

**Framework Agreement  
between the Department of Health and Monitor**

2014

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## 1. Why Framework Agreements are necessary

- 1.1. Managing Public Money requires that framework agreements exist between central government departments and their arm's length bodies.
- 1.2. This is because it is important to have a document in place that defines the relationship between a central government department and an arm's length body as any such relationship inevitably entails tensions as well as opportunities.
- 1.3. In a Framework Agreement, the autonomy of each organisation needs to be buttressed by sufficient accountability to give Parliament and the public confidence that public resources are used wisely.
- 1.4. Even where it is important that an ALB is demonstrably independent, it is still important to specify how the ALB is to operate and how it will interact with the central government department that funds it. Functional independence is compatible with financial oversight by the ALB's parent department and with accountability.

## 2. Purpose of this document

- 2.1. Following on from the above, the purpose of this specific document is to define the

critical elements of the relationship between the Department and Monitor. The document is focused on:

- How the Department and Monitor will work in **partnership** to serve patients, the public and the taxpayer; and
- How both Monitor and the Department discharge their **accountability** responsibilities effectively.

## 3. Monitor's purpose

- 3.1. Monitor is an executive non-Departmental public body, operating under provisions in the National Health Service Act 2006 and the Health and Social Care Act 2012.
- 3.2. Under the Health and Social Care Act 2012 Monitor is the sector regulator of NHS funded services. Its role is to protect and promote patient interests by promoting *economic, efficient and effective* health care services whilst maintaining or improving quality.
- 3.3. Monitor's discharges its functions by:
  - licensing providers of healthcare services for the purposes of the health service in England;
  - publishing the national tariff for health care services provided for the health service in England;

- supporting commissioners in securing continued access to essential NHS services;
  - addressing anti-competitive behaviour in the provision and procurement of services for the purposes of the health service (including through concurrent functions with the Competition and Markets Authority under the Competition Act 1988 and Part 4 of the Enterprise Act 2002 in relation to healthcare services);
  - authorising NHS trusts as NHS foundation trusts; and
  - assessing the risk of failure in NHS foundation trusts and taking action to reduce that risk where significant.
- 3.4. The Department of Health and Monitor have agreed to work to a set of principles. These are:
- **Working together in the interests of patients, people who use services and the public** to maximise the health and well-being gain for the population, and working to the values set out in the NHS Constitution.
  - **Respect for the importance of autonomy throughout the system.** The Department will respect Monitor's independence of judgement, and will not interfere in its day-to-day operations or decision-making.
  - **Working together openly and positively.** This will include working constructively and collaboratively together and with other organisations within and beyond the health and social care system.
- **Recognition that the Secretary of State is ultimately accountable to Parliament and the public for the system overall.** Monitor will support the Department in the discharge of its accountability duties, and the Department will support Monitor in the same way.
- #### 4. Governance
- 4.1. Monitor is led by a board made up of:
- a non-executive chair appointed by the Secretary of State for Health;
  - at least four other non-executive members, also appointed by the Secretary of State;
  - a chief executive appointed by the non-executive members of the Board; and
  - any other executive board members appointed by the non-executive members: the total number of executive members must be fewer than the number of non-executive members.
- 4.2. The Permanent Secretary has appointed a Senior Departmental Sponsor (SDS) to act as Monitor's designated consistent point of contact within the Department. The SDS acts as the link at executive level between

Monitor and the senior officials of the Department, and also with ministers. Whilst the SDS role is facilitative and recognises the need for direct engagement between Monitor and other parts of the Department and ministers, it also supports the Permanent Secretary in holding Monitor to account and providing assurance on its performance. The SDS is currently the Director General for Finance and NHS. The SDS will be supported by a Departmental sponsor team, which will be the principal day-to-day liaison between the Department and Monitor.

Department of Health. To ensure that this is achieved, Monitor will need to produce an organisational strategy document every three years. Monitor will agree the aims of this strategy with the Department to ensure that their proposed approach is consistent with the Department's overall approach to the health and social care system. Comments by the Department will be proportionate and relevant to its assurance role. In order to allow sufficient time for this review process, a timetable will be agreed in advance by Monitor and the Department.

