Memorandum of Understanding between the Care Quality Commission and Monitor

Introduction

1. The Care Quality Commission (CQC) and Monitor are committed to working together to encourage improvements in the quality of care and promote economic, efficient and effective services for the benefit of people who use NHS funded services. We will do this by delivering new ways of working that reflect our interdependent relationship and promote more efficient and effective regulation.

2. The 2012 Health and Social Care Act places a specific duty on CQC and Monitor to cooperate in the exercise of their respective functions and to share any information about the provision of health care services which either regulator considers would assist in the exercise of its functions.

3. This Memorandum of Understanding (MOU) sets out the strategic intent for the CQC and Monitor to work together and the relationship that we will foster to support our effective cooperation. It describes our respective roles, the principles we will adhere to and our agreed governance framework on joint areas of work. The MOU contains a series of detailed protocols (attached as annexes) which describe specific areas and circumstances in which we will coordinate our roles and activity and the information and insights we will share.

4. This document is a helpful framework to support effective working between our staff. Both organisations will invest time and effort at all levels to ensure the working practices between Monitor and CQC are delivered effectively.

Strategic purpose

5. The 2010 White Paper, Liberating the NHS and the 2012 Health and Social Care Act set out a profoundly new vision for the way that healthcare will be delivered from April 2013 onwards. The new system is highly interdependent and introduces both new ways of working as well as a number of new bodies. The Francis Report (2013) stresses the importance of regulation and supervisory bodies improving how they work together to identify poor care and bring about change to improve people’s experience of care.
6. As national regulatory bodies we will not achieve our statutory roles by acting alone. Monitor and the Care Quality Commission (CQC) share a common purpose to protect the interests of patients and users of NHS funded services by building trust in the system by enforcing regulations. We enable providers, commissioners and local health economies to deliver improvements in the quality of care and better value for money in the NHS.

7. We are committed to collaborating over protecting and promoting the interests of patients and people who use services through:

- responding to concerns, dealing with failure and driving wider improvement, in the safety and quality of care provided by organisations who require registration with CQC and a licence with Monitor
- working together on operational and strategic issues so that our approaches are aligned and duplication is minimised
- influencing the overarching system to bring about the greatest benefits for patients.

8. The CQC and Monitor recognise our respective statutory functions and independence and the unique nature of our relationship. This agreement sits alongside other arrangements which both CQC and Monitor have in place with organisations operating within the wider health and social care system such as NHS England, the NHS Trust Development Authority and Healthwatch.

Roles

9. The Care Quality Commission (CQC) is the independent regulator of health and social care providers in England. CQC’s role is to protect and promote the health, safety and welfare of people who use health and social care services. This is for the purpose of encouraging services to improve; there is a focus on the experience of people using services and; that services are efficient and effective. We also protect the interests of people whose rights are restricted under the Mental Health Act. CQC does this by: regulating and monitoring services; listening to people and putting them at the centre of our work; acting quickly when standards are not being met, drawing on our intelligence and unique insight to provide an authoritative voice on the state of care; and working with strategic partners across the system.

10. Monitor is the independent sector regulator for health. Monitor’s main duty is to “protect and promote the interests of people who use health care services by promoting provision of services which is economic, efficient and effective, and maintains or improves the quality of services”. As the sector regulator, Monitor will manage key aspects of health care regulation, including: regulating prices; enabling services to be provided in an integrated way; safeguarding choice and competition; and supporting commissioners so that they can ensure essential health services continue
to run if a provider gets into financial difficulties. Monitor will also continue to ensure that the boards of NHS foundation trusts focus on good leadership and governance, in line with their duty to be economic, efficient and effective. In addition, Monitor will have a continuing role in assessing the remaining NHS trusts when they apply for foundation trust status.

11. For the time period of this MOU we will collaborate and respond to quality safety and effectiveness concerns over providers of care who are either applicant NHS Foundation Trusts or NHS Foundation Trusts. Details of how we cooperate are described in greater detail in the annexes to this MOU.

General principles for collaborative working

12. Both organisations share the fundamental goal of working in an open way which supports and promotes the delivery of safe and good quality care for the public. Our collaboration will be built on the following principles:

- We will listen to people who use services and act in their interests
- Our activities will be proportionate, accountable, consistent, transparent and targeted
- We acknowledge the statutory responsibilities of each other and respect each others right to make independent regulatory decisions
- 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
- Providers of care will be clear about the requirements placed upon them
- We will work together as we develop our systems for when independent healthcare and other types of providers enter economic regulation
- We will have regard to each other in decisions about priorities (for example themes for inspections)
- We will collaboratively develop methods so as to avoid overlap or duplication (for example when developing methods for regulating governance)
- We will make sure intelligence is proactively and consistently pooled and shared to identify emerging issues early and respond to concerns
- We will work bilaterally to achieve both our common objectives and with others such as the NHS England to achieve system objectives.

