

**Subject:** Brighton & Sussex University Hospitals  
Trust: NHS Foundation Trust Application

**Date of Meeting:** 30 September 2009

**Report of:** The Director of Strategy and Governance

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**Wards Affected:** All

### FOR GENERAL RELEASE

#### 1. SUMMARY AND POLICY CONTEXT:

- 1.1 Brighton & Sussex University Hospitals Trust (BSUHT) has recently announced that it has begun the process of applying to become an NHS Foundation Trust (FT).
- 1.2 The statutory powers granted to Health Overview & Scrutiny Committees (HOSCs) by the Health and Social Care Act (2001) do not apply to the FT application process: the HOSC has no formal role in determining whether a trust's decision to apply to become an FT is in the best interests of local residents; nor does the HOSC have a statutory role in determining whether a trust's public/stakeholder consultation in regard to an FT application has been of satisfactory quality and/or scope.
- 1.3 However, BSUHT has expressed the desire to engage fully with HOSC on this issue, and the trust has consequently requested the opportunity to explain its FT application plans to members. BSUHT has also offered a place on its Foundation Trust Project Board to a representative of the HOSC.

#### 2. RECOMMENDATIONS:

- 2.1 That members agree Brighton & Sussex University Hospital Trust's plans for its NHS Foundation Trust application.

### **3. BACKGROUND INFORMATION**

- 3.1 NHS Foundation Trusts are independent public benefit corporations which provide NHS care and which are subject to NHS standards, performance ratings and systems of inspections.
- 3.2 Foundation Trusts draw a representative public membership from their catchment area. Members then vote for Governors, who will constitute the FT Board of Governors, together with Governors representing the staff and stakeholders.
- 3.3 The Board of Governors, or Council of Governors, has a very clear and important role. Amongst other functions the Board:
- Holds the Board of Directors to account
  - Appoints (or removes) the Chairman and Non Executive Directors and agrees their terms and conditions
  - Appoints (or removes) the auditor
  - Approves the appointment by the Non Executive Directors of the Chief Executive
  - Must be involved with the forward plans of the Trust and be presented with the Annual Plan (or business plan for the coming year).
- 3.4 FTs have greater autonomy than existing NHS trusts: for instance, they are not performance managed by the Strategic Health Authority or the Department of Health. FTs have considerable flexibility regarding their finances: for instance they may retain any financial surplus and they may also borrow commercially, investing in better and more efficient clinical services where innovation is expected.
- 3.5 The Department of Health intends that all NHS 'provider' trusts should have sought FT status by the end of 2010. Trusts which have not achieved FT status after this point may be vulnerable to being broken up or taken over by successful FTs.
- 3.7 In order to become FTs, aspirant trusts must apply (with the approval of their Strategic Health Authority) to Monitor, the FT regulator. The application process is both lengthy and involved, with a particular concentration on a trust's medium and long term financial sustainability (FTs have to meet a considerably higher standard in this respect than do non-FT NHS trusts).
- 3.8 FTs are accountable to local communities through their Board of Governors. To this end, Monitor requires that aspirant trusts consult widely prior to their formal FT application - not about whether they

become a foundation trust, but on aspects of their FT application, for instance the structure of the Board of Governors. All sections of the community, stakeholders and staff are expected to be consulted.

- 3.9 An important part of this process consists of a trust determining which communities it actually represents and devising an appropriate governance structure. For some trusts this may be relatively straightforward, but for BSUHT this is bound to present a challenge, as the trust operates major hospitals in Brighton and in Hayward's Heath (providing general acute care for the people of Brighton & Hove and the people of Mid Sussex) as well as offering a range of tertiary services for the whole of Sussex and some very specialist services on a regional basis (i.e. to people in parts of Kent and Surrey as well as the entirety of Sussex). The FT's governance structure must therefore reflect the needs of all these differing constituencies.
- 3.10 Whilst the HOSC has no formal role in approving an FT application, members may be interested in expressing opinions about elements of BSUHT plans, perhaps particularly in terms of the degree to which the trust intends to maintain a focus on the needs of Brighton & Hove residents via its new governance arrangements.

#### **4. CONSULTATION**

- 4.1 This report has been compiled with the assistance of officers from Brighton & Sussex University Hospitals Trust.

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

- 5.1 There are none to this report for information.

##### Legal Implications:

- 5.2 *"There are no legal implications arising from this report."*  
Lawyer Consulted: Elizabeth Culbert; Date: 27/08/09

##### Equalities Implications:

- 5.3 Foundation Trusts are responsible to their 'members': staff, patients and local residents who elect the trust's Governors and influence the organisation's strategic direction. It is important that a Foundation Trust's membership reflects the entire community, including groups of people who may prove 'hard to reach' via generalist modes of communication. Members may therefore wish to ascertain how BSUHT plans to engage with these groups in order to ensure that trust membership reflects the entire local community.

Sustainability Implications:

5.4 None identified

Crime & Disorder Implications:

5.5 None

Risk and Opportunity Management Implications:

5.6 None identified

Corporate / Citywide Implications:

5.7 None identified

**SUPPORTING DOCUMENTATION**

**Appendices:**

None

**Documents in Members' Rooms:**

None

**Background Documents:**

None