

THE
INDEPENDENT PANEL

FOR ADVISING GOVERNORS



**MEMORANDUM OF UNDERSTANDING BETWEEN MONITOR AND THE PANEL FOR ADVISING
FOUNDATION TRUST GOVERNORS (“THE PANEL”)**

Introduction

The Panel was introduced by section 39A of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012).

The Panel's purpose is to answer questions raised by governors of NHS foundation trusts (**FTs**) as to whether the NHS foundation trust has failed, or is failing, to act in accordance with its constitution or Chapter 5 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012). The Panel's terms of reference describe the workings of the Panel in further detail.

Status of this Memorandum

This memorandum of understanding sets out the agreed ways of working and terms of engagement between Monitor and the Panel. These are designed to ensure that the operations of the Panel run smoothly and to safeguard the confidentiality of any questions submitted to it by foundation trust councils of governors.

The memorandum does not override the statutory responsibilities of Monitor or the Panel. The parties agree that it is not legally binding.

Appointment of Chair and Panel Members

Monitor shall appoint the Panel Chair for a period of three years. In conjunction with Monitor, the Panel Chair will recruit members of the Panel, up to a normal pool of circa fifteen people. The members will be subjected to a fit and proper persons test. Both Chair and Panel members will be appointed by contract with Monitor.

The Panel members will reflect the diversity of NHS provider services as well as the geographical spread of these organisations and their initial appointments will last between two and three years. The Chair and Panel members will agree to abide by the Panel's own published guidance on conduct and behaviour, which will include arrangements for managing conflicts of interest.

Respective responsibilities

Monitor and the Panel acknowledge their respective statutory responsibilities under the National Health Service Act 2006 and the Health and Social Care Act 2012 and will show proper regard for each others' activities.

The Panel acknowledges that Monitor is entitled to regulate FTs against condition FT4(5)(h) of the NHS provider licence which requires that the FT:

“establishes and effectively implements systems and/or processes ... to ensure compliance with all applicable legal requirements”.

These requirements include compliance with the FT’s constitution and Chapter 5 of the National Health Service Act 2006.

Ways of working

Monitor is committed to supporting the Panel in carrying out its functions but recognises the need for the Panel to operate independently of Monitor.

Monitor and the Panel will always seek to collaborate and co-operate when relevant and appropriate.

Monitor will respect the confidentiality of correspondence and information flowing to the Panel from FTs. Equally the Panel will respect the confidentiality of information held by Monitor about particular FTs. The Panel will undertake its own enquiries.

Publication of Panel determinations and other reporting requirements

The Panel will publish reports of its determinations when these are completed. These reports will be anonymised and publically available. In addition the Panel will prepare an Annual Report summarising its work no later than two months after the anniversary of its founding. This report will be addressed to the sector, to Monitor and to the Secretary of State for Health.

The report shall contain as a minimum:

- a summary of the activity of the Panel over the course of the year;
- a summary of the nature of the questions asked and key decisions of the Panel;
- a summary of the Panel’s expenditure (using information from accounts to be supplied by Monitor);
- a listing of the current Members and Chair of the Panel;
- a review of the Panel’s operating procedures;
- recommendations for any further guidance or training which the Panel believes are needed by governors.

It shall also contain matters which the parties may agree are required to give an effective account of the operations of the Panel for that year.

If in the course of its work the Panel believes that there is a significant risk of a regulatory breach by a Trust, it will communicate this to the referring governors and if necessary to the relevant regulator (Monitor or the CQC) without delay.

Provision of support by Monitor

Monitor will provide necessary administrative and financial support to enable the Panel to carry out its duties.

Administrative support

Monitor agrees to provide the following:

- Temporary accommodation as and when necessary at Monitor's offices at 4 Matthew Parker Street or Wellington House;
- Web pages on Monitor's website;
- The services of administrative support staff as necessary;
- Printing, photocopying, telephone and IT facilities;
- Account keeping facilities for the Panel's expenditure;

This list is not exhaustive. For the avoidance of doubt, Monitor's in-house legal and policy teams are not available to advise the Panel.

Financial support

Monitor agrees to pay expenses properly incurred by the Panel, including:

- A daily rate of £300 for Panel work undertaken by the Panel Chair;
- Travel expenses for the Panel Chair and Members;
- The reasonable cost of expert third party advice, including legal advice;
- Insurance costs for an appropriate type and level of cover;
- In the event that the Panel needs to seek additional external advice on its deliberations, the provision of such advice as chosen by the Panel taking into account value for money, and within financial guidelines set out by Monitor.

The Panel agrees to adhere to Monitor's Business Expenses Policy and Monitor's Procurement Policy when incurring expenditure. The Panel shall consult Monitor prior to commissioning goods or services with a value of £3,000 or more excluding VAT.

The Panel is not a legal entity capable of holding property or contracting in its own right. Monitor therefore agrees to enter into contracts on the Panel's behalf. Supplier invoices should be directed to:

The Finance and Procurement Manager
Monitor
4 Matthew Parker Street, London SW1H 9NP

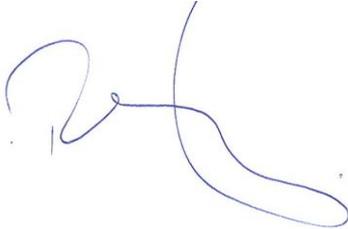
External Communications

Monitor and the Panel will work together to ensure that any external communications about the activities of the Panel or the activities of Monitor in relation to the Panel and joined up and appropriate such that there are "no surprises".

The Panel acknowledges that Monitor is subject to the Freedom of Information Act 2000 and it agrees to assist Monitor in responding to requests made under that legislation for information relating to the Panel. Monitor will consult the Panel in relation to such requests before responding, but the Panel acknowledges that the decision to disclose information or not rests solely with Monitor.

Review

This memorandum will be reviewed annually on or around 1 April.



.....
Signed on behalf of Monitor



.....
Signed on behalf of the Panel