13. This memorandum cannot override the statutory duties and powers of the CQC and Monitor, and is not enforceable in law. However CQC and Monitor will adhere to the principles set and show proper regard for each others’ activities.
Arrangements to underpin cooperation

14. There will be regular contact at operational and strategic levels. Our Joint Working Group will oversee the effectiveness of our collaboration and will be held accountable by our Chief Executives. In order to ensure we achieve our objectives and can demonstrate the added value of working together, in addition to this MOU we will also develop a joint strategic partnership plan which will be regularly reviewed. The main mechanisms for overseeing the MOU are described below.

- **Board to Board**
  CQC and Monitor will hold a Board to Board meeting on an annual basis to agree the strategic objectives for our collaboration and review the delivery of our partnership plan and the impact it is having on encouraging improvements for people who use services.

- **Chief Executives and Chairs**
  Chief executives (monthly) and Chairs meetings (bi annual) to discuss joint strategic priorities and hold the Joint Working Group and other groups to account through the joint objectives.

- **CQC and Monitor Joint Working Group**
  The Joint Working Group manages strategic, developmental and operational issues and oversees the effectiveness and impact of our cooperation.

- **Operational Collaboration**
  Monthly assessment meetings between CQC and Monitor to share up to date concerns and issues on applicant NHS trusts. Regular compliance meetings to share up to date intelligence on NHS FTs, to identify potential regulatory concerns and issues relating to registration and highlight potential issues relating to compliance.

- **Joint Licensing and Registration and Project Board**
  To deliver the Health and Social Care Act 2012 requirement to make arrangements to ensure that new entrant organisations who require a CQC Registration and a Monitor Licence can apply using a single application form and be granted a single document once subsequently approved.

Operation and review of the MOU

15. This memorandum will be reviewed by 30th September 2013. The annexes are living documents and may be reviewed before the 30th September 2013.
Signed 22\textsuperscript{nd} April 2013

CQC Chair

Monitor Chairman and Chief Executive

CQC Chief Executive
Memorandum of Understanding: Annexes

Background

1. From April 2013, a new licensing system for providers of NHS-funded services will be introduced. Through this licence Monitor will protect the interests of patients by promoting services which are economic, efficient and effective. The development of the new licensing regime introduces new powers for Monitor as the sector regulator to sit alongside the Care Quality Commission. The new licensing regime requires all NHS Foundation Trusts to hold a Licence from Monitor and be registered with the CQC.

2. The introduction of the new licensing regime will be phased in. From April 2013, all aspiring NHS Foundation Trusts (FTs) will require a Licence and from April 2014 all providers of NHS funded services who do not meet the Department of Health exemption criteria will require a licence. Existing NHS Foundation Trusts will automatically receive their Monitor licence in April 2013.

3. The annexes set out the framework for how CQC and Monitor will work together from 1st April 2013. The annexes are living documents and may be reviewed before 30th September 2013.

4. The protocol covers:

   - Annex A: CQC involvement in Monitor’s Assessment Process and significant transaction reviews
   - Annex B: Managing failure by NHS FTs to meet or maintain CQC Registration Requirements
   - Annex C: Principles of Managing Risk, Joint Escalation & Enforcement of the new Licensing Regime
Annex A: CQC involvement in Monitor’s Assessment Process and significant transaction reviews

1. Requirement to be registered
   a) Applicant NHS trusts must be registered with the CQC without enforcement actions before they can be authorised as an NHS Foundation Trust.
   b) Where an applicant trust has been registered with enforcement actions requiring it to improve performance to fully comply with the registration requirements then Monitor will usually defer an NHS Trust application until the CQC is satisfied that the actions have been addressed.

2. Assessment of the quality of care provided by applicant trusts
   a) In the course of the assessment process, Monitor will enter into a dialogue with the CQC about the quality of care in the applicant Trust. Monitor will place significant weight on the CQC’s assessment of the quality of care provided by the applicant trust in reaching its decision on whether to authorise the applicant as an NHS foundation trust and issue the Monitor Licence.
   b) Monitor will not authorise an application if:
      - the CQC has issued enforcement actions on the applicant trust
      - the CQC’s current judgement of compliance with registration shows the impact of non-compliance on people who use the service is worse than moderate impact on patients
      - the CQC is conducting or about to conduct a responsive review into compliance; and
      - the CQC is undertaking enforcement or investigation activity at the applicant trust, or such activity is planned, including preliminary enquiries into mortality data outliers.

3. Assessment process and information to be shared
   a) Monitor will inform the CQC of the timetable for assessments and the date by when a formal letter is required from the CQC confirming the current judgement against registration standards.
   b) At the start of Monitor’s assessment process, the CQC will provide Monitor with access to the Quality and Risk Profile (QRP) for the applicant trust.
   c) The CQC will provide Monitor with access to an updated QRP for the applicant trust one week prior to Monitor’s Board to Board meeting. The update will include the latest information from the regional operations and intelligence teams. The QRP will provide details of any on-going or planned investigation or enforcement activity by the CQC, including details of any preliminary enquiries into mortality outlier information, or confirmation that none exists. In addition, one week prior to the Board to Board meeting, the CQC will provide a letter signed by the Director of Operations confirming its view of the applicant to include;
• CQC’s judgement against compliance with registration requirements in relation to the applicant confirming any compliance or enforcement actions together with the impact on patients.
• confirmation that the applicant is not under investigation/responsive review or subject to enforcement activity, that no investigations/responsive reviews or enforcement activities are planned; there are no preliminary enquiries into mortality outliers.

