

This publication was withdrawn on 27 March 2023.

The new [NHS provider licence](#) can be found on the NHS England website.

The new NHS provider licence

14 February 2013

Monitor's response to the statutory consultation on the new NHS provider licence. This document includes the final standard licence conditions.

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Foreword



Monitor's provider licence is the new main tool with which we will regulate providers of NHS services. We have agreed with Ministers that we will license foundation trusts from April 2013, and other eligible NHS providers from April 2014.

The licence contains obligations for providers of NHS services that will allow Monitor to fulfil its new duties in relation to: setting prices for NHS-funded care in partnership with the NHS Commissioning Board; enabling integrated care; preventing anti-competitive behaviour which is against the interests of patients; and supporting commissioners in maintaining service continuity. It will also enable Monitor to continue to oversee the way that foundation trusts are governed.

This licence has significantly benefited from, and been influenced and shaped by, stakeholders' responses to our extensive engagement and consultation during 2012. We have listened carefully and made changes to the original draft licence based on this important feedback.

We have approached the licence with a view to minimising the amount of bureaucracy or duplication of existing practices. We have also looked to learn lessons, both from our own experience with foundation trust regulation as well as drawing from the experience of others. The licence conditions have been designed, where possible, to avoid prescriptive obligations. I believe we now have a proportionate licence, one which allows us to operate as a patient-focused and evidence-based regulator and allows providers to concentrate on giving patients the best possible care.

The licence is not set in stone and we will keep it under review proposing changes if appropriate, including any changes that may be required to reflect implications from the final report of the Mid Staffordshire NHS Foundation Trust Public Inquiry.

I look forward to working constructively with providers and partners on the application of the licence. Together we must work to ensure that the people who use NHS services, the organisations which provide them and the commissioners who buy them are able to focus on the quality, safety and sustainability of services that people depend on.

A handwritten signature in black ink that reads "David Bennett". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David Bennett
Chairman and Chief Executive

1. Executive summary

The Health and Social Care Act 2012 (the Act) makes changes to the way NHS service providers will be regulated, and gives Monitor new duties and powers. These changes include the introduction of a Monitor licence for providers of NHS services.

This document sets out our response to the statutory consultation on the standard licence conditions, which ran between 31 July and 23 October 2012. In the consultation document we described our proposals and explained the thinking behind them. To support the consultation, we ran workshops and held discussions, hosted a webinar and attended events organised by others, so we had the opportunity to listen to as many views as possible. The statutory consultation followed informal engagement and events held in early 2012.

We received a total of 105 written responses to our consultation. They included 37 from NHS foundation trusts, 19 from independent providers, including 7 charities, and 28 from representative bodies including trade unions and professional bodies.

NHS foundation trusts do not need to apply for a licence. We have agreed with ministers that we will issue licences to foundation trusts for April 2013 and that other providers will require a licence from April 2014.

The standard licence conditions are grouped into seven sections. The first section, containing the General Conditions, sets out standard requirements and rules for all licence holders. Sections 2 to 5 of the licence are about our new functions: setting prices; enabling services to be provided in an integrated way; safeguarding choice and competition; and supporting commissioners to maintain service continuity. Section 6 is about translating the well-established core of Monitor's current oversight of foundation trust governance into the new provider licence. The final section, 7, contains definitions and notes.

The final standard licence conditions

General Conditions

The General Conditions set out the standard requirements and rules which Monitor expects from all licensees. These licence conditions will apply to all licence holders.

There are nine General Conditions covering areas such as the provision and publication of information, payment of fees, fit and proper persons requirements, and a requirement for providers to be registered with the Care Quality Commission.

In our consultation we asked whether Monitor should be able to not require a licensee to meet the fit and proper persons test in very exceptional circumstances, and whether the test should include a code of conduct. Respondents' views were mixed and we decided that it is appropriate for Monitor to be able to use its discretion to not require a licensee to meet the requirement in very exceptional circumstances. We decided not to include a code of conduct but we will keep the situation under review and work with others to make any necessary changes to the licence including any that may be required to reflect implications of the final report of the Mid Staffordshire NHS Foundation Trust Public Inquiry.

We presented three options for a condition requiring licensees to take all reasonable precautions against the risk of failure to comply with the licence and other important obligations. We decided in favour of our preferred option, which was also preferred by most respondents: a requirement that is not prescriptive about which systems and processes should be in place.

We sought views on whether or not a licence condition requiring licensees to carry out their activities effectively, efficiently and economically might be necessary. Again, respondents' views were mixed. We decided not to include this condition in the licence.

We asked stakeholders for their views on our proposal not to include two licence conditions on which we had previously engaged with stakeholders. These included requirements about emergency planning and compliance with statutory and other requirements. These conditions have not been included in the licence.

A summary of what we heard from stakeholders, and our response and rationale for the final set of General Conditions is in Chapter 4.

Pricing Conditions

In future, Monitor will be responsible, in partnership with the NHS Commissioning Board, for setting prices for NHS services. There are five licence conditions to help us fulfil this duty.

These conditions will apply to all licensees providing services that are covered by the National Tariff document.

The Pricing Conditions cover the recording and provision of information, assurance about data submissions, compliance with the National Tariff document as published by Monitor, and constructive engagement with commissioners around local tariff modifications.

We did not ask any specific consultation questions about the pricing licence conditions and these conditions remain broadly the same as those we proposed. One stakeholder raised a concern about the extent to which licensees might be able to obtain costing data from sub-contractors. As a result, we have made some changes to the condition covering the recording of information.

Our rationale for the final set of Pricing Conditions is provided in Chapter 5.

Choice and Competition Conditions

Our patient Choice and Competition Conditions will allow us to protect and promote patients' interests by supporting patient choice of provider and, where it is in the interests of patients, preventing anti-competitive behaviour.

There are two Choice and Competition Conditions and they apply to all licence holders.

We asked stakeholders for their views on the circumstances in which the choice condition should apply, and whether licensees should be required to provide impartial advice about the available choice of provider. We decided to include a condition which applies where there is a choice of provider under the NHS Constitution, or where a choice of provider has been conferred locally. We

decided not to include a requirement about impartial advice – although we still think this may be important, and we intend to do further work on whether this should be introduced in the future.

We also consulted on whether to include a condition which would require foundation trusts to notify the Office of Fair Trading of mergers with other businesses providing health care services. We decided not to include this condition in the licence – this is in line with the views of the majority of respondents, including the Office of Fair Trading.

A summary of what we heard from stakeholders and our response and rationale for the final set of Choice and Competition Conditions is provided in Chapter 6.

Integrated Care Condition

The Integrated Care Condition will apply to all licence holders.

In our consultation document, we set out three options for the condition:

- Option A: a positive obligation - the licensee shall take such steps as are reasonably regarded as necessary for the purpose of enabling integrated care;
- Option B: a broadly defined prohibition - the licensee shall not do anything that would reasonably be regarded as detrimental to enabling integrated care; or
- Option C: a prohibition on actions that might block - the licensee shall not unreasonably block the integration of care.

We decided on Option B, which was most popular amongst stakeholders and also our preferred option. We think that this leaves appropriate room for providers and commissioners to take the lead in developing integrated care.

A summary of what we heard from stakeholders and our response and rationale for the final Integrated Care Condition is provided in Chapter 7.

Continuity of Services Conditions

The Continuity of Services Conditions will enable us to protect and promote patients' interests by ensuring that services continue to operate where a provider becomes financially distressed or insolvent. The Continuity of Services Conditions will apply to all licence holders that provide Commissioner Requested Services – services that if withdrawn would have a significant negative impact on patients.

The Continuity of Services Conditions cover the designation of Commissioner Requested Services, the continuity of that designation, restrictions on the disposal of assets, Monitor's risk rating, undertakings from an ultimate controller, contribution to a risk pool levy, cooperation in the event of financial stress, and reporting on the availability of resources.

We asked whether the automatic designation of NHS foundation trusts' mandatory services as Commissioner Requested Services should be time-limited. We decided that a three year limit on the duration of the automatic Commissioner Requested Services designation of mandatory services is appropriate. For NHS foundation trusts authorised on or after 1 April 2013, automatic

Commissioner Requested Services designations will expire on 1 April 2016 or one year after authorisation, whichever is later.

Some stakeholders were concerned that our proposed restrictions on the disposal of assets were unnecessarily bureaucratic and might stifle innovation. We decided that restrictions on asset disposal should apply only if there is concern about the ability of a licensee to continue as a going concern.

There was some confusion about whether the requirement for licensees to obtain undertakings from their ultimate controllers would capture trustees of charities and governors and directors of NHS foundation trusts. We have changed the drafting of the condition to state explicitly that such individuals will not be captured.

A number of respondents questioned the practicality and reasonableness of requiring a working capital statement from providers of Commissioner Requested Services as part of our condition covering the availability of resources. We have decided to remove this requirement.

We asked stakeholders for their views on our proposal not to include three licence conditions on which we had previously engaged with stakeholders. The conditions included obligations creating restrictions on licensees' levels of indebtedness, further restrictions in the event of financial distress and restrictions on lending and investment. These conditions have not been included in the licence.

Where the Continuity of Services Conditions apply Monitor has a duty to make an assessment of the risks to the continued provision of Commissioner Requested Services. We intend to meet this duty using a [Risk Assessment Framework](#), which we are currently consulting on. The *Risk Assessment Framework* will also be used in Monitor's oversight role for NHS foundation trusts, ensuring we have a single overall framework for our monitoring activity.

We have also consulted on guidance to help commissioners decide which services should be designated as Commissioner Requested Services. Our consultation is available [here](#) and our response will be published soon.

A summary of what we heard from stakeholders and our response and rationale for the final set of Continuity of Services Conditions is provided in Chapter 8.

NHS Foundation Trust Conditions

There are four licence conditions that will apply only to NHS foundation trusts.

These conditions cover the provision of information that we have a duty to maintain on the register of NHS foundation trusts and the possibility of associated fees, an obligation to provide information requested by an advisory panel, and a condition that enables us to continue our oversight of the governance of NHS foundation trusts. We have not made any significant changes to the NHS Foundation Trust Conditions following the consultation.

A summary of what we heard from stakeholders and our response and rationale for the final set of NHS Foundation Trust Conditions is provided in Chapter 9.

Other documents and further guidance

We explain in this document how the various parts of the regulatory system interact with Monitor's provider licence, and when stakeholders can expect to receive more information.

The Act says that we must carry out an impact assessment when we do something which may have a significant impact on those who provide or use NHS services, or on the general public. We published an impact assessment of the proposed draft licence conditions on 5 September 2012 ([available here](#)) and our licence conditions take this into account.

Thank you

Many people have helped us in developing the licence. Providers and commissioners have spent time with us discussing, and constructively challenging, the conditions. Trade bodies and industry groups have held roundtables and events. The Care Quality Commission, the NHS Commissioning Board, the Co-operation and Competition Panel, the Department of Health and others have all been generous with their time. We are very grateful for this assistance with our work.

2. Introduction to the provider licence

The Health and Social Care Act 2012 gives Monitor new powers and duties. It states that our main duty will be to protect and promote the interests of people who use health care services. We must do this by promoting provision of health care services which is effective, efficient and economic, and which maintains or improves the quality of services. Our current role of overseeing the governance of NHS foundation trusts will continue alongside new functions, including:

- setting prices for NHS-funded care in partnership with the NHS Commissioning Board;
- enabling integrated care;
- preventing anti-competitive behaviour which is against the interests of patients; and
- supporting commissioners in maintaining service continuity.

The Act requires us to introduce a licence for providers of NHS services. This licence sets out various obligations for providers of NHS services, including obligations relating to the four functions listed above and some specific obligations for NHS foundation trusts.

In this document, we explain our objectives for each part of the licence, what we heard from stakeholders about the conditions during our consultation, and what decisions we have taken and why.

2.1 Who needs a Monitor provider licence and when do they need it?

The Act requires everyone who provides an NHS health care service to hold a licence unless they are exempt under regulations made by the Department of Health (the exemption regulations). The section of the Act that contains this requirement will be brought into force by a commencement order. A commencement order is a Statutory Instrument which is designed to bring into force the whole or part of an Act of Parliament. Different parts of an Act may be brought into force at different times.

The exemption regulations and the date of the commencement order for the relevant section of the Act will determine the type of providers that need to apply for a licence and the date from which they need that licence.

The Department of Health consulted on the exemption regulations in summer 2012 and the consultation document can be viewed [here](#).

NHS foundation trusts will not need to apply for a licence. This is because the Act says that Monitor must issue licences to NHS foundation trusts. We have agreed with Ministers that we will issue licences to foundation trusts for April 2013 and that other providers will require a licence from April 2014.

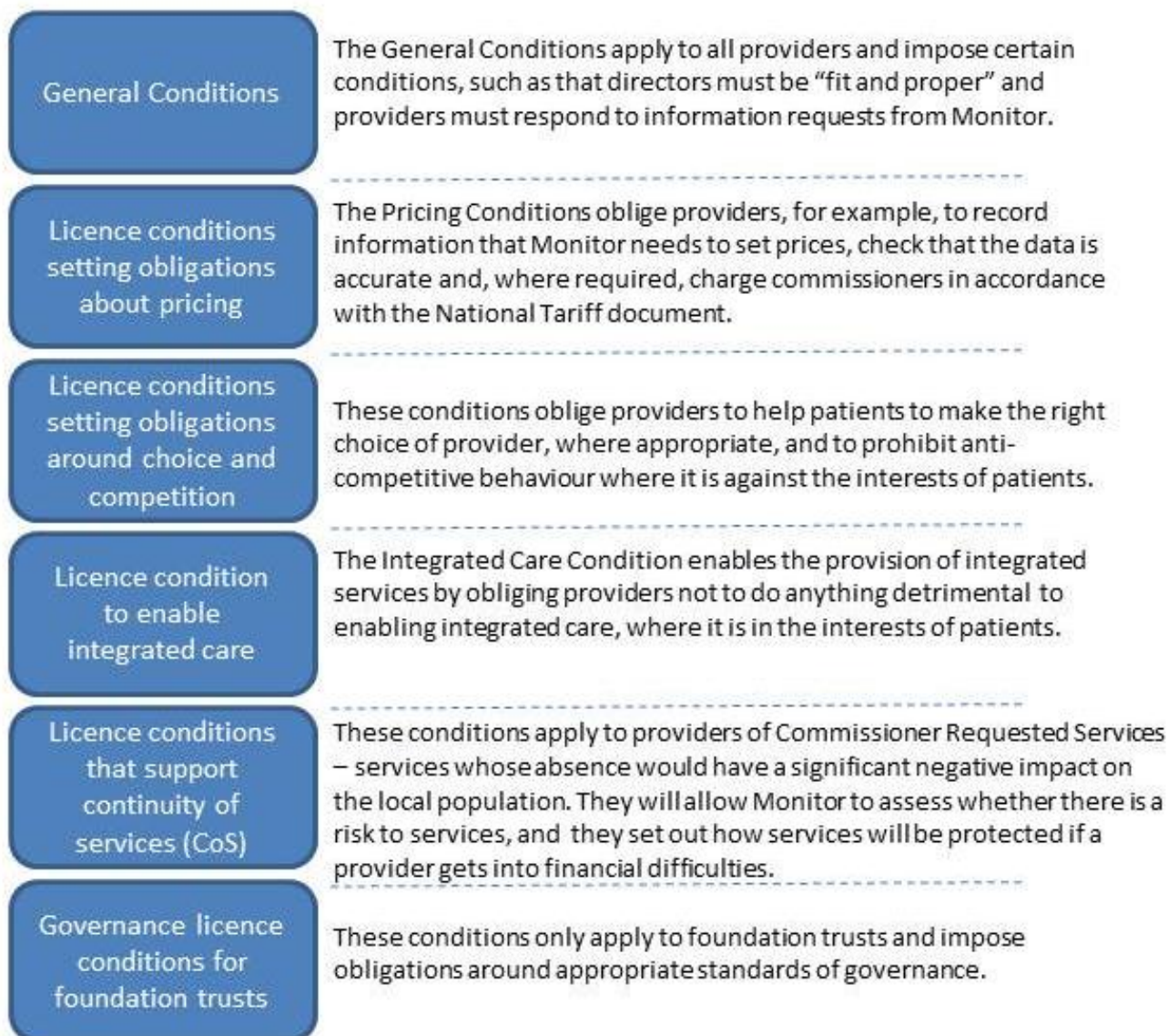
2.2 Overview of the provider licence

Monitor's standard licence conditions are grouped into seven sections. Some sections apply to all licence holders and some sections only apply to certain types of licence holder, for example, NHS foundation trusts. The first section, General Conditions, sets out standard requirements and rules for all licence holders. Sections 2 to 5 of the licence are about our new functions (described above) and section 6 is about translating the well-established core of our current oversight of NHS foundation

trust governance into our new licence-based system of regulation. The final section, 7, contains definitions and notes.

Figure 2.1 below gives an overview of the sections of the licence.

Figure 2.1 The sections of Monitor’s standard licence conditions



Our research reports expand on the background to some of the licence conditions, or provide helpful context. For example:

- [*Enablers and barriers to integrated care and implications for Monitor;*](#)
- [*Strategic options for costing;*](#) and
- [*A methodology for approving local modifications to the National Tariff.*](#)

2.3 The Monitor provider licence: part of a system of health sector oversight

Monitor, with its new functions, sits within a system of health sector oversight made up of the Care Quality Commission (CQC), the NHS Commissioning Board (NHSCB), clinical commissioning groups (CCGs) and others.

The licensing system consists of more than the licence. Secondary legislation by the Department of Health adds more detail to the Act and creates the framework for the licence by setting out, for example, which providers need a licence and the level of objection required to challenge proposed changes to the licence.

It is normal for regulators who issue a licence to set out in guidance how the licence will work in practice, and this is what we intend to do. Guidance is designed to explain obligations and not to impose them. Its purpose is to help licence holders understand the obligations that apply to them and how they can best comply, as well as explaining how Monitor will exercise its powers to monitor and enforce compliance with the licence. The licence obliges licensees to *have regard* to our guidance. We will generally consult before we finalise any formal guidance.

