are far more comfortable with this. This builds a feeling of family. Locally, the language has changed. People talk about 'our' company. This provided an easier cultural fit between the trust and the company."

Key learning

Attaining the Social Enterprise Mark provides a national recognition of the positive economic and social benefit a business can generate.

Financial management

To succeed the new business must manage costs and ensure its financial stability. We have identified differences in the way NHS companies have approached financial sustainability. However, all have a clear financial plan which appropriately mitigated financial risks and made the right financial choices to deliver their desired outcomes.

For some services, benefits come from utilising tax efficiencies or by changing staff terms and conditions. By reducing the cost base, companies can bid competitively in pursuit of new work, maximising their growth opportunities. One delegate commented, "Everybody gets how we can become more efficient through growth."

Governance

Strong governance is essential for ensuring that there is some rigour and control around the day-to-day business. It is obvious that processes should be in place to protect assets and ensure high levels of probity. However, delegates agreed that the wider governance arrangements could significantly support or hinder the operational success of a new venture.

Performance management of a company is new territory for many trust boards. A balance needs to be struck between reporting to regulators, managing the investment risk, and allowing the company board sufficient freedom. Finding this balance is tricky and requires mature leadership on both sides which should focus on the best outcomes for both the trust and the company. One delegate commented: "The board needs to be encouraged to think like an owner and not a body with significant control. The focus is overseeing the contract, not micro-managing."

Another delegate commented: "It feels as though there is a tipping point – where the critical mass is sufficient to 'demand' extra resource and make the move to change the relationship to a more developed company [rather than just a controlled subsidiary]." Determining when to change the governance model can be difficult. The governance model should be continually reviewed, ensuring it is fit for purpose.

Sustainability

We have already highlighted the importance of business planning when setting up the NHS company. The plan, if delivered well, provides key ingredients for success. All NHS companies we have spoken with have confirmed the need to revisit the plan regularly, and to ensure an appropriate focus on expansion and growth. One delegate commented: “The strategy for expansion needs to clearly follow the business plan. Spend time developing robust and tested business plans. The commercial view needs to see the opportunities.”

Growth may take the form of transfer of additional services from the trust, a joint venture with other trusts or commercial providers, or work won in competition. The ability of the company to make the most of the opportunities available will shape both how it develops and its sustainability. Having an effective business plan and continually horizon gazing for new risks and opportunities will further support its sustainability.

Managing the brand

While companies are used as separate vehicles to provide a differentiation between NHS services and the more commercial activities, the round table delegates acknowledged that the NHS is a powerful brand.

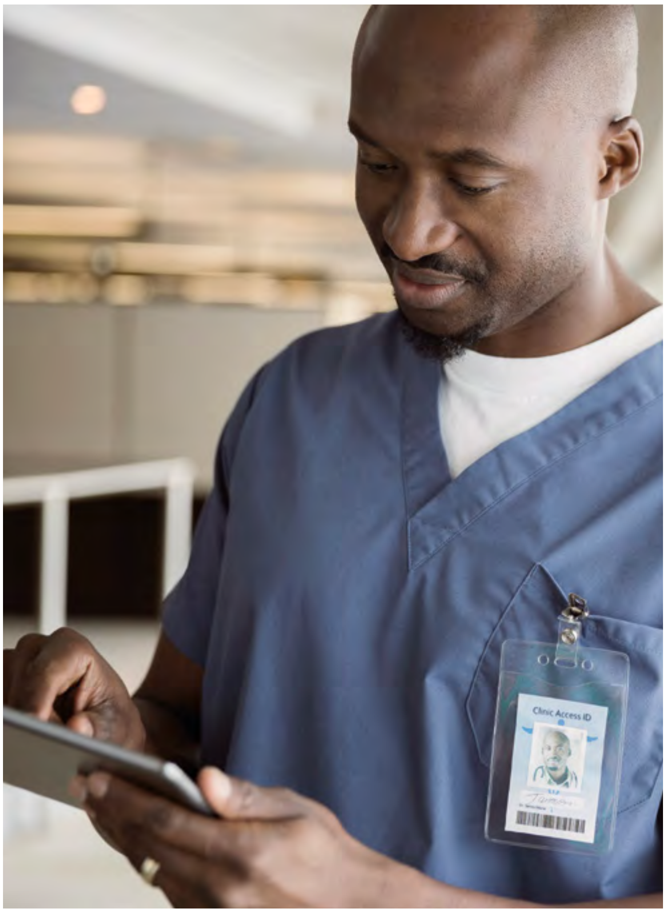
All of the delegates stated that their companies had maintained strong links with the NHS and many still use the NHS logo on their websites and stationery. One company did not initially use the NHS logo but then started to include it on correspondence. The company found that there was a greater confidence when they used the logo. Delegates at the round table felt that creating a separate brand which ‘piggybacks’ on the back of the NHS was the most effective way of launching a new company.

In conclusion, there are myriad factors that impact whether an NHS company will be successful. We have highlighted on the following pages two case studies for Guy’s and St Thomas’ NHS Trust companies.

Case note

Viapath

Guy’s and St Thomas’ NHS Foundation Trust shared how they had invested heavily to ensure pension protection for their staff within the company of Viapath. If they had needed to exit the venture, they could have maintained service delivery back in the NHS with continuity of staff. While this came at a significant cost, the trust considered that it was the most appropriate mitigation to ensure that clinically, they could continue to deliver that service.