Where the CQC has significant concerns these should be identified at this stage.

d) One week before the Monitor’s decision meeting to decide on issuing the Monitor Licence to the applicant NHS Trust, the CQC will provide a final updated QRP and an updated letter signed by the Director of Operations confirming its view of the applicant to include:

• CQC’s judgement against compliance with registration requirements in relation to the applicant confirming any compliance or enforcement actions together with the impact on patients.
• confirmation that the applicant is not under investigation/responsive review or subject to enforcement activity, that no investigations/responsive reviews or enforcement activities are planned; there are no preliminary enquiries into mortality outliers;

Where Monitor identifies significant issues in relation to clinical care during the assessment process, the Executive Director of Assessment will write to the CQC (Director of Operations) to inform the CQC of these concerns. This is to ensure CQC is aware of any such issues prior to providing Monitor with its view of the applicant prior to the Board-to-Board, meeting with applicants and/or Monitor’s final decision on the application.

4. Monitor’s authorisation decision and notification of CQC

a) Monitor will place significant weight on the CQC’s views of the quality of care provided by the applicant.

i) Where concerns about quality arise during an assessment, Monitor will determine with CQC exactly what work should be done to investigate those concerns before any final assessment decision.

ii) Where Monitor identifies concerns about an applicant’s governance, risk management or quality governance during the assessment process which individually do not indicate a decision against authorising but are concerns nevertheless, Monitor’s senior team, with appropriate input from individuals with senior NHS experience and the Care Quality Commission (CQC), will then decide, according to the evidence recorded, whether further analysis is required to conclude on the authorisation decision. Where more in-depth analysis is required, Monitor will decide with the CQC on the most appropriate way to conduct the additional analysis. This may include:
1) deeper probes into operations and management at the divisional level conducted by Monitor’s assessment team
2) investigation by the CQC;
3) commissioning an external peer review team to probe more deeply into service performance; or
4) commissioning an external review into governance arrangements.

b) Monitor will inform the CQC of the outcome of Monitor’s Board decision meetings. If applicants are rejected or deferred, Monitor will provide the CQC with copies of the rejection and deferral letters where they relate to quality of care or clinical governance concerns.

5. Development of the Assessment process

a) Monitor will notify the CQC of any significant modification to assessment process and provide opportunity for the CQC to express its views on any significant modifications.

6. Significant transaction reviews – mergers and acquisitions involving NHS foundation trusts

a) In all cases relating to mergers or acquisitions involving NHS foundation trusts, CQC will provide Monitor with access to an up-to-date QRP for both the NHS foundation trust and the target NHS trust. One week prior to Monitor’s risk rating decision, the CQC will provide a letter including a review of assurance signed by the Director of Operations confirming the CQC’s view of each trust involved in the transaction to include:

   • CQC’s judgement against compliance with registration requirements confirming any compliance or enforcement actions together with the impact on patients.
   • confirmation that the NHS foundation trust/NHS trust is not under investigation, subject to a responsive review or any enforcement activity, that no investigations/responsive reviews or enforcement activities are planned; there are no preliminary enquiries into mortality outliers.

7. Thematic activity

a) The CQC has the function of carrying out thematic work which reviews health and social care, including that provided by existing and aspiring NHS foundation trusts. Thematic work includes:
   • special reviews which consider a service or sector in NHS care or adult social care.
   • themed inspections which are coordinated compliance inspections across a sample of services
   • thematic data reviews which analyse existing data to produce intelligence at where data are scarce or additional analysis will give insight. They enhance the sensitivity of CQC’s inspection planning.

b) Where such thematic work includes applicant NHS foundation trusts, the CQC will inform Monitor.

c) Any findings relevant to applicant NHS foundation trusts (specifically or in general) will be shared with Monitor at the earliest practical opportunity and at least 48 hours before publication.

8. Scheduled reviews of compliance
a) Monitor & CQC will engage with the NHS Trust Development Authority to understand the applicant pipeline from which the CQC can align its scheduled compliance reviews to Monitors assessment timetable.
Flowchart of interactions between Monitor and the CQC in Monitor’s assessment

**Monitor Phase**

- **Week: 0**
  - Monitor informs CQC and DH of new applicants being assessed giving details of deadlines for Board-to-Board QRP and Board Decision QRP.

