

**To:** The Board

**For meeting on:** 25 June 2014

**Agenda item:** 5

**Report by:** Helen Buckingham, Chief of Staff

**Report on:** Framework agreement with the Department of Health

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**Summary:**

1. The purpose of the Framework Agreement is to define the critical elements of the relationship between the Department of Health (DH) and Monitor. It focuses on:
  - i) How DH and Monitor will work in partnership to serve patients, the public and the taxpayer; and
  - ii) How both Monitor and DH discharge their accountability responsibilities effectively.
  
2. There are four working principles stated at the start of the document:
  - Working together in the interests of patients, people who use services and the public;
  - Respect for the importance of autonomy throughout the system;
  - Working together openly and positively;
  - Recognition that the Secretary of State is ultimately accountable to Parliament and the public for the system overall.
  
3. The Framework Agreement covers the following areas:
  - i) Monitor's Purpose – setting out Monitor's responsibilities to:
    - License providers of healthcare services, including authorisation of new NHS foundation trusts (NHSFTs)
    - Publish the National Tariff
    - Assess the risk of failure in NHSFTs and where relevant secure continued access to essential NHS services
    - Address anti-competitive behaviour including through use of concurrent powers with the Office of Fair Trading (OFT) and Competition and Markets Authority (CMA).

- ii) Governance – describing:
  - Board arrangements
  - Objective setting through Monitor’s strategy and business plan
  - Discharge of statutory functions
  - Cross-government clearance
  
- iii) Accountability – describing the roles of and working relationships between:
  - The Secretary of State
  - The Principal Accounting Officer at DH
  - Monitor’s Accounting Officer
  
- iv) Monitor’s Board – further detail on:
  - The make-up of the Board
  - The responsibilities of the Chief Executive
  
- v) Partnership Working –the joint and several responsibilities of DH and Monitor for:
  - Public and parliamentary accountability
  - Sustainability
  - Emergency preparedness, resilience and response
  
- vi) Transparency – expectations around
  - Annual report and governance statements
  - Code of conduct
  - Information governance
  - Whistleblowing
  
- vii) Audit – arrangements for internal and external audit
  
- viii) Delegations and financial management:
  - Budget setting
  - Unforeseen circumstances affecting budget requirements
  - Delegated authorities
  - Efficiency controls
  
- ix) Risk management – including:
  - Application of Treasury guidance
  - Financial and operational performance reporting
  - Business continuity
  
- x) Human resources – including:
  - Remuneration policies
  - Pensions arrangements
  - Redundancy payments
  - Compliance with the Equality Act

- xi) Relationship with other Arm's Length Bodies (ALBs) – expectations of partnership working
4. The Framework Agreement replaces the Memorandum of Understanding signed by DH and Monitor in 2004. This has been in negotiation since November 2011, and has been through a number of iterations in that time. Following an intensive period of negotiation on the document from September 2012 to February 2013 agreement was reached in principle on an earlier draft. However, at that point the Treasury required DH to review all Framework Agreements, and a re-drafted version was shared with Monitor in the summer of 2012, with a number of very significant changes.
  5. Board members are asked to note that:
    - a) Framework Agreements are required by Managing Public Money. DH has reviewed the Framework Agreement, including the Annexes, to confirm whether there is any content present in the Framework Agreement which is outwith the requirements of Managing Public Money. It has confirmed that there are two items that are not mentioned as specific headings in Managing Public Money, which are stakeholder engagement and communications. For these areas, the guidance states that Framework Agreements should be clear how organisations will work with other organisations that have an interest in the ALB's business, and this is the purpose of those two items.
    - b) To cover Monitor's various accountability arrangements, Annex E summarises Monitor's accountability to Parliament, the Secretary of State and the Principal Accounting Officer at DH. This needs to be read alongside the accountability section in the main document in places and DH has cross-referenced where this is the case.
    - c) The Protocol for Public and Parliamentary Accountability sits alongside the Framework Agreement. The purpose of this protocol is to set out robust public and Parliamentary accountability arrangements and to ensure continued good communication and effective collaborative working between the two organisations.
    - d) Finally DH has drafted a paper which sets out the approach the sponsor team intend to take in acting as a 'champion' for Monitor within DH. There is a clear intent to improve the working relationships between Monitor and DH, and early indications are that this intent is being followed in practice.

**Recommendations:**

6. The Board is asked to formally approve the framework agreement.

**Helen Buckingham**  
Chief of Staff

**Making a difference for patients:**

*Clarity in Monitor's relationship with its sponsoring body will enable both Monitor and the Department of Health to discharge their respective responsibilities to patients and taxpayers effectively.*

**Public Sector Equality Duty:**

*Monitor has a duty under the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people from different groups. In relation to the issues set out in this paper, consideration has been given to the impact that the recommendations might have on these requirements and on the nine protected groups identified by the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, gender and sexual orientation).*

*It is anticipated that the recommendations of this paper are not likely to have any particular impact upon the requirements of or the protected groups identified by the Equality Act.*

**Exempt information:**

*None of this report is exempt from publication under the Freedom of Information Act 2000.*



Department  
of Health

Monitor  
Making the health sector  
work for patients

**Framework Agreement  
between the Department of Health and Monitor**

2014

**Contents:**

- 1 Purpose of this document
- 2 Monitor's purpose
- 3 Governance
- 4 Accountability
- 5 Monitor's board
- 6 Partnership working
- 7 Transparency
- 8 Audit
- 9 Delegations and financial management
- 10 Risk management
- 11 Human resources
- 12 Relations with the Department's other arm's length bodies
- 13 Review

**Annexes:**

- A Communications
- B Finance and accounting responsibilities
- C Relationships with other ALBs
- D Wider Guidance

Signed.....

Signed.....

Date.....

Date.....

(On behalf of the Department of Health)

(On behalf of Monitor)

## 1. Why Framework Agreements are necessary

- 1.1. Managing Public Money requires that framework agreements exist between central government departments and their arm's length bodies.
- 1.2. This is because it is important to have a document in place that defines the relationship between a central government department and an arm's length body as any such relationship inevitably entails tensions as well as opportunities.
- 1.3. In a Framework Agreement, the autonomy of each organisation needs to be buttressed by sufficient accountability to give Parliament and the public confidence that public resources are used wisely.
- 1.4. Even where it is important that an ALB is demonstrably independent, it is still important to specify how the ALB is to operate and how it will interact with the central government department that funds it. Functional independence is compatible with financial oversight by the ALB's parent department and with accountability.

