Haringey Council

Scrutiny Review: the North Middlesex University Hospital application for Foundation Trust status

A REVIEW BY THE OVERVIEW AND SCRUTINY COMMITTEE

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1. Executive Summary

1. Foundation trust hospitals were established under the Health & Social Care Act 2003. Foundation trusts are a new type of public service, a Public Benefit Organisation, which allows independence of NHS control while requiring adherence to NHS principles and core standards of care. To date, 83 NHS trusts have acquired foundation trust status, 17 of which are mental health providers.

2. NHS Trusts that acquire foundation trust status are given greater freedom and flexibility in the way that they plan and provide services. In particular, foundation trusts have additional financial flexibility to borrow money from both NHS and private capital sources. These freedoms may allow foundation trusts to be more responsive to patient needs, enabling the speedier development of services to suit the needs of the local community.

3. The North Middlesex University Hospital (NMUH) NHS Trust has indicated that it intends to apply as part of the 8th wave of NHS trusts applying for foundation trust status. The Trust is currently undertaking a consultation exercise in Haringey and Enfield to help develop its proposals for foundation trust status. NMUH has consulted Haringey Overview & Scrutiny Committee Haringey and the following report provides Member feedback on the Trusts proposals for foundation status.

4. The community consultation undertaken by the NMUH has focussed on the Trusts future plans and priorities as a foundation hospital and the new arrangements it intends to develop for the governance of the Trust. To ensure that potential benefits are realised, that there is accountability to the local community and that the change of status is not detrimental to partners within the local health economy, the Panel feels strongly that the following safeguards need to be put in place:

- Further developments to ensure the democratic accountability and transparency of the governance structure of the Trust;
- Reassurance that the Trust is committed to local partnerships and working to locally agreed priorities of delivering health improvement and helping to redress health inequalities;
- Guarantees that financial freedoms obtained by the Trust would not be used anti-competitively within the local health economy;
- Assurance that services will continue to be planned around the needs of patients and meet the needs of the wider health economy;
- Verification that Haringey TPCT has the necessary capacity, resources and expertise to manage the new contractual relationship with the Trust.

5. The NMUH NHS Trust is intending to submit its application for foundation trust status in 2008. It is hoped that the findings and recommendations presented within this Scrutiny Review, can help to guide and inform the further development of the Trusts proposals for foundation trust status.

2. Review recommendations

Application Process

1. That the outcomes and issues arising from the Equalities Impact Assessment be addressed in the strategic planning of the Trust.

Accountability and governance

Membership

2. The Trust regularly audits and publishes membership data to ensure that it is fully representative of the community which it serves.
3. That Trust Membership is refreshed and renewed on a periodic basis.
4. That a dedicated and ongoing programme of engagement, awareness raising and member recruitment amongst hard to reach communities is established.
5. That the Trust makes explicit reference to the ongoing costs of recruiting and maintaining the Membership within its annual accounts.
6. That the Trust promotes the active participation of the Membership and develops methods to monitor this.

Board of Governors

7. That the composition of the Board of Governors ensures that Patient and Public Governors are in a majority.
8 That, as a priority, the Board of Governors should develop the constitution for the Trust in collaboration with the Board of Directors.
9. A full programme of training should be prepared for Governors once they are elected/ appointed to ensure that they have the necessary skills and expertise to undertake their responsibilities.

Relationship between Board of Directors and Board of Governors

10. The Trust consults with other foundation trusts in order to develop a model of governance which is both open and transparent.
11. There should be regular joint meetings of the Board of Governors and the Board of Directors to ensure that the views and representations of the wider Membership are translated in to executive action.

Local partnerships and the local health economy.

12. That the Trust should continue to ensure that service information (financial, service activity data) essential for effective local commissioning is accessible and provided in a timely fashion to Haringey TPCT.
13. That the Trust should be an active and committed partner within the Local Strategic Partnership (Local Area Agreement).
14. That the Trust maintains the current level of financial transparency.
15. That disposal of non protected capital assets held by the Trust should only be done so under lease and covenanted for ongoing medical / healthcare usage.

3. Introduction

3.1 NHS foundation trusts are free from NHS control, manage their own budgets and are more able to shape the healthcare services they provide to meet the needs of the local community. Thus the establishment of foundation trusts represents a substantive change in the way that health services are provided and managed within the NHS.

3.2 It is intended that all NHS Trusts will become foundation trusts by the end of 2008. To date approximately one quarter of all eligible NHS trusts have successfully obtained foundation trust status. The NMUH NHS Trust aims to attain clearance to apply for foundation trust status from the Department of Health early in 2008 with the full application to the foundation trust regulator (Monitor) taking place soon after.

