

Time to end the
NHS experiment
with the market?

INTRODUCTION

It is only five years since Andrew Lansley forced through the biggest change in the NHS in a generation. “So big it can be seen from space” declared David Nicholson - its CEO at the time. Competition, patient choice and GP-led commissioning were all central themes. This was stepping up the NHS market experiment which was first started by legislation in 1989.

The current CEO of the NHS, Simon Stevens has set a new direction, initially laid out in his Five Year Forward View and now being implemented across the country in the form of new models of care. He has declared that the current market structure in the NHS - which gives separate roles to purchasers and providers is on the way out, to be replaced by integration and joint planning.

Ending the era of NHS organisations competing for contracts to treat patients is welcome, but promoting new roles, on its own, closes no doors on commercial involvement in the NHS. New legislation is needed and that been postponed as part of the political fallout of the election result. The existing competition framework and tendering rules therefore still apply. Companies are continuing to win new NHS contracts and there are signs of investment shifting towards the new opportunities being created in community based care.

In this report we explore the evidence about which NHS contracts are being tendered, who is winning them and how these trends form part of the new direction the NHS is now taking. Our data is based largely on a process of analysing published awards, a data base that we have compiled from observations over the last 4 years.

We also review the catalogue of problems that have emerged in the various types of outsourcing that have been tried, as part of the NHS market experiment. Some of these failures have undoubtedly influenced the current changes in strategic approach and led to the widely supported view that this experiment should end.

It is time to act on the knowledge that has been built up about how outsourcing in the NHS can negatively impact upon patients, staff, the level of resources and other NHS services. This evidence makes a compelling case and we would therefore urge the government to repeal its competition legislation and focus on building an adequate level of publicly-provided NHS services.

Paul Evans, Director, NHS Support Federation

EXECUTIVE SUMMARY

1. Activity in the market for NHS contracts remains high despite a signaled shift away from competition by the Chief Executive of the NHS.

Over the last year (Apr 2016/17) £7.1 billion worth of NHS clinical contracts has been awarded through the tendering process. This is on a par with the preceding year.

£1.6bn worth of NHS contracts were advertised in the first quarter of the current financial year (2017/18); which brings the total value of contracts awarded through the market to around £25bn, since the Health and Social Care Act (2012) came into force.

The number of high value clinical contracts that have been advertised, worth over £100 million pounds each, has almost doubled in the last year, rising from 11 to 20, of which eight were won by the private sector.

2. The private sector share of NHS contracts is rising, as they focus increasingly on growing opportunities to provide community health services.

For-profit companies won £3.1 billion worth of new contracts in the last year (16/17). This was 43% of the total value of awards advertised and their share has risen from 34% (15/16).

Companies are turning their attention to new opportunities offered by the intention to treat more patients in the community and less in hospital, an NHS wide policy. Circle – the company that walked away from a contract to run the NHS Hinchingsbrooke hospital, is now investing in intermediate care, intending to offer care beds outside hospital to look after NHS patients that hospitals want to discharge.

3. Virgin Care has been the most successful company in winning NHS clinical contracts - mostly to provide community healthcare, picking up over £1bn worth of NHS awards in 2016/17.

Its latest awards are a £355m contract to provide children's health services in Essex and a £65m award to run community health in West Lancashire. In each case the company is taking over services from the NHS and non-profit making providers. Virgin care is now the dominant private provider in the NHS market – winning a third of the total value of contracts won by non-NHS providers over the last year. The number of services the company provides to the NHS has risen from 230 to 400 over last 12 months, according to its website.

4. There is compelling evidence that the competition regulations under section 75 of the Health and Social Care Act (2012) - introduced in April 2013 are dysfunctional and have resulted in numerous failed outsourcing projects.

In a growing number of instances NHS organisations are starting to game-play the procurement rules to avoid open competition. At the same time private companies are using the courts and competition law to try to maintain their access to NHS contracts.

Competitive tendering was put at the heart of healthcare planning by the Health and Social Care Act (2012) and was a catalyst for numerous experiments with the outsourcing of NHS clinical services.

Just five years on there is now a substantial body of examples to show how outsourcing arranged under these procurement regulations often results in contract failures and serious breakdowns in the delivery and quality of care. All at a cost to patients, staff, NHS services and the tax payer.

5. There is a growing consensus that the competition framework needs to be replaced and yet party-political concerns are preventing it, a situation which will leave the NHS with a failing procurement model and could result in a further £10bn in NHS contracts going to the private sector over the next 3 years.

In March, NHS Chief Simon Stevens confirmed that the arrival of STPs would “effectively end the purchaser-provider split for the first time since 1990”. This represented a major shift in policy away from the themes of competition and patient choice - the Lansley era. The current health secretary, Jeremy Hunt also backs the need for new legislation, an intention outlined in the Conservative’s election manifesto. After the election however, he acknowledged that the government’s precarious Parliamentary situation had effectively removed the possibility. This means that the current legal framework around tendering will remain in place, which on current trends will lead to the private sector winning a further £10bn of NHS clinical contracts over the next 3 years.

6. Accountable Care Systems have been flagged as the new model for local healthcare planning in the NHS. The future role for private companies has not been clarified, but commercial opportunities are far from being capped.

Only a handful of examples of new models of care are fully developed and so far the private sector have not been bidding for the multi-billion contracts. However, in Nottingham, Capita and Centene have been employed to help develop the Accountable

Care System. Healthcare companies are also well placed to bid to market their cost-saving solutions to ACOs, who will operate with capped budgets. Virgin and Care UK have already landed over £2bn worth of NHS business and the government has not signaled that it will inhibit this kind of sub-contracting or outsourcing.

An even bigger role for business is possible though. The ACO contract that has been drawn up by NHS England does not preclude the private sector from bidding for them, although the major players in the international market, companies like United Health and Humana and Centene could will want to assess the business risk.

7. The scale of private sector involvement in the NHS is regularly downplayed in departmental and ministerial statements, but the H&SC Act has ensured that non-NHS providers have been able to establish a substantial foothold in local NHS provision.

A survey of CCG accounts for 2016/17 by the NHS Support Federation shows that these commissioners spend around 15% of their operating expenses on employing private companies and charities to deliver healthcare to CCGs. This is higher than the 11% figure shown in the national accounts - which expresses the spending on non-NHS organisations as a % of the overall DEL (Departmental Expenditure Limit).

The value of the contracts awarded through market procurement is now seven times higher than in 2013.

8. Over the last 3 years the types of services being tendered has shifted almost entirely towards those that are delivered in community settings, outside of hospitals. The private sector and charities win a majority share of these contracts.

Three years ago, hospital based care contracts accounted for 40% of the value of those clinical services put up for tender. Services delivered in hospital now account for less than 10% of the value of tenders, with the vast majority being contracts delivered in the community.

Contracts to deliver services in the community cover a wide range of services including; out of hours GP care, community nursing, public health and children's health services. In the last year the private sector and charities won over 60% of the value of these contracts.

THE NHS MARKET: A CATALOGUE OF FAILURES (2012-17)

Management of NHS hospitals

In 2012 **Circle** won a ten-year contract to run the NHS Hinchingsbrooke hospital, but pulled out after only two years following a lack of financial success and damning reports from Care Quality Commission (CQC). The CQC raised serious concerns about care quality, management and the culture at the hospital. It found a catalogue of serious failings that put patients in danger and delayed pain relief. The hospital was put in to special measures; the first time the CQC had taken this step. Circle cited financial considerations when announcing its withdrawal, but conceded that the CQC report had also been a factor in its announcement.

In December 2013 **Serco** announced that it would be pulling out of its contract to run Braintree hospital. In March 2014 the contract was handed back to Mid Essex Hospital Trust, nearly a year early. The company's other major contract with the NHS for community care in Suffolk, did not produce the profits the company was hoping for. By August 2014, the company announced that it was withdrawing from the NHS clinical services market altogether.

In June 2014, the process to find an organisation to acquire or merge with the debt-ridden **George Eliot Hospital** NHS Trust was abandoned; the process began in September 2013. An article in the HSJ notes that £1.8 million had been spent on the entire procurement process by NHS organisations prior to its abandonment. A similar procurement process, this time to find an organisation to take over the running of the **Weston General Hospital** was terminated in October 2014, after very little interest; only one NHS Trust remained interested in the contract – the Taunton and Somerset Foundation Trust.

Provision of out of hours care

In early September 2017, **Primecare**, which had been awarded one of the first integrated NHS 111 and GP out-of-hours services contracts, announced that it would be handing back the contract to the NHS. Initially this was to be in July 2018, but then in late September 2017 the company invoked a clause in the contract that meant it only had to give three-month notice; Primecare will now be leaving the contract in December 2017. The contract began in January 2017, but after only seven months, Primecare was placed in special measures after its services in East Kent were rated “inadequate” by the Care Quality Commission. Failings included not assessing risks to patients’ health and not having enough staff to meet patient needs.

