

31 July 2006

Monitor

Independent Regulator
of NHS Foundation Trusts

Gordon McLean
Chairman
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Dear Gordon,

Application for NHS foundation trust status

I have written to you today in relation to your authorisation as an NHS foundation trust. This letter deals with matters which emerged during the scrutiny of your application.

Autonomy from the local health economy

At the Board to Board meeting on 3 July 2006 you will recall that Monitor's Board raised its concerns as to your ability to act independently of the local health economy and to act autonomously. Our concerns centre on the following issues.

(i) £3.5m income support

We were concerned over the £3.5m non-repayable support which will be provided to the Trust by the Strategic Health Authority in 2006/07. We are aware that part of this funding is to cover potential redundancy costs but we believe that at least 50% of this income is not supported by I&E activity in 2006/07. It is our view that this income could be viewed as a subsidy or I&E brokerage provided to the trust. Whilst Monitor is aware that such transactions occur in NHS trusts we do not support the concept of I&E brokerage between NHS foundation trusts and other NHS bodies.

As part of our on going monitoring of your trust we will pay particular attention to the accounting treatment of this support. We will expect the Trust's Audit Committee to confirm that it is satisfied that the accounting treatment for this income is in compliance with the NHS foundation trust financial reporting manual (the FT FReM). This should be done as part of the Quarter 2 monitoring return due on 31 October 2007. Finally, in light of the proposed accounting treatment, Monitor will consider whether this support should be excluded from the I&E account before calculating the financial risk rating.

Contingencies included in your financial model

As you are aware, Monitor's Board was concerned that the financial plans put forward by the trust were not fully transparent. Our analysis revealed significant contingencies included in your base case which increased from a level of c. £3m in 2006/07 to c. £7m by 2010/11. Conversations with the trust led us to conclude that these contingencies, particularly in the later years, were included due to the perception of difficulties of showing surpluses in a challenged health economy.

Monitor's Board regards the above issues as a critical governance concern for all NHS foundation trusts. It is vital that NHS foundation trusts demonstrate that they can act independently and operate as commercial organisations within their terms of Authorisation and the rules outlined in the Department of Health's document "Operating Framework for 2006/7". This includes the ability to generate surpluses without recourse to I&E brokerage irrespective of financial pressures in the local health economy. Monitor would expect a well run foundation trust to engage with their commissioners when deciding how best to reinvest surpluses to improve patient care.

Financial reporting procedures

The PwC financial reporting procedures report highlighted several areas for development within the trust in relation to financial reporting arrangements. The following areas were of particular concern during our review:

- Risk reporting to the Board
 - the need to streamline reporting to cover core risks only
- Formal training programme for NEDs
- Management reporting framework
 - Board reports to cover detailed I&E forecast
 - Commentary on activity and its impact on the financial position
 - Sensitivity analysis on key financial risks
- Cash reporting
 - The need for rolling 12 month cash forecasts and re-profiling of cash during the year
 - Implementation of a treasury policy fit for NHS foundation trust status
- IT recovery plan
 - The need for an IT disaster recovery plan

Monitor takes seriously the concerns raised by the Independent Accounting firms through the assessment process. Therefore, Monitor's Board considers that the Trust should address all of the above areas as soon as possible.

As part of your Quarter 2 Monitoring return (due on 31 October 2006) the Audit Committee should provide a report to both the Trust's Board and Monitor which provides details of the actions which have been taken to address the control weaknesses identified above. Furthermore, I would recommend that the Audit Committee specifically request either the internal or external auditors to review the implementation of the agreed improvements as part of their 2006/07 audit plan.

The Trust has been allocated an amber rating for governance at Authorisation. This will be reviewed as part of Q2 monitoring. Progress made on addressing the issues identified above will, obviously, be an important element of the review.

Notwithstanding the above, once again, we would like to congratulate you and your team on the hard work and your successful application.

Yours sincerely

A handwritten signature in black ink, appearing to be 'W Moyes', written in a cursive style.

William Moyes
Chairman

Cc: Diane Whittington - Chief Executive

PART 1 Authorisation

1. Monitor ('Monitor'), the Independent Regulator of NHS Foundation Trusts, in exercise of the powers conferred by Section 6 of the Health and Social Care (Community Health and Standards) Act 2003 ('the Act') and all other powers exercisable by Monitor, hereby authorises Calderdale and Huddersfield NHS Trust to become an NHS Foundation Trust ('the Trust'), subject to the Conditions set out in Part 3 hereof.
2. This Authorisation shall come into force on 1 August 2006.
3. Subject to the provisions of Sections 25 and 26 of the Act, this Authorisation shall be of unlimited duration.
4. This Authorisation is not assignable.
5. Monitor may vary the Conditions of this Authorisation.