We will not issue all of the guidance for the licence right away. For example, we expect that, at some point in the future, guidance on the Integrated Care Condition might be useful to explain how we think providers should act to make sure they do not hinder the development of integrated care. However, this type of guidance is likely to be more useful later, once more evidence is available, rather than now.

One area where we think it will be helpful to issue guidance soon is on our proposed *Risk Assessment Framework*, which is relevant to the Continuity of Services and NHS Foundation Trust Conditions. We are currently consulting on this guidance. You can find the consultation document [here](#).

Another area where we are issuing early guidance is on how Commissioner Requested Services and Location Specific Services may be designated. 'Location Specific Services' are those services which should continue when a licensee fails and enters special administration. This guidance is relevant to the Continuity of Services Conditions. The formal consultation on this guidance was held in summer 2012 and the final guidance is expected to be issued shortly.

Figure 2.2 shows an overview of the Monitor guidance documents and Department of Health regulations that are most relevant to the provider licence.

Figure 2.2 Current and planned Monitor guidance and Department of Health regulations

		Further guidance, information and regulations relevant to the provider licence	
		Monitor guidance	Department of Health regulations
General information on the licensing regime		<ul style="list-style-type: none"> • How Monitor will enforce the licence • How Monitor will prioritise its work • How Monitor will make decisions Enforcement guidance	<ul style="list-style-type: none"> • Who is exempt from licensing • The definition of provider • Objection and share of supply thresholds for challenging licence modifications • Defining turnover for fines
Monitor licence condition sections	General Conditions		
	Licence conditions setting obligations about pricing	<ul style="list-style-type: none"> • How Monitor will collect cost information • The process for local modifications 	<ul style="list-style-type: none"> • Objection and share of supply thresholds for challenging methods for determining national prices
	Licence conditions setting obligations around choice and competition	<ul style="list-style-type: none"> • The provision of information and the type of behaviour that might breach the choice and competition conditions or competition legislation • Guidance on rules for commissioners 	<ul style="list-style-type: none"> • Rules for commissioners on procurement, choice and anti-competitive behaviour
	Licence condition to enable integrated care	<ul style="list-style-type: none"> • Reasonable behaviour to enable integrated care 	
	Licence conditions that support continuity of services	<ul style="list-style-type: none"> • Monitor's Risk Assessment Framework • Commissioner Requested Services and Location Specific Services • Operation of the risk pool 	<ul style="list-style-type: none"> • Health special administration regime • Objections and share of supply thresholds for challenging provider risk pool levies • Powers for Monitor to levy charges on commissioners for the risk pool
	Governance licence conditions for foundation trusts	<ul style="list-style-type: none"> • Monitor's Risk Assessment Framework 	

Key: consultation complete – currently under consultation – consulting on in future

This diagram is simplified and covers only those aspects of the regulatory regime most relevant to Monitor's provider licence.

2.4 Impact assessment of the licence

The Act requires Monitor to review regulatory burdens and to carry out impact assessments. 'Regulatory burdens' are the additional cost and workload of our regulatory requirements. The purpose of these obligations is to ensure we do not impose or maintain burdens which are unnecessary. The Act requires us to start conducting reviews of regulatory burdens as soon as practicable, and to conduct them on an annual basis. It also requires us to publish statements setting out what we have done, and propose to do, as a result of these regulatory burden reviews.

The Act says that we must carry out an impact assessment when we do something which may have a significant impact on those who provide or use NHS services, or on other members of the public. A major change to our standard licence conditions is included as a circumstance which would require an impact assessment.

We published an impact assessment of the proposed draft licence conditions on 5 September 2012 (available [here](#)), and our licence conditions take into account the results of this.

When we published the impact assessment, we asked stakeholders to comment on it at the same time as providing their response to the statutory consultation on the licence, but most stakeholders commented only on the licence and not on the impact assessment.

Impact assessment: listening to stakeholders

We received one comment on our impact assessment asking whether it is justifiable to reach the conclusion that "overall, the benefits of the proposed licence conditions are expected to outweigh the costs", and suggesting that further detail on how the licence will work in practice is needed.

Our impact assessment of the licence was one of a series of impact assessments and regulatory burden reviews of the new system of sector regulation in health care, which are being carried out both before and after the introduction of the licence. Monitor's regulatory regime will develop over time. Each time a significant additional burden is created, we will consider the need for an impact assessment.

There are several licence conditions which do not impose an immediate burden, but do give Monitor the power to ask licence holders to do certain things in the future. The licence condition requiring licence holders to provide us with information is a good example of this type of condition. Monitor is likely to use its powers in the future to oblige providers to supply information; however, at this point in time, it is not known what, or how much, data we might need, so an impact assessment on this cannot be done now.

For example, it may be the case that in the future we ask providers to supply information relating to the quality of care. However, we may not need to do this, if another regulator already collects this information and will share it with us.

When we make these types of decisions, we will consider whether the decisions need to be assessed, either by carrying out a stand-alone impact assessment or by including them in the annual review of regulatory burdens.

3. The provider licence system

This chapter explains the criteria providers will need to meet before we can issue them with a licence. It also gives a brief overview of how we will enforce the licence and how we can change licence conditions in future.

3.1 Licensing criteria

The Health and Social Care Act 2012 requires us to set and publish licensing criteria. If these criteria are met, we must issue a licence.

We have decided to propose that the licensing criteria, which must be satisfied before a licence is issued, will be the same as those proposed in the consultation document. The provider must:

- hold a Care Quality Commission (CQC) registration; and
- confirm that its governors and directors, or those performing equivalent or similar functions, are fit and proper persons requirements.

These requirements also appear in the licence as ongoing obligations in General Condition 4; that is, a provider must continue to meet the licensing criteria in order to continue to hold a licence, not just in order to obtain it.

All providers of health and social care in England are required to hold a CQC registration if they carry out one or more of 15 regulated activities. In its consultation on the exemption regulations ([available here](#)), the Department of Health proposed that providers who are not required to hold a CQC registration will be exempt from the requirement to hold a licence.

For the purpose of the licence and application criteria, 'fit and proper' persons are defined as those without recent criminal convictions and director disqualifications, and those not bankrupt (undischarged). As part of the licence application process, we intend that applicants will be required to confirm that their governors and directors, or those performing equivalent or similar functions, meet the 'fit and proper persons' requirements. We will not normally carry out any checks ourselves unless something prompts us to do so.

We consulted on some options around the fit and proper persons requirements. These options, the stakeholder responses and our final position are explained further in Chapter 4.

3.2 Issuing licences to NHS foundation trusts

NHS foundation trusts do not need to apply for a licence and the Act specifies that they are to be treated as having met the licensing criteria. In advance of issuing licences, we will contact all NHS foundation trusts to confirm the accuracy of certain information we require, such as names, titles and addresses.

3.3 Applying for a Monitor licence

The process of obtaining a licence will be straightforward. We do not expect that providers will need to submit a large volume of information and, as described above, there are only two licensing criteria: the requirements to hold a CQC registration and to confirm that relevant people are fit and proper.

The Act requires that Monitor and the CQC cooperate in the exercise of their respective functions. We have been working closely with the CQC and our intention is to implement an application process that is able, where appropriate, to make use of data already held by the CQC, and that gives new providers a single point of contact to obtain both a Monitor licence and CQC registration.

From April 2014, we intend that all providers requesting both CQC registration and a licence from Monitor will be able to apply through a single process. The Act also specifies that we should provide licensees with a single document. Monitor and the CQC will be publishing more information about this in 2013.

3.4 How the licence will apply to different providers

For reasons we explain alongside each licence condition, not all sections of the licence are applicable to all providers of NHS-funded services required to hold our licence:

- **General Conditions:** this section applies to all licence holders.
- **Pricing Conditions:** this section will only affect licence holders who provide services covered by the National Tariff document.
- **Choice and Competition Conditions:** this section applies to all licence holders.
- **Integrated Care Condition:** this section applies to all licence holders.
- **Continuity of Services Conditions:** this section applies to licence holders who supply Commissioner Requested Services.
- **NHS Foundation Trust Conditions:** this section only applies to NHS foundation trusts.

3.5 Enforcing the licence

We have developed [guidance on enforcement](#), which we have recently consulted on. Once finalised, this guidance should help us to focus our efforts and resources on the right things, help stakeholders know what to expect, and provide transparency around the decisions we make. It also gives some information about our procedures, including how we may investigate a potential breach of the licence or other legislation and how we will make our provisional and final decisions about whether a provider is actually in breach.

3.6 Changing the licence

Should we wish to make changes to the standard licence conditions, we must first give notice to a number of parties, including licence holders and clinical commissioning groups. These parties can then make representations to us. If a certain proportion of licensees object (defined by number of licensees and by share of supply), we cannot make the proposed modification, but may refer it to the Competition Commission. The Competition Commission will then consider the matter.

The percentage of licensees that would need to object in order to stop the licence modification process (defined by numbers and by share of supply) was consulted on by the Department of Health; you can find the consultation [here](#).

4. General Conditions

General Conditions set out standard requirements and rules. These conditions apply to all licence holders. As well as being licence conditions, the 'fit and proper persons' test and the requirement to be registered with the CQC are also licensing criteria.

General Condition 1: Provision of information

This condition contains an obligation for all licensees to provide Monitor with any information we require for our licensing functions.

General Condition 2: Publication of information

This licence condition obliges licensees to publish such information as Monitor may require.

General Condition 3: Payment of fees to Monitor

The Act gives Monitor the ability to charge fees and this condition obliges licence holders to pay fees to Monitor if requested.

General Condition 4: Fit and proper persons

This licence condition prevents licensees from allowing unfit persons to become or continue as governors or directors (or those performing similar or equivalent functions). In exceptional circumstances and at Monitor's discretion we may issue a licence without the licensee having met this requirement.

General Condition 5: Monitor guidance

This licence condition requires licensees to have regard to any guidance that Monitor issues.

General Condition 6: Systems for compliance with licence conditions and related obligations

This licence condition requires providers to take all reasonable precautions against the risk of failure to comply with the licence and other important requirements.

General Condition 7: Registration with the Care Quality Commission

This licence condition requires providers to be registered with the CQC (if required to do so by law) and to notify us if their registration is cancelled.

General Condition 8: Patient eligibility and selection criteria

This condition requires licence holders to set transparent eligibility and selection criteria for patients and to apply these in a transparent manner.

General Condition 9: Application of Section 5 (Continuity of Services)

This condition applies to all licence holders. It sets out the conditions under which a service will be designated as a Commissioner Requested Service. If a licensee provides any Commissioner Requested Services, all the Continuity of Services Conditions apply to the licence holder.

4.1 Purpose of the General Conditions

The General Conditions set out the standard rules and requirements for all licensees, and obligations that are relevant to more than one section of the licence. Many of the General Conditions reflect provider obligations as stated in the Act. The purpose of including such conditions is to bring these obligations within the scope of our licence enforcement powers, to assist licensees by recording their obligations in a single document, and to assist with enforcement when these obligations are directly related to the licence.

The licence conditions are in the Annexe.

4.2 Who do these licence conditions apply to?

The General Conditions apply to all licence holders.

4.3 Summary of each licence condition

General Condition 1: Provision of information

This licence condition mirrors our powers under the Act to require licensees to provide us with information we require for our licensing functions. Including this obligation in the licence conditions makes the requirement clear to licensees and creates a more straightforward enforcement route.

The licence condition, like the obligation in the Act, is broadly framed and allows us to request any information for the purpose of our relevant functions. This could include requiring licensees to generate information which is not currently collected. For example, if necessary for our regulatory functions, we could require licensees to start measuring their performance against certain benchmarks.

We will of course be mindful of the regulatory burden that the use of such licence conditions may impose, and will assess the level of information which is appropriate to enable us to fulfil our duties effectively.

When requesting information under General Condition 1, we intend always to specify the:

- information required;
- timescale in which the information is to be provided; and
- reasons for the information request.

General Condition 2: Publication of information

This licence condition requires licensees to publish such information as we may require.

Like General Condition 1, this obligation is broadly framed. We could require licensees to publish existing information or new information, such as measurements of performance in certain areas and publish the results. We might do this, for example, in the context of our duty to protect and promote the rights of patients to make choices. Our general use of this

condition may form part of our annual regulatory burden review, or, if the impact is significant, may require a regulatory impact assessment before we impose requirements.

General Condition 3: Payment of fees to Monitor

The Act and the NHS Act 2006 give Monitor the power to charge fees. Monitor will have the power under the Act to require payment of fees by all licensees in relation to our licensing function. Monitor will also continue to have the power to require payment of fees by NHS foundation trusts for the maintenance of the NHS foundation trust register. The obligation to pay these types of fees is part of the NHS Foundation Trust Conditions.

It is not necessarily the case that we will charge fees, and no decision about this has yet been taken. However, this condition creates the means by which Monitor could, in part, be funded from fees charged to licence holders.

General Condition 4: Fit and proper persons

This condition requires that licensees do not allow unfit persons to become or continue as governors or directors.

'Unfit persons' are: undischarged bankrupts, individuals who have served a prison sentence of three months or longer during the previous five years, and disqualified directors. A company may also be an unfit person.

We consulted on two options for this condition. This first option would enable us in exceptional circumstances and at our discretion to issue a licence without the licensee having met this requirement. The second option would require governors and directors (or those performing equivalent or similar functions) to adhere to appropriate standards of personal behaviours, technical competence and business practice.

During our engagement with stakeholders in early 2012, some stakeholders told us that they might wish to appoint past or current service users who would bring valuable experience but not meet the fit and proper persons requirements, perhaps, for example, because of a criminal conviction. So we consulted on a proposal to allow us to decide to issue a licence, or to allow a provider to continue to hold a licence, in very exceptional circumstances and at our discretion, where the provider's governors or directors (or those performing equivalent or similar functions) did not meet the fit and proper persons requirement.

We consulted on an option to require governors and directors (or those performing equivalent or similar functions) to adhere to appropriate standards of personal behaviours, technical competence and business practice. The policy objectives of this proposal were, firstly, to ensure that there is a commitment from governors and directors to adhere to the relevant standards, and secondly, to prevent someone who has clearly already breached these standards from remaining as, or becoming, a governor or director (or equivalent) of an organisation holding a Monitor licence.

The fit and proper persons test: listening to stakeholders

Stakeholder views were mixed. Some were against any exemption, while others thought the possibility of an exemption a good idea. Many of those who thought that exemptions were appropriate thought they should only be granted in very exceptional circumstances, and it was suggested that we publish details of any exemptions that were granted.

Stakeholders who agreed with the proposal gave us general examples of the types of licensee that might wish to appoint as governors or directors (or those performing equivalent or similar functions) individuals who did not meet the fit and proper persons test, but no respondents identified specific examples.

The fit and proper persons test: our final position

After weighing up stakeholder views, we have decided that the drafting of General Condition 4 should allow for us to agree that licensees may have directors or governors (or those performing similar functions) who do not meet the fit and proper persons requirements. We think that the ability to agree to this in very exceptional circumstances is a reasonable and appropriate example of regulatory discretion. It should be noted that those requirements of this condition that apply to NHS foundation trusts are also statutory requirements under Schedule 7 of the NHS Act 2006 which cannot be waived.

The drafting of General Condition 4 therefore enables Monitor to allow a licensee to continue to hold a licence even where one of the specified personnel covered by the fit and proper person requirements of this condition has not met them and Monitor has provided written approval of this. We expect approval to be given only in very exceptional circumstances.

When deciding whether or not to give approval, we will consider the basis on which the person does not meet the relevant fit and proper persons requirement and the role they would play for the provider.

We will provide further details of this aspect of licence issue and continuance when the licence framework is introduced.

Code of conduct: listening to stakeholders

Most providers were against including a code of conduct in the licence condition. Representative bodies and others were more positive about this proposal.

We heard arguments that the proposal was unnecessary because individuals are already required to comply with a plethora of different standards covering personal behaviours, technical competence and business practice. Many stakeholders argued that no existing set of standards would be suitable for all licensees, and therefore we would need to create our own standards, which then might duplicate and overlap with others.

Code of conduct: our final position

The Professional Standards Authority for Health and Social Care has recently published its standards for members of NHS boards and the governing bodies of Clinical Commissioning Groups in England [here](#). The Secretary of State for Health has stated that he will continue to look at how these values can be put at the heart of management, learning from the Government's final [report on Winterbourne View Hospital](#) (published on 10 December 2012) and the findings of the [Mid Staffordshire NHS Foundation Trust Public Inquiry](#) (published on 6 February 2013).

As a result, we have decided not to include a code of conduct in the initial licence conditions. However, we will keep the situation under review and work with others to make any necessary changes to the licence as the final report on Winterbourne View Hospital and the findings of the Mid Staffordshire NHS Foundation Trust Public Inquiry are considered.

General Condition 5: Monitor guidance

As explained in section 2, most regulatory systems include guidance from the regulator and this condition requires licensees to have regard to guidance we issue.

General Condition 6: Systems for compliance with licence conditions and related obligations

We intend to ensure that licensees comply with the licence. Monitor's enforcement powers are one tool to help us do so, but we consulted on whether licensees should be required to take all reasonable precautions against the risk of failure to comply with the licence conditions. This included establishing and implementing processes and a system to identify and manage material risks to compliance as well as regularly reviewing their effectiveness.

We consulted on three options for this licence condition, all with different advantages and disadvantages. Option A and Option B required licensees to take all reasonable precautions against the risk of failure to comply with the licence, specific pieces of legislation and the requirement to have regard to the NHS Constitution. Both options also required licensees to confirm, annually, that they have taken all necessary precautions to comply with this requirement. However, the options differed in the steps that each required to be taken as part of reasonable precautions against the risk of failure to comply:

- Option A required licensees to appoint a compliance officer with specific powers and responsibilities.
- Option B required licensees to establish and implement systems and processes to identify risks and guard against their occurrence. It also required them to regularly review the effectiveness of the processes and systems. This was our preferred option.
- Option C was not to have a licence condition, relying on the existence of Monitor's enforcement powers to be a sufficient incentive for licensees to put in place the appropriate staff and processes.