- **Week: 6**
  - CQC refreshes QRP as required: This is to include feedback from the local teams; confirmation that the Trust is not under investigation from the Investigations team including preliminary enquiries into Dr Foster alerts into mortality outliers and that no investigations/responsive reviews are planned. One week prior to Board to Board meeting CQC will download updated Board Decision QRP, which Monitor can review this document to understand CQC’s concerns and seek clarification if required. The overall level of concerns will be reported to Monitor’s Board.

- **Week 11**
  - CQC to provide a letter confirming judgement of compliance and confirmation no planned or ongoing investigations/responsive reviews.

- **Week 12**

**Actioned by:**
- Monitor Assessment Team
- CQC D operations
- CQC Director of Operations
- Monitor

**Sent to:**
- CQC
- CQC D operations
- Executive Director of Assessment
- Monitor

**Timing:**
- Week 11
- Week 7

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**Monitor feedback and clarification of QRP**

- Monitor team reviews DH application committee QRP and schedules meeting with CQC and NTDA to share information gathered in assessment process and to clarify issues in QRP.

- Actioned by: Monitor Assessment Team

- Sent to: CQC D operations

- Timing: Week 1 (upon referral from SoS and after batching decision)

**Updated Board to Board QRP and CQC letter**

- Monitor team reviews DH application committee QRP and schedules meeting with CQC and NTDA to share information gathered in assessment process and to clarify issues in QRP.

**Updated Board decision QRP**

- Monitor team reviews DH application committee QRP and schedules meeting with CQC and NTDA to share information gathered in assessment process and to clarify issues in QRP.

**CQC letter**

- Monitor team reviews DH application committee QRP and schedules meeting with CQC and NTDA to share information gathered in assessment process and to clarify issues in QRP.

**On Licence**

- Monitor team reviews DH application committee QRP and schedules meeting with CQC and NTDA to share information gathered in assessment process and to clarify issues in QRP.

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**Monitor notification**

- Monitor team reviews DH application committee QRP and schedules meeting with CQC and NTDA to share information gathered in assessment process and to clarify issues in QRP.

- Actioned by: Monitor Assessment Team

- Sent to: CQC D operations

- Timing: Week 1 (upon referral from SoS and after batching decision)
Annex B: Managing failure by NHS FTs to meet or maintain CQC Registration Requirements

1. Requirement to be registered
   a) NHS foundation trusts are required by law and under the terms of their Monitor licence to maintain compliance with the CQC registration requirements.
   b) Failure by an NHS FT to maintain compliance with registration requirements could lead to regulatory action by CQC and, as such a failure, or risk of failure, could also be a significant breach of the Monitor Licence and lead to intervention.

2. Identification of failing performance
   a) If the CQC or Monitor becomes aware of material information that may suggest a breach, or risk of a breach of registration requirements or the terms of the Monitor Licence by an NHS foundation trust, they will inform the other as soon as practicable.
   b) Where there is concern over a potential breach of registration requirements it will be for the CQC in the first instance to determine whether and what work should be done to investigate the concern and establish whether the NHS foundation trust is compliant with the registration requirements.
   c) The CQC will share the findings of any such work with Monitor.
   d) Where concerns are raised about aspects of the quality of care which are not covered by registration requirements, Monitor will discuss these with the CQC and decide whether further investigation is required. Where further investigation is required Monitor will decide with CQC on the most appropriate way to investigate. This may include:
      i. deeper probes into operations and management conducted by Monitor’s compliance team
      ii. investigation by CQC
      iii. commissioning an external peer review team to probe more deeply into service performance; or
      iv. commissioning an external review into governance arrangements.

3. Intervention
   a) The CQC will determine whether the NHS foundation trust is compliant with the registration requirements.
   b) The CQC findings will inform Monitor in determining whether there is a significant breach of the Licence.
   c) Where the CQC finds that the NHS foundation trust is not compliant with the registration requirements, but Monitor determines the NHS foundation trust not to be in significant breach of its Licence, then:
      • the CQC will decide on the appropriate regulatory action;
where necessary the CQC will require and monitor progress against an action plan to restore compliance with the registration requirements;

the CQC will keep Monitor informed of progress at all stages and of any change in circumstance or performance that could lead Monitor to reappraise whether the NHS foundation trust may be in significant breach of its Licence; and

the CQC will determine when the NHS foundation trust has met the registration requirements and then inform Monitor.

d) Where the CQC finds that the NHS foundation trust is not compliant with the registration requirements and Monitor determines a significant breach of the terms of its Licence has occurred then:

Monitor and the CQC will share their conclusions on the failings in the NHS foundation trust and discuss the most appropriate actions to rectify the failings efficiently and effectively;

the CQC will decide whether to use its powers of intervention;

