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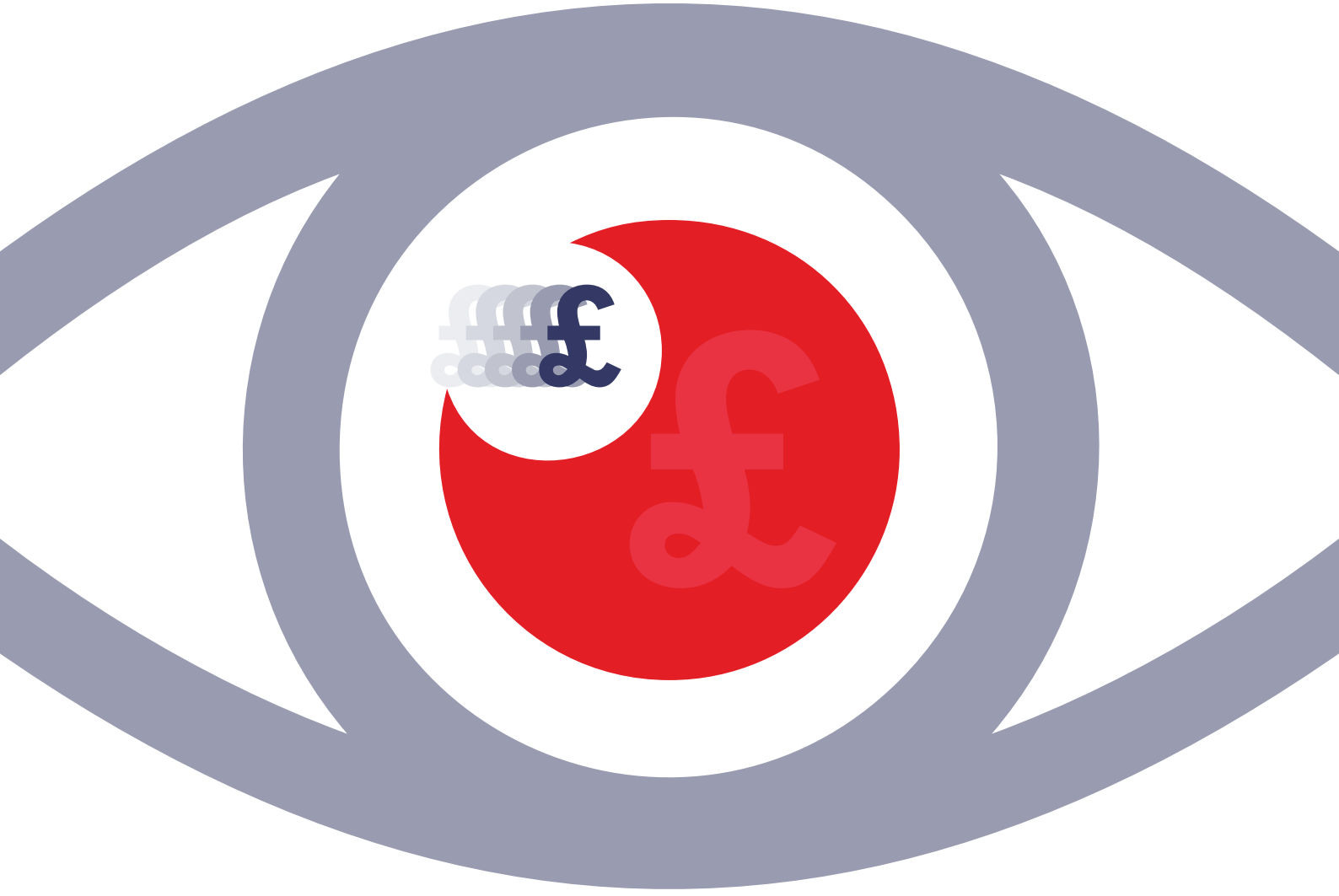
Out of Sight

The hidden profits and conflicts of interest behind the outsourcing of NHS cataract care



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The Centre for Health and the Public Interest (CHPI) is an independent think tank committed to health and social care policies based on accountability and the public interest.

The Centre seeks to frame the policy debate in a way that is evidence-based and open and accessible to citizens.

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Key Facts

£536 million	the amount paid by the NHS to 5 eye care companies in 2023/24.
32%	the average profit margin of 5 eye care companies according to their latest accounts.
£169 million	the estimated amount of profit (EBITDA) generated by 5 eye care companies from the NHS in 2023/24.
£620 million	total long term debt of 5 eye care companies who receive most of their income from the NHS.
£90 million	estimate of the total amount extracted from the NHS in the form of interest payments and dividend payments in one year.
113	the number of ophthalmic consultants who are mainly employed by the NHS and who own shares or equipment in private hospitals.
£18m	the dividends paid out to 50 ophthalmic consultants by private eye care companies over 4 years of whom 45 are NHS consultants.
84,000	the number of cataract operations over a 3 year period which were provided without a contract with private providers.
£21m	the estimated potential gain to high street optometrists for referring NHS patients for treatment at particular private clinics rather than NHS hospitals.

Introduction and executive summary

1. This is the Centre's third report into the impact of NHS eye care outsourcing on the NHS. In our previous two reports we detailed the very large increase in the amount of NHS funded cataract surgery which is provided by private companies over the past 6 years, and the impact that this has had on the availability of funds to treat patients with more complex conditions, as well as the impact on NHS hospital eye care departments and the staff who work in them.[1]

2. In this report, we describe how private sector provision of NHS funded eye care has grown so rapidly over the past 6 years, looking in particular at how the NHS market regulations have permitted very large numbers of private providers to set up and win contracts with the NHS in England, even if no need for them to provide services to patients has been clearly identified.

3. We also show how the relationship between private providers and high street optometrists is critical to generating referrals to private providers and set out concerns about how these relationships may lead to NHS patients being referred for treatment in private clinics rather than NHS hospitals.

