

Report of Director of Adult Social Services

Report to Executive Board

Date: 4th January 2012

Subject: Response to the consultation on Foundation Trust application by Leeds' NHS Trusts

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	x <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	x <input type="checkbox"/> No
Is the decision eligible for Call-In?	X Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: 10.4 (3) Appendix number: 1	x <input type="checkbox"/> Yes	<input type="checkbox"/> No

Summary of main issues

1. Three NHS Trusts (Leeds Community Healthcare, Leeds Teaching Hospitals and Yorkshire Ambulance Service) whose operational area covers the Leeds Metropolitan boundary are currently undertaking a consultation on their proposals to become Foundation Trusts. This papers sets out the consultation response of the Local Authority.
2. The government has set out expectations for all the remaining NHS Trusts across the country to become Foundation Trusts by April 2014.
3. Foundation Trusts are different to NHS Trusts and their constitution will mean that their relationship with the local authority, the public and other partners will change in future. It is important that the LA understands the implications of this change.
4. The local authority may wish to change how it commissions and provides health and social care services in future. The change from NHS Trust to Foundation Trust status may affect the plans that the local authority may wish to pursue. The impact is likely to vary across the aspirant FTs.
5. There is an opportunity via the consultation to formally influence the constitution of the aspirant FTs in Leeds.

Recommendations

6. The Executive Board is asked to:
 - 6.1 Take note of the implications for the Local Authority in relation to the Foundation Trust applications
 - 6.2 Approve the submission of the formal consultation responses subject to any amendments that the Executive Board may wish to make.

1 Purpose of this report

- 1.1 To enable the executive committee of the council to understand and respond to the potential impact on the local authority, of the Foundation Trust application process being undertaken by the Leeds NHS Trusts.

