

To: The Board

For meeting on: 25 February 2015

Agenda item: 5

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

Report on: Memoranda of Understanding with the Care Quality Commission
and General Medical Council

Summary

1. The Policy team has been working with the Care Quality Commission (CQC) to revise the existing Memorandum of Understanding (MoU) between it and Monitor. It has also been working with the General Medical Council (GMC) to develop a new MoU.
2. **The agreements are attached to this paper as Annexes 1 (CQC) and 2 (GMC) and the Board is asked to approve the contents of the MoUs for publication.**
3. Below is a brief outline and approach adopted for each agreement.

CQC

4. The MoU consists of an overarching document which sets out:
 - i) each organisation's statutory roles and responsibilities
 - ii) general principles for working together (such as patient focussed, transparent, minimise duplication and collaborative)
 - iii) key areas where our roles interact
 - iv) the role of the CQC/Monitor Joint Working Group as an oversight group
 - v) the provision for operational annexes which set out in more detail processes and arrangements
5. Underpinning the CQC and Monitor MoU are a number of associated operational annexes that set out more detailed working arrangements and processes. The expectation is these annexes will be updated more frequently than the overarching MoU to reflect changing working practices and personnel.

6. There are six operational annexes at present, covering the following areas:
 - i) Working together during the NHS foundation trust (NHSFT) assessment process and during CQC inspections
 - Sets out the requirement for a trust to be rated at least 'good' before it can proceed and the process by which CQC will provide information during the assessment process
 - ii) Joint registration and licensing of independent providers
 - Sets out the information that will be regularly shared to ensure both organisations can jointly register and licence independent providers
 - iii) Working together during significant transaction reviews for NHSFTs
 - Sets out information CQC will provide to Monitor when it is undertaking a significant transaction and how Monitor will keep the CQC up to date with the transaction pipeline
 - iv) Working together on assessing the benefits case for mergers and other competition related enquires
 - Sets out information CQC will provide to Monitor to help it assess the patient benefits of proposed mergers and how Monitor will keep the CQC up to date with the pipeline of mergers cases.
 - v) Information sharing during ongoing monitoring and enforcement
 - Sets out how both organisations will share information where there are governance, financial or quality concerns at a trust, how third party complaints and information will be treated
 - Sets out when Monitor will consult or inform CQC of the appointment of a contingency planning team and the requirements around trust special administration
 - Sets out that Monitor and CQC will work together to align their communications when regulating providers in conjunction
 - vi) Working together when trusts are placed in special measures
 - The Provider Regulation Executive requested a specific annex on special measures. It sets out the respective roles of both organisations with respect to special measures and the process and timescales for placing a trust in special measures. This annex reflects the recent discussions with the Secretary of State, CQC and the NHS Trust Development Authority.
7. Further work is ongoing to establish arrangements for sharing information with respect to the fit and proper person's test. This will be added in due course.
8. Having both an overarching MoU setting out a high level framework and principles alongside a set of more detailed operational annexes, allows the annexes to be updated more frequently than the overarching MoU, to reflect evolving policy and personnel changes. While changing to the overarching MoU should be approved by the Board, the detailed annexes can be delegated to the Executive Committee as required.

GMC

9. The GMC MoU sets out that both Monitor and the GMC will share information to help the other fulfil their statutory duties.
10. The MoU sets out:
 - i) each organisation's statutory roles and responsibilities
 - ii) general principles for working together
 - iii) a commitment to share information.
11. The MoU is not time-limited and names the Director of Strategy and Policy as the key relationship manager of the MoU.
12. In addition to the published MoU, the team is developing a short working document for internal use that sets out the key contacts for both organisations and expectations about when information will be shared. The purpose of this document is to help staff in both organisations understand when and who to share information with. This is intended to be an internal working document that can be updated as required, for example when key contacts change.

Next steps

13. The MoUs are going through parallel governance processes at each respective organisation. Subject to comments received today and comments through these respective processes the MoU will be updated prior to being signed and published. The Policy team is also liaising with the Strategic Communications directorate to publish the CQC MoU alongside the joint Chief Executive Officer video describing the organisations' respective roles.
14. **The Board is asked to approve the contents of the MoUs for publication.**

Nicola Meheran
Policy Advisor

Toby Lambert
Director of 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.

Memorandums of understanding are tools which allow us to agree common objectives and ways of working with our partners to enable effective and efficient collaboration.

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. The Act protects against discrimination on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, gender and sexual orientation. We have thought about how the issues dealt with in this paper might affect protected groups .

We believe the paper will not have any adverse impact upon these groups and that Monitor has fulfilled its duty under the Act.

Exempt information:

All of this report is exempt from publication under the Freedom of Information Act 2000.

All of the information in this report is exempt from publication as it falls under section 22 and 36 of the Freedom of Information Act 2000. Having considered the public interest, the information is exempt because disclosure of that information would, or would be likely to, inhibit the free and frank provision of advice, or exchange of views for the purpose of deliberation, and is intended for future publication.

Memorandum of understanding between the Care Quality Commission and Monitor

Introduction

The Care Quality Commission (CQC) and Monitor are committed to working together to support improvements in the quality of care delivered by providers of NHS services and to promote the provision of well-led and sustainable services for the benefit of people who use health services.

The Health and Social Care Act 2008 as amended by the Health and Social Care Act 2012¹, places a specific duty on CQC and Monitor to co-operate in the exercise of their respective functions and to share any information about the provision of health care services which either regulator considers would assist in the exercise of its functions. In addition the Care Act 2014 sets out specific areas where co-ordination of our respective functions is necessary.

Following the Mid Staffordshire NHS Foundation Trust Public Inquiry a number of reports such as “Patient’s first and foremost²”; “Hard truths³” and the National Quality Board’s “Review of early warning systems⁴” emphasised the importance of co-ordinated regulation across the health sector. Therefore, Monitor and the CQC have been working together to ensure we co-ordinate our activities effectively, minimise duplication in the regulatory regimes and help to communicate our respective roles and have they interact to the sector.

This memorandum of understanding (“memorandum”) sets out the framework for how Monitor and the CQC will work together and share information effectively to ensure patients’ interests are protected. It describes our respective roles, the principles we will adhere to and our agreed overarching governance framework for joint areas of work. Linked to the memorandum are separate free standing operational annexes which describe in more detail how we will co-ordinate our roles and share information when fulfilling our respective duties. These annexes may be updated more frequently than this overarching memorandum to reflect evolving working practices and changes to key contacts.

