



## **Briefing – October 2018**

### **NHS subsidiary companies (subcos)**

#### **Introduction**

As the NHS continues to face unprecedented financial pressures, some trusts are seeking to save money by creating subsidiary companies to deliver services such as estates and facilities. These are organisations set up at arm's length but still owned/part owned by the trust. It means that those services currently provided in-house will be provided by a separate company that will employ staff who currently work for the NHS.

On 19 September 2018, NHS Improvement announced that there should be a pause in any current plans to create new subsidiaries. NHS I have said that that there will be a consultation on this followed by new guidance. UNISON is continuing to campaign against the creation of these subcos, and believes the pause should become permanent.

Annex 1 outlines the list of subcos that UNISON is aware of.

#### **Why are Trusts doing this?**

The reasons why Trusts are doing this can be split into three broad areas:

1. **Tax savings** – The main motivation for trusts to establish subcos appears to be the savings in VAT payments that they bring. By setting up a subco, trusts can use the HMRC contracting-out direction that allows them to avail of VAT relief on outsourced services that they wouldn't be able to access if they were provided in house. Initial business cases had a strong emphasis on the VAT benefits that subcos would bring. However, following advice from the Department of Health on the risk of establishing a subco solely for VAT reasons subsequent business cases have started to emphasise broader reasons.
2. **NHS pay, terms and conditions** – NHS trusts are also using subcos to undermine nationally agreed pay, terms and conditions including access to the NHS pension scheme in order to cut staff costs. While giving a strong commitment to transferring staff that their pay, terms and conditions will not be affected, the vast majority of employers are offering less favourable non Agenda for Change contracts to new starters with no access to the NHS pension scheme.
3. **New business** – NHS trusts are also stating that by establishing a subco they will be able to sell services to other NHS organisations in order to generate income that can be ploughed back into trusts to reduce costs. To date few subcos have achieved this objective and

considering the number of trusts who are going down this route there are question marks over whether opportunities of this nature actually exist.

### **Different approaches to subcos**

The organisational structures of these companies differ from trust to trust but the most common approach is to establish a private limited company that is limited by shares. Where NHS trusts have taken this approach the subsidiary companies have remained subcos with the trusts as the sole shareholder. There are examples of subsidiary companies taking different approaches to organisational structure. NHS trusts with charity wings such as Moorfields Eye Hospital NHS FT have set up Moorfields Eye Charity as a subsidiary company that is limited by guarantee. There are also instances of subsidiary companies setting up as a limited liability partnership (LLP) such as Essentia, the subsidiary company set up by Guy's and St. Thomas' NHS FT. York Teaching Hospital NHS FT Trust is proposing a similar structure with Northumbria Healthcare Facilities Management Limited, the subsidiary company established by Northumbria NHS FT, as a minority partner.

Following a report by the *Health Service Journal* (HSJ) into NHS subcos there has been some interest from UNISON branches in Essentia. The HSJ report stated that Essentia staff maintained employment with the trust while working under the Essentia banner. On further investigation the Essentia approach is different to other proposed models as estates and facilities services continue to be provided by the trust and Essentia is only used to bid for external estates and facilities contracts.

Regardless of the organisational form, the minimum commitment UNISON branches should be seeking from employers is that all staff should be employed on an NHS pay, terms and conditions and should have access to the NHS pension scheme.

### **Challenging subcos**

Many branches faced with subcos have been challenging decisions with traditional campaigning methods and have seen proposals dropped or paused as a result. However, it is possible to organise an industrial dispute on the issue of subcos. The UNISON Wigan and Leigh health branch are currently taking this approach in challenging the proposal to transfer staff to WWL Solutions Ltd which is a subsidiary company of Wrightington, Wigan and Leigh NHS FT. If your employer is proposing to establish a subco and there is motivation from members to challenge this industrially contact your regional organiser as soon as possible for further advice.

### **UNISON's political work**

UNISON has undertaken much political work nationally and regionally to back up the efforts in branches. This has included working with MPs to organise debates in Parliament and to table early day motions to get politicians to show support for our cause and to raise the profile of the issue. The Labour Party has been particularly keen to support UNISON action in Westminster and in individual constituencies. If your trust is located in an area that has local Labour MPs and is intending to establish a subco, seek contact with the MPs so that they can join you in campaigning. If you have Conservative or Liberal Democrat MPs it is still worth getting in touch with them to let them know the strength of feeling and asking them to raise concerns with the trust.

