

A Short Guide to NHS Foundation Trusts

1. A new type of NHS hospital

- 1.1 The next five years will see major changes to the way hospital services are provided. Local communities and staff are to be given a bigger say in managing NHS services in their area.
- 1.2 The *Health and Social Care (Community Health and Standards) Bill* is currently before Parliament. Subject to Parliamentary approval, the first wave of a new type of NHS hospital - NHS Foundation Trusts - will be up and running from April 2004. There will also be future waves of NHS Foundation Trusts after this time.
- 1.3 NHS Foundation Trusts will be established in law as new legally independent organisations called Public Benefit Corporations, with a duty to provide NHS services to NHS patients.
- 1.4 NHS Foundation Trusts will establish stronger connections between local hospitals and their local communities. Local communities will have social ownership of their NHS Foundation Trust. Those living in communities served by a hospital of an NHS Foundation Trust will be invited to become a member. The membership community of each NHS Foundation Trust will be made up of local people, patients and carers and staff.
- 1.5 Members will be able to stand and vote in elections for Governors of the Trust. Governors will be responsible for representing the interests of the members and partner organisations in the local health economy in the governance of the NHS Foundation Trust. This sort of public ownership and accountability will ensure hospital services more accurately reflect the needs and expectations of local people.
- 1.6 Although run locally, NHS Foundation Trusts will remain part of the NHS family. NHS Foundation Trusts will continue to deliver relevant care for their population, purchased by locally based NHS Primary Care Trusts. The public will still experience healthcare according to core NHS principles - *free care, based on need and not ability to pay*.
- 1.7 NHS Foundation Trusts will be set free from central Government control, manage their own budgets and be able to shape the healthcare services they provide to better reflect local needs and priorities.

- 1.8 Inspected by the new Commission for Healthcare Audit and Inspection to the same high standards as all other NHS hospitals, NHS Foundation Trusts will have freedom to develop new solutions to long-standing problems such as staff shortages and long waits for certain treatments.
- 1.9 NHS Foundation Trusts will not work in isolation. They will be bound in law to work closely with partner organisations in their local area. Health care planning will continue to involve the whole NHS community, but with more freedom to set up partnerships between all healthcare providers.
- 1.10 The Government's aim is that by 2008, all NHS Trusts will have reached a standard which would enable them to apply for NHS Foundation Trust status. This will ensure that throughout the country there are high performing organisations which are empowered to deliver high quality services to local people, so that no part of the NHS is left behind.
- 1.11 Organisations already performing to high standards - those awarded 'three stars' in the NHS performance ratings - are the first to be invited to apply to become NHS Foundation Trusts from April 2004 because they are the organisations best able to make the most of the new freedoms offered by foundation status.
- 1.12 Other NHS Trusts will be supported through a £200 million investment programme over the next four to five years to help them achieve the required standard in order to be able to submit an application for foundation status.

2. The case for change

- 2.1 *The NHS Plan*, published by the Department of Health in July 2000, set out a radical ten year reform programme for the NHS.
- 2.2 Good progress has already been made. Waiting times are falling. Death rates from major killers like heart disease and cancer are decreasing. Extra doctors and nurses are being recruited. Health care facilities are being updated and replaced across the country. More money is being invested in the NHS than ever before - £59billion this year, up from £54billion last year.
- 2.3 But more still needs to be done. A service employing over a million people in hundreds of locations nationwide cannot be run from Whitehall.
- 2.4 If the reforms are to succeed, they need to be led by local communities and by the NHS professionals delivering services on the ground.