In May 2016 **Central Nottinghamshire Clinical Services**, the private company in charge of out of hours services across the East Midlands, announced it was filing for administration. It stopped its services in Leicester, Leicestershire, Rutland and north Nottinghamshire and they were transferred to another provider. The company also ran care home support services and these were transferred to Nottinghamshire Healthcare Trust.

Care UK terminated a contract to provide NHS GP out-of-hours services in April 2015. The contract was to provide care in conjunction with Portsmouth Health Limited (a group of local GPs), however the deal, which began in 2012, proved to be loss-making and so Care UK ended its involvement before the end of the contract. Similar tensions around costs-cutting were reported to be at the heart of the difficulties experienced by the out-of-hours company **Harmoni** (now owned by Care UK) in London. In 2010/2011 several GPs complained about an aggressive cost reduction agenda that they felt put their patients at risk.

In December 2013 **Serco** announced that its contract to provide out-of-hours care in Cornwall for Kernow CCG would end 18 months early. The contract had been dogged with controversy; Serco had to admit that some of its staff had falsified data to make the company’s performance appear better than it was and whistleblowers had raised concerns about poor staffing levels. The Public Accounts Committee reported

the service to be falling “unacceptably short” of essential standards of quality and safety. In 2013 Serco unsuccessfully tried to sub-contract the work to Devon Doctors, the GP consortium that had failed to win the original bid; Serco had won the bid as it was cheaper.

Provision of GP services

Private companies are closing GP practices in areas where it is difficult to make a profit. In Brighton and Hove, **The Practice Group** announced in January 2016 that it will terminate its contract for five GP surgeries in the city at the end of June, leaving 11,500 patients looking for a new GP. Over the years, The Practice Group, which runs around 50 GP surgeries, has also closed a surgery in Camden Road, London, the Maybury surgery in Woking, the Brandon Street practice in Leicester and the Arboretum surgery in Nottingham. All these surgeries were in areas of high deprivation, where it is difficult to make money. The Practice Group defended terminating the contracts and closing services, saying that loss-making activities were unsustainable.

The private limited company **Danum Medical Services Ltd** was set up in Doncaster by 23 local practices and had 63 individual shareholding GPs'. The company held APMS contracts for six practices in the Midlands and Yorkshire. In March 2016, DMSL went into administration leaving individual GP surgeries in debt, with one surgery reported to be facing losses of £20,000.

In February 2014, the Care Quality Commission criticized **Virgin Care** over its use of non-medically trained receptionists to assess patients in its Croydon Urgent Care centre. CQC inspectors found the centre was in breach of four basic standards of care.

Over the years several GP surgeries run by **Concordia** have been thrown into disarray after contracts have run out, or where Concordia has pulled out early.

In March 2017 in Merton, only three days before the end of a Concordia contract, almost 4,000 patients were left without a GP. Merton CCG reported that it did not have the data to see if any of these patients had registered in other areas, or remained unregistered.

In 2014 Concordia Health pulled out of a contract for a GP surgery in Dover, leaving less than a month from breaking the news to leaving the service. This left almost 3,500 patients with having to find a new GP. The company had pulled out of a similar contract in Broadstairs earlier in the year.

Surgery/ Diagnostics

A private hospital run by **BMI Healthcare** that treats up to 10,000 NHS patients a year, put their safety at risk according to a report by the health watchdog. The Care Quality Commission (CQC) rated Fawkham Manor hospital in Kent as “inadequate” - the worst possible ranking. Staff told the CQC that financial targets were prioritised over patient safety at the hospital, where NHS patients make up almost half the caseload.

In Somerset, dozens of people were left with impaired vision, pain and discomfort after undergoing operations provided by the private healthcare company **Vanguard Healthcare** under contract with Musgrove Park Hospital, Taunton. The hospital's contract with Vanguard Healthcare was terminated four days after 30 patients, most elderly and some frail, reported complications, including blurred vision, pain and swelling.

In a very similar set up in Devon, 19 NHS patients had the outcome of their cataract surgery reviewed after at least two had problems with their eyes following operations at a private hospital. The problems emerged on the first day of operations conducted under a contract to perform cataract operations between the NHS's South Devon Healthcare Foundation trust, which runs Torbay hospital, and Mount Stuart hospital, owned by **Ramsay Healthcare**.

Circle was the private provider involved in the privatisation of Nottingham's dermatology service, which in June 2015, was described by an independent report as "an unmitigated disaster". Once part of a national centre for excellence at Queen's Medical Centre, it is now much reduced, with some patients sent to a centre in Leicester. When Circle won the contract, several consultants refused to transfer from NHS contracts, leaving the dermatology service with few consultants and Circle had to employ locums.

In June 2013, the NHS temporarily stopped referrals to **BMI Healthcare's** Mount Alvernia hospital, in Surrey, following a Care Quality Commission report which found serious failings on patient consent, care, cleanliness, staffing levels and service quality monitoring. The report noted some staff had told inspectors breaches had been caused by initiatives designed to "save money" or for "logistical and financial reasons"

Emergency care and ambulance services

One of the most controversial failures in recent times has been the **Coperforma** contract in Sussex for non-emergency patient transport. This four-year contract worth £63.5 million was awarded in 2015 by seven CCGs. Coperforma replaced the NHS's South-East Coast ambulance service (SECamb) on 1 April 2016; it was then just a matter of days, before problems with the contract hit the headlines. By mid-April local and national press were reporting on a service in chaos, with crews not turning up to pick up patients leading to missed appointments and patients languishing for hours in hospitals awaiting transport home. Patients included those with kidney failure with appointments for dialysis and cancer patients attending chemotherapy sessions. The GMB union representing the ambulance crews said it was an "absolute shambles". Finally, in October 2016, Coperforma were forced to give up the contract.

In September 2017, the private ambulance company, **Private Ambulance Service** contracted to run non-emergency patient transport from hospitals in Bedfordshire and Hertfordshire went into administration. The business, which ran 126 vehicles and employed 300 people, took over the contract in April 2017. Problems had been reported with the service, with Herts Valleys CCG issuing an apology after ongoing

performance issues, including leaving vulnerable patients stuck in their homes or in hospital for hours waiting for transport.

In September 2016, Verita produced a critical report on **Care UK's** urgent care contract in Ealing. The contract awarded by Ealing Primary Care Trust in 2011 was worth £3.9 million to run an urgent care centre in Ealing Hospital. The independent report by Verita was triggered following complaints of poor care made to ITV reporters. The report noted that there was a gap in the assurance process carried out by the CCG as well as problems with the staffing model used by Care UK, which “took no account of predictable peaks in demand”.

In September 2015 the transport company **Arriva** was found to have wrongly claimed £1.5 million in bonuses on the contract to run non-emergency transport for NHS patients in Manchester.

Patient choice– Any qualified Provider

In July 2012 a letter was leaked to The Independent written by the director of **BMI's** Meridian Hospital. The letter to consultants ordered them to postpone surgery for patients referred from the NHS Choose and Book system, to encourage more people to opt for paying for their operations. The initial period of postponement was four weeks from first consultation rising to eight weeks by September 2012.

Community Services

The quality of service provided by Serco was also investigated in Suffolk, where it was awarded a £140 million contract in October 2012 to run community services. The company was criticized for failing to meet key response times. In January 2014, a report from **Serco** to the council's health scrutiny committee showed that Serco was not hitting three of its key performance indicators in community health response times. For example, it failed to meet urgent four-hour response targets - for nurses and therapists to reach patients at home 95% of the time (only achieving 89.3% in November 2013). Before Serco took over, the target was achieved 97% of the time. In September 2015, Serco relinquished the contract and an

NHS consortium including Ipswich and West Suffolk Hospital Trusts took over the running of community services.

In 2014 **Healthcare at Home** was bombarded with complaints over its home delivery of essential prescriptions to NHS patients. The largest issue was its failure to deliver all medications - some life-saving - on time. Problems emerged after Healthcare at Home switched from using an in-house delivery service to Movianto: an American logistics firm operating throughout Europe. When Movianto's IT systems failed many patients were left without deliveries.

Support Services

Capita took over the coordination of primary care care support services in September 2015. The contract from NHS England was designed to save £40 million per year by bringing together a previously fragmented service to a single national provider for Primary Care Support England (PCSE). Capita's bid hinged on making a £21 million per year saving. The contract which could run from seven to ten years is worth up to £400 million .

However, since April 2016 when Capita closed the local centres to leave just three national hubs and implemented a single online 'portal' for practices, there has been a growing number of reports of problems affecting GPs, community pharmacists and optometrists. These include major problems with the secure transfer of patient notes around the country, with notes going missing or delivered to the wrong surgery.

GPC (General Practice Council) chair Dr Chaand Nagpaul wrote to NHS England demanding practices be compensated for extra workload due to the 'systematic failure' of PCSE, and indemnified against any claims as a result of support service issues.

