

# Making Quality Your Business

*A guide to the right to provide*

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# Foreword by Secretary of State for Health Services and Minister of State for Care

The NHS has always drawn its strength from the expertise and spirit of those who work for it – and yet in recent years that spirit has too often been borne down on by bureaucracy and red tape.

Staff have become frustrated and disempowered by a lack of control over how their organisation is run and many good ideas have gone to waste because people haven't had a proper stake in the decision-making process.

That is why we are passionate about social enterprise and employee-led mutuals. They return the power and influence to those who can make all the difference – the doctors, nurses and other front line professionals. That is why the Coalition Government is committed to supporting the creation and expansion of mutuals, co-operatives, charities and social enterprises, and enabling public sector workers to take over the services they deliver.

In November, our colleague Francis Maude, the Cabinet Office Minister, gave the green light for public sector workers to get a 'right to provide' (R2P) – that is, a right to take over and run services themselves as an employee-led mutual. This guidance aims to support people who are thinking about taking up the R2P. We want to attract people who know things can be done better and have the skills and expertise to make it happen.

R2P builds on the successful right to request scheme for community health services, which will see almost 25,000 community NHS staff set up social enterprises to take over the services they provide. These cover an extraordinary range of organisations: from small scale services, such as prison care or support services for the homeless and vulnerable, through to large and comprehensive community providers with up to 3,500 staff.

The new R2P extends this opportunity to others working in the NHS and social care. It will give them the chance to take control of their organisations – and to get the independence and flexibility they need to improve services for communities.

Employee ownership, combined with strong staff engagement, has demonstrated how it can deliver hugely successful enterprises in a commercial context; we believe it can do at least as well in public service. Through R2P, we can improve morale, boost productivity and capture the full passion and commitment that health and social care staff have for the work they do.

This is a cornerstone of the Big Society. Supporting the development of employee-led organisations in delivering public sector services is a key Coalition commitment and a powerful way of bringing public services into the 21<sup>st</sup> century. We hope as many people as possible will come forward to be part of it.



Andrew Lansley CBE MP  
Secretary of State for Health



Paul Burstow MP  
Minister of State for Care Services

# Introduction

The right to provide is part of a bigger vision for the future of public services.

This guide aims to support people who are thinking about taking up the right to provide and has been built on the experience of healthcare staff who have been through the right to request. This guide sets out a process for people working in NHS Trusts who have the right to propose the development of a staff-led enterprise. We would also encourage staff working in social care who are thinking about the right to provide, and people working in Foundation Trusts and Arm's Length Bodies who are interested in staff leadership to use this guide.

This guide tries to answer some of the questions you may have about setting up a staff-led enterprise. It will help you identify the next steps you need to take and where to find further information.

## What is the right to provide?

Evidence shows that staff-led enterprises bring many benefits, including reduced absenteeism and increased productivity<sup>1</sup>. They also give front line professionals greater freedom to personalise and improve service delivery to the public, particularly to individuals and communities at the margins of society. Staff-led enterprises can improve staff and community engagement.

The right to provide builds on the successful right to request scheme in community health services, which will see almost 25,000 NHS staff involved in the creation of social enterprises that will deliver high quality services.

The right to provide supports and enables staff working in health and social care to ultimately develop staff-led enterprises to deliver more flexible and responsive services, whilst having ownership and real influence in the way the service develops.

As discussed later on, the right is to present to your board your proposal for a staff led enterprise and to seek approval to develop a full business case to test your proposal. If the business plan is then approved, you will be able to set up a staff-led enterprise. How this right applies to different NHS and social care organisations is described below.

Staff-led enterprises have an important role to play in meeting the Government's commitment to improve choice and quality in the delivery of healthcare services. The right to provide enables staff to consider a wide range of options, including social enterprise, staff-led mutuals, joint ventures and partnerships. Their freedom to innovate and respond to service user need will put them in a strong position to drive up quality and improve health outcomes.

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<sup>1</sup> <http://www.socialenterprise.org.uk/data/files/stateofsocialenterprise2009.pdf>

## Who has the right to provide?

At the widest level, the right to provide is for all staff working within health and social care. Depending on where you work, the process you go through will differ.

If you work in an acute, mental health or community NHS Trust, you will be able to take your right to provide proposal to the Trust board and the board will be obliged to give it due consideration. If it is approved, the Trust will be required to support the further development of the proposal. It is not automatic, however, that proposals will be supported, as they will need to demonstrate that they would facilitate, and not be detrimental to FT application. However, if the Trust decides not to support it, you should be given a clear explanation of the reason why.

If you provide social care, and are employed by a local authority, you will need to discuss your proposals in your team and take any firm proposal to the Council's Board. A number of authorities are already taking part in a programme to pilot adult social work practices (SWPs) over the next two years (up to July 2013) and some of these may develop into social enterprises over time. SWPs are social worker led organisations that are independent of the local authority and provide social work services for specified groups of adults. They will enter into contracts to discharge the statutory duties and responsibilities on behalf of the local authority in relation to these people. In these cases, there will be a legal delegation of responsibility from the Local Authority to the SWP for the specific functions.

If you work in a Foundation Trust, you will have to talk through your proposals with your manager and decide on the best approach to take. As Foundation Trusts are independent organisations, their boards are not obliged to support proposals to develop staff led enterprises. However, Foundation Trusts may well be interested in innovative proposals that will improve patient care.

If you are working within a PCT, providing commissioning or support activity, you may be interested in developing a social enterprise. Discussions are continuing about the process for establishing future commissioning support arrangements. For this reason, commissioning support is *not* being included in the R2P scheme at its launch. Further information will be made available as soon as possible.

If you are working for an Arms Length Body or Special Health Authority, you may be considering the opportunities the right to provide can offer. If you are interested in developing any proposals for a staff-led enterprise, you will have to discuss it with your director and ultimately with the Department of Health sponsor.



## What is a staff-led mutual?

Mutuals are owned by, and for the benefit of, their membership. Generally, this can include customers, employees and wider stakeholders but under the right to provide initiative, the mutuals will be led by employees<sup>2</sup>.

There are numerous business and ownership models in the co-owned business sector. Worker co-operatives are just one form of employee owned business.

Companies where employees own a significant stake in the company they work for – sometimes termed ‘co-owned’ businesses – now account for combined annual turnover in excess of £25 billion, more than 2% of GDP and growing<sup>3</sup>.

For the purposes of this guidance, the term ‘staff-led enterprise’ will encompass staff-led mutuals, cooperatives, co-owned businesses and social enterprises, joint ventures and partnerships, irrespective of their legal form.

From discussions with people working in health and social care, it is anticipated that most staff-led enterprises formed under the right to provide will be social enterprises.

## What is social enterprise?

Social enterprises are businesses established to address a social or environmental need. They range from local and community based organisations to national, and international, multi-million pound enterprises. They operate across an incredibly wide range of sectors from primary and community care to renewable energy, housing and retail.

There are approximately 62,000 social enterprises in the UK with small and medium social enterprises contributing £24 billion GVA (Gross Value Added) to the UK economy<sup>4</sup>. Whilst some social enterprises are very large, with turnovers in excess of £100 million, the majority operate at small business scales, with an average turnover of £2.1 million and a median turnover of £175,000<sup>5</sup>.

Although every business is unique, social enterprises share a number of features. Core to every social enterprise is the trading of goods or services. Whilst grants can be a source of funding, social enterprises are fundamentally about business approaches to achieving public benefit.

