

Risk assessment framework

**Updated March
2015**



About Monitor

As the sector regulator for health services in England, our job is to make the health sector work better for patients. As well as making sure that independent NHS foundation trusts are well led so that they can deliver quality care on a sustainable basis, we make sure: essential services are maintained if a provider gets into serious difficulties; the NHS payment system promotes quality and efficiency; and patients do not lose out through restrictions on their rights to make choices, through poor purchasing on their behalf, or through inappropriate anti-competitive behaviour by providers or commissioners.

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Executive summary

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

In this document, we set out our Risk assessment framework which constitutes our approach to overseeing NHS foundation trusts under these 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. The Risk assessment framework for independent providers of NHS services is covered in a separate document available on Monitor's website.¹

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 the 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. 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.² As the process of reconfiguring healthcare services is necessarily complex and time-

¹ See here for further details: www.gov.uk/government/publications/risk-assessment-framework-independent-sector-providers-of-nhs-services

² The National Health Service Act 2006 has been amended by sections 84 and 85 of the Care Act 2014, so that trust special administration can also apply where there is a serious failure by a trust to provide services of sufficient quality

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 strategic and operational 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 level of risk facing a provider to the ongoing delivery of key NHS services. There are four rating categories ranging from 1, which represents the most serious risk, to 4, representing the least risk. 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.

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 range of methods to assess governance issues at NHS foundation trusts and to gain assurance of their standards of governance:

- We will 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. We will generally use this information in three main ways: to corroborate other governance information; to help diagnose the cause of problems at a trust and to assess the ability of the trust to drive

improvement. 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. Monitor has issued guidance on the Well-Led Framework for governance reviews and 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.
- Monitor also considers that well-governed organisations will remain solvent and demonstrate robust financial planning and decision-making processes. Therefore, where we identify a material risk to a trust's financial sustainability we will consider the extent to which this reflects a governance issue.

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 governance rating applicable to all NHS foundation trusts. Where there are no evident grounds for concern or where we are not currently considering investigating a trust, we will assign it a green rating. Where we have identified a concern at a trust but not yet taken action, the foundation trust's rating will be placed 'under review' and we will provide a written description stating the issue(s) at hand. Where we have already begun enforcement action, we will assign a red rating.

Summary of updates – March 2015

In late 2014 we consulted on a number of proposed updates to the Risk assessment framework, given it had been in place for over a year. Following consideration of the consultation responses we have updated the Risk assessment framework accordingly. These updates include: introducing the new nationally mandated mental health access measures as governance proxies from April 2016 with reporting commencing in late 2015/16; specifying an additional trigger for when we may investigate financial risk at a trust; changing the name of quality governance indicators to organisational health indicators; including specific exception reporting requirements for providers of high secure services and clarifying that we may stress test providers' strategic and operational plans. We've made some updates to improve clarity and ensure recent changes to relevant policy areas such as transactions, the annual planning process, the Well-Led Framework and CQC's new regulatory regime have been reflected. We've also updated this document to clarify

that this version of the Risk assessment framework applies for NHS foundation trusts and the Risk assessment framework for independent providers is covered in a separate document. A high level summary of the responses received can be found on our website.

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 and constitutes guidance for the purposes of general condition 5 – Monitor Guidance.³ The NHS provider licence⁴ also set outs that licensees should have regard for guidance Monitor may issue on corporate governance, financial management and the risk-rating methodology.

While all providers of NHS services are required to have a licence,⁵ the Risk assessment framework only applies to specific licence holders:

- Providers of commissioner requested services (CRS)⁶ 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.
- 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.

This document only applies to foundation trusts. The Risk assessment framework for independent providers is outlined in a separate document.

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.

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

³ which states that licensees should have regard to guidance issued by Monitor for the purpose of section 96(2) of the act

⁴ Condition CoS3 and FT4

⁵ Unless exempt pursuant to The National Health Service (Licence Exemptions, etc.) Regulations 2013 (S.I. 2013/2677).

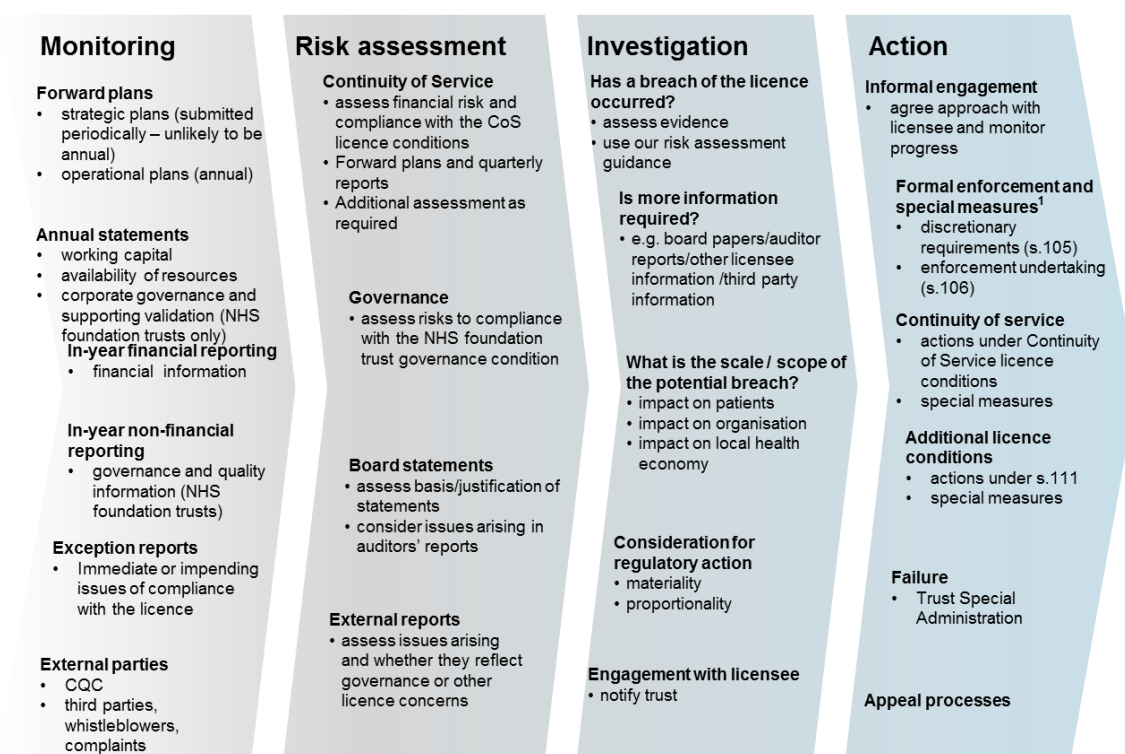
⁶ Providers of commissioner requested services can be either Foundation Trusts or Independent Providers.

- (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 Monitor’s [‘Enforcement guidance’](#)⁷ and
- (iv) **prioritisation and taking regulatory action** – see Monitor’s [‘Enforcement guidance’](#). 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 as well as aspects of investigations are 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.

Diagram 1: Monitor’s approach to provider regulation



¹Appeal 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

⁷ Available on our website at: www.monitor.gov.uk/home/news-events-publications/our-publications/browse-category/guidance-health-care-providers-and-co-7

1.2 Principles

The Risk assessment framework and how we apply it will be consistent with the regulator's code⁸ and 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
- **co-operative:** we will work with other regulators and organisations and, to avoid duplication, we will take their conclusions into account when deciding our regulatory approach.

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, where there is no alternative provider, and where removing the services would significantly increase health inequalities or removing the services would make other services unviable.
- **Location specific services** must meet the same criteria as CRS but are designated when a provider is in trust special administration. Diagram 2 lays out the differences between general NHS services, CRS and location specific services.

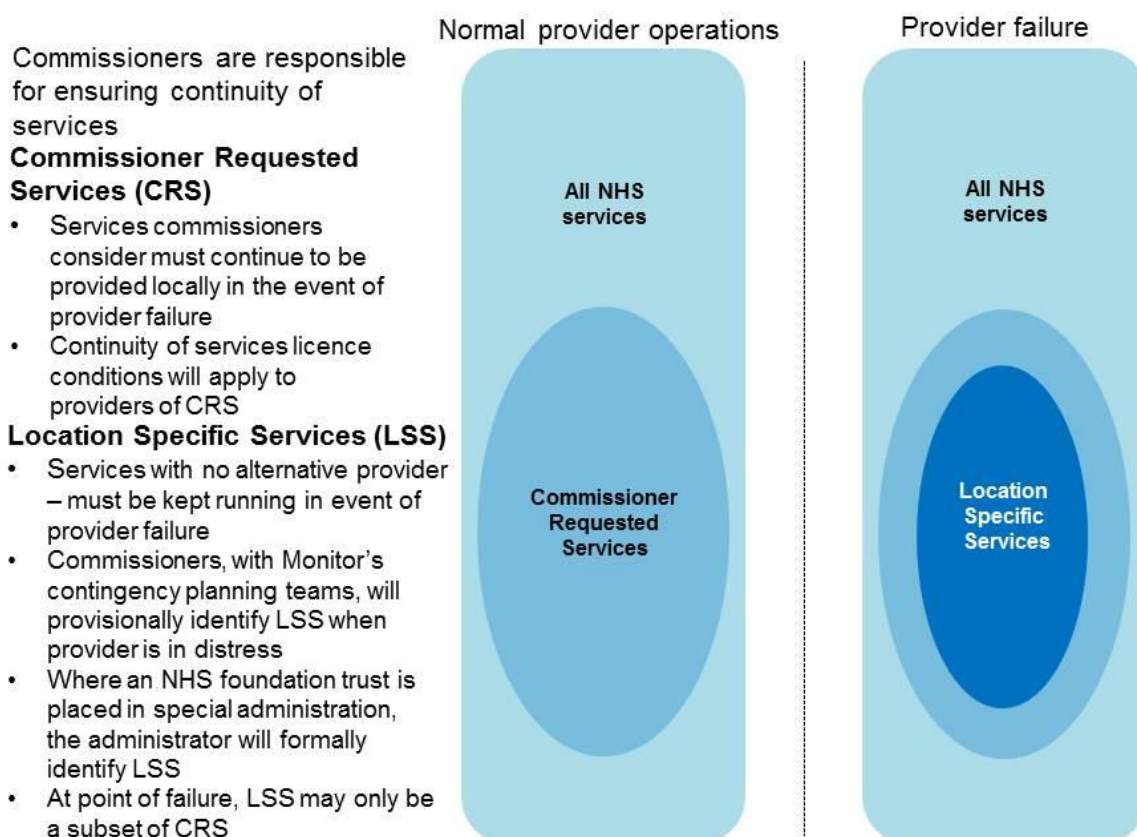
Please refer to separate guidance on the designation of commissioner requested services and location specific services for further details.⁹

