

This guidance was withdrawn in January 2021. For the latest information see [the NHS England and NHS Improvement website](#).

Monitor

Guidance for commissioners on ensuring the continuity of health care services

Designating Commissioner Requested Services and Location Specific Services

28 March 2013

Foreword



Patients need to know they can access the health care services they need, even in the rare event that a local provider of NHS services runs into serious financial difficulty. This new guidance aims to support commissioners to safeguard NHS services in their local area.

Under the Health and Social Care Act 2012, clinical commissioning groups are responsible for planning and purchasing health services for their local populations. That responsibility includes designating a range of services that local commissioners believe should continue to be

provided locally if any individual provider is at risk of failing financially. We call these *Commissioner Requested Services* and this guidance aims to help clinical commissioning groups identify these in their areas. The guidance includes a *Designation Framework* which sets out a process commissioners are recommended to follow in order to assess which services should be *Commissioner Requested Services*.

As the sector regulator of NHS-funded health care services, our duty is to protect and promote the interests of people who use them. We will use the conditions of our new provider licence to carry out this important role. Under the licence, which takes effect from April 2013, providers must not jeopardise the provision of *Commissioner Requested Services* in the operation of their organisation.

The guidance is the culmination of a three month consultation involving commissioners, providers, clinicians and patients. Thank you to those who have taken the time to contribute to this important piece of work. We are committed to continuing to work closely with commissioners and the NHS Commissioning Board to enhance understanding of the process and to support their implementation of the guidance for the benefit of patients.

A handwritten signature in blue ink that reads "Adrian Masters".

Adrian Masters

Managing Director of Sector Development

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1. Executive summary

1.1. Introduction

Monitor's main duty is to protect and promote the interests of patients. We do this by promoting the provision of health care services which is effective, efficient and economic, and which maintains or improves the quality of services.

We assess NHS trusts for foundation trust status and ensure that foundation trusts are well led, in terms of both their quality and finances. We license foundation trusts (other eligible providers of NHS services will be licensed from April 2014) and we:

- set prices for NHS-funded care in partnership with the NHS Commissioning Board;
- enable integrated care;
- safeguard choice and prevent anti-competitive behaviour which is against the interests of patients; and
- support commissioners to protect essential health services for patients if a provider gets into financial difficulties.

If a health care provider gets into financial difficulties, commissioners and Monitor must work together to make sure that patients continue to have access to services which are critical to patients and which no other provider may be close enough to or able to deliver. Patients of struggling health care providers need to be sure of having continued access to those critical services if their provider fails.

Over the past year, Monitor has been working with commissioners, providers and patient representatives to develop procedures to make sure that patients in the locality of failing providers have continued access to the health care services they need. Commissioners bear the primary responsibility for ensuring the continuity of NHS services in their local areas and play a pivotal role in these procedures. Monitor supports commissioners in three ways: by helping providers to avoid financial failure; by directing interventions to make sure patients continue to receive services if a provider does in fact fail; and by publishing this guidance for commissioners on how to fulfil their responsibility in ensuring the continuity of services.

1.2. Overview of how the continuity of services procedures work

From a commissioner's viewpoint, the procedures work like this.

1. At a time when the local health care economy is operating normally, commissioners identify any services they commission which would have to remain in the locality should a provider fail because:
 - a. either there is no alternative provider close enough; or
 - b. removing them would increase health inequalities; or
 - c. removing them would make dependent services unviable.

Commissioners and providers agree to designate these services *Commissioner Requested Services*.

2. Protecting *Commissioner Requested Services* is so important for local patients that any provider of services designated as *Commissioner Requested Services* becomes subject to the Continuity of Services conditions in [Monitor's provider licence](#). These oblige providers of *Commissioner Requested Services* to send Monitor information indicating how financially stable they are and to accept further investigation and support if they do get into financial difficulty.
3. In the unlikely event that a provider of *Commissioner Requested Services* looks as if it might fail, Monitor will appoint an expert Contingency Planning Team to work with all the providers, commissioners and patient representatives in the local health economy on developing a solution that protects services for the failing provider's patients and ensures they have access to sustainable health care. To this end, local commissioners are asked to undertake a special review of the provider's services to pinpoint which must continue to be provided in the locality. If the provider then goes into administration, these services are termed *Location Specific Services* and the administrator must keep them running in the locality.

The criteria for deciding whether a service is a *Commissioner Requested Service* or *Location Specific Service* is the same. The difference between the two lies in the trigger for deciding to designate them:

- I. Commissioners need to designate *Commissioner Requested Services* in normal circumstances to comply with the new regulatory regime. To ease the transition to the new regime, all foundation trusts' mandatory services will be designated *Commissioner Requested Services* when licensing begins on 1 April 2013. Commissioners then have three years to review those services and confirm or reject their designation.
- II. Commissioners only need to identify *Location Specific Services* when a provider is in special administration. Formally, it is the Special Administrator who defines which of the failed provider's services should be *Location Specific Services*, but they do this in consultation with commissioners.

1.3. Monitor's guidance

As *Commissioner Requested Services* are services which commissioners believe would become *Location Specific Services* should the provider fail, this guidance provides a single framework for identifying both: the 'Designation Framework' (see Annex 1). The *Designation Framework* sets out an end-to-end process that guides commissioners from initiating the work of designating services as *Commissioner Requested Services* through to deciding which services should be defined as *Location Specific Services* in the rare event that a provider fails financially.

The guidance and *Designation Framework* are both intended primarily for use by clinical commissioning groups, the NHS Commissioning Board, clinical commissioning group support services and other commissioners, as well as providers of NHS-funded services. They have been developed using insights from commissioners, providers, clinicians and economists and tested in commissioner and provider case studies. Following the processes described in the guidance should help commissioners to ensure that, if a provider does fail, its services will not be withdrawn unless there are suitable alternatives in place.

1.4. A flexible approach that encourages collaboration

Monitor recognises that identifying *Commissioner Requested Services* and *Location Specific Services* are new tasks for commissioners. The approach to performing these tasks set out in the guidance is deliberately flexible, allowing commissioners to adapt it to local circumstances and to develop it as case practice emerges. However, we ask commissioners to give evidence-based reasons for departing from the guidance and to notify Monitor when they have chosen to use a different approach. This will help us to understand how the guidance could be improved. We will keep the guidance under review, to make sure that it remains appropriate and easy to use.

The guidance is based on the principle that the continuity of services can be achieved in different ways. Some services may continue to be provided by other providers in the area, if they have enough capacity and can deliver services of a reasonable level of quality. It may also be possible to provide some services through different pathways. And some services may have to continue to be provided at or close to the site of the failing provider. The guidance helps commissioners identify which services could be provided effectively by other providers or pathways and which could not.

1.5. Monitor's recommended end-to-end process

The process for designating services as *Commissioner Requested Services* is intended to be collaborative. The guidance sets out a process that commissioners can follow when they start analysing which services in their locality to designate. Commissioners are encouraged to begin by considering how the local strategic commissioning plan might affect their designation decisions, particularly when several commissioners are commissioning the same service from a provider. Commissioners are also encouraged to consult widely when making their assessments.

The process for identifying, reviewing and updating *Commissioner Requested Services* has five phases, outlined below. The first three phases are also used to identify *Location Specific Services* when a provider is in special administration.

- **Phase 1: Prepare**
Commissioners identify the desired long-term outcome, given the needs of the local population and the current local configuration of health services.
- **Phase 2: Initiate**
Commissioners notify providers and other stakeholders that they are beginning work to identify *Commissioner Requested Services* and are seeking their input.
- **Phase 3: Assess**
Commissioners work through the four stages of the Designation Framework and either designate services as *Commissioner Requested Services* or remove their *Commissioner Requested Services* designation.
- **Phase 4: Review**
Providers are formally notified of commissioners' decisions, and may refuse the designation of a service as a *Commissioner Requested Service*. When a provider refuses to accept a *Commissioner Requested Services* designation and the commissioner still thinks the service

should be designated as such, the commissioner may seek a review from Monitor to determine whether the provider's refusal was unreasonable.

- **Phase 5: Refresh and update**

Over time, as providers enter and exit a local health economy or service, and technological changes mean services can be delivered in different ways, commissioners will need to review their *Commissioner Requested Services* designations to make sure they remain appropriate.

