

Draft **Risk Assessment Framework: consultation document**

Issued on 10 January 2013

Deadline for responses: 4 April 2013

This document is our consultation on the draft Risk Assessment Framework. The framework sets out Monitor's approach to assessing the risk of NHS providers failing financially. It also describes how we will continue to oversee the governance of foundation trusts.

Foreword

The way the health care sector is regulated is changing. In future, we anticipate that foundation trusts and most other providers of NHS services will be licensed by Monitor. Monitor has a new main duty to protect and promote the interests of people who use health care services, and we will use the conditions of the licence to carry this out. These will, amongst others, enable us to collect the information we need to carry out our duties, such as setting the prices for NHS services, reducing the risk that providers of these services might fail financially and be unable to deliver essential services to patients, and ensuring that NHS foundation trusts are well run.



Monitor's new powers now cover a wider range of providers of NHS services, and consequently the *Compliance Framework* is being replaced with a new regulatory tool, the *Risk Assessment Framework*. The principles behind the *Risk Assessment Framework* are the same as those Monitor has used so far to regulate NHS foundation trusts, so do not represent any significant change to our current approach.

This new framework will enable Monitor to protect the continuity of key NHS services provided by both NHS foundation trusts as well as commercial or third-sector providers. In developing our proposals, we have simplified our approach to focus on risk of financial failure, rather than overall financial position of organisations. We have also made this risk assessment more explicitly forward-looking.

NHS foundation trusts are autonomous bodies, making their own decisions and responsible to their local communities. Given their unique status and governance structure, as well as Parliament's desire to ensure sufficient scrutiny whilst governor capability develops, the framework will also enable Monitor to continue to judge whether foundation trusts are well-run. We intend for all NHS foundation trusts to have a governance licence condition. We propose using a wider range of information, such as staff and patient satisfaction surveys, to reinforce their Boards' responsibilities across the areas of governance. This notwithstanding, we wish to ensure the overall regulatory burden remains broadly constant. Consequently, we are consulting on reducing the number of national standards used to assess governance as well as replacing the current board statements with a single corporate governance statement.

The *Risk Assessment Framework* is intended to act as a trigger for considering formal investigation into financial and governance matters; Monitor will, as now, take a proportionate view of any issues of compliance and the need for formal investigation and enforcement action.

We are keen to hear from a wide range of people during the consultation and urge everyone who is interested to respond. We will be holding events and webinars to provide opportunities for stakeholders to engage on this consultation.

Thank you, in advance, for taking time to read and respond to this consultation. Your feedback is very welcome and we look forward to hearing from you.

A handwritten signature in blue ink, reading "Adrian Masters". The signature is fluid and cursive, with the first name "Adrian" and the last name "Masters" clearly distinguishable.

Adrian Masters
Managing Director of Sector Development

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1 Executive summary

1.1 Monitor's new role

The [Health and Social Care Act 2012](#) (the Act) makes changes to the way health care is regulated and gives Monitor, as the sector regulator for health care in England, a number of new responsibilities. Monitor has a new main duty to protect and promote the interests of people who use healthcare services.

These changes include the introduction of a licence; all providers of NHS services (with exemptions defined by the Secretary of State for Health) will need to be licensed by Monitor. We will require licence holders to comply with the conditions of their licence, we will monitor their compliance with those conditions over time and we may take action where they do not comply. We will license NHS foundation trusts from 1 April 2013 and other eligible NHS service providers from April 2014.

Further information on our new role, and other current consultations (for example on how we will enforce the licence) can be found on our website: www.monitor-nhsft.gov.uk.

1.2 About the *Risk Assessment Framework*

This document is our consultation on our proposed *Risk Assessment Framework*. The *Risk Assessment Framework* builds extensively on the existing *Compliance Framework* that we have so far used to monitor NHS foundation trusts' compliance with their terms of authorisation (see Appendix A for details of differences between the two). These terms of authorisation have been replaced by the provider licence.

Our approach is to use as simple a framework as possible and to focus Monitor's resources on the providers of greatest concern. Where the framework identifies providers as being at potential risk, Monitor then applies judgement in deciding whether further investigation is warranted.

The *Risk Assessment Framework*, which can be found in Appendix C, describes our proposed approach to assessing risk in two areas of the licence:

- I. the **continuity of services licence condition 3**, which requires **all NHS providers** to ensure they remain a going concern; and
- II. the **NHS foundation trust licence condition 4**, which lays out our definition of good governance and **only applies to NHS foundation trusts**.

This consultation document and its appendices describe the:

- annual and in-year monitoring processes for NHS foundation trusts and other providers of Commissioner Requested Services;
- composition of a rating to assess the risk to the continued delivery of NHS services (the continuity of services risk rating);

- composition of a rating to assess governance at NHS foundation trusts;
- frequency and scope of reviews of governance at NHS foundation trusts; and
- how Monitor will use the above to assess issues of compliance with the relevant aspects of the licence.

This document also summarises how Monitor intends to investigate problems that come to light through applying the *Risk Assessment Framework*. It also outlines Monitor's other statutory powers. Monitor's consultation on our [Enforcement Guidance](#) describes in full the principles that will guide our decisions on taking regulatory action and what action we may take (see Diagram 1).

When will the Risk Assessment Framework come into force?

Pending responses to this consultation, for NHS foundation trusts we intend to run elements of the new framework in 'shadow' form for the first six months of 2013/14 in parallel with a version of the *Compliance Framework 2012/13*, adapted to reflect the requirement of foundation trusts to comply with the licence rather than the terms of their Authorisation. For other eligible NHS providers, the *Risk Assessment Framework* will apply from April 2014.

1.3 The continuity of services licence condition 3

The Act gives Monitor powers to ensure the continued delivery of NHS services (continuity of services). These powers include the inclusion of conditions within the licence regarding the continuity of services, and the power to place providers of NHS services into special administration where they are unable to pay their debts. The aim of such special administration is to ensure the continued delivery of essential services (see our consultation on [guidance on defining essential services](#)).

The Act also requires Monitor to establish a mechanism to assess risk to the continued delivery of NHS services. Rather than assess the risk to *all* NHS services, **Monitor proposes to assess the risk only to those services deemed essential by commissioners**, known as Commissioner Requested Services, or CRS. Therefore the ***Risk Assessment Framework* only applies to providers of Commissioner Requested Services.**

This consultation seeks input on Monitor's proposed approach to evaluating the financial risk at providers of Commissioner Requested Services, principally by monitoring their compliance with the continuity of services licence condition 3 (our consultation referred to below includes the contents of the proposed continuity of services licence conditions).

Monitor's [consultation on the licence](#), published in July 2012, sets out our thinking at that time on how we would assess financial risk at providers of NHS services. Taking responses to that consultation into account, we have revised our approach. Our original proposals envisaged seven financial metrics and ten levels of financial risk, including several levels of 'normal' behaviour. We are now proposing an approach

that focuses on leading indicators of risk to financial viability, to assess the risk of actual failure.

The two ratios for assessing risk to the continuity of services that we propose – liquidity and Capital Servicing Capacity – measure the ability of providers to meet their operational and financing cash demands, and hence to continue as a going concern. They should be commonly available to the boards and senior management teams of providers of Commissioner Requested Services.

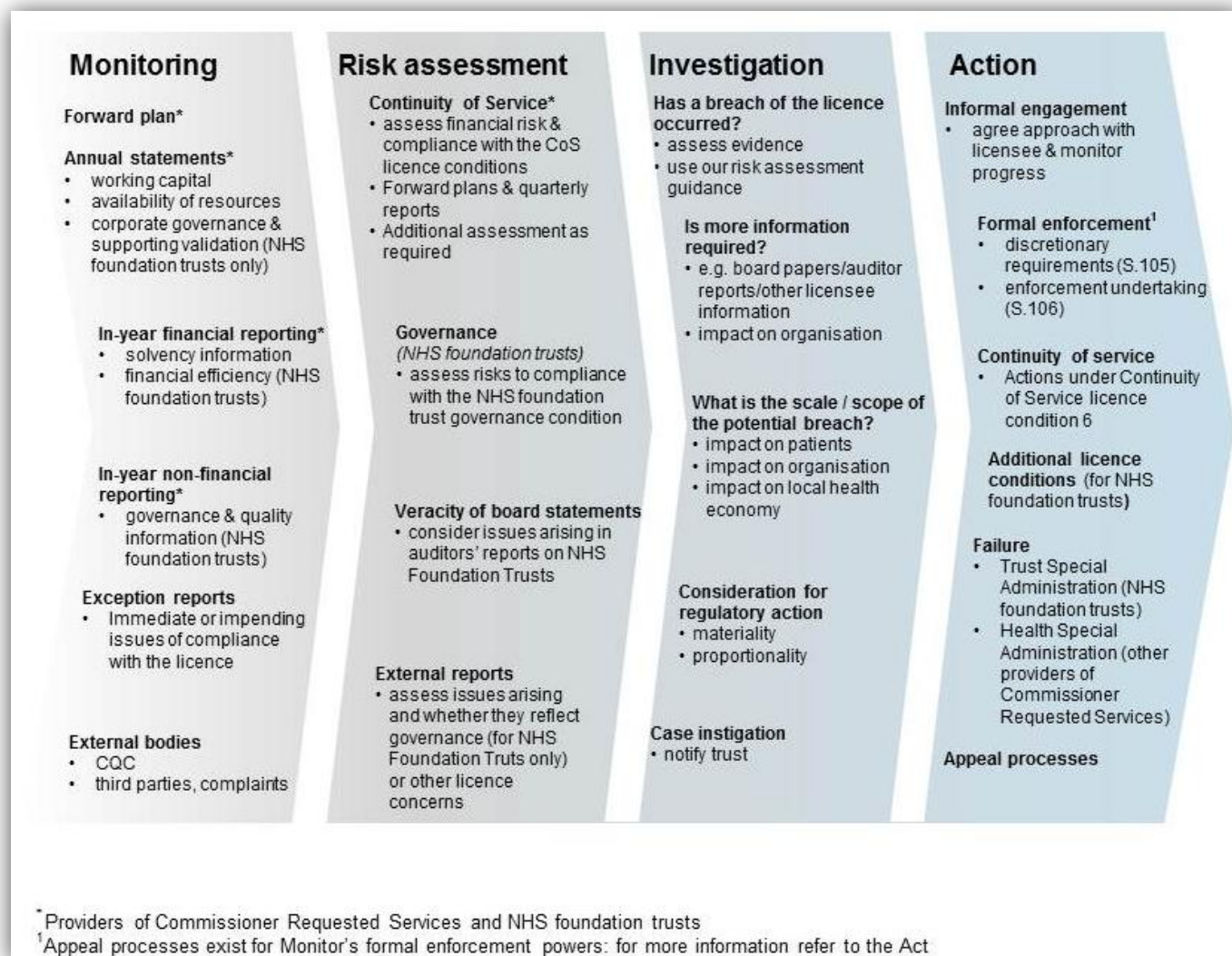
1.4 The NHS foundation trust governance condition

[Equity and Excellence: liberating the NHS](#), the NHS white paper published in July 2010, envisaged that Monitor's role in overseeing the governance of NHS foundation trusts would be confined to a limited number of foundation trusts and for a limited time. During the passage of the Act, Ministers clarified their intention that Monitor's oversight of foundation trust governance would cover all foundation trusts and be continued in perpetuity. The licence would become the vehicle for doing so. Therefore, Monitor's role in relation to foundation trust governance continues. Nonetheless, given that both Monitor's wider remit and the vehicle for overseeing governance have changed, we are proposing changes in how governance is assessed.

The consultation on the licence contained our proposals for the content of the foundation trust governance licence conditions; this consultation document sets out how we plan to assess governance at NHS foundation trusts under the *Risk Assessment Framework* by monitoring their compliance with NHS foundation trust condition 4, the governance condition.

The foundation trust governance condition only applies to NHS foundation trusts. We do recognise that applying conditions to some licence holders, but not all, creates an unequal regulatory burden. Whilst it is the clearly expressed will of Parliament that we take such an approach, we are carrying out separate work on the factors that inhibit the providers of the best services from providing such services through the NHS (the [Fair Playing Field review](#)).

Diagram 1: Monitor's approach to provider regulation



2: How to respond to this consultation

We welcome all responses to this consultation. We have asked a number of questions in each section of the main consultation document and a complete list of all questions can be found below. We very much welcome any comments that you wish to make on our proposals. We should be grateful if you would consider responding to our specific questions as well as providing any further comments you may have.

Please submit your responses to the questions and any further comments by **5pm on Thursday 4 April 2013**. There are a number of ways to send us your comments.

Online

You can find a response form on our website at www.monitor-nhsft.gov.uk/consult. This is our preferred way of receiving your comments. However you are also welcome to send your response by email or post.

By email

You can email your response to raf@monitor-nhsft.gov.uk

By post

Send your response to: *Risk Assessment Framework* Consultation, Monitor, 4 Matthew Parker Street, London, SW1H 9NP.

Confidentiality

If you would like your name, or the name of your organisation to be kept confidential and excluded from the published summary of responses or other published documents, you can request this on the response form. If you send your response by email or post, please do not forget to tell us if you wish your name, or the name of your organisation, to be withheld from any published documents.

If you would like any part of your response - instead of or as well as your identity - to be kept confidential, please let us know and make it obvious by marking in your response which parts we should keep confidential. An automatic computer-generated confidentiality statement will not count for this purpose. As we are a public body subject, for example, to Freedom of Information legislation, we cannot guarantee that we will not be obliged to release your response or name even if you say it is confidential.

What we will do next

We hope and expect that we will receive a lot of responses to this consultation, so we do not intend to write back to everyone who contacts us. However we will read and consider all responses received and, when we publish the final *Risk Assessment*

Framework later in 2013, explain how your comments and views have influenced our approach.

You can sign up [here](#) to receive emails when we publish other engagement and consultation publications on our website.

2.1 List of consultation questions

We have developed some specific questions in areas where we are still considering options. Please see below.

Chapter 3 Question 1: Do you agree with:

- a) The proposed approach to defining and quantifying financial risk at NHS foundation trusts and other providers of Commissioner Requested Services?
- b) The financial metrics chosen?
- c) The proposed weighting and thresholds underpinning the rating?
- d) The monitoring frequency for each level of risk?
- e) The regulatory implications of each level of risk?
- f) The use of forward plans to assess risk?
- g) The ability to request re-forecasts in-year should a material financial event take place and to take action if necessary to preserve Commissioner Requested Services?

Chapter 3 Question 2: Are there any other aspects of assessing financial risk that you consider Monitor could incorporate in order to fulfil our statutory roles?

Chapter 3 Question 3: How applicable is this approach to other, non-foundation trust providers of Commissioner Requested Services, regardless of their provider type (i.e. private or charitable organisations)? What might need to change for providers which aren't NHS foundation trusts?

Chapter 4 Question 4: Do you agree with the proposed approach to using the Corporate Governance Statement to test governance?

Chapter 4 Question 5: Do you consider Monitor should use (i) a colour-based system to indicate degree of governance concern at an NHS foundation trust or (ii) a descriptive summary of the actions Monitor is taking with regard to governance at the trust?

Chapter 4 Question 6: Do you agree with the proposed use of Care Quality Commission judgments as triggers of governance concerns?

Chapter 4 Question 7: Do you agree with the proposed use of national access and outcomes metrics as indicators of potential governance issues?

7a: If so, do you agree with the proposed approach to using relative performance against other NHS foundation trusts where absolute thresholds are unavailable?

Chapter 4 Question 8: Do you agree with the proposed use of third party information?

Chapter 4 Question 9: Do you agree with the proposed quality governance indicators?

9a: If so, do you agree with the proposed use of relative changes or trends in specific metrics as triggers of governance concern?

Chapter 4 Question 10: Do you agree with the proposed approach to downgrading the governance rating – and ultimately finding a foundation trust in breach – as a result of either unresolved concerns for significant periods or concerns across multiple categories?

Chapter 4 Question 11: Do you agree with the proposed approach to using NHS foundation trusts' forward plans to assess their governance?

Chapter 4 Question 12: Do you agree with the proposed approach to using three-yearly reviews, carried out by third parties to a Monitor specification, to assess NHS foundation trusts' governance?

Chapter 4 Question 13: What are your thoughts on frequency, areas of coverage and depth?

3: Assessing risk to the continuity of services

The Act requires Monitor to assess risk to the continued delivery of NHS services and gives Monitor powers to ensure that essential NHS services continue to be provided where a provider becomes financially unviable. Monitor's focus will be on protecting essential NHS services, not necessarily the institutions providing them. This includes, ultimately, putting a provider of NHS services into special administration where it is unable, or is likely to become unable, to pay its debts. The continuity of services licence condition 3, and this consultation, refers to this as a provider not being a 'going concern'.

Rather than assess risk to *all* NHS services, Monitor has proposed that commissioners of NHS services designate those services they intend to be protected (i.e. will continue to be delivered from the same site) should a provider no longer be a going concern. These are known as Commissioner Requested Services and are likely to be a subset of the services commissioned from a particular provider¹.

The financial element of the *Risk Assessment Framework* will assess the risk to the continued delivery of such Commissioner Requested Services. Monitor may, where we judge the risk is sufficiently great and the appropriate processes have been carried out:

- use our powers under the continuity of service licence condition to investigate further;
- put in place a contingency planning team to provisionally identify the services that will be protected in the event of any failure and to begin planning for how these will be delivered; or
- depending on the outcome of investigation, undertake enforcement action (see separate consultation [here](#)).

Monitor's financial monitoring will therefore focus on the risk of providers of Commissioner Requested Services no longer being a going concern rather than solely on the financial health of NHS foundation trusts. Those licence holders that do not provide Commissioner Requested Services will not be subject to the financial elements of the *Risk Assessment Framework*.

3.1 The continuity of services risk rating

Monitor proposes to use a risk rating to identify the risk of providers of Commissioner Requested Services not being a going concern. We propose that this rating comprise two financial metrics:

¹ For NHS foundation trusts, however, these services will, on commencement of licensing, generally be the same as the mandatory services currently defined in Schedule 2 of their terms of authorisation. Monitor recently [consulted on guidance](#) concerning the process to revise Commissioner Requested Services.

- I. **Liquidity:** this ratio indicates whether the provider can meet its **operational cash obligations i.e.** is its liquidity (expressed in days of liquid assets) a concern?; and
- II. **Capital servicing capacity:** this ratio indicates whether the provider can meet its **financing obligations, i.e.** is its ability to service debts or other financing obligations (including PDC dividends, interest and debt repayment and Private Finance Initiative capital and interest payments) a concern?

Liquidity

Monitor currently uses liquidity as a ratio in the *Compliance Framework's* Financial Risk Rating. We propose to continue using this in the *Risk Assessment Framework*, but with one material change. Monitor's current definition of liquidity allows NHS foundation trusts to include working capital facilities in the numerator of the liquidity ratio.

In Monitor's experience, default clauses in working capital facilities often mean these facilities become unavailable to trusts in financial difficulty. To provide a more accurate assessment of the risk of not being a going concern, we propose to include only unconditionally committed lines of credit in the numerator of the liquidity ratio. We anticipate that this will exclude most existing working capital facilities which will have some form of default clause; hence we are also proposing to rebase our thresholds on liquidity, which are now lower than in the outgoing *Compliance Framework*.

Capital Servicing Capacity

The conditions concerning affordability of debt in Monitor's [*Prudential Borrowing Code*](#) are designed to enable NHS foundation trusts to operate with an appropriate degree of financial independence without compromising their provision of NHS services. Monitor proposes incorporating Capital Servicing Capacity, which forms part of the *Prudential Borrowing Code*, in our continuity of services risk rating for all providers of Commissioner Requested Services. Full definitions of both the ratios above can be found in Appendix B.

We propose four levels of risk to the continuity of services:

Continuity of services risk rating	Description
4	There is sufficient financial headroom and liquidity Monitor continues to monitor performance on a quarterly basis
3	Emerging or residual financial concern Monthly monitoring
2	Financial performance is such that the provider of Commissioner Requested Services may be subject to investigation to see if it is in breach of its continuity of services licence condition. If Monitor considers the provider is displaying financial 'concern', Monitor may start taking an active role in ensuring the continuity of services using provisions in the licence condition, e.g. requesting the cooperation of the provider in order to assess risk to services; monitoring on a monthly basis; and possibly using enforcement powers if necessary.
1	As level 2 above In extreme cases Monitor may consider the level of risk represents financial distress and initiate contingency planning to ensure continuity of services and access in the event of special administration.

Diagram 2 sets out how we propose to use these metrics to generate a continuity of services risk rating.

Diagram 2: the continuity of services risk rating

Metric	Weight	Definition	Rating categories			
			1	2	3	4
Liquidity ratio (days)	50%	$\frac{\text{Working capital balance}^1 \times 360}{\text{Annual operating expenses}^2}$	<-12	-12	-7	-2
Capital servicing capacity (times)	50%	$\frac{\text{Revenue available for capital service}^3}{\text{Annual debt service}^4}$	<1.25x	1.25x	1.75x	2.5x

Continuity of Service Risk Rating

¹ Defined as (Current Assets less inventories) - (current liabilities) + wholly committed lines of credit available

² Operating Expenditure excluding depreciation & amortisation

³ Surplus (deficit) for the financial year (pre-dividend) + depreciation + annual interest + restructuring costs + other exceptionals

⁴ All interest, principal payable on borrowings & finance leases + annual PDC dividend payable for NHS foundation trusts; includes PFI contingent rent

We are mindful that the thresholds above are based on the experience of NHS foundation trusts and may need to be revised for the differing financial profiles of other providers of Commissioner Requested Services.

We propose to calculate the risk rating on three occasions (see diagram below):

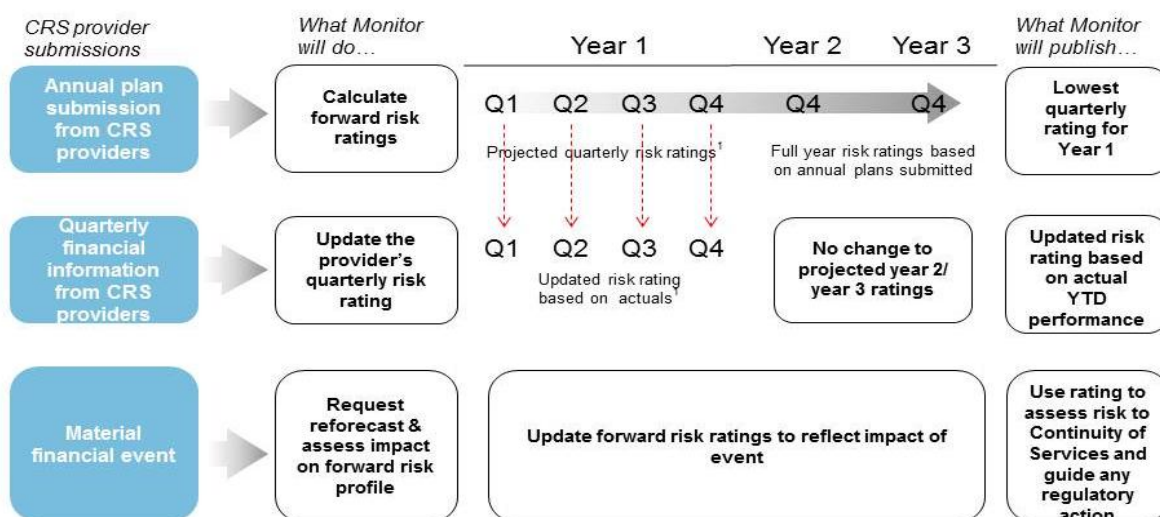
1. **annually**, when we receive forward financial information from licensees;
2. **in-year**, when we receive year-to-date financial information²; and
3. **by exception**, should a provider of Commissioner Requested Services inform us of a material financial event.

Depending on the scale and likelihood of the risk identified on any of these three occasions, we may:

- request further information;
- require the provider of Commissioner Requested Services to cooperate with us or other third parties that we select in order to assess the scale of financial risk;
- if the provider of Commissioner Requested Services is an NHS foundation trust, consider whether the risk to the continuity of services results from a governance issue and take action using our powers in that regard (under section 111 of the Act); or
- investigate formally to establish whether we should take enforcement action.

For more information on the enforcement process, see Monitor's [Enforcement Guidance](#).