In 2013 **Interserve** signed a contract with Leicestershire Partnership NHS Trust, University Hospitals of Leicester NHS Trust and the Leicester City, Leicestershire County and Rutland Primary Care Trust Cluster to improve estates and facilities management services across the cities and counties. The contract was seven years long, worth around £300 million and was expected to save the NHS a significant amount of money. Interserve were to be in charge of catering, cleaning, maintenance and security across more than 550 NHS buildings and properties.

However, in April 2016 this contract was scrapped four years early due to major problems and poor standards. These included patients in one hospital receiving meals up to three hours late and the merging of cleaning and catering services meaning around 100 people lost their jobs. It later came to light that the ex-Interserve staff were getting paid half what the NHS contracted staff were being paid.

The Health Service Journal reported in February 2017 that **Carillion**, which won a £200m, five-year estates and facility contract in 2014 with Nottingham University Hospitals Trust, would be stripped of the contract by April 2017 and the contract (including the staff) transferred back to the NHS. The company was warned in 2016 about its poor standards after reports that nurses at the trust were having to clean wards as the cleaners were failing to maintain standards. By early 2017, however, Carillion had failed to make sufficient improvements, hence the loss of the contract.

Commissioning and planning

In November 2015, an investigation by the BMJ and The Times into England's CCGs showed that many of them are commissioning services from organisations in which their own board members have an interest. The study found that CCGs in England have awarded hundreds of contracts worth at least £2.4 billion to organisations in which their board members have a financial interest. The findings follow a previous investigation by The BMJ in April 2013 which found that more than a third of GPs on the boards of CCGs had a conflict of interest resulting from directorships or shares held in private companies.

Cambridgeshire and Peterborough **CCG** awarded a contract worth £700 to £800 million over five years – for the provision of older peoples’ services. Private companies were initially interested in the contract, including Circle, Virgin Care and Capita, however they withdrew, reportedly due to the steep financial efficiencies. Eventually in November 2014 **Uniting Care Partnership**, a consortium of NHS organisations was awarded the contract. The contract began in April 2015, but just eight months later Uniting Care announced that it was handing back the contract as it was not financially viable. The Public Accounts Committee published a damning report describing the handling of the contract as a "catalogue of failures."

In April 2017, **CCGs in Staffordshire** finally abandoned the procurement of a ten year contract for cancer and end-of-life services worth £687 million. The whole process began in 2013 and has cost the four CCGs over £840,000. The tender process was paused in 2015 following the collapse of the UnitingCare Partnership contract in Cambridge and Peterborough. However, after restarting several months later in November 2016, a single final bidder emerged. This was a consortium of **Interserve and two hospital trusts**. Speaking on behalf of the CCGs, Andy Donald, chief officer at Stafford and Cannock Chase CCGs, said: "The remaining bidder couldn't convince us they could deliver with the resources available."

In September 2014 Coastal West Sussex CCG awarded the contract to **BUPA** and social enterprise CSH Surrey. However, pressure from the public and Western Sussex Hospitals Trust, forced the CCG to employ an auditor to assess the effect the contract would have on other NHS services in the area. The auditors concluded that the cumulative impact of loss of MSK services would result in the trust falling into deficit over the next five years. Western Sussex Hospitals had also warned that the loss of the contract could destabilise its trauma services. BUPA and CH Surrey withdrew from the process in January 2015 prior to signing the final contract.

Staffing

In September 2017 The Department of Health abandoned its plan to sell its majority stake in **NHS Professionals** - the health service's in-house temporary staffing agency. NHS Professionals, which was set up by the last Labour government and supplies doctors, nurses and other staff at much cheaper rates than those charged by profit-making NHS staffing firms, saving the NHS £70m a year that would otherwise go to private firms. The plan was dropped after a period of intense of public criticism, but in the process of planning the sale the Department of Health spent £2m on advice from lawyers and consultants.

THE NHS MARKET, STILL ACTIVE

National policy is shifting away from competition models but in the absence of new legislation public funds continue to fuel the NHS market. Over the last financial year (Apr 2016/17) £7.1 billion worth of NHS clinical contracts has been awarded through the tendering process; this is on a par with the preceding year. £1.6 billion worth of NHS contracts was advertised in the first quarter of the current financial year (2017/18), which brings the total value of contracts awarded through the market to around £25 billion, since the Health and Social Care Act (2012) came into force.

The Health and Social Care Act, promoted by the then Health Secretary, Andrew Lansley has led to a huge upward surge in the numbers of NHS contracts that are put out to competitive tender. The value of the contracts awarded through market procurement is now nine times higher than in 2013. (fig 1)

The consequence of introducing legislation that obliges NHS commissioners to advertise NHS contracts, has been a sharp rise in the number of NHS clinical services that are now outsourced and being run by private companies and charities. In the last year alone, our analysis found that private companies and charities have won 267 contracts to run NHS services and a further 26 contracts to work in partnership with the NHS. This number does not include a multitude of small contracts, as these awards are often not published.

FIGURE 1: How many NHS clinical contracts were awarded through tendering?

	2013/14	2014-15	2015-16	2016-17
Value, £	787,929,759	9,794,927,119	7,181,166,289	7,179,597,796
Number of awards	75	239	355	386

Overall this brings the total number of contracts that have been awarded through competition over the last 3 years to around 1000. Over half of these contracts have gone to organisations outside of the NHS (533), which in the main are for-profit companies.

FIGURE 2: THE LARGEST NHS CONTRACT WARDS BY VALUE (> £100million) – 2016/17

Contract winner	Value	Service type	NHS/non
Virgin Care Services	484,400,000	Health and social care services	non-NHS
Multiple award to 65 companies and 3 charities	359,000,000	Care at Home eg Domiciliary Care	non-NHS
Virgin Care Services	354,584,243	Pre Birth — 19yrs Health care	non-NHS
multiple award to 17 companies	350,000,000	Orthotics Products and Services.	non-NHS
Sirona Care & Health CIC	346,770,000	Children's Community Health Services	non-NHS
Central Surrey Health Ltd	319,916,514	Adult Community Healthcare Services	non-NHS
Battersea Healthcare CIC	220,000,000	Multispeciality Community Provider (MCP)	non-NHS
North West Ambulance Service	219,500,000	Non-Emergency Patient Transport Service	NHS
Guy's and St Thomas' NHS Foundation Trust	200,000,000	Clinical staffing	NHS
Wiltshire Health and Care	192,709,043	Adult Community Health Services	NHS
Care UK C S Ltd (£139m); Warwickshire NHS (£690,000) *	169,536,224	Urgent care and GP out of hours	Non-NHS/ NHS
Cornwall Partnership NHS Foundation Trust	153,719,146	Community health services	NHS
Ashford and St. Peter's Hospitals NHS Foundation Trust	140,384,424	Integrated MSK	NHS
City Health Care Partnership CIC	138,000,000	Community health services	non-NHS
Mid Cheshire Hospitals NHS Foundation Trust	135,839,632	Community health services	NHS
Care UK C S Limited; Bristol Community Health CIC	135,554,987	Offender healthcare	non-NHS
Virgin Care Services Ltd	128,412,000	Adult Community Healthcare Services	non-NHS
Care UK Clinical Services Limited	120,897,287	Health and wellbeing lead provider	non-NHS
Care UK Clinical Services Limited	115,000,000	Offender healthcare	non-NHS

* Badger Healthcare Limited (£6m); Nestor Primecare Services Limited (£23m)

WHO IS WINNING NHS CONTRACTS?

For-profit companies continue to find success in NHS tendering. They won £3.1 billion worth of new contracts in the last year (16/17). This was 43% of the total value of awards advertised and their share has risen from 34% (15/16). The private sector won 203 awards in 2016/17, which is 56% of the total number awarded and almost double the figure for 2015/16.

