Summary of stakeholder responses to *A methodology for approving local modifications to the national tariff*

Alongside the publication of the report A methodology for approving local modifications to the national tariff we asked stakeholders for their comments and suggestions on what should be done as a matter of priority to address the issues highlighted in the report.

This document is a summary of responses and includes the main themes and key findings we have taken from the feedback.

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Introduction

As part of the Health and Social Care Act (2012) Monitor and the NHS Commissioning Board will share responsibility for pricing NHS services in England. In preparation for taking on these duties, we have embarked on a thorough review of the existing system for reimbursing providers of NHS services, and of the arrangements that will need to be put in place to make sure that Monitor can fulfil its duties under the Act.

Under any national tariff system there may be times when providers face costs unavoidably above the level reimbursed through national prices. It is important to make sure valued services remain financially viable and quality is maintained, particularly in cases where these services are valued by patients and required by commissioners, Monitor will have an important role in agreeing or determining local modifications of prices where, without modification to the price set in the national tariff, it would be uneconomic to provide the service.

Under the new regime, the approach to approving uplifts to national tariff prices should be consistent and transparent. Monitor commissioned Frontier Economics to help develop a methodology based on theory, evidence and regulatory best practice. In the report published on our website in April 2012 - *A methodology for approving local modifications to the national tariff -* Frontier Economics set out an approach for these adjustments. We asked you for comments on the report by 1 June 2012.

This document provides:

- a summary of the responses received, with some respondent quotes; and
- a short response from Monitor on each of the questions.

When we published the report in April 2012 we asked you six questions:

1. *Do you have any comments on the criteria for a good framework that Frontier set out in the introduction to the report?*
2. *Do you agree that, where possible, any local modifications should be arrived at by negotiation and agreement between the commissioners and providers of services?*
3. *What are your views on using the 'whole provider' analysis during a transition period?*
4. *Do you have any comments on the proposed components of the 'long-term toolkit' (structural differences, benchmarking, quality and wider implications tests)?*
5. *Do you agree that Monitor should rely on a complaints system, rather than monitoring providers' compliance with the conditions of a local modification?*
6. *Do you have any comments about the practicality of implementing the different parts of the framework?*

We received 11 responses from a range of stakeholders covering a wide range of topics, often in significant depth. We will be actively seeking further engagement on this area as our work develops.

The 11 respondents were:

1. British Medical Association
2. Central Manchester University Hospitals NHS Foundation Trust
3. Foundation Trust Network
4. Healthcare Financial Management Association
5. Isle of Wight Clinical Commissioning Group
6. Journal of Clinical and Experimental Hepatology
7. NHS Confederation
8. Norfolk and Norwich University Hospitals NHS Foundation Trust
9. The Shelford Group
10. Somerset Partnership NHS Foundation Trust
11. Wye Valley NHS Trust

Summary of stakeholders' responses

There was a wide range of responses covering different aspects of the framework. In the summary below we have attempted to draw out the key themes in response to each question.

In addition to the specific questions, respondents made some more general comments about the methodology.

What respondents said
On the whole, respondents agreed with the proposed high-level methodological framework: the preference for agreements between commissioners and providers; the long-term toolkit; and the transitional arrangements.

Respondents raised a number of useful questions on the practical implementation of the regime. These included: whether local modifications would apply to new entrants; how oversight and adherence to agreements and determinations would work; and how to ensure commissioners constructively engage with providers. Concern was expressed about the ability of commissioners to fund local modifications without affecting their ability to fund other services.

Monitor's response
Stakeholder engagement is a key part of our policy development process and we very much welcome the comments we received. We will take into account these comments as we undertake further work on local modifications and, more generally, in developing our strategy for pricing.