⁸ Available at: www.gov.uk/government/publications/regulators-code

⁹ Guidance on commissioner requested services can be found here:

[/www.gov.uk/government/uploads/system/uploads/attachment_data/file/308811/ToPublishFinalCRSGuidance28March13.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308811/ToPublishFinalCRSGuidance28March13.pdf)

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 non-compliance with the NHS foundation trust governance condition. For foundation trusts 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** 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 foundation trusts to assess risks to the continuity of the services they provide and
- the information we will gather to assess foundation trust 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 foundation trusts 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 during the year will vary according to the level of risk that we have identified and any particular licence conditions applicable to it:

- NHS foundation trusts 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.

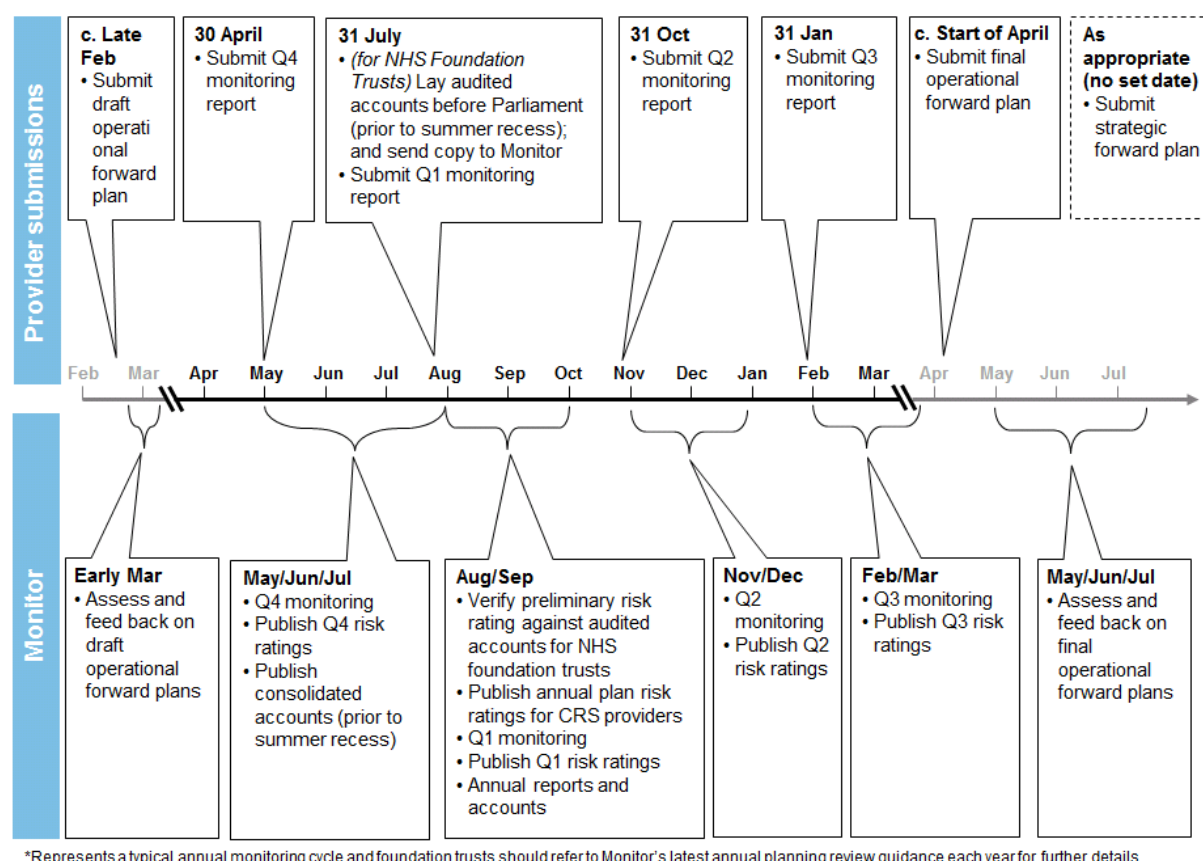
The information we request routinely is likely to be the sort that licence holders use, or should use, for their own management. We believe they should be able to extract much of the information from existing management information.

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

- (i) **annual submissions:** strategic and operational plans, statutory reporting requirements of the licence holder, and other annual requirements specified in the licence
- (ii) **in-year submissions:** financial and 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. See Appendix B on the Well-Led Framework for governance reviews for further details.

Diagram 3: The typical foundation trust annual monitoring cycle



2.2 Annual submissions

Annual submissions required by Monitor include:

- A three-to-five year strategic plan or an update on the existing strategic plan: Submission of a full strategic plan is likely to be less frequent than annual, as ultimately it should represent the output of a substantive strategy development exercise which organisations should not typically need to undertake annually. The exact timing of submission will depend in part on the external context, for instance a major change in the policy environment. However, in years where a trust is not submitting a full strategic plan, Monitor may ask for a brief update on the strategy or any significant changes since the last submission. Please refer to the latest annual planning guidance for further details.

- Operational plans which are likely to cover the next one or two years of planning: For 2015/16 foundation trusts have been asked to provide one-year operational plans. For future years it may be different and foundation trusts should refer to the latest annual planning guidance for further details.
- Availability of resources statements¹⁰ and any other statements required under their licence or by other sources such as the Risk assessment framework.

Monitor can use strategic and operational plans to assess governance and financial risk at foundation trusts (see Chapter 3). Assessing plans will allow Monitor to assess risk to the sustainability of an NHS foundation trust's services over the medium to long term, and also the resilience of an NHS foundation trust to unforeseen risks (eg capacity and demand issues) over the short 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 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.

¹⁰ As required under continuity of services licence condition 7.

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.

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

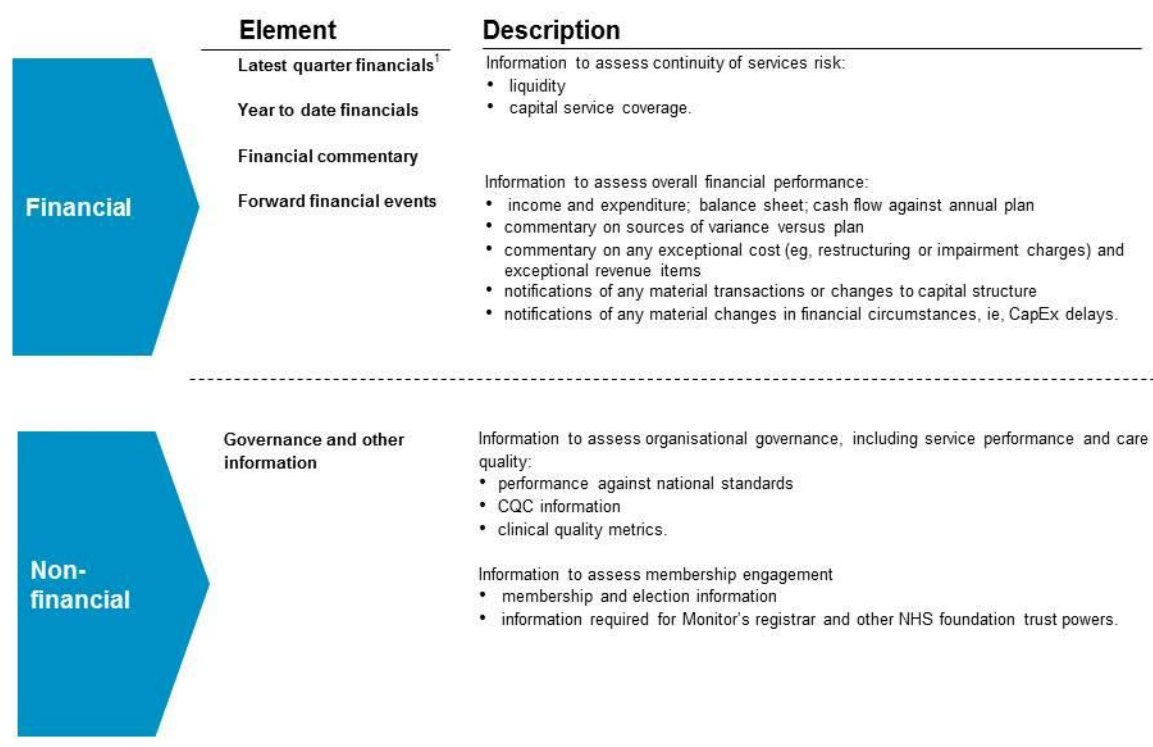
	Element	Description
	Commentary	<ul style="list-style-type: none"> • forward outlook including vision, strategy, external factors and risks to delivery • commentary including key assumptions and downside risks including an assessment of sustainability and development of scenarios to address sustainability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

2.3 In-year submissions

Foundation trusts 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 provider. Diagram 5 sets out the main categories of in-year submissions for NHS foundation trusts.