Diagram 3: The Continuity of Services risk monitoring process



¹ calculated on year to date (ytd) information

² In some cases monthly or even more frequently, depending on a provider's continuity of services risk rating

3.2 Forward plan review

We propose that all providers of Commissioner Requested Services submit, annually, three-year financial projections to allow Monitor to assess forward risk to their financial stability. To minimise disruption to existing processes at NHS foundation trusts, the scope and scale of these submissions in 2013/14 will be comparable to those of current Forward Plan Review (FPR) submissions. We may revise the submissions in future to incorporate projections from providers of Commissioner Requested Services that are not NHS foundation trusts.

What Monitor will do with the information

As today, Monitor proposes to test the robustness of the financial plans in a two-stage process. Where a Commissioner Requested Services provider's plan identifies potential risk to the continuity of services it provides, it may be subject to a more intensive second stage review focusing on areas of greatest concern. This may involve consideration of further financial information and ratios, over and above the two ratios in the continuity of services risk rating, in arriving at an evaluation of financial risk.

Monitor will publish the lowest quarterly risk rating in the first year of the provider's forward plan as its risk rating, i.e., if a provider submits a plan with a risk rating of 4 in quarter 1, 3 in quarters 2 and 3 and 4 in quarter 4, Monitor will publish a risk rating of 3.

Where an forward plan submission gives rise to a risk rating of 1 or 2 at any stage over the plan period, either based on the original submission or Monitor's review, Monitor may consider whether to trigger further investigation or ultimately whether to take any action in relation to compliance with the licence.

3.3 Quarterly submissions

Monitor will use financial submissions from providers of Commissioner Requested Services each quarter to calculate the year-to-date continuity of services risk rating.

What Monitor will do with the information

Where the re-calculated rating reflects a higher risk than that derived from the forward plan submissions above, Monitor will revise the published rating.

Where the actual rating for the past quarter is a 1 or 2, it will serve to trigger consideration as to whether Monitor should investigate a potential breach of the licence.

3.4 Exception reports and financial overrides

We know from experience that material in-year changes in providers' financial circumstances can have significant implications on their ability to remain a going concern. For example:

- CQC warning notices can require providers to spend significantly more to meet safety/quality requirements;
- material transactions can have far-reaching consequences for revenues and costs;
- losing a major contract can leave an organisation with significant 'stranded' assets and costs, at least for a period;
- refinancing may affect a provider's ability to service its financing costs; and
- exceptional or one-off income may conceal a licensee's true financial position.

In addition, providers may experience multiple smaller factors that may result, cumulatively, in a provider being materially off plan.

Under Monitor's *Compliance Framework*, if NHS foundation trusts are currently planning significant³ transactions in year, Monitor calculates a separate risk rating for the trust taking these transactions into account. We do not publish these risk ratings but use them to communicate to the trust's board the likely impact of the transaction on the provider's risk profile. We propose to extend this approach by:

- (i) recalculating (and publishing) the provider of Commissioner Requested Services prospective risk-rating following material in-year events affecting the forward financial profile of the provider, by means of either a re-forecast for the current financial year or a resubmission of its 3-year plan (a 're-plan'); and
- (ii) where this revised risk rating indicates a concern, considering whether to investigate further to evaluate if there is a breach of a licence condition.

Generally, it is not reasonable or proportionate to require such a re-plan for every CQC warning notice, every transaction, change in contract or refinancing. Some warning notices may require little financial investment to fix, others will require considerable sums. For transactions, Monitor proposes to maintain the existing threshold of 25% of revenue, assets and/or capital. For material deterioration in financial performance, we propose a re-plan where there is a difference of 20% or greater between the forecast performance and the expected performance in either of the two risk rating metrics. For others, including CQC warning notices and

³ At least 25% of revenue, assets or capital

refinancing, we propose that a re-plan be required on a case-by-case basis where it appears there will be a material change in the financial projections of the provider⁴.

What Monitor will do with the information

Where the re-plan following the event indicates a risk rating of 1 or 2 at any stage over the period covered, and therefore a material risk to the continuity of services, Monitor may consider taking action under the continuity of services licence condition, e.g. requiring closer cooperation with Monitor to minimise the financial risk identified. Monitor may also use its powers to request further information to understand the degree of risk and also, if the provider of Commissioner Requested Services is an NHS foundation trust, to consider whether the prospective risk to continuity of services is the result of a governance issue (for example, a poor plan or inadequate response to external financial pressure) and take action (in line with section 111 of the Act).

Consultation questions

Q1: Do you agree with:

- a) The proposed approach to defining and quantifying financial risk at NHS foundation trusts and other providers of Commissioner Requested Services?
- b) The financial metrics chosen?
- c) The proposed weighting and thresholds underpinning the rating?
- d) The monitoring frequency for each level of risk?
- e) The regulatory implications of each level of risk?
- f) The use of forward plans to assess risk?
- g) The ability to request re-forecasts in-year should a material financial event take place and to take action if necessary to preserve Commissioner Requested Services?

Q2: Are there any other aspects of assessing financial risk that you consider Monitor could incorporate in order to fulfil our statutory roles?

Q3: How applicable is this approach to other, non-foundation trust providers of Commissioner Requested Services, regardless of their provider type (i.e. private or charitable organisations)? What might need to change for providers which are not NHS foundation trusts?

⁴ Monitor does not envisage any material changes in 2013-14 from current requirements regarding transactions for NHS foundation trusts. Monitor will update this guidance to reflect the requirements of our Continuity of Services regime, the licence and NHS foundation trusts' governance requirements.

4 Assessing the governance of NHS foundation trusts

4.1 Introduction

We have drafted and [consulted on a licence condition](#), NHS foundation trust licence condition 4 that **applies exclusively to NHS foundation trusts**. The condition codifies Monitor's experience since 2004 in assessing breaches, significant or otherwise, of the governance requirement in foundation trusts' terms of authorisation. It is not intended, therefore, to extend the scope of governance requirements at NHS foundation trusts, nor alter the threshold at which Monitor would consider a breach of the licence or authorisation to have taken place, but instead to clarify expectations on foundation trusts within the framework of the licence.

Accordingly, Monitor's *Risk Assessment Framework* also sets out how Monitor will continue to assess governance at NHS foundation trusts. This reflects their unique status and governance structure as well as Parliament's desire to ensure they have sufficient oversight and support as they develop their capabilities in independent governance.

For a transitional period⁵, where a foundation trust's governance is such that it is breaching, or not taking sufficient steps to avoid breaching, its licence, the Act has given Monitor additional powers to respond including the ability:

- to add a governance-related condition(s) to the trust's licence; and
- to remove directors or governors and appoint interim directors or governors in their place, should the trust subsequently breach the requirements of this additional licence condition.

This transitional power only applies to a breach, or likely breach, of any licence condition by an NHS foundation trust as a result of governance, not simply the governance condition.

4.2 Proposed approach to assessing governance

Monitor proposes to assess governance at NHS foundation trusts drawing on four main sources of information:

1. the **Corporate Governance Statement**;
2. a **governance rating**, derived from our assessment of various proxies of governance and reflecting our view of an NHS foundation trust's overall governance;
3. NHS foundation trusts' **forward plans**, which may trigger governance concerns; and
4. periodic external **governance reviews**.

⁵ until at least April 2016 for NHS foundation trusts

We will consider each source to decide whether an NHS foundation trust has breached or is likely to breach the governance condition, and may seek more information before coming to a conclusion. We set out in 4.3 our proposed approach to each element of forming our view of a foundation trust's governance.

4.3 Assessing NHS foundation trust governance: the Corporate Governance Statement

Foundation trust governance licence condition 4 incorporates a Corporate Governance Statement which NHS foundation trusts will submit to Monitor within three months of the end of each financial year. With the statement, boards will confirm:

- (i) compliance with the governance condition at the date of the statement; and
- (ii) anticipated compliance with the governance condition for the next financial year, specifying any risks to compliance and any actions proposed to manage such risks.

The Corporate Governance Statement is intended to replace the annual board statements on specific areas of governance (of which there are currently 16 in the current *Compliance Framework*) with a single over-arching statement that combines a statement on the trust's compliance and any risks to compliance with external validation.

Proposed approach

Where the statement indicates a governance concern arising from, for example,

- unforeseen issues;
- a failure to take actions set out in the previous Corporate Governance Statement; or
- a foundation trust's subsequent performance calling into question the validity of the Corporate Governance Statement,

we will use this information as grounds to test the basis of the trust's previous Corporate Governance Statement and to find out whether there are material governance issues.

Consultation question

Q4: Do you agree with the proposed approach to using the Corporate Governance Statement to test governance?

4.4 The Governance rating

Monitor, in the existing *Compliance Framework*, uses a broad set of metrics to generate a governance risk rating for each NHS foundation trust. A high risk rating

can trigger greater oversight from Monitor and, if necessary, consideration for significant breach and potential regulatory action.

We propose to continue with this approach but to rearrange the factors and indicators we monitor into the following six categories:

- Care Quality Commission judgments on the quality of care provided;
- performance against selected national access standards in the NHS constitution and NHS mandate;
- performance against selected elements of the [NHS Outcomes Framework](#), published by the Department of Health in November 2012;
- relevant information from third parties;
- staff and patient information pertinent to the quality of care provided by the NHS foundation trust; and
- risk to the continuity of services.

In assessing governance, Monitor will seek to use information on the above that:

- (i) is clearly attributable to individual organisations;
- (ii) is timely, so it triggers prompt action where necessary;
- (iii) is robust, meaning it is based on consistent definitions, data or evidence; and
- (iv) can be measured against a clear threshold of compliance.

In some cases, where there are no nationally agreed thresholds of performance but the metric is an important governance indicator, we propose using persistent underperformance relative to NHS foundation trust peers⁶ or a material negative trend, to trigger governance concerns and an appropriate response from Monitor. Our proposed approach to incorporating each element of the governance rating is set out below:

i. Care Quality Commission judgments on the quality of care provided

The NHS provider licence requires NHS foundation trusts to have systems in place to manage the provision of the quality of care to patients. Where the CQC has material concerns, e.g., a warning notice, regarding the quality of care provided by an NHS foundation trust, Monitor will assess whether this represents a breach of the licence and, if so, what action to take.

ii. Performance against national access standards and outcomes

We propose to continue assessing performance against national metrics as proxies of governance. A full list of these can be found in Appendix A of the attached draft *Risk Assessment Framework*.

⁶ In the bottom decile of NHS foundation trusts, provided consistent national data is available

National access standards

The NHS foundation trust licence condition 4 requires NHS foundation trusts to have systems in place to meet national health care standards set by the Secretary of State and the CQC, among others. Material or ongoing underperformance against access and waiting time standards may indicate a governance issue and so we propose to continue incorporating them into our assessment of governance – see below. Where there are no nationally agreed thresholds for an access indicator, we propose that being in the lower decile of NHS foundation trust performance for this indicator as signalling a breach of the relevant national standard.

National outcomes

As well as setting national requirements in established areas such as health care acquired infections, the NHS Outcomes Framework also sets less familiar standards regarding, for example the incidence of venous thromboembolism and pressure ulcer sores. Some of the framework's national outcomes, for example cancer survival rates, do not meet our criteria for governance proxies as well as the proxies noted above. However, we have identified a number of additional metrics from the NHS Outcomes Framework that we could incorporate in our governance assessment. We set out three options for relating national outcomes metrics to our governance assessments below. Where there is no national threshold for a proposed national outcome indicator, we propose that being in the lower decile of NHS foundation trusts for this indicator as representing a breach of the standard.

Option 1 – greater alignment with national policy

Rationale: Monitor has to date reflected national policy in its governance proxies and, as a result, should incorporate changes in health care priorities in our oversight.

This option proposes we should expand the number of metrics we use to assess governance at NHS foundation trusts by incorporating a range of new indicators, predominantly from the NHS Outcomes Framework, alongside existing targets and indicators. Many of these new metrics do not as yet have set thresholds of performance and, in some cases, definitions of the data used to establish them are also under discussion. As a result, where robust data is available but thresholds are not, we propose using relative, rather than absolute, performance as a proxy for 'breach' of the standard in 2013/14. So, for example, if a foundation trust was in the bottom decile of all NHS foundation trusts for three quarters for a particular indicator, this might represent a governance issue.

Option 2 – no change in governance proxies

Rationale: as the majority of new national standards do not yet have robust thresholds, Monitor should stick to its current practice while new metrics, definitions and performance standards 'bed in' across the system.

This option proposes retaining all the current metrics from the *Compliance Framework*, where national definitions remain unchanged.

Option 3 – reduced set of governance proxies

Rationale: as the provider/commissioning interface becomes more important, Monitor should reduce the number of operational performance measures we implicitly manage by selecting them as proxies for measures of governance; the additional measures of governance we propose below (patient and staff information; regular governance reviews, formal CQC concerns) would compensate for any loss of oversight.

Under this option, Monitor would use a reduced number of metrics drawn from the current *Compliance Framework* and the mandate to assess governance. However, we would make sure that we still had metrics to use as governance indicators relevant to each 'class' of foundation trust or applicant (Acute, Mental Health, Ambulance, Community). The metrics we retain would, where possible, include those with a demonstrable track record in signalling governance concerns, for instance, A&E and 18 weeks. Under this approach, Monitor would not use health care acquired infections as proxies of governance. Monitor would rely on CQC concerns to signal governance issues related to service user outcomes at acute providers.

Diagram 4: three options for relating national outcomes metrics to our governance assessments

		Option 1	Option 2	Option 3
Access	Acute	Referral to diagnostic time Referral to treatment within 18 weeks • Admitted patients • Non-admitted patients • Patients on incomplete non-surgery pathways A&E waits (4 hours) Cancer waits • 2 weeks from GP/breast cancer referral • 31 days from diagnosis to first/subsequent treatment • 62 days to first definitive treatment from referral or consultant upgrade	Referral to treatment within 18 weeks • Admitted patients • Non-admitted patients • Patients on incomplete non-surgery pathways A&E waits (4 hours) Cancer waits • 2 weeks from GP/breast cancer referral • 31 days from diagnosis to first/subsequent treatment • 62 days to first definitive treatment from referral or consultant upgrade	Referral to diagnostic time Referral to treatment within 18 weeks • Admitted patients • Non-admitted patients • Patients on incomplete non-surgery pathways A&E waits (4 hours) Cancer waits • 2 weeks from GP/breast cancer referral • 31 days from diagnosis to first/subsequent treatment • 62 days to first definitive treatment from referral or consultant upgrade
	Mental health	CPA follow-up – 7-day & 12-month CRHT gatekeeping	CPA follow-up – 7-day & 12-month CRHT gatekeeping	CPA follow-up – 7-day
	Ambulance	Cat A 8 minutes & 19 minutes response times	Cat A 8 minutes & 19 minutes response times	Cat A 8 minutes & 19 minutes response times
	Learning disability (all FTs)	Meeting the 6 criteria for supporting patients with LD and their families	Meeting the 6 criteria for supporting patients with LD and their families	Meeting the 6 criteria for supporting patients with LD and their families
Outcomes	Acute	30 day emergency readmissions Incidence of MRSA Incidence of C. Difficile Incidence of Venous Thromboembolism Incidence of pressure sores Medication errors causing serious harm Admissions of full-term babies to neonatal care	Incidence of MRSA Incidence of C. Difficile	None – Monitor will rely on CQC and other inputs to identify any governance issues
	Mental health	Enhanced psychosis outreach Data completeness – identifiers & outcomes Delayed Transfers of Care IAPT recovery rates >=50%	Enhanced psychosis outreach Data completeness – identifiers & outcomes Delayed Transfers of Care	IAPT recovery rates >= 50%
	Community	Community information dataset completeness	Community information dataset completeness	Community information dataset completeness

Metrics in italics do not, to our knowledge, have a recognised national threshold

iii. Relevant information from third parties

Monitor will also consider information from third parties in judging whether there are governance issues at NHS foundation trusts. These third parties could include patient groups, Healthwatch, NHS commissioners or other regulators such as the CQC and Information Commissioner. Where other regulators have lead authority in the area of concern, any subsequent action taken by Monitor will generally be focused solely on identifying and addressing any governance issues. This is a continuation of current practice.

iv. Information related to quality governance

NHS foundation trusts are required by their licence to ensure that they pay sufficient attention to the governance and oversight of the quality of care they provide.

It is not Monitor's role to assess the quality of care at an NHS foundation trust. Boards are responsible for the governance of quality provided to patients at their organisations. Monitor proposes to reinforce this by using a limited number of indicators to flag any potential governance issues relating to the six categories on p.20 above, including trends in patient satisfaction, staff satisfaction and the workforce. Where these signal potential issues, for example, if any of the trends become materially negative, Monitor may seek further information to assess whether this signals weak governance of quality at the NHS foundation trust and, if so, whether the steps the foundation trust is taking to address the risk are sufficient. Given that many of these measures are only available on an annual basis, we would not consider this information more frequently than annually unless other related information came to light (e.g. Care Quality Commission warning notices).

v. Continuity of services

Where Monitor identifies a material risk to an NHS foundation trust's ability to operate as a going concern, or overall compliance with the continuity of services licence conditions, it will consider whether this also reflects a governance issue. This again reflects current practice.

Where NHS foundation trusts are planning transactions, investments, divestments or changes to capital structure (collectively 'transactions') on a scale that approaches Monitor's thresholds, we may request information on the proposed transaction. Monitor will assess the transaction from the perspective of governance as well as continuity of service. Where Monitor has grounds to believe that the governance of the transactions as proposed is not sufficiently robust, this may trigger further investigations into governance. In exceptional circumstances, where the risk to the NHS foundation trust is unacceptable, we may take action to set conditions or to delay the transaction.

Diagram 5: summary of our proposed triggers of governance concern

Category	Metrics	Governance concern triggered by...
CQC concerns	<ul style="list-style-type: none"> CQC judgments 	<ul style="list-style-type: none"> CQC warning notice issued Civil and/or criminal action initiated
Access metrics	<div>Service performance</div> <ul style="list-style-type: none"> For acute trusts, metrics including: <ul style="list-style-type: none"> Referral to treatment within 18 weeks A&E waits (4 hours) Cancer waits (62 days) For ambulance trusts, Category A response times For mental health trusts, metrics including CPA follow-up and psychosis outreach 	<ul style="list-style-type: none"> 3 consecutive quarters' breaches of a single access metric or 4 or more access metrics breached in a single period
Outcomes metrics	<ul style="list-style-type: none"> For acute trusts, metrics including: <ul style="list-style-type: none"> 30 day emergency readmissions – relative level Incidence of MRSA & C. Difficile – national target For mental health trusts, metrics including IAPT recovery rate and accommodation/employment status (date completeness only) 	<ul style="list-style-type: none"> 3 consecutive periods in bottom decile (for relative metrics) Breaching pre-determined annual threshold (either three quarters' breach of the year-to-date threshold or breaching the full year threshold in any quarter)
3rd party reports	<ul style="list-style-type: none"> Ad hoc reports from GMC, the Ombudsman, Commissioners, Healthwatch England, Auditor reports, Health & Safety Executive etc. 	<ul style="list-style-type: none"> Judgement based on the severity and frequency of reports.
Quality governance indicators	<div>Organisational metrics</div> <ul style="list-style-type: none"> Patient metrics <ul style="list-style-type: none"> Patient satisfaction – relative level and trends Staff metrics <ul style="list-style-type: none"> High executive team turnover – relative level and change Satisfaction – relative level and change Sickness/absence rate – relative level and change Proportion temporary staff – relative level and change Staff turnover - change Aggressive cost reduction plans - >5% in year 	<ul style="list-style-type: none"> Reduction in satisfaction levels by 25% of actual level 3 consecutive periods in bottom decile Increase in sickness or turnover rates by 25% of previous level Material increases in proportion of temporary staff
Financial risk	<ul style="list-style-type: none"> Continuity of Service risk rating 	<ul style="list-style-type: none"> Breaching the Continuity of Service licence condition

Deriving the governance rating

At present, where NHS foundation trusts trigger a red governance risk rating, Monitor then decides whether or not to investigate the matter. If so, we use the formal processes in the *Compliance Framework* to ascertain whether there really is an underlying governance issue, considering, among other things, the scale and scope of the issue, its urgency, the degree to which it is within the trust's control and the steps taken to date to resolve it.

We propose to continue using this approach in finding out whether there is an underlying problem with a foundation trust's governance. Formal investigation is not automatic; we are likely to seek additional information from the NHS foundation trust before deciding whether formal investigation is appropriate or not.

Monitor will derive a governance rating for each NHS foundation trust from any concerns triggered by metrics in the six categories set out in Diagram 5 above. In the *Risk Assessment Framework*, we propose that the factors determining this rating will be:

- (i) the number of the above categories triggering a governance concern;
- (ii) the seriousness of these concerns as a reflection of weakness in governance; and
- (iii) how long they may remain unresolved (which, as now, will depend on the

urgency of the issue, the degree to which it is in the trust's control and other factors).

If, for example, an NHS foundation trust is breaching four access targets, or has failed to meet an individual access target for at least nine months, Monitor will consider whether the NHS foundation trust is in breach of its governance licence condition and should have its governance rating downgraded (see Diagram 6 below).






Where Monitor identifies a concern in any of the governance areas above that suggest the foundation trust is in breach of its licence and the issues are wide-ranging, serious or urgent enough to merit a greater response, Monitor will consider whether formal investigation is necessary.

Presenting governance concerns

Monitor has identified 2 options to represent NHS foundation trusts' compliance with their governance licence condition:

1. By means of a colour-coded scale accompanied by high level descriptions – comparable to the outgoing *Compliance Framework* – indicating the degree to which concerns exist regarding a trust's governance:
 - where a trust is in breach of the foundation trust licence condition and Monitor has taken formal action, Monitor will red-rate the trust. The other ratings (green, amber-green, amber and amber-red) signal how close the trust is to triggering formal action from Monitor in response to its governance (see Diagram 6);
2. By describing, at high level only and without a colour-coded scale, the nature of the actions Monitor is taking to investigate or address a governance issue
 - under this approach Monitor will, rather than using a colour-based rating, indicate whether
 - initial or further investigations are underway into a trust's governance,
 - whether the trust is under consideration for use of Monitor's formal powers, or
 - whether Monitor has actually used its formal powers of intervention to address a governance issue at the organisation.

Diagram 6: The proposed levels of governance concern

Governance Rating	Description	Follow-on actions	Subsequent actions
 Green or “No concern identified”	<ul style="list-style-type: none"> No categories triggering a governance concern 	<ul style="list-style-type: none"> No follow-up action 	<ul style="list-style-type: none"> None
 Amber Green or “Emerging concern requiring further information”	<ul style="list-style-type: none"> One category triggers a governance concern 	<ul style="list-style-type: none"> Request further information Discuss with CQC, Commissioners or other third parties 	<ul style="list-style-type: none"> If governance concerns serious or not resolved in a timely manner, escalate to amber (further investigation) or amber-red (consideration for formal action)
 Amber or “Governance concern requiring formal investigation”	<ul style="list-style-type: none"> Two categories trigger a governance concern; OR Unresolved governance concerns arising from amber-green 	<ul style="list-style-type: none"> Require further information Request recovery plan Discuss with CQC, Commissioners or other third parties 	<ul style="list-style-type: none"> If governance concerns serious or not resolved in a timely manner, escalate to amber-red If a breach of the licence is likely, consider action under section 111 (see Enforcement Guidance)
 Amber Red or “Material governance issue – potential use of formal powers”	<ul style="list-style-type: none"> Three categories trigger a governance concern; OR Trust escalated from amber after unresolved governance concerns; OR CQC warning notice; OR CQC civil/criminal action 	<ul style="list-style-type: none"> Carry out additional investigation (e.g. governance review) Discuss with CQC, Commissioners or other third parties Open a formal case to consider whether trust is in breach of its governance condition 	<ul style="list-style-type: none"> If governance concerns serious and unresolved in a timely manner, escalate to red If a breach of the licence is likely, consider action under section 111 (see Enforcement Guidance)
 Red or “Formal action to address governance issues taken”	<ul style="list-style-type: none"> Unresolved governance concerns as a result of one or more categories triggering governance issues Breach of the governance licence condition with formal action 	<ul style="list-style-type: none"> Use of Monitor’s formal powers 	<ul style="list-style-type: none"> Further use of s.105, s.106 or s.111 powers, if necessary (see Enforcement Guidance)

Consultation questions

Q5: Do you consider Monitor should use (i) a colour-based system to indicate degree of governance concern at an NHS foundation trust or (ii) a high-level descriptive summary of the actions Monitor is taking with regard to governance at the trust?

Q6: Do you agree with the proposed use of Care Quality Commission judgments as triggers of governance concerns?

Q7: Do you agree with the proposed use of national access and outcomes metrics as indicators of potential governance issues?

