

## **APPENDIX 1**

### **Supporting information to members to assist with quarterly self-certification**

#### **Financial Sustainability Risk Ratings**

##### **Indicators of forward financial risk**

Each quarter Monitor requires trusts to submit a limited set of indicators of forward financial risk to highlight the potential for any future material financial breaches of the Authorisation. Where trusts inform Monitor that one or more of these indicators are present at a trust, Monitor will consider whether a meeting with the trust to discuss them is appropriate. Following this meeting, Monitor may request the preparation of plans or the provision of other assurances as to an NHS foundation trust's capacity to mitigate any potential risk. These indicators do not of themselves affect Monitor's risk ratings or trigger formal escalation

In order to certify on financial performance, Monitor would expect boards to:

- have a full understanding of the current and future financial position, and how it relates to the external environment in which the trust operates and the strategy of the trust;
- maintain systems to monitor and regularly report on financial performance to the board and be confident of the basis of preparation and accuracy of the financial performance information being reported;
- review and challenge financial performance on an on-going basis;
- use forecasting and extrapolation of current and historical trends to help predict future financial performance;
- have a full understanding of the basis on which the certification is given.

Where there is evidence that a board may not be meeting Monitor's financial risk requirements, Monitor is likely to explore the basis for a board's certification.

##### **Governance (service performance)**

- have a full understanding of the basis on which healthcare targets are measured
- be confident that they are receiving accurate information as to current and expected levels of performance against each of the healthcare targets and any performance risks;
- use forecasting and extrapolation of historic trends to help predict future performance;
- satisfy themselves that systems are in place to ensure risk to delivery has been properly assessed;
- maintain systems to monitor and regularly report on performance

##### **Governance (Learning disabilities)**

NHS foundation trust boards are required to certify that their trusts meet requirements below at the annual plan stage and in each quarter. Failure to do so will result in the application of the service performance score for this indicator.

- a) 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?

- b) 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?
- c) Does the NHS foundation trust have protocols in place to provide suitable support for family carers who support patients with learning disabilities?
- d) Does the NHS foundation trust have protocols in place to routinely include training on providing healthcare to patients with learning disabilities for all staff?
- e) Does the NHS foundation trust have protocols in place to encourage representation of people with learning disabilities and their family carers?
- f) 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?

## **Appendix 2**

### **Summary of Monitors recommendations from previous independent self-certification reviews of foundation trusts**

#### **The Board's Role**

- Introduce an additional level of executive challenge within the overall self-certification process. For example, peer review sessions;
- Provide for an initial NED challenge to the level of assurance obtained before consideration by the trust Board;
- Ensure that executive directors and NEDs properly assume responsibility for self-certification declarations;  
and
- Ensure that sufficient time and focus is given at trust Board meetings to challenge self-certification recommendations.

#### **Board reports**

- Clear ownership, process and timetable (including data 'freeze' dates) for recording, validating and reporting of data are required to ensure that all performance reports are based on the same information;
- Ensure that Board minutes provide sufficient detail of key discussion held by the Board;
- Trust performance reports should contain sufficient detail to enable NEDs to scrutinise and challenge self-certification proposals;
- Draft self-certification declarations should be prepared well in advance of submission deadlines to allow time for proper scrutiny and challenge;
- Board assurance documents, discussions of risk and the self-certification process should be aligned;
- Ensure that trust's risk register is updated and reported to the Board on a regular basis
- Board minutes to clearly document the decision making process of self-certifications and
- Self-certification to Monitor to be added as a standard Board meeting agenda item

#### **Board sub-committees**

- Ensure that the Audit Committee and Information Governance Committee review their operations to ensure they provide appropriate levels of assurance to the management and the Board;
- Audit Committee operations need to embrace the full remit of the NHS Audit Committee Framework; and
- The Audit Committee should review the accuracy of self-certification declarations made to Monitor

#### **Directorate responsibility**

- Ensure that directorates engage effectively with the trust's governance agenda; and
- Ensure clear ownership of reporting performance to the Board by executive and directorate management.

#### **Risk reporting**

- Risk reporting processes at clinical business unit level need to ensure that the trust's risk register is complete; and
- The Trust Assurance Framework should map the risks of the trust not achieving its strategic objectives to the controls in place to mitigate these risks and the assurances over the effectiveness of the controls.

**Internal audit**

- A rolling programme of internal audit work should be used to support the self-certification process;
- The Audit Committee should commission internal audit to assess whether the trust's risk mitigation actions have been successful at reducing risk; and
- Internal audit assurance should be reflect in board reports

**Training**

- Implement development sessions for the trust Board to enable them to better challenge self-certification recommendations.

## **APPENDIX 3**

The Risk Assessment Framework was revised in August 2015.

The changes include:

- monitoring in-year financial performance and the accuracy of planning
- combining these two measures with the previously used continuity of services risk rating to produce a new four level financial sustainability risk rating
- introducing a value for money governance trigger

Reporting requirements have also been reviewed and from August 2015 all NHS foundation trusts will be required to submit financial information monthly as well as quarterly.

### **1. Approach to in-year monitoring**

Monitor's programme of in-year monitoring is designed to measure and assess actual performance against the Annual Plan. The frequency and depth of in-year monitoring is determined by our risk rating, although for most NHS foundation trusts in-year monitoring will take the form of a quarterly submission and other exception and ad hoc reports. Based on in-year submissions, Monitor will assign and publish a quarterly risk rating in two areas – financial sustainability and governance.

### **2. Approach to intervention**

It is the responsibility of the Board to remedy any potential compliance failures in the first instance. Wherever it is appropriate, Monitor may work with an NHS foundation trust in resolving issues before considering intervention. This could involve regular reviews of progress or proposing the involvement of other parties, such as other NHS foundation trusts that have successfully dealt with such an issue, or an appropriate professional adviser.