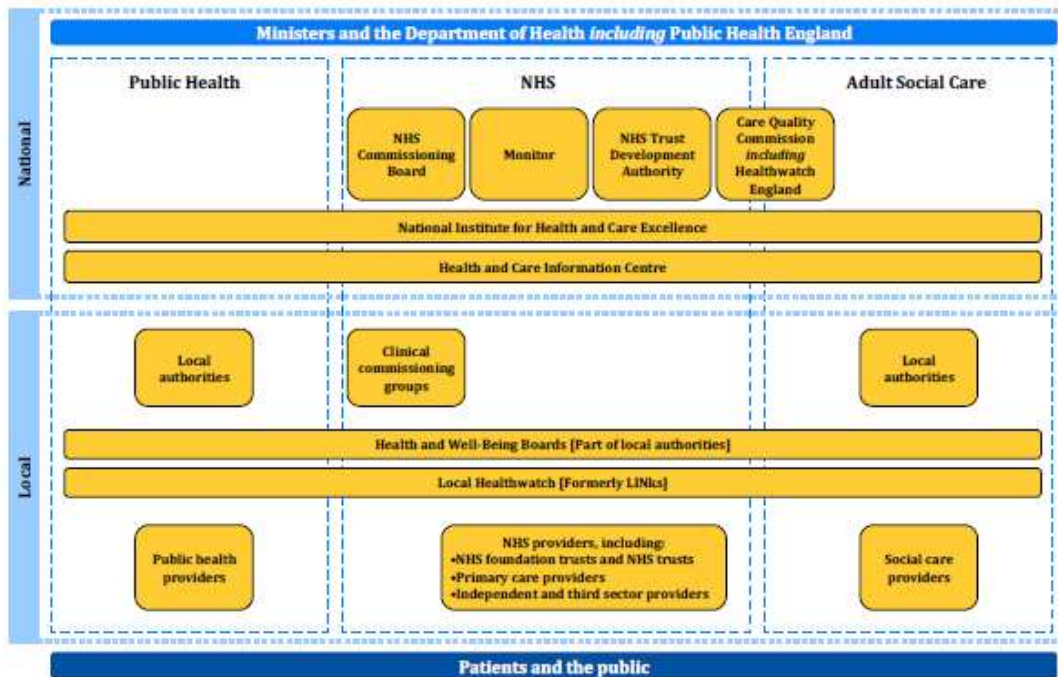
2 Background information

- 2.1 The NHS changes
 - 2.1.1 The Health and Social Care Bill was introduced into Parliament on 19 January 2011. The Bill seeks to enact the Government's vision to modernise the NHS so that it is 'built around patients, led by health professionals and focused on delivering world-class healthcare outcomes'.
 - 2.1.2 The Bill takes forward the areas of *Equity and Excellence: Liberating the NHS (July 2010)* and the subsequent Government response *Liberating the NHS: legislative framework and next steps (December 2010)*, which require primary legislation. It also includes provision to strengthen public health services and reform the Department's arm's length bodies. A summary of the main changes was included in a report to the Executive committee in September 2011 (*Shadow Health and Wellbeing Board for Leeds*).
 - 2.1.3 The government's position is that to safeguard its future the NHS needs to change to meet the challenges it faces and that '*only by modernising can the NHS tackle the problems of today and avoid a crisis tomorrow*'. The Health and Social Care Bill intends to; put clinicians at the centre of commissioning, free up providers to innovate, empowers patients and give a new focus to public health.
 - 2.1.4 The government say that modernisation is essential for three main reasons.
 - § Rising demand and treatment costs
 - § Need for improvement.
 - § State of the public finances.
 - 2.1.5 The solutions proposed within the Bill are designed to meet these challenges and include:
 - § Clinically led commissioning
 - § Provider regulation to support innovative services
 - § Greater voice for patients
 - § New focus for public health
 - § Greater accountability
 - § Streamlined arms length bodies

2.2 How the proposed system will work

- 2.2.1 From the point of view of patients and the public, the government maintain that access to NHS services on the basis of need and not ability to pay will continue. The reforms are intended to improve quality and efficiency by reforming the organisations that commission, regulate and support health and care services.
- 2.2.2 At local level, local authorities will have a much stronger role in shaping services, and will take over responsibility for local population health improvement.
- 2.2.3 New Health and Wellbeing Boards will bring together local commissioners of health and social care, elected representatives and representatives of HealthWatch (the new patient and public champion) to agree to an integrated way of improving local health and wellbeing.
- 2.2.4 Most NHS care will be commissioned by clinical commissioning groups, which will give GPs and other clinicians responsibility for using resources to secure high quality services.
- 2.2.5 NHS commissioners will be supported by a new body, the NHS Commissioning Board. The Board (which will be based in Leeds) will authorise clinical commissioning groups, allocate resources, and commission certain services, such as primary care and regional and national specialties. It will also host clinical networks (to advise on single areas of care) and clinical senates (providing clinical advice on commissioning plans).
- 2.2.6 NHS providers will no longer be performance managed by Strategic Health Authorities. The Care Quality Commission (CQC) will regulate all providers in the system and will ensure services meet safety and quality requirements. Monitor will promote efficiency, with powers to set prices, ensure competition works in patients' interests, and support service continuity.
- 2.2.7 Monitor (the previous economic regulator) will temporarily also retain oversight of foundation trusts, while the NHS Trust Development Authority (not in the Bill) will help the remaining NHS trusts achieve foundation status.
- 2.2.8 Health Education England (not in the Bill) will provide oversight and leadership for professional education and training.
- 2.2.9 The National Institute for Health and Care Excellence (NICE) will continue to provide independent advice and guidance to the NHS, and will extend its role to social care. The Information Centre will continue to act as the central, authoritative source of health and social care information.
- 2.2.10 Ministers in the Department of Health will still be ultimately accountable for the NHS. However, instead of directly managing providers or commissioners, Ministers will set objectives for the NHS through a mandate to the NHS Commissioning Board. It will hold to account all of the national bodies, with powers to intervene in the event of significant failure, or in an emergency.
- 2.2.11 Action to protect and promote the health of the population will be led nationally by a new public health service, Public Health England. When constituted this will be an executive agency of the Department of Health.

Overview of health and social care structures in the Health and Social Care Bill
April 2013



3 Main issues

3.1 NHS Provider reforms

3.1.1 The reforms to NHS service providers set out in the Bill aim to encourage innovation by granting them more autonomy. This will be achieved by building on the process started by the last government and will:

- § convert remaining NHS trusts into foundation trusts
- § relax a number of governance rules for foundation trusts
- § allow providers that are unable to compete to 'fail' and exit the market in which case Monitor will be responsible for ensuring continuity of 'designated' essential services.

3.2 Foundation trusts

3.2.1. The government has stipulated that all NHS providers must become FTs by April 2014. A Provider Development Agency (PDA) has been established to support NHS trusts that will struggle to achieve FT status. The Bill also relaxes controls on mergers and acquisitions, increasing the options available where FTs are struggling. The Kings Fund believe that it is unlikely that all NHS trusts will be able to become FTs by April 2014 or that all existing FTs will remain financially viable due to tightening of NHS finances. In some cases, the PDA will need to implement a planned reduction in services or transfer services from current providers which may provoke local opposition. It should be noted that no such concerns have been expressed about the Trusts in Leeds as all are currently deemed well above the limits required for financial stability- although this is yet to be formally tested.

