Report on Full Business Case for a Wholly Owned Subsidiary – Airedale NHS FT

Report on Full Business Case for a wholly owned subsidiary delivering Estates, Facilities and Procurement Services for Airedale NHS FT.

This paper is written on behalf of UNISON by Richard Bourne.

UNISON is the major trade union in health and social care and the largest public service union in the UK. UNISON represents more than 450,000 healthcare staff employed in the NHS, and by private contractors, the voluntary sector and general practitioners. In addition, UNISON represents over 300,000 members in social care. The union's community and voluntary sector has an expanding membership of more than 60,000 and UNISON has a large retired membership of more than 165,000 with a particular interest in the future of health and social care. In addition, there is a wider interest among our total membership of more than 1.3 million people who use, or have family members who use, health and social care services.

Richard Bourne has conducted many reviews into major projects and programmes for UNISON. He has also been part of over 70 Gateway Reviews, mostly in health, but also in local and central government. Until recently was a Gateway Programme Director at the Department of Health. He has accreditation to carry out assurance work from the Cabinet Office and the Welsh Government. He has extensive knowledge and direct experience of the care system and has worked on policy development at local and national levels.

He has worked as a Consultant in the public sector for 15 years mostly on case preparation, evaluation and assurance of major and high risk projects. He has evaluated and delivered assurance reports on many Business Cases. He has also held executive and non-executive posts within the NHS and DH at Board level. Richard has experience in local and central government working as a Consultant and was a Councillor for 13 years.

Summary

The document is not a Full Business Case (FBC) and not even a summary of a FBC. No evaluation can be undertaken of any substance without far more information, especially around quantification of claimed benefits.

It appears possible that a proper case may exist and this is being withheld. There is no good reason why the full FBC should not be publicly available, no commercial organisations are involved.

No options appraisal of any substance was undertaken, the model proposed by the external advisors was simply progressed. There may well be better options and Unison would like the opportunity to discuss them.

Unison would like to be able to discuss reservations they have about the role being played by QE Facilities and the way they were appointed. This reflects concerns at other Trusts.

Unison has not yet been consulted on the reasons for progressing with this project despite clear requirements for partnership working in the NHS and legal duties under the NHS Constitution. Hopefully this will be rectified and adequate information provided.

Should a decision be taken to progress with the proposal to set up a wholly owned subsidiary then there are many issues on which Unison must be consulted, not just on the TUPE transfer process.

Limitations on Evaluation

The document that was evaluated is entitled a Full Business Case and was provided to Unison as the definitive document supporting the claimed benefits of the changes that require establishing a wholly owned subsidiary company in a particular form. But it is not a Business Case under any reasonable definition and certainly not under the guidance that applies to the NHS.

In the document itself (3.2) are references to other pieces of work that have been carried out and mention of a FBC to be developed for consideration by the Board in October 2017. There are also many instances of redaction – for no obvious reason in some cases.

So is there a proper FBC somewhere that went to the Board but has not been provided to Unison?

The document title is limited to estates, facilities and procurement services and is written in support of just that, but it actually states in 2.4 that the scope extends far wider to 24 services. This causes major confusion and undermines the claims in the documents.

The scope and scale of the change proposed puts it outside the scope of anything that might reasonably be addressed through business as usual. It is clearly a Project that should be managed as such and there is guidance about how NHS organisations should manage Projects, even when these do not require external approval.

Garnish

A significant portion of the document is about issues relating to the set up of the WOC and even some operational matters. This is really not part of any FBC. A separate consultations with Unison will be required on how the arrangements are made if a decision is taken to progress the proposal.

The Missing VAT

Projects to form WOCs are not new and many are taking place all over the country right now. In almost every case the impact of VAT is mentioned and in some places it is clearly the savings from VAT treatment that are the only credible cash releasing short term benefit. Cases that Unison has seen indicate projected savings in VAT in £millions pa for a similar Trust.

VAT savings is not mentioned in this document. This verges on the dishonest.

Commercial Confidentiality

The document provided has many redactions, although from the headings it is not always clear why the subject matter would have been in a FBC anyway.