7a: If so, which option should Monitor use?

7b: If so, do you agree with the proposed approach to using relative performance against other NHS foundation trusts where absolute thresholds are unavailable?

Q8: Do you agree with the proposed use of third party information?

Q9: Do you agree with the proposed quality governance indicators?

9a: If so, do you agree with the proposed use of relative changes or trends in specific metrics as triggers of governance concern?

Q10: Do you agree with the proposed approach to downgrading the governance rating – and ultimately finding a foundation trust in breach – as a result of either unresolved

4.5 Assessing NHS foundation trust governance: forward plans

Introduction

Forward plans present an opportunity for NHS foundation trust boards to demonstrate their strategic and leadership capabilities, including:

- the degree to which they are aware of the needs of the health care environment in which they operate, including those of patient groups and commissioners;
- their understanding of the demographic, economic and competitive forces they face; and
- their ability to prepare a credible and rigorous plan to address these.

Proposed approach

Monitor already intends to review all NHS foundation trusts' plans annually as part of the financial risk assessment process. Where the plan also gives rise to concern over a foundation trust's governance, Monitor may use such concerns to trigger a further investigation.

Consultation questions

Q11: Do you agree with the proposed approach to using NHS foundation trusts' forward plans to assess their governance?

4.6 Assessing NHS foundation trust governance - governance reviews

Introduction

Monitor regards good governance as essential to deliver quality of care, service performance and sustainable finances. Over time, a small but material number of NHS foundation trusts have given rise to governance concerns, in many cases several years after their authorisation.

Where Monitor has taken regulatory action at foundation trusts triggered by Care Quality Commission warning notices or financial concerns, such as Morecambe Bay and Peterborough and Stamford, we have often found that the serious issues triggering these actions arose from deep-seated and longstanding poor governance practices. Our existing governance proxies have not always identified these practices in a timely fashion.

The National Audit Office recommended, in its case study review of the situation at Peterborough and Stamford Hospitals NHS foundation trust, that Monitor develop a regime of regular in-depth reviews of existing NHS foundation trusts to ensure that their governance remains strong. In addition, KPMG, Monitor's internal auditors, made a similar recommendation to Monitor's Board:

"We believe that further consideration should be given to the concept of periodic re-assessment of an FT's Board and governance. Such a mechanism would provide Monitor with an additional tool to encourage FT management to maintain the quality of its performance"

As a result, Monitor proposes building upon and extending the existing requirements in the Code of Governance to incorporate regular assurance on foundation trust governance in the regulatory regime, in addition to monitoring the indicators of governance outlined above. We are consulting on how best to do so without compromising the autonomy of foundation trusts.

Proposed approach

The [NHS Foundation Trust Code of Governance](#), derived from the Combined Code for corporate governance in the UK, already requires foundation trusts to review their governance processes and systems regularly, or explain why they do not do so. No foundation trust to date has said it has not done so. We propose using external three-yearly governance reviews as part of our overall assessment of foundation trusts'

governance and their compliance with the foundation trust governance licence condition. Under the proposed approach, foundation trusts would:

- I. commission a review of their governance undertaken by a third party against a scope set by Monitor;
- II. provide these reviews to Monitor; and
- III. inform Monitor of progress in addressing any recommendations arising from the reviews.

Where significant governance concerns emerge from the reviews, or they show that other concerns have not been addressed in a timely manner, this may trigger a decision by Monitor to investigate whether there are underlying governance issues.

We have identified a number of elements that such a review could include, drawing on our criteria for assessing applicant NHS trusts contained within the [Guide for Applicants](#):

1. board capability and processes, including its composition, and the effectiveness of subcommittees;
2. board effectiveness, including the information it receives and how it holds management to account;
3. the effectiveness of risk assurance processes, including internal controls and escalation processes; and
4. quality governance, assessed against Monitor's Quality Governance Framework.

Under the proposed approach, Monitor would set a detailed scope of the review. The scope for each area would not be greater than currently used for assessing applicants for NHS foundation trust status. Monitor would also approve a panel of third parties, any one of which could be called upon by a particular foundation trust to undertake the governance review. A third of all trusts would therefore be reviewed each year. If governance issues emerged at a trust within this three-year cycle, Monitor might request the trust to bring forward its next governance review.

Although all foundation trusts already review their governance regularly, Monitor intends to remain proportionate in its regulatory requirements. We are therefore consulting on three dimensions:

- I. frequency: our favoured option is once every three years, but a different frequency could be more appropriate;
- II. areas of coverage: should all the areas be covered every three years, or should one area at random be picked every three years?; or
- III. depth: is the depth of review in each area currently outlined in the Guide for Applicants appropriate, or should there be a different depth?

In proposing our approach, we have noted the response to last year's licence consultation, which was not in favour of Monitor carrying out regular governance reviews of FTs. Monitor considers this approach reflects an extension of existing expectations of FTs. Under the approach, Monitor is now more explicit in setting the scope of governance reviews and additionally trusts will share reviews' findings.

Consultation questions

Q12: Do you agree with the proposed approach to using three-yearly reviews, carried out by third parties to a Monitor specification, to assess NHS foundation trusts' governance?

Q13: What are your thoughts on frequency, areas of coverage and depth of this review?

5 Enforcing the licence

5.1 Investigation

Where the *Risk Assessment Framework* indicates a potential issue related to either the continuity of services or governance licence conditions at an NHS foundation trust or another provider of Commissioner Requested Services, Monitor will decide whether to open a 'case' investigating the issue. For more information on the process of 'prioritisation', please refer to the [Enforcement Guidance](#). Opening a case is not automatic; Monitor recognises that responding to an investigation imposes burdens on providers of NHS services and that, accordingly, there needs to be reasonable prospect that the benefits to people who use health care services of launching an investigation outweighs the costs.

The purpose of the investigation process is:

- to identify whether a breach has occurred;
- if so, to determine the scale and scope of any breach; and
- to identify the appropriate action to take as a result.

The investigation process is intended to allow Monitor to discover, for example:

- the financial viability of the provider in question, where there is a continuity of service concern;
- for NHS foundation trusts, the quality of governance and compliance with the foundation trust governance licence condition;
- whether the licensee has the capability and resources to return to compliance with the licence, or make good the effect of a breach without recourse to formal regulatory action; and
- whether we need to use our formal enforcement powers or whether informal engagement would be more appropriate.

5.2 Information gathering

Monitor will initially consider the information already available to us from our regular monitoring processes along with the context and circumstances of the licensee, and any other information already available from the trust and third parties. We may use our additional information gathering powers if we think this will be necessary to understand the specific nature of the issue, the plans the licensee has to address it and how likely these are to succeed.

5.3 Regulatory action

If, having gathered the relevant information, Monitor believes that a breach has occurred, our *Enforcement Guidance* describes the approach we might take and the powers available to us to address the breach.

5.4 Monitor's statutory powers

As well as our powers to take formal action to address breaches of the licence noted above, Monitor has a number of other statutory powers under the Act and the licence to enable us to carry out our regulatory duties (see below).

Diagram 7: Monitor's formal regulatory powers under the licence

S.104 Information gathering	Monitor may require the provision of information necessary or expedient for its licensing functions <ul style="list-style-type: none">• where our regular monitoring indicates a potential concern, we may follow this up with a specific request in order to determine the scale and scope of any issue
S. 105 Discretionary requirement	For licence breaches Monitor may take formal enforcement action and impose requirements: <ul style="list-style-type: none">• applying a fine;• requiring the licensee to take steps to ensure the breach does not continue or recur (<i>compliance requirement</i>); or• requiring the licensee to take action to make restoration (<i>restoration requirement</i>)
S.106 Enforcement undertaking	For licence breaches Monitor may accept formal undertakings which are published and enforceable <ul style="list-style-type: none">• undertaking actions are similar to formal enforcement actions• Monitor cannot take further action while licensee is complying with the undertakings• changes to these undertakings need to be agreed between Monitor and licensee
S.111 Additional governance licence condition(s) (FTs only)	For actual licence breach of any condition or risk of this, which is caused by poor governance, Monitor may impose an additional governance-related licence condition on an NHS foundation trust Should the FT go on to breach this condition Monitor may remove directors/governors and appoint interims
Continuity of Service licence condition	Under the continuity of service licence condition FTs in financial distress are required to cooperate with Monitor, including allowing entry to premises and working with individuals appointed by Monitor – e.g. turnaround professionals, governance review teams

¹ Monitor can use more than one at any given time

Appendix A: Comparing the *Risk Assessment Framework* and *Compliance Framework*

Changes to the assessment of financial risk

While the principles are the same, some details have changed to reflect the different scope of our risk assessment and the table below summarises the key changes.

New proposed <i>Risk Assessment Framework</i>	Current <i>Compliance Framework</i>
Definition:	
<p><u>Continuity of Services</u> risk rating</p> <p>Two metrics:</p> <ol style="list-style-type: none"> 1. Liquidity days (50%) 2. Capital Service Capacity (50%) <p>Intended to reflect short/medium term financial issues (i.e. flag risks to solvency over a 12-18 month period) at any provider of Commissioner Requested Services</p>	<p><u>Financial Risk Rating (FRR)</u></p> <p>Weighted basket of 5 metrics:</p> <ol style="list-style-type: none"> 1. EBITDA margin (25%) 2. % of plan EBITDA margin delivered (10%) 3. I&E surplus margin (20%) 4. Net return on capital (20%) 5. Liquidity days (25%) <p>Reflects the broad financial situation of a foundation trust</p>
Monitoring:	
<p>Forward plan:</p> <ul style="list-style-type: none"> - submission of forward-looking financial information - calculation & publication of risk rating 	
<p>In-year monitoring:</p> <ul style="list-style-type: none"> - quarterly - year-to-date risk rating published 	
<p>‘Overrides’ triggered by material financial events, e.g.</p> <ul style="list-style-type: none"> - planned major transaction (before formal sign-off) - predicted material loss of income (e.g. loss of a large block contract) - predicted material increase in costs (e.g. to meet a CQC requirement to meet safety standards) - significant negative trends in performance (i.e. material underperformance against plan) 	<p><i>Compliance Framework</i> does not explicitly use overrides, although the transaction assessment process calculates risk ratings while Monitor can investigate material financial issues brought to us via exception reporting.</p>

<p>Monitor may request a reforecast/'re-plan' and adjust the risk rating accordingly – depending on the revised rating further action may be taken</p>	
<p>Risk rating</p>	
<p>4-point scale: 4: no evident concerns (quarterly monitoring) 3: minor concerns (potential monthly monitoring) 2: concerns (potential breach of licence; higher monitoring frequency) 1: high risk (use of CoS and other regulatory powers may be likely; higher monitoring frequency)</p>	<p>5-point scale: 5: no concerns (potential 6-monthly monitoring) 4: no concerns 3: no concerns (but monthly monitoring if recovering from FRR 2) 2: concerns – escalate for consideration of potential significant breach 1: concerns – escalate for consideration of potential significant breach</p>

Changes to governance risk

New proposed <i>Risk Assessment Framework</i>	Current <i>Compliance Framework</i>
Proxies used to assess governance	
<p>Monitoring six categories:</p> <ol style="list-style-type: none"> 1. CQC concerns: <ul style="list-style-type: none"> - e.g. warning notices, civil/criminal action 2. Delivery of access targets (Mandate, Constitution): <ul style="list-style-type: none"> - A&E, 18 weeks, cancer waits etc. 3. Meeting national outcomes (from the NHS Outcomes Framework): <ul style="list-style-type: none"> - Including MRSA, C.difficile and potentially others 4. Third party concerns: <ul style="list-style-type: none"> - e.g. patient group concerns, MPs' complaints, etc. 5. Quality governance metrics <ul style="list-style-type: none"> - including staff & patient surveys, trends in never events 6. Financial performance 	<p>Monitoring five categories:</p> <ol style="list-style-type: none"> 1. CQC concerns: <ul style="list-style-type: none"> - e.g. warning notices 2. Delivery of access targets (from Operating Framework): <ul style="list-style-type: none"> - A&E, 18 weeks, cancer waits, etc. 3. Meeting national outcomes (from the Operating Framework): <ul style="list-style-type: none"> - MRSA, C.difficile, - CPA follow-up & reviews, ambulance response times, community services' data quality 4. Third party concerns: <ul style="list-style-type: none"> - NHSLA risk management ratings. In theory, any credible third party concern, although in practice not used 5. Financial performance: <p>NHS foundation trusts in significant breach for finances usually receive a red governance risk rating as this reflects poor governance as well as financial risk</p>
Monitoring	
Quarterly and annually where available/necessary (e.g. for staff/patient surveys)	Quarterly

More detail on changes is set out below:

Summary of changes from the current governance risk rating approach	
Changes to our metrics used as 'proxies' of governance	<p>The Department of Health has reclassified the national metrics in the Operating Framework which Monitor has historically used (e.g. A&E, 18 weeks, cancer waits) as proxies of governance:</p> <ul style="list-style-type: none"> • The acute metrics we use, including access targets like 18 weeks & A&E, will be set in either the Constitution or the Mandate (once they are finalised pending consultation). • Other requirements (i.e. MRSA and C.difficile) will be incorporated in the NHS Outcomes Framework. • While ambulance response times are included in the Mandate, it contains minimal mental health and no community metrics. These may ultimately be included in the NTDA's oversight guidance for NHS trusts) where current metrics are retained.
Third party reports	<ul style="list-style-type: none"> • In theory, these are already part of the regulatory regime, although in the last eight years they have never triggered an escalation alone, although they frequently inform an escalation decision where another trigger has been activated. • NHS Litigation Authority (NHSLA) risk management standards. At present, a score of less than one on any of NHSLA's risk management standards results in a minimum rating of amber-red. NHSLA has however indicated that it will spend the coming year revising its standards, rather than assess performance against them. Since we will not gain intelligence from these standards for the next year, it is proposed to remove them from the Risk Assessment Framework for the time being. At present, only one foundation trust has a rating of less than 1 – City Hospitals Sunderland, which received a 0 for maternity services in July 2012.
Leading quality governance indicators	<p>To ensure a more wide-ranging coverage of governance matters we have identified the need to use a wider range of indicators in considering governance concerns pertaining to the quality of care provided. Consequently we propose using patient and staff surveys and other organisational metrics to indicate potential care quality concerns. Monitor's risk assessment would concentrate on either material downward trends or sudden drops in satisfaction levels – i.e. there would not be an absolute threshold. Areas we propose looking at include:</p> <ul style="list-style-type: none"> • patient experience – link to NHS Friends & Family Test in due course; • staff surveys – are there sudden adverse movements?; • organisational metrics – do movements in staff turnover, the proportion of interim staff or sickness rates indicate a concern?; and • are cost improvement plans high (i.e. top decile/quartile) and can the trust provide assurance on the impact on quality of care?

Appendix B: continuity of services risk rating – proposed definitions

Capital Service Capacity = revenue available for debt service/Capital servicing costs	
Revenue available for debt service	Capital servicing costs
<ul style="list-style-type: none"> + Surplus after tax - Impairments/losses (-) or reversals (+) on PFI - Impairments/losses (-) or reversals (+) on non-PFI - Restructuring costs (-) - PDC expense (-) - Depreciation & Amortisation (-) - Total interest expense (-) - Gain (+) / loss (-) on asset disposals - Donations & Grants of PPE or intangibles 	<ul style="list-style-type: none"> + PDC dividend expense (for NHS foundation trusts only) + Interest expense on overdrafts & working capital facility drawdowns & bridging loans + Interest expense on commercial & non-commercial borrowing + Interest expense on PFIs & finance leases + Other finance costs & non-operating PFI costs (e.g. contingent rent) + PDC repayments + Loan repayments + Capital element of PFI & other finance lease payments
Liquidity = Cash for liquidity purposes * 360 / Operating expenses	
Revenue available for debt service	Operating expenses
<ul style="list-style-type: none"> + Fully committed Working Capital Facility without default clauses + Total current assets (+) + Total current liabilities (-) - Inventories (+) - Derivatives, current portion (+) - Financial assets available for sale (+) - PFI prepayments (+) - Non-current assets held for sale (+) - Current assets held for sale by charitable funds (+) - Current liabilities held for sale by charitable funds (-) 	= Operating expenses within EBITDA

Appendix C: Draft Risk Assessment Framework

For consultation purposes only
January 2013



Appendix C: *Draft Risk Assessment Framework*

Chapter 1: Introduction

1. The Health and Social Care Act 2012 (the Act) requires Monitor to carry out an ongoing assessment of the risks to the continued provision of NHS services and to publish guidance on certain actions it may take relating to this. Monitor is required under the Act to continue overseeing the governance of NHS foundation trusts.
2. We will carry out both these tasks by monitoring relevant providers' compliance with two sets of conditions of the licence – those relating to risk to the continued provision of NHS services ("continuity of service"), which require relevant providers to ensure amongst other matters that they remain a going concern¹, and that relating to governance at NHS foundation trusts, foundation trust condition 4, which sets out the components of governance. If monitoring or action under the *Risk Assessment Framework* should lead to concerns of potential breach of other conditions of the licence, we will take the action we consider appropriate in relation to those potential breaches.

The *Risk Assessment Framework*

3. The *Risk Assessment Framework* sets out for licence holders, including NHS foundation trusts and other relevant providers of NHS services, and stakeholders how we will carry out these roles and provides the required guidance to which licensees are required to have regard. While all providers of NHS services are required to have a licence², this *Risk Assessment Framework* will only apply to specific licensees:
 - (i) Monitor will use the *Risk Assessment Framework* to assess the risk of no longer being a going concern at all providers of Commissioner Requested Services (see below) and consequently to continuity of service (Chapters 2, 3 and 5); and
 - (ii) Monitor will use the *Risk Assessment Framework* to assess the governance of NHS foundation trusts and investigate where issues may arise (Chapters 2, 4 and 5).

The *Risk Assessment Framework* will be used as a tool to highlight concerns with particular licence holders. As such, it triggers a discussion as to whether further investigation of a particular provider is warranted. Further investigation is not automatic.

¹ Section 94(3) of the Act requires Monitor to publish guidance on how it will carry out its functions with regard to the risk of financial failure of service providers. By this document Monitor provides guidance on how it will carry out these functions.

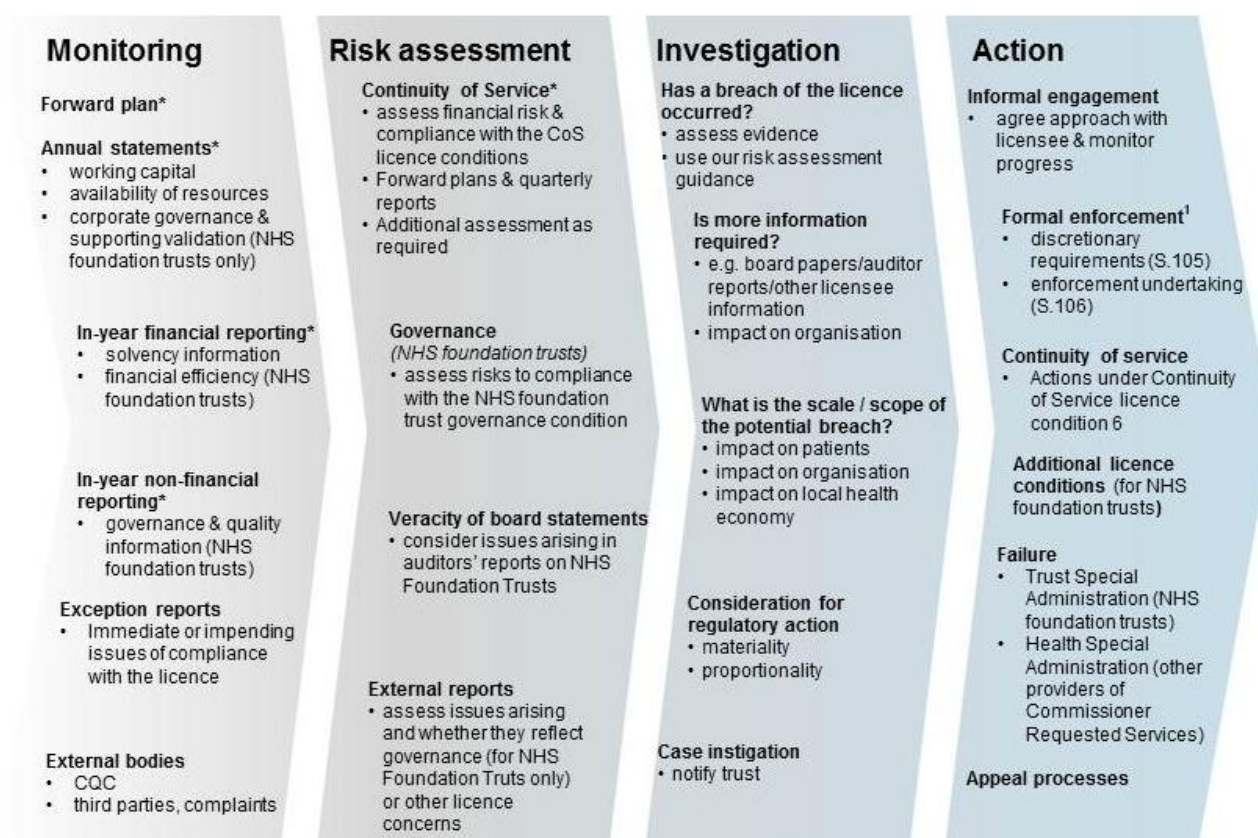
² With the exception of those meeting the Department of Health's exemption requirements

Monitor's oversight of continuity of service and governance at NHS foundation trusts will incorporate four main stages as below. These are broadly the same four stages as in the outgoing *Compliance Framework* for NHS foundation trusts:

- (i) **monitoring** the relevant licensees – see Chapter 2
- (ii) **assessing risks** to compliance with the continuity of service licence conditions and the NHS foundation trust governance licence conditions – Chapters 3 and 4
- (iii) **investigating** potential breaches of licence conditions and deciding on appropriate actions – Chapter 5 and Monitor's *Enforcement Guidance*
- (iv) **taking action** – see Monitor's *Enforcement Guidance*

The *Risk Assessment Framework* covers stages (i) – (iii) above. Taking action is covered in Monitor's separate [Enforcement Guidance](#), which applies to all licence conditions. Licensees are required to have regard to the guidance.

