

# **RCN Policy Unit**

### Policy Briefing 01/2007

## Mergers; Markets; and Monitor: An Update on NHS Foundation Trust Developments

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### Background

NHS Foundation Trusts were introduced as a result of new legislation in the Health and Social Care Act (2004) as one of the flagship elements of the government's NHS reform programme. Based upon NHS Principles and with greater autonomy and extended powers including greater financial and managerial freedoms, NHS Foundation Trusts have presented the RCN with a serious challenge because these new powers represent a significant shift in the way in which NHS services are managed and governed. In response to the introduction of Foundation Trusts the



rest of the NHS is too frequently failing to do so. So how are NHS Trusts coping with the task of becoming Foundation Trusts?

#### Making the Grade

In June 2005 the Department of Health announced the government's intention that by April 2008, the whole of acute sector NHS Trusts in England would have become NHS Foundation Trusts. By October 2005 this ambition was altered and the intention was that all NHS Trusts would "have the opportunity" to become NHSFTs by April 2008. As a means of gauging the potential for NHS Trusts to become Foundation Trusts, the Department introduced "fitness for purpose" reviews, beginning in June 2005. With a system designed by US healthcare consultants, McKinsey, all NHS organisations, including NHS Trusts, Mental Health Trusts and PCTs have been reviewed by this process, regardless of whether they are to become FTs or not. As a result, the Department of Health (DH) now have a comprehensive picture of the likely candidates for FT status by April 2008 and the identity of those organisations which, according to the McKinsey assessment methodology, are unlikely to be able to proceed to FT authorisation, even by the end of 2008.

Although the DH have never published a comprehensive record of the outcomes of the "fitness for purpose" reviews it seems likely that around 170 or so of the existing NHS Trusts will be deemed fit to apply, many after undergoing rigorous programmes of preparation. This would leave somewhere in the region of 60 NHS Trusts who would not be in a position to become NHS Foundation Trusts by January 2009. So what will become of these organisations and the services that they offer?

### Winners and losers; who gets the biggest slice of the FT cake?

In September 2006 Monitor published a guide o

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become involved in a merger must be prepared to undergo a full secondary process of authorisation with new terms of operation if they become part of a merged organisation. What is clear from the Monitor guidance is that mergers of this nature are not "a contested takeover". Even so, NHSFTs do have the power under section 17 of the Act to invest and this includes:<sup>4</sup>

### "The acquisition of other corporate bodies, their assets, staff and contracts."

Monitor go on to say that provision for one NHSFT to acquire another is covered within their best practice advice, Risk Evaluation for Investment Decisions by NHS Foundation Trusts, and that there are principle differences between mergers between and acquisition of NHS Foundation Trusts and NHS Trusts. In the case of a merger, this must be authorised by Monitor and supported by the Secretary of State for Health, leading to the formation of a new Foundation Trust. In the case of acquisition, of NHS Trusts, NHSFTs or private-sector bodies, although not necessarily requiring the support of the Secretary of State, similar considerations apply but the existing Foundation Trust would not be dissolved.

What this amounts to is a spread of provisions that could, by the end of 2008, enable the potential 170 NHSFTs to acquire or merge with the 60 or so NHS Trusts that could not make the grade as foundation trusts in their own right. Already there is one proposal for the Birmingham Heartlands NHS Foundation Trust to merge with the Good Hope NHS Trust to form a new NHSFT in that part of the West Midlands conurbation. One of the features of the Labour public service reform programme has been the achievement of "tipping points". This means achieving a sufficient critical mass of new or reformed organisations so as to accelerate the pace of reform in a given market of operation. In this case, although there has been no official statement to this effect, the "tipping point" may well be 50%, or less, of the previous NHS Trusts achieving FT status because with the power to acquire or merge with other corporate bodies they would have the potential to create a foundation trust economy by building upon their own authorised status. It seems highly unlikely that a successful NHSFT with the support of the Secretary of State would risk its authorisation by entering into a merger that would prove detrimental to its ambitions. Equally, any acquisition would be a part of that FT's investment programme and should therefore represent an opportunity to expand without the risks of dissolving its status.

<sup>&</sup>lt;sup>4</sup> Monitor, Applying for a merger involving an NHS Foundation Trust, London 2006, p.4



## Principles, Partnerships and Practice; where to next?

But isn't this talk of acquisition and merger out of keeping with the culture of NHS Foundation Trusts which are deemed to be organisations that primarily function in the best interests of the community that they serve; are governed by NHS Principles; and which only produce a surplus so that they can reinvest it in improving services? Well, perhaps there are now signs that some of the NHSFTs are already becoming more macho and aggressive in their style of working and business management. On 4<sup>th</sup> December 2006 Monitor announced that it would be seeking more detailed



Foundation Trusts. Focussing primarily on partnership working and cooperation, the survey will take place in Spring 2007 with a report ready for RCN Congress 2007.

If you have any further queries about these issues or any other matters related to NHS Foundation Trusts, please contact Colin Beacock in the RCN Policy Unit at <a href="mailto:colin.beacock@rcn.org.uk">colin.beacock@rcn.org.uk</a>

#### **Associated Policy Unit Publications**

RCN Briefing; NHS Foundation Trusts (2004)

http://www.rcn.org.uk/downloads/rcndirect/NHS\_Foundation\_Trusts\_and\_t he\_Growth\_of\_Mutualisation\_in\_Public\_Services.pdf

RCN Survey of NHS Foundation Trusts

http://www.rcn.org.uk/aboutus/policy/foundationtrusts/review.php