## 2. Purpose of this document

- 2.1. Following on from the above, the purpose of this specific document is to define the

critical elements of the relationship between the Department and Monitor. The document is focused on:

- How the Department and Monitor will work in **partnership** to serve patients, the public and the taxpayer; and
- How both Monitor and the Department discharge their **accountability** responsibilities effectively.

## 3. Monitor's purpose

- 3.1. Monitor is an executive non-Departmental public body, operating under provisions in the National Health Service Act 2006 and the Health and Social Care Act 2012.
- 3.2. Under the Health and Social Care Act 2012 Monitor is the sector regulator of NHS funded services. Its role is to protect and promote patient interests by promoting *economic, efficient and effective* health care services whilst maintaining or improving quality.
- 3.3. Monitor's discharges its functions by:
  - licensing providers of healthcare services for the purposes of the health service in England;
  - publishing the national tariff for health care services provided for the health service in England;

- supporting commissioners in securing continued access to essential NHS services;
- using its concurrent functions with the Office of Fair Trading under the Competition Act 1988 and Part 4 of the Enterprise Act 2002 in relation to healthcare services;
- addressing anti-competitive behaviour in the provision and procurement of goods and services for the purposes of the health service (including through concurrent functions with the Office of Fair Trading under the Competition Act 1988 and Part 4 of the Enterprise Act 2002);
- authorising NHS trusts as NHS foundation trusts; and
- assessing the risk of failure in NHS foundation trusts and taking action to reduce that risk where significant.

3.4. The Department of Health and Monitor have agreed to work to a set of principles. These are:

- **Working together in the interests of patients, people who use services and the public** to maximise the health and well-being gain for the population, and working to the values set out in the NHS Constitution.
- **Respect for the importance of autonomy throughout the system.** The Department will respect Monitor's independence of judgement, and will not interfere in its day-to-day

operations or decision-making.

- **Working together openly and positively.** This will include working constructively and collaboratively together and with other organisations within and beyond the health and social care system.
- **Recognition that the Secretary of State is ultimately accountable to Parliament and the public for the system overall.** Monitor will support the Department in the discharge of its accountability duties, and the Department will support Monitor in the same way.

#### 4. Governance

4.1. Monitor is led by a board made up of:

- a non-executive chair appointed by the Secretary of State for Health;
- at least four other non-executive members, also appointed by the Secretary of State;
- a chief executive appointed by the non-executive members of the Board; and
- any other executive board members appointed by the non-executive members: the total number of executive members must be fewer than the number of non-executive members.

4.2. The Permanent Secretary has appointed a Senior

Departmental Sponsor (SDS) to act as Monitor's designated consistent point of contact within the Department. The SDS acts as the link at executive level between Monitor and the senior officials of the Department, and also with ministers. Whilst the SDS role is facilitative and recognises the need for direct engagement between Monitor and other parts of the Department and ministers, it also supports the Permanent Secretary in holding Monitor to account and providing assurance on its performance. The SDS is currently the Director General for Finance and NHS. The SDS will be supported by a Departmental sponsor team, which will be the principal day-to-day liaison between the Department and Monitor.

objectives. These objectives will, however, need to be set within, and align with, the context of the overall health and social care system objectives set by the Department of Health. To ensure that this is achieved, Monitor will need to produce an organisational strategy document every three years. Monitor will agree the aims of this strategy with the Department to ensure that their proposed approach is consistent with the Department's overall approach to the health and social care system. Comments by the Department will be proportionate and relevant to its assurance role. In order to allow sufficient time for this review process, a timetable will be agreed in advance by Monitor and the Department.

#### *Process for setting objectives*

- 4.3. The Department of Health is responsible for overseeing the health and social care system. It is responsible for:
- setting objectives for the system and ensuring an integrated system;
  - overseeing national bodies whilst respecting their operational independence; and
  - accounting for the performance of the system.
- 4.4. Monitor, as an independent regulator established at arm's length and with political impartiality, will set its own

- 4.5. Underneath this, Monitor will produce a business plan each year demonstrating how it will meet its legal duties and deliver its objectives. Monitor will have the autonomy to determine their objectives for this business plan provided that: the plans are affordable within the budgets allocated by the Department of Health, and, that they align with the overall system objectives set by the Secretary of State for Health. Monitor will share a copy of the business plan with the Department. Comments by the Department will be proportionate and relevant to its assurance role. In order to allow sufficient time for this review process, a timetable will

be agreed in advance by Monitor and the Department on an annual basis.

- 4.6. In addition, the Health and Social Care Act 2012 makes provision under Section 63 for the Secretary of State to publish guidance to Monitor on the objectives specified in NHS England's mandate as are relevant to Monitor in the exercise of its functions. The Secretary of State will publish this in the form of a letter setting out his expectations of Monitor. The Senior Departmental Sponsor will discuss with Monitor the guidance issued under Section 63 and these discussions will align with the standard system business cycle.

#### *Discharge of statutory functions*

- 4.7. Subject to any constraints imposed by section 9.2, Monitor will ensure that it has appropriate arrangements in place for the discharge of each of the statutory functions for which it is responsible and is clear about the legislative requirements associated with each of them, specifically any restrictions on the delegation of those functions. It will ensure that it has the necessary capacity and capability to undertake those functions, and will ensure that it has the statutory power to take on a statutory function on behalf of another person or body before it does so. Monitor will also ensure that there is periodic

audit of the discharge of its statutory functions so that the delivery of them remains effective, efficient and legally compliant.<sup>1</sup>

#### *Cross-government clearance*

- 4.8. In addition to internal governance, cross-government clearance is required for major new policy decisions of the type set out in Cabinet Office guidance.<sup>2</sup> Although such cases are likely to be small in number, the Secretary of State will be responsible for obtaining clearance and Monitor will adhere to any conditions applied through the clearance process. There will also be cases where the Secretary of State must consult Cabinet colleagues before giving the Government's view, even if collective agreement is not required. In such cases, Monitor will supply the Secretary of State with any information he or she needs in a timely fashion.

## **5. Accountability**

### *Secretary of State*

- 5.1. As an independent regulator, Monitor is accountable to**

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<sup>1</sup> Monitor should include a review of this in their three-year audit cycle, but ensure that they take steps to sufficiently assure themselves on an annual basis and include details of this within their governance statements.