Systems for compliance: listening to stakeholders

All stakeholder groups favoured Option B, and many respondents argued that licensees should determine for themselves how best to make sure they have systems in place for compliance. In particular, many smaller stakeholders said it would be disproportionate to require them to appoint a compliance officer.

However, some respondents said there may be advantages to having a compliance officer acting as a single point of contact for staff and regulators, because then it would be clear who is accountable within an organisation. Some respondents said that it might be useful to combine the roles of compliance officer and CQC responsible individual.

Systems for compliance: our final position

We have decided to implement our preferred option - Option B in the consultation: the licence condition without the requirement to appoint a compliance officer.

We think the obligation to put in place appropriate systems and processes is sufficient, without specifying that this must include a compliance officer, which may be unnecessarily detailed and burdensome, particularly for small providers. There may be good reasons for some licensees to appoint compliance officers, and we would expect that this would form part of the appropriate systems and processes for many larger organisations. But, on balance, we agree with the respondents who argued that the responsibility for deciding what is required to ensure compliance should rest with the individual organisation.

General Condition 7: Registration with the Care Quality Commission

This condition reflects the obligation in the Act for licensees to be registered with the CQC. This condition allows Monitor to withdraw the licence from providers whose CQC registration is cancelled and who therefore cannot continue to lawfully provide services.

Licensees are only required to register with the CQC if required to do so by law. In its consultation on the exemption regulations (available [here](#)), the Department of Health proposed that providers who are not required to hold a CQC registration will be exempt from the requirement to hold a licence.

General Condition 8: Patient eligibility and selection criteria

This condition requires licensees to set and publish transparent patient eligibility and selection criteria and to apply these in a transparent manner. This includes criteria for determining patient eligibility for particular services, for accepting or rejecting referrals, or determining the manner in which services are provided to that person. The Act specifically requires us to include this condition in the provider licence.

General Condition 9: Application of Section 5 (Continuity of Services)

This condition is the only Continuity of Services condition that applies to all providers. It is described later in the document with the rest of the Continuity of Services Conditions.

The “3Es” condition: Effectiveness, efficiency and economy - not included in the licence

In our consultation, we proposed a condition that would require licensees to carry out their activities effectively, efficiently and economically. We said that there were arguments both for and against the inclusion of this condition in the licence.

The “3Es” condition: listening to stakeholders

Stakeholder responses were mixed on whether to include this condition. We heard the argument that it is important for providers of NHS-funded care to act effectively, efficiently and economically, and that the condition would set expectations for licensees by providing a signal. Other respondents argued against the condition, saying that it is the role of shareholders or trustees to scrutinise effectiveness, efficiency and economy, and that assessing compliance with this condition might be difficult, and consistent enforcement challenging.

The “3Es” condition: our final position

We have decided not to include this licence condition. We have been persuaded by the stakeholders who argued that the inclusion of this condition in the licence might be inappropriate, and the concerns about how Monitor might directly intervene if it suspected a provider was not operating in an economic, efficient or effective way. In particular, we took careful note of the argument that a lack of clarity about how the condition might be enforced could generate significant regulatory uncertainty.

Other proposed conditions not included in the licence

When we engaged with stakeholders in late 2011, we included two licence conditions which, in our statutory consultation, we proposed not to include in the licence.

The two conditions were:

- a condition requiring licensees to assist with emergency planning and responses to emergencies; and
- a condition obliging compliance with statutory and other requirements.

We proposed to remove the first condition because we thought that for many public bodies, an obligation like this is already contained in the Civil Contingencies Act 2004. There are also clauses in the NHS Standard Contract requiring providers to meet this obligation.

The original intention behind the second condition was to give Monitor the ability to take enforcement action if a licensee was in serious breach of its other obligations, not to oblige Monitor to enforce legislation that is within the remit of other bodies. We thought, on reflection, that a better way to achieve our objective would be to include in General Condition 6 an obligation for licence holders to take all reasonable precautions against the risk of failure to comply with specific pieces of legislation and the requirement to have regard to the NHS Constitution.

Emergency planning: listening to stakeholders

Just over half of respondents supported the proposal to remove this condition. Those organisations that supported the removal of the condition tended to agree that existing legal requirements, as reflected in commissioner contracts, are sufficient to compel organisations to conduct emergency planning, and that any changes should be dealt with through that route.

Emergency planning: our final position

On balance, we agree with stakeholders who argued that this matter is best dealt with via contracts, and that a decision to add additional obligations for providers of NHS-funded services beyond those required by the Civil Contingencies Act should be a decision for commissioners. We consider that the provisions in the standard NHS contract and the Civil Contingencies Act should be sufficient to support emergency planning.

Obliging compliance with statutory and other requirements: listening to stakeholders

Just over two thirds of respondents supported the proposal to remove this condition, many arguing that unnecessary duplication should be avoided and that the requirements of General Condition 6 were sufficient. Those who were in favour of its inclusion thought it would not significantly increase the regulatory burden on providers, but would set out clearly what was expected of licensees.

Obliging compliance with statutory and other requirements: our final position

We have decided not to include this condition in the licence. Most stakeholders supported our proposal that General Condition 6 is sufficient, and we are keen to avoid duplication between licence conditions.

5. Pricing Conditions

In future, Monitor will be responsible, jointly with the NHS Commissioning Board, for the pricing of NHS services. Five licence conditions will help us fulfil this duty.

The Pricing Conditions will apply to all licensees providing services covered by the National Tariff document published by Monitor.

Pricing Condition 1: Recording of information

Under this licence condition, Monitor may oblige licensees to record information, particularly information about their costs, in line with guidance to be published by Monitor.

Pricing Condition 2: Provision of information

Having recorded the information in line with Pricing condition 1 above, licensees can then be required to submit this information to Monitor.

Pricing Condition 3: Assurance report on submissions to Monitor

When collecting information for price setting, it will be important that the information submitted is accurate. This condition allows Monitor to oblige licensees to submit an assurance report confirming that the information they have provided is accurate.

Pricing Condition 4: Compliance with the National Tariff

The Health and Social Care Act 2012 requires commissioners to pay providers a price which complies with, or is determined in accordance with, the National Tariff for NHS health care services. This licence condition imposes a similar obligation on licensees, i.e. the obligation to charge for NHS health care services in line with the National Tariff.

Pricing Condition 5: Constructive engagement concerning local tariff modifications

The Act allows for local modifications to prices. This licence condition requires licence holders to engage constructively with commissioners, and to try to reach agreement locally, before applying to Monitor for a modification.

5.1 Purpose of the Pricing conditions

One of Monitor's new functions will be to set prices for health care services funded by the NHS. Accurate information is essential to ensure that providers are paid appropriately for services they provide to patients. Pricing can also be used to encourage providers to improve the quality of services for patients and to increase the efficiency with which services are provided. If providers are not properly reimbursed, this can reduce the quality and efficiency of care they offer, and may in some circumstances threaten the sustainability of their services. Pricing information also helps commissioners and providers to plan and budget for health care services to meet people's needs.

We are working closely with the NHS Commissioning Board on pricing. The NHS Commissioning Board will lead on defining the services to be priced ('currencies'), and we will set the prices for those services.

Setting prices is not, of course, new to the NHS. Monitor and the NHS Commissioning Board will be taking over responsibility for pricing from the Department of Health. The intention is for responsibility to transfer to Monitor and the NHS Commissioning Board from and including the 2014/15 tariff.

We will consult on the draft National Tariff, and stakeholders will be able to agree with, object to and/or comment on the pricing methodology being proposed. If the number of objections from relevant providers or commissioners reaches a certain threshold, we will need either to reconsider the proposed methodology or to refer it, and the objections received, to the Competition Commission.

The Department of Health has consulted on objection thresholds for the method or methods for determining national prices; you can find the consultation [here](#). This consultation deals with the definition of a 'relevant provider' for the purposes of the pricing process, and specifies the threshold for referring disputed pricing methodologies to the Competition Commission.

5.2 Who do these licence conditions apply to?

The Pricing licence conditions will apply to licensees providing services covered by the National Tariff.

5.3 Summary of each licence condition

Pricing Condition 1: Recording of information

Under this licence condition, Monitor may require licensees to record information, particularly information on their costs, in line with approved guidance that we will publish. We recently published a draft of this guidance for the collection of 2012/13 costs, which you can find [here](#). The licence condition is worded in a way that any cost and other information that may be required can be collected from both licensees and their sub-contractors.

This licence condition may also require licensees to record other information, such as quality and outcome data, in line with our guidance and for the purposes of carrying out our pricing functions.

The rationale for the inclusion of a separate licence condition, in addition to Pricing Condition 2, which covers the provision of information, is to facilitate prompt and straightforward compliance with Pricing Condition 2. If information on costs was not recorded as required, it could be difficult for licensees to provide it to us at the time requested.

Pricing Condition 2: Provision of information

Having recorded the information in line with Pricing Condition 1 above, Monitor can then require licensees to submit this information.

Having access to consistently recorded and accurate information, particularly on the costs of providing NHS services, will be essential for us to fulfil our pricing responsibilities. In the absence of such information, it will be very difficult for us to set prices at the appropriate level.

Pricing Condition 3: Assurance report on submissions to Monitor

It will be important that the information we collect for setting prices is of high quality. For this reason, we have included Pricing Condition 3, under which Monitor may require licensees to submit an assurance report confirming the accuracy of the information they have provided.

We are aware that the requirement to submit such an assurance report will have associated costs. We will bear this in mind when deciding to ask for assurance reports, and will only require them when we believe that the benefits outweigh the costs in terms of ensuring the accuracy of pricing data.

Pricing Condition 4: Compliance with the National Tariff

The Health and Social Care Act 2012 requires commissioners to pay prices corresponding to those in the National Tariff and, where prices aren't specified, to pay prices in line with the rules contained in the National Tariff. This licence condition imposes a similar obligation on licensees, that is, the obligation to charge for NHS health care services in line with the National Tariff.

In practice, the existence of this licence condition should not make much difference to licensees, given the obligation the Act places on commissioners. However, including this condition in the licence makes licensees' obligations clear, and provides a straightforward enforcement route for cases in which providers do not adhere to the National Tariff.

It is important to remember that national prices are currently prepared by the Department of Health and this will continue until the responsibility for the National Tariff transfers to Monitor. The Act defines the National Tariff as a document published by Monitor, so Pricing Condition 4 will not apply until we publish the National Tariff (expected to be the 2014/15 National Tariff).

Pricing Condition 5: Constructive engagement concerning local tariff modifications

We will seek to make prices more reflective of the efficient cost of providing a service, but even so, in some circumstances it may be uneconomic for a provider to offer a particular

service without additional funding over and above that allowed for in the National Tariff. For this purpose, the Act allows for local modifications, or adjustments, to prices.

The Act gives us responsibility for setting the process and rules around local modifications. As part of our work to develop our policy in this area, we commissioned and published a report setting out a suggested high-level approach to determining local modifications. The report is available [here](#).

The purpose of Pricing Condition 5 is to require licensees to engage constructively with commissioners and to try to reach local agreement before applying to Monitor for a local modification. A licence condition makes this expectation clear and requires compliance. While agreement on local modifications between providers and commissioners is the most desirable outcome, it will still be possible for providers to apply to us for a determination when they have not been able to reach an agreement with commissioners following constructive engagement.

Pricing conditions: listening to stakeholders

We did not consult on any specific pricing questions within the statutory consultation. However, a few stakeholders did make some comments, mainly about how we will implement pricing when we take over pricing responsibility with the NHS Commissioning Board. These comments are being considered as part of our ongoing work on pricing. Further information is available [here](#).

In addition, we received a couple of comments on the condition dealing with the recording of information. One provider raised a question about the extent to which licensees would be able to insist on the provision of data from sub-contractors. The provider felt that requiring sub-contractors to submit commercially-sensitive cost data to us through the licensee (their client) was not appropriate. Concerns were also raised about the burden placed on sub-contractors by the requirement to obtain, record and maintain information.

Pricing conditions: our final position

We think that some minor changes to the drafting of Pricing Condition 1 are appropriate in light of the comments made. Firstly, we recognise that there could be commercial sensitivities around requiring a sub-contractor to submit cost information to Monitor *through* the licensee. We have therefore modified Pricing Condition 1 so that, if requested, licensees should ensure that sub-contractors provide information *directly* to Monitor, rather than through the licensees themselves.

Subject to the Department of Health's regulations on the definition of a provider, in most cases, but not necessarily all, sub-contractors will themselves need to be licensed by Monitor and will therefore be subject to the pricing licence conditions anyway. For the minority of sub-contractors who are not licensed (for example, because they are too small to meet the minimum size threshold), we recognise that the requirement to record and provide information may be disproportionately burdensome. We have therefore modified Pricing Condition 1 so that the requirement for licensees to ensure that their sub-contractors obtain, record and maintain information will apply only if required in writing by Monitor.

6. Choice and Competition Conditions

Our patient choice and competition licence conditions will allow us to protect and promote patient interests by supporting patient choice of provider and, where it is in the interests of patients, take action against anti-competitive behaviour.

These conditions apply to all licence holders.

Choice and Competition Condition 1: Patient choice

This condition protects patients' rights to choose between providers by obliging providers to make information available and act in a fair way where patients have a choice of provider.

This condition applies wherever patients have a choice of provider under the NHS Constitution, or where a choice has been conferred locally by commissioners.

Choice and Competition Condition 2: Competition oversight

This condition prevents providers from entering into or maintaining agreements that have the object or effect of preventing, restricting or distorting competition to the extent that it is against the interests of health care users. It also prohibits licensees from engaging in other conduct which has the effect of preventing, restricting or distorting competition to the extent that it is against the interests of health care users.

6.1 Purpose of the Choice and Competition licence conditions

The Choice and Competition Conditions support patients' rights to make choices about their health care provider. In and of itself, being able to choose a provider can give direct benefits to patients. Effective patient choice can also be a key source of competitive pressure on providers and can provide incentives for higher-quality and more efficient provision of care. For choice to be effective, however, patients need to be well informed about the choices that are available to them. They need to know when they have choices, what choices are available and how the different options compare.

Under the Health and Social Care Act 2012, we must exercise our functions with a view to preventing anti-competitive behaviour in the provision of health care services which is against the interests of people who use health care services. The Act allows us to apply the Competition Act 1998 concurrently with the Office of Fair Trading. But the provisions of the Competition Act only apply to the behaviour of organisations when they are acting as 'undertakings'. Organisations will fall within the definition of an 'undertaking' when they carry out an 'economic activity' and there are some organisations in the health sector that may not be behaving as 'undertakings' under the Competition Act when carrying out certain functions. The introduction of a competition oversight licence condition serves to fill the potential enforcement gap under the Competition Act, as it will apply to all licensees.

The competition oversight condition will also provide an alternative procedural route which will allow us to adopt flexible, efficient and proportionate approaches to enforcement to the benefit of patients, licensees and Monitor.

The Choice and Competition Conditions sit within a broader set of regulatory arrangements that will affect patient choice, including, for example, the rules set for commissioners on procurement, choice and competition. The Department of Health consulted on these regulations last year; you can find further information [here](#).

The existing Principles and Rules for Cooperation and Competition already include provisions relating to patient choice and competition. The licence conditions are intended to put existing requirements on a more formal footing, where relevant. You can find the existing Principles and Rules for Cooperation and Competition [here](#).

The Choice and Competition Conditions are provided in the Annexe.

6.2 Who do these licence conditions apply to?

The Choice and Competition Conditions apply to all licensees.

6.3 Summary of each licence condition

Choice and Competition Condition 1: Patient choice

This condition:

- requires licensees to notify their patients when they have a choice of provider, and to tell them where they can find information about the choices they have. This must be done in a way that is not misleading;
- requires that information and advice that licensees provide to patients about their choice of provider does not unfairly favour one provider over another and is presented in a manner that helps patients to make well-informed choices; and
- prohibits licensees from offering gifts and benefits in kind for patient referrals or for the commissioning of services.

The condition sets out some basic requirements relating to information and behaviour. Under the condition, licensees are not required to provide advice to patients on making choices, but are not prevented from doing so. Where advice is provided, it should not unfairly favour one provider over another and should be presented in a way that helps patients to make well-informed choices.

We intend to develop guidance for this condition to explain the standards of information and advice that we would require. For example, we might require that any information or advice provided to patients should be accurate, accessible, (appropriately) representative and, as far as reasonably practicable, complete. Existing relevant standards are set out in parts of the Department of Health Code of Practice for the promotion of NHS-funded services, and we intend to take these standards as the starting point for our guidance. The guidance is likely to be available following consultation in 2013.

Which “choices” are protected by this condition?

During the consultation, a number of stakeholders asked for clarity on which patient choices would be covered by this condition. On 15 October 2012 we published a follow-up note to our consultation explaining that there were two options for the choice of provider that would be covered by this condition:

- Option 1 would limit the application of this condition to only those patient choices of provider that are set out in the NHS Constitution and its Handbook (and set out in legislation, for example, in the Standing Rules (National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012)). For instance, patients currently have a right to a choice of provider when referred for their first outpatient consultant-led appointment for acute elective care - secondary care which is planned rather than in response to an emergency - and if waiting times are going to exceed defined maxima. You can find more information on these rights [here](#).
- Option 2 would extend the protection of the licence condition to locally-introduced patient choices of provider. From April 2013, it will be for clinical commissioning groups

(CCGs) to decide locally what additional choice of provider patients should have, and CCGs may make significant additional choice offerings available to patients over time.

We also noted that the Department of Health has consulted on proposals to extend choice of provider to include choice of named consultant-led team for most elective and mental health services. These rights, if introduced, would also be included in the Handbook to the NHS Constitution and covered by the patient choice licence condition.

Which choices: listening to stakeholders

Very few stakeholders commented on this issue, but those who did favoured Option 1, principally because of its greater clarity.

