



**CO-OPERATIVES UK**

## Ten Years After

The democratic promise and potential of membership  
in NHS Foundation Trusts

*Ed Mayo, Secretary General of Co-operatives UK*

“The representation and engagement of members can help to increase accountability and ensure that healthcare provision works.”



## Foreword by Peter Hunt, Chief Executive of Mutuo

NHS Foundation Trusts have made an enormous contribution to the growth of the mutual sector in the UK. They have been a vital innovation, intended to marry public service values and entrepreneurialism with a different relationship with the public. The ten years since the advent of NHS Foundation Trusts marks a decade worth celebrating, with some outstanding successes. Mutuo has been involved throughout, by helping to share the experience of long standing co-operative and mutual businesses with new public service mutuals.

Mutuals are defined by member ownership and control - and making membership meaningful is an opportunity and challenge shared by all mutuals, including long established co-ops no less than new fledgling public service mutuals. We have seen some NHS Foundation Trusts embrace the best practice of progressive mutuals, but there is a wider need to reawaken the founding intentions of Foundation Trusts and the spirit of mutuality. The legislative framework has not made it easier to do this and it is timely to consider how to deepen the democratic basis of Foundation Trusts for the next decade.

## Democratic Form for Foundation Trusts – the role of membership

To mark the ten year anniversary of the creation of NHS Foundation Trusts in England this short report sets out how we can move towards a more democratic and participative model of health care through a strengthening of the role of membership.

This could help ensure that Foundation Trusts reach the original aims that were envisioned of grass-roots membership, enabling communities to influence healthcare provision and ensuring the accountability of directors.

Such a focus would be particularly timely in light of the Government's initial response to the Francis report earlier this year, as well as the wider, 'much-debated' changes in the organisation of health service commissioning and provision contained in the Health and Social Care Act (2012).

## Context – a co-operative vision for healthcare

NHS Foundation Trusts were created in 2003. It was a ground-breaking new legal structure called a "public benefit corporation" which was in part modelled on traditional co-operative and mutual societies. For the first time in the NHS, this introduced the concept of grass-roots membership (patients public and staff) for NHS organisations, together with a form of democratic governance. This was a break with tradition – and provided a new model which for the first time enabled communities through their elected representatives to influence healthcare provision.

**The promise that democratic engagement offers remains worthwhile.**

The co-operative sector was supportive of Foundation Trusts from an early stage, recognising that the inspiration came in part from co-operative and mutual societies. I played a role in this personally, in a former role, contributing to the formative work on the model and chairing the Department of Health Governance Advisory Group for Foundation Trusts that developed initial guidance on models of working.

The promise that democratic engagement offers remains worthwhile. There are good examples of health co-operatives worldwide, which have been able to promote a model in which responsibility for health development lies with the citizen and they, in a group or community setting, are at the centre of action for well-being, rather than what the UK still has, which is a provider-led model of healthcare centred, above all, on acute, secondary healthcare services.

The UK does have examples of participatory co-operatives in healthcare, outside of the NHS. Benenden Healthcare, for example, has a membership of 900,000, organised in branches with a highly democratic structure. The society has been voted the UK's most trusted healthcare provider for three years, in 2011, 2012 and 2013. But Benenden exemplifies not just satisfaction but also responsibility. The claim rate on services is significantly lower than for private health insurers, because, rather than seeing it as an individual consumer transaction, operating as a zero-sum game, Benenden members are aware that they are drawing on support that is pooled and to be shared equitably for all members according to need.

It is also important to recognise that there is a different experience over the last ten years, with its own positive lessons and cautions, from patient and public involvement in health and social care in Scotland and Wales.

## The Reality – mutuality in question

Given the way in which patient focus, service quality and health development have moved into the mainstream discourse of health policy, we might expect such examples to have informed the development of NHS practice. If anything, the opposite is true. Although there are some models of good practice, most notably amongst mental health providers, the overall field of Foundation Trusts has widened but it has not deepened in terms of democratic practice and participation.

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This has not been helped by the focus of the regulator and inspectors on finance and traditional NHS professional concerns, while the widening of the numbers of Foundation Trusts has not encouraged a deepening in terms of the practice or culture of mutuality. The findings of the Francis report are relevant, particularly that there was no culture of listening to patients, the failure of the Board to get a grip of its accountability and governance structure, the lack of effective engagement with patients and the public, and the lack of transparency.

I accept that the legislative framework for Foundation Trusts in terms of accountability has been somewhat compromised and clumsy from the start, lacking the clarity that would have combined genuine community accountability with a public purpose and ethos to shape operations in line with a national of resources, baselines and benchmarks.

The underlying model was a simple enough concept: members elect governors who, together with a number of other governors appointed by external bodies, appoint the chair and other non-executive directors. The non-executive directors appoint the executive directors. The board of directors runs the Trust. The council of governors hold the directors to account and represent the interests of the members and the wider public.

In practice the chain of accountability was always going to be complex. Trusts were deliberately made accountable to Parliament via the risk regulator Monitor. What's more, the development of membership tended to be less of a priority for many trusts than the development of the governor role.

There are some important differences from a traditional co-operative approach. In a co-operative organisation, the grass-roots members are the "owners" and its custodians. Their role is to provide the ultimate protection of the organisation, to make sure that it continues to deliver its corporate purpose. Like grass-roots members of most corporate bodies, their role is limited to: approve changes to the constitution; approve strategic mergers; decide whether to cease trading. It is recognised that public benefit corporations operate in a different context and that now these functions (the first two, at least) are the responsibility of the council of governors. However, the effect is to leave members with a more marginal role.