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2 NHS Mutual: engaging staff and aligning incentives to achieve higher levels of performance, <http://www.nuffieldtrust.org.uk/publications/detail.aspx?id=145&prID=604>

3 <http://www.employeeownership.co.uk/employee-ownership/the-evidence/>

4 Williams, M. and Cowling, M., 2009, Annual Small Business Survey 2007/08, Department for Business, Enterprise and Regulatory Reform

5 The State of Social Enterprise 2009, Social Enterprise Coalition, <http://www.socialenterprise.org.uk/data/files/Research/stateofsocialenterprise2009.pdf>

All social enterprises have social or environmental objectives or both. While many private businesses also consider themselves to have social objectives, social enterprises are distinctive because their social or environmental goals are central to what they do. For example, whilst the Big Issue is a business that sells magazines and makes a profit, its overriding intent is to address homelessness and it uses the profits it generates to further address this purpose.

Social enterprise is not a legal form in itself; it is what a business does with its profits rather than its structure, which defines it as a social enterprise. Social enterprise can take a number of different legal forms – common examples are Community Interest Companies (CIC), partnerships, Industrial and Provident Societies and companies limited by guarantee or shares.

Increasing numbers of social enterprises are created by establishing independent organisations to run what was previously a statutory service, such as community and primary care services established under the ‘right to request’ policy. What all social enterprises share is an enterprising, innovative, business-based approach to achieving social and environmental aims.

**“I saw the social enterprise model for the provider arm as potential for real cultural change, putting the decision-making power where it should be, with frontline staff.”**

**Staff involved in a right to request social enterprise**

## Why have a right to provide?

The Government is committed to the Big Society approach, making public services answerable to the people that use them. Right to provide devolves power to staff at a local level who know how things can be done better and gives them the opportunity to put their ideas into practice.

The right to provide gives NHS staff the opportunity to innovate and redesign services in flexible new ways, through independent organisations, to deliver services that are responsive to the needs of the communities and people they serve. It will help to create the conditions where NHS and social care staff can innovate and lead rather than follow.

This is particularly relevant in relation to the Government’s commitment to give patients more choice and control over their care and treatment through Any Qualified Provider (AQP).

AQP is about empowering patients and carers, improving their outcomes and experience, enabling innovation and freeing up clinicians to drive change and improve practice.

**“The benefits for us are about being able to respond to patient needs in real time and to develop services without having to gain fresh approval. It’s about having the authority to act... We deliver on the front line and see the need and we don’t want to be stopped by red tape.”**

**Staff involved in a right to request social enterprise**

Competition on quality will enable better providers to be financially rewarded, allowing them to grow, while poorer providers will be incentivised to improve the quality of the services they offer.

Staff-led enterprises have a history of providing innovative, responsive and high quality services, tailored to the needs of the populations they serve<sup>6</sup>.

We therefore envisage that within two years there will be a range of staff-led enterprises, delivering high quality, efficient and productive services that people choose to use.

This is important, as the reform of the NHS will create the presumption that people will have choice and control over their care and treatment, and choice of Any Qualified Provider of services – right to provide staff-led enterprises will add to the richness of services people can choose.

## Why exercise the right to provide?

Establishing or working for a staff-led enterprise offers an alternative to working in public or private services. It will offer many people the opportunity to work in organisations for public benefit, but with greater freedom and independence.

The experience of NHS staff who have been through the right to request process clearly shows that whilst it was a challenge, both personally to those leading the right to request and to those who work in the service, it was ultimately a life-changing opportunity<sup>7</sup>.

## What are the benefits of the right to provide?

Our experience of the right to request is that developing a staff-led enterprise is a challenge and is not to be undertaken lightly. However, there are some specific benefits of the right to provide, which will help you to make the best of the opportunity.

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<sup>6</sup> <http://www.businesslink.gov.uk/bdotg/action/detail?itemId=1079871139&type=RESOURCES>

<sup>7</sup> Case studies from the Right to Request

[http://www.dh.gov.uk/en/Managingyourorganisation/Socialenterprise/Action/DH\\_114193](http://www.dh.gov.uk/en/Managingyourorganisation/Socialenterprise/Action/DH_114193)

**“Setting up a social enterprise gives you the freedom to develop a service very differently; to engage your staff more so that they understand the value of business culture.”**

**Staff involved in a right to request social enterprise**

### Pensions

Assuming that you continue to provide NHS-funded services and you set up an appropriate legal form, such as a social enterprise, you should maintain your eligibility to continue to be in the NHS pension scheme if you are at present a member of it. More information is in the pensions annex. However, this and the preservation of your terms and conditions may be important factors in your decision to exercise your right to provide.

### Contracts

In some cases, particularly for clinical services, where there is not an established market, you may be eligible for an uncontested contract to deliver services. The length of the contract will be dependent on when the service you are planning to deliver will become subject to choice and Any Qualified Provider.

### Ownership and Involvement

Staff-led enterprises enable people to have a much greater say in the way the organisation is run and in its strategic direction. That sense of ownership can be a powerful motivating force and is a factor in improving quality and the delivery of service.

**“The journey will be very tough, but will be enormously satisfying for the right people. It is not for those who want a slow slide to retirement!”**

**Staff involved in a right to request social enterprise**

### What is the first step in the right to provide?

The very first step to take is to consider what it is that is motivating you and your colleagues to establish a staff-led enterprise. There may be a number of reasons, such as a desire to have more freedom and flexibility to innovate and meet clients' needs more effectively and efficiently. You may have ideas on how you want the service to develop and want a say in how that happens.

The right to provide allows you to explore different options to meet those aspirations. Understanding what you and your colleagues want to do early on will, in the end, save you time and help you make informed decisions.

### Staff engagement

Staff engagement is vital in establishing a staff-led enterprise. If staff are able to contribute early on in the development of the proposal and have a sense of ownership, the venture is more likely to be a success. Furthermore, leading the development of a new organisation there is considerable responsibility to ensure that people who transfer into the new organisation understand why this endeavour is taking place and what the risks and benefits are.

**“Leaders need a strong, firm, well researched stance and should have a clear, constructive, open and honest dialogue with staff”**

**Staff involved in a right to request social enterprise**

The first step then, is to discuss your plans and ideas with colleagues. You should also consider engaging your stakeholders, including potential partners, and people who use your services early in your plans.

It is vital that people who work in the organisation are fully engaged in developing the vision, social mission and values of the organisation. This will help drive the organisation forward and foster shared ownership of the plans.

Trade unions should be engaged early on in discussions and planning before decisions are made. This is a particular requirement where TUPE transfers take place.

Many staff-led enterprises see their staff teams as being absolutely critical to delivering and protecting their social mission. These social enterprises ensure that supporting the organisation’s social mission is a core part of the induction and appraisal process, that staff are regularly updated on the progress in delivering this social mission and that they are appraised against the role they play in delivering it.

### Staff Engagement Methods

There is no one size fits all approach to staff engagement and it will be good practice to ensure that numerous approaches are taken. This may include meetings, staff briefings, question and answer sessions, staff involvement in steering groups and use of the intranet. Some organisations may consider using staff ballots, although this is not a requirement. It is also important to remember that staff engagement is an ongoing process, not a one-off activity.

The Department does not prescribe the approach that should be taken to staff engagement. However, the assurance process for the right to provide clearly states that there must be evidence of staff engagement in order for the new organisation to be approved.

### Community and user engagement

An important characteristic of staff-led enterprises is how they connect with their communities and service users. Making sure that the groups and communities you serve have a greater involvement in the design and delivery of services will help you to design and deliver quality services that people choose to use.

Expert professionals, working with marginalised groups such as ex-offenders, the homeless and substance misusers, have established a growing number of staff-led enterprises. Effective and committed engagement has enabled these services to truly meet the needs of the client group and engender a sense of ownership. It is also a key factor in driving up quality: independence from government allows people to build more trusting relationships with service users, developing services specifically designed to meet their needs.

