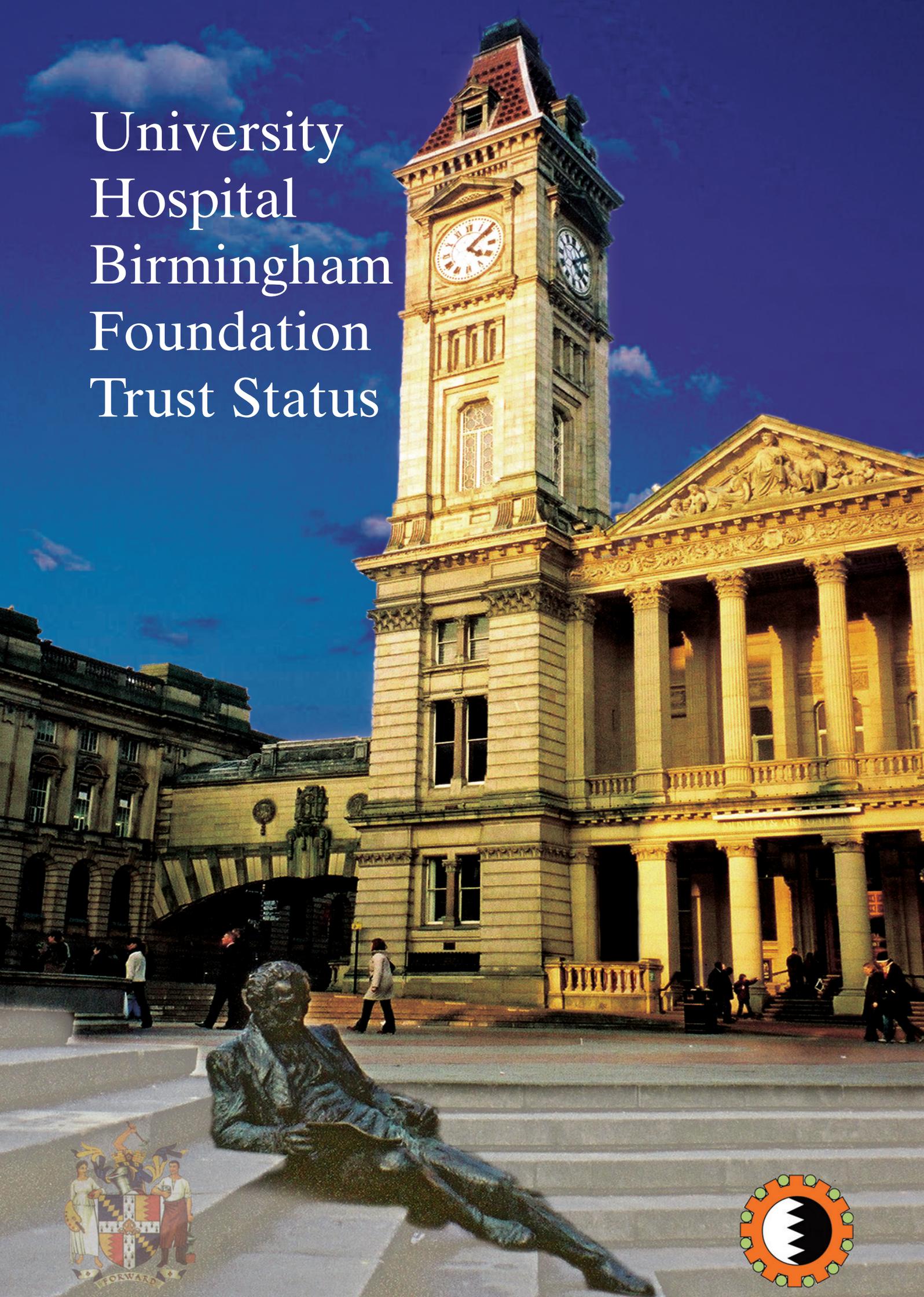


# University Hospital Birmingham Foundation Trust Status





## Application by University Hospital Birmingham for Foundation Trust Status

2<sup>nd</sup> December 2003

Report to the City Council

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# Application by University Hospital Birmingham for Foundation Trust Status

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## Application by University Hospital Birmingham for Foundation Trust Status

### Preface

**By Councillor Bryan Nott**

Chair, Health Overview and Scrutiny Committee



Since the Government announced its intentions to introduce Foundation Trusts last year, there has been a lot of national debate about what the policy really means and what impact it might have, not only for health care provision, but for NHS structures and NHS principles.

Foundation Trusts are controversial. The way they are being introduced is yet more controversial. With the announcement made by University Hospital Birmingham NHS Trust (UHBT) that it was making a preliminary application for Foundation Status, the Health and Overview and Scrutiny Committee decided the matter needed further exploration.

The purpose of the review was to examine the policy from a local perspective and to examine what risks and benefits were presented by UHBT's application to

- the provision of health services for the people of Birmingham
- the equitable distribution of resources and financial stability of the local health and social care economy

Our review takes into account a variety of views. In ascertaining the level of change and impact, we have also uncovered some myths and misunderstandings – many of which we hope will be clarified once the legislative process has completed its course through Parliament.

It is important that our review findings do not get lost in the politics of this controversial policy. Whether Foundation Trusts bring radical or welcomed change is a debate that will continue for some time. What our report does provide is an outline of the challenges facing the health and social care economy as a result of NHS 'whole systems' reform: Foundation Trusts are only one element of this. This bigger agenda requires greater attention.

The review took almost five months to complete. I would like to thank my colleagues on the review panel - Councillors Margaret Sparrey, Jagdip Rai, Reverend Richard Bashford and Jerry Evans - for assisting with the enquiries, as



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well as Members of the Health Overview and Scrutiny Committee who contributed to this report.

I would also like to acknowledge the co-operation and time given to this review from local NHS bodies - in particular the Chairman and Chief Executive of UHBT, and South Birmingham PCT, Birmingham's four Community Health Councils (CHCs) and the Chief Executive and Director of Finance of the Strategic Health Authority who participated in the process.

A handwritten signature in black ink, appearing to read 'Bryan Nott', written in a cursive style.

Councillor Bryan Nott  
Chair, Health Overview and Scrutiny Committee



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# 1: Summary

- 1.1.1 This review has been undertaken by the Health Overview and Scrutiny Committee.
- 1.1.2 The purpose of the review was to examine the risks and benefits of an application for Foundation Trust status made by University Hospital Birmingham NHS Trust (UHBT) on the
- provision of health services for the people of Birmingham and
  - equitable distribution of resources and financial stability of the local health and social care economy
- 1.1.3 In undertaking the review, the Committee learnt that Foundation Trusts are one element of 'Systems Reform' in the NHS. They are to spearhead the early introduction of Payment by Results and will be implementing a range of other reforms around staff pay and conditions (Agenda for Change) and enhancing patients' decisions about their care (Patients' Choice) along similar timescales as the rest of the NHS.
- 1.1.4 Whilst it is only those NHS Trusts that have a three-star performance rating that are eligible to apply, the Government is providing support to all Trusts in order to raise standards and ensure that by 2008 every NHS Trust in the country has Foundation status.
- 1.1.5 Legislation on this matter is running its course through Parliament and it is understood that many revisions and amendments have been made in the process. The exact nature of the parameters within which Foundation Trusts will operate is yet to be seen. However, they are expected to differ from NHS Trusts in three distinct areas:
- Governance arrangements
  - Performance management arrangements
  - Financial freedoms and flexibilities
- 1.1.6 The Committee's work has focused on these as well as a number of recurrent themes, including



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- Planning and commissioning of services in relation to need
- Decentralised control
- Use of financial and human resource freedoms
- Performance management and regulation
- Duty of partnership
- Governance arrangements

### 1.1.7

As well as analysing the risks and benefits associated with UHBT's application, our conclusions are:

- The Health Overview and Scrutiny Committee would, on balance, support UHBT's application for Foundation Trust status and believes that there may be some advantages for the city as a result of this Trust becoming one of the first Foundation Trusts in the country. This support is conditional on sufficient safeguards being put in place to ensure services continue to be planned to meet local needs and to ensure the stability of the local health economy. This support does not, however, imply an endorsement by the Committee of the Foundation Trust policy overall.
- If UHBT succeeds in making an early application, the NHS in Birmingham will undoubtedly be at the cutting edge of this overall programme of reform. This advantage is an important and worthwhile consideration for the city as a whole.
- The Committee acknowledges the aspirations, leadership and commitment shown by UHBT in its application for Foundation Trust status and also that shown by South Birmingham Primary Care Trust. We recognise their vision and achievements as high performing Trusts, and how they can contribute to the regeneration of the city.
- The Trust's continued drive to make further improvements to local services through the greater autonomy and freedoms associated with Foundation Trust status will undoubtedly create incentives for change and accelerate the pace of modernisation across the wider health economy.
- At the time of writing, it does not appear that the Trust has immediate and detailed plans to use the financial and other freedoms associated with Foundation Trust status to improve particular services.
- In assessing the benefits for local people, the Committee



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is encouraged by the opening statement by the Trust that the reason it wishes to become a Foundation Trust is to make it "more accountable to local people."

- However, the Committee is sceptical about the national framework for local governance, and the Trust's ability within that framework to deliver a meaningful, new form of local democracy and accountability.
- Whilst we acknowledge the considerable strengths and performance of South Birmingham PCT as the main purchaser, the Committee believes that Primary Care Trusts (PCTs) as a whole are having to cope with a huge number of demands, including the introduction of an internal market under Patients' Choice and Payment by Results, the new GP and consultant contracts, and Agenda for Change.
- This burden on PCTs, together with the weakened role of the Strategic Health Authority (StHA) in regulating the health economy as a whole, in active performance management, and in financial brokerage, could lead to even greater inequity in service provision than at present.
- The Committee has concerns about the capacity of the PCTs in Birmingham to manage this huge agenda of reform and modernisation (of which Foundation Trusts are one) and to work collaboratively to ensure strategic investment in health care as well as performance managing their contracts with Foundation Trusts. The Committee is also concerned about the impact of Patients' Choice and Payment by Results on the future ability of PCTs to commission services on an equitable basis because of the re-introduction of the internal market.
- The Committee's view is that there need to be more safeguards to ensure that the commissioning and distribution of health care is based on an understanding of health needs and inequalities. We think the Government needs to give further consideration to the role of PCTs and the StHA and how this might be strengthened within its programme of reforms.
- The Committee believes that there will be additional costs of introducing Foundation Trusts and that these should be made transparent and explicit. The financial advantages which Foundation Trusts will have as a result of the early introduction of the new funding regime and through central support are likely to be considerable.



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- The impact of this policy (i.e. to foster innovation and change in acute hospitals) on the ability of PCTs to invest in preventive, primary, community and intermediate care should be carefully monitored.
- The Committee believes that it will be essential to monitor the total costs of establishing UHBT as a Foundation Trust, and how much additionally PCTs in Birmingham have to allocate to acute hospital care simply to deliver the reform agenda.
- The Committee is concerned that there may be risks to partnership working, particularly between health and social care and between NHS Trusts and Foundation Trusts as a result of the freedoms and privileges associated with Foundation Trust status. Whilst we recognise that there is a duty of partnership within the Trust's Licence and assurances were given by UHBT, the Committee was concerned that a more competitive environment as a result of Patients' Choice, together with an emphasis on surplus generation, could result in tensions similar to those seen under GP fundholding and the internal market.
- We would like to see the principles of partnership working, including those established by the Birmingham Health Partnership for health and social care and those agreed as part of the Concordat for Health Scrutiny formalised in a "Partnership Agreement" between the Council, South Birmingham PCT and the Trust. This agreement should be monitored by the Independent Regulator under the 'Duty of Partnership' part of the Trust's Licence.
- The Committee believes the following areas should be monitored if and when Foundation Trusts are introduced:
  - changes in models of service delivery which have been implemented
  - valuation of assets
  - duty of partnership working and what this means in practice
  - additional revenue costs of Foundation Trust implementation
  - membership of the Board of Governors and integration with structures for public involvement
  - input and reporting of stakeholder governors
  - support given to non-Foundation Trusts wishing to raise standards
  - developing role of PCTs and StHA
  - revenue costs of capital schemes that would



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formerly have been approved by the Strategic  
Health Authority

- 1.1.8                    These areas are reflected in the recommendations as appropriate.



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# 2: Summary of Recommendations

**With regards to UHBT's application and further applications for Foundation Trust status and subject to legislation, the Health Overview and Scrutiny recommends that:**

	<b>Recommendation</b>	<b>Responsibility</b>	<b>Completion Date</b>
R1	If successful in their application for Foundation Trust status, UHBT submit a report to the Health Overview and Scrutiny Committee describing the details contained in their terms of Licence, including the list of protected services and whether they have opted for Income Guarantee or National Tariff options.	Chief Executive - UHBT	April 2004
R2	UHBT governance arrangements take account of: <ul style="list-style-type: none"> <li>a) The need to ensure representative balance of members and that the arrangements to protect this are written into the Trust's Constitution;</li> <li>b) The need to ensure that the Strategic Health Authority maintains an active role in strategic planning and overview of health care across the region. This may include, for example, them having a place on the Board of Governors;</li> <li>c) Options suggested by the Health Overview and Scrutiny Committee as at paragraphs 4.8.11 - 4.8.13.</li> </ul>	Chief Executive - UHBT	April 2004
R3	In developing its governance arrangements, UHBT works towards building on existing patient and public involvement forums including their Patients' Council, and the new Patients' Forums and submit information to the Health Overview	Chief Executive - UHBT	April 2004



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and Scrutiny Committee on:

- a) Budgetary details about costs and deployment of resources for developing governance arrangements;
- b) The robustness of governance arrangements in terms of its membership community, election processes and the effective involvement of local people.