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

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



¹ 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.

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 foundation trust'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 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. 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 inspections and judgments**

The licence requires NHS foundation trusts to have systems in place to deliver care of sufficient quality to patients. The CQC has primary responsibility for the performance of NHS foundation trusts with respect to meeting clinical quality standards. Monitor does not intend to duplicate this regulation, however issues relating to the quality of care provided can arise from or reflect poor governance.

Where services provided by a foundation trust have been inspected under CQC's new regulatory regime, Monitor will take into account the findings of that inspection when considering if it will investigate a trust. If following an inspection the CQC has decided to take enforcement action, Monitor may investigate and consider whether a trust is in breach of its licence. Foundation trusts are required to report to us the outcomes of a CQC inspection or review.

Following an inspection the CQC may also recommend that Monitor places a foundation trust in special measures. Separate guidance is available on how and when a trust may be placed in special measures.

We will also consider whether CQC judgments in other relevant areas, such as those covered by the fit and proper persons requirements and the duty of candour contained in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, could be relevant to the compliance by NHS foundation trusts with their governance condition.

- **Organisational health indicators**

Monitor has identified a number of organisational health indicators that may indicate 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.

We are unlikely to start a formal investigation based on performance against these indicators alone and there are generally three ways in which we use these organisational health indicators:

- i. during Monitoring – to corroborate other governance concerns identified by, for example, performance against nationally defined outcome and access measures, or CQC judgments
- ii. during an investigation – to help to start to diagnose the causes of poor performance
- iii. during an investigation or once a trust has been found in breach – to help assess the trusts ability to turn around performance

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 organisational health indicators we will monitor.

2.4 Exception reports

Monitor expects foundation trusts 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 foundation trusts 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 foundation trust 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 foundation trust to assess the effect on compliance with its licence. Where the exception represents a material risk to the foundation trust'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 healthcare 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. 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.¹¹

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 always 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

¹¹ 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.

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. In addition, foundation trusts that provide high secure mental health services are required to report non-compliance with the Secretary of State safety and security directions, any significant issues relating to safety and security audits and serious incidents in line with their serious incident and reporting policy.

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.

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 healthcare 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
- 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 Governance¹² 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 have provided guidance on the Well-Led Framework for governance reviews, which states that foundation trusts should look at four different domains:

- **Strategy and planning** – how well is the board setting direction for the organisation?
- **Capability and culture** – is the board taking steps to ensure it has the appropriate experience and ability, now and into the future, and can it

¹² Published by the Financial Reporting Council.

positively shape the organisation's culture to deliver care in a safe and sustainable way?

- **Process and structures** – do reporting lines and accountabilities support the effective oversight of the organisation?
- **Measurement** – does the board receive appropriate, robust and timely information and does this support the leadership of the trust?

To support a minimum standard of assurance for these reviews, Monitor has published guidance on the Well-Led framework for governance reviews¹³ including examples of good practice.

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).

¹³ www.gov.uk/government/uploads/system/uploads/attachment_data/file/312988/well_led_framework_governance_reviews_1_.pdf

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 that is a NHS foundation trust.

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

CRS providers are required to...

...resulting in:

Be financially viable

- No financial concerns as per Monitor's risk rating (*Continuity of Service condition 3*)

Cooperate with Monitor

- In cases of financial concern, licensees must co-operate with Monitor, including providing information to commissioners and allowing parties identified by Monitor to enter premises (*Continuity of Service condition 6*)

Provide assurance on commitment and capability to provide CRS

- Assurance from ultimate controller¹ (*Continuity of Service condition 4*)
- Assurance on ability to provide CRS (*Continuity of Service 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 Service condition 1*)
- Retain assets required to provide CRS (*Continuity of Service condition 1*)

¹ 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. 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 foundation trust 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 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 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 and use this information to calculate continuity of services risk ratings.

3.2 The continuity of services risk rating

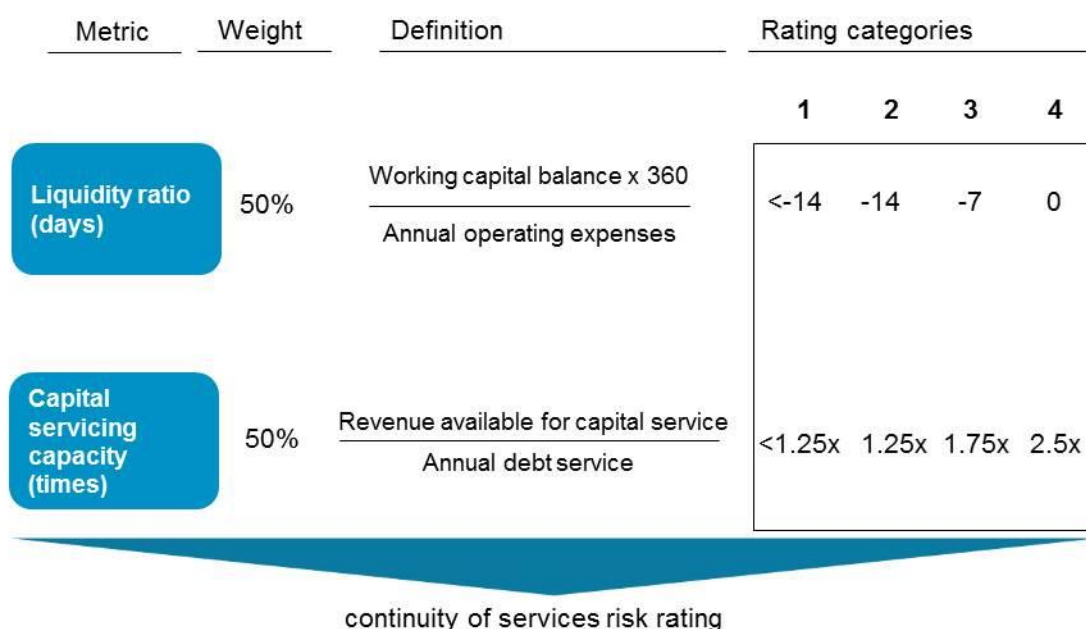
The continuity of services risk rating incorporates two common measures of financial robustness (see Diagram 9, below):

- (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 each year.

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. In addition, if a foundation trust has an overall rating of 3 but either its liquidity or its capital service capacity is rated 1 (highlighted blue in Table 1 above), then we may subsequently investigate whether it is in breach of the continuity of services licence conditions, or requires enhanced monitoring as described above.
- **Continuity of services risk rating 2*:** Where a 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 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 co-operating with a Monitor-appointed contingency planning team or other financial experts.

Diagram 10: Continuity of services risk rating – regulatory implications

Continuity of Service risk rating ¹	Description	Monitoring frequency	Regulatory activity
4	No evident concerns	Quarterly	None
3	Emerging or minor concern potentially requiring scrutiny	Potential monthly	Consideration for potential investigation <i>if</i> liquidity or capital service capacity component is rated 1
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

¹ Weighted average, rounded up, across the two components of the Continuity of Service 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.¹⁴

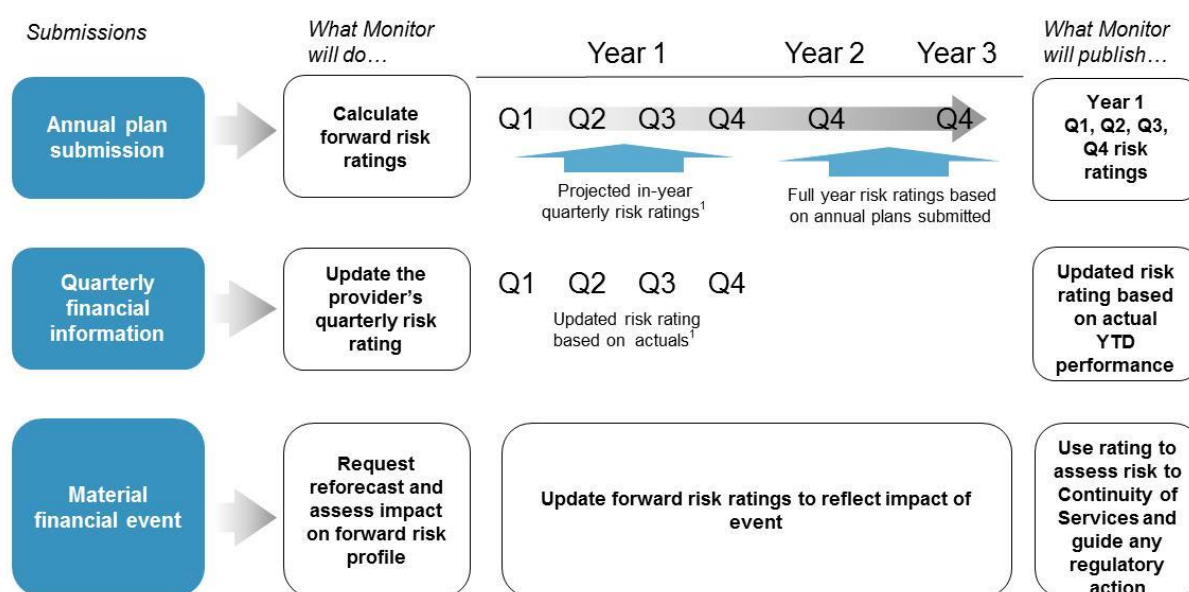
3.5 Monitoring continuity of services risk

This section describes how we will monitor and assess risk to continuity of services at providers of CRS who are foundation trusts.

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

- use **operational plans** to calculate the continuity of services risk rating quarterly over the coming 12 months and for the next one to two years¹⁵
- on a **quarterly** basis, compare the risk rating against **quarterly** financial performance information¹⁶ and
- assess the impact of **ad hoc or 'exceptional'** financial events with material potential impacts on the CRS provider's financial prospects.

