

# Risk assessment framework

**27 August 2013**

This document sets out our approach to overseeing NHS foundation trusts' compliance with the governance and continuity of services requirements of their provider licence. From 1 October 2013, it replaces the *Compliance Framework*.

A decorative graphic on the right side of the page consisting of several concentric, curved blue lines of varying shades, creating a sense of movement and depth.

## **About Monitor**

Monitor is the sector regulator for health services in England. Our job is to protect and promote the interests of patients by ensuring that the whole sector works for their benefit.

We exercise a range of powers granted by Parliament which include setting and enforcing a framework of rules for providers and commissioners, implemented in part through licences we issue to NHS-funded providers.

For example, we make sure foundation hospitals, ambulance trusts and mental health and community care organisations are run well, so they can continue delivering good quality services for patients in the future. To do this, we work particularly closely with the Care Quality Commission, the quality and safety regulator. When it establishes that a foundation trust is failing to provide good quality care, we take remedial action to ensure the problem is fixed.

We also set prices for NHS-funded services, tackle anti-competitive practices that are against the interests of patients, help commissioners ensure essential local services continue if providers get into serious difficulty, and enable better integration of care so services are less fragmented and easier to access.

We know the NHS needs to change to meet the challenges of the future and that, as the sector regulator, Monitor must facilitate that change. This means we will encourage new ways of delivering care and will use the tools we have, such as pricing incentives, to encourage innovation.

We will also be pragmatic and flexible in applying rules. We are not pre-disposed to any particular solution to the challenges facing the NHS; instead our decisions and actions will be based on the available evidence. Where relevant evidence is scarce, we will commission research to establish the facts.

What matters to us is that all our work helps to improve the quality of services so they are clinically effective, safe and provide a positive experience for everyone who uses them. Where we have complex decisions or trade-offs to make we will be guided by one simple principle: we will do whatever is ultimately in the best interests of patients.

# Contents

<b>Executive summary</b>	<b>4</b>
<b>1. Introduction</b>	<b>7</b>
1.1 The <i>Risk assessment framework</i>	7
1.2 Principles	9
1.3 Commissioner Requested Services and continuity of services	10
1.4 Monitor's approach to risk assessment	11
<b>2. Monitoring and data collection</b>	<b>13</b>
2.1 Introduction	13
2.2 Annual submissions	14
2.3 In-year submissions	17
2.4 Exception reports	20
<b>3. Assessing risk to continuity of services</b>	<b>25</b>
3.1 Introduction	25
3.2 The continuity of services risk rating	26
3.3 Using the continuity of services risk rating	27
3.4 Trust Special Administration	30
3.5 Monitoring continuity of services risk	30
<b>4. Assessing NHS foundation trust governance</b>	<b>36</b>
4.1 Introduction	36
4.2 The governance rating	36
4.3 Assigning ratings to NHS foundation trusts	39
4.4 Other information used to inform the governance rating	40
4.5 Ad hoc/triggered reviews of governance	42
<b>5. Investigation</b>	<b>43</b>
5.1 Introduction	43
5.2 Initial assessment and prioritisation	43
5.3 Investigation	44
5.4 Monitor's response to providers of Commissioner Requested Services in financial distress	45
5.5 Monitor's response to NHS foundation trusts potentially in breach of their governance condition	45
5.6 Consideration and use of formal enforcement powers	45

Appendix A: Access targets and outcomes objectives	47
Appendix B: The <i>Quality Governance Framework</i>	59
Appendix C: NHS foundation trust transactions	67
Appendix D: Corporate governance statement	77
Appendix E: Joint Ventures and Academic Health Science Centres	79
Appendix F: Continuity of services and NHS foundation trust governance licence conditions	81

## Executive summary

Since 1 April 2013 all NHS foundation trusts need a licence from Monitor stipulating specific conditions that they must meet to operate. Key among these are financial sustainability and governance requirements.

In this document, we set out our *Risk assessment framework* which constitutes our approach to overseeing the sector under the new rules. It explains how we will use the framework to assess individual NHS foundation trusts' compliance with two specific aspects of their work: the continuity of services and governance conditions in their provider licences.

From 1 October 2013, the *Risk assessment framework* will replace our *Compliance Framework*.

From April 2014 the licence system will expand to cover all providers of NHS services. At that point we will amend the *Risk assessment framework* by adding a separate section on our assessment of these additional organisations.

### **What the *Risk assessment framework* does**

The aim of a Monitor assessment under the *Risk assessment framework* is to show when there is:

- a significant risk to the financial sustainability of a provider of key NHS services which endangers the continuity of those services; and/or
- poor governance at an NHS foundation trust.

These will be assessed separately using new types of risk categories set out in this document; each NHS foundation trust will therefore be assigned two ratings.

The role of ratings is to indicate when there is a cause for concern at a provider. But it is important to note that they will not automatically indicate a breach of its licence or trigger regulatory action. Rather, they will prompt us to consider where a more detailed investigation may be necessary to establish the scale and scope of any risk.

### **Continuity of key services**

Monitor has a statutory role to ensure the continued provision of key NHS services, as identified by commissioners. The *Risk assessment framework* will help us detect early signs of any financial risks that could lead to an NHS foundation trust's financial failure and so threaten the continuity of the key services it provides.

If a provider looks likely to fail financially, its key services may need to be reconfigured to ensure they continue to be available to local patients. Reconfiguration may take place either by agreement with other parties in the local health economy or under the guidance of a Trust Special Administrator. As the

process of reconfiguring health care services is necessarily complex and time-consuming, the *Risk assessment framework* is designed to provide Monitor with early notice of any potential failure, thereby avoiding disruption for patients and overburdening providers. Advance warning will allow us to assess the scope of the issues and the best way to engage commissioners, patients and other stakeholders in addressing them quickly and effectively.

We will assess annually what the risks at each NHS foundation trust are likely to be by reviewing its three-year plans. In addition, we will monitor its current financial position every quarter. If there is a material change in a provider's circumstances (for example, because of a large transaction, sudden loss of income or increase in costs), we may require it to carry out a budget reforecast in order that we can reassess its risk profile.

### **The continuity of services risk rating**

The continuity of services risk rating states our view of the risk facing a provider of key NHS services. There are four rating categories ranging from 1, which represents the most serious risk, to 4, representing the least risk. As previously explained, a low rating does not necessarily represent a breach of the provider's licence. Rather, it reflects the degree of financial concern we may have about a provider and consequently the frequency with which we will monitor it.

This new continuity of services risk rating will not be calculated and used in the same way as the financial risk rating (FRR) that was applied to NHS foundation trusts through Monitor's *Compliance Framework*. Whereas the FRR was intended to identify breaches of trusts' terms of authorisation on financial grounds, the continuity of services risk rating will identify the level of risk to the ongoing availability of key services.

### **NHS foundation trust governance**

Good governance is essential to support the quality of care a trust provides and ensure its financial sustainability. Monitor's role as sector regulator includes overseeing governance at NHS foundation trusts; governance requirements form a specific condition in NHS foundation trust licences.

We will use a combination of existing and new methods to assess governance issues at NHS foundation trusts and to gain assurance of their standards of governance:

- We will continue to use a specified set of national metrics as proxies for overall standards of governance, including A&E waiting times, referral-to-treatment targets and rates of C. difficile infection. In addition, when the Care Quality Commission has serious concerns about a trust, we will consider whether it is in breach of its licence and what action is needed. Where third

parties bring information to us, such as patterns of patient complaints, or infection outbreaks, we will consider whether it is evidence of underlying governance issues.

- How individuals (both staff and patients) perceive their hospital also sheds light on the governance of the institution. Consequently we will track trends in a specific number of staff and patient metrics, such as satisfaction ratings, staff turnover and absenteeism. If we identify any causes for concern, we will act proportionately and transparently, sharing our findings with trusts.
- Monitor believes that well-run organisations should conduct regular and rigorous assessments of their governance. The *Risk assessment framework* recommends that NHS foundation trusts commission an independent review of their governance at least every three years. We see this primarily as a way to encourage the development of governance assurance at trusts. However if a review reveals there are significant unexpected governance issues driving a concern, we will consider immediate steps to safeguard patients and services.

### **The governance rating**

NHS foundation trusts should be well-governed; this includes how they oversee care for patients, deliver national standards and remain efficient, effective and economic.

There are three categories to the new governance rating applicable to all NHS foundation trusts. Where there are no grounds for concern at a trust, we will assign it a green rating. Where we have identified a concern at a trust but not yet taken action, we will provide a written description stating the issue at hand and the action we are considering. Where we have already begun enforcement action, we will assign a red rating.

### **Summary**

An initial draft of this document was put out to consultation early in 2013 and the *Risk assessment framework* now reflects comments made by the health care sector. Its publication fulfils our obligations to assess provider risk to continuity of services and NHS foundation trusts' governance, and to work in a joined-up manner with other regulators.

We will pay close attention to how the *Risk assessment framework* works in practice and will adjust it appropriately to protect and promote the interests of patients.

# 1. Introduction

## 1.1 The *Risk assessment framework*

Monitor is required by the Health and Social Care Act 2012 (the Act) to assess risks to the continued provision of NHS services and to publish guidance on action we may take if we identify risks. Monitor is also required under the Act to continue overseeing the governance of NHS foundation trusts.

The *Risk assessment framework* comprises the guidance we will use to carry out these two tasks. It also includes guidance which the relevant licence holders must take into account (see below). As such, this document is intended to inform current and potential licence holders (including NHS foundation trusts and other providers of NHS services) and other health care sector stakeholders. The *Risk assessment framework* replaces the financial and governance oversight in Monitor's *Compliance Framework* from 1 October 2013.<sup>1</sup>

While all providers of NHS services are required to have a licence,<sup>2</sup> the *Risk assessment framework* only applies to specific licence holders:

- Providers of Commissioner Requested Services (CRS) are subject to the continuity of services conditions in the provider licence. We will use the *Risk assessment framework* to assess risks to the financial sustainability of these providers. CRS are defined in Section 1.3, below. (See Chapters 2, 3 and 5).
- NHS foundation trusts are subject to the NHS foundation trust condition 4 (the governance condition) in their licence. We will also use the *Risk assessment framework* to assess governance at NHS foundation trusts against the requirements of this condition and to investigate any governance issues that may arise (see Chapters 2, 4 and 5).

These licence conditions can be found in Appendix F.

The *Risk assessment framework* is designed to highlight causes for concern in the areas of the licence described above. Monitor may follow up on this concern by requesting further information or opening a formal investigation. Further investigation is not automatic, and triggering a concern does not automatically indicate a breach of the licence.

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<sup>1</sup> Section 94(3) of the Act requires Monitor to publish guidance on how it will carry out its functions with regard to the risk of financial failure of service providers. The *Risk assessment framework* meets this requirement.

<sup>2</sup> With the exception of those meeting the Department of Health's exemption requirements.

Monitor's oversight of continuity of services at CRS providers and of governance at NHS foundation trusts comprises four stages (see Diagram 1):

- (i) **monitoring** the licence holders – see Chapter 2;
- (ii) **assessing risks** to compliance with the continuity of services and NHS foundation trust licence conditions for governance– see Chapters 3 and 4;
- (iii) **investigating** potential breaches of licence conditions – see Chapter 5; and
- (iv) **prioritisation and taking regulatory action** – see Monitor's [\*Enforcement Guidance\*](#).<sup>3</sup> Where our concerns overlap with those of the Care Quality Commission (CQC) we will seek to align our regulatory approaches.

The *Risk assessment framework* covers stages (i) to (iii) above. Prioritisation and taking action is covered in Monitor's separate *Enforcement Guidance*, which applies to the enforcement of all licence conditions (and which licence holders are also required to take note of). It also describes our approach to taking regulatory action in more detail.

The *Enforcement Guidance* should be read alongside Chapter 5 of this document.

**Note: while the *Risk assessment framework* will soon apply to NHS foundation trusts and independent providers of Commissioner Requested Services, it currently sets out how Monitor will oversee only NHS foundation trusts' compliance with the governance and continuity of services areas of the licence (from 1 October 2013).**

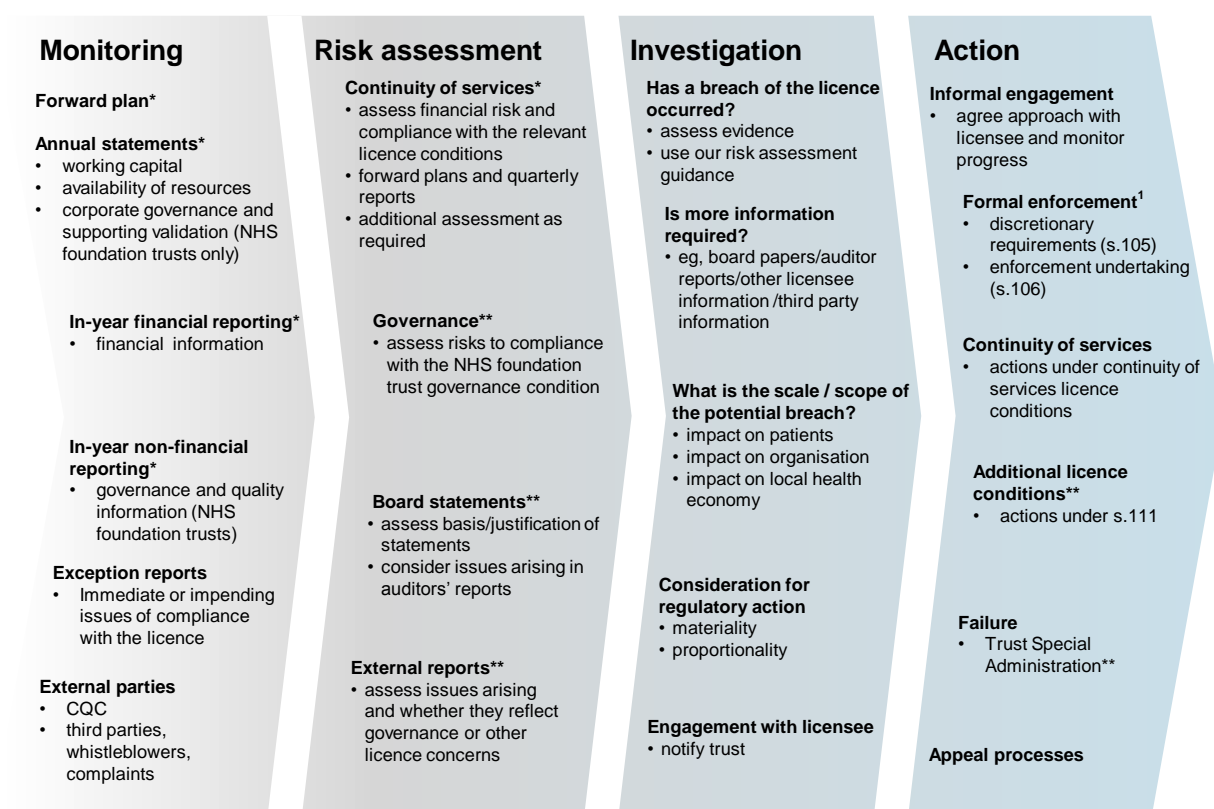
**For April 2014, when the licence system will expand to cover all providers of NHS services, we will amend the *Risk assessment framework* by adding a separate section on our assessment of these additional organisations.**

**For the purposes of this document, regard the terms "licence holders", "CRS providers/providers of CRS" and "NHS foundation trusts" as interchangeable.**

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<sup>3</sup> Available on our website at: [www.monitor.gov.uk/home/news-events-publications/our-publications/browse-category/guidance-health-care-providers-and-co-7](http://www.monitor.gov.uk/home/news-events-publications/our-publications/browse-category/guidance-health-care-providers-and-co-7).

**Diagram 1: Monitor's approach to provider regulation**



\* Providers of Commissioner Requested Services and NHS foundation trusts

\*\* NHS foundation trusts

<sup>1</sup>Appeal processes exist for Monitor's formal enforcement powers; for more information refer to the Act.

Note: this diagram sets out indicative considerations. Monitor may take into account other relevant factors and take other action as appropriate.

## 1.2 Principles

The *Risk assessment framework* and how we apply it will be consistent with our established regulatory approach, which is:

- patient-focused:** where we identify issues at licence holders, we will be guided by the interests of patients in assessing the risks and the need for action, whether the issues represent, for example, a risk to service continuity, access, or the governance of quality of care;
- evidence-based:** we will base our actions on the available and relevant evidence;
- proportionate:** we will ensure that our actions address solely the material risks identified so that we do not overreach our regulatory remit;
- transparent:** we will strive to communicate clearly and openly to licence holders, commissioners and other stakeholders the reasons for any actions we take and to ensure that our actions deliver the right outcomes for patients, commissioners and other stakeholders; and

- **cooperative:** we will work with other regulators and organisations and, to avoid duplication, we will take their conclusions into account when deciding our regulatory approach.

The principles of better regulation will also apply (for more information see the Better Regulation Delivery Office website: [www.bis.gov.uk/brdo](http://www.bis.gov.uk/brdo)).

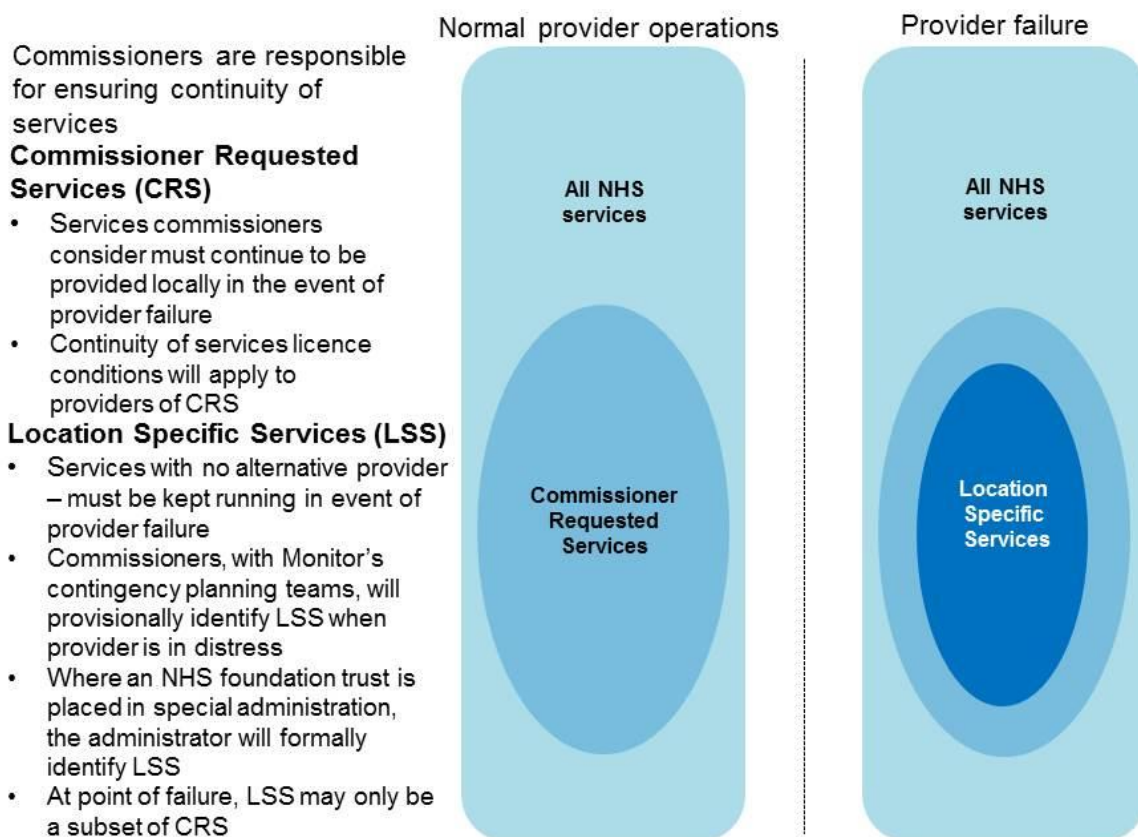
### 1.3 Commissioner Requested Services and continuity of services

Commissioner Requested Services (CRS) and Location Specific Services play a crucial role in Monitor's overall continuity of services regime:

- **Commissioner Requested Services** are those services that local commissioners believe must continue to be delivered to local patients should the provider fail (ie, be unable to carry on as a going concern). Commissioners should designate as a CRS any service they commission that they wish to ensure will continue to be delivered in such circumstances.
- **Location Specific Services** are those services that must, on the grounds of health care access and equality, be maintained if a CRS provider fails due to there being no alternative local provider. These services are defined by commissioners when a CRS provider has reached the point of financial failure. Diagram 2 lays out the differences between general NHS services, CRS and Location Specific Services.

