

To: The Board

For meeting on: 30 July 2014

Agenda item: 6

Report by: Nicola Meheran, Policy Adviser
Toby Lambert, Director Strategy and Policy

Report on: Memorandum of Understanding with Healthwatch

1. Monitor has been working with Healthwatch to draft a new memorandum of understanding (MoU). The MoU sets out the high level framework for working together.
2. The agreement is attached to this paper as an annex and is now ready for final review and sign off from the Board.
3. In summary the MoU covers:
 - a) Each organisation's statutory roles and responsibilities
 - Monitor's role is described using our standard narrative to ensure consistency with other MoUs
 - b) The specific requirements for consulting and sharing information under the Health and Social Care Act 2012 and Care Act 2014, which are:
 - Healthwatch must provide Monitor with views of people who use healthcare services;
 - Monitor must give notice to Healthwatch England when introducing or modifying provider licence conditions;
 - Local Healthwatch is a statutory consultee of Trust Special Administrators
 - c) Our shared goals of ensuring the delivery of healthcare that meets the needs of patients, ensuring patients are listened to and their needs understood and working in a transparent, open and honest way
 - d) Areas of joint working
 - This section has been linked mainly to Monitor's functions. It sets out that we will proactively engage Healthwatch England and local Healthwatch during the assessment process, ongoing monitoring of

providers and when managing failure. It also sets out that we will work together to ensure patient views are heard when reviewing how choice and competition is working in different healthcare markets. Two operational annexes which have more detail on how the provider appraisal and provider regulation teams will engage with Healthwatch

e) Formal governance

- Sets out an expectation that the Chairs of both organisations will meet once a year and the Chief Executives twice yearly
4. The MoU is intended to be a high level framework for how both organisations will work together. In parallel work is being led by the Provider Regulation team to further develop working level relationships and a detailed shared workplan for the year is currently being jointly developed by the chief executives' offices.
 5. The MoU is going through the equivalent sign off processes at Healthwatch in parallel, and will be updated for comments if required.
 6. The Board is asked to agree the attached MoU.

Nicola Meheran
Policy Adviser

Toby Lambert
Director Strategy and Policy

Making a difference for patients:

Monitor's mission is to make the health sector work better for patients and to do this Monitor must work closely with both national and local system bodies. Memoranda of understanding are tools which allow us to agree common objectives and ways of working with our partners to enable effective and efficient collaboration. In particular, Healthwatch, as consumer champion, can provide Monitor with useful information and insights about patients' views and experiences of healthcare that can inform our work and ensure it working in the best interests of patients.

Public Sector Equality Duty:

Monitor has a duty under the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people from different groups. In drafting this report consideration has been given to the impact that the issues dealt with might have on these requirements and on the nine protected groups identified by this Act. It is anticipated that the issues dealt with in this this paper are not likely to have any particular impact upon the requirements of or the protected groups identified by the Act.

Exempt information:

None of this report is exempt from publication under the Freedom of Information Act 2000.

Monitor - Healthwatch England

Memorandum of Understanding

1. Joint Statement

Through this memorandum of understanding, Monitor and Healthwatch England commit to work together and to support each other in fulfilling their statutory responsibilities to protect and promote the interests of consumers, patients, other users of healthcare services and the general public in the provision of high quality healthcare to communities.

The shared approach for working together is characterised by openness, transparency, information sharing and timely engagement on issues of mutual interest and importance.

This agreement sits alongside the other memorandums of understanding, and partnership agreements, that both Monitor and Healthwatch England have in place with their other strategic partner organisations in the wider health and social care system.

This document is not legally binding and cannot constrain either organisation in exercising their respective roles and responsibilities as set out in legislation and under direction from the Secretary of State.

2. Roles and Responsibilities

Monitor

Monitor is the sector regulator for health services in England and our job is to make the health sector work better for patients.

Before April 2013 Monitor's main task was to authorise and regulate NHS foundation trusts, currently 60% of all public providers of NHS services. However, under the Health and Social Care Act 2012 Monitor was given a wide range of additional responsibilities. Our core responsibilities can be summarised under four main headings:

1. **Making sure public providers are well led.** From its inception, Monitor has been tasked with making sure public providers of NHS care are well led,

delivering quality care on a sustainable basis. Monitor does this in two ways: first by setting a required standard that all NHS providers must meet (our foundation trust authorisation standard or 'bar') and by working, most recently with the NHS Trust Development Authority, to ensure that, in due course, all NHS providers meet this standard; second, we seek to control the risk that foundation trusts, once authorised, fall back below the required standard. If they do, we take remedial action. We also work with others to support the ongoing development of foundation trust capabilities so that they are better able to deal with the challenges they face.

