

70 years of the NHS: observations on healthcare management

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At DAC Beachcroft we are proud to have been a partner to the NHS since its inception in 1948 when we first acted for St Mary's Hospital Paddington, now part of Imperial Healthcare NHS Trust. Our first major involvement was in defending hospitals and clinicians from clinical negligence claims, and from there our practice grew to be the all-encompassing full legal service that it is today.

The last 70 years has seen many milestones for the NHS. DAC Beachcroft partner and Head of Commercial Health Anne Crofts, takes a look at the many landmarks on our National Health Service's journey from 1948 to 2018.

Looking back

There are a number of recurrent themes for the NHS in its 70 year tenure, particularly around optimal structuring, reducing waiting lists, integration of health and social care services and the role of primary care. However much the language and terminology has changed over the years, the basic principles have remained. Take the following statements:

"...the crying need for [elderly people] is to keep them at home as long as one possibly can, with as many services to assist them as is humanly possible..."

"In recent years, the trend of much development has been to bring local health and welfare services so closely together that they can be administered as one for the benefit of the patient ... there are innumerable cases ... where it is difficult to say where health ends and welfare begins."

In spite of the archaic terminology this could be commentary on the policy behind the Five Year Forward View but is in fact from Hansard in March 1963, when the House of Lords debated the Porritt Report on Medical Services. The issues identified then as potential obstacles have continued to present legal challenges throughout the last 50 years, with the integration of Health and social care a particularly thorny issue.

As a firm, our presence as a major provider of legal support to NHS clients developed rapidly in the 1980s and 1990s. This was the era when public sector outsourcing began in earnest, including the services that had been provided by Health Authority legal teams. Two of our predecessor firms, Beachcrofts and Wansboroughs, acquired Health Authority legal teams from London, the South West and the North and our specialist health practice grew from there. The 1980s and early 1990's also witnessed the development of the 'internal market' in the NHS. Influenced by the Enthoven Report, published in the 1980's, which argued for greater decentralisation of healthcare, the Conservative Government created the first commissioner/provider split with the establishment of NHS trusts as purely provider organisations, legally separate from Health Authorities, and with sole responsibility for commissioning healthcare. Some GP 'fundholding practices' also began commissioning care for their own patients.

Continuing themes

More than 30 years later, each of these themes continues to be the subject of public and political debate; from the collapse of Carillion and what that means for the future of outsourcing contracts to the award of large NHS care contracts to independent providers, and the development of contracts for integrated Accountable Care Organisations/Systems with capitated budgets being challenged through Judicial Reviews.

A large part of our Commercial Health work is to help our clients implement or respond to current health policy within the legal framework. As such, the nature of instructions changes as policy changes; 10-15 years ago it was largely about PFI contracts and centrally mandated models of contracting. This was in response to the Labour Government's 'NHS Plan', which increased investment and implemented further reforms. A lot of our instructions were on major infrastructure "projects" which could take years to complete from the initial business case, through a competitive procurement process to final completion. Another quote from Hansard comes to mind, *"It is a truism that a new hospital, which may have taken five years to design is out of date when the foundation stone is laid, and it may take another 5 years to complete"*, this time from the debate on the Hospital Plan of 1963. Although it cannot be denied that a number of fine modern hospitals were built as a result of PFI, the model is now often criticised as expensive and not flexible enough to address more recent policy initiatives which emphasise "right place" care centred around the patient in the community and home.

The early 2000's saw Primary Care Trusts (PCTs) established with responsibility for commissioning healthcare and providing community services, and at the same time Foundation Trusts also began to be authorised with greater commercial freedoms and autonomy.

In 2006 the National Programme for IT was introduced; a hugely ambitious project to provide every hospital with an Electronic Patient Record system. Roll on 10 or so years and the recording and use of data in the NHS is still the subject of much debate and controversy. Current challenges include how to share patient information between care providers without compromising the confidentiality and security of that data, as well as determining the ethical and legal parameters for how the NHS is entitled to use it.

The last major landmark was the Coalition Government reforms, implemented by the Health and Social Care Act 2012. These reforms imposed a "hard line" between commissioning and providing healthcare, with the abolition of PCTs and Strategic Health authorities, the establishment of Clinical Commissioning Groups whose members are GPs, and the transfer of public health obligations to Local Authorities and primary care, and specialist commissioning to NHS England. As I write this piece, the Government has announced it is considering scrapping some of the 2012 reforms, seen by many to be expensive and obstructive to the development of integrated care.

Looking to the future

With the promise of a 10 year settlement for the NHS it will be particularly interesting to see whether the challenge of bringing health services and social care together will succeed and how the future strategy for primary care will develop.

What is very clear is the impact that technology and use of patient data is already having on patient care and, of course, patient choice. As awareness around this topic grows from the patient perspective, there is now an increasing emphasis on technological innovation that provides populations with access to managing their own health, with trusts and other health and social care organisations also seeking to take advantage of technologies to ease resourcing pressures.

Alongside this, attention has been turned to estates and buildings to ease these same pressures; the Naylor Report has placed a spotlight on the potential that effective management of the NHS property assets can have on the NHS bottom line.

Looking back over the last 70 years, the underlying challenges of pressured funding, demands to adopt the latest technology, aging population, decaying buildings and resourcing pressures seem perennial. It may be over optimistic to expect that they can ever be fully addressed, but we look forward to continuing to support the NHS in addressing those challenges into the future.

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