Monitor has published [separate guidance](#) on the designation of Commissioner Requested Services and Location Specific Services. These classifications of services replace "mandatory services" for the purposes of our regulatory oversight. NHS foundation trusts' mandatory services became CRS on 1 April 2013. Commissioners of services from NHS foundation trusts authorised at 1 April 2013 have until 1 April 2016 to designate these services as CRS. Commissioners may remove CRS status earlier, either through a formal designation exercise or, for example, by removing the services in question from the CRS provider's contract.

**Diagram 2: Commissioner Requested Services and Location Specific Services at NHS foundation trusts**



#### 1.4 Monitor's approach to risk assessment

The Act gives Monitor powers to require any information necessary or expedient for performing a number of our functions from a wide range of parties including licence holders. In addition, all licence holders are required by the terms of their licence to provide Monitor with any information we ask of them to carry out our licensing functions. This includes assessing the risk of non-compliance with particular licence conditions.

Monitor will use the information we collect and receive under the *Risk assessment framework* to assess the risk to continuity of services conditions and, for NHS foundation trusts, non-compliance with the NHS foundation trust governance condition. Monitor has two types of assessment ratings:

- (i) **a continuity of services risk rating** describing the risk of a provider of CRS failing to carry on as a going concern. This represents Monitor's view of the likelihood that a licence holder is, will be, or could be in breach of the continuity of services licence condition 3. A rating will be issued to all licence holders that provide CRS; and

- (ii) **a governance rating**, for NHS foundation trusts only, setting out Monitor's degree of concern about the governance of the trust, any steps we are taking to investigate this and/or any actions we are taking.

Where these ratings identify material issues of compliance with the licence conditions, we will inform the licence holder and assess whether there is a need for further investigation and/or follow-up action (see Chapter 5 and Monitor's *Enforcement Guidance*).

We may also use the information collected and received under the *Risk assessment framework* to assess compliance with other licence conditions and for our other regulatory functions, as appropriate.

## 2. Monitoring and data collection

### 2.1 Introduction

This chapter sets out:

- the information Monitor will gather from all providers of Commissioner Requested Services (CRS) to assess risks to the continuity of the services they provide; and
- the additional information we will gather from NHS foundation trusts to assess their governance.

We will look at a range of information, including regular financial submissions, plans and forecasts, and third party information, in order to assess risk to continuity of services and governance. We will require the licence holders to submit information both annually and throughout the year.

Diagram 3 describes the annual monitoring cycle for NHS foundation trusts. Some of the information we require from CRS providers during the year will vary according to the level of risk that we have identified and any particular licence conditions applicable to it:

- licence holders with higher levels of financial risk may be required to submit information monthly or even more frequently; and
- as noted above, NHS foundation trusts will be required to submit additional information to allow Monitor to assess their governance.

The information we request routinely is likely to be the sort that licence holders use, or should use, for their own management. We believe they should be able to extract much of the information from existing management information.

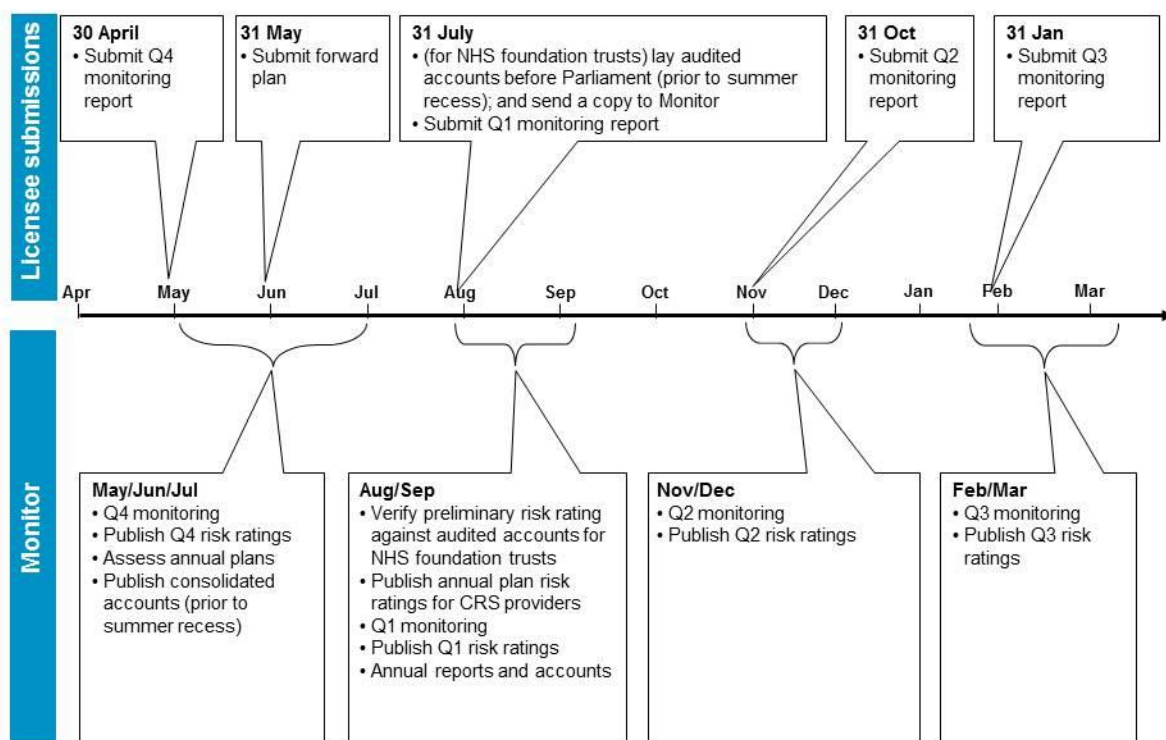
The *Risk assessment framework* divides the information Monitor may routinely request into four broad categories:

- (i) **annual submissions:** plans, statutory reporting requirements of the licence holder, and other annual requirements specified in the licence;
- (ii) **in-year submissions:** financial and, for NHS foundation trusts, other service performance information submitted during the year, generally quarterly;
- (iii) **exception reports:** other information that may have material implications for a licence holder's compliance, but which is not routinely requested by Monitor. An example might be reports from the medical Royal Colleges; Monitor would not routinely request these, but we would expect to receive such a report from an NHS foundation trust if it identified concerns

relevant to the trust's governance of quality (and therefore to the trust's compliance with its licence); and

- (iv) **other information from NHS foundation trusts:** we consider that foundation trusts should carry out periodic reviews of their governance. As part of the assurance we require regarding the governance of NHS foundation trusts, Monitor would expect that trusts should report the findings of external reviews covering areas of governance, to help inform our assessment. We will separately publish guidance on this later in 2013.

**Diagram 3: The NHS foundation trust annual monitoring cycle 2013/14**



## 2.2 Annual submissions

### All providers of Commissioner Requested Services

Annual submissions required by Monitor from all providers of CRS include:

- three-year forward plans; and
- availability of resources statements<sup>4</sup> and any other statements required under their licence.

<sup>4</sup> As required under continuity of services licence condition 7.

Monitor will use forward plans to assess financial risk at CRS providers (see Chapter 3). Assessing plans will allow Monitor to consider the impact on licence holders of:

- changes in income, eg, as a result of losing a major contract;
- changes in cost, eg, rising labour or energy costs; and
- material financial events, eg, planned major acquisitions, investments or changes to capital structure.

Such changes in financial circumstances could affect the ability of the licence holder to provide Commissioner Requested Services over the medium term.

### **Additional information requirements and annual submissions for NHS foundation trusts**

As well as being subject to the reporting requirements listed above, all NHS foundation trusts that provide CRS are subject to the following additional information requirements:

- Monitor is required to report the financial projections of NHS foundation trusts to HM Treasury as part of the overall framework for financial assistance for these trusts. As a result, our requirements for financial projections from NHS foundation trusts may differ from those other licence holders. We will try hard to keep any such additional reporting to a minimum.
- The Act gives powers to the Health and Social Care Information Centre to require information from all providers of NHS care, including NHS foundation trusts. The Information Centre can be required to use these powers by a number of organisations, including the Secretary of State and the NHS England.
- The Act also gives powers to the Department of Health to request information from NHS foundation trusts.
- Where possible and appropriate, Monitor may require additional information through forward plans and quarterly reporting on behalf of these national organisations. We will generally only do this where it is easier for licence holders to submit information through our processes rather than through a separate collection. We will indicate where this is the case.

## **Corporate governance statement**

To comply with the governance conditions of their licence, NHS foundation trusts are required to provide a statement (the corporate governance statement) setting out:

- any risks to compliance with the governance condition; and
- actions taken or being taken to maintain future compliance.

The statement replaces the board statements that NHS foundation trusts were previously required to submit with their annual plans under the *Compliance Framework*.

Where facts come to light that could call into question information in the corporate governance statement, or indicate that an NHS foundation trust may not have carried out planned actions, Monitor is likely to seek additional information from the NHS foundation trust to understand the underlying situation. Depending on the trust's response, we may decide to investigate further to establish whether there is a material governance concern that merits further action.

## **NHS foundation trust annual reports and accounts**

NHS foundation trusts are also required (under the National Health Service Act 2006) to submit to Monitor their annual report and audited annual accounts. Monitor consolidates the accounts for submission to Parliament and inclusion in the Department of Health's group accounts.

## **Governor and membership reporting**

NHS foundation trusts should maintain a representative membership base; Monitor will require information from trusts on members and membership elections.

Diagram 4 summarises the annual submission requirements for NHS foundation trusts.

**Diagram 4: Main annual submissions for NHS foundation trusts**

	Element	Description
Strategic overview	Commentary	<ul style="list-style-type: none"> <li>• three-year outlook including vision, strategy, external factors and risks to delivery</li> <li>• commentary including key assumptions and downside risks</li> <li>• commentary on any investments</li> <li>• commentary on measures to assess and address risks to quality</li> <li>• commentary on identification, analysis and mitigation of significant risks to CRS</li> <li>• commentary on identification, analysis and mitigation of significant risks to compliance with the governance licence condition</li> <li>• commentary on identification, analysis and mitigation of any other significant risks to compliance with the licence</li> <li>• review of major non-financial issues.</li> </ul>
	Corporate governance statement and supporting validation	<ul style="list-style-type: none"> <li>• statement of compliance with the NHS foundation trust governance condition</li> <li>• statement of forward compliance with the NHS foundation trust governance condition</li> <li>• specification of any risks to compliance with the NHS foundation trust governance condition</li> <li>• actions planned to manage these risks.</li> </ul> <p><b>If requested :</b></p> <ul style="list-style-type: none"> <li>• auditor statement that either <ul style="list-style-type: none"> <li>• the NHS foundation trust has taken actions set out in the corporate governance statement applicable to the previous year; or</li> <li>• setting out the areas where, in their view and after making reasonable enquiries, the licensee has failed to take the actions set out in its corporate governance statement applicable to the previous year.</li> </ul> </li> </ul>
Governance and other statements	Governor development and membership report	<ul style="list-style-type: none"> <li>• commentary on governor development activity in previous year and plans for coming 12 months</li> <li>• membership data including present and projected membership by constituency, election turnout rates and stratified comparisons with eligible groups</li> <li>• commentary on membership strategy.</li> </ul>
Finance	Financial projections	<ul style="list-style-type: none"> <li>• projections for next three years (income and expenditure; balance sheet; cash flow)</li> <li>• actual results against plan for past year with commentary explaining variances.</li> </ul>

## 2.3 In-year submissions

All providers of CRS are required to provide Monitor with financial information during the year so that we can assess financial risk and the risk to the continued provision of CRS. The amount of information we require and its frequency will vary, depending on the level of risk to compliance with the licence identified at a particular CRS provider. Diagram 5 sets out the main categories of in-year submissions for NHS foundation trusts.

Where no risks to compliance have been identified, licence holders will generally submit in-year information on a quarterly basis.

### Quarterly information

Monitor will use year-to-date financial performance (income and expenditure, balance sheet and cash flow performance) to update continuity of services risk ratings for licence holders during the course of the year (see Chapter 3).

## **Exceptional in-year reports**

Heightened risks to compliance at a licence holder may trigger additional in-year requirements. Where material changes in a licence holder's financial prospects are signalled by, for example, transactions, adverse trading movements or cost increases, or material deterioration in financial performance, then Monitor is likely to request a financial reforecast from the CRS provider in order to recalculate the provider's risk rating.

## **Additional in-year submissions required from NHS foundation trusts**

Monitor's statutory governance oversight role means we require a greater level of regular information from NHS foundation trusts than from other providers of CRS. To carry out our role, we will routinely collect or monitor additional information:

- **Performance against mandated standards of access and outcomes**

Monitor considers the ability of NHS foundation trusts to meet selected national standards for access and outcomes (such as waiting times in A&E or referral-to-treatment times for elective care) to be an important indicator of the effectiveness of the organisation's governance.

We will collect information from NHS foundation trusts each quarter to assess their performance against these standards. A full list of the national metrics informing our assessment of governance at NHS foundation trusts can be found in Appendix A.

- **Care Quality Commission judgments**

Meeting clinical quality standards is a priority for providers of NHS services. The performance of NHS foundation trusts in this area is primarily monitored by the Care Quality Commission (CQC) and Monitor does not intend to duplicate existing regulation. However, issues with quality of care can arise from or reflect poor governance. NHS foundation trusts are required to inform Monitor of CQC warning notices, fines or other formal notices.

Monitor and the CQC work closely together to regulate providers, ensuring that our regulatory actions are properly coordinated.<sup>5</sup>

Consequently, we will monitor NHS foundation trusts' compliance with the minimum standards of quality and safety as defined by the CQC. Where CQC warning notices, fines or other formal notices raise concerns about

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<sup>5</sup> For more information, please see Monitor's memorandum of understanding with the CQC, available on our website: [www.monitor.gov.uk/home/news-events-publications/latest-press-releases/monitor-and-the-care-quality-commission-sign-mem](http://www.monitor.gov.uk/home/news-events-publications/latest-press-releases/monitor-and-the-care-quality-commission-sign-mem).

quality at an NHS foundation trust, Monitor will consider whether these could indicate underlying governance issues.

- **Organisational quality indicators**

Monitor has identified a number of indicators that may represent a risk to the current or future quality of care provided by an NHS foundation trust, including results from patient and staff surveys, staff turnover and agency staff numbers. Failing to identify, address or mitigate concerns raised by these indicators of organisational quality may represent poor governance.

We recognise that not all of these indicators are available monthly or quarterly, so we require NHS foundation trusts to submit them as they become available.

See Chapter 4 for more details on the information Monitor will use to assess governance at NHS foundation trusts, including details of the quality indicators we will monitor.

**Diagram 5: Main categories of in-year submissions for NHS foundation trusts**

	Element	Description
<b>Financial</b>	Latest quarter financials <sup>1</sup>	Information to assess continuity of services risk: <ul style="list-style-type: none"> <li>• liquidity</li> <li>• capital service coverage.</li> </ul>
	Year to date financials	
	Financial commentary	
	Forward financial events	Information to assess overall financial performance: <ul style="list-style-type: none"> <li>• income and expenditure; balance sheet; cash flow against annual plan</li> <li>• commentary on sources of variance versus plan</li> <li>• commentary on any exceptional cost (eg, restructuring or impairment charges) and exceptional revenue items</li> <li>• notifications of any material transactions or changes to capital structure</li> <li>• notifications of any material changes in financial circumstances, ie, CapEx delays.</li> </ul>
<b>Non-financial</b>	Governance and other information	Information to assess organisational governance, including service performance and care quality: <ul style="list-style-type: none"> <li>• performance against national standards</li> <li>• CQC information</li> <li>• clinical quality metrics.</li> </ul>
		Information to assess membership engagement <ul style="list-style-type: none"> <li>• membership and election information</li> <li>• information required for Monitor's registrar and other NHS foundation trust powers.</li> </ul>

<sup>1</sup> Continuity of services risk assessment is only relevant for licensees providing CRS; Monitor will collect this financial information from NHS foundation trusts, even in the absence of CRS, to assess governance.

## 2.4 Exception reports

### All providers of Commissioner Requested Services

Monitor expects licence holders to notify us in writing of any incidents, events or reports which may reasonably be regarded as raising potential concerns over compliance with their licence. This applies to all licence conditions, not just the conditions that are the focus of the *Risk assessment framework*.

We also require licence holders to inform us of particular occurrences that could have an impact on the operation of their business. We may then assess the impact of these on the trust's compliance with the licence. Examples of such occurrences include:

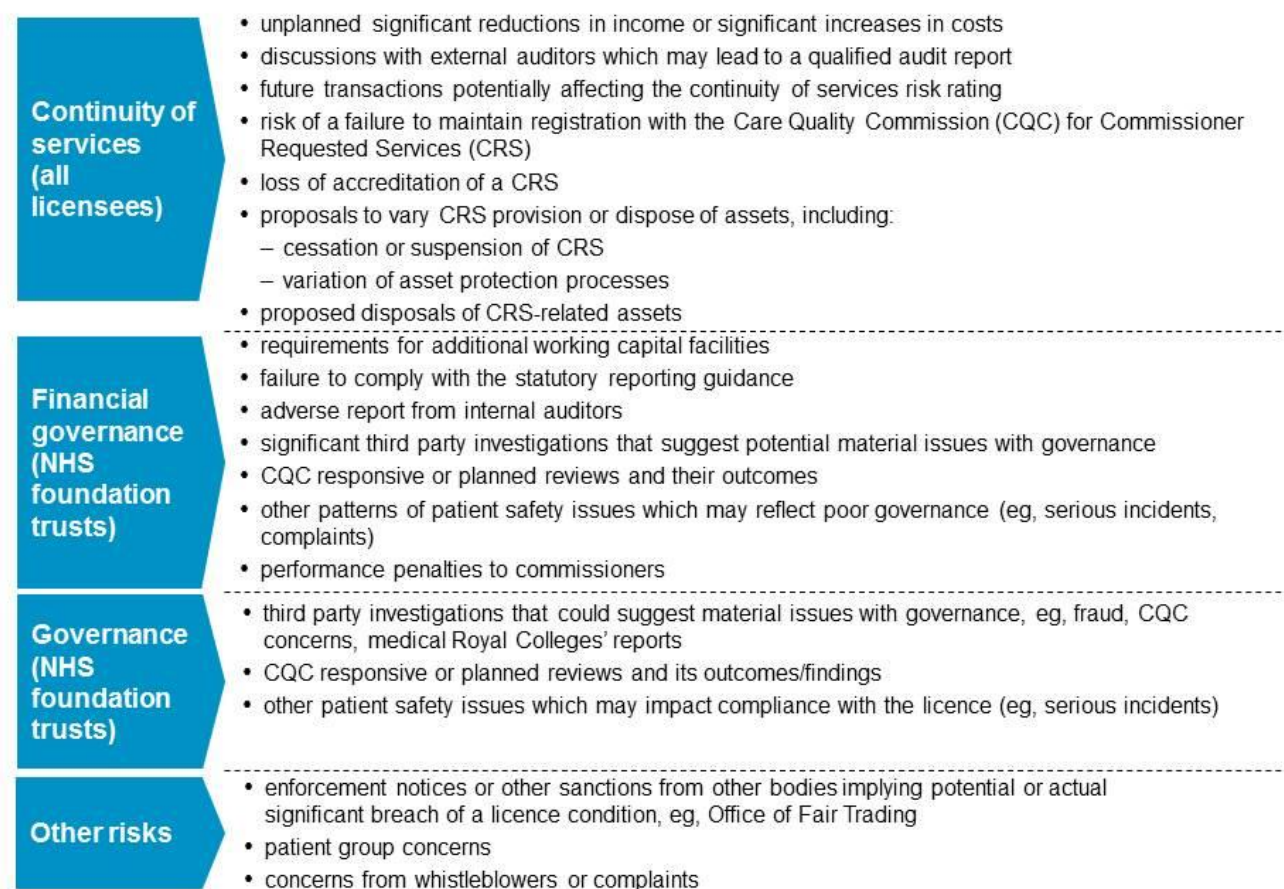
- undertaking a major acquisition, investment or divestment;
- losing a significant contract;
- a significant change in capital structure;
- a material deterioration in financial performance; or
- an immediate need to spend significant sums to meet regulatory requirements (for example, increased costs as a result of a requirement from the CQC).