#### *Process for setting objectives*

4.3. The Department of Health is responsible for overseeing the health and social care system. It is responsible for:

- setting objectives for the system and ensuring an integrated system;
- overseeing national bodies whilst respecting their operational independence; and
- accounting for the performance of the system.

4.4. Monitor, as an independent regulator established at arm's length and with political impartiality, will set its own objectives. These objectives will, however, need to be set within, and align with, the context of the overall health and social care system objectives set by the

4.5. Underneath this, Monitor will produce a business plan each year demonstrating how it will meet its legal duties and deliver its objectives. Monitor will have the autonomy to determine their objectives for this business plan provided that: the plans are affordable within the budgets allocated by the Department of Health, and, that they align with the overall system objectives set by the Secretary of State for Health. Monitor will share a copy of the business plan with the Department. Comments by the Department will be proportionate and relevant to its assurance role. In order to allow sufficient time for this review process, a timetable will be agreed in advance by Monitor and the Department on an annual basis.

4.6. In addition, the Health and Social Care Act 2012 makes

provision under Section 63 for the Secretary of State to publish guidance to Monitor on the objectives specified in NHS England's mandate as are relevant to Monitor in the exercise of its functions. The Secretary of State will publish this in the form of a letter setting out his expectations of Monitor. The Senior Departmental Sponsor will discuss with Monitor the guidance issued under Section 63 and these discussions will align with the standard system business cycle.

#### *Discharge of statutory functions*

- 4.7. Subject to any constraints imposed by section 10.2, Monitor will ensure that it has appropriate arrangements in place for the discharge of each of the statutory functions for which it is responsible and is clear about the legislative requirements associated with each of them, specifically any restrictions on the delegation of those functions. It will ensure that it has the necessary capacity and capability to undertake those functions, and will ensure that it has the statutory power to take on a statutory function on behalf of another person or body before it does so. Monitor will also ensure that there is periodic audit of the discharge of its statutory functions so that the delivery of them remains

effective, efficient and legally compliant.<sup>1</sup>

#### *Cross-government clearance*

- 4.8. In addition to internal governance, cross-government clearance is required for major new policy decisions of the type set out in Cabinet Office guidance.<sup>2</sup> Although such cases are likely to be small in number, the Secretary of State will be responsible for obtaining clearance and Monitor will adhere to any conditions applied through the clearance process. There will also be cases where the Secretary of State must consult Cabinet colleagues before giving the Government's view, even if collective agreement is not required. In such cases, Monitor will supply the Secretary of State with any information he or she needs in a timely fashion.

### **5. Accountability**

#### *Secretary of State*

- 5.1. As an independent regulator, Monitor is accountable to Parliament, the Secretary of State and to the Department of Health's Principal Accounting

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<sup>1</sup> Monitor should include a review of this in their three-year audit cycle, but ensure that they take steps to sufficiently assure themselves on an annual basis and include details of this within their governance statements.

<sup>2</sup> Guide to Cabinet and Cabinet Committees, <http://www.cabinetoffice.gov.uk/resource-library/cabinet-committees-system-and-list-cabinet-committees>, pages 6-8

Officer. This is a complex relationship that is summarised in Annex E. The text below focuses on Monitor's accountability to the Secretary of State and the Department of Health.

5.2. The Secretary of State is accountable to Parliament for the health system (its "steward"), including Monitor. The Department of Health supports him or her in this role. This involves:

- setting national priorities and monitoring the whole system's performance to ensure it delivers what patients, people who use services and the wider public value most;
  - setting budgets across the health system, including for Monitor;
  - supporting the integrity of the system by ensuring that funding and accountability arrangements protect the best interests of patients, the public and the taxpayer; and;
- accounting to Parliament for Monitor's performance and the effectiveness of the health and care system overall.

