CHPI Centre for Health and the Public Interest

To Market! To Market!

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Introduction

1. As predicted, the future of health care in England seems likely to lie with EU competition law and in the hands of lawyers[1]. The House of Lords' vote in favour of keeping the revised section 75 regulations contained in Health and Social Care Act 2012 has seen to that. Opponents of the regulations now fear that the NHS is on an irreversible path towards privatisation. Lord Owen has claimed that within 20 years the NHS will be unrecognisable[2].

2. The controversial regulations go to the heart of the coalition government's determination to open up the English NHS to competition. Without section 75, regardless of its wording, the Act is pointless. New Labour is as culpable as the coalition government in bringing the NHS to this sorry pass, since it laid the foundations for the government's plans, which are being imposed on the NHS against the wishes of most of those who work in it, and large sections of the public who own and use it.

3. An intriguing question is why governments of all political hues are so fixated on markets and competition, especially in the face of all the evidence which finds them wanting. Why do our political leaders blindly pay homage to those who claim that the NHS can only benefit from a dose of marketization? Have they forgotten the very reasons for establishing the NHS in 1948? Have these reasons disappeared, or become irrelevant with the passage of time? Is there no public interest case to be argued and defended which would seek to restrict market entry into health care? To judge from the widespread public and professional opposition which the government's changes triggered, and which might have been greater had the media not bought the government's rhetoric, and failed in its duty of proper scrutiny, it would seem that those reasons still resonate for many. Yet those opposing the changes are denounced either as dinosaurs, diehards who refuse to be 'modernised', or as representing narrow sectional interests who do nicely from keeping things the way they are. Why is such cynicism the driver for changes that threaten the founding principles of the NHS? And why are the opposing voices so muted when compared with those who insist there is no other way? There are no easy answers to such questions. Certainly, media coverage of the changes was for the most part lamentable and failed utterly to

provide reasoned analysis of their implications. But debate was also hampered by the seemingly obscure and technical nature of the changes, their sheer volume and complexity, and by a public largely detached from engagement with such matters of state. This last factor may also reflect a public increasingly weary of party politics and cynical about politicians.

4. In the light of this conundrum, this opinion piece deals with two related questions. First, what are the limits to markets in health care, and what is the current state of the evidence in regard to these? And, second, given the weight of evidence testifying to their limits, why do governments and political leaders from across the party spectrum choose to ignore it, preferring instead to select what meagre, and flawed, evidence exists to support a market-led approach? If markets truly added value then there would be less need to pose these questions. We might not like markets for other reasons but we could not then deny that they had advantages and benefits which might be hard to achieve through other means, and for which a reasonably sound evidence base existed. But in fact these questions are central to the current debate about the future of the NHS and the sort of health care system we as a society want because the evidence concerning the benefits of markets, such as it is, is woefully weak and has been subject to much criticism.

Limits to markets

5. The limits to markets in health care have been well documented, especially by Arrow in a celebrated article[3], and more recently by Sandel[4]. Paradoxically, given the subsequent policies pursued by the government of which Gordon Brown was Chancellor and then Prime Minister, they were ably summarised in a lecture he delivered to the Social Market Foundation in 2004[5]. A powerful critique of market forces in health care is also offered by Woolhandler and Himmelstein[6]. Intended as a warning cry to those who favour the introduction of markets and competition, the authors stress that evidence from the US is remarkably consistent: 'public funding of private care yields poor results'. In the face of this market failure they assert: 'only a dunce could believe that market based reform will improve efficiency or effectiveness'.

6. It is important to remind ourselves why the NHS is a public service and was set up as such 65 years ago. As has been pointed out, 'treating public services as though they are simply transactions misses many aspects of what makes them public'[7]. Among the reasons for having services located in the public realm are the following: having services available to all and paid for by all is good for social justice and instils greater equality; services that are best provided publicly are those which are complex, consume scarce or finite resources, and which involve setting priorities and negotiating trade-offs that must be handled through the political process rather than through markets concerned primarily with profit and increasing shareholder value. Nothing has changed over the years to alter these inescapable factors. Apart from the familiar problem of high transaction costs arising from billing and marketing budgets, which add little of value and deny frontline services much-needed resources, market incentives in health care produce adverse effects. For example, Smith shows that market disciplines seriously undermine the professional ethic in health, resulting in poorer quality care and health outcomes for patients[8].