The Foundation Trust Network recognises the need to support the role of governors and develop the chain of accountability from governor to trust member to the broader public, and I

welcome their consistent efforts over the years to develop guidance for trusts and build capacity for wider member and public engagement and accountability. They point me to one Foundation Trust where over ten thousand members took part in voting and to some of the creative ways in which Foundation Trusts focusing on mental health have engaged their service users through membership. These are, to be sure, examples of best practice that the wider co-operative sector can learn from, just as there are outstanding co-operatives models of governance on challenges such as gender equality, with the Co-operative Women's Challenge, and youth participation. After all, the point about participatory governance is that its effectiveness depends on the quality of participation. This is an enduring and persistent focus and challenge for all member-owned co-operatives and mutuals, not something somehow to be solved and then left alone.

Overall, Monitor, the regulator report that there were over two million members of Foundation Trusts in 2011/12 and in a survey of practice that over 50% of trusts say that members have influenced what they do, on issues such as communication and the development of new services. Whether members feel as if they have an influence on what the trust does is not a question though that was asked. Ultimately though, this is what matters. Democratic accountability is not just about giving an account of what you do, but whether others know that their voice is taken into account.

## The role of membership

I therefore argue for a reconsideration of the membership in Foundation Trusts, which I see as now having a limited role and lacking a voice. This is a cause for concern as it has a number of consequences, including making membership a relatively uninteresting proposition, with a knock-on effect in terms of recruitment and retention. This can also make governors more exposed as they lack the support or pressure of an active membership. It could also limit the range of individuals seeking election, thereby making it difficult for governors to represent the full community.

The hollowing out of membership has been exacerbated by the Health and Social Care Act 2012, which required certain decisions to be authorised by governors, rather than members. While the act could have strengthened the position of members, in fact it did the opposite by requiring changes to the constitution to be approved by the governors (and directors). Previously trusts could choose for constitutional changes to be approved by their members. Public benefit corporations are now different in this respect from all other corporate bodies requiring governors to approve a range of other decisions including “significant transactions”, mergers and acquisitions, and taking on or substantially increasing the amount of private work.

The act introduces for the first time a requirement for an annual meeting of its members. Whilst in principle this is a good thing, it does not really enhance the position of members because

- The annual meeting has to be open to members of the public, so membership of the trust does not give anything additional.

- Members themselves have no rights in a Foundation Trust other than the right to vote in elections of governors. By comparison, members of a company (shareholders), who similarly have the right to attend the annual meeting, have a number of other substantial legal rights such as the power to remove directors. This makes their right to attend the AGM and ask questions rather more substantial than the equivalent for members of the Foundation Trust.

In summary, of the three core features of co-operative membership (information, voice and representation), members of an NHS Foundation Trust have representation, but patchy information and no voice as members. The role of members is therefore minimal, and membership a relatively unattractive proposition. There is therefore no real sense of “community ownership” of a trust. This either leads to an ownership deficit, or the feeling that the governors are somehow the members.

### **Eight actions to strengthen membership as a form of community governance**

In order to address the fact that members have representation but lack a voice, I am making an eight point set of recommendations that form a democratic membership agenda for Foundation Trusts, in line with the original spirit of the model:

- 1 Ensure that members have a voice in ownership and governance arrangements, and, create the opportunity for more pro-active engagement with members and communities.

- 2 Develop practices at the grass-roots level to reinforce communication between members and governors, including access to elected governors, some right of approach and dialogue, and, the ability to require feedback and updates. This will help to ensure that governors are accountable and will compel them to engage with members and the local community.
- 3 Review whether members should be included in the decisions currently under the control of governors.
- 4 Insist that governors have dialogue with members on the issues upon which the Health and Social Care Act now requires them to decide, and, possibly other issues such as executive pay and patient safety too.
- 5 Require Foundation Trusts to publish clear forward plans to members so that people know what is coming up.
- 6 Through relevant regulatory and inspection frameworks, encourage Foundation Trusts to engage with their local communities via the AGM and other member or public events on decisions that their governors are likely to have to make in the future. When Governors do have to make a decision, they should do so as representatives of their community who are responding to their communities' wishes, rather than on their own gut-response.
- 7 Take other steps to create a greater sense of ownership. These could include consideration of measures such as the requirement for two-way dialogue, responsibility around health promotion, and, escalated complaints and feedback, as well as closer connections around membership with the operations of HealthWatch.

- 8 Engage employees more systematically as members, for example through its own constituency, following the example of the co-operative Rochdale Borough-Wide Housing. NHS staff have a stake in and can make a vital contribution to the success of any Foundation Trust.

Increasing and improving the role of members through representation and engagement will help to increase accountability, ensure that healthcare provision works for the area, and, recognises the importance of community to cost-effective and inclusive health development in years to come.

## Co-operatives UK

Co-operatives UK works to promote, develop and unite co-operative enterprises. It has a unique role as a trade association for co-operatives and its campaigns for co-operation, such as Co-operatives Fortnight, bring together all those with a passion and interest in co-operative action.

Any organisation supportive of co-operation and mutuality can join and there are many opportunities online for individuals to connect to the latest co-operative news, innovations and campaigns. All members benefit from specialist services and the chance to network with other co-operatives.

[www.uk.coop](http://www.uk.coop)

On the tenth anniversary of their creation Ed Mayo reflects on the democratic performance of NHS Foundation Trusts in England and finds a missed opportunity to introduce some much needed accountability to the health care system. By strengthening participative membership the original intentions behind Foundation Trusts can be better realised, to the benefit of the NHS.



## **CO-OPERATIVES UK**

Co-operatives UK Limited  
Holyoake House  
Hanover Street  
Manchester M60 0AS  
Tel: 0161 214 1750  
[www.uk.coop](http://www.uk.coop)

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