3.3 The NMUH NHS Trust has planned a 12 week consultation to engage and inform local stakeholders about the nature of their proposed developments and to take on board views and responses to these plans. It is intended that that the consultation process will guide and inform the Trusts application for foundation trust status.

3.4 As part of the consultation process, the NMUH NHS Trust has consulted with the London Borough of Haringey Overview and Scrutiny Committee (OSC). The following report details the conclusions and recommendations of a Scrutiny Review Panel convened by OSC to examine the Trusts proposals for foundation trust status.

4. Background – National Context

4.1 NHS foundation trusts were established under provisions within the Health & Social Care (Community Health & Standards) Act 2003. Foundation trusts are Public Benefit Corporations, which aim to develop stronger connections between hospitals and the communities they serve.

4.2 Acute, mental health and ambulance services may apply for foundation trust status. The main incentive to obtain foundation trust status is that this will bring new freedoms and flexibilities to health care providers. Foundation trusts have more freedoms than other NHS Trusts, which include:

- Independence of NHS control and more accountable to local people;
- The ability to decide locally on the nature and level of services provided;
- Greater financial self-determination (to borrow & invest).

4.3 Foundation trusts are authorised (granted an operating licence) and supervised by an independent regulator (Monitor). Foundation trusts are regularly audited by Monitor to ensure that they comply with the terms of their authorisation, particularly in relation to the provision of core services, governance and financial management.

4.4 Foundation trusts are still part of the NHS and continue to conform to key NHS principles:

- Providing free care, based on need and not the ability to pay;
- Adherence to core clinical standards in health care;
- Have a duty of cooperation with other health and social care partners.

4.5 Although foundation trusts are independent of NHS control, accountability is maintained through the operation of a Membership. Patients, staff and the general public can become part of the Membership of the foundation trust. The Membership elects constituency representatives (Governors) to the Board of Governors, which has powers to appoint the Chairman and Non Executive Directors to the Board of Directors. Whilst the Board of Governors must be consulted on the strategic development of the trust, day to day operational management of the foundation trust remains with the Board of Directors.

4.6 To date, 83 acute and mental health service trusts have acquired foundation trust status, 17 of which are mental health service providers.

Background – Local Context

4.7 The NMUH NHS Trust is a medium sized acute sector hospital with over 400 beds. The NMUH operates a very busy accident and emergency department that has over 160,000 attendances each year (NMUH, 2007). The NMUH is one of two hospitals which provide the majority of secondary health care for people in Haringey.

4.8 Reports would suggest that the NMUH is meeting all of the core NHS standards. In the annual rating for the quality of services provided, the NMUH was rated as 'fair' and for its use of resources it was rated as 'poor' (Healthcare Commission, 2007). Annual accounts have shown that the NMUH has a cumulative deficit of £13m, but has recorded a small financial surplus in 2006/7. A surplus of £3m is projected for 2007/8.

4.9 The NMUH NHS Trust is currently commencing a major site development: £111m has been acquired through LIFT to replace over one-half of the current site building and to develop new emergency care services and diagnostic suites. It is intended that the acquisition of foundation trust status will provide additional flexibility and freedoms to allow the hospital to progress the redevelopment of the site further and to allow the hospital to provide services that match the needs of the community more quickly in the future.

4.10 The NMUH intends to recruit to the Membership from residents aged 12 and over in Haringey and Enfield. Patient membership will be drawn from a wider geographic area. The target for Trust Membership is 5,000-10,000 members. Of the planned 36 Governors, 21 will be elected (16 public, 2 patient and 3 staff) and 15 will be appointed (from local PCTs, Local Authorities, Universities and other local stakeholders). The Chairman of the Trust will preside over both the Board of Governors and the Board of Directors.

4.11 From 2006/7 a more holistic assessment has been used to determine trusts eligibility to apply for foundation trust status. A 'fair' rating in any aspect of service 'will not in itself debar the trust from applying', though any 'poor' rating 'will call the application in to question' (DH, 2007). The NMUH is operating a consultation period for foundation trust status from 22nd October 2007 through to 13th January 2008.

5. Review aims, objectives and methods

5.1 The Overview & Scrutiny Committee at the London Borough of Haringey formed a review Panel to consider the NMUH application for foundation trust status. The review Panel consisted of 4 Members and met twice to consider evidence and form recommendations. The terms of reference for the review were agreed as:

> *"…to consider and comment as appropriate on the proposed application for foundation status by the North Middlesex University Hospital NHS Trust and, in particular, its overall strategy and governance arrangements."*

5.2 In its deliberations the Panel indicated that it wished to focus on 5 key objectives:

- The process for foundation trust application (consultation);
- Accountability and governance issues raised;
- Equality of access, impact on partnerships and the local health economy;
- Impact on local people;
- Financial implications of acquiring foundation trust status.