2. Making sure essential NHS services are maintained. If a provider of essential NHS services, whether an NHS foundation trust or an independent sector provider, gets into such serious difficulty that it is unlikely to be able to continue providing its essential services for much longer, Monitor is responsible for making sure those services are maintained and protected for local patients. The services may continue to be provided by the failing provider while it restructures, or by alternative providers.

3. Making sure the NHS payment system promotes quality and efficiency. One of Monitor's new duties is to work with NHS England to design and operate the payment system for all NHS services. Monitor sets the rules that govern the prices paid for services, while the grouping of services for payment purposes is done by NHS England.

4. Making sure procurement, choice and competition operate in the best interests of patients. The purpose of promoting good procurement and, where appropriate, enabling patients and commissioners to choose between competing service providers is to support improvements in the quality of care and the efficiency with which it is provided. Monitor's role is to help commissioners and providers make sure patients do not lose out through poor commissioning, restrictions on their rights to make choices or inappropriate anti-competitive behaviour by commissioners or providers.

Across all areas of our work Monitor has a duty to enable better integration of services, both in healthcare and between health and social care, where this is in patients' interests. Monitor also seeks to encourage innovation and beneficial change through research and analysis to identify what works and what doesn't, and to stimulate better ways of working.

Healthwatch England

Healthwatch England was established in accordance with section 181 of the Health and Social Care Act 2012 with the purpose of acting as an effective, independent consumer champion making demonstrable differences to consumers of health and social care.

The health and social care reforms of 2012 set a powerful ambition of putting aims to put people at the centre of health and social care. To help realise this ambition, the reforms created a Healthwatch in every local authority area across England and Healthwatch England, the national body. Healthwatch England provides leadership and support to the network to help ensure that each local Healthwatch has a positive impact on local services. The network is strongest working together when it shares information, expertise and learning to improve health and social care services. We are working towards a society in which people's health and social care needs are heard, understood and met.

Achieving this will mean that, people shape health and social care delivery, people influence the services they receive personally, and people hold services to account. As the consumer champion for health and social care, Healthwatch England: listens hard to people, especially the most vulnerable, to understand their experiences and what matters most to them; influences those who have the power to change services so that they better meet people's needs now and into the future; empowers and informs people to get the most from their health and social care services and encouraging other organisations to do the same and; works with the Healthwatch network to champion service improvement and to empower local people.

Requirements for consulting and sharing information

The Health and Social Care Act 2012 sets out specific requirements for both Monitor and Healthwatch to consult with each other. Healthwatch must provide Monitor with information and advice regarding the views of people who use health or social care services and other members of the public on their needs for and experiences of health and social care services. Monitor must consult with, or give notice to (as the case may be) Healthwatch England when introducing or modifying standard and/or special licence conditions.

Where a trust special administrator (TSA) has been appointed, Section 120 of the Care Act 2014 lists local Healthwatch as one of the statutory consultees the trust special administrator (TSA) must consult so that local Healthwatch can provide feedback on the TSA's draft recommendations about the future of the failing trust and its services.

3. Context and shared purpose

Monitor and Healthwatch England both aim to enable the delivery of safe, effective and sustainable health and social care to patients and consumers and work together with local communities to ensure the system works well for service users.

With this shared vision, Monitor and Healthwatch England have a number of shared goals:

- to ensure providers deliver high quality and effective health and social care services that meets the needs of patients;
- to understand the needs and experiences of users of health and social care to improve the quality of services and facilitate integrated, person-centred care, allowing us to look beyond the boundaries between individual providers;
- to listen to consumer voices as a signal of quality; and
- to support patient choice and ensure it is working in the best interests of patients and other users of health and social care services.

4. Areas of joint working

Monitor and Healthwatch England commit to transparent and open communication between our two organisations to support and oversee joint working that can develop as the new health and social care landscape takes shape.