An exception report from a licence holder should describe:

- the issue that has arisen or will arise, the area of the licence to which it applies, the magnitude of the issue, and when it will have an effect or when it occurred;
- any actions planned to address the issue;
- a list of any affected parties; and
- if it hasn't already, how the licence holder plans to notify these parties of the issue and address any impact on them.

Some examples of issues concerning continuity of services or governance at NHS foundation trusts (and therefore falling under the scope of the *Risk assessment framework*) that would require exception reports are listed in Diagram 6.

**Diagram 6: Examples of exception reporting**



### *Actions on receiving an exception report*

On receiving an exception report, Monitor may require additional information from the licence holder to assess the effect on compliance with its licence. Where the exception represents a material risk to the licence holder's ability to carry on as a going concern, Monitor will consider applying an override to the licence holder's continuity of services risk rating (see Chapter 3).

### *Reporting transactions and other exceptional financial events*

Licence holders should report to Monitor details of:

- any planned UK health care investments or other transactions worth more than 10% of their assets, revenue or capital; and
- any planned changes in capital structure representing a change of more than 10% in their capital employed over a 12-month period.

On receiving these reports, we may conduct our own risk assessment of the transaction. The level of scrutiny will be proportionate to: the nature and volume of

CRS provided by the affected licence holder; the share of the licence holder's overall business represented by CRS; and the nature of the risk in question.

For more information, and further requirements on NHS foundation trusts for transactions in excess of 10%, see Appendix C. While Monitor does not have a statutory role in approving these transactions, we will risk-assess them from the perspective of governance as well as continuity of services (see Chapter 3). Where Monitor has grounds to believe that the quality and robustness of plans underpinning these transactions as proposed is inadequate, we may undertake further investigations into a trust's governance. If necessary, we can take regulatory action to address significant transaction-related concerns<sup>6</sup>.

For details of what information licence holders (NHS foundation trusts and others) should include in submissions about transactions, please refer to transactions guidance in Appendix C.

These requirements are separate and additional to the requirement under the Act for NHS foundation trusts to make applications to Monitor about certain kinds of transaction, for example, acquisitions and separations. Monitor may also make further provision outside the *Risk assessment framework* of the requirements for such applications. For more information see Appendix C.

### **Additional exception reporting requirements for NHS foundation trusts**

NHS foundation trusts should report to Monitor any further information that could reasonably be regarded as having the potential to affect their compliance with their governance licence condition.

There are many third parties, including other regulators, auditors, medical Royal Colleges, training establishments and coroners, that comment on and review aspects of an NHS foundation trust's performance. We do not require NHS foundation trusts to send us each and every report that includes commentary or observation on their performance. However, we do require trusts to inform us of such reports where they could reasonably be regarded as raising potential concerns over a trust's current or potential compliance with licence conditions, in particular the NHS foundation trust governance condition.

As part of Monitor's capital expenditure monitoring role (on behalf of HM Treasury), NHS foundation trusts should inform us if capital expenditure for the remainder of the year is likely to diverge by 15% (above or below) from the amount in their annual plans. Monitor may request a capital expenditure reforecast for the remainder of the year.

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<sup>6</sup> Note: The requirement on NHS foundation trusts to make exception reports regarding transactions is without prejudice to Monitor's statutory powers to approve certain transactions on the part of NHS foundation trusts.

## NHS foundation trusts: independent governance assurance and regular reviews

The [Code of Governance for NHS Foundation Trusts](#) requires trusts to:

- ensure that adequate systems and processes are maintained to measure and monitor the trust's effectiveness, efficiency and economy as well as the quality of its health care delivery. The board should regularly review the performance of the NHS foundation trust in these areas against regulatory and contractual obligations and approved plans and objectives; and
- conduct, at least annually, a review of the effectiveness of the trust's system of internal control and report to members that they have done so. The review should cover all material controls, including financial, clinical, operational and compliance controls and risk management systems.

This mirrors a provision in the *UK Code of Corporate Governance*<sup>7</sup> that: "The board should, at least annually, conduct a review of the effectiveness of the company's risk management and internal control systems and should report to shareholders that they have done so."

Monitor builds upon these provisions by requiring NHS foundation trusts to commission a rigorous external review of governance at least once every three years. We consider that such a review should cover at least one of the following areas of governance (see Diagram 7 for more details):

- **board governance and leadership**, including information the board receives, planning processes and how it holds management to account;
- the effectiveness of **organisational oversight**, including risk assurance processes, performance management systems, internal controls and escalation processes;
- **quality governance**, assessed against Monitor's [Quality Governance Framework](#); and
- the **board's capability**, including its composition and the effectiveness of subcommittees.

To support a minimum standard of assurance for these reviews, Monitor will:

- publish guidance, including setting a proposed scope for these reviews, and the areas for inspection. The scope will mirror areas currently covered in the application process and hence laid out in our [Guide for Applicants](#); and

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<sup>7</sup> Published by the Financial Reporting Council.

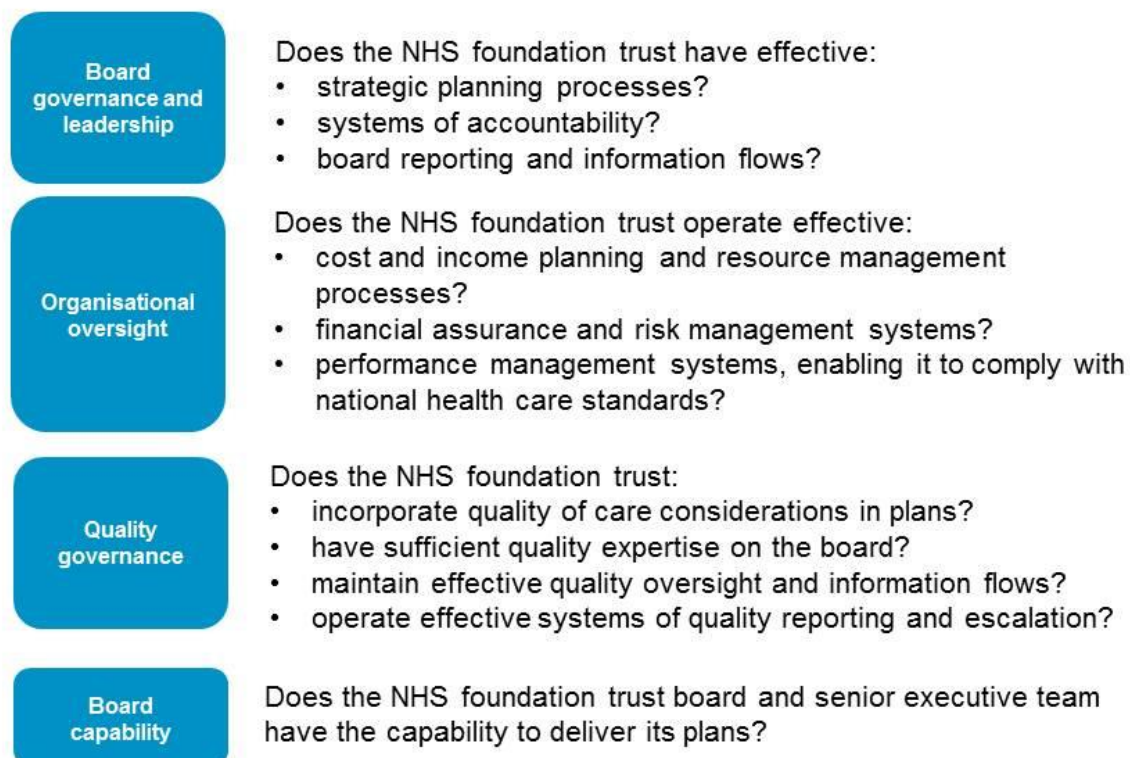
- provide guidance in the form of indicative selection criteria that could be used by trusts in line with their procurement policies.

Monitor will publish this guidance in late 2013/early 2014.

Monitor sees these as primarily an opportunity to develop the sector's processes for building governance assurance. Provided the reviews that NHS foundation trusts commission cover at least the scope set out in guidance, trusts are free to set the overall scope of the reviews they carry out.

They should report the findings of the review to Monitor. Where they raise issues of concern that might reflect on compliance with its governance condition, we will consider whether to investigate further (see Chapter 4).

#### **Diagram 7: Periodic governance reviews – areas of scope**



## 3. Assessing risk to continuity of services

### 3.1 Introduction

An assessment under Monitor's continuity of services framework aims to identify whether the financial situation of a provider of Commissioner Requested Services (CRS) could place these key NHS services at risk. As the measures necessary to address financial issues – ie, internal restructuring, local reconfiguration or, where appropriate, special administration – are complex and time-consuming, we will seek to identify financial issues at providers of CRS in a timely fashion. Early warning of such issues is intended to allow Monitor to take the necessary steps to safeguard services while minimising disruption and uncertainty for patients. This chapter describes how Monitor will assess the degree of financial risk at a CRS provider.

#### Diagram 8: Requirements of the continuity of services licence conditions (summary)

Providers of Commissioner Requested Services (CRS) are required to:

Resulting in:

Be financially viable

- no financial concerns as per Monitor's risk rating (*continuity of services condition 3*).

Cooperate with Monitor

- in cases of financial concern, licensees must cooperate with Monitor, including providing information to commissioners and allowing parties identified by Monitor to enter premises (*continuity of services condition 6*).

Provide assurance on commitment and capability to provide CRS

- assurance from ultimate controller<sup>1</sup> (*continuity of services condition 4*)
- assurance on ability to provide CRS (*continuity of services condition 7*)
  - annual availability of resources statement highlighting any factors affecting capability to deliver CRS
  - working capital statement
  - in-year exception reporting.

Maintain CRS provision

- approval of Monitor and commissioners required to change CRS (*continuity of services condition 1*)
- retain assets required to provide CRS (*continuity of services condition 1*).

<sup>1</sup> Note: this does not apply to NHS foundation trusts.

The requirements of the continuity of services licence conditions are summarised in Diagram 8 (above). In line with condition 3, Monitor will use a **continuity of services risk rating** to assess financial risk at providers of CRS. Actions we may take include:

- further investigation, a requirement to work with Monitor-appointed experts and/or enforcement proceedings, in circumstances where we consider a licence holder may be in breach of continuity of services licence condition 3;
- inserting additional conditions into the licence, to address circumstances where we believe that the governance of an NHS foundation trust is such that it is failing, or will fail, to comply with the conditions of its licence, including continuity of services;
- informing the relevant commissioning organisations – the Act obliges Monitor to do this in circumstances where we believe that a CRS provider is at risk of no longer being a going concern, and that one of the major causes of that risk is the local configuration of services; and
- investigating the situation and potentially initiating contingency planning to prepare for organisational restructuring, service reconfiguration or Trust Special Administration, in circumstances where Monitor is concerned about the ability of a provider of CRS to carry on as a going concern.

CRS will comprise the bulk of activities for some licence holders while only a small proportion for others. However, financial risk at the overall organisation may endanger its ability to provide CRS, however small a part of overall operations these services may represent. Monitor will therefore consider, where relevant and proportionate, risk at the level of the overall entity providing the service.

Monitor will regularly consider the planned and actual financial performance of all providers of CRS and use this information to calculate continuity of services risk ratings.

### 3.2 The continuity of services risk rating

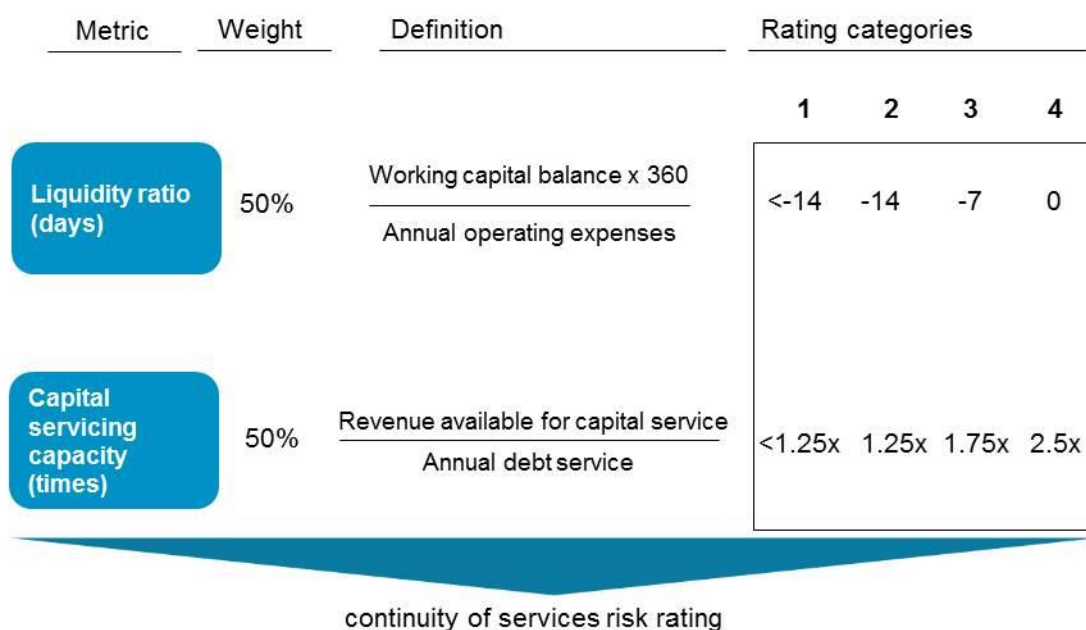
The continuity of services risk rating incorporates two common measures of financial robustness (see Diagram 9, below):

- (i) **liquidity:** days of operating costs held in cash or cash-equivalent forms, including wholly committed lines of credit available for drawdown; and
- (ii) **capital servicing capacity:** the degree to which the organisation's generated income covers its financing obligations.

Monitor considers that these measures should be calculated as part of a board's normal financial reporting at well-run organisations, so preparing and submitting

them should not add an undue burden to licence holders. Detailed definitions will be found in the reporting templates Monitor will issue to NHS foundation trusts for reporting from Q3 2013/14.

### Diagram 9: Calculating the continuity of services risk rating for NHS foundation trusts



### 3.3 Using the continuity of services risk rating

Monitor will use the thresholds in Diagram 9 to assign a rating of 1, 2/2\*, 3 or 4 to each of the two components of the continuity of services risk rating, once they have been calculated. The CRS provider's overall rating is the average of the two, rounded up. For example, scoring 4 for liquidity and 3 for capital service capacity will result in an overall score of 4 applied to the risk rating (see Table 1 below).

**Table 1: Calculating the risk rating**

Risk rating		Capital service capacity			
		1	2	3	4
Liquidity	1	1	2/2*	2/2*	3
	2	2/2*	2/2*	3	3
	3	2/2*	3	3	4
	4	3	3	4	4

The overall score will inform Monitor's regulatory approach towards the CRS provider in question (see Diagram 10 below):

- **Continuity of services risk rating 4:** We will generally take no action beyond continuing to monitor the licence holder as described in Chapter 2.
- **Continuity of services risk rating 3:** We may ask the licence holder to provide a limited amount of financial information on a monthly basis. We will use this information, which should form a subset of the information a board regularly receives, to calculate the risk rating in between quarters and assess any additional aspects of the CRS provider's position. This is intended to allow us to identify and respond swiftly to any sudden deterioration in the financial position of a provider of CRS.
- **Continuity of services risk rating 2\*:** Where a CRS provider has a risk rating of 2 but Monitor considers there is little likelihood of deterioration in its financial position, we will assign a rating of 2\* to the provider and continue to monitor the organisation on a quarterly basis. If the provider returns a rating of 2 at the next quarter, we will again consider whether a rating of 2 or 2\* is merited. Currently we anticipate a limited number of providers being assigned a 2\* rating.
- **Continuity of services risk rating 2:** This rating is likely to represent a material level of financial risk and may represent, eg:
  - **immediate issues requiring action.** Monitor may subsequently investigate whether a CRS provider is in breach of the continuity of services licence conditions, including condition 3, and collect additional information from the licence holder to determine the extent of its financial situation before deciding whether further regulatory action is required;

- **an increased level of risk requiring closer monitoring.** Monitor may request information on a monthly basis in order to pre-empt or respond quickly to any serious issues should they later emerge.
- **Continuity of services risk rating 1:** For licence holders demonstrating a significant level of financial risk, Monitor may:
  - consider using its powers under the licence to initiate a contingency planning process, assessing the financial situation at the CRS provider and the best options to address it in order to minimise disruption to patients; or
  - maintain a closer degree of monitoring by collecting financial information on a monthly or more frequent basis. Where appropriate, Monitor may also consider formal enforcement action as well as specific requirements within the terms of the continuity of services licence conditions themselves, including cooperating with a Monitor-appointed contingency planning team or other financial experts.

**Diagram 10: Continuity of services risk rating – regulatory implications**

Continuity of services risk rating <sup>1</sup>	Description	Monitoring frequency	Regulatory activity
4	No evident concerns	Quarterly	None
3	Emerging or minor concern potentially requiring scrutiny	Potential monthly	None
2*	Level of risk is material but stable	Potential monthly	None
2	Material risk	Monthly or greater	Consideration for potential investigation (see Chapter 5)
1	Significant risk	Monthly or greater	Potential investigation (see Chapter 5) Potential appointment of contingency planning team

<sup>1</sup> Weighted average, rounded up, across the two components of the continuity of services risk rating.

### 3.4 Trust Special Administration

When an NHS foundation trust is unable, or likely to be unable, to remain a going concern, then Monitor may place the organisation into trust special administration.<sup>8</sup>

### 3.5 Monitoring continuity of services risk

This section describes how we will monitor and assess risk to continuity of services at providers of CRS. Where other bodies already assess financial risk at licence holders we will, where appropriate, ensure that any investigation and action by us complements their oversight.

