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**Department of Health**

Achievement of foundation trust  
status by NHS hospital trusts

## Key facts

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**113**

NHS trusts in the 'pipeline' process to become foundation trusts

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**20**

NHS trusts which 'tripartite formal agreements' show are not financially or clinically viable in their current form

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**28**

trusts predict they will submit applications to the Department of Health in April 2013 or later

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- 113** the number of NHS trusts that are aspiring to gain NHS foundation trust status by 2014.
- 20** the number of NHS trusts which analysis of 'tripartite formal agreements' (TFAs) shows are not financially or clinically viable in their current form.
- 28** trusts (almost a quarter) predict in their TFAs that they will submit applications for foundation trust status in April 2013 or later.
- £1.47 billion** efficiency savings target for pipeline NHS trusts in 2010-11.
- 78 per cent** of NHS trusts face strategic and local health economy issues.
- 80 per cent** of NHS trusts face financial issues.
- 65 per cent** of NHS trusts face quality and performance issues.
- 39 per cent** of NHS trusts face governance and leadership issues.
- £3.2 million per year** the cost incurred by the centrally resourced team dedicated to supervising and managing trusts' progress through the pipeline including £1.7 million support to trusts to prepare them for foundation status. Additional consultancy costs in 2011-12 are forecast to be £0.3 million.
- £376 million** the estimated loan facility that will be needed across NHS trusts to reach the required levels of liquidity.
- 62 per cent** of trusts in the London region have yet to achieve NHS foundation trust status – the biggest challenge faced by a single region.

# Summary

**1** Government policy is that NHS hospitals should run their own affairs and be accountable to local people and patients, as opposed to being subject to top-down direction from the Department of Health (the Department). This has been policy since the first NHS foundation trusts were created in 2004 as self-governing NHS providers. To attain foundation trust status requires strengthened board governance, financial disciplines that promote long-term financial viability, and a framework to secure delivery of quality services. The Department sees foundation status as a vital step for hospitals if they are to succeed in an increasingly financially demanding and competitive health service. The Government expects that the vast majority of NHS trusts will become foundation trusts by April 2014, primarily through a locally managed process with national support as needed.

**2** When it first created NHS foundation trusts the Department announced that all acute and specialist hospitals should be in a position to apply for this status by 2008. By 1 October 2011 there were 139 NHS foundation trusts, and 113 NHS trusts at various stages in the 'pipeline' towards foundation trust status. The number of authorisations peaked in 2007 and 2008, however, and only 14 foundation trusts had been authorised since the end of 2009. Many of the remaining NHS trusts have more challenges to resolve to achieve foundation status than the early applicants did. These include financial, quality and governance issues within the organisations themselves, and also, for some trusts, more deep-seated and long-standing issues about, for example, size and location, which limits their capacity to deliver health services efficiently and effectively. Trusts now also face the added challenge that across the NHS 4 per cent efficiency savings per annum are required if the service is to achieve its target saving of up to £20 billion by the end of 2014-15.

**3** Monitor, the independent regulator of NHS foundation trusts, is responsible for assessing applicants for foundation trust status, and subsequently for regulating them once they are approved. Monitor sets the criteria aspirant trusts must meet, and has made clear that there will be no dilution or weakening of the standard it applies.

**4** In its White Paper *Equity and Excellence: Liberating the NHS* (July 2010) the Government announced that it was relaunching the foundation trust process:

“Within three years, we will support all NHS trusts to become foundation trusts. It will not be an option for organisations to decide to remain as an NHS trust rather than become or be part of a foundation trust...”

Following the pause in the passage of the legislation in summer 2011, the Department has amended the Health and Social Care Bill so an NHS trust may, in exceptional circumstances, continue beyond April 2014 if it is on an agreed timeline towards foundation trust status. This may, for example, involve merger or transfers of services between hospitals, which has to follow set protocols including defined periods of public consultation.

**5** From October 2010 the Department has been developing new processes to help progress aspirants through the 'pipeline' towards foundation trust status. A key element in this process has been completion of a 'tripartite formal agreement' (TFA) for each NHS trust. The TFA summarises the main challenges facing each organisation, and the resulting actions to be taken by the trust, Strategic Health Authority (SHA), and the Department. These organisations then commit themselves to taking specific actions, laid down within the document, in line with an explicit timetable. Because of the influence that commissioning intentions have on whether trusts' financial plans are viable, the lead Primary Care Trust (PCT) for each trust has also been asked to endorse the TFA document.

**6** The regional distribution of trusts in the pipeline is very uneven. By 1 October 2011, all but one trust in the North East has become a foundation trust. By contrast, in London, only 38 per cent of trusts have achieved foundation status. There are several reasons why trusts have not become foundation trusts. Some trusts had not applied earlier because they had not viewed it as a priority and were not under pressure to do so. Others had applied and failed. Some have never attempted it because they have severe financial, performance and quality issues to address.