Monitor will decide whether to use its powers of enforcement;

any use of enforcement powers by Monitor does not preclude the CQC from taking enforcement action related to breaches of registration requirements or any other regulatory activity if it is appropriate to do so. Similarly any enforcement activity by CQC does not preclude Monitor from exercising its enforcement powers in relation to breaches of the Licence if relevant to do so;

interventions & enforcement action by either or both parties will be announced in a coordinated and coherent fashion, clearly specifying the failings, the rationale for the interventions and the expectations and requirements placed on the NHS foundation trust;

an action plan will be required to address the identified failings within a timescale specified by the regulators. Where relevant, progress against the action plan will be reported to both Monitor and the CQC;

the CQC will determine when the NHS foundation trust has taken the actions to rectify the failure to meet the registration requirements; and Monitor will determine if and when the NHS foundation trust has rectified the breach of its terms of the Licence.
Annex C: Principles of Managing Risk, Joint Escalation & Enforcement of the new Licensing Regime

This annex is for use by the two organisations to put a framework around the interactions between Monitor and CQC when dealing with NHS foundation trusts who are at risk of breach of their Licence conditions or of their CQC registration requirements as provider of regulated activities.

It is intended to make use of the existing meeting structures and to highlight the key circumstances when CQC and Monitor should interact and the formal action that should be taken.

It is not intended to restrict dialogue when either Monitor/CQC have concerns about NHS foundation trusts where this dialogue is required by each regulator as part of early warning and quality regulation.

Underlying Principles

Any intervention involving CQC/Monitor should be:
- Proportionate
- Targeted
- Coherent
- Transparent

In addition interventions which are jointly agreed must not compromise the statutory role of either regulator.

Sharing Information

1.1 Early Warning

The CQC and Monitor will openly share information with each other to ensure they are sighted on the safety, quality, financial and governance risks of any NHS provider for which they hold regulatory responsibility. Where either regulator wishes to use information provided by the other, they should seek to receive this in writing to ensure an appropriate audit trail is in place.

Where information is shared the recipient regulator will preserve the confidence of that information and will seek clearance before making use of it within the public domain.

Where information is subject to a request under the Freedom of Information Act the legal position of the Act must be respected. However the regulator receiving the request will, as a courtesy, notify the author in advance of releasing the information.

1.2 Exception Reporting

- Monitor will inform CQC about negative changes in the licence conditions of a NHS Foundation Trust (FT). Monitor will provide CQC with a list, after each quarter, of any foundation trust whose governance & financial risk rating has deteriorated with an outline of the cause of this. This list will be discussed between the relevant Regional Director at Monitor and the Director of Operations at CQC to consider its impact on CQC’s regulatory program.
- Following the annual plan review Monitor will provide CQC with an outline of the risks identified with each Foundation Trust’s Plans. This list will be
discussed between the relevant Regional Director (Provider Regulation Directorate) at Monitor and the relevant Deputy Director of Operations at CQC to consider its impact on CQC’s regulatory programme.

- Monitor will email CQC on an exception basis to inform them about any foundation trusts where significant concerns exist in relation to the licence including changes to risk and quality. This information will be produced by Monitor’s Regional Teams for distribution to the CQC Deputy Directors and will provide clear contact details to enable follow up where required.
- CQC will email Monitor on an exception basis to inform them about any foundation trusts where significant concerns exist. This will include any changes in their regulatory status including changes in registration conditions, enforcement notices or QRP. This will be produced by the CQC Regional Teams for distribution to the Monitor Regional Directors.
- CQC and Monitor will copy each other into any concerns about a foundation trust raised by a third party organisation unless specifically asked not to do so.
- Monitor will write formally to CQC where it receives evidence of significant quality concerns at any NHS organisation. Where this is a foundation trust, Monitor will request that CQC responds outlining its view on the substance of these concerns and the need for any further action to be taken. If the need for further action is identified, CQC and Monitor will agree the most appropriate way to investigate concerns. This may include Monitor requesting that CQC considers undertaking a responsive review at the NHS Foundation Trust.

NB It is assumed that where CQC has evidence of significant quality concerns these would prompt a compliance review/inspection and would be covered by the feedback from that review.

- CQC will write formally to Monitor where it receives evidence of potential governance concerns at any foundation trust. CQC will request that Monitor responds outlining its view on the substance of these concerns and the need for any further action to be taken. If the need for further action is identified, Monitor and CQC will agree the most appropriate way to investigate.

1.3 Trusts subject to exceptional regulatory intervention (including Special Administration)

Where a NHS Foundation trust:
- Has been found in breach of its Licence conditions or
- Is subject to a CQC review and/or conditions being applied to its registration or other enforcement activity;
- Has a high risk of being subject to either of the above scenarios;

It is expected that the respective regulator will write to the other laying out the concerns and the considerations they are making. Consideration should be given to holding a formal meeting (most likely by conference call) to enable the regulators to agree both the lead regulator and the appropriate action to take. Neither regulator should delay regulatory action as a result of this communication.

