Haringey Council

Scrutiny Review of Whittington Hospital Application for Foundation Trust Status

A REVIEW BY THE OVERVIEW AND SCRUTINY COMMITTEE

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1. Executive Summary

1. Foundation 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 them to adhere to core NHS principles and standards of care.

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 Whittington NHS Trust is part of the 7th wave of NHS Trusts to apply for Foundation Trust Status. It has undertaken a consultation exercise within the community to help develop its proposals for Foundation Trust status. Overview & Scrutiny Committees at both the London Borough of Haringey and London Borough of Islington have been consulted.

4. The consultation was, in particular, on the plans and priorities for the hospital as a Foundation Trust and its governance. 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 PCT has the necessary capacity, resources and expertise to manage the new contractual relationship with the Trust.

5. The Whittington Hospital NHS Trust is intending to submit its application for Foundation Trust status on November 1st 2007. It is hoped that the findings and recommendations presented within this Scrutiny Review, can help to guide and inform the further development of the Whittington Hospitals 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.

Members Council

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

9. The Trust consults with other Foundation Trusts in order to develop a model of governance which is both open and transparent.
10. There should be regular joint meetings of the Members Council 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.

11. 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.
12. That the Trust should be an active and committed partner within the Local Strategic Partnership (LAA).
13. That the Trust maintains the current level of financial transparency.
14. 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 central Government 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 To date approximately ¼ of all eligible NHS trusts have successfully obtained Foundation Trust status and it is the stated intention that all NHS Trusts will become Foundation Trusts by the end of 2008. The Whittington Hospital NHS Trust is part of the 7th wave of NHS Trust applicants seeking Foundation Trust status.

3.3 The Whittington Hospital NHS Trust has operated 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 their application for Foundation Trust status.

3.4 As part of the consultation process, the Whittington Hospital 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 Whittington Hospital's application 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:

- Independent 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 their operating licence) and monitored 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 governance and finance issues.

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 standards in health care;
- Work in cooperation with 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 Members Council, which has powers to appoint and confirm Directors and Non Executive Directors to the Board of Directors. Whilst the Members Council may provide strategic advice, day to day operational management of the Foundation Trust remains with the Board of Directors.

4.6 To date, 78 acute and mental health service trusts have acquired Foundation Trust status. It is the governments stated intention that all acute sectors providers will become Foundation Trusts by the end of 2008.

Background – Local Context

4.7 The Whittington Hospital NHS Trust is a medium sized acute sector Hospital which in 2006/7: treated nearly 85,00 people in it's A & E service, offered approximately 200,000 outpatient appointments and delivered over 3,500 babies (Whittington Hospital, 2007). Although located just outside Haringey, a significant proportion of these services are provided for residents who live in Haringey.

4.8 Reports would suggest that the Whittington is meeting most of the NHS standards for clinical services and financial management, being rated as 'good' for both in the annual health check undertaken by the Healthcare Commission (2007). Annual accounts show the Whittington to be financially stable reporting a turnover of £143 million in 2006/7 from which a £2m operating surplus was derived.

4.9 The Whittington Hospital NHS Trust is currently midway through a major site upgrade. 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 develop services that match the needs of the community more quickly in the future.

4.10 The Whittington Hospital intends to recruit to the Membership from all of Haringey and Islington residents and among some postcodes in Barnet, Camden and Hackney. It is intended that Membership will total 4,000 by January 2008. Of the planned 29 Governors, 19 will be elected (5 patients, 10 public and 4 staff) and 10 appointed (from local PCTs, Local Authorities, Universities and other local stakeholders). The Chairman of the Trust will preside over both the Members Council and the Board of Directors.

4.11 NHS Trusts are eligible to apply for Foundation Trust status once it has attained 2 or 3 star rating in the Healthcare Commission performance rating. Having obtained this level of performance the Whittington Hospital is part of a 7th wave of NHS Trusts applying Foundation Trust status. The consultation period for Foundation Trust status ran from July 9th through to 29th September 2007. The application for Foundation Trust status will first be submitted to the Secretary of State on November 1st 2007. If this is cleared, the application will proceed to the Foundation Trust regulator (Monitor) on January 1st 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 Whittington Hospital 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 Whittington 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 4 key objectives:

- The process of Foundation Trust application (consultation)
- Accountability and governance issues raised;
- Equality of access, impact on partnerships and the local health economy;
- Impact on local people.