R4	The Chair of the Health Overview and Scrutiny Committee writes to the Department of Health requesting a report summarising key findings of the "Due Diligence" report it has commissioned on the financial viability of UHBT's application.	Chair - Health O&S Committee	January 2004
R5	South Birmingham PCT, working in conjunction with UHBT, provides an annual progress report to the Health Overview and Scrutiny Committee which could cover, for example, the following activities: <ol style="list-style-type: none"> <li>a) Any changes to protected services as set out in the Trust's Licence;</li> <li>b) Changes of land use/assets;</li> <li>c) Joint ventures that have been entered into, particularly relating to the development of local and community services, new models of care and preventive treatments of chronic conditions;</li> <li>d) Amount and use of any surpluses accrued and how these have been reinvested into local health care provision.</li> </ol>	Chief Executive - South Birmingham PCT Chief Executive - UHBT	April 2005
R6	The Chair of the Health Overview and Scrutiny Committee writes to the Independent Regulator suggesting that PCTs are involved in setting out partnership agreements as they apply to the whole health and social care economy in Birmingham and that these partnership agreements are included, under the 'Duty of Partnership' element of Foundation Trusts' Licences.	Chair - Health O&S Committee	January 2004
R7	All PCTs in Birmingham adopt a systematic approach to undertaking risk assessments prior to second	Chief Executives of South Birmingham PCT	July 2004



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stage applications for Foundation Trust status, particularly in respect of financial, managerial and service issues and that this information be made available to the Health Overview and Scrutiny Committee as required. Progress on this to be reported to the Committee in July 2004 by South Birmingham PCT

R8	South Birmingham PCT, in conjunction with the other PCTs in Birmingham, submits a report to the Health Overview and Scrutiny Committee demonstrating that arrangements are in place for effective collaborative working, performance monitoring, service evaluation and health improvement across PCT boundaries.	Chief Executive - South Birmingham PCT	April 2004
R9	The Strategic Health Authority, in conjunction with the four PCTs in Birmingham, submits a report to the Health Overview and Scrutiny Committee on: <ul style="list-style-type: none"> <li>a) How it intends to develop a consistent approach to management of Foundation Trust applications and patient and public involvement across the city;</li> <li>b) How it intends to work with PCTs and the Independent Regulator for the effective performance management of the health economy as a whole.</li> </ul>	Chief Executive - StHA	September 2004
R10	The Chair of the Health Overview and Scrutiny Committee writes to the Independent Regulator recommending that there is provision for the exchange of information and dialogue between the Independent Regulator and Health Overview and Scrutiny Committees.	Chair - Health O&S Committee	January, 2004
R11	Following the second wave of Foundation Trust applications, the Strategic Health Authority provides a report to the Health Overview and Scrutiny Committee on the allocation of capital budgets in the region, the equitable distribution of capital and the implications for financial stability of other NHS Trusts in Birmingham.	Chief Executive - StHA	September 2004



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R12	Full Council appoints a Member to serve on UHBT's Board of Governors and agrees an appropriate reporting mechanism.	Council	April 2004
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### With regards to the impact of wider NHS Systems Reform:

R13	The Health Overview and Scrutiny Committee, with input from the Strategic Health Authority, keeps under review the following matters and that these form part of the Committee's work programme from July 2004:	Chair - Health O&S Committee	July 2004
	<ul style="list-style-type: none"> <li>a) Preparatory and capacity issues for PCTs around implementing NHS Systems Reform, i.e. Agenda for Change, Payment by Results and Patients' Choice;</li> <li>b) The robustness of commissioning tools, IT infrastructures and partnership arrangements across the health sector and the financial impact on PCTs;</li> <li>c) Monitoring arrangements about the impact of NHS Systems Reforms on the local NHS, including the application of the national tariff and implications of case-mix drift.</li> </ul>		

### With regards to monitoring and tracking of recommendations:

R14	A first report on progress towards achievement of these recommendations should be submitted to the Health Overview and Scrutiny Committee by 28 <sup>th</sup> July 2004 and reviewed on a six-monthly basis until completed.	Chief Executive - UHBT Chief Executive - South Birmingham PCT Chief Executive - Strategic Health Authority Chair - Health O&S Committee	July 2004
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# 3: Introduction

## 3.1 Reason for Review

- 3.1.1 In July 2000, the Government published the NHS Plan - an ambitious ten-year plan to modernise and reform the NHS and social care system. Subsequent publications and policy documentation from the Department of Health have served to map and signpost the nature of reform and investment required by the NHS to deliver high quality services, develop services that are responsive to local needs and improve accountability.
- 3.1.2 In July 2002, the Government announced its intention to create NHS Foundation Trusts as independent public interest organisations operating within a new framework of governance and regulation. This policy is one of several likely to have a major impact on the planning and provision of health care over the next three years.
- 3.1.3 The Government's aim is to accelerate the pace of change by putting Foundation Trusts at the cutting edge of this wider programme of public sector reform - offering more diversity and patient choice, enabling leadership, innovation and initiative to flourish as part of the local health economy, and replacing central control from Whitehall with accountability to the local community.
- 3.1.4 The necessary powers and safeguards required to establish Foundation Trusts are currently the subject of primary legislation. At the time of writing (October 2003), the Health and Social Care (Community Health and Standards) Bill 2003 was yet to be ratified. It completed its course in the House of Commons on 8<sup>th</sup> July 2003. A second reading in the House of Lords is in progress. Final notification on the matter is expected around 20<sup>th</sup> November. If the Bill is ratified, Foundation Trusts will become effective from April 2004.
- 3.1.5 Guidance setting out the eligibility criteria and milestones for Foundation Trust applications was issued in December 2002. The best performing acute and specialist Trusts, i.e. those that achieved three-star status in the NHS performance rankings, were



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- invited to submit applications to become the first wave applicants.
- 3.1.6 The Government's intention is to encourage more NHS Trusts to apply as their performances improve. By 2008, all NHS Trusts in the country will have the opportunity to become Foundation Trusts. In later waves, eligibility may also be available to other types of NHS Trusts and to organisations that are not currently part of the NHS.
- 3.1.7 In May 2003, the Government launched an improvement programme: "Raising Standards – Improving Performance." This programme includes a £200m package of financial support to raise standards in the NHS. Strategic Health Authorities will be given £50m a year for four years to target zero and one-star NHS Trusts. A separate package is being developed for two-star Trusts.
- 3.1.8 In February 2003, the Board of University Hospital Birmingham NHS Trust (UHBT) agreed to put forward a preliminary application to become an NHS Foundation Trust. At that time, it was the only NHS Trust in Birmingham to have achieved three-star status. The Trust's second stage application is due in mid-December. The final decision on whether to proceed with this application will be made by UHBT once the final regulations have been published. If successful in its application, UHBT will be one of the first Foundation Trusts in the country.
- 3.1.9 In June 2003, the Council's Health Overview and Scrutiny Committee decided to undertake a review of UHBT's application to become a Foundation Trust as part of its work programme for this year. Foundation Trusts were one of several priorities identified at a seminar convened by the Overview and Scrutiny Committee in March 2003 that was held with NHS partners, Community Health Councils and the voluntary sector. A wider policy debate on the principles of Foundation Trusts organised by the City's Health Partnership group in April 2003 (chaired by Councillor Susanna McCorry) identified some key issues that helped to guide the framework for this review.
- 3.1.10 The Committee took the view that the introduction of Foundation Trusts could have a significant impact on the local health and social care economy and this development was of interest to local people. The Committee was also aware that other NHS Trusts in Birmingham were intending to follow suit. The Committee believed that initial findings from the review of UHBT's application were likely to be relevant to second-wave applications and that it would provide a useful input to the consultation process.
- 3.1.11 Three other three-star NHS Trusts in the city have now submitted



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preliminary applications to become Foundation Trusts: Birmingham West and Sandwell NHS Trust, the Women's NHS Trust and Heartland and Solihull NHS Trust.

- 3.1.12 In September, UHBT began its consultation exercise (closing date 27<sup>th</sup> November) with key stakeholders, including the City Council. The Health Overview and Scrutiny Committee is also responsible for co-ordinating the City Council's response to this consultation, which will draw views from across Council departments, Elected Members and the Executive. Whilst the initial findings of the Committee will provide one input into the Council's response, the process of drawing together the consultation response is a separate exercise to the preparation of this report. It should be noted that the remit, focus and recommendations of our review go beyond the specific issues raised by UHBT as part of their consultation exercise.
- 3.1.13 The key lines of enquiry which the Committee followed during the course of this review were as follows:
- How will local people benefit?
  - Will local people have more say in the way services are provided?
  - What are the risks and benefits for the local health and social care economy?
  - How can equity of access, high clinical standards and planning to meet local needs be assured?
  - Does the capacity exist to deliver the changes required?
  - What aspects of Foundation Trust applications and implementation require further scrutiny?
- 3.1.14 When conducting the review, a number of recurring themes emerged about Foundation status:
- Planning and commissioning of services in relation to need
  - Decentralised control
  - Use of financial and human resource freedoms
  - Performance management and regulation
  - Duty of partnership
  - Governance arrangements
- These areas are covered in the main body of the report.
- 3.1.15 In drawing our conclusions, the Committee is aware that the



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Health & Social Care (Community Health and Standards) Bill 2003 is still under discussion and that there remain a number of uncertainties about the final regulations. The Committee is concerned that the Government has placed so little emphasis on wider public debate and consultation about this policy at a local level, and that Trusts have been invited to submit applications for Foundation Trust status before legislation is complete.

3.1.16 These uncertainties, together with the short timescale for the Committee to conduct this review (i.e. the need to submit a report to Council in December, prior to UHBT submitting their second stage application), means that much of the evidence required to assess its likely impact on the local health economy, on partnership working and on equity of resource allocation and service distribution has been limited. Any assumptions that have been made are highlighted where appropriate.

3.1.17 It is particularly unfortunate that a "Due Diligence" financial report on UHBT, commissioned by the DOH as part of their assessment, was not available to either the Committee or the Strategic Health Authority. We understand that this report is likely to include financial plans for the last three years, funding flows and associated risks of having a PFI scheme requiring additional revenue. The StHA indicated that work on this was in progress and is likely to be concluded at the end of November. The Committee considered that this was a key document which would have provided a useful insight into its enquiries - particularly with regard to clarifying some of the financial uncertainties. This matter is further addressed at 4.5.6.

### 3.2 Terms of Reference

3.2.1 Terms of Reference for the review are attached at Appendix 1.

### 3.3 Membership

3.3.1 A review panel of Members from the main Health Overview and Scrutiny Committee carried out the review. Members of the review panel were:

- Councillor Bryan Nott (Chair)
- Councillor Reverend Richard Bashford
- Councillor Jerry Evans



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- Councillor Jagdip Rai
  - Councillor Margaret Sparrey
- 3.3.2 Members of the Health Overview and Scrutiny Committee were:
- Councillor Bryan Nott (Chair)
  - Councillor Margaret Sparrey (Vice Chair)
  - Councillor Susan Axford
  - Councillor Reverend Richard Bashford
  - Councillor Jilly Bermingham
  - Councillor Jerry Evans
  - Councillor Jon Hunt
  - Councillor Ansar Ali Khan
  - Councillor Shaukat Ali Khan
  - Councillor Chaman Lal
  - Councillor Jagdip Rai
  - Councillor Fergus Robinson
- 3.3.3 The review panel wishes to acknowledge the contribution made by Ian Clemenson (Independent Human Resources Adviser) who attended one meeting and provided advice on workforce matters.
- 3.3.4 Officer support for the review panel's work was provided by the Council's Scrutiny Office, Lead Officer: Narinder Saggi, and the Committee's Link Officer, Dr. Jacky Chambers.