Diagram 11 describes how we will monitor and assess risk at a CRS provider, both regularly and by exception. We will:

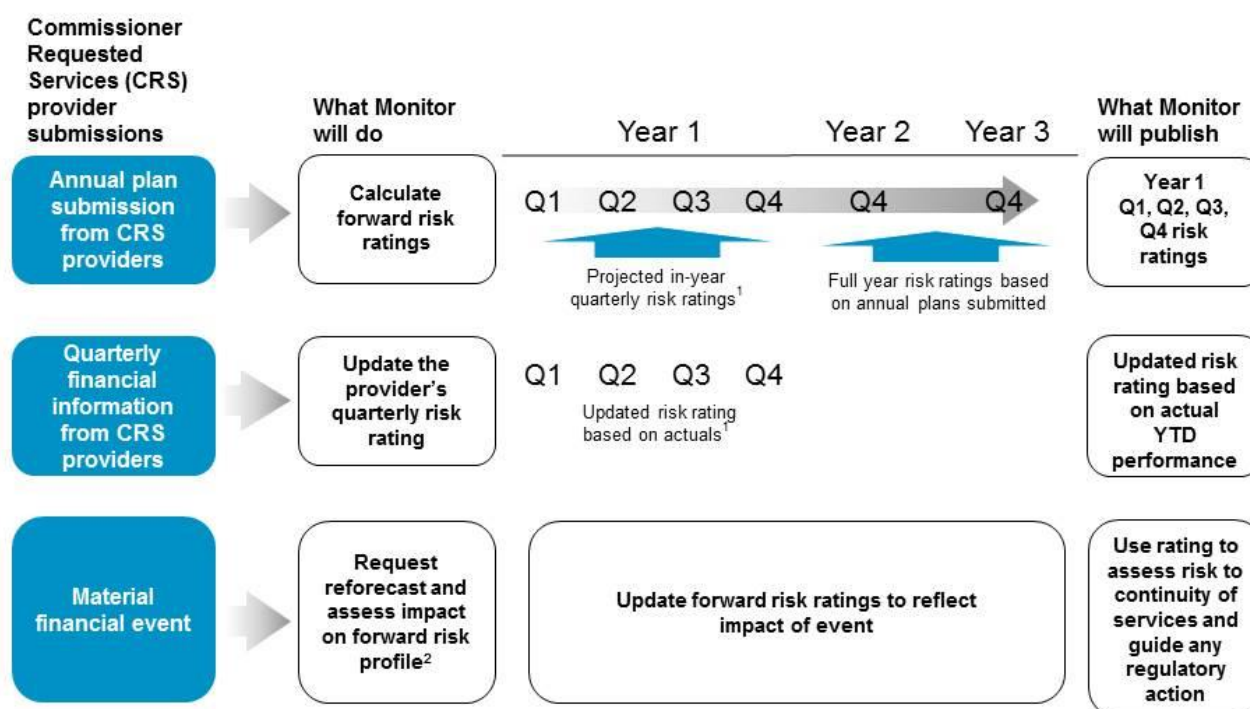
- use **forward plans** to calculate the continuity of services risk rating quarterly over the coming 12 months and for each of the next two full years;
- on a **quarterly** basis, compare the risk rating against **quarterly** financial performance information<sup>9</sup>; and
- assess the impact of **ad hoc or “exceptional”** financial events with material potential impacts on the CRS provider’s financial prospects.

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<sup>8</sup> The role of the administrator is to work with commissioners and other local health care organisations to produce a plan for the reorganisation and sustainable delivery of health care services.

<sup>9</sup> Or monthly, in the case of CRS providers under the monthly monitoring regime.

**Diagram 11: The continuity of services risk rating process**



## Forward plans (once a year)

Every year, all providers of CRS will submit to Monitor financial projections covering three years of operations. We will assess risks to their ability to carry on as a going concern on the basis of these projections. NHS foundation trusts will submit plans at the end of May (see Diagrams 3 and 4).

### *What Monitor will do with the information*

Monitor will evaluate forward plans from CRS providers in two stages. The first stage will be a desk-based review to identify plans requiring further scrutiny. A subset of these plans, selected on the basis of risk to CRS and our existing knowledge of the issues, may undergo a deeper second stage of analysis.

Where we subject a licence holder's forward plan to the second stage of analysis, the licence holder's continuity of services risk rating may remain provisional until that stage is completed.

### *Publishing forward risk ratings*

Having reviewed a licence holder's three-year projections, Monitor will publish the quarterly risk profile over the coming year, ie, the prospective rating at the end of each quarter.

Where an annual plan submission indicates a prospective risk to continuity of services (ie, a risk rating of 1 or 2, at any stage over the plan period but, in particular, over the next 12 months), we may consider whether further investigation is necessary to determine what, if any, regulatory action is appropriate. Such investigation might entail, for example, requiring further information or requiring the CRS provider to cooperate with Monitor or third parties we select to assess the scale of financial risk. Where appropriate, we may also move to formal enforcement or other regulatory action immediately if we consider this necessary to safeguard key services.

### **In-year submissions**

Monitor will use financial submissions, usually quarterly but monthly where warranted by a CRS provider's level of risk, to calculate each provider's year-to-date continuity of services risk rating.

### *What Monitor will do with the information*

If there is a material difference between the in-year financial submissions and the relevant quarter of the annual plan, we may require licence holders to explain the reasons and the actions they propose to take to address the gap.

Each quarter, we will publish the continuity of services risk rating calculated from year-to-date submissions.<sup>10</sup> Where the year-to-date risk rating reflects a higher risk than the most recent rating published (ie, the rating published at annual plan stage or after a previous quarter), Monitor's next steps will be based on the most recent risk rating. Conversely, where the year-to-date rating represents a lower level of risk than planned, we will consider whether to reflect this in its regulatory stance towards the CRS provider.

Where the quarterly rating is a 1 or 2, reflecting a potential breach of the licence, we will consider whether closer monitoring, further information or other action under the licence are necessary to establish whether the CRS provider complies with the continuity of services licence conditions and, if not, whether regulatory action is appropriate.

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<sup>10</sup> Where a provider is under monthly monitoring, we will revise its rating on a monthly basis.

## Exception reports, financial overrides and reforecasts

Material in-year changes in CRS providers' financial circumstances can have significant implications for their financial sustainability, for example:

- CQC warning notices or other regulatory requirements can lead to increases in costs to meet quality and safety requirements;
- material transactions can have far-reaching consequences for revenues and costs;
- material in-year deteriorations from plans can affect financial sustainability;
- losing a major contract can leave an organisation with significant "stranded" assets and costs, at least for a period;
- refinancing may affect a CRS provider's ability to service its financing costs; and
- exceptional/ one-off income may conceal a licence holder's true financial position.

In addition, CRS providers may experience several smaller changes that lead cumulatively to a material deviation from the plan and consequently a concern for the sustainability of services provided.

### *What Monitor will do with the information*

Where a licence holder reports a material financial event (see 2.4 Exception reports), Monitor may act to revise the licence holder's risk rating (see Diagram 12 below). In such circumstances, we may either:

- require a plan reforecast for the remainder of the financial year or the next financial year(s) in order to recalculate the CRS provider's prospective continuity of services risk rating;<sup>11</sup> or
- conclude that the financial outlook for the licence holder warrants an immediate override.

We are not likely to require a reforecast for every CQC warning notice, transaction, change in contract or refinancing. Some of these changes may have little financial impact, while others will involve considerable sums. For transactions, Monitor will require a reforecast if the transaction meets the triggers set out in our guidance (see

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<sup>11</sup> Monitor may request, from NHS foundation trusts displaying material variances between forward plan and year-to-date performance at quarter two, a six-month update of financial projections in-year. This reforecast will reflect on the priorities of the forward plan, but with explanations required only for any significant variances, key risks to compliance with the continuity of services and governance conditions and action plans to rectify the position.

Appendix C). Where the trust's prospective risk rating changes as a result of this reforecast, we will use this rating as the basis for any regulatory action.

In cases of deterioration in financial performance, we may consider a reforecast where there is a difference of 20% or greater between the forecast performance and the expected performance in either:

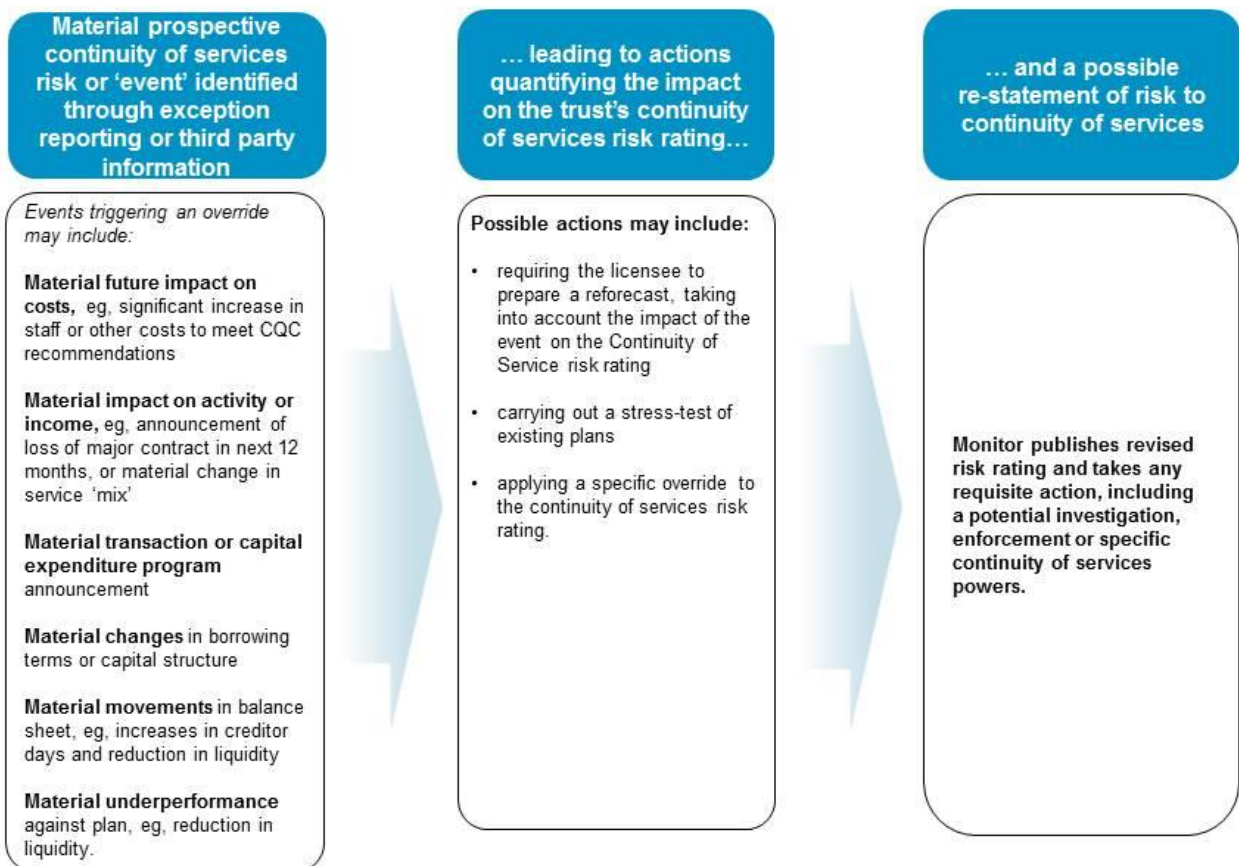
- revenue available for debt service;
- capital service costs; or
- where liquidity falls by 20% or seven days, whichever is lower.

For other exceptional events, including CQC warning notices and refinancing, we will consider requesting a reforecast only in cases where it appears the event will result in a material change in the financial projections of the provider of CRS.

Where the reforecast following the event indicates a prospective risk rating of 1 or 2 at any stage over the reforecast period, we may consider whether to undertake further investigation or action under the continuity of services licence conditions, such as requiring closer cooperation with Monitor or parties appointed by us to minimise the financial risk identified.

We may also use our powers to request further information to understand the degree of risk. If the licence holder is an NHS foundation trust, we may consider whether the prospective risk to continuity of services results from governance issues, for example, a poor plan or inadequate response to the external operating pressures, and if so, determine our regulatory response accordingly.

**Diagram 12: In-year continuity of services risk rating override process**



## 4. Assessing NHS foundation trust governance

### 4.1 Introduction

The status of NHS foundation trusts is reflected in four additional conditions in their licence. NHS foundation trust conditions 1, 2 and 3 contain important administrative and other requirements, while condition 4 (the governance condition)<sup>12</sup> sets out the overall standards we set for different aspects of NHS foundation trust governance. The scope of the governance condition reflects Monitor's long-standing expectations regarding effective governance, evidenced in published guidance and our regulatory action to date. This chapter sets out how Monitor will use the *Risk assessment framework* to assess trusts' governance through the licence.

Where there is evidence that an NHS foundation trust may be failing to meet the requirements of the condition, Monitor is likely to investigate whether a breach of the governance condition may have occurred or is likely to occur (see Chapter 5) and, if so, consider whether to take regulatory action. Our *Enforcement Guidance* provides further information on how we will investigate potential breaches of the licence and make decisions on enforcement action.

**As the CQC introduces its new regulatory methodology to incorporate governance, we will adjust the scale and scope of Monitor's requirements in this area accordingly.**

### 4.2 The governance rating

Monitor will primarily use a governance rating, incorporating information across a number of areas, to describe our views of the governance of an NHS foundation trust. We will generate this rating by considering the following information regarding the trust and whether it is indicative of a potential breach of the governance condition:

- performance against selected national access and outcomes standards;
- CQC judgments on the quality of care provided;
- relevant information from third parties;
- a selection of information chosen to reflect quality governance at the organisation;
- the degree of risk to continuity of services and other aspects of risk relating to financial governance; and
- any other relevant information.

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<sup>12</sup> See Appendix F

## **Performance against national access and outcomes requirements**

Monitor expects NHS foundation trusts to establish and effectively implement systems and processes to ensure that they can meet national standards for access to health care services. We will incorporate performance against a number of these standards in our assessment of the overall governance of a trust. Monitor will also assess trusts' ability to meet certain requirements of the NHS Outcomes Framework; for more information on the metrics concerned see Appendix A.

Material or ongoing underperformance against these access and outcomes requirements may reflect a governance concern and warrant consideration by Monitor for further investigation.

## **Care Quality Commission judgments**

The licence requires NHS foundation trusts to have systems in place to deliver care of sufficient quality to patients. Where the CQC issues a warning notice or takes stronger action, Monitor is highly likely to investigate further and to consider whether a trust is in breach, or will be in breach, of its licence.

## **Third party information**

Monitor will also consider information from third parties, either supplied to us by the NHS foundation trust (see 2.4 Exception reports) or brought to us directly. While our initial response is likely to be a request for further information from the trust in question or others, where appropriate we may investigate formally (see Chapter 5) and consider whether an NHS foundation trust is in breach, or will be in breach, of its licence. This is particularly likely where the information reflects similar or relevant concerns from other sources and/or is relevant to governance of matters related to patient care.

## **Quality governance indicators**

It is not Monitor's role to assess the quality of care at an NHS foundation trust directly. However, it is our role to consider whether effective quality governance is in place. Monitor will use a small number of indicators (see Diagram 13 below) to identify whether any relevant potential patient or workforce concerns exist at trusts.

We will consider trends in these indicators at individual organisations, and where negative trends suggest potential issues (eg, sudden increases in staff absenteeism), Monitor will consider if further information is necessary to assess (i) whether there may be issues with the quality governance at the trust; and (ii) to what extent the trust's board is aware of and addressing the issue. Our *Enforcement Guidance* contains further relevant information on how we will prioritise investigation and enforcement.

## **Continuity of services and aspects of financial governance**

Monitor considers that well governed NHS foundation trusts will not only remain solvent (see Chapter 2) but will also demonstrate financial efficiency and robust financial planning and decision-making processes. Where we identify a material risk to a trust's financial sustainability or overall compliance with the continuity of services licence conditions, we will consider whether this may also reflect a governance issue.

When we assess trusts' forward plans, reforecasts and their proposed transactions for any risk to their continuity of services, we may also assess the governance underpinning the plans by, for example:

- checking if the approach to planning and the major assumptions in the forward plan are reasonable, eg, comparable to past performance, other NHS foundation trusts and relevant national guidance;
- considering how closely the NHS foundation trust performed against its plan in the previous year. We will also assess the scale of any variance between key elements of the plan and the previous year's actual figures in order to test the credibility of the projections; and
- assessing the implications for financial viability during the year.

Where a trust's forward plans, reforecasts or transactions indicate to us that the trust may not be taking sufficient steps to ensure compliance with the licence, we may initiate further investigation into the trust's governance, particularly regarding planning and leadership.

## **Generating the governance rating**

Monitor will use the information gathered under the five categories outlined above (alongside any other relevant information, see 4.4. below) to assess the strength of governance at an NHS foundation trust. Diagram 13 outlines what could give Monitor cause for governance concerns (presented by category). Information that comes to light from other areas of our governance oversight described below (board statements, reviews of plans and governance reviews) may lead to overrides in the governance rating.

**Diagram 13: Indicators of governance concerns**

Category	Metrics	Governance concern triggered by
<b>CQC information</b>	<ul style="list-style-type: none"> <li>CQC judgments</li> </ul>	<ul style="list-style-type: none"> <li>CQC warning notice issued</li> <li>Civil and/or criminal action initiated</li> </ul>
<b>Access and outcomes metrics</b>	<p>For <b>acute trusts</b>, metrics including:</p> <ul style="list-style-type: none"> <li>referral to treatment within 18 weeks</li> <li>A&amp;E waits (4 hours)</li> <li>cancer waits (62 days)</li> </ul> <p>For <b>ambulance trusts</b>, Category A response times</p> <p>For <b>mental health trusts</b>, metrics including CPA follow-up and psychosis outreach</p> <p>For <b>acute trusts</b>, metrics including:</p> <ul style="list-style-type: none"> <li>C. difficile – national target</li> </ul> <p>For <b>mental health trusts</b>, metrics including tracking accommodation/employment status (data completeness only)</p> <p>For providers of community services, data completeness against selected elements of the CIDS dataset</p>	<ul style="list-style-type: none"> <li>Three consecutive quarters' breaches of a single metric or a service performance score of 4 or greater<sup>1</sup></li> <li>Breaching pre-determined annual C. difficile threshold (either three-quarters' breach of the year-to-date threshold or breaching the full year threshold at any time in the year)</li> <li>Breaching the A&amp;E waiting times target in two quarters over any four-quarter period <i>and</i> in any additional quarter over the subsequent three quarters</li> </ul>
<b>Third party reports</b>	<ul style="list-style-type: none"> <li>Ad hoc reports from GMC, the Ombudsman, commissioners, Healthwatch England, auditor reports, Health &amp; Safety Executive, patient groups, complaints, whistleblowers, medical Royal Colleges etc.</li> </ul>	<ul style="list-style-type: none"> <li>Judgment based on the severity and frequency of reports</li> </ul>
<b>Quality governance indicators</b>	<ul style="list-style-type: none"> <li>Patient metrics <ul style="list-style-type: none"> <li>patient satisfaction</li> </ul> </li> <li>Staff metrics <ul style="list-style-type: none"> <li>high executive team turnover</li> <li>satisfaction</li> <li>sickness/absence rate</li> <li>proportion temporary staff</li> <li>staff turnover</li> </ul> </li> <li>Aggressive cost reduction plans</li> </ul>	<ul style="list-style-type: none"> <li>Material reductions in satisfaction, or increases in sickness or turnover rates</li> <li>Material increases in proportion of temporary staff</li> <li>Cost reductions in excess of 5% in any given year</li> </ul>
<b>Financial risk</b>	<ul style="list-style-type: none"> <li>Continuity of services risk rating</li> </ul>	<ul style="list-style-type: none"> <li>Breaching any continuity of services licence condition as a result of governance</li> <li>Inadequate planning processes</li> </ul>

<sup>1</sup> For example a service performance score as per the metrics in Appendix A.

### 4.3 Assigning ratings to NHS foundation trusts

The governance rating assigned to an NHS foundation trust reflects Monitor's views of its governance (see Diagram 14):

- we will assign a green rating if no governance concern is evident;
- where we identify potential material causes for concern with the trust's governance in one or more of the categories (requiring further information or formal investigation), we will replace the trust's green rating with a description of the issue and the steps (formal or informal) we are taking to address it; or
- we will assign a red rating if we take regulatory action.