Actions on regulatory intervention include:

- Monitor will inform CQC where any NHS FT is considered for investigative action to determine whether it is in breach of its Licence conditions and will copy CQC into the outcomes of any escalation meetings held with Trusts and any correspondence following a Monitor Board decision to find a Trust in significant breach of its Licence.
• Where the Compliance Framework (Risk Assessment Framework from October 2013) indicates that a Foundation Trust is in distress, Monitor can appoint a Contingency Planning Team (CPT) to help find a long term solution to the financial viability and/or identify the services provided by the NHS FT that will need to be protected in the event of provider failure. Monitor will inform CQC of the appointment of the CPT and where appropriate, CQC will be requested to provide a report on the quality and safety at the FT in question (nb Appointment of a CPT is a policy decision and may not be taken in all cases when Monitor takes intervention action).

• In the event of failure of an FT, Monitor can appoint a Trust Special Administrator (TSA) whose role will include a specific focus on ensuring continuity of services for protected services ('commissioner requested services') and to work with Monitor and local commissioners to find a long-term solution. Monitor will firstly consult with the Department of Health, the FT, local commissioners and the CQC on the decision to appoint a TSA. Once the decision to make a TSA appointment has been made, the CQC must submit a report on the quality & safety of the ‘commissioner requested services’ (protected services) at the failing Trust as soon as is practically possible. The Administrator must consider the CQC report on quality & safety in both their draft & final TSA reports on the findings & recommendations for the proposed future of the failing Trust. The TSA reports will be submitted to Monitor.

• CQC will inform Monitor where an NHS FT has had conditions applied to its registration or been issued with compliance action.

• CQC will inform Monitor of any reviews/inspections that are taking place in foundation trusts and the reasons for these reviews.

• CQC will share with Monitor the draft report from any review highlighting major impacts on patients when it is provided to the Foundation Trust for factual accuracy review.

• CQC will provide Monitor with the final outcome of responsive or planned reviews and will highlight where:
  o CQC have identified non compliance with a moderate or major impact on people who use services
  o Any form of enforcement action (conditions to registration, warning notices, fixed penalty notices, suspension of registration, cancellation of registration).

In all cases, the Deputy Directors of CQC & Monitor’s Enforcement & Regional Directors will communicate on a regular basis where circumstances require ensuring a consistent and coordinated regulatory approach. The level of communication should be agreed and included in the relevant regulatory action plan.

1.4 Response Times

Each regulator will seek to respond to any formal letters within 10 working days of the date it was sent. Where this is not possible a holding statement will be provided outlining the reason for the delay and the timeframe in which a full response will be provided.
To prevent delays formal letters should be emailed to the relevant CQC Deputy Director of Operations and the Monitor Regional Director respectively. However, both sets of Directors should be in regular contact with each other. Dependent on the level of concern it may be appropriate to copy in the CQC Director of Operations and Monitor’s Managing Director of Provider Regulation.

In the case of decisions & outcomes from Monitor’s Board or Executive Committee on enforcement activity & special administration, the CQC will be copied directly into formal correspondence where this is provided to the Trust.

In the case of formal CQC reports (where there is a requirement for Trusts to have 28 days to respond to the report and request changes to reflect factual accuracy) a draft will be provided and Monitor will respect the confidence of the CQC when making use of any relevant information.

Where either regulator is unhappy with the response they receive this concern should be escalated to the respective Chief Executive.

1.5 Lead Regulator

Depending on the nature of any concern it may be appropriate for one regulator (or another stakeholder) to take responsibility for leading on the response to a Trust. This should ensure consistency in the regulatory activity taken whilst respecting the autonomy of each organisation. Where the concern primarily affects issues of patient safety and quality the CQC would normally be expected to take a lead. Where the concern primarily reflects finance or Governance, Monitor would be expected to take a lead.

When considering who is to be the lead regulator the relative benefits of each Regulator’s legal powers to the specific circumstances, should be taken into account.

1.6 Communication with NHS England

In keeping with the National Quality Board publication “Review of Early Warning System” it is recommended that a regular discussion take place within each NHS region between the CQC Deputy Director, relevant Monitor Regional Director and/or Enforcement Director, NHS England regional offices and Local Area Team (LATs).

1.7 Third Party Briefings

Where possible CQC and Monitor should seek to issue joint statements where they are actively regulating a Foundation Trust in conjunction. Where this is not possible or appropriate the communications departments should work to ensure that public messages are consistent.
Annex D: Working practices between CQC & Monitor

The working practices in this annex sets out the operational details of how Monitor and CQC work together.

There are a number of regular meetings held between the CQC and Monitor:

1. Chair and Chief Executive meetings
2. Monitor & CQC Joint Working Group
3. Operational Meetings for Assessment concerning applicant FTs
4. Operational Meetings for Risk Assessment of FTs
5. Other regular meetings or information exchanges, driven by each organisation’s regulatory processes.

1. Chair and Chief Executive meetings

Aim of regular meetings
To keep both organisations aware of major policy, consultation or intervention plans and to hold the effectiveness of other meetings between the two organisations to account.

