

Item 6: Foundation Trust Status: Background Note.

By: Tristan Godfrey, Research Officer to the Health Overview and Scrutiny Committee

To: Health Overview and Scrutiny Committee, 25 November 2011

Subject: Foundation Trust Status

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## 1. Foundation Trusts (FTs)

- (a) Foundation Trusts are independent public benefit organisations but remain part of the NHS. They are accountable to Parliament as well as the local community. They have a duty to engage with their local community and encourage local residents, staff and service users to become members. Members can stand for election to the council of governors.
- (b) The council of governors is drawn from various constituencies, with members either elected or appointed by that constituency. It works with the board of directors, which has the responsibility for day-to-day running of the FT.<sup>1</sup>
- (c) The current Health and Social Care Bill progressing through Parliament proposes a number of changes to FTs. There will be an increase in autonomy – the private patient income cap will be repealed, legislation on organisational change will be completed and there will be increased transparency around financial assistance from the Secretary of State.
- (d) The role of FT governors and directors will be clarified and there will be a requirement to hold board meetings in public.<sup>2</sup>
- (e) As things currently stand, there are a number of differences between NHS Trust and NHS Foundation Trust status. One of the areas of difference is around financial duties:
  - 1. NHS Trusts have a duty to break even, meaning that their expenditure must not exceed their income, taking one financial year with another. Spending on capital and cash held must be within certain limits.
  - 2. FTs are not statutorily required to break even, but must achieve the financial position set out in their financial plan. One main

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<sup>1</sup> Monitor, *Current practice in NHS foundation trust member recruitment and engagement*, 2011, <http://www.monitor-nhsft.gov.uk/sites/default/files/Current%20practice%20in%20foundatio...ecruitment%20and%20engagement.pdf>

<sup>2</sup> Department of Health, *Provider regulation to support innovative and efficient services – The Health and Social Care Bill*, October 2011, <http://healthandcare.dh.gov.uk/files/2011/10/B2-Provider-regulation-to-support-innovative-and-efficient-services.pdf>

measure of an FT's financial performance is EBITDA (earnings before interest, tax, depreciation and amortisation).<sup>3</sup>

## 2. The Foundation Trust Pipeline

- (a) The first FTs were created in 2004. There is an expectation that all NHS Trusts will become Foundation Trusts (or part of an FT) by 1 April 2014 and NHS Trust legislation would be repealed (meaning non-FT NHS Trusts will not exist). However, the rigid deadline has been removed to allow flexibility. Monitor will maintain its oversight role of Foundation Trusts until 2016, or two years following authorisation.
- (b) Since October 2010, the Department of Health has been developing new processes to assist aspirant Trusts towards authorisation.<sup>4</sup> The completion of a 'tripartite formal agreement' (TFA) for each Trust has been a core element of this with the TFA summarising the main issues "relevant to each trust's plans to go forward to foundation status."<sup>5</sup> Any issues were put into four categories<sup>6</sup>:
- Financial;
  - Quality and Performance;
  - Governance and leadership; and
  - Strategic issues.
- (c) A Trust Development Authority will be established to take over the Strategic Health Authority role of overseeing non-FT Trusts once SHAs are abolished on 1 April 2013.<sup>7</sup>
- (d) As of 1 November 2011, there are 140 FTs. Across England, this accounts for 57% of acute, 73% of mental health and 27% of ambulance trusts.<sup>8</sup>

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<sup>3</sup> Academy of Medical Royal Colleges and Audit Commission, *A Guide to Finance for Hospital Doctors*, July 2009, p.23, <http://www.audit-commission.gov.uk/health/audit/financialmgmt/hospitaldoctors/Pages/hospitaldoctors9jul2009.aspx>

<sup>4</sup> National Audit Office, *Achievement of foundation trust status by NHS hospital trusts*, Full report p.6, 13 October 2011, [http://www.nao.org.uk/publications/1012/foundation\\_trusts.aspx](http://www.nao.org.uk/publications/1012/foundation_trusts.aspx)

<sup>5</sup> Health Service Journal, *Letter from Matthew Kershaw, Director of Provider Delivery, Department of Health*, 10 November 2011, p.18.

<sup>6</sup> National Audit Office, *Achievement of foundation trust status by NHS hospital trusts*, Full report p.21, 13 October 2011, [http://www.nao.org.uk/publications/1012/foundation\\_trusts.aspx](http://www.nao.org.uk/publications/1012/foundation_trusts.aspx). Links to all the TFAs can be found at: Department of Health, *Foundation Trusts: Tripartite Formal Agreements*, <http://healthandcare.dh.gov.uk/foundation-trusts-tripartite-formal-agreements>

<sup>7</sup> Department of Health, *Timetable for change*, <http://healthandcare.dh.gov.uk/timetable-for-change>

<sup>8</sup> Monitor, *140<sup>th</sup> foundation trust authorised by Monitor*, 1 November 2011, <http://www.monitor-nhsft.gov.uk/home/news-events-and-publications/latest-press-releases/140th-foundation-trust-authorised-monitor>

(e) Across the South East Coast region, 50% of Trusts have been authorised as Foundation Trusts.<sup>9</sup>

(e) In Kent and Medway, the Foundation Trusts are currently:

- East Kent Hospitals NHS University Foundation Trust;
- Medway NHS Foundation Trust; and
- South East Coast Ambulance Service NHS Foundation Trust

### 3. Monitor

(a) Monitor is the independent regulator of NHS Foundation Trusts and is directly accountable to Parliament.

(b) The three main strands to its work are currently:

1. Assessing the readiness of Trusts to become FTs;
2. Ensuring FTs comply with their terms of authorisation and that they are well governed and financial robust;
3. Supporting FT development.<sup>10</sup>

(c) A number of changes to the role of Monitor have been proposed as a result of the NHS White Paper, *Equity and Excellence: Liberating the NHS*, and the passage of the Health and Social Care Bill through Parliament. It will become the sector regulator for health (and potentially for social care at a later date), licensing providers of NHS services and carrying out functions in the following three areas:

1. Regulating prices;
2. Enabling integration and protecting against anti-competitive behaviour; and
3. Supporting service continuity.<sup>11</sup>

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<sup>9</sup> NHS South East Coast, *Provider Development Update*, Board Papers 28 September 2011, <http://www.southeastcoast.nhs.uk/Downloads/Board%20Papers/28%20September%202011/71-11%201%20Provider%20Development%20update%20Sept%202011.pdf>

<sup>10</sup> Monitor, *What we do*, <http://www.monitor-nhsft.gov.uk/home/about-monitor/what-we-do>

<sup>11</sup> Monitor, *The Health and Social Care Bill: Monitor's Evolving Role*, 10 October 2011, [http://www.monitor-nhsft.gov.uk/sites/default/files/The%20Health%20and%20Social%20Care%20Bill%20-%20Monitor's%20evolving%20role%20\[Information%20sheet\]%2010%20October%202011.pdf](http://www.monitor-nhsft.gov.uk/sites/default/files/The%20Health%20and%20Social%20Care%20Bill%20-%20Monitor's%20evolving%20role%20[Information%20sheet]%2010%20October%202011.pdf)