7. It would appear that the corrosive effect of market-type thinking may have had a part to play in the failure of care documented in the report of the Francis inquiry into the problems at Mid Staffordshire NHS Foundation Trust Hospital between 2005 and 2009[9]. As Gray posits in regard to the dreadful lapses in quality and care at Mid Staffs: 'might not the culture of callousness that exists in some parts of the NHS be somehow connected with the destruction of ethos in the service by incessant market reforms'[10]? There is a deeper, and more insidious, issue at work here which goes to the core of what makes capitalism work. If capitalism's dynamism and productivity come from harnessing private vices, including rivalry and predation, envy and

ostentatious luxury, should such human motives be nurtured and encouraged in a public service? Is the human condition so driven by greed that only capitalism can deliver effective services? Surely not, but the answer might lie not so much in believing, as many pro-market advocates do, that markets can become more cooperative and less avaricious, but in deciding where markets should be permitted to operate, and in building strong countervailing institutions where they should not. This would mean doing precisely the opposite of current policy, namely, strengthening the NHS as a public service instead of dismantling it as the government intends, despite its protestations to the contrary. At present, no strong political constituency advocating such a view exists. This surely needs to change.

8. The notion of the professional ethic becomes crucial in this regard because, as Smith points out, contracts can never cover all contingencies[11]. Health care is delivered in complex settings involving patients with severe conditions and possible co-morbidities. Professional norms therefore play a pivotal role in filling the inevitable gaps in market contracts. Far from contributing to the development of a more effective professional culture, working in a competitive market is likely to corrode it, encouraging the development of competitive behaviours that are counter-productive for patients and public.

9. A further disadvantage of competitive markets is that they do not serve the need for joined-up policy and delivery when it comes to non-communicable and/or chronic diseases. The key pressures on health systems, and drivers for change, now come from such diseases, and the complex care needs to which they give rise transcend professional and organisational boundaries. It is difficult to envisage circumstances in which a truly competitive market can be created for many chronic conditions for which there are few, if any, clear measures of outcome, and where the need is for a heavy reliance on joined-up working between a range of agencies. Competitive markets could actually work against the development of effective partnerships and result in greater fragmentation of care. It is a risk already facing the new NHS where integrated services of the kind currently being successfully provided in Torbay and elsewhere are now threatened by the requirement laid down by Monitor to market- test all services whose contracts are coming up for renewal. As has been noted, 'market incentives and behaviours by themselves do nothing to solve basic organisational problems such as how to manage complex organisations filled with professionals who have conflicting values and interests'[12].

10. An argument often made in support of markets is why there should be so much concern over introducing a 'mixed economy' of health care in

England. It is, after all, the model that holds sway in most other European countries and their health systems figure prominently alongside the NHS in the international league tables of well-performing health services. However, even there the evidence is mixed, and not all of it points towards markets being a good thing. Sweden, for example, has changed most rapidly in terms of privatising its health care system. Conclusions from the experience are sobering: profit-driven health services are increasing inequities in the supply of primary healthcare, with new urban-rural differences appearing, high-income areas within cities being favoured over low income areas, and reduced access to primary healthcare for low-income patients. In addition, market oriented reforms are forcing public providers to act as profit-driven private providers, and important but non-profitable activities are being neglected[13].

11. The analysis of the Swedish experience also found that securing profit can be a threat to the quality of care; profit-driven healthcare systems increase the total cost of care; public funds for health services become profit for shareholders; market-oriented healthcare systems reduce choice; and profit-driven health sector reforms undermine public accountability and democratic control of healthcare.