5.3. To support this accountability, Department of Health Ministers will chair quarterly accountability meetings with Monitor to keep touch with system developments, whilst, recognising Monitor's unique role and independence as the Sector Regulator. These meetings will be focused on strategic and topical issues,

and items can be proposed by either party. One of these meetings may be chaired by the Secretary of State. The Chair and Chief Executive of Monitor, and, the Senior Departmental Sponsor (SDS) will also attend. The remaining three will be led by the Parliamentary under Secretary of State for Quality and attended by the Chair of Monitor, the Chief Executive of Monitor (should the Chair of Monitor so wish) and by the SDS. These meetings will also support the shared principles and will be structured to promote openness, constructive challenge and the identification and resolution of strategic and topical issues.

#### *The Principal Accounting Officer and Monitor's Accounting Officer*

5.4. The Department of Health's Permanent Secretary is the Principal Accounting Officer (PAO) and so is accountable in Parliament for the general performance of the health system in England, including Monitor. This requires him or her to gain assurance that Monitor is discharging its statutory duties and meeting the objectives set out in the Health and Social Care Act 2012. In this way the PAO is able to give Parliament an informed account of the Department's stewardship of the public funds it distributes and manages.

5.5. The Department's Permanent Secretary, as the Department's

Principal Accounting Officer, has appointed Monitor's chief executive as its Accounting Officer (AO). The AO may be called to account for the performance of Monitor in Parliament. Whilst Monitor is operationally independent, the PAO can also be held to account in Parliament since the PAO's oversight should allow him or her to assess the adequacy of Monitor's stewardship of public funds and discharge of its duties. This assessment includes making judgments about whether Monitor is operating to adequate standards of regularity, propriety, feasibility and value for money (assessed for the Exchequer as a whole).

5.6. To gain this assurance, the PAO has appointed the Director General for Finance and NHS as the Senior Departmental Sponsor (SDS) for Monitor. The SDS will hold quarterly accountability meetings with the Chief Executive of Monitor. If, there are insufficient issues to discuss in one of the formal quarterly accountability meetings between the SDS and Chief Executive, then the meeting need not take place.

5.7. Other working level meetings will happen as necessary to maintain an open and constructive dialogue between the Department and Monitor, whilst protecting Monitor's independence of judgement. The schedule of working level meetings will be agreed

between the Department and Monitor.

5.8. The PAO's oversight of Monitor's performance also relies upon the provision of information, and processes to enable both parties to review performance. The Department requires the following formal documents from Monitor:

- Quarterly in-year and year-end performance against budgetary controls;
- Quarterly high level risk registers (these should at least contain the ten most significant risks and the ten newest risks);
- Data on HR, procurement, estates and IT (which ordinarily will be obtained through the quarterly pipeline process whereby Monitor seeks Departmental approval for expenditure on these items); Annual business plan (as set out in 4.5);
- Annual reports and accounts; and
- Annual draft and final Governance Statements, with the draft being shared around December each year.

Monitor and the Department work together closely on a number of issues across the health and social care system and routinely share considerable amounts of information and thinking in

addition to that listed above. It is expected that this level of openness and transparency will continue as it is in the interests of patients and the wider health care system. Monitor will also provide further information to the Department relevant to their assurance role where proportionate and relevant to the risk and that does not compromise Monitor's operational independence.

5.9. Monitor is responsible for the delivery of its objectives and to respect Monitor's operational independence, the Department will limit the circumstances in which it will intervene in its activities. The following constraints do, however, apply:

- All funds allocated to Monitor must be spent on the statutory functions of Monitor. If any funds are spent outside the statutory functions of Monitor, the Department could seek adjustments to the grant in aid for running costs (administration) to compensate.
- The Secretary of State may remove any non-executive member from the Board on the grounds of incapacity, misbehaviour or failure to carry out his or her duties as a non-executive member.
- As set out in Section 71 of the Health and Social Care Act 2012, if the

Secretary of State considers that Monitor is significantly failing or has failed to perform any of its functions properly or at all he is able to intervene and issue directions to Monitor. In the first instance, the Secretary of State could direct Monitor about how it carried out its functions. If Monitor failed to comply with such directions, the Secretary of State could either discharge the function himself, or make arrangements for another body to do so on his behalf. The Secretary of State will always publish his reasons for any intervention.