3.3 What are NHS Foundation Trusts?

- 3.3.1 NHS foundation trusts are not-for-profit, public benefit corporations. They are part of the NHS and provide over half of all NHS hospital, mental health and ambulance services.
- 3.3.2 They were created to devolve decision making from central government to local organisations and communities. They provide and develop healthcare according to core NHS principles - free care, based on need and not ability to pay.
- 3.3.3 They differ from NHS trusts in a number of ways:
- § they are independent legal entities - Public benefit corporations.
 - § they are not directed by Government so have greater freedom to decide, with their governors and members, their own strategy and the way services are run
 - § 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 are expected to realise an operating surplus and can retain this financial surplus to invest in the delivery of new NHS services.
 - § 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 accountable to
 - their local communities through their members and governors
 - their commissioners through contracts
 - Parliament (via an annual report)
 - the Care Quality Commission (via legal requirement to register and meet the associated standards for the quality of care provided)
 - Monitor, as their regulator
- 3.3.4 NHS foundation trusts are designed to be more responsive to the needs and wishes of their local communities. Anyone who lives in the area, works for a foundation trust, or has been a patient or service user, can become a member of the trust. These members elect the board of governors. Further information can be found in the background document *A Short Guide to NHS Foundation Trusts*.

3.4 Foundation Trusts in Leeds

- 3.4.1 In Leeds, there is one existing Foundation Trust (FT)- Leeds Partnerships Foundation Trust (LPFT) and two aspirant FTs- Leeds Community Healthcare NHS Trust (LCHT) and Leeds Teaching Hospitals NHS Trust (LTHT). In addition, Yorkshire Ambulance Service NHS Trust (YAS) whose operational area includes the Leeds Metropolitan Boundary is also applying to become a FT. Leeds Partnerships NHS Foundation Trust has been a FT since 1 August 2007.
- 3.4.2 Although the governments' position is that all remaining NHS Trusts should become FTs by April 2014, all three remaining trusts in Leeds are on a trajectory to achieve FT status by April 2013.

3.4.3 The key dates associated with this process will vary slightly across Trusts but will broadly be in line with the following:

- § Autumn 2011 Membership recruitment and consultation commences
- § December 2011 Consultation ends
- § Spring 2012 Feedback published
- § August 2012 Secretary of State approval
- § September 2012 Elections begin for Council of Governors
- § September 2012 Monitor starts its assessment
- § January 2013 Council of Governors appointed in 'shadow' form
- § April 2013 FTs established as legal entity by Secretary of State

3.5 What this means for the Local Authority

3.5.1 There are strong links between the local authority and the existing NHS Trusts both in the LA role as commissioner and/or service provider. Furthermore Leeds City council currently have financial relationships across all 4 of the NHS provider Trusts, comprising approximately £10 million of expenditure and £1 million in receipts.

In this context Members attention is drawn to a current landlord and tenant issue between the Council and the Teaching Hospital Trust which is outlined in the confidential appendix 1 of this report.

3.5.2 These relationships have been developed further via the Leeds Health and Social Care Transformation Programme (LH&SCTP) where CEOs and Directors from all statutory commissioners and providers (including the LPFT) come together monthly to work together to improve services for people in Leeds.

3.5.3 This body will be subject to increased local authority oversight as it will form part of the new arrangements for the Health and Wellbeing Board (H&WB)- currently operating in shadow form. The LH&SCTP has recently reported to both the Shadow H&WB Board and Scrutiny (Health & Wellbeing and Adult Social Care). The fundamentals of these relationships are unlikely to be changed by the advent of new Foundation Trusts.

3.5.4 The consultation documents supported by presentations at Scrutiny (Scrutiny minutes 28 October 2011) indicate a strong willingness from the 2 Leeds aspirant FTs to continue to work collaboratively with the local authority and other partners in the best interests of the citizens of Leeds. All have made commitments to support effective Local Authority arrangements. Scrutiny are preparing their own responses to the consultation. Their draft minutes noted a willingness to support the application and sought assurance over a number of issues including the need to; assure quality, limit non core income, promote governance arrangements, promote integration of health and social care services and to clarify future accountability via the Scrutiny process.

3.5.5 The local authority should be further assured that each aspirant FT will need to undertake a rigorous assessment process by Monitor (the independent regulator), before achieving FT status outlined below.