Which choices: our final position

Option 1 would provide a clearly defined reference point when applying the condition, but its scope would be very narrow. The licence condition would not apply to a significant number of locally-introduced patient choices of provider, and this number is likely to grow over time.

Option 2 would provide a greater level of support to patients' choices, but may raise some practical implementation issues. Some stakeholders have noted that providers may not know the full set of options available to patients. However, this concern and others raised by stakeholders relate to practicalities and the desirability of extending patient choice. The licence condition would not extend choice of provider, it would simply provide support for those choices that have been established nationally or conferred locally by Clinical Commissioning Groups.

We consider it important for choice of provider to be supported, whether choice is introduced nationally or locally-conferred, and therefore we have decided Option 2 is the most appropriate. We have adjusted the wording of the licence condition to reflect this. We will consider how practical difficulties around the identification of locally conferred choice options should be taken into account in any guidance on the application of this condition.

Impartial advice

We also consulted on an option to include an 'impartial advice' provision where providers are also 'gatekeepers'.

Under this option, where a patient had a choice of provider, and where the provider responsible for giving advice was itself a provider of some services that the patient could choose, the licensee would need to make arrangements to ensure that the patient was offered impartial advice about the available choices.

Impartial advice: listening to stakeholders

There was some support for the impartial advice provision, but the majority of respondents considered that it should not be included. A number of significant concerns were raised, particularly about how such a provision would work in practice. Also, a number of stakeholders argued that the onus should be on commissioners to provide impartial advice.

Impartial advice: our final position

We have decided not to introduce the obligation to provide impartial advice but will continue work on analysing the costs and benefits of doing so, and may, in the future, propose a revision to the licence to include this obligation. We consider that the original proposal attempted to address the important matters of both patient choice and competition, and potential problems may remain if this option is not included in the licence. That said, we are persuaded by the arguments that more work is needed to understand all of the costs and benefits ahead of such a condition being introduced.

Choice and Competition Condition 2: Competition oversight

This condition prohibits the licensee from entering into or maintaining agreements that have the object or effect of preventing, restricting or distorting competition to the extent that it is against the interests of health care users. It also prohibits the licensee from engaging in other conduct which has the effect of preventing, restricting or distorting competition to the extent that it is against the interests of health care users.

We have made one change to the competition oversight condition: we have changed the wording to follow more closely the wording in the Act, so that the condition makes clear it prohibits agreements and conduct that either have the effect, or *are likely to* have the effect, of preventing, restricting or distorting competition.

We intend to develop guidance to explain how we plan to enforce the condition, which will give stakeholders a better understanding of the types of behaviour that would be prohibited or allowed by the condition. We expect our approach to involve using economic methods similar to those used to assess behaviour under competition law. These are set out in existing guidance that is produced, for example, by the Office of Fair Trading. You can find this guidance [here](#). Our guidance will provide further details of the framework that we would use when assessing particular behaviour. We expect this guidance to be available during 2013.

Condition requiring NHS foundation trusts to notify the Office of Fair Trading of mergers – not included in the licence.

In our consultation document, we included a licence condition which would have required licence holders to inform the Office of Fair Trading of mergers with other businesses that provide health care services before they are completed. This condition would have applied only to NHS foundation trusts.

Under the Act, a licence condition may be used to require NHS foundation trusts to notify the Office of Fair Trading of mergers ahead of completion. The reason for this is a concern that the Office of Fair Trading may not have appropriate notice of mergers involving NHS

foundation trusts. NHS foundation trusts may have limited awareness of the UK merger control regime, because the extent to which it applies to them has been unclear. Given this potential lack of awareness, there is a risk that NHS foundation trusts may not initially make fully informed judgements on whether to notify the Office of Fair Trading of mergers. This could result in NHS foundation trust mergers having to be reversed at high cost.

Notification of mergers: listening to stakeholders

NHS foundation trusts were generally not in favour of this condition; independent providers and others were generally in favour.

Some stakeholders argued that the aims could be achieved better through guidance and that the condition could generate significant costs in situations where merger notification was unnecessary. It was also noted that the consultation in itself had raised awareness of the issue.

Stakeholders in favour of retaining the condition argued that there is a knowledge gap in merger and competition issues between public and private sector providers, that the costs of notification are not substantial, and that the condition would reduce the risk of mergers involving NHS foundation trusts having to be reversed.

The Office of Fair Trading does not support the inclusion of this condition, for the following reasons:

- it would increase costs, because notification under the licence condition would oblige it to investigate and publish a decision even in cases where it could have been reasonably concluded without such a formal investigation that competition concerns were unlikely to arise; and
- the risks of a harmful merger proceeding are mitigated by the Office of Fair Trading's market intelligence function; the publicity surrounding transactions, and the involvement of other agencies and government departments in transactions, make it likely that potentially problematic mergers would be identified in good time.

The Office of Fair Trading considers that it can work with Monitor, the NHS Commissioning Board and the Department of Health to ensure that a combination of guidance, published decisions and informal advice would enable risks to be sufficiently mitigated.

Notification of mergers: our final position

We consider that the arguments are finely balanced, but that it is appropriate to give significant weight to the Office of Fair Trading's views on the potential to mitigate in a less costly way the risks of having to reverse mergers. We have decided not to include this condition in the licence. The implication is that NHS foundation trusts take the same responsibility as firms in other sectors for deciding whether it is necessary to inform the Office of Fair Trading about a merger, which we think is appropriate.

7. Integrated Care Condition

The Integrated Care Condition applies to all licence holders.

The Integrated Care Condition is a broadly defined prohibition: the licensee shall not do anything that could reasonably be regarded as detrimental to enabling integrated care.

It also includes a patient interest test. The patient interest test means that the obligations only apply to the extent that they are in the interests of people who use health care services.

7.1 Purpose of the Integrated Care Condition

The Health and Social Care Act 2012 gives Monitor a duty to enable integrated care where this improves quality or efficiency or reduces inequality. We commissioned research on integrated care from Frontier Economics, the Nuffield Trust, The King's Fund and Ernst & Young. We asked these organisations to help us define integrated care, identify the ways in which it might benefit users of health care services, and outline the enablers of, and barriers to, the delivery of integrated care. You can view the research report [here](#).

As part of this work, initial recommendations were produced on how we could use our tools and powers to best enable the delivery of integrated care. The research found that we could make a significant contribution through our role in regulating prices and by bearing in mind the issue of integrated care when carrying out all our other functions. For example, we could ensure the payment system creates incentives for integrated care, and take integrated care solutions into account in our Continuity of Services framework.

The research also found that it would be helpful to have a licence condition about integrated care, to make clear to licensees the importance we attach to our role and to enable us to take action where there are problems with the delivery of integrated care. This is in line with our view that our main role regarding integrated care is to support commissioners and providers, as they are the groups who need to take the lead in developing integrated care solutions.

7.2 Who does this licence condition apply to?

The Integrated Care Condition applies to all licensees.

7.3 Summary of the licence condition

Integrated Care Condition 1: Provision of integrated care

In most cases, we would expect integrated care to be delivered locally by commissioners specifying their requirements and working with providers. The requirement for care to be delivered in an integrated way would be captured in contracts, and our policies in areas such as pricing would act as our main tools for enabling integrated care.

The purpose of this licence condition is to enable Monitor to step in where integrated care is not being delivered, in spite of decisions and efforts made by commissioners.

We consulted on three options for potential licence conditions:

- **Option A:** a positive obligation - the licensee shall take all reasonable steps necessary for the purpose of enabling integrated care;
- **Option B:** a broadly defined prohibition - the licensee shall not do anything that could reasonably be regarded as detrimental to enabling integrated care; or
- **Option C:** a prohibition on actions that might block integrated care - the licensee shall not unreasonably block the integration of care.

We also consulted on whether we should include a patient interest test in the licence condition. Our view was that this test may already be captured by the objectives specified in the licence condition; that is, enabling integrated care should be expected where it improves quality or efficiency, or reduces inequality. However, we were also keen to hear stakeholder views.

Provision of integrated care: listening to stakeholders

We heard a range of views, but there was an overall preference for Option B.

Many stakeholders said that Option A was attractive because it would send a strong signal that providers need to do more to promote integrated care. However, they also said that it might be too difficult to enforce and might result in Monitor getting inundated with complex complaints when we could more usefully spend our time enabling integrated care through pricing and other mechanisms. Generally, Option B was favoured because stakeholders thought it represented the most satisfactory balance.

Over half of respondents said they favoured the inclusion of a patient interest test in the Integrated Care Condition. Although many agreed that patient interest was already captured in the condition we proposed, they said that to include the test specifically would signal our commitment to our duty to protect and promote the interests of patients.

Some respondents also felt that, by using the same patient interest test wording as is used in the competition oversight condition (Choice and Competition Condition 2), our intentions would be clearer, even if any conflict between this condition and the competition oversight condition was only a perceived, not an actual, conflict.

Provision of integrated care: our final position

We have decided to use Option B as the licence condition, and to include a patient interest test. We agree with the stakeholders who thought this option strikes the right balance and is appropriate in placing potential regulatory intervention as a backstop.

Our concern with Option A is that it might create a very broad spectrum for potential regulatory action, with the potential for many different opinions around what could reasonably be regarded as necessary for the delivery of integrated care.

Our concern with Option C is that it is too narrow, because there might be instances of integrated care not being delivered without a licensee necessarily taking specific actions to block integrated care.

We have listened to stakeholders who said they thought that including a patient interest test in the Integrated Care Condition was important. Since stakeholders said that this would make both the Choice and Competition Conditions and the Integrated Care condition clearer, we have decided to include it. We have included the same patient interest test wording as is used in the competition oversight licence condition (Choice and Competition Condition 2).

8. Continuity of Services Conditions

The Continuity of Services Conditions allow Monitor to protect and promote patients' interests by ensuring that vital services continue to operate if a provider becomes financially distressed or insolvent. The Continuity of Services Conditions are:

General Condition 9: Application of Section 5 (Continuity of Services)

This condition applies to all licensees. It sets out how services may be designated as Commissioner Requested Services. If a licensee provides Commissioner Requested Services, the Continuity of Services Conditions apply.

Continuity of Services Condition 1: Continuing provision of Commissioner Requested Services

This condition prevents licensees from ceasing to provide Commissioner Requested Services, or from changing the way in which they provide Commissioner Requested Services, without the agreement of relevant commissioners.

Continuity of Services Condition 2: Restriction on the disposal of assets

This licence condition ensures that licensees keep an up-to-date register of *relevant* assets used in the provision of Commissioner Requested Services. It also creates a requirement for licensees to obtain Monitor's consent before disposing of these assets when Monitor is concerned about the ability of the licensee to carry on as a going concern.

Continuity of Services Condition 3: Monitor risk rating

This condition requires licensees to have due regard to adequate standards of corporate governance and financial management.

Continuity of Services Condition 4: Undertaking from the ultimate controller

This condition requires licensees to put in place a legally enforceable agreement with their 'ultimate controller' to stop ultimate controllers from taking any action that would cause licensees to breach the licence conditions. This condition specifies who is considered to be an ultimate controller.

Continuity of Services Condition 5: Risk pool levy

This licence condition obliges licensees to contribute, if required, towards the funding of the "risk pool" - this is like an insurance mechanism to pay for vital services if a provider fails.

Continuity of Services Condition 6: Cooperation in the event of financial stress

This licence condition applies when a licensee fails a test of sound finances, and obliges the licensee to cooperate with Monitor in these circumstances.

Continuity of Services Condition 7: Availability of resources

This condition requires licensees to act in a way that secures access to the resources needed to operate Commissioner Requested Services.

8.1 Purpose of the Continuity of Services licence conditions

The Act requires us to establish a Continuity of Services framework. The purpose of this is to make sure that, in the event of the financial failure of a provider, services continue to be provided where necessary.

For some services, patients could easily go elsewhere, so they would not suffer harm if a provider of these services failed. For some services in some areas, however, one provider may be the only option available to patients and so it is necessary to make sure that these services continue to be provided if a provider became financially unsustainable.

The Continuity of Services framework needs a more intricate set of licence conditions than some of our other functions. So before discussing each individual condition, we provide an overview of the framework.

Designating services as Commissioner Requested Services

The starting point for the Continuity of Services framework is the identification of those services that would need to continue in the event that a provider encountered financial difficulties. The reason that we call these services *Commissioner Requested Services* is that it will be commissioners (and the Special Administrator) who decide which NHS services should continue to be provided at that location in the case of failure of a provider.

Each commissioner (e.g. local CCGs or the NHS Commissioning Board in the case of specialist services) will be expected to identify the services it needs to designate as Commissioner Requested Services. Commissioners are best placed to assess which services they wish to designate, because whether or not patients could access a particular service from another provider within a reasonable distance depends on the local picture of health care provision. We consulted on guidance to help commissioners select which services should be designated as Commissioner Requested Services and you can read our proposals [here](#).

All providers of Commissioner Requested Services are subject to the Continuity of Services Conditions. Some of these conditions apply only to those services that are designated as Commissioner Requested Services, while others apply to the provider as a whole.

Paying for the Continuity of Services framework

The guarantee of continued provision comes at a cost. We expect that the funding required to support the ongoing provision of services in the event that a provider fails will come from a central fund known as the risk pool.

One option under consideration is that all providers and commissioners pay a pre-agreed amount into the risk pool each year. Risk pool funds would then be called on in the event of the financial failure of a provider. In principle, the risk pool would operate like an insurance fund: individual providers and commissioners would pay into a central fund which would be used to protect against infrequent but potentially high-cost events.

The licence conditions allow Monitor to oblige providers to pay into the risk pool if requested. We will consult separately on the design of the charging system used to collect the required

funds for the risk pool. In designing a charging methodology, we will bear in mind that it may not be appropriate to link provider charges to Commissioner Requested Service designation in the early days, before commissioners have reviewed which services should properly be designated as Commissioner Requested Services.

Depending on the design of the charging mechanism, requiring providers and commissioners to pay into the risk pool could create desirable incentives. For example, if charges on commissioners were set relative to the proportion of services they designate as Commissioner Requested Services, this could provide a financial incentive for commissioners to review their Commissioner Requested Services designations and ensure that services are correctly designated. Obliging commissioners to pay into the risk pool would require secondary legislation and would be subject to a separate consultation by the Department of Health.

Assessing the risks to the continued provision of services

The Act places on Monitor a duty to assess, on an ongoing basis, the risks to the continued provision of services to which the Continuity of Services Conditions apply. This will be done using our [Risk Assessment Framework](#), which we are currently consulting on.

The *Risk Assessment Framework* will also be used in our role in overseeing NHS foundation trusts. The next chapter contains more details on the specific conditions we propose to apply to NHS foundation trusts.

When there is a risk to the continued provision of Commissioner Requested Services

Under the licence conditions, Monitor may give notice to a provider of Commissioner Requested Services stating that we have concerns about its ability to carry on as a going concern. We will use the *Risk Assessment Framework* to help us decide when to issue such a notice. Once we issue this notice, the provider is obliged to do certain things, including cooperate with people that we may appoint to assist in the management of the provider's affairs. This might include, for example, cooperating with a team of specialists who would work with local commissioners and providers to formulate a plan to protect appropriate services if the provider did fail.

The first task of such a team would be to work with commissioners to help them to review the services currently designated as Commissioner Requested Services designations, and to adjust these if necessary, to ensure that the services designated as Commissioner Requested Services properly reflect the services that should be protected. These specialist teams would also help to develop an agreed contingency plan for protecting these services if the provider were to fail; for instance, helping to identify options for restructuring health care provision so that Location Specific Services continued to be provided in a sustainable way. We stress that the appointment of a specialist team would not necessarily imply the inevitable failure of a provider. The planning process might lead to a solution that could be agreed and implemented without the provider deteriorating further into failure.

Notification to a provider that we have concerns about its ability to continue as a going concern would also trigger restrictions on the disposal of *relevant* assets used in the provision of Commissioner Requested Services.

Special administration

Our Continuity of Services duties are complemented by provisions in the Act and previous legislation to allow us to appoint special administrators in the case of providers becoming insolvent. In the case of NHS foundation trusts, the pre-existing mechanism of Trust Special Administration (established under the Health Act 2009) has been changed to allow Monitor to appoint special administrators. In the case of companies, the 2012 Act makes provision for a new 'Health Special Administration' regime, but this provision has not yet been commenced.

Both systems envisage the appointment of a special administrator to take over the running of the failed provider, to ensure that services identified by commissioners as Location Specific Services keep running, and to work to find a longer-term solution for maintaining their provision. In carrying out these functions, the special administrator would in most cases be assisted by the earlier contingency planning, as described above.

8.2 Summary of each licence condition

General Condition 9: Application of Section 5 (Continuity of Services)

This condition determines to which providers the Continuity of Services conditions apply. It is a General Condition, and applies to all providers, but we explain it in this document with the other Continuity of Services conditions so the whole framework is explained in the same place. General Condition 9 specifies that licensees are only subject to the Continuity of Services licence conditions if they provide Commissioner Requested Services.

As we set out above, the starting point for the Continuity of Services licence conditions is the identification of those services that would need to continue to be provided if the provider were to encounter financial distress or become insolvent. As these services are considered so important, providers that supply them will be subject to the additional regulatory oversight set out in the Continuity of Services licence conditions.

The exercise of identifying which services should be designated as Commissioner Requested Services will take time and resources, and it is therefore not practical to expect commissioners to be able to undertake this analysis immediately. General Condition 9 establishes that mandatory services provided by NHS foundation trusts will be “grandfathered” to become Commissioner Requested Services on the first day when NHS foundation trusts are issued with Monitor licences. This is a pragmatic way to make sure that vital services are protected from the very beginning of the licensing regime. Commissioners can immediately, or progressively, remove the Commissioner Requested Service designation from any services they wish, as set out in our [draft guidance](#).

