

## **Operational annexes to the Care Quality Commission and Monitor memorandum of understanding**

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

This document contains the following annexes:

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

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

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

### **Overview**

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

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

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

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

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

This annex therefore sets out:

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

## **Information Monitor will share with CQC – programme of assessment**

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

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

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

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

## **Information Monitor will share with CQC prior to an inspection**

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

- governance structure and arrangements
- service quality, for example:
  - current key issues, risks or concerns which may have an impact on the services people receive in the five areas: safety, effectiveness, caring, responsiveness, leadership and culture

- any changes which the provider has made to reflect feedback from service users and carers
- any other recent improvement activity which the provider has made, such as their response to recent national reports
- any particular areas of high quality care that you would like to highlight.

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

### **Information sharing and co-ordination following inspection**

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

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

### **Information sharing during the assessment and authorisation process**

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

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

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

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

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

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

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

- whether the applicant trust is registered with CQC, and whether the registration is subject to additional conditions (other than location conditions)
- the current overall rating of the trust. Applicant trusts must have a current overall rating of either 'Good' or 'Outstanding'
- whether the trust is the subject of any regulatory action, and the current status of this
- whether CQC holds any information from its Intelligent Monitoring or any other surveillance systems which would trigger the need for a responsive/focused inspection
- whether CQC is taking any enforcement or other investigation activity at the trust or such activity is planned including preliminary enquiries into outlier alerts.

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

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

## **Annex 2: Approach for licensing of independent providers including joint licensing and registration**

### **Overview**

This annex sets out specific provisions to support independent provider licensing and registration.

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

### **Licensing of registered providers**

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

### **Information CQC will provide to Monitor**

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

- CQC ID
- registered name
- registered address
- all other locations (addresses) associated with the CQC ID.

The following organisations are excluded from the data extract:

- registrants that do not provide services for the purposes of the NHS
- NHS foundation trust
- NHS trust
- only provides primary medical services
- only provides dental services
- only provides continuing healthcare and/or NHS-funded nursing care
- only provides a combination of primary medical services, dental services or continuing healthcare and/or NHS-funded nursing care,

### **Information Monitor will provide to CQC**

Monitor publishes the statutory register of NHS provider licence holders on its website<sup>1</sup>. Monitor will on a weekly basis inform CQC of any decisions made on provider licence applications and license revocations.

Monitor will provide CQC with a current list of providers of commissioner requested services (CRS providers) on a monthly basis.

### **Joint licensing and registration**

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

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

### **Information CQC will provide to Monitor**

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

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

### **Information Monitor will provide to CQC**

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

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

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<sup>1</sup> [www.gov.uk/government/publications/nhs-foundation-trust-directory](http://www.gov.uk/government/publications/nhs-foundation-trust-directory)

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



## **Annex 3: Working together on transaction reviews for foundation trusts**

### **Overview**

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

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

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

Therefore this annex sets out:

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

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

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

Monitor will advise CQC of the following:

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

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

## **Information CQC will share with Monitor about trusts undergoing significant transactions**

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

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

## **CQC's briefing**

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

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

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

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

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

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

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

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

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

### **Mergers**

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

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

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

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

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

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

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

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

- the current registration conditions of a provider or providers (including whether any special conditions apply to this)
- any relevant background or context about a provider or providers
- any regulated activities carried on, at or from each of the provider's locations
- the results of CQC's intelligent monitoring of the provider
- CQC's current rating of the provider

- a statement which sets out CQC’s latest assessment of quality of a provider or providers, including:
  - current registration status
  - a review of the provider’s compliance from a quality of care perspective
  - whether CQC holds any current information which would trigger the need for a focused inspection
  - whether any enforcement action or investigation by CQC is ongoing or under consideration
  - whether the provider has any open mortality outliers and
  - other relevant information.

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

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

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

### **Other work**

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

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

## **Annex 5: Information sharing during ongoing monitoring and enforcement**

This annex sets out how Monitor will share information routinely and by exception during the ongoing monitoring of licensed providers<sup>2</sup> and how we will work together when either organisation is undertaking enforcement action at a licensed provider.

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

Any intervention involving Monitor CQC should be proportionate, targeted, coherent, and transparent<sup>3</sup>. How we will work together during special measures is covered in a separate annex.

Areas this annex covers:

- information sharing during monitoring
- third-party information and concerns
- co-ordinating regulatory action
  - CQC's enforcement powers
  - Trust special administration
- joint communication when working together.

### **Monitoring**

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

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

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<sup>2</sup> By licensed provider we mean any provider who holds an NHS provider licence. This could be a foundation trust or an independent provider of NHS services.

<sup>3</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

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

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

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

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

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

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

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

### **Third party enquiries and concerns**

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

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

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

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

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

### **Co-ordinating regulatory action**

This section applies where a foundation trust or an independent provider of CRS:

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

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

### **CQC enforcement powers**

CQC have a range of enforcement powers to help them:

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

When determining the appropriate course of action, CQC follows a four-stage decision-making approach to decide whether to use enforcement powers and, if so,



which ones are proportionate. Generally CQC will contact Monitor at the first stage of this approach, 'initial assessment', for relevant information. CQC will also inform Monitor where a decision has been made to take enforcement action against a licenced provider.

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

### **Contingency planning team**

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

### **Trust special administration**

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

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

#### *CQC assessment of TSA recommendation*

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

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

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

### **Co-ordinating communications during monitoring and enforcement**

Monitor and CQC have the following shared communication objectives:

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

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

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

### **Overview**

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

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

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

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

The overarching roles of each organisation are outlined below.

### **CQC**

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

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

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

## **Monitor**

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

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

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

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

## **CQC inspections and re-inspections**

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

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

## **Key interactions in the special measures process**

*Placing a trust in special measures:*

- *During inspection.* For trusts that are likely to be inadequate in the 'well led' question, and at least one of CQC's five key questions about quality, the CQC inspection lead will have more intensive liaison with Monitor following the final corroboration session with the trust.
- *Report drafting.* Head of Hospital Inspection (HHI) will have early discussions with Monitor's regional director about any special measures recommendation

whilst drafting the report. This will particularly including ensuring that the regional director is fully appraised of CQC's concerns and that they are clearly covered in the report, to inform Monitor's planning and preparations for special measures.

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

In all cases, the HHIs and/or deputy chief inspectors and Monitor's regional directors will communicate on a regular basis where circumstances require, ensuring a consistent and coordinated regulatory approach.

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

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

The re-inspection may be comprehensive or it may be targeted on specific areas – for example, when it is designed to investigate a particular concern or is a follow-up review after an extension period. CQC will decide the scope following discussion

with Monitor and depending on the original reasons for the trust's entry into special measures. The re-inspection will always look at the 'well led' question.

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

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

CQC will keep Monitor informed of its timetable for any re-inspection and ensure advance notice of publication of inspection reports (along with estimated dates for the issuance of the draft report for factual accuracy checking, the Quality Summit and publication date of the final report). In the event that a trust remains in special measures following the second re-inspection (ie beyond 18 months) and has not improved sufficiently to be taken out, CQC will write to Secretary of State setting out the reasons for the trust remaining in special measures and the areas which require improvement. CQC will engage with Monitor in drawing up the letter and ensure co-ordination when it is sent.

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

### **Timescales**

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

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