3. NHS Foundation Trust core principles

- 3.1 NHS Foundation Trusts are a brand new type of NHS organisation. New legislation will have to be passed in Parliament to create them.
- 3.2 These new Trusts will be new legal entities – Public Benefit Corporations. They will have stronger local ownership and greater involvement of their local communities through their links with their members. Local people, patients and carers and staff will be able to become members of their local NHS Foundation Trust.
- 3.3 NHS Foundation Trusts will be different from existing NHS Trusts in three important ways. They will:
- Have new freedom to decide locally how to meet their obligations;
 - Be accountable to local people, who will become members and Governors;
 - Be authorised and monitored by an Independent Regulator for NHS Foundation Trusts.
- 3.4 NHS Foundation Trusts will remain part of the NHS. They will be required by law to:
- Maintain high national standards for NHS services;
 - Deliver NHS services to NHS patients free at the point of use;
 - Treat patients according to need, not ability to pay;
 - Work in co-operation with other health and social care partners.
- 3.5 The primary purpose of NHS Foundation Trusts will be to provide NHS services to NHS patients and this will be set out in their terms of authorisation which will be issued by the Independent Regulator. NHS Foundation Trusts will be prevented from selling off or mortgaging NHS property and resources needed to provide key NHS services.

4. Governance arrangements

A say in how your hospital is run

- 4.1 NHS Foundation Trusts will strengthen local ownership of - and responsibility for - hospital services. Major decisions will no longer be taken by civil servants or Government Ministers in isolation. They will be taken *with* local communities *for* local communities.
- 4.2 Residents and patients in areas served by an NHS Foundation Trust with an interest in the wellbeing of their local hospital will be invited to register as members of the organisation.
- 4.3 NHS Foundation Trusts may also allow for patients who do not live locally, and their carers, to become members.

- 4.4 Members of NHS Foundation Trusts will not receive any special treatment as NHS patients. They will have the same access to NHS services as anyone who chooses not to become a member.
- 4.5 All NHS Foundation Trust members can expect to receive regular information about their local Trust and be consulted on plans for future development.
- 4.6 Members will be able to vote in elections to the Board of Governors of the NHS Foundation Trust. They will also be able to stand for election as Governors, and public members will be eligible to be appointed as non-executive directors on the Board of Directors.
- 4.7 The Board of Governors will be 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.
- 4.8 The Board of Governors will not be responsible for the day to day management of the organisation e.g. setting budgets, staff pay and other operational matters – that will be a matter for the Board of Directors. The Board of Governors will however enable local residents, staff and key stakeholders to influence decisions about spending and the development of services. The Board of Governors will also appoint the chair and non-executive directors of the Board of Directors.
- 4.9 It will be 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, there must be fair and transparent elections. Governance arrangements will ultimately be *tailored to the individual circumstances of each Trust*, reflecting the range of diverse relationships with patients, the local community and other stakeholders.
- 4.10 NHS Foundation Trusts will be allowed some local flexibility over the exact 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 Primary Care Trusts;
 - At least one governor representing Local Authorities in the area;
 - At least one governor 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

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

- 4.12 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.
- 4.13 There will be no limit on the number of people who can register as members, providing they meet the eligibility criteria.
- 4.14 Membership of an NHS Foundation Trust is about participation and real responsibility and all members must agree to pay a token sum (fixed in law at a maximum of £1) to the Trust as a symbol of their commitment. This is not a membership fee, and members will not be required to pay a regular subscription - indeed it is unlikely that the sum will ever be collected.