**“Patients have welcomed the more entrepreneurial style of delivering care. The process has had a positive impact on both patients and members of staff, raising the aspirations and personal responsibility of staff and service users”**

**Staff involved in a right to request social enterprise**

It is important to note that how staff-led enterprises engage with their communities varies from enterprise to enterprise. Sandwell Community Caring Trust<sup>8</sup> for example has formalised its community engagement by having carers and users on its Board. Similarly, Principia<sup>9</sup> stands out in having formal community representation within the governance of the organisation.

Other organisations like Open Door<sup>10</sup> co-produce their services with the communities they are serving to ensure the service truly meets the needs of the end users. What is important is to find methods of engagement that align with your organisation’s vision, values and mission.’

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<sup>8</sup> <http://home.btconnect.com/sandwellcct/trust/>

<sup>9</sup> <http://www.nottinghamprincipia.nhs.uk/>

<sup>10</sup> <http://www.thebiglifegroup.com/open-door/>

## What is the process for the right to provide?

There are four milestones in the right to provide process:

1. Submission of the expression of interest
2. Production of the draft integrated business plan
3. Production of the final integrated business plan
4. Go live

These are described in more detail below.

### Milestone 1: Submission of the expression of interest

An application to use the right to provide can be made by an individual or team and it is done through the creation and submission of an expression of interest. If you haven't already, it is good practice to involve colleagues at all levels within the team or service in the development of the expression of interest and to set up effective staff engagement processes.

The expression of interest is a high-level document that details your proposal, including discussion on what you hope to achieve through setting up a staff led enterprise, how you expect to do things differently and how you will demonstrate value for money. You should also aim to demonstrate how setting up a staff-led mutual will improve service quality and enable you to innovate.

In relation to social enterprise, you will need to articulate your social mission and show that you have given thought to how the enterprise will be run. If you are thinking of joint ventures or partnerships, you will need to identify the organisations you are thinking of working with.

You need to give some thought to finances and sustainability, as these will be cornerstones of the proposal. However, at this early stage, it is unlikely that you will have a full knowledge of the costs of your service, so you do not have to go into detail at this stage.

A suggested template is available on the Department of Health's website to help you get this process started.

Your expression of interest needs to be submitted to your organisation's board, as discussed above in the 'who has the right to provide' section, as well as to the SHA who will forward it on to the DH Social Enterprise Unit (SEU).

Submission of the expression of interest does not automatically mean that it will be supported. Your organisation's board will have to consider how it may affect the organisation's wider remit and objectives and how practical it is to implement the proposal. For example, the Trust will

have to consider how it may affect its application to be a Foundation Trust. However, if it is not approved, the decision will, in this case, be subject to assurance from your SHA, with support from the SEU.

It is also important to note that if the expression of interest is supported, it does not mean that you have approval to set up your social enterprise. It means that you have approval to develop a business plan to see whether the proposal is viable and it may qualify you to receive support to do this, including investment from the Social Enterprise Investment Fund.

### **Milestone 2: Production of the draft integrated business plan**

If your expression of interest is approved by your organisation's board, your next step is to develop a business plan that demonstrates its financial viability and sustainability.

At milestone 2, you will be expected to present a draft iteration of the business plan to your board for consideration and approval. It gives you further time to revise your plan before submitting the final version for assessment and approval.

This milestone allows you to discuss your draft with your board and will help identify any problems early on, particularly in relation to the business model and projected income.

It is possible that at this stage, the business case does not stack up and that further work would be of no value, in which case the plan will not be supported by your organisation's board. Again, this decision will be assured, for example if you are working in an NHS Trust, by your SHA, with support from the SEU. You should also expect to receive clear feedback as to why the proposal is not supported.

### **Vision, Values and Mission**

The core of your business lies in its vision, values and mission. These provide a powerful statement about what you will do. It is also important that these relate to the NHS constitution and the Social Care Vision.

**"Social purpose is at the very heart of what we do. Our work and values are closely aligned to NHS values and we're able to combine these values with business principles, enabling us to be autonomous, innovative, flexible and responsive to the needs of our local community."**

**Staff involved in a right to request social enterprise**

In developing your vision, values and mission you will need to involve everyone who has an interest in what you do, including people who work in the organisation, people who use the service and other stakeholders.



## The Vision

Your vision is the driving force behind the organisation because it concerns the change you intend to bring about. It embodies the aspiration of your organisation and, whilst it must be realistically achievable, it can be ambitious.

A vision statement provides you with the ability to articulate simply and clearly to yourself, your staff and other stakeholders what you are about and where you are going. This is a powerful tool for motivation and for gaining interest in what you are doing.

**“It is important to have an authentic vision to present to patients, staff and the wider community. The vision needs to be meaningful and clearly articulated”**

**Staff involved in a right to request social enterprise**

## The Values

It is important to back your vision statement with a set of values describing why you believe in the changes your vision can make.

This can be expressed by your aims and objectives, in two key areas:

- Your organisational practices, for example, if you are a democratic member controlled organisation such as a co-operative or if you employ people with disabilities in the case of Social Firms; and
- What you do (the product or service you provide) and why you do it (the social or environmental needs you are aiming to address).

This can be a simple and short paragraph that expresses the foundations upon which your organisation’s vision is built. This further clarity will help you to ensure that all activity is aligned with your vision, from staff management to policies and service design or product development.

## The Mission

The mission statement is a summary of what the organisation does or intends to do, for whom and where. It needs to communicate the work of your enterprise in a way that everyone can understand.

## **Your Objectives**

Once you have your vision, values and mission you will need to establish your business objectives. These are the ends that an organisation sets out to achieve and are based on combining the various interests of all stakeholder groups.

These should flow from your mission and usually include a set of objectives relating to aspects such as:

- health or social care outcomes
- customer satisfaction
- employee satisfaction

If possible, you should quantify your objectives. They need to be challenging but attainable. They should be realistic and understandable so that they are easy to communicate.

Once you have your vision, values, mission and organisational objectives a full business plan will help you to achieve these goals helping you to map the structure of your business, pinpoint strengths and weaknesses and help you to mitigate risks. It will help you to feel confident about where you are going and equip you with the knowledge of what you need to get there. It is also vital for convincing your bank or funding organisation and possibly key customers and suppliers to support you.

## **Your Business Plan**

A business plan must show that you understand your market – in other words, who will buy your service. It needs to show that you can offer clear value. It also helps decide what makes your business different from competitors and from the status quo.

Areas you will need to consider include:

- Executive Summary
  - An overall summary of your business plan.
- Your organisational structure
  - Including the legal structure, the governance, management structure and key personnel, including partner agencies, if applicable
- Your products and services
  - The nature of the service or product you will supply including whom it is for and how it will be provided.
  - Your pricing strategy.
  - How you will assure quality

- Your marketing plan
  - Who will buy and use your service or product and how you will reach them.
- Your financial plan
  - The estimate of your company's financial future. This should include the following; a 12-month and five year profit and loss projection, a cash-flow projection, a projected balance sheet, and a break-even calculation.
  - Where your funding and revenue is going to come from and how certain your assumptions are.
- Your corporate functions
  - These include functions such as governance, HR, Information and Communication Technology and finance and payroll.

A good business plan helps you to understand how each aspect of your enterprise relates to each other and where a weakness in one area can influence another.

### Milestone 3: Production of the final integrated business plan

This milestone is the point at which you submit your business case for final approval. To pass this stage, your integrated business plan will need to be authorised by your board and by, for example, your SHA with support from the SEU.

At this stage, you must have finalised your plan and be in a position to demonstrate, amongst others:

- Financial viability
- Sustainability
- Staff and stakeholder engagement
- Social mission
- Quality and innovation
- Legal form
- Appropriate insurance and negligence cover
- Governance

### **Governance**

Good governance is essential for staff-led enterprises to thrive and be sustainable. Good governance provides legitimacy, accountability and transparency for all stakeholders, and provides a framework for responsible decision-making and safeguards for investors. Further, when it comes to the provision of health and social care services, good governance is essential to maintain and strive for the highest standards of patient care.

