

Monitor

Independent Regulator  
of NHS Foundation Trusts

# Guide to Monitor

## For NHS foundation trust governors



# Introduction to Monitor

**Monitor was established in January 2004 as part of the legislation that created NHS foundation trusts. Our role is to make sure NHS foundation trusts are well governed – by that we mean the board of an NHS foundation trust must be capable of ensuring its trust delivers high quality services responsive to patient needs, but is also able to maintain strong finances.**

Because NHS foundation trusts have been given freedom from central government they are locally accountable through their members and governors. They also have an independent regulator, accountable to Parliament, to monitor their performance and intervene when problems occur that the trusts cannot resolve on their own. That is why Monitor was established and our functions and powers are set out in the National Health Service Act 2006.

## What is Monitor's role?

There are three main strands to Monitor's work:

### **1: Determining whether a trust is ready to become an NHS foundation trust**

The Secretary of State for Health recommends to Monitor NHS trusts that are ready to enter our assessment process. We then undertake a thorough and independent assessment of each NHS trust. When our assessment is complete, Monitor's Board decides whether or not to authorise the applicant as an NHS foundation trust.

### **2: Ensuring that NHS foundation trusts comply with the terms and conditions of their authorisation**

Once authorised, all NHS foundation trusts are subject to their terms of authorisation – a detailed set of requirements they must operate within. These are available on the NHS foundation trust directory section of Monitor's website. All of the rules and regulations we apply to foundation trusts are set out in our *Compliance Framework*. This includes how we will intervene if an NHS foundation trust breaches, or risks breaching, its terms of authorisation.

### **3: Supporting NHS foundation trust development**

Where we identify development needs across the foundation trust sector, based on what we have learnt through our assessment and compliance work, and we feel there is a legitimate role for Monitor's involvement, we attempt to provide solutions, either working alone or with partner organisations. Examples of this work include a development programme for non-executive directors and the development of a guide for governors on exercising their statutory duties (see further information section at the end of this leaflet).

## How we regulate NHS foundation trusts

Monitor's approach to regulation – our compliance regime – allows us to spot problems early and take swift action.

All NHS foundation trusts are required each year to submit their three-year plans to Monitor. The plans set out what improvements the trust intends to make to its services, a three year financial forecast, and whether it has identified any potential risks that will affect compliance with its terms of authorisation during the next twelve months. The board of directors is expected to provide governors with the opportunity to review the plan before it is submitted to Monitor.

Once we have analysed the plans, we assign to each trust two risk ratings. The risk ratings indicate our view on whether or not the trust is at risk of breaching its terms of authorisation.

The categories of risk rating are:

- **finance:** whether or not we have any concerns about the financial performance of a foundation trust; and
- **governance:** that the trust is being sufficiently well managed to deliver high quality services and that it is delivering all of the services it has a legal obligation to provide (under contract with its commissioners).

These categories are broad enough to cover a diverse range of issues that could affect the overall performance of an NHS foundation trust.

During the course of the subsequent twelve months we monitor each NHS foundation trust's performance against its annual plan.

All risk ratings are updated every three months to reflect our latest assessment of the trust.

The risk ratings are published on our website and in quarterly reviews, which also provide a snapshot of performance issues across the NHS foundation trust sector.

### What powers does Monitor have?

If problems start to develop at a foundation trust that could lead to a breach of a foundation trust's terms of authorisation, we make sure the trust has an action plan in place to deal with it, and we monitor progress against its delivery. The problems might be related to overall governance or leadership, the delivery of care, or how the trust is managing its finances. Our approach to regulation is designed to make us aware of these problems as early as possible.

As a rule, we want boards of directors to resolve their own problems – we consider them to be the front line of regulation, responsible for understanding the cause of problems and taking action to deliver solutions. But if they fail to do this, we will intervene to safeguard patients, service users and services if we need to.

If we decide to use our statutory intervention powers, it is with the aim of resolving issues as quickly as possible and in the most effective way.

Our powers are broad and range from requiring the board to undertake specific actions, to removing any, or all, of the directors or governors and appointing replacements, or closing a specific service.

## Important distinctions between Monitor and other organisations

**We are not an inspectorate:** we do not perform spot checks on hospital wards or other investigations of patient services. These functions are part of the role of the Care Quality Commission (CQC). However, we work with a network of organisations to ensure we have access to a broad range of information on NHS foundation trust performance and expert advice.

The CQC, as the regulator of clinical quality, has primary responsibility for reviewing quality of care across the NHS, and provides information Monitor uses to inform its views on governance within existing foundation trusts and applicants.

**We are not a performance manager:** we do not set targets for foundation trusts to achieve. We operate a risk-based regulatory system, meaning we intervene when we have concerns, but do not interfere with the day-to-day management of trusts that are performing well. However, we do require them to meet the national targets and core standards set by the Government for all NHS providers. In addition, as part of their annual plan, foundation trusts are required to set out priorities for how they intend to improve the quality of care they provide and how they plan to achieve this.

As a regulator we comment on the performance of the sector, developing issues and changes to our own processes, but we are not the representative body for foundation trusts. That function is provided by the Foundation Trust Network (part of the NHS Confederation).

## How can governors interact with Monitor?

Because governors are a crucial part of delivering local accountability and good governance at each foundation trust, we are keen to ensure they understand their role and link well with the board of directors, including challenging them when necessary. To assist governors in their role we have produced *Your Statutory Duties: A Reference Guide for NHS Foundation Trust Governors*.

Our relationship with each foundation trust is primarily managed through contact with the trust's board of directors. Each foundation trust is assigned a 'relationship manager' who is a senior manager in Monitor's compliance team. The relationship manager ensures a single point of contact is established to manage the flow of information between the trust and Monitor.

Governors will mainly get in touch with Monitor via the chair. However, there may be instances where it would not be appropriate for the chair to contact Monitor, or Monitor to contact the chair (for example, in relation to the appointment of the chair). In such situations, Monitor advises that the lead governor should communicate with Monitor. The role of lead governor is set out in *Your Statutory Duties: A Reference Guide for NHS Foundation Trust Governors* – they should lead the board of governors in circumstances where it may not be considered appropriate for the chair or another one of the non-executive directors to do so. Routine communications from Monitor to governors will, as a matter of course, be disseminated via board secretaries.

The existence of a lead governor does not, in itself, prevent any governor making contact with Monitor directly if they feel it is necessary.

## Further information

Our website [www.monitor-nhsft.gov.uk](http://www.monitor-nhsft.gov.uk) provides more detail on our work. It includes a directory which provides information on each foundation trust, including the terms of their authorisation, their constitution, their latest annual report and accounts and annual plan.

There is a section on our website for governors [www.monitor-nhsft.gov.uk/governors](http://www.monitor-nhsft.gov.uk/governors) with links to the various documents and tools we have published, including:

- *Developing the Role of NHS Foundation Trust Governors;*
- *Your Statutory Duties: A Reference Guide for NHS Foundation Trust Governors;* and
- An online facility for governors to test their knowledge, specifically around their statutory duties.

For further reading, the following documents are available from the publications section on Monitor's website:

- *The NHS Foundation Trust Code of Governance*
- *Compliance Framework.*

# Monitor

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© Monitor (October 2009)  
Publication code: IRREP 11/09

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