<sup>2</sup> Guide to Cabinet and Cabinet Committees, <http://www.cabinetoffice.gov.uk/resource-library/cabinet-committees-system-and-list-cabinet-committees>, pages 6-8

Parliament, the Secretary of State and to the Department of Health's Principal Accounting Officer. This is a complex relationship that is summarised in Annex E. The text below focuses on Monitor's accountability to the Secretary of State and the Department of Health.

5.2. The Secretary of State is accountable to Parliament for the health system (its "steward"), including Monitor. The Department of Health supports him or her in this role. This involves:

- setting national priorities and monitoring the whole system's performance to ensure it delivers what patients, people who use services and the wider public value most;
- setting budgets across the health system, including for Monitor;
- supporting the integrity of the system by ensuring that funding and accountability arrangements protect the best interests of patients, the public and the taxpayer; and accounting to Parliament for Monitor's performance and the effectiveness of the health and care system overall.

5.3. To support this accountability, Department of Health Ministers will chair quarterly accountability meetings with Monitor to keep touch with system developments, whilst, recognising Monitor's unique role and independence as the

Sector Regulator. These meetings will be focused on strategic and topical issues, and items can be proposed by either party. One of these meetings may be chaired by the Secretary of State. The Chair and Chief Executive of Monitor, and, the Senior Departmental Sponsor (SDS) will also attend. The remaining three will be led by the Parliamentary under Secretary of State for Quality and attended by the Chair of Monitor, the Chief Executive of Monitor (should the Chair of Monitor so wish) and by the SDS. These meetings will also support the shared principles and will be structured to promote openness, constructive challenge and the identification and resolution of strategic and topical issues.

#### *The Principal Accounting Officer and Monitor's Accounting Officer*

5.4. The Department of Health's Permanent Secretary is the Principal Accounting Officer (PAO) and so is accountable in Parliament for the general performance of the health system in England, including Monitor. This requires him or her to gain assurance that Monitor is discharging its statutory duties and meeting the objectives set out in the Health and Social Care Act 2012. In this way the PAO is able to give Parliament an informed account of the Department's stewardship of the public funds it distributes and manages.

- 5.5. The Department's Permanent Secretary, as the Department's Principal Accounting Officer, has appointed Monitor's chief executive as its Accounting Officer (AO). The AO may be called to account for the performance of Monitor in Parliament. Whilst Monitor is operationally independent, the PAO can also be held to account in Parliament since the PAO's oversight should allow him or her to assess the adequacy of Monitor's stewardship of public funds and discharge of its duties. This assessment includes making judgments about whether Monitor is operating to adequate standards of regularity, propriety, feasibility and value for money (assessed for the Exchequer as a whole).
- 5.6. To gain this assurance, the PAO has appointed the Director General for Finance and NHS as the Senior Departmental Sponsor (SDS) for Monitor. The SDS will hold quarterly accountability meetings with the Chief Executive of Monitor. If, there are insufficient issues to discuss in one of the formal quarterly accountability meetings between the SDS and Chief Executive, then the meeting need not take place.
- 5.7. Other working level meetings will happen as necessary to maintain an open and constructive dialogue between the Department and Monitor, whilst protecting Monitor's independence of judgement.
- The schedule of working level meetings will be agreed between the Department and Monitor.
- 5.8. The PAO's oversight of Monitor's performance also relies upon the provision of information, and processes to enable both parties to review performance. The Department requires the following formal documents from Monitor:
- Quarterly in-year and year-end performance against budgetary controls;
  - Quarterly high level risk registers (these should at least contain the ten most significant risks and the ten newest risks);
  - Data on HR, procurement, estates and IT (which ordinarily will be obtained through the quarterly pipeline process whereby Monitor seeks Departmental approval for expenditure on these items); Annual business plan (as set out in 3.6);
  - Annual reports and accounts; and
  - Annual draft and final Governance Statements, with the draft being shared around December each year.
- Monitor and the Department work together closely on a number of issues across the health and social care system and routinely share

considerable amounts of information and thinking in addition to that listed above. It is expected that this level of openness and transparency will continue as it is in the interests of patients and the wider health care system. Monitor will also provide further information to the Department relevant to their assurance role where proportionate and relevant to the risk and that does not compromise Monitor's operational independence.

5.9. Monitor is responsible for the delivery of its objectives and to respect Monitor's operational independence, the Department will limit the circumstances in which it will intervene in its activities. The following constraints do, however, apply:

- All funds allocated to Monitor must be spent on the statutory functions of Monitor. If any funds are spent outside the statutory functions of Monitor, the Department could seek adjustments to the grant in aid for running costs (administration) to compensate.
- The Secretary of State may remove any non-executive member from the Board on the grounds of incapacity, misbehaviour or failure to carry out his or her duties as a non-executive member.

- As set out in Section 71 of the Health and Social Care Act 2012, if the Secretary of State considers that Monitor is significantly failing or has failed to perform any of its functions properly or at all he is able to intervene and issue directions to Monitor. In the first instance, the Secretary of State could direct Monitor about how it carried out its functions. If Monitor failed to comply with such directions, the Secretary of State could either discharge the function himself, or make arrangements for another body to do so on his behalf. The Secretary of State will always publish his reasons for any intervention.

## 6. Monitor's board

- 6.1. Monitor is governed by its board. The role of the board is as described in the corporate governance code for central government departments<sup>3</sup> and includes establishing and taking forward the strategic

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<sup>3</sup> The corporate governance guidelines (available at [http://www.hm-treasury.gov.uk/psr\\_governance\\_corporate.htm](http://www.hm-treasury.gov.uk/psr_governance_corporate.htm)) are written for central government departments, although, as it says in the guidelines, "the principles in the Code generally hold across other parts of central government, including departments' arm's length bodies".

aims and objectives of Monitor, holding its executive management team to account and ensuring the organisation is able to account to Parliament and the public for how it has discharged its functions.

6.2. The board is led by a non-executive Chair, who is responsible to the Secretary of State for ensuring that Monitor's affairs are conducted with probity, and that Monitor's policies and actions support it in the discharge of its functions and duties efficiently and effectively and meet Monitor's objectives, including those set out in its business plan. The Senior Departmental Sponsor will ensure that there is an annual objective setting and review process in place for the Chair. The Chair and other non-executive directors are responsible for appointing the executive directors, including the Chief Executive.

