Item 6: Dartford and Gravesham NHS Trust and Medway Foundation Trust: Developing Partnership. Background Note.

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

To: Health Overview and Scrutiny Committee, 9 March 2012

Subject: NHS Trust and NHS 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 board/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.[1]

(c) 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 measure of an FT's financial performance is EBITDA (earnings before interest, tax, depreciation and amortisation).[2]

2. The Foundation Trust Pipeline

(a) The NHS Operating Framework for 2012/13 provides the following summary of the FT Pipeline:

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[1] 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

[2] 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

"Progress on the NHS Foundation Trust (FT) pipeline is not an end in itself but a critical means for creating clinically and financially sustainable organisations across the provider sector. NHS trusts are expected to achieve NHS FT status on their own, as part of an existing NHS FT or in another organisational form by April 2014, with a few concluding beyond this date by exceptional agreement. Plans for all NHS trusts have been agreed under Tripartite Formal Agreements (TFAs), which codify the locally owned issues, actions and processes and set out the journey each organisation must take going forward."[3]

(b) Since October 2010, the Department of Health has been developing new processes to assist aspirant Trusts towards authorisation. The completions of a 'tripartite formal agreement' (TFA) for each Trust has been a core element of this with the TFA summarising the main challenges faced by each organisation along with the actions to be taken by the Trust, SHA and Department of Health.[4] Any issues were put into four categories:[5]

- Financial;
- Quality and Performance;
- Governance and leadership; and
- Strategic issues.

(c) As of 30 January 2012 there are 140 FTs. Across England, this accounts for around 57% of acute, 73% of mental health and 27% of ambulance trusts.[6]

(d) Across the South East Coast region, 50% of Trusts have been authorised as Foundation Trusts.[7] In Kent and Medway, the Foundation Trusts are currently:

- East Kent Hospitals NHS University Foundation Trust;

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[3] Department of Health, *The Operating Framework for the NHS in England 2012/13*, 24 November 2011, p.29, http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131428.pdf

[4] 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

[5] Ibid., p.21. The TFA for Dartford and Gravesham NHS Trust can be viewed here, http://www.dvh.nhs.uk/news-events-and-publications/annual-reports-accounts-and-plans/?locale=en All TFAs can be accessed here: http://healthandcare.dh.gov.uk/foundation-trusts-tripartite-formal-agreements/

[6] Monitor, *140th 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

[7] 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

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

3. Financial Support for NHS Trusts[8]

(a) On 3 February 2012, the Department of Health announced that 7 Trusts may receive additional funding support from the DH. The Trusts are:

1. Barking, Havering and Redbridge NHS Trust;
2. Dartford and Gravesham NHS Trust;
3. Maidstone and Tunbridge Wells NHS Trust;
4. North Cumbria NHS Trust;
5. Peterborough and Stamford Hospitals NHS Foundation Trust;
6. South London Healthcare NHS Trust; and
7. St Helens and Knowsley NHS Trust.

(b) These Trusts had demonstrated they face "serious structural financial issues" and have historic PFI arrangements. Subject to 4 tests, these Trusts will be able to access financial support up to £1.5 billion over 25 years. A local plan to achieve long term, financial balance must also be in place.

(c) The 4 tests are:

1. The problems they face should be exceptional and beyond those faced by other organisations;
2. They must be able to show that the problems they face are historic and that they have a clear plan to manage their resources in the future;
3. They must show that they are delivering high levels of annual productivity savings;

[8] This section sources from: Department of Health, *NHS trusts to receive funding support*, 3 February 2012, http://mediacentre.dh.gov.uk/2012/02/03/nhs-trusts-to-receive-funding-support/

4. They must deliver clinically viable, high quality services, including delivering low waiting times and other performance measures.

