



## **FLA RESPONSE TO THE SELECT COMMITTEE ON HEALTH ENQUIRY INTO NHS DEFICITS**

1. This is the Finance & Leasing Association's (FLA) response to the Select Committee on Health's enquiry into NHS deficits.
2. We would like to bring three points to the Committee's attention in this context:
  - i. The increasing propensity of NHS Trusts to pay their creditors late.
  - ii. The failure of the Department of Health to deliver long promised proposed legislation on the arrangements for winding up NHS Trusts.
  - iii. The impact on the NHS finances of tax changes currently going through Parliament.

### **The FLA and the NHS**

3. FLA is the principal representative of the asset, consumer and motor finance sector in the UK. FLA members achieved £84.7 billion of new business in 2005. Of this £26.8 billion was provided to the business sector and UK public services, representing over 30% of all fixed capital investment in the UK in 2005 (excluding real property). The remaining £57.9 billion was provided to the consumer sector and FLA members represented 25.6% of all unsecured lending in the UK. In the above total is £18.6 billion of finance provided to the motor sector. FLA members financed at least 50% of all new car registrations in the UK in 2005.
4. The NHS Purchasing and Supplies Agency estimates that the NHS spends in the region of £500 million a year on operating leases, covering a diverse range of equipment from scanners, pathology analysers and ambulances/vehicles to catering equipment and photocopiers. (Operating leases cover part of the equipment's economic life.)
5. The FLA has a Forum, comprising Members active in the NHS market. It currently includes 26 businesses providing finance as well as associate members providing support services, principally in the fields of law, software and consultancy. The Forum seeks to explain asset finance to the NHS and to represent Members' views on policy and legal issues impacting on the NHS finance market.
6. As a condition of membership, FLA Members have to adhere to a Business Code of Practice, available from [www.fla.org.uk](http://www.fla.org.uk). It has a section specifically on the NHS and other public services. The Code's



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main theme is that the terms of the finance must be transparent to the client.

### **NHS deficits**

7. The FLA welcomes the Committee's Enquiry. Our Members have reported to us a number of concerns, detailed below, that flow primarily from these deficits, we believe.
8. We mention one instance to illustrate the problems that are looming if these deficits are not tackled effectively. A Member recently received a letter from a Trust demanding a 10% reduction in "all future invoices". This letter appeared to ask unilaterally for a reduction in payments against existing contracts. This is clearly unacceptable as a business practice and indicates the desperate financial circumstances of at least one NHS Trust. It is the only Trust we have heard of that has gone to these lengths, but a growing pattern of financial shortcomings suggests that the NHS has a systemic problem which must be solved urgently.

### **Paying late**

9. A number of Members have reported to the FLA that some NHS Trusts are paying their creditors late, as a policy aimed at alleviating short-term financial pressures, not through administrative shortcomings.
10. We were sufficiently concerned to approach Monitor, the Independent Regulator for Foundation Hospital Trusts. We were pleased to get a reassuring reply that Monitor did not consider it acceptable practice to stretch creditors unreasonably or beyond contractual terms., which we have advised Members to draw on if such Trusts pay late.
11. Monitor cannot be responsible for individual Trusts' payment performance. The Trusts themselves must do so. There are current cases causing difficulties, albeit a minority. Monitor's Board meeting of 27 April 2006, for example, reported that "Monitor continued to have concerns as to the Gateshead Foundation Hospital Trust's liquidity given that it continued to stretch its creditors and was not adhering to best practice standards in this respect."
12. Traditional Trusts are also paying late. The evidence is only anecdotal at present, but sufficient Trusts appear to be using late payment to make it a concern to FLA Members. We believe that the Department of Health should take steps to send the same message to traditional Trusts as Monitor has sent to Foundation Hospital Trusts, and ensure that it is adhered to.
13. Late payment causes obvious commercial damage. It is bad enough for large businesses (which FLA Members in this market are, either bank/finance house subsidiaries or the financial arm of manufacturers). We suspect that certain Trusts are applying a 'delayed payment

strategy' to all or most of their creditors. The effects would be particularly damaging, perhaps fatal, for SMEs.

14. Late payment would also damage NHS Trusts if adopted as a strategy. Late-payment strategies cost more as late payment interest is incurred and potential failure to pay promptly is built into future pricing. Ultimately, some funders may walk away from the sector, reducing choice and competitiveness, if the risks of lending to both traditional Trusts and FHTs is thought to be too great. Funders already do this to firms in the private sector that prove to be poor payers.
15. It is perhaps symptomatic of this trend that some Trusts, our Members tell us, are reluctant to pay by direct debit, causing unnecessary costs for funders and themselves. We would like the Department to encourage all Trusts to adopt this as a practice.

### **Winding up Foundation Hospital Trusts (FHTs)**

16. When FHTs were set up, under the Health and Social Care (Community Health and Standards) Act 2003, it was provided that they could be wound up, unlike traditional NHS Trusts. This made their creditworthiness unclear, so the FLA met the Department of Health in early 2004 to express our concerns. In April 2004 the Department consulted on the secondary legislation required to explain, in detail, what would happen if a FHT was wound up. They proposed a model loosely based on insolvency legislation applicable to the private sector. The FLA and others responded by the deadline of June 2004.
17. The FLA explained why the model was unsatisfactory from our perspective. In particular, it transferred liabilities from traditional Trusts, covered by the 1996 Residual Liabilities Act, which guaranteed repayment when a Trust was re-organised, to FHTs, where the Act did not apply; and it did not provide clarity on what would happen to the assets and liabilities of a FHT if it were wound up.
18. Since then, there has been no movement towards the needed legislation. Over the years this has caused considerable difficulties for asset finance providers, since it has created considerable uncertainty about the creditworthiness of FHTs. These concerns are not theoretical. A few FHTs have experienced considerable financial difficulties. Monitor has put in place an excellent financial control regime, but it cannot guarantee there will be no windings-up. The legislation is needed and the Department of Health should bring it forward soon.

### **New tax arrangements for NHS Leasing**

19. The current Finance Bill includes a radical re-shaping of the taxation of leasing. One consequence will be that for leasing transactions lasting over five years it may be the lessee that has to claim capital allowances on investment in equipment. Lessees that are ineligible for allowances

will not get any benefit, since in these circumstances the lessor too will be unable to claim. This applies to the NHS. It seems a curious time to make it more difficult for the NHS to access asset finance, given its financial benefits, including for NHS cash flow. We have pointed this out to HMRC but they have insisted that changing this would threaten the structure of their approach. We doubt this and would like it revisited in the 2007 Finance Act.

Finance & Leasing Association  
31 May 2006

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