### 3.4 Methodology

- 3.4.1 In producing its findings, the Committee drew on information obtained through the following sources:
- Policy documents and guidance notes on Foundation Trusts and related initiatives (see Appendix 2)
  - Various academic papers on Foundation Trust policy as well as evidence presented to the House of Commons Health Committee (see Appendix 2)
  - Documentation, presentation material and written submissions supplied by UHBT (see Appendix 2)
  - Evidence from Unions, NHS Trusts, UHBT's Patients' Council, PCTs, Birmingham City Council Departments and



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CHCs (see Appendix 3)

- Discussion with Lord Hunt (former Health Minister)
- Review panel meetings as follows:

24 <sup>th</sup> July	UHBT
7 <sup>th</sup> August	UHBT
11 <sup>th</sup> August	Unions
5 <sup>th</sup> September	CHCs
16 <sup>th</sup> September	PCTs
8 <sup>th</sup> October	Strategic Health Authority
15 <sup>th</sup> October	Unions
20 <sup>th</sup> October	UHBT and South Birmingham PCT

### 3.5 Critique of Methodology

- 3.5.1 As specified at 3.1.16, the timescales for the review meant we had to complete the exercise before the legislative outcome was known and in the absence of key documentation. Consequently, considerable uncertainties remain about the impact of Foundation Trust status and the exact nature of the financial freedoms and their implications. The exercise would have been much easier both for those scrutinising as well as those being scrutinised had the legislative framework been clearer.
- 3.5.2 Furthermore, the Committee would have liked a direct input into the review from patients and the public. However, within the time and resources available contributions were limited to representative forums such as Birmingham's four CHCs and UHBT's Patients' Council.



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# 4: Findings

### 4.1 University Hospital Birmingham NHS Trust (UHBT)

- 4.1.1 UHBT is one of the largest teaching hospitals in the West Midlands. Through its two hospitals - the Queen Elizabeth Medical Centre and Selly Oak Hospital - the Trust delivers a range of secondary services to meet local, regional and national needs. Over 500,000 patients are treated at the two hospitals each year and tertiary services are provided for about six million people. The range of services provided by the Trust includes all major acute specialties (except paediatrics and obstetrics), heart, lung, liver and kidney transplant programmes and major regional services including neurosurgery, burns and plastic surgery. The Trust is also the regional centre for cancer and has a large cardiac critical care unit. The Trust employs approximately 6,000 staff. For the year ending 31<sup>st</sup> March 2003, the Trust had a turnover of £290.2m and a fixed asset base of £198.4m.

(Source: UHBT: Consultation document on becoming a Foundation Trust) and written submission from UHBT to the Health Overview and Scrutiny Committee)

- 4.1.2 UHBT has contractual arrangements with the four PCTs in Birmingham. In terms of patient flows, the Trust's patients come from PCT areas as described in the tables below.

PCT/ area	Percentage
South Birmingham PCT	52%
Heart of Birmingham (t) PCT	10%
East Birmingham PCT	4%
North Birmingham PCT	3%
Other PCTs in the West Midlands	16%
Other parts of the UK	15%

Source: UHBT Consultation document on becoming a Foundation Trust, September 2003



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<b>UHBT Activity 2002/03</b>			
<b>PCT</b>	<b>Inpatient episodes</b>	<b>Outpatient attendances</b>	<b>Accident and emergency*</b>
Dudley Beacon and Castle PCT	646	1678	
Dudley South PCT	1750	5961	
East Birmingham PCT	3828	12985	
Heart of Birmingham (t) PCT	16264	35739	
North Birmingham PCT	3359	9278	
Oldbury and Smethwick PCT	3659	6728	
Rowley Regis and Tipton PCT	733	2263	
Solihull PCT	2732	10014	
South Birmingham PCT	54113	159419	
Walsall Teaching PCT	1665	6276	
Wednesbury & W. Bromwich PCT	2133	4700	
Wolverhampton City PCT	1145	2518	
PCTs outside the Birmingham and Black Country Strategic Health Authority area	17570	48512	
<b>Total</b>	<b>109597</b>	<b>306071</b>	<b>72457</b>

\* When attending A&E, patients' PCT is not recorded

Source: UHBT Policy and Performance Directorate – information supplied October 2003

- 4.1.3 Under the Government's system of star ratings, UHBT has achieved three-star status for two years in a row – a performance of which it is proud and keen to sustain. In 2002, a review of the Trust by the Commission for Health Improvement (CHI) was positive about leadership and management at the Trust and its focus on a whole-systems approach in service design and delivery.
- 4.1.4 Earlier this year the Trust identified seven strategic themes for the period 2003 – 2010 based on an analysis of demographic trends and changes in patterns of health care. These are:
- To deliver and develop high quality integrated local health services.
  - To consolidate and further develop the Trust's role as the primary regional specialist service centre for the West Midlands.



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- To educate, develop, train and retain the workforce required to provide excellent patient care.
- To become patient and client focused in all aspects of the Trust's activities.
- To develop the Trust's research capacity and embed research development activities as a core function of the Trust.
- To create an international peer network through which the Trust can test its comparative performance and develop its organisational learning.
- To be a community asset for Birmingham, engaged with and influenced by its citizens and playing a leading role in the economic, social and cultural development of the city, its communities and its citizens.

(Source: UHBT corporate Strategy 2003-2010[as at 4<sup>th</sup> April 2003])

- 4.1.5 The Trust is also committed to developing the Birmingham New Hospitals Project, funded through a £350m Private Finance Initiative scheme. The purpose of the scheme is to build a new state-of-the-art single-site hospital to replace the Queen Elizabeth and Selly Oak Hospitals. The New Hospitals Project also includes the replacement of mental health facilities at the Queen Elizabeth Psychiatric Hospital.
- 4.1.6 A private sector partner to build and maintain the site is due to be announced in December with construction work expected to commence in 2004. The date for completion is expected to be 2008.
- 4.1.7 In 2001, the Royal Centre for Defence Medicine relocated to a site owned by the Trust. The Centre trains medical, nursing and other health care staff for the UK armed forces.
- 4.1.8 These developments indicate an ambitious agenda, enterprising culture and record of achievements by the Trust. The Trust sees Foundation Trust status as one means of delivering its strategic aims and objectives, including that of being a major contributor to the city's regeneration.

## 4.2 What are Foundation Trusts?

- 4.2.1 Foundation Trusts will be established as independent public benefit corporations providing NHS health care free at the point of delivery. Ownership and control of NHS assets will be transferred



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from the Secretary of State to an elected Board of Governors. Foundation Trust activities will be regulated through a licence held by an Independent Regulator.

- 4.2.2 Foundation Trusts will be given certain powers under the Health and Social Care (Community Health and Standards) Bill 2003 to generate operating surpluses which they can use to invest in services. It is expected that they will differ from NHS Trusts in three important ways:

- Governance arrangements
- Performance management arrangements
- Financial freedoms and flexibilities

Each of these is covered in more detail below.

### **Governance arrangements**

- 4.2.3 Foundation Trusts will be governed as independent Public Benefit Corporations modelled on the idea of a 'mutual co-operative.'
- 4.2.4 Responsibility for governance will be passed to a Board of Governors elected from a 'membership community.' The role of this Board is to "shape the strategic direction of the Trust and its services and to hold the Directors to account on behalf of the members." (Source: Foundation Trusts Guidance, Department of Health, December 2002)
- 4.2.5 Day-to-day management, operation and decision –making will be undertaken by a Board of Directors. Sovereignty for decisions about the Trust effectively rests with the Board of Directors, whose decisions cannot be vetoed by the Board of Governors.

### **Performance management**

- 4.2.6 Foundation Trusts will be performance managed by Primary Care Trusts in relation to contracts as set out in the Local Delivery Plans of PCTs. Their overall performance will be monitored through a Licence issued by the Independent Regulator. It is not clear how the Independent Regulator will actually performance manage these Trusts and whether this will be similar to the way in which the Strategic Health Authority has done so in the past. The Committee considered that it was important to understand the nature of the changed relationships in this area and to determine the scope for dialogue between the Health Overview and Scrutiny Committee and the Independent Regulator. It



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therefore agreed that *the Chair of the Health Overview and Scrutiny Committee writes to the Independent Regulator recommending that there is provision for the exchange of information and dialogue between the Independent Regulator and Health Overview and Scrutiny Committees.*

### Financial freedoms and flexibilities

4.2.7 Foundation Trusts will have powers to generate surpluses. They can:

- trade in NHS and non-NHS services
- buy and sell land and other assets
- create commercial arms or join existing commercial ventures
- borrow money from private lenders
- sub-contract work to commercial companies

4.2.8 From 2004/05 they will begin to operate under a new national tariff system - one year earlier than the rest of the NHS. The system which will come into effect requires all NHS providers to adopt a centrally determined rate of payment for individual episodes of care and draw capital against the Department of Health's capital spending limit. Additional activity will be funded by PCTs at tariff, not marginal price. Under the current system of block contracts, PCTs negotiate a marginal price for extra work undertaken by NHS Trusts (this can be between 40%-60% of the actual cost of the work). This means that often Trusts are not being reimbursed fairly for extra work undertaken. However, under the new tariff system all work will be charged at the full tariff rate (100%). Further details about the national tariff are contained in Appendix 4.

4.2.9 The amount that Foundation Trusts can borrow will be based on a formula called the 'Prudential Code' and will depend on the Trust's ability to repay the debt from the revenue they raise.

4.2.10 The borrowing limits for each Foundation Trust will be negotiated with the Independent Regulator on a Trust-by-Trust basis, and will be set out in the Trust's Licence.

### Recruitment and retention of staff

4.2.11 The Government has stated that Foundation Trusts will operate within the framework of 'Agenda for Change' - a new framework for pay and contracts which applies to the whole NHS. (See



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Appendix 4)

- 4.2.12 All NHS Trusts will be allowed to offer extra premiums and special benefit packages and to pay recruitment and retention rates above a normal 30% cap where this is justified. This can only be applied subject to consultation with other NHS Trusts. In practice this freedom is likely only to be used as an incentive for jobs where recruitment is difficult.

### The changing context of public sector reform

- 4.2.13 The Committee believes it is important to understand UHBT's application to become a Foundation Trust within the wider context of public sector reform and modernisation which is taking place in the NHS. The legislation for Foundation Trusts is part of a broader agenda of promoting choice within the public sector, of creating a mixed economy for NHS patients to access both public and private sector hospitals, and of changing the NHS from a "monolithic organisation commanded from Whitehall" to one which encourages "local leadership and innovation."
- 4.2.14 Other related policies include 'Agenda for Change', Payment by Results and Fair for all, Personal to you: Patients' Choice. (See Appendix 4 for more detailed explanations of each).
- 4.2.15 The Government's intention is to put Foundation Trusts at the "cutting edge" of its commitment to devolution and wider programme of reform for public services.

(Source: Short Guide to NHS Foundation Trusts, Department of Health [August 2003])

## 4.3 Evidence presented by the NHS

- 4.3.1 The predominant views of Non-Executive and Executive Directors of UHBT, the StHA and local PCTs was that alone, the shift to Foundation Trust status would be unlikely to have a significant impact on the local health economy and that the changes were likely to be modest. UHBT stated that, whilst achieving Foundation Trust status was one of the Trust's priorities, maintaining the quality of services and performance standards at a three-star level, delivering Agenda for Change and ensuring progress with the PFI new hospital development were central to the Trust's agenda.
- 4.3.2 The PCTs did not believe that the creation of Foundation Trusts



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presented risks to their role as commissioners serving a well-defined geographical population. Their view was that as long as much of the revenue available to Foundation Trusts was determined by PCTs, the scope for Foundation Trusts borrowing and investing in new services without proper business planning, discussion and agreement with partners was extremely limited. Other policies - namely Patients' Choice and Payment by Results - would in the medium to longer term have a far greater impact on their ability to direct service investment to meet local needs.

- 4.3.3 The Strategic Health Authority said that in their view there was a need to strengthen the ability of PCTs to work collaboratively and commission major service developments across boundaries. The Strategic Health Authority also expressed the view that there was a risk within a less regulated system of planning in which they no longer had a role in approving Trust business cases that new service developments might increasingly be driven by provider interests rather than PCTs on behalf of their local population. Within the UHBT context, the StHA felt that given the changes which would result from the new policies on Patients' Choice and funding flows, the commissioning roles of PCTs, particularly those with one-star status, needed to be strengthened. Due to the uncertainties around this, the Committee considered that this area required revisiting and recommends that *South Birmingham PCT, in conjunction with the other PCTs in Birmingham, submits a report to the Health Overview and Scrutiny Committee demonstrating that arrangements are in place for effective collaborative working, performance monitoring, service evaluation and health improvement across PCT boundaries.*
- 4.3.4 Overall the view generally expressed by the local NHS was that the freedoms provided by Foundation Trust status were limited. Even so they welcomed the scope for more innovation and change developments than was currently possible under existing regimes and central control.
- 4.3.5 In contrast, the potential impact of Patients' Choice and Payment by Results on the ability on PCTs to invest strategically in services to meet local needs, to ensure equity of access and to reach local agreements about contracts and capacity was viewed as extremely significant. Together these policies introduce a market-led approach in which patient and funding flows would be determined not by PCTs contracting with Trusts for a given level of service, but by the choice patients made at the point of referral.
- 4.3.6 The PCTs also highlighted that the introduction of Foundation Trusts, Patients' Choice, Agenda for Change and Payment by



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Results were only some of the many simultaneous demands for modernisation and reform which were being placed on them. Others included the introduction of the new General Medical Service (GMS) contract and IT systems for GPs, improving performance standards in primary care, the Local Improvement Finance Trust (LIFT) programme, and delivering the National Service Framework for children, heart disease, diabetes, mental health and older peoples' services. The Committee concluded that, whilst important, these areas were beyond the scope of the review and may form the basis of future discussions with the StHA.