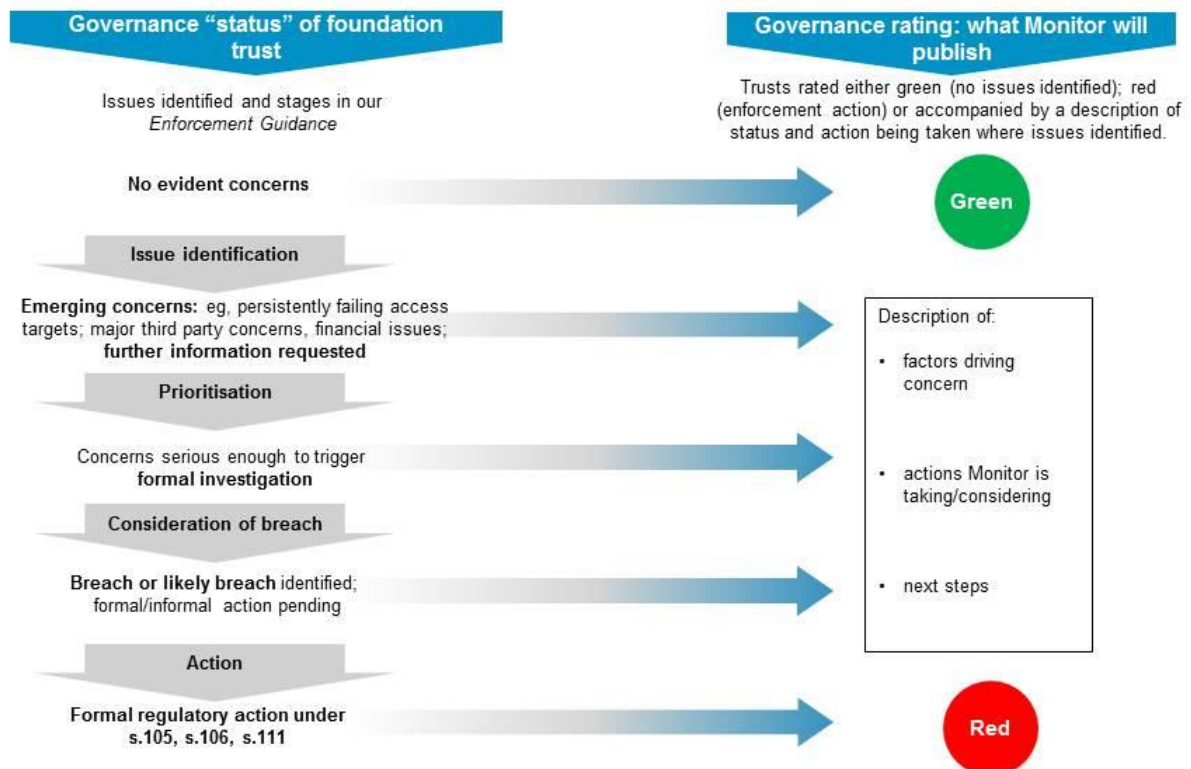
In assigning an appropriate governance risk rating, Monitor will be informed by the:

- seriousness of the issue;
- information we already have concerning the situation;

- effectiveness of the trust’s initial response to it; and
- time-critical nature of the situation.

Monitor may require additional information from the trust. Depending on our assessment, we may decide to investigate formally and/or address the issue through our enforcement powers (see Chapter 5 and our *Enforcement Guidance*).

**Diagram 14: The governance rating**



#### 4.4 Other information used to inform the governance rating

In addition to the five areas described above, we will also use other sources of information as they are made available during the year to consider a trust’s governance. These include corporate governance statements, the annual governance statement, forward plans and regular governance reviews. Where they could represent governance concerns we will adjust the governance rating accordingly

## **Corporate governance statement**

Under their governance condition, NHS foundation trusts will submit a corporate governance statement within three months of the end of each financial year. The governance condition requires boards to confirm:

- compliance with the governance condition at the date of the statement; and
- forward compliance with the governance condition for the current financial year, specifying (i) any risks to compliance and (ii) any actions proposed to manage such risks.

Where the corporate governance statement indicates risks to compliance with the governance condition, Monitor will consider whether any actions or other assurance is required at the time of the statement or whether it is more appropriate to maintain a watching brief.

## **Annual governance statement**

In addition to the forward-looking corporate governance statement submitted in their forward plan, NHS foundation trusts will prepare an annual governance statement<sup>13</sup> in their annual reports, which includes reference to quality governance. An NHS foundation trust's annual report should also include a statement that the board has conducted a review of the effectiveness of the trust's system on internal controls.

Where the annual governance statement indicates risks to compliance with the governance condition, Monitor will consider whether any actions or other assurances are required at the time of the statement or whether it is more appropriate to maintain a watching brief.

## **NHS foundation trust forward plans**

Under their governance condition, NHS foundation trusts are required to maintain effective systems of financial decision-making, management and control. Should Monitor's review of an NHS foundation trust's forward plan or other forward-looking information submitted as part of its monitoring requirements indicate concerns with the trust's financial sustainability, its governance, or its compliance with any other aspect of the licence, we may ask for additional information or open a formal investigation, reflecting these concerns in the governance rating.

## **Regular governance reviews**

As set out in Chapter 2, Monitor recommends that NHS foundation trusts carry out periodic in-depth and independent reviews of their governance, ideally every three years. The primary purpose of these reviews is to ensure a consistently effective

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<sup>13</sup> Refer to the [NHS Foundation Trust Annual Reporting Manual](#), available on our website.

level of governance assurance at NHS foundation trusts. However, where reviews identify material governance concerns, Monitor will consider the trust's response to the review and what, if any, steps on our part are appropriate.

Monitor sees these as primarily an opportunity to develop the sector's processes for building governance assurance. Provided the reviews NHS foundation trusts commission cover at least the scope requested from the areas described in Chapter 2, trusts are free to set the overall scope of the reviews they carry out.

NHS foundation trusts should report the findings of these reviews, and any response, to Monitor within 60 days of their submission to trust boards. Where we are made aware of these findings earlier and they are such that we consider it appropriate, we may take action sooner (see Chapter 5 and Monitor's *Enforcement Guidance*). As indicated in Chapter 2, we will issue further guidance later in 2013.

#### **4.5 Ad hoc/triggered reviews of governance**

Should Monitor's oversight of governance indicate a material governance concern, we may request the board of the trust to carry out an immediate review into the issues behind this concern as a preliminary to or as part of a formal investigation. Where the review identifies a potential breach of the governance condition, we may investigate further and possibly take enforcement action.

## 5. Investigation

### 5.1 Introduction

The risk assessment processes outlined above are designed to identify situations where a licence holder is failing, or is at risk of failing, to comply with the continuity of services conditions of its licence or, for NHS foundation trusts, its governance condition. This chapter sets out the principles and processes Monitor will apply once the *Risk assessment framework* identifies a breach or potential breach of the licence in these areas.

In each case, we will consider the licence holder's circumstances and the context of the possible breach or breaches in question. The purpose of any subsequent investigation will be to:

- determine the scale and scope of any breach; and
- identify the appropriate action, if any, to be taken as a result including enforcement action.

Monitor's [Enforcement Guidance](#) describes in full the powers available to us where we identify that a licence holder is in breach of or at risk of breaching the licence and the process we will follow to determine what regulatory approach to take. Please read the guidance alongside this chapter.

### 5.2 Initial assessment and prioritisation

On identifying a concern at a licence holder, Monitor will initially consider:

- the context and circumstances of the potential breach;
- the information already available through in-year monitoring; and
- any other information readily available from the trust and third parties.

Following this initial assessment, if Monitor considers that there are grounds to investigate if a breach may have occurred, or may occur, we will decide whether to carry out further investigation to establish what action to take.

#### Prioritisation

As with any of our enforcement decisions, in deciding whether to investigate a potential breach we will consider our prioritisation criteria, which comprise the:

- likely benefit (direct and indirect) to health care users;
- impact on patients and the provision of health care;

- ultimate scale and scope of the breach; and
- resources required to investigate and address the breach in full.

### 5.3 Investigation

The investigation process is designed to provide evidence of an actual or suspected breach or a risk of a breach of the licence and, if one is found, inform what our regulatory response should be. The process will allow us to find out, for example:

- the financial viability of the licence holder in question where there is a continuity of services concern;
- for NHS foundation trusts, the quality of governance where an issue concerning compliance with the governance condition has been identified;
- whether the licence holder has the capability and resources to return to compliance with the licence, or make good the effect of a breach;
- the impact of any breach on other parties; and
- whether we will need to use our formal enforcement powers or whether other forms of engagement are appropriate.

Once Monitor has identified a potential breach and launched an investigation, we are likely to require additional information to understand the nature of the issue, the licence holder's plans to address it and whether or not these plans can be successfully implemented. Monitor may gather this information through a number of means, including:

- offering to hold meetings with the licence holder;
- requesting additional information from the licence holder; and
- where relevant, seeking the views of, or information from, appropriate third parties.

Monitor may also ask the licence holder to take action, including:

- preparing, presenting and committing to deliver a plan to address the breach;
- commissioning an independent report into the causes of the potential breach; or
- commissioning external advice to address the issue.

Monitor's formal powers, and how we consider their use, are described in our *Enforcement Guidance*.

#### **5.4 Monitor's response to providers of Commissioner Requested Services in financial distress**

Where a licence holder providing Commissioner Requested Services is in financial distress, Monitor may require the licence holder to:

- make information available to commissioners;
- work with parties appointed by Monitor to address the financial issues; and
- generally cooperate with Monitor.

Actions required by Monitor in such circumstances may also include requesting the board to commission a report by independent advisers. This may:

- investigate further the matters indicating a risk to continuity of services;
- consider the monthly financial profile of the licence holder and key risks and sensitivities;
- define a set of monthly measures that Monitor can use to assess the licence holder's return to financial stability; and
- assess the licence holder's capability to deliver a recovery plan.

#### **5.5 Monitor's response to NHS foundation trusts potentially in breach of their governance condition**

Where Monitor has identified a potential breach by an NHS foundation trust of either the governance condition – or of any other relevant condition of its licence resulting from its governance – Monitor may require the trust to:

- further investigate the matters indicating a potential breach;
- draw up a recovery plan addressing any potential breach, including an analysis of key risks and sensitivities;
- agree measures of progress in addressing the issue; and
- consider management and organisational capability and any other factors related to addressing the issue.

#### **5.6 Consideration and use of formal enforcement powers**

Monitor will work with licence holders deemed as potentially in breach of their licence to gather additional information and assess what is needed to ensure the issues are addressed swiftly and appropriately.

For more information on Monitor's formal powers of enforcement and our general approach to prioritising and deciding on regulatory action, see the *Enforcement Guidance*.

## **Appendix A: Access targets and outcomes objectives**

Monitor uses a limited set of national measures of access and outcome objectives as part of our assessment of governance at NHS foundation trusts. These cover acute, mental health, community and ambulance activities. As set out in Diagram 13 in Chapter 4, Monitor uses performance against these indicators as a trigger to detect potential governance issues.

NHS foundation trusts failing to meet at least four of these requirements at any given time, or failing the same requirement for at least three quarters, will trigger a governance concern, potentially leading to investigation and enforcement action.

Except where otherwise stated, any trust commissioned to provide services will be subject to the relevant governance indicators associated with those services.

Table 2 below sets out the indicators and thresholds. Unless stated in the supporting notes, these are monitored on a quarterly basis.

**Table 2: targets and indicators with thresholds for 2013/14**

Area	Indicator	Threshold (A)	Weighting (B)	Monitoring Period
Access	1 Maximum time of 18 weeks from point of referral to treatment in aggregate – admitted <b>(C)</b>	90%	1.0	Quarterly
	2 Maximum time of 18 weeks from point of referral to treatment in aggregate – non-admitted <b>(C)</b>	95%	1.0	Quarterly
	3 Maximum time of 18 weeks from point of referral to treatment in aggregate – patients on an incomplete pathway <b>(C)</b>	92%	1.0	Quarterly
	4 A&E: maximum waiting time of four hours from arrival to admission/ transfer/ discharge <b>(D)</b>	95%	1.0	Quarterly
	5 All cancers: 62-day wait for first treatment <b>(E)</b> from: urgent GP referral for suspected cancer NHS Cancer Screening Service referral	85% 90%	1.0	Quarterly
	6 All cancers: 31-day wait for second or subsequent treatment <b>(F)</b> , comprising: surgery anti-cancer drug treatments radiotherapy	94% 98% 94%	1.0	Quarterly
	7 All cancers: 31-day wait from diagnosis to first treatment <b>(G)</b>	96%	1.0	Quarterly
	8 Cancer: two week wait from referral to date first seen <b>(H)</b> , comprising: all urgent referrals (cancer suspected) for symptomatic breast patients (cancer not initially suspected)	93% 93%	1.0	Quarterly
	9 Care Programme Approach (CPA) patients <b>(I)</b> , comprising: receiving follow-up contact within seven days of discharge having formal review within 12 months	95% 95%	1.0	Quarterly
	10 Admissions to inpatients services had access to Crisis Resolution/Home Treatment teams <b>(J)</b>	95%	1.0	Quarterly
	11 Meeting commitment to serve new psychosis cases by early intervention teams <b>(K)</b>	95%	1.0	Quarterly
	12 Category A call – emergency response within 8 minutes <b>(L)</b> , comprising: Red 1 calls Red 2 calls	75% 75%	1.0 1.0	Quarterly
	13 Category A call – ambulance vehicle arrives within 19 minutes <b>(L)</b>	95%	1.0	Quarterly
Outcomes	14 Clostridium (C.) difficile – meeting the C. difficile objective <b>(M)</b>	DM*	1.0	Quarterly
	16 Minimising mental health delayed transfers of care <b>(N)</b>	≤7.5%	1.0	Quarterly
	17 Mental health data completeness: identifiers <b>(O)</b>	97%	1.0	Quarterly
	18 Mental health data completeness: outcomes for patients on CPA <b>(P)</b>	50%	1.0	Quarterly
	19 Certification against compliance with requirements regarding access to health care for people with a learning disability <b>(Q)</b>	N/A	1.0	Quarterly
	20 Data completeness: community services <b>(R)</b> , comprising: referral to treatment information referral information treatment activity information	50% 50% 50%	1.0	Quarterly

\*DM – a *de minimis* applies

## General notes

- A. Monitor will not utilise a general rounding principle when considering compliance with these targets and standards, eg, a performance of 94.5% will be considered as failing to achieve a 95% target. However, exceptional cases may be considered on an individual basis, taking into account issues such as low activity or thresholds that have little or no tolerance against the target, eg, those set between 99-100%.

All indicators will be monitored on a quarterly basis.

Unless otherwise specified, indicators have been sourced from publicly available definitions in the [Mandate](#), the [NHS Outcomes Framework](#) and [NHS Constitution](#).

- B. Where NHS foundation trusts breach given target(s), or certify breach(es), Monitor will use the sum of each metric's weighting to calculate a **service performance score**. **Where this score is 4.0 or greater, this will represent a governance concern** (see Diagram 13). Where a trust breaches a target systematically, this will also represent a governance concern (see Diagram 15, below).

Where targets comprise multiple thresholds, each threshold must be individually met to avoid incurring a score.

- C. **18 weeks referral to treatment:** performance is measured on an

aggregate (rather than specialty) basis and NHS foundation trusts are required to meet the threshold on a monthly basis. Consequently, any failure in one month is considered to be a quarterly failure for the purposes of the *Risk assessment framework*. Failure in any month of a quarter following two quarters' failure of the same measure represents a third successive quarter failure and should be reported via the exception reporting process.

Will apply to consultant-led admitted, non-admitted and incomplete pathways provided. *While failure against any threshold will score 1.0, the overall impact will be capped at 2.0.* The measures apply to acute patients whether in an acute or community setting. Where an NHS foundation trust with existing acute facilities acquires a community hospital, performance will be assessed on a combined basis.

Monitor will take account of breaches of the referral to treatment target in the 2013/14 *Compliance Framework* when considering consecutive failures of the referral to treatment target in the *Risk assessment framework*. For example, if a trust fails the 2013/14 admitted patients target at quarters 1 and 2 and the 2013/14 admitted patients target in quarter 3, it will be considered to have breached for three quarters in a row.

- D. **A&E four-hour wait:** Waiting time is assessed on a provider basis, aggregated across all sites: no activity from off-site partner organisations should be included. The 4-hour waiting time indicator will apply to minor injury units/walk in centres.
- E. **62-day wait for cancer first treatment:** measured from day of receipt of referral to treatment start date. This includes referrals from screening service and other consultants. *Failure against either threshold represents a failure against the overall target.* The target will not apply to trusts having five cases or less in a quarter. Monitor will not consider there to be a breach where trusts fail individual cancer thresholds but only report a single patient breach over the quarter.<sup>15</sup> This will apply to any community providers providing the specific cancer treatment pathways.

National guidance states that for patients referred from one provider to another, breaches of this target are automatically shared and treated on a 50:50 basis. These breaches may be reallocated in full back to the referring organisation(s) provided Monitor receives evidence of written agreement to do so between the relevant providers (signed by both chief executives) in place at the time the NHS foundation trust makes its quarterly declaration to Monitor.

In the absence of any locally agreed contractual arrangements,

Monitor encourages trusts to work with other providers to reach a local system-wide agreement on the allocation of cancer target breaches to ensure that patients are treated in a timely manner. Once an agreement of this nature has been reached, Monitor will consider applying the terms of the agreement to foundation trusts party to the arrangement.

- F. **31-day wait for cancer second/subsequent treatment:** measured from cancer treatment period start date to treatment start date. *Failure against any threshold represents a failure against the overall target.* The target will not apply to trusts having five cases or less in a quarter. Monitor will not consider there to be a breach where trusts fail individual cancer thresholds but only report a single patient breach over the quarter.<sup>14</sup> This will apply to any community providers providing the specific cancer treatment pathways.
- G. **31-day wait for cancer diagnosis to first treatment:** Measured from decision to treat to first definitive treatment. The target will not apply to trusts having five cases or fewer in a quarter. Monitor will not consider there to be a breach where trusts fail individual cancer

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<sup>14</sup> I.e., if a trust has ten cancer (surgery) patients in a quarter and one breaches the waiting time target (scoring 90% vs. the 94% threshold) Monitor will generally not consider this to be a breach. But if a trust has 20 patients and two breach the target (failing the target with more than one breach) Monitor generally will consider this to be a breach of the target.

thresholds but only report a single patient breach over the quarter<sup>15</sup>. This will apply to any community providers providing the specific cancer treatment pathways.

**H. Two-week wait for cancer referral to date first seen:**

Measured from day of receipt of referral – existing standard (includes referrals from general dental practitioners and any primary care professional).<sup>15</sup> *Failure against either threshold represents a failure against the overall target.* The target will not apply to trusts having five cases or fewer in a quarter. Monitor will not consider there to be a breach where trusts fail individual cancer thresholds but only report a single patient breach over the quarter. This will apply to any community providers providing the specific cancer treatment pathways.

**I. Care Programme Approach (CPA)**

**Patients:** *failure against either threshold represents a failure against the overall target.*

- 7-day follow up:

**Numerator:** the number of people under adult mental illness specialties on CPA who were followed up (either by face-to-face contact or by phone discussion)

within seven days of discharge from psychiatric inpatient care.

**Denominator:** the total number of people under adult mental illness specialties on CPA who were discharged from psychiatric inpatient care.

All patients discharged to their place of residence, care home, residential accommodation, or to non-psychiatric care must be followed up within seven days of discharge. All efforts must be made to follow up with the patient. It is the responsibility of the trust that discharged the patient to provide follow up patient treatment. Links will need to be established with the receiving institution if a patient is discharged to, for example, a care home, to enable follow up to take place. However, if the patient is transferred to another psychiatric unit to continue psychiatric care, then the responsibility lies with the receiving trust to follow up the patient after they have been discharged. Where a patient has been transferred to prison, contact should be made via the prison in-reach team.

Exemptions from both the numerator and the denominator of the indicator include:

- patients who die within seven days of discharge;
- where legal precedence has forced the removal of a patient from the country; or

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<sup>15</sup> Specific guidance and documentation concerning cancer waiting targets can be found at:  
<http://www.connectingforhealth.nhs.uk/nhais/cancerwaiting/documentation>.

- patients discharged to another NHS psychiatric inpatient ward.

Guidance on what should and should not be counted when calculating the achievement of this target can be found on Unify2.<sup>16</sup>

- For 12 month review (from Mental Health Minimum Data Set v4-0, MHMDS):

**Numerator:** the number of adults in the denominator who have had at least one formal review in the last 12 months.

**Denominator:** the total number of adults who have received secondary mental health services and who were on the CPA at the end of the reported period

J. **Crisis resolution/home treatment teams:** This indicator applies only to admissions to the foundation trust's mental health psychiatric inpatient care. The following cases can be excluded:

- planned admissions for psychiatric care from specialist units;
- internal transfers of service users between wards in a trust and transfers from other trusts;

- patients recalled on Community Treatment Orders; or
- patients on leave under Section 17 of the Mental Health Act 1983.

The indicator applies to users of working age (16-65) only, unless otherwise contracted. This includes CAMHS clients only where they have been admitted to adult wards. An admission has been gate-kept by a crisis resolution team if they have assessed the service user before admission and if they were involved in the decision-making process, which resulted in admission.