## **Pay, terms and conditions**

The vast majority of trusts who have set up a subco are not offering newly recruited staff NHS pay, terms and conditions. Annex 2 outlines an example of what's being offered by CCD Services Ltd, a subco of County Durham and Darlington NHS FT.

Further to this, employers are not offering new staff access to the NHS pension scheme. The reason often cited for this, is that the NHS pension regulations do not allow subcos to offer access to the pension scheme. In some circumstances employers have stated they have received legal advice that has informed this position. Over the last number of months UNISON has raised this issue through various pension channels. As of June 2018, the Department of Health could confirmed that no subco had made an application for pension scheme access for all of their staff, but there is nothing in the current pension regulations that prevents employers from doing so. Employers can make an application for access to the pension scheme through the NHS Business Services Authority and the Department of Health will then make an assessment on the application. As long as the organisation is wholly owned and engaging in NHS work the Department expect that the application will be looked upon favourably.

For further advice on this contact the UNISON health group at [health@unison.co.uk](mailto:health@unison.co.uk) .

## **Equal pay**

Where NHS subcos have been established branches should pay particular attention to trusts that have transferred a workforce that is predominantly female as there may be potential to mount an equal pay challenge. This will be particularly the case where less favourable non NHS contracts have been introduced for new staff.

There are some situations in which a company may be deemed an "associated employer" and therefore comparisons for equal pay purposes could still be made. UNISON previously won a case in local government where the employment appeals tribunal said that for equal pay purposes UNISON members employed by an arms length trading company set up by Glasgow City Council could compare themselves with council employees. UNISON will be doing more work on assessing the relevance of this case for members working in NHS wholly owned subsidiaries.

## Annex 1

### Trusts that have established a subco

UNISON region	Subco name	Parent organisation	Implementation date	No of staff transferred
Greater London	Essentia	Guy's & St Thomas's NHS FT.	April 2013	
Greater London	King's IFM	King's College Hospital NHS Foundation Trust	June 2016	
Greater London	Quality Trusted Solutions	Central and North West London FT	January 2018	
Northern	QE Facilities	Gateshead NHS FT	April 2014 & 2 <sup>nd</sup> Wave in 2-16	approximately 500
Northern	NTW Solutions	Northumberland, Tyne and Wear NHS FT	April 2017	600
Northern	Northumbria Healthcare Facilities Management	Northumbria Healthcare NHS FT	January 2012	806
Northern	County Durham and Darlington Services (CDD services)	County Durham and Darlington NHS FT	April 2017	approximately 400
Northern	CHOICE	City Hospitals Sunderland FT	April 2013 (initially to provide pharmacy)	approximately 300
Northern	NTH Solutions	North Tees & Hartlepool NHS FT	1 <sup>st</sup> March 2018	approximately 700
Northern	NEASUS	North East Ambulance Service	1 January 2018	60
North West	IFM Bolton	Bolton NHS FT	July 2016	333
North West	BFW management	Blackpool Teaching Hospitals NHS FT	December 2016	
North West	PropCare	Clatterbridge Cancer Centre NHS FT	March 2016	
South East	UHS Estates Ltd	University Hospital Southampton NHS FT	March 2016	
South East	Healthcare Partners Ltd	Royal Surrey County Hospital NHS FT	April 2018	
South East	2gether Solutions Ltd	East Kent University Hospitals Trust		
South West	Salisbury Trading Ltd	Salisbury NHS FT	April 2013	
South West	Salisbury linen services	Salisbury NHS FT	2013	
South West	Simply Serve	Yeovil District Hospital NHS FT	February 2018	