¹ Sections 288 and 289

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/170701/Patients_First_and_Foremost.pdf

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270368/34658_Cm_8777_Vol_1_accessible.pdf

⁴ http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_113021.pdf

Our Roles

Care Quality Commission (CQC)

The CQC is the independent regulator of health and social care in England. CQC's purpose is to make sure health and social care services provide people with safe, effective, compassionate, high-quality care and we encourage care services to improve. CQC's role is to monitor, inspect and regulate services to make sure they meet fundamental standards of quality and safety and we publish what we find, including our inspection ratings to help people choose care. CQC also has a new monitoring function in relation to financial sustainability of 'difficult-to-replace' adult social care providers. Through its work CQC will protect the rights of vulnerable people, including those whose rights are restricted under the Mental Health Act.

CQC is significantly improving the way it regulates health and social care services. CQC's has introduced a new approach which will ask five questions of all services: are they safe, effective, caring, responsive and well led. CQC's inspection teams will be bigger and include specialists. CQC will make much better use of intelligence and data to target its inspections and to ensure it focused on areas of particular risk. CQC will continue to seek opportunities to innovate and change in line with opportunities and identifiable risks.

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 including expanding its role beyond foundation trusts to the licencing of non-exempt independent providers of NHS services. Monitor's core responsibilities can be summarised under four main headings:

- **Making sure public providers are well led.** Monitor makes sure public providers of NHS care are well led and delivering quality care on a sustainable basis. Firstly 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.
- **Making sure essential NHS services are maintained.** Monitor is responsible for making sure those services are maintained and protected for local patients. If a provider of essential NHS services, gets into such serious difficulties so as to no longer be able to provide essential services, 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.

- **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.
- **Making sure procurement, choice and competition operate in the best interests of patients.** 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.

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 change through research and analysis to identify what works and what doesn't, and to stimulate better ways of working.

Working together

General principles for how we will work together

We will work together in a transparent and open way to support and promote the delivery of safe, well-led and sustainable care for the public.

This memorandum does not override each organisations respective statutory duties and powers. However, both organisations will act in accordance with the Regulator's code⁵ and adhere to the following principles for collaborative working:

- **Patient focussed:** We will listen to people who use services and act in their interests. Influencing the overarching system to bring about the greatest benefits for patients.
- **Minimise duplication:** When we work together we will be clear about our unique expertise and roles to avoid duplication and ensure the efficient and effective use of resources.
- **Transparent:** We will be clear with providers about the requirements placed upon them. We will work together in dealing with failure and driving wider improvement, in the safety and quality of care provided by organisations that require registration with CQC, and a licence with Monitor.
- **Collaborative:** We will work together to communicate our aims, objectives and recommendations, where appropriate. We will collaboratively develop methods (for example when developing methods for regulating governance).
- **Considerate:** We acknowledge the statutory responsibilities of each other and respect each other's right to make independent regulatory decisions.

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

We will have regard to each other in decisions about priorities (for example themes for inspections).

- Share intelligence: We will make sure intelligence is proactively and consistently pooled and shared to identify emerging issues early and respond to concerns.
- Share best practice: We will share best practice and working together to manage shared risks.
- Work with others: We will work bilaterally to achieve both our common objectives and with others such as the NHS England and the NHS Trust Development Authority (NHS TDA) to achieve system objectives.

Broadly there are three areas where CQC and Monitor will work together:

- when NHS trusts are being assessed for foundation trust status and when independent providers are jointly registered and licenced to provide NHS service (for example how we ensure an effective and efficient assessment process)
- during the ongoing monitoring of foundation trusts to ensure they continue to remain well-led and during the monitoring of independent providers of NHS services (for example how we share information following CQC inspections or when we receive complaints that may warrant further investigation by either organisation; our approach to sharing information during the assessment of mergers and acquisitions)
- when either organisation is taking enforcement action to resolve concerns about a foundation trust or independent provider of NHS services (for example how we will work together when a foundation trust is placed into special measures or trust special administration).

In addition, Monitor and CQC will make each other aware of relevant consultations that the other may wish to respond to, for example consultations on the national tariff payment system or consultations on changes to CQC inspection regime.

Where information is subject to a request under the Freedom of Information Act (FOIA) the legal position of this act must be respected. Each organisation will as a courtesy notify and where appropriate consult the other in advance of releasing information following an FOIA request. Responsibility for responding to an FOIA request – including final responsibility for making any decision to withhold information under exemption remains with the organisation receiving the request.

Where appropriate across these functions both organisations will work together to ensure our communications to the sector are aligned. Monitor and the CQC will also notify the other before any announcement or publication that may concern the other is released.

Across each of the areas there will be regular contact at senior and operational levels within both organisations. A joint working group, consisting of senior level representatives from both organisations will meet quarterly to share information and discuss issues that require collaboration. The terms of reference will be agreed by our chief executives and regularly reviewed. The group will be held accountable by our Chief Executives. Outside of this group, CQC and Monitor will also have

opportunities to share information at wider joint meetings with other partners such as the NHS TDA and NHS England.

More detailed working arrangements and processes are set out in a number of associated operational annexes. The expectation is these annexes will be updated more frequently than this overarching memorandum to reflect changing working practices and personnel.

This agreement sits alongside other arrangements which we both have in place with organisations operating within the wider health and social care system, including with NHS Trust Development Authority (NHS TDA), NHS England, Healthwatch and General Medical Council.

This MOU is not time-limited and will continue to have effect unless the principles described need to be altered or cease to be relevant. The memorandum may be reviewed at any time at the request of either party. The linked operational annexes can be reviewed and updated without updating this overarching document. This memorandum cannot override the statutory duties and powers of the CQC and Monitor, and is not enforceable in law. However, we will adhere to the principles set and show proper regard for each others' activities.

Signed

CQC Chair

Monitor Chairman

CQC Chief Executive

Monitor Chief Executive

Operational annexes to the CQC and Monitor memorandum of understanding

Underpinning the CQC and Monitor memorandum is a number of associated operational annexes that set out more detailed working arrangements and processes. The expectation is these annexes will be updated more frequently than the overarching memorandum to reflect changing working practices and personnel. From time to time existing annexes may be amended, new annexes may be introduced or annexes that are no longer relevant removed. This document was published in March 2015 and reflects the current agreed principles and arrangements. If changes are made to the annexes this document will be replaced with a new version. Like the overarching memorandum, these annexes cannot override the statutory duties and powers of the CQC and Monitor, and are not enforceable in law. However, we will adhere to the principles set and show proper regard for each others' activities.