Diagram 11: The continuity of services risk rating process



¹ calculated on year to date (ytd) information

¹⁴ The role of the administrator is to work with commissioners and other local healthcare organisations to produce a plan for the reorganisation and sustainable delivery of healthcare services.

¹⁵ The timeframe for which we ask for operational plans may vary from year to year. Foundation trusts should have regard for the latest annual planning review guidance published.

¹⁶ Or monthly, in the case of providers under the monthly monitoring regime.

Strategic and operational plans

Every year, foundation trusts will submit to Monitor operational plans likely to cover the next one to two years of operations. On the basis of these plans we will assess risks to their ability to carry on as a going concern, to address short-term performance issues, and their ability to achieve quality, operational and financial resilience over the short term. NHS foundation trusts will most likely submit operational plans at the beginning of the financial year in April (see Diagrams 3 and 4 and latest annual planning guidance published on Monitor's website).

On a less frequent basis, foundation trusts may also be required to submit strategic plans, likely to cover the next three to five years of operations. These plans should represent the output of a substantive strategy development exercise undertaken by each NHS foundation trust, and therefore it would be considered counter-productive for the resultant plans to be submitted annually. However we may ask for a strategy update instead. The exact timing of strategic plans will in part depend on the external context, for instance a major change in the policy environment. Foundation trusts should refer to Monitor's latest published annual planning review guidance for details in each relevant year. On the basis of these strategic plans and their underlying financial projections, we will assess risks to the NHS foundation trust's ability to provide high quality care to its patients on a sustainable basis.

What Monitor will do with the information

Monitor will evaluate both strategic and operational plans 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. We may also stress test the trust's plans against common assumptions and scenarios to support our review of the plans.

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. Where the overall quality of a provider's strategic and operational plan is poor and stress testing of the plans indicates potential concerns, we may consider whether further investigation is necessary.

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. Where we identify a material risk to a trust's financial sustainability we will consider the extent to which this reflects a governance issue. Where appropriate, we may also move to formal enforcement or other regulatory action immediately if we consider this necessary to safeguard key services. This may include asking for a full multi-year turnaround plan.

Publishing forward risk ratings

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

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 period 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.¹⁷ 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 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 provider complies with the continuity of services licence conditions and, if not, whether regulatory action is appropriate.

Exception reports, financial overrides and reforecasts

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

- CQC warning notices or other enforcement action that 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

¹⁷ Where a provider is under monthly monitoring, we will revise its rating on a monthly basis.

- refinancing may affect a provider's ability to service its financing costs and
- exceptional/ one-off income may conceal a licence holder's true financial position.

In addition, 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 provider's prospective continuity of services risk rating¹⁸ 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 or enforcement action, 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 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 or other enforcement action and refinancing, we will consider requesting a reforecast only in cases where

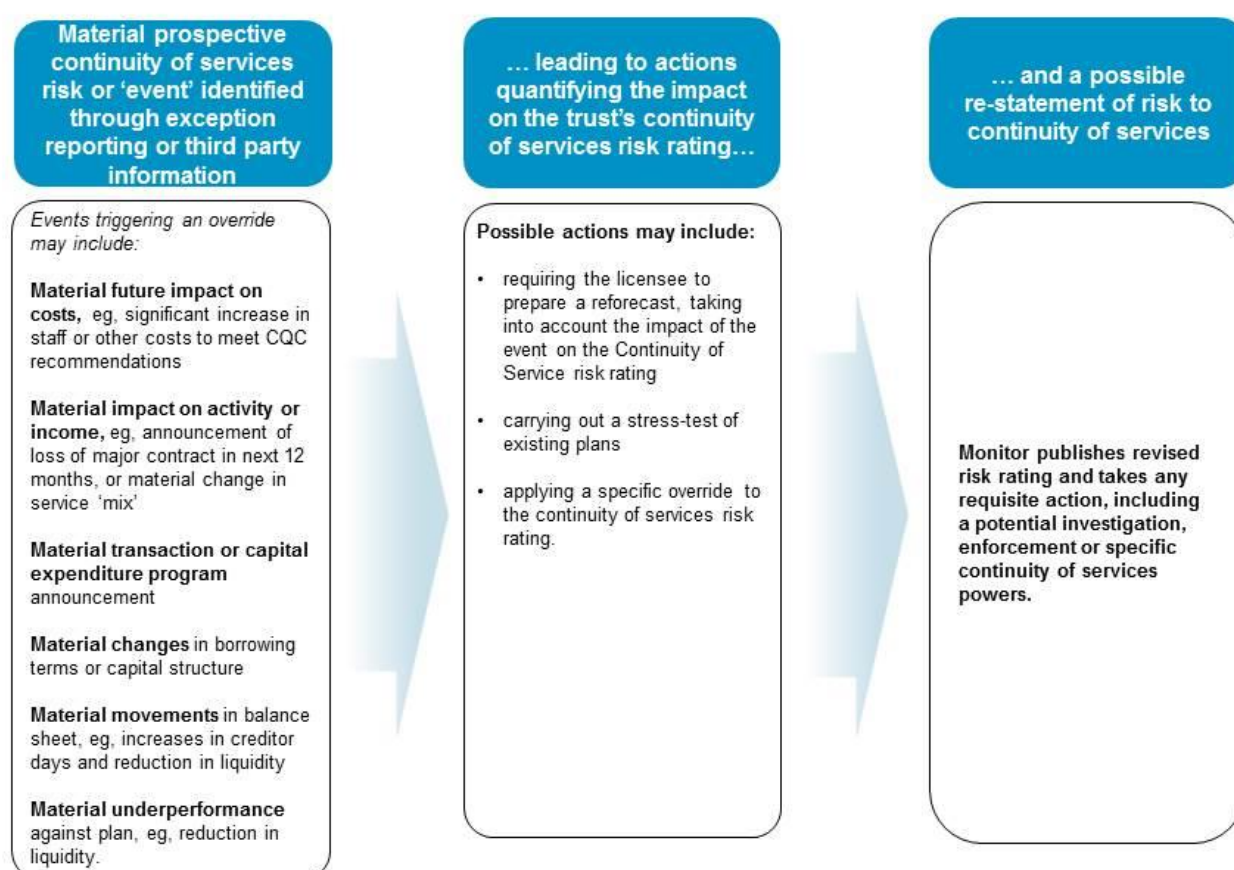
¹⁸ Monitor may request, from NHS foundation trusts displaying material variances between forward plan and year-to-date performance at quarter two, a six-month update of financial projections in-year. This reforecast will reflect on the priorities of the forward plan, but with explanations required only for any significant variances, key risks to compliance with the continuity of services and governance conditions and action plans to rectify the position.

it appears the event will result in a material change in the financial projections of the provider.

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 co-operation 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. 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)¹⁹ 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.

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
- outcomes of CQC inspections and assessments relating to the quality of care provided
- relevant information from third parties
- a selection of information chosen to reflect organisational health 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.

¹⁹ 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 healthcare 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 underperformance in the short term or ongoing, ie successive underperformance against these access and outcomes requirements, may reflect a governance concern and warrant consideration by Monitor for further investigation.

Care Quality Commission inspections and 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 other enforcement 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. We will also consider whether CQC judgments in other relevant areas, such as those covered by the fit and proper persons requirements and the duty of candour contained in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, could be relevant to the compliance by NHS foundation trusts with their governance condition.

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.

Organisational health 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.

It is unlikely that we will take regulatory action based on performance against these indicators alone. We will typically use this information in three ways:

- i. during monitoring – to corroborate and add weight to other governance concerns (such as ongoing breaches of national targets such as RTT, cancer or A&E waits)
- ii. during an investigation – to help start to diagnose causes of poor performance (including identifying potential culture issues)
- iii. during an investigation/once a trust has been found in breach of their licence as evidence that could be relevant to the assessment of our level of confidence in a trust’s ability to turn around performance.

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 overall quality of the plan and stress testing plans against different scenarios, comparing past performance, and making appropriate references to 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...
CQC concerns	<ul style="list-style-type: none"> Outcomes of CQC inspections and assessments 	<ul style="list-style-type: none"> CQC warning notice Changes to registration conditions Civil and/or criminal action initiated
Access and outcomes metrics	<p>For acute trusts, metrics including:</p> <ul style="list-style-type: none"> Referral to treatment within 18 weeks A&E waits (4 hours) Cancer waits (62 days) <p>For ambulance trusts, Category A response times</p> <p>For mental health trusts, metrics including CPA follow-up, Early intervention in Psychosis and Improving Access to Psychological Therapies</p> <p>For acute trusts, metrics including:</p> <ul style="list-style-type: none"> C.Difficile – national target <p>For mental health trusts, metrics including tracking accommodation/employment status (date 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"> 3 consecutive quarters' breaches of a single metric or 4 or more metrics breached in a single period¹ Breaching pre-determined annual C.Diff threshold (either three quarters' breach of the year-to-date threshold or breaching the full year threshold at any time in the year) Breaching the A&E waiting times target in 2 quarters over any 4-quarter period <i>and</i> in any additional quarter over the subsequent 3 quarters
3rd party reports	<ul style="list-style-type: none"> Ad hoc reports from GMC, the Ombudsman, Commissioners, Healthwatch England, Auditor reports, Health & Safety Executive, patient groups, complaints, whistleblowers, medical colleges etc. 	<ul style="list-style-type: none"> Judgment based on the severity and frequency of reports
Quality governance indicators	<ul style="list-style-type: none"> Patient metrics, for example: <ul style="list-style-type: none"> Patient satisfaction Staff metrics, for example: <ul style="list-style-type: none"> High executive team turnover Satisfaction Sickness/absence rate Proportion temporary staff Staff turnover Aggressive cost reduction plans 	<ul style="list-style-type: none"> Material reductions in satisfaction, or increases in sickness or turnover rates Material increases in proportion of temporary staff Cost reductions in excess of 5% in any given year
Financial risk	<ul style="list-style-type: none"> Continuity of Service risk rating Inadequate planning processes 	<ul style="list-style-type: none"> Breaching any Continuity of Service licence condition as a result of governance