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

- Oral and written evidence from the Whittington Hospital NHS Trust;
- Oral evidence from an independent adviser to the Panel;
- Written evidence from Haringey Teaching Primary Care Trust;
- Written evidence from the Patient & Public Involvement Forum at the Whittington Hospital NHS Trust;
- Research and best practice data;
- Panel visit to the Whittington Hospital NHS Trust.

6. Report Findings

6.1 Consultation process for Foundation Trust application

6.1.1 The review Panel concluded that the Whittington Hospital 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 Whittington Hospital produced a consultation document which had detailed ways in which people could fully respond to the planned proposals. The Panel understood that responses to the consultation would be collated, analysed and summarised within the application process to the Secretary of State and Monitor, the licensing and regulatory authority.

6.1.3 The Panel heard evidence that the Whittington Hospital had undertaken and Equalities Impact Assessment on those people who had already been recruited to the Membership. Analysis of equalities data found that there were no 'material weaknesses'. This process is due to be repeated before the final submission of the application.

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 Hospital 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 and adopt pro-active outreach strategies patient (surveys and consultations) with hard to reach communities to ensure that this is representative of the community.

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.

Members Council

6.2.5 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 their role and that broad variations resulted. A number of reports indicated that Governors experience a high degree of uncertainty as to their role and responsibilities, particularly upon their initial election or appointment (Lewis & Hinton, 2005; Chester, 2005).

6.2.6 The Panel noted that Governors provide the 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 that interaction with the Governors and the Membership was in some instances poor: survey research highlighted problems with Governors being able to define their constituents, or had received little training in engagement processes or had inadequate resources to deliver communication strategies (Lewis & Hinton, 2005).

6.2.7 The need to provide a systematic and ongoing programme of training for Governors was highlighted to the Panel so as to provide support in developing 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 the public and other constituencies (Chester, 2005).

Recommendation:

7. That, as a priority, the Members Council should develop the constitution for the Trust in collaboration with the Board of Directors.

8. 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 Members Council

6.2.9 Comparative case study data presented to the Panel from the independent adviser suggested that there was a wide variation in nature of interactions between the Members Council 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 Members Council in strategic planning was noted to be more contentious and had proved to be a source of tension in the relationship between the Members Council 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 Members Council. The dual role adopted by the Trust Chairman was also noted to lead to tensions in the Members Council, as this meant that it lacked its own Chair and did not have a line of accountability through which to hold the Board 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 Members Council 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 at the Board level. As the Governors represent the link between the Membership and the Trust, it was felt appropriate that Governors be represented at the Board.

Recommendation:

9. The Trust consults with other Foundation Trusts in order to develop a model of governance which is both open and transparent.

10. There should be regular joint meetings of the Members Council 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 a Governor to Members Council.

6.3.2 The Panel were aware that the new financial freedoms available to the Foundation Trust may be likely to place it at a considerable competitive advantage over other NHS trusts in the local health economy. Whilst it was recorded that the North Middlesex Hospital 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 Given the new independent status of the Whittington Hospital, Panel members were keen that the Trust continues to commit to local partnerships within the local health economy. As such, members expected that the Whittington 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 Foundation Trust. 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 the Foundation Trusts, particularly in relation to commissioning, contract monitoring and performance management.

6.3.5 The Panel noted the long term (3 year) legally binding contracts that Haringey PCT may be required to enter with the Foundation Trust and raised concerns as to flexibility of those contracts to allow Haringey PCT to develop more primary care based models of service provision. The Panel noted that this was particularly important at this juncture as the PCT is developing its Primary Care Strategy (which is in line with the Darzi review of London NHS services).

6.3.6 Written evidence submitted to the Panel from Haringey PCT indicated that there is a good relationship between the PCT and the Whittington NHS Trust. However, in this submission, Haringey PCT noted there had been problems in accessing service information from the Trust which needs to be redressed within the new contractual framework that will exist between them. Haringey PCT also sought explicit reassurance that the Trust would actively collaborate to:

- Engage with health prevention and promotion strategies;
- Develop new modelling plans for Primary Health Care;
- Attain 18 week targets.

11. 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.

12. 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 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.

6.5 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 Whittington Hospital 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 medium term development of the site, 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 noted that the Trust had not provided any plans as to how they would use new financial freedoms or what the business plan priorities were once Foundation Trust status was attained.

Recommendation:
13. That the Trust maintains the current level of financial transparency.
14. 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 to date with Monitor.

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