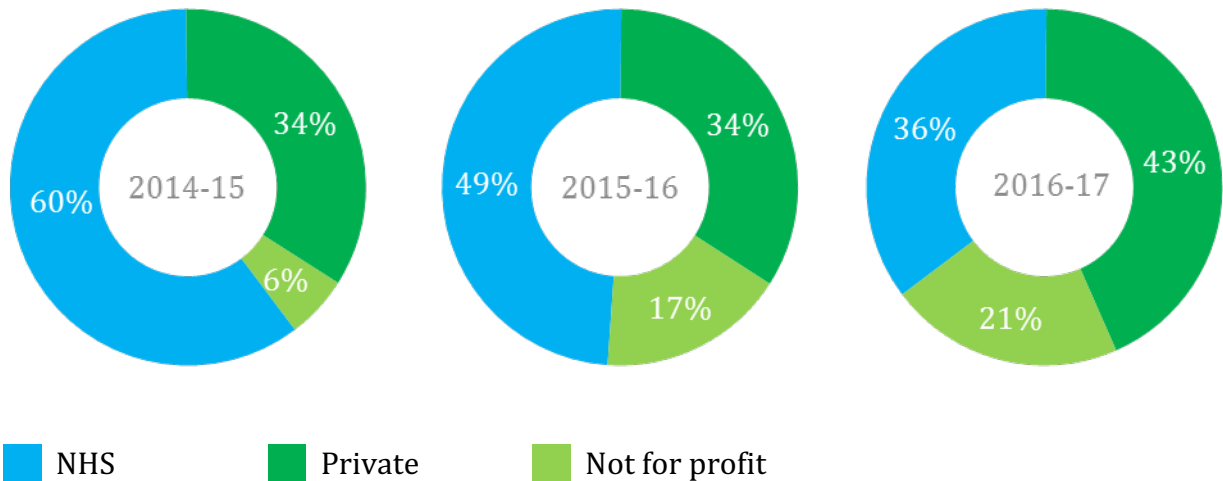
However, as we discuss later in the report, shifts in policy and eventually legislation will move the NHS away from procurement through competition, but they won't close off the outsourcing of NHS functions to the private sector.

In terms of the value of the awards made in 2016/17, the share of these contracts won by for-profit companies and the voluntary sector has increased significantly, from 51% (15/16) up to 63% (16/17).

The Health and Social Care Act has proved to be a huge commercial opportunity since it came into force in April 2013. The value of awards to the private sector for clinical work now totals around £9bn. However, as we show in this report the private sector has not always been able to see out the contracts that it has won, deliver services successfully or manage to turn a profit.

Virgin Care has been the most successful company in winning NHS contracts picking up £1bn worth of NHS awards in 2016/17.

FIGURE 3: Who won? Value of awards



Huge contracts to run community health services in Somerset, Kent and Essex have helped Virgin Care to win a third of the value of the deals with the private sector over the last year. In Bath and North East Somerset it won a groundbreaking contract to coordinate over 200 health and social care services - the first time that responsibility for providing statutory care services has been outsourced to a for-profit company.

Care UK has won the second largest share of NHS awards by value in the year April 2016-17 at £596.3 million. For-profit companies have also increased their share of clinical contracts commissioned by councils (public health), from £102m in 2015/16 to £205m in 2016/17.

In 2016/17 the NHS won £2.5 billion worth of contracts - 35% of the total value available. Its share was down from 49%. However, we can already see that the NHS share will increase next year because of the tendering of the new models of care, which involve a wide variety of existing NHS work.

The emergence of **not-for-profit providers** like Sirona CIC is also notable. They won a £347 million contract in Bristol and South Gloucestershire to provide children's services and this will be explored more in our next report.

FIGURE 4: Winners of NHS clinical awards, by sector

	2014-15	2015-16	2016-17
NHS	5,887,498,656	3,535,596,343	2,546,734,565
	60.11%	49%	35.47%
Not for profit	558,343,774	1,224,986,920	1,530,669,299
	5.70%	17%	21.32%
Private	3,348,011,696	2,400,078,026	3,102,193,891
	34.18%	34%	43.21%
Total	9,794,927,119	7,181,166,289	7,179,597,796

NEW MODELS OF CARE

The Five Year Forward View (5YFV) - a strategy for the NHS in England (Oct 2014) started a series of pilots to investigate new ways to organise care. This programme focused on a range of different services including primary and urgent care; community care; and mental health, with the major aim of integrating care and developing ways to move it away from hospitals into community settings.

Less than two years later in 2016 the Sustainability and Transformation Plan (STP) programme began, with the intention of rolling out these new models of care across the country. But this wasn't the only purpose of STPs. Now known as sustainability and transformation partnerships, they were instructed to set out ways to turnaround the deficits in the 44 STP areas. Consequently, proposals to sell assets, close/merge units and reduce staff costs became a major feature of many of the plans.

The STP documents discussed a number of new models; the formation of multispeciality community providers (MCPs), primary and acute care systems (PACS), local care organisations (LCOs) and accountable care organisations (ACOs). These terms are used widely, but can mean slightly different things in each area.

HOW ARE THE NEW MODELS AFFECTING THE NHS MARKET?

The new models of care are changing the structure of healthcare planning and delivery - moving away from the competition model and the separate roles for purchasers and providers, but with no obvious cap on opportunities for private sector involvement. Already we can see that contracts for MCPs and ACOs tend to be large and to cover numerous services. Consequently, the number of mid-size contracts appears to be dwindling, whilst the number of contracts worth over £100 million has almost doubled in the last year.

Two super-contracts that have emerged in 2017.

The first was a £6bn contract in Manchester to provide all non-acute healthcare - except core GMS contractual services - to 600,000 patients in a 10-year deal.

The second is a £5bn contract in Dudley to deliver a range of services that includes urgent and end of life care to over 300,000 patients in a contract lasting for 15 years.

In both cases it looks like the awards will be made to the existing providers that have been involved in developing the contracts - NHS trusts, GPs and the local councils. Neither procurement process gave much time for competing bids to be submitted and so far, the commercial sector has been absent from the development process.

Other areas have opted to develop alliances and partnerships to form MCPs and ACOs, and to this point have favoured consortiums made up of NHS trusts and GP federations, with seemingly limited input from the third sector and private companies.

However, despite the low level of involvement of the private sector in the new models of care, there is plenty of scope for them to expand its interest.

HEADING FOR ACCOUNTABLE CARE SYSTEMS

The Health Secretary has made it clear how important Accountable Care Organisations will be in the future, they would take over the responsibility for the budget and for organising care in defined areas around the country. It is also clear from the ACO contract devised by NHS England that there is no barrier to a private company holding the contract.

And after several years of privatisation of community services across the country, there is the distinct possibility that a private company could bid for and win an ACO contract.

Any organisation holding an ACO contract will have organisational control over the allocation of NHS and taxpayers' money for an entire area. Its accountability for spending it and its obligations to the public will be set through contracts, but so far without any defined lines of accountability or governance.

“The Five Year Forward View is a vitally important plan. It's about the move to accountable care organisations...it is vital that we stick with that plan and implement it. And there will be lots of challenges and lots of bumps in the road but the sustainability and

transformation plans are the way that we implement the Five Year Forward View and it is vital we stick with them.' - Jeremy Hunt speaking to NHS leaders (Nov 2016)

The fact that commercial interests aren't yet positioned to take on ACO contracts reflects the fact that in this early stage NHS providers control and are heavily invested in their development.

It is also perhaps unsurprising that commercial companies aren't yet positioning to bid for the multi-billion-pound super contracts, as they pose a considerable business risk. They are both complex and untested in the NHS context. The record of businesses trying to make money out of large NHS contracts has so far been very poor. Some big players like Serco retreated from the clinical market altogether, after it failed to guarantee profits from its deals to provide community health services.

The advent of the large ACO/MCP contracts does still provide huge commercial opportunities, in the form of multiple sub-contracts. And perhaps more importantly, the integration of health and social care under these ACO/MCP contracts could provide the way for the private companies that have been active in social care for many years to move over to cover health care as well.

In certain areas of the country community care services are well on the way to being privatized. Any company already geared up to provide these large contracts would be in a prime position to extend their control of the supply of services yet further as time goes on.

For example, in Bath and North East Somerset, Virgin Care holds a seven year contract worth around £700 million with an option to extend for three years, to coordinate over 200 health and social care services. With such a powerful stake in the local health economy, it is not difficult to see that Virgin Care, as the incumbent providers, would be perfectly positioned to design and ultimately win an ACO contract. Virgin Care is also in a similar position in Essex, where in November 2016, Essex County Council awarded the company a seven year contract to run its Pre-Birth to 19 Health, Wellbeing and Family Support Service across Essex, which covers both health and social care.

THE END OF THE NHS MARKET?

In March 2017, Simon Stevens, NHS England Chief Executive, speaking at a Public Accounts Committee hearing said that between six and ten sustainability and transformation plan (STP) areas were set to become “accountable care organisations or systems, which will for the first time since 1990 effectively end the purchaser-provider split, bringing about integrated funding and delivery for a given geographical population.”

The statement from Stevens has major ramifications, and as The King’s Fund noted, taken at face value “It would be hard to overstate the magnitude of such a shift in policy.”

It is the new models of care, planned in many of the STPs, that intend to integrate health and care. If they are successful, then the purchaser-provider split will become outmoded by shifts in roles and power. Under an accountable care system (ACS) both commissioners and providers work together to manage a budget and under an accountable care organisation (ACO, the commissioners could transfer a budget for an entire population to a lead provider or a consortium.

Another nail in the coffin of the purchaser-provider split is the new partnerships and mergers being formed across England - hospitals are establishing groups and networks, and primary care, community care and hospitals are creating new partnerships. Indeed, there has been reports of STPs already seeking to work together in partnership. This changing landscape is all helping to make the purchaser-provider split unsustainable.