¹i.e. 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):

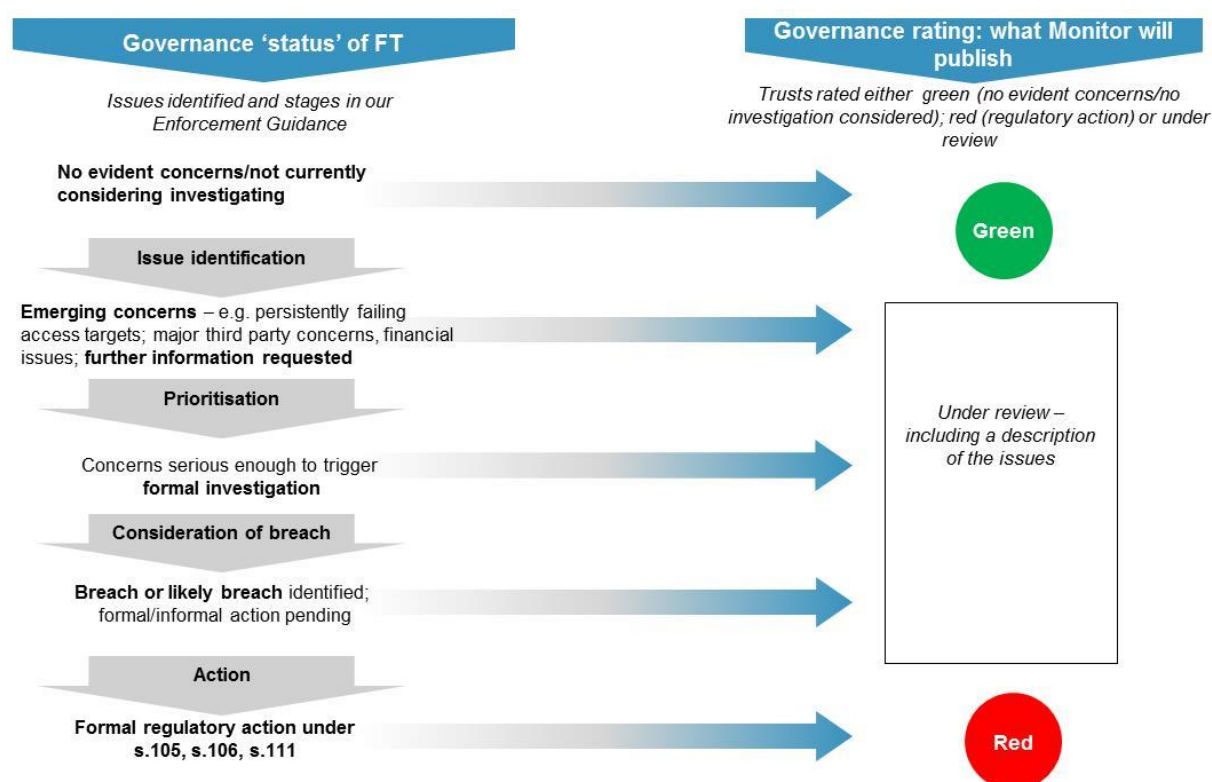
- we will assign a green rating if no governance concern is evident or where we are not currently undertaking a formal investigation
- where we identify potential material causes for concern with the trust's governance in one or more of the categories (requiring further information or formal investigation), we will replace the trust's green rating with 'under review' and provide a description of the issue(s) 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
- 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 are 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 statement²⁰ 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 strategic and operational 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 strategic plan, operational 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

²⁰ 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, see Appendix B and Monitor's latest published guidance for further details.

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
- 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 healthcare users
- impact on patients and the provision of healthcare

- ultimate scale and scope of the breach
- 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 foundation trusts in financial distress

Where a foundation trust 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 co-operate 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
- 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

Area	Indicator	Threshold (A)	Weighting (B)	Monitoring Period
Access	1 Maximum time of 18 weeks from point of referral to treatment in aggregate – admitted (C)	90%	1.0	Quarterly
	2 Maximum time of 18 weeks from point of referral to treatment in aggregate – non-admitted (C)	95%	1.0	Quarterly
	3 Maximum time of 18 weeks from point of referral to treatment in aggregate – patients on an incomplete pathway (C)	92%	1.0	Quarterly
	4 A&E: maximum waiting time of four hours from arrival to admission/ transfer/ discharge (D)	95%	1.0	Quarterly
	5 All cancers: 62-day wait for first treatment (E) 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 (F), comprising: surgery anti-cancer drug treatments radiotherapy	94% 98% 94%	1.0	Quarterly
	7 All cancers: 31-day wait from diagnosis to first treatment (G)	96%	1.0	Quarterly
	8 Cancer: two week wait from referral to date first seen (H), 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 (I), 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 (J)	95%	1.0	Quarterly
	11 Meeting commitment to serve new psychosis cases by early intervention teams (K)	95%	1.0	Quarterly
	12 Category A call – emergency response within 8 minutes (L), comprising: Red 1 calls Red 2 calls	75% 75%	1.0 1.0	Quarterly
	13 Category A call – ambulance vehicle arrives within 19 minutes (L)	95%	1.0	Quarterly
Outcomes	14 Early intervention in Psychosis (EIP): People experiencing a first episode of psychosis treated with a NICE approved care package within two weeks of referral (M)	50%	1.0	Quarterly
	15 Improving access to psychological therapies (IAPT) (N): People with common mental health conditions referred to the IAPT programme will be treated within 6 weeks of referral People with common mental health conditions referred to the IAPT programme will be treated within 18 weeks of referral	75% 95%	1.0 1.0	Quarterly
	16 Clostridium (C.) difficile – meeting the C. difficile objective (O)	de minimis applies	1.0	Quarterly
	17 Minimising mental health delayed transfers of care (P)	≤7.5%	1.0	Quarterly
	18 Mental health data completeness: identifiers (Q)	97%	1.0	Quarterly
	19 Mental health data completeness: outcomes for patients on CPA (R)	50%	1.0	Quarterly
	20 Certification against compliance with requirements regarding access to healthcare for people with a learning disability (S)	N/A	1.0	Quarterly
	21 Data completeness: community services (T), comprising: referral to treatment information referral information treatment activity information	50% 50% 50%	1.0	Quarterly

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. Only activity commissioned by English Commissioners to be included in data submitted to Monitor

- 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 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.¹⁵ 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 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.²¹ 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 thresholds but only report a single patient breach over the quarter¹⁵. This will apply to any community providers providing the specific cancer treatment pathways.

²¹ 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.

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). *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
- 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 Unify2.²²

- For 12-month review (from Mental Health Learning Disability Data Set (MHLDDS)):

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

²² Unify2 is the system for reporting and sharing NHS and social care performance information.

- 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. This indicator will be superseded by the Early intervention in psychosis access measure from April 2016.

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. **Early intervention in Psychosis (EIP).** Foundation trusts will be required to start reporting their performance to monitor in Q4 2015/16 in accordance with the latest technical guidance published by NHS England and the HSCIC

N. **Improving access to psychological Therapies (IAPT).** Foundation trusts will be required to start reporting their performance in Q3 2015/16 in accordance with the latest technical guidance published by NHS England's and the HSCIC

O. **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.

C. difficile cases should be reported regardless of whether a 'lapse of care' has been confirmed. Trusts should retrospectively revise any adjustments to figures where a lapse of care criteria is not met.

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	No

the in-year trajectory ²³ for the national objective	
If a trust exceeds both the <i>de minimis</i> limit and the in-year trajectory ¹⁷ for the national objective	Yes
If a trust exceeds its national objective above the <i>de minimis</i> limit	Yes

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

P. 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:

²³ 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.

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.

Q. Mental health identifiers: Patient identity data completeness metrics (from MHLDDS) 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.²⁴

Denominator: total number of entries.

R. Outcomes for patients on CPA (from MHLDDS). *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 multidisciplinary 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

²⁴ 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.

other multidisciplinary 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.

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.

S. **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
 - 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 healthcare 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.

T. 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 healthcare 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
- 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 governance concern
Meeting the C.Difficile objective	<ul style="list-style-type: none"> Has greater than 12 cases in the year to date, and either: breaches the cumulative year-to-date trajectory for three successive quarters; or breaches its full year objective;¹ or Reports important or significant outbreaks of C. difficile
Referral to Treatment (RTT) waiting times	<ul style="list-style-type: none"> Breaches²: <ul style="list-style-type: none"> the admitted patients 18 weeks waiting time measure for a third successive quarter; the non-admitted patients 18 weeks waiting time measure for a third successive quarter; or the incomplete pathway 18 weeks waiting time measure for a third successive quarter.
A&E indicator	<ul style="list-style-type: none"> Fails to meet the A&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.
Cancer waiting times	<ul style="list-style-type: none"> Breaches: <ul style="list-style-type: none"> the 31-day cancer waiting time target for a third successive quarter; or the 62-day cancer waiting time target for a third successive quarter.
Ambulance response times	<ul style="list-style-type: none"> Breaches: <ul style="list-style-type: none"> either category A 8-minute response time targets (Red 1 and Red 2) for a third successive quarter; or the category A 19-minute response time target for a third successive quarter.
Community services data completeness	<ul style="list-style-type: none"> Fails to maintain the threshold for data completeness for: <ul style="list-style-type: none"> referral to treatment information for a third successive quarter; service referral information for a third successive quarter; or treatment activity information for a third successive quarter.
Mental health access measures	<ul style="list-style-type: none"> Breaches³: <ul style="list-style-type: none"> Early intervention in psychosis for third successive quarter Improving access to psychological therapies for third successive quarter
Any indicator	<ul style="list-style-type: none"> Breaches the indicator for three successive quarters.