Over time, commissioners may wish to designate additional services as Commissioner Requested Services or to commission Commissioner Requested Services from providers other than NHS foundation trusts. General Condition 9 is therefore drafted in a way that allows commissioners to designate services as Commissioner Requested Services. We anticipate that, most of the time, commissioners and providers will agree whether or not a service should be classified as a Commissioner Requested Service during contract

negotiations for a service. But the licence also allows for the possibility that a service already being provided may be classified as a Commissioner Requested Service part way through a contract. In this case, a licensee may refuse to accept a commissioner's designation of Commissioner Requested Services. If a commissioner believes that the licensee's refusal is unreasonable, it may ask Monitor to determine whether or not this is the case.

We have published draft guidance for commissioners that sets out the factors they should take into account when deciding which services to designate as Commissioner Requested Services. Under the Act, and licence, commissioners must "have regard to" our guidance. The draft guidance, available [here](#), sets out the framework and process we will use to decide whether or not a licensee's refusal to accept a designation of Commissioner Requested Services is unreasonable.

If this process determines that the licensee's refusal is not unreasonable, then Monitor will take no action against the provider to oblige it to accept the commissioner's request, and the licensee will not be subject to any of the Continuity of Services Conditions (unless it provides other services that are Commissioner Requested Services). If we determine that the licensee's refusal is unreasonable, the service will be designated as a Commissioner Requested Service.

General Condition 9 allows Monitor to determine that a service is no longer a Commissioner Requested Service. In the draft guidance, we set out the process by which a provider may request that we review the Commissioner Requested Service designation of a service in the course of normal operations. Ideally, whether or not a service should be de-designated should be agreed locally between the provider and the relevant commissioners. But where local agreement cannot be reached, the provider may request that we undertake a review, and, if we find that the service should no longer be a Commissioner Requested Service, we will issue a determination to that effect.

When we issue licences to NHS foundation trusts in April 2013 all services that are currently classified as 'mandatory services' under an NHS foundation trust's terms of authorisation will be classified as Commissioner Requested Services. We refer to services which are treated in this way as "grandfathered".

For NHS foundation trusts authorised on or after 1 April 2013, when they receive a licence, all services which they were required to provide under an NHS contract immediately before the date of authorisation will initially be designated as Commissioner Requested Services. Over time, we expect that commissioners will choose to de-designate some NHS foundation trust services that were initially classified as Commissioner Requested Services, and to commission some Commissioner Requested Services from providers who are not NHS foundation trusts.

The licence limits the duration of the automatic Commissioner Requested Services designation of mandatory services of NHS foundation trusts to end on 1 April 2016 (or to a year after authorisation, for those trusts which become NHS foundation trusts after 1 April 2015). If commissioners wish these services to continue being covered by the Continuity of Services licence conditions after this time, they will need to review the designation of the

services they commission from NHS foundation trusts before the end of the automatic designation period.

During the “grandfathering” period, when services are automatically designated as Commissioner Requested Services, the scope for requests for determinations that services should be de-designated will be limited – to do otherwise would render the point of “grandfathering” meaningless, in that commissioners could be obliged by requests for determinations to review designations. The licence differentiates between two different types of disagreement between provider and commissioners on the classification of Commissioner Requested Services:

- for those services where a provider no longer wishes to provide the service, licensees may apply to Monitor for a determination on Commissioner Requested Service designation as the contract reaches the end of its term; and
- in the case of disputes between commissioners and providers over whether a service should be classified as a Commissioner Requested Service, but where the provider wishes to continue providing the service, the licence does not allow for Monitor to issue a determination on Commissioner Requested Service designation until after the end of the “grandfathering” period.

In the event that a provider of a Commissioner Requested Service does not wish to renew its contract to provide that service, but the designating commissioner is unable to find another provider to supply the service when the contract expires, Monitor may issue a direction to the licensee that the service shall continue to be a Commissioner Requested Service for a specified period of time. During that period, the licensee will continue to be subject to the provisions of the Continuity of Services licence conditions, including the duty not to cease or alter the provision of the service without the agreement of relevant commissioners.

Monitor cannot determine the way in which contractual terms between commissioners and providers are agreed. However, we believe that the best way to avoid the undesirable situation of a commissioner having insufficient time to find an alternative provider of a Commissioner Requested Service is for contracts for Commissioner Requested Services to be structured in a way that facilitates continuity of patient care in the event that a provider does not wish to renew the contract. One way to achieve this would be a rolling contract with a notice period of sufficient duration such that, if a provider wished to stop supplying the Commissioner Requested Service, the commissioner would have enough time to organise an alternative provider (or providers).

We recognise that General Condition 9 potentially obliges a provider to carry on providing a service when it wishes to stop doing so, and that this creates a degree of regulatory risk for providers. This may deter new entry by alternative providers and possibly new investment in Commissioner Requested Services. We would therefore only expect to intervene where it is absolutely necessary to secure the continued provision of services in the interests of patients, and we would aim to minimise the impact of the intervention where possible.

For the avoidance of doubt, it is important to note that General Condition 9 does not oblige a licensee to start providing any services as Commissioner Requested Services that it does not already provide.

General Condition 9: options we have considered

Given that many services (all mandatory services) provided by NHS foundation trusts will automatically become Commissioner Requested Services, NHS foundation trusts will have a large number of services designated as Commissioner Requested Services. We asked for views on whether it was necessary to make sure that these designations were reviewed over time. Options that we considered included:

- allowing Commissioner Requested Services to reduce over time as contracts are renewed and commissioners review their Commissioner Requested Services designations; or
- putting in place provisions in the licence that limit the duration of the designation of services “grandfathered” as Commissioner Requested Services, to encourage commissioners to review their Commissioner Requested Services designation within a given time period.

General Condition 9: listening to stakeholders

Many respondents were concerned about the prospect of services being designated automatically as Commissioner Requested Services. They felt that this would result in too many services becoming Commissioner Requested Services. However, most accepted that additional protection was required for some services and that, before commissioners conducted a proper assessment of services, there was no simple way to identify the services that require that additional protection.

There was strong support for provisions limiting the duration of Commissioner Requested Services designated automatically. Most providers who specified a period for the time limit favoured one shorter than three years.

Providers also expressed concerns about whether CCGs would follow our guidance when deciding which services to designate as Commissioner Requested Services. Respondents also noted how important it would be that commissioners specify during the contracting process which services would be designated as Commissioner Requested Services.

General Condition 9: our final position

We have decided that a three-year limit on the duration of the automatic Commissioner Requested Services designation of mandatory services is appropriate. For NHS foundation trusts authorised before 1 April 2013, Commissioner Requested Services that were designated automatically will therefore expire on 1 April 2016. For NHS foundation trusts authorised on or after 1 April 2013, automatic Commissioner Requested Services designations will expire on 1 April 2016 or one year after authorisation, whichever is later. We believe that this arrangement will protect patients and achieves an appropriate balance of the interests of providers and commissioners, reflecting the fact that, as the new system matures, it will become easier for commissioners to identify the correct scope of their Commissioner Requested Services.

The condition has also been redrafted to articulate more clearly when a service becomes a Commissioner Requested Service and when it ceases to be one. This includes clarifying our

role in issuing directions if we consider the licensee's refusal of a Commissioner Requested Service's designation to be unreasonable, or if a contract to provide a Commissioner Requested Service lapses without the existence of adequate provision to ensure continuity of services.

We acknowledge stakeholder concerns that the initial designation of all NHS foundation trusts' mandatory services as Commissioner Requested Services may be burdensome. We recognise that there is concern about the "grandfathering" period, and that the licence does not allow Monitor - where the provider wishes to continue providing the service - to issue a determination on a Commissioner Requested Service designation until after the end of the "grandfathering" period.

In formulating our final policy, we considered the need to protect patients, and to ensure that the regulatory burden is proportionate to our objectives. We will keep the operation of the Commissioner Requested Services and Continuity of Services regimes under review. And of course we will be responsive to any evidenced representations that the Continuity of Services framework, or the grandfathering arrangements, turn out to have unintended consequences or disproportionate costs. We intend to conduct a short review, gathering stakeholder feedback, after about a year. We will look at how the licensing regime is working, and this will include the operation of Commissioner Requested Services and Continuity of Services and whether commissioners have acted to review Commissioner Requested Service designations.

Continuity of Services Condition 1: Continuing provision of Commissioner Requested Services

Under this condition, licensees are not able to stop providing Commissioner Requested Services or change the way in which they provide Commissioner Requested Services without the agreement of commissioners and Monitor. Licensees would only be allowed to stop providing, or materially alter, the provision of Commissioner Requested Services if:

- all commissioners who have designated the service as a Commissioner Requested Service agree to the removal of its Commissioner Requested Service designation and/or to a change in the way it is provided; or
- the licensee is required to do so by the Care Quality Commission or another regulator.

Continuing provision of Commissioner Requested Services: listening to stakeholders

Some respondents expressed concern that this condition could inhibit providers' flexibility to innovate and reconfigure services.

Concerns were also raised that the draft of the condition on which we consulted only allowed for the material alteration of services for regulatory reasons when required by the CQC. People said that regulatory bodies other than the CQC can also require providers to alter services (e.g. the HFEA) and that this should be reflected in the licence condition.

Continuing provision of Commissioner Requested Services: our final position

We have not made significant changes to this condition following consultation. When services to patients are as important enough to be designated as Commissioner Requested Services, we consider it reasonable for the provider to obtain commissioner agreement for service reconfiguration and material alteration. We expect that providers and commissioners should be able to reach agreement on service reconfiguration where innovation and flexibility can be shown to be in the interests of patients.

However, following consultation, we have replaced the requirement to obtain Monitor approval for changes to services with a requirement to notify us of changes to Commissioner Requested Services agreed between licence holders and their commissioners. We believe that this change will be effective in reducing potential bureaucratic barriers to reconfiguration and innovation.

As suggested by respondents to our consultation, we have also changed the condition in order to allow licensees to alter services materially when required to do so by any relevant regulator with statutory responsibilities for health care, not only the CQC.

Continuity of Services Condition 2: Restriction on the disposal of assets

Continuity of Services Condition 2 ensures that licensees keep an up-to-date register of all the *relevant* assets used in the provision of Commissioner Requested Services. When we are concerned about the ability of a licensee to continue as a going concern, this licence condition also prevents that licensee from disposing of, or relinquishing control over, any assets on that register without our consent.

We consider that this condition provides important protection for Commissioner Requested Services because:

- in the event that a licensee fails financially, this condition ensures that an incoming special administrator would still have the necessary assets and equipment from the provider to ensure continuity of patient care for Commissioner Requested Services; and
- if there is concern about a licensee's ability to continue as a going concern, it protects against the possibility that services could be threatened by inappropriate asset disposal, or that commissioners could effectively be forced to accept a reconfiguration of Commissioner Requested Services as a *fait accompli* following the disposal of assets by a licensee.

Continuity of Services Condition 2 therefore provides a safety net for exceptional circumstances where the disposal of assets could pose a significant risk to the continued provision of Commissioner Requested Services. However, we are keen to ensure that it does not create an undue regulatory burden on providers that might hamper innovation and discourage improvements in the way services are provided. We are therefore setting up a process that is largely self-regulating and risk-based.

Restriction on the disposal of assets: listening to stakeholders

Stakeholders raised two main concerns in relation to this condition.

Some respondents suggested that an asset register was impractical, in particular because some assets may be used to provide both Commissioner Requested Services and non-Commissioner Requested Services.

And some respondents said that, the condition we proposed would impose asset disposal restrictions on all licensees, regardless of their financial position and performance. Stakeholders suggested that this was unnecessarily bureaucratic and could stifle innovation. Some respondents also said that the condition might result in providers being treated differently depending whether they own their assets or lease them.

Restriction on the disposal of assets: our final position

In response to the first concern, we believe that licensees should be aware of which assets are used to provide Commissioner Requested Services. Even without this condition, we would expect licensees to maintain an asset register as part of good governance processes. We note that NHS foundation trusts, who are already subject to similar requirements under their terms of authorisation, have not generally objected to the idea of an asset register. In addition, the fact that some assets are used to provide both Commissioner Requested Services and other services does not invalidate the need to maintain an asset register: an asset can still be critical for the provision of Commissioner Requested Services, even if it is also used to provide other services.

In response to the second concern, we recognise that asset disposal restrictions could add a layer of bureaucracy to transactions, the majority of which (replacement and enhancement) would not threaten the continuity of services. After considering the responses to the consultation, we have decided that restrictions on asset disposal should apply only if there is concern about the ability of a licensee to continue as a going concern. Our rationale is that when a licensee is financially robust, adequate safeguards to protect patients are already provided by the other Continuity of Services Conditions. An inappropriate asset disposal would lead to a breach of another licence condition which would allow Monitor to take any appropriate enforcement action to protect patients.

If there are concerns about a licensee's ability to continue as a going concern, it will be necessary to apply the asset disposal restrictions because, by the time an inappropriate disposal has been identified, it may be too late for us to prevent harm to patients.

We believe that this change to our proposals will be effective in reducing the regulatory burden on providers of Commissioner Requested Services in the normal course of their operations.

Continuity of Services Condition 3: Monitor risk rating

This condition requires licensees to adopt and apply adequate standards of corporate governance and financial management at all times. If licensees are managing their finances well, they are more likely to be sustainable in the short and long term, and to be able to weather changes in their services or revenues. They are therefore less likely to find

themselves in financial difficulty and put at risk the continuity of provision of Commissioner Requested Services.

Continuity of Services Condition 3 has two important roles. It sets a benchmark for the financial performance of Commissioner Requested Service providers that encourages sound financial management and therefore reduces the risk to continuity of services. It also provides us with early warning of impending financial difficulties.

To monitor compliance with this condition, we intend to use our *Risk Assessment Framework*, as explained earlier.

Monitor risk rating: listening to stakeholders

Very few stakeholders commented on this condition, as the *Risk Assessment Framework* is subject to a separate consultation. Some charities commented that separate financial oversight of charities by Monitor is unnecessary because of the oversight provided by the Charity Commission.

Monitor risk rating: our final position

We have not made any changes to this condition. We will continue to develop our thinking on how the *Risk Assessment Framework* should apply to organisations other than NHS foundation trusts, including charities. We will ensure that our proposals are proportionate and take account of existing regulation and oversight by other bodies. However, if a service that a charity or other non-foundation trust organisation provides has been designated as a Commissioner Requested Service, this implies that the commissioner believes that the service is essential to the local population and that there are no suitable alternative providers of that service. As such, the service needs to be subject to the regulation of the Continuity of Services conditions, regardless of the provider's ownership structure. These licence conditions provide regulatory protection for patients which is specifically targeted at ensuring continuity of key health care services and is not equivalent to other forms of regulation and oversight undertaken by other bodies. As the organisation with overarching responsibility for ensuring continuity of services, we will need to maintain some form of oversight.

Continuity of Services Condition 4: Undertaking from the ultimate controller

This condition requires licensees to put in place a legally enforceable agreement with their ultimate controller.

An 'ultimate controller undertaking' is a regulatory instrument to prevent parent companies from taking action that would cause a licensee to breach its licence. Similar licence conditions operate in the regulated parts of the gas, electricity, rail and water sectors.

An 'ultimate controller' is any body that could instruct the licensee to carry out particular actions. In practice, the ultimate controller would usually be the parent company of a subsidiary company, where it is the subsidiary company that has been licensed by Monitor. The agreement between the licensee and the ultimate controller required by Continuity of Services Condition 4 would oblige the ultimate controller to refrain from taking any action that would cause the licensee to breach Monitor's licence conditions.

If there is no single body that could instruct the licensee in this way, the licensee does not have an ultimate controller, in which case there is no need for an undertaking under this condition.

If a licensee is taken over by, or otherwise becomes subject to, a new ultimate controller, it will have seven days to put a new agreement in place. Agreements are required to remain in place for as long as the relationship between the two parties exists.

The licence condition we are proposing would require the ultimate controller to provide information about itself, or other related parties, which a licensee may need in order to comply with our licence conditions.

This licence condition protects against the risk that outside influences, notably parent companies that are not licensed by Monitor, take action that prevents licensees from complying with our licence conditions. For example, a parent company would not be able to restructure the licensee or sell licensee assets in a way that would prejudice the ability of the licensee to deliver its Commissioner Requested Services. The undertaking given by the ultimate controller under this licence condition is therefore another element of the ring fence around Commissioner Requested Services designed to protect patients.

Undertaking from the ultimate controller: listening to stakeholders

On the whole, respondents understood the reasons why this condition was necessary and supported its inclusion in the licence. However, there was some evidence of confusion about the definition of an ultimate controller, especially from charities who were concerned that their trustees might be regarded as ultimate controllers.

Undertaking from the ultimate controller: our final position

We have changed the drafting of the condition to state explicitly that trustees of charities and governors and directors of NHS foundation trusts are not regarded as ultimate controllers and will not need to provide undertakings.

However, we have maintained the general requirement for such an undertaking to be provided when an ultimate controller exists, regardless of the legal status of that person or organisation. This is because we believe this undertaking represents an important safeguard for continuity of services by ensuring that all parties with an interest in Commissioner Requested Services understand the seriousness of the commitment involved in providing such services.

Continuity of Services Condition 5: Risk pool levy

As we discussed at the beginning of the chapter, in the event of a provider entering special administration, the costs of administration will be met by a central fund known as the risk pool. This licence condition requires licensees to contribute towards the funding of this pool if we require them to do so. Licensees are required to make their contribution within 28 days of our request.

The risk pool will not come into effect until April 2015 at the earliest. We are planning to undertake a separate consultation on the details of how the risk pool will work. The Department of Health will also consult on regulations around the risk pool.

Risk pool levy: listening to stakeholders

Most of the comments we received related to the need for both commissioners and providers to have incentives to reduce the number of services designated as Commissioner Requested Services, as this would help to reduce the regulatory burden. Also, if commissioners were dependent on a single provider for fewer services, this would reduce the risk to patients posed by the financial distress of any one provider.

Many charities pointed out that charity law places significant restrictions on the purposes for which charities can use their funds. They were concerned that these rules might prevent them from making contributions to the risk pool.

Finally, some providers were concerned that risk pool payments could push providers into failure if they were excessive.

