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A guide to special measures – addendum

This addendum, developed jointly by the Care Quality Commission (CQC), Monitor and the NHS Trust Development Authority (TDA),¹ supplements the [special measures guidance](#) published in February 2015.

As set out in the main guidance document, foundation trusts and trusts in special measures are expected to make significant improvement within a reasonable time. The special measures period is usually 12 months, which may in some cases be extended for an additional six months.

This addendum to the guidance provides further detail on how CQC, Monitor and TDA will work together while foundation trusts and trusts are in special measures, towards a common objective of securing good quality care for patients. It also clarifies the decision-making process where foundation trusts and trusts have not made significant improvement despite an extended period in special measures.

How will CQC, Monitor and TDA work together while foundation trusts or trusts are in special measures?

CQC's inspections and monitoring directly inform intervention by Monitor and TDA, and vice versa. Experience has shown that the quality and timeliness of information sharing between them is key to early and effective consideration of the issues and potential solutions for providers. It minimises the risk that reinspection will find insufficient improvement in a provider to recommend exit from the regime.

Early and full information sharing is therefore a priority from the outset of special measures (or even earlier) and throughout the special measures period. When a foundation trust or trust first enters special measures, there will be close dialogue both between CQC and Monitor/TDA, and with the foundation trust or trust, which will include what improvements in quality would give assurance of progress being made. These required improvements form the basis for joint reviews of progress during the special measures period, in addition to the existing regular information exchange between CQC and Monitor/TDA regional leads.

This process of information exchange and review will enable extra support or intervention to be considered as needed. These decisions will not need to wait until the next reinspection.

¹ Monitor and TDA will be coming together as NHS Improvement from 1 April 2016.

What types of extra support or intervention will be considered?

Monitor and TDA are developing an increasingly wide range of options to support foundation trusts and trusts to make progress with rapid and sustainable improvements. These will be considered from the outset of and throughout the special measures period, as appropriate, depending on the challenges facing the foundation trust or trust and the rate of improvement.

Where a foundation trust or trust is not ready to exit special measures following inspection after the normal 12-month period of special measures, and requires an extended period in special measures, the Chief Inspector of Hospitals will normally write to the foundation trust or trust as well as issuing a warning notice. The letter will make clear that special administration or other strong enforcement action will be considered if the provider does not make significant improvements by the end of the extension period.

In this situation Monitor/TDA will review the foundation trust's or trust's plans and progress, as there is likely to be a need to accelerate improvement and reduce the risk of insufficient improvement at the next inspection. Monitor/TDA will also continue and intensify efforts to identify any continuing underlying issues and long-term solutions that may be needed.

Examples of actions to accelerate improvement in the extension period

Monitor/TDA will consider, for example:

- expanding the roles, degree of intervention or direction (as opposed to advice) and scope (eg trust-wide or focused on specific services) that an improvement director or 'buddy' trust provides
- enhanced arrangements to support the board or appointments to vacancies in senior leadership
- additional advice or practical support that could be mobilised.

Monitor/TDA will also consider whether any other enforcement action is appropriate.

These short-term interventions will aim to ensure that by the time of CQC's next inspection at the end of the six-month extension period, any areas of the foundation trust or trust with inadequate ratings have been stabilised and improvement has accelerated.

Examples of actions to address wider structural issues

At the same time, Monitor/TDA will ensure that consideration is given to whether long-term solutions are needed to address any structural issues affecting the foundation trust or trust's ability to ensure high quality, sustainable services for the public.

These long-term solutions may not be complete by the time of CQC's next inspection at the end of the initial special measures period, or even after a further six month extension period. But they should enable the Chief Inspector of Hospitals to take a view as to whether a viable long-term solution is in place and whether progress is being made. In such cases, it may be necessary for foundation trusts or trusts to remain in special measures while efforts to achieve long term viability are being undertaken.

A range of longer-term solutions may be considered by Monitor/TDA – see below for an indicative list of options that may be considered. The choice of solution(s) for any given foundation trust or trust will depend on the nature of the issues facing it, and the list provided below is for illustrative purposes only.