However, the issue of commercial confidentiality must be contested. This is a project that involves no bodies outside the public sector. It is about what might happen entirely within the public sector utilising public money.

The usual test for commercial confidentiality in respect of information held by a public body is that its release would be likely to prejudice commercial interests, which is some trading activity. It is also clear that to justify refusing to disclose information the risk of prejudice should be more than a hypothetical or remote possibility; there must be a real and significant risk. None of that applies.

Even if the Trust maintains this stance it is open to the Trust to provide information under some reasonable agreement on confidentiality to enable meaningful engagement and consultation.

QEF may wish to present themselves as some sort of commercial operation competing with others although it does not appear to have been procured through a competitive process – this is internal to the NHS. It is just about conceivable that they have a commercial interest but that has no bearing at all on the issue of why information about Airedale FT should not be available to the public.

Unison Position

Unison wishes to enter into consultation about the reasons why this course of action is being progressed, what benefits are being claimed will result, and why any particular solution is the best for patients and the staff. That does not begin with an assumption that one particular form of Wholly Owned Subsidiary (WOS)[1] is the solution most likely to achieve the benefits.

The NHS is an organisation committed to partnership working at national, regional and local levels. Unison is also aware of the clear pledge in the NHS Constitution to engage staff and their representatives in "decisions that affect them and the services they provide". The Trust has a legal duty to have regard to this pledge and has yet to provide evidence of any process that they went through to consider their position and to decide they would not engage.

Any process of engagement and consultation can only be possible if both parties have access to the necessary information. The document under evaluation falls far short of providing that necessary information.

[1] In some places, and for no apparent reason, the document sometimes uses the acronym SPV which presumably means the WOC is regarded as a Special Purpose Vehicle – the distinction is unclear.

Process Issues

The Trust's SFIs, 19.3 set out that it shall comply (as far as is practical) with the requirements of the DH Guidance generally and with a special reference to management consultancy (the use of QE Facilities is mentioned below). That would require the initial preparation of a Business Case and its progressive development up to the FBC.

The document is not a FBC. A FBC is the document that allows the final decision to be made, in this case by the Trust Board. As such it must set out the strategic, economic, commercial, financial and management cases as well as providing evidence of the baseline position, the evaluation of options and the outline for the benefits realisation plan to secure what is proposed.

One complicating factor that has not been addressed is how double counting of benefits is avoided (weakening the case) – both within the Trust's own cost reduction programme and within the wider system under the STP. Managing dependencies between programmes is not discussed anywhere.

The usual form of Business Cases to be used within the NHS is very well established and in general follows guidance originating from HM Treasury. Whilst other forms could be appropriate the document has neither the depth nor the breadth of background analysis, information and evaluation that must be present in a FBC.

For this reason this evaluation falls far short of what is required and can only cover what is in the document and what is missing. The document gives insufficient information to enable meaningful consultation and it also fails to provide the basis for accountability that is a necessary feature of a structured approach to case preparation, evaluation and development.

There is also an issue with the way consultancy support from QE Facilities was used. It is unclear what process was used to "appoint" QEF but there is no evidence of any kind of competitive procurement as required under the Trust SFIs 19.4.1. There is also evidence in the document itself that paragraphs have been imported directly from documents at other Trusts, the cut and stick approach to consultancy. QEF (which is part of Gateshead FT) chose its own model for creating and is now effectively promoting that model and approach as opposed to leading a proper evaluation of options – what passes for an Options Appraisal is identical to the one in a document at another Trusts also advised by QEF.

Case for Change

Despite a lot of rhetorical phrases this is about dealing with a serious financial challenge; and it should say so very clearly.

It is apparent that the driver for the Project is cost reduction. Whilst there are other benefits and claims for improved quality of services this quality improvement was not the driver, there is no evidence of Board concerns with the quality of services. A quality improvement without significant cost reduction would not be seen as success. It is unclear however whether a cost reduction and a deterioration in service might be acceptable.

Section 3 of the document deals with case for change and benefits but without a single number or financial value being provided.

Options

Section 3.2 addresses Options. This is the most serious cause for concern.