1.6. The Designation Framework

At the heart of the Assess phase (Phase 3) is a four-stage framework for designating *Commissioner Requested Services*. Exactly the same framework is used to designate *Location Specific Services* when a provider enters special administration. The details of the *Designation Framework* are set out in Annex 1 and there is a supporting [Excel-based toolkit](#). The four stages of the framework comprise:

1. Information gathering – to define the service being assessed and identify key features of the service;
2. Considering suitable alternative provision – to assess the availability, capacity and accessibility of alternative providers and/or pathways;
3. Considering any impact on health inequalities – to assess whether disadvantaged groups may be significantly adversely affected if the service is withdrawn, including whether they might face particular difficulties in accessing alternative providers; and
4. Considering interdependent services – to determine whether the safe and effective operation of the service requires co-dependent services to be retained as well, or whether there are feasible alternative providers for any co-dependent services.

2. An overview of continuity of services

This chapter:

- *provides the legal context for regulating the continuity of services;*
- *explains the roles of commissioners and providers of NHS-funded services, supported by Monitor, in ensuring the continuity of services in the rare event of provider failure;*
- *explains the concepts of Commissioner Requested Services and Location Specific Services;*
- *gives an overview of Monitor's proposed Risk Assessment Framework; and*
- *outlines the arrangements for special administration.*

2.1. Legal context

The Health and Social Care Act 2012 ("the Act") makes changes to the way NHS service providers are regulated and gives Monitor new duties and powers. Under the Act, when a provider becomes, or is likely to become, unable to pay its debts as they fall due, the provider may be placed in special administration. The Act makes provision for two special administration regimes for providers of NHS-funded care. Health special administration will apply to companies providing NHS-funded services, while trust special administration will apply to NHS foundation trusts. The objective of both forms of special administration is to ensure the continued provision of key services.¹ There is a separate special administration regime, run by the Department of Health, for NHS trusts.

Under the arrangements for trust special administration set out in section 175 of the Act, commissioners must determine which key services should be maintained by the trust Special Administrator at or close to the provider, and they should do this by determining which services meet the conditions set out in section 65DA of the National Health Service Act 2006 (as inserted by section 175 of the Act). Monitor terms these services *Location Specific Services*. In identifying these services, commissioners must have regard to guidance published by Monitor. This document and the accompanying annex, Designation Framework, constitute that guidance.

The detailed requirements for health special administration need to be set out in secondary legislation. This legislation has not yet been made. We may therefore need to consult on and publish additional guidance for identifying *Location Specific Services* under health special administration. However, it is our intention that the same process for identifying *Location Specific Services* will apply for both health special administration and trust special administration.

The guidance we are publishing here will also be used to identify *Commissioner Requested Services*. For the purposes of [Monitor's provider licence](#), using powers set out in section 97(1)(i) of the Act, *Commissioner Requested Services* will be defined as those services to which specific licence conditions designed to ensure the continuity of essential services will apply. Under section 98(4)(a), Monitor must publish guidance for commissioners about the exercise of their functions in connection with providers of *Commissioner Requested Services*. This

¹ See sections 129-130 of the Act and section 65DA of the National Health Service Act 2006 (as inserted by s.175 of the Act).

guidance will help commissioners to identify which services should be Commissioner Requested Services and commissioners must have regard to that guidance under section 98(5) of the Act.

2.2. The roles of commissioners, providers and Monitor in ensuring the continuity of services

Monitor regulates licensed providers in order to reduce the risk of a financial failure of a provider of health care services and to reduce the impact on patients if a provider does in fact fail. Financial failure occurs when a provider is unable, or is likely to become unable, to pay its debts as they fall due. Monitor has a responsibility to prevent providers from taking action that could undermine their continued ability to deliver services, and to oversee a special administration process for providers who fail financially.

Commissioners, supported by the NHS Commissioning Board, continue to have the primary responsibility for ensuring the continuity of services for patients. Monitor's role is to support commissioners in ensuring the continuity of services by:

- implementing a series of measures through the new provider licence aimed at protecting patients by reducing the likelihood and impact of provider failure;
- directing intervention in the event of a provider failing to secure continued delivery of services to patients; and
- publishing guidance to assist commissioners in the performance of their duties.

2.3. *Commissioner Requested Services and Location Specific Services*

The objective of special administration is to make sure local populations continue to receive the health care services they need. Specifically, it protects services if withdrawing them might significantly impair the health of the local population and/or significantly increase health inequalities. In practice, both are likely to occur where the services in question cannot be effectively provided in a timely manner by alternative providers and/or pathways. This might be because:

- appropriate alternative providers of those services do not currently exist; or
- the services cannot be provided in a different way; or
- other potential providers do not have sufficient capacity to treat the extra patients that would come to them should the failing provider stop providing services; or
- vulnerable groups may have particular problems accessing alternative providers.

This is the basis of our *Designation Framework* for identifying which services should be designated *Commissioner Requested Services* or *Location Specific Services*. The *Designation Framework* forms part of our guidance for commissioners and is attached as [Annex 1](#).

While *Location Specific Services* will only be formally identified once a provider is already in failure, we believe that services likely to need maintaining in the event of provider failure should be identified in advance, so that providers of these services can be subject to greater regulatory oversight and appropriate plans can be made in good time to ensure services continue to be available to patients. We have therefore established the concept of *Commissioner Requested Services* in Monitor's provider licence.

Commissioner Requested Services are services which commissioners believe are likely to be identified as *Location Specific Services* in the event of provider failure. Providers of *Commissioner Requested Services* are therefore subject to an additional set of licence conditions (the Continuity of Services conditions), which include the obligation to continue providing the services in question and not to make material changes to the way in which they are provided without the agreement of commissioners. These extra conditions are explained in more detail in the [new provider licence, and the accompanying document](#) which provides Monitor's response to the statutory consultation. In broad terms, the extra conditions are intended to i) give Monitor advance warning of when a provider of *Commissioner Requested Services* is likely to encounter financial difficulties; and ii) reduce the likelihood of failure of those licensees providing *Commissioner Requested Services*.

Importantly, if a service is not designated as a *Commissioner Requested Service*, or a *Location Specific Service*, it does not mean that patients do not need that service. Rather, in the view of the commissioner, suitable alternatives exist if the current provider were to stop providing that service, and there is therefore no need for extra regulatory protection.

It is important, therefore, to draw a distinction between decisions about which services should be designated as *Commissioner Requested Services* (CRS) and commissioning decisions. CRS designation for a service determines the degree of regulatory oversight applied to the service provider, while commissioning determines the actual provision of the service. Removing the CRS designation of services does not necessarily indicate that commissioners are reducing, or may in future reduce, their commitment to particular providers.

Commissioner Requested Services will be identified locally by commissioners and can be provided by any licensed provider, that is, foundation trusts from April 2013 and eligible independent and third-sector providers once they are licensed from April 2014. NHS trusts will not be subject to Monitor's licensing regime, so separate arrangements for ensuring the continuity of services apply to them, overseen by the Department of Health. However, NHS trusts should be included in the consideration of possible alternative providers when deciding whether a service should be designated as a *Commissioner Requested Service* or *Location Specific Service*.