**7** The actions required to achieve foundation status rest primarily with local trusts' boards and management, supported regionally by their SHAs and nationally, as required, by the Department of Health. The Department intends that, following the abolition of SHAs in April 2013, a new body, the NHS Trust Development Authority will become responsible for progressing the remaining trusts in the pipeline.

**8** It is already clear that not all NHS trusts will be able to achieve foundation trust status in their current form. The pipeline process has been useful in bringing out in sharp relief the problems faced by these trusts which are often long-standing and which can only be solved by redesign of how hospital services are delivered within local communities.

**9** This report examines the management and reporting processes for the pipeline put in place by the Department to identify and address the obstacles trusts face. Some of the issues can be tackled at local or regional level, but some trusts face challenges that will need strategic national interventions. There are at least 20 trusts, including eight in London, that face complex and substantial problems. These trusts have indicated that the problems they face are so severe that they cannot meet the standard for foundation trust status in their present form. Tackling these problems will require much more radical reorganisation of how healthcare is provided to local people, including mergers and reconfiguration of services, with services contracting or closing in some locations and expanding in others.

**10** Our methodology is summarised at Appendix One. We interviewed key Department of Health staff, and reviewed relevant documents including the TFAs for all the trusts in the pipeline. In addition, we visited six NHS trusts and three SHAs, and carried out telephone interviews with senior managers at a further five SHAs.

## Findings

The Department's management of the pipeline between October 2010 and September 2011

**11 The process of developing and committing to TFAs has made much more transparent the challenges trusts face to demonstrate their long-term viability, and has forced the signatories publicly to accept accountability for addressing them.** Some of these issues, though well-known within the local health economy, have lain unresolved for a number of years.

**12 It has taken six months to finalise TFAs.** The time taken reflects the extent and complexity of the issues faced by some trusts and the degree of effort being taken to ensure they are an accurate assessment of both the challenges faced and the actions required. Different SHAs have been involved to differing extents in drafting the documents. The Department asked for all draft TFA documents to be submitted by trusts in March 2011. There were questions about the quality of some original submissions, and the Department identified a need to develop national responses for trusts with common financial problems. The Department signed the TFAs for the final 46 of the 113 trusts on 30 September 2011 committing trusts to agreed actions, although for some of the most challenged trusts the process of agreeing the set of actions they, their SHAs, and the Department will need to take is not complete.

**13 The Department has put in place a national framework to monitor progress against milestones and track risks.** Now that TFAs are agreed, progress against timelines will be monitored by SHAs. The Department has asked each SHA to report monthly on progress against milestones and, following discussion with the Department, to agree the level of risk in each case. Ultimately, this information will flow to the NHS Operations Board. If there are concerns about trusts' progress, the SHA will address these through its existing performance management arrangements.

**14 The level of resources being devoted to ensuring that TFAs are robust varies considerably between SHAs.** The progress of trusts through the pipeline will also require continued investment of staff time and monitoring by SHAs. Those that are most challenged will require the closest scrutiny and support. A number of SHAs have developed robust local performance management systems, for example in the North West and East of England, but these are not universal and there is scope to learn from exemplars. As part of the Government's wider health reforms, the ten existing SHAs were grouped into four clusters on 1 October 2011. The Department and the new clusters are developing a single operating model to manage trusts' performance through the pipeline ahead of the introduction of the NHS Trust Development Authority in 2013.

**15 There is no mechanism to measure how much the pipeline process is costing across the NHS.** The Department did not specify to SHAs how they should resource the work they do in support of the pipeline, and the level of resources committed has varied. The cost of work being done by trusts in support of foundation trust applications is not known by the Department, partly because financial management decisions are devolved to local management, and also because some of the work would have been necessary anyway to improve trusts' performance in a more challenging financial climate. The process is costing the Department £3.2 million a year. Additional consultancy costs in 2011-12 are forecast to be £0.3 million.

**16 The flow of NHS trusts through the pipeline is heavily back loaded.** Analysis of milestones in the TFA documents shows that the number of applications, as currently forecast, peaks in April 2013. Beyond that date 15 trusts expect to submit applications to the Department between May 2013 and April 2015. The Department is considering what resources it will need to process applications, and what scope there may be to streamline application processes, but there is a clear risk that bottlenecks will lead to delay. Once endorsed by the Department, straightforward applications can typically require four months to process with more difficult cases taking very much longer. Monitor has already expressed concern to the Health Select Committee about having to deal with a large number of late applications. Trusts with particularly complex problems seeking late application dates will be likely to struggle to meet Monitor's standards by 2014.

**17 The Department recognises that NHS trusts face some common obstacles to achieving foundation status, and is carrying out work to provide national support.** This work, still in progress, includes:

- considering loan funding to improve trusts' liquidity or to fund capital investment;
- actions to address the cases where a trust's viability is undermined largely by payments required to service one or more Private Finance Initiative (PFI) schemes;
- developing diagnostic tools and support to help trusts improve the quality of local management and strengthen Board capability – an area that Monitor has highlighted repeatedly as a weakness in past submissions; and
- a portfolio of alternative solutions for trusts that cannot meet the requirements for foundation status.

