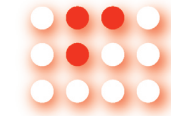


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Fight over privatisation by back door in NHS

Unions have held protests in York and Chesterfield against moves by two NHS trusts to set up wholly owned subsidiaries.

Health workers, fearful for their jobs and the future of services protested at Chesterfield Royal Hospital and York Hospital.

A transfer of services, such as estates and facilities, to a wholly owned subsidiary company could mean staff losing the benefits and protections of working for the NHS.

The trend to wholly owned subsidiaries comes as the NHS continues to face unprecedented financial pressures. Trusts claim that money will be saved by exploiting a tax loophole, but the major savings will come from employing new staff on non-NHS terms and conditions with no access to the NHS Pension Scheme.

Public services union UNISON believes this is a form of back door privatisation, with direct consequences for healthcare staff and potentially damaging ramifications for the NHS in England. It also ignores the fact that all staff are part of one NHS team that delivers for patients and that it

works best when it is pulling together for the same organisation.

UNISON's head of health Sara Gorton said: "This worrying trend is caused by the government's underfunding of the NHS. Trusts are seeking to save money by creating wholly owned subsidiary companies, but it is the workers and patients who lose out as a result."

The Department of Health and Social Care announced recently that it was consulting on this issue with a view to strengthen "central oversight" of wholly owned subsidiaries by asking all NHS trusts to report to them via NHS Improvement of their intention to set one up.

Colenzo Jarrett-Thorpe, national officer for health at the Unite general union, said: "The government's proposal for a consultation on wholly owned subsidiaries is a step in the right direction."

Nevertheless, the union wants health secretary Matt Hancock to enforce a moratorium on the further creation of other wholly owned subsidiary companies while this consultation is taking place, and for those that are in the process of being created to be paused while the consultation takes place.

There have been successes in the fight against wholly owned subsidiaries. In early July, Wrightington, Wigan and Leigh Foundation Trust agreed to drop plans to transfer more than 900 workers

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including porters, cleaners and catering staff to NHS subsidiary firm WWL Solutions after Wigan Council has stepped in with a financial deal.

The plans to move staff to the new company had been the subject of a long-running campaign and dispute led by UNISON.

And, after the threat of industrial action, Leeds Teaching Hospitals has shelved plans to transfer staff to a wholly owned subsidiary. The move would have seen estates, facilities and clinical engineering staff transferred.

www.unison.org.uk/news/article/2018/07/fight-save-chesterfield-hospital/

www.uniteunion.org/york-and-chesterfield-protests/

www.unison.org.uk/news/2018/07/hospital-trust-drops-plans-outsource-nhs-staff-private-company/

www.yorkshirepost.co.uk/news/unions-hope-to-defeat-hospital-staff-transfers-as-leeds-nhs-trust-puts-private-company-move-on-hold-1-9265997

Employers must act on sexual harassment

Sexual harassment at work is widespread and commonplace, but there has been a failure to tackle unlawful behaviours, despite the government's obligations under international law, say MPs.

Employers and regulators have ignored their responsibilities for too long, and often legal protections are not available to workers in practice, a report from the Women's and Equalities committee finds.

The report refers to a BBC survey, which in 2017 found that 40% of women and 18% of men had experienced unwanted sexual behaviour in the workplace.

The report finds the effects of sexual harassment can be traumatic and devastating, but there is a lack of appropriate support for victims at the workplace.

The lack of action by employers and regulators to tackle this problem means that the burden of holding harassers and employers to account rests heavily on the individual.

However, many victims may not want to take forward a complaint for fear of victimisation, or because they cannot trust their employer to take robust action. For those who do take a grievance through their employer's internal procedures or at employment tribunal, these systems do not work well enough.

This may explain why the number of tribunal cases appears to be so low. The tribunal system must be an effective remedy for employees, and the threat of

tribunal must be sufficient to ensure that employers have proper systems in place to tackle and prevent sexual harassment. Better data is also required so that the extent of harassment and effectiveness of remedies can be more easily measured.

The committee points out that non-disclosure agreements (NDAs) are used unfairly by some employers and also some members of the legal profession to silence victims of sexual harassment.

While NDAs have a place in settling complaints of sexual harassment in the workplace, there is insufficient oversight and regulation of their use. It is unacceptable that some NDAs are used to prevent or dissuade victims from reporting sexual harassment to the police, regulators or other appropriate bodies or individuals. Those who use NDAs unethically in this way must face strong and appropriate sanctions, the committee says.

The report calls on the government to focus on five priorities to put sexual harassment at the top of the agenda for employers.

Introduce a new duty on employers to prevent harassment, supported by a statutory code of practice outlining the steps they can take to do this; and ensuring that interns, volunteers and those harassed by third parties have access to the same legal protections and remedies as their workplace colleagues.

Require regulators to take a more active role, starting by setting out the actions they will take to help tackle this problem, including the enforcement action they will take; and by making it clear to those they regulate that sexual harassment is a breach of professional standards and a reportable offence with sanctions.

Make enforcement processes work better for employees by setting out in the statutory code of practice what employers should do to tackle sexual harassment; and reducing barriers to taking forward tribunal cases, including by extending the time limit for submitting a claim, introducing punitive damages for employers and reducing cost risks for employees.

Clean up the use of non-disclosure agreements (NDAs), including by requiring the use of standard, plain English confidentiality clauses, which set out the meaning, limit and effect of the clause, and making it an offence to misuse such clauses; and extending whistleblowing protections so that disclosures to the police and regulators, such as the EHRC, are protected.

