

New Models of Care in New Forms

The HSJ has reported suggestions that NHS England and NHS Improvement are considering the scope for the creation of new NHS organisations - whether new NHS Trusts or Foundations Trusts - to address some of the difficulties of the new models of care programme. They do however raise the question of whether these ideas - which we have heard independently in the context of the Dudley MCP, are practicable.

WHAT ARE THE PROBLEMS THE NEW TRUSTS WOULD ADDRESS?



VAT issues created by the creation of new non statutory bodies such as an LLP or a company which takes over services currently provided by NHS bodies



Governance problems in NHS Foundation Trusts who have limited powers to delegate their functions or decision – making, and cannot form an MCP/ACO sub-board with delegated powers if it has outside members such as GPs



The lack of trust on the part of GPs and others (in some places) of Trusts providing acute services



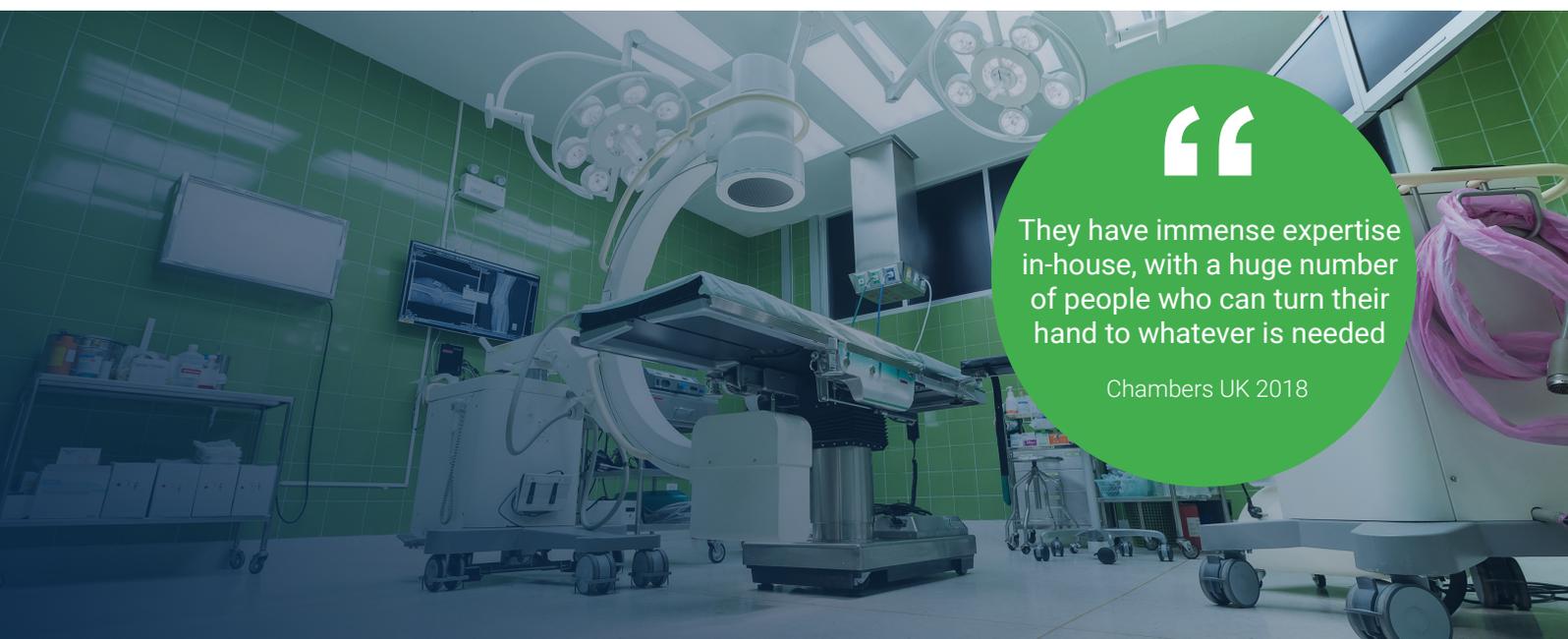
Effective ring-fencing of the ACO budget



The need to address concerns that ACO models are in some way 'privatisation' of the NHS



GP representation in the governance structure, and potentially other third parties with a financial interest in the ACO.



They have immense expertise in-house, with a huge number of people who can turn their hand to whatever is needed

Chambers UK 2018

THE NHS TRUST ROUTE

One potential challenge in terms of the practicalities with the idea of new NHS Trusts is whether the Secretary of State for Health would use his power to create a new NHS Trust; it seems an unlikely policy departure given the intention in the Health and Social Care Act 2012 to abolish the NHS Trust model. Whilst technically this requires a statutory instrument, they have in general not been controversial.

Further changes to the governance arrangements for NHS Trusts may require amendments to the statutory instruments governing them. Even if designated as a Care Trust there is no automatic right for GP representation on the Board of Directors, but it would be possible for a GP to hold the medical director's role, or hold another role. The non - executives are appointed by NHS Improvement so there is a degree to which that element of the arrangements can be achieved without involving the Secretary of State.

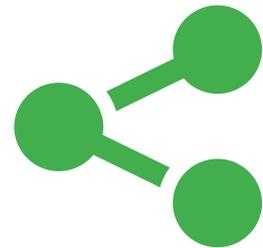


DEMERGING TO CREATE A NEW FOUNDATION TRUST

Although never used there is a power in the NHS Act 2006 for a Foundation Trust to apply to split into 2 (a 'de - merger') - each part is then authorised as a separate and ongoing Foundation Trust. This means it is perfectly possible, provided the two entities meet the requirements for authorisation, for this to be done on the authority of NHS Improvement, and without Secretary of State consent. However the new FTs will both have to have constitutions which comply with the provisions of the NHS Act, and it is here that the problems in governance arise.

Whilst an FT can have as large a Board as it wishes, there must be a majority of non - executives appointed by the governors, who in turn must be constituted with a majority elected by the public and patient constituencies. A GP place or possibly more could be reserved either on the Council of Governors, or as non-executive, and indeed again the medical director could be a GP. In this way most of the problems can be addressed, although there is a slight issue in the order of events. Will the new 'ACO FT' be viable in the face of a decision to procure the services before it is awarded the ACO contract? This could be finessed through a conditional award, and fitting the approval into the ISAP gateway 2 which would link to the assessment of the contract.

Neither option resolves VAT issues on the social care side, nor do they give GPs (or other third parties) control of or a financial interest in the new Trust.



For more information please get in touch



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