4. As in other parts of the private healthcare sector, significant numbers of NHS consultants are found to have shares in, or own equipment in, private clinics or hospitals which deliver care to NHS-funded patients. These arrangements can be financially very beneficial to the doctors involved. Despite doctors being required to declare conflicts of interest, the conflicts often remain hidden and undisclosed to patients and NHS staff.[2]

5. Given the current constraints on public spending the need to scrutinise where the money which is paid to the private companies to deliver NHS services ends up is even more important.

6. We therefore set out an analysis of the very large amounts generated from the NHS by companies providing NHS-funded eye care services in the form of profits, interest payments, and dividends.

7. In setting out these findings we have been careful not to identify any individual, company or organisation, or to suggest any wrong-doing or illegal activity. To a large extent the concerns that we identify in this report are the result of the current system of regulation in the NHS and the weak safeguards which are in place to protect the public interest.

Key findings

Based on an analysis of Companies House accounts, data from freedom of information requests, public statements on the internet and interviews with those working in the NHS, we find the following:

Finding 1: There are high levels of leakage from the payments made to private companies providing NHS-funded cataract care in the form of profits, dividends and interest payments

- Very large amounts of money are leaking out of the money paid by the NHS to private companies in the form of pre-tax profits, dividends, and interest payments on high-cost loans, which could otherwise be spent on NHS patient care
- An examination of the expenditure records of 42 ICBs for 2023/24 found that £536 million was spent on 5 private companies which generate most of their annual income from delivering NHS funded eye care services.
- The average profit margin (EBITDA) across these companies, according to their latest accounts filed with Companies House, is 32% and ranges from 17% to 50%.
- For 3 of the companies which are owned by private equity funds, the total long term debt is £620 million; the interest rates on this debt ranges from 10% to 12.5%.
- In the last year for which financial accounts are available, £75 million was paid out by these companies in the form of interest payments. Between 12% to 38% of the income received by these companies – which comes mainly from the NHS for undertaking cataract surgery – goes on interest repayments. In addition these companies paid out £20m in dividends in the last year for which financial accounts are available.
- In total we estimate that out of the £536 million paid to these 5 companies by the NHS in the financial year 2023/24, £169 million went to profits (EBITDA) and £68 million went on interest payments on high-cost loans.
- In total, over the last 4 years, these 5 companies have paid £205.3 million to investors in the form of interest payments and dividends, with the NHS providing the great majority of the income received by these companies over this period.

Finding 2: Weak market regulation and patient choice rules have allowed eye care companies to set up and start delivering services to NHS patients in England even if they are not needed

- The very rapid growth in the number of NHS-funded cataract operations being delivered by private companies has not been planned by the NHS but has instead been driven by companies establishing clinics in ICB regions across England. Only a small proportion of the total amount of eye care now being delivered by private companies has resulted from a competitive tendering process, where the NHS asked private companies to bid for a contract to provide capacity to help bring down waiting lists.
- Over 150 clinics, owned by 5 major eye care companies, are now in operation in England to deliver NHS care, 131 of which have been established in the past 6 years. Some ICBs regions have seen more than 7 new clinics established in their area since 2019.
- The NHS patient choice regulations, in effect, allow private companies to demand a contract from their local NHS ICB even if there is no identified need for them, and ICBs are unable to refuse to them because of these rules as long as they are able to deliver a healthcare service in the way specified by the NHS. In the event that an NHS patient is referred to one of these clinics for treatment by a GP or an optometrist, the ICB is obliged to pay for their care even if they have not budgeted for it.
- These very low barriers to market entry help to explain the very fast growth in the private provision of NHS cataract surgery and the inability of NHS ICBs to limit the amount spent on cataract surgery relative to other eye care diseases, even if that may not be seen as medically desirable.
- The current NHS market rules also allow companies to provide cataract services to NHS patients even if they do not have a contract with the local ICB which pays for the patient. In 2021/22 on average around one in 7 (14%) of all NHS-funded cataract operations in the private sector were provided on a non-contract basis. In total, around 84,000 cataract operations over a 3 year period were provided on a non-contract basis with private providers.
- The ability of companies to provide thousands of cataract operations on a non-contract basis also poses a potential risk to patient safety as it limits the ability of the ICB to have control and oversight of the care that is being delivered.

Finding 3: There are significant concerns about the financial relationship between high street optometrists who refer patients for NHS cataract surgery and private providers of care

- The large majority of patients referred for NHS-funded cataract surgery are now referred by optometrists in high street businesses. These businesses are not regulated by the Care Quality Commission, and whilst the optometrists operating in them are subject to statutory professional regulation, there are concerns that they may be subject to commercial pressures arising from the business environment in which they operate.
- A large survey conducted in 2021 by the national regulator, the General Optical Council, found that nearly one third of all optometrists said that they had felt pressure at some point to meet commercial targets at the expense of patient care. A BBC investigation in the same year found that some optometrists were being given financial incentives to refer patients for privately-funded cataract surgery.
- Depending on the local rules set by the ICB , in many parts of England optometrists can refer patients directly to private companies for NHS-funded care. This makes the relationship between the high street optometrist and the private providers of eye care companies very important when determining in which clinic or hospital an NHS patient is treated.
- A review of the websites of some of the companies involved in providing NHS funded cataract surgery shows that they offer high street optometrists additional revenue if they refer patients to them. This additional revenue mainly comes through the patient being referred back to them after surgery which results in a fee for a follow-up appointment.
- The clinical need for post operative follow-up appointments for all cataract patients remains unclear, since just 3-7% of patients are estimated by the Royal College of Ophthalmologists to need post operative care.
- Despite this, data from 32 ICBs, shows that in 2022/23 they paid for 235,000 outpatient follow-up appointments to the main private providers of cataract services, worth £15.8m 2022/23, with these being sub-contracted by these providers to high street optometrists.
- In addition, during a follow-up appointment the optometrist is able to carry out an NHS-funded eye test, as well as having the opportunity to offer the patient new glasses or contact lenses.
- In total we estimate that the potential value of these arrangements to high street optometrists is in the region of £18m to £21m a year.

