A literature review on the structure and performance of not-for-profit health care organisations

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Executive Summary

Aims, background and history
1. The government’s policy of contracting out public services to nonprofit (or ‘third sector’) bodies raises the crucial issue of government control, and in particular how public expenditure is accounted for and audited, and how services are regulated to ensure that the delivery conforms to their core values. A key question is whether nonprofits are public or private bodies, as this determines the nature and scope of the government’s powers of intervention and regulation. The aims of the study were to review empirical of nonprofit performance and to examine how nonprofits are classified with respect to their regulation.

2. Nonprofits have had a role in English health care both before and after the creation of the NHS. Increased voluntary sector participation had been encouraged by successive governments at least since 1980. However, after 2000 exhortation was backed up by legal reforms abolishing the public sector’s monopoly and thereby increasing opportunities for nonprofit participation. Policy towards nonprofits has focused principally on reducing or eliminating barriers preventing third sector bodies from being able to provide public services.

Approach and methods
3. The conceptual framework for the review is based on definitions of nonprofits and on hypotheses generated by the theoretical frameworks used in nonprofit performance studies. Because of definitional problems and the sector’s diversity, a range of theoretical frameworks has been adopted for its study and the associated hypotheses are consequently diverse.

4. It has proved extremely difficult to provide an analytic framework that encompasses this diversity. We have identified six main themes but there is inevitably substantial overlap. Our six analytic themes are as follows:
   - Funding and competition
   - Public purpose
   - Users and quality
   - Capital financing
   - Integration and planning
   - Governance and accountability

5. A number of systematic reviews of the performance of the nonprofit sector have already been conducted. These studies have noted methodological limitations, definitional problems and inconclusive findings in studies of nonprofit performance. They have also noted
that the literature is mainly drawn from the US health care system which means that it is of limited relevance to other health systems which are not market-based and are universal, as in the UK.

6. The literature reviewed in the present study was obtained from a variety of sources. Twenty-six core sources (14 literature databases and 12 websites) were searched, using 9 different search terms. The databases extended beyond the medical literature to include social science and economic literature. The initial search yielded over 14,000 hits including duplicates. The database was sifted three times for relevance and a final total of 163 studies was identified. Most (126) of the papers concerned the health sector. Only a small proportion concerned social services. The papers reviewed were mainly based on quantitative studies. Only 33 were based on qualitative research.

Review of the literature on nonprofit performance

7. Most (77%) of the empirical literature finally reviewed relates to the USA, where the main focus of concern has been the relative merits of nonprofit and for-profit providers, as policy has increasingly turned from a system based heavily on the former to one relying more on the latter. The value of this literature for UK policy-making is reduced by its very different historical context (there being virtually no public sector in US health care) and the difficulty of abstracting, for the purpose of drawing lessons for the UK, from the specifically US elements that govern the way nonprofits are conceptualised there. These limitations are compounded by widespread limitations in the scope of the studies that have been done, noted by several previous reviewers, and by methodological weaknesses (not confined to the US literature), also noted by earlier reviewers.

8. Methodological problems limit the usefulness of much of the literature that might otherwise be of interest for UK policy-making. The literature relating to cost and quality is a particularly unfortunate case in point. Cost and quality definitions are often problematic. It is rarely possible to isolate the causal effects of the variables studied from those of other variables, and in too many cases no attempt is even made to do so. Data from company financial reports and accounts tend to be treated uncritically. In particular, the segmentation of the US health care market makes it impossible to generalise usefully about the relative efficiency or other aspects of alternative types of provider in the USA.

9. A limitation of the US studies overall, however, was their focus on providers. Reflecting the complexity of US system, the studies covered a range of fragments of the healthcare market, attempting to identify impacts of cost control and reimbursement methods on providers. This literature rarely relates the performance of nonprofit agencies to the achievement of universal health goals, such as equal access to care by geographically-defined populations, which
are a high priority for the UK government. In fact, few studies paid direct attention to the regulatory regimes within which nonprofits providers operate.