- 4.3.7 When considering the feasibility of these reforms as part of the move towards Foundation Trusts, the Committee had concerns about the impact on both financial and infra-structural arrangements within the NHS - particularly on PCTs. The Committee was of the view that the situation required closer monitoring and agreed that *the Health Overview and Scrutiny Committee, with input from the Strategic Health Authority, keeps under review the preparatory and capacity issues for PCTs around implementing NHS Systems Reform, i.e. Agenda for Change, Payment by Results and Patients' Choice.*
- 4.3.8 The Committee noted that PCTs are relatively new organisations, which have been in existence for less than two years. They have only recently developed their approach to preparing Local Delivery Plans, reaching contractual arrangements and establishing partnership working between health and social care within their localities. Because of the requirement for early implementation of Payment by Results by April 2004, PCTs will also have to put in place more sophisticated commissioning arrangements for Foundation Trusts and the Minimum Income Guarantee and National Tariff.
- 4.3.9 In addition to these changes, PCTs will also be expected to undertake responsibility for performance managing Foundation Trusts. The Committee was told that this role in relation to a three-star Trust, such as UHBT, would be very "light touch" and that by and large they would 'performance manage' themselves. However, this performance management role may become more important as Trusts that have a less robust track record of performance and achievement become Foundation Trusts.
- 4.3.10 We were assured that South Birmingham PCT was one of the best performing PCTs in the country, had achieved a two-star rating earlier in the year and was in a better position than many others to manage the changes. The PCT had taken part in learning sets to help them understand the implications of Foundation Trusts and



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associated reforms. Further assurance was given by the Strategic Health Authority that it would continue to monitor the impact on PCTs and if necessary provide support arrangements for joint commissioning across PCT boundaries.

- 4.3.11 Despite these assurances, the Committee believes that the role of PCTs as commissioners on behalf of their local population will be pivotal to the success of NHS reforms if historic inequalities in the resourcing distribution, access and quality of health care are to be addressed. However, we saw little evidence that, as yet, PCTs were working collaboratively in handling the applications for Foundation Trusts within the city. We also feel that so far there has been little thought given by the StHA to the organisational development required to ensure that PCTs in Birmingham are equipped and have the capacity for implementing this ambitious and overall package of reforms. The Committee therefore recommends that *the Strategic Health Authority, in conjunction with the four PCTs in Birmingham, submits a report to the Health Overview and Scrutiny Committee on:*

- *how it intends to develop a consistent approach to management of Foundation Trust applications and patient and public involvement across the city*
- *how it intends to work with PCTs and the Independent Regulator for the effective performance management of the health economy as a whole*

With regards to the capacity issues for PCTs, the Committee believes this matter will be addressed by the previously mentioned Recommendation 13 (as at 4.3.7).

### 4.4 Benefits of decentralisation

- 4.4.1 The Committee examined the benefits of decentralisation for the Trust and the citizens of Birmingham.
- 4.4.2 The Chairman of UHBT informed us that freedom from central control was a welcome move. It would enable the Trust to make decisions determined by local need and accelerate the speed of change. For example, the Trust had submitted plans to develop a new extension to one of their hospital buildings: building the actual extension took only four months, yet the Trust spent almost ten months trying to acquire approval and funding for the plans from the Department of Health. He believed that a management system, which was unable to respond to immediate concerns of hospitals and their patients, was outdated and needed to be replaced. In his view, the freedom from Whitehall



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control offered by Foundation Trust status would be beneficial for the citizens of Birmingham.

- 4.4.3 The Chief Executive of UHBT believed that decentralised control would be an important freedom through which the Trust could deliver its Corporate Service Strategy. It would enable the Trust to:
- Have greater autonomy to manage and take decisions quickly through a Board of Directors;
  - Use financial freedoms to plan, develop and invest in services by working collaboratively with local partners, including PCTs, local authorities, education, research and business sectors;
  - Use workforce freedoms to ensure the organisation had human resources of the right calibre and capacity to respond to service needs;
  - Be accountable to local people through the establishment of a membership community and Board of Governors.
- 4.4.4 Examples given by UHBT in terms of how they might apply their freedom to service developments included:
- Working with PCTs to deliver services such as diabetes and asthma care in community-based settings - hence releasing resources and accommodation for deployment in other areas.
  - Initiating joint ventures with research companies to undertake clinical drugs trials.
  - Investment in the expansion of service areas, such as cardiology, where there are logjams or lengthy waiting times for treatments.
- 4.4.5 The Committee acknowledged that if delays in decision-making could be minimised by reducing levels of central control and bureaucracy, this would benefit patients and services. However, we were of the view that the advantages of a more localised and less bureaucratic system in the NHS should be available to all NHS Trusts, including those not yet eligible for Foundation Trust status.
- 4.4.6 The Committee is aware of the Government's programme of support to raise standards in all NHS Trusts to enable them to apply for Foundation Trust status and that the freedoms associated with Foundation Trusts are intended to give scope for innovation and change. Trusts with lower star ratings will inevitably be the ones requiring the most support. Yet we are



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not clear how the disparities between higher performing Trusts (which are likely to thrive and excel) and the lower performing Trusts are going to be addressed in real terms. In our view this dichotomy will inevitably result in a widening of health inequalities at community level. We were concerned that in the rush to ensure that more Trusts acquired Foundation Trust status, the Government should not decide to relax its scrutiny of the application process and criteria for three-star status. Such a process would negate some of the characteristics that made Foundation Trusts 'different'. The Committee considers that this matter will be addressed by the previously mentioned Recommendation 9 (as at 4.3.11).

- 4.4.7 It also raises the question about the need to have Foundation Trusts at all. Our view was that it might be simpler for the Government to introduce greater freedoms, less bureaucracy and more local flexibility across the whole health sector.

### 4.5 Financial issues

- 4.5.1 In discussions with UHBT, the Strategic Health Authority and PCTs, the Committee covered a number of financial areas. The evidence received is as follows.
- 4.5.2 **Financial stability.** We received written submissions from UHBT about its finances, including annual accounts and reports. For the year ending 31<sup>st</sup> March 2003, the Trust had an annual turnover of £290.2m and a fixed asset base of £198.4m.
- 4.5.3 Whilst the Committee did not have time to make comparisons, the Trust's annual report appears to suggest a long record of sound financial results - it has met its break-even duty for each and every year of its existence. The Trust also reported that auditors appointed by the Department of Health to assess the organisation's financial health for progression to Foundation status have confirmed the strength of its financial control and assurance frameworks.
- 4.5.4 We heard evidence from the Strategic Health Authority that an independent financial review had been commissioned by the DOH as part of the Trust's application process to assess their financial competency and robustness. This review will look at financial risks, valuation of capital assets by the District Valuer and the additional revenue likely to be available to the Trust to pay for the PFI new hospital project. The results of this review are due at the end of November and will be scrutinised by the DOH and the Independent Regulator.



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4.5.5 The Committee also questioned the StHA about the additional costs and affordability of the PFI scheme within the revenue available under the new national tariff scheme. The StHA informed us that Foundation Trusts with costs lower than the national tariff will be able to create and retain surpluses. Those with costs higher than the national tariff - which are likely to include those with large PFI schemes - will find it more difficult, since the extra costs of PFI deals will not be allowed for in the national tariff. The Committee was told by UHBT that they believed the Trust was unlikely to experience difficulty due to the national tariff, as the tariff would have an element of local variance, including PFI schemes. The Trust stated that it was currently looking at the affordability of the PFI scheme and whether it would opt for a five-year Minimum Income Guarantee from the PCTs or adopt the national tariff. These issues would also be addressed as part of the independent financial review and evaluation of the Trust's application.

4.5.6 Due to some inconsistency on this matter, the Committee sought advice from the Department of Health (NHS Financial Reforms Team) and received the following statement:

*"The tariff will be adjusted to give a price for each Trust using a "market forces factor." This is similar to the area cost adjustment used in allocating resources to local government, which you might be familiar with. It allows for differences in the cost of staff, land and buildings."*

*"As you note, there is an issue around existing PFI schemes, and the short-term costs associated with new investment. These issues are raised in our consultation paper, and we have yet to take decisions on them. But any additional support to reflect these issues would be in addition to tariff - so in terms of the tariff itself, the market forces factor is the only adjustment that will be made."*

NHS Financial Reforms Team: 30<sup>th</sup> October 2003

This indicates that there is still huge uncertainty about the affordability of the Trust's PFI scheme and the financial impact it will have on other NHS bodies in the city. Whilst the Trust is yet to decide whether to opt for Minimum Income Guarantee or national tariff options, the Committee considers it would be prudent to revisit the matter and therefore recommends that *if successful in their application for Foundation Trust status, UHBT submit a report to the Health Overview and Scrutiny Committee describing the details contained in their terms of Licence, including the list of protected services and whether they have*



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*opted for Minimum Income Guarantee or national tariff options. The Committee further believed it was appropriate that the Chair of the Health Overview and Scrutiny Committee writes to the Department of Health requesting a report summarising the key findings of the "Due Diligence" report it has commissioned on the financial viability of UHBT's application.*

- 4.5.7 In response to a question, the Chairman of South Birmingham PCT reported that a risk assessment of UHBT's application on his and other PCTs had not been undertaken, but that South Birmingham PCT had been involved in assessments of the PFI scheme. The Committee was concerned that South Birmingham PCT had not undertaken risk assessments and that such a process should be in place, not only with regard to UHBT's application but also for forthcoming applications by other NHS Trusts. The Committee therefore recommends that *all PCTs in Birmingham adopt a systematic approach to undertaking risk assessments prior to second stage applications for Foundation Trust status, particularly in respect of financial, managerial and service issues and that this information be made available to the Health Overview and Scrutiny Committee as required.*
- 4.5.8 The Committee asked what would happen should UHBT get into financial difficulties and where the onus of responsibility for putting together a recovery plan would lie. We heard from the Chief Executive of the Strategic Health Authority that one of the financial freedoms available to the Trust was the ability to operate to a three-yearly budget balancing system instead of annual accounts. This would provide greater flexibility in financial management. Day to day responsibility for financial and activity monitoring and discussions with the Trust over any difficulties would rest with South Birmingham PCT. Major issues would be reported to the Independent Regulator and he/she would decide the necessary course of action. The Chief Executive of the StHA said that it was not yet completely clear how or who would be responsible for taking action, that the role of the StHA in financial brokerage would change and that in his view the StHA would need to work closely with the Independent Regulator to support Foundation Trusts that ran into financial difficulties.
- 4.5.9 The Committee also noted the views of both the Chief Executive of the Strategic Health Authority and South Birmingham PCT that they considered UHBT to have a strong and sound management team with robust financial structures and that the Trust was unlikely to encounter financial difficulties.
- 4.5.10 **Borrowing arrangements.** UHBT informed the Committee that the Government was currently finalising limits under the Prudential



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Borrowing Code. Their forecast was a limit of around £15m. Arrangements for accessing Government borrowing would be at agreed rates through an NHS lending facility; repayment terms and conditions for non-NHS funded debt would depend on the scheme, risk and repayment profile. The Trust made it clear that the extent to which it borrowed would be highly dependent on the funding secured through contracts with PCTs. The Committee was further told by the StHA that capital borrowing by Foundation Trusts would come out of a finite capital allocation for the whole NHS. Potentially, non-Foundation Trusts might only have access to those funds remaining once Foundation Trusts had secured their own bids for borrowing. As more hospitals become Foundation Trusts, there is a possibility that Foundation Trusts may 'crowd out' other Trusts' bids for capital if the overall capital allocation is not large enough or is fully subscribed. The Committee believed that this matter should be subject to further monitoring and recommends that *following the second wave of Foundation Trust applications, the Strategic Health Authority provides a report to the Health Overview and Scrutiny Committee on the allocation of capital budgets in the region, the equitable distribution of capital and the implications for financial stability of other NHS Trusts in Birmingham.*

- 4.5.11 **Generating and retaining surpluses / use of assets.** UHBT said that generating large financial surpluses for service development was not a major priority for the Trust. The opening of the new PFI hospital and the transfer of services would release some land and buildings, which would present opportunities for alternative business usage. The Trust's Chairman stated that UHBT would not be 'free agents' in the way surpluses were used, that the nature and size of surpluses would be subject to monitoring by the PCT and their intention was to reinvest additional income into the provision of health services and patient care which would benefit the people of Birmingham.
- 4.5.12 **Potential for increases/decreases in income through Patients' Choice and Payment by Results.** The Committee raised concerns that UHBT might intend to compete with and promote their services to patients and doctors at the expense of other Trusts. Under Patients' Choice, such marketing could draw funds away from and destabilise other Trusts. Both the Chairman and Chief Executive of UHBT told the Committee that this was unlikely to happen. The Trust had seen a 15% increase in Accident and Emergency admissions in the past year and were focused on dealing with the number of patients it already had. The Trust asserted that competition with other Trusts would not be part of its agenda as a Foundation Trust. The Finance Director of South Birmingham PCT also informed us that, like other



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NHS Trusts, Foundation Trusts would only receive income from the contracts commissioned by PCTs. In their performance management role PCTs would monitor demands on individual Trusts and increases in waiting lists. A primary purpose of Patients' Choice was to reduce waiting times to nil and PCTs would in any case be obliged to channel patients away from hospitals with long waiting lists.

