

A Short Guide to **NHS Foundation Trusts**



1

A new type of NHS hospital



NHS Foundation Trusts – Ten Key Points

1.1 *NHS Foundation Trusts are at the cutting edge of the Government's commitment to devolution and decentralisation in the public services, and are at the heart of a patient-led NHS.* They are not subject to direction from Whitehall. Instead, local managers and staff working with local people have the freedom to innovate and develop services tailored to the particular needs of their patients and local communities.

1.2 *NHS Foundation Trusts are firmly part of the NHS and subject to NHS standards, performance ratings and systems of inspection.* They have a primary purpose of providing NHS care to NHS patients according to NHS quality standards and principles – free care based on need, not ability to pay.

1.3 *NHS Foundation Trusts are established in law with a new bespoke form of public ownership as independent Public Benefit Corporations.* This means far greater local ownership and involvement of patients, the public and staff rather than control from the Department of Health. The principles behind NHS Foundation Trusts build on the sense of ownership many local people and staff feel for their hospital.

1.4 *NHS Foundation Trusts are democratic.* Local people and staff directly elect representatives to serve on the Board of Governors. The Board of Governors works with the Board of Directors – responsible for day-to-day running of the Trust – to ensure that the NHS Foundation Trust acts in a

way that is consistent with its terms of authorisation. In this way, the Board of Governors plays a role in helping to set the overall direction of the organisation.

1.5 *NHS Foundation Trusts are not a means to privatisation.* They are required in law to use their assets – such as land and buildings – to promote their primary purpose of providing NHS services to NHS patients. A legal lock protects these organisations from the sort of 'de-mutualisation' we have seen in the Building Society sector and prevent any threat of future privatisation.

1.6 *NHS Foundation Trusts operate within a clear accountability framework.* They are accountable locally to their members through the Board of Governors. And to commissioners – including NHS Primary Care Trusts – for the delivery of NHS services via legally binding agreements. NHS Foundation Trusts are also accountable to Monitor (the Independent Regulator of NHS Foundation Trusts) who oversees and monitors them against their terms of authorisation, and has powers to intervene. NHS Foundation Trusts are not being left to sink or swim and cannot 'cherry pick' services or pursue organisational goals at the expense of the needs of their local health community.

1.7 *NHS Foundation Trusts are there to treat NHS patients, not to make profits or to distribute them.* Just like NHS Trusts, most of their income is derived from agreements reached with local NHS Primary Care Trusts to provide locally relevant



services for NHS patients at the national tariff rate. Private work is strictly limited.

1.8 *NHS Foundation Trusts are not about elitism.* All NHS Trusts will receive help and support so that they too are in a position to apply for foundation status.

1.9 *NHS Foundation Trusts must work in partnership with other NHS organisations.* They remain part of the NHS and have a duty in law to co-operate with other local partners using their freedom in ways that fit with NHS principles and are consistent with the needs of other local NHS organisations.

1.10 *NHS Foundation Trusts are able to direct their services more closely to the communities they serve with freedom to develop new ways of working that reflect local needs and priorities.* This is being done within the NHS framework of standards and inspection that safeguards the quality of NHS care. Direct elections of Governors by local people and staff get local hospitals better focused on meeting the needs of the communities they serve.

2

A new type of NHS hospital



2.1 The introduction of NHS Foundation Trusts (often referred to as “foundation hospitals”) represents a profound change in the history of the NHS and the way in which hospital services are managed and provided.

2.2 NHS Foundation Trusts are a new type of NHS Trust in England. They are part of the Government’s plan for creating a patient-led NHS. The aim of these reforms is to provide high quality care, shaped by the needs and wishes of today’s patients, in the most efficient way. NHS Foundation Trusts have been created to devolve decision-making from central Government to local organisations and communities so they are more responsive to the needs and wishes of their local people. They are also at the leading edge of many of the other reforms and improvements that are creating a patient-led NHS.

2.3 NHS Foundation Trusts are no longer subject to direction from the Secretary of State for Health. Instead, NHS Foundation Trusts establish stronger connections between themselves and their local communities. Those living in communities served by a hospital of an NHS Foundation Trust can become a member of that organisation. The membership community of each NHS Foundation Trust is made up of local people and staff, with patients and carers also having the option to become a member.

2.4 Members are able to stand and vote to elect representatives, to serve on the Board of Governors. Governors are responsible for representing the interests of the members and partner organisations in the local health economy in the running of the NHS Foundation Trust. Local communities and staff working on the front line can therefore have a bigger say in the management and provision of NHS services in their area. NHS Foundation Trusts can in turn direct their services more closely to their communities, with freedom to develop new ways of working so that hospital services more accurately reflect the needs and expectations of local people.

