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Seven reasons why UNISON is opposed to Foundation Trusts

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Reason 1: Foundation Trusts will compete as part of a commercial market

Reason 2: Foundation Trusts will be a backdoor to privatisation

Reason 3: Foundation Trusts will not lead to greater local accountability or social ownership

Reason 4: Foundation trusts will be poor value for money

Reason 5: Foundation trusts will lead to greater inequalities between hospitals

Reason 6: Foundation trusts will draw scarce staff away from non-foundation trusts

Reason 7: Foundation trusts will undermine the NHS's public service principles

Reason 1: Foundation Trusts will compete as part of a commercial market

Foundation trusts will contribute towards the introduction of a competitive commercial market into the NHS. Under this market, Primary Care Trusts will commission services from a range of different providers across the public and private sectors, including NHS Trusts, Foundation Trusts and privately run diagnostic and clinical centres. Patients will be able to select the provider from they wish to receive treatment, and providers will compete for business, with funding following the patient. Should the number of patients being treated by a particular provider fall below the level predicted by the PCT, then funding equivalent to the shortfall will be withdrawn from the provider and transferred elsewhere.

UNISON is concerned that competition from Foundation Trusts will lead to financial instability for other NHS Trusts. Relatively small changes in patient demand could destabilise smaller general hospitals, forcing them to close services in order to remain financially viable. Non-foundation Trusts will be at an unfair disadvantage in competing for patients because patients will be attracted to Foundation Trusts on account of their perceived superior status. Furthermore, Foundation Trusts will be in a better position than NHS Trusts to compete because of their additional financial freedoms, for example by borrowing from the private sector to invest in new services or to upgrade facilities.

Reason 2: Foundation trusts will be a backdoor to privatisation

The Government's proposed legislation introducing Foundation Trust status would allow not only existing Foundation Trusts to become NHS Foundation Trusts, but also other organisations from the private or voluntary sectors. This means that, for example, there would be nothing in principle to stop an organisation such as BUPA from being awarded a licence to run a Foundation Trust. Confirmation of this is given by the Government's own guide to Foundation Trusts which says that, although the first wave of Foundation Trusts will be 3-star acute trusts, Foundation Trust status could in time also be opened up to organisations 'that are not currently part of the NHS.'

Foundation Trusts will also lead to greater privatisation because there will be nothing to stop NHS Trusts that gain Foundation status from outsourcing some or all of their functions to the private sector.

Reason 3: Foundation trusts will not lead to greater local accountability or social ownership

Foundation Trusts will not lead to greater local accountability or social ownership. As public services, NHS hospitals are already owned by the public. And unlike a mutual, NHS hospitals should be for the benefit of the whole public, not just a small number of 'members.'

Foundation Trusts are unlikely to provide an effective means of achieving a balanced representation of the full range of groups and interests present within a Trusts' stakeholder community. Reasons for this include:

- Foundation Trusts will be able to run with only a very small number of members in relation to their total user population
- Foundation Trust members will be self-selecting, creating the potential for the under-representation of particular ethnic or social groups and for Foundation Trusts to fall hostage to political interests
- It is not clear what safeguards will exist to ensure that Boards of Governors undertake their duty to consult with Foundation Trust members in a genuine or meaningful way

Another area of weakness in the governance structure is the ability of the Board of Governors elected by the Foundation Trust members to influence the way in which a Foundation Trust is run. It is not clear that, if the Board of Governors feels strongly about an issue, they will have sufficient power to ensure that their views are acted upon. The Government has said that matters of 'day to day management', for instance budgets and staff pay, will not be part of the remit of the Board of Governors but will be the responsibility of the Management Board. The Management Board will have a duty to consult the Board of Governors regarding the development of forward plans for the Foundation Trust and the Board of Governors will be entitled to fill a minority of the places on the Management Board. Beyond this, however, the exact nature of the relationship between the Board of Governors is undefined, being left for each Foundation Trust to set out in their constitution.

Reason 4: Foundation Trusts will be poor value for money

By borrowing from the private sector to fund capital developments, Foundation Trusts will incur higher rates of interest than they would if they were to borrow through the public sector. Even worse, rather than leading to increased total levels of capital investment, the Government has said that private sector borrowing by Foundation Trusts will count towards the overall capital allocations agreed between the Department of Health and the Treasury. This means that public finance will simply be replaced by more expensive private lending, leading to higher costs for no overall increase in the level of NHS capital investment.

While Foundation Trusts' private borrowing will not be subject to Treasury approval, the Government will shoulder the risk if Foundation Trusts get into financial difficulty. If a Foundation Trust goes bankrupt, it will be the Government that will be expected to stand behind its debts. In addition, Foundation Trusts will be permitted to offer assets such as car parks and retail premises that are deemed to be non-essential for the provision of clinical services as security on private sector borrowing. This may result in such assets being sold off to pay debts in the event of financial failure.