It should be mentioned that this section is remarkably similar to documents obtained by Unison from other Trusts, to the extent that some paragraphs are word for word identical.

It is stated that Do Nothing and Outsourcing were rejected as options by some earlier process. In effect that means that the ONLY option considered within the FBC is the particular version of WOC. This option is of course a form of outsourcing as it is disingenuous to suggest otherwise.

It is Unison's view, based on wider experience that there are many possible ways to achieve the desired outcome of lower cost and better quality services in these areas. In a proper Business Case the long and short list of Options would feature along with evaluation rationale.

There are obvious other options that could and indeed should have been evaluated. It appears only one option was actually ever considered - what might be termed the QEF model. Other perhaps better examples might be:-

It is pretty obvious that doing nothing is not appropriate, but Do Something should have been explored in partnership with staff. Going back to the benefits required, to what extent can they be achieved without organisational change for example using flexibilities already available around Agenda for Change, working in partnership with other NHS bodies to share best practices, by recruiting other staff or insourcing expertise? How does that then compare with claims about the QEF WOC option? If for no other reason this work needed to be done to set a baseline for benefits realisation.

Shared services are the preferred option in much of the work around the Carter Review and STPs. If every Trust sets up its own WOC for service delivery then how do you get STP or NHS wide economies of scale? Property related matters and procurement (two of the three services considered in the document) are both considered to be better dealt with at regional or sub regional level. Unison is already aware of forms of shared service which include a

private sector partner to insource expertise. There is the use a limited company model to get VAT savings but through a company owned by several Trusts not just one.

Variations on WOC are many. There might be a partnership model and at least one example of this exists. How staff are dealt with, how the governance of the WOC is set up, the extent to which the WOC can be reversed, limitations on WOC ownership in future are some of the key issues. How the WOC is set up and how staff are treated, both now and in future, are essential factors. This might be for Unison the least worst option.

Options Appraisal

By any standards this is rudimentary and objective criteria are almost entirely absent. No weightings are applied so cost savings ranks equally alongside potential for income generation. It would be unlikely anyone believes that.

As mentioned above it is not clear if the document refers to 3 or to 24 services. Did the options appraisal look at both? What might be different if other services are included?

Whilst this is not stated properly it is clear that the Project is about reducing the costs associated with the delivery of estates, facilities and procurement services. It would be reasonable to assume that this is to be achieved with no deterioration in services and possibly with some service quality improvements although the extent of improvement required is not set out anywhere.

The Table in 3.2.3 is again a copy. There is information about who was involved in appraising the options but nothing about methodology and evidence used. It has almost zero value as objective analysis, almost every score in the final two columns could be reasonably contested.

This is not an options appraisal at all. It is simply a reversed justification for the only option (QEF WOC) ever put forward.

Realisation of Benefits

These need to be split into financial and other. Again the "options appraisal" drew no distinction and how much weight gets placed on non financial benefits (such as a more commercial focus) is entirely unclear.

Mixed into the Section on Finance is one statement about "impact on cash", other details have been redacted.

The document sets out a number of areas where costs savings are intended, although it fails to mention VAT. From numerous other documents seen by Unison the benefits are

essentially savings from VAT and staff cost reductions[2] through employing new staff on non NHS terms and conditions. The rest are minimal and debatable – income from opportunities to generate additional income is highly unlikely if everyone sets up their own WOC!

What is required is a simple table showing for the 3 or 4 key benefits the cash releasing savings that will be delivered in each of the next 5 years, offset by any set up, project management and double running costs.

Without that the rest is pretty meaningless.

Risks and Assumptions

Section 6.2 deals with risks, but Appendix 1 which provides the Risk Register was redacted.

This is alarming. It is suspected again that the Register will refer to matters such as VAT which are carefully excluded from the main text. Withholding of risk registers always raises alarm bells.

Little if anything is provided about key assumptions especially dependencies which is of concern in a system which has a lot going on and multiple disconnected workstreams.

[2] Reduced sickness absence, easier recruitment, better retention, cultural changes in management are all attainable without moving to any WOC, just better management and partnership working.