- Whilst there is no suggestion that such arrangements are illegal or unlawful, the Competition and Markets Authority introduced rules in 2014 to prohibit any arrangements between a healthcare professional and a private provider of healthcare services which conveyed a financial benefit for the referring person or organisation. This was because of concerns about the impact on competition and the potential that such arrangements might breach the Bribery Act. The CMA have confirmed that the rules do not apply to large parts of the ophthalmology sector or to the private provision of NHS-funded services.
- However, It is likely that the use of incentive schemes such as those identified here may breach the NHS licence covering all providers of NHS care and which explicitly prohibits the use of financial benefits to induce patient referrals.

Finding 4: There are concerns about the potential for major conflicts of interest in the provision of privately-provided NHS cataract care involving NHS consultants

- Based on a review of the websites of private healthcare providers and accounts filed with Companies House, we identified that there were 39 NHS ophthalmic consultants who owned equipment in private hospitals, and 74 opthalmologists owned shares in private ophthalmology clinics, most of which provide NHS cataract services.
- The great majority of these doctors were NHS consultants and very few of these financial interests in private companies were declared on the public websites of their NHS Trusts, which is required by NHS England and the General Medical Council.
- We also identified that 50 of the consultants who own shares in private clinics which deliver care to the NHS (of whom 45 are NHS consultants) will have collectively received dividend payments of £18 million over a 4- year period.
- Because private providers of NHS eye care compete with NHS Hospital eye care departments for the income is earned from the delivery of cataract surgery, we examined activity data for NHS hospitals which employed ophthalmologists who had shares in private hospitals.
- We found that over the last 6 years there was on average a 30% drop in the number of cataract operations performed in 10 NHS eye care departments where consultant ophthalmologists with shares in private hospitals worked. Around 12,000 fewer cataract operations were performed in these NHS hospitals in 2022/23 compared to 2017/18, whilst NHS funded cataract surgery activity in private hospitals increased significantly over this period.
- As we have documented elsewhere the total number of cataract operations performed in NHS hospital has dropped significantly over

this period and so it should be stressed that these findings should be seen in that context. Without further analysis it is difficult to establish a link between share ownership by an NHS ophthalmic consultant and the amount of cataract activity being performed in their NHS hospital.

Conclusions and recommendations

In the light of these findings we make the following recommendations:

Recommendation 1: Limit the leakage of public funding from NHS-funded eye care services to shareholders and investors

- The Department of Health and Social Care should consider introducing a cap on the profits of companies providing NHS-funded care, similar to that being proposed for providers of state-funded children's social care. This cap should consider not only profits but also other forms of extraction such as , interest on debt.
- Financial regulation of companies providing NHS-funded services should also be considered to avoid excessive profit extraction and to avoid the financial risk run by companies with high levels of debt.
- The National Audit Office (NAO) should include in its value for money methodology an analysis of the profits generated from companies which provide NHS-funded services.

Recommendation 2: Review the price paid for NHS-funded cataract surgery by private companies

- The Department of Health and Social Care and NHS England should review the prices paid to private eye care companies for delivering cataract surgery. The very large profit margins being generated suggests that the tariff price that is being paid for them – which is benchmarked against NHS costs – is significantly in excess of the economic cost of delivering this form of activity.

Recommendation 3: Provide Integrated Care Boards with the powers to determine how the private healthcare sector is used to support NHS services

- The very low barriers to market entry identified in this report and the impact of the patient choice regulations have meant that Integrated Care Boards have lost control of the volume of NHS funded cataract surgery which is provided in their area and by whom.
- The Department of Health and Social Care and NHS England should review the patient choice regulations and the overall NHS market regulations to ensure that ICBs are able to plan the provision of healthcare to meet the needs of their populations. Whilst patient choice is important, it is against the public interest for the delivery of healthcare to be driven by the interests of those providing care.

Recommendation 4: Make it illegal for high street optometrists to receive financial benefits for referring NHS funded patients to particular private companies

- Both the evidence we have seen and the concerns which have been raised with us about high street optometrists receiving financial incentives to refer patients for treatment at particular private clinics are extremely concerning from a public interest perspective.
- Any suspicion that financial incentives are distorting the clinical decision-making of optometrists has the potential to undermine confidence in the provision of eye care services and overall confidence in the optometry profession.
- Not only can financial incentives lead to unnecessary referrals, which is a patient safety risk, they can also prevent patients from being given the opportunity to choose their preferred healthcare provider.
- The Competition and Markets Authority should review this area as a matter of urgency to determine whether the arrangements are in breach of competition law and the Bribery Act, and if necessary take appropriate action.
- NHS England should investigate whether any provider of opthalmology services have breached the NHS provider licence as a result of offering financial incentives designed to induce referrals.
- NHS England should introduce a system for all Integrated Care Boards which reviews referrals from both GPs and high street optometrists to ensure that all patients are offered a genuine choice of provider.

- The General Optical Council, which regulates optometrists, should consider whether there is sufficient evidence to take fitness to practise cases against any high street optometrist or registered optometry business that has received payments for referrals.

Recommendation 5: NHS consultants should be prohibited from owning equipment or shares in private hospitals, particularly where these hospitals are in competition with NHS hospitals

- As we have pointed out in previous reports, there are significant patient safety risks associated with doctors owning shares in private hospitals or clinics in which they operate. Research shows that owning a financial interest in a clinic can lead to the provision of treatment which is unnecessary and even harmful to patients.
- Although the Competition and Markets Authority prohibits doctors from owning of more than 5% of the shares in a clinic or hospital in some parts of the private hospital sector, this does not apply to private ophthalmology clinics or to those clinics engaged in NHS-funded activity.
- In addition, in the current NHS market when NHS hospitals are in competition with private clinics, the financial success of a private clinic is often to the detriment of the local NHS hospital.
- It is therefore unacceptable that an NHS consultant with shares in a private eye care clinic could benefit financially from the decline in the resources and activity available in his or her own local eye care department
- NHS England and the General Medical Council have been aware for some time that the requirements around disclosure of financial conflicts of interest are regularly being ignored by NHS consultants and NHS Trusts.
- As a result, it is clear that the current disclosure requirements are ineffective and that an effectively enforced prohibition on share ownership and equipment ownership by consultants in private hospitals is required.