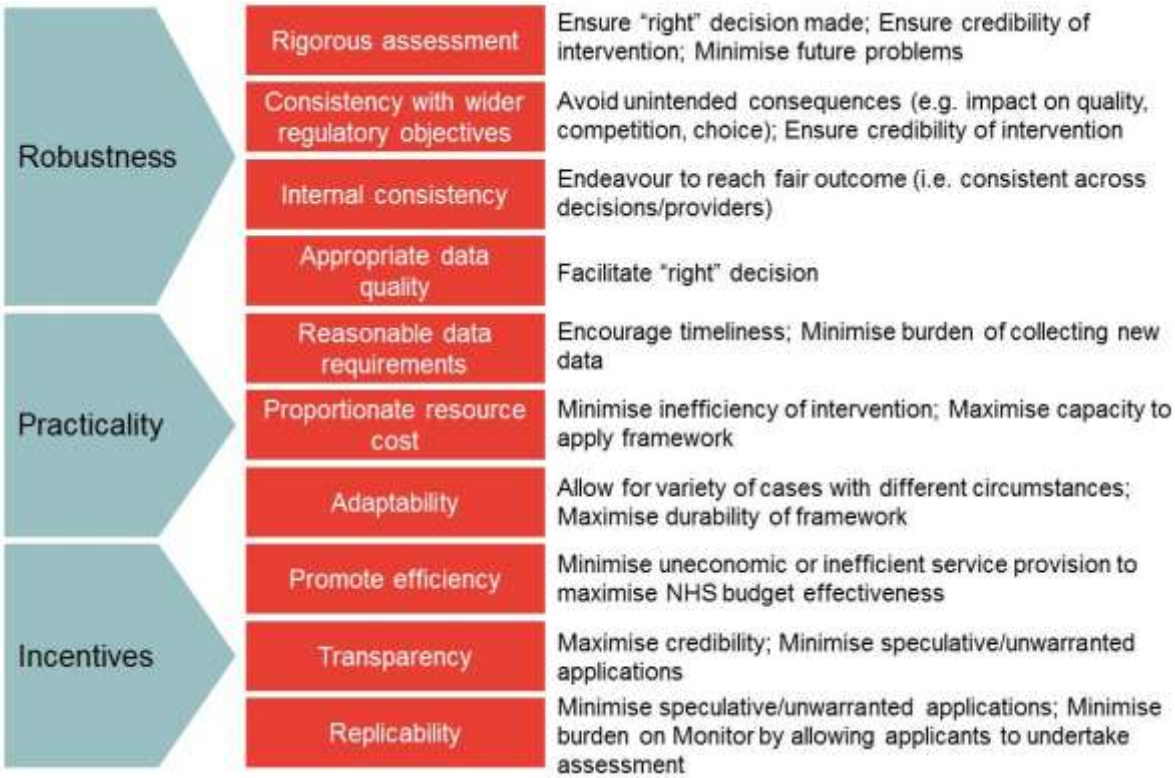
We will continue to work closely with the NHS Commissioning Board throughout the development of the local modifications process to make sure the regime works and is effective.

Question 1: Do you have any comments on the criteria for a good framework that Frontier set out in the introduction to the report?

What respondents said

There was general agreement with the criteria for a good framework proposed by Frontier Economics. These criteria are reproduced in Figure 1 below.

Figure 1: Proposed criteria for a good framework



Respondents suggested the following additional criteria for consideration:

- Timeliness – limited time may be available to resolve funding issues. Therefore the local modifications process should be designed to reach a speedy resolution;
- Affordability for commissioners – the additional cost of a local modification will fall in the first instance on commissioners. It is important to make sure commissioners can afford it without undue adverse impact on other services; and
- Capacity and capability – skill and resource requirements; as well as compatibility with cross-system pathways need to be considered.

Monitor's response

The additional criteria suggested by stakeholders mainly apply to the way methodology is implemented. This will be considered in the next stage of our local modifications work. We agree these criteria need to be considered when designing the regime and we will make sure these comments are taken into account.

Question 2: Do you agree that, where possible, any local modifications should be arrived at by negotiation and agreement between the commissioners and providers of services?

What respondents said

Theme 1: Commissioner engagement in the process

A number of stakeholders raised issues about the role of commissioners in the process. Some felt commissioners would be reluctant to engage, particularly if the structural issue, underlying the need for a local modification, had not been taken into account in setting their funding allocation. There was also a concern it might be difficult to set clear criteria to determine whether a failure to engage had taken place.

"The proposals to encourage agreements in the document all seem to focus on making agreements more favourable than applications. Whilst this is certainly an encouragement to providers attempting to engage with commissioners, it provides no incentive on commissioners to engage with the process and in fact it is commissioners rather than providers who have an incentive not to agree modifications"

Theme 2: Process and alternative mechanisms

Most respondents agreed it was right to give priority to agreements as the preferred path for local modifications. Some comments were raised on the mechanisms, which might be applied to incentivise agreements. One respondent suggested setting a higher materiality threshold for applications to Monitor than for agreements as it could incentivise commissioners to withhold agreement. Another proposed having mandatory contractual support documentation relating to local modification agreements to reduce the need for involving lawyers in the process. A third suggested a presumption against applications supported by consultants' reports.

