

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

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To: Health Overview and Scrutiny Committee, 30 November 2012

Subject: A) NHS Foundation Trust Status and Monitor  
B) Financial Support for NHS Trusts  
C) South London Healthcare NHS Trust

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## **Part A - NHS Foundation Trust Status, Monitor and the Co-Operation and Competition Panel**

### **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.<sup>1</sup>
- (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).<sup>2</sup>

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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> 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>

## 2. The Foundation Trust Pipeline

(a) There are currently 144 FTs across England.<sup>3</sup> The NHS Operating Framework for 2012/13 provides the following summary of the FT Pipeline:

- *“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.”<sup>4</sup>*

(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.<sup>5</sup> Any issues were put into four categories:<sup>6</sup>

- 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

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<sup>3</sup> Monitor, <http://www.monitor-nhsft.gov.uk/about-nhs-foundation-trusts/nhs-foundation-trust-directory>

<sup>4</sup> 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](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131428.pdf)

<sup>5</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>6</sup> All TFAs can be accessed here: <http://healthandcare.dh.gov.uk/foundation-trusts-tripartite-formal-agreements/>

responsibility for overseeing NHS Trusts (i.e. those which are not FTs) from April 2013 when SHAs will have been abolished.<sup>7</sup>

#### **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:
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.<sup>8</sup>
- (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?<sup>9</sup>
- (d) Once an FT has been authorised, Monitor looks to ensure it is compliant with its terms of authorisation which 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.<sup>10</sup>
- (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:

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<sup>7</sup> <http://www.ntda.nhs.uk/about/>

<sup>8</sup> <http://www.monitor-nhsft.gov.uk/home/about-monitor/what-we-do>

<sup>9</sup> <http://www.monitor-nhsft.gov.uk/about-monitor/what-we-do-0#1>

<sup>10</sup> <http://www.monitor-nhsft.gov.uk/about-monitor/how-we-do-it/how-monitor-regulates-nhs-foundation-trusts>

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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).<sup>11</sup>
- (f) Where an FT is at risk of breaching its terms of authorisation, Monitor can require an action plan from the organisation but 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.<sup>12</sup>
- (h) 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.<sup>13</sup>

## 5. The Co-operation and Competition Panel

- (a) Monitor and the Department of Health jointly sponsor **The Co-operation and Competition Panel** (CCP). The CCP was formally established on 29 January 2009.<sup>14</sup> It provides advice on the application of the Department of Health's *Principles and Rules of Co-operation and Competition*.<sup>15</sup> Cases are undertaken by the CCP in the following four categories:
- Merger cases;
  - Conduct cases;
  - Procurement dispute appeals; and

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<sup>11</sup> Ibid.

<sup>12</sup> <http://www.monitor-nhsft.gov.uk/SLM>

<sup>13</sup> Monitor, *Introduction to Monitor's future role*, 20 June 2012, <http://www.monitor-nhsft.gov.uk/monitors-new-role/-introduction-monitors-new-role>

<sup>14</sup> 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>

<sup>15</sup> 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](http://www.ccp-panel.org.uk/content/Principles_and_Rules_REVISED5.pdf)

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- Advertising and misleading information dispute appeals.<sup>16</sup>
- (b) On 15 February 2012 the CCP accepted the merger of Dartford and Gravesham NHS Trust and Medway Foundation Trust for review. The scope was to see whether the proposed merger was consistent with Principle 10 of the *Principles and Rules of Co-operation and Competition*.<sup>17</sup>
- (c) Principle 10 is:
- “Mergers, including vertical integration, between providers are permissible when there remains sufficient choice and competition or where they are otherwise in patients’ and taxpayers’ interests, for example because they will deliver significant improvements in the quality of care.”<sup>18</sup>
- (d) Phase 1 of the review was completed on 11 April 2012. Phase 2 was completed on 10 October 2012 and a report published. The report’s conclusion was:
- “On the basis that the safeguards are in place, the CCP recommendation to the Department of Health and Monitor is that the proposed merger is consistent with Principle 10 of the *Principles and Rules*.”<sup>19</sup>
- (e) The Executive Summary of the CCP report is attached as an Appendix.<sup>20</sup>

## **Part B - Financial Support for NHS Trusts**<sup>21</sup>

- (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;

<sup>16</sup> Co-operation and Competition Panel, *About the CCP*, <http://www.ccp-panel.org.uk/about-the-ccp/index.html>

<sup>17</sup> Co-operation and Competition Panel, *Merger of Dartford and Gravesham NHS Trust with Medway NHS Foundation Trust*, [http://www.ccp-panel.org.uk/content/cases/Dartford\\_and\\_Gravesham\\_NHS\\_Trust\\_with\\_Medway\\_NHS\\_Foundation\\_Trust/121009\\_Dartford\\_Medway\\_Merger\\_Report\\_Excisions\\_Final\\_2.pdf](http://www.ccp-panel.org.uk/content/cases/Dartford_and_Gravesham_NHS_Trust_with_Medway_NHS_Foundation_Trust/121009_Dartford_Medway_Merger_Report_Excisions_Final_2.pdf)