Section 1: Where does the money which is paid to private eye care companies end up?

1. For the financial year 2023/24 we analysed expenditure by the 42 Integrated Care Boards (ICBs) in England on 5 private eye care companies which were set up to deliver NHS funded cataract surgery and other ophthalmology services. In total we identified that the NHS spent £536 million on these companies over a 12 month period.

The profits generated by companies providing NHS funded eye care

2. An examination of the latest annual accounts filed with companies house for these companies shows that the average profit margin across these companies is 32% and ranges from 17% to 50% whilst the average expenditure on wages and salaries was 20%.[i]

3. A company with high levels of profits does not mean that it is paying out this amount to shareholders or investors each year. However, the accounts of these companies and their parent companies show that significant amounts have been paid out to investors in the form of dividend payments or interest payments.

NHS funds are being used to cover annual interest payments on the debt taken out by private equity investors to purchase companies

4. A number of these companies have been acquired by private equity funds using high cost loans. In these cases, the income that the company receives for undertaking work for the NHS is used to pay back the loans that were used to purchase the companies.

5. This arrangement is different to the interest and capital payments which the NHS makes on loans taken on by private companies under public private partnerships such as the Private Finance Initiative (PFI).

6. In the case of the PFI, loans are taken out by private companies to finance the building of a new hospital which the NHS is then able to use over a 25-30 year period to treat patients. In the case of the private equity owned

i The profit margin we have used is Earnings Before Interest, Tax, Depreciation and Amortisation (EBITDA) which is the industry standard for assessing the profitability of companies. Due to the fact that some of the companies involved in providing these services record interest payments on their debts in the accounts of the parent company rather than in the accounts of the operating company, we have used the revenue and EBITDA margins of the parent company in this analysis where appropriate.

eye care companies, these loans have primarily been taken out to buy the companies from their original owners. The sale of these companies to private equity funds, in some cases, has generated a very large return for the original investors.

7. In total the long term debt for these companies according to the last set of published accounts is £620 million and the interest rates on the loans range from 10% to 12.5%. In some cases the annual interest payments on these loans do not go to banks but to other investors who loaned their own money when the company was purchased.

8. In the last financial year, £75m was paid out by these companies in the form of interest payments. According to the latest accounts for these companies, the percentage of income of the parent companies which goes on interest repayments ranges from 12% to 38%.

9. Some of these companies also pay out dividends to shareholders. The latest accounts for these companies show that £20 million was paid out in dividends during their last reporting period.

10. This means that in one year a total of £95 million was paid out to the shareholders and investors in 5 companies which provide NHS cataract surgery in the form of dividends and interest payments on high cost loans.

The amount of money paid by the NHS which goes on profits, interest payments and dividends.

11. To estimate the total amount of money paid to these companies by the NHS which leaks out in the form of profits, we looked at the total amount paid by the 42 NHS ICBs to these companies and then calculated the proportion of this income which went to profits based on the margins reported in their annual accounts.

12. We used the same approach to estimate the total amount of money paid by the NHS to these companies which went on interest payments – we looked at the proportion of their annual income which went on interest payments and again applied these proportions to the amount they received from the NHS.[ii]

13. In total we estimate that in 2023/24 out of the £536 million paid to these 5 companies by the 42 NHS ICBs, £169 million went to profits, £116 million went on salaries and wages and £68 million went on interest payments on high cost loans.

ii For example, if a company spent 20% of its total annual income on the interest payments on its debts we assume that 20% of the income that it received from the NHS would go on interest payments. We have again used the parent company to estimate the percentage of income spent on interest payments.

Table 1 Estimates of where 2023/24 expenditure by 42 ICBs on 5 private eye care providers ends up

Profits

Total expenditure by 42 ICBs 2023/24	Profits (EBITDA) generated from NHS income	% of NHS income which goes to profit
£535,707,420	£169,161,615	32%

Wages and salaries

Total expenditure by 42 ICBs 2023/24	Wages and Salaries paid from NHS income	Wages and Salaries paid from NHS income % of NHS income
£535,707,420	£116,365,841	22%

Interest payments on high cost loans

Total expenditure by 42 ICBs 2023/24	Expenditure on interest payments	% of NHS income which goes on interest payments
£535,707,420	£68,019,213	13%

14. This means that an estimated £1 in every £3 spent by the NHS on purchasing (predominantly) cataract surgery from these companies in 2023/24 leaked out in the form of profit. This contrasts with an estimated £1 in every £5 going to pay the wages and salaries of those delivering care to mainly NHS patients.

15. Although the dividend payments made by some of these companies in the last year of their accounts are not part of their typical annual expenditure – they are optional and can be paid at different points depending on their financial and tax strategies – they still amount to funds being extracted from the income which has come almost entirely from the NHS.

16. As noted above the total amount paid out in dividends was £20m in one year. Combined with the amounts going towards interest payments, the total estimated amount extracted from the provision of NHS eyecare services is in the region of £90 million in one year.

17. In total, across the last 4 years, these 5 companies have paid £205 million to investors in the form of interest payments and dividends, with the NHS providing the vast majority of the income received by these companies over this period.

18. This is in addition to the profits that they have generated over this period.[iii]

iii We do not have the exact amount of money paid by the NHS to these companies during this period and so are unable to say what percentage of the total amount paid to them by the NHS went to profit or on interest or dividend payments.

Understanding how such high profits are generated by private companies out of NHS cataracts

19. Both the high profit margins and the high levels of extraction from these companies should be seen as a source of major concern by NHS commissioners and the Department of Health and Social Care. Although we do not have detailed knowledge of the business models of these companies it is legitimate to assume that the amount being paid by the NHS for cataract operations is significantly in excess of the cost to the providers of delivering the service.