Monitor's response

The local modifications regime will require providers to engage constructively with commissioners on any modification request. This is underpinned by one of the conditions in Monitor's proposed licence.[1] The preference for local agreements over applications to Monitor is driven by a desire to ensure local information and knowledge is used. Our future work will look carefully at the incentives the process creates to make sure both providers and commissioners are encouraged to engage constructively to reach agreement. We will also work closely with the NHS Commissioning Board to communicate the importance of commissioner engagement with providers on local modifications.

[1] In this document in February 2012 we set out our proposed pricing licence condition and asked for views on how it should be developed. We will be publishing a statutory consultation on the provider licence later this year.

We will further consider respondents' comments regarding mechanisms for encouraging agreements, in preference to applications for determination; as well as consider how best to address any potential issues.

Question 3: What are your views on using the 'whole provider' analysis during a transition period?

What respondents said

Respondents generally agreed that the transitional "whole provider" approach was necessary. Generally respondents agreed that the transitional arrangements should not penalise efficient providers who could subsidise loss-making services, which would otherwise merit a local modification.

"We agree that until tariff becomes fully cost-reflective, a process like the whole provider analysis must be in place to unpick issues around overall sustainability of providers, cross subsidisation from other services and to ensure efficient providers are not inadvertently penalised. The 'transition' to a fully cost-reflective tariff will take many years, so it is likely the whole provider analysis will remain a key part of the process for some time."

One respondent stated the issue of cross-subsidies would require detailed long-term analysis, and good costing data, to disentangle. Another respondent urged the whole provider process to become transparent and replicable, so providers could avoid unnecessary calls on Monitor by managing the process themselves.

"The "whole provider" analysis needs to be able to cater where services are not well supported by data and performance management information. Activity delivered within a community setting is often poorly recorded. In addition, where services span organisational boundaries, the analysis needs to be able to quantify the associated impact of that relationship. Although health and social care teams work as one in some health economies, there is no single source of tariff-based income. The whole provider analysis therefore may need to span more than the traditional funding mechanism of the NHS."

Monitor's response

We acknowledge the support respondents have given to the "whole provider" approach proposed by Frontier Economics. We recognise the need to consider how best to support the sector to undertake the local modifications analysis themselves. This will include considering how to make the methodology both transparent and replicable.

On costing, we commissioned and recently published *Strategic Options for Costing* on our website. This report picks up on some of the issues raised in this stakeholder engagement with respect to costing. The *Strategic Options for Costing* report is open for stakeholder engagement until **27 July 2012**.

Question 4: Do you have any comments on the proposed components of the 'long-term toolkit' (structural differences, benchmarking, quality and wider implications tests)?

What respondents said

This question covered most of the detailed elements of the methodological framework and it attracted the most comments.

One respondent stated the definition of a "service" needs to be considered. This is because a structural cause of higher costs would be unlikely to affect a single HRG and would be more likely to affect a broader group of activities, such as a service line. The other comments are discussed below under three themes.

Theme 1: structural difference and benchmarking

- **Uniqueness and controllability:** some argued the criteria of uniqueness and controllability would need to be sufficiently flexible to accommodate the facts of a particular case. In particular a provider might be unable to avoid a problematic cost because they were unable to convince their commissioner to accept an alternative way of delivering a service. Alternatively, an issue which was recognised as being sufficiently widespread, as to merit a specialist top-up, might be particularly severe for a given provider who would need a local modification anyway.
- **Efficiency:** one respondent questioned the value of competitive tendering as a way of demonstrating the equivalent service could not be procured at lower cost, because the timescales for doing this would be too long.
- **Benchmarking:** several respondents said the effective use of benchmarking would depend on finding suitable comparators. One respondent suggested Monitor might be able to help by publishing suitable data.

"In terms of whether a cost driver is uncontrollable, Monitor will need to take a slightly different approach to an application as opposed to an agreement. A provider may have made an application because a commissioner insists on a service being provided but has not been prepared to work with a provider in coming to an agreement. In such a case and if a wider reconfiguration of services would be impossible for the provider without the commissioners support, then Monitor will need to consider this uncontrollable, in the short term at least."