Frequency of meetings
Monthly for Chief Executives and half-yearly for Chairs

Agenda for meetings
Topics of major relevance to both organisations

Output
To pass back relevant information to Joint Working Group

2. Quarterly strategic and policy meetings (Joint Working Group)

Strategic and policy issues are managed through the CQC’s Head of Better Regulation and Monitor’s Policy Director.

Aim of regular meetings
A Joint Working Group between the CQC and Monitor in order to keep each other fully informed about developments in their approach and methodologies in which the other may have an interest, and to discuss items of strategic relevance to both organisations.

Frequency of meetings
Quarterly

Agenda for meetings
The agenda is circulated to attendees by the organisation hosting the meeting. There are no standing agenda items. Agenda items include, but are not limited to;
• development of Monitor’s Compliance Framework, regulatory documentation and risk ratings, and Assessment methodology;
• development of criteria for registration requirements;
• development of reviews including any ratings
• responses to upcoming consultations.
• effective co-operation and team working between organisations
• any major operational or communications/public affairs issues

Attendees
Monitor attendees are:
• Toby Lambert, Director of Strategy & Policy
• Adam Cayley, Regional Director – Midlands & East
• Miranda Carter, Executive Director of Assessment
• Sue Meeson, Executive Director of Strategic Communications

CQC attendees are:
• Alex Baylis, Head of Better Regulation
• Amanda Sherlock, Director of Operations
• Ian Biggs Deputy Director of Operations (South)
• Lisa Annały, Head of Quality and Risk Profile Development
• Chris Day, Head of Communications Delivery
• Louise Dineley, Head of Regulatory Risk & Quality

Other attendees will be invited as required.

Output
A briefing note (on key issues discussed and actions agreed) will be drafted by the hosting organisation for forwarding to CQC/Monitor Chairs and Chief Executives.

Key relationships

Key relationships for policy and strategic issues are as follows:

<table>
<thead>
<tr>
<th>CQC contact</th>
<th>Job title</th>
<th>Monitor contact</th>
<th>Job title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alex Baylis</td>
<td>Head of Better Regulation</td>
<td>Adrian Masters</td>
<td>Managing Director of Sector Development</td>
</tr>
<tr>
<td>Alan Rosenbach</td>
<td>Special Policy Lead</td>
<td>Toby Lambert</td>
<td>Director of Strategy &amp; Policy</td>
</tr>
<tr>
<td>Amanda Sherlock</td>
<td>Director of Operations</td>
<td>Miranda Carter</td>
<td>Executive Director of Assessment</td>
</tr>
<tr>
<td>Ian Biggs</td>
<td>Deputy Director South</td>
<td>Adam Cayley</td>
<td>Regional Director – Midlands/East</td>
</tr>
<tr>
<td>Chris Day</td>
<td>Head of Communications Delivery</td>
<td>Sue Meeson</td>
<td>Executive Director of Strategic Communications</td>
</tr>
</tbody>
</table>
3. Assessment meetings concerning applicant FTs

The CQC and Monitor will collaborate and cooperate to ensure that any potential concerns regarding the provision of healthcare services by NHS trusts which are being assessed for NHS foundation trust status are shared through a joint systematic framework that is consistently applied to all applicants for NHS foundation trust status.

Monitor receives information from the CQC via the Quality and Risk Profiles, which are received three times in the assessment process, and via a joint meeting between the CQC and Monitor prior to Monitor’s Board meeting to decide on Authorisation of the applicant.

3.1 Monthly Assessment Meetings

Operational issues relating to applicant FTs are managed through the CQC’s Director of Operations and Monitor’s Executive Director of Assessment.

Aim of regular meetings

Operational meetings have been established in order to share up-to-date intelligence on applicant NHS trusts, to identify potential regulatory concerns and issues relating to registration and highlight potential issues relating to authorisation.

Frequency of meetings
Monthly, by conference call

Attendees

Monitor attendees are:
- Miranda Carter, Executive Director of Assessment

CQC attendees are:
- Amanda Sherlock, Director of Operations

Other attendees will be invited as required.

Outputs of meetings

The outputs of the meetings will be:
- actions/follow-up meetings regarding issues on applicant NHS trusts, coordination on communications and media plans; and
- where appropriate, a briefing note (on key issues discussed and actions agreed) will be drafted by the hosting organisation for forwarding to Joint working Group leads and to CQC/Monitor Chairs and Chief Executives.

3.2 CQC/monitor meetings as part of assessment

Senior Assessment Managers will meet with the relevant CQC Compliance Managers during the assessment process – there is now an agreement to hold a formal meeting as part of the assessment
process prior to the Monitor Board-to-Board meeting involving CQC, Monitor and NTDA. This meeting will be used to:

- discuss the Quality and Risk Profiles;
- share information and any quality or clinical governance concerns identified through the assessment process; and
- seek the views and input from CQC and the NHS TDA prior to the Monitor Board-to-Board meeting.

Senior Assessment Managers will also have access to the outputs from the triggered risk summits.