6.3. Monitor's Chair and non-executive directors are appointed by the Secretary of State. Appointments will be transparent, will be made on merit, and are regulated by the Commissioner for Public Appointments. The Chair appointment is subject to pre-appointment scrutiny by Parliament.

6.4. The responsibilities of the chief executive are:

- Safeguarding the public funds and assets for which the chief executive has charge;

- Ensuring propriety, regularity, value for money and feasibility in the handling of those funds;
- The day-to-day operations and management of Monitor;
- Ensuring that Monitor is run on the basis of the standards (in terms of governance, decision-making and financial management) set out in *Managing Public Money*, including seeking and assuring all relevant financial approvals;
- Together with the Department, accounting to Parliament and the public for Monitor's financial performance and the delivery of its objectives;
- Accounting to the Department's Permanent Secretary, who is Principal Accounting Officer for the whole of the Department of Health's budget, providing a line of sight from the Department to Monitor;
- Reporting quarterly to the PAO on performance against Monitor's objectives, to be discussed at one of the formal quarterly accountability meetings chaired by the SDS.

6.5. The responsibilities of the board as a whole include supporting the Accounting Officer in ensuring that Monitor exercises proper stewardship of public funds, including compliance with the principles laid out in *Managing Public Money*; and ensuring that total

capital and revenue resource use in a financial year does not exceed the amount specified by the Secretary of State.

- 6.6. The board should ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control. The board must set up an Audit Committee, chaired by an independent non-executive member with significant experience of financial leadership at board level. Other members need not be main board members but should be able to demonstrate relevant sectorial experience at board level. The committee should have at least four members, although this can be fewer if the board feel that is justified and at least half of these should be main board members. The internal and external auditors must be invited to all meetings and be allowed to see all the papers.

## **7. Partnership working**

- 7.1. The Department and Monitor will work together, and with the Department's other arm's length bodies, in the interests of patients, people who use services and the public to maximise the health and wellbeing gain for the population, working to the values set out in the NHS Constitution. To support this, Monitor and the Department will follow an 'open book' approach. In the case of issues with an impact on the development or implementation

of policy, the Department can expect to be kept informed by Monitor. In the same way, the Department will seek to keep Monitor apprised of developments in policy and Government. There are likely to be some issues where the Department or Monitor will expect to be consulted by the other before the Department or Monitor makes either a decision or a public statement on a matter. The Department and Monitor will make clear which issues fall into this category in good time. The sponsor team will be responsible for ensuring that this works effectively.

- 7.2. To support the Secretary of State and the Principal Accounting Officer in their accountability functions, the Secretary of State has the power to require Monitor to provide reports or information relating to the exercise of its functions.

### *Public and Parliamentary Accountability*

- 7.3. The Department and its ALBs share responsibility for accounting to the public and to Parliament for policies, decisions and activities across the health and care sector. Accountability to Parliament will often be demonstrated through parliamentary questions, MPs' letters and appearances before parliamentary committees. Accountability to the public may be through the publication

of information on Monitor's website, as well as through responses to letters from the public and responses to requests under the Freedom of Information Act.

- 7.4. The Department and its ministers remain responsible to Parliament for the system overall, so will often have to take the lead in demonstrating this accountability. Where this is the case, Monitor will support the Department by, amongst other things, providing information for ministers to enable them to account to Parliament. In its turn, the Department will provide leadership to the system for corporate governance, including setting standards for performance in accountability.
- 7.5. Monitor will, however, have its own responsibilities in accounting to the public and to Parliament, and its way of handling these responsibilities will be agreed with the Department where appropriate. In all matters of public and parliamentary accountability the Department and its ALBs will work together considerately, cooperatively and collaboratively, and any information provided by Monitor will be timely, accurate and, where appropriate, consistent with information provided by the Department. To facilitate this, the Department and Monitor have agreed a public and parliamentary accountability protocol that sets out how they will work together to secure the

confidence of the public and Parliament, and to maintain the service levels that MPs and the public have come to expect.

#### *Emergency preparedness, resilience and response*

- 7.6. Monitor and the Department have specific responsibilities for planning for and managing the response to emergencies, as key players in an extended team that works across Government. The Secretary of State has cross-government responsibility to provide assurance on the health system's emergency preparedness.
- 7.7. Monitor will work with DH, Public Health England, NHS England and other organisations involved in civil resilience to develop and resource effective, tested and coordinated plans to manage incidents and emergencies, including any necessary changes to its operations.

### **8. Transparency**

- 8.1. Monitor is an open organisation that will carry out its activities transparently. It will demonstrate this by proactively publishing on its website its Annual Report and Accounts and key information on areas including pay, diversity of the workforce, performance, the way it manages public money and the public benefits achieved through its activities, and by supporting those who

- wish to use the data by publishing the information within guidelines set by the Cabinet Office<sup>4</sup>. The annual report will include a governance statement, which is to be reviewed by the Senior Departmental Sponsor.
- 8.2. Monitor will hold open board meetings in line with the Public Bodies (Admission to Meetings) Act 1960.
- 8.3. To underpin the principles of good communication, ‘no surprises’ and transparency Monitor and the Department will put in place arrangements for managing communications. Further details are provided in Annex A.
- 8.4. Monitor’s executive and non-executive board members will operate within the general principles of the corporate governance guidelines set out by HM Treasury<sup>5</sup>. They will also comply with the Cabinet Office’s Code of Conduct for Board Members of Public Bodies<sup>6</sup> and with the rules on disclosure of financial interests contained in the rules governing the membership of Monitor’s board.
- 8.5. Monitor will develop a code of conduct for all staff which will comply with the principles in the Cabinet Office’s model code for staff of executive non-Departmental public bodies<sup>7</sup>, which includes rules on conflicts of interest, political activity and restrictions on lobbying.
- 8.6. Monitor will take all necessary measures to ensure that:
- patient, personal and/or sensitive information within its care and control is well managed and protected through all stages of its use, including through compliance with the Data Protection Act
  - it provides public assurance in respect of its information governance practice by completing and publishing an annual information governance assessment using an agreed assessment mechanism
  - it meets its legal obligations for records management, accountability and public information by compliance with relevant standards, including government and NHS codes of practice on confidentiality, security and records management.
- 8.7. Monitor’s Senior Information Risk Owner and the senior

<sup>4</sup> The guidance is available on the HM Treasury website: [http://www.hm-treasury.gov.uk/psr\\_transparency\\_index.htm](http://www.hm-treasury.gov.uk/psr_transparency_index.htm)

<sup>5</sup> The corporate governance guidelines (available at [http://www.hm-treasury.gov.uk/psr\\_governance\\_corporate.htm](http://www.hm-treasury.gov.uk/psr_governance_corporate.htm)) are written for central government departments, although, as it says in the guidelines, “the principles in the Code generally hold across other parts of central government, including departments’ arm’s length bodies”.

