# Accountability and Regulation

**NHS**

## NHS Foundation Trusts information guide

---

### Introduction

The creation of NHS Foundation Trusts is a key step in public sector reform – giving greater freedoms to NHS organisations. This is part of the wider programme of moving from an NHS controlled nationally towards an NHS where standards and inspection are national but delivery and accountability is local.

NHS Foundation Trusts will remain fully part of the NHS and will have a primary purpose of providing NHS services to NHS patients. They will be subject to NHS standards, NHS performance ratings and NHS systems of inspection. NHS Foundation Trusts will pioneer a new model of social ownership, giving local communities real opportunities to get involved in the stewardship of their local hospitals.

This information document is part of a first series of 8 short documents covering key aspects of NHS Foundation Trust policy and interrelated areas.

---

### Accountability of NHS Foundation Trusts

NHS Foundation Trusts will be set up as a new type of organisation – Public Benefit Corporations. They will have a duty to provide NHS services to NHS patients. They will increase the influence of local communities and staff in the way that NHS services are provided and so make NHS Foundation Trusts more accountable to the communities they serve.

New legislation before Parliament will ensure NHS Foundation Trusts are free from the powers of direction of the Secretary of State for Health that apply to NHS Trusts. Local control and independent regulation and inspection will replace Department of Health control.

Unlike existing NHS Trusts – which are accountable to the Department of Health through their Strategic Health Authorities – NHS Foundation Trusts will be free to decide their own local priorities within a common vision for their local health communities and a framework of national quality control.

There are three key ways in which NHS Foundation Trusts will be accountable:

### 1. Governance

NHS Foundation Trusts will be accountable to local communities and front line NHS staff through their Board of Governors and Board of Directors. Local people and staff will directly elect representatives to serve on the Board of Governors. The Board of Governors will appoint the chair and non-executive directors of the Board of Directors. It will work with the Board of Directors – responsible for day-to-day running of the Trust e.g. setting budgets, staff pay and other operational matters – to ensure that the NHS Foundation Trust acts in a way that is consistent with its terms of authorisation. The Governors, in appointing the chair and non-executive directors, will be in a strong position to influence the direction of the NHS Foundation Trust.

### 2. Performance agreements

NHS Foundation Trusts will work closely with NHS Primary Care Trusts – the bodies responsible for buying NHS care for local communities. In future, NHS Primary Care Trusts will sign legally binding agreements with NHS Foundation Trusts to provide agreed levels of service which accurately reflect local needs and which reward results.

### 3. Independent regulation

An Independent Regulator – accountable to Parliament – will be appointed to oversee NHS Foundation Trusts.

The Independent Regulator will issue an authorisation – like a 'licence' to operate – to each NHS Foundation Trust. This authorisation will set out the conditions under which each NHS Foundation Trust will operate (the terms of authorisation). The Independent Regulator will have powers to step in if there is evidence that an NHS Foundation Trust has significantly breached the terms of its authorisation, or has failed to comply with NHS Foundation Trust legislation.

## Independent quality inspection

These accountability mechanisms will be underpinned by independent quality inspection. Like all other NHS organisations, NHS Foundation Trusts will be subject to independent inspection and monitoring by the new Commission for Healthcare Audit and Inspection, taking account of national quality standards for the NHS. NHS Foundation Trusts will also feature in the annual NHS performance ('star') rating system.

## Regulation of NHS Foundation Trusts

The Independent Regulator for NHS Foundation Trusts will be appointed by the Secretary of State for Health, in line with national guidelines on public appointments. The Independent Regulator will be accountable to Parliament, not the Department of Health or the Secretary of State for Health.

The Secretary of State for Health's powers over the Independent Regulator will be limited to:

- Deciding on the Independent Regulator's length of appointment, pay and conditions; and
- Removing the Independent Regulator in the event of incapacity or misbehaviour.

The Independent Regulator will be responsible for appointing the staff of the Office of the Independent Regulator.

The Independent Regulator will be required to exercise his functions in a manner that is consistent with the way in which the Secretary of State performs his general duties.

An Independent Regulator will be appointed in autumn 2003 – in an advisory capacity at first – but subject to confirmation in post when the Bill currently before Parliament comes into force. The Independent Regulator will publish an annual report on how he has carried out his functions and present it to Parliament and the Secretary of State for Health. Individual NHS Foundation Trusts will also publish their own annual reports.

## Authorisations of NHS Foundation Trusts

Each NHS Foundation Trust will operate under an authorisation issued by the Independent Regulator. The authorisation will set out the requirements, duties and standards that will apply to each NHS Foundation Trust and will be reviewed from time to time.

Although the Independent Regulator will be able to add local conditions to individual agreements, all NHS Foundation Trust authorisations are likely to cover such things as:

- A requirement to provide quality healthcare, based on the national standards for healthcare against which the Commission for Healthcare Audit and Inspection will inspect;
- Protection of NHS clinical services and the circumstances in which major changes to services (for example, in response to a changing local population) need to be discussed locally and agreed by the Independent Regulator;
- Safeguards on any assets such as buildings, land or equipment needed to provide essential NHS services;
- Limits on the amount of private work an NHS Foundation Trust can carry out. NHS Foundation Trusts will be subject to strict limits on private patient work based on the amount of private work they currently do. If an NHS Foundation Trust wishes to treat more private patients, it will need to treat more NHS patients *first*. This will ensure

that NHS Foundation Trusts continue to focus on NHS work;
- The amount of money an NHS Foundation Trust is allowed to borrow; and
- The financial and statistical information an NHS Foundation Trust is required to provide.

Each authorisation will be a public document and a copy will be held by the Registrar of Companies. If an NHS Foundation Trust wants to make substantial changes to the provision of essential 'protected' NHS services it will need to consult the Local Authority Overview and Scrutiny Committee before applying to the Independent Regulator for a change to its terms of authorisation.

The Independent Regulator will oversee how NHS Foundation Trusts perform against their terms of authorisation and will have powers to take action if they do not comply in a significant way.

**Further Information**

This information document is part of a first series of 8 short documents covering key aspects of NHS Foundation Trust policy and interrelated areas.

Other titles in the same series are: System Reform in the NHS, Financial Reforms: Payment by Results, Financial Freedoms, Members, Governors, Human Resources and Contracting.

A Guide to NHS Foundation Trusts and A Short Guide to NHS Foundation Trusts, published by the Department of Health, are available at **www.doh.gov.uk/nhsfoundationtrusts**