For full details of the features of gate-keeping, please see *Guidance Statement on Fidelity and Best Practice for Crisis Services* on the (Department of Health). As set out in this guidance, the crisis resolution home treatment team should:

- provide a mobile 24 hour, seven days a week response to requests for assessments;
- be actively involved in all requests for admission: for the avoidance of doubt, "actively involved" requires face-to-face contact unless it can be demonstrated that face-to-face contact was not appropriate or possible. For each case where face-to-face contact is deemed

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<sup>16</sup> Unify2 is the system for reporting and sharing NHS and social care performance information.

inappropriate, a declaration that the face-to-face contact was not the most appropriate action from a clinical perspective will be required;

- be notified of all pending Mental Health Act assessments;
- be assessing all these cases before admission happens; and
- be central to the decision making process in conjunction with the rest of the multidisciplinary team.

K. **Early intervention for new psychosis cases:** Quarterly performance against commissioner contract. Threshold represents a minimum level of performance against contract performance, rounded down.

L. **Ambulance emergency response:** For patients with immediately life-threatening conditions.

The category A8 ambulance response time standard has been formally sub-divided into Red 1 and Red 2 calls to allow a faster response to those patients with time critical conditions. Monitor will differentiate between Red 1 and Red 2 Category A8 calls:

- Red 1 calls are the most time-critical and cover cardiac arrest patients who are not breathing and do not have a pulse, and

other severe conditions such as airway obstruction.

- Red 2 calls are serious but less immediately time-critical and cover conditions such as stroke and fits.

Each type of category A8 call will be assessed using the 75% threshold. *Failure against either threshold will be considered a failure and scored accordingly.*

M. **C. difficile:** Will apply to any inpatient facility with a centrally set C. difficile objective. Where an NHS foundation trust with existing acute facilities acquires a community hospital, the combined objective will be an aggregate of the two organisations' separate objectives. Both avoidable and unavoidable cases of C. difficile will be taken into account for regulatory purposes.

Where there is no objective (ie, if a mental health NHS foundation trust without a C. difficile objective acquires a community provider without an allocated C. difficile objective) we will not apply a C. difficile score to the NHS foundation trust's governance rating.

Monitor's annual *de minimis* limit for cases of C. difficile is set at 12. However, Monitor may consider scoring cases of <12 if Public Health England indicates multiple outbreaks.

See Table 3 for the circumstances in which we will score NHS

foundation trusts for breaches of the C. difficile objective.

Monitor will assess NHS foundation trusts for breaches of the C. difficile objective against their objectives at each quarter using a cumulative year-to-date trajectory as follows:

**Table 3**

Criteria	Will a score be applied?
Where the number of cases is less than or equal to the <i>de minimis</i> limit	No
If a trust exceeds the <i>de minimis</i> limit, but remains within the in-year trajectory <sup>17</sup> for the national objective	No
If a trust exceeds both the <i>de minimis</i> limit and the in-year trajectory <sup>17</sup> for the national objective	Yes
If a trust exceeds its national objective above the <i>de minimis</i> limit	Yes (and a red rating applied)

If Public Health England indicates that the C. difficile target is

<sup>17</sup> Assessed at: 25% of the annual centrally-set objective at quarter 1; 50% at quarter 2; 75% at quarter 3; and 100% at quarter 4 (all rounded to the nearest whole number, with any ending in 0.5 rounded up). Monitor will not accept a trust's own internal phasing of their annual objective or that agreed with their commissioners.

exceeded due to multiple outbreaks, while still below the *de minimis*, Monitor may apply a score.

Monitor considers it a matter of routine reporting for trusts to report any risk to achieving its targets, including those relating to infection control.

- N. **Mental health delayed transfers of care:** For full details of the changes to the CPA process, please see the implementation guidance *Refocusing the Care Programme Approach* (Department of Health). For minimising mental health delayed transfers of care:

**Numerator:** the number of non-acute patients (aged 18 and over on admission) per day under consultant and non-consultant-led care whose transfer of care was delayed during the quarter. For example, one patient delayed for five days counts as five.

**Denominator:** the total number of occupied bed days (consultant-led and non-consultant-led) during the quarter.

Delayed transfers of care attributable to social care services are included.

- O. **Mental health identifiers:** Patient identity data completeness metrics (from MHMDS) to consist of:
- NHS number;
  - Date of birth;
  - Postcode (normal residence);

- Current gender;
- Registered General Medical Practice organisation code; and
- Commissioner organisation code.

**Numerator:** count of valid entries for each data item above.<sup>18</sup>

**Denominator:** total number of entries.

P. **Outcomes for patients on CPA** (from MHMDS). *Note: Monitor is assessing the completeness of data to make assessments of employment and accommodation status. Thresholds in Table 1 above reflect minimum required levels of data completeness in order to assess performance against the indicators in question, not performance itself:*

- Employment status:

**Numerator:** the number of adults in the denominator whose employment status is known at the time of their most recent assessment, formal review or other multi-disciplinary care planning meeting, in a financial year. Include only those whose assessments or reviews were carried out during the reference period. The reference period is the last 12

months working back from the end of the reported quarter.

**Denominator:** the total number of adults (aged 18-69) who have received secondary mental health services and who were on the CPA at any point during the reported quarter.

- Accommodation status:

**Numerator:** the number of adults in the denominator whose accommodation status (ie, settled or non-settled accommodation) is known at the time of their most recent assessment, formal review or other multi-disciplinary care planning meeting. Include only those whose assessments or reviews were carried out during the reference period. The reference period is the last 12 months working back from the end of the reported quarter.

**Denominator:** the total number of adults (aged 18-69) who have received secondary mental health services and who were on the CPA at any point during the reported quarter.

- Having a Health of the Nation Outcome Scales (HoNOS) assessment in the past 12 months:

**Numerator:** The number of adults in the denominator who have had at least one HoNOS assessment in the past 12 months.

<sup>18</sup> For details of how data items are classified as VALID please refer to the data quality constructions available on the Information Centre's website: [www.ic.nhs.uk/services/mhmds/dq](http://www.ic.nhs.uk/services/mhmds/dq).

**Denominator:** The total number of adults who have received secondary mental health services and who were on the CPA at the end of the reference period.

**Q. Learning disability access:**

Meeting the six criteria for meeting the needs of people with a learning disability, based on recommendations set out in *Healthcare for All* (DH, 2008):

- Does the NHS foundation trust have a mechanism in place to identify and flag patients with learning disabilities and protocols that ensure that pathways of care are reasonably adjusted to meet the health needs of these patients?
- Does the NHS foundation trust provide readily available and comprehensible information to patients with learning disabilities about the following criteria:
  - treatment options;
  - complaints procedures; and
  - appointments?
- Does the NHS foundation trust have protocols in place to provide suitable support for family carers who support patients with learning disabilities?
- Does the NHS foundation trust have protocols in place to routinely include training on providing health care to patients with learning disabilities for all staff?
- Does the NHS foundation trust have protocols in place to encourage representation of people with learning disabilities and their family carers?
- Does the NHS foundation trust have protocols in place to regularly audit its practices for patients with learning disabilities and to demonstrate the findings in routine public reports?

Note: NHS foundation trust boards are required to certify that their trusts meet requirements a) to f) above at the annual plan stage and in each quarter. Failure to do so will result in the application of the service performance score for this indicator.

**R. Community services data completeness:**

Data completeness levels for trusts commissioned to provide community services, using Community Information Data Set (CIDS) definitions, to consist of:

- referral to treatment times – consultant-led treatment in hospitals and allied health care professional-led treatments in the community;

- community treatment activity – referrals; and
- community treatment activity – care contact activity.

*While failure against any threshold will score 1.0, the overall impact will be capped at 1.0.* Failure of the same measure for three quarters will result in a red-rating.

**Numerator:** all data in the denominator actually captured by the trust electronically (not solely CIDS-specified systems).

**Denominator:** all activity data required by CIDS.

For the avoidance of doubt as to what services/activities are within scope of the CIDS collection and how that data is collected, please note that:

- all community providers that receive community funding are required to capture and produce local extracts of CIDS data, as defined in the relevant CIDS Information Standards Notice (ISN);
- Monitor's indicators are relevant for any services that previously would have been commissioned under (and funded through) the Community Services Contract. Services previously funded through an acute/other contract will continue to be excluded; and
- trusts that submit CIDS data through the Secondary Uses Service (SUS) are also required to capture CIDS data.

**Diagram 15: Levels of systematic underperformance triggering a potential governance concern**

Indicator (see Appendix A)	Driver of a governance concern
Meeting the C. difficile objective	<ul style="list-style-type: none"> <li>Has greater than 12 cases in the year to date, and either: <ul style="list-style-type: none"> <li>breaches the cumulative year-to-date trajectory for three successive quarters; or</li> <li>breaches its full year objective;<sup>1</sup> or</li> <li>Reports important or significant outbreaks of C. difficile.</li> </ul> </li> </ul>
Referral-to-treatment (RTT) waiting times	<ul style="list-style-type: none"> <li>Breaches<sup>2</sup>: <ul style="list-style-type: none"> <li>the admitted patients 18 weeks waiting time measure for a third successive quarter;</li> <li>the non-admitted patients 18 weeks waiting time measure for a third successive quarter; or</li> <li>the incomplete pathway 18 weeks waiting time measure for a third successive quarter.</li> </ul> </li> </ul>
A&E indicator	<ul style="list-style-type: none"> <li>Fails to meet the A&amp;E target twice in any two quarters over a twelve month period and fails the indicator in a quarter during the subsequent nine-month period or the full year.</li> </ul>
Cancer waiting times	<ul style="list-style-type: none"> <li>Breaches: <ul style="list-style-type: none"> <li>the 31-day cancer waiting time target for a third successive quarter; or</li> <li>the 62-day cancer waiting time target for a third successive quarter.</li> </ul> </li> </ul>
Ambulance response times	<ul style="list-style-type: none"> <li>Breaches: <ul style="list-style-type: none"> <li>either category A 8-minute response time targets (Red 1 and Red 2) for a third successive quarter; or</li> <li>the category A 19-minute response time target for a third successive quarter.</li> </ul> </li> </ul>
Community services data completeness	<ul style="list-style-type: none"> <li>Fails to maintain the threshold for data completeness for: <ul style="list-style-type: none"> <li>referral to treatment information for a third successive quarter;</li> <li>service referral information for a third successive quarter; or</li> <li>treatment activity information for a third successive quarter.</li> </ul> </li> </ul>
Any other indicator	<ul style="list-style-type: none"> <li>Breaches the indicator for three successive quarters.</li> </ul>

<sup>1</sup> Consideration for investigation can occur as soon as the full year breach is recorded.

<sup>2</sup> As the indicator must be met in each month during the quarter, trusts should report, by exception, any month in which they have breached the RTT measure. Where trusts consequently report failures in the first or second months of a quarter, and have failed the measure in each of the previous two quarters, Monitor may consider whether to investigate the trust in advance of the end of the third quarter. This also applies where a trust fails the relevant measure in each year spanning any three quarters from 2012/13 going into 2013/14.

## Appendix B: The *Quality Governance Framework*

Quality governance is achieved through a combination of structures and processes (at and below board level) which lead on trust-wide quality performance including:

- ensuring required standards are achieved;
- investigating and taking action on sub-standard performance;
- planning and driving continuous improvement;
- identifying, sharing and ensuring delivery of best-practice;
- and identifying and managing risks to quality of care.

Diagram 16 lists the four areas and ten questions underpinning Monitor's [\*Quality Governance Framework\*](#). Samples of good practice in each are set out in the tables below.

**Diagram 16: Monitor's *Quality Governance Framework***

Strategy	Capabilities and culture	Processes and structure	Measurement
1A Does quality drive the trust's strategy?	2A Does the board have the necessary leadership, skills and knowledge to ensure delivery of the quality agenda?	3A Are there clear roles and accountabilities in relation to quality governance?	4A Is appropriate quality information being analysed and challenged?
1B Is the board sufficiently aware of potential risks to quality?	2B Does the board promote a quality-focused culture throughout the trust?	3B Are there clearly defined, well understood processes for escalating and resolving issues and managing quality performance?	4B Is the board assured of the robustness of the quality information?
		3C Does the board actively engage patients, staff and other key stakeholders on quality?	4C Is quality information used effectively?

Strategy	Example good practice
<b>1A: Does quality drive the trust's strategy?</b>	<p>Quality is embedded in the trust's overall strategy:</p> <ul style="list-style-type: none"> <li>• The trust's strategy comprises a small number of ambitious trust-wide quality goals covering safety, clinical outcomes and patient experience which drive year on year improvement.</li> <li>• Quality goals reflect local as well as national priorities, reflecting what is relevant to patients and staff.</li> <li>• Quality goals are selected to have the highest possible impact across the overall trust.</li> <li>• Wherever possible, quality goals are specific, measurable and time-bound.</li> <li>• Overall trust-wide quality goals link directly to goals in divisions/services (which will be tailored to the specific service).</li> <li>• There is a clear action plan for achieving the quality goals, with designated lead and timeframes.</li> </ul> <p>Trusts are able to demonstrate that the quality goals are effectively communicated and well-understood across the trust and the community it serves.</p> <p>The board regularly tracks performance relative to quality goals.</p>

<p><b>1B: Is the board sufficiently aware of potential risks to quality?</b></p>	<p>The board regularly assesses and understands current and future risks to quality and is taking steps to address them.</p> <p>The board regularly reviews quality risks in an up-to-date risk register.</p> <p>The board risk register is supported and fed by quality issues captured in directorate/service risk registers.</p> <p>The risk register covers potential future external risks to quality (eg, new techniques/technologies, competitive landscape, demographics, policy change, funding, regulatory landscape) as well as internal risks.</p> <p>There is clear evidence of action to mitigate risks to quality.</p> <p>Proposed initiatives are rated according to their potential impact on quality (eg, clinical staff cuts would likely receive a high risk assessment).</p> <p>Initiatives with significant potential to impact quality are supported by a detailed assessment that could include:</p> <ul style="list-style-type: none"> <li>• “Bottom-up” analysis of where waste exists in current processes and how it can be reduced without impacting quality (eg, lean).</li> <li>• Internal and external benchmarking of relevant operational efficiency metrics (of which nurse/bed ratio, average length of stay, bed occupancy, bed density and doctors/bed are examples which can be markers of quality).</li> <li>• Historical evidence illustrating prior experience in making operational changes without negatively impacting quality (eg, impact of previous changes to nurse/bed ratio on patient complaints).</li> </ul> <p>The board is assured that initiatives have been assessed for quality.</p> <p>All initiatives are accepted and understood by clinicians.</p> <p>There is clear subsequent ownership (eg, relevant clinical director).</p> <p>There is an appropriate mechanism in place for capturing front-line staff concerns, including a defined whistleblower policy.</p> <p>Initiatives’ impact on quality is monitored on an ongoing basis (post-implementation).</p> <p>Key measures of quality and early warning indicators identified for each initiative.</p> <p>Quality measures monitored before and after implementation.</p> <p>Mitigating action is taken where necessary.</p>
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Capabilities and culture	Example good practice
<p><b>2A: Does the board have the necessary leadership, skills and knowledge to ensure delivery of the quality agenda?</b></p>	<p>The board is assured that quality governance is subject to rigorous challenge, including full non-executive director engagement and review (either through participation in the audit committee or relevant quality-focused committees and sub-committees).</p> <p>The capabilities required in relation to delivering good quality governance are reflected in the make-up of the board.</p> <p>Board members are able to:</p> <ul style="list-style-type: none"> <li>• describe the trust's top three quality-related priorities;</li> <li>• identify well and poor performing services in relation to quality, and actions the trust is taking to address them;</li> <li>• explain how it uses external benchmarks to assess quality in the organisation (eg, adherence to NICE guidelines, recognised Royal College or Faculty measures);</li> <li>• understand the purpose of each metric they review, be able to interpret them and draw conclusions from them;</li> <li>• be clear about basic processes and structures of quality governance;</li> <li>• feel they have the information and confidence to challenge data; and</li> <li>• be clear about when it is necessary to seek external assurances on quality (eg, how and when it will access independent advice on clinical matters).</li> </ul> <p>Trusts are able to give specific examples of when the board has had a significant impact on improving quality performance (e.g. must provide evidence of the board's role in leading on quality).</p> <p>The board conducts regular self-assessments to test its skills and capabilities; and has a succession plan to ensure they are maintained.</p> <p>Board members have attended training sessions covering the core elements of quality governance and continuous improvement.</p>
<p><b>2B: Does the board promote a quality-focused culture throughout the trust?</b></p>	<p>The board takes an active leadership role on quality.</p> <p>The board takes a proactive approach to improving quality (eg, it actively seeks to apply lessons learnt in other trusts and external organisations).</p> <p>The board regularly commits resources (time and money) to delivering quality initiatives.</p> <p>The board is actively engaged in the delivery of quality improvement initiatives (eg, some initiatives led personally by board members).</p> <p>The board encourages staff empowerment on quality.</p>

	<p>Staff are encouraged to participate in quality/continuous improvement training and development.</p> <p>Staff feel comfortable reporting harm and errors (these are seen as the basis for learning, rather than punishment).</p> <p>Staff are entrusted with delivering the quality improvement initiatives they have identified (and are held to account for delivery).</p> <p>Internal communications (eg, monthly newsletter, intranet, notice boards) regularly feature articles on quality.</p>
<b>Structures and processes</b>	<b>Example good practice</b>
<b>3A: Are there clear roles and accountabilities in relation to quality governance?</b>	<p>Each and every board member understands their ultimate accountability for quality.</p> <p>There is a clear organisation structure that cascades responsibility for delivering quality performance from “board to ward to board” (and there are specified owners in-post and actively fulfilling their responsibilities).</p> <p>Quality is a core part of main board meetings, both as a standing agenda item and as an integrated element of all major discussions and decisions.</p> <p>Quality performance is discussed in more detail each month by a quality-focused board sub-committee with a stable, regularly attending membership.</p>
<b>3B: Are there clearly defined, well understood processes for escalating and resolving issues and managing quality performance?</b>	<p>Boards are clear about the processes for escalating quality performance issues to the board:</p> <ul style="list-style-type: none"> <li>• Processes are documented.</li> <li>• There are agreed rules determining which issues should be escalated.</li> <li>• These rules cover, among other issues, escalation of serious untoward incidents and complaints.</li> </ul> <p>Robust action plans are put in place to address quality performance issues (eg, including issues arising from serious untoward incidents and complaints). With actions having:</p> <ul style="list-style-type: none"> <li>• designated owners and time frames; and</li> <li>• regular follow-ups at subsequent board meetings.</li> </ul> <p>Lessons from quality performance issues are well-documented and shared across the trust on a regular, timely basis, leading to rapid implementation at scale of good-practice.</p> <p>There is a well-functioning, impactful clinical and internal audit process in relation to quality governance, with clear evidence of action to resolve audit concerns:</p>

	<ul style="list-style-type: none"> <li>• Continuous rolling programme that measures and improves quality.</li> <li>• Action plans completed from audit.</li> <li>• Re-audits undertaken to assess improvement.</li> </ul> <p>A whistleblower/error reporting process is defined and communicated to staff; and staff are prepared if necessary to blow the whistle.</p> <p>There is a performance management system with clinical governance policies for addressing under-performance and recognising and incentivising good performance at individual, team and service line levels.</p>
<b>3C: Does the board actively engage patients, staff and other key stakeholders on quality?</b>	<p>Quality outcomes are made public (and accessible) regularly, and include objective coverage of both good and bad performance.</p> <p>The board actively engages patients on quality, eg:</p> <ul style="list-style-type: none"> <li>• patient feedback is actively solicited, made easy to give and based on validated tools;</li> <li>• patient views are proactively sought during the design of new pathways and processes;</li> <li>• all patient feedback is reviewed on an ongoing basis, with summary reports reviewed regularly and intelligently by the board;</li> <li>• the board regularly reviews and interrogates complaints and serious untoward incident data; and</li> <li>• the board uses a range of approaches to “bring patients into the board room” (eg, face-to-face discussions, video diaries, ward rounds, patient shadowing).</li> </ul> <p>The board actively engages staff on quality, eg:</p> <ul style="list-style-type: none"> <li>• staff are encouraged to provide feedback on an ongoing basis, as well as through specific mechanisms (eg, monthly “temperature gauge” plus annual staff survey); and</li> <li>• all staff feedback is reviewed on an ongoing basis with summary reports reviewed regularly and intelligently by the board.</li> </ul> <p>The board actively engages all other key stakeholders on quality, eg:</p> <ul style="list-style-type: none"> <li>• quality performance is clearly communicated to commissioners to enable them to make educated decisions;</li> <li>• feedback from Healthwatch and PALS is considered; and</li> <li>• for care pathways involving GP and community care, discussions are held with all providers to identify potential issues and ensure overall quality along the pathway.</li> </ul>

