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To: Health Overview and Scrutiny Committee – 2 October 2009

Subject: Briefing Note on Item 4. South East Coast Ambulance Trust - Application for Foundation Trust Status

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## **Part 1 - What is a Foundation Trust?**

### **a. Introduction**

Foundation Trusts (FTs) were established through the *Health and Social Care (Community Health and Standards) Act 2003* as ‘public benefit corporations.’ The same Act allowed for the creation of the Independent Regulator of NHS Foundation Trusts (known as Monitor). The first 10 FTs were authorised on 1 April 2004.

According to the Department of Health, the purpose in establishing FTs is to:

1. “Devolve more power and responsibility to the local level so that NHS hospitals are better able to respond to the needs of patients. The establishment of NHS Foundation Trusts aims to bring about improved access to higher quality services for NHS patients by incentivising innovation and entrepreneurialism.
2. Devolve accountability to local stakeholders including NHS patients and staff. NHS Foundation Trusts operate governance arrangements that give local stakeholders and the public opportunities to influence the overall stewardship of the organisation and its strategic development.
3. Support patient choice by increasing the plurality and diversity of providers within the NHS.”<sup>1</sup>

Since then, the ability to apply for Foundation Trust status has been extended to other types of Trust. Ambulance Trusts have been able to apply for Foundation Trust status since April 2009.

FTs are providers of NHS services which have more operational and financial freedom than other NHS providers (“NHS Trusts”). They are authorised and regulated by Monitor and are not performance managed by Strategic Health Authorities (which have a performance management role with NHS Trusts). Both FTs and NHS Trusts are covered by the Care Quality Commission.

The majority of the income of an FT comes from services commissioned from them by primary care trusts, and in this they are similar to NHS Trusts. However, whereas NHS Trusts have a duty to break even (normally over a three year period), FTs have no statutory duty to break even but must achieve

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<sup>1</sup> *Purpose of NHS Foundation Trusts*, Department of Health, 9 February 2007, [http://www.dh.gov.uk/en/Healthcare/Secondarycare/NHSfoundationtrust/DH\\_4062806](http://www.dh.gov.uk/en/Healthcare/Secondarycare/NHSfoundationtrust/DH_4062806)

the financial position set out in their financial plan. FTs can also borrow money within limits set by Monitor, retain surpluses and decide on service development for their local populations.

## **b. Governance Structure**

The governance structure of an FT is different to that of an NHS Trust. There are three main components – members, board of governors, and board of directors.

### **i. Members**

FTs have a duty to engage their local community and a responsibility to encourage people to become members. FTs have to endeavour to ensure that their membership is representative of that community. Built into the application process is a requirement for applicant Trusts to set out plans for the minimum size and composition of the membership.

The eligibility criteria varies from FT to FT, but in general terms, anyone who is a resident in the local area, a member of staff or who has been a patient or service user, can become a member. Along with receiving information about the FT and being consulted on plans for future development, members can elect representatives to serve on the board of governors, and stand for election themselves. They can also put themselves forward for appointment of Chairman of the FT or as a non-executive director.

Membership is free of charge and carries with it no obligations.

### **ii Board of Governors**

The board of governors does not get involved in the daily management of the FT, but is responsible for working with the board of directors to ensure it acts in accordance with its terms of authorisation. The board of governors can appoint or remove the Chairman and non-executive directors; approve the appointment (by the non-executive directors) of the Chief Executive; and appoint or remove the external auditors.

The size and shape of the board of governors will vary from FT to FT, within certain parameters:

- “overall majority of places must be made up of representatives elected from public and patient membership
- at least three staff governors elected from the staff membership
- at least one local authority governor, one primary care trust governor and where applicable at least one university governor, all via nomination.”<sup>2</sup>

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<sup>2</sup> Governance, Department of Health, 9 January 2009, [http://www.dh.gov.uk/en/Healthcare/Secondarycare/NHSfoundationtrust/DH\\_4131785](http://www.dh.gov.uk/en/Healthcare/Secondarycare/NHSfoundationtrust/DH_4131785)

### iii Board of Directors

The board of directors is responsible for the day to day running of the FT, deciding the budget, staffing and so on. They are responsible for delivering the terms of authorisation.