PART 2 Interpretation and construction

1. Words and expressions used in the Authorisation shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them.
2. Any reference to an enactment shall include any re-enactment thereof or amendment thereto.
3. Words and expressions defined in the Act shall have the same meaning when used in this Authorisation.
4. Unless otherwise specified, any reference to a numbered Condition (with or without a suffix letter) or Schedule is a reference to the Condition or Schedule bearing that number in this Authorisation.
5. In construing the provisions of this Authorisation, the heading or title of any Part, Condition or Schedule shall be disregarded.
6. Where any obligation of the Trust is required to be performed by a specified date or within a specified period, and where the Trust has failed so to perform, such obligation shall continue to be binding and enforceable after the specified date or after the expiry of the specified period.
7. In this Authorisation:
 - "ancillary services" means services which support the provision of the mandatory goods and services listed in Schedule 2.
 - "property" is land and buildings owned or leased by the Trust.
 - "the Board of Directors" means the Board of Directors of the Trust.
 - "the provision of goods and services for purposes related to the provision of health care" includes the provision of social care services.
 - 'high security psychiatric services' has the same meaning as in Section 4 of the National Health Service Act 1977 as amended.

PART 3 Conditions

1. Principal Purpose

The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England. This does not preclude the provision of cross-border services to other parts of the United Kingdom.

2. General duty

The Trust shall exercise its functions effectively, efficiently and economically.

3. Constitution

- (1) The Trust shall secure that its constitution is in accordance with any regulations made under Section 35 of the Act (conduct of elections).
- (2) The Trust may make amendments to its constitution with the approval of Monitor.
- (3) The constitution, incorporating any amendments which may be made thereto, is annexed at Schedule 1.

4. Compliance and enforcement

(1) The Trust shall comply with:

any requirements imposed on it under the Act or any other enactment;

the Conditions of this Authorisation;

the terms of its constitution;

if applicable, directions issued by the Secretary of State with respect to safety and security in connection with the provision of high security psychiatric services; and

the terms of its contracts with bodies which commission the Trust to provide goods and services (including education and training, accommodation and other facilities) for the purposes of the health service in England.

- (2) The Trust shall comply with any guidance issued by Monitor, unless the Monitor has agreed with the Trust that, in the particular circumstances, the Trust is not required to comply.
- (3) A failure to comply may result in Monitor taking enforcement action under Sections 23, 24 or 25 of the Act.

5. Governance

- (1) The Trust shall ensure the existence of appropriate arrangements to provide representative and comprehensive governance in accordance with the Act and to maintain the organisational capacity necessary to deliver the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2 and

the mandatory education and training referred to in Condition 7(2) and listed in Schedule 3.

- (2) The Trust shall comply with the principles of best practice applicable to corporate governance in the NHS/health sector, with any relevant code of practice and with any guidance which may be issued by Monitor.

6. Health care standards

- (1) The Trust shall put and keep in place and comply with arrangements for the purpose of monitoring and improving the quality of health care provided by and for the Trust.
- (2) The Trust shall comply with statements of standards in relation to the provision of health care published by the Secretary of State under Section 46 of the Act, as currently set out in the Department of Health publication Health and Social Care Standards and Planning Framework (July 2004) as may be amended from time to time.
- (3) If applicable, the Trust shall comply with any statements of standards with respect to social care services which the Secretary of State may issue from time to time.
- (4) If applicable, the Trust shall comply with any statements of standards with respect to security and risk management which the Secretary of State may issue from time to time.

7. Mandatory Services

- (1) The Trust is required to provide for the purposes of the health service in England the goods and services listed in Schedule 2 in the volumes or amounts specified therein ('**mandatory goods and services**') which goods and services in the volumes or amounts specified are to be provided pursuant to a legally binding contract or contracts between the Trust and one or more of the commissioning bodies, or on the understanding that the Trust and the relevant commissioning body or bodies will conclude a legally binding contract or contracts for the provision of said goods and services in the volumes or amounts specified within 12 months of the date on which this authorisation comes into force. This requirement includes an obligation to provide any ancillary services, accommodation and other facilities related to said goods and services and which are generally accepted to be required for the effective, efficient and economic provision of said goods and services in the volumes or amounts specified.
- (2) The Trust is required to provide education and training to third parties for the purposes of the health service in England listed in Schedule 3 in the volumes or amounts specified therein ('**mandatory education and training**'), which are to be provided pursuant to a legally binding contract or contracts between the Trust and one or more of the commissioning bodies, or on the understanding that the Trust and the relevant commissioning body or bodies will conclude a legally binding contract or contracts for the provision of said education and training in the volumes or amounts specified within 12 months of the date on which this authorisation comes into force.