Governance is particularly important when organisations are making the transition from the public sector and establishing themselves as autonomous enterprises. Being a staff-led enterprise brings with it a different set of governance responsibilities and it is essential that these new organisations do not simply replicate the governance structures of the public sector.

As autonomous businesses, the Board of Directors or equivalent body in a staff-led enterprise is responsible for setting and safeguarding the organisation's vision and social mission. Directors are fully responsible for the management of their companies and must act in a way most likely to promote the success of the business. They are also personally liable for any acts or omissions of the business. It is therefore essential that the board of directors has the appropriate financial and business acumen as well as having the right values and are committed to the organisation's social mission.

Beyond this, there is no single correct formula for the governance of staff-led enterprises. Some staff-led enterprises choose to appoint the board while others have a democratic election process. Some choose to have formal staff and stakeholder representation while others choose to do this in an advisory way. Similarly, some staff-led enterprises choose to remunerate non-executive directors, balancing this with the organisation's social mission; others choose to make these posts voluntary.

What is essential is that the Board of Directors is committed to both the business and social purpose of the organisation. It is essential that they fully understand their roles and duties, are committed to developing and delivering the organisation's mission and are open and accountable to all stakeholders. The individuals should also be aware of the risks they are assuming and be happy to do so.

You may want to consider agreeing transitional arrangements with your employing organisation, to give you time to establish your board and other governance arrangements.

### **Conflicts of Interest**

You need to be aware of issues around conflicts of interest. When NHS or other public sector staff transfer to the new organisation, care needs to be taken to ensure there are no conflicts of interest for them. Staff who are to transfer should not take part in negotiating the terms of the transfer on behalf of the public body, or be involved in assessing any bids from that body for any ongoing contracts.

After the transfer, conflicts of interest between any representatives of the public body who sit on the board of the new enterprise need to be declared and managed in accordance with the rules of both the public body and the new enterprise.

One of the issues for the public body in relation to any ongoing arrangements between the public body and the new enterprise is that the public body is fulfilling two roles. As the

promoters of the new enterprise, they will wish to see it succeed not least because they will want service delivery to continue. However, they will be unable to favour that enterprise in any tender process in the event that it has to compete for contracts.

It is important therefore to agree a protocol with your current organisation right at the beginning of the right to provide. Clear terms of reference should be established for staff dedicated to establishing the new enterprise.

### **Due Diligence**

Due diligence is the act of performing a reasonable investigation into the facts and circumstances of a transaction to ensure a full and complete understanding of it. Any group of NHS employees contemplating taking on the delivery of a public service by setting up a new enterprise should ensure that it carries out an appropriate due diligence exercise. The nature of this will be dependent on the services involved and staff involved should take appropriate advice.

### **Other Business Considerations**

In relation to issues such as taxation and legal form, you will need to take professional advice as to which arrangements are best for your enterprise, as there are advantages and disadvantages relating to the decisions you make.

You will need to give due consideration to legal requirements, such as the Transfer of Undertakings and Protection of Employment (TUPE) and the requirements of the Equality Act 2010 and the public sector equality duty. More information on this can be found in "The Essential Guide to the Public Sector Equality Duty", produced by the Equality and Human Rights Commission.

**“The SE model offers a real opportunity for a new entrant to the provider market. There have been difficult times, but I wouldn’t have swapped a minute!”**

**Staff involved in a right to request social enterprise**

You will also need to have in place adequate pension arrangements and back office functions.

Finally, remember that your business plan is a living document and that you need to update it as your organisation evolves.

## Milestone 4: Go live

This is the point at which you become an independent organisation. Whilst this may be the end of the right to provide journey, it is also the start of a new journey.

## What are the next steps?

The thought of setting up a staff-led enterprise can be daunting. Although this guide contains much of the information you will need to consider, it is not fully comprehensive and is not intended to replace the specialist advice you will need, such as legal, tax and accounting advice as you move on through your journey.

Much can be learned from talking with existing social enterprises and mutuals and by visiting numerous websites and resources. A list of internet resources is provided at the end of this guide, which should prove useful.

The following appendices are designed to give you specific information on a number of topics, to both make you aware of what you need to consider and to give advice as to what you need to do. You can send any queries you may have on the right to provide to [social.enterprise@dh.gsi.gov.uk](mailto:social.enterprise@dh.gsi.gov.uk).

# Pensions and Employment Services Issues

## The basics

The NHS Pension Scheme operates principally for the benefit of staff who are directly employed within the NHS in England & Wales in an 'employing authority' such as:

- NHS Trust
- NHS Foundation Trust
- Primary Care Trust
- Health Authority
- Special Health Authority
- Strategic Health Authority
- Local Health Board

In addition, the Scheme operates for the benefit of medical services providers and their staff operating under a NHS contract to deliver:

- General Medical Services (GMS)
- Personal Medical Services (PMS)
- Alternative Provider Medical Services (APMS)
- Specialist Personal Medical Services (SPMS)

There are two other categories of organisation whose employees may, with the prior approval of the Secretary of State for Health, continue to have access to the NHS Pension Scheme:

- Direction employers – principally not-for-profit organisations in the voluntary sector that support the NHS in the provision of health care
- Joint NHS and Social Care partnerships to provide integrated health care – staff are able to retain membership of their original pension schemes when they are transferred to the NHS or Local Authority

Where staff are transferred to a social enterprise under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) they can apply to retain access to the scheme through the Direction route outlined above. To qualify for a Direction, the social enterprise must be 'not for profit' (eg a Charity, Community Interest Company or Industrial and Provident Society) and not part of a joint venture with a profit making organisation. Directions cover NHS funded work only and do not cover new recruits.

The Independent Public Sector Pensions Commission also made recommendations about future access to Public Service Pension Schemes as part of its final report. The Government has accepted the report as the basis for discussions with Trade Unions and Employers and intends to set out proposals in the autumn. It is therefore possible that in future the terms of access to the NHS Pension Scheme for social enterprises may change.

In all other cases, staff who join a non-NHS employer will normally lose access to the NHS Pension Scheme. The Treasury guidance, 'A Fair Deal for Staff Pensions' requires that where staff are transferred under TUPE the new employer should provide broadly equivalent pension benefits. The Fair Deal is currently under consultation, which is due to report in the summer.

Where local authority staff transfer, the organisation will need to apply to Local Government for 'admitted body status' in order to retain access to their pension scheme.

## What you need to know

### Staff Transferring to a Right to Provide Organisation under TUPE

When staff are transferred, pay, terms and conditions are protected by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

### Which Terms and Conditions are protected on transfer?

Terms and Conditions include such details as holidays, sick leave and contractual redundancy benefits. These are set out in the Staff Council Terms and Conditions Handbook

### Will redundancy and severance terms transfer?

Under TUPE regulations, Right to Provide Organisations must replicate NHS redundancy and severance terms. These include a requirement to offer some staff an unreduced pension if they are made redundant.

Direction employers are not allowed to pay for redundancy retirement. However, in some cases they can purchase sufficient 'Additional Pension' through the NHS Pension Scheme to deliver the equivalent terms. Cash compensation agreed with the member may be necessary where this is not possible.

### Are the benefits provided under the NHS Injury Benefits Scheme protected by TUPE?

Not all benefits in relation to the NHS Injury Benefit Scheme are protected TUPE. TUPE does apply to Temporary Injury Allowance (TIA), and Permanent Injury Benefit (PIB) where pay reduces but NHS employment continues. However, it does not apply for the provision of Permanent Injury Benefit where NHS employment has terminated.