Diagram 1 Monitor's approach to provider regulation



*Providers of Commissioner Requested Services and NHS foundation trusts

¹Appeal processes exist for Monitor's formal enforcement powers: for more information refer to the Act

Principles

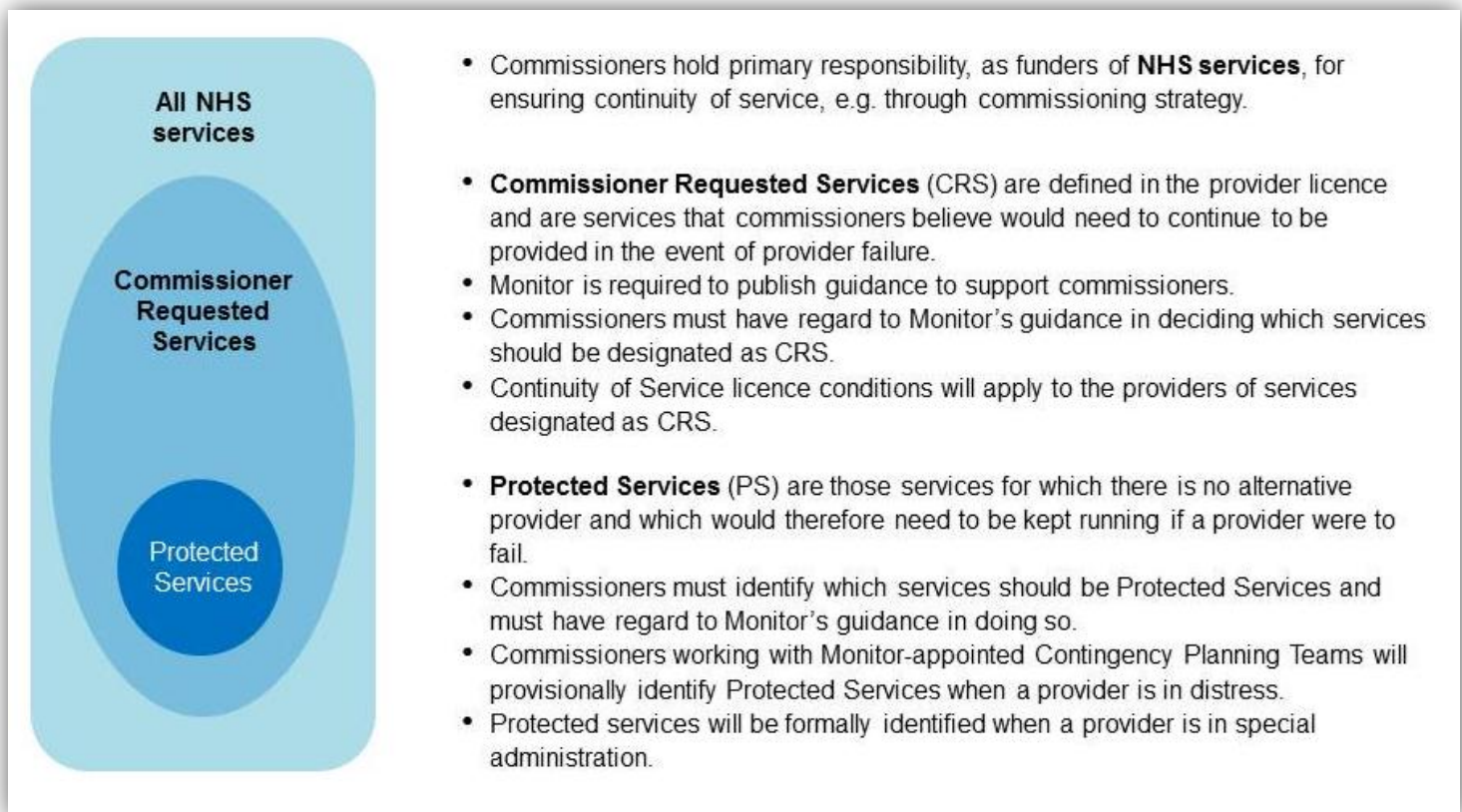
4. The *Risk Assessment Framework*, and how we apply it, will be consistent with our established regulatory approach, incorporating a number of core concepts:
 - **Patient-focused:** where we identify issues at licensees, we will be guided by the interests of patients in assessing the risks and the need for action, whether the issues represent a risk to service continuity, access or the governance of quality of care;
 - **Evidence-based:** we will base our actions on the available and relevant evidence;
 - **Proportionate:** we will ensure that our actions address solely the material risks identified so that we do not overreach our regulatory remit;
 - **Transparent:** we will strive to communicate clearly and openly to licensees, commissioners and other stakeholders the reasons for any actions we take and to ensure that our actions deliver the right outcomes for patients, commissioners and other stakeholders; and
 - **Cooperative:** we will work with other regulators and organisations, and, to minimise duplication where possible and appropriate, taking into account their conclusions wherever possible and appropriate to inform our regulatory approach.

Commissioner Requested Services and Continuity of Service

5. Monitor has published separate guidance on the designation of [Commissioner Requested Services](#). Broadly, commissioners will be required to designate those services they wish to ensure continue to be delivered. Diagram 2 lays out the differences between NHS services, Commissioner Requested Services and Protected Services.
6. Until commissioners are in a position to carry out such a designation exercise, Monitor has proposed that the existing mandatory services (contained in schedule 2 of the terms of authorisation of each NHS foundation trust) which broadly speaking reflects the content of current commissioner contracts be treated as Commissioner Requested Services from licensing commencement day. Commissioners will be expected to carry out the designation exercise within a set number of years. This does not mean that the list on licensing commencement day remains unaltered and hence protected until commissioners carry out their designation exercise; removal of a service from contract, for example, will be taken as an indication that the commissioner no longer wishes that service to be protected.
7. For licensees that are not NHS foundation trusts, commissioners will need to designate specifically Commissioner Requested Services.
8. Licensees with no Commissioner Requested Services (to be judged under General Condition 9) are not subject to the Continuity of Service licence

conditions, and are hence not subject to the continuity of service component of the *Risk Assessment Framework*.

Diagram 2 Commissioner Requested Services and Protected Services Governance at NHS foundation trusts



9. NHS foundation trusts are additionally subject to the NHS foundation trust conditions and *Risk Assessment Framework* will monitor compliance with NHS foundation trust condition 4, the foundation trust governance condition.

Monitor's approach to risk assessment

10. The Act grants Monitor powers to require any information necessary or expedient for the performance of its functions from a range of parties including licensees. In addition, all licensees are required to provide Monitor with any information we require for our licensing functions, including for risk assessment of non-compliance with particular licence conditions.
11. Monitor will use the information we collect and receive to assess the risk to compliance with continuity of service conditions and, for NHS foundation trusts, the degree of concern with their governance. Monitor will reflect and communicate this assessment via two ratings:
 - I. **Continuity of service risk rating** (all Commissioner Requested Services providers), assessing the risk to a licensee not carrying on as a going concern and to provide Commissioner Requested Services; and a
 - II. **Governance rating** (NHS foundation trusts only) assessing NHS foundation trusts' compliance with foundation trust condition 4.
12. These ratings will represent Monitor's view of the likelihood that a licensee is, will, or could be in breach of the continuity of service or NHS foundation trust governance conditions.
13. Where these ratings identify potential material issues of compliance with the relevant licence conditions, we will inform the licensee and assess whether there is a need for further investigation and/or follow-up action (see Chapter 5: Investigation). Monitor will also publish a summary and analysis of health care ratings on our website.

Contents of this document

- **Chapter 2** describes Monitor's reporting requirements for providers of Commissioner Requested Services and additional requirements for NHS foundation trusts;
- **Chapter 3** describes how Monitor calculates the continuity of service risk rating;
- **Chapter 4** describes how Monitor assesses governance at NHS foundation trusts; and
- **Chapter 5** sets out the high level principles behind Monitor's investigation of potential breaches of the licence that pertain to continuity of service and governance at foundation trusts.

Monitor's [Enforcement Guidance](#), available on our website, describes Monitor's approach to taking regulatory action in more detail, and should be read alongside Chapter 5 of the *Risk Assessment Framework*.

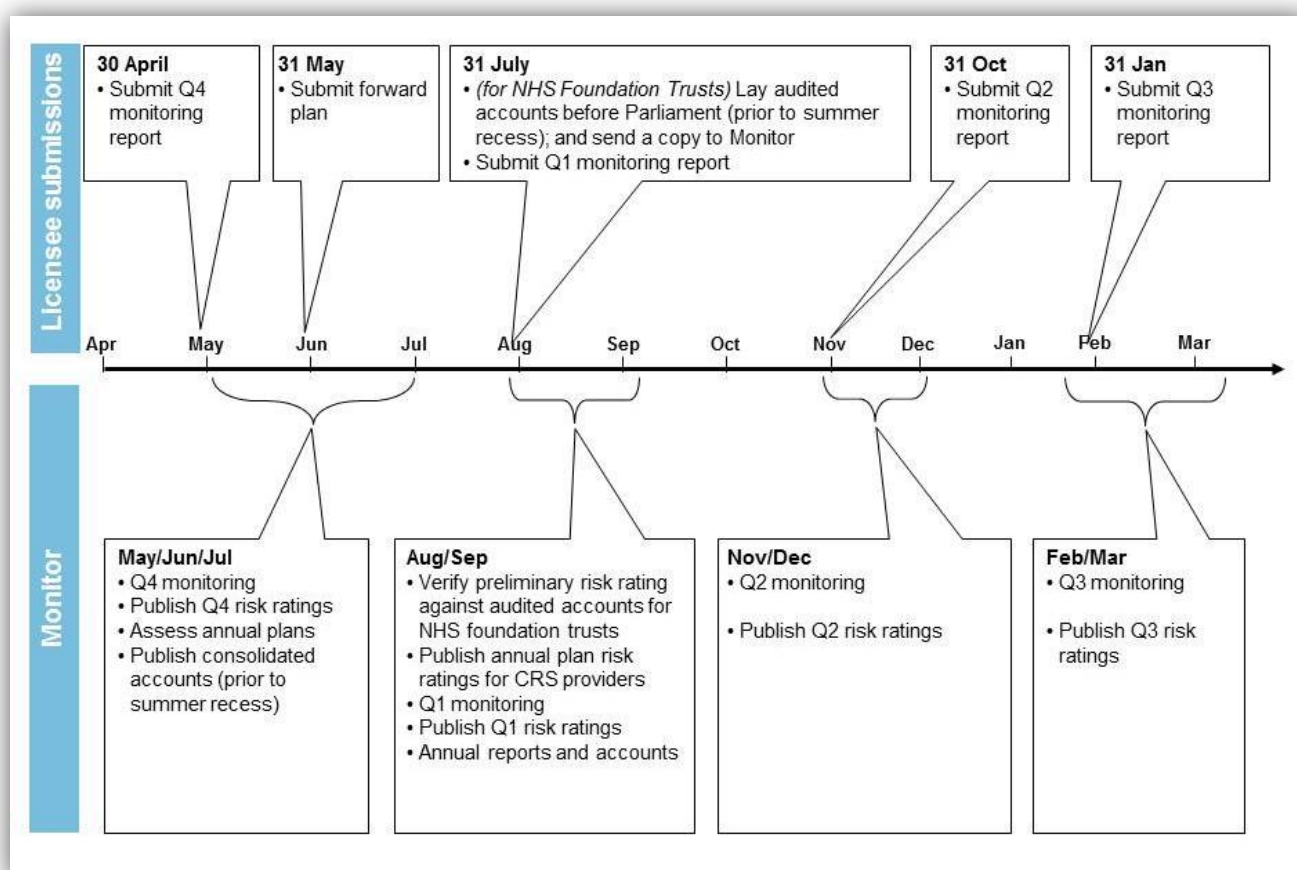
Chapter 2: Monitoring and data collection

Introduction

14. The Act gives Monitor powers to require any information we consider necessary or expedient to fulfil our regulatory functions and in addition the licence contains powers to require information. This chapter sets out the information Monitor will gather from all providers of Commissioner Requested Services to assess risks to the continuity of their services, and from NHS foundation trusts to assess their governance.
15. Monitor will draw on a range of information, including regular financial submissions, plans and forecasts, and third party information to assess risk to continuity of service and to assess governance. Diagram 3 describes the annual planning and monitoring cycle.
16. Monitor will require licence holders to submit information both annually and during the year. Some of the information required from providers will vary according to the level of risk at the provider that Monitor has identified, and to the nature and status of the licence holder as reflected in licence conditions:
 - licensees with higher levels of financial risk may be required to submit information monthly or even more frequently; and
 - NHS foundation trusts will submit additional information to allow Monitor to assess their governance.
17. The information requested routinely by Monitor is likely to comprise a subset of the information that licence holders use or should use for their own management purposes, and consequently be extractable from existing material that the licensee has or should have.
18. The *Risk Assessment Framework* divides the information Monitor may routinely request into four broad categories:
 - I. **Annual submissions:** plans, statutory reporting requirements of the licensee, and other annual requirements specified in the licence;
 - II. **In-year submissions:** information submitted during the year, generally quarterly;
 - III. **Exception reports:** other information that may have material implications for a licence holder's compliance with its licence, but which is not routinely requested by Monitor (an example might be reports from the Royal Colleges. Monitor would not routinely request these, but would be expected to receive such a report should it identify concerns relevant to governance of quality, and hence with an NHS foundation trust's compliance with its licence); and

- IV. **Other reviews:** Monitor will require NHS foundation trusts, as part of the assessment of governance, to submit external reviews covering areas of governance.

Diagram 3 The annual planning and monitoring cycle



Annual submissions

All providers of Commissioner Requested Services

19. Annual submissions required by Monitor from all providers of Commissioner Requested Services include:
- three-year forward plans; and
 - availability of resources and any other statements required under their licence³.
20. Monitor will use forward plans as part of our assessment of risk to a licence holder's ability to carry on as a going concern and hence to continuity of service (see Chapter 3). Looking at forward plans will allow Monitor to assess the impact on licensees of:

³ As required under Continuity of Service licence condition 7

- changes in income;
- changes in costs; and
- planned discontinuities in a licence holder's business. These might include major acquisitions or investments, changes to providers' capital structure, or the impact of changes to the unitary payment where a licence holder has a private finance initiative (PFI) project. These could affect the ability of the licensee to provide Commissioner Requested Services over the medium term.

Additional requirements for NHS foundation trusts

21. We have assumed in this section that all NHS foundation trusts are providers of Commissioner Requested Services. The requirements in this section therefore follow on from the previous section, modifying or adding to those requirements where appropriate.

22. Regarding forward plans:

- Monitor is required to report the financial projections of NHS foundation trusts to HM Treasury. The requirements for financial projections may hence differ from those licence holders who are not NHS foundation trusts. We will endeavour to restrict such additional reporting to a minimum.
- Under the Act abolishes the terms of authorisation and consequently schedule 6 (which specified which information NHS foundation trusts were required to report nationally) are removed at the point at which the licence comes into effect. The Act gives powers to the Health and Social Care Information Centre to require information from all providers of NHS care, including NHS foundation trusts. The Information Centre can be required to use these powers by a number of organisations, including the Secretary of State and the NHS Commissioning Board. Where possible and appropriate, Monitor may require additional information through forward plans on behalf of such other national bodies. Monitor will indicate where this is the case.
- Under their governance condition, NHS foundation trusts are required to maintain effective systems of financial decision-making, management and control. Should Monitor's review of an NHS foundation trust's forward plan indicate concerns with its financial sustainability, the trust's governance or, for that matter, compliance with any other aspect of the licence, Monitor may decide to investigate further.

Additional requirements include:

- a corporate governance statement, required by the licence; and
- annual reports and accounts and a governor and membership report, required by our continuing role as the NHS foundation trust registrar.

Corporate Governance Statement

To comply with the governance conditions of their licence, NHS foundation trusts are required to provide a corporate governance statement setting out:

- identified risks to compliance with the governance condition; and
- actions taken or being taken to maintain future compliance.

The corporate governance statement replaces the board statements that NHS foundation trusts are currently required to submit under the *Compliance Framework*.

23. Where information comes to light that could call into question whether the information in the corporate governance statement is valid, or that an NHS foundation trust has not carried out planned actions, Monitor is likely to seek additional information from the NHS foundation trust to understand the underlying situation. Depending on the response from the NHS foundation trust, Monitor may decide to investigate further to establish whether this represents a material governance concern and merits further action.

NHS foundation trust annual reports and accounts

24. NHS foundation trusts are also required (under the NHS Act 2006) to submit their audited annual accounts, and their annual report, to Monitor. Monitor consolidates the accounts for submission to Parliament, and for inclusion in the Department of Health's group accounts.

Governor and membership reporting

25. NHS foundation trusts should maintain a representative membership base and Monitor will require information on members and elections to assess this.
26. Diagrams 4 and 5 summarise the annual submission requirements for NHS foundation trusts and other Commissioner Requested Services providers respectively.

Diagram 4: Annual Submissions (NHS foundation trusts)

Strategic overview	Element	Description
Governance and other statements	Commentary	<ul style="list-style-type: none"> • three year outlook including vision, strategy, external factors and risks to delivery • commentary including key assumptions and downside risks • commentary on any investments • commentary on measures to assess and address risks to quality • commentary on identification, analysis and mitigation of significant risks to CRS • commentary on identification, analysis and mitigation of significant risks to compliance with the governance licence condition • commentary on identification, analysis and mitigation of any other significant risks to compliance with the licence • review of major non-financial issues
	Corporate governance statement & supporting validation	<p>Corporate governance statement</p> <ul style="list-style-type: none"> • statement of compliance with the NHS foundation trust governance condition • statement of forward compliance with the NHS foundation trust governance condition • specification of any risks to compliance with the NHS foundation trust governance condition • actions planned to manage these risks. <p>Validation that:</p> <ul style="list-style-type: none"> • Auditor statement that either <ul style="list-style-type: none"> • the NHS foundation trust has taken actions set out in the corporate governance statement applicable to the previous year; or • setting out the areas where, in their view and after making reasonable enquiries, the Licensee has failed to take the actions set out in its corporate governance statement applicable to the previous year.
Finance	Governor development & membership report	<ul style="list-style-type: none"> • commentary on governor development activity in previous year and plans for coming 12 months • membership data including present and projected membership by constituency, election turnout rates and stratified comparisons with eligible groups • commentary on membership strategy
	Financial projections	<ul style="list-style-type: none"> • projections for next three years (income and expenditure; balance sheet; cash flow) • actual results against plan for past year with commentary explaining variances

In-year submissions

Providers of Commissioner Requested Services

27. All providers of Commissioner Requested Services will provide Monitor with the financial information needed during the year to assess their financial sustainability and risk. The amount of information we require and its frequency will vary, depending on the level of risk to compliance with the licence identified at the trust.
28. Where no risks to compliance have been identified, in-year information will generally be submitted on a quarterly basis and, by exception, where the provider meets specific triggers (see below).

Quarterly information

29. Monitor will use year-to-date financial performance – Income and Expenditure, Balance Sheet and Cash flow performance to update CRS providers' continuity of service risk ratings during the year.

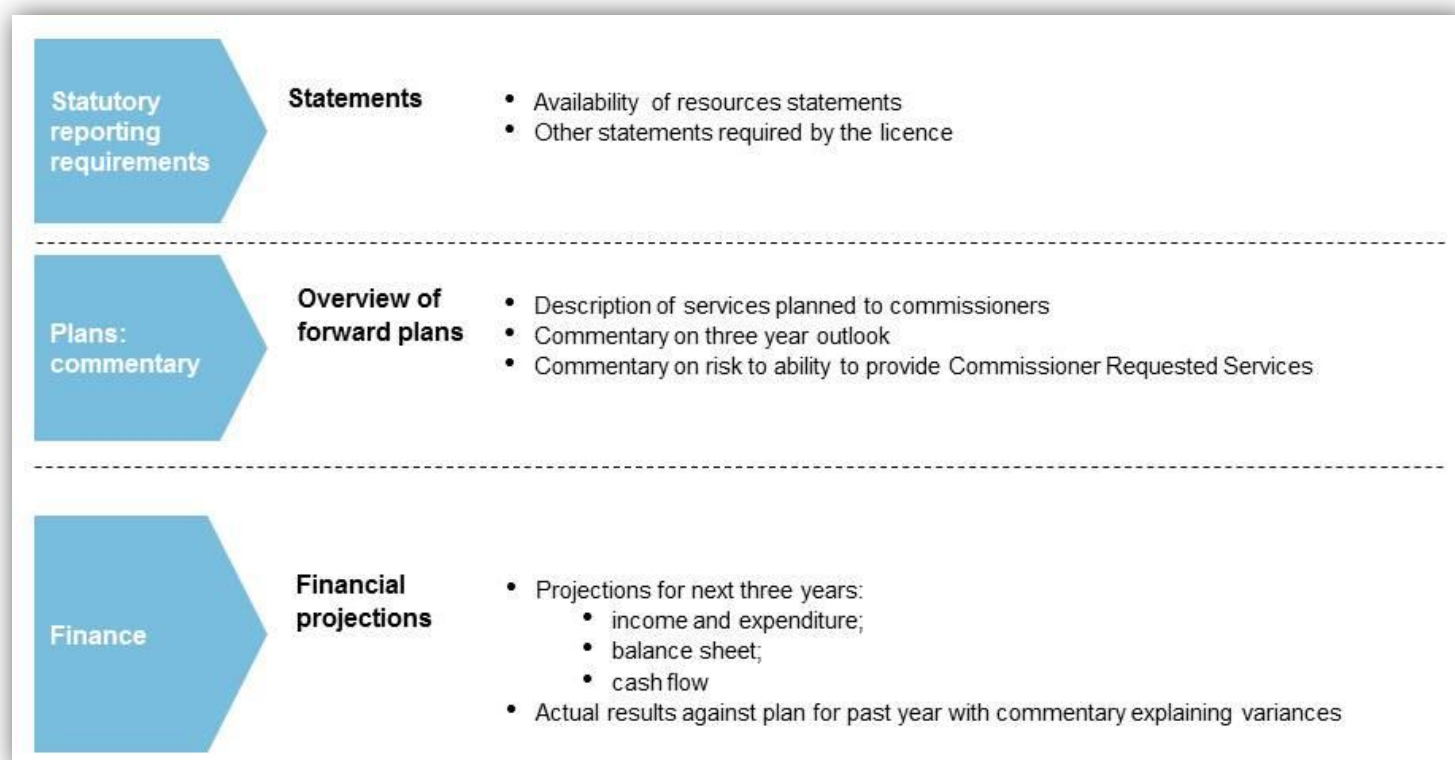
Exception reports

30. Where there are material changes in financial prospects, triggered by:

- transactions;
- adverse trading movements or cost increases; or
- material deterioration in continuity of service metrics against plans,

Monitor is likely to request a financial reforecast from the provider in order to recalculate the provider's risk rating.

Diagram 5: Annual submissions (other CRS providers)



Additional requirements for NHS foundation trusts

31. Monitor requires a greater level of regular information from NHS foundation trusts than from other providers of Commissioner Requested Services because we are required under the act to assess governance at NHS foundation trusts.

To support the assessment of NHS foundation trusts' compliance with the governance condition in their licence, Monitor will routinely collect three types of information:

- i. Performance against nationally mandated standards of access and outcomes

Monitor considers the ability of NHS foundation trusts to meet selected national standards, such as waiting times in A&E or referral to treatment times for elective care, to be a key indicator of the effectiveness of the organisation's governance. We will collect information from NHS foundation trusts each quarter to assess their performance against these standards. Monitor will also assess their performance against selected elements of the NHS outcomes framework. A full list of the national metrics informing our assessment of governance at foundation trusts can be found in the Appendices.

- ii. Care Quality Commission judgments

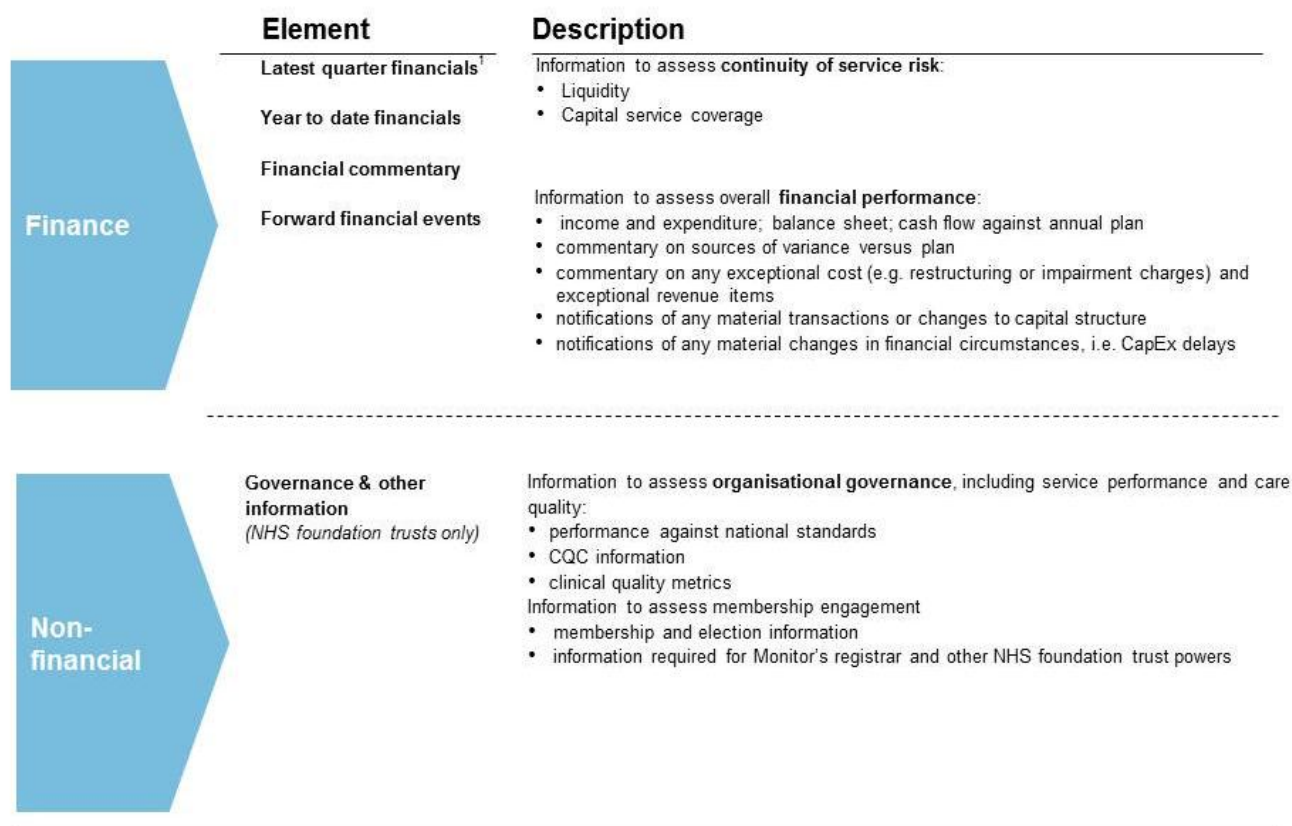
Meeting clinical quality standards is a key responsibility for providers of NHS services. The performance of NHS foundation trusts in this area is primarily monitored by the Care Quality Commission (CQC) and Monitor does not intend to duplicate existing regulation. However, care quality issues can arise from or reflect poor governance. Consequently, we will monitor trusts' compliance with the minimum standards of quality and safety as defined by the CQC. Where CQC warning notices, fines or other formal notices raise quality concerns at an NHS foundation trust, Monitor will consider whether these could indicate underlying governance issues – see Chapter 4 for more details. NHS foundation trusts are required to inform Monitor of specified CQC warning notices, fines or other formal notices.