- 4.5.13 Regarding the issue of increased borrowing leading to increased need for income generation, UHBT stated that any variations in borrowing requirements would be negotiated with the Independent Regulator and would be subject to an assessment of the Trust's financial position.
- 4.5.14 The Committee also examined the potential for Foundation Trusts either to 'select' the patients it treated because certain interventions attracted higher tariff payments, or to 'deselect' certain categories of patients because their costs were greater than the national price tariff (case-mix drift). UHBT maintained that the potential for case-mix drift existed for all NHS Trusts. PCTs would manage the issues of case-mix drift through their contract monitoring arrangements. Again, the Committee concluded that some uncertainties exist around these areas and that it would be worthwhile revisiting them once the legislative context was clearer. It therefore agreed that *the Health Overview and Scrutiny Committee, with input from the Strategic Health Authority, keeps under review the following matters and that these form part of the Committee's work programme from July 2004:*
- *Preparatory and capacity issues for PCTs around implementing NHS Systems Reform, i.e. Agenda for Change, Payment by Results and Patients' Choice;*
  - *The robustness of commissioning tools, IT infrastructures and partnership arrangements across the health sector and the financial impact on PCTs and*
  - *Monitoring arrangements about the impact of NHS Systems Reforms on the local NHS, including the application of the national tariff and implications of case-mix drift.*
- 4.5.15 **Protection of services.** The Committee was unclear about the nature of protected services that would be identified in UHBT's 'Licence' for Foundation status. ('Protected' means those medical and health services that the Trust is required to provide.) The Trust confirmed to us that all clinical services currently provided on both of the Trust's sites would be included in its list of protected services. The list may expand to include additional



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services when the new hospital is established.

- 4.5.16 However, the level of specificity and detail which would be described within the service agreement including the use of Healthcare Resource Groups (HRGs) to describe case-mix was unclear.
- 4.5.17 One concern was the potential for PCTs to get 'locked into' certain models of service provision as a result of these agreements. This locking into long term agreements which are legally binding might prevent the development of more primary care based models of service provision by the PCTs if the Trust was unwilling to agree to changes in the pattern of investment towards primary care.
- 4.5.18 The Committee believes that the way in which these protected services are defined and described as part of these service agreements is a matter which deserves further consideration. Therefore, not just South Birmingham but rather all PCTs in Birmingham should be more actively engaged in developing this part of the application in order to ensure that services are not "locked" into a particular model of secondary care in service delivery. This matter is addressed by the previously mentioned Recommendation 7 (as at 4.5.7). Furthermore, with regard to the issue of case-mix drift, the Committee concluded that, with input from the Strategic Health Authority, it would keep under review *monitoring arrangements about the impact of NHS Systems Reforms on the local NHS, including the application of the national tariff and implications of case-mix drift.*
- 4.5.19 **Joint ventures and partnership agreements.** Foundation Trusts are expected to have a duty to co-operate with partners in health care planning and delivery of high quality services to national standards. The governance arrangements require that stakeholders and partners be adequately represented on the Board of Governors. Through partnership working, Foundation Trusts must demonstrate that they are using their freedoms in ways that fit NHS principles and are consistent with the needs of other local NHS organisations.
- 4.5.20 The Committee asked about UHBT's intentions to enter into joint ventures and their commitment to partnership agreements within the public sector, particularly those involving social care.
- 4.5.21 We noted that UHBT had a keen interest in entering into joint ventures, particularly around research, investing in new technologies and equipment and the development of new clinical interventions. The Chief Executive of UHBT told us that the field of research and clinical excellence were key areas where the Trust



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- needed to compete at a national and international level, thus enabling it to be at the leading edge of clinical practice, teaching and service innovation.
- 4.5.22 The Trust said it was also keen to enter into joint ventures at a community level and to work with the PCT and social care partners to provide care closer to peoples' homes. Examples of where new models of care might be developed included asthma, diabetes and palliative care, which the Trust believed should be easily accessible and more care provided in community settings.
- 4.5.23 UHBT indicated that the planning of these joint ventures was still in the very early stages of development. As yet there were no specific plans which they could describe. However, the Chief Executive agreed that if joint ventures were taken forward to remodel secondary care within community settings, then the potential transfer of revenue and other resources would need to be considered.
- 4.5.24 The Committee recognised the importance of the Trust developing as a key player in national and international medical research, both to the city and to clinical care, although we were disappointed to find their strategy with the PCT and the Council's Social Care and Health Directorate for developing local services in the community was not further advanced. We also believed, however, that there needed to be safeguards, through the governance arrangements and the role of the PCT, to ensure that the Trust continued to provide good acute services to the local population and to develop new models of care for the prevention and treatment of chronic conditions. The Committee therefore recommends that *South Birmingham PCT, working in conjunction with UHBT, provides an annual progress report to the Health Overview and Scrutiny Committee with details of joint ventures that have been entered into, particularly relating to the development of local and community services, new models of care and preventive treatments of chronic conditions.*
- 4.5.25 Regarding partnership agreements across the whole health and social care economy, UHBT said that it was in its own interest to commit to such corporate agreements. It added that, unlike NHS Trusts, the Duty of Partnership element of their Licence would make it obligatory for them to work collaboratively. Furthermore, PCTs had a key role in securing the co-operation of all local NHS bodies in matters that required a whole-system approach. The Committee was concerned about the 'Duty of Partnership' element of the Trust's Licence and that there was no formal mechanism for the involvement of PCTs around this. It therefore felt it was appropriate that *the Chair of the Health Overview and Scrutiny*



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*Committee writes to the Independent Regulator suggesting that PCTs are involved in setting out partnership agreements as they apply to the whole health and social care economy in Birmingham and that these partnership agreements are included, under the 'Duty of Partnership' element of Foundation Trusts' Licences.*

### 4.6 Workforce developments

- 4.6.1 UHBT will be implementing Agenda for Change at the same time as other NHS Trusts. The Committee was pleased to hear the Trust's commitment to working within the parameters for Agenda for Change. The Trust confirmed that it would act responsibly in ensuring that in exercising the freedoms available, the ability of other local NHS employers was not undermined. With regards to the ability to pay recruitment and retention rates above the normal 30% cap (which would be available to all NHS Trusts), UHBT confirmed that this would only be used to recruit or retain staff in service areas facing shortages or other difficulties, e.g. radiology.
- 4.6.2 We heard from the Trust that it was more interested in exploring other incentives, including career development, recruitment and training for staff. With regards to the latter, the Trust will be considering entering into joint ventures with academic institutions, local businesses, the Workforce Confederation and the Learning and Skills Council to provide career routes into the NHS for local people.
- 4.6.3 In the Committee's view, the principles of Agenda for Change needed to be applied fairly across the health and social care economy and due consideration needed to be given to staff in joint appointments between different organisations to ensure they were not unfairly disadvantaged.

### 4.7 Performance management and regulation

- 4.7.1 The Committee learnt that Foundation Trusts will be accountable to PCTs instead of to the Strategic Health Authority and that accountability will be in the form of Service Level Agreements.
- 4.7.2 Foundation Trusts will be expected to maintain high national standards to meet national performance targets and be subject to monitoring by the Commission for Health Improvement. Their performance will continue to be assessed using the existing



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system of star ratings.

- 4.7.3 The Committee queried the local versus national tensions that might exist for Foundation Trusts in trying to meet national performance standards as well as addressing local needs. On the one hand the Trusts would be subject to local accountability and required to provide services in response to local need. On the other, they would be required to meet nationally driven targets. The latter would determine a Trust's star rating and it was unclear to the Committee whether or not a change in star rating would affect a Trust's Foundation status. The Committee was concerned about the potential for incongruence between these two dimensions and how this would be managed. It therefore recommends that *South Birmingham PCT, in conjunction with the other PCTs in Birmingham, submits a report to the Health Overview and Scrutiny Committee demonstrating that arrangements are in place for effective collaborative working, performance monitoring, service evaluation and health improvement across PCT boundaries.*
- 4.7.4 Furthermore, the Committee was concerned that the role of the Strategic Health Authority may become marginalised, as it would no longer be directly involved with Foundation Trusts. The role of the Strategic Health Authority had been one of active performance management of all NHS Trusts based on real time information, managerial oversight and personal contact between the Strategic Health Authority's Chief Executive or his team and the NHS Trusts' Chief Executives. The Chief Executive of the Strategic Health Authority said that in his view the role of the StHA would have to be redefined. He further reiterated that the Strategic Health Authority would continue to have strong relationships with PCTs and some involvement with the work of the Independent Regulator. A further avenue for ensuring oversight of the health economy and its performance was for the Strategic Health Authority to explore the potential for having a place on the Trust's Board of Governors. The Committee agreed that the role of the Strategic Health Authority in planning and maintaining oversight of healthcare issues at a regional level was significant. The Committee therefore recommends that the UHBT governance arrangements take account of *the need to ensure that the Strategic Health Authority maintains an active role in strategic planning and overview of health care across the region. This may include, for example, them having a place on the Board of Governors.*
- 4.7.5 With regards to the role of the Independent Regulator, the nature of this role and details about the processes for issuing a Licence, the Committee noted that exact information about this was still



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awaited. However, UHBT's 'Licence' might cover areas such as:

- A requirement to provide quality healthcare to national standards
- Protection of NHS clinical services and arrangements to consider the alteration of services, i.e. to reflect population changes, etc.
- Safeguard of assets such as buildings, land or equipment
- Limits on the amount of private work that can be undertaken
- Amount of money a Foundation Trust is able to borrow
- Details about the financial and statistical information that the Trust is expected to provide

4.7.6 UHBT was positive and confident that its management could cope with becoming a Foundation Trust, managing a large PFI project and maintaining its clinical performance as a three-star Trust. However, in noting a comment made by the StHA that performance can slip in Trusts involved in major PFI projects, the Committee was anxious that UHBT's management focus should not be diverted away from clinical governance and quality of care.

4.7.7 Furthermore, Foundation Trust status will present many exciting opportunities for UHBT to pursue research and joint ventures. The Trust recognised that there may be a tension between its management of the pursuit of these and service provision. The Committee was keen to ensure that this area was subject to ongoing monitoring, as mentioned previously, to which recommendation 5c refers.

### 4.8 Governance arrangements

4.8.1 The Committee considered issues related to both the generic nature of governance arrangements as well as those specifically proposed by UHBT in their consultation document. It found it difficult to comment in any depth on the proposed governance arrangements since legislation was still awaited.

4.8.2 Generally the Committee was sceptical about the national framework for governance of Foundation Trusts. Control over individual Foundation Trust policy and investment decisions effectively rests with the Board of Directors, who are not elected. Much will therefore depend on the goodwill and commitment of the Trust and on the extent to which there is community engagement



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and fair representation as a result of the election process.

- 4.8.3 Foundation Trust members have no statutory accountability to the wider local community and no well-defined responsibilities to serve the public interest. In the absence of both legislation and examples of a proposed Foundation Trust Constitution, the Committee was unable to ascertain how governance arrangements might actually work in practice.
- 4.8.4 We considered that one risk associated with governance arrangements was that of 'take-over' and domination of the Board of Governors by single-issue groups. From discussions with CHCs, the Committee agreed that for governance arrangements to be successful and meaningful, a balance of views on the Board of Governors needed to be retained. One of the ways of doing this was by securing a large and diverse membership community. Other options included the commitment and involvement of stakeholder representatives and safeguards being written into the Trust's Constitution. The Committee therefore recommends that *UHBT's governance arrangements take account of the need to ensure representative balance of members and that the arrangements to protect this are written into the Trust's Constitution.*
- 4.8.5 In terms of the process and costs for drawing up and maintaining a membership community as well as the administration of elections, the Committee received a wide range of estimations of the costs of recruiting members, running elections and paying the Board of Governors. These were from as low as £5,000 p.a. to as high as £0.25m, depending on the size of the membership community. Whilst budgetary provisions for this in the first year would be made by the Department of Health, in subsequent years additional resources required for this new form of governance would have to come from the PCT.
- 4.8.6 The Committee learnt that the proposal was to restrict eligibility criteria for the 'public group' of members to Birmingham residents, current patients and patients who had received treatment at the Trust within the last three years. The criterion for the 'staff group' was any current member of staff who had worked at the Trust for over 12 months.
- 4.8.7 Whilst the Committee accepts the rationale for drawing public and staff membership, it was concerned about the potential for confusion if individual Trusts began city-wide or house-to-house recruitment campaigns. There are nine NHS Trusts in the city, out of which a further three were coming forth as prospective candidates for Foundation Trust status. Furthermore, we were also aware of campaigns underway to recruit members for



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Patients' Forums. The Committee was keen to ensure that membership recruitment and public involvement in health should be co-ordinated as far as possible to avoid overload and confusion for the public.

