A guide to special measures
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Introduction

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 interventions designed to improve the quality of care within a reasonable time.

In this approach the Care Quality Commission (CQC) will focus on identifying failures in the quality of care and judging whether improvements have been made. The NHS Trust Development Authority (NHS TDA) and Monitor will use their respective powers to support improvement in the quality of care provided.

This guide, developed jointly by CQC, Monitor and NHS TDA, describes how the special measures programme works for NHS trusts and foundation trusts. It 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.

Why trusts are placed in special measures

CQC, through the Chief Inspector of Hospitals (‘Chief Inspector’), will normally recommend that a trust is placed in special measures when an NHS trust or foundation trust is rated ‘inadequate’ in the well led domain (ie there are concerns that the organisation’s leadership is unable to make sufficient improvements in a reasonable timeframe without extra support) and ‘inadequate’ in one or more of the other domains (safe, caring, responsive and effective).

When NHS TDA or Monitor receives a recommendation from the Chief Inspector to place an NHS trust or foundation trust in special measures, NHS TDA or Monitor will consider the evidence that CQC provides to them alongside other relevant evidence. On the basis of the full range of information, NHS TDA or Monitor will make a decision whether the trust or foundation trust will be placed in special measures.

NHS TDA or Monitor may also place a trust or foundation trust into special measures without receiving a recommendation from the Chief Inspector, based on its own evidence. In these circumstances, NHS TDA or Monitor will always seek advice from CQC.

An NHS trust or foundation trust will not enter special measures until NHS TDA or Monitor formally makes that decision.
What will happen when NHS TDA and Monitor place a trust in special measures

Monitor will take appropriate regulatory action in line with its existing powers as set out in its ‘Enforcement Guidance’.

An NHS trust that NHS TDA places into special measures will automatically be given an escalation score of 1 – the highest escalation level for NHS trusts. The range of interventions and support that a trust at escalation level 1 should expect is set out in ‘Delivering for Patients: the 2014/15 Accountability Framework for NHS trust boards’.

NHS TDA or Monitor will communicate its decision to the trust and then make a formal public announcement through a press release. The period of special measures begins when NHS TDA or Monitor formally and publicly announces that a trust is in special measures. It is intended that the usual period of time a trust remains in special measures will be a maximum of 12 months, although this may be extended in some circumstances (see ‘Extension of special measures’ below).

What will happen to trusts in special measures

Typically, providers will be subject to the following interventions, although their detailed application will vary according to the specific circumstances of the organisation.

1. NHS TDA or Monitor will appoint an improvement director who will act on our behalf to provide assurance of the trust’s approach to improving performance.

2. In most cases, NHS TDA or Monitor will also appoint one or more appropriate partner organisations to provide support in improvement. Partner organisations will be selected for their strength in the areas of weakness at the trust in special measures. The nature and amount of support from the partner will be tailored to the trust’s requirements but will focus on addressing quality issues identified in the trust’s action plan. Arrangements for this appointment will be set out in a memorandum of understanding between NHS TDA or Monitor and the partner (‘buddy’) organisation. Partner organisations will be reimbursed by Monitor or NHS TDA for reasonable expenses and may receive an incentive payment.

3. NHS TDA or Monitor will review the capability of the trust’s leadership. If needed, this may lead to changes to the management of the organisation to make sure that the board and executive team can make the required improvements.
4. NHS TDA or Monitor will require trusts in special measures to **publish their progress against action plans** every month on the NHS Choices and their own website, and to participate as required in national and local press conferences.

CQC will continue to monitor quality at the trust. If at any time patients are at immediate risk of harm, they can use their urgent powers to safeguard the patients. CQC will re-inspect the trust within 12 months of the start of special measures. It will judge if there have been improvements to the quality of patient care and leadership.

**Removing trusts from special measures**

NHS TDA or Monitor will only take a trust out of special measures following a recommendation from the Chief Inspector. NHS TDA or Monitor will usually make such a recommendation after a trust has been re-inspected, is no longer rated as ‘inadequate’ in the ‘well led’ domain and has made progress across the other four domains. NHS TDA or Monitor must also be confident that improvements will be sustained.

**Care Quality Commission re-inspection**

Normally an NHS trust or foundation trust will be re-inspected by CQC within 12 months of being placed in special measures. CQC will take account of the trust’s action plans when planning the focus of the re-inspection. They will gather data from a wide range of sources across the five domains before the re-inspection.

NHS TDA and Monitor will provide CQC with information on their view of the progress that the NHS trust or foundation 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 NHS TDA and Monitor gain from their regulatory activities.

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 NHS TDA or 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 domain.

**Care Quality Commission recommendation**

CQC will normally recommend that a trust comes out of special measures if the quality of care is showing sufficient signs of improvement, even if it is not yet ‘good’, and the trust leadership is robust enough to ensure that the trust will sustain current improvements and make further improvements. This will normally be demonstrated through the trust no longer being judged ‘inadequate’ in the ‘well led’ domain.
An inspection and recommendation from the Chief Inspector may result in a range of outcomes for a trust in special measures that includes:

- exit from special measures
- exit after an extension period
- continuing in special measures where Monitor or NHS TDA 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).

**Removal from special measures at first re-inspection**

NHS TDA or Monitor will decide whether to formally remove the trust from special measures following the recommendation from the Chief Inspector.

When deciding whether a trust can exit special measures NHS TDA or Monitor will consider whether we are confident that the improvements at the trust will be sustainable without the support of the special measures regime and they are therefore unlikely to re-enter special measures within 12 months.

If NHS TDA or Monitor reaches a positive conclusion, NHS TDA or Monitor will then consider whether any elements of the special measures programme should continue beyond the original defined period. For example, where a partner trust’s programme of work is scheduled for completion a few months after special measures formally ends.

NHS TDA or Monitor will communicate a decision to the NHS trust or foundation trust in question and then communicate it formally and publicly in a press release, on the NHS TDA or Monitor websites and on the NHS Choices website.

It is important to note that trusts which exit special measures may still have on-going concerns and foundation trusts exiting special measures may remain subject to enforcement action.

**Extension of special measures**

In some circumstances, special measures will be extended for a short period to allow the trust to make the improvements needed. This might occur, for example, where there have been changes to the leadership team and more time is needed for the new team to bring about change.

When deciding whether to extend the time a trust spends in special measures, NHS TDA or Monitor, in consultation with CQC, will consider whether they are confident that the measures already under way will deliver required improvements within a designated period of time.
What constitutes a reasonable time frame will be decided by NHS TDA or Monitor in consultation with CQC, and will depend on the nature of the remaining improvements that are necessary. It will not normally exceed six months.

In the case of an extension the trust will prepare a revised action plan that lists actions to address any outstanding or new concerns. The trust will publish the revised action plan on the NHS Choices website and its own website.

**Continuing in special measures**

An NHS trust or foundation trust may remain in special measures where NHS TDA or Monitor has residual concerns and further action is required to secure ongoing improvements to services. In some instances we will already be taking action and have communicated relevant concerns to CQC before the trust’s re-inspection.

In some circumstances, a transaction may be the best means of securing longer term improvements in the quality of care. In these circumstances, the resulting organisation (whether an acquiring parent organisation, new entity formed by merger, etc) itself would not automatically be placed into special measures at the point of transaction. The resulting organisation would be assessed on its own merits and regulated accordingly by CQC, NHS TDA and Monitor, which would take full account of the nature of the quality problems being taken on within the resulting organisation and how it, as a whole, was seeking to address them.