The appeal of markets

12. Market advocates ignore all these well-founded and documented criticisms, proclaiming that the benefits in terms of greater productivity, efficiency and innovation outweigh any drawbacks[14] [15] [16]. Their position remains unchanged despite reasoned critiques[17] [18]

13. So if evidence is not going to win the day, what other explanations might there be for the insatiable love affair with markets? The penetration of Whitehall and central government departments over the past decade and more by management consultancies, notably McKinsey & Company, enables the grip such organisations have on policy-makers to be strengthened and provides the perfect milieu to pursue their agendas. The problem was even acknowledged by David Cameron shortly before becoming Prime Minister. He warned in a speech delivered in February 2010 that lobbying 'is the next big scandal waiting to happen'. Significant swathes of public sector provision, including health care, are being outsourced to private providers, like Capita, Serco and Virgin Health, whose businesses are growing apace. Is this purely coincidence, or is there a causal connection between corporate donations to political parties and subsequent policies designed to favour their interests?

14. This suggests an alternative explanation for markets becoming the pre-eminent means to transact business. While ideology does still matter, so does maintaining party advantage. The government has made no secret of its determination to roll back the state and open up the last significant public sector monopoly, ie the NHS, to market forces. Prominent supporters, many now occupying influential positions in the Cabinet, have over the years made numerous public utterances about the need to tackle what they perceived to be the NHS's flaws and deficiencies and how these could only be tackled through opening it up to competition and market forces[19]. Whether ideological conviction is the key driver, or whether it simply reflects the reality that many of our politicians in both Houses of Parliament have lucrative business interests in private health care or in those management consultancies that stand to benefit from the increasing privatising of health services is an issue that merits deeper exploration and proper public discussion.

In place of markets

15. In exploring alternatives to markets in health care, there is a prior need to acknowledge the essential rationale of public service. As noted earlier, services like health have been placed in the public sector precisely because they are different from those in the private sector and demand to be run as such. In particular, considerations determined by the political process rather than considerations of the market place are critical. The management and delivery of services 'has to be grounded in the distinctive purposes of the public domain which political theory would suggest involve democracy, community, citizenship, equity, and discourse'[20].

16. In his Social Market Foundation lecture Gordon Brown[21] concluded that reforming and modernising the public realm did not need to rely on market mechanisms but should be achieved through devolution, transparency and accountability. He maintained that 'the assumption that the only alternative to command and control is a market means of public service delivery has obscured the real challenge in health care'. Meeting this challenge, according to Brown, meant 'developing decentralised non market models for public provision' through which 'we will show to those who assert that whatever the market failure the state failure will always be greater, that a publicly funded and provided service can deliver efficiency, equity and be responsive to the consumer'. While Brown clearly forgot these words almost as soon as he had uttered them, judging by subsequent New Labour policies promoting competition and markets, and while hitherto neither Ed Miliband nor Andy Burnham has chosen to revisit them explicitly, they

are alive and well in the Welsh and Scottish governments. While Wales has the Bevan Commission articulating a different way forward for health policy[22], Scotland has committed itself to a public service model that has eschewed the lure of the market[23]. If nothing else, health policy across the UK promises to become much more interesting in the years ahead. It will be important to capture the learning and ensure that any lessons inform policy accordingly.

Conclusion

17. The power of the marketplace and neoliberal dogma now pervade much of the thinking surrounding health care among the political elites in England if not elsewhere in the UK. With all the main political parties buying into the alleged, though largely unsubstantiated, claims for markets in health care, those opposed to them and who support alternative approaches are effectively disenfranchised. Of course, the changes under way in the NHS are not going to be dramatic, which will allow their supporters to argue that their critics are scurrilous scare-mongers. Instead, the changes will be introduced gradually to avoid arousing suspicion as to the government's true motives or creating unease among a largely unsuspecting public. But over time the NHS will change as the section 75 Regulations in particular begin to take effect. For the coalition government, it is sufficient that the means to bring about a shift from public to private provision are in place. It heralds a significant victory and one, rather like the franchised railway network, from which there can probably be no return. Whatever commissioning may mean in future it will progressively be locked into a competitive market-based system that is bound to expand. That is the government's desired direction of travel and by the time the majority of people wake up to the dysfunctional effects of the market-style changes it will be too late.