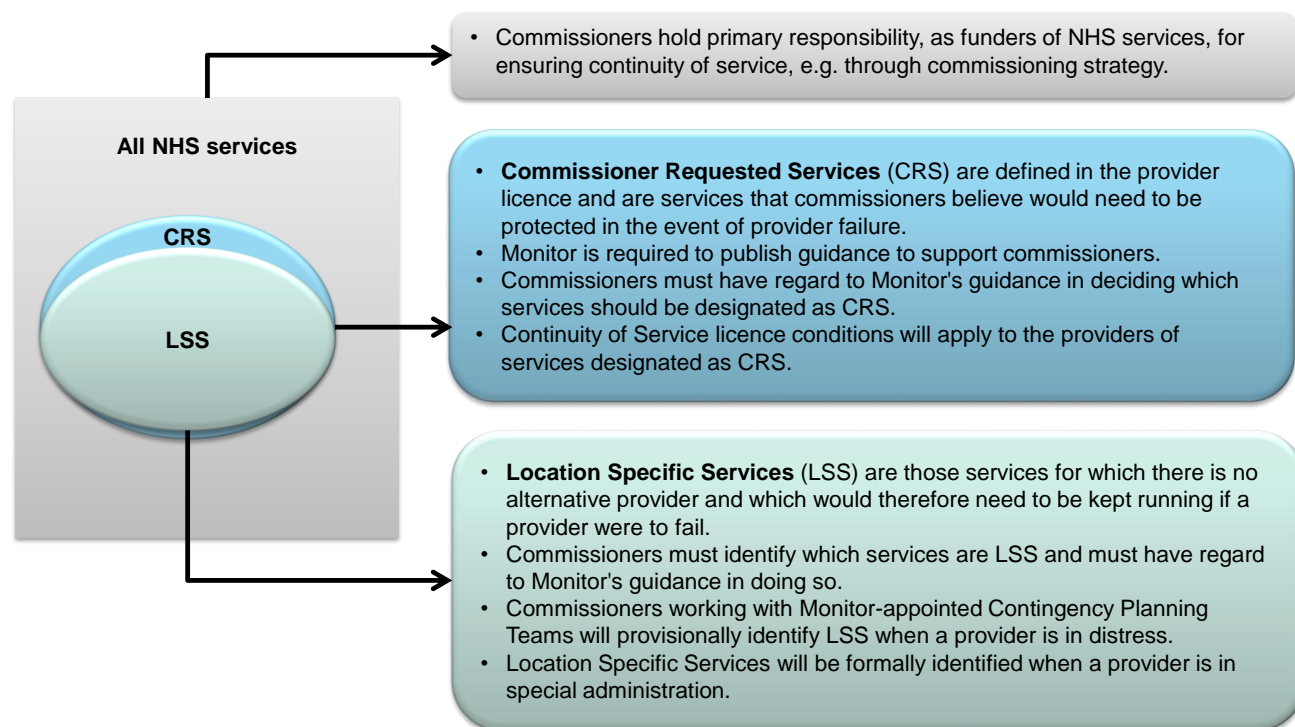
As noted above, since *Commissioner Requested Services*' designation aims to identify those services that might become *Location Specific Services* in failure, the same *Designation Framework* applies for the designation of *Commissioner Requested Services*.

Once a service is designated as a *Commissioner Requested Service*, providers will be required under Monitor's licence to continue to deliver that service and to refrain from making significant changes to it without the agreement of commissioners. Importantly, and rarely, Monitor may continue to enforce this requirement for a specified period even beyond the term of any contract between a provider and commissioners to deliver that service. For example, we may do this if a provider wishes to stop providing a *Commissioner Requested Service* and the commissioner is unable to find an alternative provider. This reflects the importance of ensuring the continuity of *Commissioner Requested Services*; for example they should not cease to be provided in a situation where commissioners and providers are unable to agree the terms of a new contract.

Monitor cannot determine the way in which contractual terms between commissioners and providers are agreed. However, we believe that the best way to avoid a commissioner having too little time to find an alternative provider of a *Commissioner Requested Service* is for contracts for these services to be structured so as to facilitate continuity of patient care in the event that a provider does not wish to renew the contract. One way to achieve this would be a contract with a notice period long enough

to ensure the commissioner would have enough time to organise an alternative provider (or providers), should the provider wish to stop supplying the *Commissioner Requested Service*.

Figure 1: Commissioner Requested Services and Location Specific Services



2.4. Monitor's Risk Assessment Framework

Monitor will keep the financial health of all providers of *Commissioner Requested Services* under review in order to protect patients using those services. To carry out this duty, we will use a *Risk Assessment Framework*. Further information on the *Risk Assessment Framework* can be found [here](#).

We will regularly monitor two financial indicators – a liquidity ratio and the capital servicing capacity – in order to track the financial health of providers of *Commissioner Requested Services*. The annual rating will be based on the provider's estimates of its risk rating in its annual plan. It may be updated during the year, when we receive year-to-date financial information; or, should a *Commissioner Requested Services*' provider inform us of a material financial event. The risk rating will indicate the financial sustainability over the next 12 months of a provider of *Commissioner Requested Services*.

Monitor will use the risk rating as a trigger for considering whether to investigate further the financial position of the provider. We envisage four possible 'states' of a provider's financial sustainability:

Continuity of Services Risk Rating	Description	Monitor response
4	There is sufficient financial headroom and liquidity	Monitor continues to monitor performance on a quarterly basis
3	Emerging or residual financial concern	Performance is monitored on a monthly basis
2	Financial performance is such that the provider of <i>Commissioner Requested Services</i> may be subject to investigation to see if it is in breach of its Continuity of Services licence conditions.	If Monitor considers the provider is displaying financial 'concern', Monitor may start taking an active role in ensuring the continuity of services using provisions in the licence, e.g. requesting the cooperation of the provider in order to assess risk to services; monitoring on a monthly basis; and possibly using enforcement powers if necessary.
1	As level 2 above	In extreme cases Monitor may consider the level of risk represents financial distress and initiate contingency planning to ensure continuity of services and access in the event of special administration.

3. Defining Commissioner Requested Services and Location Specific Services

This chapter explains the:

- *initial arrangements for defining Commissioner Requested Services;*
- *process for reviewing the designation of services as Commissioner Requested Services; and*
- *process for defining Location Specific Services.*

3.1. Initial arrangements for defining *Commissioner Requested Services*

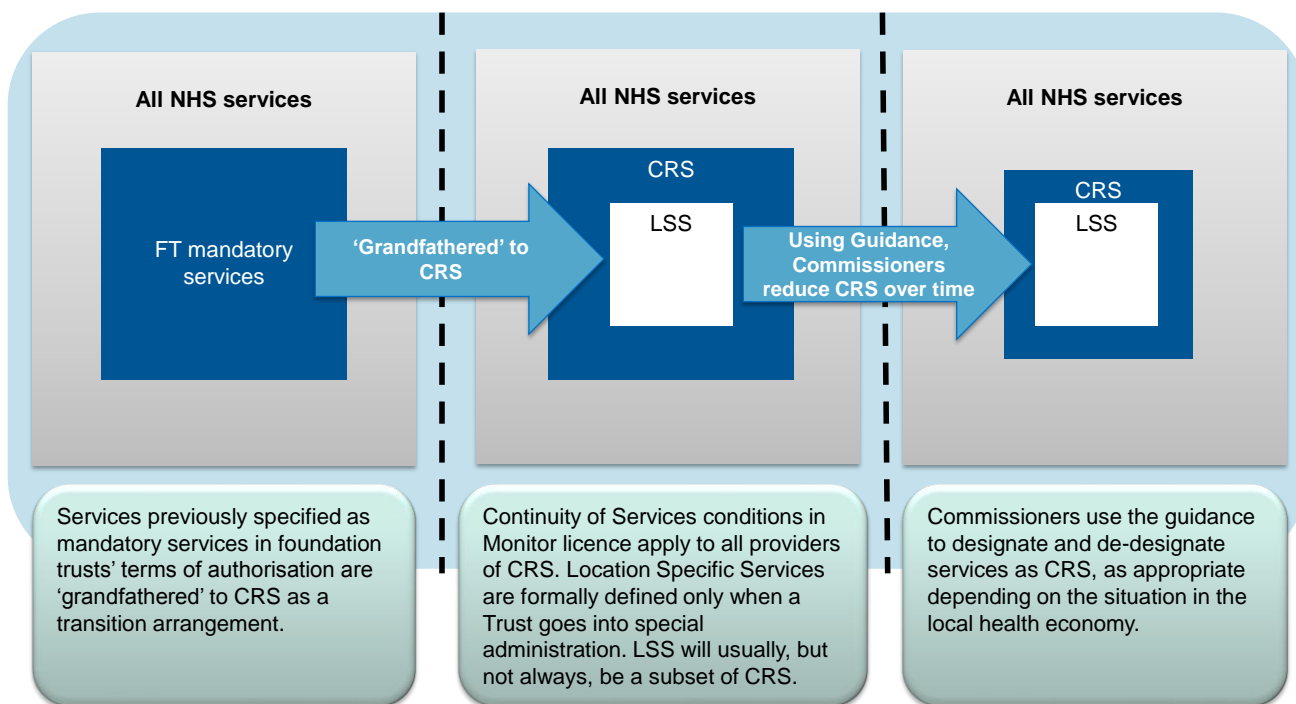
Initially, all services provided by foundation trusts that were previously identified in their terms of authorisation as mandatory services² will automatically be classified as *Commissioner Requested Services*.³ We sometimes refer to this process of automatic classification of mandatory services to *Commissioner Requested Services* as “grandfathering”. The reasoning behind this arrangement is that clinical commissioning groups, which are themselves new organisations, will need time to review thoroughly which services require additional protection. In the interim, it is prudent to extend regulatory protection to all mandatory services offered by foundation trusts.