### Post-transfer changes to terms and conditions

TUPE affects terms and conditions at the point of transfer but future changes, such as annual pay increases, are not automatic and must be negotiated with the new employer



### What pensions provision will right to provide organisations be required to make for transferring staff?

Where staff are transferred under TUPE, the Right to Provide employer currently needs to provide broadly comparable pensions benefits as part of the “Fair Deal for Staff Pensions” The Fair Deal is currently under consultation by the Treasury which is due to report in the summer.

### Will it be possible for staff transferring from the NHS to a Right to Provide Organisations to maintain access to the NHS Pensions Scheme?

If the right to provide organisation is ‘not for profit’, it can apply for an NHS Pension Direction that will allow transferring staff to retain access to the NHS Pension scheme.

### Qualifying for Directions

In order to qualify the staff must be doing NHS work and, more specifically, the organisation must have either a PMS, APMS, or an NHS Standard Contract.

### What is the process for requesting a Direction?

Once the appropriate contract is in place, an application for a Direction should be made to the Pensions Division of the Business Services Authority (NHSPA), which administers the scheme and access eligibility. This process will include providing relevant corporate documentation. For further information on the direction application process, please contact Steve Blakey ([srblakey@nhspa.gov.uk](mailto:srblakey@nhspa.gov.uk)). The process for applying for a direction usually takes between one and two months.

### Can Directions be granted retrospectively?

It is important to make contact with NHS Pensions as soon as possible to ensure there is adequate time to complete the application process before the TUPE transfer date. In exceptional circumstances, Directions can be applied retrospectively, however for legal reasons they must be granted within 12 months of the staff having been eligible to participate in the scheme.

### Do staff with Mental Health Officer/Special Class Status retain a normal pension age of 55 and a minimum pension age of 50 if they are covered by a Direction?

Yes. The benefits afforded by Mental Health Officer and Special Class Status are retained.

### What criteria must Right to Provide Organisations satisfy in order to be eligible for Directions?

The NHSPA have specific criteria that organisations must meet in order to be granted Directions. These criteria focus mainly on the governance structure of the organisation and what its funding model is. Key criteria include:

- Whether the organisation is not for profit
- A description of the aims of the organisation
- The method of funding for the organisation

Directions are intended for 'not for profit' organisations and it is possible that a Direction may not be granted if a right to provide organisation is a joint venture. Directions would not be granted if private, profit-making organisations are shareholders in the right to provide organisation.

#### Will employees be able to pension non-NHS work?

No. Non-NHS work cannot be pensioned under the NHS Pensions Scheme. Non-NHS work would instead need to be pensioned under whatever alternative pension scheme the organisation offered. It is important that there is a clear separation between NHS and non-NHS work, and split contracts may be a way of achieving this. You will need to source an alternative pension scheme to cover non-NHS work and any newly recruited staff (not covered by the original TUPE transfer)

#### Will transferred employees be able to maintain access to the NHS Pensions Scheme if they are promoted or move post after the transfer?

Providing the organisation successfully applies for a direction, employees will be able to maintain access to the NHS Pension Scheme if they move post or are promoted (They should continue to carry out NHS work).

#### Which legal form means transferred staff retain access to the NHS pension scheme?

The following legal forms are acceptable for Social Enterprises who wish to have access to the NHS Pension:

- Charity
- Community Interest Company (for example a company interest company limited by guarantee)
- Industrial and Provident Society

The general principle is that the company should be a 'not for personal profit' enterprise, with any profit being reinvested in services or the wider community.

#### How do I find out about alternative pension schemes?

You will need to consult an independent financial adviser. There are certified 'off the shelf' pension schemes available, on which an independent financial advisor could advise you.

### Further resources

DH booklet: *What happens to my pension*

([http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_063847](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_063847)) was distributed to all NHS employers on publication. This sets out the actions that employers should take when NHS services are transferred to the private sector.

# Contracts

## The basics

With any third party service provider, the commissioning organisation or the body purchasing the service (such as the Department, a local authority or, currently a Primary Care Trust, and in the future a GP Commissioning Consortia) will need to agree a legally binding contract to govern the provision of services. This will set out the relationship between the staff-led enterprise and the government purchaser of your services.

## For staff-led enterprises providing clinical services:

### What you need to know

The NHS Standard Contract should be the form of agreement that is used when contracting with social enterprise organisations in the majority of circumstances. The NHS Standard Contract has been developed over the last 4 years and consists of nationally mandated terms and conditions plus a significant number of associated contract schedules that will be agreed between the provider organisation and the commissioning organisations.

Where the staff-led enterprise organisation is delivering primary care services the suite of primary care contracts should be used.

The primary medical care contracts include the GMS, PMS, APMS and SPMS contracts that have been developed from the many statutory regulations that set out the requirements for primary care based services.

### NHS Standard Contracts

There are currently four standard contracts covering acute hospital care, ambulance, mental health and learning disability and community services which will be used to contract for services from all provider types including NHS Trusts, Foundation Trusts, Independent, Charitable and Voluntary Sectors as well as social enterprises that provide clinical services.

Dependent upon the services provided, the contracts for community or mental health and learning disability are the contracts most likely to be used by staff-led enterprises.

The contracts contain standard legal clauses in respect of the terms of the contract and will normally be for three years. However, for social enterprises set up under the right to provide, longer agreements may be offered, but will be coupled with the requirement to market test through a formal tender process specific services.

For some services, particularly those where patient choice is being introduced, commissioners may instead wish to consider awarding social enterprises 'Any Qualified Provider' status, under which they would provide services as long as they met agreed contract and service standards and price. Organisations would compete with other accredited providers on the basis of the quality of their services.

Contracts are based on an outcome driven service specification agreed by both the commissioner and the provider, and include prices as well as targets for quality performance.

## For staff-led enterprises providing other services:

### What you need to know

Depending on what services your staff-led enterprise is proposing to provide there may be a standard form contract, which sets out the terms on which your organisation will be required to contract with the government body purchasing the service.

If so, you need to find out what it is and whether your organisation needs to participate in a tender process.

If there is no standard form contract, you will need to agree a legally binding contract to govern the provision of services.

Government organisations are subject to EU procurement and competition law and may have to competitively tender the services your organisation is seeking to provide.

You should confirm whether this is the case when preparing your business plan.

### Further resources

The 2011/12 NHS Standard Contracts are published on the Department of Health website at: [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_124324](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_124324)

Queries on contracts should be sent to [contractshelp@dh.gsi.gov.uk](mailto:contractshelp@dh.gsi.gov.uk)

# VAT / Tax / Procurement

## The basics

VAT registration and VAT liabilities should be considered at an early stage of business case preparation. From a VAT perspective, the most likely scenario is that you will need to register for VAT independently and to charge VAT on the services your organisation will be deemed to be rendering to the public body.

Staff-led enterprises formed as a result of the right to provide process will not be able to claim any preferential treatment in terms of VAT or corporation tax. This means that the standard HMRC rules will apply. These rules are very complex and there are many different ways in which an organisation can manage its VAT and corporation tax affairs to leave the lowest possible liabilities. These all need to be considered so the most tax efficient structures and policies are introduced.

## What you need to know

In simple terms, the provision of healthcare is a VAT exempt supply. However, a social enterprise might not only be providing healthcare, so there could well be a mix of exempt and VATable supplies. In terms of purchasing, the social enterprise will have to pay VAT on invoices and therefore these two elements need to be managed in the most tax efficient way. Each social enterprise will be different as there are a variety of factors that impact on a VAT liability. This emphasises the need for expert advice.

## Assets

Enterprises also need to consider what assets they will require to provide the services. The purchase or lease of premises should also be considered at an early stage. This will very much depend on the circumstances of each case.

## EU procurement rules

While the initial contract awarded under the right to provide may not be open to competition all subsequent or additional contracts will be and therefore it is important to understand the implications of EU procurement rules.

