

## Licensing Providers of NHS Services (Department of Health Consultation) – Bradford Teaching Hospital NHS Foundation Trust (BTHFT) Responses

### 1. BTHFT Response for the consultation

The Department of Health has posed the following questions; the response from BTHFT is detailed below each question:

<b>Question 1</b>	<b>Do you think NHS trusts should be exempt from the requirement to hold a licence, but expected to meet equivalent requirements to those in the general, pricing (where appropriate), choice and competition and integrated care sectors of Monitor’s licence? Yes/ No</b>
<b>BTHFT Response</b>	<i>No, BTHFT does not agree with this approach.</i>

<b>Question 2</b>	<b>Is there anything you want to add?</b>
<b>BTHFT Response</b>	<i>Licensing all NHS trusts would be the preferred approach. As stated in the consultation, this would be simple, unambiguous and give Monitor maximum flexibility and control in applying and enforcing requirements, as Monitor considered necessary and proportionate. In particular, as all NHS trusts will require registration with the CQC, licenses should also be obligatory.</i>

<b>Question 3</b>	<b>Do you agree that it is not appropriate to license small and micro providers of NHS funded services, at this stage, pending further review of costs and benefits? Yes/No</b>
<b>BTHFT Response</b>	<i>BTHFT response to DoH – Yes, BTHFT agrees that while all NHS funded services should be licensed there should be exceptions based on the organisation size in particular if the organisations are considered as ‘small’ or ‘micro’.</i>  <i>However, there is potential for Trusts to lose services to smaller providers who are not licensed. As such, there should be mechanisms in place that when non-license holders compete for services against license holders there is in place a trigger to favour the license holder or level the competitors standing.</i>

<b>Question 4</b>	<b>If so, do you agree that providers of NHS services with fewer than 50 employees (FTEs) and income from the provision of NHS hospital and community healthcare services of less than £10 million should be exempt from the requirement to hold a licence?</b>
<b>BTHFT Response</b>	<i>As per the DoH guidance within the consultation, BTHFT do not have any suggestions that would make 'a compelling justification to impose a statutory requirement on small and micro-businesses to hold a licence from Monitor' and hence agree that the above conditions should be used for exemption.</i>

<b>Question 5</b>	<b>Alternatively, do you think a de minimis threshold based on a provider fulfilling one of the two conditions would be more appropriate (eg. &lt;50 staff (WTEs) or &lt;£10m turnover)?</b>
<b>BTHFT Response</b>	<i>BTHFT believes both thresholds should be fulfilled in order to be exempt as per the EU definition.</i>

<b>Question 6</b>	<b>If not, on what basis should small and micro providers be exempt?</b>
<b>BTHFT Response</b>	<i>BTHFT response to DoH – Not applicable to BTHFT due to the response in Q4.</i>

<b>Question 7</b>	<b>Is there anything you want to add?</b>
<b>BTHFT Response</b>	<i>No additional comments to add.</i>

<b>Question 8</b>	<b>Do you agree that providers of primary medical services and primary dental services under contracts with the NHS Commissioning Board should initially be exempt from the requirement to hold a licence from Monitor? Yes/No</b>
<b>BTHFT Response</b>	<i>BTHFT agrees with the proposal</i>

<b>Question 9</b>	<b>Is there anything you want to add?</b>
<b>BTHFT Response</b>	<i>BTHFT's proposal is based on the caveat that when the Government carries out its proposed review, during the next Parliament, of how the licensing regime is operating, it will re-consider this aspect specifically.</i>

<b>Question 10</b>	<b>Do you think providers of adult social care who also provide NHS services should be required to hold a licence, unless they fall below a de minimis threshold?</b>
<b>BTHFT Response</b>	<i>Licensing all NHS trusts would be the preferred approach. As stated in the consultation, this would be simple, unambiguous and give Monitor maximum flexibility and control in applying and enforcing requirements, as Monitor considered necessary and proportionate. In particular, as all NHS trusts will require registration with the CQC, licenses should also be obligatory.</i>

<b>Question 11</b>	<b>If so, do you think that threshold should be fewer than 50 employees (FTEs) and income from the provision of NHS hospital and community healthcare services of less than £10 million?</b>
<b>BTHFT Response</b>	<i>BTHFT believes both thresholds should be fulfilled in order to be exempt as per the EU definition however particular emphasis should be place on the turnover.</i>