Risk pool levy: our final position

We have not made any changes to this condition because the licence condition itself is only an enabling clause for risk pool payments. The details of risk pool charging are still being developed and will be consulted on by Monitor and the Department of Health in due course. We recognise the concerns of charities and are currently working with them and the Charity Commission to ensure that our proposals are consistent with charity law.

Continuity of Services Condition 6: Cooperation in the event of financial stress

This licence condition applies when a licensee fails to meet the test of sound financial management, as set out in Continuity of Services Condition 3 and monitored under our Risk Assessment Framework.

If this happens, licensees could be required to:

- provide information to commissioners;
- allow parties appointed by Monitor to enter their premises; and
- actively cooperate with such parties.

More detail about the triggers that might lead to specific interventions are set out in our detailed consultation on the *Risk Assessment Framework*.

The requirement to allow parties appointed by Monitor to enter premises would only be invoked when a licensee reached a defined level of risk in our *Risk Assessment Framework*. This requirement would allow Monitor-appointed specialist teams to work with commissioners to identify which services would become Location Specific Services if the licensee were to become insolvent. In the event of special administration, this information would be passed on to the special administrator, who would be responsible for formally identifying Location Specific Services, in consultation with wider stakeholders.

Cooperation in the event of financial stress: listening to stakeholders

This condition generated very few comments from stakeholders. One charity suggested that this condition would be inappropriate if the services to be protected were only partly funded by the NHS and/or if the provider offered both Commissioner Requested Services and other services.

Cooperation in the event of financial stress: our final position

We have not made any changes to this condition. We believe that if a provider is performing an essential NHS service, it is reasonable to expect cooperation if we are concerned about its ability to continue as a going concern. Whether or not a licensee also provides other services should not make it any more difficult or any less appropriate for the provider to cooperate with us in this respect.

Continuity of Services Condition 7: Availability of resources

This condition requires licensees to act in a way that secures access to the resources needed to operate Commissioner Requested Services (the 'required resources'). These resources include: management resources; financial resources and facilities; personnel; physical and other assets; and working capital.

Each year, licensees will be required to provide us with a certificate, signed by their board, stating that, over the course of the next 12 months, they either:

- reasonably expect to have the required resources to keep their Commissioner Requested Services running; or
- reasonably expect to have the required resources to keep their Commissioner Requested Services running, but they would like to draw our attention explicitly to specific risk factors; or
- will not have the required resources to keep their Commissioner Requested Services running, in their opinion.

Licensees will also have to send us a statement of the main factors that they have taken into account in preparing the certificate.

This condition provides us with reassurance that the board of a provider has duly considered the necessity of the provider having sufficient resources dedicated to the provision of Commissioner Requested Services over the next 12 months.

A further requirement of this condition is that licensees will have to inform us immediately if they become aware of any circumstances that would cause them to believe that their most recent certificate is no longer valid.

Availability of resources: listening to stakeholders

We received few comments on most of the provisions of this clause. However, a number of respondents questioned the practicality and reasonableness of requiring a working capital statement from providers of Commissioner Requested Services.

Availability of resources: our final position

We accept the practical difficulties pointed out by respondents and have removed the requirement for a working capital statement under this condition. We consider that sufficient early warning regarding solvency issues will be provided by the *Risk Assessment Framework*.

8.3 Removal of proposed conditions

In our earlier stakeholder engagement, we had included three additional licence conditions. These related to:

- indebtedness;
- further restrictions in the event of financial distress; and
- restrictions on lending and investment.

We received few comments on the conditions we proposed to remove and the comments we did receive were supportive of our proposal to remove them. We have therefore decided not to include them in the licence.

9. NHS Foundation Trust Conditions

The licence will replace NHS foundation trusts' existing terms of authorisation, which will cease to apply. The NHS foundation trust licence conditions translate the well-established core of Monitor's current oversight of NHS foundation trust governance into Monitor's new licence-based system of regulation.

NHS Foundation Trust Condition 1: Information to update the register of NHS foundation trusts

This licence condition ensures that NHS foundation trusts provide required documentation to Monitor.

NHS Foundation Trust Condition 2: Payment to Monitor in respect of registration and related costs

If Monitor moves to funding by collecting fees, we may need this licence condition to charge additional fees to NHS foundation trusts to recover the costs of registration. We would consult stakeholders before introducing such a fee.

NHS Foundation Trust Condition 3: Provision of information to advisory panel

The Act gives Monitor the ability to establish an advisory panel that will consider questions brought by governors. It is Monitor's current intention to establish this panel. This licence condition requires NHS foundation trusts to provide the information requested by an advisory panel.

NHS Foundation Trust Condition 4: NHS foundation trust governance arrangements

This condition will enable Monitor to continue oversight of governance of NHS foundation trusts.

9.1 Purpose of the NHS foundation trust licence conditions

The purpose of the NHS Foundation Trust Conditions are to ensure that we are able to continue to oversee and regulate the governance of NHS foundation trusts in a similar way as we do today. The conditions reflect the unique governance structure of NHS foundation trusts, their importance to the overall provision of NHS services, and the time it may take for governors to develop the capability to hold their board of directors to account.

The Act allows Monitor to vary the standard conditions applicable to different types of licence holder. However, this is allowed only where the variation relates to the governance of the licence holder and is necessary to take account of the differences in status of different licensees, or where it is necessary to ensure that the burdens of different licensees are broadly consistent.

In addition to setting different or additional conditions, where we are satisfied that the governance of an NHS foundation trust is such that the trust will fail to comply with the conditions of its licence, we may include additional licence conditions relating to governance that we consider appropriate to reduce that risk. If we decide that these additional conditions have been breached, we may require that specific actions take place, including the removal, suspension or disqualification of directors or governors. This provision will remain in place until at least April 2016.

Therefore, we will oversee NHS foundation trusts in two ways:

- through permanent additional licence conditions for NHS foundation trusts that reflect their substantively different governance arrangements, the importance of their position in the provision of NHS health care services, and Parliament's expectation that we should continue to oversee the governance of NHS foundation trusts; and
- by placing, where required, new governance-related conditions in NHS foundation trust licences to reduce the risk of failure to comply with licence conditions as a result of governance inadequacies. This would apply only to NHS foundation trusts that we determined were at risk of compliance failure due to governance inadequacies, and only for a transitional period (at least until April 2016).

We describe the governance licence condition in section 9.3.

Section 8.1 explained that all mandatory services currently provided by NHS foundation trusts will be initially designated as Commissioner Requested Services. Over a period of three years, we expect commissioners to review their Commissioner Requested Services and remove designation from some services provided by NHS foundation trusts, as well as designate as Commissioner Requested Services some services provided by other providers. Where an NHS foundation trust is supplying Commissioner Requested Services, it will be subject to both the Continuity of Services licence conditions and the specific NHS Foundation Trust Conditions. Were it to cease supplying Commissioner Requested Services, it would be subject only to the NHS Foundation Trust Conditions.

The NHS foundation trust licence conditions are in the Annexe.

9.2 Who do these licence conditions apply to?

The NHS Foundation Trust Conditions apply to NHS foundation trusts only.

9.3 Summary of each licence condition

NHS Foundation Trust Condition 1: Information to update the register of NHS foundation trusts

Under the National Health Service Act 2006, Monitor must maintain a register of NHS foundation trusts. This is similar, for example, to the register of limited companies kept by Companies House. The information required to be on the register includes NHS foundation trust constitutions, annual reports and accounts.

This licence condition ensures that NHS foundation trusts provide the required documents to Monitor. Licensees will need to provide us with the documents within 28 days of them becoming available.

Information to update the register of NHS foundation trusts: listening to stakeholders

Some respondents raised concerns that providing register information might involve a cost to NHS foundation trusts.

Information to update the register of NHS foundation trusts: our final position

We have not made any changes to this condition. The information provided to us for registrar purposes – constitution, report and accounts – are basic statutory requirements of NHS foundation trusts, and the trusts already submit this information to us. We do not think that the information provided will need to change significantly and we think it is proportionate.

NHS Foundation Trust Condition 2: Payment to Monitor in respect of registration and related costs

In the General Conditions, we have included a licence condition about Monitor's ability to charge fees. As explained earlier, no decisions have been taken as to whether we will charge fees. That licence condition creates the ability for fees to be charged, and should this become our funding route we plan to hold a separate consultation on our approach in this area.

For NHS foundation trusts, we have included a separate licence condition on NHS foundation trust-related fees (e.g. costs of maintaining the register). If fees were to become our funding model, it may be appropriate to charge additional fees to NHS foundation trusts to recover such costs. As with general fees, no decisions have been taken as to whether we will charge specific NHS foundation trust fees.

Payment of fees to Monitor: listening to stakeholders

A number of respondents raised concerns that NHS foundation trust-only payments would not represent a level playing field. Stakeholders also mentioned that consulting on a registrar fee would be difficult without knowing how much the fee is likely to be, and if a fee is to be introduced in April 2013 there is not much time to consult on, and subsequently implement, a fair fee. There is also the question of whether we would seek to recover all or simply a portion of NHS foundation trust-related costs via a registration fee.

Payment of fees to Monitor: our final position

Although we consulted on the principle of this licence condition, we will not levy any registrar fees on NHS foundation trusts without further consultation, and in any event not as soon as 1 April 2013. Monitor has had the power to levy a fee from NHS foundation trusts since 2004 but to date has not chosen to do so.

NHS Foundation Trust Condition 3: Provision of information to advisory panel

The Act gives Monitor the ability to establish an advisory panel to consider questions brought by governors. It is our current intention to establish this panel.

The panel would provide a source of independent advice to governors, and would help governors fulfil their role of holding non-executive directors to account for the performance of the board. Subject to further secondary legislation, the panel's scope would be limited to advising on whether an NHS foundation trust has failed or is failing to act in accordance with its constitution and other requirements in Part 4 of the Act.

As part of its investigation, the panel could request information or advice. This licence condition would require NHS foundation trusts to provide the information requested so that the panel was able to give the best advice possible.

Provision of information to advisory panel: listening to stakeholders

Some respondents were concerned that an advisory panel might lead to a level of distrust between governors and directors. Other questions raised included whether the panel should only consider substantive issues raised by governors and whether there would be limits to information to be shared with the panel.

Provision of information to advisory panel: our final position

We have not made any changes to this condition. Parliament has given Monitor the power to establish a governor advisory panel and we intend to establish one for the purposes of helping governors to fulfil their role.

Under provisions in the Act, a majority of governors of an NHS foundation trust is required in order to submit a query to the panel. This ensures that any queries are likely to be substantive and representing material issues for governors. An advisory panel will provide a source of independent advice to governors, which, at present, they receive informally from Monitor. We think that requiring licensees to provide information to the panel when requested will help ensure that the panel is effective.

NHS Foundation Trust Condition 4: NHS foundation trust governance arrangements

This licence condition enables us to continue our current role in relation to NHS foundation trust governance.

The condition sets out our expectations regarding the governance of NHS foundation trusts. For example, it requires NHS foundation trusts to have effective board and committee structures, reporting lines and performance and risk management systems. Many of the requirements in this licence condition are similar to the statements that NHS foundation trust boards currently make as part of their annual or quarterly submissions, and are consistent with our current approach in assessing governance of NHS foundation trusts. To ensure that the governance ‘threshold’ remains comparable across our existing and future regimes, with no additional burden, we have based the licence condition on our previous experience of trusts’ breaches of their terms of authorisation.

It is not the role of this licence condition to define in detail what such governance systems and processes should look like. We are keen that NHS foundation trusts should have the autonomy and flexibility to ensure their structures and processes work well for their organisations now and in the future, while making sure they meet our overall requirements.

Foundation trusts will also be required to submit a Corporate Governance Statement on an annual basis. The statement will confirm: compliance with this licence condition on the date of the statement; anticipated compliance for the next year; any risks to compliance with this condition during the next year; and any actions it proposes to take to manage such risks. The *Risk Assessment Framework* will set out our approach to assessing compliance with this condition. You can find our consultation on the *Risk Assessment Framework* [here](#).

NHS foundation trust governance arrangements: listening to stakeholders

While the majority of respondents agreed with these requirements, a number of stakeholders, including the Foundation Trust Network, considered permanent NHS foundation trust-specific requirements to be unfair, inconsistent with a ‘level playing field’ and leading to additional regulatory burden. They argued that we should instead be aiming to regulate all types of provider in the same way from 2016, using the same licence conditions for all licensees.

Other respondents considered that these requirements were not extensive enough, and should also cover:

- environmental sustainability;
- information on governance requirements from the information governance toolkit;
- a well-functioning Council of Governors; and
- anti-crime measures.

Finally, one respondent questioned how the requirements around the proposed Corporate Governance Statement (similar to board certifications today) fitted with the Annual Governance Statement (formerly Statement on Internal Control, an annual reporting requirement).

NHS foundation trust governance arrangements: our final position

Ministers made explicit during the closing stages of the Act's passage the intention for Monitor to continue its oversight of NHS foundation trusts' governance by means of a licence condition.

NHS Foundation Trust Condition 4 broadly reflects the criteria we have used to date to assess whether NHS foundation trusts are in significant breach of Condition 5 (governance) of their terms of authorisation, and therefore is consistent with our current practice. The Corporate Governance Statement will replace the many board certifications currently required of NHS foundation trusts.

We will take a reasonable and proportionate approach to using the governance licence condition and taking action to address breaches. Our focus will be to address clear governance failings and will generally not take action where other bodies have the lead regulatory responsibility in any given area, with the exception of areas where the lead responsible body is the CQC. Where the CQC indicates serious concerns, Monitor may consider using its powers in parallel to address any related governance issues of the NHS foundation trust in a timely fashion.

One aspect of governance which is not specifically referred to in this licence condition is information governance. It refers to the systems, processes and controls that are implemented to manage information. Monitor is not the lead regulator on information governance matters; this is the role of the Information Commissioner, while the CQC is also required to establish a National Information Governance Committee and to keep us informed about registered providers' practices in processing information. It is therefore not appropriate to reflect specific information governance requirements, which are subject to regular reclassification, in a document such as the licence. Rather than require information on information governance standards from NHS foundation trusts, we would expect the Commissioner or CQC to inform us where there are material information governance issues.

In order to remove any unnecessary duplication, we will set out in reporting guidance for NHS foundation trusts how the requirements for a Corporate Governance Statement and Annual Governance Statement complement each other.

NHS Provider Licence Standard Conditions

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Section 1 – General Conditions

Condition G1 – Provision of information

1. Subject to paragraph 3, and in addition to obligations under other Conditions of this Licence, the Licensee shall furnish to Monitor such information and documents, and shall prepare or procure and furnish to Monitor such reports, as Monitor may require for any of the purposes set out in section 96(2) of the 2012 Act.
2. Information, documents and reports required to be furnished under this Condition shall be furnished in such manner, in such form, at such place and at such times as Monitor may require.
3. In furnishing information documents and reports pursuant to paragraphs 1 and 2 the Licensee shall take all reasonable steps to ensure that:
 - (a) in the case of information or a report, it is accurate, complete and not misleading;
 - (b) in the case of a document, it is a true copy of the document requested; and
4. This Condition shall not require the Licensee to furnish any information, documents or reports which it could not be compelled to produce or give in evidence in civil proceedings before a court because of legal professional privilege.

Section 1 – General Conditions

Condition G2 – Publication of information

1. The Licensee shall comply with any direction from Monitor for any of the purposes set out in section 96(2) of the 2012 Act to publish information about health care services provided for the purposes of the NHS and as to the manner in which such information should be published.
2. For the purposes of this condition “publish” includes making available to the public, to any section of the public or to individuals.

Section 1 – General Conditions

Condition G3 – Payment of fees to Monitor

1. The Licensee shall pay fees to Monitor in each financial year of such amount as Monitor may determine for each such year or part thereof in respect of the exercise by Monitor of its functions for the purposes set out in section 96(2) of the 2012 Act.
2. The Licensee shall pay the fees required to be paid by a determination by Monitor for the purpose of paragraph 1 no later than the 28th day after they become payable in accordance with that determination.

Condition G4 – Fit and proper persons as Governors and Directors (also applicable to those performing equivalent or similar functions)

1. The Licensee shall ensure that no person who is an unfit person may become or continue as a Governor, except with the approval in writing of Monitor.
2. The Licensee shall not appoint as a Director any person who is an unfit person, except with the approval in writing of Monitor.
3. The Licensee shall ensure that its contracts of service with its Directors contain a provision permitting summary termination in the event of a Director being or becoming an unfit person. The Licensee shall ensure that it enforces that provision promptly upon discovering any Director to be an unfit person, except with the approval in writing of Monitor.
4. If Monitor has given approval in relation to any person in accordance with paragraph 1, 2, or 3 of this condition the Licensee shall notify Monitor promptly in writing of any material change in the role required of or performed by that person.
5. In this Condition an unfit person is:
 - (a) an individual;
 - (i) who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged; or
 - (ii) who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it; or
 - (iii) who within the preceding five years has been convicted in the British Islands of any offence and a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him; or
 - (iv) who is subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986; or
 - (b) a body corporate, or a body corporate with a parent body corporate:

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- (i) where one or more of the Directors of the body corporate or of its parent body corporate is an unfit person under the provisions of subparagraph (a) of this paragraph, or
- (ii) in relation to which a voluntary arrangement is proposed under section 1 of the Insolvency Act 1986, or
- (iii) which has a receiver (including an administrative receiver within the meaning of section 29(2) of the 1986 Act) appointed for the whole or any material part of its assets or undertaking, or
- (iv) which has an administrator appointed to manage its affairs, business and property in accordance with Schedule B1 to the 1986 Act, or
- (v) which passes any resolution for winding up, or
- (vi) which becomes subject to an order of a Court for winding up.

Section 1 – General Conditions

Condition G5 – Monitor guidance

- 1 Without prejudice to any obligations in other Conditions of this Licence, the Licensee shall at all times have regard to guidance issued by Monitor for any of the purposes set out in section 96(2) of the 2012 Act.
- 2 In any case where the Licensee decides not to follow the guidance referred to in paragraph 1 or guidance issued under any other Conditions of this licence, it shall inform Monitor of the reasons for that decision.