Theme 2: Quality

One respondent was of the view that flexibility should be allowed in applying the proposed rule, '*local modifications should not be used to pay for services where a higher cost reflected a higher level of quality'*. Others said recognised quality standards, such as those published by the National Institute for Health and Clinical Excellence (NICE), should be used. Additionally, it was stated as a given that the interplay of responsibilities between Monitor and the Care Quality Commission (CQC) means care would need to be taken in addressing this question.

"[We welcome] that the report recognises that a structural difference could have led to a decrease in quality (as providers have been forced to cut costs to stay sustainable). Hence a local modification would be granted (but conditional on an improvement in quality within a certain time frame). This is a sensible approach. However, the interaction of this pricing mechanism with the CQC regime will need to be approached with care."

Theme 3: Wider implications and linkages

Some respondents said patient and wider public engagement, in assessing the implications of a local modification, could provide useful input on the question of service quality. One respondent also considered whether a provider would need to continue to provide a service in the current format, should a local modification application be rejected.

"On wider implications, should Monitor not sanction a modification on grounds of public / patient interest, the provider/commissioner should be expected to take alternative measures (e.g. to reconfigure the service) and not to be forced to retain the same unviable service model thus placing the problem back with the provider. Third party interests should be judged on the reasonableness / likelihood of these being affected which could, for example, be quite different for urgent/unplanned care than for elective/planned care."

Monitor's response

We recognise the issues in this part of the framework are complex and there is a need for clarity and transparency in the way in which the framework will be applied. On the other hand, we also recognise that there may be a need to consider the circumstances of each case, on a case-by-case basis.

On the issue of quality, the Frontier Economics report did not recommend local modifications be used to fund low quality services. However they should be used to ensure quality services, which are important to patients, can be maintained and operated sustainably. The recommendation is that local modifications should not be a route for seeking quality improvements. Monitor will be considering this recommendation further, in relation to local modifications and as part of our work on wider pricing strategy.

Finally, we will seek to frame the requirements for local modifications in a clear and accessible way. This may involve providing additional guidance to the sector, which we will consider in due course.

Question 5: Do you agree that Monitor should rely on a complaints system, rather than monitoring providers' compliance with the conditions of a local modification?

What respondents said

There was general agreement that a light-touch, complaints-based approach to ensuring compliance, with local modification agreements and determinations, was appropriate. However, several respondents said relying on complaints alone might not be sufficient. For example, problems might be well advanced before a complaint could be lodged and addressed. Suggested additional measures included publication of:

- all agreements and determinations;
- a description of how the additional funding would be spent by providers; and
- a statement confirming that the terms of the local modification have been adhered to in provider quarterly performance monitoring returns.

"We suggest that, in addition to a complaints system there should be a transparent system of openness; for example, if a rural maternity unit is supported in Cornwall, that data should be available to support a similar agreement/application in Northumberland. There is no need for all NHS bodies to re-invent the wheel, and some local modifications could be seen as setting a precedent. We shall be pleased to assist further on this issue from a good business perspective."

Monitor's response

We acknowledge respondents' endorsement of this general approach. We will work in conjunction with the NHS Commissioning Board to consider how best to support any further oversight, which may be considered necessary.

Question 6: Do you have any comments about the practicality of implementing the different parts of the framework?

What respondents said

One area of concern raised was the potential for there to be a large number of applications, and difficulties for Monitor in responding speedily to the volume of cases.

Another concern was constructing a well-evidenced application might represent a significant resource and capability challenge, particularly to smaller providers. It was also felt clear guidance had a role to play in making it easier for providers to apply the methodology.

One respondent was concerned about the "messaging" aspects. In other words, granting a local modification might give the impression the NHS was not serious about controlling costs.

"Message management – at a time when the NHS is trying to save £20bn, a provider seeking an increase to the tariff payable for services that it provides may be viewed as not actually facing up to the wider NHS savings program that the service has embarked upon. Stakeholder engagement and management is crucial as opposed to the provider being viewed as having failed."

Monitor's response

The next phase of our work on local modifications will aim to work through issues around implementation of the regime. This will include work to ensure reasonable requests are addressed on a practical timescale and evidence requirements are proportionate.

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Publication code: IRCP (R) 11/12