This document contains the following annexes:

- Annex 1: Working together during the foundation trust assessment process and during CQC inspections
- Annex 2: Approach for licensing of registered providers including joint registration and licensing
- Annex 3: Working together on transaction reviews for foundation trusts
- Annex 4: Working together on assessing the benefits case for mergers and other competition related enquires
- Annex 5: Information sharing during ongoing monitoring and enforcement
- Annex 6: Working together when trusts are placed in special measures

An additional annex relating to how we share information with respect to the fit and proper person's test for directors is under development and will be added in due course.

Annex 1: Working together during the foundation trust authorisation process and during CQC inspections

Overview

CQC inspect the care delivered by providers to establish if it is safe, effective, caring, well led and responsive to people's needs. Inspections can be scheduled; in response to concerns about poor care; or focussed on specific services.

One of Monitor's responsibilities is to assess NHS trusts for foundation trust status. Trusts must be put forward by the NHS Trust Development Authority (NHS TDA) in order to be assessed by Monitor.

The quality of healthcare services provided by a trust is a key component of the assessment process and to streamline and improve the assessment process, Monitor, NHS TDA and CQC have agreed that trusts applying for foundation trust status should be inspected by the CQC before being referred to Monitor by the NHS TDA.

For Monitor to start the foundation trust assessment process, the NHS trust must have been rated overall "Good" or "Outstanding" by the CQC following the inspection. In addition, as there will be a subsequent time lapse between CQC's inspection and Monitor's final authorisation decision, CQC will also provide Monitor with a CQC Pre authorisation letter setting out CQC's view on the applicant trust prior to the authorisation decision. This will ensure Monitor is aware of and takes into account CQC's most recent view of the trust at the time of Monitor's authorisation decision.

Monitor will place significant weight on the CQC's assessment of the quality of care provided by the applicant trust in reaching its decision on whether to authorise the applicant as an NHS foundation trust. If at any point during the assessment process either the CQC or Monitor is made aware of any material issues that may be relevant to the other organisation, both organisations commit to notifying the other.

This annex therefore sets out:

- the information that Monitor will share with CQC regarding Monitor's programme of assessments and any information gathered throughout the process that may be relevant to CQC regulatory duties
- the information that Monitor will share with CQC prior to a CQC inspection of a trust if Monitor has relevant information
- the process for sharing information during and following Monitor's assessment process.

Information Monitor will share with CQC – programme of assessment

Monitor will provide an update on its programme of assessment to CQC each month, and this will include:

- each NHS trust under assessment
- the current status of the assessment (ie active, postponed or deferred) and
- if known, for each active assessment case:
 - the Monitor lead manager and responsible senior manager for the assessment
 - the board to board meeting date, the status of this (provisional or confirmed)
 - the proposed authorisation date, the status of this (provisional or confirmed), and the delivery date for Pre authorisation letter and briefing (normally two weeks before the proposed authorisation date).

Monitor will advise CQC of any change to its programme of assessment if an assessment case (existing or new) becomes active.

CQC will take this information into account in deciding its schedule of inspections, in particular so as to minimise the risk of the timing of inspections causing unreasonable delay to Monitor's assessment and authorisation process. CQC will provide Monitor with the contact details of the area inspection team (the inspection manager for the trust, and the relevant head of hospital inspection) and the responsible deputy chief inspector of hospitals.

Information Monitor will share with CQC prior to an inspection

In some cases, for example where Monitor has been asked by the NHS TDA to conduct a quality governance review at a trust or where a trust's assessment for foundation trust status has been deferred or postponed Monitor may have information that is relevant to the CQC prior to their inspection of the trust and where this is the case, eight weeks prior to inspection CQC will make a request to Monitor for a briefing on the trust which will contain information, as required, on:

- governance structure and arrangements
- service quality, for example:
 - current key issues, risks or concerns which may have an impact on the services people receive in the five areas: safety, effectiveness, caring, responsiveness, leadership and culture
- any changes which the provider has made to reflect feedback from service users and carers
- any other recent improvement activity which the provider has made, such as their response to recent national reports
- any particular areas of high quality care that you would like to highlight.

Monitor will share the feedback it provided to the trust at the conclusion of quality governance reviews (usually in the form of a letter outlining the key findings of the review) and conduct a conference call with the inspection team to provide relevant information.

Information sharing and coordination following inspection

CQC will keep Monitor informed of findings from inspection and where there are significant concerns (for example, raising the likelihood of enforcement or special measures) will normally do so within 48 hours of the inspection concluding.

CQC and Monitor will agree case by case how they coordinate their roles in relation to quality summits and action plans. Monitor will normally chair the second half of a quality summit (the half which focuses on forward plans) where a trust is rated inadequate and may also do so where a trust is rated as requiring improvement, but is less likely to do so where a trust is rated as good or outstanding.

Information sharing during the assessment and authorisation process

Monitor, NHS TDA and CQC have agreed that trusts applying for foundation trust status which are currently in the NHS TDA pipeline should be inspected by the CQC before being referred to Monitor.

Only trusts with an overall rating of “Good” or “Outstanding” can be referred to Monitor and can be authorised as a NHS foundation trust.

At the start of the Monitor assessment process the CQC will provide Monitor with the CQC’s rating and the inspection report for the trust. Within this information, CQC will advise Monitor if there are pertinent findings in its assessment of how well-led the trust is, that Monitor may want to take into account.

Prior to Monitor’s board to board meeting with the applicant trust, Monitor and CQC will engage at an operational level, for example, a call between the Monitor appraisal manager and the CQC area inspection team, to share relevant important information and clarify information in anticipation of the board to board meeting.