The extent of competition will depend on the type of services provided and the relationship between the staff enterprise and the contracting authority. As soon as the public body commences a tendering process it must treat all bidders or potential bidders equally.

You should also be aware of State Aid rules. These are a key constraint on the extent to which support may be provided to social enterprises operating in a commercial environment.

Particular areas to watch out for are grants or loans at preferential rates of interest or those relating to the transfer of assets (including land) at rates below market value. The State Aid rules only apply where a public body is providing support to other organisations, not to activities it carries out itself.

## Actions

We would always recommend that staff-led enterprises make use of expert VAT and tax and legal advice.

## Further information

Information on taxation, including corporation tax and VAT can be found at HM Revenue and Customs: <http://www.hmrc.gov.uk/index.htm>

Business Link is a useful resource for businesses, including information on taxation: <http://www.businesslink.gov.uk/>

# Clinical Negligence

## The basics

For health services, excellent clinical governance is essential to reduce the incidence of clinical negligence. If you take advantage of the right to provide, ultimate responsibility for clinical negligence will lie with you. Negligence is conduct that falls below the standards of behaviour established by law for the protection of others against unreasonable risk of harm. Any promise to exercise care or skill in the performance of certain services, whether expressed or implied, would be relevant in the context of negligence and so failing to act when one has a duty to do so could result in legal action and litigation.

A court could impose an injunction to prevent the defendant (or the person who caused the alleged injury) from continuing to carry out relevant activities, or it could award damages which attempt to measure in financial terms the extent of harm suffered because of a defendant's actions. Damages are not punitive, but depend on the extent of the injury to and circumstances of the patient harmed. In addition to their own costs, defendants are also liable for the costs incurred by the claimant when the claim is successful.

## What you need to know

If you decide to establish a social enterprise, you will need to have indemnity cover for clinical negligence liabilities. The Department of Health is committed to making sure that the NHS indemnity arrangements that are available to NHS bodies are also available to other providers of NHS care. The Clinical Negligence Scheme for Trusts (CNST) currently provides clinical negligence indemnity cover to NHS bodies. The Department is currently reviewing arrangements in light of the structural reform proposals in the Health and Social Care Bill to make sure future arrangements are accessible to all providers of NHS care.

Currently, CNST is not generally available to non-NHS bodies. However, there are limited circumstances in which a PCT provider arm that divests from the PCT can continue to receive CNST cover. Essentially, the PCT can extend its cover to a divested provider arm as long as:

- exactly the same service is delivered by the divested provider as was delivered by the PCT
- there is no break in service i.e. the PCT delivers it one day, and the divested provider delivers it the next
- the services are not primary medical or dental services

If these criteria are met, then claims can be made against the PCT as though it was still delivering the service. Further information about obtaining this type of cover should be sought from the NHS Litigation Authority.

CNST is not the only indemnity product available. You should consider whether the basic cover provided under CNST meets your requirements or whether a product from the mutual or insurance markets more closely meets your needs. For example, the medical defence organisations provide additional services beyond indemnity, such as medico-legal advice, media relations expertise for civil cases and support at coroners' inquests, which are not available under CNST. You should look across the indemnity market to obtain the product that best meets your needs.

Under the current legislation, only services that were previously provided by PCTs can benefit from this arrangement. In future, all providers of NHS care will be able to benefit from NHS indemnity arrangements, if they choose to, which will supersede this PCT-only arrangement. In the interim, non-PCT staff divesting services will need to obtain alternative clinical negligence cover.

It is very important that you factor the cost of indemnity into your contract price. Further, in an organisational context, where clinical negligence could be claimed against various staff, the importance of regular risk assessments on practices and procedures should be highlighted with regular audits carried out. Similarly, environmental hazards and other safety requirements for premises should be thoroughly and systematically checked on a regular basis.

## Actions

In order to deliver services under the NHS Standard Contracts, all providers must show commissioners that they have adequate and appropriate indemnity arrangements in place to cover a range of risks / liabilities. A provider should seek appropriate advice on the level of risk and source adequate cover.

## Further information

Further information about CNST and the current circumstances under which social enterprises may have access to it is available from the NHS Litigation Authority website at <http://www.nhsla.com/home.htm>

The Department of Health expects to publish proposals on allowing all health care providers access to NHS indemnity arrangements later on in 2011. Further information should be available then on the Department's website.



# Care Quality Commission (CQC)

## The basics

All providers of certain health and social care services in England are subject to regulation by CQC. It is an offence not to register with CQC if you provide these services.

## What you need to know

It is your responsibility to check if you need to register. CQC has published a *Scope of registration guide* to help you check.

It is the legal entity that actually provides the service that must register. Providers can be individuals, partnerships or organisations.

In most cases, the manager with day-to-day responsibility for the service must register too. This will involve a short interview with CQC.

To apply for registration, providers and managers need to demonstrate that they are fit to provide health or social care, and that the service meets the regulatory requirements. CQC's *Essential standards of quality and safety* sets out what providers can do to meet these. CQC may carry out an inspection to check this. CQC will issue a certificate of registration that lists the types of services that you may provide and from which locations.

The regulatory requirements cover essential aspects of quality and safety. Meeting these is a legal requirement. Most providers are able to demonstrate compliance without undue difficulty.

Once registered, you must make sure that you always meet the essential standards. CQC will monitor your service using national data sets, public feedback and notification of serious incidents. They will ask for information if they identify possible concerns, and may carry out unannounced visits.

For most providers, registration gives independent assurance that standards are met. But where providers fall below the safety and quality requirements, CQC may use its enforcement powers. Enforcement can include restricting aspects of the service, prosecution, and temporary or permanent closure of the service.

## Actions

You should familiarise yourself with the safety and quality requirements, the scope of registration and the approach to monitoring and judging compliance. You should also review the online application form and should consider what evidence you will use if asked to demonstrate that you meet each requirement. All of these resources are on CQC's website.

Put in your application for registration 3-4 months before you start providing the service. At the same time, you should apply for criminal records bureau (CRB) disclosure certificates where these are required.

Fee charges vary depending on your type of service and number of locations.

After you are registered, you must notify CQC of serious incidents and significant changes to your service. If you change or expand your service, or you want to have restrictions that CQC placed on it lifted, you may need to apply to CQC for a variation of registration.

## Further resources

CQC's website at [www.cqc.org.uk](http://www.cqc.org.uk) has extensive guidance.

CQC's national contact centre on 03000 61 61 61 or [enquiries@cqc.org.uk](mailto:enquiries@cqc.org.uk) can answer your queries and send you printed copies of the safety and quality requirements.

# Any Qualified Provider (AQP)

## The basics

AQP is about empowering patients and carers, improving their outcomes and experience, enabling innovation and freeing up clinicians to drive change and improve practice.

The White Paper *'Equity and Excellence: Liberating the NHS'* states:

“The Government will create a presumption that all patients will have choice and control over their care and treatment, and choice of any willing [qualified] provider wherever relevant...” and,

“We expect choice of treatment and provider to become the reality for patients in the vast majority of NHS-funded services by no later than 2013/14”.

AQP will build on and extend the existing choice of provider for elective care introduced in 2007.

The Operating Framework for the NHS in England 2011/12 committed to introducing AQP for community services from 2011/12. The recent consultation on choice asked whether AQP should be introduced for some mental health services in 2011.

## What you need to know

### Why AQP?

Let's start with who matters most – patients. We're introducing choice of Any Qualified Provider to give patients more choice and control. That's what all the research evidence tells us is what they want and increasingly expect from their NHS. Why shouldn't somebody with MS be able to choose the physiotherapist they want and be treated at the time and in the setting that best suits their needs?

Introducing choice of Any Qualified Provider will help encourage and spread innovation – doing things differently and better for your patients. This could be greater use of tele-health for patients with COPD and diabetes, or providing intravenous therapy or chemotherapy in patients' homes, or one-stop services for providing disabled people with personalised wheelchairs.

