

Key learnings from regulatory action in 2010

Introduction

This short report sets out some of the lessons learned from NHS foundation trusts that have been in significant breach of their terms of authorisation¹. It looks at the issues that led these trusts getting into difficulty, as well as points relating to their improvement and subsequent removal from significant breach.

Monitor has always been very clear about the critical role boards play in ensuring that their organisations deliver high quality services for patients whilst at the same time delivering value-for-money for taxpayers. Hospitals are extremely complex organisations and it is unrealistic to expect that problems will never happen. However, effective boards are better placed to identify and address problems when they do occur, and to face the challenges that lie ahead for the NHS as a whole.

The 2010 National Leadership Council report, [*The Healthy NHS Board Principles for Good Governance*](#), identified the three key roles that effective boards undertake in order to demonstrate leadership:

1. Formulating strategy for the organisation;
2. Ensuring accountability by holding the organisation to account for the delivery of the strategy, and through seeking assurance that systems of control are robust and reliable; and
3. Shaping a positive culture for the board and the organisation.

Monitor's role as regulator is to ensure that foundation trusts are well-led, that their leaders are focused on delivering high quality services, and that they are financially robust. When we look at the leadership of a foundation trust we look particularly at whether the board is monitoring the performance of the organisation in an effective way, and at the trust's financial strength. While the culture a board sets is important, the focus on shaping culture is not part of Monitor's remit, so this report does not deal with that point. However, experts and a literature review highlight a fourth area of governance which is relevant to Monitor's role:

- Ensuring effective performance – appropriate skills, information flows and board-level dynamics.

Using evidence from cases where foundation trusts breached their terms of authorisation in 2010, we have therefore used three headings to structure this lessons learned document:

1. Formulating strategy for the organisation;
2. Ensuring accountability by holding the organisation to account for the delivery of the strategy, and through seeking assurance that systems of control are robust and reliable; and
3. Ensuring effective performance – appropriate skills, information flows and board-level dynamics.

¹ Where a trust is failing to meet its terms of authorisation, Monitor's Board may find it to be in 'significant breach' of its authorisation based on serious concerns about financial stability or governance at the trust. Monitor will also then consider what regulatory action is appropriate. If a trust is deemed to be in significant breach, Monitor may use its statutory powers of intervention under Section 52 of the National Health Service Act 2006. Details of Monitor's forward-looking, risk-based approach to regulation can be found on [our website](#).

1. Formulating strategy for the organisation

- There have been a number of boards which have shown a lack of strategic planning, especially in their finances. This has led to short-term cost cutting which in turn can have a negative impact on patients and services. Robust financial planning is vital, especially given the changing economic climate. To maintain high quality services, trusts should plan for more efficient use of resources while maintaining an emphasis on quality.
- A number of NHS foundation trusts have encountered problems relating to agreeing contracts with commissioners. These could affect their financial position in 2011/12 if unresolved. Foundation trusts need to work constructively with commissioners to manage demand and ensure they receive tariff for activity undertaken. Monitor is advising trusts to stick to the rules set out in the *Operating Framework* and not to accept contracts with unnecessary risks. In some circumstances, organisations will need to look at how their services are configured and if they are delivering the best value for patients and taxpayers. These discussions must take place with local commissioners.
- Several trusts failed to engage with or gain the buy-in of stakeholders during exercises such as service reviews, which led to resistance from stakeholders and damage to the trust's reputation. In order to mitigate this, other trusts have developed and implemented engagement strategies to ensure they are open to outside influence and scrutiny and that key stakeholders, including patients, the public, members, staff, commissioners and strategic health authorities are informed and consulted.

2. Ensuring accountability by holding the organisation to account for the delivery of the strategy, and through seeking assurance that systems of control are robust and reliable.

- In several cases, a poor quality business planning process and unrealistic assumptions have resulted in boards being unable to carry out appropriate risk planning. Planning to meet the challenges ahead must be robust and locally led, working closely with PCTs to understand their plans for commissioning services.
- The boards of several trusts that went on to be found in significant breach of their terms of authorisation failed to heed early warning signs, such as declines in financial performance. Ineffective information flows are often a problem in trusts that get into difficulty, as is a failure to identify and tackle underlying financial problems. If margins slip for consecutive quarters, boards should begin to ask questions, even if the overall picture still looks healthy.
- In some cases, boards were not aware, to a sufficient level of granularity, of what was happening in their hospital. As well as understanding the quality indicators (e.g. complaints, nurse-patient ratio, infections, and serious incidents) they also need to know what it feels like to be a patient in the hospital. Some boards are very good at this – using their governors to provide insight, as well as keeping themselves plugged in by walking around the hospital, talking to staff and patients and looking at the detail of complaints. Patient experience needs to be triangulated with other metrics.

3. Ensuring effective performance – appropriate skills, information flows and board-level dynamics.

- Although foundation trusts collect a lot of data, several of the trusts that have been found in significant breach were not using data of a sufficiently high quality or providing it in a timely manner. Reliable information is essential in terms of having a mechanism of accountability within an organisation for performance delivery, and robust underlying data is necessary to support decision making. In order to understand how to increase productivity while maintaining quality, boards need information on how their hospitals are performing on quality and finance. It is up to boards to ensure they are being given good quality data and that they understand it. Trusts that have been placed in significant breach have gone on to identify the need for systematic data quality reviews to resolve some of these issues.
- There are a number of reasons why boards of trusts that were found in significant breach in 2010 were not working effectively. These range from having become complacent, to lacking a strategic plan that provides clear direction. Board performance depends both upon leadership and the interaction of particular people and personalities. It is important that the board effectively gauges its own performance by carrying out regular assessments into how it operates, its effectiveness and its use of different skills. In Monitor's experience, it is only when the board consciously draws conclusions about its own performance and areas of strength and weakness that it can take steps to improve. A regular assessment using third-party external advisers ensures the board is operating at maximum efficiency and effectiveness, and that it is adding value, as well as providing a yardstick by which it can both prioritise its activities for the future and measure itself.
- In several cases where trusts were found in significant breach, board members were not using their skills effectively. Non-executive directors in particular often bring unique technical expertise to the operation in addition to their broad business experience and can be useful for asking the difficult questions. However, non-executive directors do not always apply these skills in the context of running a hospital as they would elsewhere, in terms of satisfying themselves that financial information is accurate and that financial controls and systems of risk management are robust. It is important for non-executive directors to analyse the data they are given and challenge the board if necessary.