Following the board to board meeting Monitor will provide feedback to CQC, including:

- whether or not there is any change to the status of the trust’s application eg from active to postponed
- any information or intelligence that is relevant to CQC's regulatory role and purpose arising from Monitor's assessment of the trust but not known to CQC

As there will be a time lapse between the CQC inspection of the applicant trust and Monitor’s final decision on authorisation, following the board to board meeting, and pre authorisation, CQC will provide a letter to Monitor which confirms the CQC’s current view of quality at the applicant trust and whether or not it should proceed in its application. In reaching its recommendation, CQC will take account of the following information:

- whether the applicant trust is registered with CQC, and whether the registration is subject to additional conditions (other than location conditions)

- the current overall rating of the trust. Applicant trusts must have a current overall rating of either “Good” or “Outstanding”
- whether the trust is the subject of any regulatory action, and the current status of this
- whether CQC hold any information from its Intelligent Monitoring or any other surveillance systems which would trigger the need for a responsive / focused inspection
- whether CQC is taking any enforcement or other investigation activity at the trust or such activity is planned including preliminary enquiries into outlier alerts.

Monitor will advise CQC of the final outcome of the trust’s application, including:

- whether or not the trust has been authorised as a foundation trust, including sharing relevant deferral or side letters sent to the trust
- any information or intelligence that is relevant to CQC's regulatory role and purpose arising from Monitor's assessment of the trust but not known to CQC.

Annex 2: Approach for licensing of Independent Providers including Joint Licensing and Registration

Overview

This annex sets out specific provisions to support Independent Provider licensing and registration.

From the 1 April 2014 all non-exempt providers of NHS health care services for the purposes of the NHS have been required by law to hold a Monitor Licence. To be granted a Licence, CQC Registration is required if needed and the provider must be fit (judged by whether its Directors/Governors or their equivalent comply with the fit and proper person test).

Licensing of Registered Providers

To aid the licencing process CQC will continue to provide relevant data from its provider database as set out below.

Information CQC will provide to Monitor

To enable Monitor to undertake its licensing role, CQC will continue to supply a refreshed weekly dataset from their provider database that includes:

- CQC ID
- Registered Name
- Registered Address
- All other locations (addresses) associated with the CQC ID

The following organisations are excluded from the data extract:

- Registrants that do not provide services for the purposes of the NHS
- NHS Foundation Trust
- NHS Trust
- Only provides Primary Medical Services
- Only provides Dental Services
- Only provides continuing health care and/or NHS Funded nursing care
- Only provides a combination of Primary Medical service, Dental services or continuing healthcare and/or NHS Funded nursing care

Information Monitor will provide to CQC

Monitor publishes the statutory register of NHS provider licence holders on its website¹. Monitor will on a weekly basis inform CQC of any decisions made on provider licence applications and license revocations.

Monitor will provide CQC with a current list of providers of Commissioner Requested Services (CRS providers) on a monthly basis.

Joint Licensing and Registration

From April 2014, Monitor and CQC have been required by statute to ensure that an applicant for registration and a licence can apply using a single application form for both and be issued with a single document of registration and licensing. To facilitate this, a Joint Licensing and Registration (JLaR) process has been devised for any provider applying for a CQC registration and an NHS provider licence at the same time.

Monitor and CQC will work together to ensure there are processes, systems and resources available to discharge their statutory duty. The information and data sharing required undertake our respective roles are as follows:

Information CQC will provide to Monitor

To enable Monitor to undertake its role in the JLaR process, CQC will:

- For all new JLaR applications, send a PDF copy of the application to Monitor within 4 working days of receipt for validation by Monitor.
- Upon CQC approval of the applicant's regulated activities, the relevant CQC assessor shall email Monitor with a PDF of the application together with the CQC provider ID and all Notices of Decision (NoDs) within 2 working days. Additional information (for example any registration conditions) will also be sent at this point.
- Notify Monitor when the single JLaR document and all NoDs have been served on the provider.

Information Monitor will provide to CQC

To enable CQC to undertake its role in the JLaR process, Monitor will:

- For all new JLaR applications, Monitor will ensure that the provider has successfully completed all of Part B and confirm to the CQC any further information required from the applicant within a maximum of 4 working days of receipt.

¹ <https://www.gov.uk/government/publications/nhs-foundation-trust-directory>

- Following receipt of the CQC's notification that CQC regulated activities have been approved, Monitor will review the information pertaining to the provider licence and confirm to the CQC within 10 working days, whether or not the provider will receive a licence. Monitor will provide a PDF of the relevant NoD, and if the provider is to receive a licence, Monitor will generate Part B of the JLaR document (the provider licence) and provide a PDF of Part B to the CQC.

DRAFT

Annex 3: Working together on transaction reviews for foundation trusts

Overview

Transactions by foundation trusts are overseen by Monitor's regulatory framework as described in Appendix C of the Risk Assessment Framework (RAF).

Transactions involving foundation trusts include mergers, acquisitions, significant investments, joint ventures and divestments. Mergers and acquisitions are the most complex of these transactions and where Monitor and the CQC are most likely to need to work together. However, other types of transactions involving foundation trusts may also require co-operation between both parties.

When a foundation trust is considering a transaction, Monitor will review the transaction in accordance with Appendix C of the RAF and other relevant guidance. In the case of significant transactions, this will culminate in a risk rating for the transaction. Before risk rating a transaction Monitor will seek the views of the CQC on the trust(s) involved through a briefing note.

Therefore this annex sets out:

- information Monitor will share with CQC about the transactions it is reviewing
- information CQC will share with Monitor about trusts undergoing transactions

Information Monitor will share with CQC about the transactions it is reviewing

Monitor will update CQC monthly on proposed merger and acquisition transaction reviews and the current status of each review. It will also advise CQC of any other significant transactions that are likely to require input from CQC. This will be done through established monthly calls between Monitor's Provider Appraisal team and the CQC.

Monitor will advise CQC of the following:

- the Monitor lead contact for the transaction.
- the schedule for the transaction review by Monitor
- the required delivery date for the CQC briefing for the significant transaction review (which will typically be one week before Monitor's risk rating or approval of the transaction).

Monitor will inform the CQC of the outcome of each significant transaction review for which CQC has provided a briefing. As part of this process, Monitor will also share any information or intelligence arising from their assessment that is relevant to CQC's regulatory role and purpose.

Information CQC will share with Monitor about trusts undergoing significant transactions

When Monitor requests information from CQC in relation to a significant transaction, CQC will consider:

- Whether it should carry out an inspection to inform its recommendation; or
- Place reliance on the last inspection of the trusts involved in the proposed transaction and information CQC holds about each provider.

CQC's briefing

When CQC provides information on its view of the trust(s) and the impact of the planned transaction in the context of an acquisition transaction, CQC will consider the overall rating for the acquiring trust and also its rating for the domain Well-led.