We're introducing Any Qualified Provider because we want to drive the quality of services up. Our approach to introducing AQP will put safety and quality first, sustaining current standards

and supporting continuous quality improvement. There will be transparent and rigorous processes for qualifying providers to be an 'AQP'.

Choice of Any Qualified Provider creates real opportunities for NHS professionals to lead change, innovate and run their own services. This is a time for grasping those opportunities.

### How will AQP work?

Patients choose any provider who meets NHS standards and prices. Money follows them and the choices they make about where and by whom to be treated.

To qualify as an AQP, providers will be subject to a qualification process. They will be required to show that they can meet the conditions of their licence with CQC and/or Monitor (if necessary), provide safe quality services to the contractual standards set by the NHS Commissioning Board and meet NHS prices – either set nationally or locally.

Commissioners (PCTs and consortia) can set reasonable additional contractually binding quality standards to meet the needs of particular communities or patient groups. This could include referral protocols and thresholds to manage demand and support integration with local services. Providers will be expected to work within and as part of the local health system.

Commissioners cannot refuse to accept qualified providers once qualified, unless providers fail quality standards, reject the agreed price or refuse to comply with any reasonable, additional, locally set standards.

Once qualified, providers will register locally with commissioners (PCTs, clusters and consortia) for payment purposes. There will be no volume or payment guarantees for providers – their income will be wholly dependent on patients choosing to use their services.

Those providers who are also commissioners will have to sign up to managing potential conflicts of interest explicitly and transparently, ensuring patients are aware of their right to choose and all their options.

Competitive tendering, where potential providers compete transparently on quality and price for a given service, is currently well established in the NHS. With the introduction of Any Qualified Provider the need for competitive tendering should diminish considerably.

Tendering will, however, remain an option for commissioners where significant change is required to existing provider markets to deliver, for example, whole system service transformation. By tendering for longer-term contracts for specific patient groups, for example, for end of life care, or services for frail older people with multiple complex needs, commissioners may find this an effective approach to driving transformation and sharing the demand risk more effectively with providers. It will be for commissioners to decide when to use

tendering, but the presumption will be that for most services patients will have a choice of Any Qualified Provider.

Under tendering, providers would still be required to offer patients choice of treatment, setting and lead clinician. Choice of provider for appropriate parts of a pathway could be provided through sub-contracts or alliances with voluntary organisations, community social enterprises or primary care to provide services that keep patients well and out of hospital.

It will be for commissioners to decide which services are best delivered through an AQP approach or tendering but the presumption will be that for most services patients will have a choice of Any Qualified Provider.

Subject to Parliamentary Approval, the NHS Commissioning Board will have a duty to promote patient choice, having agreed its scope with the Secretary of State for Health, introducing AQP and holding consortia to account for delivering choice.

As Monitor's role evolves into the independent regulator of NHS services, one of its core functions will be to promote competition where appropriate. AQP begins to create competition among providers and stimulate innovation, quality and choices helping to improve patients' experience.

### Benefits

AQP has the potential to offer patients much greater choice and control, drive up quality, and enable innovation, contributing to the delivery of QIPP programmes. Many of the benefits of AQP are implicit in what is described above, but, to summarise, AQP means:

- Much greater patient choice and control over from whom, when and where to access treatment and care
- Improved service quality and responsiveness, as better providers are rewarded financially for developing quality services that are more responsive to patient needs, allowing them to grow. Poorer providers will be incentivised to improve the quality of the services they offer
- Innovation being encouraged and spread with new and creative cost-effective providers able to make their services available more widely without the burden and cost of bidding and
- Services are provided in new and different ways, accelerating the transfer of treatment and care away from hospital settings, to achieve better care for patients and better value

## Myth busting

There are a number of myths surrounding AQP.

### **Myth: This is a ‘race to the bottom’ on quality**

**Fact:** When we say 'AQP' it means that patients will be able to choose any provider who meets NHS standards and prices described above; the extension of regulated prices through national or local tariffs will mean that referrals are conducted on the basis of quality."

### **Myth: This is price competition**

**Fact:** Under AQP patients choose, and providers compete, on the basis of quality alone. Prices are fixed – either national Tariff or set locally. All providers get paid the same for the same work.

### **Myth: AQP will lead to pathways being fragmented**

**Fact:** Providers will be required to work within local referral pathways and thresholds, including any ‘red flag’ protocols, e.g. for physiotherapy. Providers will be expected to work within and as part of the local health system. This will include playing their part in education and training, and supporting continuing professional development. There will be no ‘free ride’.

### **Myth: You won’t be able to buy from practices in your own consortium**

**Fact:** Providers who are also commissioners will have to sign up to managing potential conflicts of interest explicitly and transparently, ensuring patients are aware of their right to choose and all their options.

### **Myth: This is privatisation**

**Fact:** Services remain free at the point of use, based on clinical need. AQP is a way to ensure that only the highest quality and best value services are purchased with valuable and limited NHS money.

### **Myth: AQP will be imposed for all services**

**Fact:** Tendering will remain an option for commissioners where significant change is required to existing provider markets to deliver, for example, whole system service transformation. It will be for commissioners to decide which services are best delivered through an AQP approach or tendering but the presumption will be that for most services patients will have a choice of Any Qualified Provider.

# IT and Health Informatics

## The basics

The provision of IT and Health Informatics services within an NHS organisation will ensure that the knowledge, skills and tools are in place to enable information to be collated, managed, used and shared effectively. This is important in directly supporting the delivery of healthcare services and the promotion of health and well being.

IT services will provide the technical infrastructure and skills to ensure that staff can be effective in the way that they work and in the way they communicate with patients, colleagues and staff in partner organisations. These services will include:

- Networking
- Telecommunications
- PC and “desktop” support
- Mobile working
- IT helpdesk
- IT training and education

Health Informatics services will provide the underlying data flows and information needed to support direct clinical activity, service quality and effective management processes. These services will include:

- Maintaining source data quality
- Management of electronic patient records
- Information management and reporting
- Information security and governance
- Analytical capabilities

IT and Informatics services act as a key “enabler” in helping to achieve the strategic and transformational plans of an organisation. In developing these plans there should be a clear vision of how the IT and informatics services will develop to support both the structural reforms and greater patient choice outlined in the NHS White Paper.

## What you need to know

The provision of IT and Informatics services will form one of the corporate functions of a staff-led enterprise.

## Information Requirements and Systems

You will need to consider the information requirements to support the operational management of the organisation. This will include clinical information to provide patient records, letters and appointments and to generate clinical activity for returns and analysis.

Business and finance information will be required to support the commissioning process and underpin the contracts held with the PCT and emerging GP consortia.

You will also need to ensure that activity data required to feed the emerging Community Information Dataset and central returns is routinely produced from the clinical information systems within the organisation.

Information systems may be transferred across from the originating PCT to support the clinical services. These may be operated and hosted by a Local Service Provider on behalf of the organisation or be operated by the PCT or a shared IT service covering the local NHS community. Alternatively you may need to procure your own system solutions. An “Additional Supply Capability and Capacity” (ASCC) framework exists to support the procurement of IT goods and services.

## Services from NHS Connecting for Health

As a newly formed social enterprise organisation it will be necessary to access the services provided by NHS Connecting for Health. In particular a new NHS Organisation (ODS) code will be required which will act as an identifier for the social enterprise within all NHS information systems, returns and data submissions. You should be aware that a social enterprise organisation will be classified and coded as a new Independent Sector Healthcare Provider (ISHP) for this purpose.

You should also be aware that in order to access secure NHS Spine related services through NHS Connecting for Health you will need to apply for an N3 network connection. Please note that as your organisation will be classified as an ISHP there may be a charge made for this connection as it will not be covered by the central NHS contract for N3 connectivity. If your IT systems and services are being fully hosted by the PCT any review of N3 services can be deferred until the existing PCT contract is due for renewal.