<sup>6</sup> <http://www.bl.uk/aboutus/governance/blboard/Board%20Code%20of%20Practice%202011.pdf>

<sup>7</sup> [http://www.civilservice.gov.uk/wp-content/uploads/2011/09/5\\_public\\_body\\_staff\\_2\\_tcm6-2484.pdf](http://www.civilservice.gov.uk/wp-content/uploads/2011/09/5_public_body_staff_2_tcm6-2484.pdf)

person responsible for protecting confidentiality of patient/service level information and enabling appropriate information sharing will work together to ensure that both patient and other personal information are handled in line with best practice in government and the wider public sector.

### *Sustainability*

- 8.8. As a major public sector body, Monitor has a key role to play in driving forward the government's commitment to sustainability in the economy, society and the environment. As a minimum, Monitor should comply with the Greening Government Commitments<sup>8</sup> that apply to all government departments, executive agencies and non-departmental public bodies, set out in the action plan for driving sustainable operations and procurement across government. Reporting will be via the Department (including the consolidation of relevant information in the Department's annual resource account), and the Department will ensure that Monitor is aware of the process for this.
- 8.9. Monitor, as with the Department and all its ALBs, should have whistleblowing policies and procedures in place that comply with the Public Interest Disclosure Act 1998 and best practice

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<sup>8</sup> <http://sd.defra.gov.uk/documents/Greening-Government-commitments.pdf>

guidance. It should prohibit the use of confidentiality clauses that seek to prevent staff from speaking out on issues of public interest.<sup>9</sup>

### **9. Audit**

- 9.1. The Comptroller and Auditor General will audit Monitor's annual accounts and will lay them before Parliament, together with his report.
- 9.2. The Comptroller and Auditor General may also choose to conduct a value-for-money audit of any aspect of Monitor's work: Monitor will cooperate fully with the NAO in pursuing such audits, and give them full access to all relevant files and information.
- 9.3. Monitor is responsible for establishing and maintaining internal audit arrangements in accordance with the Public Sector Internal Audit Standards. Monitor's internal audit function should report to its Audit and Risk sub-committee, and should consider issues relating to Monitor's adherence to its business plan. The Department's Audit and Risk Committee remit includes risk management, corporate governance and assurance arrangements in all its subsidiary bodies and so Monitor's Audit and Risk Committee should work closely

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<sup>9</sup>

<http://www.nhsemployers.org/EmploymentPolicyAndPractice/UKEmploymentPractice/RaisingConcerns/Pages/Whistleblowing.aspx>

with the Departmental committee.

to give to a Health Special Administrator DH and Monitor will develop a separate Memorandum of Agreement to cover this eventuality.

## **10. Delegations and financial management**

- 10.1. Details of Monitor's financial arrangements, including funding allocation, in-year reporting, preparation of accounts, and the accounting officer's responsibilities in relation to financial management and Monitor's accounts, are provided in Annex B.
- 10.2. Monitor's overall revenue and capital resources are set out each year in a letter from the Senior Departmental Sponsor to the Chief Executive of Monitor. This is based on an assessment by the Department of Monitor's proposals for funding and human resourcing, considered alongside the financial and human resourcing needs of all of the Department's arm length bodies. The Department will endeavour to provide Monitor with sufficient human and financial resources to deliver its agreed core functions.
- 10.3. Notwithstanding clause 9.2, the Department accepts that unforeseen circumstances may arise during a financial year, in consequence of which Monitor may legitimately require additional resources. An example of one such unforeseen circumstance may be a charge against an indemnity that Monitor wishes
- 10.4. Monitor's delegated authorities are issued to it by the Department, including those areas where Monitor must obtain the Department's written approval before proceeding. Monitor will adhere to these delegated authorities.
- 10.5. Monitor must demonstrate that it is delivering its functions in the most efficient manner, and must provide timely returns to the Department where these are required either by it or by other departments within central government.
- 10.6. Monitor, as with all public bodies and government departments, must operate within any relevant set of efficiency controls. These controls may affect areas of spend such as information communications technology (ICT), marketing and advertising, procurement, consultancy, the public sector estate, recruitment, major projects or strategic supplier management. The Department will ensure that Monitor is kept informed of any efficiency controls in operation.
- 10.7. As part of the government's approach to managing and delivering public service at a reduced cost base, Monitor, as with all other arm's length bodies and the Department, will in future receive its back

office support, including finance and accounting, HR, payroll, procurement and ICT, through a shared or standardised service approach. Details of the services between Monitor and the service provider will be set out in contract or where appropriate a service level agreement (SLA).

- 10.8. A shared or standardised value for money approach will also apply to the use of estate. Monitor will comply with guidance on property and asset management, and the principles set out by the Department's Estate Strategy Optimisation Board.
- 10.9. Monitor has the power to charge for the provision of licences under the Health and Social Care Act 2012.

## 11. Risk management

- 11.1. Monitor will ensure that it deals with the risks that it faces in an appropriate manner, according to best practice in corporate governance, and develop a risk management strategy in accordance with the Treasury guidance *Management of Risk: Principles and Concepts*<sup>10</sup>. It will adopt and implement policies and practices to safeguard itself against fraud and theft, in line with Treasury guidance<sup>11</sup>. It should also take all reasonable steps to

<sup>10</sup> [http://www.hm-treasury.gov.uk/d/orange\\_book.pdf](http://www.hm-treasury.gov.uk/d/orange_book.pdf)

<sup>11</sup> [http://www.hm-treasury.gov.uk/psr\\_managing\\_risk\\_of\\_fraud.htm](http://www.hm-treasury.gov.uk/psr_managing_risk_of_fraud.htm)

appraise the financial standing of any firm or other body with which it intends to enter into a contract or to whom it gives financial assistance.

