

Gloucestershire Care Services: The Legal Case

The legal case, being made by Leigh Day (1) for M. Lloyd, against NHS Gloucestershire (NHSG) has come to a pause – unfortunately no-one knows how long it will be until there is an outcome.

If Mr Lloyd wins his case, the judge cannot decide what action NHSG can take, but he can ask NHSG to restart the process. This means that, with pressure from staff, public and unions, the PCT community services could stay within the NHS. If NHSG insist that privatisation is still the route they wish to take, then there is a chance services will be tendered and bid for. Those bidding may also include other NHS trusts. However, full market tendering can be avoided if services are offered up only within the public sector market. There are options which NHSG can investigate in order to prevent staff being transferred out of the NHS, for example integration with any other NHS trust in England. But this can only occur if the management allow it. That means we need to let them know that we do not want services privatised, either via the formation of a community interest company (CIC) or via an established private company.

If the legal case against NHSG is lost, services will be run by the CIC. Although a CIC is very different from other forms of social enterprise (particularly in the manner of the board configuration, which gives enormous power to the board), your staff side representatives have worked very hard to ensure you have the best terms and conditions in a very bleak healthcare setting. Whilst the legal case goes on, your reps are using the extra time they have been given to keep working on your possible future terms and conditions.

However, it seems quite clear that NHS CICs are being set up to be taken over by other private companies when their contracts run out and, at a recent meeting of a Strategic Overview and Scrutiny Committee, Conservative Councillor Ray Apperley, let on that services would go out to the private sector in a few years time anyway(2).

Now a leaked government document which has prompted the British Medical Association to call for the total scrapping of the Health and Social Care bill, states that support services for clinical commissioning groups are to be run by private companies after 2016 (3).

Clearly, full privatisation is on the cards.

Should there be a change of government following the next election, any privatisations that have occurred, whether through CICs or the established private sector, cannot be reversed under EU law. However, as an NHS trust, there will be some assurance of protection to remain within the public sector (4), accountable to patients and public and in a better position to put money into care where it belongs.

If you wish to help keep services within the NHS, write to senior managers, or speak to your department head. Chat to your rep about how services can stay in the NHS and join a union if you are not in one already!

Alternatively, a Gloucestershire-based legal expert who has been liaising with the campaign group and Leigh Day, can come to your meeting to explain the legal case. To arrange a group meeting with Kate Berry, please email your contact details to helpthenhs@hotmail.co.uk.

- 1 Leigh Day and Co. are a team of solicitors most well known for their human rights and public sector expertise
<http://www.leighday.co.uk/About-us/external-recognition/Legal-500-2011>
<http://www.keepournhspublic.com/pdf/StandupforyourNHS.pdf>
- 2 Stroud District Council, Strategic Overview and Scrutiny Committee meeting, 6th October 2011
- 3 <http://abetternhs.wordpress.com/2011/11/25/press-release-from-keep-our-nhs-public/>
- 4 Andy Burnham at the RCM conference – he says Labour would repeal the Bill <http://www.policyreview.tv/video/617/4585>

For more information look at

http://www.youtube.com/watch?v=TJ_kfWWhyj94

Wendy Savage talks about the privatisation of the NHS and The Health and Social Care Bill. Followed by a legal spokesperson talking about the Gloucestershire NHS legal case.