Challenges now faced by the Department, trusts and SHAs in taking forward the actions required by the TFAs

**18 Achieving foundation trust status is more difficult because of the challenge of making savings under local cost improvement programmes (CIPs) and the NHS Quality, Innovation, Productivity and Prevention (QIPP) initiative.** Trusts are required to make at least 4 per cent year-on-year cost savings over at least the next four years. Many of the trusts in the pipeline will need to achieve greater savings to be able to demonstrate their financial viability.

**19 Meeting Monitor's tests of financial viability is a challenge for almost all trusts in the pipeline.** The Audit Commission reported that 16 trusts received additional funding from PCTs or SHAs in 2010-11 to help them break even. The Department's assessment of trusts' financial position in July 2011 concluded that as many as 48 trusts were unlikely to meet Monitor's criteria without additional work to address a number of issues, for example:

- **The Department has identified that up to 36 trusts may need access to £376 million of loan facilities to deepen their working capital reserves sufficiently to meet Monitor's standard requirement for a set level of working capital.**
- **The Department acknowledges that external financial support may be needed for a small number of trusts with large PFI schemes.**  
The Department's advisers have examined 22 trusts with PFI schemes costing some £763 million a year, and concluded that in most cases the PFI schemes do not in themselves undermine the viability of specific trusts. This initial analysis indicated that up to 6 of the 22 trusts were not viable under any of the tested scenarios, because of the scale of their PFI payments alongside a variety of other financial problems.
- **The level of accumulated debt is identified by 24 trusts (21 per cent) as an obstacle to them achieving foundation status.**

**20 Tackling the financial problems faced by some of the most challenged trusts will require direct intervention by the Department, such as long-term loan facilities, debt restructuring, and addressing the affordability of PFI schemes.**

At this point it is impossible to conclude how many trusts will need this support. The Department has said that some proposals will have to be subject to HM Treasury approval, and any support must also be consistent with Monitor's financial assessment criteria. The Department is still considering how to resolve these issues. To qualify for foundation status trusts must be financially viable even if future performance reflects the pessimistic scenarios in their financial plans. Interventions using public money to increase aspirants' apparent viability would also risk distorting competition and undermining the policy objective to increase hospitals' financial sustainability.

**21** Although commissioners are required to sign the TFA to confirm that they support the trust's application, those currently responsible for commissioning decisions – Primary Care Trusts – will increasingly hand over responsibility to new GP led Clinical Commissioning Groups. This creates potential uncertainty about trusts' future income. Trusts and SHAs are engaging with pathfinder Clinical Commissioning Groups around the country but these are inevitably at different stages of preparedness. Firmer commitments from them about their plans for commissioning will be needed to ensure that aspirant trusts' financial projections are robust enough to withstand scrutiny.

Analysis of TFAs shows that, so far, 20 trusts recognise they will not achieve foundation trust status in their present form

**22** The process of applying for foundation trust status has identified long-standing issues for 20 trusts which they cannot resolve in their current form. These issues are:

- very high levels of historic debt;
- for a small number of trusts, the ongoing cost of large PFI schemes;
- misalignment between hospital capacity and demand for services from commissioners; and
- imbalance between primary and secondary care.

**23** Seventeen of the twenty trusts have already said that they are seeking merger partners among existing foundation trusts or other pipeline trusts or, in one case, with a private sector partner. Such mergers fit within a wider set of established processes around reconfiguration of hospital services, although these involve lengthy public consultations and take time to complete. The Department is developing contingency plans for intervention if trusts fail to identify a viable partner or alternative configuration, and has not yet publicly announced the circumstances under which it would act.

**24** In the next few months it is possible that more trusts will declare that they are not viable in their current form. Among the TFAs signed off at the end of September 2011, were a group of trusts whose future as an independent entity depends on the results of further consideration of their financial situation by local trusts' boards, their SHAs, and the Department.



**25** Modelling work done by the London SHA on the 18 non-specialist acute trusts in the Capital suggests that at least half cannot become financially viable in their current form. Compared to other regions, London has both the highest proportion, and the largest number, of trusts in the pipeline. They face complex problems individually, but there is also a wider underlying mismatch in parts of London between hospital capacity and demand from commissioners, and an imbalance between primary and secondary care. The SHA is working with all London trusts to identify ways to achieve sustainability in the long term.

### **Conclusion on the work done to date**

**26** Based on statements in the TFA documents, the processes the Department has put in place have introduced a new sense of purpose among NHS trusts in the pipeline for foundation trust status. The Department has made it clear that it is not in the business of maintaining back-door subsidies to financially weak trusts with a record of poor care. Even where foundation trust status is a realistic possibility, many trusts will need to substantially improve their performance. This will involve a step change in the quality of local management, together with close performance monitoring, and timely intervention by SHAs, the Department and, in due course, by the NHS Trust Development Authority, if trusts start to miss milestones. There are, however, at least 20 trusts that face such substantial and long-standing problems that they are not viable in their current form. The Department is now in the process of determining, with the NHS, how it will deal with these trusts.