CQC will review its findings, judgements on ratings and regulatory response from its inspection of the relevant trusts and will compile a briefing document for Monitor which sets out:

- the current registration conditions of a provider or providers (including whether any special conditions apply to this)
- any relevant background or context about a provider or providers
- any regulated activities carried on, at or from each of the provider's locations
- the results of the CQC's intelligent monitoring of the provider
- CQC's current rating of the provider
- a statement which sets out the CQC's latest assessment of quality of a provider or providers, including:
 - current registration status;
 - a review of the provider's compliance from a quality of care perspective;
 - whether CQC holds any current information which would trigger the need for a focused inspection;
 - whether any enforcement action or investigation by CQC is ongoing or under consideration;
 - whether the provider has any open mortality outliers and
 - other relevant information.

CQC will confirm that it has provided Monitor with all relevant information that it is aware of about the trusts involved. In some circumstances it may be appropriate for CQC to provide a recommendation on whether a transaction should proceed alongside the briefing (for example when a trust is in special measures), this will be agreed on a case by case basis between CQC and Monitor. The briefing will typically be required one week before Monitor's risk rating or approval of the transaction.

A common template for the briefing note will be agreed between CQC and Monitor, to streamline the process and ensure consistency across information requests.

This arrangement will be reviewed periodically to ensure it is working effectively.

Transfer of regulatory liabilities if a trust is subject to CQC requirements during the transaction

Where a trust acquires another provider that is subject to requirements, conditions or enforcement by CQC, or a new provider is formed through a merger with a trust subject to these, CQC will keep Monitor apprised of its approach to handling this situation and will ensure appropriate coordination, as it decides whether and how any requirements, conditions or enforcement action should transfer to the acquiring trust or the new (merged) provider.

DRAFT

Annex 4: Working together in relation to Monitor's co-operation and competition functions

Mergers

Monitor has a statutory duty to advise the Competition and Markets Authority (CMA) on the relevant customer benefits of mergers involving NHS foundation trusts that are investigated by the CMA. In addition, Monitor provides advice to the NHS TDA on the impact on choice and competition of mergers between NHS trusts.

Information about the quality of care provided by an organisation as a whole or for a particular service is likely to be relevant to Monitor's advice to the CMA and TDA on mergers.

Monitor will provide a monthly update to CQC identifying merger cases on which Monitor is likely to request information to the CQC. The intention is for this to be done through the established monthly calls between Monitor's Provider Appraisal team and the CQC. This arrangement will be reviewed after an initial period of operation to ensure it is working effectively.

When reviewing a merger case for the purpose of advising the CMA or TDA, Monitor may request information from the CQC about the quality of care delivered by a provider or providers.

In the first instance Monitor will check the published ratings and any inspection reports on the CQC's website and then will contact the CQC in order to obtain:

- any recent as yet unpublished information that the CQC is aware of that may be relevant to the merger under consideration
- information regarding any future events or reviews that the CQC is aware of that may be relevant to the merger under consideration

The CQC will respond to Monitor's requests in a timely manner.

Monitor may also request, in writing, a briefing note from the CQC which sets out:

- the current registration conditions of a provider or providers (including whether any special conditions apply to this)
- any relevant background or context about a provider or providers
- any regulated activities carried on, at or from each of the provider's locations
- the results of the CQC's intelligent monitoring of the provider
- CQC's current rating of the provider
- a statement which sets out the CQC's latest assessment of quality of a provider or providers, including:
 - current registration status;
 - a review of the provider's compliance from a quality of care perspective;

- whether CQC holds any current information which would trigger the need for a focused inspection;
- whether any enforcement action or investigation by CQC is ongoing or under consideration;
- whether the provider has any open mortality outliers and
- other relevant information.

A template for the briefing note will be agreed between CQC and Monitor to streamline the process and ensure consistency between information requests.

At the time of each request, Monitor and the CQC will agree an appropriate timeframe for the briefing note to be provided, depending on the urgency and the complexity of the case. If, after the briefing note is provided, the CQC becomes aware of additional information that is relevant to the case, the CQC will notify Monitor of this information.

Monitor may follow up with the CQC to discuss any of the information provided in the briefing in more detail.

Other work

Monitor may request information from the CQC that is relevant to the exercise of Monitor's other co-operation and competition functions. At the time of each request, Monitor and CQC will agree an appropriate timeframe for the information to be provided, depending on the urgency and the complexity of the case. Monitor's request will include:

- a description of the information requested;
- a summary of the case or project in relation to which the information will be used by Monitor;
- a brief explanation of why the information is being requested.

Annex 5: Information sharing during ongoing monitoring and enforcement

This annex sets out how monitor will share information routinely and by exception during the ongoing monitoring of licensed providers² and how we will work together when either organisation is undertaking enforcement action at a licensed provider.

As far as possible and appropriate, only information or data which does not identify individuals and in particular service users will be shared between the regulators under this operational protocol. Any proposed sharing of personal data or sensitive personal data, including third party enquiries and concerns, will be done only in accordance with the Data Protection Act 1998 and the policies, guidance and relevant legislation of the disclosing organisation. In the event of any proposed sharing of information or data subject to a common law duty of confidence the disclosing organisation will have regard to this.

Any intervention involving Monitor and CQC should be proportionate, targeted, coherent, and transparent³. How we will work together during special measures is covered in a separate annex.

Areas this annex covers:

- Information sharing during monitoring
- Third party information and concerns
- Co-ordinating regulatory action
 - CQC's enforcement powers
 - Trust special administration
- Joint communication when working together

Monitoring

Each organisation will openly share relevant information on safety, quality, financial and governance risks at a licenced provider where appropriate.

Where either organisation wishes to use the information provided by the other, the information should be received in writing to ensure there is an appropriate audit trail and both organisations will seek permission from the other before making it public.

Any request under the Freedom of Information Act (FOIA) relating to information which was all or in part provided by the other regulator will not be released without first notifying and seeking consultation with the organisation that provided the information.

² By licensed provider we mean any provider who holds an NHS provider licence. This could be a Foundation Trust or an independent provider of NHS services.

³ Insert link to better regulation principles

Legal responsibility for responding to an FOIA request – including final responsibility for making any decision to withhold information under exemption – remains with the organisation receiving that request.

Where information is subject to a request under the Freedom of Information (FOI) Act the legal position of this Act must be respected. Each organisation will as a courtesy notify the other advance of releasing information following an FOI request.

