

# Restructuring Pathology in the NHS

## The challenges for Human Resources

December 2010



With the drive by the NHS to restructure and consolidate Pathology services, local solutions will follow various paths, but they will all involve major organisational change. It is important to recognise that most of the savings will be made by reducing staffing. This will affect managers and medical staff as well as laboratory personnel. Some people will lose their jobs, while others will have to move to new posts and/or new employers, or different locations, and might have to consider changed,

perhaps less favourable, terms and conditions of employment. Early retirement might be an option for some, with the potential loss of valuable skills.

The list of the principal options for reconfiguring Pathology services set out below is not exhaustive! However, Executives, NHS Trust Boards, Strategic Health Authorities and managers in HR and in Pathology need to consider the implications raised in this paper.

### ***Making the current Pathology service more cost-effective***

The costs of the Pathology staff, like those of any other workforce, depend essentially on the number of people required and what it costs to employ them. Staffing 'establishments' and patterns of work that have lain undisturbed for years are likely to be inefficient and might be unsuited to new technology. They need to be challenged. The work done and the skills (and pay bands) of the people doing it need to be properly evaluated. The outcome might be reductions in staffing, a different mix of skills, changes to individual job descriptions, new shift patterns and perhaps reductions in ancillary payments.

The flexibility of the current workforce could be enhanced by cross-training in specialisms that require similar knowledge and skills, allowing separate laboratories to be merged or personnel to be rotated.

Such changes must be sustainable and maintain the required standards of quality. They must also, needless to say, be handled sensitively. HR policies, EU/UK laws and procedural agreements cannot simply be overridden. Care must be taken to ensure compliance with employment legislation, and appropriate consultation must take place with union representatives and with the employees.

### ***Transferring services between laboratories in the same NHS Trust***

It usually makes economic sense to remove duplication of work. So if two hospitals in a Trust both run blood sciences laboratories, for example, it should be feasible to consolidate the non-urgent testing (including direct access work for GPs) in one place. But it might be necessary to maintain a 'local' or 'hot' laboratory at each site to handle essential, in-patient work. The requirements will vary between disciplines.

In such circumstances the considerations listed above are still relevant. But the reduction and redistribution of

staffing become complicated by questions of redeployment between two or more locations. Be wary of making easy assumptions about offering 'suitable alternative employment' to people whose current jobs are at risk of redundancy. It will not necessarily allow you to use the prospective loss of redundancy pay as an inducement for employees to redeploy. Even if the alternative job is 'suitable', the loss of severance pay will depend on various factors, including individual circumstances such as travelling time.

## ***Transferring services to another NHS Trust***

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At this point the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) loom into view and lawyers start rubbing their hands. The 'service provision change' category of TUPE might apply to a Pathology service transferring to another Trust (it depends on, among other things, whether an 'organised grouping of employees' can be identified). TUPE is a complex piece of legislation and needs careful compliance with the requirements for information and consultation.

Most importantly, Pathology managers at both Trusts need to agree on how the service will be organised and managed. Any transfer of services is potentially disruptive. Savings will not accrue from simply doing the same work, in the same way, in a new location. Changes to the staffing will be necessary

## ***Forming a 'network' of Pathology services among two or more NHS Trusts***

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This is where different organisational structures proliferate. 'Networks' can be anything from the informal cooperation of Trusts to a new entity with its own arrangements for corporate, clinical and financial governance. The consolidation of services might mean that microbiology work, for example, transfers from Trust A to Trust B while histopathology moves in the other direction.

Employment models include the 'prime site' or 'host Trust' approaches, raising questions about differences in terms and

conditions of employment. It is essential that the managers and HR departments at each Trust should work together and coordinate their local consultation with representatives and employees. In a network, competition between services must be replaced by cooperation – so behaviour during the formation has to be appropriate. Managers will feel threatened, and will need close support.

## ***A 'joint venture' between one or more Trusts and an external (private sector) provider***

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Again, there is more than one option for a 'joint venture'. A separate JV company might be set up, owned by the parties, or there can be a contractual arrangement based on service level agreements. Effective governance is essential. And employment models (which, again, embrace TUPE issues) become more complex. Do not assume that the 'retention of employment' (RoE) alternative (seconding employees between organisations) will solve the problem. It requires the agreement of the employees, and even then the courts might decide that it is a ruse to avoid TUPE.

We should also mention here Social Enterprises. The initial focus has been on primary and social care, but the 'Equity and Excellence' White Paper envisages a place for them in the acute sector. Watch this space.

Amongst all the debate over organisational forms, it is easy to lose sight of the real reason for the change – the need to make the service more cost-effective. The benefits must be clearly defined and a programme for change determined.

## ***Transferring responsibility for managing the Trust's laboratory(ies) to an external provider, with the Trust continuing to employ the staff***

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An external provider might manage the Pathology services more efficiently. Or it might not. 'Efficiency' is a vague concept that needs to be translated into improvements in cost, quality and service. Any significant financial benefits will require the same reductions in payroll costs as above.

And be careful how you transfer the responsibility for managing the services. Do not simply add an extra managerial layer, which will increase complexity. Clarify new and changed roles and avoid creating a 'them and us' environment.