## 6. Monitor's board

6.1. Monitor is governed by its board. The role of the board is as described in the corporate governance code for central government departments<sup>3</sup> and includes establishing and taking forward the strategic aims and objectives of Monitor, holding its executive management team to account

<sup>3</sup> The corporate governance guidelines (available at [http://www.hm-treasury.gov.uk/psr\\_governance\\_corporate.htm](http://www.hm-treasury.gov.uk/psr_governance_corporate.htm)) are written for central government departments, although, as it says in the guidelines, "the principles in the Code generally hold across other parts of central government, including departments' arm's length bodies".

and ensuring the organisation is able to account to Parliament and the public for how it has discharged its functions.

6.2. The board is led by a non-executive Chair, who is responsible to the Secretary of State for ensuring that Monitor's affairs are conducted with probity, and that Monitor's policies and actions support it in the discharge of its functions and duties efficiently and effectively and meet Monitor's objectives, including those set out in its business plan. The Senior Departmental Sponsor will ensure that there is an annual objective setting and review process in place for the Chair. The Chair and other non-executive directors are responsible for appointing the executive directors, including the Chief Executive.

6.3. Monitor's Chair and non-executive directors are appointed by the Secretary of State. Appointments will be transparent, will be made on merit, and are regulated by the Commissioner for Public Appointments. The Chair appointment is subject to pre-appointment scrutiny by Parliament.

6.4. The responsibilities of the chief executive are:

- Safeguarding the public funds and assets for which the chief executive has charge;
- Ensuring propriety, regularity, value for money

and feasibility in the handling of those funds;

- The day-to-day operations and management of Monitor;
- Ensuring that Monitor is run on the basis of the standards (in terms of governance, decision-making and financial management) set out in *Managing Public Money*, including seeking and assuring all relevant financial approvals;
- Together with the Department, accounting to Parliament and the public for Monitor's financial performance and the delivery of its objectives;
- Accounting to the Department's Permanent Secretary, who is Principal Accounting Officer for the whole of the Department of Health's budget, providing a line of sight from the Department to Monitor;
- Reporting quarterly to the PAO on performance against Monitor's objectives, to be discussed at one of the formal quarterly accountability meetings chaired by the SDS.

6.5. The responsibilities of the board as a whole include supporting the Accounting Officer in ensuring that Monitor exercises proper stewardship of public funds, including compliance with the principles laid out in *Managing Public Money*; and ensuring that total capital and revenue resource use in a financial year does not

exceed the amount specified by the Secretary of State.

- 6.6. The board should ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control. The board must set up an Audit Committee, chaired by an independent non-executive member with significant experience of financial leadership at board level. Other members need not be main board members but should be able to demonstrate relevant sectorial experience at board level. The committee should have at least four members, although this can be fewer if the board feel that is justified and at least half of these should be main board members. The internal and external auditors must be invited to all meetings and be allowed to see all the papers.

Monitor. In the same way, the Department will seek to keep Monitor apprised of developments in policy and Government. There are likely to be some issues where the Department or Monitor will expect to be consulted by the other before the Department or Monitor makes either a decision or a public statement on a matter. The Department and Monitor will make clear which issues fall into this category in good time. The sponsor team will be responsible for ensuring that this works effectively.

- 7.2. To support the Secretary of State and the Principal Accounting Officer in their accountability functions, the Secretary of State has the power to require Monitor to provide reports or information relating to the exercise of its functions.