Over time, commissioners should review this automatic classification and we expect the number of services that are designated as *Commissioner Requested Services* to decrease as a result. This review will be undertaken using the same process and criteria used to identify *Location Specific Services* in the event of failure. We therefore expect the scope of *Commissioner Requested Services* to become much closer to *Location Specific Services* over time. This convergence is illustrated in Figure 2 below. Note that we sometimes refer to the process of removing the *Commissioner Requested Services* designation of a service as “de-designation” or “de-designating”.

² Mandatory services are those which a foundation trust is required to provide, in the volumes specified, as set out in Schedule 2 of its terms of authorisation. This schedule is based on the services commissioned from the foundation trust, and will usually be the subject of a legally binding contract. Requiring foundation trusts to provide certain goods and services is aimed at ensuring that service users have continued access to vital NHS services, and so has the same rationale as *Commissioner Requested Services*. Once the licensing regime comes into effect, the terms of authorisation for foundation trusts will be superseded by the provider licence.

³ For those trusts authorised after 1 April 2013, all their NHS services will automatically be classified as *Commissioner Requested Services*.

Figure 2: The convergence of Commissioner Requested Services to Location Specific Services



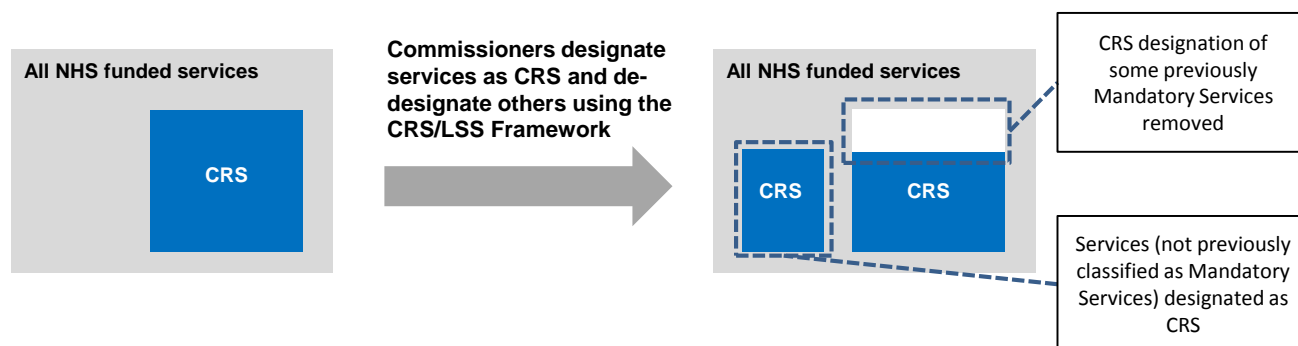
Following public consultation, we have decided to impose a time limit on the automatic classification of current mandatory services as *Commissioner Requested Services* (CRS). For all trusts which have achieved foundation status by 1 April 2015, the automatic classification of services as CRS will expire on 1 April 2016. This means that commissioners will have three years to review the CRS designation of services provided by trusts which achieved foundation status before Monitor's licensing regime commenced on 1 April 2013. For any trusts which gain foundation status after 1 April 2015, the automatic classification of services will apply for one year from the date when the trust obtains its provider licence. The expiry of automatic CRS classification means that commissioners will need to have decided which services should remain designated as CRS within the appropriate time period.

3.2. Processes for reviewing the designation of services as *Commissioner Requested Services*

Following the automatic classification of mandatory services as *Commissioner Requested Services* (CRS), Monitor strongly recommends that commissioners review as soon as possible whether this is the correct set of services that would need to be protected in the event of provider failure. When this initial review has been completed, commissioners are likely to need to reassess periodically which services are designated as CRS, to ensure that the designation remains appropriate in light of any changes in the local health economy. This may involve designating as CRS services that were not previously so designated or removing the CRS designation from services that no longer meet the CRS criteria.

The process for designating or de-designating *Commissioner Requested Services* is shown in Figure 3 below.

Figure 3: Review of Commissioner Requested Services during normal provider operations



Providers and commissioners may disagree about whether a service should be designated as a *Commissioner Requested Service*. In cases where a commissioner believes that the provider is acting unreasonably in refusing to accept the designation of the service as a *Commissioner Requested Service*, Monitor will review the evidence and decide whether or not that is the case.

A provider may also come to the view, in the course of normal operations, that a particular service should no longer be designated as a *Commissioner Requested Service*, for example, because there have been changes in the local health economy. In the first instance, the provider should present its case to the relevant commissioner(s) and, ideally, agreement should be reached locally. However, where local agreement is not achieved, the provider may request that Monitor examines the issue and, if Monitor agrees with the provider, we will issue a determination that the service is no longer a *Commissioner Requested Service*. It is important to note that there are restrictions on the scope for requests for reviews initiated by providers during the grandfathering period. More details on these restrictions and on Monitor's review processes are set out in Chapter 5.

3.3. Process for identifying Location Specific Services

As set out in Section 2.4, using the *Risk Assessment Framework*, Monitor will define four levels of risk and will assign a provider with a Continuity of Services Risk Rating relating to its financial viability and ability to maintain the continuity of the services it provides. The risk rating will determine the degree of regulatory scrutiny and action.

Levels 3 and 2 of the risk rating will represent increasing levels of financial concern and this should prompt commissioners to confirm that their *Commissioner Requested Services* designations for that provider are appropriate.

When a provider bears a risk rating of 1 it may be considered to be financially distressed and at this stage Monitor can appoint and fund a team of experts, known as a Contingency Planning Team, to formulate a plan to ensure the continuity of services if the provider were to fail. The team will support commissioners in identifying which services should become *Location Specific Services* and therefore be kept in operation should the provider in fact fail.

If a provider does fail financially, it is likely to be placed in special administration either by Monitor (for trust special administration) or via a court order (for health special administration), and a Special Administrator will be appointed. The primary objective of the special administrator is to secure the continued provision of the services identified by commissioners as *Location Specific Services*. The special administrator and commissioners must therefore either verify that the set of *Location Specific Services* provisionally identified during the distress phase is appropriate or, alternatively, if

a provisional group of *Location Specific Services* was not identified during the distress phase, they should identify a set of *Location Specific Services*. The latter might be necessary if, for example, a provider had experienced some unexpected event that caused it to move into failure very quickly.

Note that under the arrangements for trust special administration⁴, *Location Specific Services* can only be formally identified when a provider is in failure.

The provisions for trust special administration require that commissioners may only classify a service as one which must continue to be provided if there is no alternative provider and ceasing to provide that service at or close to the failing provider is likely to:

- a) have a significant adverse impact on the health of persons in need of the service; or
- b) significantly increase health inequalities; or
- c) cause a failure to prevent or ameliorate either a significant adverse impact on the health of such persons or a significant increase in health inequalities.

⁴ Similar arrangements will apply for health special administration in due course – these are subject to the passage of secondary legislation.

4. Identifying *Commissioner Requested Services* and *Location Specific Services*

This chapter:

- sets out the purpose of this guidance and the *Designation Framework* provided in Annex 1;
- explains at a high level the processes for designating *Commissioner Requested Services* and *Location Specific Services*; and
- explains how commissioners and others can access and use an Excel-based toolkit to guide them through the *Designation Framework*.

4.1. Guidance and Designation Framework

This guidance and the accompanying *Designation Framework* in Annex 1 set out an end-to-end process that will guide commissioners from initiating the process of designating services as *Commissioner Requested Services*, through to finalising their decisions about which services need to continue being provided at or close to a failing provider in the rare event that a provider fails financially. The *Designation Framework* is an integral part of Monitor's guidance.