3.5.6 Notwithstanding the local and national NHS scrutiny of the process, the applications may lead over time to different relationships between these providers and the local

authority. The Local authority will continue to have an interest and relationship with the Trusts in its role as:

- § Strategic Leader for the city
- § Commissioner of health services (direct and indirect)
- § Provider partner
- § Citizen champion

3.5.7 The levels of involvement with each Trust will continue to vary according to a number of factors including:

- § their role in achieving the Vision for Leeds and associated City Priorities
- § the impact of each Trust locally, regionally and nationally
- § the nature of services that each FT will continue to provide
- § their role in partnership/joint working arrangements
- § the nature and value of contracts that the LA may commission
- § the relative size of the different organisations (turnover and staff)
- § the amount and location of the estate each Trust occupies/owns
- § the potential for further integration of services/functions in the future

3.5.8 The Trusts are also likely to have an increased relationship with the local authority as a result of the council taking on new responsibilities for Public Health. The Department of Health paper outlining the scope of the local authority's role in public health is due to be published at the end of 2011. It is anticipated that it will clarify the responsibilities that the council will lead on in contrast to those that will be discharged via Public Health England. Although this guidance will cover wider issues, in relation to the aspirant and current NHS Trusts it is likely to include roles to:

- § commission some services which used to be commissioned by the NHS and that the aspirant FTs provide (likely to increase over time)
- § ensure that public health messages pervade interactions between NHS staff and the public (via *Making Every Contact* count programme)
- § provide Public Health expertise and support
- § increase partnership working to ensure city resilience
- § encourage providers to collaborate to further enhance the development of the city's Joint Strategic Needs Assessment
- § work with partners including NHS Trusts to ensure coordinated services, health improvements and reduced inequalities

3.5.9 The main areas that the council will wish to seek assurance over relate to:

- § Their role in achieving the strategic Vision for Leeds and associated City Priorities
- § The financial viability of FTs as stand alone entities
- § The implications for staff and employment prospects for the city
- § The ability of Foundation Trusts to establish appropriate governance arrangements to adequately discharge statutory responsibilities of the local authority, including responsibilities for:
 - providing social care for children, young people and adults
 - public health functions including emergency planning
- § The continued cooperation from aspirant FTs to establish appropriate models of joint provision for integrated teams and facilities which take into account both current and future aspirations for how care is provided.
- § Their ability to continue to provide high quality care to the population of Leeds
- § Their continued relationship with Scrutiny
- § The ability of FTs to secure accountability to their local communities and to develop and grow a representative membership

3.6 Foundation Trust assurance

- 3.6.1 To become a foundation trust each NHS trust must ultimately satisfy the secretary of state for health on a number of measures which are assessed by the FT regulator – Monitor.
- 3.6.2 Monitor must be confident and able to provide assurance to Parliament and a wide range of stakeholders that NHS foundation trusts will be legally constituted, financially sustainable, well-governed and locally representative. These are deemed by Monitor to be the essential requirements for NHS foundation trusts to be able to operate with sufficient freedoms, to deliver national health priorities and to respond to local needs.
- 3.6.3 The local authority should be assured that Monitor is continuing to review its assessment process in light of some of the incidents in other established and aspirant FTs (*Lessons learned from recent NHS foundation trust applications, Jan 2011.*) in order to ensure that FTs are financially sustainable; with strong management, minimising the need for intervention.
- 3.6.4 Before trusts can be authorised by the Secretary of State as NHS foundation trusts, they move through three distinct phases of activity during the application and assessment process (a brief guide to which is attached *Overview of the NHS foundation trust application process*):
1. Strategic Health Authority (SHA)-led Trust Development Phase – to prepare NHS trusts for the application process and Secretary of State support;
 2. Secretary of State Support Phase – to determine whether applicant NHS trusts are eligible to apply to Monitor for assessment; and
 3. Monitor Phase – to assess and potentially authorise Secretary of State for Health supported NHS trusts as NHS foundation trusts.
- 3.6.5 The three local aspirant Trusts are currently in the SHA phase. Monitor’s involvement in the process starts at phase three, once an NHS trust has received approval from the Secretary of State to apply for NHS foundation trust status.
- 3.6.6 Whilst this should provide adequate assurance for the Local authority in relation to the underlying assessment process, the authority will still wish to seek to influence and respond to a number of the issues arising from the establishment of the FTs locally. In relation to the issues outlined above consideration has been given to:
- § The assurance that Monitor will be seeking related to each issue
 - § The statements made in the respective FT consultation document
 - § The draft response from the local authority
- 3.6.7 The table in appendix 2 provides a summary of the assessment of the issues included in the response from the Local Authority. This is followed by draft letters to each organisation at appendices 3 - 5.
- ### 3.7 Next steps
- 3.7.1 In order to meet the deadline set by the aspirant FTs in line with the governments assessment process, a draft consultation response from the local authority has been submitted to the respective NHS Trusts.