- iii. Organisational quality indicators

Monitor has identified a limited number of indicators which may represent a risk to the current or future quality of care provided by a foundation trust, including results from patient and staff surveys, staff turnover and agency staff. A failure to identify, address or mitigate concerns raised by these indicators may represent poor governance. We recognise that not all of these indicators are available on a monthly or quarterly basis; hence we will require NHS foundation trusts to submit them as they become available. For more information on the metrics see Chapter 4.

- 32. Monitor will use the above, and other information, in assessing governance (see Chapter 4 for more details).

Diagram 6 in-year submissions (NHS foundation trusts and other providers of CRS)



¹ Continuity of Service risk assessment is only relevant for licensees providing CRS; Monitor will collect this financial information from NHS foundation trusts, even in the absence of CRS, to assess governance.

Exception reports

All providers of Commissioner Requested Services

33. Monitor aims to have a transparent and open relationship with licensees. We therefore expect licence holders to notify Monitor in writing of any incidents, events or reports which may reasonably be regarded as raising potential concerns over their compliance with the conditions of the licence. This applies to concerns over compliance in relation to all licence conditions, not just the conditions that are the focus of the *Risk Assessment Framework*.
34. In addition to submitting exception reports which could raise issues with compliance with the licence, Monitor also requires licence holders to inform us of major discontinuities in their business, regardless of whether the licence holder believes that the discontinuity will affect compliance with the licence. Examples of such discontinuities include undertaking a major acquisition, investment or divestment; a loss of a significant contract; a significant change in the capital structure of the licence holder; a material deterioration in financial performance of the licence holder; and an immediate need to spend significant

sums to meet regulatory requirements (i.e. raise staffing levels to address a warning notice from the Care Quality Commission).

Diagram 7 examples of exception reporting



35. An exception report from a licensee should describe, as applicable:

- the issue that has arisen or will arise, the area of the licence to which it applies, the magnitude of the issue, and when it will come into effect or when it occurred;
- any actions planned to address the issue;
- a list of any affected parties; and
- if not already carried out, the proposed approach to notifying them and addressing any impact on them of the issue in question.

Examples of exception reports reflecting continuity of service or governance at NHS foundation trusts are listed in Diagram 7. This list is non-exhaustive.

Actions on receiving an exception report

36. On receiving an exception report, Monitor may require additional information from the licence holder to assess the effect on the licence holder's compliance

with its licence. Where the exception represents a material risk to the licence holder's ability to carry on as a going concern, Monitor will consider applying an override to the licence holder's continuity of service risk rating (see Chapter 3).

Transactions

37. Licence holders should report to Monitor details of any planned UK health care investments or other transactions worth more than 10% of the licence holder's assets, revenue or capital; or details of any planned changes in capital structure representing a change of more than 10% in the licence holder's capital employed over a 12-month period.
38. On receiving these reports, Monitor may conduct our own risk assessment of the transaction. The level of scrutiny will be proportionate to the volume of Commissioner Requested Services provided by the affected licence holder, and the share of the overall business of the licence holder represented by Commissioner Requested Services (i.e., a licence holder for whom Commissioner Requested Services are a marginal part of their business will receive less intensive scrutiny).
39. Where NHS foundation trusts are planning transactions, investments, divestments or changes to capital structure (collectively 'transactions') on a scale that approaches Monitor's thresholds, we may request information on the proposed transaction. While Monitor will not approve these transactions, we will assess them from the perspective of governance as well as continuity of service (see Chapter 3). Where Monitor has grounds to believe that the governance of the transactions as proposed is not sufficiently robust, this may trigger further investigations into governance. In exceptional circumstances where it is considered necessary, we may take action to set conditions or to delay the transaction⁴.
40. For details of what information licence holders (NHS foundation trusts and others) should include in these submissions, please refer to transactions reporting guidance on Monitor's website [here](#).
41. These requirements are separate and additional to those set out under the Act when NHS foundation trusts are required to make applications to Monitor in respect of certain kinds of transactions (for example acquisitions and separations). Monitor may also make further provision outside the *Risk Assessment Framework* of the requirements for such applications.

Additional requirements for NHS foundation trusts

42. NHS foundation trusts should also report to Monitor any further information that could reasonably be regarded as having the potential to impact their compliance with the conditions of their licence. Diagram 7 (above) lays out examples.

⁴ Note: The requirement on NHS foundation trusts to make exception reports regarding transactions is without prejudice to Monitor's statutory powers to approve certain transactions on the part of foundation trusts

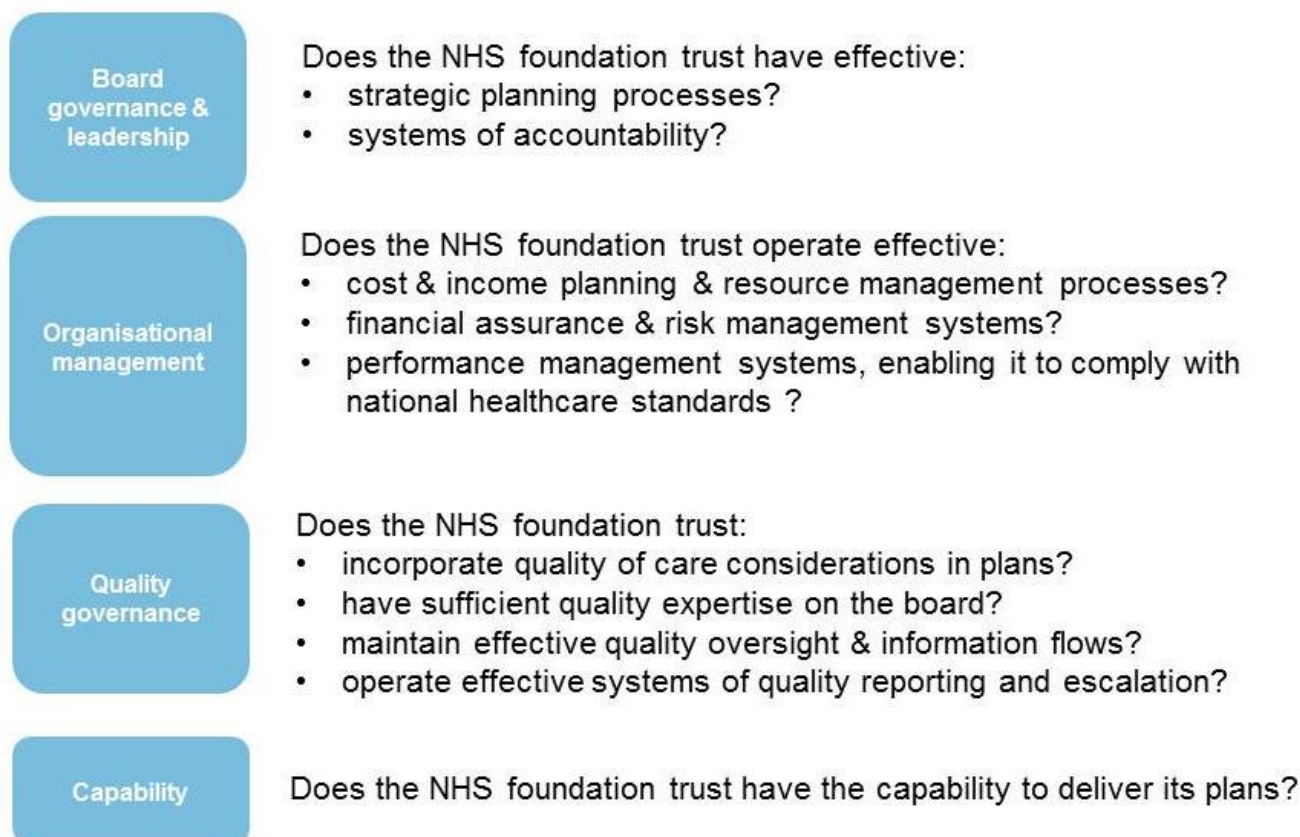
43. There are many third parties, including coroners, other regulators, Royal Colleges, training establishments and so on, that comment and review on aspects of an NHS foundation trust's performance. We do not require NHS foundation trusts to send us each and every report that includes commentary or observation on their performance. We do require NHS foundation trusts to inform us of such reports where they could reasonably be regarded as raising potential concerns over an NHS foundation trust's current or potential compliance with NHS foundation trust condition 4 or other licence conditions.

Other reviews

44. The [Code of Governance for NHS foundation trusts](#) requires foundation trusts to:
- ensure that adequate systems and processes are maintained to measure and monitor the NHS foundation trust's effectiveness, efficiency and economy as well as the quality of its health care delivery. The board should regularly review the performance of the NHS foundation trust in these areas against regulatory and contractual obligations and approved plans and objectives.
 - conduct, at least annually, a review of the effectiveness of the NHS foundation trust's system of internal control and should report to members that they have done so. The review should cover all material controls, including financial, clinical, operational and compliance controls and risk management systems.
45. This mirrors a provision in the *UK Code of Corporate Governance* that, *"The board should, at least annually, conduct a review of the effectiveness of the company's risk management and internal control systems and should report to shareholders that they have done so."*
46. Monitor considers that well-run trusts will undertake regular and rigorous assessments of their governance to ensure that arrangements are robust and sufficient to maintain compliance with the licence.
47. Monitor will build upon these provisions by requiring NHS foundation trusts to commission an external review of governance at least once every three years. Monitor will set out a detailed scope and an approved list of organisations that can provide the review. NHS foundation trusts will be able to suggest additional organisations for inclusion. The scope will mirror areas currently covered in the application process and hence laid out in the *Guide for Applicants*. It will cover:
- I. the board's capability and processes, including its composition, and the effectiveness of subcommittees;
 - II. board effectiveness, including information the board receives and how it holds management to account;
 - III. the effectiveness of risk assurance processes, including internal controls and escalation processes; and
 - IV. quality governance, assessed against Monitor's Quality Governance Framework.

48. For further information on the scope, see Diagram 8 and Monitor's *Guide for Applicants*. Monitor may not require NHS foundation trusts to commission a review covering all four areas every three years, but will instead inform NHS foundation trusts which area(s) should be covered in each review. NHS foundation trusts will be required to report the findings of the review to Monitor. Where they raise issues of concern that might reflect on an NHS foundation trust's compliance with its governance condition, we will consider whether to investigate further.

Diagram 8 Periodic governance reviews



Other submissions

Information submissions to support the National tariff

49. All licensees are required by their licence to submit any appropriate information to allow Monitor to set prices for NHS services. Details on these requirements can be found on Monitor's website. These will be separate to submissions for this *Risk Assessment Framework*.

Chapter 3: Assessing risk to continuity of service

Introduction

50. Monitor's continuity of service provisions, including the conditions in the licence and this component of the *Risk Assessment Framework*, aim to identify where essential NHS services may not continue to be delivered because their provider will cease to be a going concern. Timely identification allows Monitor to intervene, if necessary, to safeguard their provision. The requirements of the continuity of service licence conditions are summarised in Diagram 9.

Diagram 9: requirements of the continuity of service licence condition (summary)

CRS providers are required to...	...resulting in:
Be financially viable	<ul style="list-style-type: none">No financial concerns as per Monitor's risk rating (<i>Continuity of Service condition 3</i>)
Cooperate with Monitor	<ul style="list-style-type: none">In cases of financial concern, licensees must cooperate with Monitor, including providing information to commissioners and allowing parties identified by Monitor to enter premises (<i>Continuity of Service condition 6</i>)
Provide assurance on commitment and capability to provide CRS	<ul style="list-style-type: none">Assurance from ultimate controller¹ (<i>Continuity of Service condition 4</i>)Assurance on ability to provide CRS (<i>Continuity of Service condition 7</i>)<ul style="list-style-type: none">annual availability of resources statement highlighting any factors affecting capability to deliver CRSworking capital statementin-year exception reporting
Maintain CRS provision	<ul style="list-style-type: none">Approval of Monitor and Commissioners required to change CRS (<i>Continuity of Service condition 1</i>)Retain assets required to provide CRS (<i>Continuity of Service condition 1</i>)
Pay into a risk pool	<ul style="list-style-type: none">Upon its inception, to contribute to a risk pool to support restructuring activities (<i>Continuity of Service condition 5</i>)

¹ Note: this does not apply to NHS foundation trusts

51. Providers of Commissioner Requested Services are required to comply with the Continuity of Service licence conditions (see Diagram 9). This chapter describes how Monitor will assess the risk of a provider of Commissioner Requested Services no longer being a going concern.
52. Monitor will use an assessment of financial risk, the **continuity of service risk rating**, to identify financial concerns in good time:

- where Monitor believes a licence holder is in breach of continuity of service licence condition 3, we may begin enforcement proceedings;
 - where Monitor believes that the governance of an NHS foundation trust is such that it is failing, or will fail, to comply with the conditions of its licence, including the Continuity of Service conditions, we may insert additional conditions into the licence to address the governance failing;
 - where Monitor believes that a provider is at risk of no longer being a going concern, and that one of the major causes of that risk is the local configuration of services, the Act obliges Monitor to inform the relevant commissioning organisations; and
 - where Monitor is concerned about the ability of a provider of Commissioner Requested Services to carry on as a going concern, Monitor may, amongst other actions, initiate contingency planning to, amongst other eventualities, prepare for Trust Special Administration. A contingency planning team may, in conjunction with local commissioners, draw up a provisional list of protected services and generate potential options for their delivery.
53. For some licensees, Commissioner Requested Services will comprise the bulk of their activities while for others Commissioner Requested Services may only represent a small proportion. Nevertheless, Monitor will take into account, where relevant, risk at the level of the overall entity, on the basis that financial pressures on the overall organisation may place its ability to provide Commissioner Requested Services at risk, however small a part they may play in the provider's overall operations.
54. Monitor will regularly consider the planned and actual financial performance of all providers of Commissioner Requested Services and use this information to calculate a continuity of service risk rating for each one. Diagram 11 describes how Monitor will:
- (i) use annual plans to set an initial, forward-looking continuity of service risk rating;
 - (ii) compare it against quarterly performance; and
 - (iii) where necessary, assess the impact of ad hoc or 'exceptional' financial events.

Diagram 10: calculating the continuity of service risk rating

Metric	Weight	Definition	Rating categories			
			1	2	3	4
Liquidity ratio (days)	50%	$\frac{\text{Working capital balance}^1 \times 360}{\text{Annual operating expenses}^2}$	<-12	-12	-7	-2
Capital servicing capacity (times)	50%	$\frac{\text{Revenue available for capital service}^3}{\text{Annual debt service}^4}$	<1.25x	1.25x	1.75x	2.5x

Continuity of Service Risk Rating

¹ Defined as (Current Assets less inventories) - (current liabilities) + wholly committed lines of credit available

² Operating Expenditure excluding depreciation & amortisation

³ Surplus (deficit) for the financial year (pre-dividend) + depreciation + annual interest + restructuring costs + other exceptionals

⁴ All interest, principal payable on borrowings & finance leases + annual PDC dividend payable for NHS foundation trusts; includes PFI contingent rent

Calculating the continuity of service risk rating

55. By focusing on forward-looking measures of financial solvency, this rating is designed to ensure that Monitor is aware in good time of material risks to the future sustainability of any Commissioner Requested Services. Monitor's subsequent action will take into account as appropriate the circumstances of the licensee – see Chapter 5.
56. The continuity of service risk rating incorporates two common indicators of financial robustness, described in Diagram 10:
 - I. **Liquidity**, defined as days of operating costs held in cash or cash-equivalent forms, including wholly committed lines of credit available for drawdown; and
 - II. **Capital servicing capacity**, defined as the degree to which the organisation's income generated covers its financing obligations.
57. Monitor considers that these metrics should form part of the board's normal financial reporting at well-run organisations so their preparation and submission should not represent an undue additional burden to organisations.

Diagram 11 Continuity of service risk rating – regulatory implications

Continuity of Service risk rating ¹	Monitoring frequency	Regulatory activity
4	Quarterly	None
3	Monthly	None
2	Monthly or greater	Potential investigation (see Chapter 5)
1	Monthly or greater	Potential investigation (see Chapter 5) Potential initiation of pre-failure planning (see Appendix B)

¹ Weighted average across the two components of the Continuity of Service risk rating

58. Monitor will use the thresholds in Diagram 10 to assign a rating of 1, 2, 3 or 4 to each of the two components of the continuity of service risk rating once it has been calculated. The provider's overall rating is the rounded average of the two. For example, scoring 4 for liquidity and 2 for capital servicing capacity will result in an overall score of 3. The overall score will inform Monitor's regulatory stance towards the Commissioner Requested Services provider in question – see Diagram 11. A rating of 2 or 1 may represent a potential breach of continuity of service condition 3.

How the continuity of service risk ratings affect Monitor's regulatory stance

59. Each level of risk is matched by an appropriate regulatory stance from Monitor:

- Continuity of service risk rating 4: Monitor will generally take no action beyond continuing to monitor the licensee as described in Chapter 2.
- Continuity of service risk rating 3: Monitor will generally ask the licensee to provide monthly financial updates to allow us to identify and respond swiftly to any sudden deterioration in its financial position.
- Continuity of service risk rating 2: This level of risk may represent financial concern. Monitor may consequently investigate whether a provider may be

in breach of the continuity of service licence conditions – including 3⁵ and collect extra information from the licensee to determine the extent of the financial issues there. Alternatively, a risk rating of 2 may represent an increased level of risk and so Monitor may request information on a monthly basis in order to respond to any issues in a timely fashion should they emerge in the future.

- Continuity of service risk rating 1: For licensees demonstrating a heightened level of financial risk, Monitor is very likely to consider whether it should invoke its powers under continuity of service licence condition 6⁶ and, if so, whether as part of this to require the provider to cooperate with an expert team appointed to assist with contingency planning or financial recovery – for more information see Chapter 5. Alternatively, in some extreme cases, Monitor may collect monthly information as for a rating of 2 above. Where appropriate, Monitor may also consider formal enforcement action as well as specific requirements within the terms of the Continuity of Service licence conditions themselves.

Special Administration

60. When a provider is or is unlikely to be able to pay its debts, then Monitor may:

- for NHS foundation trusts, place the organisation into Trust Special Administration; and
- for other licence holders, apply to the courts to place the organisation into Health Special Administration.

Appendix B summarises Trust Special Administration.

⁵ **Continuity of Service licence condition 3:** 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:

- suitable for a provider of the Commissioner Requested Services provided by the Licensee, and
- providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern.

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:

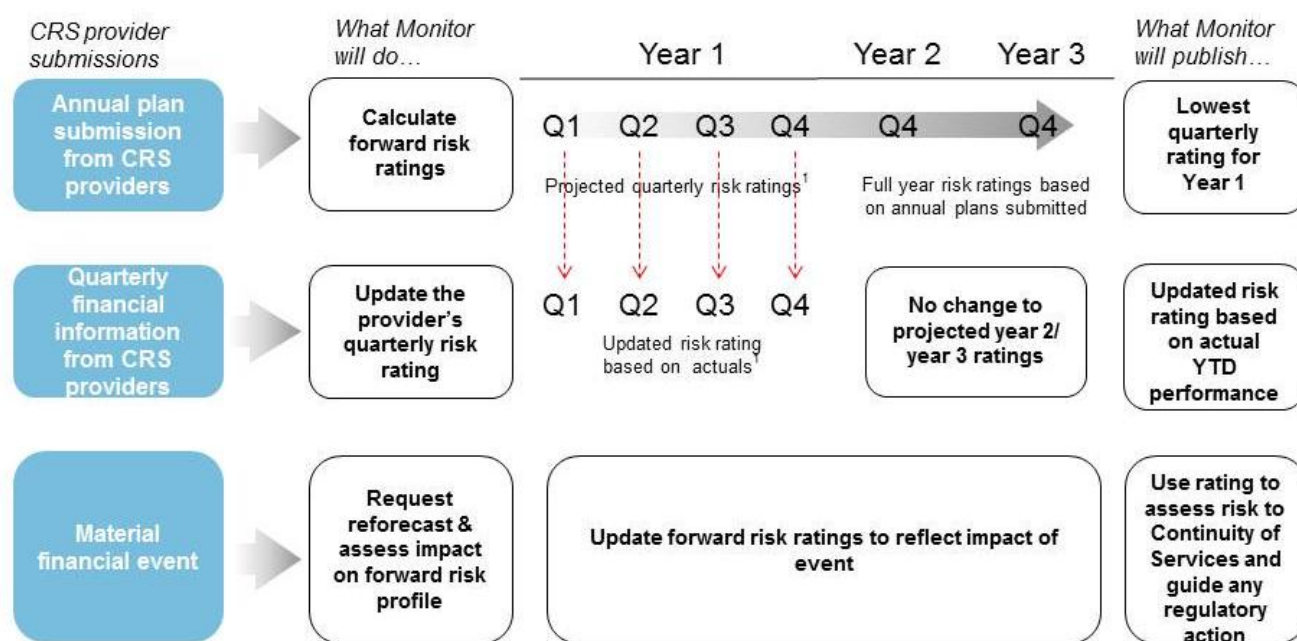
- such guidance as Monitor may issue from time to time concerning systems and standards of corporate governance and financial management;
- the Licensee's rating using the risk rating methodology published by Monitor from time to time, and
- the desirability of that rating being not less than the level regarded by Monitor as acceptable under the provisions of that methodology.

⁶ **Continuity of Service licence condition 6:** 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.

When this paragraph applies the Licensee shall:

- provide such information as Monitor may direct to Commissioners and to such other persons as Monitor may direct;
- 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
- cooperate with such persons as Monitor may appoint to assist in the management of the Licensee's affairs, business and property.

Diagram 12 The continuity of service risk rating process



Monitoring continuity of service risk

61. Monitor will calculate the risk rating on three occasions (see Diagram 12):

1. On an **annual** basis, on receipt of forward financial information from licensees;
2. **In-year** on receipt of year-to-date financial information⁷; and
3. **By exception** should a provider of Commissioner Requested Services inform us of a material financial event.

⁷ In some cases monthly, for Commissioner Requested Services providers with Continuity of Service risk ratings of 3 or less

Forward plans (once a year)

62. Every year, all providers of Commissioner Requested Services will submit financial projections covering three years. Monitor then assesses forward risk to their ability to carry on as a going concern. To minimise disruption to existing processes at NHS foundation trusts, the scope and scale of these submissions in 2013/14 are likely to be comparable to the current forward plan review (FPR) submissions. We may revise this for future plan submissions and to reflect projections from licence holders that are not foundation trusts.

What Monitor will do with the information

63. Monitor will evaluate forward plans from Commissioner Requested Services providers in a two-stage process. The first stage will be a desk-based review to identify plans for further scrutiny. A subset of plans submitted, based on potential impact to Commissioner Requested Services and Monitor's existing knowledge of the issues, will be passed to a more in depth second stage of analysis.
64. Where Monitor subjects a licence holder's forward plan to further analysis as part of the annual plan review, the continuity of service risk rating may remain provisional until that review is completed. In cases of a material variance between the in-year financial submissions and the relevant quarter of the annual plan, NHS foundation trusts will be required to explain the reasons and the actions they propose to take to address the variance.
65. Monitor will publish the lowest quarterly risk rating in the first year of the provider's annual plan, i.e. if a provider submits a plan with a risk rating of 4 in quarter 1, 3 in quarters 2 and 3 and 4 in quarter 4, Monitor will publish a risk rating of 3.
66. Where an annual plan submission indicates a prospective risk to continuity of service, i.e. a risk rating of 1 or 2 at any stage over the plan period, Monitor may consider whether further investigation is necessary to assess what, if any, further regulatory action could be appropriate. Such investigation might include requiring the provider to cooperate with Monitor or other third parties selected by Monitor in order to assess the scale of financial risk, or might include Monitor using its powers to require further information. We may also move to formal enforcement or other regulatory action immediately if we consider this appropriate.