<b>Question 12</b>	<b>Alternatively, do you think a de minimis threshold based on an adult social care provider fulfilling one of the two conditions would be more appropriate (ie &lt;50 staff (FTEs) or &lt;£10m turnover)?</b>
<b>BTHFT Response</b>	<i>BTHFT believes both thresholds should be fulfilled in order to be exempt as per the EU definition.</i>

<b>Question 13</b>	<p><b>Do you know of any adult social care providers who also provide NHS services who would not fall below this specific de minimis threshold?</b></p> <p>Option 1: For fewer than 50 employees and income &lt;£10m?      Yes    <b>No</b></p> <p>Option 2: For fewer than 50 employees only?                              Yes    <b>No</b></p> <p>Option 3: For income &lt;£10m only?    Yes    <b>No</b></p> <p>If yes to any of the above, please provide details:</p>
<b>BTHFT Response</b>	<i>BTHFT has highlighted the answers in the above question.</i>

<b>Question 14</b>	<b>If you think there should be a different de minimis threshold, what is that threshold?</b>
<b>BTHFT Response</b>	<i>BTHFT agrees with the thresholds discussed previously.</i>

<b>Question 15</b>	<b>Is there anything you want to add?</b>
<b>BTHFT Response</b>	<i>No further details to add.</i>

<b>Question 16</b>	<b>Do you think a 20% threshold would be suitable for the standard condition modification objection percentage?</b>
<b>BTHFT Response</b>	BTHFT believe that this could be a suitable threshold.

<b>Question 17</b>	<b>If not, what figure do you think would be suitable?</b>
<b>BTHFT Response</b>	Not applicable due to answer in question 16.

<b>Question 18</b>	<b>Is there anything you want to add?</b>
<b>BTHFT Response</b>	Despite the fact that the 20% objection threshold has worked in the energy and gas market (at the Order of the Secretary of State), BTHFT believes its effectiveness should be reviewed within a set timeframe to ensure that this works adequately within the healthcare sector too.

<b>Question 19</b>	<b>Do you think the share of supply threshold should be calculated by defining share of supply as the number of licence holders affected by the proposed modification, weighted by NHS turnover?</b>
<b>BTHFT Response</b>	BTHFT believe that the consideration of the weighting by NHS turnover is key for this proposal to work and agrees that the calculation should be used.

<b>Question 20</b>	<b>Do you think the threshold itself should be 20% as with the objections percentage?</b>
<b>BTHFT Response</b>	BTHFT believe that this could be a suitable threshold.

<b>Question 21</b>	<b>Do you think variations in the costs of providing NHS services should be taken into account when calculating share of supply?</b>
<b>BTHFT Response</b>	The variations should be taken into account as the requirement for a license are more accurately determined despite the increase in administrative burden.

<b>Question 22</b>	<b>Is there anything you want to add?</b>
<b>BTHFT Response</b>	<p>Additional information for question 19 - This will help identify the key share holders and weight their 'voice' accordingly.</p> <p>Additional information for question 20 – as previously stated, the 20% threshold has worked in the energy and gas market. BTHFT believes its effectiveness should be reviewed within a set timeframe to ensure that this works within the healthcare sector too.</p>

<b>Question 23</b>	<b>Do you think the calculation of turnover for the purposes of the variable monetary penalty maximum should be based on turnover from provision of NHS funded services?</b>
<b>BTHFT Response</b>	BTHFT believe that the amount will be a significant deterrent for license holders. Basing the penalty on NHS turnover makes sense as the income generated from other avenues would not be covered under the Monitor license conditions

<b>Question 24</b>	<b>If not, how do you think turnover should be calculated?</b>
<b>BTHFT Response</b>	Not applicable as response in question 23 was in agreement.

<b>Question 25</b>	<b>Is there anything you want to add?</b>
<b>BTHFT Response</b>	No additional comments to add.

<b>Question 26</b>	<b>Do you have any evidence that the proposals in this document will impact adversely or unfairly on any protected groups?</b>
<b>BTHFT Response</b>	BTHFT has not seen any evidence of the proposals potentially affecting any of the protected groups. However, this needs to be monitored following the implementation of the proposals.