

Question 1: Do you agree that providers of services in the tariff in operation at the time at which Monitor consults on the next tariff should count towards the thresholds? If not, can you suggest an alternative method to base this on?

Yes – however, only those organisations that undertake activity in the area that is being challenged should count towards the thresholds (see more detailed response to Question 3 and Question 7)

Question 2: If yes, do you agree that this should include any such providers who are exempt from the requirement to hold a licence?

Yes – we believe that this will not have a material impact on whether a threshold is reached or not.

Questions 3: Do you agree that the data used to calculate an objection threshold should be based on total tariff income, as reported in financial accounts? If no, please suggest an alternative source.

No – it is essential that the data used to calculate an objection threshold is based upon the services for which the objection relates. Otherwise it will be mathematically impossible for providers of specialist services to reach the required threshold to trigger the actions laid out in the DH proposals. Clearly this will introduce an element of complexity around definitions – however, HRG-level and specialty-level information is readily available and should be used.

Question 4: Are there any other providers who should count towards the threshold? If yes, please give details and reasons.

No

Question 5: Do you agree that the objection percentage threshold should be set at 51% for commissioners? If not, what figure would you propose, and why?

No – this threshold is too high (although please note comment below regarding the NHS Commissioning Board. It is important if a substantial minority of providers object to a particular area of the tariff for this to trigger the actions laid out in the proposals. However, it is essential that there are measures in place to ensure that the NHS Commissioning Board (which will hold a substantial proportion of the NHS commissioning budget) cannot automatically trigger a threshold acting alone, as this would be an inappropriate use of purchasing power within the NHS market.

Question 6: Do you agree that the objection percentage threshold should be set at 51% for providers? If not, what figure would you propose, and why?

No – this threshold is too high. It is important if a substantial minority of providers object to a particular area of the tariff for this to trigger the actions laid out in the proposals. It would be more appropriate to have a threshold of 10-20% as a sensible trigger of a legitimate issue requiring further investigation.

Question 7: Do you agree that a provider's share of supply should be calculated across all tariff services covered by the tariff in force at the time at which the consultation takes place? If not, how should their share of supply be calculated?

No – see response to Question 3 above.

Question 8: Do you agree that providers should be weighted based on income received from tariff services, as stated in the previous year's financial accounts, minus local area adjustments? If not, on what basis should they be weighted?

Yes – we agree that weighting based upon income received from the relevant area of tariff services is appropriate, although note that this should not be based upon total tariff income (see response to Question 3 above)

Question 9: Do you agree that the share of supply percentage threshold should be set at the same figure as for the objection percentage thresholds, ie 51% of the total supply? If not, what percentage should be set, and why?

No – this threshold is too high. It is important if a substantial minority of providers object to a particular area of the tariff for this to trigger the actions laid out in the proposals. It would be more appropriate to have a threshold of 10-20% as a sensible trigger of a legitimate issue requiring further investigation.

Question 10: Do you have any evidence that the proposals in this document will impact adversely or unfairly on any protected groups?

No

General Comments

It appears complex to have two thresholds, one based upon unweighted number of commissioners / providers and one based upon share of supply. It would be more logical, and simpler, to have one threshold based solely upon share of supply – otherwise there is the possibility of a number of commissioners / providers triggering the threshold despite only having a very small proportion of supply between them, whilst a smaller number of commissioners / providers with a large proportion of supply (but just under the proposed threshold) would not meet the threshold.

It will also be important to make it clear what constitutes an objection – for example, what data or evidence is required – and the timescale for rectification, including whether it will be retrospectively applied.

We also disagree with the proposal for those lodging an appeal to bear all of the costs of an unsuccessful appeal. In order to encourage input from commissioners and providers it is important not to disincentivise using the process laid out in the DH proposals.