The Chairman of a Foundation Trust is Chairman of both the board of directors and the board of governors.

#### **c. FT Board Meetings**

The meetings of the board of governors of an FT must be open to the public, but there is not the same requirement for the board of directors.

A straw poll carried out by the Health Service Journal suggests that less than a quarter of FTs are holding their board of directors' meetings in public.<sup>3</sup>

Although the arguments for and against holding board of directors' meetings in private have been discussed over the years, the Healthcare Commission report into events at Mid-Staffordshire (which is a Foundation Trust) has brought renewed attention to this issue.

Following the Healthcare Commission report, the Department of Health commissioned two swift reviews looking at different aspects of the situation at Mid-Staffordshire. The Department of Health response to the comments these reviews made in relation to FTs holding their board meetings in private can be found in the following Parliamentary Written Answer:

#### “NHS: Public Participation

Mr. Kidney: To ask the Secretary of State for Health if he will bring forward legislation to compel NHS Foundation Trusts to hold board meetings in public; and if he will make a statement.  
[274915]

Mr. Bradshaw: A written ministerial statement on Mid-Staffordshire NHS Foundation Trust (FT) was issued on 30 April in response to the reports of the independent reviews undertaken by Professor Sir George Alberti and Dr. David Colin-Thomé.

There is no legal requirement for board of directors meetings to be open to the public and there are no plans to bring forward legislation to compel them to do so. However, the Government response to the Alberti and Colin-Thomé reports stated:

‘These reports and the Health Commission report were highly critical of the closed culture that operated at Stafford Hospital. All NHS organisations must ensure they are operating in accordance

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<sup>3</sup> p.4, Health Service Journal, 2 April 2009, <http://www.hsj.co.uk/news/policy/private-board-meeting-risks-spelled-out/2007708.article>

with current guidance, which promotes openness, transparency and accountability to their local populations, including boards holding meetings in public.’

The NHS Foundation Trust Code of Governance, published by Monitor, the independent regulator of NHS FTs, states that the board of directors of an NHS FT should

‘follow a policy of openness and transparency in its proceedings and decision making unless this conflicts with a need to protect the wider interests of the public or the NHS foundation trust (including commercial-in-confidence matters) and make clear how potential conflicts of interests are dealt with’.”<sup>4</sup>

During a meeting of Medway Council’s Health and Adult Social Care Overview and Scrutiny Committee on 20 August, SECAMB were asked about the issue of holding meetings in public. The record of this meeting can be found in the Appendix to this briefing note.

#### **d. The Authorisation Process**

The authorisation process falls into three distinct phases. The essential aim behind the process is to ensure the applicant organisation is capable of functioning as a Foundation Trust.

##### *Phase One: SHA-led Trust Development Phase*

In this initial stage, the relevant Strategic Health Authority will work with the Trust to develop a rigorous application. It is during this phase that the 12-week public consultation takes place.

##### *Phase Two: Secretary of State Support Phase*

Once the SHA is satisfied the Trust is ready to proceed, a formal application is made to the Secretary of State for Health. The Department of Health’s Application Committee will make recommendations to the Secretary of State for a final decision.

##### *Phase Three: Monitor Phase*

If an application is approved by the Secretary of State, Trusts must then formally apply to begin Monitor’s assessment process. The evidence is considered and visits are undertaken to the Trust. Phase Three takes around three months and is based on three key criteria assessment:

1. Is the trust well governed?
2. Is the trust financially viable?
3. Is the trust legally constituted?

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<sup>4</sup> Hansard, 1 June 2009, PQ 274915, Col. 123W. The full document, *Government response to Alberti and Colin-Thomé Reports*, Department of Health, 30 April 2009, can be found here: [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_098660](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_098660)

The final decision rests with Monitor. If an application is approved, Monitor informs the Trust and issues the terms of authorisation.