The guidance and *Designation Framework* are both targeted primarily at clinical commissioning groups, the NHS Commissioning Board, clinical commissioning group support services and other commissioners, as well as providers of NHS-funded services. They have been developed using insights from commissioners, providers, clinicians and economists. Commissioner and provider case studies have also been conducted.

It is for each individual commissioner of services from licensed providers to determine whether the services they commission should be protected for their patients by *Commissioner Requested Services* designation. Commissioners should consider designation where they have an established contractual relationship with a provider of the service or where they have been using the service on a consistent basis. The *Designation Framework* provides more guidance on this (see Annex 1).

Two or more commissioners of the same service from a single provider may reasonably arrive at different decisions about whether to designate the service as a *Commissioner Requested Service*, depending on their catchment areas, which may have, for example, different patient profiles or different options for alternative provision. However, discussion between multiple commissioners of the same service, including where they have entered into collaborative commissioning arrangements (following NHS Commissioning Board guidance), will be important in designation decisions. Such discussions will help to develop a common understanding of the strategic context of the local health economy among commissioners and the potential scope for alternative arrangements.

4.2. Monitor's recommended end-to-end process

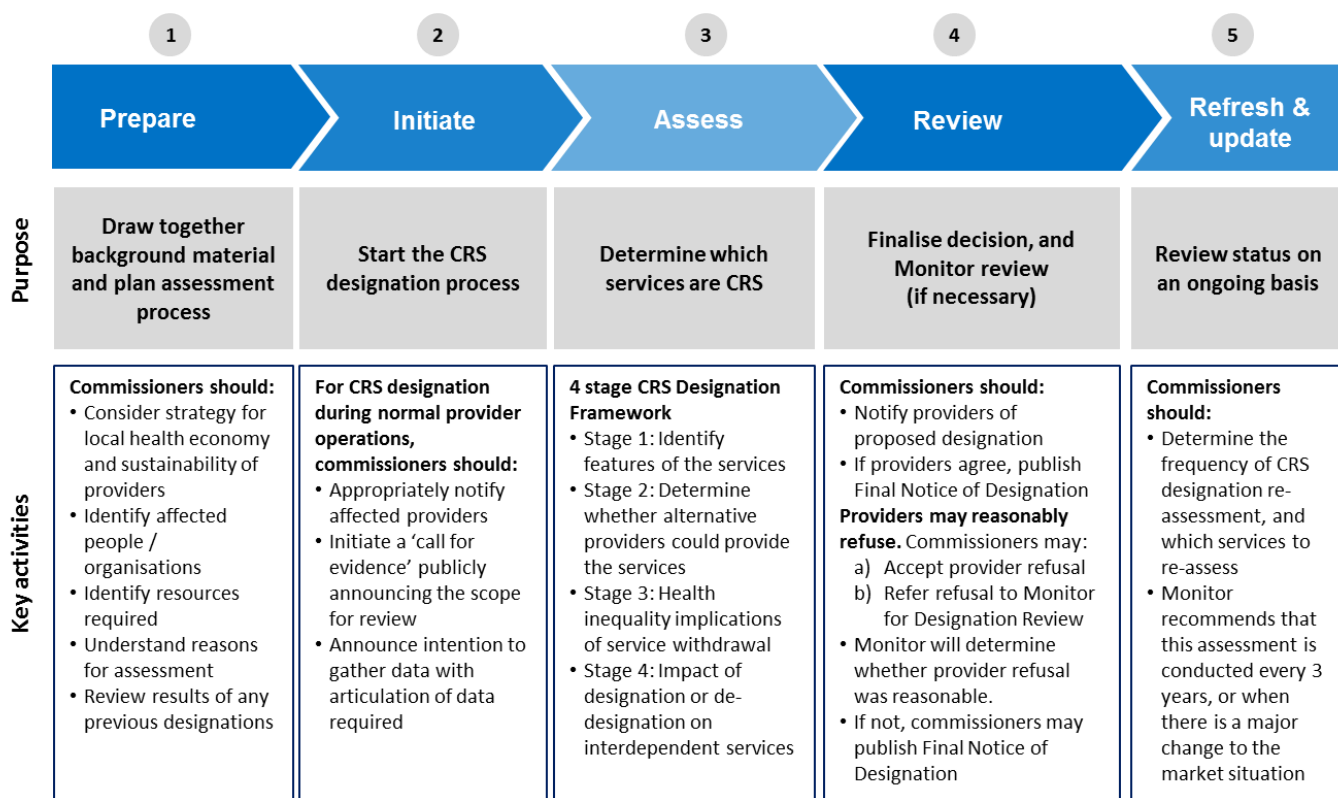
Monitor has worked with experts from across the health care sector to develop a process for identifying *Commissioner Requested Services* and *Location Specific Services*.

The process for identifying *Commissioner Requested Services* has five phases. Each phase is explored in detail below and in Figure 4. Only the first three phases apply to identifying *Location*

Specific Services, because no review of *Location Specific Services* is possible as they are only defined in special administration. We discuss phases 1, 2 and 3 here, and the review phase in the next chapter.

- **Phase 1: Prepare**
Commissioners identify the desired long-term outcome, given the needs of the local population and the current local configuration of health services.
- **Phase 2: Initiate**
At this stage, commissioners should notify providers and other stakeholders that they are beginning work to identify *Commissioner Requested Services* and are seeking their input.
- **Phase 3: Assess**
Commissioners designate or de-designate services as *Commissioner Requested Services*.
- **Phase 4: Review**
Providers are formally notified of commissioners' decisions. Providers may refuse the designation of a service as a *Commissioner Requested Service*. If so, and if the commissioner remains of the view that the service should be designated as a *Commissioner Requested Service*, the commissioner may seek a review from Monitor to determine whether the provider's refusal was unreasonable.
- **Phase 5: Refresh and Update**
Over time, as providers enter and exit a local health economy or service, and technological changes enable services to be delivered in different ways, commissioners should review their designation decisions to ensure that they remain appropriate.

Figure 4: Monitor’s recommended end-to-end process for commissioners identifying Commissioner Requested Services



4.3. The Prepare phase

Monitor recommends that commissioners undertake a brief period of preparation before formally starting each process for assessing *Commissioner Requested Services* and *Location Specific Services*. Commissioners should use this time to:

- draw together background material that will later help to inform whether a service should be designated as a *Commissioner Requested Service* or *Location Specific Service*; and
- put in place plans and resources to support the review process.

During this phase, commissioners may:

- consider their overall strategy for their local health economy and the priorities for their area, and assess whether these may influence designation;
- identify which people and organisations within their region will be affected by any decision resulting from the *Commissioner Requested Services* and *Location Specific Services* designation processes, which will facilitate communication with those stakeholders;
- consult with other commissioners that may use the affected providers, where this applies;
- determine the resources (for example, people, time and infrastructure) required to complete a *Commissioner Requested Service* or *Location Specific Service* designation process, and ensure that those resources are in place; and

- review the results of previous assessment processes and designation decisions, if a relevant assessment process has been conducted previously.

This preparation work should ensure that the assessment and designation process will proceed effectively. After this preparation, the full assessment process can begin.

4.4. The Initiate phase

The ways in which commissioners will initiate a *Commissioner Requested Services* and *Location Specific Services* designation review process will vary depending upon the circumstances under which the designation is undertaken. This section explains how the *Commissioner Requested Services* review process, conducted when a provider is operating normally, compares to the process to determine *Location Specific Services*, conducted when a provider is in financial distress or failure.

Initiating a designation review process during normal provider operations

Once a commissioner has decided to initiate a designation review, it should begin by notifying affected providers. Commissioners should then initiate a “call for evidence”. They should make public the scope of the review, the issues to be addressed and the services and organisations to be included in the assessment. Commissioners should also announce their intention to begin gathering information, clearly articulating the type of information required and their suggested timeline for responses.