20. A significant difference between the amount paid by the NHS to any private company delivering healthcare services and their actual costs is likely to occur because the price paid by the NHS is benchmarked against the cost of providing an NHS cataract operation in a local NHS hospital.

21. This cost is likely to be very much higher than the NHS due to the fact that NHS has to treat highly complex patients, provide emergency care, cover the cost of their buildings and facilities and to fully cover staff costs including pensions and national insurance.

22. Private companies providing cataract surgery are likely to be able to generate a substantial margin from the price they are paid for a cataract operation because their clinics have been established to treat a high volume of low complexity cases with the NHS mostly treating the more complex and expensive cases.

23. Also, the cost of owning and operating the infrastructure used by the private sector to deliver cataract care are often much lower than an NHS hospital – as we have shown in our previous report it is possible to set up a clinic to provide cataract surgery for around the cost of £1.8 million.[3]

24. Whilst an average NHS Trust spends around 66% of its income on staff costs, as noted above a review of accounts of the companies show that they spend on average 20% of their income on staff. We found that some of the private companies delivering NHS cataract services spent more on interest payment on high cost loans than on staff.

Conclusions and Recommendations

The Department of Health and Social Care should consider introducing a cap on the profits of companies providing NHS-funded care, similar to that being proposed for providers of state funded children's social care. This cap should consider not only pre-tax profits but also other forms of financial extraction.

Financial regulation of companies providing NHS funded services should also be considered to avoid excessive profit extraction and to avoid the financial risk incurred by companies with high levels of debt.

The National Audit Office (NAO) should include an analysis of the profits generated from companies which provide NHS funded services in its value for money methodology.

The Department of Health and Social Care and NHS England should review the price paid to private eye care companies for delivering cataract surgery. The very large profit margins being generated suggest that the tariff price that is being paid for them – which is benchmarked against NHS costs – is significantly in excess of the economic cost of delivering this activity.

Section 2: How can the very fast growth in privately provided NHS cataract services be explained?

The growth in the number of cataracts delivered by private providers and the amount spent on these companies was not planned

25. Between 2018/19 and 2023/24 there has been a 400% increase in the number of cataract operations delivered by private companies to the NHS.

26. The growth in the number of NHS-funded cataracts which are now being provided by the private sector is not the result of planned commissioning decisions taken by local Integrated Care Boards or nationally by NHS England.

27. In none of the eye care strategies that we have seen is there a declared intention by the NHS to increase so substantially the number of cataracts delivered by private providers, nor to effectively outsource NHS cataract care to the private sector.

28. In addition, the NHS has not issued market-based tenders to gain additional capacity from the private sector, as often happens when the public sector wants to outsource services.

29. A review of the government's list of contracts awarded to the 5 dedicated private companies delivering NHS cataract published on the "Contracts Finder" website, identified 7 contracts worth £22.3 million to deliver community ophthalmology services since 2019.[4] This is a small fraction of the total value of the actual expenditure on these companies by the NHS during this period.

30. Instead, the growth of activity in this area has occurred because of the way in which the current NHS market is regulated, giving primacy to patient choice to drive activity and offering very low barriers to companies seeking to enter the market.

31. These low barriers to entry have meant that there are now 153 dedicated private eye care clinics registered with the Care Quality Commission, owned by 5 companies which generate most of their revenue by providing NHS-funded cataract surgery.

32. Of these, 131 have opened between 2019 and January 2025. In 11 ICBs more than 4 clinics operated by these companies have opened up over the past 6 years, with one ICBs seeing up to 9 private clinics established in their region over this period. In a number of cases companies have established new clinics in ICB regions where they already had a presence.

Table 2: The number of clinics established by 5 private eye care providers in NHS ICBs Jan 2019 to Jan 2025.

Integrated Care Board	Total number of dedicated private eye care clinics in ICB as of Jan 2025	Number of clinics established since 2019
NHS North East and North Cumbria Integrated Care Board	9	9
NHS Cheshire and Merseyside Integrated Care Board	8	7
NHS Hampshire and Isle of Wight Integrated Care Board	8	7
NHS Lancashire and South Cumbria Integrated Care Board	8	7
NHS Greater Manchester Integrated Care Board	9	6
NHS West Yorkshire Integrated Care Board	9	6
NHS Nottingham and Nottinghamshire Integrated Care Board	5	5
NHS Bedfordshire, Luton and Milton Keynes Integrated Care Board	4	4
NHS Black Country Integrated Care Board	4	4
NHS Derby and Derbyshire Integrated Care Board	4	4
NHS Leicester, Leicestershire and Rutland Integrated Care Board	4	4

(Source: Care Quality Commission Care Directory accessed January 2025)

Patient choice as the driver of demand for NHS-funded cataract services

33. In carrying out this research we were surprised to hear from senior NHS commissioners that private companies were establishing private clinics in their regions and then invoicing the local ICB for treatment carried out on the NHS patients they were responsible for.

34. This was the case even though the NHS commissioning body had not sought additional support from the private sector and in some cases the ICB did not have a contract with the company to provide these services. How could this be explained?

35. In the first instance the NHS contract guidance prevents NHS commissioners from giving 'prior approval' to any form of treatment provided by a consultant if the patient is referred by an optometrist.[5] In effect, if an optometrist determines that a patient is in need of a cataract operation and the patient chooses to go to a particular hospital or clinic which has a contract with the NHS, the ICB must pay the provider for carrying it out.

36. This is the opposite of a commissioning model which plans care according to the assessed needs of the population and buys the necessary amount of care required. In general it means that the amount of expenditure by an ICB on a particular area of healthcare is determined by the demand generated through "patient choice" and the available supply of providers who are able to deliver the service.

37. It also explains why some NHS commissioners we spoke to talked about losing control of their budgets for eye care. They were required to pay for certain volumes of cataract surgery even though they had not planned or budgeted for them.