2.5 Although run locally, NHS Foundation Trusts remain fully part of the NHS. They have been set up in law under the *Health and Social Care (Community Health and Standards) Act 2003* as legally independent organisations called Public Benefit Corporations, with a primary purpose to provide NHS services to NHS patients and users according to NHS principles and standards. The public still receive healthcare according to core NHS principles – *free care, based on need and not ability to pay.*

3

NHS Foundation Trust core principles



3.1 The first NHS Foundation Trusts were established in 2004. Since then more waves have been established. In addition to acute and specialist Trusts, mental health Trusts are now applying for foundation status. Over time the Government wants all NHS Trusts to be in a position to achieve foundation status so that throughout the country organisations are empowered to deliver high quality services to local people.

3.2 To support the Government's commitment, the Department of Health is working with Monitor (the Independent Regulator of NHS Foundation Trusts) and Strategic Health Authorities on a programme to determine the state of readiness of NHS Trusts for foundation status and to help them work towards the high standards required for authorisation.

3.3 NHS Foundation Trusts are different from existing NHS Trusts in the following ways:

- They are independent legal entities – Public Benefit Corporations.
- They have unique governance arrangements and are accountable to local people, who can become members and governors. Each NHS Foundation Trust has a duty to consult and involve a Board of Governors (comprising patients, staff, members of the public and partner organisations) in the strategic planning of the organisation.

- They are set free from central Government control and are no longer performance managed by Health Authorities. As self-standing, self-governing organisations, NHS Foundation Trusts are free to determine their own future.
- They have new financial freedoms and can raise capital from both the public and private sectors within borrowing limits determined by projected cash flows and therefore based on affordability. They can retain financial surpluses to invest in the delivery of new NHS services.
- They are overseen by Monitor.

3.4 The new set of freedoms gives NHS Foundation Trusts the opportunity to develop new solutions to long-standing problems such as staff shortages and long waits for certain treatments. However, NHS Foundation Trusts cannot work in isolation. They are bound in law to work closely with partner organisations in their local area. Healthcare planning continues to involve the whole NHS community, but with more freedom to set up partnerships between all healthcare providers.

3.5 NHS Foundation Trusts continue to deliver relevant care for their population, purchased by locally based NHS Primary Care Trusts. They are also inspected by the Healthcare Commission to the same high standards as all other NHS hospitals and service providers. NHS Foundation Trusts must continue to achieve – and are expected to exceed – national healthcare standards.

4

The case for change



4.1 *The NHS Plan*, published by the Department of Health in July 2000, set out how the NHS would continue to provide high-quality care to all, free at the point of delivery, within the context of changing patient needs and increased demand on resources. It established a radical ten year programme of sustained investment and reform to make the NHS more responsive to patients.

4.2 The NHS has delivered real progress in healthcare across the country. For example:

- There are thousands more doctors and nurses
- Dozens of new hospitals have opened or are under way
- Death rates from cancer and heart disease are sharply down
- The maximum waiting time for an operation has fallen from 18 months to less than 9 months, and will continue to fall
- 19 out of 20 patients in A&E are now seen within 4 hours
- Growing numbers of patients are taking advantage of new services such as NHS Direct and NHS Walk-in Centres

4.3 Year on year, more money is being invested in the NHS than ever before. By 2008/9, investment in the NHS will rise to £90 billion per annum. But more still needs to be done. A health service employing over a million people in hundreds of locations nationwide cannot be run from Whitehall. If the reforms are to succeed, NHS hospitals need to be led by local communities and by the NHS professionals delivering services on the ground.

4.4 NHS Foundation Trusts are helping to ensure that the record extra funding going into the NHS produces more responsive local services for patients. Evidence from independent reviews and case studies so far is that NHS Foundation Trusts are making good progress in providing better quality services to NHS patients, developing new services and improving accountability to their local populations while maintaining standards in terms of access to and quality of care.

5

Governance arrangements



A say in how your hospital is run

5.1 NHS Foundation Trusts strengthen local ownership of – and responsibility for – hospital and other health services. Major decisions are informed by active participation from members based in local communities.

5.2 Residents and patients in areas served by an NHS Foundation Trust, with an interest in the wellbeing of their local hospital and health services, can register as members of the organisation.

5.3 NHS Foundation Trusts may also allow for patients who do not live locally, and their carers, to become members.

5.4 Members of NHS Foundation Trusts do not receive any special treatment as NHS patients and users. They have the same access to NHS services as anyone who chooses not to become a member.