5.3 To fulfil the review objectives, the Panel obtained evidence from a range of sources. These included:

- Oral and written evidence from the NMUH NHS Trust;
- Research and best practice data.

6. Report Findings

6.1 Consultation process for foundation trust application

6.1.1 The review Panel concluded that the NMUH produced a clear consultation strategy which spanned the statutory requirement of 12 weeks. Overview & Scrutiny Committee were consulted as part of this process.

6.1.2 It was noted that the NMUH produced a consultation document which had detailed ways in which people could fully respond to the planned proposals. 25,000 copies of the consultation document are intended to be circulated in the community. The Panel understood that all responses to the consultation would be collated, analysed and summarised within the application process to the Secretary of State and to Monitor, the licensing and regulatory authority.

6.1.3 The Panel were provided with evidence that the NMUH would undertake and Equalities Impact Assessment of the trust Membership. Analysis of the equalities impact will help the Trust to identify under representation within

the Membership and to target appropriate groups for recruitment. The Panel understands that this will be an ongoing process.

Recommendation:
1. That the outcomes and issues arising from the Equalities Impact Assessment be addressed in the strategic planning of the Trust.

6.2. Accountability and governance issues;

Membership

6.2.1 The Panel received evidence to indicate that the size of the Membership for foundation trusts varied considerably (5,000 to 90,000) and was dependent on a number of factors including the size of the trust, the nature of services provided (i.e. specialist or general care) and the model of Membership used (i.e. opt-in or opt-out).

6.2.2 There is evidence to suggest that the Membership can be a significant resource to foundation trusts in that it can provide helpful intelligence about the accessibility and quality of services provided (Monitor, 2007). It was also noted that the development of a Membership has also been associated with significant increases in attendance a foundation trust public meetings (Healthcare Commission, 2005). The Panel therefore considered it important that the Trust take steps to engage the Membership and to ensure that it plays an active role in the governance of the Trust.

6.2.3 It was felt that the operation of a foundation trust Membership does not constitute a public and patient involvement strategy in itself, particularly as there is evidence to suggest that foundation trusts have failed to reach traditionally under represented communities through their Membership (Healthcare Commission, 2005). The Panel indicated that the Trust should regularly audit the Membership to ensure that it is representative of the community. The Panel also indicated that the Trust should adopt pro-active outreach strategies particularly among hard to reach groups to ensure that all members of the community have an opportunity to contribute to the development of the Trust.

6.2.4 The costs associated with developing and maintaining the foundation trust Membership (recruitment, communication and elections) may be considerable. The Panel heard evidence that at one foundation trust the cost of maintaining the Membership was £150,000, equating to £30 per Member per annum. The Panel therefore indicated that such costs should be explicit and transparent and should not impact on the provision of services for patients.

Recommendation:
2. The Trust regularly audits and publishes membership data to ensure that it is fully representative of the community which it serves.
3. That Trust Membership is refreshed and renewed on a periodic basis.
4. That a dedicated and ongoing programme of engagement, awareness raising and member recruitment amongst hard to reach communities is established.
5. That the Trust makes explicit reference to the ongoing costs of recruiting and maintaining the Membership within its annual accounts.

6. That the Trust promotes the active participation of the Membership and develops methods to monitor this.

Board of Governors

6.2.5 The Panel have noted that current plans for the Board of Governors provide for a total of 36 Governors, of which 18 are patient or public representatives. The Panel noted that this contravenes statutory regulations where patient and public governors must form a majority on the Board of Governors (DH, 2006)

6.2.6 Whilst it was noted that within national guidance (DH, 2004) that Governors should adopt one of three roles (advisory, guardianship or strategic), from evidence to the Panel it was noted that there was some confusion as to the exact nature of the Governor role which resulted in broad variations in practice. A number of reports have indicated that Governors experience a high degree of uncertainty as to their role and responsibilities, particularly upon their initial election or appointment to the Board of Governors (Lewis & Hinton, 2005; Chester, 2005).

6.2.7 The Panel noted that Governors provide a critical link between the Membership and the foundation trust. This link provides the route through which the community is engaged & involved and establishes a line of accountability between the foundation trust and the wider public. The Panel were made aware of evidence that at some trusts, the interaction between Governors and the Membership was poor. Research has highlighted problems with Governors not being able to define their constituents, or having received limited training in engagement processes or of having received inadequate resources to enable them to deliver effective communication strategies (Lewis & Hinton, 2005).