## **7. Partnership working**

- 7.1. The Department and Monitor will work together, and with the Department's other arm's length bodies, in the interests of patients, people who use services and the public to maximise the health and wellbeing gain for the population, working to the values set out in the NHS Constitution. To support this, Monitor and the Department will follow an 'open book' approach. In the case of issues with an impact on the development or implementation of policy, the Department can expect to be kept informed by

### *Public and Parliamentary Accountability*

- 7.3. The Department and its ALBs share responsibility for accounting to the public and to Parliament for policies, decisions and activities across the health and care sector. Accountability to Parliament will often be demonstrated through parliamentary questions, MPs' letters and appearances before parliamentary committees. Accountability to the public may be through the publication of information on Monitor's website, as well as through

responses to letters from the public and responses to requests under the Freedom of Information Act.

- 7.4. The Department and its ministers remain responsible to Parliament for the system overall, so will often have to take the lead in demonstrating this accountability. Where this is the case, Monitor will support the Department by, amongst other things, providing information for ministers to enable them to account to Parliament. In its turn, the Department will provide leadership to the system for corporate governance, including setting standards for performance in accountability.

- 7.5. Monitor will, however, have its own responsibilities in accounting to the public and to Parliament, and its way of handling these responsibilities will be agreed with the Department where appropriate. In all matters of public and parliamentary accountability the Department and its ALBs will work together considerably, cooperatively and collaboratively, and any information provided by Monitor will be timely, accurate and, where appropriate, consistent with information provided by the Department. To facilitate this, the Department and Monitor have agreed a public and parliamentary accountability protocol that sets out how they will work together to secure the confidence of the public and Parliament, and to maintain the

service levels that MPs and the public have come to expect.

#### *Emergency preparedness, resilience and response*

- 7.6. Monitor and the Department have specific responsibilities for planning for and managing the response to emergencies, as key players in an extended team that works across Government. The Secretary of State has cross-government responsibility to provide assurance on the health system's emergency preparedness.
- 7.7. Monitor will work with DH, Public Health England, NHS England and other organisations involved in civil resilience to develop and resource effective, tested and coordinated plans to manage incidents and emergencies, including any necessary changes to its operations.

### **8. Transparency**

- 8.1. Monitor is an open organisation that will carry out its activities transparently. It will demonstrate this by proactively publishing on its website its Annual Report and Accounts and key information on areas including pay, diversity of the workforce, performance, the way it manages public money and the public benefits achieved through its activities, and by supporting those who wish to use the data by publishing the information

- within guidelines set by the Cabinet Office<sup>4</sup>. The annual report will include a governance statement, which is to be reviewed by the Senior Departmental Sponsor.
- 8.2. Monitor will hold open board meetings in line with the Public Bodies (Admission to Meetings) Act 1960.
- 8.3. To underpin the principles of good communication, ‘no surprises’ and transparency Monitor and the Department will put in place arrangements for managing communications. Further details are provided in Annex A.
- 8.4. Monitor’s executive and non-executive board members will operate within the general principles of the corporate governance guidelines set out by HM Treasury<sup>5</sup>. They will also comply with the Cabinet Office’s Code of Conduct for Board Members of Public Bodies<sup>6</sup> and with the rules on disclosure of financial interests contained in the rules governing the membership of Monitor’s board.
- 8.5. Monitor will develop a code of conduct for all staff which will comply with the principles in the Cabinet Office’s model code for staff of executive non-Departmental public bodies<sup>7</sup>, which includes rules on conflicts of interest, political activity and restrictions on lobbying.
- 8.6. Monitor will take all necessary measures to ensure that:
- patient, personal and/or sensitive information within its care and control is well managed and protected through all stages of its use, including through compliance with the Data Protection Act.
  - it provides public assurance in respect of its information governance practice by completing and publishing an annual information governance assessment using an agreed assessment mechanism.
  - it meets its legal obligations for records management, accountability and public information by compliance with relevant standards, including government and NHS codes of practice on confidentiality, security and records management.
- 8.7. Monitor’s Senior Information Risk Owner and the senior person responsible for protecting confidentiality of

<sup>4</sup> The guidance is available on the HM Treasury website: [http://www.hm-treasury.gov.uk/psr\\_transparency\\_index.htm](http://www.hm-treasury.gov.uk/psr_transparency_index.htm)

<sup>5</sup> The corporate governance guidelines (available at [http://www.hm-treasury.gov.uk/psr\\_governance\\_corporate.htm](http://www.hm-treasury.gov.uk/psr_governance_corporate.htm)) are written for central government departments, although, as it says in the guidelines, “the principles in the Code generally hold across other parts of central government, including departments’ arm’s length bodies”.