5.5 All NHS Foundation Trust members can expect to receive regular information about their local Trust and be consulted on plans for future development.

5.6 Members are able to vote in elections to the Board of Governors of the NHS Foundation Trust. They can also stand for election as governors, and public members are eligible to be appointed as non-executive directors on the Board of Directors.

5.7 The Board of Governors is responsible for representing the interests of the local community in the management and stewardship of the NHS Foundation Trust, and for sharing information about key decisions with other NHS Foundation Trust members.

5.8 The Board of Governors is not responsible for the day to day management of the organisation e.g. setting budgets, staff pay and other operational matters – that is a matter for the Board of Directors. However, the Board of Governors allows local residents, staff and key stakeholders to influence decisions about spending and the development of services. The Board of Governors also appoints the chair and non-executive directors of the Board of Directors.

5.9 It is up to each individual NHS Foundation Trust to determine the detail of the arrangements for the membership and election to the Board of Governors, within certain parameters. In particular, elections must be fair and transparent. Governance arrangements are ultimately *tailored to the individual circumstances of each Trust*, reflecting the range of diverse relationships with patients, the local community and other stakeholders.

‘Some members are already assisting us with the development of our services and this will grow as we all understand the benefits of working together.’

Clive Wilkinson, Chairman, Heart of England NHS Foundation Trust.



5.10 NHS Foundation Trusts are allowed some local flexibility over the size and composition of their Board of Governors. However, every board must have:

- A majority of governors elected by members in the public constituency;
- At least one governor representing local NHS Primary Care Trusts;
- At least one governor representing Local Authorities in the area;
- At least three governors representing staff;
- A chair;
- At least one governor appointed from the local university (if the trust's hospitals include a medical or dental school).

Becoming an NHS Foundation Trust member

5.11 As outward facing, locally owned organisations NHS Foundation Trusts have a duty to engage with local communities and encourage local people to become members of the organisation. They also have a duty to take steps to ensure that the membership base is representative of the communities they serve.

5.12 Eligibility for membership of an NHS Foundation Trust is open to local residents, patients and carers and staff employed by the Trust, in the terms provided in each Trust's constitution.

5.13 Individual NHS Foundation Trusts may provide for people who live outside the area, but have been patients or carers at one of the Trust's hospitals, to be eligible for membership.

5.14 There is no limit on the number of people who can register as members, providing they meet the eligibility criteria. Neither Monitor nor the Department of Health has set out a minimum or maximum number of people who can register as members. It is for NHS Foundation Trusts to ensure they have a representative membership and sufficient members in order that they can mount credible election processes. Governance arrangements for NHS Foundation Trusts need to be reflective of local conditions and proposals that work best for them.

5.15 Beyond minimum legislative requirements and those of the terms of authorisation, it is up to each NHS Foundation Trust to make its own arrangements around membership recruitment and retention, and communicating with its membership base.

6

Local services, national standards



6.1 Monitor is accountable directly to Parliament. The role of Monitor is to assess applications by NHS Trusts, authorise NHS Trusts as NHS Foundation Trusts, issue terms of authorisation to every NHS Foundation Trust, oversee compliance against this and intervene if required only in the event of significant non-compliance with the terms of authorisation.

6.2 The terms of authorisation set out the conditions under which an NHS Foundation Trust operates and cover such things as:

- A description of the health services that an NHS Foundation Trust is authorised to provide;
- A list of services that an NHS Foundation Trust is required to provide to the NHS in England;
- A requirement to operate to national standards and targets, based on the national standards for healthcare against which the Healthcare Commission inspects;
- The circumstances in which major changes to services (for example, in response to a changing local population) need to be discussed locally and agreed by Monitor;
- A list of assets such as buildings, land or equipment that are designated as 'protected' because they are needed to provide required NHS services;
- The amount of money an NHS Foundation Trust is allowed to borrow;
- The financial and statistical information an NHS Foundation Trust is required to provide;
- A limit on the amount of private work an NHS Foundation Trust can carry out. Each NHS Foundation Trust is required to limit the percentage of private patient income to the same level as it was when the organisation was an NHS Trust in 2002-2003.

7

Regulation



7.1 Like all other NHS bodies, NHS Foundation Trusts are inspected against national standards by the Healthcare Commission which produces an annual performance rating for the Trust. Monitor receives copies of inspection reports and decides what, if any, action is needed in the event of failings.

7.2 Monitor oversees all NHS Foundation Trusts to ensure compliance with the terms of their authorisation. The role of Monitor is designed to give NHS Foundation Trusts the freedom to deliver services to meet local needs while safeguarding the interests of NHS patients. In normal circumstances Monitor will have no reason to intervene in the running of an NHS Foundation Trust.