6.2.8 The need to provide a systematic and ongoing programme of training for Governors was highlighted to the Panel as this would provide support in helping them to define and develop their role (Healthcare Commission, 2005; Day & Klein, 2005; Chester, 2005). Priority areas in which training was needed included: developing an understanding of the governor role, help in setting work objectives and strategies for engaging and communicating with their constituencies and wider public (Chester, 2005).

Recommendation:

7. That the composition of the Board of Governors ensures that Patient and Public Governors are in a majority.

8. That, as a priority, the Board of Governors should develop the constitution for the Trust in collaboration with the Board of Directors.

9. A full programme of training should be prepared for Governors once they are elected/ appointed to ensure that they have the necessary skills and expertise to undertake their responsibilities.

Relationship between Board of Directors and Board of Governors

6.2.9 Comparative case study data presented to the Panel suggested that there was a wide variation in nature of interactions between the Board of Governors and the Board of Directors. In one foundation trust, the Council

and the Board met regularly and that there were reciprocal arrangements for Governors and Non Executive Directors to attend respective Board and Council meetings. The Panel felt that such a model was open and transparent and that the Trust should seek to develop a model of governance that embodied these principles.

6.2.10 The Panel noted that there was strong evidence to suggest that the operational role of the Board of Directors is clearly set out and understood by all parties. However, the role of the Board of Governors in strategic planning was noted to be more contentious and had proved to be a source of tension in the relationship between the Board of Governors and the Board of Directors (Day & Klein, 2005, Lewis & Hinton, 2005, Chester, 2005).

6.2.11 Analysis of the operation of both Board of Directors and the Board of Governors suggested that the Trust Chairman (who presides over both) and the Chief Executive play a significant role in driving the agenda of the Board of Governors. The dual role adopted by the Trust Chairman was also noted to lead to tensions in the Board of Governors, as this meant that it lacked its own Chair and did not have a line of accountability through which to hold the Board of Directors to account. The Panel noted that in its audit of foundation trusts, the Healthcare Commission (2005) has also questioned the ability of the role of the Board of Governors to influence the decisions of the Board of Directors.

6.2.12 In light of the evidence presented, the Panel were keen to ensure that the Trust develop clear lines of accountability and representation from the broader Membership through to Governors and ultimately to the level of the Board. The Panel concurred with statutory regulations which state that all Non Executive Directors should be drawn from the Membership of the trust (DH, 2006). In addition, as Governors represent the link between the Membership and the Trust, it was felt appropriate that there should be regular planned meetings between the Board of Governors and the Board of Directors

Recommendation:

10. The Trust consults with other foundation trusts in order to develop a model of governance which is both open and transparent.

11. There should be regular joint meetings of the Board of Governors and the Board of Directors to ensure that the views and representations of the wider Membership are translated in to executive action.

6.3 Equality of access, impact on partnerships and the local health economy.

6.3.1 The Panel were informed that foundation trusts have a 'Duty of Partnership' with other health and social care institutions which is obligatory under the terms of their licence. Whilst there is no mechanism to assess or monitor this, it was noted that in the Trust proposals, all major partners

(PCTs and Local Authorities) will be able to nominate representatives to the Board of Governors.

6.3.2 The Panel were aware that the new financial freedoms available to the Trust may place it at a considerable competitive advantage over other NHS trusts in the local health economy. Whilst it was recorded that the Whittington Hospital NHS Trust and Barnet, Enfield & Haringey Mental Health Trust are currently preparing applications for foundation trust status, the Panel were keen to obtain reassurance from the Trust that it would not act in a uncompetitive manner and fully participate in local strategic planning and partnership work for the benefit of the local health economy.

6.3.3 If successfully applying for foundation trust status, the NMUH will become independent of NHS control. As such, Panel members were keen to ensure that the Trust continues to commit to local partnerships within the local health economy. The Panel also expected that the NMUH to play a role in determining and responding to health priorities established within the local well being agenda.

6.3.4 Haringey TPCT will be required to enter new legally binding contracts with the NMUH if it acquires foundation trust status; these will be of 3 year duration and be legally binding. The Panel noted evidence from other foundation trust scrutiny reviews (LB Camden, 2003; Birmingham CC, 2003) highlighting the need for careful evaluation of the local PCTs capability and capacity to manage this new contractual relationship with foundation trusts, particularly in relation to commissioning, contract monitoring and performance management.