However, despite all these changes the Health and Social Care Act 2012 that put in place the regulations for competition and tendering is still in place. Straight after Stevens remarks to the Public Accounts Committee, David Hare, chief executive of the NHS Partners Network, which represents private providers of NHS services, responded in the HSJ and in a blog:

“It is important that with the implementation of STPs and the development of new care models there is not a move towards inflexible monopoly provision of health services and that the legal principles of

patient choice, fair treatment of provider and a diversity of healthcare provision are upheld.”

He went on to say: “Any changes to the way in which services are planned and secured must act within existing legal frameworks, be in line with the principles of patient choice and plurality of provision, applied consistently across the NHS and based upon strong evidence of improved patient care.”

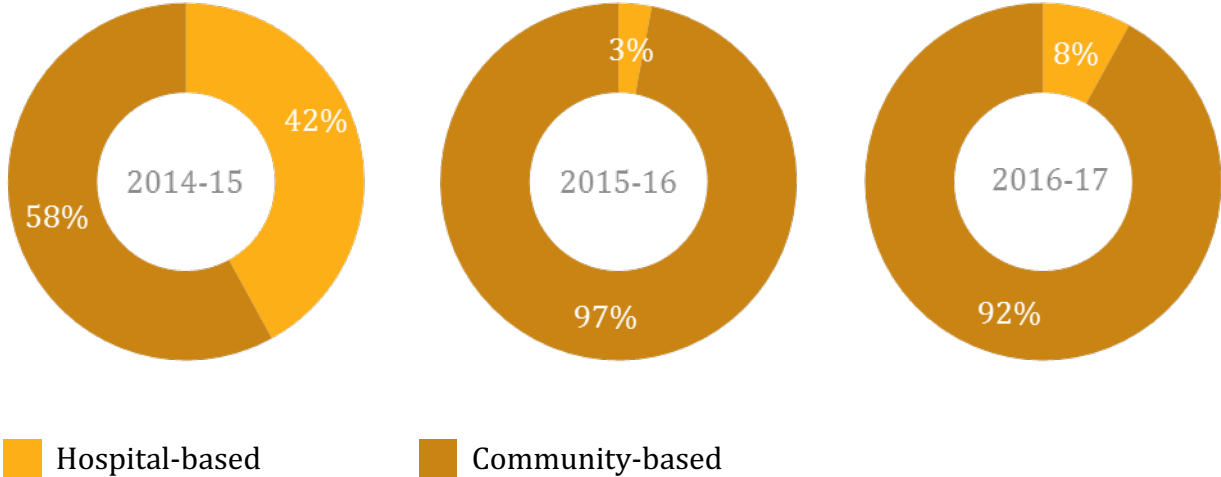
In other words, some of the key rules of the game remain the same and the private healthcare industry is not going to let that fact be ignored. Legal challenges will take place if the industry feels that procurement rules have been flouted. The only way to avoid such challenges once and for all is to repeal section 3 of the H&S Care Act 2012.

THE SHIFT FROM HOSPITAL TO COMMUNITY BASED CARE

The move towards community based care continues to offer new contract opportunities. In 2016/17 the share by value of hospital based contracts has fallen to 7% and contracts delivered in the community dominate, forming 93% of the total value tendered. Two years ago contracts covering hospitals based care took 42% of those put out to tender versus 58% for those based around community health care.

There continues to be a large number of community health contracts on offer, £6.1 billion worth in 2016/17. This was 75% of total value of all contracts awarded and has risen from a 50% of the total value in 2014/15.

FIGURE 5: The shift from hospital to community based contracts



VIRGIN CARE AND OTHER PLAYERS

Commercial companies are positioning themselves to exploit the changing models of care. Perhaps the most talked about company involved with the NHS, Virgin Care has for some years now been targeting and winning large-scale contracts for community services.

In 2016/2017 Virgin Care won contract awards worth just over £1 billion by value. It was the single most successful private company in this period in terms of clinical contract awards. In mid-2016 Virgin Care declared on its website that it ran around 230 NHS and social care services; by the end of 2017 this had expanded to more than 400 services.

Virgin Care's procurement strategy - targeting contracts that cover a very large number of services in both health and social care - is in line with the changes that are taking place within the NHS and the development of new models of care. These contracts which cover hundreds of services including social care, place Virgin Care right at the heart of the NHS in a prime position to influence and help develop new models of care.

For example, in 2016/2017 Virgin Care won two massive contracts that combine health and social care services. Under a contract in Bath and North-East Somerset for community services, Virgin Care became the first private company to take over adult social care services, including social workers. A contract in Essex won in late 2016 also contains a large chunk of social care and early years care.

Virgin Care might have been successful, but the company has attracted considerable criticism targeted particularly on its tax status; the company pays no tax in the UK and its ultimate parent company is based in a tax haven. In 2016, this became an issue with campaigners fighting against privatisation of community services in Bath and North-East Somerset.

The campaigners were unsuccessful at stopping the contract award, but it appears that the campaigners' efforts did strike a chord within the council and perhaps the company, as an interesting aspect of the contract is a clause under which Virgin will reinvest any "financial surplus" in the service. The clause indicates the high level of unease surrounding the appointment of Virgin Care within the local area and perhaps a strategy by Virgin to try to appear to be non-profit making.

Virgin Care may have acted to appease commissioners in one area, but in 2016/2017 the company also showed that it is prepared to go to court over contracts. In November 2016, as a result of losing a tender bidding process, Virgin Care launched legal proceedings against the eight commissioning organisations involved in a tendering process in Surrey; in late 2017 Virgin received a monetary payout from the CCGs involved as a settlement of the legal proceedings. The contract was a Surrey-wide children's community care contract that had previously been run by Virgin Care; the award was made to an alliance of Surrey and Borders Partnership Foundation Trust and two social enterprises, CSH Surrey and First Community Health.

There have also been issues within contracts: in March 2017, CCG board papers seen by the HSJ revealed that Virgin Care and East Staffordshire CCG were in dispute over contractual arrangements. Then in October 2017, HSJ reported that Virgin Care is demanding more money from the CCGs in Staffordshire. No amount has been officially confirmed, but HSJ noted "that sources have told HSJ the private provider has asked for nearly £5m extra."

Recent contracts won by Virgin include:

[WEST LANCASHIRE URGENT CARE AND COMMUNITY CARE](#)

Virgin Care was awarded two five-year contracts together worth £65 million in December 2016 by West Lancashire CCG. The community health services contract is worth £45 million and the urgent care services is worth £20 million; both started on 1 April 2017.

The services include district nurses, community matrons, IV therapy, end of life teams, GP out of hours and walk-in centres.

[ESSEX COUNTY COUNCIL CHILDREN'S SERVICES](#)

In November 2016, Essex County Council awarded a seven year contract to Virgin Care, in partnership with Barnardo's, to run its Pre-Birth to 19 Health, Wellbeing and Family Support Service across Essex. The contract began in April 2017. The new service will combine a range of existing services, including the Healthy Child Programme, Healthy Schools, Family Nurse Partnership and children's centres. The contract is worth £354.6 million, but if further services are added and an extension of three years, the contract could be worth over £800 million.

In west Essex, the service was jointly commissioned with NHS West Essex Clinical Commissioning Group and will also include children's community nursing, paediatrics, therapies and specialist services.

LUTON MSK SERVICE

In October 2016, Virgin Care was awarded the contract for an integrated Community musculoskeletal (MSK) Service by Luton CCG. The MSK Service will provide a single point of contact for GPs and other healthcare professionals to refer MSK related presentations. Clinically appropriate referrals will be triaged as necessary to physiotherapy, pain management, orthopaedic and rheumatology pathways. The contract is worth £5.5 million and is five years long.

BATH AND NORTH SOMERSET HEALTH AND SOCIAL CARE

In August 2016 Virgin Care was chosen as preferred bidder to take on a seven year contract, worth around £700 million with an option to extend for three years, to coordinate over 200 health and social care services in Bath and North Somerset. The contract was awarded in November 2016 despite substantial opposition.

Virgin Care was chosen over a consortium led by the social enterprise Sirona Care and Health, which included Avon and Wiltshire Mental Health Partnership Trust, Royal United Hospitals Bath Foundation Trust, Dorothy House Hospice Care, and the GP organisation Bath and North-East Somerset Enhanced Medical Services.

This is a prime provider contract with Virgin Care directly delivering and coordinating services, but with the option to subcontract to other providers where appropriate. Under the contract, Virgin Care will run three statutory services – adult social care, continuing healthcare and children’s community health – from April 2017.

The deal marks the first time a council’s core adult social work services will be directly delivered by a for-profit private firm. Previous outsourcing by councils have seen social work run by local authority-owned trading companies or not-for-profit social enterprises that have been spun out of social services departments.

A range of non-statutory services such as public health nursing, integrated re-ablement and speech and language therapy are also included in the contract.