Monitor and Healthwatch England will work together to ensure:

- Healthwatch England and local Healthwatch are proactively engaged in the Foundation Trust Authorisation process and can support these processes as appropriate (See Annex A for further details);
- Healthwatch England and local Healthwatch are proactively engaged in provider regulation processes of Monitor and can support these processes as appropriate (See Annex B for further details);
- Healthwatch England are engaged in Monitor's work on managing failure and ensuring continuity of services and can support these processes as appropriate (See Annex B for further details);
- Patient views are heard when reviewing the operation of choice and competition in different health care markets; and
- Communication is supported between other health and social care organisations and to patients about the role of Healthwatch England as the consumer champion and the role of Monitor as health sector regulator.

Annex A sets out the ways of working between Healthwatch England and local Healthwatch and Monitor in relation to the Foundation Trust Authorisation process.

Annex B sets out the ways of working between Healthwatch England and local Healthwatch and Monitor in relation to the ongoing regulation of providers.

Ways of Working

The ways of working between the organisations will be at national and local trust level and will cover strategic, operational and cultural methods:

- **Strategic** - we will work together to support each other in meeting our respective strategic objectives;
- **Cultural** - we will seek to promote common values, based on those in the NHS Constitution, and constructive behaviours.
- **Operational** - we will develop clear approaches to dealing coherently and effectively with a range of operational matters;

The over-arching approach to operational working will be characterised by:

- Openness and honesty - 'no surprises';
- Understanding of respective statutory roles, duties and powers;
- Engagement on issues of mutual interest and importance, including joint learning and development;
- Early and pro-active information-sharing at a local, regional and national level.

Governance for Delivering Joint Priorities

The Chairs of both organisations will meet at least once a year to discuss areas of shared interest and the Chief Executives of the two organisations will meet together at least twice-yearly to discuss organisational strategies and shared priorities. Staff from both organisations will meet throughout the year when required.

More frequent regional meetings will be held between the organisations on more operational issues. A detailed work plan will be worked on a yearly basis between the organisations.

This memorandum of understanding and associated annexes will be reviewed by April 2016 at the latest but may be revised sooner as necessary.

Dr Katherine Rake

Chief Executive
Healthwatch England

Anna Bradley

Chair
Healthwatch England

Dr David Bennett

Chief Executive
Monitor

Baroness Joan Hanham

Interim Chair
Monitor

Annex A: Seeking local Healthwatch views on applicant trusts

At the outset of each assessment process Monitor will approach Healthwatch to seek information through the following process:

- Monitor will write to the applicant trust's local Healthwatch organisation(s) to inform them of the assessment process and to ask if there are any concerns that they wish to raise with Monitor's provider appraisal team;
- Monitor will endeavour to allow at least four weeks for Healthwatch to respond;
- In some cases Monitor's provider appraisal team may request a follow up phone call or meeting with local Healthwatch to understand any concerns raised in more detail.

Local Healthwatch is not required to provide a response to Monitor.

In some cases this process may also be replicated for a foundation trust which is seeking to undertake a significant transaction.

Annex B: Engagement between local Healthwatch and Healthwatch England and Monitor's Provider Regulation team

Healthwatch and Monitor will engage in the following ways in relation to the ongoing regulation of foundation trusts and licensed independent providers:

- A Healthwatch lead will be nominated as the key contact for each foundation trust and this person will engage with the lead Monitor (provider regulation team) contact
- Monitor (provider regulation team) and local Healthwatch will engage through local Quality Surveillance Groups (QSGs), or by exception as required when significant concerns are identified.
- When Monitor begins investigating a trust for breach of licence we will write to the applicant trust's local Healthwatch lead to inform them of Monitor's concerns and ask if there are any concerns they wish to raise to inform the investigation.
- Local Healthwatch is not required to provide a response to Monitor.
- In some cases Monitor may request a follow up phone call or meeting with local Healthwatch to understand any concerns raised in more detail.

Healthwatch and Monitor will engage in the following ways in relation to the managing failure and ensuring continuity of services:

- Where Monitor appoints a Contingency Planning Team (CPT) to a Foundation Trust and Independent providers a local Healthwatch lead will be nominated as the key contact for the CPT and this person will engage with the lead Monitor and/or CPT contact.
- Prior to appointment of a Trust Special Administrator (TSA) Monitor will, where appropriate, engage with the Trust's local Healthwatch to notify them that Trust Special Administration is being considered and ask if there are any concerns that they wish to raise with Monitor.
- Monitor expects local Healthwatch will engage directly with the TSA throughout the statutory process.

In some cases, Monitor may request a follow-up phone call or meeting with local Healthwatch to understand any concerns raised in more detail.