Initiation of a designation review process in distress and failure

As outlined earlier, when a provider is experiencing financial distress, commissioners (with support from a Monitor-appointed Contingency Planning Team) should revisit the *Commissioner Requested Services*’ designations for that provider to ensure that they are appropriate, and identify those services that should be designated as *Location Specific Services*, if the provider were in fact to fail financially.

In each of those instances, the relevant bodies (commissioners, Contingency Planning Team and special administrator) should again use the principles and processes laid out in this guidance.

4.5. The Assess phase

The purpose of this phase is to assess whether withdrawing a particular service would have a significant adverse impact on the health of users of health care, and/or on health inequalities. Commissioners must therefore explore whether there are suitable alternative arrangements and whether withdrawing a service at a failing provider would have implications for patients’ health or health inequalities.

To support commissioners, Monitor has designed a *Designation Framework* that lays out how commissioners can approach the necessary analysis in a systematic way. The *Designation Framework* can be found in Annex 1. An [Excel-based toolkit](#) has also been developed to help commissioners through the Assess phase.

Commissioner and provider case studies have been conducted to test the *Designation Framework* and to bring to life the issues associated with designating *Commissioner Requested Services* and *Location Specific Services* locally. Adhering to the *Designation Framework* will allow a

commissioner to demonstrate to providers and the communities that it serves that it has followed a robust and rigorous process and has good grounds for its decisions.

Where multiple commissioners are using the *Designation Framework* to assess the same providers, co-operation between commissioners will be important to minimise the burden on providers. It will also help to ensure that commissioners are aware of possible alternative ways of providing services.

Dialogue between commissioners and providers is also vital. Combined with discussions among commissioners, this will be key to understanding different service delivery models and capacity constraints, as well as the ability of existing and new providers to expand available capacity and capabilities.

Overview of the *Designation Framework*

The *Designation Framework* is a set of questions designed to help users construct evidence-based arguments to consider whether a particular service may need to be maintained at that particular location. It is intended to help commissioners by:

- laying out a clear, repeatable process for the designation of *Commissioner Requested Services* and *Location Specific Services* that commissioners can explain to providers, users of health care services and the public;
- establishing a common methodology for designation across different commissioners to make discussion easier (for example, when multiple commissioners hold contracts for services from the same provider);
- providing a facility to record evidence to present to Monitor should a decision be challenged and as an audit trail for wider purposes, including as the starting point of any future review;
- leaving flexibility for commissioners to modify elements of the designation/de-designation process to suit local circumstances and preferences; and
- reducing the likelihood of challenge to commissioner decisions by establishing a fair due process.

The structure of the *Designation Framework*

The *Designation Framework* has four stages of assessment and three key decision points. If followed, it will help commissioners to determine whether services should be designated as *Commissioner Requested Services* or *Location Specific Services*. These stages and decision points are explored in detail in the *Designation Framework*. In summary, they are:

Assess Phase stage 1: Information gathering – the features of the patient service

This stage allows commissioners and other users of the *Designation Framework* to develop further the information they collected during the “call for evidence” in the Initiate phase. This information will be required in subsequent stages of the *Designation Framework*. The information required ranges from the characteristics of the service under consideration (for example, type of service provided, clinical urgency, method of delivery, etc.), to profiling information about the users of that service. Commissioners using the *Designation Framework* will need to collect a broad range of information, as they will need to understand both the service in question and other services that could be suitable alternatives for patients or service users.

Assess Phase stage 2: Whether suitable alternative provision exists

To prevent an adverse impact on users of health care services, stage 2 of the Assess Phase considers whether commissioners would have sufficient alternative sources of supply if a provider were to fail. Commissioners can determine this by:

- looking at whether there are alternative providers who provide an equivalent service at a reasonable level of quality in the relevant geographical area;
- assessing whether those alternatives would have the capacity and capability (including clinical resilience) to cope with the increase in demand that would result, should the provider in question cease or reduce service provision. Commissioners should seek assurance from alternative providers that they would be able to cope with the displaced demand in this case. They will need to explore this issue with particular care when the provider in question provides more than 25-30% of that service in the area. However, this level of provision should not be seen as a universal threshold for concern. In some cases, there may be significant concerns even when a provider supplies a much lower percentage of the service in that area; and
- finally, analysing whether there would be scope for capacity to be increased over a reasonable time period, to deal with the increase in demand. Capacity may be increased at an existing provider, by the entry of a new provider, or by facilitating a different model of service provision, for example, in a community rather than an acute setting. Commissioners should take care to determine the ability of alternative providers to increase capacity realistically. Further, particularly when identifying *Location Specific Services*, they should conduct discussions with providers in such a way as to avoid anti-competitive behaviour.

After completing this Assess Phase stage 2, *Designation Framework* users should be in a position to decide whether all or part of a service needs to be designated as a *Commissioner Requested Service* (or *Location Specific Service*), and hence become subject to Monitor's Continuity of Services licence conditions (or be maintained if the provider is at the point of failure).

If there is not enough alternative capacity (for example, when alternative providers cannot give the necessary assurances), the commissioner should consider designating the whole service or a portion of the service. If, on the other hand, there is sufficient capacity and capability nearby to deal with the displacement of demand within the appropriate timeframe, then the commissioner should consider not designating that service.

It is important to note here that it is possible to protect all of a service or just part of it, as long as safety requirements continue to be met. For example, in the course of a reconfiguration, commissioners might decide that penetrating eye injuries are only to be treated by one provider in the local health economy, while routine ophthalmology services are offered more widely. In this case, emergency ophthalmology services, such as the treatment of penetrating eye injuries, could be designated at their single provider, while all other ophthalmology services at that location would not be designated.

A commissioner should also identify the volume of the service that it commissions and that it requires to be designated.

For services that commissioners think need designation at this stage, they can go straight to Assess Phase stage 4 (assessing interdependent services), bypassing stage 3. If commissioners determine in stage 2 that a service may not need to be designated, the next step is an assessment of the potential impact of withdrawing the service on health inequalities (Assess Phase stage 3).

Assess Phase stage 3: Whether there would be health inequality implications if the service were withdrawn in the event of provider failure

As outlined above, in considering whether particular services should be designated as *Location Specific Services*, the Act requires commissioners to consider the impact of withdrawing those services at a particular provider on health inequalities. This consideration therefore also applies to the designation of *Commissioner Requested Services*.

Stage 3 of the *Designation Framework* looks at whether any disadvantaged or “hard to reach” groups, who tend to have poorer health outcomes, would be disproportionately affected by the withdrawal of a service at a particular provider. A key output of this phase is a profile of service users broken down by characteristics (income, ethnicity, gender, socio-economic group, and other protected characteristics under equalities legislation). In a small number of cases, there may also be links between NHS services and wider public services that commissioners may wish to take into account in their designation decisions. For example, Monitor is aware of one foundation trust whose paediatric services department works very closely with a local authority’s child protection service, whose work is primarily focused on a particularly deprived geographical area with significant health inequalities relative to other areas. This relationship has been built up over a number of years and may be hard to replicate in another provider. In circumstances like this, commissioners may want to take into account this type of wider integration in their decisions on *Commissioner Requested Service* and *Location Specific Service* designation, particularly where there is a strong potential impact on health inequalities.

After Phase 3, a decision must be made as to whether a service should be designated as a *Commissioner Requested Service* (or a *Location Specific Service*).

If alternative providers exist that disadvantaged groups can easily access, designation is not required. By contrast, any impediments to access, such as a long distance to an alternative provider, which would impose material costs on disadvantaged users of health care, could be considered grounds to designate the service on the basis that the commissioner does not consider the alternative provision suitable. Any relationship built up by a provider with a particular community – especially one considered “hard to reach” – may also be a factor to be considered in a *Commissioner Requested Service* or *Location Specific Service* designation decision, if it cannot easily be replicated by another provider and/or in another location.

The significance of the impact on health outcomes of disadvantaged groups and the suitability of potential alternatives should be defined locally by commissioners. This underlies the need for expert and patient views to be taken into account in the decision-making process.

Assess Phase stage 4: The impact of protection on interdependent services

The nature of health care services means that decisions about whether to designate one service often cannot be made in isolation. Stage 4 allows commissioners and other users of the *Designation Framework* to consider whether interdependent services need to be designated in addition to the primary designated service.