- (3) Monitor reserves the right to vary the goods and services and the volumes or amounts thereof which the Trust is required to provide in terms of Condition 7(1) and the education and training to third parties and the volumes or amounts thereof which the Trust is required to provide in terms of Condition 7(2), in particular in order to ensure the continuity of local service provision and the fulfilment of local health needs as they may vary from time to time.
- (4) The Board of Directors of the Trust shall regularly review and shall at all times maintain and ensure the capacity and capability of the Trust to provide the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.

8. Authorised Services

- (1) The Trust is authorised to provide goods and services (including education and training, accommodation and other facilities) for purposes related to the provision of health care, subject to written confirmation to Monitor by the Board of Directors that the Board of Directors is satisfied that the Trust has the capacity and the capability to provide said goods and services and that the provision of said goods and services will not inhibit the provision by the Trust of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.
- (2) Monitor reserves the right to refuse to authorise specific goods and services in circumstances where Monitor is not satisfied that the Board of Directors has a proper basis for the written confirmation referred to in Condition 8(1).
- (3) The Trust shall establish and maintain an up to date register of the goods and services referred to in Condition 8(1). With respect to education and training, only education and training provided to third parties shall be included in the register. Accommodation and other facilities do not require to be included in the register of goods and services.
- (4) The Trust shall make the register of goods and services available for public inspection on payment of such reasonable fee, if any, as the Trust may determine.
- (5) The Trust is authorised to carry out research in connection with the provision of health care, subject to written confirmation to Monitor by the Board of Directors that the Board of Directors is satisfied that the Trust has the capacity and the capability to provide said research, that all relevant authorisations with respect to the carrying out of said research have been secured, that the said research will be carried out in accordance with the generally accepted ethical standards and that the said research will not inhibit the provision by the Trust of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.
- (6) Monitor reserves the right to refuse to authorise research in circumstances where Monitor is not satisfied that the Board of Directors has a proper basis for the written confirmation referred to in Condition 8(5).
- (7) The Trust is authorised to make facilities and staff available for the purposes of education, training or research carried on by others.

- (8) Any activities undertaken by the Trust, other than the provision of goods and services for purposes related to the provision of health care, shall be subject to any restrictions which may be imposed by Monitor in terms of Section 14(3) of the Act.

9. Protection of property

- (1) Property needed for the purposes of providing any of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2 (including the ancillary services, accommodation and other facilities related thereto) and the mandatory training and education referred to in Condition 7(2) and listed in Schedule 3 is protected.
- (2) The Trust may not dispose any protected property without the approval of Monitor.
- (3) The Trust shall establish and maintain an asset register in respect of protected property, in accordance with guidance to be issued by Monitor.
- (4) The Trust shall make the asset register available for public inspection on payment of such reasonable fee, if any, as the Trust may determine.

10. Private health care

The proportion of total income of the Trust in any financial year derived from private charges shall not be greater than the percentage set out in Schedule 4 ('the private charges cap').

11. Limit on borrowing

- (1) The total amount of the Trust's borrowing is subject to the limit set out in Schedule 5.
- (2) The limit is subject to annual review by Monitor.

12. Financial viability

The Trust shall at all times remain a going concern as defined by relevant accounting standards in force from time to time.

13. Dividend payments on Public Dividend Capital

The Trust shall be required to pay annually to the Department of Health a dividend on its Public Dividend Capital at a rate to be determined from time to time by the Secretary of State.

14. Information

The Trust shall disclose to Monitor and directly to any third parties as may be specified by the Secretary of State the information, if any, specified in Schedule 6 as may be varied from time to time and such other information as Monitor may from time to time require.

15. Entry and inspection of premises

The Trust shall allow Monitor, any member, officer or member of staff of Monitor, and any agent acting on behalf of Monitor, to enter and inspect premises owned or controlled by the Trust.

16. Fees

The Trust shall pay to Monitor such reasonable annual fee, if any, as may be determined by Monitor.

17. Representative membership

The Trust shall continue to take such reasonable steps as may be required by Monitor, by such date or within such period as may be specified by Monitor, to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) the patients' constituency is representative of those eligible for such membership.