Routine information will be shared at regional quality surveillance groups (QSGs) which are quarterly. Where significant concerns are identified Monitor and CQC will notify each other by exception. This could include a provider being investigated for a potential licence breach, changes in their inspection rating, or registration conditions following a CQC inspection, or being subject to enforcement action by either organisation. Information will be provided by Monitor's regional teams to the CQC regional teams.

Monitor will write to CQC where it receives evidence of significant quality concerns at any NHS organisation. CQC will write to Monitor where it receives evidence of potential governance or financial concerns at any foundation trust or an independent provider of Commissioner Requested Services (CRS). This could be a formal letter or email, depending on the situation. If the need for further action is identified CQC and Monitor will agree the most appropriate way to investigate and act on the concerns.

Monitoring of independent providers that deliver both health and adult social care services

Some providers deliver both health and adult social care services and are therefore subject to regulation by both Monitor and CQC. Monitor and CQC have independent responsibility for monitoring the financial sustainability of health and adult social care providers respectively to ensure continuity of essential NHS services (CRS) on Monitor's side and continuity of care for people using adult social care services on CQC's side. To minimise the burden on providers subject to both CQC's and Monitor's financial monitoring regimes, both organisations agree to coordinate any requests for information and meetings where possible and appropriate and ensure that relevant information is shared between organisations on an exception basis in an appropriate and secure way.

Third party enquires and concerns

Both Monitor and CQC may receive information, complaints or enquires from a third party that falls within the remit of the other organisation.

Where Monitor receives complaints that are relevant to CQC's remit we will send this to CQC to follow up. If these complaints contain personal data they will be anonymised or sent under another valid legal basis.

Where CQC receives complaints in relation to Monitor's remit they will be sent to Monitor to follow up. If these complaints contain personal data they will be sent in anonymised form or under another valid legal basis in accordance with their Code of Practice on Confidential Personal Information.

If Monitor receives complaints about serious safety or quality issues it will pass them onto the CQC and any other relevant body, and then follow up what has been done with that information. In such instances, it may not be appropriate to anonymise the information received. If CQC becomes aware of any information from a third party or individual that highlights there is a financial or governance concern, it will pass that information directly to Monitor's relevant regional team.

Monitor and CQC will continue to work together to ensure that there are robust processes in place underlying this MOU to record when information has been shared from third parties and how either organisation has acted on them.

Co-ordinating regulatory action

This section applies where a foundation trust or an independent provider of Commissioner Requested Services (CRS):

- Is under investigation for a potential licence breach
- Has been found in breach of its licence conditions or
- Is subject to a CQC inspection or enforcement activity; or
- Has a high risk of being subjected to either of the above scenarios

Both organisations will work together to ensure what action is needed and who will be lead regulator for the appropriate action where co-ordinated action is appropriate. This may include carrying out inspections and reviews jointly or in parallel.

CQC enforcement powers

CQC have a range of enforcement powers to help them:

- protect people who use regulated services from harm and the risk of harm and to ensure they receive health and social care services of an appropriate standard
- to hold providers and individuals to account for failures in how the service is provided.

When determining the appropriate course of action, CQC follow a four stage decision making approach to decide whether to use enforcement powers and, if so, which ones are proportionate. Generally CQC will contact Monitor at the first stage of this approach, "initial assessment" for relevant information. CQC will also inform Monitor where a decision has been made to take enforcement action against a licenced provider.

When CQC take enforcement action and require a provider to make improvements the responsibility for following up to check whether the necessary improvements have been made will generally be with the CQC, unless CQC and Monitor agree alternative arrangements.

Contingency planning team

Monitor can appoint a contingency planning team (CPT) to help find a long term solution to ensure sustainability of the services provided by a foundation trust or an independent provider of Commissioner Requested Services (CRS) that would need to be continued in the event of provider failure. Monitor will inform CQC of the appointment of a CPT and where appropriate CQC will be requested to provide a report on the quality and safety at the provider in question.

Trust special administration

In the event of failure of an FT, Monitor can appoint a trust special administrator (TSA) whose role will include a specific focus on continuity of 'location specific services' and working with Monitor and commissioners to find a long term solution. TSA is a statutory process and Monitor and CQC each have responsibilities under TSA legislation.

The Care Act 2014 introduces provisions that allow the CQC to require that Monitor puts a trust into special administration, if the statutory test is met. The CQC will only recommend or require that a trust goes into special administration in extreme circumstances and if special administration is deemed to be the most appropriate strategy given the specific case, with other regulatory measures having failed to deliver adequate improvements. CQC will always consult Monitor before making any such requirement or recommendation.

CQC assessment of TSA recommendation

In responding to recommendations from the trust special administrator, the CQC will make an assessment as to whether the proposals meet the objective of ensuring that the location specific services are of sufficient safety and quality to be provided..

In making this assessment the CQC will want assurance that the recommendations allow for full compliance with the legislation, in conjunction with its existing registration requirements. This judgment may include requirements for monitoring, imposition of conditions on a provider's registration, or other measures if necessary to fully ensure feasibility and sustainability. The detail of what is required will reflect the specific situation and proposals.

The CQC has published guidance which sets out the characteristics describing what 'outstanding', 'good', 'requires improvement' and 'inadequate care' looks like in order to inform a proportionate assessment of the recommendations from the Trust Special Administrator.

Co-ordinating communications during monitoring and enforcement

Monitor and CQC have the following shared communication objectives:

- be clear about our respective roles and how we work together, including with providers to ensure they are able to communicate effectively with their patients, staff and stakeholders
- demonstrate how our inspections and regulatory action impact on the quality of care for people who use services
- explain how our inspections and regulatory action encourage greater transparency in local services and confidence that there is a plan in place to tackle problems
- explain the reason why we take action and when we take action

Where Monitor and CQC are actively regulating a provider in conjunction with each other our respective communications departments will work together to ensure that public messages are consistent and fulfil the above objectives.

Annex 6: Working together when trusts are placed in Special Measures

Overview

Special measures apply to NHS trusts and foundation trusts that have serious failures in quality of care and where there are concerns that existing management cannot make the necessary improvements without support. Special measures consist of a set of specific actions designed to improve the quality of care within a reasonable time.

In this approach the CQC will focus on identifying failures in the quality of care and judging whether improvements have been made. Monitor will use their respective enforcement powers to support improvement in the quality of care provided. In some cases the underlying reasons for special measures may be caused by intrinsic structural problems in the local health economy that take time to resolve. Therefore a trust may be able to exit the regime if it can demonstrate a trajectory of improvement, before these issues are completely solved.