Advice that we have received from clinicians suggests that clinical urgency will be an important determinant in the decision to designate an interdependent service. All things being equal, where access to the interdependent services is required urgently – that is, within minutes of the initial service – commissioners will most likely find it difficult to identify alternative providers.

Commissioners will also need to take into account any economies of scale and scope in providing the designated and supporting (interdependent) service. Monitor commissioned Frontier Economics, in collaboration with the Boston Consulting Group, to carry out a review of work in this area and to develop a framework for measuring economies of scale and scope. The report can be found [here](#).

With all designated services, commissioners will also need to ensure that the service can continue to be offered safely. For some treatments, such as paediatric cardiology, a minimum number of procedures may be required for the service to remain clinically safe. This may affect whether interdependent services, such as routine treatments, need to be designated.

The likelihood of adverse impacts on users of health care should be the overriding concern in determining which services are interdependent. Commissioners must then make judgments about whether to designate all or part of the interdependent service based on whether there are any suitable alternatives, as in previous stages.

Applying stage 4 in practice

It is important that stage 4 is not seen and used simply as a way to protect current configurations of health services. Commissioners and providers are encouraged to think broadly and imaginatively about how services might be delivered in different ways to improve quality and safety, and to deliver the productivity gains needed to meet the financial challenges facing the NHS as a whole.

Indeed, it is vital that commissioners reflect on different models of care provision to consider whether it is possible to deliver the same or better quality care in different, more cost-effective ways, by, for example:

- considering whether Accident and Emergency (A&E) facilities really require support services that only a full-scale hospital can provide, given emerging models of stand-alone A&E facilities seen, for example, in the North West of England; or
- considering ways of centralising services where economies of scale and/or scope exist, particularly for more complex treatments, whilst ensuring that more local facilities remain available to meet most patients' immediate needs. This can be seen, for example, in the way that stroke services have been concentrated among a small number of providers in London, leading to substantial improvements in health outcomes, and in "hub and spoke" models of A&E care, where critically ill patients are stabilised in "spoke" facilities and then transported to major centres ("hubs") which are better equipped and staffed, and therefore able to provide more specialised treatments to higher standards of clinical quality.

Where interdependencies are truly unavoidable, commissioners should consider whether they require complementary services to be provided by the same provider on the same site, or whether there might be other feasible solutions. For example, where A&E services require access to orthopaedic surgeons to deal with trauma cases, do the surgeons involved have to be employed by the same provider on the same site, or can call-off arrangements be made with other providers nearby who provide elective orthopaedic surgery?

4.6. Registering *Commissioner Requested Services* with Monitor

To help enable Monitor to fulfil our role of ensuring the continuity of services, we are intending to maintain a central register of *Commissioner Requested Services*. It is therefore important that commissioners notify Monitor once a decision to designate or de-designate a service as a *Commissioner Requested Service* is confirmed. We intend to develop a web-based form to allow commissioners to do this.

Monitor expects that commissioners and Contingency Planning Teams will adhere closely to the guidance set out in this consultation. However, there may be circumstances when commissioners want to take an alternative approach to designating services.

As part of understanding how our guidance is being used in practice, it would be helpful to Monitor to be aware of when commissioners believe that they have developed a more appropriate method of identifying *Commissioner Requested Services* or are deviating substantially from Monitor's guidance. We will therefore be including a question on this in the web-based form on which we will ask commissioners to register their designation decisions.

More detail on how commissioners have made designation decisions will be collated as part of our process of review to ensure that the guidance remains appropriate and easy to use. We would also encourage the dissemination of emerging approaches, through appropriate sector forums to promote best practice across the sector.

5. Process for confirming and reviewing commissioner decisions

This chapter explains the:

- *process following an initial commissioner decision to designate or de-designate a service as a Commissioner Requested Service;*
- *process for finalising a designation decision;*
- *process for reviewing a provider's refusal to accept the designation of a service as a Commissioner Requested Service – the Designation Review Process – including grounds for such a review and the required evidence;*
- *recommendations for the periodic reassessment of Commissioner Requested Service designation by commissioners;*
- *process for providers to request a review of a Commissioner Requested Service designation during normal operations; and*
- *application of the review process to services automatically classified as Commissioner Requested Services.*

5.1. Process following an initial commissioner decision to designate or de-designate a **Commissioner Requested Service**

When a commissioner has come to a decision about whether to designate or de-designate a *Commissioner Requested Service* using the *Designation Framework* described above (and in Annex 1), there are a number of actions that it should take.

First, commissioners should seek to communicate their decision to providers and other interested parties, such as neighbouring commissioners, the NHS Commissioning Board, local authorities, Health and Wellbeing Boards, and local Healthwatch.

Decisions about *Commissioner Requested Services'* designation can have a significant financial and operational impact on providers. Providers need to receive a written request from a commissioner that they are required to provide a particular service as a *Commissioner Requested Service*. This is a formal requirement before the protections in the licence for services designated as *Commissioner Requested Services* will be applied.

For other interested parties, commissioners will need to make a judgement about the best form of communication. Members of the public should also be able to access information on *Commissioner Requested Services*; this could be achieved by publishing information on the commissioner's website.

For a service to be de-designated (that is, it is no longer a *Commissioner Requested Service*), all current commissioners of that service who have identified it as a *Commissioner Requested Service* must agree to remove its designation and/or Monitor must issue a written determination that the service should no longer be designated as a *Commissioner Requested Service*.

Commissioners are also encouraged to keep a record of the information gathered during any designation review process and the rationale for their decisions, so they can draw on this evidence should a provider enter financial distress or fail. As noted in Chapter 4, an Excel-based toolkit is available [on Monitor's website](#) to:

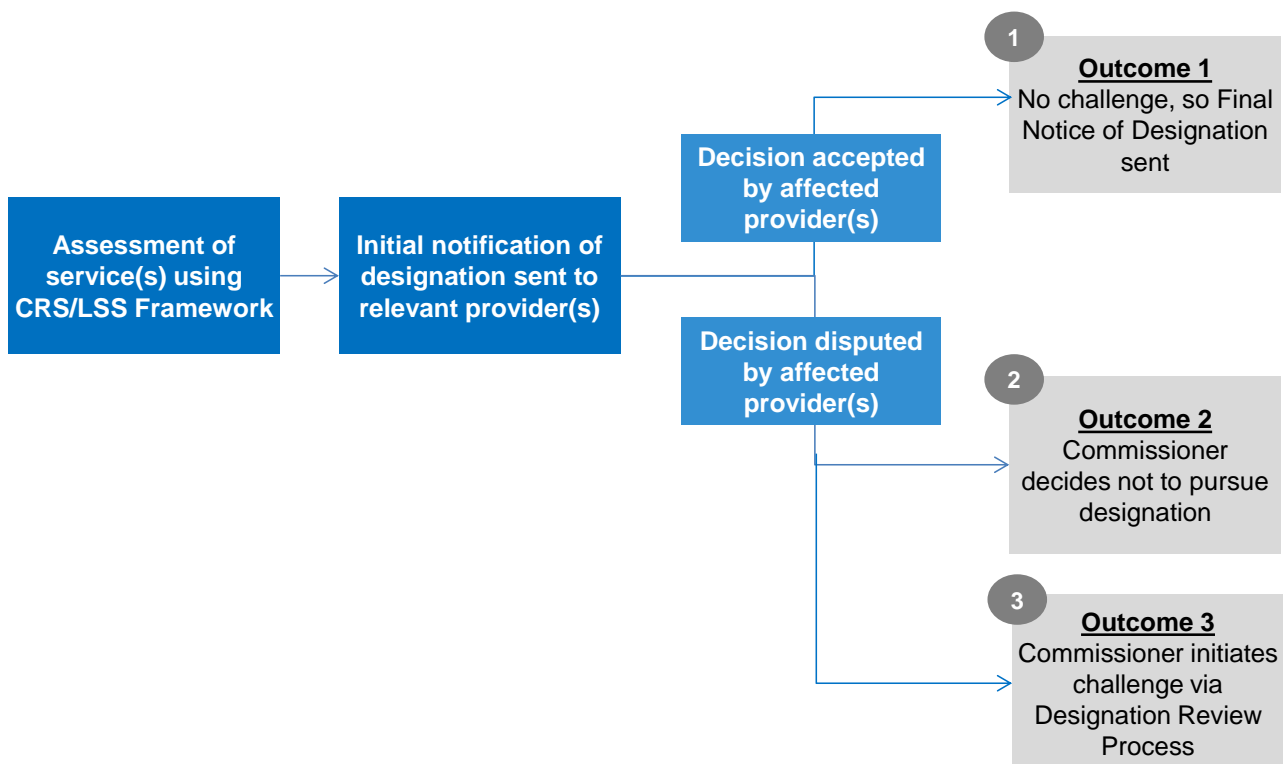
- guide commissioners through the *Designation Framework*; and
- provide a mechanism to record the evidence used and the thinking underlying a decision to designate or not.