18. Before his sudden death late last year the health economist Gavin Mooney[24] wrote that 'neoliberalism kills. We need to find a better way'. He advocated a new political economy of health which put politics at the heart of a public debate that was overdue. Only through such means could the increasing commodification of health care be arrested and the idea of health care systems as social institutions be revived. What is urgently required, no less, is a social and political movement to articulate, and give voice to, such a vision backed up by robust evidence.

References

[1] McKee M, 'The future of England's healthcare lies in the hands of competition lawyers', *British Medical Journal* 346 (2013)

[2] http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/130424-0003.htm

[3] Arrow K, 'Uncertainty and the welfare economics of medical care', *American Economic Review* 53 (1963)

[4] Sandel M, '*What Money Can't Buy: The Moral Limits of Markets'* (2012)

[5] Brown G, '*A Modern Agenda for Prosperity and Social Reform'*, London: Social Market Foundation (2004)

[6] Woolhandler S and Himmelstein D U, 'Competition in a publicly funded health-care system', *British Medical Journal* 335 (2007)

[7] Clarke J, Newman J and Westmarland L, 'The antagonism of choice: New Labour and the reform of public services', *Social Policy & Society* 7 (2008)

[8] Smith P, 'The case against the internal market', in Dixon J, Le Grand J and Smith P (eds) '*Shaping the New NHS: Can Market Forces be Used for Good?*', London: King's Fund. (2003)

[9] Francis R, '*Report of the Mid- Staffordshire NHS Foundation Trust Public Inquiry'* (2013).

[10] Gray J, 'Hive mentality: the conflicts of ethics and politics', *New Statesman* (2013)

[11] Smith P, 'The case against the internal market', in Dixon J, Le Grand J and Smith P (eds) '*Shaping the New NHS: Can Market Forces be Used for Good?'*, London: King's Fund. (2003)

[12] White J, 'Markets and medical care: the United States, 1993-2005', *The Milbank Quarterly* 85 (2007)

[13] Dahlgren G, '*Profit driven health sector reforms – experiences from Sweden*'. Background paper for the 15th Turkish national public health congress, Bursa (2012)

[14] Cooper Z, Gibbons S, Jones S and McGuire A, 'Does hospital competition save lives? Evidence from the English NHS patient choice reforms', *Economic Journal*, 121 (2011)

[15] Bloom N, Cooper Z, Gaynor M, Gibbons S, Jones S, McGuire A, et al, 'In defence of our research on competition in England's National health Service', *The Lancet*, 378 (2011)

[16] Gaynor M, Moreno-Serra R and Propper C, 'Can competition improve outcomes in UK health care? Lessons from the past two decades', *Journal of health Services Research & Policy*, 17 (2012)

[17] Pollock A, Macfarlane A, Kirkwood G, Majeed FA, Greener I, Morelli C, et al, 'No evidence that patient choice saves lives', *The Lancet*, 378 (2011)

[18] Gravelle H, Santos R, Siciliani L and Goudie R, '*Hospital quality competition under fixed prices*'. CHE Research Paper 80. York: Centre for Health Economics (2012)

[19] Letwin O and Redwood J, '*Britain's biggest enterprise: ideas for radical reform of the NHS*'. London: Centre for Policy Studies (1988)

[20] Stewart J, 'Advance or retreat: from the traditions of public administration to the new public management and beyond', *Public Policy and Administration* 13(4) (1998)

[21] Brown G, '*A Modern Agenda for Prosperity and Social Reform*', London: Social Market Foundation (2004)

[22] NHS Wales, '*2008-2011 NHS Wales: Forging a better future*'. A report by the Bevan Commission (Chair: Sir Mansel Aylward). Cardiff: NHS Wales (2011)

[23] Christie C, '*Commission on the Future Delivery of Public Services'.* Edinburgh: The Scottish Government (2011)

[24] Mooney G, 'Neoliberalism is bad for our health', *International Journal of Health Services*, 42 (2012)