- 11.2. Monitor has a reporting process in place to assure its board of financial and operational performance against the business plan at its meetings. Board meetings are held monthly, with performance and risk discussed in more detail on a quarterly basis. This assurance report will include information on risks and how they are being managed in accordance with the Treasury guidance mentioned above. The information prepared will be shared with the Department to enable the Department to assure itself on risk management. Monitor and the Department will agree a process and trigger points for the escalation of risks to the Department of Health Audit and Risk Committee, where those risks will have a potentially significant impact on Monitor, the Department or the wider system that requires a co-ordinated response.
- 11.3. Monitor will have effective and tested business continuity management (BCM) arrangements in place to be able to respond to disruption to business and to recover time-critical functions where necessary. In line with Cabinet Office guidelines, the BCM system should aim to comply with ISO 22301 Societal

Security – Business Continuity Management Systems.

## 12. Human resources

- 12.1. Monitor is responsible for recruiting staff, but will comply with any departmental or government-wide recruitment controls. The Department will ensure that Monitor is made aware of any such controls. Very senior managers in Monitor are subject to the Department of Health pay framework for very senior managers in arm's length bodies, and may be subject to additional governance as specified by the Department. The Department will ensure that Monitor is aware of any such requirements or restrictions.
- 12.2. Monitor must obtain the approval of the Secretary of State in respect of policies relating to remuneration, pensions, allowances or gratuities.
- 12.3. In relation to remuneration, Monitor, as with all executive non-departmental public bodies, is subject to the pay remit process, which regulates the pay setting arrangements for its staff (those who are not very senior managers). The pay remit provides a framework within which Monitor sets:
- The pay envelope for the year
  - Pay strategies
  - Pay reporting.

- 12.4. HM Treasury has delegated the approval of executive non-departmental public bodies' pay remits to parent departments. Monitor is therefore required to submit its pay remit proposals to the Department for approval.
- 12.5. Very senior manager remuneration is subject to the recommendations of the Senior Salaries Review Body.
- 12.6. In relation to pensions, the organisational pension scheme is the Civil Service Pensions Scheme, which has rules set down in legislation.
- 12.7. Like all departments and arm's length bodies, Monitor will be required to follow any requirements for disclosure of pay or pay-related information.
- 12.8. Subject to its financial delegations, Monitor is required to comply with the Department's and HM Treasury's approval processes in relation to contractual redundancy payments. All novel or contentious payments require the Department's and HM Treasury's approval. Special severance payments are always considered novel or contentious.

### *Equalities*

- 12.9. The provisions of the Equality Act 2010 (Specific Duties) Regulations 2011 require Monitor, as a public body, to:

- Annually, publish information to demonstrate compliance with the Public Sector Equality Duty. This information must include, in particular, information relating to persons who share a relevant protected characteristic who are its employees (provided the organisation has 150 or more employees) and other persons affected by its policies and procedures.
- Prepare and publish one or more objectives it thinks it should achieve to meet the Public Sector Equality Duty.<sup>12</sup>

12.10. As a public authority Monitor is also under a duty to have regard to the need to eliminate unlawful discrimination and advance equality of opportunity. Monitor licences NHS foundation trusts that are required to establish and implement systems and processes to ensure compliance with all applicable legal requirements. Monitor is responsible for regulating compliance with licence conditions and therefore whether trusts have the governance systems in place to ensure compliance with all applicable law, including (where appropriate) compliance with the Equality Act 2010.

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<sup>12</sup> This was required by 6 April 2013, and is required every four years thereafter

### **13. Relations with the Department's other arm's length bodies**

- 13.1. Monitor will work in partnership with the Department and its other arm's length bodies, in the interests of patients, people who use services and the public, to maximise the health and wellbeing gain for the population, and working to the values set out in the NHS Constitution.
- 13.2. The Department and its arm's length bodies have complementary but distinct roles within the system to ensure that service users receive high quality services which deliver value for public money. Annex C provides further details on Monitor's relationship with other ALBs. Monitor may also develop separate partnership agreements with other ALBs.

### **14. Review**

- 14.1. As set out in 3.6, Monitor will produce an annual business plan before the beginning of each financial year, subject to decisions being made about their financial budget in time.
- 14.2. As set out in section 4, the Department will regularly review Monitor's performance at formal accountability meetings. In addition, the Department will undertake an in-depth review of Monitor as well as its other arm's length bodies on at least a triennial

basis. The purpose of this review as set out by the Cabinet Office document “Guidance on reviews of non-departmental public bodies”, is:

- To provide a robust challenge of the continuing need for individual NDPBs – both their functions and their form; and
- Where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance.

This review also aligns with the Principles for Economic Regulation which state that the Government, approximately once a Parliament, can:

“Reaffirm the fitness for purpose of the regulators’ responsibilities, pursue changes where they are required to keep the system effective and clarify the respective roles and responsibilities of regulator and Government.”

- 14.3. Monitor is established by the Health and Social Care Act (Community Health and Standards Act) 2003, and revised under the Health and Social Care Act 2012. Any change to its core functions or duties therefore requires further primary legislation.

- 14.4. This agreement will be reviewed every three years, or sooner upon request of either party.

- 14.5. Monitor is established by the Health and Social Care (Community Health and Standards) Act 2003. Any change to its core functions or duties, including mergers, significant restructuring or abolition would therefore require further primary legislation. If this were to happen, the Department would then be responsible for putting in place arrangements to ensure a smooth and orderly transition, with the protection of patients being paramount. In particular, the Department is to ensure that, where necessary, procedures are in place in the ALB so the Department can obtain independent assurance on key transactions, financial commitments, cash flows, HR arrangements and other information needed to handle the transition effectively and to maintain the momentum of any on-going and / or transferred work.