Condition G6 – Systems for compliance with licence conditions and related obligations

1. The Licensee shall take all reasonable precautions against the risk of failure to comply with:
 - (a) the Conditions of this Licence,
 - (b) any requirements imposed on it under the NHS Acts, and
 - (c) the requirement to have regard to the NHS Constitution in providing health care services for the purposes of the NHS.
2. Without prejudice to the generality of paragraph 1, the steps that the Licensee must take pursuant to that paragraph shall include:
 - (a) the establishment and implementation of processes and systems to identify risks and guard against their occurrence; and
 - (b) regular review of whether those processes and systems have been implemented and of their effectiveness.
3. Not later than two months from the end of each Financial Year, the Licensee shall prepare and submit to Monitor a certificate to the effect that, following a review for the purpose of paragraph 2(b) the Directors of the Licensee are or are not satisfied, as the case may be that, in the Financial Year most recently ended, the Licensee took all such precautions as were necessary in order to comply with this Condition.
4. The Licensee shall publish each certificate submitted for the purpose of this Condition within one month of its submission to Monitor in such manner as is likely to bring it to the attention of such persons who reasonably can be expected to have an interest in it.

Condition G7 – Registration with the Care Quality Commission

1. The Licensee shall at all times be registered with the Care Quality Commission in so far as is necessary in order to be able lawfully to provide the services authorised to be provided by this Licence.
2. The Licensee shall notify Monitor promptly of:
 - (a) any application it may make to the Care Quality Commission for the cancellation of its registration by that Commission, or
 - (b) the cancellation by the Care Quality Commission for any reason of its registration by that Commission.
3. A notification given by the Licensee for the purposes of paragraph 2 shall:
 - (a) be made within 7 days of:
 - (i) the making of an application in the case of paragraph (a), or
 - (ii) becoming aware of the cancellation in the case of paragraph (b), and
 - (b) contain an explanation of the reasons (in so far as they are known to the Licensee) for:
 - (i) the making of an application in the case of paragraph (a), or
 - (ii) the cancellation in the case of paragraph (b).

Condition G8 – Patient eligibility and selection criteria

1. The Licensee shall:
 - (a) set transparent eligibility and selection criteria,
 - (b) apply those criteria in a transparent way to persons who, having a choice of persons from whom to receive health care services for the purposes of the NHS, choose to receive them from the Licensee, and
 - (c) publish those criteria in such a manner as will make them readily accessible by any persons who could reasonably be regarded as likely to have an interest in them.

2. “Eligibility and selection criteria” means criteria for determining:
 - (a) whether a person is eligible, or is to be selected, to receive health care services provided by the Licensee for the purposes of the NHS, and
 - (b) if the person is selected, the manner in which the services are provided to the person.

Condition G9 – Application of Section 5 (Continuity of Services)

1. The Conditions in Section 5 shall apply:
 - (a) whenever the Licensee is subject to a contractual or other legally enforceable obligation to provide a service which is a Commissioner Requested Service, and
 - (b) from the commencement of this Licence until the Licensee becomes subject to an obligation of the type described in sub-paragraph (a), if the Licensee is an NHS foundation trust which:
 - (i) was not subject to such an obligation on commencement of this Licence, and
 - (ii) was required to provide services, or was party to an NHS contract to provide services, as described in paragraph 2(a) or 2(b);

for the avoidance of doubt, where Section 5 applies by virtue of this subparagraph, the words “Commissioner Requested Service” shall be read to include any service of a description falling within paragraph 2(a) or 2(b).

2. A service is a Commissioner Requested Service if, and to the extent that, it is:
 - (a) any service of a description which the Licensee, being an NHS foundation trust with an authorisation date on or before 31 March 2013, was required to provide in accordance with condition 7(1) and Schedule 2 in the terms of its authorisation by Monitor immediately prior to the commencement of this Licence, or
 - (b) any service of a description which the Licensee, being an NHS foundation trust with an authorisation date on or after 1 April 2013, was required to provide pursuant to an NHS contract immediately before its authorisation date, or
 - (c) any other service which the Licensee has contracted with a Commissioner to provide as a Commissioner Requested Service.
3. A service is also a Commissioner Requested Service if, and to the extent that, not being a service within paragraph 2:

Section 1 – General Conditions

- (a) it is a service which the Licensee may be required to provide to a Commissioner under the terms of a contract which has been entered into between them, and
 - (b) the Commissioner has made a written request to the Licensee to provide that service as a Commissioner Requested Service, and either
 - (c) the Licensee has failed to respond in writing to that request by the expiry of the 28th day after it was made to the Licensee by the Commissioner, or
 - (d) the Commissioner, not earlier than the expiry of the [28th] day after making that request to the Licensee, has given to Monitor and to the Licensee a notice in accordance with paragraph 4, and Monitor, after giving the Licensee the opportunity to make representations, has issued a direction in writing in accordance with paragraph 5.
4. A notice in accordance with this paragraph is a notice:
 - (a) in writing,
 - (b) stating that the Licensee has refused to agree to a request to provide a service as a Commissioner Requested Service, and
 - (c) setting out the Commissioner's reasons for concluding that the Licensee is acting unreasonably in refusing to agree to that request to provide a service as a Commissioner Requested Service
5. A direction in accordance with this paragraph is a direction that the Licensee's refusal to provide a service as a Commissioner Requested Service in response to a request made under paragraph 3(b) is unreasonable.
6. The Licensee shall give Monitor not less than [28] days' notice of the expiry of any contractual obligation pursuant to which it is required to provide a Commissioner Requested Service to a Commissioner for which no extension or renewal has been agreed.
7. If any contractual obligation of a Licensee to provide a Commissioner Requested Service expires without extension or renewal having been agreed between the Licensee and the Commissioner who is a party to the contract, the Licensee shall continue to provide that service on the terms of the contract (save as agreed with that Commissioner), and the service shall continue to be a Commissioner Requested

Section 1 – General Conditions

Service, for the period from the expiry of the contractual obligation until Monitor issues either:

- (a) a direction of the sort referred to in paragraph 8, or
 - (b) a notice in writing to the Licensee stating that it has decided not to issue such a direction.
8. If, during the period of a contractual or other legally enforceable obligation to provide a Commissioner Requested Service, Monitor issues to the Licensee a direction in writing to continue providing that service for a period specified in the direction, then for that period the service shall continue to be a Commissioner Requested Service.
9. No service which the Licensee is subject to a contractual or other legally enforceable obligation to provide shall be regarded as a Commissioner Requested Service and, as a consequence, no Condition in Section 5 shall be of any application, during any period for which there is in force a direction in writing by Monitor given for the purposes of this condition and of any equivalent condition in any other current licence issued under the 2012 Act stating that no health care service provided for the purposes of the NHS is to be regarded as a Commissioner Requested Service.
10. A service shall cease to be a Commissioner Requested Service if:
 - (a) all current Commissioners of that service as a Commissioner Requested Service agree in writing that there is no longer any need for the service to be a Commissioner Requested Service, and Monitor has issued a determination in writing that the service is no longer a Commissioner Requested Service, or
 - (b) Monitor has issued a determination in writing that the service is no longer a Commissioner Requested Service; or
 - (c) it is a Commissioner Requested Service by virtue only of paragraph 2(a) above and 3 years have elapsed since the commencement of this Licence; or
 - (d) it is a Commissioner Requested Service by virtue only of paragraph 2(b) above and either 3 years have elapsed since 1 April 2013 or 1 year has elapsed since the commencement of this Licence, whichever is the later; or
 - (e) the contractual obligation pursuant to which the service is provided has expired and Monitor has issued a notice pursuant to paragraph 7(b) in relation to the service; or

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- (f) the period specified in a direction by Monitor of the sort referred to in paragraph 8 in relation to the service has expired.
- 11. The Licensee shall make available free of charge to any person who requests it a statement in writing setting out the description and quantity of services which it is under a contractual or other legally enforceable obligation to provide as Commissioner Requested Services.
- 12. Within [28] days of every occasion on which there is a change in the description or quantity of the services which the Licensee is under a contractual or other legally enforceable obligation to provide as Commissioner Requested Services, the Licensee shall provide to Monitor in writing a notice setting out the description and quantity of all the services it is obliged to provide as Commissioner Requested Services.
- 13. Unless it is proposes to cease providing the service, the Licensee shall not make any application to Monitor for a determination in accordance with paragraph 10(b):
 - (a) in the case of a service which is a Commissioner Requested Service by virtue only of paragraph 2(a) above, in the period of 3 years since the commencement of this Licence or
 - (b) in the case of a service which is a Commissioner Requested Service by virtue only of paragraph 2(b), in the period until the later of 1 April 2016 or 1 year from the commencement of this Licence.
- 14. In this Condition “NHS contract” has the meaning given to that term in Section 9 of the 2006 Act.

Section 2 – Pricing

Condition P1 – Recording of information

1. If required in writing by Monitor, and only in relation to periods from the date of that requirement, the Licensee shall:
 - (a) obtain, record and maintain sufficient information about the costs which it expends in the course of providing services for the purposes of the NHS and other relevant information, and
 - (b) establish, maintain and apply such systems and methods for the obtaining, recording and maintaining of such information about those costs and other relevant information,as are necessary to enable it to comply with the following paragraphs of this Condition.
2. From the time of publication by Monitor of Approved Reporting Currencies the Licensee shall maintain records of its costs and of other relevant information broken down in accordance with those Currencies by allocating to a record for each such Currency all costs expended by the Licensee in providing health care services for the purposes of the NHS within that Currency and by similarly treating other relevant information.
3. In the allocation of costs and other relevant information to Approved Reporting Currencies in accordance with paragraph 2 the Licensee shall use the cost allocation methodology and procedures relating to other relevant information set out in the Approved Guidance.
4. If the Licensee uses sub-contractors in the provision of health care services for the purposes of the NHS, to the extent that it is required to do so in writing by Monitor the Licensee shall procure that each of those sub-contractors:
 - (a) obtains, records and maintains information about the costs which it expends in the course of providing services as sub-contractor to the Licensee, and establishes, maintains and applies systems and methods for the obtaining, recording and maintaining of that information, in a manner that complies with paragraphs 2 and 3 of this Condition, and
 - (b) provides that information to Monitor in a timely manner.
5. Records required to be maintained by this Condition shall be kept for not less than six years.

Section 2 – Pricing

6. In this Condition:

“the Approved Guidance”	means such guidance on the obtaining, recording and maintaining of information about costs and on the breaking down and allocation of costs by reference to Approved Reporting Currencies as may be published by Monitor;
“Approved Reporting Currencies”	means such categories of cost and other relevant information as may be published by Monitor;
“other relevant information”	means such information, which may include quality and outcomes data, as may be required by Monitor for the purpose of its functions under Chapter 4 (Pricing) in Part 3 of the 2012 Act.

Section 2 – Pricing

Condition P2 – Provision of information

1. Subject to paragraph 3, and without prejudice to the generality of Condition G1, the Licensee shall furnish to Monitor such information and documents, and shall prepare or procure and furnish to Monitor such reports, as Monitor may require for the purpose of performing its functions under Chapter 4 in Part 3 of the 2012 Act.
2. Information, documents and reports required to be furnished under this Condition shall be furnished in such manner, in such form, at such place and at such times as Monitor may require.
3. In furnishing information documents and reports pursuant to paragraphs 1 and 2 the Licensee shall take all reasonable steps to ensure that:
 - (a) in the case of information or a report, it is accurate, complete and not misleading;
 - (b) in the case of a document, it is a true copy of the document requested; and
4. This Condition shall not require the Licensee to furnish any information, documents or reports which it could not be compelled to produce or give in evidence in civil proceedings before a court because of legal professional privilege.

Section 2 – Pricing

Condition P3 – Assurance report on submissions to Monitor

1. If required in writing by Monitor the Licensee shall, as soon as reasonably practicable, obtain and submit to Monitor an assurance report in relation to a submission of the sort described in paragraph 2 which complies with the requirements of paragraph 3.
2. The descriptions of submissions in relation to which a report may be required under paragraph 1 are:
 - (a) submissions of information furnished to Monitor pursuant to Condition P2, and
 - (b) submissions of information to third parties designated by Monitor as persons from or through whom cost information may be obtained for the purposes of setting or verifying the National Tariff or of developing non-tariff pricing guidance.
3. An assurance report shall meet the requirements of this paragraph if all of the following conditions are met:
 - (a) it is prepared by a person approved in writing by Monitor or qualified to act as auditor of an NHS foundation trust in accordance with paragraph 23(4) in Schedule 7 to the 2006 Act;
 - (b) it expresses a view on whether the submission to which it relates:
 - (i) is based on cost records which have been maintained in a manner which complies with paragraph 2 in Condition P1;
 - (ii) is based on costs which have been analysed in a manner which complies with paragraph 3 in Condition P1, and
 - (iii) provides a true and fair assessment of the information it contains.

Section 2 – Pricing

Condition P4 – Compliance with the National Tariff

1. Except as approved in writing by Monitor, the Licensee shall only provide health care services for the purpose of the NHS at prices which comply with, or are determined in accordance with, the national tariff published by Monitor, in accordance with section 116 of the 2012 Act.
2. Without prejudice to the generality of paragraph 1, except as approved in writing by Monitor, the Licensee shall comply with the rules, and apply the methods, concerning charging for the provision of health care services for the purposes of the NHS contained in the national tariff published by Monitor in accordance with, section 116 of the 2012 Act, wherever applicable.

Section 2 – Pricing

Condition P5 – Constructive engagement concerning local tariff modifications

1. The Licensee shall engage constructively with Commissioners, with a view to reaching agreement as provided in section 124 of the 2012 Act, in any case in which it is of the view that the price payable for the provision of a service for the purposes of the NHS in certain circumstances or areas should be the price determined in accordance with the national tariff for that service subject to modifications.

Section 3 – Choice and Competition

Condition C1- The right of patients to make choices

1. Subsequent to a person becoming a patient of the Licensee and for as long as he or she remains such a patient, the Licensee shall ensure that at every point where that person has a choice of provider under the NHS Constitution or a choice of provider conferred locally by Commissioners, he or she is notified of that choice and told where information about that choice can be found.
2. Information and advice about patient choice of provider made available by the Licensee shall not be misleading.
3. Without prejudice to paragraph 2, information and advice about patient choice of provider made available by the Licensee shall not unfairly favour one provider over another and shall be presented in a manner that, as far as reasonably practicable, assists patients in making well informed choices between providers of treatments or other health care services.
4. In the conduct of any activities, and in the provision of any material, for the purpose of promoting itself as a provider of health care services for the purposes of the NHS the Licensee shall not offer or give gifts, benefits in kind, or pecuniary or other advantages to clinicians, other health professionals, Commissioners or their administrative or other staff as inducements to refer patients or commission services.

Condition C2 – Competition oversight

1. The Licensee shall not:
 - (a) enter into or maintain any agreement or other arrangement which has the object or which has (or would be likely to have) the effect of preventing, restricting or distorting competition in the provision of health care services for the purposes of the NHS, or
 - (b) engage in any other conduct which has (or would be likely to have) the effect of preventing, restricting or distorting competition in the provision of health care services for the purposes of the NHS,
- to the extent that it is against the interests of people who use health care services.

Section 4 – Integrated care

Condition IC1 – Provision of integrated care

1. The Licensee shall not do anything that reasonably would be regarded as against the interests of people who use health care services by being detrimental to enabling its provision of health care services for the purposes of the NHS to be integrated with the provision of such services by others with a view to achieving one or more of the objectives referred to in paragraph 4.
2. The Licensee shall not do anything that reasonably would be regarded as against the interests of people who use health care services by being detrimental to enabling its provision of health care services for the purposes of the NHS to be integrated with the provision of health-related services or social care services by others with a view to achieving one or more of the objectives referred to in paragraph 4.
3. The Licensee shall not do anything that reasonably would be regarded as against the interests of people who use health care services by being detrimental to enabling it to co-operate with other providers of health care services for the purposes of the NHS with a view to achieving one or more of the objectives referred to in paragraph 4.
4. The objectives referred to in paragraphs 1, 2 and 3 are:
 - (a) improving the quality of health care services provided for the purposes of the NHS (including the outcomes that are achieved from their provision) or the efficiency of their provision,
 - (b) reducing inequalities between persons with respect to their ability to access those services, and
 - (c) reducing inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
5. The Licensee shall have regard to such guidance as may have been issued by Monitor from time to time concerning actions or behaviours that might reasonably be regarded as against the interests of people who use health care services for the purposes of paragraphs 1, 2 or 3 of this Condition.

Section 5 – Continuity of Services

Condition CoS1 – Continuing provision of Commissioner Requested Services

1. The Licensee shall not cease to provide, or materially alter the specification or means of provision of, any Commissioner Requested Service otherwise than in accordance with the following paragraphs of this Condition.
2. If, during the period of a contractual or other legally enforceable obligation to provide a Commissioner Requested Service, or during any period when this condition applies by virtue of Condition G9(1)(b), Monitor issues to the Licensee a direction in writing to continue providing that service for a period specified in the direction, then the Licensee shall provide the service for that period in accordance with the direction.
3. The Licensee shall not materially alter the specification or means of provision of any Commissioner Requested Service except:
 - (a) with the agreement in writing of all Commissioners to which the Licensee is required by a contractual or other legally enforceable obligation to provide the service as a Commissioner Requested Service; or
 - (b) at any time when this condition applies by virtue of Condition G9(1)(b), with the agreement in writing of all Commissioners to which the Licensee provides, or may be requested to provide, the service as a Commissioner Requested Service; or
 - (c) if required to do so by, or in accordance with the terms of its authorisation by, any body having responsibility pursuant to statute for regulating one or more aspects of the provision of health care services in England and which has been designated by Monitor for the purposes of this condition and of equivalent conditions in other licences granted under the 2012 Act.
4. If the specification or means of provision of a Commissioner Requested Service is altered as provided in paragraph 3 the Licensee, within [28] days of the alteration, shall give to Monitor notice in writing of the occurrence of the alteration with a summary of its nature.
5. For the purposes of this Condition an alteration to the specification or means of provision of any Commissioner Requested Service is material if it involves the delivery

Section 5 – Continuity of Services

or provision of that service in a manner which differs from the manner specified and described in:

- (a) the contract in which it was first required to be provided to a Commissioner at or following the coming into effect of this Condition; or
- (b) if there has been an alteration pursuant to paragraph 3, the document in which it was specified on the coming into effect of that alteration; or
- (c) at any time when this Condition applies by virtue of Condition G9(1)(b), the contract, or NHS contract, by which it was required to be provided immediately before the commencement of this Licence or the Licensee's authorisation, as the case may be.