Where a developmental approach is not appropriate, for example for significant financial or clinical failures, or where such an approach is failing, Monitor will generally consider intervening. In determining whether or not to intervene, Monitor must decide whether failure to comply with the Licence is or is not 'significant' (under the provisions of section 52 of the Act). In making its judgement of 'significance', Monitor will make a case-by-case determination, examining the circumstances to decide what action, if any, is appropriate. Monitor will aim to ensure that its responses are proportionate.

Circumstances will arise where an NHS foundation trust has failed to comply with its Licence but the failure is not judged to pass the statutory test of 'significance'. Monitor may draw such circumstances to the attention of the Board to seek confirmation that remedial action is in hand. Monitor may decide to *make public* failures to comply with the Licence whether or not they are significant in statutory terms. There is a legal obligation on Monitor to publicise formal interventions made under section 52 of the Act.

### **3. Approach to intensity of monitoring**

The intensity of monitoring will be guided by risk assessments. This includes both a forward-looking orientation and an assessment of historic performance. For those NHS foundation trusts where the board struggles to manage risks of non-compliance with their Licence, monitoring will be more intense.

#### **4. What NHS foundation trusts are required to provide**

NHS foundation trusts are required to provide to Monitor in-year submissions covering financial and non financial performance in the most recent quarter and year to date against annual plan. Monitor will review actual quarterly performance against the annual plan. In cases where there is any material variance between the in-year financial submissions and the relevant quarter of the annual plan, NHS foundation trusts are required to provide a financial commentary explaining the reasons for the variance and the actions which they propose to take to address it. As part of the in-year submission, NHS foundation trusts must also provide:

- Self certification that the Trust will continue to maintain a financial sustainability risk rating of at least 3 over the next 12 months
- self-certification that all targets have been met (after the application of thresholds) over the period and plans in place are sufficient to ensure that all known targets, including those which will come into force, will also be met;
- self certification that it is satisfied that, to the best of its knowledge and using its own processes (supported by CQC information and including any further metrics it chooses to adopt), it has and will keep in place, effective arrangements for the purpose of monitoring and continually improving the quality of healthcare provided to its patients
- a report on the results of any elections including turnout rates; and
- a report on any changes in the board or board of governors – *which involves completion of an on line form and Exec turnover is now declared, with Monitor clearly deeming high turnover as a sign of governance issues.*

NHS foundation trusts are required to report in-year, quarterly in the first instance, by 31 July (Q1), 31 October (Q2), 31 January (Q3), and 30 April (Q4) respectively.

#### **5. What Monitor will do with the information**

Monitor will evaluate the in-year returns submitted by each NHS foundation trust to verify that the NHS foundation trust is achieving plan and continuing to comply with its Licence.

#### **6. Exception reporting**

NHS foundation trusts need to report to Monitor in-year any material, actual or prospective changes which may affect their ability to comply with any aspect of their Licence, and which have not been previously notified to Monitor. Examples are given below:

#### **7. Examples of exception reporting:**

##### **7.1 Continuity of Services**

- Unplanned significant reductions in income or significant increases in costs
- Discussions with external auditors which may lead to a qualified audit report
- risk of failure to maintain registration with CQC for CRS
- Major investments that could affect financial risk rating

##### **7.2 Financial governance**

- requirements for additional working capital facilities
- failure to comply with the statutory reporting guidance
- adverse report from internal auditors
- CQC inspections and their outcomes

##### **7.3 Governance**

- third party investigations or reports that could suggest material issues with financial, operational, clinical service quality or other aspects of the trusts activities that could indicate material issues with governance
- CQC responsive or planned inspections and the outcomes/findings

- changes in chair, senior independent director or executive director
- any never events
- other serious incidents or patient safety issues that may impact complicate with the licence (eg. serious incidents, complaints)

#### Other risks

- Enforcement notices from other bodies implying potential or actual significant breach of any other requirement in the Licence,
- concerns from whistle-blowers or complaints
- any significant reputation issues, eg. any adverse national press attention

### 8. Risk Ratings

Under the Risk Assessment Framework, the governance rating highlights any concerns Monitor have with the way the Trust is being run and what regulatory action they are taking. The financial sustainability risk rating will represent Monitor’s view of the level of financial risk a provider is running and what Monitor is doing about it.

#### 9.1 The governance rating

Monitor will primarily use a governance rating, incorporating information across a number of areas. They generate this rating by considering the following information regarding the Trust and whether it is indicative of a potential breach of the governance condition:

1. Performance against selected national access and outcomes standards
2. CQC judgments on the quality of care provided (*eg prev Warning Notice, latest inspection rating*)
3. Relevant information from third parties (*eg Keogh, LETB, HEEM, service reviews, mortality*)
4. A selection of information chosen to reflect quality governance
5. The degree of risk to continuity of services and other aspects of risk relating to financial governance

#### 9.2 Assigning ratings

The governance rating assigned reflects Monitor’s view of our governance

- they will assign a **green rating** if no governance concern is evident
- where they identify potential material causes for concern in one or more of the 5 categories, they will replace a green rating with a description of the issues and the formal/informal steps Monitor are taking to address it
- they will assign a **red rating** if they take regulatory action

#### 9.3 Levels of risk to financial sustainability

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 has incorporated 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.

Monitor introduces four levels of risk to the continuity of services:

Continuity of Service Risk	Description	Regulatory activity
4	No evident concerns	None

<b>3</b>	Emerging or minor concern potentially requiring scrutiny	Potential enhance monitoring
<b>2*</b>	Level of risk is material but stable	Potential enhanced monitoring
<b>2</b>	Material risk	Potential investigation
<b>1</b>	Significant risk	Likely investigation. Potential appointment of contingency planning team