South West	Gloucestershire Managed Services (GMS)	Gloucestershire Hospitals NHS Trust	April 2018	
South West	Salisbury Healthcare Solutions	Salisbury NHS FT	November 2018	
Yorkshire & Humberside	Barnsley Facilities Services Limited	Barnsley Hospitals NHS FT	September 2017	
Yorkshire & Humberside	AGH Solutions	Airedale NHS FT	February 2018	
Yorkshire & Humberside	Harrogate Health Care Facilities Management Ltd	Harrogate District NHS FT	March 2018	
West Midlands	Summerhill Supplies Ltd	Birmingham and Solihull Mental Health NHS Foundation Trust	December 2012	
West Midlands	BWC Management Services Ltd	Birmingham Woman and Children's NHS FT	March 2018	
Yorkshire & Humberside	TBC	Calderdale and Huddersfield NHS Foundation Trust	August 2018	

**Trusts that have commenced consultation on transferring staff**

<b>UNISON Region</b>	<b>subco name</b>	<b>Parent organisation</b>	<b>Implementation date</b>	<b>No of staff transferred</b>
East Midlands	TBC	Chesterfield Royal Hospital NHS FT	November 2018	
East Midlands	Leicester, Leicestershire and Rutland Healthcare Facilities Management Services LLP	University Hospitals of Leicester NHS Trust	October 2018	
Northern	TBC	North Tees and Hartlepool NHS FT	1 March 2018	
North West	WWL Solution Ltd	Wigan Wrightington Leigh NHS FT	Paused – decision in June 2018	
South East	2gether support solutions	East Kent Hospitals University NHS FT	Commencing Aug 2018 completed by Oct 2018	
South West	TBC	Royal United Hospital, Bath FT	Delayed	

South West	Salisbury Healthcare Solutions	Salisbury NHS FT	1 November 2018	
Northern	Tees, Esk and Wear Valleys Estates FM Ltd	Tees, Esk and Wear Valleys trust		
Yorkshire & Humberside	TBC	Bradford Teaching Hospitals NHS FT	TBC	
Yorkshire & Humberside	TBC	Mid Yorkshire Hospitals NHS Trust	Trust not proceeding in 2018	
Yorkshire & Humberside	TBC	Leeds Teaching Hospitals NHS Trust	Trust not proceeding	
Yorkshire & Humberside	TBC	York Teaching Hospital NHS Foundation Trust	October 2018	
Greater London	TBC	Royal Free London NHS Foundation Trust	TBC	

#### Trusts that are considering establishing a subco

UNISON region	subco	Parent organisation	Implementation date	No of staff transferred
South West	TBC	North Bristol NHS Trust	Proposal abandoned by Trust Board	
Yorkshire & Humberside	TBC	Hull and East Yorkshire Hospitals NHS Trust	Not currently proceeding	
Yorkshire & Humberside	TBC	Rotherham NHS FT	TBC	
Yorkshire & Humberside	TBC	Doncaster and Bassetlaw Teaching Hospitals NHS FT	TBC	
Yorkshire & Humberside	TBC	Humber teaching NHS FT	TBC	

## Annex 2

Comparison of the employment contracts being offered to new staff employed by NHS subcos with agenda for change.