“The terms of authorisation set out the conditions under which an NHS foundation trust is required to operate and cover such things as:

- the NHS foundation trust’s Constitution – a legal document which describes, among other things, the purpose of the NHS foundation trust, how the board of governors and board of directors should operate and how members are recruited;
- details of the mandatory goods and services that the trust must provide to its patients and service users – these are the services which the NHS foundation trust is contracted to provide by its commissioners;
- details of the mandatory education and training that the trust must provide, as agreed with its commissioners;
- the proportion of the total patient income which NHS foundation trusts can make from private healthcare charges;
- a limit on how much the NHS foundation trust is allowed to borrow; and
- a statement of the information the NHS foundation trust must provide to Monitor and any third parties, including the Department of Health.”<sup>5</sup>

#### **e. Foundation Trusts in the South East**

The following is a list of where Trusts within the South East Coast Strategic Health Authority area are in the FT ‘pipeline’<sup>6</sup>:

Authorised as Foundation Trusts:

- Frimley Park Hospital
- Queen Victoria Hospital
- Medway Maritime
- Surrey and Borders
- Sussex Partnership
- East Kent Hospitals University

Planned to achieve FT licence in 2009/10:

- Royal Surrey County
- Kent and Medway NHS and Social Care Partnership
- Dartford and Gravesham
- Ashford and St. Peter’s

To be in a position to submit application to the Department of Health by December 2010:

- East Sussex Hospitals

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<sup>5</sup> *Phase three Monitor Phase*, Monitor, <http://www.monitor-nhsft.gov.uk/home/becoming-nhs-foundation-trust/how-the-assessment-process-works/phase-three-monitor-phase>

<sup>6</sup> This information adapted from the Board Papers of the South East Coast Strategic Health Authority, 23 September 2009, Item 63/09, <http://www.southeastcoast.nhs.uk/aboutus/theboard/papers/documents/63-09-FTBoardpaper-Sept09.pdf>

- South East Coast Ambulance Service
- Brighton and Sussex University Hospitals
- Western Sussex Hospitals
- Surrey and Sussex Healthcare

To be in a position to submit application to the Department of health by December 2011:

- Maidstone and Tunbridge Wells.

## **Part 2 – South East Coast NHS Ambulance Trust (SECamb)**

### **a. Introduction<sup>7</sup>**

The South East Coast NHS Ambulance Trust was formed on 1 April 2006. This was as a result of a merger of three Trusts in Kent, Surrey and Sussex.

- covers a geographical area of 3,600 square miles (Brighton & Hove, East Sussex, Kent, Surrey, North East Hampshire, West Sussex)
- serves a resident population of 4,500,000
- operates from 63 ambulance stations and three Emergency Dispatch Centres, as well as numerous administrative, fleet, equipment and training bases
- responds currently to a 999 call every 1.14 minutes
- employs approximately 3,000 staff.

The three Emergency Despatch Centres are at:

Coxheath; Lewes; and Banstead.

The 63 ambulance stations are at:

Ashford	Battle	Bexhill	Bognor Regis	Brighton	Burgess Hill
Canterbury	Caterham	Chertsey	Chichester	Cranleigh	Cranbrook
Crawley	Crowborough	Dartford	Deal	Dorking	Dover
Eastbourne	East Grinstead	Epsom	Esher	Farnborough	Folkestone
Gatwick	Godalming	Godstone	Guildford	Hailsham	Haslemere
Hastings	Haywards Heath	Heathfield	Herne Bay	Horley	Horsham
Hove	Knaphill	Leatherhead	Lewes	Littlehampton	Lydd

<sup>7</sup> This information adapted from the South East Coast NHS Ambulance Trust website:  
<http://www.secamb.nhs.uk/>