**Nonprofit classification**

10. We reviewed the classification of nonprofits with respect to the regulatory regimes governing their operations in the UK. The classification systems in question are those of the system of national accounts and those of the European Union’s economic constitution. The definitions used by these classification systems show the public or private character of nonprofit providers. The systems are subject to revision, through reviews by international standard-setters or through court judgements, precisely because of the growing importance of the use of ‘third sector’ bodies and the classificatory difficulties this creates.

11. The system of national accounts does not incorporate a nonprofit sector and nonprofit bodies can be classed to either public or private sectors. This system allows two interpretations of ‘non-governmental’ and the UK government’s use of this term leaves open the question of whether it intends that third sector policy constitutes privatisation in the sense of the substantial transfer of government and public control over services and assets to the private sector.

12. While attempts are being made at the international level to harmonise the classification of nonprofits, the approach adopted stipulates that nonprofits are private bodies, a policy which is not reflected in UK practice. The approach does not clarify the government powers it is intended shall be retained when nonprofits take over public health care services.

13. A further classification problem being dealt with by international bodies concerns the question of how to determine whether public service contractors are part of the government sector. The decision depends crucially on whether payments include income guarantees from the public sector, in which case the contractor is deemed to be part of government. However it is often difficult to differentiate between payments that include income guarantees and those that do not. The classification of NHS trusts illustrates the problem. In 2003 these nonprofits were reclassified to the government sector on the basis of an Office of National Statistics reassessment of the income guarantees in their payments.

14. Our review of classification systems also draws attention to inconsistencies between the system of national accounts and government financial reporting with respect to the classification of nonprofit assets. The complexity of partnerships arrangements between nonprofit bodies and public agencies are such that is often difficult to judge where property ownership rests, as ownership is tied to the risks and rewards of providing a service, about which interpretations can differ.
15. Market bodies are subject to the European Union’s competition law. We examine the classification system used to determine when this law applies to nonprofits delivering public services. Competition rules do not apply to those activities which constitute the ‘exercise of official authority’ or which are non-economic in nature. Derogations from competition law can apply in the case of bodies which are economic in character but nevertheless provide a public service. The nonprofit status of an agency providing health services is not of itself a guarantee against European jurisdiction. Furthermore, the fact that a service is contracted out may lead, irrespective of the sectoral classification of the contractor, to that service coming under EU jurisdiction. This finding is illustrated with a case study.

**Key lessons for the NHS**

1. There is no evidence to support the government policy in England of using nonprofits to switch from an integrated, publicly-owned and provided system to a provider- or firm-based system where market incentives and principles apply.

2. The overwhelming preponderance of American nonprofit studies in the literature makes it difficult, indeed dangerous, for the UK government in particular to draw inferences internationally; the US is a non-universal, private, voluntary insurance health care system in which almost 50 million people are uninsured.

3. The historical literature from the UK shows that the pre-NHS hospital system failed to achieve any correspondence between provision and health needs. Research into contemporary health systems reveals a preoccupation with internal performance detached from and unrelated to needs-based planning and equity of funding and provision.

4. Evaluations of non profit forms are problematic even within a single country because it is not possible to control for complex interactions between land and asset base values, regulatory regimes, patient entitlement, patient groups, system level resources, and levels of service provision both internal and external to the nonprofit firm.

5. There is no consistent evidence that nonprofits perform better than other ownership forms and there is little research of their impact on access to services. The evidence suggests that in a competitive environment nonprofit providers behave much like for-profit providers and this has a negative impact on quality of care and staffing levels.

6. The switch to commercial contracting with nonprofit providers will expose health service commissioners to European competition law, limiting their regulatory powers at national level. Under current case law, European competition law, from which nonprofit
organisations are not exempt, can be triggered by commercial contracting.

7. The NHS should revisit the benefits of integrating the system from the perspective of planning, equity and efficiency in provision.
Disclaimer

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Addendum

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