Guy's and St Thomas' NHS Foundation Trust has a history of collaboration and partnership. The trust has one of the largest and most experienced commercial teams in the NHS. Below, we take a closer look at some of the elements of the trust's commercial offering. The company and investment portfolio of the trust are primarily managed by the trust's wholly owned subsidiary, Guy's and St Thomas' Enterprises Limited, this includes commercial subsidiaries and investments such as Essentia Trading and Viapath.

Viapath

The trust set up the pathology company Viapath as a joint venture with SERCO in 2009 and subsequently King's College Hospital NHS Foundation joined the venture in 2010. Guy's and St Thomas' chose a commercial partner to work alongside them and to complement their NHS pathology expertise. Viapath has become successful and has an annual turnover of around £100 million. It is majority owned by the NHS (66.6%) but has the commercial freedom to invest in growth and innovation.

Choosing the right model and partner had a significant impact on the venture's success. The group's decision to utilise a limited liability partnership (LLP) structure limits its financial liability while enabling the trust to exploit the flexibility offered by a partnership.

The need to ensure that NHS pathology staff retained their existing pension rights was a priority. This was initially done by a 'retention of employment model' (under the then current law) before TUPE transferring the staff when Viapath had an appropriate GAD approved pension scheme.

Viapath's purpose is to drive innovation through a transformed pathology service. They utilise their corporate structure to drive the cost efficiencies needed to enable its healthcare experts to develop new tests, master new technology and collaborate with sector partners to improve services.

Viapath's offering is focused on three key areas:

- **New test development**: the company's work leads to a continuous stream of new and specialist tests and improved diagnostic strategies for clinical teams.
- **Routine and specialist pathology services**: laboratory staff from across the member trusts work to deliver specialist clinical services and manage ongoing demand in a hospital or primary care facility.
- **Whole-service outsourcing**: in line with the findings of Lord Carter's 2008 review, which recommended that the pathology skills of multiple hospital trusts should be integrated into a smaller number of outsourced centres of excellence. Viapath was the first organisation to offer this service to NHS partners.

Following a major restructure in January 2015, Viapath now utilises a group structure in order to maximise efficiency. The last set of results available prior to the restructure (year ending 31 December 2016) reported revenues of more than £105 million with profit distributable to group members of £1.3 million.

Essentia Trading Limited

Essentia is a division within Guy's and St Thomas' NHS Foundation Trust. It is a team of 1,800 people delivering the internal service required by the trust to design, build and maintain healthcare infrastructure. In 2013, Essentia Trading Limited was launched as Essentia's commercial arm. Essentia Trading Limited is a wholly owned subsidiary, of Guy's and St Thomas' Enterprises Limited.

From the company's annual review: "Essentia Trading limited, Essentia's commercial arm, helps clients, predominantly in the public sector, to become more efficient and more effective. We provide consultancy and services in areas ranging from strategy and estates development to sustainability and IT. We use our experience and expertise gained from many years in the NHS to support other organisations – and all profits are reinvested in Guy's and St Thomas'. We are unique."

Essentia Trading Limited is set up as a private company structure, limited by guarantee; this option has the benefit of being a simple structure to set up while greatly limiting the trust's exposure to financial liability.

Services offered by Essentia Trading Limited include:

- **Healthcare planning**: everything from advice on simple hospital aesthetics to patient flows and space and capacity planning.
- **Property consultancy**: assisting NHS and non-NHS clients in developing and implementing their estates plans.
- **Capital development**: provision of an integrated approach to designing, building and managing projects in the healthcare built environment. Services include project and programme management, cost management and construction management consultancy.
- **Sustainability**: development of plans which will deliver carbon and energy savings in a cost effective way for clients.
- **Technology**: providing strategic and operational IT support and advice to NHS and non-NHS clients.

Essentia Trading Limited was incorporated and began trading as a limited company in late 2013, with its first full year of trading being 2014/15. The company has grown steadily with revenues growing from zero to £3.12 million in 2014/15, £5.2 million in 2015/16 and £6.8 million in 2016/17. The company is set to continue to develop over the coming years, with over 20% of revenues now coming from international work.

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About us

Grant Thornton UK LLP is a leading business and financial adviser with client-facing offices in 24 locations nationwide. We understand regional differences and can respond to local needs across public, private and not-for-profit sectors. Our clients can have confidence that our team of NHS and local government specialists is part of a firm led by more than 185 partners and employing more than 4,500 professionals, who together serve over 40,000 clients.

Grant Thornton has a well-established market in the public sector. We believe the current public sector reforms present real opportunities to redesign and integrate service delivery. We are passionate about supporting cross sector solutions to health and social care challenges and are developing our business to support this important agenda.

We have been working with the NHS and local authorities for more than 30 years and are the largest employer of CIPFA members and students in the UK.

Our national team of experienced NHS and local government specialists, including those who have held senior positions within the sectors, provide the growing range of assurance, tax and advisory services that our clients require.

We are a leading firm in the NHS audit market and the largest supplier of audit and related services. We are the largest provider of public sector audit nationally. Our nationwide NHS practice clients comprise 25 FTs, 34 NHS trusts and 77 CCGs.

Through proactive, client-focused relationships, our teams deliver solutions in a distinctive and personal way, not through pre-packaged products and services. Our approach combines a deep knowledge of the NHS, supported by an understanding of wider public sector issues, drawn from working with associated delivery bodies, relevant central government departments and private and not-for-profit sector organisations operating in the sector.

We understand the challenges and issues facing our clients and regularly produce sector-related thought leadership reports, typically based on national studies, and client briefings on key issues. We also run seminars and events to share our thinking on the NHS and local government.

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