## ***Transferring responsibility for managing the Trust's laboratory(ies) to an external provider, which would employ the staff***

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Similar comments apply. But now TUPE (or possibly RoE) is likely to apply, and employee relations will become more prominent. To achieve big savings (sorry to harp on about this), the new provider will have to reduce the staff or the pay. Don't underestimate the loss of control over the services that such a model can entail, unless tightly defined -

or the possibility that the trades unions and professional bodies will choose to make a stand against your deal. Ensure you involve representatives of the employees in the manner that your procedures stipulate. Do it by the book, and recognise that it will take time.

## ***Transferring all or some of the laboratory work to an external provider, which would do the work on its own premises***

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This is where the TUPE debate gets up a head of steam. Private sector providers will typically prefer not to take on NHS employees if they can avoid it, or will look to do so on less favourable terms and conditions. Some have had long practice in such matters, often in other sectors of the economy. But transferring Pathology services is not like

(with all due respect) outsourcing cleaning or security services. Trusts must ensure that they retain sufficient control over how the service is performed, that continuing professional development is provided, and that the next generation of scientists is trained. Caveat emptor.

## **What else is there to say**

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Quite a lot, but space (and your attention span perhaps) does not permit much more. Here's a few related HR points to consider:

- Communication, communication, communication! It's crucial, and people always want more. But be clear when communication will move into formal consultation
- The law says that an employer must consult with appropriate representatives of employees if it is proposing to dismiss as redundant 20 or more employees, at one establishment, within a period of 90 days or less. It also defines when consultation should begin – but with the proviso that it must be 'in good time'. So it might not always be necessary, but if you do it, do it right – and at the right time!
- 'Second generation' outsourcing – what if there is a subsequent transfer to another provider?
- 'Insourcing' – suppose you want to bring an outsourced service back in-house?
- NHS Pensions – a subject in itself
- Managing performance, including sickness absence – it might well dip during the transition and must be handled sensitively
- Retention of important personnel – there are some people you will need to keep on board, literally (well almost) and metaphorically

There are other, wider issues, which will be fundamental in determining the way forward. We won't go into too much

detail here. But, for example, procurement routes must consider compliance with the Public Contracts Regulations 2006 and with DH and Cooperation and Competition Panel (CCP) policies. The regulatory implications of changes to the organisation and services must be clearly understood, and appropriate quality metrics defined. The compatibility of information technology, principally Laboratory Information Management Systems (LIMS), must be evaluated. Efficient arrangements for transport between Trusts and other providers, and to collect samples from GPs and other customers, will be vital. And on the savings front, economies of scale on equipment, consumables, managed services contracts, et cetera, should be possible, if coordinated properly. Finally, it might be feasible to reduce the share of Trust overheads apportioned to Pathology!

The consolidation of Pathology is in the headlights right now. But it will be followed by other services. The government's proposals for changes to the NHS will alter the balance of decision-making and Acute Trusts will have to compete (even more than now) to provide services to the primary sector. Such changes are happening elsewhere, in the public and private sectors, and they will happen in the NHS. The only question is: which Trusts will be leaders and which are at risk of being overtaken by events? This is not the end, or the beginning of the end, or even the end of the beginning (with apologies to Winston Churchill).

Many NHS HR people are accustomed to managing change. But this is of a different order from what they have seen before. They are unlikely to have experienced large-scale reductions in staffing, at least in their current organisations. They will need support.

## **A word about Collinson Grant, and our work in human resources (and in Pathology)**

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Collinson Grant, a management consultancy established in 1970, has grown steadily and undramatically. Our head office is in Worsley, near Manchester. We serve clients at the top of organisations in the UK, throughout Europe and in the United States. A lot of our recent work has been in public services. We are accredited to ISO 9001: 2008 (Quality management) and ISO 14001: 2004 (Environmental management). Most of our consultants are trained in Prince 2 methodology – and an increasing number are qualified practitioners in 'Managing Successful Programmes' (MSP).

We have been supporting clients in Healthcare – public and private – for over 25 years. We have considerable recent experience in support of Pathology in England – at the Department of Health (for Lord Carter's Independent Review) and at over 50 Pathology services, networks and regional groups. And we work with the Modernising Scientific Careers team, supporting the reprofiling of the Pathology workforce.

We also have wide-ranging knowledge and experience in managing people. Our consultants have practical skills and

a deep understanding of how employers work. We work with senior managers in planning the workforce, changing the structure, reviewing pay and benefits, and getting the best performance from people. We have managed many restructuring programmes and transfers of undertakings in the public and private sectors. Our specialists in employee relations ensure that difficult change is implemented smoothly and that redundancies are handled efficiently and sensitively. We understand trade unions and can negotiate directly with them when this is in the client's interests.

Our employment lawyers deal every day with difficult questions on managing people. They know the practical solutions to common problems and will help to reduce disruption while keeping costs under control. Our success at employment tribunals is excellent – we control costs by making considered judgements on when and when not to settle.

Please do not hesitate to contact me if you would like to discuss any aspect of our work. I can be contacted on 07715 495 711 or at [phudson@collinsongrant.com](mailto:phudson@collinsongrant.com).

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