

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

To: Health Overview and Scrutiny Committee, 7 September 2012

Subject: NHS Foundation Trust Status and Monitor

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. FT 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) There are currently 144 FTs across England. The NHS Operating Framework for 2012/13 provides the following summary of the FT Pipeline:

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 completion 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) 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
- (d) The **NHS Trust Development Authority (NTDA)** was established as a Special Health Authority in June 2012 to be able to take on the responsibility for overseeing NHS Trusts (i.e. those which are not FTs) from April 2013 when SHAs will have been abolished.⁶

4. 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:

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 All TFAs can be accessed here: <http://healthandcare.dh.gov.uk/foundation-trusts-tripartite-formal-agreements/>

⁶ <http://www.ntda.nhs.uk/about/>

Item 5: NHS Foundation Trust Status and Monitor. Background Note.

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.⁷
- (c) When assessing an NHS Trust applying for Foundation Trust status, the focus is on three key questions:
1. Is the Trust well governed with the leadership in place to drive future strategy and improve patient care?
 2. Is the Trust financially viable with a sound business plan?
 3. Is the Trust legally constituted, with a membership that is representative of its local community?⁸
- (d) Once an FT has been authorised, Monitor looks to ensure it is compliant with its terms of authorisation. These are a set of detailed requirements around how the FT must operate. Some of the areas covered in the terms of authorisation are:
- the general requirement to operate effectively, efficiently and economically;
 - requirements to meet healthcare targets and national standards; and
 - the requirement to cooperate with other NHS organisations.⁹
- (e) Each FT is assigned an annual and quarterly risk rating which indicate the risk of failure to comply with the terms of authorisation. Two risk ratings are published:
1. governance (rated red, amber-red, amber-green or green); and
 2. finance (rated 1-5, where 1 represents the highest risk and 5 the lowest).¹⁰
- (f) Where an FT is at risk of breaching its terms of authorisation, Monitor can require an action plan from the organisation. It has a range of formal intervention powers where improvement has not been demonstrated.
- (g) FT development is supported through such programmes as service-line management which involves identifying specialist clinical areas and managing them as distinct operational units.¹¹

⁷ <http://www.monitor-nhsft.gov.uk/home/about-monitor/what-we-do>

⁸ <http://www.monitor-nhsft.gov.uk/about-monitor/what-we-do-0#1>

⁹ <http://www.monitor-nhsft.gov.uk/about-monitor/how-we-do-it/how-monitor-regulates-nhs-foundation-trusts>

¹⁰ Ibid.

¹¹ <http://www.monitor-nhsft.gov.uk/SLM>

- (c) A number of changes to the role of Monitor are being introduced as a result of the health and Social Care Act 2012. It will become the sector regulator for health and carry out functions in the following areas:
1. Licensing providers of NHS care
 2. Regulating prices;
 3. Enabling integration;
 4. Safeguarding choice and competition
 5. Assessing NHS providers for FT status;
 6. Supporting service continuity.¹²
- (d) Monitor and the Department of Health jointly sponsor **The Co-operation and Competition Panel** (CCP). The CCP was formally established on 29 January 2009.¹³ It provides advice on the application of the Department of Health's *Principles and Rules of Co-operation and Competition*.¹⁴ 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.¹⁵

¹² Monitor, *Introduction to Monitor's future role*, 20 June 2012, <http://www.monitor-nhsft.gov.uk/monitors-new-role/-introduction-monitors-new-role>

¹³ Co-operation and Competition Panel, *Guide to the Co-operation and Competition Panel*, <http://www.ccp-panel.org.uk/content/Guide-to-the-CCP.pdf>

¹⁴ Co-operation and Competition Panel, *Principles and Rules of Co-operation and Competition*, http://www.ccp-panel.org.uk/content/Principles_and_Rules_REVISED5.pdf

¹⁵ Co-operation and Competition Panel, *About the CCP*, <http://www.ccp-panel.org.uk/about-the-ccp/index.html>