	The board is clear about governors' involvement in quality governance.
<b>Measurement</b>	<b>Example good practice</b>
<b>4A: Is appropriate quality information being analysed and challenged?</b>	<p>The board reviews a monthly "dashboard" of the most important metrics. Good practice dashboards include:</p> <ul style="list-style-type: none"> <li>• key relevant national priority indicators and regulatory requirements;</li> <li>• selection of other metrics covering safety, clinical effectiveness and patient experience (at least 3 each);</li> <li>• selected "advance warning" indicators;</li> <li>• adverse event reports/serious untoward incident reports/patterns of complaints;</li> <li>• measures of instances of harm (eg, Global Trigger Tool);</li> <li>• Monitor's risk ratings (with risks to future scores highlighted);</li> <li>• where possible/appropriate, percentage compliance to agreed best-practice pathways; and</li> <li>• qualitative descriptions and commentary to back up quantitative information.</li> </ul> <p>The board is able to justify the selected metrics as being:</p> <ul style="list-style-type: none"> <li>• linked to trust's overall strategy and priorities;</li> <li>• covering all of the trust's major focus areas;</li> <li>• the best available ones to use; and</li> <li>• useful to review.</li> </ul> <p>The board dashboard is backed up by a "pyramid" of more granular reports reviewed by sub-committees, divisional leads and individual service lines.</p> <p>Quality information is analysed and challenged at the individual consultant level.</p> <p>The board dashboard is frequently reviewed and updated to maximise effectiveness of decisions; and in areas lacking useful metrics, the board commits time and resources to developing new metrics.</p>
<b>4B: Is the board assured of the robustness of the quality information?</b>	<p>There are clearly documented, robust controls to assure ongoing information accuracy, validity and comprehensiveness:</p> <ul style="list-style-type: none"> <li>• Each directorate/service has a well-documented, well-functioning process for clinical governance that assures the board of the quality of its data.</li> <li>• Clinical audit programme is driven by national audits, with processes for initiating additional audits as a result of identification of local risks (eg,</li> </ul>

	<p>incidents).</p> <ul style="list-style-type: none"> <li>• Electronic systems are used where possible, generating reliable reports with minimal ongoing effort.</li> <li>• Information can be traced to source and is signed-off by owners.</li> </ul> <p>There is clear evidence of action to resolve audit concerns:</p> <ul style="list-style-type: none"> <li>• Action plans are completed from audit (and subject to regular follow-up reviews).</li> <li>• Re-audits are undertaken to assess performance improvement.</li> </ul> <p>There are no major concerns with coding accuracy performance.</p>
<b>4C: Is quality information being used effectively?</b>	<p>Information in Quality Reports is displayed clearly and consistently.</p> <p>Information is compared with target levels of performance (in conjunction with a R/A/G rating), historic own performance and external benchmarks (where available and helpful).</p> <p>Information being reviewed must be the most recent available, and recent enough to be relevant.</p> <p>“On demand” data is available for the highest priority metrics.</p> <p>Information is “humanised”/personalised where possible (e.g. unexpected deaths shown as an absolute number, not embedded in a mortality rate).</p> <p>Trust is able to demonstrate how reviewing information has resulted in actions which have successfully improved quality performance.</p>

## **Appendix C: NHS foundation trust transactions**

As part of its overall assessment of NHS foundation trusts' compliance with the continuity of services and governance conditions of their licences, Monitor will consider the impact of transactions involving these trusts. We will take a proportionate approach, with the transaction's size and scope determining the degree of analysis we will seek to undertake.

Our approach to transactions involving NHS foundation trusts is twofold:

### **1. Statutory transactions**

Under the 2012 Act, we have a statutory role in approving (where we are satisfied that trust/s have taken the necessary preparatory steps):

- mergers of NHS foundation trusts;
- acquisitions by an NHS foundation trust of an NHS trust or another foundation trust;
- separations of NHS foundation trusts into two or more NHS foundation trusts; and
- dissolutions of NHS foundation trusts.

Trusts undertaking these transactions are required under the 2012 Act to carry out a number of procedural actions (e.g. receiving the approval of a majority of governors) set out below.

**NHS foundation trusts should, before undertaking these procedural actions, follow the guidance set out in this appendix in order for Monitor**

**to be satisfied that the trust has completed the necessary preparatory steps required for formal approval of the transaction.**

### **2. Other transactions**

In addition to these statutory transactions, we will also assess other transactions to determine whether they are likely to represent a risk to compliance with the continuity of services or NHS foundation trust governance conditions.

Such transactions include:

- projects funded through private finance initiatives (PFI);
- contracts to provide services;<sup>19</sup>
- other acquisitions, investments or divestments; and
- changes in indemnity arrangements that exceed the thresholds shown in Diagram 17.

For "significant"<sup>20</sup> transactions Monitor will consider the transaction's impact on the NHS foundation trust's risk ratings and communicate this to trust boards.

Where, in Monitor's view, a transaction represents a substantial level of risk to compliance with the trust's continuity of services or governance conditions, Monitor will consider whether the use of its powers are necessary to mitigate that risk.

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<sup>19</sup> These may or may not involve a transfer of assets but will be treated as an investment for these purposes.

<sup>20</sup> As defined in Diagram 18. This is not to be confused with significant transactions as set out in NHS foundation trust constitutions.

## Reporting transactions to Monitor

The board will need to determine when transactions – statutory or otherwise – should be reported to Monitor as well as the information required.

### Diagram 17: thresholds for reporting investments or divestments

IF A TRANSACTION MEETS ANY ONE OF THESE CRITERIA, THE NHS FOUNDATION TRUST SHOULD REPORT THIS TRANSACTION TO MONITOR

Ratio	Description	Reporting thresholds	
		Non-health care/ international	UK health care
<b>Assets</b>	The gross assets or capital* subject to the transaction, divided by the gross assets of the NHS foundation trust	> 5 %	> 10%
<b>Income</b>	The income attributable to: • the assets; or • the contract associated with the transaction, divided by the income of the NHS foundation trust	> 5 %	> 10%
<b>Consideration to total NHS foundation trust capital</b>	The gross capital** of the company or business being acquired/divested, divided by the total capital*** of the NHS foundation trust following completion, or the effects on the total capital of the NHS foundation trust resulting from a transaction	> 5 %	> 10%

\* Gross assets is the total of fixed assets and current assets

\*\* Gross capital equals the market value of the target's shares and debt securities, plus the excess of current liabilities over current assets

\*\*\* Total capital of the foundation trust equals taxpayers' equity

Even where a proposed transaction does not trigger the reporting requirements for investments or divestments set out below, boards are encouraged to take account of Monitor's best practice advice described in [Risk Evaluation for Investment Decisions by NHS Foundation Trusts](#) (REID) when evaluating the processes which they should undertake to ensure that reputational and financial risks are fully understood and governance obligations met. The types of transactions covered

in REID include significant capital expenditure, acquisitions, joint ventures, equity stakes, major property transactions, mergers and alliances. The financing of such transactions may be through retained surpluses, equity, debt, sale and leaseback transactions, PFI and other financial instruments.

The timing for reporting major investments is also set out in *REID*. Boards should inform Monitor once they have completed their detailed review and before committing to an

investment or divestment. When contemplating major investments or divestments, NHS foundation trusts may wish to inform Monitor prior to proceeding to the detailed review stage.

Based on their scale relative to the NHS foundation trust, major

investments or divestments are categorised between “material” and “significant” transactions. The relevant thresholds are set out in Diagram 18:

- for acquisitions and divestments of assets or businesses, data from the last year’s audited accounts should be used;

## Diagram 18: Categories for major investments/divestments

IF A TRANSACTION MEETS ANY ONE OF THESE CRITERIA, THE NHS FOUNDATION TRUST SHOULD REPORT THIS TRANSACTION TO MONITOR

Ratio	Description	Categories*	
		Material	Significant
<b>Assets</b>	The gross assets or capital** subject to the transaction, divided by the gross assets of the foundation trust	> 10%	> 25%
<b>Income</b>	The income attributable to: <ul style="list-style-type: none"> <li>• the assets; or</li> <li>• the contract associated with the transaction,</li> </ul> divided by the income of the NHS foundation trust	> 10%	> 25%
<b>Consideration to total NHS foundation trust capital</b>	The gross capital*** of the company or business being acquired/divested, divided by the total capital**** of the NHS foundation trust following completion, or the effects on the total capital of the NHS foundation trust resulting from a transaction	> 10 %	> 25%

\* For non-healthcare/international transactions the thresholds will be reduced by 50% for investments only

\*\* Gross assets is the total of fixed assets and current assets

\*\*\* Gross capital equals the market value of the target’s shares and debt securities, plus the excess of current liabilities over current assets

\*\*\*\* Total capital of the NHS foundation trust equals taxpayers’ equity

- for capital investments, the investment may be made over a number of years, with revenue attributable to the investment potentially only being achieved in future years. For the asset ratio, estimated capital spend will be compared with the audited asset

values, and for income ratio the full year impact of projected revenue from the investment will be compared with projected foundation trust revenue in that year; and

- where a foundation trust chooses to cease membership of the NHS

Litigation Authority's various schemes, including CNST, and enters into alternative indemnity arrangements, and this affects the capital (taxpayers' equity) on the trust's balance sheet, this may trigger a transaction review according to the thresholds set out in Diagrams 17 and 18.

In addition:

- for any other transaction types, the data used for the transaction classification will be considered on a case-by-case basis. Foundation trusts should seek guidance from Monitor if there is any uncertainty;
- where there has been a material or significant transaction since the date of the last audited accounts, we will consider the data used for the transaction classification on a case-by-case basis; and
- in the case of an acquisition where there has been a material change in the financial position of either the foundation trust or the business being acquired since the last accounts date, and the ratio at that time is not considered representative of the contribution of the acquired business to the foundation trust, Monitor may, following discussions with the foundation trust, choose to recalculate the ratios on a pro-forma basis using current or future year data.

In all cases Monitor may, following discussions with the foundation trust, choose to recalculate the ratios using data from future years where we

reasonably consider this to be an appropriate measure of the relative size of the transaction.

### **Material and significant transactions**

The distinction between 'material' and 'significant' transactions, the two categories of major investments or divestments, determines both the extent of information Monitor may request and how Monitor uses the information to assess the risk to compliance with the governance and continuity of services licence conditions.

### **Material investments and divestments**

Where a major investment (including contracts) or divestment is deemed to be 'material', based on the thresholds in Diagram 18, Monitor will, as part of its overall assessment of financial risk and governance, request evidence that the board is satisfied that it has:

- conducted an appropriate level of financial and market due diligence relating to the proposed investment or divestment;
- considered the implications of the proposed investment or divestment on the resulting entity's financial risk rating, having taken full account of reasonable downside sensitivities;
- conducted appropriate inquiry about the probity of any partners involved in the proposed investment or divestment, taking into account the nature of the services provided and likely reputational risk;

- conducted an appropriate assessment of the nature of services being undertaken as a result of the investment or divestment and any implications for reputational risk arising from these;
- received appropriate external advice from independent professional advisers with relevant experience and qualifications;
- taken into account the best practice advice in REID or commented by exception where this is not the case;
- resolved any accounting issues relating to the investment or divestment and its proposed treatment;
- addressed any legal issues associated with the transfer of staff (either via an acquisition, divestment or fixed term contract);
- complied with any consultation requirements;
- established the organisational and management capacity and skills to deliver the planned benefits of the proposed investment or divestment;
- involved senior clinicians at the appropriate level in the decision-making process and received confirmation from them that there are no material clinical concerns in proceeding with the investment or divestment, including consideration of the subsequent configuration of clinical services;
- in the case of a contract of a specified period, ensured

appropriate legal protection in relation to staff, including on termination of the contract;

- ensured relevant commercial risks are understood;
- at the time of the acquisition, a corporate governance statement (see Appendix D) for the acquirer; and
- at the time of the acquisition, a board statement that plans are in place to be able to make the corporate governance statement (see Appendix D) in the new organisation within six months.

This should take place prior to financial and legal closure. In addition:

- within six months of the transaction, the new organisation should make a revised corporate governance statement (see Appendix D) for the new organisation.

The board will also need to consider and certify that it has satisfied itself that a proposed 'material' investment or divestment will meet the requirements of the choice and competition licence conditions.

If the board is not able to certify to Monitor that it is satisfied that the above matters have been addressed, or provide material on request, it should explain why. Monitor will consider this in assessing the risk associated with the transaction.

### **Diversification**

Where trusts undertake material transactions representing substantial

diversification, Monitor will regard this as a 'significant' transaction for the purposes of quality governance assurance – see below.

### **Significant investments and divestments**

Where a major investment (including contracts) or divestment is deemed to be "significant", NHS foundation trusts should, in addition to the evidence requested for a 'material' transaction, provide Monitor with a greater degree of assurance regarding the risk to continuity of services or governance.

This should be at the Final Business Case stage. As part of this more detailed review phase, Monitor may request financial and other information in order to undertake a full risk evaluation of the resulting business following completion of the transaction.

The purpose of the risk evaluation process is to consider how the proposed investment or divestment may affect the risk profile of the NHS foundation trust. This will inform Monitor whether any change should be reflected in the published continuity of services risk rating or governance rating.

Monitor may also request evidence from the board of the strategy behind its proposed investment or divestment and other matters which may reflect on the governance of the NHS foundation trust.

On completion of the risk assessment, where the indicative continuity of services risk rating is less than 3 or there are outstanding governance

concerns, Monitor will provide details of the risks identified. In these circumstances Monitor would not expect a board to enter into a binding contract without having first satisfied itself and Monitor that these risks can be mitigated.

### **Financial and quality governance assurances for 'significant' transactions**

In the case of a "significant" transaction Monitor may, on a case-by-case basis, seek additional evidence concerning the assurance the board has received in relation to the transaction. This may include any or all of the following:

- a post-transaction integration plans;
- a working capital board memorandum prepared in relation to the transaction;
- external reports from independent accountants to report on these;
- financial reporting procedures board memorandum and external independent advice on this.

The information requested by Monitor will take into account the specific risks of the investment or divestment proposed. Lack of any or all of the information requested is likely to have a bearing on Monitor's view of the degree of risk the transaction represents.

In addition to the above, Monitor may also request evidence from trusts undertaking 'significant' transactions that they have:

1. prepared plans for applying appropriate quality governance arrangements across the new organisation; and
2. received external assurance, in the form of an independent opinion, on the trust's post-transaction quality governance arrangements.

1 and 2 above may also apply to trusts undertaking material transactions displaying substantial diversification (see above).

### **Transactions involving NHS foundation trusts meeting investigation triggers**

Monitor may vary its approach to calculating risk ratings for transactions where there is a risk that the NHS foundation trust is in breach of its governance or continuity of services licence conditions.

Where an NHS foundation trust has met one of Monitor's investigation triggers, and Monitor is currently considering whether to investigate formally, or is formally investigating that trust, Monitor may:

- for material transactions, postpone receipt of trust certifications concerning the transaction in question; and
- for substantial transactions, postpone assigning a risk-rating to the transaction until Monitor has determined whether the trust is, or is not, in breach of the governance or continuity of services conditions of its licence and whether regulatory action is necessary.

### **Transactions involving NHS foundation trusts in breach of the continuity of services or governance conditions of their licence**

Where an NHS foundation trust is in breach of the continuity of services or governance conditions of their licence, Monitor will consider any material transaction as a significant transaction and consequently apply an associated risk rating. In assessing the risk associated with the transaction and any subsequent regulatory action, we will consider the prospects of the trust returning to compliance.

### **Investment adjustments**

In order not to discourage NHS foundation trusts from undertaking transactions with short-term negative implications for Monitor's risk ratings, NHS foundation trusts may apply for investment adjustments.

An investment adjustment will be considered by Monitor on a case-by-case basis and may apply only in the following circumstances:

- written application is made by the NHS foundation trust to Monitor requesting an investment adjustment and providing supporting information; and
- the relevant investment is a major investment.

### **Continuity of services risk rating adjustments**

For continuity of services risk rating adjustments, trusts are required to provide evidence that:

- risks and potential rewards, and their likely timing, are demonstrated in accordance with REID; and
- the NHS foundation trust's plan supporting the investment identifies the potential risk adjusted costs and returns over the period of the investment.

In assessing a potential investment adjustment, Monitor may require a presentation from the NHS foundation trust setting out the basis on which it considers it appropriate, including detailed analysis of cash flows and associated risks.

### **Governance rating adjustments**

Trusts seeking such an adjustment based on a revised performance threshold should, in the first instance, submit to Monitor, alongside the standard requirements for a transaction:

- a proposed threshold trajectory for each governance indicator for the acquired business by quarter, returning to the target threshold within 13 months;
- a proposed threshold trajectory for each indicator which the trust should be scored across the combined business, rather than separately; and
- a rationale for the thresholds above.

Monitor will investigate the rationale before agreeing to any trajectory.

In addition, trusts seeking post-transaction NHS Litigation Authority CNST levels should indicate the proposed timeline and plans to achieve a CNST level of 1.0. Monitor will generally not provide a transaction adjustment related to risks triggered by Care Quality Commission concerns.

For further information, see Monitor's [\*Investment adjustments: Guidance for NHS Foundation Trusts\*](#).

### **Joint ventures**

NHS foundation trusts entering into major joint ventures, including Academic Health Science Centres (AHSCs), that meet any of the triggers set out below are required to:

- as part of the annual plan each year, certify anticipated continued compliance with the requirements set out in Appendix E; and
- by exception, to notify Monitor where an NHS foundation trust ceases to comply with the requirements set out in Appendix E.

The relevant triggers are:

- "Control", ie, where a separate decision-making body has influence over the development and/or delivery of an NHS foundation trust's strategy. Where the separate decision-making body is a legal entity, influence would normally be defined as at least 20% ownership.
- "Financial conditions": where an NHS foundation trust's:
  - assets within the vehicle are greater than 10% of its total

- assets (per the most recent quarterly monitoring submission); or
  - share of income or expenditure from the partnership exceeds 10% of the foundation trust's total income or expenditure respectively in any full financial year.
- Legal arrangement – for 'accredited' AHSCs only, where an NHS foundation trust enters into a legal agreement establishing the legal arrangement of the partnership.

### **Statutory transactions: other requirements**

NHS foundation trusts undertaking a statutory transaction are required under the 2012 Act to follow a number of procedural steps. These steps should be carried out after completing any applicable processes of assurance and risk assessment as specified elsewhere in this Appendix.

### **Mergers:**

An application by two NHS foundation trusts, or an NHS foundation trust and an NHS trust, for a merger must be accompanied by:

- evidence of approval by a majority of governors of both NHS foundation trusts (in the case of an NHS trust, the support of the Secretary of State);
- details of the property and liabilities being transferred; and

- the constitution of the proposed new organisation following the transaction.

### **Acquisitions:**

An application by an NHS foundation trust for the acquisition of another foundation trust or NHS trust must be accompanied by:

- evidence of approval of the transaction by a majority of the governors of both NHS foundation trusts (or, in the case of an NHS trust, the support of the Secretary of State); and
- the constitution of the proposed new organisation following the transaction.

### **Dissolutions:**

An application by an NHS foundation trust for its dissolution must be accompanied by evidence of approval of a majority of governors of the NHS foundation trust. Monitor will grant the application if it is satisfied that, in addition to the necessary preparatory steps having been completed, the trust has no liabilities.