- 4.8.8 In exploring this with the Strategic Health Authority, the Chief Executive informed us that his organisation was keen to ensure a consistent approach to public involvement and one which did not cause duplication or confusion amongst patients. One possibility was the creation of a city-wide database of people who wished to become members or involved in local health matters, and using this database as an electoral register. The Strategic Health Authority pointed out that if such provision was developed, it did not have any powers to require Foundation Trusts to use it. The Committee considered it important that there was consistency of approach as Foundation Trusts develop, particularly in relation to patient and public involvement. It therefore recommends that *the Strategic Health Authority, in conjunction with the four PCTs in Birmingham, submits a report to the Health Overview and Scrutiny Committee on how it intends to develop a consistent approach to management of Foundation Trust applications and patient and public involvement across the city.*

The Committee further recommended that *in developing its governance arrangements, UHBT works towards building on existing patient and public involvement forums including their Patients' Council and the new Patients' Forums and submit information to the Health Overview and Scrutiny Committee on budgetary details about costs and deployment of resources for developing governance arrangements and the robustness of governance arrangements in terms of its membership community, election processes and the effective involvement of local people.*

- 4.8.9 With regard to UHBT's specific proposals as contained in its consultation document, the Committee supports the view that the composition of the membership community should reflect the catchment population served by the Trust. We consider that one of the most important requirements of any governance arrangements must be for the Trust to ensure an appropriate balance between local (acute) and regional (tertiary) interests and to ensure that current arrangements for Patients' Councils, specialist Patients' Forums and the processes for getting their views are properly integrated into the work of the Board.
- 4.8.10 Overall the Committee's view is that, until such time as a more effective governance framework can be put in place nationally, significant funds should not be diverted from patient care. A



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small, effective governing body could be established which draws on the Trust's existing arrangements for public and patient involvement forums such as Patients' Forums and the Trust's Patients' Council.

- 4.8.11 Regarding the two options proposed by the Trust (set out in the Trust's consultation document) for allocating places to the Board of Governors for the 'public group', the Committee's preference is for option 2 as this would allow for a fairer and more diverse balance of representation. The Committee also suggests that out of the three places allocated to ethnic minority communities, at least one should be for a female.
- 4.8.12 In relation to the proposals for the composition of the staff grouping, the Committee's preference is for option 2, i.e. for different professional groups to be represented. However, within this, this Committee suggests that the Trust explores the potential to secure a balance of gender and ethnicity. An extract of the options taken from the Trust's consultation document in relation to the public and staff groups is attached at Appendix 6.
- 4.8.13 The Committee agreed that the most appropriate mechanism for conducting elections was the Single Transferable Vote system.
- 4.8.14 The Committee also considered the proposals for stakeholder governors and concurs with the overall list of partners to be offered seats as stakeholders. With regards to the allocation of a Birmingham City Council representative, the Committee recommends that the *Council appoints a Member to serve on UHBT's Board of Governors and agrees an appropriate reporting mechanism.*

### 4.9 Overview of views and comments provided to the Committee

- 4.9.1 Whilst much of the evidence received from UHBT, the Strategic Health Authority and South Birmingham PCT has been written into the main body of the report, the Committee noted generic information received from other sources. A brief overview of these is provided in Appendix 5.



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## 4.10 Risks and benefits analysis

This section provides a summary of key risks and benefits evaluated during the course of the review.

Legislative framework	
Benefit	Risk
<ul style="list-style-type: none"> <li>Proposals offer UHBT the opportunity to make locally based decisions that are speedier, responsive and take account of local needs and to use their resources (financial and workforce) to invest and deliver high quality care.</li> </ul>	<ul style="list-style-type: none"> <li>Legislation still running its course through Parliament. Local NHS bodies making plans in an air of huge uncertainty.</li> </ul>

Early introduction of other NHS Systems Reforms	
Benefit	Risk
<ul style="list-style-type: none"> <li>Reforms intend to improve patient experience and ensure NHS organisations reimbursed according to type and number of patients they treat.</li> </ul>	<ul style="list-style-type: none"> <li>Foundation Trusts will be benefiting from developments ahead of other Trusts and this may widen the gap between providers across the City i.e. Patients' Choice may mean people may choose UHBT over their local Trust.</li> <li>Initiatives need to be underpinned by robust infrastructures, processes and commissioning processes in PCTs. These organisations are new themselves and there is a risk that they may be dealing with too much reform too soon.</li> <li>Also some uncertainty about whether they will adequately pick up and respond to any early 'teething problems' presented by Foundation trusts. Whilst South PCT and UHBT are considered to have sound leadership and management, this may not be the case for other NHS bodies in the City.</li> </ul>



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Financial freedoms	
Benefit	Risk
<ul style="list-style-type: none"> <li>• Enable UHBT to unlock potential of capital, land and buildings and to generate and retain their surpluses and to reinvest this money into health care.</li> <li>• UHBT have said they intend to invest in expansion of some service areas in order to reduce waiting times. They will also enter into joint ventures to research and provide the most modern medical interventions and also to localise some elements of care by providing them in community settings.</li> <li>• Foundation trusts will have 3-year planning and budgetary cycles providing greater management and financial flexibility.</li> </ul>	<ul style="list-style-type: none"> <li>• Some uncertainty exists about arrangements for borrowing, how this will be used and exactly which services will be the first to benefit.</li> <li>• Exact nature of joint ventures is still to be worked through and contractual arrangements have not yet been developed.</li> <li>• Through other Systems reforms there may be other financial pressures facing the Trust. Is this really the right environment to encourage borrowing?</li> <li>• Borrowing will be set against contracts with PCTs. These will be based on treatment of patients costed at national tariff rates. What if actual costs are higher than national tariff? This is likely to affect both income and borrowing payments. However under the three-year budgetary cycle, some financial risks may be harder to scrutinise.</li> </ul>

Performance Management and Regulation	
Benefit	Risk
<ul style="list-style-type: none"> <li>• Performance management will have a more local perspective as it will be undertaken by South PCT.</li> <li>• Also moderation through the Independent Regulator will be more focussed against the terms of the 'licence' awarded.</li> <li>• The licence will set out the list of protected services and UHBT have stated all their current clinical services will be protected.</li> <li>• UHBT will still be inspected by CHI and</li> </ul>	<ul style="list-style-type: none"> <li>• South Birmingham PCT are already contending with an array of other initiatives as well undertaking this new performance management role. Do they have the IT infrastructures in place?</li> <li>• How will information be collected from other PCTs who might also be purchasing services from UHBT.</li> <li>• How will the Trust manage local versus national tensions i.e. requirement to meet local needs and priorities as agreed with PCTs yet still</li> </ul>



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be subject to star ratings.	<p>aspire to national targets in order to retain 3 star status?</p> <ul style="list-style-type: none"> <li>Risk that the role of the Strategic Health Authority may be undermined in relation to regional planning and overview.</li> </ul>
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Workforce developments	
Benefit	Risk
<ul style="list-style-type: none"> <li>UHBT will have flexibility to tailor employment and skills mix of staff to needs of the organisation and local health care patterns.</li> <li>UHBT are committed to working within the parameters of Agenda for Change.</li> </ul>	<ul style="list-style-type: none"> <li>Provision of incentives, career development opportunities and image of UHBT as a 'model employer' could draw staff away from other Trusts – particularly in the first year when UHBT will be implementing Agenda for Change ahead of other Trusts.</li> </ul>

Governance Arrangements	
Benefit	Risk
<ul style="list-style-type: none"> <li>Involvement of local people, staff and stakeholders in influencing decisions about health care.</li> </ul>	<p>In the absence of legislation, uncertainty still exists about the exact nature of governance arrangements and how they will work. Potential risks include:</p> <ul style="list-style-type: none"> <li>Size of electorate and membership community</li> <li>Effectiveness of recruitment campaigns</li> <li>Electoral processes</li> <li>Costs of recruitment and conducting elections and how this is to be sustained in future years.</li> <li>Need to ensure co-ordination of recruitment so that public is not approached from several Trusts across the city all at the same time.</li> <li>Need to avoid 'take-over' by single issue groups</li> </ul> <p>Also the Board of Governors needs to be properly engaged and to feel that their involvement is meaningful and not merely symbolic.</p>



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# 5: Conclusion and Recommendations

- 5.1.1 The application of UHBT and other hospitals in Birmingham to become Foundation Trusts, together with the wider policy agenda of reforms in the NHS, will have a major impact on the planning, availability, diversity and delivery of healthcare provision in the city over the next five years.
- 5.1.2 The Committee is concerned that much of the detailed discussion and preparation needed to take forward this programme of reforms and to ensure that there are sufficient safeguards has not taken place prior to legislation and that the Government has invited Trusts to make their applications for Foundation Trust status before legislation is complete.
- 5.1.3 As well as analysing the risks and benefits associated with UHBT's application, our conclusions are:
- The Health Overview and Scrutiny Committee would, on balance, support UHBT's application for Foundation Trust status and believes that there may be some advantages for the city as a result of this Trust becoming one of the first Foundation Trusts in the country. This support is conditional on sufficient safeguards being put in place to ensure services continue to be planned to meet local needs and to ensure the stability of the local health economy. This support does not, however, imply an endorsement by the Committee of the Foundation Trust policy overall.
  - If UHBT succeeds in making an early application, the NHS in Birmingham will undoubtedly be at the cutting edge of this overall programme of reform. This advantage is an important and worthwhile consideration for the city as a whole.
  - The Committee acknowledges the aspirations, leadership and commitment shown by UHBT in its application for Foundation Trust status and also that shown by South Birmingham Primary Care Trust. We recognise their vision



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and achievements as high performing Trusts, and how they can contribute to the regeneration of the city.

- The Trust's continued drive to make further improvements to local services through the greater autonomy and freedoms associated with Foundation Trust status will undoubtedly create incentives for change and accelerate the pace of modernisation across the wider health economy.
- At the time of writing, it does not appear that the Trust has immediate and detailed plans to use the financial and other freedoms associated with Foundation Trust status to improve particular services.
- In assessing the benefits for local people, the Committee is encouraged by the opening statement by the Trust that the reason it wishes to become a Foundation Trust is to make it "more accountable to local people."
- However, the Committee is sceptical about the national framework for local governance, and the Trust's ability within that framework to deliver a meaningful, new form of local democracy and accountability.
- Whilst we acknowledge the considerable strengths and performance of South Birmingham PCT as the main purchaser, the Committee believes that Primary Care Trusts (PCTs) as a whole are having to cope with a huge number of demands, including the introduction of an internal market under Patients' Choice and Payment by Results, the new GP and consultant contracts, and Agenda for Change.
- This burden on PCTs, together with the weakened role of the Strategic Health Authority (StHA) in regulating the health economy as a whole, in active performance management, and in financial brokerage, could lead to even greater inequity in service provision than at present.
- The Committee has concerns about the capacity of the PCTs in Birmingham to manage this huge agenda of reform and modernisation (of which Foundation Trusts are one) and to work collaboratively to ensure strategic investment in health care as well as performance managing their contracts with Foundation Trusts. The Committee is also concerned about the impact of Patients' Choice and Payment by Results on the future ability of PCTs to commission services on an equitable basis because of the re-introduction of the internal market.