**Letter from the CQC to Monitor**
The CQC will provide Monitor with a final updated Quality and Risk Profile and a letter signed by the CQC’s Director of Operations confirming its view of the applicant prior to the Monitor Board decision on applicant trusts.

**Key relationships**
Key relationships for assessment issues are as follows:

<table>
<thead>
<tr>
<th>CQC contact</th>
<th>Job title</th>
<th>Monitor contact</th>
<th>Job title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amanda Sherlock</td>
<td>Director of Operations</td>
<td>Miranda Carter</td>
<td>Executive Director of Assessment</td>
</tr>
<tr>
<td>Louise Dineley</td>
<td>Head of Regulatory Risk and Quality</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Janet Ortega</td>
<td>Foundation Trust Assurance Managers</td>
<td>Marianne Loynes</td>
<td>Assessment Director</td>
</tr>
<tr>
<td>Segun Oladokun</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adam Brown</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mandy Musgrave</td>
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</tbody>
</table>

### 4. Risk Assessment of Foundation Trusts

Operational issues relating to risk assessment of Foundation Trusts are to be managed by Region and co-ordinated through the relevant Deputy Directors at CQC and Regional Directors at Monitor.

**Aim of regular meetings**

Operational meetings have been established in order to share up-to-date intelligence on Foundation trusts, to identify potential regulatory concerns and issues relating to registration and highlight potential issues relating to risk management.

The CQC and Monitor will collaborate and cooperate to:
• ensure NHS foundation trusts are clear on the requirements placed on them, and the mechanisms for holding them to account;

• ensure NHS foundation trusts are effectively held to account;

• ensure the regulation of NHS foundation trusts is proportionate, effective and efficient in line with Better Regulation principles;

• share information on NHS FTs where regulatory issues exist or are likely to exist;

• be clear as to who the lead is from a regulatory perspective (i.e. the CQC or Monitor); and

• to ensure alignment of approach between the CQC and Monitor.

**Frequency of meetings**
Regular conference calls between respective Regional and Deputy Directors when concerns arise.

**Key Relationships**

<table>
<thead>
<tr>
<th>CQC Deputy Director</th>
<th>Region</th>
<th>Monitor Regional Director</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andrea Gordon</td>
<td>Central</td>
<td>Adam Cayley</td>
</tr>
<tr>
<td>Matthew Trainer</td>
<td>London</td>
<td>Mark Turner</td>
</tr>
<tr>
<td>Malcolm Bower-Brown</td>
<td>North</td>
<td>Yvonne Mowlds</td>
</tr>
<tr>
<td>Ian Biggs</td>
<td>South</td>
<td>Frances Shattock</td>
</tr>
</tbody>
</table>

Other attendees will be invited as required. For example, when relevant and appropriate – an Enforcement Director from Monitor will join these meetings.

**Outputs of meetings**

The outputs of the meetings will be:

• actions/follow-up meetings regarding issues on NHS Foundation Trusts, coordination on communications and media plans; and

• Where appropriate a briefing note (on key issues discussed and actions agreed) will be drafted by the hosting organisation for forwarding to Joint working Group leads and to CQC/Monitor Chief Executives.
Key relationships for communications issues are as follows:

<table>
<thead>
<tr>
<th>CQC Contact</th>
<th>Job title</th>
<th>Monitor contact</th>
<th>Job title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chris Day</td>
<td>Head of Communications Delivery</td>
<td>Sue Meeson</td>
<td>Director of Strategic Communications</td>
</tr>
<tr>
<td>Victoria Carson</td>
<td>Head of Public Affairs</td>
<td>Jon Hibbs</td>
<td>Media Relations Director</td>
</tr>
<tr>
<td>Alan Pickstock</td>
<td>Media Manager</td>
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</tr>
</tbody>
</table>

5. Other regular meetings or information exchanges

5.1. Triggered risk summits

The CQC holds triggered risk summits as ad-hoc collaborative reviews which bring together relevant parties for detailed discussion in order to agree a coordinated approach where partners have a concern. Risk summits will be convened in line with the National Quality Board’s guidance on Quality Surveillance Groups.

5.2. Other information exchanges

Aim

The CQC and Monitor will exchange information and requests for information.

- CQC and Monitor will work together to reduce the information burden resulting from special reviews, in particular requests for information from NHS foundation trusts;
- CQC and Monitor will work together to ensure that analytical and information management issues are shared to ensure that data may easily flow between the regulatory bodies and that joined up analytical approaches are in place;

<table>
<thead>
<tr>
<th>CQC contact</th>
<th>Job title</th>
<th>Monitor contact</th>
<th>Job title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intelligence Directorate</td>
<td></td>
<td>Regulatory Operations Directorate</td>
<td></td>
</tr>
<tr>
<td>Lisa Annaly</td>
<td>Head of QRP Delivery</td>
<td>Neil Stutchbury</td>
<td>Knowledge Management Director</td>
</tr>
</tbody>
</table>

- Monitor will forward copies of complaints received to CQC, where they relate to the health, safety and welfare of people who use health and social care services.