Department  
of Health



**Framework Agreement  
between the Department of Health and Monitor**

**Annex A: Communications**

2014

## Annex A: Communications

- i. This annex sets out the principles that govern how Monitor and the Department of Health will work together to deliver effective and coherent communications in the spirit of common purpose.
  - ii. To ensure that communication activities deliver real benefit for patients, the public, communities, stakeholders and the system itself, these principles will underpin all communications activities.
  - iii. To support this, the Monitor Director of Communications will take part in the cross-system Arm's Length Bodies Directors of Communications forum that will take ownership of the cross-system communications approach. Monitor and the Department of Health will also ensure that relevant senior officials from their communications teams meet regularly, build effective working relationships and design detailed working practices.
  - iv. The general principles underpinning the approach to communications to be followed by Monitor and the Department will be:
    - a. Mutual respect, co-operation and 'no surprises'
    - b. Value for money and avoiding duplication
    - c. A shared responsibility to promote and protect the public's health, aligning these activities where appropriate
- d. The most effective communication using the most appropriate voice

### Communications strategy and planning

- v. Monitor and the Department will develop annual communications strategies setting out their communications objectives and priorities. Where objectives are the same, the organisations will work together to ensure the associated activities are coherently aligned and add value to each other.
- vi. The ALB Directors of Communications forum will play a key role in ensuring communications strategies and planning across the health and care system are aligned and coherent.
- vii. As agreed by the Public Expenditure Committee (Efficiency and Reform) – PEX(ER) – major paid-for communications activity will also be incorporated into the annual health communication and marketing plans developed by the 'Health Hub'. The Hub structure has been developed across government to ensure value for money, reduce duplication and share expertise. The annual Health Hub communications and marketing plan is a requirement of the Cabinet Office's annual cross-government Proactive Communications Plan.
- viii. In addition, PEX(ER) agreed to a cross-government freeze on paid-for communications activity

and a process managed by the Cabinet Office's Efficiency and Reform Group (ERG) to manage this. The process, and details of the operation of the control, will be communicated to you separately by the Department.

### **Media Handling**

- ix. Monitor will establish and maintain independent relationships with all those interested in, or affected by its work, including the media. It will have responsibility for dealing with media enquiries received relating to its work and the way in which it exercises its functions.
- x. DH and Monitor will keep each other informed of plans for media announcements. When it comes to the attention of DH or Monitor that the media or any other organisation is intending to make public information related to Monitor or its work, Monitor or DH will, where possible, bring this matter to the attention of the other.
- xi. DH and Monitor will, where possible, bring to the attention of communications leads in each organisation issues creating media interest and expected media coverage which relates to the work of DH or Monitor.

### **Announcements**

- xii. To support the principle of partnership working described in the framework agreement and the commitment to 'no surprises', Monitor and DH will share a schedule of relevant planned announcements weekly or fortnightly as appropriate. These should be treated "in-confidence" by the receiving parties and care taken with onward circulation.
- xiii. Monitor and the Department will endeavour to give each other as much notice as possible to enable early discussions on all aspects of the announcement with relevant policy and communications leads from each organisation.
- xiv. Monitor and DH will also share, in confidence and principally for information, a near-final draft of any relevant report to be published, including conclusions, any executive summary and recommendations.

### **Publications**

- xv. 'Publications' in this section refers to documents such as annual reports, anything relating to the structure or operation of the organisation, and statutory reports such as accounts. It does not include green or white papers or any other significant statements of Government policy. In these cases DH will commit to the principle of 'no surprises' wherever possible and endeavour to share drafts with Monitor officials for comment where appropriate.

- xvi. There are separate arrangements for publication of official statistics and these are described in the Statistics section below.
- xvii. To support the principle of partnership working described in the framework agreement and the commitment to 'no surprises', Monitor and DH will share a schedule of relevant forthcoming publications weekly or fortnightly as appropriate.
- xviii. Monitor and DH will, except in exceptional circumstances, share publications with each other ten working days before publication for information and to allow clarification of any issues that may arise. Monitor and DH officials will liaise as necessary to provide briefing on the publication. Monitor and DH will, whenever possible, send a final copy of the publication to each other's officials at least three days before publication. In exceptional circumstances, this period may be shorter and both parties will endeavour to allow as long as possible in such cases.
- xix. Where Monitor and the Department of Health cannot resolve an issue relating to the detail in a publication due for release, the organisation publishing the document will respond to the querying organisation in writing before publication explaining why the comments cannot be taken on board in the final copy of the document.
- xx. When it comes to the attention of DH or Monitor that another Government Department or public body is intending to publish a report concerning the other party and its work, DH or Monitor will, wherever possible, bring this matter to the other's attention.
- Digital and channel strategy**
- xxi. DH and Monitor will develop annual digital strategies setting out their digital communications objectives and priorities. These strategies will follow the principles set out in the annual cross-Government digital strategy.
- xxii. The Department and Monitor will use digital channels as their default channels for communications and services following the "digital first" channel strategy for health and care and the direction of travel set in the May 2012 Information Strategy for health and care, 'The Power of Information'.
- Campaign activity**
- xxiii. Any major, public-facing campaign activity should be incorporated into the annual health communication and marketing plans developed by the Health Hub and agreed through the ERG process.
- xxiv. Monitor will discuss this activity with DH in advance and ensure that DH has appropriate opportunities to inform the

thinking and ensure a strategic fit with other campaigns across the health and care system. This will avoid unnecessary duplication and inefficient use of resource.

## Statistics

- xxv. Pre-announcement of statistical publications:
- a. The planned month of any statistical publications should normally be announced at least 12 months in advance. The precise date should be announced or confirmed at least 4 weeks in advance. To support the principle of co-operation, Monitor should inform the DH Statistics Team of any changes to planned publication dates for Official Statistics.
- xxvi. Sharing data in their final form for briefing:
- a. Official statistics in their final form, including any press release for publication of official statistics, will be shared with those officials and Ministers for whom pre-release access has been agreed no earlier than 24 hours before the formal time of publication. Access for briefing purposes is limited to requirements to brief Ministers or others who may be required to comment at the time of publication. A list of people should be agreed
- 10 working days in advance, by the lead official for statistics at Monitor, who will consult with the DH Head of Profession if they judge necessary (current DH models for pre-release access may be consulted as a guide). Monitor will not provide media with embargoed access to the press release in advance of publication.
- xxvii. Sharing pre-publication data for other purposes:
- a. Official statistics may also, with the agreement of the lead official for official statistics at Monitor, be shared before publication for other purposes as set out below:
    - i. With DH analytical staff where those staff are directly involved in producing the statistics, or related DH statistical products.
    - ii. With named DH analysts and subject specialists, where there would be added value derived from expert Quality Assurance (QA) (either on the figures themselves, or on any statement of DH policy positions in the draft publication).

- iii. Where DH officials apply to Monitor for access for a specified management purpose (if, for example, it is evident that patient health or public finances would be protected by granting such access).
  - iv. Where up-to-date data is needed for inclusion in a DH publication planned for release at the same time, or shortly after, the statistics are to be published.
- xxviii. In all cases where pre-release access is agreed, the purpose, timings and names of individuals should be agreed in advance by the lead official for statistics. All pre-release access will be documented, and lists of people granted access will be made available on request. Where pre-release access has been granted, the pre-publication uses of the data will not exceed the stated purpose.