	Subco	NHS																																	
<b>Pay</b>	<ul style="list-style-type: none"> <li>Minimum pay being offered by subco ranges from NMW to Living Wage Foundation.</li> <li>Spot rates with no incremental progression.</li> </ul>	<ul style="list-style-type: none"> <li>Band 1 starts at £15,404 and progresses annually over 2 years to £15,671</li> <li>Band 2 starts at £15,404 and progresses annually over 7 years to £18,157</li> </ul>																																	
<b>Pension</b>	<ul style="list-style-type: none"> <li>Offering access to NEST with an employer contribution of 3%.</li> <li>NHS Pension Regulations does not allow for NHS subcos to offer access to the NHS Pension Scheme for new starters.</li> </ul>	<ul style="list-style-type: none"> <li>Employer contribution to the NHS Pension Scheme is 14.38% of pensionable pay.</li> </ul>																																	
<b>Annual leave</b>	<ul style="list-style-type: none"> <li>Under 2 years 20 days + 8 public holidays</li> <li>Over 2 years 24 days + 8 public holidays</li> <li>Over 5 years 27 days + 8 public holidays</li> </ul>	<ul style="list-style-type: none"> <li>On appointment 27 days + 8 public holidays</li> <li>After 5 years 29 days + 8 public holidays.</li> <li>After 10 years 33 days plus 8 public holidays.</li> </ul>																																	
<b>Sick pay</b>	<table border="1"> <thead> <tr> <th>Service</th> <th>Full Pay</th> <th>Half Pay</th> </tr> </thead> <tbody> <tr> <td>Up to 6 months</td> <td>SSP</td> <td>SSP</td> </tr> <tr> <td>6 months to 2 years</td> <td>4weeks</td> <td>4weeks</td> </tr> <tr> <td>2 years to 5 years</td> <td>8weeks</td> <td>8weeks</td> </tr> <tr> <td>Over 5 years</td> <td>12weeks</td> <td>12weeks</td> </tr> </tbody> </table> <p>Based on basic pay and not including enhancements.</p> <p>No payments for first 3 days of absence.</p>	Service	Full Pay	Half Pay	Up to 6 months	SSP	SSP	6 months to 2 years	4weeks	4weeks	2 years to 5 years	8weeks	8weeks	Over 5 years	12weeks	12weeks	<table border="1"> <thead> <tr> <th>Service</th> <th>Full Pay</th> <th>Half Pay</th> </tr> </thead> <tbody> <tr> <td>During the first year of service</td> <td>1month</td> <td>2months</td> </tr> <tr> <td>During the second year of service</td> <td>2months</td> <td>2months</td> </tr> <tr> <td>During the third year of service</td> <td>4months</td> <td>4months</td> </tr> <tr> <td>During the fourth and fifth years' service</td> <td>5months</td> <td>5months</td> </tr> <tr> <td>After completing five years of service</td> <td>6months</td> <td>6months</td> </tr> </tbody> </table> <p>Staff in NHS pay bands 1 and 2 have enhancements included in</p>	Service	Full Pay	Half Pay	During the first year of service	1month	2months	During the second year of service	2months	2months	During the third year of service	4months	4months	During the fourth and fifth years' service	5months	5months	After completing five years of service	6months	6months
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<b>Overtime</b>	<ul style="list-style-type: none"> <li>Flat rate of basic pay</li> </ul>	<ul style="list-style-type: none"> <li>Time and a half and double time on public holidays.</li> </ul>																				
<b>On call</b>	<ul style="list-style-type: none"> <li>£22.50 for the on call period</li> </ul>	<ul style="list-style-type: none"> <li>On call arrangements are agreed on a Trust by Trust basis but is significantly better than what subcos are offering</li> </ul>																				
<b>Maternity pay</b>	<ul style="list-style-type: none"> <li>Statutory minimum</li> </ul>	<ul style="list-style-type: none"> <li>8 weeks full pay</li> <li>18 weeks half pay plus flat rate SMP or average weekly earnings, whichever is lower.</li> <li>13 weeks SMP flat rate or 90 per cent of their average weekly earnings, whichever is the lower.</li> </ul>																				
<b>Unsocial hours</b>	<ul style="list-style-type: none"> <li>Unsocial hours start at 10pm and finish at 6am.</li> <li>40% enhancement for staff.</li> <li>50% public holidays</li> </ul>	<ul style="list-style-type: none"> <li>Monday to Friday unsocial hours are 8pm to 6am. All day Saturday is also considered unsocial hours. These times attract the following rate. <table border="1" data-bbox="1099 1276 1316 1514"> <thead> <tr> <th>Band</th> <th>Time Plus Rate</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>50%</td> </tr> <tr> <td>2</td> <td>44%</td> </tr> <tr> <td>3</td> <td>37%</td> </tr> <tr> <td>4-9</td> <td>30%</td> </tr> </tbody> </table> </li> <li>All day Sunday and Public holidays attract the following rates. <table border="1" data-bbox="1088 1657 1327 1895"> <thead> <tr> <th>Band</th> <th>Time Plus Rate</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Double Time</td> </tr> <tr> <td>2</td> <td>88%</td> </tr> <tr> <td>3</td> <td>74%</td> </tr> <tr> <td>4-9</td> <td>60%</td> </tr> </tbody> </table> </li> </ul>	Band	Time Plus Rate	1	50%	2	44%	3	37%	4-9	30%	Band	Time Plus Rate	1	Double Time	2	88%	3	74%	4-9	60%
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