7.3 However, if an NHS Foundation Trust significantly breaches the terms of its authorisation, or finds itself in difficulty, Monitor has the power to step in to resolve the breach. Monitor has a range of intervention powers, including powers to:

- Issue warning notices;
- Require the Board of Governors or Board of Directors to take certain actions or refrain from taking certain actions;
- Suspend or remove members of the Board of Governors or Board of Directors, and make interim appointments.

7.4 In the most serious cases, where intervention by Monitor cannot resolve the breach, an NHS Foundation Trust could be dissolved after consultation. If this were to happen, the *Health and Social Care (Community Health and Standards) Act 2003* provides mechanisms to ensure that NHS patients and users continue to receive high quality treatment.

8

Rewarding results, encouraging growth



8.1 Historically, hospital funding in the NHS has been dependent on the negotiating skills of individual hospital managers in agreeing service levels in block contracts. From April 2005, a fairer more open financial system of *payment by results* is being introduced across the NHS. Under *payment by results*, NHS acute and specialist Trusts and NHS Foundation Trusts will be paid for the services they actually deliver according to a nationally set tariff for most NHS activity. This allows local NHS Primary Care Trusts to buy hospital services that best meet the needs of their local populations without lengthy price negotiations. NHS Primary Care Trusts will have sufficient funding to look for alternative providers if agreed activity levels are not met.

8.2 *Payment by results* is a major reform for the NHS. The new financial system:

- Reimburses hospitals fairly for the services they deliver;
- Rewards efficiency and quality in providing NHS care;
- Give patients more choice about where they are treated and allows funding to 'follow' a patient if he/she decides to be treated in another hospital.

8.3 Those NHS Foundation Trusts that were established at the time started moving towards this 'reward for results' regime a year earlier than NHS Trusts – from April 2004.

8.4 NHS Foundation Trusts enter into legally binding agreements with local NHS Primary Care Trusts which buy locally relevant services for the population served by the Trusts. These contracts set out the number and type of services NHS Foundation Trusts provide.

8.5 If an NHS Foundation Trust wants to change its services, it must consult the NHS Primary Care Trusts that pay for those services. If the services it wishes to change are classified as essential 'protected' NHS services which the Trust is required to provide under its terms of authorisation, then the NHS Foundation Trust must also consult the local Council Overview and Scrutiny Committee, and obtain the agreement of Monitor.

'I believe NHS Foundation status offers us tremendous scope for the future, much more flexibility to invest in design and deliver the services patients and staff think are important, and to continue to make a world class contribution to cancer care.'

Cally Palmer, Chief Executive of the Royal Marsden NHS Foundation Trust.



8.6 NHS Foundation Trusts have significantly greater freedoms over the way they conduct their finances. Unlike NHS Trusts, NHS Foundation Trusts are able to:

- Build up operational surpluses;
- Retain proceeds from asset sales;
- Raise capital in the public and/or private sectors;
- Manage their organisations and their resources – free from central Government control.

8.7 NHS Foundation Trusts have the freedom to decide locally the capital investment needed in order to improve services and increase capacity. They are able to borrow to support this investment, as long as they can afford it, without needing to seek external approval. Access to Private Finance Initiative (PFI) and public capital for major schemes continues as before.

8.8 The amount they can borrow is determined by a formula – the Prudential Code – directly linked to their ability to repay the debt from the revenue they raise. Each NHS Foundation Trust calculates its borrowing limit based on this formula.

8.9 The limit that each NHS Foundation Trust can borrow is set out in its terms of authorisation and is subject to annual review by Monitor.

8.10 Against this borrowing limit, NHS Foundation Trusts are allowed to raise finance to build new facilities and improve existing ones. They are able to borrow money from the Government and from private sector lenders.

8.11 As part of the terms of authorisation issued by Monitor, NHS Foundation Trusts are required to provide essential 'protected' NHS goods and services. The protection also covers the NHS assets needed to continue to provide those services. In this way, patients can be sure that NHS Foundation Trusts continue to be able to provide the NHS services that are needed and commissioned locally. Land, buildings and other assets which are 'protected' in this way, as part of an NHS Foundation Trust's authorisation, cannot be used as security for borrowing.

9

Employment of staff



9.1 Achieving NHS Foundation Trust status does not affect the continuity of service of staff, who will remain NHS staff. Transferring staff have full access to the NHS pension scheme and other NHS benefits.

9.2 NHS Foundation Trusts were among the first NHS organisations to issue new contracts based on the new NHS pay framework *Agenda for Change* (for non-medical staff). As part of *Agenda for Change*, NHS job roles are formally assessed and put into an agreed pay band, ensuring staff are rewarded fairly for the skills they have and the work they do.