¹ Consideration for investigation can occur as soon as the full year breach is recorded.

² 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.

³ From Q1 April 2016

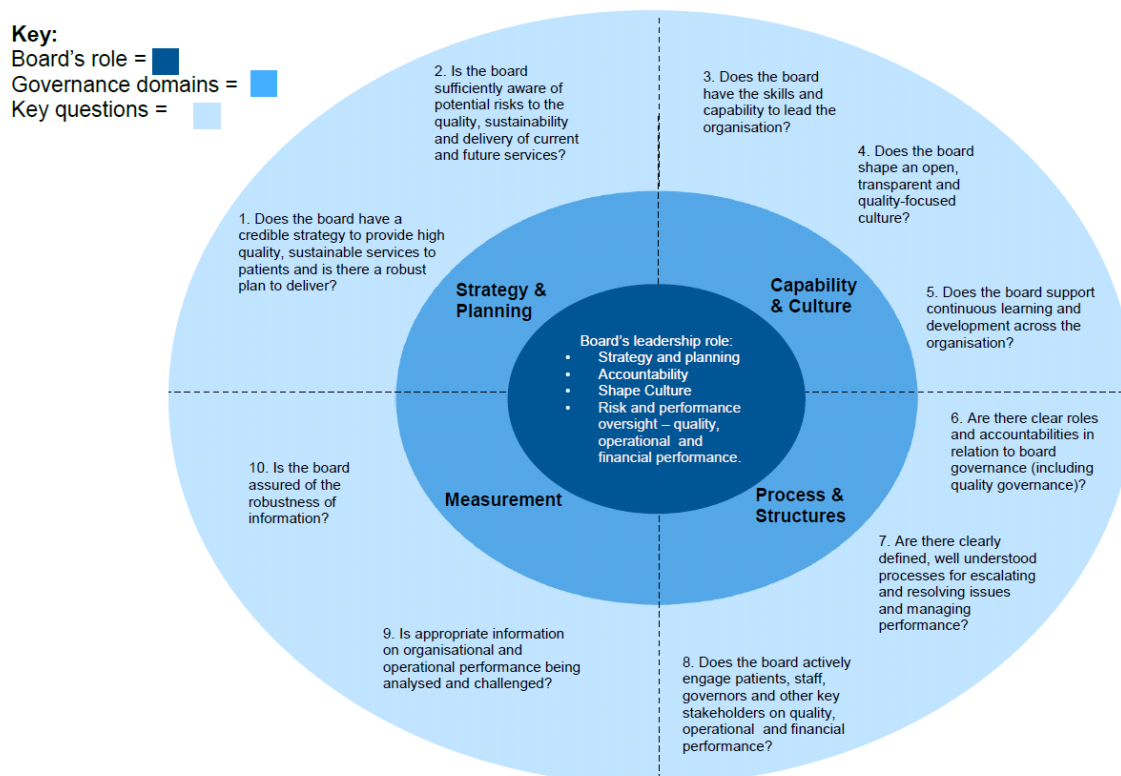
Appendix B: The Well-Led framework for governance reviews

Monitor has issued guidance on the Well-Led Framework for governance reviews which aims to support NHS foundation trusts in gaining assurance that they remain well led.

The framework represents a 'core' reference for NHS foundation trusts to structure reviews of their governance. The depth and breadth of these areas for investigation can be shaped through the trust's self-assessment and initial review team findings at the start of the process. Where trusts choose to exclude core elements of the framework, they should tell us that they are doing this and why, in line with a 'comply or explain' approach.

Diagram 16 lists the four areas and ten questions underpinning Monitor's Well-Led Framework for governance reviews. Samples of good practice can be found on our website.²⁵

Diagram 16: Domain's of Monitor's Well-Led Framework for governance reviews fits together



25

www.gov.uk/government/uploads/system/uploads/attachment_data/file/312994/Well_led_framework_questions_and_good_practice_examples_1.pdf

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 our view of the risks involved in undertaking a transaction determining the degree of analysis and assurance required.

Transactions will be classed as 'small', 'material' or 'significant'. Our level of scrutiny will depend on these classifications.

Transactions that we considers 'significant' (as defined under 'Thresholds for reporting and detailed review' below) will be subject to a detailed review. Where a trust has incorporated its own definition of a significant transaction into its constitution, this may differ from our definition of 'significant'. Our definition applies for the purposes of determining whether we conduct a detailed review.

Our approach to transactions involving NHS foundation trusts is twofold.

1. Statutory transactions

Under the 2006 Act, as amended by the 2012 Act, we have a statutory role in approving (where we are satisfied that trusts have taken the necessary preparatory steps):

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

Trusts undertaking these transactions are required under the 2006 Act, as amended by the 2012 Act, to make a formal application (with accompanying documents) to Monitor. This will involve completing a number of statutory requirements (eg obtaining the approval of a majority of governors) set out in Annex II to this appendix below.

Annex II clarifies what we consider are the necessary preparatory steps for a small, material or significant statutory transaction.

NHS foundation trusts must follow the guidance set out in this appendix before they make a formal application to Monitor in order to satisfy us that they have completed all the preparatory steps required for formal approval of the transaction.

2. Other transactions

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

Such transactions include:

- projects funded through private finance initiatives (PFI)
- contracts to provide services
- material capital investments
- other mergers, acquisitions, investments or divestments
- joint ventures and
- changes in indemnity arrangements that exceed the thresholds shown in Diagram 18.

Where we consider such a transaction to be significant according to the criteria set out under 'Thresholds for reporting and detailed review' below, we will conduct a detailed review to consider the risk involved in undertaking the transaction and communicate this in a letter to the trust board.

Where a transaction represents in our view a substantial level of risk to a trust's compliance with its continuity of services or governance licence conditions, we will consider whether we need to use our powers to mitigate that risk.

Engagement with Monitor

If an NHS foundation trust's potential transaction meets any one of the criteria set out in the following section, which details the thresholds for reporting transactions to us and for a detailed review, the trust should report the transaction to Monitor. This section describes how we will engage with trusts on all reportable transactions, and details how we will engage with NHS foundation trusts planning mergers and acquisitions in particular.

A number of different strategic and/or operational changes made by NHS foundation trusts (including but not limited to transactions) may raise issues under the competition rules that apply to providers of NHS services. NHS foundation trusts should inform themselves at an early stage whether the proposed changes are likely to raise any issues under these rules as this will enable an informed decision to be taken on how best to proceed. Further details on the types of competition issues that can arise and how Monitor can help trusts understand them can be found [here](#).²⁶

²⁶ See www.monitor.gov.uk/regulating-health-care-providers-commissioners/co-operation-and-competition

Reportable transactions

If a potential transaction, statutory or otherwise, will need to be reported to Monitor according to the criteria set out under 'Thresholds for reporting and detailed review' below, the trust should contact us as soon as the transaction becomes a significant likelihood to agree:

- whether the proposed transaction is 'significant' and will therefore require a detailed review by Monitor
- the likely timing of any detailed review and
- the scope of any detailed review.

Trusts that are considering an investment that may require approval from the Department of Health or HM Treasury (eg PFI investments or other investments which are novel, contentious or potentially repercussive for the public sector) for their planned investment should engage with us at an early stage (that is, as soon as they believe there is a significant likelihood that they will want to undertake the transaction).

Mergers and acquisitions

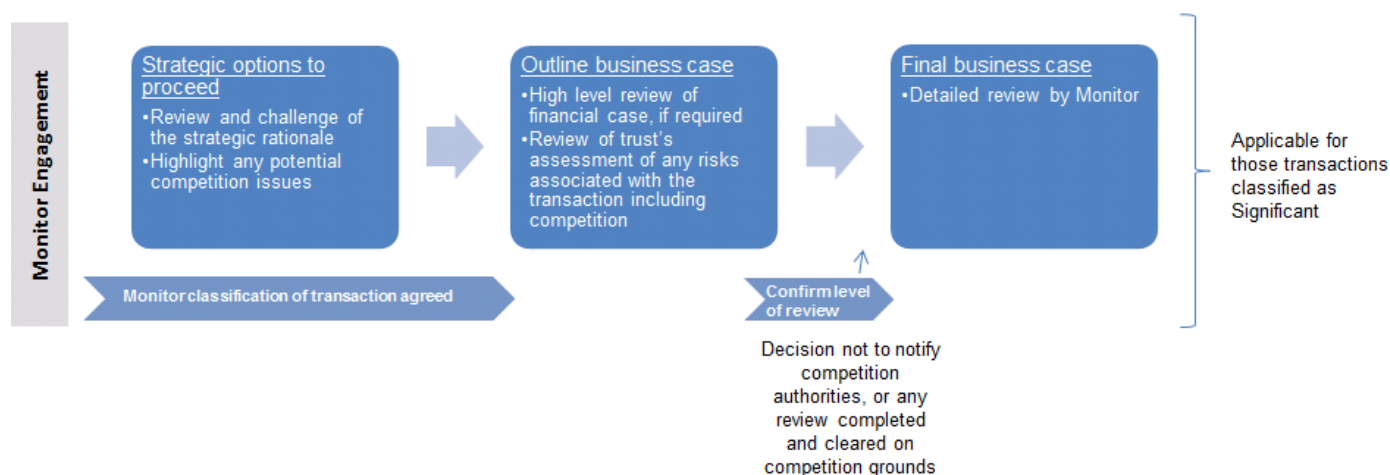
We will work closely with trusts considering a merger or acquisition to help them navigate the relevant regulatory issues (including any implications of competition rules) by engaging at several points as a transaction develops.

This is to ensure the proposals work in the best interests of patients, from both good governance and competition perspectives.