This contract award to Virgin Care attracted a lot of criticism and opposition, including from unions and social work leaders. As a result, Councillor Vic Pritchard, cabinet member for adult social care and health at Bath and North East Somerset Council was forced to announce that there is a clause in the contract that would require “any financial surplus made by the new prime

provider to be reinvested into services in Bath and north east Somerset". However, it should be noted that definitions of "financial surplus" can vary widely.

This contract puts Virgin Care right at the heart of the healthcare economy of the Bath, Swindon and Wiltshire STP and therefore in a strong position to influence the STP's "vision" for the area. The STP notes that "B&NES [CCG and council] has recently awarded a Prime Provider contract for a range of community and preventative services and is in discussions with local providers regarding the nature of care models."

SEXUAL HEALTH SERVICES IN THE NORTH EAST

Virgin Care was awarded the contract for integrated sexual health service across the boroughs of Hartlepool, Middlesbrough, Redcar and Cleveland and Stockton-on-Tees in May 2016 by the councils of these areas. The £36.2 million contract is for five years with an option to extend to nine years.

NORTH KENT ADULT COMMUNITY SERVICES

In January 2016 Virgin won a bid to run adult community services across Dartford, Gravesham, Swanley and Swale region of North Kent. This seven-year contract is worth £18 million per year and could be extended for an extra three years. Virgin Care will take the contract from Kent Community Health Foundation Trust, which reported that it lost out to Virgin Care in the area of price. Kent Community Health Foundation Trust, said it scored "slightly higher" on quality in the assessment process.

CARE UK

After Virgin, Care UK has won the biggest share of NHS awards by value in the year April 2016 to April 2017 at £596.3 million. Prior to this, data collected by the NHS Support Federation estimated that Care UK was awarded £187.4 million in contract awards from 2010 to April 2016. However, this is certainly a significant underestimate of the amount of income Care UK derives each year from work for the NHS, as according to the company's accounts in the year to the end of September 2016 income from NHS work received from CCGs, NHS England and the Department of Health was £342.2 million.

Care UK has a large number of contracts with CCGs and councils and its work encompasses both health and social care, including 111 services and walk-in centres. Recent contract awards, however, have been predominantly for

healthcare in prisons and detention centres. From April 2016 to April 2017, Care UK was awarded four such contracts, valued at over £348 million. The contracts cover prisons and detention centres across the Thames Valley, Bristol, South Gloucestershire, Wiltshire and Gloucestershire, plus Devon and Dorset, and Sudbury and Foston Hall. Prison healthcare is facing serious problems and in August 2017, The Guardian reported on the appalling state of prison healthcare. Other recent awards include:

SHEPTON MALLET HEALTH AND WELLBEING CENTRE

The contract for the Shepton Mallet Health and Wellbeing centre is worth £120 million over eight years. Under the contract, which began in January 2017, Care UK will work with the Somerset Partnership NHS Foundation Trust, which currently runs the community hospital and the minor injuries unit (MIU) on the site. However, as this is a prime-provider contract, Care UK is able to subcontract work to other firms and organisations. At the moment, Care UK runs the Shepton Mallet NHS Treatment Centre on the same site delivering a range of NHS services for people living in the Shepton Mallet area. Care UK and the trust will develop the Shepton Mallet Health and Wellbeing centre to encompass: a treatment centre; the community hospital and services that go beyond being a hospital, providing a base for the community, including voluntary and third sector organisations; diagnostics; and the minor injury unit (MIU).

URGENT CARE AND OOH IN THE MIDLANDS

Another large contract won partially by Care UK is for an integrated out-of-hours GP service and NHS 111 service for 16 CCGs in the midlands. Care UK shares this six year contract with other private companies, but Care UK receives the lion's share with almost £140 million; almost £24 million goes to Nestor Primecare Services Ltd; £6 million goes to Badger Healthcare Limited, a social enterprise; and £690,000 goes to Coventry and Warwickshire Partnership NHS Trust. These new contracts began in November 2016, to be integrated with the existing contracts through an alliance agreement.

In 2016/2017 several private companies that have a history of being awarded NHS contracts are seeking to change their business strategies in-line with the new models of care being brought in by the STPs. Companies are assessing where profits can now be made from the NHS in the light of the new structures.

The Practice Group

The Practice Group is primarily known for its GP surgeries, a business it has built up through acquisitions and contract awards over the past decade. Most recently in May 2016, The Practice Group (TPG) acquired Phoenix Primary Care Limited with 12 GP surgeries. At the time of the acquisition, Phoenix had 58,000 registered patients.

In mid-2017 TPG listed 37 surgeries on its website. Other areas of interest include ophthalmology services (15 listed on its website) and dermatology clinics (three in Blackpool and one in Kent). The surgery business has struggled in recent years, however; in Brighton and Hove the company pulled out of contracts with the closure of five GP practices. One of the reasons given was a lack of adequate funding for the surgeries, which could also be construed as no possibility of making a profit on the contracts. It comes as no surprise then to find the company looking at other aspects of health and social care that are potentially more lucrative than the struggling GP surgery market.

In April 2017 the company announced a new complex care division to provide home-based complex healthcare services to people with significant health conditions, long-term illnesses or disabilities. The division is known as TPG Complex Care. In May 2017 it launched the division at its headquarters in Telford.

It is clear that TPG is now angling for a slice of the hospital-at-home market. With the primary strategic direction of the NHS being for more care to be administered at home in preference to more expensive hospital care, then TPG has targeted what it believes to be a massive growth market. The company highlights that its new division "is based on enabling people to make their own choices and to be able to live their life comfortably at home independently." The division is marketed as a company that can potentially reduce hospital stays, eliminate hospital admissions and support relatives; all of these aims are a major part of STPs. The thrust of the website and marketing is of a company working for the NHS, rather than targeting the private home care market.

The company is targeting its services at a wide variety of specialist healthcare conditions, including acquired brain injuries, spinal injuries, learning disabilities, mental health conditions, neurological disorders, dementia and those with ventilator dependencies.

Centene, a US private health insurance company, has a 75% share of TPG; its investment in the company began in 2014.

CENTENE

As well as being the majority owner of The Practice Group (TPG), Centene operates in the UK under its own subsidiary and according to its website “specialises in enabling effective coordination of care through data analysis, logistics, and the development of IT solutions.” The company came to the attention of the media in the UK in 2017 when it was given a sub-contract by Capita for a large part of a contract for the development of an accountable care system in Nottinghamshire.

The original one year £2.7 million contract was awarded to Capita by Nottingham and Nottinghamshire STP.

Outside of the USA, Centene has primarily been associated with the Spanish company, Ribera Salud; Centene owns 50% of this company. Ribera Salud is known for pioneering the development of the public/private partnership model of healthcare in Spain. Centene notes on its website that it will save the NHS money and references its “experience with Ribera Salud in Spain” which it says “is recognised by governments across the world as an example of an effective model of care.....[that] produces better results for the patient at less cost to the government.”

In a guest article in HSJ in June 2017 Ribera Salud’s model of integrated care is also lauded and its capacity for reducing costs praised. Ribera Salud developed an integrated model of healthcare at the Alzira hospital in Valencia, which has become known as the Alzira model. Under this model, Ribera Salud received a capitated budget from the regional government over a 15-year contract. Ribera Salud must then provide free healthcare to a defined geographical population. In return, it retains profits of up to 7.5% of turnover, but anything above this is returned to the government. The model encompasses hospital services and primary care. According to the HSJ article the Alzira model spends 25% less than government run hospitals in the area and has been hailed as a major success for integrated care. The Alzira model has been replicated in other areas within Valencia and also in Madrid.

What neither Centene nor the HSJ article mention, is that Ribera Salud is currently under police investigation and there is a process underway in Valencia to take the hospitals back into public control. The Spanish newspaper El Pais reported in November 2016 that Ribera Salud is under

police investigation for fraud, including overcharging and issues with sub-contracting. In March 2017, El Pais reported that the regional Valencia government is to do a “reversión de la sanidad privatizada” literally a reversion of privatised health, under which as the contracts or “concessions” come to an end, the hospitals will be transferred back into public management.

One of the major election campaign promises for the Green/Socialist/Podemos coalition government in Valencia, which won the regional election in 2015, was stopping and reversing health service privatisation. There have been significant problems with a lack of oversight of the “concessions” given to Ribera Salud, with no effective control, nor checks on the quality of its service, nor in any financial matters, according to Ximo Puig, President of the regional government in Valencia.

CIRCLE

Circle came to prominence with the Hinchingsbrooke hospital contract, which ended in failure in 2015. Since then the company has won few large contracts. Its major NHS contracts are in Nottingham for a treatment centre, in Bedfordshire for an integrated musculoskeletal service, and its most recent contract award in August 2016, an integrated musculoskeletal service in Greenwich .