In year submissions

67. Monitor will use financial submissions, usually quarterly but monthly where the level of risk warrants it, to calculate the year-to-date continuity of service risk rating.

What Monitor will do with the information

68. Monitor will publish the continuity of service risk rating. Where the year-to-date risk rating reflects a higher risk than the most recent rating published (i.e. the rating published at annual plan stage or after a previous quarter) Monitor's next steps will be based on the most recent risk rating.
69. Where the quarterly rating is a 1 or 2, and consequently reflects a potential breach of the licence, then Monitor will consider whether further investigation is necessary to establish compliance/non compliance with the continuity of service licence conditions and/or regulatory action is appropriate.

Exception reports, financial overrides and reforecasts

70. Material in-year changes in providers' financial circumstances can have significant implications for their financial sustainability, for example:
- CQC warning notices can require providers to spend significantly more to meet safety/quality requirements;
 - material transactions can have far-reaching consequences for revenues and costs;
 - losing a major contract can leave an organisation with significant 'stranded' assets and costs, at least for a period;
 - refinancing may affect a provider's ability to service its financing costs; and
 - exceptional or one-off income may conceal a licensee's true financial position.

In addition, providers may experience multiple smaller factors that may result, cumulatively, in the provider being materially off plan.

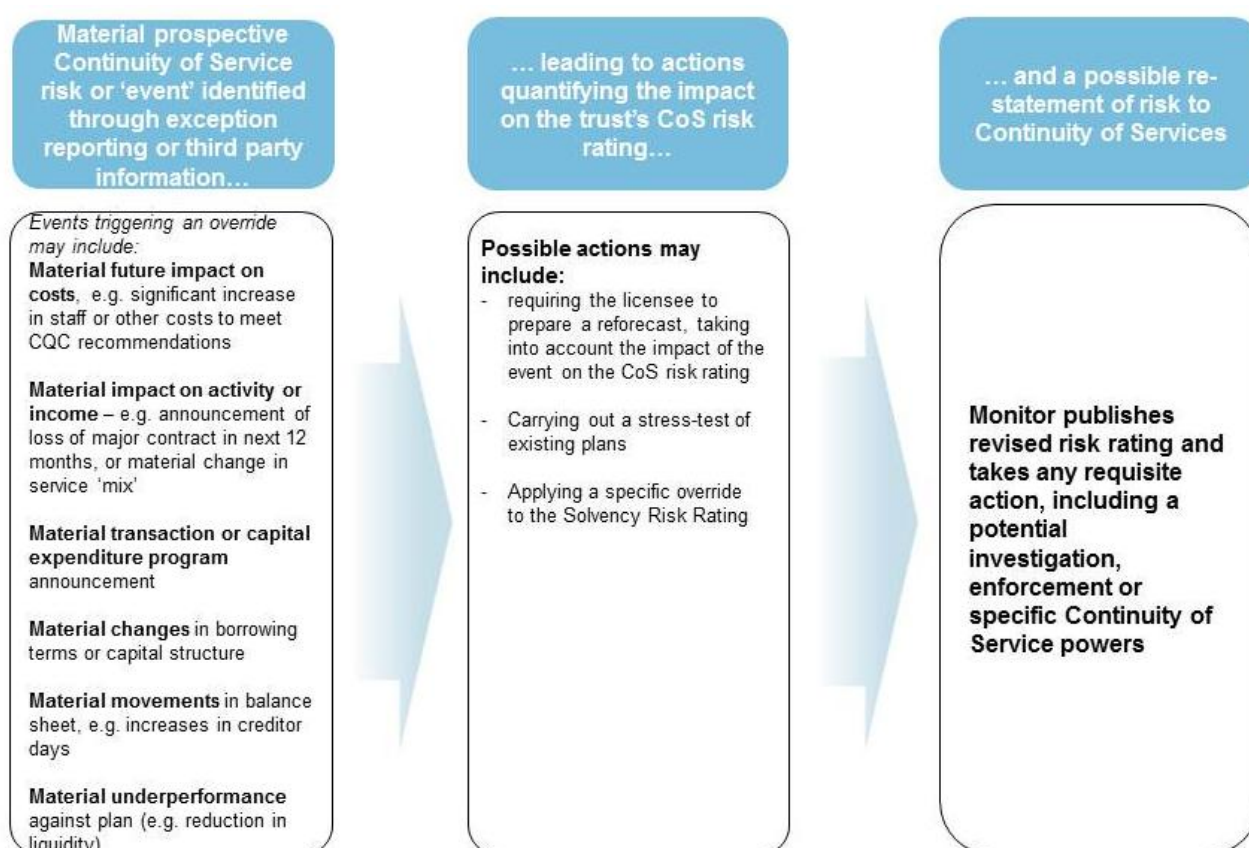
71. Where a licence holder reports a material financial event (see Chapter 2), Monitor may act to 'override' the risk rating (See Diagram 13) to reflect this. Monitor may require a re-forecast for the remainder of the financial year or the next financial year(s) in order to recalculate the provider's prospective continuity of service risk rating as part of this process, or Monitor may conclude that the financial outlook for the licence holder is such that an immediate 'override' is required.
72. We are not likely to require such a reforecast for every CQC warning notice, every transaction, change in contract or refinancing. Some warning notices may require little financial investment to fix, others will require considerable sums. For transactions, Monitor proposes to maintain the existing threshold in the *Compliance Framework* of 25% of income, assets and/ or capital, and to fold the process into the transaction risk assessment process. For material deterioration in financial performance, we propose a reforecast where there is a

difference of 20% or greater between the forecast performance and the expected performance in either of the two risk rating metrics. For others, including CQC warning notices and refinancing, we propose that a reforecast be required on a case-by-case basis where it appears there will be a material change in the financial projections of the provider.

What Monitor will do with the information

73. Where the re-plan following the event indicates a prospective risk to continuity of service via a risk rating of 1 or 2 at any stage over the re-forecast period, Monitor may consider whether further investigation or action under the continuity of service licence conditions is necessary – e.g. requiring closer cooperation with Monitor to minimise the financial risk identified under continuity of service condition 6.
74. Monitor may also use its powers to request further information to understand the degree of risk or, if the licence holder is an NHS foundation trust, also consider whether the prospective risk to continuity of services results from governance issues (i.e. a poor plan or inadequate response to the external financial pressure).

Diagram 13 In-year continuity of service risk rating override process



Assessment of continuity of service risk at non-foundation trusts

75. In essence, Monitor will take the same approach to risk assessment regarding continuity of service at all providers of Commissioner Requested Services. However, Monitor will tailor the scale and scope of the risk assessment process to the amount of Commissioner Requested Services at risk. Where other bodies (e.g. the Charity Commission) already assess financial risk at licensees we will, where appropriate, ensure that any investigation and action complements their oversight.

Chapter 4: Assessing NHS foundation trust governance

Introduction

76. NHS foundation trusts have four additional conditions in their licence reflecting their different status. Three (NHS foundation trust conditions 1-3) reflect administrative and other aspects of their status; NHS foundation trust condition 4 sets out the required standards on NHS foundation trusts in regard to governance. The scope of the condition reflects Monitor's experience of, and guidance on, good governance at NHS foundation trusts and so should already be familiar to NHS foundation trusts and other stakeholders.
77. This chapter sets out how Monitor will use the *Risk Assessment Framework* to assess NHS foundation trusts governance. The licence condition itself comprises four main areas, as below:

I. Board leadership

78. Monitor expects the board of the trust to provide effective leadership through creating and operating appropriate board structures and committees, clear responsibilities and lines of accountability and performance oversight. In addition, business planning and other strategic decision-making processes should be rigorous and robust.

II. Organisational management and oversight

79. The foundation trust licensee is expected to have systems in place ensuring that it provides accurate and timely information, and operates effective systems of performance management and risk assessment such that, amongst other matters:
- issues or risks are identified and, where identified, they are appropriately escalated;
 - the licensee's internal processes and structures are sufficient to ensure ongoing compliance with the licence, health care standards and legal requirements; and
 - systems of financial oversight and controls are sufficient to ensure the licensee can remain a going concern.
- Monitor expects well-run NHS foundation trusts to meet any relevant national health care standards. Monitor consequently expects trust boards to:
- have a full understanding of the basis on which national standards are measured;
 - receive accurate information on expected levels of performance against national standards and any risks to achieving these levels;
 - use plans effectively to ensure satisfactory service performance;

- satisfy themselves that systems are in place to ensure risks to delivery have been properly assessed;
- maintain systems to monitor and regularly report on performance;
- understand where lapses in performance have occurred, or are predicted, and how action plans will deliver the improvements required to meet national standards and any other requirements of the Care Quality Commission;
- commission internal auditing and, as appropriate, other independent advice to provide adequate levels of assurance on governance and performance; and
- continually review and, as appropriate, challenge performance levels.

III. Quality governance

80. Quality of health care and other services is a key responsibility of the board and is primarily monitored by parties other than Monitor, in particular, the Care Quality Commission. Monitor does not intend to duplicate existing regulation in this area. However, we do consider that maintaining and improving quality is an important indicator of the strength of governance at a trust.

In principle, our view of an NHS foundation trust's health care and service quality governance takes into account:

- patient safety;
- clinical effectiveness; and
- patient experience.

As part of complying with their governance condition, NHS foundation trust boards are expected to have assessed the trust against Monitor's Quality Governance Framework (see Appendix C). In particular, we expect trusts to be able to:

- describe their own objectives for improving quality in annual plans;
- identify metrics for monitoring quality in terms of clinical outcomes, patient or service user safety and experience, and expected levels of clinical performance;
- ensure they have in place systems, processes and procedures to monitor, audit and improve quality, including meeting their own objectives, health care targets and indicators and complying with all relevant legislation, and that relevant risks or shortfalls are identified, understood and mitigated;
- maintain effective governance systems to monitor and report on cleanliness, patient safety and experience in a timely fashion;
- consider serious incidents and patterns of complaints; and
- maintain a programme of internal audit review and independent assurance.

In addition, to the best of their knowledge and using their own processes, boards should be satisfied that plans in place are sufficient to ensure ongoing

compliance with the Care Quality Commission's registration requirements. Processes to ensure that all medical practitioners providing care on behalf of the trust meet the relevant registration/revalidation requirements should also be in place.

81. Where there is evidence that an NHS foundation trust board may not be meeting quality of health care requirements,⁸ Monitor is likely to investigate whether a breach of the governance condition has occurred or is likely to occur (see Chapter 5) and, if so, consider whether to take regulatory action.

IV. Capability

82. NHS foundation trust boards should ensure that there is appropriate capability throughout the organisation to meet the needs of patients and ensure compliance with their licence. Where there is evidence that a board has failed to discharge this function effectively, Monitor may investigate the governance of the trust.
83. Monitor will also look for evidence that a collaborative and productive relationship exists between the council of governors and the board of directors and that members of the board understand and have the competencies to ensure that an NHS foundation trust continues to meet the requirements of its licence.
84. Monitor will reflect the governance of NHS foundation trusts through:
- (i) a governance rating, indicating Monitor's assessment of the trust's compliance with its governance condition;
 - (ii) comparison of the trust's corporate governance statement against actual performance; and
 - (iii) regular reviews of governance.

Information that comes to light from (ii) and (iii) above and, where appropriate, from other sources, may lead to changes in the governance rating.

The governance rating

85. Monitor will generate a governance rating for NHS foundation trusts by considering the following data about the trust:
- performance against appropriate national access standards;
 - performance against appropriate national outcomes;
 - Care Quality Commission judgments on the quality of care provided;
 - relevant information from third parties;
 - a selection of information chosen to reflect quality governance at the organisation; and
 - the degree of risk to continuity of service.

⁸ For example, through Care Quality Commission concerns or adverse reports from third parties regarding clinical quality or patient safety.

Performance against national access requirements

86. Monitor expects that NHS foundation trusts should meet national standards of access. Monitor will incorporate performance against a number of these standards in our assessment of the overall governance of an NHS foundation trust. For more information on the standards see Appendix A.
87. Material or ongoing underperformance against these access requirements may reflect a governance concern and hence warrant further investigation.

Meeting national outcome standards

88. In assessing governance, Monitor will also assess NHS foundation trusts' ability to meet certain requirements of the NHS Outcomes Framework. Material or ongoing underperformance against these measures may reflect a governance concern and a potential breach of the licence. For more information on the metrics concerned see Appendix A.

Care Quality Commission judgments

89. The licence requires NHS foundation trusts to have systems in place to manage the provision of care of sufficient quality to patients. Where the CQC issues a warning notice or takes stronger action, Monitor is highly likely to investigate further and to consider whether an NHS foundation trust is in breach, or will be in breach, of its licence.

Third party information

90. Monitor will also consider information from third parties, either supplied to us by the NHS foundation trust (see Chapter 2 under 'exception reporting') or brought to us directly. Whilst our initial response is likely to be a request for further information from the trust in question, where appropriate, we may investigate formally (see Chapter 5) and consider whether an NHS foundation trust is in breach, or will be in breach, of its licence. This is particularly likely where the information reflects similar or relevant concerns from other sources and/or is relevant to governance of matters related to patient care.

Quality governance indicators

91. It is not Monitor's role to assess the quality of care at an NHS foundation trust directly. It is however Monitor's role to assess governance, including how well an NHS foundation trust is identifying risks to quality and addressing them. Monitor will therefore use a small number of such indicators to prompt further information requests where these suggest that NHS foundation trusts are not identifying risks early and mitigating them. Such indicators will include patient and staff survey information. Monitor will also look at the results of the incoming

‘Friends and Family’ test⁹ to understand if that too can be used to indicate concern with quality governance. Where such measures suggest potential issues, Monitor will seek further information to assess whether the risk is material and, if so, what steps the foundation trust is taking to address it, taking any other or further action as seems appropriate.

Continuity of service

92. Monitor considers well-governed NHS foundation trusts will not only remain solvent (see Chapter 2) but will also demonstrate financial efficiency and robust financial planning and decision-making processes. Where Monitor identifies a material risk to an NHS foundation trust’s financial sustainability or overall compliance with the continuity of service licence condition, it will consider whether this also reflects a governance issue.
93. When we review forward plan submissions, reforecasts and transaction submissions from NHS foundation trusts to assess any risk to their continuity of service, in order to assess the *governance* underpinning the plan we may also:
- check if the approach to planning and the major assumptions in the forward plan are reasonable, e.g. comparable to past performance, other NHS foundation trusts and relevant national guidance;
 - consider how closely the NHS foundation trust performed against its plan in the previous year. Monitor will also assess the scale of any variance between key elements of the plan and the previous year’s actual figures in order to test the credibility of the projections; and
 - assess the implications for financial viability during the year.
94. Where an NHS foundation trust’s forward plans indicate to us that the trust is not taking sufficient steps to ensure compliance with the licence, this may result in further investigation into an NHS foundation trust’s governance, with particular regard to planning.

Generating the governance rating

95. Monitor will use the information gathered under the six categories outlined above to assess the strength of governance at an NHS foundation trust. Diagram 14 outlines what will trigger governance concerns in each of the categories.

⁹ For more information see <http://cno.dh.gov.uk/2012/05/31/friends-and-family-test-what-it-means-for-nhs/>

Diagram 14 Triggers of governance concerns

Category	Metrics	Governance concern triggered by...
CQC concerns	<ul style="list-style-type: none"> CQC judgments 	<ul style="list-style-type: none"> CQC warning notice issued Civil and/or criminal action initiated
Access metrics	<p>For acute trusts, metrics including:</p> <ul style="list-style-type: none"> Referral to treatment within 18 weeks A&E waits (4 hours) Cancer waits (62 days) <p>For ambulance trusts, Category A response times</p> <p>For mental health trusts, metrics including CPA follow-up and psychosis outreach</p>	<ul style="list-style-type: none"> 3 consecutive quarters' breaches of a single access metric or 4 or more access metrics breached in a single period
Outcomes metrics	<p>For acute trusts, metrics including</p> <ul style="list-style-type: none"> 30 day emergency readmissions – relative level Incidence of MRSA & C. Difficile – national target <p>For mental health trusts, metrics including IAPT recovery rate and accommodation/employment status (date completeness only)</p>	<ul style="list-style-type: none"> 3 consecutive periods in bottom decile (for relative metrics) Breaching pre-determined annual threshold (either three quarters' breach of the year-to-date threshold or breaching the full year threshold in any quarter)
3rd party reports	<ul style="list-style-type: none"> Ad hoc reports from GMC, the Ombudsman, Commissioners, Healthwatch England, Auditor reports, Health & Safety Executive etc. 	<ul style="list-style-type: none"> Judgment based on the severity and frequency of reports.
Quality governance indicators	<ul style="list-style-type: none"> Patient metrics <ul style="list-style-type: none"> Patient satisfaction – relative level and trends Staff metrics <ul style="list-style-type: none"> High executive team turnover – relative level and change Satisfaction – relative level and change Sickness/absence rate – relative level and change Proportion temporary staff – relative level and change Staff turnover - change Aggressive cost reduction plans - >5% in year 	<ul style="list-style-type: none"> Reduction in satisfaction levels by 25% of actual level 3 consecutive periods in bottom decile Increase in sickness or turnover rates by 25% of previous level Material increases in proportion of temporary staff
Financial risk	<ul style="list-style-type: none"> Continuity of Service risk rating 	<ul style="list-style-type: none"> Breaching the Continuity of Service licence condition Inadequate planning processes






96. Where Monitor identifies material concerns in one or more of these categories, it will reflect this in the governance rating (see Diagram 15) and seek to understand what, if any, are the underlying governance issues. Where Monitor is satisfied that the governance concerns are not resolved, we may further raise the governance rating of the NHS foundation trust to reflect this.

The scale and timing of any such increase will reflect

- the seriousness of the issue;
- the effectiveness of the NHS foundation trust's response to it; and
- the urgency or time-critical nature of the situation.

Monitor may require additional information from the trust in carrying this out. Depending on this assessment, Monitor may consider whether there is a need to investigate formally and/or address the issue via our enforcement powers (see both Chapter 5: Investigation and Monitor's *Enforcement Guidance*).

Diagram 15 The Governance rating

Governance Rating	Description	Follow-on actions	Subsequent actions
 "No concern identified"	<ul style="list-style-type: none"> No categories triggering a governance concern 	<ul style="list-style-type: none"> No follow-up action 	<ul style="list-style-type: none"> None
 "Emerging concern requiring further information"	<ul style="list-style-type: none"> One category triggers a governance concern 	<ul style="list-style-type: none"> Request further information Discuss with CQC, Commissioners or other third parties 	<ul style="list-style-type: none"> If governance concerns serious or not resolved in a timely manner, escalate to amber (further investigation) or amber-red (consideration for formal action)
 "Governance concern requiring formal investigation"	<ul style="list-style-type: none"> Two categories trigger a governance concern; OR Unresolved governance concerns arising from amber-green 	<ul style="list-style-type: none"> Require further information Request recovery plan Discuss with CQC, Commissioners or other third parties 	<ul style="list-style-type: none"> If governance concerns serious or not resolved in a timely manner, escalate to amber-red If a breach of the licence is likely, consider action under Section 111 (see Enforcement Guidance)
 "Material governance issue – potential use of formal powers"	<ul style="list-style-type: none"> Three categories trigger a governance concern; OR Trust escalated from amber after unresolved governance concerns; OR CQC warning notice; OR CQC civil/criminal action 	<ul style="list-style-type: none"> Carry out additional investigation (e.g. governance review) Discuss with CQC, Commissioners or other third parties Open a formal case to consider whether trust is in breach of its governance condition 	<ul style="list-style-type: none"> If governance concerns serious and unresolved in a timely manner, escalate to red If a breach of the licence is likely, consider action under Section 111 (see Enforcement Guidance)
 "Formal action to address governance issues taken"	<ul style="list-style-type: none"> Unresolved governance concerns as a result of one or more categories triggering governance issues Breach of the governance licence condition with formal action 	<ul style="list-style-type: none"> Use of Monitor's formal powers 	<ul style="list-style-type: none"> Further use of s.105, s.106 or s.111 powers, if necessary (see Enforcement Guidance)

Corporate governance statement

97. Under their governance condition, NHS foundation trusts will submit a corporate governance statement within three months of the end of each financial year. The governance condition requires boards to confirm:

- compliance with the governance condition at the date of the statement; and
- forward compliance with the governance condition for the next financial year, specifying (i) any risks to compliance and (ii) any actions proposed to manage such risks.

Where subsequent events in-year call into question the basis of assurances given in the corporate governance statement, Monitor may require a review of governance at the NHS foundation trust.

Regular governance reviews

98. As described in Chapter 2, Monitor will require NHS foundation trust boards to commission a review of aspects of their trust's governance every three years. This review will be submitted to the trust board and Monitor. Trust boards will additionally submit, within 60 days of the report's submission, a commentary from the board on its key findings and a plan to implement any recommendations.

99. Where the review identifies material concerns with the governance of an NHS foundation trust, Monitor will consider whether this reflects a risk to the trust's compliance with its governance condition. Where Monitor considers it appropriate, e.g. where the failings are such that Monitor would need to act sooner to prevent patient harm, we may not wait 60 days for the board's response to the report, choosing to take action sooner.

Ad hoc / triggered reviews

100. Should the governance rating or any other information indicate a potential governance concern (e.g. a rating of amber-green or greater), Monitor may request the board of the trust to carry out a review into the issues behind this concern. Where the review identifies a potential breach of the governance condition, Monitor may further investigate and potentially take enforcement action.

Chapter 5: Investigation

Introduction

101. The risk assessment processes outlined in Chapters 2 to 4 are designed to indicate situations where a licensee is failing, or is at risk of failing, to comply with the continuity of service or, for NHS foundation trusts, the governance conditions of its licence. This chapter sets out the principles and processes Monitor will apply once the *Risk Assessment Framework* identifies such a breach or potential breach of the licence in these areas.
102. Where the *Risk Assessment Framework* indicates such a compliance issue, Monitor will consider the provider's circumstances and context of the possible breach or breaches in question. Chapters 3 and 4 set out some of the indicators of a breach or potential breach of the above licence conditions. The purpose of any subsequent investigation will be to:
- determine the scale and scope of any breach; and
 - identify the appropriate action, if any, to take as a result.
103. In addition to describing the enforcement powers available to Monitor where it identifies a provider is in breach of the licence, Monitor's *Enforcement Guidance* also describes the process through which Monitor will determine the appropriate regulatory approach to a breach of the licence. This chapter should be read alongside the *Enforcement Guidance*.

Initial assessment and prioritisation

104. Monitor will initially consider:
- the information already available via in-year monitoring;
 - the context and circumstances of the potential breach; and
 - any other information available from the trust and third parties.
105. Following this initial assessment, if Monitor believes that a breach may have occurred, or may occur, we will consider whether to carry out further investigation in order to establish the appropriate actions to take.

Prioritisation

106. As with our enforcement processes, Monitor will use a process of prioritisation in coming to a decision to investigate a potential breach, considering:
- The likely benefit (direct and indirect) to healthcare users;
 - the impact on patients and the provision of health care;
 - the ultimate scale and scope of the breach; and

- the resources required to fully investigate and address the breach.

Investigation

107. The investigation process is designed to provide clear evidence of whether a breach of the licence has taken place and, if so, what Monitor's regulatory response should be. The process intends to allow Monitor to find out, for example:

- the financial viability of the licensee in question where there is a continuity of service concern;
- for NHS foundation trusts, the quality of governance where an issue concerning compliance with the governance condition has been identified;
- whether the licensee has the capability and resources to return to compliance with the licence, or make good the effect of a breach;
- the impact of any breach on other parties; and
- if Monitor will need to use our formal enforcement powers or whether other forms of engagement are appropriate.

108. Once Monitor has identified a potential breach and launched an investigation, we are likely to require additional information in order to understand the nature of the issue, the licensee's plans to address it and the likelihood of these plans succeeding. Monitor may gather this information through a number of means, including:

- offering to hold meetings with the licensee;
- requesting additional information from the licensee; and
- where relevant, seeking the views of, or information from, appropriate third parties.