<sup>6</sup> <http://www.bl.uk/aboutus/governance/blboard/Board%20Code%20of%20Practice%202011.pdf>

<sup>7</sup> [http://www.civilservice.gov.uk/wp-content/uploads/2011/09/5\\_public\\_body\\_staffv2\\_tcm6-2484.pdf](http://www.civilservice.gov.uk/wp-content/uploads/2011/09/5_public_body_staffv2_tcm6-2484.pdf)

patient/service level information and enabling appropriate information sharing will work together to ensure that both patient and other personal information are handled in line with best practice in government and the wider public sector.

that seek to prevent staff from speaking out on issues of public interest.<sup>9</sup>

## 9. Audit

9.1. The Comptroller and Auditor General will audit Monitor's annual accounts and will lay them before Parliament, together with his report.

9.2. The Comptroller and Auditor General may also choose to conduct a value-for-money audit of any aspect of Monitor's work: Monitor will cooperate fully with the NAO in pursuing such audits, and give them full access to all relevant files and information.

9.3. Monitor is responsible for establishing and maintaining internal audit arrangements in accordance with the Public Sector Internal Audit Standards. Monitor's internal audit function should report to its Audit and Risk sub-committee, and should consider issues relating to Monitor's adherence to its business plan. The Department's Audit and Risk Committee remit includes risk management, corporate governance and assurance arrangements in all its subsidiary bodies and so Monitor's Audit and Risk Committee should work closely with the Departmental committee.

## *Sustainability*

8.8. As a major public sector body, Monitor has a key role to play in driving forward the government's commitment to sustainability in the economy, society and the environment. As a minimum, Monitor should comply with the Greening Government Commitments<sup>8</sup> that apply to all government departments, executive agencies and non-departmental public bodies, set out in the action plan for driving sustainable operations and procurement across government. Reporting will be via the Department (including the consolidation of relevant information in the Department's annual resource account), and the Department will ensure that Monitor is aware of the process for this.

8.9. Monitor, as with the Department and all its ALBs, should have whistleblowing policies and procedures in place that comply with the Public Interest Disclosure Act 1998 and best practice guidance. It should prohibit the use of confidentiality clauses

<sup>8</sup> <http://sd.defra.gov.uk/documents/Greening-Government-commitments.pdf>

<sup>9</sup> <http://www.nhsemployers.org/EmploymentPolicyAndPractice/UKEmploymentPractice/RaisingConcerns/Pages/Whistleblowing.aspx>

## **10. Delegations and financial management**

- 10.1. Details of Monitor's financial arrangements, including funding allocation, in-year reporting, preparation of accounts, and the accounting officer's responsibilities in relation to financial management and Monitor's accounts, are provided in Annex B.
- 10.2. Monitor's overall revenue and capital resources are set out each year in a letter from the Senior Departmental Sponsor to the Chief Executive of Monitor. This is based on an assessment by the Department of Monitor's proposals for funding and human resourcing, considered alongside the financial and human resourcing needs of all of the Department's arm length bodies. The Department will endeavour to provide Monitor with sufficient human and financial resources to deliver its agreed core functions.
- 10.3. Notwithstanding clause 10.2, the Department accepts that unforeseen circumstances may arise during a financial year, in consequence of which Monitor may legitimately require additional resources. An example of one such unforeseen circumstance may be a charge against an indemnity that Monitor wishes to give to a Health Special Administrator DH and Monitor will develop a separate

Memorandum of Agreement to cover this eventuality.