Best efforts should be made by commissioners to ensure that affected parties understand and agree with the designation decision. When there is a disagreement, commissioners and providers should try to reach an understanding of the reasons for the disagreement and attempt to resolve them. Referral to Monitor's designation review process (described in section 4.4) should be rare.

5.2. Finalising a designation decision

After the commissioner has made interested parties aware of its decision to designate a service as a *Commissioner Requested Service*, it should allow 28 days to elapse (unless the provider agrees to the decision in advance of that period ending). During this period, the provider may choose to accept the commissioner's decision to designate the service or to refuse the designation. If a provider refuses the designation, the commissioner must decide whether it wishes to pursue the designation of that service. If the commissioner decides it does wish to pursue designation, the commissioner must seek a designation review by Monitor, during which Monitor will decide whether or not the provider has acted unreasonably in refusing the *Commissioner Requested Service* designation. There are therefore three possible outcomes of this part of the process, as shown in Figure 5 and described below.

Figure 5: An outline of the Commissioner Requested Services finalisation process



Outcome 1: No challenge

If the affected provider accepts the *Commissioner Requested Service* designation decision made by the commissioner (or does not reject the designation within 28 days), then the designation is confirmed. A commissioner should indicate this by publishing a Final Notice of Designation on its website and notifying Monitor of its decision. At this point, the designation process comes to an end. The designation will then stand until the commissioner chooses to review it.

Providers of *Commissioner Requested Services* must then meet the conditions in their provider licence that, among other things, limit their ability to cease to offer, or significantly modify, a Commissioner Requested Service without approval from their commissioners.

Outcome 2: Provider's refusal accepted by the commissioner

If a provider refuses the commissioner's *Commissioner Requested Service* designation, and the commissioner accepts that refusal, the service will not be designated as a *Commissioner Requested Service*. No further action is required.

Outcome 3: Provider's refusal contested by the commissioner, leading to a Designation Review

If the provider refuses to provide the service as a *Commissioner Requested Service* and the commissioner still wishes to designate it, the commissioner may ask Monitor to review whether the provider's refusal is unreasonable, through the designation review process, described below.

The **designation review process will only apply to Commissioner Requested Services' designations, and not to the designation of a Location Specific Service** (the processes for the latter are set out in the legislation).

5.3. The designation review process

Where a commissioner and provider have been unable to reach agreement on whether a certain service should be designated as a *Commissioner Requested Service* and the provider has refused the commissioner's designation, the commissioner can choose to refer the issue to Monitor for review.

Monitor will run the designation review process. Commissioners will have 28 days from the date that a provider notifies them of their rejection of the proposed designation of a service as a *Commissioner Requested Service* to lodge a request for review with Monitor. Monitor will then examine and make a judgement on the proposed designation, either upholding or rejecting it. The review will be completed within two months, provided that any requests for evidence issued by Monitor are met in a timely manner. When this is not the case, Monitor reserves the right to extend the timeframe.

During the period in which the review process is taking place, the existing status of the service before the commissioner's notification will stand until a final decision on designation is made. In cases where the service was not previously a *Commissioner Requested Service* (CRS), it will therefore not be a CRS during the review process. Conversely, if the service was a CRS immediately before the review, the service will remain a CRS while a review decision is being made.

Multiple commissioners will be able to request a review collectively, if they are all affected by a refusal by the same provider to accept the proposed designation of a service as a *Commissioner Requested Service*. Doing so will allow commissioners to share the administrative burden of seeking a review, reducing the impact on the resources of each individual organisation. Similarly, where the same provider has rejected the proposed designation of multiple services on a single occasion, commissioners may seek a single review covering all of those services.

Under Monitor's licence, a licensee will be required to provide a service as a *Commissioner Requested Service* if Monitor determines that the licensee's refusal is unreasonable.

This guidance and the *Designation Framework* in Annex 1 will be used to evaluate whether a provider has been unreasonable in refusing to accept a designation decision. If a commissioner has interpreted and implemented this guidance and followed the *Designation Framework* in an appropriate way, then the provider's refusal to accept a *Commissioner Requested Service* designation is likely to be considered unreasonable. If a commissioner has not done so, then a provider may have reasonable grounds to refuse the designation of a service as a *Commissioner Requested Service*. It is anticipated that strong evidence will be required for a review to overturn a commissioner's decision.

If Monitor determines that the provider's refusal is reasonable, the service will not be designated as a *Commissioner Requested Service*, and the Continuity of Services licence conditions will not apply to the provider (unless it provides other services which are designated as Commissioner Requested Services). If Monitor determines that the provider's refusal is unreasonable, it will issue a direction to this effect and, under the provider licence, the licensee will be required to provide the service as a *Commissioner Requested Service* and the Continuity of Services licence conditions will apply.

5.4. Reassessing *Commissioner Requested Service* designations

It is the responsibility of commissioners to determine how frequently they wish to re-assess *Commissioner Requested Service* designations, and whether they wish to re-assess all designations at once or to stagger them (e.g. by assessing tranches of services, or the designations relating to particular providers, in turn).

Monitor's recommendation is that commissioners should seek to re-assess *Commissioner Requested Service* designations every three years, or when there is a major change to the situation in a local health economy or commissioning area. For instance, the entry of a major new provider could change the basis of *Commissioner Requested Service* designations for other providers in the area. Equally, if a major provider ceases to offer a particular service, increasing the reliance of commissioners on the remaining providers of that service, then this could also be grounds for a re-assessment.

5.5. Provider-initiated review of *Commissioner Requested Service* designation

If a provider comes to the view, in the course of normal operations, that a particular service should no longer be designated as a *Commissioner Requested Service*, it would be best practice for this to be resolved locally between commissioners and providers, without the intervention of Monitor. A review by Monitor should be necessary only when commissioners and providers are unable to agree.

In the first instance therefore, a provider should present evidence and make its case to the relevant commissioner(s) that a particular service should no longer be designated as a *Commissioner Requested Service*. If all the commissioners of that service agree, they must notify Monitor, who will then issue a determination that the service is no longer a *Commissioner Requested Service*, in line with the conditions of Monitor's provider licence.

Commissioners should give their view on the provider's request within a reasonable timeframe. We suggest a reasonable timeframe would be three months.

If the provider is unable to persuade the commissioner(s) that the *Commissioner Requested Services'* designation should be removed from a service, it may apply to Monitor for a Designation Review.

If Monitor determines that the service should continue to be a *Commissioner Requested Service* (CRS), the licensee will be required to continue providing that service as a CRS, under Continuity of Services Licence Condition 1. However, if Monitor comes to the view that the service should not be designated as a CRS, it will issue a written determination that the service is no longer a CRS, as set out in General Licence Condition 9. As above, the existing designation status will stand, while the designation review is undertaken, that is, the service will remain a *Commissioner Requested Service* until Monitor has issued a determination that it has ceased to be one.

Monitor will not undertake a review of the designation of the same service unless there is strong evidence that circumstances have changed substantially since the previous review was undertaken.

5.6. Review of services automatically classified as *Commissioner Requested Services*

It is important to note that it is only possible for a foundation trust to initiate a review of its "grandfathered" *Commissioner Requested Services* in limited circumstances during the grandfathering period. Under General Condition 9 of Monitor's provider licence, reviews initiated by providers are only permitted during this period if:

- the provider wishes to cease providing the service altogether; or
- the commissioner has previously undertaken a review of its grandfathered *Commissioner Requested Services* and actively designated the service in question as a *Commissioner Requested Service*.

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