In line with our roles of assessing NHS foundation trusts' compliance with the continuity of services and governance licence conditions as well as supporting trusts in understanding any competition issues, we will review the trust's assessment of its strategic rationale for the transaction at an early stage. The level of work that we conduct will depend on our classification of the transaction. **NHS foundation trusts contemplating a merger or acquisition should therefore engage with us at an early stage** (that is, as soon as they believe there is a significant likelihood that they will want to undertake a transaction).

Diagram 17, below, shows the anticipated points of engagement between Monitor and a trust during the planning process for a merger or acquisition. We then give further detail on each stage of engagement.

Diagram 17: Monitor and NHS foundation trust engagement for mergers and acquisitions



Stage 1: Strategic options to proceed

We would offer relatively informal support and advice at this stage, with two objectives:

- a) **To consider the robustness of the underlying strategy.** Our intention is not to approve the proposed strategy at this stage but to pose key questions that might include:
 - What challenges faced by the trust is the transaction strategy seeking to address?
 - What options other than this transaction were considered for addressing those challenges?
 - What was the basis for selecting the proposed (transaction) approach?

We will offer views on how robustly the trust has answered these questions, but it will be for the trust to decide how to proceed.

- b) **To highlight the type of competition issues that might arise.** At this stage we would also advise whether we believe the transaction might give rise to any competition issues and, if so, what the trust should do to determine more precisely the nature and extent of those issues. We would also advise in general terms on how to assess relevant patient benefits.

We would also set out our likely transaction classification at this stage, where there is sufficient information to do so.

Stage 2: Review of Outline Business Case

Once a trust has developed an outline business case and identified its preferred option we may undertake a further review of the case, before the trust commits significant resources. This work would comprise:

- a) a review and challenge of the strategic rationale supporting the transaction and, potentially, a high-level review of the financial case if the transaction triggers the detailed review threshold set out below. The purpose here would be to identify any 'show stoppers' before significant resources have been committed
- b) a review of the trust's own assessment of any competition issues resulting from the proposed transaction, comparing these with our own assessment
- c) a preliminary review of the trust's approach to assessing relevant patient benefits, including the robustness of plans to realise those benefits, as well as commissioning intentions in the local area.

These discussions would conclude in a more formal meeting between Monitor and the trust board, after which we would send a letter to the trust setting out:

- any strategic business issues that we feel need further attention
- our view on whether the proposed transaction is likely to give rise to any competition issues and, if necessary, our suggestions on what work the trust needs to do to examine these potential issues and
- our view as to what, if any, further work is needed to complete the analysis and presentation of relevant patient benefits.

It would be for the trust to decide whether or not to proceed with the proposed merger and whether or not to notify the Office of Fair Trading (OFT). Trusts are not required to notify the OFT of the proposed merger – it is for the trust to decide whether to do so. However, there are risks of not notifying a merger where it might give rise to competition issues as the OFT may call the merger in for review.

We would not normally start work on a detailed transaction review until the competition authorities have cleared the transaction (if required).

Stage 3: Monitor detailed review of Final Business Case

The scope of the detailed review (if required) will, where possible, be determined at Stage 1, the review of the strategic option to proceed, and refined at Stage 2, the review of the outline business case. The classification of the transaction will remain subject to there being no material changes in the risk profile of the transaction before it is completed. Further detail of the potential scope and output of a detailed review is set out below.

Thresholds for reporting and detailed review

Threshold for reporting transactions to Monitor

Diagram 18: Monitor reporting requirements

If a potential transaction meets any one of the criteria below, the NHS foundation trust should report it to Monitor

Ratio	Description	<u>Reporting requirements</u>	
		Non-healthcare/ International	UK Healthcare
Assets	The gross assets* subject to the Transaction, divided by the gross assets of the foundation trust	> 5%	> 10%
Income	The income attributable to: • the assets; or • the contract associated with the Transaction, divided by the income of the foundation trust	> 5%	> 10%
Consideration to total foundation trust capital	The gross capital** or consideration associated with the Transaction divided by the total capital*** of the foundation trust following completion, or the effects on the total capital of the 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

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.

Where an NHS foundation trust chooses to cease membership of the NHS Litigation Authority's various schemes, including the Clinical Negligence Scheme for Trusts (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 this section.

For any other transaction types, the data used for the transaction classification will be considered on a case-by-case basis. NHS foundation trusts should seek our guidance if there is any uncertainty.

Where there has been a material or significant transaction since the date of the last audited accounts (ie, those accounts do not include that transaction), we will consider the data used for the transaction classification on a case-by-case basis. NHS foundation trusts should seek our guidance if there is any uncertainty.

In the case of an acquisition where there has been a material change in the financial position of either the NHS foundation trust or the business being acquired since the last accounts date, and the ratio at that time is not considered representative of the likely contribution of the acquired business to the foundation trust, we 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 we may, following discussions with the foundation trust, choose to recalculate the ratios using data that we reasonably consider to be a more appropriate measure of the relative size of the transaction.

Even where a proposed transaction does not trigger the reporting requirements set out above, boards are encouraged to take account of best practice advice published by Monitor²⁷ when evaluating the processes which they should undertake to ensure that reputational and financial risks are fully understood and governance obligations met.

Threshold for detailed review

Monitor's view of the risks inherent in a potential transaction will determine whether it is classified as 'small', 'material' or 'significant'.

Those transactions which do not meet the reporting requirements, as set out in Diagram 18 are classified as 'small' transactions. If the small transaction is nevertheless a statutory transaction, a trust must make a formal application to Monitor and demonstrate that it has taken the necessary preparatory steps, as set out in Annex II. In any other type of small transaction, we would not normally expect to be notified or otherwise involved.

All reportable transactions will be classified as either material or significant.

Once a transaction has been reported, we will seek to understand more about the risks associated with the transaction to determine its regulatory approach. Potential risks will include:

- the relative size of the transaction compared to the NHS foundation trust
- the leverage expected in the enlarged organisation following the transaction

²⁷ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386708/MonitorTransactionsGuidance.pdf

- the degree of experience in the acquiring organisation of the services provided by the target (where relevant), or of any change in services following the investment
- the existing level of financial risk and quality risk in the target (where relevant)
- the existing level of financial risk and quality risk in the NHS foundation trust
- risks identified as part of our early engagement with the trust (where relevant), for instance poor options appraisal or a lack of strategic rationale.

A non-exhaustive list of examples of risk factors are set out in the table below to provide trusts with an indication of what we may consider to be a major risk or otherwise.

Risk factor	Example of major risk	Example of other risk
Leverage	Capital servicing capacity of enlarged organisation is <1.75 (as defined in the Risk assessment framework)	Capital servicing capacity of enlarged organisation is <2.5 (as defined in the Risk assessment framework)
Acquirer's experience of services provided by target	A significant change in scope of activity of acquirer	A minor change in scope of activity of acquirer
Acquirer quality	Governance at the acquirer is rated "red" or subject to narrative with a "formal investigation" underway	Governance at the acquirer is subject to narrative description of some concerns
Acquirer financial	Continuity of services risk rating ≤ 2 in the acquirer	Continuity of services risk rating of 2*/3 in the acquirer
Target quality	Target is rated "inadequate" by CQC	Target is rated 'requires improvement' by CQC
Target financial	Target has significant current and/or historical deficits	Target has minor current and/or historical deficits

We will look at each potential transaction on a case-by-case basis and we may change our relative weighting of the risks outlined above, if we consider this appropriate. Trusts should keep us informed if there is any change to the risk profile of the transaction. We may change our view of classification based on this information.

We will assess the nature and scale of these risks. Based on our assessment, we will determine whether a detailed review is required and, if so, the scope of the detailed review. If a detailed review is required, the transaction will be classified as 'significant'.

Those transactions which trigger the reporting requirements above but do not require a detailed review are classified as 'material' transactions.

We will decide to classify the transaction as significant and therefore requiring a detailed review according to whether the transaction meets one of the following criteria:

- A relative size of greater than 40% in any of the tests set out in Diagram 18 will always lead to a detailed review.
- A relative size of between 25% and 40% of the tests set out in Diagram 18 will lead to a detailed review where an additional risk factor has been identified by Monitor and is considered relevant.
- A relative size of between 10% and 25% of the tests set out in Diagram 18 will lead to a detailed review where, in Monitor's view, one or more major risk or more than one other risk has been identified by us and is considered relevant.

Material transactions – requirements

Where a transaction is classified as material, Monitor will, as part of its overall assessment of financial and governance risk, request evidence in the form of a certification that the board has satisfied itself in a number of areas set out in Annex I to this appendix. In certain transactions we may require trusts to provide additional evidence to support their certification. The certification should be submitted to and agreed with us before the trust enters into any legally binding arrangements in relation to the transaction. In addition, within six months of the transaction occurring, the trust should make a revised corporate governance statement (see Appendix D) and send this to Monitor, with the exception of the statement concerning quality governance for which an appropriate timescale for compliance should be determined by the trust board and agreed with us.

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 to support the certification, it should explain why. We will consider this in assessing the risk associated with the transaction and whether additional assurance work is required.

Significant transactions – requirements

Where a transaction is classified as significant, NHS foundation trusts must, in addition to the evidence requested for a material transaction, provide us with a greater degree of assurance regarding the risk to breach of the continuity of services or NHS foundation trust governance licence conditions. This will be by way of a detailed review, the majority of which will normally be conducted at Final Business Case stage. For a significant transaction NHS foundation trusts must prepare financial plans in a suitable Monitor Long Term Financial Plan model and should contact modelqueries@monitor.gov.uk to confirm the most suitable model to use.

The purpose of the detailed review is to consider how the proposed transaction may affect the risk profile of the ongoing NHS foundation trust (or the new NHS foundation trust in the event of a merger).

