

Memorandum of understanding between Monitor and the Care Quality Commission

Introduction

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

The Health and Social Care Act 2008 as amended by the Health and Social Care Act 2012,¹ places a specific duty on CQC and Monitor to co-operate in the exercise of their respective functions and to share any information about the provision of healthcare services which either regulator considers would assist in the exercise of its functions. In addition, the Care Act 2014 sets out specific areas where co-ordination of our respective functions is necessary.

Following the Mid Staffordshire NHS Foundation Trust Public Inquiry a number of reports such as 'Patients first and foremost'²; 'Hard truths'³ and the National Quality Board's 'Review of early warning systems'⁴ emphasised the importance of co-ordinated regulation across the health sector. Therefore, Monitor and the CQC have been working together to ensure we co-ordinate our activities effectively, minimise duplication in the regulatory regimes and help to communicate our respective roles and how they interact to the sector.

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

¹ Sections 288 and 289

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

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

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

Our roles

Care Quality Commission (CQC)

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

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

Monitor

Monitor is the sector regulator for health services in England and our job is to make the health sector work better for patients. Before April 2013 Monitor's main task was to authorise and regulate NHS foundation trusts, currently 60% of all public providers of NHS services. However, under the Health and Social Care Act 2012 Monitor was given a wide range of additional responsibilities including expanding its role beyond foundation trusts to the licensing of non-exempt independent providers of NHS services. Monitor's core responsibilities can be summarised under four main headings:

- **Making sure public providers are well led.** Monitor makes sure public providers of NHS care are well led and delivering quality care on a sustainable basis. Firstly by setting a required standard that all NHS providers must meet (our foundation trust authorisation standard or 'bar') and by working, most recently with the NHS Trust Development Authority, to ensure that, in due course, all NHS providers meet this standard; secondly, we seek to control the risk that foundation trusts, once authorised, fall back below the required standard. If they do, we take remedial action.
- **Making sure essential NHS services are maintained.** Monitor is responsible for making sure those services are maintained and protected for local patients. If a provider of essential NHS services gets into such serious difficulties so as to no longer be able to provide essential services, Monitor is responsible for making sure those services are maintained and protected for local patients. The services may continue to be provided by the failing provider while it restructures, or by alternative providers.
- **Making sure the NHS payment system promotes quality and efficiency.** One of Monitor's new duties is to work with NHS England to design and operate the payment system for all NHS services. Monitor sets the rules that

govern the prices paid for services, while the grouping of services for payment purposes is done by NHS England.

- **Making sure procurement, choice and competition operate in the best interests of patients.** Monitor's role is to help commissioners and providers make sure patients do not lose out through poor commissioning, restrictions on their rights to make choices or inappropriate anti-competitive behaviour by commissioners or providers.

Monitor has a duty to enable better integration of services, both in healthcare and between health and social care, where this is in patients' interests. Monitor also seeks to encourage innovation and change through research and analysis to identify what works and what doesn't, and to stimulate better ways of working.

Working together

General principles for how we will work together

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

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

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

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

- **Share best practice:** We will share best practice and work together to manage shared risks.
- **Work with others:** We will work bilaterally to achieve both our common objectives and with others such as the NHS England and the NHS Trust Development Authority (TDA) to achieve system objectives.

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

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

In addition, Monitor and CQC will make each other aware of relevant consultations that the other may wish to respond to, for example consultations on the National Tariff Payment System or consultations on changes to CQC inspection regime.

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

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

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

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

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

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

Signed

February 2015

A handwritten signature in black ink, appearing to read 'David Behan', written in a cursive style.

David Behan
CQC Chief Executive

A handwritten signature in black ink, appearing to read 'David Bennett', written in a cursive style with a long horizontal stroke extending to the right.

David Bennett
Monitor Chief Executive