4. Monitor and the NHS Trust Development Authority (NTDA)

(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; and

3. Supporting FT development.[9]

(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, 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.[10]

(d) Monitor will maintain its oversight role of Foundation Trusts until 2016 (or two years following authorisation if this is later) when the role will be reviewed.[11]

(d) The establishment of the NTDA will involve bringing together a number of functions currently carried out by the DH, SHAs and Appointments Commission. Its core functions will be:

1. Performance management of NHS Trusts;

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[9] Monitor, *What we do*, http://www.monitor-nhsft.gov.uk/home/about-monitor/what-we-do
[10] 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.pdf
[11] Ibid., and Monitor, *Assessing and regulating NHS foundation trusts, http://www.monitor-nhsft.gov.uk/home/monitors-new-role/assessing-and-regulating-nhs-foundation-trusts*

2. Overseeing the FT pipeline;

3. Assurance of clinical quality, governance and risk at NHS Trusts; and

4. NHS Trust appointments, including Chairs and non-executives.[12]

(e) The timeline is that the NTDA will be established as a Special Health Authority in June 2012, take on the functions of the Appointments Commission in October 2012 and be fully operational April 2013.[13]

(f) A review of the continuing need for the NTDA is likely to take place in 2016.[14]

(g) Monitor and the Department of Health jointly sponsor ***The Co-operation and Competition Panel*** (CCP). The CCP was formally established on 29 January 2009.[15] It provides advice on the application of the Department of Health's *Principles and Rules of Co-operation and Competition*.[16] Cases are undertaken by the CCP in the following four categories:

- Merger cases;
- Conduct cases;
- Procurement dispute appeals; and
- Advertising and misleading information dispute appeals.[17]

5. Hospital Reconfiguration: Recent Reports

(a) In March 2011, The King's Fund published the report *Reconfiguring Hospital Services - Lessons from South East London.*[18] This was a review of the reconfiguration exercise known as *A Picture of Health*.

(b) Then six key lessons drawn from the review are as follows:

1. The likely need for reconfiguration of services across hospital sites being the only way for some Trusts to achieve financial balance

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[12] Department of Health, *Building the NHS Trust Development Authority*, 5 January 2012, p.8, http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_132049.pdf
[13] Ibid., pp.6, 19.
[14] Ibid., p.7.
[15] Co-operation and Competition Panel, *Guide to the Co-operation and Competition Panel*, http://www.ccpanel.org.uk/content/Guide-to-the-CCP.pdf
[16] Co-operation and Competition Panel, *Principles and Rules of Co-operation and Competition*, http://www.ccpanel.org.uk/content/Principles_and_Rules_REVISED5.pdf
[17] Co-operation and Competition Panel, *About the CCP*, http://www.ccpanel.org.uk/about-the-ccp/index.html
[18] The King's Fund, *Reconfiguring Hospital Services Lessons from South East London*, 3 March 2011, http://www.kingsfund.org.uk/publications/reconfiguring.html

without deterioration in the quality of care given the current financial climate.

2. The large deficits and legacy deficits of Trusts with PFI schemes are caused in part by under-funding of fixed capital charges in Payment by Results tariffs.

3. Achieving the best patient outcomes and patient experience and narrowing the quality gap between the best and worst performers should be the focus of the reconfiguration.

4. Competition and choice in contestable services may have the unintended consequence of deterioration in essential services.

5. There needs to be strong commissioning of emergency and network services across a large catchment area.

6. The acquisition of financially challenged Trusts by high-performing Foundation Trusts may often be the best way to bring about reconfiguration along patient pathways.[19]

(c) A different approach was taken by the Centre for Market and Public Organisation at the University of Bristol in the January 2012 report, *Can governments do it better? Merger mania and hospital outcomes in the English NHS*.[20] This examined merger activity between 1997 and 2006; there were 223 acute hospitals in 1997, and 112 had merged by 2006 (the research paper used 102 mergers). The Abstract of this report is as follows:

"*The literature on mergers between private hospitals suggests that such mergers often produce little benefit. Despite this, the UK government has pursued an active policy of hospital mergers, arguing that such consolidations will bring improvements for patients. We examine whether this promise is met. We exploit the fact that between 1997 and 2006 in England around half the short term general hospitals were involved in a merger, but that politics means that selection for a merger may be random with respect to future performance. We examine the impact of mergers on a large set of outcomes including financial performance, productivity, waiting times and clinical quality and find little evidence that mergers achieved gains other than a reduction in activity. Given that mergers reduce the scope for competition between hospitals the findings suggest that further merger activity may not be the appropriate way of dealing with poorly performing hospitals.*" [21]

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[19] Ibid., pp.26-29.
[20] Centre for Market and Public Organisation, January 2012, http://www.bristol.ac.uk/cmpo/publications/papers/2012/wp281.pdf
[21] Centre for Market and Public Organisation, January 2012, http://www.bristol.ac.uk/cmpo/publications/papers/2012/abstract281.html