Maidstone	Medway	Midhurst	Newhaven	Pulborough	Redhill
Rye	Sevenoaks	Sheppey	Shoreham	Sittingbourne	Staines
Thameside	Thanet	Tonbridge	Tongham	Tunbridge Wells	Uckfield
Walton	Woking	Worthing			

**b. SECAMB FT Consultation Document “Your Service, Your Call”<sup>8</sup>**

A 12-week public consultation on SECAMB’s foundation trust plans was launched on Saturday 25 July and runs until midnight on Friday 16 October. The process has been given the name “Your service, your call” by the Trust and a dedicated website has been set up:

<http://ysyc.secamb.nhs.uk/index.htm>

**Summary of Proposals**

Because Foundation Trust status is largely concerned with changing the way a Trust is governed, that is the focus here.

Details of the proposed governance arrangements can be set out under the three headings of members, governors and directors.

**i. Members**

SECAMB is proposing two categories of Membership, public and staff.

Public membership will be available to anyone who lives in the SECAMB area and to people of any age, though people under 16 will need permission from a parent/guardian.

Staff membership will be automatic for all members of staff, unless they choose to opt out.

An individual can only belong to one of the above categories.

**ii. Governors**

SECAMB is proposing a 26 member council of governors. A governor has to be at least 16 years old. There will be 18 elected governors and 8 appointed governors. The Trust is proposing staggered term lengths of 2 and 3 years “to avoid us having a complete change of governors at the same time and will mean existing governors can provide support for new governors.”

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<sup>8</sup> Available at: <http://ysyc.secamb.nhs.uk/consultation.htm>. All quotations in this section are taken from the full consultation document.

### *Elected public governors*

14 governors will be elected by the public. There will be 6 constituencies and these relate to local authority areas. The number of governors that each area will elect is based on respective populations and is shared out as follows (the PCTs contained within each local authority area are included for reference):

Table 1

<b>Local Authority</b>	<b>/14</b>	<b>PCTs covered by LA</b>
Brighton and Hove City Council	1	Brighton and Hove City
East Sussex County Council	2	East Sussex Downs and Weald, and Hastings and Rother
Kent County Council	4	Eastern and Coastal Kent, and West Kent
Medway Council	1	Medway
Surrey County Council*	4	Surrey
West Sussex County Council	2	West Sussex

\* For the purposes of public membership, Surrey includes the parts of Berkshire and north-east Hampshire that SECAMB serve. Those areas come under different PCTs.

### *Elected staff governors*

4 governors will be elected by staff. There will be 2 constituencies as follows:

Table 2

<b>Staff constituency</b>	<b>/4</b>	<b>Notes</b>
Operational	3	“Those who deal with patients direct, either face-to-face or over the phone.”
Non-operational	1	“Support staff (for example, Human Resources and Finance).”

### *Appointed governors*

The mechanisms for appointment are not explained in the consultation document, but the 8 appointed governors will be drawn from the following groups:

Table 3

<b>Appointed governor groups</b>	<b>/8</b>	<b>Notes</b>
Primary Care Trusts	1	There are 8 of these in the area (see Table 1)
Local Authority	1	There are 6 of these in the area (see Table 1)
Voluntary organisation or charity	1	Organisations such as MIND or the British Heart Foundation will be invited to nominate themselves.
Regional Resilience Forum	1	This group is formed of various



		agencies such as the fire service, police and ambulance service which prepare for major incidents.
NHS Acute Trusts	2	There are 12 of these in the area, including the 4 acute trusts in Kent and Medway. <sup>9</sup>
MHS Mental Health or Social Care Trust	1	There are 4 in the area, included the Kent and Medway NHS and Social Care Partnership Trust. <sup>10</sup>
University	1	5 have been chosen on the basis that SECAMB works in partnership with them to provide paramedic qualifications. <sup>11</sup>

### iii. Directors

The Board of Directors will be made up of 14 members – 7 executive directors including the chief executive and 7 non-executive directors, including the Chairman. In the event of a tie, the Chairman will have the casting vote.