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- The Committee's view is that there need to be more safeguards to ensure that the commissioning and distribution of health care is based on an understanding of health needs and inequalities. We think the Government needs to give further consideration to the role of PCTs and the StHA and how this might be strengthened within its programme of reforms.
- The Committee believes that there will be additional costs of introducing Foundation Trusts and that these should be made transparent and explicit. The financial advantages which Foundation Trusts will have as a result of the early introduction of the new funding regime and through central support are likely to be considerable.
- The impact of this policy (i.e. to foster innovation and change in acute hospitals) on the ability of PCTs to invest in preventive, primary, community and intermediate care should be carefully monitored.
- The Committee believes that it will be essential to monitor the total costs of establishing UHBT as a Foundation Trust, and how much additionally PCTs in Birmingham have to allocate to acute hospital care simply to deliver the reform agenda.
- The Committee is concerned that there may be risks to partnership working, particularly between health and social care and between NHS Trusts and Foundation Trusts as a result of the freedoms and privileges associated with Foundation Trust status. Whilst we recognise that there is a duty of partnership within the Trust's Licence and assurances were given by UHBT, the Committee was concerned that a more competitive environment as a result of Patients' Choice, together with an emphasis on surplus generation, could result in tensions similar to those seen under GP fundholding and the internal market.
- We would like to see the principles of partnership working, including those established by the Birmingham Health Partnership for health and social care and those agreed as part of the Concordat for Health Scrutiny formalised in a "Partnership Agreement" between the Council, South Birmingham PCT and the Trust. This agreement should be monitored by the Independent Regulator under the 'Duty of Partnership' part of the Trust's Licence.
- The Committee believes the following areas should be monitored if and when Foundation Trusts are introduced:



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- changes in models of service delivery which have been implemented
- valuation of assets
- duty of partnership working and what this means in practice
- additional revenue costs of Foundation Trust implementation
- membership of the Board of Governors and integration with structures for public involvement
- input and reporting of stakeholder governors
- support given to non-Foundation Trusts wishing to raise standards
- developing role of PCTs and StHA
- revenue costs of capital schemes that would formerly have been approved by the Strategic Health Authority

**With regards to UHBT's application and further applications for Foundation Trust status and subject to legislation, the Health Overview and Scrutiny Committee recommends that:**

	<b>Recommendation</b>	<b>Responsibility</b>	<b>Completion Date</b>
R1	If successful in their application for Foundation Trust status, UHBT submit a report to the Health Overview and Scrutiny Committee describing the details contained in their terms of Licence, including the list of protected services and whether they have opted for Income Guarantee or National Tariff options.	Chief Executive – UHBT	April 2004
R2	UHBT governance arrangements take account of <ul style="list-style-type: none"> <li>a) The need to ensure representative balance of members and that the arrangements to protect this are written into the Trust's Constitution;</li> <li>b) The need to ensure that the Strategic Health Authority maintains an active role in strategic planning and overview of health care across the region. This may include, for example, them having a place on the Board of Governors.</li> <li>c) Options suggested by the Health Overview and Scrutiny</li> </ul>	Chief Executive - UHBT	April 2004



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Committee as at paragraphs 4.8.11 – 4.8.13.		
R3	<p>In developing its governance arrangements, UHBT works towards building on existing patient and public involvement forums including their Patients' Council, and the new Patients' Forums and submit information to the Health Overview and Scrutiny Committee on:</p> <p>a) Budgetary details about costs and deployment of resources for developing governance arrangements;</p> <p>b) The robustness of governance arrangements in terms of its membership community, election processes and the effective involvement of local people.</p>	Chief Executive - UHBT April 2004
R4	<p>The Chair of the Health Overview and Scrutiny Committee writes to the Department of Health requesting a report summarising key findings of the "Due Diligence" report it has commissioned on the financial viability of UHBT's application.</p>	Chair - Health O&S Committee January 2004
R5	<p>South Birmingham PCT, working in conjunction with UHBT, provides an annual progress report to the Health Overview and Scrutiny Committee which could cover, for example, the following activities:</p> <p>a) Any changes to protected services as set out in the Trust's Licence;</p> <p>b) Changes of land use/assets;</p> <p>c) Joint ventures that have been entered into, particularly relating to the development of local and community services, new models of care and preventive treatments of chronic conditions;</p> <p>d) Amount and use of any surpluses accrued and how these have been reinvested into local health care provision.</p>	Chief Executive - South Birmingham PCT April 2005 Chief Executive - UHBT
R6	<p>The Chair of the Health Overview and Scrutiny Committee writes to the Independent Regulator suggesting that PCTs are involved in setting out partnership agreements as they apply to the whole health and social</p>	Chair - Health O&S Committee January 2004



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	care economy in Birmingham and that these partnership agreements are included, under the 'Duty of Partnership' element of Foundation Trusts' Licences.		
R7	All PCTs in Birmingham adopt a systematic approach to undertaking risk assessments prior to second stage applications for Foundation Trust status, particularly in respect of financial, managerial and service issues. PCTs should report their findings to the Health Overview and Scrutiny Committee. Progress on this to be reported to the Committee in July 2004 by South Birmingham PCT.	Chief Executives of South Birmingham PCT	July 2004
R8	South Birmingham PCT, in conjunction with the other PCTs in Birmingham, submits a report to the Health Overview and Scrutiny Committee demonstrating that arrangements are in place for effective collaborative working, performance monitoring, service evaluation and health improvement across PCT boundaries.	Chief Executive - South Birmingham PCT	April 2004
R9	The Strategic Health Authority, in conjunction with the four PCTs in Birmingham, submits a report to the Health Overview and Scrutiny Committee on: <ul style="list-style-type: none"> <li>a) How it intends to develop a consistent approach to management of Foundation Trust applications and patient and public involvement across the city;</li> <li>b) How it intends to work with PCTs and the Independent Regulator for the effective performance management of the health economy as a whole.</li> </ul>	Chief Executive - StHA	September 2004
R10	The Chair of the Health Overview and Scrutiny Committee writes to the Independent Regulator recommending that there is provision for the exchange of information and dialogue between the Independent Regulator and Health Overview and Scrutiny Committees.	Chair - Health O&S Committee	January 2004
R11	Following the second wave of Foundation Trust applications, the Strategic Health Authority provides a	Chief Executive - StHA	September 2004



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report to the Health Overview and Scrutiny Committee on the allocation of capital budgets in the region, the equitable distribution of capital and the implications for financial stability of other NHS Trusts in Birmingham.

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R12	Full Council appoints a Member to serve on UHBT's Board of Governors and agrees an appropriate reporting mechanism.	Council	April 2004
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### With regards to the impact of wider NHS Systems Reform:

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R13	The Health Overview and Scrutiny Committee, with input from the Strategic Health Authority, keeps under review the following matters and that these form part of the Committee's work programme from July 2004:	Chair - Health O&S Committee	July 2004
	<ul style="list-style-type: none"> <li>a) Preparatory and capacity issues for PCTs around implementing NHS Systems Reform, i.e. Agenda for Change, Payment by Results and Patients' Choice;</li> <li>b) The robustness of commissioning tools, IT infrastructures and partnership arrangements across the health sector and the financial impact on PCTs;</li> <li>c) Monitoring arrangements about the impact of NHS Systems Reforms on the local NHS, including the application of the national tariff and implications of case-mix drift.</li> </ul>		

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### With regards to monitoring and tracking of recommendations:

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R14	A first report on progress towards achievement of these recommendations should be submitted to the Health Overview and Scrutiny Committee by 28 <sup>th</sup> July 2004 and reviewed on a six-monthly basis until completed.	Chief Executive - UHBT Chief Executive - South Birmingham PCT Chief Executive - Strategic Health Authority	July 2004
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## Appendix 1: Terms of Reference

### Proposed Scrutiny Review

A	Subject of review	<b>Application By University Hospital Birmingham for Foundation Trust Status</b>
	Overview and Scrutiny Committee	<b>Health Overview and Scrutiny Committee</b>
B	Reason for review	Arrangements for the governance, regulation, asset management and financial borrowing by NHS Foundation Trusts represents a radical departure from current systems of commissioning, performance management and public involvement in the NHS.
C	Objectives of review, including outcomes	<p><b>COMMUNITY FOCUS</b></p> <ul style="list-style-type: none"> <li>To assess the robustness of the proposed governance arrangements for effectively attracting community membership and involving socially excluded groups.</li> <li>To report on the understanding, views and confidence of local people and staff on the application</li> <li>To explore how the new system will interface with patient and public involvement forums, the voluntary sector and other mechanisms for community engagement.</li> </ul> <p><b>NHS/ HEALTH ECONOMY FOCUS</b></p> <ul style="list-style-type: none"> <li>To assess the risks and benefits of the application to the local health and social care economy, in particular to identify what safeguards will be in place to ensure equity of resources and adherence to agreements such as staff terms and conditions.</li> <li>To assess and identify the nature of freedoms available to the Trust and how these might be applied, particularly in relation to co-partnership arrangements, income sources and ensuring that "regulated services" continue to meet the needs of local people</li> <li>To understand the role of PCTs and their interface with the Trust, particularly having regard to purchasing and developing services which are equitable across the City and meet local needs</li> </ul>
D	Lead Member(s)	Councillors Bryan Nott (Lead), Margaret Sparrey, Richard Bashford, Jagdip Rai, Jerry Evans
E	Lead Review Officer	Narinder Saggu (Scrutiny Office) with additional support to be confirmed.



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F	Relevant Cabinet Member(s)	Councillor Susanna McCorry, Cabinet Member for Social Care and Health
G	Council departments expected to contribute	<ul style="list-style-type: none"> <li>• Social Services</li> <li>• Housing</li> <li>• Transportation</li> <li>• Education</li> <li>• Economic Development</li> <li>• LILA/ Neighbourhood Forums</li> </ul>
H	External organisations expected to contribute	<ul style="list-style-type: none"> <li>• UHBT</li> <li>• Neighbouring NHS Trusts</li> <li>• PCTs - in particular South PCT</li> <li>• CHCs</li> <li>• Patient and Public Involvement Forums</li> <li>• Strategic Health Authority</li> <li>• Neighbouring Local Authorities</li> </ul>
I	Anticipated date of report to Overview and Scrutiny Committee	<p>Interim Report – July?</p> <p>Full report – September/ October</p>
J	<p>Estimated Number of Working Days to Conduct Review</p> <p>Per Member</p> <p>Officers</p>	<p>Review period: June – September</p> <p>15 days approx.</p> <p>20 days approx (including writing up report)</p>
K	Anticipated call on Scrutiny Budget	May entail expenses for holding public meeting, or fees for involvement of expert.

**Signed:**

(By Chair on behalf of Overview and Scrutiny Committee)

**Date Agreed:**

(By Overview and Scrutiny Committee)

**Approved:**

(Chairman, Co-ordinating Overview and Scrutiny Committee)

**Date Approved:**

(By Co-ordinating Overview and Scrutiny Committee)



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# Appendix 2: List of Documentation

### **UHBT**

UHBT Consultation Document on becoming a Foundation Trust	September 2003
Preliminary application for FT status Trust Board paper	February 2003
Preliminary application for FT status submitted to the Department of Health	February 2003
Birmingham New Hospital - project summary	
Presentation from Mark Britnell and John Charlton given to the Council Executive Management Team	7 <sup>th</sup> August 2003
UHBT Corporate Strategy 2003 – 2010	Second draft as at 4.4.03
Letter to Councillor Bryan Nott from Peter Shanahan, Deputy Chief Executive of UHBT	October 2003

### **Seminar/Conference Materials**

Birmingham Health Partnership Seminar	April 2003
- Notes of seminar	
- Presentation slides from Malcolm Lowe-Laurc (Chief Executive of Kings College Hospital NHS Trust)	
- Presentation slides from Mark Britnell (Chief Executive of University Hospital Birmingham NHS Trust)	
- Presentation slide from Dr. Jacky Chambers	
Equity in the NHS – Conference by School of Public Policy - Feedback notes from Dr. Jacky Chambers	October 2003



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### Birmingham Health Community Event Systems Reform

- F.T.S. Presentation slides from South Birmingham PCT September 2003
- Payment by Results – presentation slides –  
Sebastian Habibi September 2003

### Research Papers/Journal Material

- Foundation Hospitals – a new direction for NHS reform:  
Kieran Walshe March 2003  
Journal of the Royal Society of Medicine, vol. 96
- In Place of Bevan – briefing paper: July 2003  
Allyson Pollock & David Price  
Public Health Policy Unit, University College London
- Foundation Hospitals – Shifting the Balance of Responsibility: February 2003  
Socialist Health Association
- Reconciling Equity and Choice – Foundation Hospitals – the March 2003  
Future of the NHS: John Mohan
- Summary Points of Kings Fund Submission to the Health January 2003  
Select Committee on Foundation Trusts
- Governance for NHS Foundation Trusts: Rudolph Klein January 2002  
BMJ, vol. 326
- FT – exploring some of the issues – summary paper for BCC July 2003  
Review Panel: Namita Srivastava
- Community and Public Ownership: Manfred David Mann June 2002
- Unison – evidence to the Health Select Committee enquiry February 2003
- Foundation Trusts – IPPR briefing note March 2003
- Public Interest Companies and the Fair Principles of Public February 2003  
Service Reform – IPPR briefing
- Not for Profit Organisations and Patient Choice – The Route  
to Better Health Care - IPPR briefing



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Foundation Trusts and the New NHS Architecture: Keith Palmer, Cambridge Economic Policy Associates 2002

### Government Papers / Policy Documents

Guidance on NHS Foundation Trusts – Democratic Health Network January 2003

A guide to NHS Foundation Trusts December 2003

The parliamentary debate on Foundation Trusts – DHN policy briefing July 2003

A Short Guide to NHS Foundation Trusts – DOH August 2003

House of Commons Health Committee Foundation Trusts – volume 1 May 2003

Reforming NHS Financial Flows – Introducing Payment by Results – DOH October 2002

Payment by Results – preparing for 2005 – DOH August 2003

FT Guidance on Consultation – NHS FT Unit, DOH September 2003

FT Information Guides on: July 2003

- Members
- Governors
- Financial freedoms
- Payment by Results
- Contracting
- Human Resources
- Accountability and Regulation

Foundation Trusts – A Guide to Governance Arrangements – DOH September 2003

Patients Choice National Consultation – Fair for All – Personal to You

### Other written evidence



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Letter to Alan Milburn from West Birmingham CHC

March 2003

Letter to Mark Britnell from West Birmingham CHC

February 2003

Response to DOH publication – A Guide to NHS Foundation  
Trusts  
By South Birmingham CHC

Letter to Councillor Bryan Nott from South Birmingham CHC



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# Appendix 3: List of Organisations and People Providing Evidence for the Review