- 10.4. Monitor's delegated authorities are issued to it by the Department, including those areas where Monitor must obtain the Department's written approval before proceeding. Monitor will adhere to these delegated authorities.
- 10.5. Monitor must demonstrate that it is delivering its functions in the most efficient manner, and must provide timely returns to the Department where these are required either by it or by other departments within central government.
- 10.6. Monitor, as with all public bodies and government departments, must operate within any relevant set of efficiency controls. These controls may affect areas of spend such as information communications technology (ICT), marketing and advertising, procurement, consultancy, the public sector estate, recruitment, major projects or strategic supplier management. The Department will ensure that Monitor is kept informed of any efficiency controls in operation.
- 10.7. As part of the government's approach to managing and delivering public service at a reduced cost base, Monitor, as with all other arm's length bodies and the Department, will in future receive its back office support, including finance and accounting, HR, payroll, procurement and ICT,

through a shared or standardised service approach. Details of the services between Monitor and the service provider will be set out in contract or where appropriate a service level agreement (SLA).

10.8. A shared or standardised value for money approach will also apply to the use of estate. Monitor will comply with guidance on property and asset management, and the principles set out by the Department's Estate Strategy Optimisation Board.

10.9. Monitor has the power to charge for the provision of licences under the Health and Social Care Act 2012.

## 11. Risk management

11.1. Monitor will ensure that it deals with the risks that it faces in an appropriate manner, according to best practice in corporate governance, and develop a risk management strategy in accordance with the Treasury guidance *Management of Risk: Principles and Concepts*<sup>10</sup>. It will adopt and implement policies and practices to safeguard itself against fraud and theft, in line with Treasury guidance<sup>11</sup>. It should also take all reasonable steps to appraise the financial standing of any firm or other body with which it intends to enter into a

contract or to whom it gives financial assistance.

11.2. Monitor has a reporting process in place to assure its board of financial and operational performance against the business plan at its meetings. Board meetings are held monthly, with performance and risk discussed in more detail on a quarterly basis. This assurance report will include information on risks and how they are being managed in accordance with the Treasury guidance mentioned above. The information prepared will be shared with the Department to enable the Department to assure itself on risk management. Monitor and the Department will agree a process and trigger points for the escalation of risks to the Department of Health Audit and Risk Committee, where those risks will have a potentially significant impact on Monitor, the Department or the wider system that requires a co-ordinated response.

11.3. Monitor will have effective and tested business continuity management (BCM) arrangements in place to be able to respond to disruption to business and to recover time-critical functions where necessary. In line with Cabinet Office guidelines, the BCM system should aim to comply with ISO 22301 Societal Security – Business Continuity Management Systems.

<sup>10</sup> [http://www.hm-treasury.gov.uk/d/orange\\_book.pdf](http://www.hm-treasury.gov.uk/d/orange_book.pdf)

<sup>11</sup> [http://www.hm-treasury.gov.uk/psr\\_managing\\_risk\\_of\\_fraud.h](http://www.hm-treasury.gov.uk/psr_managing_risk_of_fraud.htm)  
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## 12. Human resources

- 12.1. Monitor is responsible for recruiting staff, but will comply with any departmental or government-wide recruitment controls. The Department will ensure that Monitor is made aware of any such controls. Very senior managers in Monitor are subject to the Department of Health pay framework for very senior managers in arm's length bodies, and may be subject to additional governance as specified by the Department. The Department will ensure that Monitor is aware of any such requirements or restrictions.
- 12.2. Monitor must obtain the approval of the Secretary of State in respect of policies relating to remuneration, pensions, allowances or gratuities.
- 12.3. In relation to remuneration, Monitor, as with all executive non-departmental public bodies, is subject to the pay remit process, which regulates the pay setting arrangements for its staff (those who are not very senior managers). The pay remit provides a framework within which Monitor sets:
- The pay envelope for the year
  - Pay strategies
  - Pay reporting.
- 12.4. HM Treasury has delegated the approval of executive non-departmental public bodies' pay remits to parent departments. Monitor is therefore required to submit its pay remit proposals to the Department for approval.
- 12.5. Very senior manager remuneration is subject to the recommendations of the Senior Salaries Review Body.
- 12.6. In relation to pensions, the organisational pension scheme is the Civil Service Pensions Scheme, which has rules set down in legislation.
- 12.7. Like all departments and arm's length bodies, Monitor will be required to follow any requirements for disclosure of pay or pay-related information.
- 12.8. Subject to its financial delegations, Monitor is required to comply with the Department's and HM Treasury's approval processes in relation to contractual redundancy payments. All novel or contentious payments require the Department's and HM Treasury's approval. Special severance payments are always considered novel or contentious.