<sup>18</sup> Co-operation and Competition Panel, *Principles and Rules of Co-operation and Competition*, p.4, [http://www.ccp-panel.org.uk/content/Principles\\_and\\_Rules\\_REVISED5.pdf](http://www.ccp-panel.org.uk/content/Principles_and_Rules_REVISED5.pdf)

<sup>19</sup> Co-operation and Competition Panel, *Merger of Dartford and Gravesham NHS Trust with Medway NHS Foundation Trust*, p.4, [http://www.ccp-panel.org.uk/content/cases/Dartford\\_and\\_Gravesham\\_NHS\\_Trust\\_with\\_Medway\\_NHS\\_Foundation\\_Trust/121009\\_Dartford\\_Medway\\_Merger\\_Report\\_Excisions\\_Final\\_2.pdf](http://www.ccp-panel.org.uk/content/cases/Dartford_and_Gravesham_NHS_Trust_with_Medway_NHS_Foundation_Trust/121009_Dartford_Medway_Merger_Report_Excisions_Final_2.pdf)

<sup>20</sup> Sourced from: *Ibid.*, pp. 1, 3-4.

<sup>21</sup> This section sourced 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/>

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

### **Part C – South London Healthcare NHS Trust**

- (a) On 16 July 2012, the Regime for Unsustainable NHS Providers was implemented for the first time and applied to South London Healthcare NHS Trust (SLHT). The regime is a way for the Government to deal with NHS Trusts that “are either unsustainable in their current configuration or at serious risk of failing to deliver sustainable services, and of failing to comply with the plans to move towards achieving Foundation Trust status.”<sup>22</sup> The Trust Board was suspended and a

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<sup>22</sup> Office of the Trust Special Administrator, *Draft Report. Securing sustainable NHS services. Consultation on the Trust Special Administrator’s draft report for South London Healthcare NHS Trust and the NHS in south east London*, 29 October 2012, p.83, <http://www.tsa.nhs.uk/sites/default/files/TSA-DRAFT-REPORT-WEB3.pdf>

Trust Special Administrator (TSA), Matthew Kershaw, appointed to be accountable officer for the Trust and develop recommendations for the Secretary of State with the aim of ensuring high quality sustainable services.

- (b) A draft report with draft recommendations was published on 29 October 2012 and a consultation on them will run from 2 November to 13 December 2012. A final report will go to the Secretary of State for Health on 7 January 2013. The Secretary of State then has 20 working days to determine what action to take, and so this will take place by 1 February 2013. The Secretary of State's decision is final; there is no right of appeal.
- (c) The summary of the recommendations is appended to this Background Note.<sup>23</sup>
- (d) Further information on Draft recommendation VI, organisational solutions, provides the following further information on Queen Mary's Hospital Sidcup:
- *“Draft recommendation II sets out the proposals for the future of Queen Mary's Hospital in the context of the development of a Bexley Health Campus. The site should be owned and run by Oxleas NHS Foundation Trust. Under Oxleas' leadership the hospital will have a sustainable future, providing the services that commissioners have identified are required for the local population and a centre of excellence for inpatient mental health services across Bexley and Bromley.”*
  - *“The majority of services currently provided from the site will continue to be provided there, with some new services being added – specifically a satellite radiotherapy unit to be provided by Guy's and St Thomas' NHS Foundation Trust. As per draft recommendation V, day case elective surgery and endoscopies, both currently delivered at Queen Mary's Hospital by South London Healthcare NHS Trust will continue to be provided there. However, as the Trust will no longer exist, Bexley CCG should initiate a procurement exercise to secure the right provider of care for the future. In the interim, the draft recommendation is for Dartford and Gravesham NHS Trust to be the provider of these services. The small number of inpatient elective procedures that currently take place at Queen Mary's Hospital (around 2,000 per year) should be consolidated with the elective surgical work for south east London in the proposed elective centre at University Lewisham Hospital. As outlined in draft recommendation V, further work will be undertaken to explore a partnership model for the delivery of services that would see services being provided by a range of organisations on*

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<sup>23</sup> Take from: Office of the Trust Special Administrator, *Draft Recommendations*, <http://www.tsa.nhs.uk/sites/default/files/Summary%20of%20TSA%20recommendations.pdf>

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*the University Lewisham Hospital site, for which the outpatient services would be available on the Bexley Health Campus.*<sup>24</sup>

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<sup>24</sup> Office of the Trust Special Administrator, *Draft Report. Securing sustainable NHS services. Consultation on the Trust Special Administrator's draft report for South London Healthcare NHS Trust and the NHS in south east London*, 29 October 2012, pp.71-2, <http://www.tsa.nhs.uk/sites/default/files/TSA-DRAFT-REPORT-WEB3.pdf>