5. Local services, national standards

- 5.1 An Independent Regulator, accountable directly to Parliament, will be appointed to oversee NHS Foundation Trusts.
- 5.2 Every NHS Foundation Trust will have an authorisation – like a 'licence' to operate - issued by the Independent Regulator. The terms of authorisation will set out the conditions under which an NHS Foundation Trust will operate and will cover such things as:
- A description of the health goods and services that a Trust is authorised to provide;
 - A list of goods and services that a Trust is required to provide to the NHS in England;
 - A requirement to operate to high standards, based on the national standards for healthcare against which the Commission for Healthcare Audit and Inspection will inspect;
 - 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 the Independent Regulator;
 - A list of assets such as buildings, land or equipment that are designated as 'protected' because they are needed to provide required NHS services;
 - Limits on the amount of private work an NHS Foundation Trust can carry out. NHS Foundation Trusts will be subject to strict limits on private patient work based on the amount of private work they currently do. If an NHS Foundation Trust wishes to treat more private patients, it will need to treat more NHS patients *first*. This will ensure that NHS Foundation Trusts continue to focus on NHS work;
 - 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.
- 5.3 Like all other NHS bodies, NHS Foundation Trusts will be inspected against national standards by the Commission for Healthcare Audit and Inspection. The Independent Regulator will receive copies of inspection reports and decide what, if any, action is needed in the event of failings.
- 5.4 The Independent Regulator will monitor each NHS Foundation Trust to ensure they do not breach the terms of their authorisation. The role of the Independent Regulator 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 the Independent Regulator will have no reason to intervene in the running of an NHS Foundation Trust.
- 5.6 However, if an NHS Foundation Trust significantly breaches the terms of its authorisation, or finds itself in difficulty, the Independent Regulator will have the power to step in to resolve the breach. The Independent Regulator will have a range of intervention powers, including powers to:
- Issue warning notices;
 - Require the Board of Governors or Board of Directors to take certain actions;
 - Suspend or remove the Board of Governors or members of the Board of Directors.
- 5.7 In the most serious cases, where intervention by the Independent Regulator could not resolve the breach, an NHS Foundation Trust could be dissolved. If this ever were to happen, the *Health and Social Care (Community Health and Standards) Bill* provides mechanisms to ensure that NHS patients continue to receive high quality treatment.

6. Rewarding results, encouraging growth

- 6.1 Historically, hospital funding 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 *payments by results* will be introduced across the NHS.
- 6.2 The new financial system will:
- Reimburse hospitals fairly for the services they deliver;
 - Reward efficiency and quality;
 - Ensure services are developed in line with local need;
 - Give patients more choice about where they are treated;
 - Allow funding to 'follow' a patient if they decide to be treated in another hospital.
- 6.3 NHS Foundation Trusts will start moving towards this 'reward for results' regime a year early than NHS Trusts - from April 2004.

- 6.4 NHS Foundation Trusts will enter into legally binding agreements with local NHS Primary Care Trusts who will buy locally relevant services for the population served by the Trusts. These contracts will set out the number and type of services NHS Foundation Trusts will provide.
- 6.5 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 the Independent Regulator.

7. Borrowing for growth, protecting NHS assets

- 7.1 NHS Foundation Trusts will have freedom to decide locally the capital investment needed in order to improve services and increase capacity. They will be 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 and Public Capital for major schemes will continue.
- 7.2 The amount they can borrow will be 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 will calculate their borrowing limit based on this formula.
- 7.3 The limit that each NHS Foundation Trust can borrow will be set out in their authorisation and will be subject to annual review by the Independent Regulator.
- 7.4 Against this borrowing limit, NHS Foundation Trusts will be allowed to raise finance to build new facilities and improve existing ones. They will be able to borrow money from the Government and from private sector lenders.
- 7.5 As part of the terms of authorisation issued by the Independent Regulator, NHS Foundation Trusts will be required to provide essential 'protected' NHS goods and services. The protection will also cover the NHS assets needed to continue to provide those services. In this way, patients can be sure that NHS Foundation Trusts will 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.

8. Modernising pay and conditions

- 8.1 NHS Foundation Trusts will be among the first NHS organisations to issue new contracts based on the new NHS pay framework *Agenda for Change*.

- 8.2 As part of *Agenda for Change*, NHS job roles will be formally assessed and put into an agreed pay band, ensuring staff are rewarded fairly for the skills they have and the work they do.
- 8.3 Achieving NHS Foundation Trust status will not affect the continuity of service of staff. Transferring staff will have full access to the NHS pension scheme and other NHS Benefits.
- 8.4 But NHS Foundations Trusts will be able to develop a range of local initiatives. They will be encouraged to create new types of jobs, new ways of working and more flexible shift patterns to meet local needs.