Collect robust data on the extent of sexual harassment in the workplace and on the number of employment tribunal claims involving complaints of harassment of a sexual nature.

Maria Miller, chair of the committee, said: "It is utterly shameful that in 2018, unwanted sexual comments, touching, groping and assault are seen as an everyday occurrence and part of the culture in many workplaces.

"Government, regulators and employers have been dodging their responsibilities for far too long."

<https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/T25/T2502.htm>

Protection against caste discrimination

The government has decided not to add "caste" to the list of nine protected characteristics in the 2010 *Equality Act*.

The main reason for the decision is the difficulty in drafting a precise legal definition of "caste", which includes the problem in differentiating "caste" from "social class" and so introducing "social class" as a protected characteristic.

The Government Equalities Office's (GEO) response to a consultation says: "Having given careful and detailed consideration to the findings of the consultation, government believes that the best way to provide the necessary protection against unlawful discrimination because of caste is by relying on emerging case-law as developed by courts and tribunals."

The response adds: "Legislating for caste is an exceptionally controversial issue, deeply divisive within certain groups.

"The inability to define 'caste' within the legislation, even if an effective and suitable definition could be agreed on, presented a significant complication to introducing a concept into law that would potentially be open to a variety of interpretations. Interpreting caste either too narrowly or too broadly could give rise to either the legislation failing to cover some of those it was intended to protect or risk importing concepts into law that it was not designed to cover."

The GEO has taken account the full terms of the *Tirkey* judgment and the responses to the consultation commenting on it and it will keep any new

cases of caste discrimination that come before the courts under review to ensure that the principles established by the *Tirkey v Chandok* judgment are upheld.

"Should there be any question that the established case law is under challenge, for instance by a case being referred to a court higher than an EAT, we will consider whether government should intervene in order to support the existing legal interpretation of the interaction between caste and ethnic origins," the GEO said.

The *Tirkey* case ran in 2015. Ms *Tirkey* from the Adivasi caste worked in the *Chandok* household as a domestic servant. She brought many different claims against her employer, including race discrimination, indirect religious discrimination and caste discrimination.

She worked excessive hours, had to sleep on the floor, was not allowed to contact her family or control her own bank account, did not receive the minimum wage and was deprived of her bible and the right to go to church.

The EAT confirmed that caste discrimination will already be covered by the 2010 Act if it is part of an existing protected characteristic, usually "ethnic origin". Someone's caste is likely to be part of their ethnic origin where it is based on descent, or contains an identifiable ethnic identity.

www.gov.uk/government/consultations/caste-in-great-britain-and-equality-law-a-public-consultation

<http://www.equalrightstrust.org/ertdocumentbank/Case%20Summary%20-%20Tirkey%20v%20Chandok.pdf>

Worker director fudge in governance code

After extensive consultation, the City watchdog, the Financial Reporting Council (FRC), has issued an updated *UK corporate governance code* for listed companies.

On engagement with the workforce, the code recommends that one or a combination of the following methods should be used:

- a director appointed from the workforce;
- a formal workforce advisory panel;
- a designated non-executive director.

If the board has not chosen one or more of these methods, it should explain what alternative arrangements are in place and why it considers that they are effective.

In addition, there should be a means for the workforce to raise concerns in confidence, and – if they wish – anonymously.

TUC general secretary Frances O'Grady was disappointed. "These reforms are a step in the right direction but they are not the shake-up of corporate Britain Theresa May promised and the country needs," she said.

"While it's good this new code recognises the importance of workforce engagement, the real test is whether companies give workers more of a say in how they are run. The government should have stuck to its commitment to make workers on boards mandatory."

On boardroom pay, the code says the remuneration committee's report – a section of a company's annual report – should describe "what engagement with the workforce has taken place to explain how executive remuneration aligns with wider company pay policy".

www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf

Introduce CDC pensions ASAP

The government must move quickly to enable the creation of the UK's first collective defined contribution (CDC) pension scheme, following the groundbreaking agreement between Royal Mail and the CWU communication workers' union, a committee of MPs warns.

The Work and Pensions select committee says defined benefit (DB) pensions schemes are in decline as employers seek to reduce their exposure to ongoing funding obligations and massive scheme deficits

have featured in a series of high-profile corporate failures, including those such as BHS and Carillion that have been investigated by the committee.

Meanwhile, individual defined contribution (DC) saving is growing fast under automatic enrolment, but while DC pensions are more manageable for employers, they require individual savers to consider how to manage investment and actuarial risk.

CDC pensions by contrast offer advantages in the middle ground. These schemes, which are already prominent features of highly successful pensions systems in Denmark and the Netherlands, offer a regular retirement income, but in the form of a target benefit rather than DB schemes' "guarantee". Changes in the funding position of the scheme are addressed by adjusting the benefit rather than calling on extra contributions from the employer.

CDC gives companies the option of offering good pensions to their staff without the risk of large long-term pension liabilities on their balance sheets, and gives staff the welcome prospect of a regular income in retirement, managed collectively on behalf of all members. Several studies have shown that CDC schemes could offer more generous and predictable benefits than individual DC provision, through the feature of risk pooling.

Committee chair Frank Field said the committee's report "offers that opportunity for pensions: how to combine decades of individual pension ownership and provision with collective security".

For the TUC, pensions policy officer Tim Sharp said that CDC pensions could provide a useful "middle ground" option between the types of workplace pension currently available. "The biggest barrier that remains is one of political will," he said.

<https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/580/58002.htm>
<https://www.tuc.org.uk/blogs/easy-cdc-why-we-must-move-quickly-allow-new-collective-pensions>

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