Condition CoS2 – Restriction on the disposal of assets

1. The Licensee shall establish, maintain and keep up to date, an asset register which complies with paragraphs 2 and 3 of this Condition (“the Asset Register”)
2. The Asset Register shall list every relevant asset used by the Licensee for the provision of Commissioner Requested Services.
3. The Asset Register shall be established, maintained and kept up to date in a manner that reasonably would be regarded as both adequate and professional.
4. The obligations in paragraphs 5 to 8 shall apply to the Licensee if Monitor has given notice in writing to the Licensee that it is concerned about the ability of the Licensee to carry on as a going concern.
5. The Licensee shall not dispose of, or relinquish control over, any relevant asset except:
 - (a) with the consent in writing of Monitor, and
 - (b) in accordance with the paragraphs 6 to 8 of this Condition.
6. The Licensee shall furnish Monitor with such information as Monitor may request relating to any proposal by the Licensee to dispose of, or relinquish control over, any relevant asset.
7. Where consent by Monitor for the purpose of paragraph 5(a) is subject to conditions, the Licensee shall comply with those conditions.
8. Paragraph 5(a) of this Condition shall not prevent the Licensee from disposing of, or relinquishing control over, any relevant asset where:
 - (a) Monitor has issued a general consent for the purposes of this Condition (whether or not subject to conditions) in relation to:
 - (i) transactions of a specified description; or
 - (ii) the disposal of or relinquishment of control over relevant assets of a specified description, and

the transaction or the relevant assets are of a description to which the consent applies and the disposal, or relinquishment of control, is in accordance with any conditions to which the consent is subject; or

Section 5 – Continuity of Services

- (b) the Licensee is required by the Care Quality Commission to dispose of a relevant asset.

9. In this Condition:

<p>“disposal”</p>	<p>means any of the following:</p> <p>(a) a transfer, whether legal or equitable, of the whole or any part of an asset (whether or not for value) to a person other than the Licensee; or</p> <p>(b) a grant, whether legal or equitable, of a lease, licence, or loan of (or the grant of any other right of possession in relation to) that asset; or</p> <p>(c) the grant, whether legal or equitable, of any mortgage, charge, or other form of security over that asset; or</p> <p>(d) if the asset is an interest in land, any transaction or event that is capable under any enactment or rule of law of affecting the title to a registered interest in that land, on the assumption that the title is registered,</p> <p>and references to “dispose” are to be read accordingly;</p>
<p>“relevant asset”</p>	<p>means any item of property, including buildings, interests in land, equipment (including rights, licenses and consents relating to its use), without which the Licensee’s ability to meet its obligations to provide Commissioner Requested Services would reasonably be regarded as materially prejudiced;</p>
<p>“relinquishment of control”</p>	<p>includes entering into any agreement or arrangement under which control of the asset is not, or ceases to be, under the sole management of the Licensee, and “relinquish” and related expressions are to be read accordingly.</p>

10. The Licensee shall have regard to such guidance as may be issued from time to time by Monitor regarding:

- (a) the manner in which asset registers should be established, maintained and updated, and

Section 5 – Continuity of Services

- (b) property, including buildings, interests in land, intellectual property rights and equipment, without which a licence holder's ability to provide Commissioner Requested Services should be regarded as materially prejudiced.

Condition CoS3 – Standards of corporate governance and financial management

1. The Licensee shall at all times adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as:
 - (a) suitable for a provider of the Commissioner Requested Services provided by the Licensee, and
 - (b) providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern.

2. In its determination of the systems and standards to adopt for the purpose of paragraph 1, and in the application of those systems and standards, the Licensee shall have regard to:
 - (a) such guidance as Monitor may issue from time to time concerning systems and standards of corporate governance and financial management;
 - (b) the Licensee's rating using the risk rating methodology published by Monitor from time to time, and
 - (c) the desirability of that rating being not less than the level regarded by Monitor as acceptable under the provisions of that methodology.

Condition CoS4 – Undertaking from the ultimate controller

1. The Licensee shall procure from each company or other person which the Licensee knows or reasonably ought to know is at any time its ultimate controller, a legally enforceable undertaking in favour of the Licensee, in the form specified by Monitor, that the ultimate controller (“the Covenantor”):
 - (a) will refrain for any action, and will procure that any person which is a subsidiary of, or which is controlled by, the Covenantor (other than the Licensee and its subsidiaries) will refrain from any action, which would be likely to cause the Licensee to be in contravention of any of its obligations under the 2012 Act or this Licence, and
 - (b) will give to the Licensee, and will procure that any person which is a subsidiary of, or which is controlled by, the Covenantor (other than the Licensee and its subsidiaries) will give to the Licensee, all such information in its possession or control as may be necessary to enable the Licensee to comply fully with its obligations under this Licence to provide information to Monitor.
2. The Licensee shall obtain any undertaking required to be procured for the purpose of paragraph 1 within 7 days of a company or other person becoming an ultimate controller of the Licensee and shall ensure that any such undertaking remains in force for as long as the Covenantor remains the ultimate controller of the Licensee.
3. The Licensee shall:
 - (a) deliver to Monitor a copy of each such undertaking within seven days of obtaining it;
 - (b) inform Monitor immediately in writing if any Director, secretary or other officer of the Licensee becomes aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached, and
 - (c) comply with any request which may be made by Monitor to enforce any such undertaking.
4. For the purpose of this Condition, subject to paragraph 5, a person (whether an individual or a body corporate) is an ultimate controller of the Licensee if:
 - (a) directly, or indirectly, the Licensee can be required to act in accordance with the instructions of that person acting alone or in concert with others, and

Section 5 – Continuity of Services

- (b) that person cannot be required to act in accordance with the instructions of another person acting alone or in concert with others.
- 5. A person is not an ultimate controller if they are:
 - (a) a health service body, within the meaning of section 9 of the 2006 Act;
 - (b) a Governor or Director of the Licensee and the Licensee is an NHS foundation trust;
 - (c) any Director of the Licensee who does not, alone or in association with others, have a controlling interest in the ownership of the Licensee and the Licensee is a body corporate; or
 - (d) a trustee of the Licensee and the Licensee is a charity.

Section 5 – Continuity of Services

Condition CoS5 – Risk pool levy

1. The Licensee shall pay to Monitor any sums required to be paid in consequence of any requirement imposed on providers under section 135(2) of the 2012 Act, including sums payable by way of levy imposed under section 139(1) and any interest payable under section 143(10), by the dates by which they are required to be paid.
2. In the event that no date has been clearly determined by which a sum referred to in paragraph 1 is required to be paid, that sum shall be paid within 28 days of being demanded in writing by Monitor.

Section 5 – Continuity of Services

Condition CoS6 – Co-operation in the event of financial stress

1. The obligations in paragraph 2 shall apply if Monitor has given notice in writing to the Licensee that it is concerned about the ability of the Licensee to carry on as a going concern.
2. When this paragraph applies the Licensee shall:
 - (a) provide such information as Monitor may direct to Commissioners and to such other persons as Monitor may direct;
 - (b) allow such persons as Monitor may appoint to enter premises owned or controlled by the Licensee and to inspect the premises and anything on them, and
 - (c) co-operate with such persons as Monitor may appoint to assist in the management of the Licensee's affairs, business and property.

Condition CoS7 – Availability of resources

1. The Licensee shall at all times act in a manner calculated to secure that it has, or has access to, the Required Resources.
2. The Licensee shall not enter into any agreement or undertake any activity which creates a material risk that the Required Resources will not be available to the Licensee.
3. The Licensee, not later than two months from the end of each Financial Year, shall submit to Monitor a certificate as to the availability of the Required Resources for the period of 12 months commencing on the date of the certificate, in one of the following forms:
 - (a) “After making enquiries the Directors of the Licensee have a reasonable expectation that the Licensee will have the Required Resources available to it after taking account distributions which might reasonably be expected to be declared or paid for the period of 12 months referred to in this certificate.”
 - (b) “After making enquiries the Directors of the Licensee have a reasonable expectation, subject to what is explained below, that the Licensee will have the Required Resources available to it after taking into account in particular (but without limitation) any distribution which might reasonably be expected to be declared or paid for the period of 12 months referred to in this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to provide Commissioner Requested Services”.
 - (c) “In the opinion of the Directors of the Licensee, the Licensee will not have the Required Resources available to it for the period of 12 months referred to in this certificate”.
4. The Licensee shall submit to Monitor with that certificate a statement of the main factors which the Directors of the Licensee have taken into account in issuing that certificate.
5. The statement submitted to Monitor in accordance with paragraph 4 shall be approved by a resolution of the board of Directors of the Licensee and signed by a Director of the Licensee pursuant to that resolution.

Section 5 – Continuity of Services

6. The Licensee shall inform Monitor immediately if the Directors of the Licensee become aware of any circumstance that causes them to no longer have the reasonable expectation referred to in the most recent certificate given under paragraph 3.
7. The Licensee shall publish each certificate provided for in paragraph 3 in such a manner as will enable any person having an interest in it to have ready access to it.
8. In this Condition:

“distribution”	includes the payment of dividends or similar payments on share capital and the payment of interest or similar payments on public dividend capital and the repayment of capital;
“Financial Year”	means the period of twelve months over which the Licensee normally prepares its accounts;
“Required Resources”	<p>means such:</p> <ul style="list-style-type: none"> (a) management resources, (b) financial resources and financial facilities, (c) personnel, (d) physical and other assets including rights, licences and consents relating to their use, and (e) working capital <p>as reasonably would be regarded as sufficient to enable the Licensee at all times to provide the Commissioner Requested Services.</p>

Section 6 – NHS Foundation Trust Conditions

Condition FT1 – Information to update the register of NHS foundation trusts

1. The obligations in the following paragraphs of this Condition apply if the Licensee is an NHS foundation trust, without prejudice to the generality of the other conditions in this Licence.
2. The Licensee shall ensure that Monitor has available to it written and electronic copies of the following documents:
 - (a) the current version of Licensee's constitution;
 - (b) the Licensee's most recently published annual accounts and any report of the auditor on them, and
 - (c) the Licensee's most recently published annual report,and for that purpose shall provide to Monitor written and electronic copies of any document establishing or amending its constitution within 28 days of being adopted and of the documents referred to in sub-paragraphs (b) and (c) within 28 days of being published.
3. Subject to paragraph 4, the Licensee shall provide to Monitor written and electronic copies of any document that is required by Monitor for the purpose of Section 39 of the 2006 Act within 28 days of the receipt of the original document by the Licensee.
4. The obligation in paragraph 3 shall not apply to:
 - (a) any document provided pursuant to paragraph 2;
 - (b) any document originating from Monitor; or
 - (c) any document required by law to be provided to Monitor by another person.
5. The Licensee shall comply with any direction issued by Monitor concerning the format in which electronic copies of documents are to be made available or provided.
6. When submitting a document to Monitor for the purposes of this Condition, the Licensee shall provide to Monitor a short written statement describing the document and specifying its electronic format and advising Monitor that the document is being sent for

Section 6 – NHS Foundation Trust Conditions

the purpose of updating the register of NHS foundation trusts maintained in accordance with section 39 of the 2006 Act.

Section 6 – NHS Foundation Trust Conditions

Condition FT2 – Payment to Monitor in respect of registration and related costs

1. The obligations in the following paragraph of this Condition apply if the Licensee is an NHS foundation trust, without prejudice to the generality of the other conditions in this Licence.
2. Whenever Monitor determines in accordance with section 50 of the 2006 Act that the Licensee must pay to Monitor a fee in respect of Monitor's exercise of its functions under sections 39 and 39A of that Act the Licensee shall pay that fee to Monitor within 28 days of the fee being notified to the Licensee by Monitor in writing.

Section 6 – NHS Foundation Trust Conditions

Condition FT3 – Provision of information to advisory panel

1. The obligation in the following paragraph of this Condition applies if the Licensee is an NHS foundation trust, without prejudice to the generality of the other conditions in this Licence.
2. The Licensee shall comply with any request for information or advice made of it under Section 39A(5) of the 2006 Act.

Section 6 – NHS Foundation Trust Conditions

Condition FT4 – NHS foundation trust governance arrangements

1. This condition shall apply if the Licensee is an NHS foundation trust, without prejudice to the generality of the other conditions in this Licence.
2. The Licensee shall apply those principles, systems and standards of good corporate governance which reasonably would be regarded as appropriate for a supplier of health care services to the NHS.
3. Without prejudice to the generality of paragraph 2 and to the generality of General Condition 5, the Licensee shall:
 - (a) have regard to such guidance on good corporate governance as may be issued by Monitor from time to time; and
 - (b) comply with the following paragraphs of this Condition.
4. The Licensee shall establish and implement:
 - (a) effective board and committee structures;
 - (b) clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees; and
 - (c) clear reporting lines and accountabilities throughout its organisation.
5. The Licensee shall establish and effectively implement systems and/or processes:
 - (a) to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
 - (b) for timely and effective scrutiny and oversight by the Board of the Licensee's operations;
 - (c) to ensure compliance with health care standards binding on the Licensee including but not restricted to standards specified by the Secretary of State, the Care Quality Commission, the NHS Commissioning Board and statutory regulators of health care professions;

Section 6 – NHS Foundation Trust Conditions

- (d) for effective financial decision-making, management and control (including but not restricted to appropriate systems and/or processes to ensure the Licensee's ability to continue as a going concern);
 - (e) to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making;
 - (f) to identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of its Licence;
 - (g) to generate and monitor delivery of business plans (including any changes to such plans) and to receive internal and where appropriate external assurance on such plans and their delivery; and
 - (h) to ensure compliance with all applicable legal requirements.
6. The systems and/or processes referred to in paragraph 5 should include but not be restricted to systems and/or processes to ensure:
- (a) that there is sufficient capability at Board level to provide effective organisational leadership on the quality of care provided;
 - (b) that the Board's planning and decision-making processes take timely and appropriate account of quality of care considerations;
 - (c) the collection of accurate, comprehensive, timely and up to date information on quality of care;
 - (d) that the Board receives and takes into account accurate, comprehensive, timely and up to date information on quality of care;
 - (e) that the Licensee including its Board actively engages on quality of care with patients, staff and other relevant stakeholders and takes into account as appropriate views and information from these sources; and
 - (f) that there is clear accountability for quality of care throughout the Licensee's organisation including but not restricted to systems and/or processes for escalating and resolving quality issues including escalating them to the Board where appropriate.

Section 6 – NHS Foundation Trust Conditions

7. The Licensee shall ensure the existence and effective operation of systems to ensure that it has in place personnel on the Board, reporting to the Board and within the rest of the Licensee's organisation who are sufficient in number and appropriately qualified to ensure compliance with the Conditions of this Licence.
8. The Licensee shall submit to Monitor within three months of the end of each financial year:
 - (a) a corporate governance statement by and on behalf of its Board confirming compliance with this Condition as at the date of the statement and anticipated compliance with this Condition for the next financial year, specifying any risks to compliance with this Condition in the next financial year and any actions it proposes to take to manage such risks; and
 - (b) if required in writing by Monitor, a statement from its auditors either:
 - (i) confirming that, in their view, after making reasonable enquiries, the Licensee has taken all the actions set out in its corporate governance statement applicable to the past financial year, or
 - (ii) setting out the areas where, in their view, after making reasonable enquiries, the Licensee has failed to take the actions set out in its corporate governance statement applicable to the past financial year.

Section 7 – Interpretation and Definitions

Condition D1 – Interpretation and Definitions

1. In this Licence, except where the context requires otherwise, words or expressions set out in the left hand column of the following table have the meaning set out next to them in the right hand column of the table.

“the 2006 Act”	the National Health Service Act 2006 c.41;
“the 2008 Act”	the Health and Social Care Act 2008 c.14;
“the 2009 Act”	the Health Act 2009 c.21;
“the 2012 Act”	the Health and Social Care Act 2012 c.7;
“the Care Quality Commission”	the Care Quality Commission established under section 1 of the 2008 Act;
“clinical commissioning group”	a body corporate established pursuant to section 1F and Chapter A of Part 2 of the 2006 Act;
“Commissioner Requested Service”	a service of the sort described in paragraph 2 or 3 of condition G9 which has not ceased to be such a service in accordance with paragraph 9 of that condition;
“Commissioners”	includes the NHS Commissioning Board and any clinical commissioning group;
“Director”	includes any person who, in any organisation, performs the functions of, or functions equivalent or similar to those of, a director of: (i) an NHS foundation trust, or (ii) a company constituted under the Companies Act 2006;
“Governor”	includes any person who, in any organisation, performs the functions of, or functions equivalent or

	similar to those of, a Governor of an NHS foundation trust as specified by statute;
“the NHS Acts”	the 2006 Act, the 2008 Act, the 2009 Act and the 2012 Act;
“NHS Commissioning Board”	the body corporate established under section 1E of, and Schedule A1 to, the 2006 Act;
“NHS foundation trust”	a public benefit corporation established pursuant to section 30 of, and Schedule 7 to, the 2006 Act.

2. Any reference in this Licence to a statutory body shall be taken, unless the contrary is indicated, to be a reference also to any successor to that body.
3. Unless the context requires otherwise, words or expressions which are defined in the 2012 Act shall have the same meaning for the purpose of this Licence as they have for the purpose of that Act.
4. Any reference in the Licence to any provision of a statute, statutory instrument or other regulation is a reference, unless the context requires otherwise, to that provision as currently amended.

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