Monitor, CQC and NHS TDA have published a joint guidance document (“A guide to special measures”) outlining how the special measures programme works for NHS trusts and foundation trusts. They will jointly review and revise this from time to time, to ensure that it remains current. The joint guidance explains why trusts are placed in special measures, what will happen to trusts during special measures, the roles and responsibilities of key organisations involved and when and how trusts will exit special measures.

Monitor and CQC will work in collaboration in the exchange of information and expertise where concerns have arisen about a trust resulting in a recommendation or decision that it be placed in special measures.

The overarching roles of each organisation are outlined below.

CQC

CQC focuses on identifying quality failures and judging whether improvements have been made. As an organisation it can intervene at any stage by, for example, issuing a warning notice if it believes patients are at immediate risk of harm.

CQC, through the Chief Inspector of Hospitals (‘Chief Inspector’), will recommend in writing to Monitor that a trust is placed in special measures, be removed from special measures or remains in special measures following an inspection/re-inspection.

CQC will provide specific reasons why trust are recommended to enter or, where applicable, remain in special measures, identifying the specific areas of improvement where actions need to be taken and what needs to be achieved.

Monitor

Upon receiving a recommendation from CQC, Monitor can decide whether a trust should be placed in special measures, be removed from special measures or remains in special measures. Monitor will focus on using its enforcement powers to support the trust to improve the quality of care and address patient safety and quality issues using interventions such as:

- appointing an Improvement Director;
- appointing an appropriate partner (buddy) organisation to provide support;
- requiring the trust to enhance the capability of its leadership; and
- requiring the trust to publish progress against its action plan every month on the NHS Choices (and its own) website.

If leadership changes are required this will happen in a timely manner, and the necessary support will be put in place to support this.

Monitor can also recommend a trust be placed in special measures based on evidence other than from the CQC, though it will always seek advice from CQC.

CQC Inspections & Re-inspections

CQC will initially re-inspect after 12 months and will result in a recommendation to either (a) exit special measures or (b) continue in special measures for an extension period or (c) continue in special measures where Monitor has concerns that the trust may not be able to sustain improvements without special measures in place (in this instance special measures may run in parallel to processes which will consider longer-term solutions, eg a transaction or special administration).

Should recommendation (b) above be approved by Monitor then CQC will carry out a further re-inspection within a reasonable timeframe having consulted with Monitor (normally not exceeding six months from the date of publication of the initial re-inspection report).

Key interactions in the special measures process

Placing a trust in special measures:

- *During inspection.* For trusts that are likely to be inadequate in the “well led” question, and at least one other quality domain, the CQC inspection lead will have more intensive liaison with Monitor following the final corroboration session with the trust.
- *Report drafting.* Head of Hospital Inspection (HHI) will have early discussions with Monitor’s Regional Director about any special measures recommendation whilst drafting the report. This will particularly include ensuring that the Regional Director is fully apprised of CQC’s concerns and that they are clearly covered in the report, to inform Monitor’s planning and preparations for special measures.

- *CQC's National Quality Assurance Group (NQAG)*. CQC's initial decision on whether to recommend special measures will be made and minuted at this group.
- *Factual accuracy*. HHI will complete the "Draft report and factual accuracy check" covering letter including details of the initial proposed recommendation with respect to special measures. The draft report and covering letter will be shared with Monitor. After reviewing the trust's comments, the HHI will confirm CQC's special measures recommendation to the 'Chief Inspector' and inform Monitor accordingly.
- *Quality Summit*. CQC will confirm to Monitor in advance of the quality summit that it is recommending the trust be placed in special measures. This will normally be done by the Chief Inspector with Monitor's Chief Executive or Managing Director of Provider Regulation. Both organisations will work collaboratively to ensure that the Quality Summit process is effective in facilitating progress in those trusts rated inadequate.
- *Report publication*. The day before the final report is published the 'Chief Inspector' will send a formal recommendation letter to Monitor regarding special measures.
- *Post report publication*. CQC will arrange appropriate time with the trust to explain the reports findings and judgements to ensure appropriate action plans can be produced by the trust to rectify the issues highlighted.

In all cases, the HHIs and/or Deputy Chief Inspectors and Monitor's Regional Directors will communicate on a regular basis where circumstances require, ensuring a consistent and coordinated regulatory approach.

Re-inspecting a trust once it has been placed in special measures:

The expectation is that a trust will be re-inspected by CQC within 12 months of being placed in special measures. CQC will discuss progress with Monitor and the trust before finalising an appropriate timing and scope for the re-inspection. This timing will be communicated to all parties as soon as possible (along with estimated dates for the issuance of the draft report for factual accuracy checking, the Quality Summit and publication date of the final report).

The re-inspection may be comprehensive or it may be targeted on specific areas – for example, when it is designed to investigate a particular concern or is a follow-up review after an extension period. CQC will decide the scope following discussion with Monitor and depending on the original reasons for the trust's entry into special measures. The re-inspection will always look at the "well led" question.

Monitor will provide CQC with information on its view of the progress that the trust has made. This will be based on feedback from the Improvement Director, progress that the trust has demonstrated against its action plan, and other intelligence Monitor has gained from its regulatory activities.

Should a trust remain in special measures for an extension period CQC will discuss with Monitor (and the trust) an appropriate timescale for a re-inspection (depending

on the nature of the remaining improvements required). This will normally be scheduled so as to keep the overall period of special measures to a maximum of 18 months in total, as far as possible. In order to achieve this timetable, CQC and Monitor will ensure frequent and prompt communication of developments and progress. In particular, CQC will inform Monitor rapidly if the first re-inspection after 12 months finds significant concerns that may require review of existing plans, so that consideration and coordination of activity can commence in parallel with finalisation of the report rather than needing to wait for it to be published.

CQC will keep Monitor informed of its timetable for any re-inspection and ensure advance notice of publication of inspection reports (along with estimated dates for the issuance of the draft report for factual accuracy checking, the Quality Summit and publication date of the final report). In the event that a trust remains in special measures following the second re-inspection (ie beyond eighteen months) and has not improved sufficiently to be taken out, the CQC will write to Secretary of State setting out the reasons for the trust remaining in special measures and the areas which require improvement. CQC will engage with Monitor in drawing up the letter and ensure coordination when it is sent.