According to the company's 2016 financial report, Circle is seeking new ways to make a profit out of healthcare in the UK. Circle's CEO has outlined a new strategy for the company - 'rehabilitation centres'. The company already has a joint venture with the European rehabilitation specialists VAMED. The idea is to build rehabilitation centres close to large NHS hospitals and then offer the NHS use of these centres to alleviate the problems it faces with delayed discharge - patients who no longer need acute care, but who are not fit enough to go home. Circle described the partnership with VAMED as "a game-changer for the group."

The CEO noted in the company's 2016 annual report “the great growth potential here is to build dedicated rehabilitation hospitals close to large NHS trusts.....A 500-bed NHS trust could save millions of pounds a year by moving patients to dedicated rehabilitation facilities, using the latest technology, which would give them better patient outcomes."

Circle already has a pilot rehabilitation centre in Reading, and its plan is to add a 120-bed rehabilitation centre to its planned private hospital in Birmingham.

This approach would fit in with the new models of care outlined in STPs, which in the main call for less care in acute hospitals and more care either at home or closer to home. This area of intermediate care in nursing homes is already mainstream and almost exclusively provided by the private sector. However, Circle appear to be describing a larger facility than an average nursing home with more specialist facilities. Circle describe rehabilitation as “a critical missing piece” in UK healthcare. The company says: “this initiative is providing us with a much more open door to discuss partnerships and service provision with the public sector,” than its other services.

The only notable contract award for Circle in 2016/2017 was the Greenwich MSK contract.

GREENWICH MSK CONTRACT

The Greenwich contract was awarded by the CCG in August 2016 and is worth £73.7 million over five years. This contract has not been straightforward for the company, however, as in November 2016, the finalisation of the contract was put on hold following a public outcry. There was a successful campaign for an assessment of the contract’s impact on Lewisham & Greenwich NHS Trust; campaigners feared that changes to the MSK services the Trust is paid to deliver could threaten its ability to provide other services, including A&E services at both hospitals.

In March 2017, management consultants Price Waterhouse Coopers (PwC) published the assessment report; it found that the Circle contract would have a massively negative affect on the Trust. Lewisham and Greenwich Trust could lose up to £6.6 million of revenue over five years, according to the report, unless Circle Health contracts it to deliver community based services and “other orthopaedic activity”.

It would be possible for the Trust to mitigate the financial loss from the Circle contract, if Circle used the trust’s resources to deliver community care and if Circle “repatriated other orthopaedic activity”, meaning orthopaedic surgery. However, the contract with Circle contained “no contractual commitment to do this at present”. This absence of a guarantee, noted the report, “poses a risk to the trust which would be exacerbated if further activity loss was to occur”.

The PwC report noted that the Trust's MSK services would be under threat if Circle were to contract with another provider because the loss of activity would make Queen Elizabeth Hospital "the smallest site delivering both trauma and orthopedic services in the country which may impact the delivery of quality and safe care". The report also noted that there would be an issue with the Trust's ability to train doctors, due to the reduction in activity.

According to a leaked document seen by the HSJ, as a result of the PwC report, Circle signed a tripartite agreement to agree to all the mitigations proposed by the incumbent Lewisham and Greenwich Trust. The mitigations include a specified "minimum activity level" for the trust for the five-year contract term. They also include a termination clause that says Circle's contract, awarded by Greenwich Clinical Commissioning Group, will end if planned activity levels in orthopaedics at the trust fall below a certain level.

SIGNS OF MARKET DYSFUNCTION:

(1) GAME-PLAYING THE CONTRACT RULES

The legal framework may still be in place, but there is considerable evidence that NHS organisations are already finding ways to avoid the expensive and time-consuming process of tendering.

In the same month that Simon Stevens was suggesting an end to the purchaser-provider split, health leaders in Manchester advertised a £6 billion contract for 'a local care organisation' (LCO) to run a range of community services. The ten-year contract is part of a new model of care for integrated health services in Manchester. There are aspects of this tender opportunity that point to what could be construed as 'game-playing' of the rules surrounding contracting in order to award the contract to certain organisations.

Primarily, the LCO contract was designed over the previous two years by the incumbent providers of community services, Central Manchester University Hospitals Foundation Trust and University Hospital of South Manchester FT, as part of the Manchester Provider Board; during this time it was clear that the Manchester Provider Board was expected to deliver this contract.

Albert Sanchez-Graells, an expert in procurement law at Bristol University, has also noted that there are other aspects of the tender that would have acted to dissuade private companies from applying. For a start, the sheer size and breadth of the contract and the fact that other services could be added at a later date, is likely to have dissuaded a single organisation from going for the contract, so any tender would have to be a consortium. It is common practice in many large contracts to divide them into lots, making it easier for individual companies to apply for just one or two lots, this was not the case with this contract.

Then there was the time frame of six weeks to get a bid in which seems very short for such a large and complicated contract (although smaller contracts often have shorter time limits). The time pressure on any organisation was compounded by the fact that the tender notice also stated, "The contract will be awarded without further advertisement of this opportunity and there will be no further opportunity to express interest".

So it was no surprise then that in June 2017, it was revealed that there was only one bid for the contract, the Manchester Provider Board, a consortium

made up of Manchester City Council, local GP federations, the city's three acute trusts, community service providers and Greater Manchester Mental Health Trust. The contract is likely to be awarded in early 2018 with a start date of April 2018.

Albert Sanchez-Graells, noted: "On the whole, it seems that the advertising of the contract was never intended to create real competition, and is simply a formal step aimed at creating an appearance of legality of this strategy aimed at side-stepping the (NHS) market."

A similar £5 billion, 15-year MCP contract was advertised by Dudley CCG and Dudley Metropolitan Council in June 2017. The contract covered community-based health and care services including GP services for the registered patient population covered by the CCG and resident population of the Council.

Once again, the incumbent providers - the local GPs and the local trusts - that had developed the MCP were uniquely placed to bid for the contract. It came as no surprise then that in August 2017 the CCG announced that it will take forward a bid for the contract from a consortium formed of GPs with four NHS trusts - Birmingham Community Healthcare Trust; The Dudley Group Foundation Trust; Dudley and Walsall Mental Health Partnership Trust; and The Black Country Partnership FT.

Whereas Manchester may have 'game-played' the rules, in Cornwall, Kernow CCG deliberately ignored the rules in order to improve its services. In July 2017, Kernow CCG announced its intention in board papers that it wished to hand a contract to be the main provider of Cornwall's nine minor injuries units to Royal Cornwall Hospitals Trust. The contract is currently run by Cornwall Partnership Foundation Trust, however if the transfer is made then the Royal Cornwall Hospitals Trust's A&E performance will improve. If performance improves then its chances of gaining more money from the Sustainability and transformation fund is increased. The Royal Cornwall Trust would then subcontract the work back to the Cornwall Partnership Foundation Trust. Ultimately, there will be no change for patients and no change of management. The request for the change of contract was made by management at both trusts.

This move is a direct award of a contract, which is in breach of the procurement regulations; this was acknowledged by the CCG board, however following legal advice the CCG's finance committee considered a challenge from another provider to be "unlikely".

There is some evidence that health leaders are taking other approaches to the setting up of new care models, such as MCPs and ACOs, that mean that having to tender a large contract is avoided.

In Stockport, the borough council and the Stockport Foundation Trust are to create a new care trust to run the area's contract for a MCP. The area decided on the creation of an accountable care trust. This care trust would hold the contract for the MCP as well as other health and social care contracts. In this way no contract has to be tendered out.

In Sandwell and West Birmingham, , six organisations involved in the Connecting Care Partnership have decided to set up an MCP through an alliance agreement rather than tendering the contract.

One of the reasons for this decision is the length of time needed for the procurement process. In a statement to HSJ, the organisations said: "An alliance arrangement can be effective by April 2018, rather than the procurement timeline for an MCP contract, which would take longer."

In Northumberland, the accountable care organisation that went live in April 2017 was set up as a partnership arrangement; the CCG transferred its funding for most core NHS services to an accountable care organisation, which operates as a partnership between Northumbria Foundation Trust; Northumberland, Tyne and Wear NHS Foundation Trust; the mental health provider, and other providers. Northumbria Foundation Trust holds the formal contract, but it will be managed through a type of partnership arrangement with the other providers. No contract need be advertised and no tender process was undertaken.

There have also been cases whereby the advertising of contracts is paying lip-service to the whole process. This was the case in October 2016 when for the first time NHS England advertised the contracts for specialised prescribing, which are collectively worth over £10 billion. Nine contracts were advertised in October 2016, divided by area - three in the midlands, two in the South East, and one each for the North West, Yorkshire and Humber, London, and the South West. All contained the same wording as follows:

"NHS England South West Commissioning hub is signalling their intent to: award whole contracts for 2017-2019 using the NHS Standard Contract to the incumbent providers without further publication, unless; expressions of interest are received from alternative economic operators."