- 3.7.2 This response will be amended in line with Executive Committee's comments.
- 3.7.3 It is likely that FTs will invite the local authority to identify one or more representative to sit on their board of governors. Consideration may also be given to the appropriate level of Local Authority contribution at Trust Board. Once further details are established, a process will be undertaken to identify if any potential roles are best discharged by an elected member of officer of the council. In the case of an elected member, it is likely that the external appointments process will be followed.
- 3.7.4 Any further implications for the local authorities position in regard to FTs will be reviewed in light of emerging legislation (Health and Social Care Act- expected May 2012). It is likely that further details will emerge in regard to the role of Scrutiny committees and Foundation Trusts.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The respective NHS Trusts have embarked on a formal 3 month consultation process.
- 4.1.2 They have undertaken a number of road shows with members of the public and partners. Their consultations have been posted on their respective internet sites. At the time of writing this report the level of responses were not known.
- 4.1.3 The validity of their consultation process will be assessed as part of their application to become an FT.
- 4.1.4 The Scrutiny Board (Health and Wellbeing and Adult Social Care) has recently heard from each respective NHS Trust and has drafted a consultation response. The draft response included in this report reflects the issues identified by scrutiny.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 The application to become an FT is considered to be a management change as each organisation must retain its existing portfolio of services as part of obtaining its licence agreement.
- 4.2.2 Therefore a full impact assessment has not been undertaken. However, each Trust will need to provide assurance as part of the assessment process that their membership is representative of the communities they serve.

4.3 Council Policies and City Priorities

- 4.3.1 Securing local, sustainable health care providers is consistent with the council's vision to be the Best city for.... Health and Wellbeing, Children and Business.
- 4.3.2 The Leeds based NHS Trust are already contributing to the City Priority plan 2011 to 2015.

4.4 Resources and Value for Money

- 4.4.1 Establishing local, financially viable health care providers contributes to the council's value to spend money wisely. Aspirant FTs will need to provide evidence that they

have a viable business plan, that this is consistent with commissioners intentions and provides value for money.

- 4.4.2 The existing Leeds FT already has an established track record of securing efficiency savings and the others will be required to do the same.
- 4.4.3 Furthermore they are required to generate a surplus which is reinvested in new services. The local authority may wish to consider influencing the spend of the surplus via the H&WB Board and Scrutiny arrangements.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The full legal implications to local authorities of the health and social care act will be established when/if it achieves Royal assent (expected May 2012).
- 4.5.2 There are no specific legal implications arising from this report.
- 4.5.3 The information contained in Appendix 1 is exempt under Access to Information Rule 10.4 (3) as it contains information relating to the financial or business affairs of any particular person (including the authority holding that information). It is considered that the public interest in maintaining the content of Appendix 1 as exempt outweighs the public interest in disclosing the information.

4.6 Risk Management

- 4.6.1 The main issues for the council are outlined in the main body of the report.

5 Conclusions

- 5.1 The applications from the remaining Leeds NHS Trusts to become Foundation Trusts are underway.

The local authority should be assured that the process governing the application process is rigorous, continually reviewed and led by an independent regulator.

The result will lead to Leeds securing financially viable and sustainable health care providers committed to providing quality care for the citizens of Leeds built around the needs of the care recipient.

The consultation response will seek to ensure that the aspirant FTs continue to play a key role in achieving the Vision and Priorities for the City and with an opportunity to influence the constitution of these bodies.

6 Recommendations

- 6.1 The Executive Board is asked to:
 - 6.1.1 Take note of the implications for the Local Authority in relation to the Foundation Trust applications
 - 6.1.2 Approve the submission of the formal consultation responses subject to any amendments that the Executive Board may wish to make.

7 Background documents

- 7.1 Report of Director of Adult Social Services, Director of Public Health and Director of Children's Services: Report to Executive Board: 7 September 2011, Shadow Health and Wellbeing Board for Leeds
- 7.2 A Short Guide to NHS Foundation Trusts
- 7.3 Draft consultation feedback report Scrutiny Board (Health and Wellbeing and Adult Social Care)
- 7.4 Minutes of the NHS Foundation Trust Proposals Scrutiny Board (Health and Wellbeing and Adult Social Care 28 October 2011, section 29)
- 7.5 Minutes of the NHS Foundation Trust Proposals Scrutiny Board (Health and Wellbeing and Adult Social Care 25 November
- 7.6 Foundation Trust consultation documents.