Monitor will normally only remove a trust from special measures on the advice of the Chief Inspector. If the Chief Inspector decides not to recommend exit from special measures, even though the general criteria set out in the joint guidance are met, he will write to Monitor to inform them of the rationale.

Timescales

Normally, minimum timescales between key elements of the above process should be as follows:

<u>Between:</u>	<u>And:</u>	<u>Minimum period (working days):</u>
Draft report being issued for factual accuracy check	Deadline for trust response regarding factual accuracy	10
Deadline for trust response regarding factual accuracy	Quality Summit	5
Quality Summit	Final report publication	5

[INSERT LOGOS]

Memorandum of Understanding between Monitor and the General Medical Council

The purpose of this memorandum of understanding is to set out a framework to support the working relationship between Monitor and the General Medical Council (GMC).

The working relationship between Monitor and the GMC supports a co-ordinated regulatory system for healthcare in England which exists to ensure the health sector works well for patients, promotes patient safety and delivers quality healthcare.

Monitor is the sector regulator for health services in England. Monitor's job is to make the health sector work better for patients. The responsibilities and functions of Monitor and the GMC are set out at Annex A.

The purpose of the GMC under the Medical Act 1983 (the Medical Act) is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine.

This memorandum does not override the statutory responsibilities and functions of Monitor and the GMC. This memorandum and any protocols, supplementary arrangements or annexes to it are not enforceable in law. However, Monitor and the GMC agree to adhere to the contents of this memorandum.

1. Principles of co-operation

The working relationship between Monitor and the GMC will be characterised by the following principles:

- Shared purpose – both organisations have a common goal, which is to monitor and take action to ensure the health sector works in the best interests of patients and delivers quality healthcare.

- Openness and transparency – both organisations will share, proactively and on request, relevant information which helps the other carry out its key regulatory functions.
- Quality – both organisations commit to providing the other with information that is accurate, current and robust.
- Lawful – both organisations will comply with relevant UK legislation when sharing, storing and processing information.
- Efficiency – both organisations will take care to ensure their requests for information and referrals of information, including concerns, are made in a considerate and timely way.
- Respect – each organisation will respect the other's functions, policies and independent status.

Monitor and the GMC are committed to supporting a regulatory system for healthcare in England which is transparent, accountable, proportionate, consistent and targeted – the principles of better regulation, as set out in the Regulators' Code¹.

2. Exchange of information

Where Monitor or the GMC has relevant information which it believes falls specifically within the remit of the other, it will convey that information to a named individual with relevant responsibility at the other body in a timely manner.

The GMC will support Monitor with its assessment of trusts for foundation status and through its ongoing oversight of NHS foundation trusts by sharing information which it collects through its monitoring of designated bodies and local education providers, particularly material concerns which relate to an organisation's clinical, quality and educational governance.

Monitor will support the GMC by sharing material concerns that relate to a particular doctor's fitness to practice, medical revalidation or the training environment for medical students and doctors, and which emerge through its assessment of applicant trusts for foundation status; ongoing monitoring of foundation trusts and licensed independent providers; or when conducting a formal investigation into patient choice and competition.

¹ <https://www.gov.uk/government/publications/regulators-code>

All arrangements for collaboration and exchange of information set out in this memorandum and any supplementary arrangements will take account of and comply with the Data Protection Act 1998, any legislation specific to Monitor or the GMC about such matters (for example, section 70 of the Health and Social Care Act 2012) and any codes of practice, frameworks or other policies relating to confidential personal information.

Both Monitor and GMC are subject to the Freedom of Information Act 2000. If one organisation receives a request for information and the requested information has been obtained from, is held by or otherwise impacts on the other organisation, the receiving organisation will transfer the request or discuss the request with the other before responding.

Monitor and the GMC will agree a working document that contains details of how and when we will share relevant information and a list of relevant contact details for raising concerns. This will be a working document that can be altered by the other as details change. Each organisation will ensure the contact details are made available internally as appropriate.

3. Duration and review of this memorandum

This memorandum is not time-limited and will continue to have effect unless the principles described need to be altered or cease to be relevant.

The memorandum may be reviewed at any time at the request of either party.

Both organisations have identified a key senior contact at Annex B and these will liaise as required to ensure this memorandum is kept up to date and to identify any emerging issues in the working relationship between the two organisations.

4. Resolution of disagreement

Any disagreement between Monitor and the GMC will normally be resolved at working level. If this is not possible, it may be brought to the attention of the memorandum managers identified at Annex B, who may then refer it upwards through those responsible, up to and including the chief executives of the two organisations who will then jointly be responsible for ensuring a mutually satisfactory resolution.

Signed

David Bennett Chief Executive Monitor	Niall Dickson Chief Executive and Registrar General Medical Council
Date:	Date:

DRAFT

Annex A

Responsibilities and functions

Monitor and the GMC acknowledge each other's responsibilities and functions, and will take account of these when working together.

Monitor's responsibilities and functions

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. Its core responsibilities can be summarised under four main headings:

- **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.
- **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.
- **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.
- **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 does not, and to stimulate better ways of working.

GMC's responsibilities and functions

The GMC's responsibilities and functions are set out primarily in the Medical Act.

The GMC's purpose under the Medical Act is to protect, promote and maintain the public's health and safety by ensuring proper standards in the practice of medicine.

The Medical Act gives the GMC four main functions:

- controlling entry to and maintaining the list of registered and licensed medical practitioners
- fostering good medical practice
- promoting high standards of medical education and training
- dealing firmly and fairly with doctors whose fitness to practise is in doubt.

Annex B

Contact details

Monitor 133-155 Waterloo Road London SE1 8UG Telephone: 020 3747 0000	General Medical Council Regent's Place 350 Euston Road London NW1 3JN Telephone: 0161 923 6602
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Named contacts between Monitor and the GMC are as follows:

Chief executives (internal escalating policies should be followed before referral to chief executives)	
David Bennett Chief Executive Email: david.bennett@monitor.gov.uk	Niall Dickson Chief Executive and Registrar Email: ndickson@gmc-uk.org
Management of the memorandum	
Toby Lambert Director of Strategy and Policy Email: Toby.Lambert@monitor.gov.uk Direct line: 020 3747 0359	Andrew Lewis Assistant Director – Employer Liaison Service Email: alewis@gmc-uk.org Direct line: 020 7189 6849