

NHS Foundation Trusts – key features for health scrutiny

Briefing note by Mike Cooper, Tamarind Chambers, Dec 2009

NHS Foundation Trusts (FTs) were established under the Health and Social Care (Community Health and Standards) Act 2003. They remain part of the NHS, but with new governance arrangements and greater freedoms, intended 'to devolve decision-making from central government control to local organisations and communities, to make Trusts more responsive to the needs and wishes of local people' (Department of Health, DH).

The key differences from other NHS Trusts are that FTs are:

- legally independent bodies under new form of public ownership as independent 'Public Benefit Corporations';
- accountable to local people, through their membership and Governing Board;
- not accountable to or performance managed by the SHA, DH or Secretary of State;
- responsible to Monitor (see below) not Secretary of State.

FTs have greater freedom (than other NHS Trusts) to develop their services and direct their resources to meet local needs and priorities. FTs:

- are free of central government control and not performance managed by SHAs;
- can retain financial surpluses and retain proceeds of asset sales;
- decide their own capital investment needs; and
- can raise capital from the public and private sectors (within limits set by Monitor).

FTs (similar to other Trusts):

- are subject to national standards and targets, and to inspection by the Care Quality Commission (CQC) (same as other NHS Trusts);
- provide NHS services under legal contract to PCTs (as commissioner).

'Terms of Authorisation' set out the conditions under which the FT operates, including: the services it can provide, the services it is required to provide to the NHS – 'protected' services, and a list of assets that are 'protected' (ie are required for the provision of 'protected' services).

In relation to the role and power of health scrutiny, they are 'local NHS bodies' and should be treated the same way as other NHS Trusts; however scrutiny committees should note that:

- Officers of an FT are required to provide information and attend health scrutiny committees, the same as other Trusts, but they are likely to see their primary accountability as being to their governing body.
- If an NHS Foundation Trust wants to change 'protected' NHS services, it must consult the local health scrutiny committee, and obtain the agreement of Monitor (similar to consultation on substantial variation and right of referral to SofS).

FTs are accountable to:

- members through Board of Governors;
- PCTs through contracts;
- Monitor.

FTs can tailor their governance arrangements to suit their community and health economy.

Membership: FTs have a duty to engage with their local community, and encourage local people to become members. The way that its membership is structured and recruited is up to each FT.

Membership is open to:

- residents and patients in areas served by the FT;
- staff of the FT; and
- optionally – patients who do not live locally, and their carers.

Members:

- receive regular information about their Trust;
- are consulted on plans for future development;
- can vote in elections to the Board of Governors; and
- can stand for election as Governors.

And public members are eligible to be appointed as non-executive directors (NEDs) on the Board of Directors.

Governance. Two-tier governance:

- Board of Governors (oversight).
- Board of Directors (corporate leadership).

Chair of FT is Chair of Board of Directors and Chair of Board of Governors.

Board of Governors. Also called Council of Governors, Membership Council, member's council, governing body.

The exact size and shape of its Board of Governors is determined by each FT in the light of its local circumstances, within minimum parameters set out in legislation:

- a majority of places must be representatives elected from public and patient membership;
- at least three staff governors elected from the staff membership; and
- at least one local authority governor, one primary care trust governor and where applicable at least one university governor, nominated by the relevant organisation.

Role of Board of Governors:

- represent the interests of the members and partner organisations in the local health economy in the governance of the Trust;
- share information about key decisions with their membership community;
- work with the Board of Directors to set the strategic direction of the Trust and ensure it acts in a way that is consistent with its terms of authorisation;
- advise the Board of Directors and 'influence' decisions about spending and service development; and
- collectively hold the Board of Directors to account.

Plus the Board of Governors:

- appoints Chair and NEDs of Board of Directors (and can remove on 75% vote);
- approves appointment of Trust Chief Executive;
- agrees terms and remuneration of NEDs and Chair; and
- receives annual report and accounts.

Governors are not responsible for the day-to-day management of the FT.

Governors must act in the best interests of the FT (same as Directors).

Governors have a 'scrutiny' role and are separate from the 'executive' function of the Board of Directors, but they are not 'independent' as they are required to act in the interests of the FT.

Board of Directors. Made up of executive directors, paid employees, including the CE and finance director; and equal or larger number of non-executive directors, including the chair.

Role of Board of Directors:

- responsible for performance of Trust, exercises powers of FT;
- responsible for the day-to-day management of the organisation e.g. setting budgets, staff pay and other operational matters (like other NHS Trusts); and
- must consult and involve Board of Governors in strategic planning of Trust, and in preparing the Trust's forward plan must have regard to the views of the Board of Governors.

Monitor, the Independent Regulator of Foundation Trusts: approves applications for Foundation Trust status, issues Terms of Authorisation, monitors performance, and can intervene in the event of serious non-compliance with the terms of authorization – can require the FT to take certain action, and can suspend or remove members of the Board of Governors or Board of Directors. Monitor is accountable directly to Parliament (not Secretary of State).