9.3 Contracts for medical staff are in place in the NHS, and being developed, in line with the approaches to Modernising Medical Careers and delivering service improvements. NHS Foundation Trusts adopted the new Consultant Contract introduced in October 2003; around 90% of all consultants in the NHS are now on this contract. New contractual arrangements for career grade doctors are being negotiated with the profession, to be introduced with effect from April 2006. Junior doctors are employed under the terms of the New Deal Contract introduced in 2000.

9.4 NHS Foundation Trusts will be able to continue benefiting from new contractual arrangements as these evolve over time. For all NHS organisations, workforce reform is one of the key approaches to delivering improved services. NHS Foundation Trusts can develop a range of local initiatives. It is likely that over time NHS Foundation Trusts will – as high performing organisations with a good track record on workforce policies and practices – use their freedoms to explore innovative approaches to a range of workforce issues e.g. creating new types of jobs, new ways of working and more flexible shift patterns to meet local needs.

10

Becoming an NHS Foundation Trust



10.1 At present, to be eligible to apply for foundation status, NHS organisations must be an acute, specialist or mental health trust. The Government is committed to extending the opportunity to apply for foundation status to future waves of NHS Trusts.

10.2 NHS Trusts wishing to become NHS Foundation Trusts must first obtain the support of the Secretary of State for Health before they can make an application to Monitor for consideration for authorisation as an NHS Foundation Trust.

10.3 In order to obtain the Secretary of State's support, applicant Trusts must demonstrate that they have consulted staff, local NHS partners and the public on their proposals and that their proposals fit with the local vision for health services. Support is dependent on the development of a five year business plan, HR strategy and governance proposals (e.g. membership arrangements, size and composition of the Board of Governors and Board of Directors).

10.4 Once the Secretary of State has given support, applicants are asked to submit an application for an authorisation to Monitor. The decision to authorise a Trust as an NHS Foundation Trust is strictly a decision for Monitor after having satisfied itself of an applicant's preparedness and viability for foundation status.

10.5 Monitor looks at the detail of individual applicants in determining whether to authorise a Trust as an NHS Foundation Trust or not. To be authorised as an NHS Foundation Trust, an

applicant must meet the criteria laid down in the *Health and Social Care (Community Health and Standards) Act 2003* and Monitor's own criteria set out in its guide for applicants. The criteria reflect the need for an NHS Foundation Trust to be legally constituted, financially viable and sustainable, and well governed.

10.6 The Department of Health provides direct financial support to NHS Foundation Trust applicants to assist them in their preparations for their application and establishment as an NHS Foundation Trust. The Department also supplies a centrally provided programme of support. This includes training events, local implementation events, project management planning support, good practice guides, model constitution and model contract, access to policy officials and technical expertise, and regular feedback on developing proposals as trusts move forward to submitting their application to the Secretary of State for approval.

10.7 The Foundation Trust Network represents the views, and promotes the interests of, NHS Foundation Trusts and NHS Trusts applying for foundation status. The Network discusses, defines and responds to policy issues and represents NHS Foundation Trusts to key stakeholders, decision makers and the media to influence and shape existing and emerging policy. A key part of the Network's mission is to enable NHS Foundation Trusts to share innovation and learning, whilst providing a single point of contact for those wanting to know more about the foundation trust movement.

Finding out more

Further details about Monitor can be found at **www.monitor-nhsft.gov.uk**

Further details about the Foundation Trust Network can be found at **www.foundationtrustnetwork.org**

Further details on NHS Foundation Trusts can be found at **www.dh.gov.uk/foundationtrusts**

Further details on Agenda for Change and all published documentation can be found at **www.dh.gov.uk/agendaforchange**

Further details on Payment by Results can be found at **www.dh.gov.uk/paymentbyresults**

The Healthcare Commission's review of NHS Foundation Trusts can be found at **www.healthcarecommission.org.uk**



Gateway 5591

© Crown Copyright 2005

Produced by the Department of Health
271433 1p 40k Nov 05 (BEL)
CHLORINE FREE PAPER

The text of this document may be reproduced without
formal permission or charge for personal or in-house use.

First published November 2005

Department of Health Publications
PO Box 777
London SE1 6XH
Tel: 08701 555 455
Fax: 01623 724 524
Email: dh@prolog.uk.com

271433/A Short Guide to NHS Foundation Trusts can also be made
available on request in braille, audio cassette, disk, large print and
in other languages.

www.dh.gov.uk/nhsfoundationtrusts