### **Separations:**

An application by an NHS foundation trust for its separation into two or more new foundation trusts must be accompanied by:

- evidence of approval of a majority of governors of the NHS foundation trust;
- specification of the property and liabilities proposed to be

transferred to each new organisation; and

- the constitutions for each proposed new organisation.

## Appendix D: Corporate governance statement

	Risks and mitigating actions
The Board is satisfied that [insert name] NHS foundation trust applies those principles, systems and standards of good corporate governance which reasonably would be regarded as appropriate for a supplier of health care services to the NHS.	
The Board has regard to such guidance on good corporate governance as may be issued by Monitor from time to time	
<p>The Board is satisfied that [insert name] NHS foundation trust implements:</p> <p>(a) effective board and committee structures;</p> <p>(b) clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees; and</p> <p>(c) clear reporting lines and accountabilities throughout its organisation.</p>	
<p>The Board is satisfied that [insert name] NHS foundation trust effectively implements systems and/or processes</p> <p>(a) to ensure compliance with the Licence holder's duty to operate efficiently, economically and effectively;</p> <p>(b) for timely and effective scrutiny and oversight by the Board of the Licence holder's operations;</p> <p>(c) to ensure compliance with health care standards binding on the Licence holder including but not restricted to standards specified by the Secretary of State, the Care Quality Commission, the NHS Commissioning Board and statutory regulators of health care professions;</p> <p>(d) for effective financial decision-making, management and control (including but not restricted to appropriate systems and/or processes to ensure the Licence holder's ability to continue as a going concern);</p> <p>(e) to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making;</p> <p>(f) to identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of its Licence;</p> <p>(g) to generate and monitor delivery of business plans (including any changes to such plans) and to receive internal and</p>	

<p>where appropriate external assurance on such plans and their delivery; and</p> <p>(h) to ensure compliance with all applicable legal requirements.</p>	
<p>The Board is satisfied:</p> <p>(a) that there is sufficient capability at Board level to provide effective organisational leadership on the quality of care provided;</p> <p>(b) that the Board's planning and decision-making processes take timely and appropriate account of quality of care considerations;</p> <p>(c) the collection of accurate, comprehensive, timely and up to date information on quality of care;</p> <p>(d) that the Board receives and takes into account accurate, comprehensive, timely and up to date information on quality of care;</p> <p>(e) that [insert name] NHS foundation trust including its Board actively engages on quality of care with patients, staff and other relevant stakeholders and takes into account as appropriate views and information from these sources; and</p> <p>(f) that there is clear accountability for quality of care throughout [Insert name] NHS foundation trust including but not restricted to systems and/or processes for escalating and resolving quality issues including escalating them to the Board where appropriate.</p>	
<p>The Board of [insert name] NHS foundation trust effectively implements systems to ensure that it has in place personnel on the Board, reporting to the Board and within the rest of the Licence holder's organisation who are sufficient in number and appropriately qualified to ensure compliance with the Conditions of this Licence.</p>	

## Appendix E: Joint Ventures and Academic Health Science Centres

For NHS foundation trusts:

- that are part of a major Joint Venture or Academic Health Science Centre (AHSC); or
- whose boards are considering entering into either a major Joint Venture or an AHSC.

The following statement should be made:

<b>The board is satisfied it has or continues to:</b> <ul style="list-style-type: none"><li>• ensure that the partnership will not inhibit the trust from remaining at all times compliant with the conditions of its licence;</li><li>• have appropriate governance structures in place to maintain the decision making autonomy of the trust;</li><li>• conduct an appropriate level of due diligence relating to the partners when required;</li><li>• consider implications of the partnership on the trust's financial risk rating having taken full account of any contingent liabilities arising and reasonable downside sensitivities;</li><li>• consider implications of the partnership on the trust's governance processes</li><li>• conduct appropriate inquiry about the nature of services provided by the partnership, especially clinical, research and education services, and consider reputational risk;</li><li>• comply with any consultation requirements;</li><li>• have in place the organisational and management capacity to deliver the benefits of the partnership;</li><li>• involve senior clinicians at appropriate levels in the decision-making process and receive assurance from them that there are no material concerns in relation to the partnership, including consideration of any re-configuration of clinical, research or education services;</li></ul>	<b>Risks and mitigating actions comprise:</b>
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<ul style="list-style-type: none"> <li>• address any relevant legal and regulatory issues (including any relevant to staff, intellectual property and compliance of the partners with their own regulatory and legal framework);</li> <li>• ensure appropriate commercial risks are reviewed;</li> <li>• maintain the register of interests and no residual material conflicts identified; and</li> <li>• engage the governors of the trust in the development of plans and give them an opportunity to express a view on these plans.</li> </ul> <p>In addition, before entering into an accredited AHSC or other major Joint Venture, boards of NHS foundation trusts are required to certify that they have:</p> <ul style="list-style-type: none"> <li>• received external advice from independent professional advisers with appropriate experience and qualifications; and</li> <li>• taken into account the best practice advice in <a href="#"><i><u>Risk Evaluation for Investment Decisions by NHS Foundation Trusts</u></i></a> or comment by exception where this is not the case.</li> </ul>	
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## **Appendix F: Continuity of services and NHS foundation trust governance licence conditions**

The *Risk assessment framework* is designed to oversee compliance with the continuity of services conditions (primarily Condition CoS3) and, for NHS foundation trusts, licence condition 4 (Condition FT4), which relates to governance. For reference, these can be found in this appendix.

For more information on the licence, including other sections and guidance on complying with other requirements, please visit Monitor's website:

[www.monitor.gov.uk](http://www.monitor.gov.uk)

### **Condition CoS1 – Continuing provision of Commissioner Requested Services**

1. The Licensee shall not cease to provide, or materially alter the specification or means of provision of, any Commissioner Requested Service otherwise than in accordance with the following paragraphs of this Condition.
2. If, during the period of a contractual or other legally enforceable obligation to provide a Commissioner Requested Service, or during any period when this condition applies by virtue of Condition G9(1)(b), Monitor issues to the Licensee a direction in writing to continue providing that service for a period specified in the direction, then the Licensee shall provide the service for that period in accordance with the direction.
3. The Licensee shall not materially alter the specification or means of provision of any Commissioner Requested Service except:
  - (a) with the agreement in writing of all Commissioners to which the Licensee is required by a contractual or other legally enforceable obligation to provide the service as a Commissioner Requested Service; or
  - (b) at any time when this condition applies by virtue of Condition G9(1)(b), with the agreement in writing of all Commissioners to which the Licensee provides, or may be requested to provide, the service as a Commissioner Requested Service; or
  - (c) if required to do so by, or in accordance with the terms of its authorisation by, any body having responsibility pursuant to statute for regulating one or more aspects of the provision of health care services in England and which has been designated by Monitor for the purposes of this condition and of equivalent conditions in other licences granted under the 2012 Act.
4. If the specification or means of provision of a Commissioner Requested Service is altered as provided in paragraph 3 the Licensee, within [28] days of the alteration, shall give to Monitor notice in writing of the occurrence of the alteration with a summary of its nature.
5. For the purposes of this Condition an alteration to the specification or means of provision of any Commissioner Requested Service is material if it involves the delivery or provision of that service in a manner which differs from the manner specified and described in:
  - (a) the contract in which it was first required to be provided to a Commissioner at or following the coming into effect of this Condition; or

- (b) if there has been an alteration pursuant to paragraph 3, the document in which it was specified on the coming into effect of that alteration; or
- (c) at any time when this Condition applies by virtue of Condition G9(1)(b), the contract, or NHS contract, by which it was required to be provided immediately before the commencement of this Licence or the Licensee's authorisation, as the case may be.

## **Condition CoS2 – Restriction on the disposal of assets**

1. The Licensee shall establish, maintain and keep up to date, an asset register which complies with paragraphs 2 and 3 of this Condition (“the Asset Register”)
2. The Asset Register shall list every relevant asset used by the Licensee for the provision of Commissioner Requested Services.
3. The Asset Register shall be established, maintained and kept up to date in a manner that reasonably would be regarded as both adequate and professional.
4. The obligations in paragraphs 5 to 8 shall apply to the Licensee if Monitor has given notice in writing to the Licensee that it is concerned about the ability of the Licensee to carry on as a going concern.
5. The Licensee shall not dispose of, or relinquish control over, any relevant asset except:
  - (a) with the consent in writing of Monitor, and
  - (b) in accordance with the paragraphs 6 to 8 of this Condition.
6. The Licensee shall furnish Monitor with such information as Monitor may request relating to any proposal by the Licensee to dispose of, or relinquish control over, any relevant asset.
7. Where consent by Monitor for the purpose of paragraph 5(a) is subject to conditions, the Licensee shall comply with those conditions.
8. Paragraph 5(a) of this Condition shall not prevent the Licensee from disposing of, or relinquishing control over, any relevant asset where:
  - (a) Monitor has issued a general consent for the purposes of this Condition (whether or not subject to conditions) in relation to:
    - (i) transactions of a specified description; or
    - (ii) the disposal of or relinquishment of control over relevant assets of a specified description, andthe transaction or the relevant assets are of a description to which the consent applies and the disposal, or relinquishment of control, is in accordance with any conditions to which the consent is subject; or
  - (b) the Licensee is required by the Care Quality Commission to dispose of a relevant asset.

9. In this Condition:

“disposal”	<p>means any of the following:</p> <p>(a) a transfer, whether legal or equitable, of the whole or any part of an asset (whether or not for value) to a person other than the Licensee; or</p> <p>(b) a grant, whether legal or equitable, of a lease, licence, or loan of (or the grant of any other right of possession in relation to) that asset; or</p> <p>(c) the grant, whether legal or equitable, of any mortgage, charge, or other form of security over that asset; or</p> <p>(d) if the asset is an interest in land, any transaction or event that is capable under any enactment or rule of law of affecting the title to a registered interest in that land, on the assumption that the title is registered,</p> <p>and references to “dispose” are to be read accordingly;</p>
“relevant asset”	<p>means any item of property, including buildings, interests in land, equipment (including rights, licenses and consents relating to its use), without which the Licensee’s ability to meet its obligations to provide Commissioner Requested Services would reasonably be regarded as materially prejudiced;</p>
“relinquishment of control”	<p>includes entering into any agreement or arrangement under which control of the asset is not, or ceases to be, under the sole management of the Licensee, and “relinquish” and related expressions are to be read accordingly.</p>

10. The Licensee shall have regard to such guidance as may be issued from time to time by Monitor regarding:

- (a) the manner in which asset registers should be established, maintained and updated, and
- (b) property, including buildings, interests in land, intellectual property rights and equipment, without which a licence holder’s ability to provide Commissioner Requested Services should be regarded as materially prejudiced.

### **Condition CoS3 – Standards of corporate governance and financial management**

1. The Licensee shall at all times adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as:
  - (a) suitable for a provider of the Commissioner Requested Services provided by the Licensee, and
  - (b) providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern.
2. In its determination of the systems and standards to adopt for the purpose of paragraph 1, and in the application of those systems and standards, the Licensee shall have regard to:
  - (a) such guidance as Monitor may issue from time to time concerning systems and standards of corporate governance and financial management;
  - (b) the Licensee's rating using the risk rating methodology published by Monitor from time to time, and
  - (c) the desirability of that rating being not less than the level regarded by Monitor as acceptable under the provisions of that methodology.

### **Condition CoS4 – Undertaking from the ultimate controller**

1. The Licensee shall procure from each company or other person which the Licensee knows or reasonably ought to know is at any time its ultimate controller, a legally enforceable undertaking in favour of the Licensee, in the form specified by Monitor, that the ultimate controller (“the Covenantor”):
  - (a) will refrain from any action, and will procure that any person which is a subsidiary of, or which is controlled by, the Covenantor (other than the Licensee and its subsidiaries) will refrain from any action, which would be likely to cause the Licensee to be in contravention of any of its obligations under the 2012 Act or this Licence, and
  - (b) will give to the Licensee, and will procure that any person which is a subsidiary of, or which is controlled by, the Covenantor (other than the Licensee and its subsidiaries) will give to the Licensee, all such information in its possession or control as may be necessary to enable the Licensee to comply fully with its obligations under this Licence to provide information to Monitor.
2. The Licensee shall obtain any undertaking required to be procured for the purpose of paragraph 1 within 7 days of a company or other person becoming an ultimate controller of the Licensee and shall ensure that any such undertaking remains in force for as long as the Covenantor remains the ultimate controller of the Licensee.
3. The Licensee shall:
  - (a) deliver to Monitor a copy of each such undertaking within seven days of obtaining it;
  - (b) inform Monitor immediately in writing if any Director, secretary or other officer of the Licensee becomes aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached, and
  - (c) comply with any request which may be made by Monitor to enforce any such undertaking.
4. For the purpose of this Condition, subject to paragraph 5, a person (whether an individual or a body corporate) is an ultimate controller of the Licensee if:
  - (a) directly, or indirectly, the Licensee can be required to act in accordance with the instructions of that person acting alone or in concert with others, and
  - (b) that person cannot be required to act in accordance with the instructions of another person acting alone or in concert with others.

5. A person is not an ultimate controller if they are:
- (a) a health service body, within the meaning of section 9 of the 2006 Act;
  - (b) a Governor or Director of the Licensee and the Licensee is an NHS foundation trust;
  - (c) any Director of the Licensee who does not, alone or in association with others, have a controlling interest in the ownership of the Licensee and the Licensee is a body corporate; or
  - (d) a trustee of the Licensee and the Licensee is a charity.

**Condition CoS5 – Risk pool levy**

1. The Licensee shall pay to Monitor any sums required to be paid in consequence of any requirement imposed on providers under section 135(2) of the 2012 Act, including sums payable by way of levy imposed under section 139(1) and any interest payable under section 143(10), by the dates by which they are required to be paid.
2. In the event that no date has been clearly determined by which a sum referred to in paragraph 1 is required to be paid, that sum shall be paid within 28 days of being demanded in writing by Monitor.

### **Condition CoS6 – Co-operation in the event of financial stress**

1. The obligations in paragraph 2 shall apply if Monitor has given notice in writing to the Licensee that it is concerned about the ability of the Licensee to carry on as a going concern.
2. When this paragraph applies the Licensee shall:
  - (a) provide such information as Monitor may direct to Commissioners and to such other persons as Monitor may direct;
  - (b) allow such persons as Monitor may appoint to enter premises owned or controlled by the Licensee and to inspect the premises and anything on them, and
  - (c) co-operate with such persons as Monitor may appoint to assist in the management of the Licensee's affairs, business and property.

### **Condition CoS7 – Availability of resources**

1. The Licensee shall at all times act in a manner calculated to secure that it has, or has access to, the Required Resources.
2. The Licensee shall not enter into any agreement or undertake any activity which creates a material risk that the Required Resources will not be available to the Licensee.
3. The Licensee, not later than two months from the end of each Financial Year, shall submit to Monitor a certificate as to the availability of the Required Resources for the period of 12 months commencing on the date of the certificate, in one of the following forms:
  - (a) “After making enquiries the Directors of the Licensee have a reasonable expectation that the Licensee will have the Required Resources available to it after taking account distributions which might reasonably be expected to be declared or paid for the period of 12 months referred to in this certificate.”
  - (b) “After making enquiries the Directors of the Licensee have a reasonable expectation, subject to what is explained below, that the Licensee will have the Required Resources available to it after taking into account in particular (but without limitation) any distribution which might reasonably be expected to be declared or paid for the period of 12 months referred to in this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to provide Commissioner Requested Services”.
  - (c) “In the opinion of the Directors of the Licensee, the Licensee will not have the Required Resources available to it for the period of 12 months referred to in this certificate”.
4. The Licensee shall submit to Monitor with that certificate a statement of the main factors which the Directors of the Licensee have taken into account in issuing that certificate.
5. The statement submitted to Monitor in accordance with paragraph 4 shall be approved by a resolution of the board of Directors of the Licensee and signed by a Director of the Licensee pursuant to that resolution.
6. The Licensee shall inform Monitor immediately if the Directors of the Licensee become aware of any circumstance that causes them to no longer have the reasonable expectation referred to in the most recent certificate given under paragraph 3.

7. The Licensee shall publish each certificate provided for in paragraph 3 in such a manner as will enable any person having an interest in it to have ready access to it.
8. In this Condition:

“distribution”	includes the payment of dividends or similar payments on share capital and the payment of interest or similar payments on public dividend capital and the repayment of capital;
“Financial Year”	means the period of twelve months over which the Licensee normally prepares its accounts;
“Required Resources”	<p>means such:</p> <ul style="list-style-type: none"> <li>(a) management resources,</li> <li>(b) financial resources and financial facilities,</li> <li>(c) personnel,</li> <li>(d) physical and other assets including rights, licences and consents relating to their use, and</li> <li>(e) working capital</li> </ul> <p>as reasonably would be regarded as sufficient to enable the Licensee at all times to provide the Commissioner Requested Services.</p>

#### **Condition FT4 – NHS foundation trust governance arrangements**

1. This condition shall apply if the Licensee is an NHS foundation trust, without prejudice to the generality of the other conditions in this Licence.
2. The Licensee shall apply those principles, systems and standards of good corporate governance which reasonably would be regarded as appropriate for a supplier of health care services to the NHS.
3. Without prejudice to the generality of paragraph 2 and to the generality of General Condition 5, the Licensee shall:
  - (a) have regard to such guidance on good corporate governance as may be issued by Monitor from time to time; and
  - (b) comply with the following paragraphs of this Condition.
4. The Licensee shall establish and implement:
  - (a) effective board and committee structures;
  - (b) clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees; and
  - (c) clear reporting lines and accountabilities throughout its organisation.
5. The Licensee shall establish and effectively implement systems and/or processes:
  - (a) to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
  - (b) for timely and effective scrutiny and oversight by the Board of the Licensee's operations;
  - (c) to ensure compliance with health care standards binding on the Licensee including but not restricted to standards specified by the Secretary of State, the Care Quality Commission, the NHS Commissioning Board and statutory regulators of health care professions;
  - (d) for effective financial decision-making, management and control (including but not restricted to appropriate systems and/or processes to ensure the Licensee's ability to continue as a going concern);
  - (e) to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making;

- (f) to identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of its Licence;
  - (g) to generate and monitor delivery of business plans (including any changes to such plans) and to receive internal and where appropriate external assurance on such plans and their delivery; and
  - (h) to ensure compliance with all applicable legal requirements.
6. The systems and/or processes referred to in paragraph 5 should include but not be restricted to systems and/or processes to ensure:
- (a) that there is sufficient capability at Board level to provide effective organisational leadership on the quality of care provided;
  - (b) that the Board's planning and decision-making processes take timely and appropriate account of quality of care considerations;
  - (c) the collection of accurate, comprehensive, timely and up to date information on quality of care;
  - (d) that the Board receives and takes into account accurate, comprehensive, timely and up to date information on quality of care;
  - (e) that the Licensee including its Board actively engages on quality of care with patients, staff and other relevant stakeholders and takes into account as appropriate views and information from these sources; and
  - (f) that there is clear accountability for quality of care throughout the Licensee's organisation including but not restricted to systems and/or processes for escalating and resolving quality issues including escalating them to the Board where appropriate.
7. The Licensee shall ensure the existence and effective operation of systems to ensure that it has in place personnel on the Board, reporting to the Board and within the rest of the Licensee's organisation who are sufficient in number and appropriately qualified to ensure compliance with the Conditions of this Licence.
8. The Licensee shall submit to Monitor within three months of the end of each financial year:
- (a) a corporate governance statement by and on behalf of its Board confirming compliance with this Condition as at the date of the statement and anticipated compliance with this Condition for the next financial year, specifying any risks to compliance with this

Condition in the next financial year and any actions it proposes to take to manage such risks; and

- (b) if required in writing by Monitor, a statement from its auditors either:
  - (i) confirming that, in their view, after making reasonable enquiries, the Licensee has taken all the actions set out in its corporate governance statement applicable to the past financial year, or
  - (ii) setting out the areas where, in their view, after making reasonable enquiries, the Licensee has failed to take the actions set out in its corporate governance statement applicable to the past financial year.

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