- **Service reconfiguration:** this option would be considered with those responsible (NHS England and local commissioners) where organising services differently, potentially across different services and organisations, would help improve quality of care, could reduce capacity pressures in the foundation trust or trust and increase sustainability.
- **Management support or operational franchise:** these options would be considered if an NHS foundation trust or trust was felt to be sustainable in the longer term but needed stronger leadership and management to deliver significant improvements in quality.
- **Transaction (merger or acquisition):** this option would be considered where improvement can best be achieved by a permanent change of ownership of part or all of the provider, and/or added value can be obtained from integration with the acquiring or merging provider.
- **Success Regime (whole system intervention):** this would be considered where it is identified that the organisation is situated in a health and care system that requires wider transformation for improvement to be realised.

What happens if there is still insufficient improvement at the end of the extension period?

CQC will reinspect at the end of the extension period, typically 18 months after the foundation trust or trust enters special measures. The inspection will be planned in co-ordination with Monitor/TDA. The inspection findings will be shared with Monitor/TDA and the provider as soon as possible.

If it is found that there is still insufficient improvement for the provider to exit special measures, this will be shared at the earliest possibility and then set out in a letter that the Chief Inspector of Hospitals will write to Monitor/TDA. This will trigger urgent and intensified consideration of the provider's short and long-term improvement plans, to ensure that they remain the right solution for the organisation, and examination of any alternative options to secure sustainable high-quality services for patients.

Inadequate care cannot be allowed to continue. For all foundation trusts and trusts, CQC will make an overall judgement of the quality of care being delivered as well the capability and capacity of the provider to deliver improved services. Since a rating of inadequate for well led at the provider level would indicate a lack of capability or capacity to deliver the required improvements, the Chief Inspector of Hospitals would in this situation normally proceed to use CQC's strongest enforcement powers.

Those enforcement powers are:

- Cancellation of registration: this means that the provider can no longer lawfully provide the health and care services for which it is registered in any of the sites it operates. Contingency planning would be needed so that another provider can ensure continued access to services.
- Imposition of conditions: this can mean that the provider may no longer provide certain aspects of its services in certain of its locations. Again, contingency planning would be needed to ensure that appropriate alternative provision is in place for service users.
- Special administration: CQC can take steps to require a foundation trust to be placed in special administration, or make a recommendation to the Secretary of State that an NHS trust be placed in special administration. Services can continue to be provided while the administrator undertakes time-limited consideration of options for the future.

Monitor/TDA will work with the foundation trust or trust and other stakeholders to support their efforts to make necessary improvements to services and so avoid the need for this type of enforcement action.

The Chief Inspector of Hospitals will for all foundation trusts and trusts take account of how much progress is being made in special measures and of the need to allow reasonable time for improvement plans to be achieved, but will have a low tolerance where robust, credible and timely plans are not in place or are drifting. In all cases, use of CQC's strongest enforcement powers will remain an option where care is inadequate and insufficient improvement is being made.

The guiding principle in determining actions at this stage will continue to be what is in the best interests of people using the services. While the decision will ultimately be made by CQC, it will be closely co-ordinated with Monitor/TDA, with involvement of NHS England and local commissioners as appropriate.

Letter to the Secretary of State

Where the foundation trust or trust has made insufficient improvement to exit special measures on reinspection at the end of the extension period, the Chief Inspector of Hospitals will also write to the Secretary of State to advise of the situation and how it is proposed to be managed. The letter will normally be sent in parallel with the foundation trust's or trust's inspection report, and will normally include information about:

- CQC's findings on the quality and safety of care, and on what improvements need to be achieved
- whether the Chief Inspector of Hospitals intends to proceed with enforcement under CQC's powers or, if not, why the Chief Inspector is of the view that an alternative strategy will be more effective in serving the interests of people using the services
- if an alternative strategy is identified, a clear deadline by when the Chief Inspector of Hospitals will check that improvements have been made
- how progress towards the necessary improvements in quality and safety will be monitored, reported and escalated to CQC and other oversight bodies as necessary.