Foundation Trusts will also be more costly to administer. As independent legal entities, Foundation Trusts will have to enter into legally binding service agreements with commissioners, leading to higher legal bills. In addition, the Government has said that it will be giving additional financial support to applicant Foundation Trusts in order to help them with the cost of the application process.

Reason 5: Foundation trusts will lead to greater inequalities between hospitals

The Government has said that it hopes to see all NHS Trusts attain Foundation status within the next four to five years. However, within that timescale there is scope for considerable inequalities to emerge between those NHS Trusts which receive Foundation status first and those who are at the end of the queue.

One of the reasons why Foundation trusts will lead to greater inequalities between Trusts is that they will enjoy greater freedom than NHS trusts over asset disposals and surpluses. Under the current system, asset sale proceeds above a certain amount and operating surpluses are transferred to a central NHS funding pool, from where they are redistributed to wherever the need in the NHS is greatest. However, Foundation Trusts will be able to keep all operating surpluses and asset sale proceeds themselves.

Foundation Trusts will also increase inequalities in access to capital finance. Foundation Trusts will potentially have access to higher levels of capital finance than NHS Trusts without Foundation status, as they will be able to borrow from both the public and the private sectors. Furthermore, because private borrowing by Foundation Trusts will be accounted for within the Department of Health's overall spending limit, there is a danger that the increased pot of capital finance for Foundation Trusts may in fact result in a decreased availability of capital finance for non-Foundation trusts. Should this happen, not only will Foundation Trusts receive higher levels of capital finance, but this will be at the expense of the rest of the NHS.

Reason 6: Foundation trusts will draw scarce staff away from non-foundation trusts

By exercising their additional flexibilities on pay, Foundation trusts will draw scarce staff away from Trusts that do not have Foundation status. This will make recruitment and retention for Trusts without Foundation status more difficult, undermining their performance and increasing their reliance on temporary staff. In addition, staff may be drawn away to Foundation Trusts as a result of the better reputation that these will enjoy.

In those NHS Trusts that do not gain Foundation status, there is a danger that staff and patients may feel devalued and demoralised. This is likely to prove a particular problem as more and more NHS Trusts move towards Foundation status.

Reason 7: Foundation trusts will undermine the NHS's public service principles

Foundation trusts will undermine the NHS's public services principles and conflict with other, more positive, Government reforms. Some of the ways in which this will happen include:

- **Healthcare planning and the provision of joined-up services:** Foundation Trusts will jeopardise the success of the Government's initiatives to improve the way in which NHS organisations plan services together and to provide a joined-up healthcare service for patients. Foundation Trusts will strengthen institutional boundaries, making it more difficult to ensure that patients moving around the NHS receive an integrated package of care. Furthermore, the independent status of Foundation Trusts will undermine the ability of the NHS to take a planned and co-ordinated approach to service development, allowing Foundation Trusts to duplicate existing services or to ignore local health needs.

  According to Frank Dobson, the former Secretary of State for Health:

  'Foundation Trusts deciding their own priorities could well become cuckoos in the local health nest – tossing out other people's priorities for the exclusive benefit of their own. Up till now, with the support of the health care professionals, the Government has been trying to develop a more comprehensive approach to local NHS planning and delivery. This will set it back.'

- **Equality of access:** One of the guiding principles underpinning the NHS is that it should be accessible to all who need it on a equal basis, regardless of factors such as age or complexity of treatment. This could be compromised by Foundation Trusts, which according to the Government's guidance will be required only to meet a 'reasonable level of demand' for regulated services listed in the licence. Where demand exceeds this level, Foundation Trusts may therefore be able to exercise selectivity in deciding who to treat, rejecting those patients with higher than average costs and focussing on those individuals from whom they will make the most profit.

- **Best practice sharing:** Foundation Trusts would undermine the Government's attempt to promote better sharing of good practice and innovation across the NHS. Foundation Trusts will take many of the best NHS Trusts out of the mainstream of the NHS and will make Trusts more reluctant to share good practice by encouraging greater competition between Trusts.

The Government claims that the principles and ethos of the NHS will be protected by the Independent Regulator for Foundation Trusts, which will issue Foundation Trusts with their licences, deal with any breaches and adjudicate on proposed changes to Foundation Trusts' regulated services. This, however, provides little comfort as the Government has failed to provide any clarification regarding what principles or criteria by which the Independent Regulator will be expected to observe in making its decisions. Thus, for example, it is unclear whether the Independent Regulator will be obliged to have regard to the universal coverage of the NHS or the principle of equality of access to NHS care.