Low barriers to entry for private providers of NHS services has encouraged the establishment of large numbers of private eye care providers

38. The NHS rules also mean that there is a very low barrier to a company first setting up and then expanding their presence in a particular NHS region. Where a provider can meet certain criteria and can demonstrate that it can deliver the services required, the commissioner **must** offer the provider an NHS contract.[6] This limits the ability of NHS ICBs to restrict who they award contracts to and the number of providers operating in their region.

39. Once it has one clinic up and running, a company is effectively able to open as many as it likes both in that region and nation-wide, as long it is CQC-registered and can provide services to the specification required by the NHS.

40. The NHS contract guidance states that "at the point of referral, patients have the legal right to choose any clinically appropriate provider in England which has been commissioned by at least one NHS commissioning body, to provide the particular service required."[7]

Private eye care providers have been providing NHS-funded cataract services to Integrated Care Boards without holding a contract with them

41. The very fast growth of new private eye care providers has meant that in some instances providers have been providing NHS services in an ICB region without holding a contract with them. This is permissible under the NHS rules because companies have been able to utilise their status as a contracted provider in one part of the country to operate in another.[8]

42. This type of activity is known as non-contract activity and it has formed a substantial proportion of the amount of NHS funded cataract surgery delivered by private companies over the past 6 years. Our data, based on Freedom of Information requests to the 42 ICBs, shows that in 2021/22 on average around one in 7 (14%) of all NHS funded cataracts in the private sector were provided on a non-contract basis.

43. In 7 ICBs over 25% of all cataracts delivered in 2021/22 were provided by private companies which did not have a contract with the ICB that paid them for the cataract treatment they carried out on the NHS patients which they were responsible for. Over a 3 year period around 84,000 cataract operations were provided on a non-contract basis.

44. Whilst the great majority of NHS-funded privately provided cataract surgery is now provided under a contract, it is notable that during the period when private companies were expanding their presence in the NHS there was not always a requirement for them to hold a contract with the local NHS commissioner whose patients they were treating.

45. Not only does this raise significant questions about how the NHS can regulate and control the provision of services but it also means that in a large number of cases the ICB had limited powers to oversee the provision of services and make sure that the appropriate standards were being adhered to.

Conclusions and Recommendations

The very low barriers to market entry identified in this report and the patient choice regulations have meant that Integrated Care Boards have lost control of the volume of NHS funded cataract surgery which is provided in their area and by whom.

The Department of Health and Social Care and NHS England should review the patient choice regulations and the overall NHS market regulations to ensure that ICBs are able to plan the provision of healthcare to meet the needs of their populations.

Whilst patient choice is important, it is against the public interest for the delivery of healthcare to be driven by the interests of those providing care, particularly when this is likely to be at the expense of those most in need.

Section 3: Understanding the role of high street optometrists in the growth of privately provided NHS cataract care

The High Street optometrist is the main source of referral for NHS-funded cataract surgery provided by private companies

46. Unlike most of the other areas of NHS care which are provided by a consultant, all or most patients are referred for cataract surgery by an optometrist based on the high street rather than a GP.

47. High Street optometrists have traditionally focused on carrying out sight tests and dispensing glasses or contact lenses. However, they are now involved in providing a greater range of healthcare services, such as treating patients with minor eye conditions, including inflammation, red eye and ingrowing lashes.

48. Despite this shift, these providers are not required to be registered with the Care Quality Commission and are commercial businesses, with the majority of their income coming from the sale of glasses, frames or contact lenses.[9]

49. The main source of referrals for NHS cataracts is, therefore, companies which are focused on meeting business targets and operate under significant commercial pressure.

50. According to a survey of 4,479 registrants carried out by the General Optical Council in 2021, 30% of optometrists who responded felt under pressure at some point to meet commercial targets at the expense of patient care.[10]

51. The lack of mandatory regulation and inspection by a national regulator, combined with the existence of significant commercial pressures, could potentially create a high-risk environment for making decisions about if and where NHS cataract surgery should be carried out.

52. Concerns have been raised with us by those within the NHS and amongst senior ophthalmologists that such an environment risks placing the commercial interests of the business over the needs of the patient. Similar concerns about financial incentives provided to optometrists to refer patients for private cataract surgery were raised in 2020 by BBC Inside Health, although these were strongly refuted by the company involved.[11]

53. The decisions taken by high street optometrists about if and where patients should be treated for cataracts have a significant impact on the overall provision of cataract services within a particular region. This is especially so because in some instances NHS optometrists have the ability to refer directly to providers without any oversight from the local NHS, with some private providers allowing them to make NHS-funded referrals using their own email systems.

Possible evidence of the existence of incentives to refer patients to particular private providers

54. Because high street optometrists are central to determining where patients are treated, it is likely that any new provider of cataract services will seek to build strong relationships with them and the other healthcare professionals who work in them, as part of any strategy to expand the number of patients they treat.

55. We found that one way of building this relationship was by providing free continuing professional development (CPD) to high street optometrists, in order that they were then able to carry out follow-up assessments on patients who had received cataract surgery. These offers of free CPD by private providers were accompanied by offers to return any patient to them for follow-up treatment.

56. A review of the websites and other material published online by a range of private providers show that in some cases the private cataract providers are clear that these arrangements will generate "additional revenue streams" for high street optometrists. There are also statements made by these companies which suggest that either all patients will be referred back to them for a follow-up appointment, or that between 70% to 80% will be.

57. The clinical need for post operative follow-up appointments for such large numbers of cataract patients remains unclear. Whilst patients who have had cataract surgery are recommended to visit their optician to have a sight test 4 weeks after surgery, it is estimated that just between 3-7% of patients are likely to need some level of post operative care.