As the wording implies the contract adverts were really only paying lip-service to the entire process.

SIGNS OF MARKET DYSFUNCTION:

(2) LEGAL CHALLENGES

Of major concern in this new commissioning landscape where organisations appear to have succeeded in either game-playing or ignoring the legislation, is that as regulations are still in place then there is always the risk of legal action.

Even before Simon Stevens comments and the launch of the STPs, legal action has been an issue within the system and not just from private companies, the NHS has also launched legal action over contracts. Such action over the procurement process has resulted in delayed implementation of contracts and re-tendering of contracts, as well as considerable financial outlay by the NHS on legal teams. This all has financial implications for a struggling NHS.

In terms of financial challenges from private companies, Virgin Care appears to be the most litigious in recent years. The company undertook legal action in Surrey where the company was challenging its loss of a three-year contract to provide children's services worth £82 million. In late 2016, Virgin Care lost out in a competitive tendering process to Surrey Healthy Children and Families Services Limited Liability Partnership. The winning bid came from a group comprising Surrey and Borders Partnership Foundation Trust, CSH Surrey and First Community Health.

Virgin has stated that there were: "serious flaws in the procurement process." On the 4 November 2016, Virgin began legal proceedings against NHS England, Surrey County Council and the county's six clinical commissioning groups.

Virgin lodged the action just nine days after the contract was awarded, despite claims that the it had been well-informed about the procurement process throughout.

In late 2017, Virgin was paid an undisclosed amount by the CCGs involved to settle the legal case.

Earlier legal challenges, include in February 2016 in Hull when Virgin began a legal challenge against Hull CCG's proposed creation of large, geographical GP practices from eight smaller practices. Virgin's challenge forced NHS England and the CCG to carry out a full procurement process in four lots. Despite Virgin's complaints, Virgin did not bid for any of the lots and they were awarded to new providers in March 2017.

Disputes about procurement do not have to go to court, but can be dealt with by NHS Improvement (and previously Monitor), however this can still result in delays to contracts and retendering as the case of the North-East London Treatment Centre clearly shows. In 2015 three outer North-East London CCGs awarded the five-year, £55m contract to run services at the North-East London Treatment Centre to Barking, Havering and Redbridge University Hospitals Trust. But the decision was challenged by private care firm Care UK and referred to Monitor (now NHS Improvement).

Care UK had complained that commissioners had: not followed due process in agreeing to sub-tariff prices; failed to take quality sufficiently into account; and discriminated against it by not running a competitive tender for other services. NHS Improvement decided there had been mistakes in the process, but did not provide a remedy for the situation. As a result, the CCGs extended Care UK's contract by 15 months, then retendered the contract. Eventually, in September 2017, Care UK won the contract.

There are other areas where Virgin Care has been involved with legal challenges or contractual results. In North Kent Virgin did not initiate litigation but defended a challenge by an NHS provider from whom it had previously won a contract. In January 2016, Virgin Care was awarded a £127 million community services contract by Swale CCG and Dartford, Gravesham and Swanley CCGs.

This was challenged by the existing provider Kent Community Health Foundation Trust, which argued that there were flaws in the assessment and that patient care would be affected by the handover to Virgin. Acting Chief Executive of Kent Community Health NHS Foundation Trust, Lesley Strong, stated:

“We have been working with the CCG and Virgin Care during the past month on the transfer of services from 1 April. We have been concerned that Virgin Care was awarded the contract on price over quality and as further information has become available, our concerns have increased.”

In February the High Court suspended the contract while the trust made its case. In May 2016, Swale CCG and Dartford, Gravesham and Swanley CCGs successfully applied to the High Court for the suspension to be lifted.

SIGNS OF MARKET DYSFUNCTION:

(3) SUB-CONTRACTING

The move to larger more complicated contracts, in particular those for MCPs and ACOs, such as seen in Manchester and Dudley, highlights a whole new issue surrounding contracts - sub-contracting.

Rules of subcontracting are opaquer than the standard EU rules for primary contracts. NHS organisations, as public bodies are still bound by the Public Contracts regulations 2015 when sub-contracting, however non-NHS organisations are not under any obligation to abide by these regulations. A private company can sub-contract part of its contracted service outside of the public domain.

NHS England does publish guidance and standard sub-contracts for prime providers (or holders of MCP/ACO contracts), which will be used by NHS organisations, but not necessarily by non-NHS providers. Non-NHS Providers do not have to advertise subcontracts or follow specific protocol in how they select a provider. They also don't have to publish who they have selected or how much they have paid them.

An interesting example is that of Wandsworth CCG's multispecialty community provider contract. In June 2015, Wandsworth CCG was asked to approve of the development of an MCP; a year later the contract notice was published, and at the end of 2016 the contract was awarded to Battersea Community Interest Company (BHCIC) - the local GP federation. This contract will run for a minimum of seven years, with a possible extension of three more years, and is valued at up to £220 million. The contract award document identifies the contract as a "lead provider", this means BHCIC are able to subcontract as much of the work within the MCP as they like. The MCP involves integration of all out of hospital services and will come online in 3 phases on the 1st April 2017, 1st October 2017, and 1st April 2018.

Soon after BHCIC won the contract notices appeared for two subcontracts: Community Adult Health Services and an End of Life Care Coordination Service. The former is worth "up to £15.9 million per year and is intended to run for a minimum of 4.5 years with the potential for a further 3+2 years (9.5 years in total)". The latter meanwhile is not set to start until a year after the MCP contract begins and will last for four years with a potential extension for another three.

What is interesting is that BHCIC explicitly states that it is under no obligation to advertise these subcontracts in the public domain: “Whilst Battersea Healthcare CIC is under no lawful obligation to comply with the Public Contracts Regulations 2015, it is nevertheless committed to invite expressions of interest through a transparent process, hence this Contracts Finder Notice.”

These two subcontracts are the tip of the iceberg as according to a BHCIC job advert the following services for the MCP are to be subcontracted: Community Adult Health Services; Planning All Care Together; Enhanced Care Pathway; Quality; Community Diagnostics; End of Life Care; Diabetes; and 8-8 Access. It plans to directly provide only two services: Dermatology and MICAS (Musculoskeletal Interface Clinical Assessment Service).

The complications that can arise ‘behind the scenes’ after a large contract has been awarded and then sub-contracting takes place are shown by issues that have arisen in East Staffordshire.

In March 2017, it was revealed that NHS East Staffordshire CCG’s finances could be at risk as a result of a contractual dispute with Virgin Care over changes to a £270 million contract for community services. And as Virgin plans to subcontract some work to Burton Hospitals trust, this trust is now also at financial risk because it cannot sign its subcontract with Virgin until the dispute with the CCG is resolved.

Under the fixed-price, seven-year contract which began in 2016, Virgin Care is responsible for coordinating care for frail elderly patients, intermediate care, and care for patients with long term conditions.

Documents from the CCG state that there was: “a number of contractual claims made by Virgin Care for variations to the contract.” It is not clear from the documents, however, what these claims are. The documents also said the outcome of “contractual claims made by Virgin Care” present a “potential risk” to the CCG’s finances.

Further issues with this contract emerged in August 2017, when Burton Hospitals Trust revealed in board papers that it had to pay £300,000 in VAT at the end of 2016-17, in relation to services it was contracted to deliver by Virgin Care, as part of a “prime provider” contract with East Staffordshire CCG. The trust expects to have to pay around £400,000 in VAT in 2017/2018.

The trust has queried this payment with the HMRC, but found it was obliged to make the payment under current legislation; Virgin Care, the commissioner

of the service from Burton Hospitals Trust, is outside the group of NHS organisations that can recover VAT costs.

APPENDIX A - SPENDING ON NON-NHS ORGANISATIONS BY CLINICAL COMMISSIONING GROUPS

It is often said by government ministers that spending by the NHS on outside bodies forms only a small percentage of its overall expenditure. Figures published in the DH's annual report now put this figure at 11% of the budget, or nearly £13bn. This proportion rises further if you focus on the parts of the budget specifically concerned with commissioning.

Spending by CCGs, who's main role is to commission healthcare, spend a higher proportion on non-NHS organisations than seen by viewing the whole DH budget.

A survey of CCG accounts for 2016/17 by the NHS Support Federations shows that these commissioners spend around 15% of their operating expenses on employing private companies and charities to deliver healthcare CCGs. They control 2/3 of total NHS England budget and this year (2017/18) will spend around £73.6 billion.

In some parts of England, the reliance on private companies and charities is much greater. The survey of the annual accounts of CCGs also revealed that there are 15 CCGs where over 25% of their expenditure is allocated to private companies and charities, for the provision of healthcare.

The two CCGs who spend the biggest share of their expenditure on the private sector are in Bath and Stafford and these areas both have large deals with Virgin Care, which have resulted in 30% of local NHS spending going over to the private sector and charities.