University Hospital Birmingham NHS Trust	John Charlton Mark Britnell Andrew Hine Peter Shanahan
South Birmingham PCT	Cynthia Bower David Cox Graham Urwin
North Birmingham PCT	Kevin Stringer
Heart of Birmingham PCT	Paul Tully
East Birmingham PCT	Chris Steadman Janet Down
South Birmingham CHC	Gordon Wills Julia Wilson David Spilsbury
West Birmingham CHC	Martyn Smith Josephine Cooper
North Birmingham CHC	John Line Sheila West
Strategic Health Authority	David Nicholson David Poynton
Birmingham Women's Health Care NHS Trust	Phil Elliott
Sandwell & West Birmingham Hospitals NHS Trust	John Adler



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BCC Education Service

BCC Leisure & Culture

Royal College of Midwives

Royal College of Nursing

Unison

Department of Health

House of Lords

UHBT Patients' Council

Tony Howell

Andrew Kerr

Lianne Brooks

Barbara Tassa  
Ann Leedham-Smith

Ian McKivett

Various contacts,  
including statement from  
Ed Jewell, NHS Financial  
Reforms Team

Lord Hunt

Sue Fursier



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# Appendix 4: NHS Systems Reform - outline of policies

### **Payment by Results**

Payment by Results will operate as a mechanism to ensure that NHS Trusts are reimbursed fairly for all the work they do. Working in partnership with PCTs, Foundation Trusts are to agree the type and level of services that are needed to meet the needs of local populations and these will be built into a three-year commissioning contract. PCTs will purchase hospital services under a new national pricing system calculated on a 'volume and casemix' basis. 'Volume and casemix' means that providers are paid not just for the amount of activity they do, but the complexity of activity. Complexity of activity is defined by different healthcare categories and clusters of cases known as Healthcare Resource Groups (HRGs). Each is weighted according to a 'spell' of healthcare from start to finish. Spells are determined by the number of Finished Consultant Episodes (FCEs). A key feature of this policy is the introduction of a new national tariff system, which requires providers to charge centrally determined prices for individual episodes of care. Foundation Trusts will have a choice of whether they wish to be paid for their first three years based on a minimum income guarantee or whether they wish to opt immediately for payment at national tariff rates.

Whilst the Government is currently consulting on rolling out a national tariff system from 2005-8, Foundation Trusts will begin their transition path in April 2004 – a year ahead of other NHS Trusts.

Under the current financial system, PCTs commission services from NHS Trusts on a "block contract" basis. These are based on historically set budgets and articulated on a Trust by Trust basis. Critics of this system argue that:

- Funding becomes 'locked' in the system and it is difficult to direct resources where they are most needed.



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- The current system also does not allow for effective long-term planning and delivery and restricts the number and type of providers that PCTs can work with. This can often lead to a monopoly of NHS provision and disadvantages patients from having exercising choice.
- NHS Trusts are only marginally rewarded for increasing the amount of work they do.
- Service patterns differ across the NHS and cost comparisons are difficult.

Furthermore, according to the Department of Health information guide on contracting, block contracts are not legally binding. Whilst they set out a framework of provision, they are overseen by Strategic Health Authorities on behalf of the Department of Health. Strategic Health Authorities also performance manage PCTs as well as NHS Trusts and therefore the lines of accountability on contractual arrangements can sometimes become blurred.

Under Service Level Agreements between PCTs and Foundation Trusts, the lines of accountability are expected to be clearer. Foundation Trusts will be required to take full responsibility for the healthcare services they provide in terms of volume, quality and responsiveness to patients. PCTs will be responsible for:

- effective planning,
- developing arrangements with a more diverse range of providers including the private sector,
- applying the system of tariffs,
- closely monitoring provision and emerging shortfalls and
- shifting resources to organisations that have the capacity to meet extra demands.

Service Level Agreements between PCTs and Foundation Trusts are expected to set out the number and type of services the Foundation Trust will provide and PCTs will only reimburse them for the activity they have delivered on, hence, Payment by Results. This new financial system is intended to:

- Reimburse hospitals fairly for the services they deliver, as payment is directly linked and costed to different levels and type of activity
- Reward efficiency and quality
- Ensure services are developed in line with local need by enabling PCTs to have a more flexible set of commissioning tools that can be adjusted



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- for different elements of care
- Give patients more choice about where they are treated
- Allow funding to 'follow' a patient if they decide to be treated in another hospital
- Address issues about higher cost provision (source: A short guide to NHS FT)

Furthermore, SLAs will be on a three-year basis, providing a revenue stream for the Foundation Trust against which to secure borrowing.

### **Patients' Choice**

Patients' Choice is directly linked to and supported by Payment by Results. The aim of the initiative is to allow finances to move through the health economy and for these flows to be determined by patients choosing the date, time and provider where they wish to receive treatment. Patients are to be offered a menu of 4-5 providers at the point of referral, of which at least one must be a provider in the Independent sector. The system will be underpinned by a national electronic booking system and the introduction of advocacy support or 'expert patients' to assist people in making the right choices for their conditions. The advent of Patients' Choice is intended to see an end to patients waiting more than six months for inpatient and out patient treatment. With regards to payments for private sector services, the Government has not yet entered into agreements with independent companies. However, the intention is that they will be paid according to the national tariff and not private sector rates.

### **Agenda for Change**

Agenda for Change is the process of overhauling the NHS pay system. The proposed changes will introduce a new job-evaluated pay structure covering all health service posts, based on the principle of equal pay for work of equal value. It will also create a common set of core conditions for all NHS employees, thus bringing to an end the complexity arising from separate terms for different bargaining groups. This will be achieved by merging hundreds of separate scales and grades into three national pay spines – one for doctors and dentists, one for other workers covered by the independent pay review body process (such as nurses and midwives) and one for all other NHS employees including administrative, clerical and ancillary staff. There will also be the creation of a new single pay negotiating forum for all NHS workers not covered by the pay review



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bodies, replacing 11 separate bargaining groups.

Whilst initially it was expected that Foundation Trusts might have access to Agenda for Change from April 2004, it is now understood that the policy will be rolled out across the whole of the NHS in October 2004.



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# Appendix 5: Overview of meetings/ views expressed to the Committee

### **Meeting with Birmingham's four PCTs**

In general PCTs in Birmingham are supportive of some of the concepts that underpin Foundation Trusts, e.g. local accountability, increased democracy and public participation. None of the PCTs were able to make a formal position statement about the policy or UHBT's application. Three PCTs were yet to discuss the matter at Board level. PCTs recognised that Foundation status would mean accelerated change and an increased technical workload in terms of developing contracts and payment systems and associated monitoring arrangements. There was some concern that recent restructures and organisational changes were still being embedded in many NHS organisations and that Foundation Trusts were an added dimension. Whilst PCTs would have liked more time for preparation, steps had been taken to develop appropriate processes and procedures. PCTs were confident that UHBT had strong leadership and management that would enable it to work effectively through any extra demands brought about by Foundation status. Additionally, as an early applicant, the Trust would receive £100,000 from the Government's Foundation Trust Implementation Team to support the extra work incurred by Foundation status.

There was some concern, however, that PCTs were not clear about how to deal with matters if things went wrong, e.g. if UHBT encountered financial difficulties. Whilst PCTs were responsible for performance managing Foundation Trusts, they did not have access to funds to cover the financial losses of NHS organisations. Strategic Health Authorities, the Government or the NHS Bank were likely to be involved with recovery plans. South Birmingham PCT were of the view that UHBT had sound financial management and was unlikely to get into such difficulties. Additionally Foundation Trusts would be expected to work to a three-



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yearly rather than an annual balancing period, which would enable them to resolve these situations over a longer period of time.

### **Written submissions from NHS Trusts**

Due to the uncertainty around the legislation on Foundation Trust, many local NHS Trusts were unwilling to share their view on UHBT's application. Support was received from those Trusts with three-star status who were intending to submit preliminary applications themselves.

### **Written submissions from Birmingham City Council Departments**

City Council Departments were invited to provide written submissions on UHBT's application for Foundation status. From those received, departments were generally supportive about the application. Concerns and suggestions that came forward were mainly around the need to ensure Foundation status did not have any adverse impact on existing initiatives and services such as those for children and young people, inter-agency working, multi-disciplinary teams and education provision on the Trust's site. With regard to the latter, reassurances were requested that Foundation Status would not be seen as an opportunity to seek additional income from schools for accommodation provided. A more comprehensive outline was to be incorporated in the Council's formal response to the UHBT's consultation exercise.

### **Written submissions from Unions**

Written submissions received from Unions revealed a mixture of views. Some Unions are directly opposed to the development whilst others are cautious but supportive. Concerns were expressed around governance arrangements and how effective these would be in influencing service developments to ensure they meet public needs. Many Unions want to see more staff representation on Governing Bodies (some suggested 25% of Governing Body seats should be retained for staff) so that there is a truer reflection of job areas and professional bodies. Whilst most Unions wanted reassurance that 'Agenda for Change' would be adhered to, there were no direct concerns about higher salaries being offered for service areas that had recruitment difficulties. Some Unions were of the view that Foundation status as a structural reform was not an issue but that commitment was needed to support the provision of seamless services for local communities. At the other extreme, some Unions were fearful that Foundation Trusts would not deliver the results expected and that



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they were “a large ship that had not been tested in terms of its seaworthiness.”

### Meeting with Birmingham’s four CHCs

The review panel sought the views of the four CHCs in Birmingham. Evidence was in the form of a verbal presentation and written submissions from South Birmingham CHC. The CHCs expressed very strong views opposing both the concept of Foundation Trusts and the application by UHBT. In similar vein to Unions, they considered capacity to be more important than structure and wanted reassurances that capacity and provision of services would be maintained in the new organisational system. With regard to some of the freedoms and flexibilities offered by Foundation Status, CHCs were of the view that the over-emphasis on national targets and indicators was cumbersome on trusts and that freedom from these would enable Trusts to concentrate on service provision. Decentralisation and localisation offered by Foundation status was meaningless if the requirement to meet national targets was still there.

Further concerns indicated by CHCs included:

- The nature, size and operational arrangements for Governing bodies. Information on how this would work was not yet clear and confusion existed on membership and electoral arrangements.
- “Take-over” of governing bodies by single-issue groups and diversion of resources to causes supported by these groups.
- Potential dangers around transfer of ownership of assets from a Trust Board to a Community co-operative.
- The lack of Patients’ Forums in Foundation Trusts. CHCs believe Patients’ Forums are the closest body to CHCs and that whilst Governing bodies are meant to be representative of local communities, they will not have the same powers, duties and responsibilities as Patients’ Forums. If all NHS Trusts in the City obtain Foundation status within the next five years (as the Government expects) then potentially Patients’ Forums will cease to exist. This issue is also of concern to the Commission for Patient and Public in Health (CPPIH).

In terms of risks and benefits of UHBT’s application, CHCs were concerned that the risks outweighed the benefits. Whilst the principles of devolution, accountability and the financial freedoms were all necessary components of improving services, these should not be at the expense of other Trusts



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in the City. For instance, the introduction of Patients' Choice might lead to greater demand and waiting lists at Trusts with Foundation status than those without.

### **Written submission from UHBT's Patients' Council**

UHBT's Patients' Council confirmed that they have had sufficient dialogue with UHBT about their application. Whilst they are not wholly supportive of the proposals, as they consider Foundation Trusts will lead to a two-tier health system, the Patients' Council did believe there may be some benefits derived from Foundation Status, largely around financial freedoms and the opportunities for investment in, for example, research projects. In relation to their role if and when governance arrangements came into effect, the Patients' Council were uncertain as to what might happen. They presumed the forum would continue with perhaps a monitoring role for the Trust Board.



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# Appendix 6: Options for allocation of places to the Board of Governors

### Public Elected Governors Group

#### Option 1

- 9 members of the public living in the South Birmingham PCT area
- 2 members of the public living in the Heart of Birmingham PCT area
- 2 members of the public living in the North or East Birmingham PCT area
- 5 members of the public living outside of Birmingham who have recently been patients, 3 of whom are current/former patients of the Trust's regional specialist services. \*

#### Option 2

- 9 members of the public living in the South Birmingham PCT area, of which at least
  - 2 will be female
  - 2 will be male
  - 2 will be over 65
- 3 will be from minority ethnic groups
- 2 members of the public living in the Heart of Birmingham PCT area
- 2 members of the public living in the North or East Birmingham PCT area
- 5 members of the public living outside of Birmingham who have recently been patients, 3 of whom are current/former patients of the Trust's regional specialist services. \*

\* As defined by the National Specialist Commissioning Advisory Group, Department of Health and the West Midlands Regional Specialist Services Group.



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### Staff Elected Governors Group

#### Option 1

4 Governors seats

All staff vote for all candidates with the top four being elected irrespective of professional background or discipline.

#### Option 2

4 Governors seats

- 1 Governor will be medically qualified
- 1 Governor will be a registered or auxiliary nurse
- 1 Governor will be an AHP/Pharmacist or Scientist
- 1 Governor will be Ancillary, Technical, Administrative or Clerical

Staff to vote only for members from their own professional group or discipline.

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