18. Co-operation with other bodies

(1) The Trust shall co-operate with Primary Care Trusts, Strategic Health Authorities, Special Health Authorities, the Commission for Health Care Audit and Inspection, NHS foundation trusts, other NHS trusts and other health authorities and organisations in accordance with the Act and any future guidance to be published by Monitor.

(2) The Trust shall co-operate with the Commission for Social Care Inspection, the Mental Health Act Commissioners, the National Oversight Group for High Security Hospitals and such other bodies [as may be specified in any future guidance to be published by Monitor] which have a remit covering activities related to the provision of mental healthcare services.

(3) The Trust shall co-operate with local authorities in the exercise of its own functions and in the exercise by the local authorities of their respective functions.

19. Emergency planning

The Trust shall assist the relevant authorities with, and participate in, local and national emergency planning and provision.

20. Information technology

The Trust shall participate in the national programme for information technology, in accordance with any guidance issued by Monitor.

21. Audit committee

(1) The Trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

(2) The Board of Directors shall satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

22. Audit

- (1) The Audit Code for NHS Foundation Trusts ('the Audit Code') contains the directions of Monitor under paragraph 24(5) of Schedule 1 to the Act with respect to the standards, procedures and techniques to be adopted by the auditor.
- (2) The Trust shall comply with the Audit Code.
- (3) The auditor shall comply with the Audit Code.

23. Public interest reporting

The Trust shall forward a report to Monitor within thirty days (or such shorter period as Monitor may specify) of the auditor issuing a public interest report in terms of Schedule 5 paragraph 3 of the Act. The report shall include details of the Trust's response to the issues raised within the public interest report.

24. Notification

The Trust shall deal with Monitor in an open and co-operative manner and shall promptly notify Monitor of anything relating to the Trust of which Monitor would reasonably expect prompt notice, including, without prejudice to the foregoing generality, any anticipated failure or anticipated prospect of failure on the part of the Trust to meet its obligations under this authorisation or any financial or performance thresholds which Monitor may specify from time to time.

25. Information given to Parliament and to Members of Parliament

In addition to any statutory requirements, the Chairman, Chief Executive or any other person giving information to Parliament or to a Member of Parliament on behalf of a Trust shall ensure that they comply with the standards expected of Ministers of the Crown with regard to openness of dealings, the giving of accurate and truthful information and the correction of any inadvertent error at the earliest opportunity. Any question submitted to the Trust by a Member of Parliament shall be responded to by the Trust within the same timescale as that expected of Ministers with respect to Parliamentary questions.

Schedule 2
Mandatory Goods and Services
Calderdale and Huddersfield NHS Foundation Trust

2006/07

Code	Speciality	Emergency in-patients		Elective in-patients		Total of Emergency & Elective		Day Cases		Out patients		Other (1)	
		SPELLS	SPELLS	SPELLS	SPELLS	SPELLS	SPELLS	SPELLS	SPELLS	SPELLS	SPELLS	Rehab (bed days) & A&E attendances	A&E attendances
100	General Surgery	4181	2337	6518	6532	31440	0	0	0	0	0	0	0
101	Urology	944	1263	2207	3081	11679	0	0	0	0	0	0	0
110	Trauma & Orthopaedics	2866	2478	5344	1883	54080	0	0	0	0	0	0	0
120	Ear, Nose & Throat (ENT)	284	1160	1424	1415	17823	0	0	0	0	0	0	0
130	Ophthalmology	134	371	505	2566	51518	0	0	0	0	0	0	0
140	Oral Surgery	44	156	200	1313	9479	0	0	0	0	0	0	0
143	Otorhinolaryngology	0	0	0	0	0	0	0	0	0	0	0	0
145	Plastic Surgery	0	0	0	0	3607	0	0	0	0	0	0	0
146	Podiatry	0	0	0	0	0	0	0	0	0	0	0	0
150	Acute Emergency (A&E)	0	0	0	0	0	0	0	0	0	0	0	0
180	Pain Management	0	0	0	16	0	0	0	0	0	0	0	0
191	Pain Management	0	0	0	0	5681	0	0	0	0	0	0	0
300	General Medicine	8405	143	8548	1504	20516	0	0	0	0	0	0	0
301	Gastroenterology	2318	191	2509	2268	9872	0	0	0	0	0	0	0
302	Endocrinology	0	0	0	0	82	0	0	0	0	0	0	0
303	Clinical Haematology	134	47	181	1801	8524	0	0	0	0	0	0	0
314	Rehabilitation	0	0	0	0	0	0	0	0	0	0	0	0
320	Cardiology	429	195	524	857	10377	0	0	0	0	0	0	0
330	Chemistry	17	0	0	0	14317	0	0	0	0	0	0	0
335	Chemistry	0	0	0	0	0	0	0	0	0	0	0	0
370	Medical Oncology	442	45	487	381	5153	0	0	0	0	0	0	0
400	Neurology	11	0	11	113	0	0	0	0	0	0	0	0
410	Rheumatology	15	3	18	239	12409	0	0	0	0	0	0	0
420	Paediatrics	5309	45	5354	26	10123	0	0	0	0	0	0	0
430	Geriatric Medicine	5405	116	5521	283	5443	0	0	0	0	0	0	0
501	Obstetrics	8980	1	8981	3	12869	0	0	0	0	0	0	0
502	Gynaecology	1305	1349	2654	1800	21021	0	0	0	0	0	0	0
503	Obstetrics & Gynaecology	1506	0	1506	0	0	0	0	0	0	0	0	0
825	Chemical Pathology	43139	5901	53040	27407	327493	0	0	0	0	0	0	0
TOTAL		43139	5901	53040	27407	327493	0	0	0	0	0	0	0