109. Monitor may also ask the licensee to take action, including:

- preparing, presenting and committing to deliver a recovery plan;
- commissioning an independent report into the causes of the potential breach; or
- commissioning external advice to address the issue.

Monitor's response to providers of Commissioner Requested Services in financial distress

110. Where a licensee providing Commissioner Requested Services is in financial distress, Monitor may require the licensee to, amongst other actions:

- make information available to commissioners;
- work with parties appointed by Monitor to address the financial issues; and
- generally cooperate with Monitor.

111. Actions required by Monitor in such circumstances may also include requesting the board to commission a report by independent advisers. This may:

- confirm the facts indicating a risk to Continuity of Service;
- consider the monthly financial profile of the licensee and key risks and sensitivities;
- define a set of monthly measures that Monitor can use to assess the licensee's return to financial stability; and
- assess the licensee's capability to deliver a recovery plan.

Monitor's response to NHS foundation trusts potentially in breach of their governance condition

112. Where Monitor has identified a potential breach by an NHS foundation trust of either the NHS foundation trust governance condition or any other relevant condition of its licence resulting from its governance, Monitor may require the trust to, amongst other actions:

- confirm the facts indicating a potential breach;
- draw up a recovery plan addressing any potential breach, including an analysis of key risks and sensitivities;
- agree measures of progress in addressing the issue; and
- consider management and organisational capability and any other factors related to addressing the issue.

Actual breach of the licence and use of formal enforcement powers

113. Monitor will generally work with licensees deemed as potentially in breach of their licence to gather additional information and assess what is needed to ensure the issues are addressed swiftly and appropriately.

114. For more information on Monitor's formal powers of enforcement and our general approach to prioritising and deciding on regulatory action, see the *Enforcement Guidance*.

Appendix A – Access targets, outcomes objectives and other triggers of governance concern

Monitor uses a limited set of national measures to assess the quality of governance at NHS foundation trusts. These cover acute, mental health, community and ambulance activities. As set out in **Diagram 14** in **Chapter 4**, Monitor uses performance against these indicators as a trigger to detect potential governance issues and generate governance risk ratings.

NHS foundation trusts failing to meet at least four of these requirements at any given time, or failing the same requirement for at least three quarters, will trigger a governance concern, potentially leading to investigation and enforcement action.

Except where otherwise stated, any trust commissioned to provide services will be subject to the relevant governance indicators associated with those services.

Table 1 below sets out the indicators and thresholds. Unless stated in the supporting notes, these are monitored on a quarterly basis.

Table 1A: targets and indicators with thresholds for 2013/14		
Area	Indicator	Threshold (A)
Access	1 Maximum time of 18 weeks from point of referral to treatment in aggregate – admitted (2)	90%
	2 Maximum time of 18 weeks from point of referral to treatment in aggregate – non-admitted (2)	95%
	3 Maximum time of 18 weeks from point of referral to treatment in aggregate – patients on an incomplete pathway (2)	92%
	4 Maximum time of 6 weeks from point of referral to diagnostic test (3)	99%
	5 A&E: maximum waiting time of four hours from arrival to admission/transfer/discharge (4)	95%
	6 All cancers: 62-day wait for first treatment (5) from:	
	urgent GP referral for suspected cancer	85%
	NHS Cancer Screening Service referral	90%
	7 All cancers: 31-day wait for second or subsequent treatment (6) , comprising:	
	Surgery	94%
	anti-cancer drug treatments	98%
	radiotherapy	94%
	8 All cancers: 31-day wait from diagnosis to first treatment (7)	96%
	9 Cancer: two week wait from referral to date first seen (8) , comprising:	
	all urgent referrals (cancer suspected)	93%
	for symptomatic breast patients (cancer not initially suspected)	93%
	11 Care Programme Approach (CPA) patients (9) , comprising:	
	receiving follow-up contact within seven days of discharge	95%
	having formal review within 12 months	95%
	12 Admissions to inpatients services had access to Crisis Resolution/Home Treatment teams (10)	95%
	13 Meeting commitment to serve new psychosis cases by early intervention teams (11)	95%
	14 Expected recovery following completion of psychological therapy treatment (12)	50%
	15 Category A call – emergency response within 8 minutes (13) , comprising:	
	Red 1 calls	75%
	Red 2 calls	75%
	16 Category A call – ambulance vehicle arrives within 19 minutes (13)	95%

Table 1B: targets and indicators with thresholds for 2013/14

Area	Indicator	Threshold (A)
Outcomes	17 Clostridium (C.) difficile – meeting the C. difficile objective (14)	DM*
	18 Methicillin-resistant Staphylococcus aureus (MRSA) bacteraemia – meeting the MRSA objective (15)	DM*
	19 30 day emergency readmissions (16)	TBC
	20 Incidence of newly-acquired pressure ulcers (17)	TBC
	21 Medication errors causing serious harm (18)	TBC
	22 Admission of term babies to neonatal care (19)	TBC
	23 Incidence of health care-related venous thromboembolism (20)	TBC
	24 Minimising mental health delayed transfers of care (21)	≤7.5%
	25 Mental health data completeness: identifiers (22)	97%
	26 Mental health data completeness: outcomes for patients on CPA (23)	50%
	27 Certification against compliance with requirements regarding access to health care for people with a learning disability (24)	N/A
	28 Data completeness: community services (25) , comprising:	
	Referral to treatment information	50%
	Referral information	50%
	Treatment activity information	50%

*DM – a *de minimis* applies

General notes

- (1) Monitor will not use a general rounding principle when considering compliance with these targets and standards, e.g. a performance of 94.5% will be considered as failing to achieve a 95% target. However, exceptional cases may be considered on an individual basis taking into account, for instance, low activity or thresholds that have little or no tolerance against the target, e.g. those set between 99-100%. Where targets comprise multiple thresholds, each threshold must be individually met to avoid being assessed as a governance concern.

All indicators will be monitored on a quarterly basis.

Unless otherwise specified, indicators have been sourced from the draft *Mandate to the NHS Commissioning Board*, the NHS constitution and the *NHS Outcomes Framework*. In addition, many of the indicators were previously used by Monitor in the 2012/13 *Compliance Framework* and were sourced from the *NHS Operating Framework*.

Notes on Table 1A: Access

- (2) **18 weeks referral to treatment:** Performance is measured on an aggregate (rather than specialty) basis and NHS foundation trusts are required to meet the threshold on a monthly basis. Consequently, any failure in one month is considered to be a quarterly failure for the purposes of the *Risk Assessment Framework*. Failure in any month of a quarter following two quarters' failure of the same

measure represents a third successive quarter failure and should be reported via the exception reporting process.

Will apply to consultant-led admitted, non-admitted and incomplete pathways provided. *Failure against any threshold will constitute a governance failure.* The measures apply to acute patients whether in an acute or community setting. Where an NHS foundation trust with existing acute facilities acquires a community hospital, performance will be assessed on a combined basis.

Monitor will take account of breaches of the referral to treatment target in prior quarters (i.e. under the *Compliance Framework*) when considering consecutive failures of the referral to treatment target under the *Risk Assessment Framework*

- (3) **6 weeks referral to diagnostics:**

The percentage of patients waiting 6 weeks from referral or more for a diagnostic test should be less than 1%. The number of patients waiting 6 weeks or more for a diagnostic test (for the 15 key tests and procedures reported in the monthly diagnostic data collection) should be based on monthly diagnostics data provided by NHS and independent sector organisations and signed off by NHS commissioners as a percentage of the total number of patients waiting at the end of the period. Information, including the definitions that apply for diagnostics, is available at: <http://transparency.dh.gov.uk/2012/07/05/diagnostics-information/>

- (4) **A&E 4 hours wait:** Waiting time is assessed on a provider basis, aggregated across all sites: no activity from *off-site* partner organisations should be included. The 4-hour waiting time indicator will apply to minor injury units/walk in centres.
- (5) **62-day wait for cancer first treatment:** measured from day of receipt of referral to treatment start date. This includes referrals from screening service and other consultants. *Failure against either threshold represents a failure against the overall target.* The target will not apply to trusts having five cases or less in a quarter. Monitor will not consider there to be a breach where trusts fail individual cancer thresholds but only report a single patient breach over the quarter. Will apply to any community providers providing the specific cancer treatment pathways.

National guidance states that for patients referred from one provider to another, breaches of this target are automatically shared and treated on a 50:50 basis. These breaches may be reallocated in full back to the referring organisation(s) provided Monitor receives evidence of written agreement to do so between the relevant providers (signed by both Chief Executives) in place at the time the NHS foundation trust makes its quarterly declaration to Monitor.

In the absence of any locally-agreed contractual arrangements, Monitor encourages trusts to work with other providers to reach a local system-wide agreement on the allocation of cancer target breaches to ensure that patients are treated in a timely manner. Once an agreement of this nature has been reached, Monitor will consider applying

the terms of the agreement to foundation trusts party to the arrangement.

- (6) **31-day wait for cancer second/subsequent treatment:** measured from cancer treatment period start date to treatment start date. *Failure against any threshold represents a failure against the overall target.* The target will not apply to trusts having five cases or less in a quarter. Monitor will not consider there to be a breach where trusts fail individual cancer thresholds but only report a single patient breach over the quarter.¹ Will apply to any community providers providing the specific cancer treatment pathways.
- (7) **31-day wait for cancer diagnosis to first treatment:** Measured from decision to treat to first definitive treatment. The target will not apply to trusts having five cases or fewer in a quarter. Monitor will not consider there to be a breach where trusts fail individual cancer thresholds but only report a single patient breach over the quarter. Will apply to any community providers providing the specific cancer treatment pathways.
- (8) **2 week wait for cancer referral to date first seen:** Measured from day of receipt of referral – existing standard (includes referrals from general dental practitioners and any primary care professional). *Failure against either threshold represents a failure*

¹ I.e. if a trust has ten cancer (surgery) patients in a quarter and one breaches the waiting time target (thus scoring 90%) Monitor will generally not consider this to be a breach. But if a trust has 20 patients and two breach the target (failing the target with more than one breach) Monitor generally will consider this to be a breach of the target.

against the overall target. The target will not apply to trusts having five cases or fewer in a quarter. Monitor will not consider there to be a breach where trusts fail individual cancer thresholds but only report a single patient breach over the quarter. Will apply to any community providers providing the specific cancer treatment pathways.

- (9) **CPA patients:** failure against either threshold represents a failure against the overall target.

- 7-day follow up:

Numerator: the number of people under adult mental illness specialties on CPA who were followed up (either by face-to-face contact or by phone discussion) within seven days of discharge from psychiatric inpatient care.

Denominator: the total number of people under adult mental illness specialties on CPA who were discharged from psychiatric inpatient care.

All patients discharged to their place of residence, care home, residential accommodation, or to non-psychiatric care must be followed up within seven days of discharge. All efforts must be made to follow up with the patient. It is the responsibility of the trust that discharged the patient to provide follow up patient treatment. Links will need to be established with the receiving institution if a patient is discharged to, for example, a care home, to enable follow up to take place. However, if the patient is transferred to another psychiatric

unit to continue psychiatric care, then the responsibility lies with the receiving trust to follow up the patient after they have been discharged. Where a patient has been transferred to prison, contact should be made via the prison in-reach team.

Exemptions from both the numerator and the denominator of the indicator include:

- i. patients who die within seven days of discharge;
- ii. where legal precedence has forced the removal of a patient from the country; or
- iii. patients discharged to another NHS psychiatric inpatient ward.

Guidance on what should and should not be counted when calculating the achievement of this target can be found on Unify2.²

- For 12 month review (from Mental Health Minimum Data Set v4-0, MHMDS):

Numerator: the number of adults in the denominator who have had at least one formal review in the last 12 months.

Denominator: the total number of adults who have received secondary mental health services during the reporting period (quarter) who had spent at least 12 months on CPA (by the end of the reporting period OR when their time on CPA ended).

² Unify2 is the system for reporting and sharing NHS and social care performance information.

(10) **Crisis Resolution/Home**

Treatment teams: This indicator applies only to admissions to the foundation trust's mental health psychiatric inpatient care. The following cases can be excluded:

- i. planned admissions for psychiatric care from specialist units;
- ii. internal transfers of service users between wards in a trust and transfers from other trusts;
- iii. patients recalled on Community Treatment Orders; or
- iv. patients on leave under Section 17 of the Mental Health Act 1983.

The indicator applies to users of working age (16-65) only, unless otherwise contracted. This includes CAMHS clients only where they have been admitted to adult wards. An admission has been gate-kept by a crisis resolution team if they have assessed the service user before admission and if they were involved in the decision-making process, which resulted in admission.

For full details of the features of gate-keeping, please see [Guidance Statement on Fidelity and Best Practice for Crisis Services](#) on the Department of Health's website. As set out in this guidance, the crisis resolution home treatment team should:

- i. provide a mobile 24 hour, seven days a week

response to requests for assessments;

- ii. be actively involved in all requests for admission: for the avoidance of doubt, 'actively involved' requires face-to-face contact unless it can be demonstrated that face-to-face contact was not appropriate or possible. For each case where face-to-face contact is deemed inappropriate, a declaration that the face-to-face contact was not the most appropriate action from a clinical perspective will be required;
- iii. be notified of all pending Mental Health Act assessments;
- iv. be assessing all these cases before admission happens; and
- v. be central to the decision making process in conjunction with the rest of the multidisciplinary team.

(11) **Early intervention for new**

psychosis cases: Quarterly performance against commissioner contract. Threshold represents a minimum level of performance against contract performance, rounded down.

(12) **Improved access to psychological therapies (IAPT):**

the proportion of people with depression and/or anxiety disorders who complete treatment who are moving to recovery.

Numerator: The number of people who have completed treatment having attended at least two treatment contacts and are moving

to recovery (those who at initial assessment were considered to be a case and at final session were not)

Denominator: The number of people who have completed treatment within the reporting quarter, having attended at least two treatment contacts.

Psychological therapy is defined by NICE as recommended (low or high intensity) treatment from a qualified psychological therapist.

Case is defined as a patient suffering from depression and/or anxiety disorders, as determined by scores on the Patient Health Questionnaire or another anxiety disorder specific measure as appropriate.

Completed treatment is a count of all those who have left treatment within the reporting quarter having attended at least two treatment contacts. Reasons include: planned completion; death; unscheduled discontinuation; referral to another service; or unknown.

- (13) **Ambulance emergency response:** For patients with immediately life-threatening conditions.

The category A8 ambulance response time standard has been formally subdivided into Red 1 and Red 2 calls to allow a faster response to those patients with time critical conditions. Monitor will differentiate between Red 1 and Red 2 Category A8 calls:

- Red 1 calls are the most time-critical and cover cardiac arrest patients who are not breathing and do not have a pulse, and other severe conditions such as airway obstruction.

- Red 2 calls are serious but less immediately time-critical and cover conditions such as stroke and fits.

Each type of category A8 call will be assessed using the 75% threshold. *Failure against either threshold will represent a governance concern.*

Notes on Table 1B: Outcomes

- (14) **C. difficile:** Will apply to any inpatient facility with a centrally set C. difficile objective. Where an NHS foundation trust with existing acute facilities acquires a community hospital, the combined objective will be an aggregate of the two organisations' separate objectives. Both avoidable and unavoidable cases of C. difficile will be taken into account for regulatory purposes.

Where there is no objective (i.e. if a mental health NHS foundation trust without a C. difficile objective acquires a community provider without an allocated C. difficile objective) we will not consider this to represent a governance concern.

Monitor's annual *de minimis* limit for cases of C. difficile is set at 12. However, Monitor may regard cases of <12 as representing a governance concern if the Health Protection Agency indicates multiple outbreaks.

See ⌘ for the circumstances in which we will consider that trust performance against the C. difficile objective represents a governance concern.

- (15) **MRSA:** Will apply to any inpatient facility with a centrally set MRSA objective. Where an NHS foundation trust with existing acute facilities acquires a community

hospital, the combined objective will be an aggregate of the two organisations' separate objectives.

Those NHS foundation trusts that are not in the best performing quartile for MRSA should deliver performance that is at least in line with the MRSA objective target figures calculated for them by the Department of Health. We expect those NHS foundation trusts without a centrally calculated MRSA objective as a result of being in the best performing quartile to agree an MRSA target for 2012/13 that at least maintains existing performance.

Where trusts do not have an MRSA trajectory, Monitor will use a de minimis of 6 cases/year as a de facto threshold for governance purposes.

Where there is no objective (i.e. if a mental health NHS foundation trust without an MRSA objective acquires a community provider without an allocated MRSA objective) we will not consider this to represent a governance concern.

Monitor's annual *de minimis* limit for cases of MRSA is set at 6.

See 3 for the circumstances in which we will consider that trust performance against the MRSA objective represents a governance concern.

3 Monitor will assess NHS foundation trusts for breaches of the C. difficile and MRSA objectives against their objectives at each quarter using a cumulative year-to-date trajectory as follows:

Criteria	Considered to be a governance concern
Where the number of cases is less than or equal to the <i>de minimis</i> limit	No
If a trust exceeds the <i>de minimis</i> limit, but remains within an in-year trajectory ³ for the national objective	No
If a trust exceeds both the <i>de minimis</i> limit and any in-year trajectory ¹⁷ for the national objective	Yes
If a trust exceeds a national objective above the <i>de minimis</i> limit	Yes

If the Health Protection Agency indicates that the C. difficile target is exceeded due to multiple outbreaks, while still below the *de minimis*, Monitor may consider this to represent a governance concern.

Monitor considers it a matter of routine reporting for trusts to report any risk to achieving its targets, including those relating to infection control.

- (16) **30-day emergency readmissions:** Percentage of emergency admissions to any NHS foundation trust occurring within 30 days of the last, previous discharge

³ Assessed at: 25% of the annual centrally-set objective at quarter 1; 50% at quarter 2; 75% at quarter 3; and 100% at quarter 4 (all rounded to the nearest whole number, with any ending in 0.5 rounded up). Monitor will not accept a trust's own internal phasing of their annual objective or that agreed with their commissioners.

from hospital after admission, excluding readmissions for cancer and obstetrics.

Numerator: The number of finished and unfinished continuous inpatient spells that are emergency admissions within 0-29 days (inclusive) of the last, previous discharge from hospital. This includes those spells resulting in patient death, but excludes patients: coded as obstetric as the main specialty upon readmission; with a diagnosis of cancer in the readmitting spell (other than benign or in situ); or with chemotherapy for cancer coded in the spell.

Denominator: The number of finished continuous inpatient spells within selected medical and surgical specialties, with a discharge date up to March 31 within the year of analysis. Exclusions are: day cases; spells with a discharge coded as death; maternity spells (based on specialty, episode type, diagnosis); and those with mention of a diagnosis of cancer or chemotherapy for cancer anywhere in the spell (or in the 365 days prior to admission).

- (17) **Pressure ulcers:** This indicator draws on the percentage incidence of newly-acquired pressure ulcers in categories 2 (partial thickness – skin loss or blister), 3 (full thickness, fat visible) and 4 (full thickness, bone visible), based on data from the NHS Safety Thermometer.

Numerator: Number of patients who develop a new pressure ulcer

(counting all ulcers and those Category 2 or greater).

Denominator: Number of patients on the (care) unit or in the (care) facility during the time period.

- (18) **Medication errors causing serious harm:** Patient safety incidents reported to the National Reporting and Learning Service (NRLS), where: degree of harm is recorded as severe harm/death; and incident type is 'medication' by the NHS foundation trust. The rate is per 100,000 population.

A patient safety incident is defined as any unintended or unexpected incident(s) leading to actual harm for one or more person(s) receiving NHS funded health care, filtered for incidents identified as being of type 'medication error'.

The 'degree of harm' for patient safety incidents reported relates to: *severe* (permanent harm as a result of the patient safety incident); and *death* (patient death as a result of the patient safety incident). *Serious* denotes the total for patient safety incidents resulting in severe harm or death.

Numerator: The number of medication error incidents recorded as causing severe harm/death.

Denominator: Mid-year population estimate for all persons, year in question or latest year available. Data to be sourced from the Office of National Statistics (ONS).

- (19) **Full term babies admitted to neonatal care:** Percentage of all term babies (≥ 37 weeks gestation) admitted to neonatal care. Data to be sourced from the National Neonatal Audit Programme and the ONS.

Numerator: Number of admissions of a term baby to neonatal care.

Denominator: Number of term births (with data collected from birth notification records).

(20) **Incidence of health care-related venous**

thromboembolism (VTE): Rate of admissions with VTE (drawing on Hospital Episode Statistics data, using VTE ICD codes for pulmonary embolism (I260, I260) and deep vein thrombosis (I800-03, I808-09, I821-23, I828-29, O223, O229, O871, O87.0, O87.9). The rate is age standardised per 100,000 population.

Numerator: Number of hospital admissions with a primary or secondary diagnosis of VTE

Denominator: Resident population (ONS).

(21) **Mental health delayed**

transfers of care: For full details of the changes to the CPA process, please see the implementation guidance [Refocusing the Care Programme Approach](#) on the Department of Health's website. For minimising mental health delayed transfers of care:

Numerator: the number of non-acute patients (aged 18 and over on admission) per day under consultant and non-consultant-led care whose transfer of care was delayed during the quarter. For example, one patient delayed for five days counts as five.

Denominator: the total number of occupied bed days (consultant-led and non-consultant-led) during the quarter.

Delayed transfers of care attributable to social care services are included.

(22) **Mental health identifiers:**

Patient identity data completeness metrics (from MHMDS) to consist of:

- NHS number;
- Date of birth;
- Postcode (normal residence);
- Current gender;
- Registered General Medical Practice organisation code; and
- Commissioner organisation code.

Numerator: count of valid entries for each data item above.⁴

Denominator: total number of entries.

(23) **Outcomes for patients on**

CPA (from MHMDS). Note: Monitor is assessing the completeness of data to make assessments of employment and accommodation status. Thresholds in **Table 1** above reflect minimum required levels of data completeness in order to assess performance against the indicators in question, not performance itself:

- Employment status:

Numerator: the number of adults in the denominator whose employment status is known at the time of their most recent assessment, formal

⁴ For details of how data items are classified as VALID please refer to the data quality constructions available on the Information Centre's website: www.ic.nhs.uk/services/mhmds/dq

review or other multi-disciplinary care planning meeting, in a financial year. Include only those whose assessments or reviews were carried out during the reference period. The reference period is the last 12 months working back from the end of the reported quarter.

Denominator: the total number of adults (aged 18-69) who have received secondary mental health services and who were on the CPA at any point during the reported quarter.

- Accommodation status:

Numerator: the number of adults in the denominator whose accommodation status (i.e. settled or non-settled accommodation) is known at the time of their most recent assessment, formal review or other multi-disciplinary care planning meeting. Include only those whose assessments or reviews were carried out during the reference period. The reference period is the last 12 months working back from the end of the reported quarter.

Denominator: the total number of adults (aged 18-69) who have received secondary mental health services and who were on the CPA at any point during the reported quarter.

- Having a Health of the Nation Outcome Scales (HoNOS) assessment in the past 12 months:

Numerator: The number of adults in the denominator who have had at least one HoNOS assessment in the past 12 months.

Denominator: The total number of adults who have received secondary mental health services and who were on the CPA during the reference period.

- (24) **Learning disability access:** Meeting the six criteria for meeting the needs of people with a learning disability, based on recommendations set out in *Healthcare for All* (DH, 2008):

- Does the NHS foundation trust have a mechanism in place to identify and flag patients with learning disabilities and protocols that ensure that pathways of care are reasonably adjusted to meet the health needs of these patients?
- Does the NHS foundation trust provide readily available and comprehensible information to patients with learning disabilities about the following criteria:
 - treatment options;
 - complaints procedures; and
 - appointments?
- Does the NHS foundation trust have protocols in place to provide suitable support for family carers who support patients with learning disabilities?

- vii. Does the NHS foundation trust have protocols in place to routinely include training on providing health care to patients with learning disabilities for all staff?
- viii. Does the NHS foundation trust have protocols in place to encourage representation of people with learning disabilities and their family carers?
- ix. Does the NHS foundation trust have protocols in place to regularly audit its practices for patients with learning disabilities and to demonstrate the findings in routine public reports?

Note: NHS foundation trust boards are required to certify that their trusts meet requirements a) to f) above at the annual plan stage and in each quarter. Failure to do so will represent a breach and therefore a governance concern.

(25) **Community services data**

completeness: Data completeness levels for trusts commissioned to provide community services, using Community Information Data Set (CIDS) definitions, to consist of:

- Referral to treatment times – consultant-led treatment in hospitals and Allied Healthcare Professional-led treatments in the community;
- Community treatment activity – referrals; and
- Community treatment activity – care contact activity.

