

BOD 20/2014

(Agenda Item: 4)

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

# Board of Directors

**26 February 2014**

**Chief Executive’s Report**

**For Information**

***National Issues***

**1. Significant Transactions – benchmarking against definitions in NHS Foundation Trust (NHS FT) constitutions**

The Foundation Trust Network has carried out a desk-top analysis of the constitutions of NHS FTs to identify whether they have chosen to define significant transactions in their constitutions. The National Health Service Act 2006 (**the 2006 Act**) (paragraph 51A of Schedule 7) as amended by the Health and Social Care Act 2012 (**the 2012 Act**) allows NHS FTs discretion to develop their own definitions of significant transactions.

The Foundation Trust Network has identified that, of the 147 NHS FTs authorised as at February 2014:

* 57 NHS FTs or 39% have defined significant transactions in their constitutions; and
* 90 NHS FTs or 61% have chosen not to define significant transactions and their constitutions have a statement to the effect that they contain no such definition.

The Trust’s proposed revisions to its Constitution, as approved at the last Board meeting and to be submitted to Council in March 2014 for final approval, does not define significant transactions, in common with 61% of NHS FTs.

Of the 39% of NHS FTs which have defined significant transactions in their constitutions:

* the majority have done so in financial terms by staying with the old Monitor definition of 25% of income, fixed assets or gross capital; others have set the thresholds lower at 10% or 20%;
* a few have taken a different approach by setting different definitions for non-health/non-UK transactions to those for UK health transactions. Typically, these NHS FTs have chosen thresholds of 5% of gross assets, 12.5% of EBITDA (Earnings Before Interest, Taxation, Depreciation and Amortisation), 5% of income from assets or 5% of gross capital as the definition for non-health/non UK transactions with a higher threshold of 10% of gross assets, 25% of EBITDA and 10% of income from assets or of gross capital as the definition for UK healthcare transactions; and
* two NHS FTs have looked to define significant transactions in terms other than financial, taking account of factors such as:
  + whether the transaction is subject to public consultation;
  + whether the transaction falls outside of or contradicts the NHS FT’s overall strategy;
  + whether the transaction involves significant reputational risk;
  + whether the transaction affects the NHS FT’s ability to meet regulatory or contractual standards or requires separate reporting;
  + whether the transaction involves increasing non-NHS income by more than 5% of total income; or
  + other important transactions that the Board believes governors should approve.

The Foundation Trust Network has also taken legal advice to confirm that NHS FTs which have not defined significant transactions in their constitutions are under no obligation to seek the approval of governors before a transaction goes ahead although it is expected that Boards will consult governors on the annual plan and longer term strategies (and it is likely that a significant transaction will form an integral part of such a strategy or plan). There are obligations to consult with governors on proposals with strategic implications, for example if the transaction:

* is a merger, acquisition, separation or dissolution then the approval of more than 50% of governors is required (see sections 56(1A), 56A, 56B and 57A of the 2006 Act);
* involves a proposal to increase the NHS FT’s income from activities other than the provision of goods and services for the purposes of the NHS as required by the 2006 Act (section 43 (3D)); or
* where the governors’ approval is required for the transaction under any other provision of an NHS FT’s constitution.

***Local / Trust Issues***

**2. CEO Stakeholder Meetings & Visits**

Since the last meeting, key stakeholders that I have met, visits I have undertaken and meetings that I have attended have included:

* the first meeting of the Oxford Academic Health Science Centre Board;
* a meeting of the CLAHRC (Collaboration for Leadership in Applied Health Research and Care) Board;
* Productive Care Learning and Sharing Event; and
* the Highfield official opening.

**Recommendation**

The Board is asked to note the report.

**Lead Executive Director:** Stuart Bell, Chief Executive