Critical Care services

Speciality	Total	Currency
Neonatal Intensive Care Unit (NICU)	0	(note 1)
Radiatic Intensive Care Unit (PICU)	0	(note 1)
Special Care Baby Unit (SCBU)	3977	(note 1)
Intensive Care Unit (ITU)	6003	(note 1)
High Dependency Unit (HDU)	0	(note 1)
Coronary Care Unit (CCU)	0	(note 1)

Schedule 3
Mandatory Education and Training Services

2006/07

Calderdale and Huddersfield NHS Foundation Trust

Commissioning body	Educational body	Contract Length (Years)	Expiry date of contract	Student group	Type of training	Number of Students	Contract Value (£000s)
Yorkshire Deanery (SIFT)	University of Leeds	Annual	31.03.06	Undergraduate doctors in training	Medical	1265 Student weeks	£295,360
South Yorkshire & Humber Post Grad Deans office	University of Sheffield	Annual	31.03.06	Undergraduate doctors in training	Medical		£11,824
Yorkshire Deanery	University of Leeds	Annual	31.03.06	Doctors in training	Medical	SHO/PRHO	£2,214,908
Yorkshire Deanery	University of Leeds	Annual	31.03.06	PGME	Medical	Staff/non staff costs	£221,920
Yorkshire Deanery	University of Leeds	Annual	31.03.06	Library	Medical	Staff/non staff costs	£196,000
Yorkshire Deanery	University of Leeds	Annual	31.03.06	SHO training budget	Medical	Training budget	£37,500
Yorkshire Deanery	University of Leeds	Annual	31.03.06	Doctors in training	Medical	Additional F1 posts	£51,411
Yorkshire Deanery	University of Leeds	Annual	31.03.06	Urology SPRs (across Yorkshire)	Medical	Training budget	£18,000*
Yorkshire Deanery	University of Leeds	Annual	31.03.06	VTS prog (GP registrars Cald & Hudds)	Medical	Training budget	£6,375*
Yorkshire Deanery	University of Leeds	Annual	31.03.06	Modernising Medical Careers	Medical	Leads & secretaries	£8,688
Yorkshire Deanery	University of Leeds	Annual	31.03.06	Foundation Training	Medical	Leads & secretaries	£21,334
Yorkshire Deanery	University of Leeds	Annual	31.03.06	Foundation Training	Medical	Generic skills prog	£4,500

* budget not received by Trust, but monitored on behalf of the Deanery

AUTHORISATION OF CALDERDALE AND HUDDERSFIELD NHS FOUNDATION TRUST

PRIVATE CHARGES CAP

In 2002/03 the proportion of the total patient income derived from private health charges was 0.4%

Pursuant to Section 15 of the Health and Social Care (Community Health and Standards) Act 2003, the Private Charges Cap, referred to in Condition 10, is 0.4%.

PPI DEFINITION:

$$\frac{\text{Private patient income}}{\text{Total patient related income}}$$

AUTHORISATION OF CALDERDALE AND HUDDERSFIELD NHS FOUNDATION TRUST

PRUDENTIAL BORROWING LIMIT

Pursuant to Section 17 of the Act, the Prudential Borrowing Limit ("PBL") for the year 2006/07 is the sum of the following:

- (i) Maximum cumulative long term borrowing: £46.8 million, and
- (ii) Approved working capital facility: not to exceed £18.0 million