### *Equalities*

- 12.9. The provisions of the Equality Act 2010 (Specific Duties) Regulations 2011 require Monitor, as a public body, to:
- Annually, publish information to demonstrate compliance with the Public Sector Equality Duty. This information must include, in

particular, information relating to persons who share a relevant protected characteristic who are its employees (provided the organisation has 150 or more employees) and other persons affected by its policies and procedures.

- Prepare and publish one or more objectives it thinks it should achieve to meet the Public Sector Equality Duty.<sup>12</sup>

12.10. As a public authority Monitor is also under a duty to have regard to the need to eliminate unlawful discrimination and advance equality of opportunity. Monitor licences NHS foundation trusts that are required to establish and implement systems and processes to ensure compliance with all applicable legal requirements. Monitor is responsible for regulating compliance with licence conditions and therefore whether trusts have the governance systems in place to ensure compliance with all applicable law, including (where appropriate) compliance with the Equality Act 2010.

### **13. Relations with the Department's other arm's length bodies**

13.1. Monitor will work in partnership with the Department and its other arm's length bodies, in

the interests of patients, people who use services and the public, to maximise the health and wellbeing gain for the population, and working to the values set out in the NHS Constitution.

13.2. The Department and its arm's length bodies have complementary but distinct roles within the system to ensure that service users receive high quality services which deliver value for public money. Annex C provides further details on Monitor's relationship with other ALBs. Monitor may also develop separate partnership agreements with other ALBs.

### **14. Review**

14.1. As set out in 4.5, Monitor will produce an annual business plan before the beginning of each financial year, subject to decisions being made about their financial budget in time.

14.2. As set out in section 5, the Department will regularly review Monitor's performance at formal accountability meetings. In addition, the Department will undertake an in-depth review of Monitor as well as its other arm's length bodies on at least a triennial basis. The purpose of this review as set out by the Cabinet Office document "Guidance on reviews of non-departmental public bodies", is:

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<sup>12</sup> This was required by 6 April 2013, and is required every four years thereafter

- To provide a robust challenge of the continuing need for individual NDPBs – both their functions and their form; and
- Where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance.

This review also aligns with the Principles for Economic Regulation which state that the Government, approximately once a Parliament, can:

“Reaffirm the fitness for purpose of the regulators’ responsibilities, pursue changes where they are required to keep the system effective and clarify the respective roles and responsibilities of regulator and Government.”

- 14.3. Monitor is established by the Health and Social Care Act (Community Health and Standards Act) 2003, and revised under the Health and Social Care Act 2012. Any change to its core functions or duties therefore requires further primary legislation.
- 14.4. This agreement will be reviewed every three years, or sooner upon request of either party.
- 14.5. Monitor is established by the Health and Social Care (Community Health and Standards) Act 2003. Any change to its core functions or duties, including mergers, significant restructuring or abolition would therefore require further primary legislation. If this were to happen, the Department would then be responsible for putting in place arrangements to ensure a smooth and orderly transition, with the protection of patients being paramount. In particular, the Department is to ensure that, where necessary, procedures are in place in the ALB so the Department can obtain independent assurance on key transactions, financial commitments, cash flows, HR arrangements and other information needed to handle the transition effectively and to maintain the momentum of any on-going and / or transferred work.