58. Because so few patients need follow up care following cataract surgery, the guidelines state that patients should be offered the chance to book an appointment for a follow up when they need it – for example, if they develop pain in their eyes or worsening vision rather than being booked in automatically.[12] There is also no requirement in the guidance that patients should be automatically referred back to the referring optometrist. As is the case with all aspects of NHS care, patients should have the choice of where to go for any form of treatment including a follow up appointment.[13]

59. We identified 3 types of possible additional revenue streams which may result from an agreement between a high street optometry business and a private provider of NHS funded cataract care regarding the referral of a patient to a private provider for surgery and the provision of follow up care. These agreements may affect the decisions made by optometrists about where to refer patients for NHS funded cataract surgery

i) Fee for a follow up appointment

60. The arrangements between high street optometrists and private providers that are published on the internet appear to provide the referring optometrist with a fee for carrying out a follow up appointment on any patient referred to them.

61. Discussions with NHS England and the commissioners of services have confirmed that this is a complicated arrangement whereby the local NHS (in the form of the ICB) pays the cataract surgery provider for the follow up appointment and this is then subcontracted by them back to the high street optometrist.

62. Based on our analysis of the websites of the companies providing NHS- funded cataract services, as well as those of other organisations representing optometry providers, this follow-up appointment could generate a fee for the optometrist of between £28 to £43.[14]

ii) The opportunity to carry out an NHS funded sight test during a follow up appointment.

63. Through referring the patient back to them for a follow up appointment the private ophthalmology clinic also offers the referring optometrist the opportunity to carry out an NHS-funded eye test on the patient who has had cataract surgery. An eye test can be carried out when there has been a change to the patient's vision, which is likely to occur following surgery. Because the great majority of cataract patients are aged over 60, the NHS will pay a fee for a sight test in most cases.[15]

iii) The opportunity to sell a patient new glasses or contact lenses in a follow up appointment.

64. In the majority of cases, patients who have had their cataracts removed no longer need glasses or contact lenses, particularly those which had been used for long distance. However, in some cases, new glasses are needed for reading. The arrangements which are published on the websites of the private eye care companies state that a referring optician would also be provided with the opportunity to dispense new glasses during a follow up appointment.

Estimating the possible benefits of the financial incentives to make referrals

65. In order to understand whether these potential benefits were likely to influence decision-making by high street optometrists, we sought to quantify their total annual value.

66. The main source of additional revenue we identified came from the fee from carrying out post cataract follow-up appointments. We submitted FOI requests to all 42 ICBs to ask them the total number of cataract follow-up appointments which they had paid for in the private sector.

67. We received usable data from 32 ICBs, which show that in 2022/23 they paid for 235,000 outpatient follow-up appointments to the main private providers of cataract services, worth £15.8m 2022/23, an average of £494,000 for each ICB.

68. If referring optometrists were paid a follow-up fee worth between half and two-thirds of the value of the NHS fee then the total potential benefit to referring optometrists could be between £10.4 million and £13.7 million.[16]

69. In addition to providing a fee for carrying out a follow up, the NHS would also fund a sight test. Assuming that follow-up appointments by referring optometrists were carried out after each of the 335,000 cataract surgeries performed by the private sector in 2022 23 an estimated £7.4 million could be generated from undertaking NHS sight tests. [17,18]

70. The combined total value of follow up appointments plus sight tests for those who received NHS-funded cataract surgery in private hospitals is therefore likely to be worth between £18 million and £21m a year.

71. In addition, any estimate of the total value of carrying out follow ups by referred patients would have to include the potential benefit of selling the post cataract patient new glasses or contact lenses.

Conclusions and recommendations:

Both the evidence we have seen and the concerns which have been raised with us about high street optometrists receiving financial incentives to refer patients for treatment at particular private clinics are extremely concerning from a public interest perspective.

Any suspicion that financial incentives are distorting the clinical decision- making of optometrists has the potential to undermine confidence in the provision of eye care services and overall confidence in the optometry profession.

Not only can financial incentives lead to unnecessary referrals, which is a patient safety risk, they can also prevent patients from being given the opportunity to choose their preferred healthcare provider.

The Competition and Markets Authority should review this area as a matter of urgency to determine whether the arrangements are in breach of competition law and also the Bribery Act and if necessary take appropriate action.

It is likely that the use of widespread incentive schemes may breach the NHS licence covering all providers of NHS care and which explicitly prohibits the use of financial benefits to induce patient referrals. NHS England should investigate whether any company providing opthalmology services has breached their operating licence and take the required action.

NHS England should introduce a system for all Integrated Care Boards which reviews referrals from both GPs and high street optometrists to ensure that all patients are offered a genuine choice of provider.

The General Optical Council should consider whether there is sufficient evidence to take fitness to practise cases against any high street optometry or registered optometry business which has received payments for referrals.

Section 4: Conflicts of Interest in the delivery of NHS funded eye care services by private companies

NHS consultants and conflicts of interest in the private healthcare sector

72. As we have documented in other parts of the private hospital sector, the delivery of NHS-funded treatment depends overwhelmingly on NHS consultants carrying out the operations done in private hospitals, including those funded by the NHS. The same is true of the provision of NHS-funded cataract services, where the majority of those carrying out these operations in the private sector are NHS consultants and doctors in training whose primary place of employment is the local NHS trust.

73. The way in which the private sector has made use of NHS doctors and other staff was raised as an issue of concern by the opthalmologists who responded to our 2023 survey, with suggestions that NHS consultants were receiving greater remuneration for undertaking NHS work in private hospitals, at the expense of the NHS eye care departments where they were also employed.[19]

NHS ophthalmology consultants who own equipment in private hospitals

74. We have identified in previous studies that some NHS consultants also have financial stakes in the private companies that they work in. In addition to the additional income they receive from undertaking work in the private sector they are also able to benefit from the overall growth and success of these businesses.[20,21]

75. A review of the financial accounts of private providers of ophthalmology services and the declarations made on their websites showed that there are significant numbers of NHS opthalmologists who had either shares or owned equipment in private hospitals.

76. We identified 39 NHS consultant ophthalmologists who owned equipment – either in part or in full – in private hospitals. Only 5 declarations of this equipment ownership could be found on the websites of their NHS employer.