To receive N3 connectivity services from NHS Connecting for Health your organisation will need to complete the Information Governance Statement of Compliance (IGSoC) process. This will cover your arrangements for processing personal data and access to the Information Governance Toolkit – an on-line tool that allows organisations to assess their information governance performance against DH defined standards and requirements.

Organisations requiring access to patient information within the NHS Care Records Service need to establish a Registration Authority (RA) to verify the identity of staff required to use



systems linked to the NHS Spine. The RA will authorise the issuing of NHS CRS Smartcards that authenticate the user's identity and access rights each time they log-on.

You should be aware that as an ISHP a social enterprise is unable to host its own RA function and will therefore need an RA parent, this will typically be the PCT covering the geographic area.

## Actions

### Strategy and Planning

You need to think about the IT and Informatics strategy for your organisation. This will need to support the strategic themes within both the NHS Operating Framework and the overall strategic objectives and mission of the staff-led enterprise.

The strategy will need to be supported by operational Information Technology and Informatics plans which seek to cover areas including:

- Informatics Management and Leadership
- IT related skills and resources
- IT investment proposals and funding
- Information Governance (IG) policies and procedures
- Data quality standards
- Data sharing agreements with other bodies
- Education, Training and Development
- Capture, coding and submission of data for central returns and secondary reporting purposes

### Service Level Agreements

At an early stage, it will be necessary to identify any IT services, which will continue to be provided by the originating PCT or existing shared service organisation. This may be a complete hosting of all IT systems and services or the provision of specific elements such as technical support for IT infrastructure, provision of an IT helpdesk service or IT training facilities.

A Service Level Agreement setting out the detail of the services to be provided over the agreed term, the standards to be met and the associated costs will be required and should be monitored on a regular basis.

### Migration of Services under the Transforming Community Services (TCS) Programme

The transfer of Community services from existing PCTs at 1 April 2011 under the TCS initiative will require the social enterprise to plan for the reconfiguration of supporting IT and Informatics services.

It will be necessary to establish a new ODS organisation code (as described above). To request a code you should contact the ODS helpdesk [Exeter.helpdesk@nhs.net](mailto:Exeter.helpdesk@nhs.net).

There will be transition period during which the following migration issues will need to be addressed:

- Branding of system generated reports, letters and returns
- Transfer of the “Choose and Book” directory of services
- Establishing a “Registration Authority” (RA) function
- Migration of “Smartcards” for transferring staff to ensure appropriate access to systems
- Migration or procurement of clinical systems
- Provision of Corporate e-mail and business services
- IT technical support and helpdesk service
- Records management and data sharing
- Information Governance (IG) and IGSoC submission
- Staff IT and IG training

The Organisational Data Service NHS reconfiguration team has produced guidance covering the TCS IT reconfiguration process for a newly formed Social Enterprise. You should contact the team to discuss your plans and timescales: [Nhsreconfiguration@nhs.net](mailto:Nhsreconfiguration@nhs.net)

## Further resources

Further information regarding NHS Organisational Data Service (ODS) can be found at:

<http://www.connectingforhealth.nhs.uk/systemsandservices/data/ods>

Further information regarding application for an Information Governance Statement of Compliance (IGSoC) can be found at:

<http://www.connectingforhealth.nhs.uk/systemsandservices/infogov/igsoc/non-nhs>

Further information on Registration Authority management can be found at:

<http://www.connectingforhealth.nhs.uk/iim>

For further general information regarding the Transferring Community Services (TCS) Programme can be found on the DH website at:

<http://www.dh.gov.uk/en/Healthcare/TCS/index.htm>

# Links to Other Resources

The following links will help you in finding further information on staff-led enterprises and are for information only. The Department is not responsible for any external content other than that from its own site.

## Procurement

Office of Government Commerce  
[www.ogc.gov.uk](http://www.ogc.gov.uk)

State Aid guidance  
[http://ec.europa.eu/comm/competition/state\\_aid/overview/index\\_en.cfm](http://ec.europa.eu/comm/competition/state_aid/overview/index_en.cfm)

Supply to Government  
[www.supply2.gov.uk](http://www.supply2.gov.uk)

## Business Support

Business Link  
<http://www.businesslink.gov.uk/bdotg/action/home>

Social Enterprise Training and Support (SETAS)  
[www.setas.co.uk](http://www.setas.co.uk)

Social Enterprise Support Centre  
[www.sesc.info](http://www.sesc.info)

Manual for Developing Social Enterprises  
[www.sustainable-enterprise.org.uk/resources.htm](http://www.sustainable-enterprise.org.uk/resources.htm)

## Finance

Unlocking the Potential:  
A guide to the different forms of non-grant finance available for social enterprises  
<http://www.socialenterprise.org.uk/pages/publications.html>

Grants, loans, tax relief, venture capital and awards to support your organisation  
[www.j4b.co.uk](http://www.j4b.co.uk)

## Finance Providers

Adventure Capital Fund  
[www.adventurecapitalfund.org.uk](http://www.adventurecapitalfund.org.uk)

Association of British Credit Unions  
[www.abcuk.org](http://www.abcuk.org)

Bridges Community Ventures Ltd  
[www.bridgesventures.com](http://www.bridgesventures.com)

Charitybank  
[www.charitybank.org](http://www.charitybank.org)

Community Development Finance Association  
[www.cdfa.org.uk](http://www.cdfa.org.uk)

Co-operative Bank  
[www.co-operativebank.co.uk](http://www.co-operativebank.co.uk)

Social Investment Business  
<http://www.thesocialinvestmentbusiness.org>

Triodos Bank  
[www.triodos.co.uk](http://www.triodos.co.uk)

Unltd  
[www.unltd.org.uk](http://www.unltd.org.uk)

Unity Trust Bank  
[www.unity.uk.com](http://www.unity.uk.com)

Venturesome fund  
[www.cafonline.org/venturesome](http://www.cafonline.org/venturesome)

## Legal and Governance

Keeping it Legal:  
A guide to establishing the rules and regulations that govern social enterprise  
<http://www.socialenterprise.org.uk/pages/publications.html>

Community Interest Companies: Guidance  
Material CIC Regulator  
[www.cicregulator.gov.uk/](http://www.cicregulator.gov.uk/)

Capacity Builders Leadership and  
Governance workstream  
<http://www.improvingsupport.org.uk/governance/index.html>

## General

Association of Chief Executives of  
Voluntary Organisations  
<http://www.acevo.org.uk/>

Baxi Partnership  
<http://www.baxipartnership.co.uk/>  
Community Action Network

[www.can-online.org.uk](http://www.can-online.org.uk)

Cooperatives UK  
[www.cooperatives-uk.coop](http://www.cooperatives-uk.coop)

Development Trusts Association  
[www.dta.org.uk](http://www.dta.org.uk)

New Economics Foundation  
[www.neweconomics.org](http://www.neweconomics.org)

NHS Networks  
<http://www.networks.nhs.uk>

Social Firms UK  
[www.socialfirms.co.uk](http://www.socialfirms.co.uk)

School for Social Entrepreneurs  
[www.sse.org.uk](http://www.sse.org.uk)

Social Enterprise Coalition  
[www.socialenterprise.org.uk](http://www.socialenterprise.org.uk)

## Government

Cabinet Office  
[www.cabinetoffice.gov.uk/](http://www.cabinetoffice.gov.uk/)

Department of Business Innovation and  
Skills  
<http://www.bis.gov.uk/>

Department of Health Social Enterprise Unit  
<http://www.dh.gov.uk/socialenterprise>

Guidelines for using NHS logos  
<http://www.nhsidentity.nhs.uk/>