9. Qualifying for NHS Foundation Trust status and the application process

- 9.1 To be eligible to apply for foundation status, NHS organisations must:
- Be an acute or specialist NHS Trust (in the future foundation status may be available to other types of NHS Trusts);
 - Hold a 'three star' rating in the annual NHS performance ratings and maintain this throughout the application process;
 - Prove that they have strong leadership and a commitment to modernising services for the benefit of patients and local communities;
 - Have the support of staff and other local stakeholders for their vision for reform.
- 9.2 The applications process for NHS Foundation Trust status comprises of two distinct phases (i) *preliminary* and (ii) *preparatory*.
- 9.3 Requirements for preliminary applications are brief. Applicants at this phase are asked to provide information on current and recent past performance and working practices across a range of national priority areas.
- 9.4 Applicants who are shortlisted to enter the preparatory phase are asked to set out their vision for the new organisation. This must complement the local health community's vision. Applicants are also asked to provide proposals for their governance arrangements (e.g. membership arrangements, size and composition of the Board of Governors and Board of Directors etc) and HR policy.
- 9.5 At the end of the preparatory phase, the Secretary of State for Health will consider each proposal against set criteria, alongside evidence of relevant and inclusive consultation. He will then indicate whether he supports the application.
- 9.6 Once the Secretary of State has given his support, applicants will be asked to submit an application for an authorisation to the Independent Regulator. The final decision on whether an organisation can be established as an NHS Foundation Trust rests with the Independent Regulator.
- 9.7 Subject to Parliamentary approval, the first NHS Foundation Trusts will be established from April 2004 and there will be further waves of NHS Foundation Trusts thereafter.

Finding out more

- *A Guide to NHS Foundation Trusts*, published by the Department of Health, is available at www.doh.gov.uk/nhsfoundationtrusts
- Details on *Agenda for Change* and all published documentation can be found at www.doh.gov.uk/agendaforchange
- Details on *Payment by Results* can be found at www.doh.gov.uk/nhsfinancialreforms

Ten key points about NHS Foundation Trusts

NHS Foundation Trusts will be firmly part of the NHS and subject to NHS standards, performance ratings and systems of inspection. They will treat NHS patients according to NHS quality standards and principles – free care based on need, not ability to pay.

NHS Foundation Trusts will be established in law as independent Public Benefit Corporations. This will mean 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.

NHS Foundation Trusts will be democratic. Local people and staff will directly elect representatives to serve on the Board of Governors. The Board of Governors will work 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 will play a role in helping to set the overall direction of the organisation.

NHS Foundation Trusts will prevent privatisation of the NHS. They will be 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 will protect these organisations from the sort of 'de-mutualisation' we have seen in the Building Society sector and prevent any threat of future privatisation.

NHS Foundation Trusts will operate within a clear accountability framework. They will not be left to sink or swim, allowed to 'cherry pick' services or set loose to pursue organisational goals at the expense of the needs of their local health community.

NHS Foundation Trusts will be there to treat NHS patients, not to make profits or to distribute them. Most of their income will come through agreements reached with local NHS Primary Care Trusts to provide locally relevant services for NHS patients at the national tariff rate. Private work will be strictly limited.

NHS Foundation Trusts will be at the cutting edge of the Government's commitment to devolution and decentralisation in the public services. They will not be subject to direction from Whitehall. Local managers and staff working with local people - rather than remote Civil Servants - will have the freedom to innovate and develop services tailored to the particular needs of their local communities.

NHS Foundation Trusts are not about elitism. All NHS Trusts will get help and support over a four to five year period so they too are in a position to apply for foundation status.

NHS Foundation Trusts will work in partnership with other NHS organisations. They will remain part of the NHS. They will 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. They will be overseen by a new Independent Regulator, accountable to Parliament, and inspected by the new Commission for Healthcare Audit and Inspection.

NHS Foundation Trusts will be 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 will be 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 will get local hospitals better focused on meeting the needs of the communities they serve.