We will perform detailed work in up to four areas, depending on the nature and risks of the proposed transaction:

- strategy
- transaction execution
- quality
- finance.

We will assess each of these areas using the key questions set out below, with reference to good practice guidance to be published in spring 2014.

Strategy

1. Is the trust's overall strategy well reasoned and can the board demonstrate how the transaction supports its delivery?
2. Has there been a detailed options appraisal and is there a clear rationale for the option that the trust has selected?
3. Does this rationale set out why it is the best option for patients, the trust and the local health economy?
4. Does the board have the capability, capacity and experience to deliver the trust's strategy?

Transaction execution

1. Does the board have the appropriate capability and capacity to minimise execution risks?

2. Is the board able to identify and quantify transaction risks appropriately (including risks associated with the competition rules, if any)? Is its approach to due diligence robust, and is there evidence that key risks have been recorded?
3. Has the board effectively mitigated the key risks and established effective processes for the continued management of these risks, post transaction?
4. Is there a robust and comprehensive plan for delivery of the transaction, including integration and realisation of other benefits?
5. Is the integration plan sufficiently supported by clear lines of accountability, governance processes, delivery milestones and dedicated resource?
6. Has the trust met all regulatory and legal requirements (including Monitor certification), and is it planning the transaction with reference to good practice guidance?

Quality

1. Has the trust received an unqualified quality governance opinion in relation to the transaction? (where relevant)
2. Has the medical director provided a certification to Monitor?
3. What is the CQC's view of both trusts and the impact of the planned transaction?
4. Would the enlarged organisation trigger any governance concerns under the Risk assessment framework?*

Finance

1. Does the trust's plan demonstrate financial viability and sustainability, post transaction?*
2. Has the trust received an unqualified Financial Reporting Procedures opinion? (where relevant)
3. Has the trust received an unqualified working capital opinion? (where relevant)

Note: The ability of the trust board's to manage downside financial risk will be assessed as part of question 3 under 'transaction execution'. The key question for consideration is:

Can the board articulate future mitigation plans and demonstrate the capability to deliver these plans?

*Post investment adjustment

Additional assurances

We 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 external reports and opinions from independent accountants or other experts on any or all of the following:

- post-transaction integration plans
- a working capital board memorandum prepared in relation to the transaction
- financial reporting procedures board memorandum and
- plans for applying appropriate quality governance arrangements across the new organisation.

The information that we request will take into account the specific risks of the proposed transaction. Lack of any or all of the information requested is likely to have a bearing on our view of the degree of risk the transaction represents.

Transaction risk rating

Small and material transactions will not be risk rated by Monitor.

For significant transactions, following completion of the detailed review, we will assign the transaction with an overall risk rating: green, amber or red.

This rating will be based on an aggregation of the risks identified under each of the four areas that could constitute a detailed review (see 'Significant transactions – requirements' section above), noting that some risks could by themselves be so significant that they drive the overall rating. Our assessment of risk will be based on a trust's adherence to Monitor's good practice guidance. The risk rating definitions are set out below:

- Green – no material concerns arising out of our detailed review.
- Amber – some significant issues arising which will require action by the trust to address and may require ongoing regulatory monitoring. However, issues not so serious that the transaction ought to be stopped or deferred.
- Red – issues considered to be sufficiently serious to warrant deferring the transaction to allow time to restructure it (if possible) to address the risks involved. If this is not considered possible, the transaction ought to be stopped, through the use of regulatory powers if appropriate.

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 before we assign the transaction a risk rating.

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

- written application is made by the NHS foundation trust to us, requesting an investment adjustment and providing supporting information and
- the relevant transaction is a material or significant transaction.

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 Monitor's transaction guidance 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, we 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, showing how the trust will return to the target threshold within an appropriate timeframe agreed with us
- a proposed threshold trajectory for each indicator against which the trust should be scored across the combined business, rather than separately
- a rationale for the thresholds above.

We will investigate the rationale before agreeing to any trajectory.

Monitor will generally not provide a transaction adjustment related to risks triggered by CQC concerns.

Transactions involving NHS foundation trusts meeting investigation triggers

We may vary our approach to calculating risk ratings for transactions where there is a pre-existing risk that the NHS foundation trust is in breach of its licence conditions.

Where an NHS foundation trust has met one of our investigation triggers, and we are currently considering whether to investigate formally, or are formally investigating that trust, we may:

- for material transactions, postpone submission of trust certifications concerning the transaction in question and
- for significant 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, we may consider any material transaction as a significant transaction and consequently undertake a detailed review.

Aggregation of transactions in a twelve month period

Transactions completed with the same counterparty during the twelve months before the date of the latest transaction may be aggregated with that transaction for the purposes of Monitor's reporting thresholds. We should be informed at an early stage of the latest transaction in such cases.

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:

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

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, ie, for 'accredited' AHSCs only, where an NHS foundation trust enters into a legal agreement establishing the legal arrangement of the partnership.

Annex I (to Appendix C): Certification requirements

Where a potential transaction 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:

- considered a detailed options appraisal before deciding that the transaction delivers benefits for patients and the trust in delivering its strategy
- assured itself that a proposed transaction will meet the requirements of the choice and competition licence conditions
- conducted an appropriate level of financial, clinical 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 continuity of service 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 Monitor's transactions guidance²⁸ 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, including those 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

²⁸ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386708/MonitorTransactionsGuidance.pdf

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
- made provision for the transfer of all relevant assets and liabilities
- at the time of the acquisition, a corporate governance statement (see Appendix D of this 'Risk assessment framework') 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 of this 'Risk assessment framework') in the new organisation within six months, with the exception of the following statement concerning quality governance for which an appropriate timescale for compliance should be determined by the trust board and agreed with Monitor:

“The board is satisfied:

(f) that there is clear accountability for quality of care throughout [insert name] 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.”

Annex II (to Appendix C): Statutory transactions – other requirements

NHS foundation trusts undertaking a statutory transaction are required under the 2006 Act, as amended by the 2012 Act, to make a formal application, which involves a number of statutory requirements. The application should be submitted after completing any applicable processes of assurance and risk assessment as specified elsewhere in this appendix.

Mergers

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

- written acknowledgement from the foundation trust/s of Monitor's risk rating where the transaction was classed as significant
- evidence of approval by a majority of governors of each party which is an NHS foundation trust
- in the case of a merger with an NHS trust, a letter of support from the Secretary of State
- details of the property and liabilities being transferred and
- the constitution of the proposed new organisation following the transaction.

If the application is granted, the two trusts will be dissolved and a new NHS foundation trust will be established.

Acquisitions

A joint application by two NHS foundation trusts, or a foundation trust and an NHS trust for an acquisition by the acquiring foundation trust must be accompanied by:

- written acknowledgement from the foundation trust/s of Monitor's risk rating where the transaction was classed as significant
- evidence of approval of the transaction by a majority of the governors of the NHS foundation trust(s)
- in the case of an acquisition of an NHS trust, a letter of support from the Secretary of State and
- the constitution of the acquiring NHS foundation trust following the transaction.

Important note: There is no requirement for an NHS trust or foundation trust to be separately dissolved once it has been acquired.

Dissolutions

An application by an NHS foundation trust for its dissolution must be accompanied by:

- evidence of approval of a majority of the trust's governors
- evidence that 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 NHS foundation trust and
- the constitutions for each proposed new NHS foundation trust.

Monitor will check applications and their accompanying documents for accuracy and completeness. We may seek additional supporting information if necessary, but will not conduct an in depth review of the contents.

Statutory transactions: steps necessary to prepare for the transaction

We can only grant an application for a statutory transaction where we are satisfied that the trust(s) have undertaken the steps necessary to prepare for the transaction.

The table below sets out our view of what constitutes the necessary steps according to whether the transaction is small, material or significant.

Classification*	Necessary preparatory steps
Small	<ul style="list-style-type: none"> • The trust(s) have submitted all the relevant documents for the statutory transaction
Material	<ul style="list-style-type: none"> • The trust(s) have submitted all the relevant documents for the statutory transaction • The trust(s) have reported the transaction to Monitor • The trust(s) have submitted the certifications to Monitor and we are satisfied with them
Significant	<ul style="list-style-type: none"> • The trust(s) have submitted all the relevant documents for the statutory transaction • The trust(s) have reported the transaction to Monitor • The trust(s) have submitted the certifications to Monitor and we are satisfied with them • The transaction has been through Monitor's detailed review and has achieved a transaction risk rating of green or amber

*For definitions of 'small', 'material' and 'significant', please refer to 'Threshold for detailed review' section above.

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 healthcare 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 healthcare 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:

<p>The board is satisfied it has or continues to:</p> <ul style="list-style-type: none"> • ensure that the partnership will not inhibit the trust from remaining at all times compliant with the conditions of its licence; • have appropriate governance structures in place to maintain the decision making autonomy of the trust; • conduct an appropriate level of due diligence relating to the partners when required; • 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; • consider implications of the partnership on the trust's governance processes • conduct appropriate inquiry about the nature of services provided by the partnership, especially clinical, research and education services, and consider reputational risk; • comply with any consultation requirements; • have in place the organisational and management capacity to deliver the benefits of the partnership; • 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; 	<p>Risks and mitigating actions comprise:</p>
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<ul style="list-style-type: none"> • 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); • ensure appropriate commercial risks are reviewed; • maintain the register of interests and no residual material conflicts identified; and • engage the governors of the trust in the development of plans and give them an opportunity to express a view on these plans. <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"> • received external advice from independent professional advisers with appropriate experience and qualifications; and • taken into account the best practice advice in Monitor's transaction guidance or comment by exception where this is not the case. 	
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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

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 for 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">(a) management resources,(b) financial resources and financial facilities,(c) personnel,(d) physical and other assets including rights, licences and consents relating to their use, and(e) working capital <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 healthcare 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 healthcare 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.



Making the health sector
work for patients

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