6.3.5 The Panel noted that Haringey TPCT may be required to enter into new legally binding contracts with the Trust, which in turn raised concerns as to flexibility of these contracts to allow Haringey TPCT to develop more primary care based models of service provision. The Panel noted that this was particularly important at this juncture as the TPCT is currently developing a Primary Care Strategy which seeks to promote the provision of secondary care services in the community (in line with the Darzi review of London NHS services).

6.3.6 The Panel remain unconvinced as to the extent the NMUH will be an active participant in the current review of NHS services in London (Darzi proposals). The Panel are awaiting further clarification of the role the NMUH will play in this review at this stage, but would expect that the Trust will adhere to conclusions of the review where these are in the best interests of the local health economy.

6.3.7 The Panel heard that there is a good relationship between Haringey PCT and the NMUH and that they were currently in discussions concerning the new commissioning arrangements that would exist between them. Whilst Haringey TPCT has indicated that it cannot identify any reason why it cannot support the NMUH application for foundation trust status, negotiations are continuing and written confirmation of the outcome is expected by OSC.

Recommendation:

12. That the Trust should continue to ensure that service information (financial, service activity data) essential for effective local commissioning is accessible and provided in a timely fashion to Haringey TPCT.

13. That the Trust should be an active and committed partner within the Local Strategic Partnership (LAA).

6.4 Impact on local people.

6.4.1 The Panel noted evidence from the Healthcare Commission (2005) which found that nationally, patient access to services and the quality of services available had improved at foundation trust hospitals through a number of ways:

- The existence of business strategies that focussed on growth and the development of new services for patients;
- Increased ability of foundation trusts to plan and develop services more quickly;
- Improved governance helped focus on patient priorities, particularly access to services and patients hospital environment concerns;
- Improved financial management of services;
- Clinical networks or the pathways of care experienced by patients have remained the same.

6.4.2 Early evaluative evidence would suggest that foundation trust status has had little impact on clinical networks and care pathways. It was noted however that ongoing collaboration would be necessary to ensure that foundation trust status does not strengthen institutional boundaries in the local health economy as this would make it more difficult for patients to continue to receive an integrated package of care.

6.4.3 The Panel heard that apart from improved communication, patients may not experience an immediate difference in services once foundation trust status has been acquired. Improvements in the hospital environment and all round patient experience at the Trust was expected to improve in the short to medium term however, as new governance arrangements and new financial freedoms allow the Trust to be more responsive to patient needs.

6.4.4 The Panel heard that the NMUH Patient and Public Involvement Forum had been consulted on the Trusts proposals for foundation trust status and had indicated that it approved of its application.

6.5 Finance

6.5.1 Data from the foundation trust regulator would suggest that the sector is financially stable with a predicted total operating surplus of £198 million predicted for 2007/8. 57 of the 59 current foundation trusts are predicting an operating surplus in 2007/8. Projected operating surplus across the sector varies from £10,000 to £14.45 million (median £1.81million). There is evidence that the foundation trust sector is reducing operating costs, where £344million (3%) of cost savings were achieved in 2006/7 (Monitor, 2007).

6.5.2 All foundation trusts are prescribed a borrowing limit set by the regulator based on an individual assessment of their finances. Increases in capital expenditure (2005/6) would appear to be financed predominantly financed through public sector loans (£137m), though other sources were used such as private sector loans (£74m) and disposal of assets (£63). There is a however a concern that there is an under development of capital in the foundation trust sector at present given the uncertainty around PCT commissioning plans (Monitor, 2007b).

6.5.3 There is evidence to suggest that there is a strong financial monitoring system in place to support foundation trusts. Those foundation trusts that fail to meet standards set by the regulatory authority are required to submit monthly recovery plans.

6.5.4 The Panel noted that the NMUH will be able to dispose of capital assets (not deemed necessary for the core business) once foundation trust status has been obtained. Whilst recognising that the disposal of such assets may be necessary to raise sufficient revenue for the development of services, Panel members strongly believed that such assets should be retained for health services for local people in the longer term.

6.5.5 The Panel that the NMUH currently has a 'poor' rating for the use of resources, which according to Department of Health guidelines 'should call the application in to question' (DH, 2007). The Panel will be keen to hear of the planned improvements that the Trust intends to make to ensure the progression of this application.

Recommendation

14. That the Trust maintains the current level of financial transparency.

15. That disposal of non protected capital assets held by the Trust should only be done so under lease and covenanted for ongoing medical / healthcare usage.

6.6 Relationship with Overview & Scrutiny

6.6.1 The Panel heard that the relationship of the foundation trust with Overview & Scrutiny Committee should on the whole continue as before. There was however one exception in this process, in that appeals would now be directed to Monitor (the foundation trust regulator) instead of the Secretary of State. There is no public evidence of any appeals being lodged with Monitor to date.

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