### Consultation Questions

The formal questions contained in the consultation document are as follows:

- Q1. Do you agree with our vision?
- Q2. Do you agree with our proposals for the Board of Directors?
- Q3. Do you agree that there should not be a minimum age for membership?
- Q4. Do you agree with the public constituencies we have proposed?
- Q5. Do you agree with our proposals for staff membership?
- Q6. Do you agree that the minimum age of a governor should be 16?
- Q7. Do you think our proposals for who our Council of Governors should include will make sure that it is able to fairly represent the public, patients, our staff and partner organisations?

And a final unnumbered question:

- Do you have any other comments?

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<sup>9</sup> The complete list is: Ashford and St Peter's Hospitals NHS Trust, Brighton and Sussex University Hospitals NHS Trust, Dartford and Gravesham NHS Trust, East Kent Hospitals University NHS Foundation Trust, East Sussex Hospitals NHS Trust, Frimley Park NHS Foundation Trust, Maidstone and Tunbridge Wells NHS Trust, Medway NHS Foundation Trust, Royal Surrey County Hospital NHS Trust, Surrey and Sussex Healthcare NHS Trust, Queen Victoria Hospital NHS Foundation Trust, and Western Sussex Hospitals NHS Trust.

<sup>10</sup> The other 3 are: South Downs Health NHS Trust, Surrey and Borders Partnership NHS Foundation Trust, Sussex Partnership NHS Foundation Trust.

<sup>11</sup> These 5 are: University of Brighton, St George's University of London, University of Surrey, Canterbury Christ Church University, The University of Greenwich.

## Appendix - Medway Council and SECAMB

On 20 August, the Medway Council's Health and Adult Social Care Overview and Scrutiny Committee discussed the Foundation Trust application of SECAMB. The following is the relevant extract from the record of that meeting<sup>12</sup>:

### "218 APPLICATION FOR FOUNDATION TRUST STATUS - SOUTH EAST COAST AMBULANCE TRUST

#### Discussion:

The Director of Corporate Affairs and Service Development at South East Coast Ambulance Trust (SECAMB) gave a powerpoint presentation setting out the aims of the Ambulance Trust and reasons why it wished to apply for foundation trust status.

He set out the vision of the Trust and a number of innovative treatments that were offered by ambulance staff. He stated that the Trust was the best in the country on infection control. One of the main reasons for applying for foundation trust status was to achieve independence from the Department of Health and to bring about new freedoms to allow the trust to invest more in services and to bring about further innovations.

In response to a question he stated that it was SECAMB's intention, if it achieved foundation trust status, to hold eight public board meetings per year. In the light of the events in Mid-Staffordshire, where poor levels of care had led to the death of possibly some 400 patients over a three year period, he felt that openness and transparency were important. He said that the Trust was keen to retain its engagement with partners and the public on the various Committees held. He invited Members to consider putting forward a nomination to be part of the Trust's governing body.

A member of the public, who works for the Air Ambulance service, expressed the view that the Ambulance Trust appeared not to be including the Air Ambulance service in its plans. The Director of Corporate Affairs and Service Development stated that the two organisations were separate but that they had a working relationship through the Coxheath Control Centre.

#### Decision:

- (a) Members noted the South East Coast Ambulance Trust's intention to hold public board meetings and the wish to consider a nomination from the Council for its governing body; and
- (b) It was agreed to delegate authority to the Chairman and spokespersons of the Committee, in conjunction with the Head of

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<sup>12</sup> Medway Council,  
<http://www.medway.gov.uk/index/council/committees/commdoc/commlist/viewagenda/viewrecord.htm?id=742>

Democratic Services, to respond to the specific questions from South East Coast Ambulance Trust in relation to their foundation trust application. “