77. Although in many cases the NHS Trust did not publish an up to date register of interests – which is required by NHS England guidance – there were a number of instances where consultants had not stated these financial interests on the registers that were published.[22] Guidance issued by the General Medical Council requires that consultants make relevant declarations in line with statutory guidance.[23]

NHS ophthalmology consultants who own shares in the private companies which provide NHS funded cataract services

78. Regulations issued by the Competition and Markets Authority (CMA) in 2014 prevent consultants from owning more than 5% of the value of a private hospital to which they refer private patients. Any instances where a consultant owns shares in a private hospital must also be declared on the company's website. These restrictions were introduced because of concerns that share ownership was impacting the decision-making of consultants and distorting competition.[24]

79. However, we have confirmed with the CMA that these restrictions do not apply to those parts of the ophthalmology sector which deliver care in private outpatient clinics and would in any case not cover NHS funded care.[25]

80. In total, a review of the accounts filed with Companies House found that 74 opthalmologists owned shares in private ophthalmology clinics most of which provide NHS-funded cataract services. We were able to identify that 68 of these consultants worked for NHS hospitals.

81. In many cases share ownership resulted in dividend payments to the opthalmologists. A review of accounts filed with Companies House shows that 50 of the ophthalmologists who owned shares in companies which provide NHS cataract services (including 45 who worked in the NHS) will have shared in dividend payments totalling £18m in the course of the last 4 years, with the large majority of this income coming from the NHS. It is unclear whether this is on top of the income they receive from carrying out NHS-funded cataract surgery in their private clinics. Again, very few of these financial interests were declared by the NHS ophthalmologists on their NHS Trust websites.

The potential impact of share and equipment ownership on NHS eye care departments

82. In total, we identified 113 consultant opthalmologists who had financial stakes in the private sector, which is around 7.5% of the total number of ophthalmology consultants estimated to be practising in the NHS in England.[26]

83. Because NHS hospitals are in competition with private hospitals for the revenue which comes from providing cataract surgery, the existence of these financial stakes has the potential to distort competition between providers to the detriment of the NHS and in favour of private clinics.

84. Or put another way, an NHS consultant who has shares in a company which provides NHS-funded cataract services will potentially benefit if that company takes cataract activity away from the NHS.

85. We gathered data under the Freedom of Information Act on the changes in the amount of cataract surgery which had been delivered in 50 NHS Trusts over a 6 year period. We examined 10 of these Trusts where ophthalmology consultants who held shares in private hospitals worked, to see what changes might have occurred in the number of cataracts delivered over a 6 year period.

86. These data showed an average 30% drop over the last 6 years in the number of cataract operations performed in the 10 NHS eye care departments where consultant ophthalmologists with shares in private hospitals worked. Around 12,000 fewer cataract operations were performed in these NHS hospitals in 2022/23 compared to 2017/18, whilst activity increased significantly at private hospitals.

87. As we have documented elsewhere, the total number of cataract operations performed in NHS hospitals has dropped significantly over this period, so it should be stressed that these findings should be seen in that context. Without further analysis it is difficult to establish any causal link between share ownership by an NHS ophthalmic consultant and the amount of cataract activity being performed in their NHS hospital.

Conclusions and recommendation

NHS consultants should be prohibited from owning equipment or shares in private hospitals, particularly where these hospitals are in competition with NHS hospitals

As we have pointed out in previous reports, there are significant potential patient safety risks associated with doctors owning shares in private hospitals or clinics which they operate out of.[27] Research shows that owning a financial interest in a clinic can lead to the provision of treatment which is both unnecessary and harmful to patients.[28]

Although the Competition and Markets Authority prohibits share ownership above 5% by doctors in some parts of the private hospital sector, this does not apply to private ophthalmology clinics or to those engaged in activity with the NHS.

In addition, in the current NHS market when NHS hospitals are in competition with private clinics, the financial success of a private clinic is likely to be to the detriment of the local NHS hospital.

It is therefore unacceptable that an NHS consultant with shares in a private eye care clinic could benefit financially from the decline in the resources and activity available in his or her own local eye care department.

NHS England and the General Medical Council have been aware for some time that the requirements around disclosure of financial conflicts of interest are regularly being ignored by NHS consultants and NHS Trusts.

It is clear that the current disclosure requirements are ineffective and that a prohibition on share ownership and equipment ownership by consultants in private hospitals is required.

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4 Contracts Finder website. https://www.gov.uk/contracts-finder

5 The NHS contract guidance states that there is no requirement upon commissioners to approve the provision of *' consultant-led elective care where the patient has exercised choice of provider under the legal rights set out in the NHS Constitution' as long as a patient is referred by a GP, a dentist or an optometrist'*.

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6 NHS England 'Patient Choice Guidance'. https://www.england.nhs.uk/long-read/patient-choice-guidance/

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12 The opportunity for the patient to book a follow up appointment when needed is known as a Patient Initiated Follow Up (PIFU). For an example of the circumstances when a patient should seek a follow up appointment see guidance from Harrogate and District NHS Foundation Trust 'Your Patient Initiated Follow Up (PIFU) Guide Card for Post routine cataract surgery'. https://www.hdft.nhs.uk/wp-content/uploads/2015/12/Post-routine-cataract-surgery.pdf

13 Royal College of Ophthalmologists and The College of Optometrists "Joint statement: Interim recommendations to discharge patients following routine uncomplicated cataract surgery" 28 June 2021. https://www.rcophth.ac.uk/news-views/interim-recommendations-uncomplicated-cataract-surgery/ The opportunity for the patient to book a follow up appointment when needed is known as a Patient Initiated Follow Up (PIFU).

14 Although the fee paid by the NHS for a follow up appointment in 2023/24 was around £67 we understand that not all of the fee is paid to the optometrist, with some of it retained by the private provider of cataract services.

15 To note almost all cataract patients are entitled to a free sight test as the NHS funds sight tests for people aged 60 and over. NHS England 'Free NHS Eye Tests and Vouchers'. https://www.nhs.uk/nhs-services/opticians/free-nhs-eye-tests-and-optical-vouchers/

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