Failure to maintain data completeness above any of these

thresholds will represent a governance concern.

Numerator: all data in the denominator actually captured by the trust electronically (not solely CIDS-specified systems).

Denominator: all activity data required by CIDS.

For the avoidance of doubt as to what services/activities are within scope of the CIDS collection and how that data is collected, please note that:

- all community providers that receive community funding are required to capture and produce local extracts of CIDS data, as defined in the relevant CIDS Information Standards Notice (ISN);
- Monitor's indicators are relevant for any services that previously would have been commissioned under (and funded through) the Community Services Contract. Services previously funded through an acute/other contract will continue to be excluded; and
- trusts that submit CIDS data through the Secondary Uses Service (SUS) are also required to capture CIDS data.

Appendix B: The failure regime

An overview of the failure regime

The Health and Social Care Act 2012 enables Monitor to trigger the failure regime and appoint an Administrator in situations where it is clear that a provider of Commissioner Requested Services is, or is likely to become, unable to pay its debts.

Such a point will typically be reached following a process of decline in the provider's risk rating although it is conceivable that in some cases a provider may, on occasion, reach this point very quickly. In either case, Monitor will have powers to appoint a Trust Special Administrator if the provider is an NHS foundation trust, or a Health Special Administrator if the provider is a private sector or charity provider, to manage the affairs of the provider and to maintain 'Protected' Services.

When the provider is in financial distress but before the point of actual financial failure, when Monitor may appoint a Special Administrator, Monitor may also choose to appoint a Contingency Planning Team (CPT) to work with local health care commissioners to determine the provisional list of services that must continue in the event of failure (Protected Services). The Contingency Planning Team and the Special Administrator will apply Monitor's *Failure Regime*.

The objective of the failure regime and protected services

The failure regime is designed to protect services for patients, rather than the entities or institutions that provide them. A Special Administrator - if appointed – is required to manage the affairs of the provider and ensure continued provision of services that have been designated by local commissioners (with the counsel of the contingency planning team) as "Protected". Protected Services are those for which the local health care economy cannot provide a suitable alternative or where significant adverse effects on patient health care or health equality would arise from their loss. Designating a service as 'Protected' means the service will continue to be provided should its provider fail financially and it is envisaged that provision of the service will continue to be funded directly from the Risk Pool.

The failure test

The test for whether (i) a court can appoint a health special administrator or (ii) Monitor can appoint a trust special administrator are largely the same – e.g. where the provider is, or Monitor is satisfied it will be, unable to pay its debts.⁵

The Administration process

The failure regime is conducted by the Contingency Planning Team and a Special Administration Team, whose work is closely related.

Outline of the steps involved

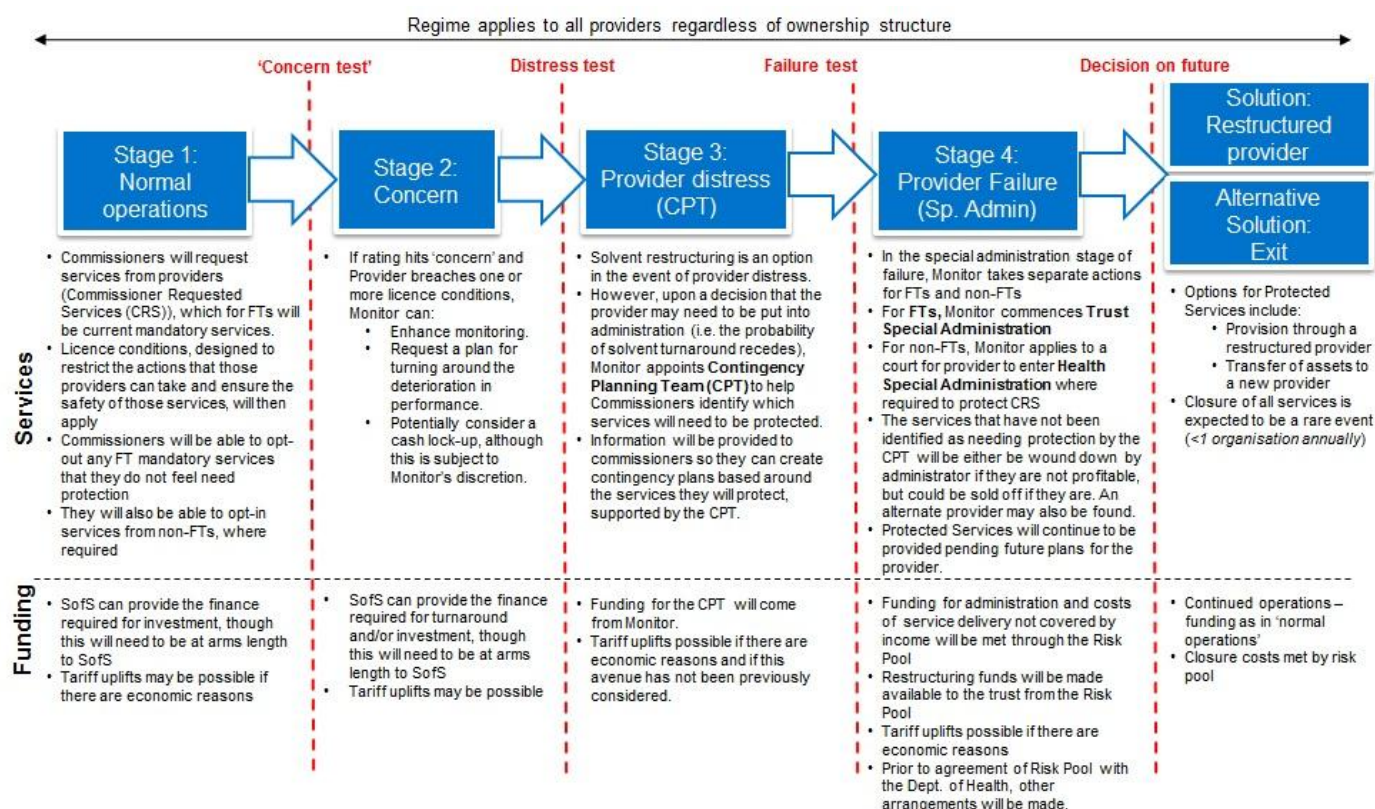
Monitor will use the Risk Assessment Framework to assess the financial strength and, for an NHS foundation trust, governance of a provider of Commissioner

⁵ For more information, see Sections 128-133 and 174 of the Act

Requested Services subject to regulation by Monitor. When Monitor considers, via the Risk Assessment Framework, that there is a material chance that a provider may meet the failure test, for example as a result of a continuity of service risk rating of 1 and without realistic scope to execute a solvent restructuring, Monitor may appoint a Contingency Planning Team.

This team will work with local commissioners to determine which services need to be protected in the event of the failure of a provider of Commissioner Requested Services. If that failure subsequently occurs, then a Special Administrator may be appointed to manage the affairs of the provider in accordance with its terms of reference and the law. A pictorial depiction of the failure regime is given in Diagram 1 below.

Diagram 1



Objective of the Contingency Planning Team

A Contingency Planning Team (CPT) may be sent to a provider before it reaches the point of formal failure. The team's objective will be to work with local health commissioners to determine provisionally the services that should be designated as protected in case the provider does indeed fail. The CPT will be guided by Monitor's published guidance and designation framework.

The team will then concentrate on determining the best available option for reconfiguring the provider's services in the context of the local health economy to make sure protected services continue to be provided. Teams should consider reconfiguring care pathways at the existing provider and/or relocating existing

services at alternative (or new) providers and choose the best option for patients. This may mean closing certain services operated by the existing provider.

The CPT's work will not necessarily culminate in the appointment of a Special Administrator. A private provider in distress working with the CPT may find a solution that avoids formal failure. Similarly, with foundation trusts, the CPT would explore the options for a solvent restructuring, if this would provide a better outcome for patients in terms of clinical care and value-for-money.

The final output of the CPT's work will be a report to Monitor setting out a plan for the continued provision of Protected Services as well as a plan for the continued provision in the local health economy of those services not formally designated as protected. In the case of a foundation trust, the report should advise whether to place the trust into Trust Special Administration or to pursue a solvent restructuring, and in either case the report should present the relevant materials and analysis that would be needed for the consultation and implementation.

Appointment of the Contingency Planning Team

Monitor may appoint a Contingency Planning Team at a provider when we believe that it may be necessary to place the provider into Special Administration. The team will be deployed at the discretion of Monitor and will comprise professionals with a background in health policy formulation, restructuring and health economics. It will also comprise a communications team to manage the very high expected level of public interest in the team's work. Personnel will be provided by an external provider, with Monitor oversight. In some extreme cases, Monitor may immediately move to appoint an administrator, bypassing the CPT stage.

Objective of Trust Special Administration

The legal objective of a Trust Special Administrator appointed to a provider is to secure the continued provision of Protected Services until it becomes unnecessary for the Administrator to remain in post. In practice, the Special Administrator is required to run the Provider as a going concern, maintaining Protected Services and building upon the findings of the Contingency Planning Team, before consulting upon their recommendations on the future of services provided by the Provider. As they will manage the trust's affairs, when a Trust Special Administrator is appointed, the trust's Governors, Chairman, Exec- and Non-Exec Directors are suspended from office, but their employment status is not affected.

Duties of a Trust Special Administrator

Within a maximum of 45 working days after appointment⁶, the Trust Special Administrator is required to publish a draft report outlining his or her recommendations on the future of services provided by the Provider. This report will build on the report produced by the CPT. Throughout this stage, the Administrator will be required to consult the NHS Commissioning Board and others to whom the Provider provides services as well as anyone else whom Monitor instructs the Administrator to consult. The administrator is required to publish that it is undertaking this process and how persons may respond to the consultation.

⁶ Monitor may extend this period

On publishing the draft report, the Administrator must launch a consultation process lasting 30 working days. During this consultation, the Administrator must:

(1) Hold at least one meeting with:

- a. staff of the trust; and
- b. anyone else who wishes to attend a meeting;

and

(2) Seek written responses to the consultation from and hold a meeting with:

- a. the NHS Commissioning Board;
- b. any person (i.e. commissioners) to whom the Provider provides services; and
- c. any additional persons (e.g. the local authority or MP) whom Monitor instructs the Administrator to consult. The Secretary of State may also instruct Monitor to instruct the Administrator to hold meetings with, or seek responses from, other persons or organisations.

Within 15 days of the end of the consultation, the Administrator must provide to Monitor a final report recommending the action(s) that should be taken in relation to the Provider. There then begins a process of acceptance of the report (or rejection and subsequent amendments to) leading to a final decision, which may:

- (1) keep the provider in existence with no changes to its services or structure; or
- (2) keep it in existence but make changes to its services or structure; or
- (3) dissolve the provider and transfer its assets and employees to another NHS foundation trust or to the Secretary of State.

In any case, it is likely that Monitor will continue to require the Trust Special Administrator to facilitate any changes or transfers until such time as they can reasonably be stood down from their responsibilities and duties to continue to provide Protected Services.

Objective of a Health Special Administrator

The objective of a Health Special Administrator is defined in the Health and Social Care Act 2012 as to manage the affairs, business and property of the Provider and exercise their functions so as to maintain services as required by the Health Special Administration regulations.

As these regulations are still subject to consultation and the passing of secondary legislation, we cannot yet give precise details of the HSA's functions or duties. However, we anticipate that the duties and functions of a Health Special Administrator will be similar to those of a Trust Special Administrator.

Appointment of Administrators

An Administrator appointed under the failure regime will report to Monitor and will be responsible for working to guidelines set by Monitor for the health care provider in question.

Before appointing a Trust Special Administrator, Monitor will be required first to consult the Secretary of State for Health, the NHS foundation trust to whom the Administrator will be sent, the NHS Commissioning Board, the Care Quality Commission and any other person to whom the trust provides services under the Act and whom Monitor considers it appropriate to consult. On making an order of appointment, Monitor must place a report before Parliament stating the reasons for making the order and Monitor must specify the date on which the appointment of an Administrator takes effect. Upon appointment, the Trust Special Administrator must manage the trust's affairs. The trust's Governors, Chairman, Exec- and Non-Exec Directors are therefore suspended from office from that date.

A Health Special Administrator may only be appointed by a court following an application to the court by Monitor.

Funding

Funding for the Contingency Planning Team will be provided by Monitor on a case-by-case basis on each occasion a CPT is deployed.

It is envisaged that funding for the Special Administration Teams will be met by the Risk Pool, a central contingency fund managed by Monitor.

Appendix C: The Quality Governance Framework

Quality governance is the combination of structures and processes at and below board level to lead on trust-wide quality performance including:

- ensuring required standards are achieved;
- investigating and taking action on sub-standard performance;
- planning and driving continuous improvement;
- identifying, sharing and ensuring delivery of best-practice;
- and identifying and managing risks to quality of care.

Diagram 17 lists the four areas and ten questions underpinning Monitor's *Quality Governance Framework*, while samples of good practice in each are set out in the diagrams below.

Diagram 17: Monitor's *Quality Governance Framework*

Strategy	Capabilities and culture	Processes and structure	Measurement
<p>1A Does quality drive the trust's strategy?</p> <p>1B Is the board sufficiently aware of potential risks to quality?</p>	<p>2A Does the board have the necessary leadership, skills and knowledge to ensure delivery of the quality agenda?</p> <p>2B Does the board promote a quality-focused culture throughout the trust?</p>	<p>3A Are there clear roles and accountabilities in relation to quality governance?</p> <p>3B Are there clearly defined, well understood processes for escalating and resolving issues and managing quality performance?</p> <p>3C Does the board actively engage patients, staff and other key stakeholders on quality?</p>	<p>4A Is appropriate quality information being analysed and challenged?</p> <p>4B Is the board assured of the robustness of the quality information?</p> <p>4C Is quality information used effectively?</p>

Strategy	Example good practice:
1A: Does quality drive the trust's strategy?	<p>Quality is embedded in the trust's overall strategy:</p> <ul style="list-style-type: none"> • The trust's strategy comprises a small number of ambitious trust-wide quality goals covering safety, clinical outcomes and patient experience which drive year on year improvement. • Quality goals reflect local as well as national priorities, reflecting what is relevant to patients and staff. • Quality goals are selected to have the highest possible impact across the overall trust. • Wherever possible, quality goals are specific, measurable and time-bound. • Overall trust-wide quality goals link directly to goals in divisions/services (which will be tailored to the specific service). • There is a clear action plan for achieving the quality goals, with designated lead and timeframes. <p>Applicants are able to demonstrate that the quality goals are effectively communicated and well-understood across the trust and the community it serves.</p> <p>The board regularly tracks performance relative to quality goals.</p>
1B: Is the board sufficiently aware of potential risks to quality?	<p>The board regularly assesses and understands current and future risks to quality and is taking steps to address them.</p> <p>The board regularly reviews quality risks in an up-to-date risk register.</p> <p>The board risk register is supported and fed by quality issues captured in directorate/service risk registers.</p> <p>The risk register covers potential future external risks to quality (e.g. new techniques/technologies, competitive landscape, demographics, policy change, funding, regulatory landscape) as well as internal risks.</p> <p>There is clear evidence of action to mitigate risks to quality.</p> <p>Proposed initiatives are rated according to their potential impact on quality (e.g. clinical staff cuts would likely receive a high risk assessment).</p> <p>Initiatives with significant potential to impact quality are supported by a detailed assessment that could include:</p> <ul style="list-style-type: none"> • 'Bottom-up' analysis of where waste exists in current processes and how it can be reduced without impacting quality (e.g. Lean). • Internal and external benchmarking of relevant operational efficiency metrics (of which nurse/bed ratio, average length of stay, bed occupancy, bed density and doctors/bed are examples which can be markers of quality). • Historical evidence illustrating prior experience in making operational changes without negatively impacting quality (e.g. impact of previous changes to nurse/bed ratio on patient complaints). <p>The board is assured that initiatives have been assessed for quality.</p> <p>All initiatives are accepted and understood by clinicians.</p> <p>There is clear subsequent ownership (e.g. relevant clinical director).</p> <p>There is an appropriate mechanism in place for capturing front-line staff concerns, including a defined whistleblower policy.</p> <p>Initiatives' impact on quality is monitored on an ongoing basis (post-implementation).</p> <p>Key measures of quality and early warning indicators identified for each initiative.</p> <p>Quality measures monitored before and after implementation.</p> <p>Mitigating action taken where necessary.</p>

Capabilities and Culture	Example good practice:
<p>2A: Does the board have the necessary leadership and skills and knowledge to ensure delivery of the quality agenda?</p>	<p>The board is assured that quality governance is subject to rigorous challenge, including full NED engagement and review (either through participation in Audit Committee or relevant quality-focused committees and sub-committees).</p> <p>The capabilities required in relation to delivering good quality governance are reflected in the make-up of the board.</p> <p>Board members are able to:</p> <ul style="list-style-type: none"> • Describe the trust's top three quality-related priorities. • Identify well- and poor-performing services in relation to quality, and actions the trust is taking to address them. • Explain how it uses external benchmarks to assess quality in the organisation (e.g. adherence to NICE guidelines, recognised Royal College or Faculty measures). • Understand the purpose of each metric they review, be able to interpret them and draw conclusions from them. • Be clear about basic processes and structures of quality governance. • Feel they have the information and confidence to challenge data. • Be clear about when it is necessary to seek external assurances on quality e.g. how and when it will access independent advice on clinical matters. <p>Applicants are able to give specific examples of when the board has had a significant impact on improving quality performance (e.g. must provide evidence of the board's role in leading on quality).</p> <p>The board conducts regular self-assessments to test its skills and capabilities; and has a succession plan to ensure they are maintained.</p> <p>Board members have attended training sessions covering the core elements of quality governance and continuous improvement.</p>
<p>2B: Does the board promote a quality-focused culture throughout the Trust?</p>	<p>The board takes an active leadership role on quality.</p> <p>The board takes a proactive approach to improving quality (e.g. it actively seeks to apply lessons learnt in other trusts and external organisations).</p> <p>The board regularly commits resources (time and money) to delivering quality initiatives.</p> <p>The board is actively engaged in the delivery of quality improvement initiatives (e.g. some initiatives led personally by board members).</p> <p>The board encourages staff empowerment on quality.</p> <p>Staff are encouraged to participate in quality/continuous improvement training and development.</p> <p>Staff feel comfortable reporting harm and errors (these are seen as the basis for learning, rather than punishment).</p> <p>Staff are entrusted with delivering the quality improvement initiatives they have identified (and held to account for delivery).</p> <p>Internal communications (e.g. monthly newsletter, intranet, notice boards) regularly feature articles on quality.</p>

Structures and Processes	Example good practice:
3A: Are there clear roles and accountabilities in relation to quality governance?	<p>Each and every board member understands their ultimate accountability for quality.</p> <p>There is a clear organisation structure that cascades responsibility for delivering quality performance from 'board to ward to board' (and there are specified owners in-post and actively fulfilling their responsibilities).</p> <p>Quality is a core part of main board meetings, both as a standing agenda item and as an integrated element of all major discussions and decisions.</p> <p>Quality performance is discussed in more detail each month by a quality-focused board sub-committee with a stable, regularly attending membership.</p>
3B: Are there clearly defined, well understood processes for escalating and resolving issues and managing performance?	<p>Boards are clear about the processes for escalating quality performance issues to the board:</p> <ul style="list-style-type: none"> Processes are documented. There are agreed rules determining which issues should be escalated. These rules cover, among other issues, escalation of serious untoward incidents and complaints. <p>Robust action plans are put in place to address quality performance issues (e.g. including issues arising from serious untoward incidents and complaints). With actions having:</p> <ul style="list-style-type: none"> Designated owners and time frames. Regular follow-ups at subsequent board meetings. <p>Lessons from quality performance issues are well-documented and shared across the trust on a regular, timely basis, leading to rapid implementation at scale of good-practice.</p> <p>There is a well-functioning, impactful clinical and internal audit process in relation to quality governance, with clear evidence of action to resolve audit concerns:</p> <ul style="list-style-type: none"> Continuous rolling programme that measures and improves quality. Action plans completed from audit. Re-audits undertaken to assess improvement. <p>A whistleblower/error reporting process is defined and communicated to staff; and staff are prepared if necessary to blow the whistle.</p> <p>There is a performance management system with clinical governance policies for addressing under-performance and recognising and incentivising good performance at individual, team and service line levels.</p>

<p>3C: Does the board actively engage patients, staff and other key stakeholders on quality?</p>	<p>Quality outcomes are made public (and accessible) regularly, and include objective coverage of both good and bad performance.</p> <p>The Board actively engages patients on quality, e.g.:</p> <ul style="list-style-type: none"> • Patient feedback is actively solicited, made easy to give and based on validated tools. • Patient views are proactively sought during the design of new pathways and processes. • All patient feedback is reviewed on an ongoing basis, with summary reports reviewed regularly and intelligently by the Board. • The board regularly reviews and interrogates complaints and serious untoward incident data. • The board uses a range of approaches to 'bring patients into the board room' (e.g. face-to-face discussions, video diaries, ward rounds, patient shadowing). <p>The board actively engages staff on quality, e.g.:</p> <ul style="list-style-type: none"> • Staff are encouraged to provide feedback on an ongoing basis, as well as through specific mechanisms (e.g. monthly 'temperature gauge' plus annual staff survey). • All staff feedback is reviewed on an ongoing basis with summary reports reviewed regularly and intelligently by the board. <p>The board actively engages all other key stakeholders on quality, e.g.:</p> <ul style="list-style-type: none"> • Quality performance is clearly communicated to commissioners to enable them to make educated decisions. • Feedback from PALS and LINKs is considered. • For care pathways involving GP and community care, discussions are held with all providers to identify potential issues and ensure overall quality along the pathway. <p>The board is clear about Governors' involvement in quality governance.</p>
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Measurement	Example good practice:
4A: Is appropriate quality information being analysed and challenged?	<p>The board reviews a monthly 'dashboard' of the most important metrics. Good practice dashboards include:</p> <ul style="list-style-type: none"> • Key relevant national priority indicators and regulatory requirements. • Selection of other metrics covering safety, clinical effectiveness and patient experience (at least 3 each). • Selected 'advance warning' indicators. • Adverse event reports/serious untoward incident reports/patterns of complaints. • Measures of instances of harm (e.g. Global Trigger Tool). • Monitor's risk ratings (with risks to future scores highlighted). • Where possible/appropriate, percentage compliance to agreed best-practice pathways. • Qualitative descriptions and commentary to back up quantitative information. <p>The board is able to justify the selected metrics as being:</p> <ul style="list-style-type: none"> • Linked to trust's overall strategy and priorities. • Covering all of the trust's major focus areas. • The best available ones to use. • Useful to review. <p>The board dashboard is backed up by a 'pyramid' of more granular reports reviewed by sub-committees, divisional leads and individual service lines.</p> <p>Quality information is analysed and challenged at the individual consultant level.</p> <p>The board dashboard is frequently reviewed and updated to maximise effectiveness of decisions; and in areas lacking useful metrics, the board commits time and resources to developing new metrics.</p>
4B: Is the board assured of the robustness of the quality information?	<p>There are clearly documented, robust controls to assure ongoing information accuracy, validity and comprehensiveness:</p> <ul style="list-style-type: none"> • Each directorate/service has a well-documented, well-functioning process for clinical governance that assures the board of the quality of its data. • Clinical audit programme is driven by national audits, with processes for initiating additional audits as a result of identification of local risks (e.g. incidents). • Electronic systems are used where possible, generating reliable reports with minimal ongoing effort. • Information can be traced to source and is signed-off by owners. <p>There is clear evidence of action to resolve audit concerns:</p> <ul style="list-style-type: none"> • Action plans are completed from audit (and subject to regular follow-up reviews). • Re-audits are undertaken to assess performance improvement. <p>There are no major concerns with coding accuracy performance.</p>

<p>4C: Is quality information being used effectively?</p>	<p>Information in Quality Reports is displayed clearly and consistently.</p> <p>Information is compared with target levels of performance (in conjunction with a R/A/G rating), historic own performance and external benchmarks (where available and helpful).</p> <p>Information being reviewed must be the most recent available, and recent enough to be relevant.</p> <p>‘On demand’ data is available for the highest priority metrics.</p> <p>Information is ‘humanised’/personalised where possible (e.g. unexpected deaths shown as an absolute number, not embedded in a mortality rate).</p> <p>Trust is able to demonstrate how reviewing information has resulted in actions which have successfully improved quality performance.</p>
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