

HEALTH AND SOCIAL CARE ACT 2012

Implications for the Trust, its
Directors, governors
and members

Peter Lee
Chairman



Key issues

- Where we start from
- A new commissioning regime
- New initiatives
- New roles and responsibilities – Governors
- New roles and responsibilities – Directors of the FT
- Non NHS derived income (private income)
- Overall impact

Where we start from

- Combined hospital and community services
- Income £225m from 1 year contract
- Over 4,000 staff
- Cost improvement programme 2012/13 £14 m
- FRR – 3 (1-5) and Governance – Green (green/amber/red)
- Lowest waiting times
- Infection control record - excellent

A new commissioning regime

- Present position – Primary Care Trust until April 2013
- Future position – Clinical Commissioning Group from 2013
- Transitional arrangements exist

- CCGs – locally managed and directed – all primary care providers have to be members – regulatory supervision – obligations to be transparent

- CCGs – mandated to continuously improve services.....reduce inequalities.....promote patient involvement and patient choice...innovation.....research andthe integration of health and social care

New Initiatives

- Promotion of section 75 NHS Act 2006 arrangements
- Every provider of health services will need to be licensed
- Changing role for Monitor (Foundation Trust regulator)
- Increasing role of Council of Governors
- Duty to promote the NHS Constitution
- Caps and conditions to non NHS income
- FT Board meetings to be held in public

New roles and responsibilities - Governors

- New specific duties :
 - (a) to hold the NEDs individually and collectively accountable for the performance of the Board
 - (b) to represent the interests of the members (as a whole) and the interests of the public
 - (c) to require the directors to attend Council of Governors to supply information regarding the performance of their duties and functions
- Any amendment to the Constitution of the Trust regarding the powers or duties of the Governors (or their role) is subject to a members' vote. More than 50% of those voting must be in favour and the motion must be put by a member of Council of Governors
- Any other amendments to the Constitution of the Trust are subject to more than 50% of the Directors voting in favour and more than 50% of those Governors actually voting being in favour.
- NOTE: Influence over mergers, acquisitions, separations and dissolutions – any proposal is subject to approval by 50% of all of the Governors (not just 50% of the Governors voting!
- Constitution can be changed to specify partnering organisations which may appoint one or more members of the Council e.g. major charity?

New roles and responsibilities - Directors

- General duty to act with a view to promote the success of the Trust so as to maximise benefits for the members (as a whole) and for the public
- Must supply Governors with meeting Agendas prior to their meetings and minutes as soon as practicable after meetings
- Constitution must be amended to provide for meetings to be open to the public and may provide for exclusion of the public for special reasons
- Obligation to promote the NHS Constitution to members of the public in discharging the Trust's functions
- Ensure that the Governors are equipped with the skills and knowledge required in their capacity as such, to discharge their duties

Directorscont.

- Accountability to Governors (all directors) for performance of their functions and duties and the requirement to attend at Council, if requested by Council, to supply information and answer questions regarding their functions and performance of their duties
- Constitutional changes require Governors approvals (NB the voting majorities required)
- What is a significant transaction may be defined in the Constitution of the Trust (or not) (and not by Monitor) and entry into such a transaction will be subject to approval by more than 50% of the Governors actually voting
- Governors influence over mergers, acquisitions, separations and dissolutions – any proposal is subject to approval by 50% of the Governors (in numerical terms – whether they vote or not) (not 50% of the Governors voting!)
- Obligations re the “complexion” of the membership
- Obligation to hold an annual meeting of its members (open to the public)

Members

- Change to an obligation (not an option) upon the Trust to secure that the actual membership of any public constituency is representative of those eligible for such membership
- In deciding which areas are to be public constituencies, (or in deciding whether there is to be a patients constituency), FTs must have regard to the need for those eligible for such membership to be representative of those to whom the Trust provides services
- Obligation to provide a members' annual meeting

Overall impact?