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**Framework Agreement  
between the Department of Health and Monitor  
Annex B: Financial and accounting responsibilities**

2014

## **Annex B – Financial and accounting responsibilities**

- i. The Framework Agreement sets out the governance and accountability arrangements between the Department of Health and Monitor. This Annex provides further detail on financial and accounting responsibilities, and, delegated authorities.

### Annual Expenditure Limits

- i. As part of the Department's annual business planning cycle, Monitor will produce a business plan demonstrating how delivery of the overarching functions will be achieved. The plan will need to be costed and supporting guidance issued by the Department will provide the format and level of financial detail required. A target budget will be issued with the planning guidance, incorporating overall efficiencies relevant to the Department and its arm's length bodies.
- ii. The business plan will need to identify revenue, capital and cash forecasts for grant-in-aid funded activity, and equivalent expenditure associated with any other income sources. It will need to clearly identify the distinction between costs and income falling inside and outside the administration budget regime.
- iii. The Chief Executive, as Accounting Officer, must ensure that, in any financial year, Monitor's spending in each of

the following categories does not exceed the limit set by the Secretary of State for that year:

- a. Revenue (non ring-fence);
  - b. Revenue (ring-fence);
  - c. capital;
  - d. annually managed expenditure; and
  - e. technical accounting/budgeting.
- iv. The Accounting Officer must also ensure that:
    - a. Monitor's total spending on administration in any financial year does not exceed its overall admin control limit, set by the Secretary of State as a subset of the revenue resource limit; and that
    - b. In any given year the cash usage of Monitor does not exceed the cash limit (allotment) for Monitor plus any payments received which are used to offset expenditure that would have otherwise scored against that limit.
  - v. In addition to the specific controls referred to in paragraphs iii and iv, Monitor has a duty to promote the provision of health care services which is economic, efficient and effective. Effective partnerships developed with other regulatory bodies, such as NHS England and the NTDA, will be key to this.

### Grant in aid funding and any ring-fenced grants

- vi. Any grant-in-aid provided by the department for the year in question will be voted in the department's Supply Estimate and be subject to Parliamentary control.
- vii. The grant-in-aid will normally be paid in monthly instalments on the basis of written applications showing evidence of need. Monitor will comply with the general principle, that there is no payment in advance of need. Cash balances accumulated during the course of the year from grant-in-aid or other Exchequer funds shall be kept to a minimum level consistent with the efficient operation of Monitor. Grant-in-aid not drawn down by the end of the financial year shall lapse. Subject to approval by parliament of the relevant Estimates provision, where grant-in-aid is delayed to avoid excess cash balances at the year-end, the department will make available in the next financial year any such grant-in-aid that is required to meet any liabilities at the year end, such as creditors.
- viii. In the event that the department provides Monitor with separate grants for specific (ring-fenced) purposes, it would issue the grant as and when Monitor needed it on the basis of a written request. Monitor would provide evidence that the grant was used for the purposes authorised by the department. Monitor shall not have uncommitted grant funds in

hand, nor carry grant funds over to another financial year.

### Accounts

- i. In relation to financial reporting, the Department is required by HM Treasury to report in year financial performance and forecasts for all its Arm's Length Bodies, by Estimate Line, and in a specified format, in a timely manner. Monitor is required to comply with Departmental plans and schedules which enable the Department to meet HMT deadlines, and the Department's overall financial planning to meet HM Treasury spending controls through the Shared Financial Planning Agreement.
- ii. Any additional in-year financial support and challenge will be identified through the accountability arrangements, and support and challenge will be determined by the levels and nature of financial risk identified.
- iii. Monitor must prepare annual accounts for each financial year ending 31 March, and interim accounts for shorter periods if required. In relation to these accounts, Monitor must:
  - a. ensure that accounts are prepared to the form, content, methods and principles prescribed by the Secretary of State in his annual group accounting instructions;
  - b. submit these accounts (both unaudited and

- audited) to the Department by a date to be specified by the Secretary of State; and
- c. submit these accounts to the Comptroller and Auditor General (C&AG) for audit as soon as reasonably practicable after the year end (or, in the case of any interim account, as soon as reasonably practicable after the end of the interim period to which that interim account relates).
- iv. Monitor must publish an annual report of its activities together with its audited accounts after the end of each financial year. Information on performance against key financial targets is within the scope of the audit and should be included in the notes to the accounts. The report and accounts are to be signed by Monitor's Accounting Officer and laid before Parliament by Monitor and made available on Monitor's website, in accordance with the guidance in the Government Financial Reporting Manual (FReM). A draft of the report should be submitted to the Department in line with the published timetable.
  - v. The Accounting Officer must also ensure that Monitor participates fully in all agreement of balances exercises initiated by the Department, and in the form specified by the Department, and that it agrees income and expenditure and payables and receivables balances both with other organisations within the Department's resource accounting boundary and, for the purposes of the WGA, with other government bodies outside that boundary.
  - vi. In doing so, Monitor should seek to agree all outstanding balances but in any case should keep within any level of materiality set by the Department. *[To be agreed with Monitor]*
- Audit
- vii. Section 8 of the Framework Agreement sets out the high level requirements for audit.
  - viii. To meet the requirements for internal audit, Monitor will also:
    - a. establish and maintain arrangements for internal audit in accordance with the Public Sector Internal Audit Standards, and have in place a Head of Internal Audit who is suitably competent and qualified;
    - b. prepare an audit strategy, taking into account the Department's priorities, and forward the audit strategy, periodic audit plans and annual audit report, including Monitor's Head of Internal Audit's opinion on risk management, control and governance as soon as possible to the Department; and
    - c. keep records of, and prepare and forward to the Department an annual report on fraud

and theft suffered by Monitor and notify the Department of any unusual or major incidents as soon as possible.

accounts. Monitor shall discuss with the Department the procedures for appointing the C&AG as auditor of the companies.

- ix. The Department is committed to the development of a group assurance model for DH and its Arm Length Bodies. It has been agreed that as soon as possible, Monitor's internal audit provision will be delivered as part of the shared service. Monitor will be expected to actively engage with the Department in the development of the group assurance model. During transition to the new group assurance model, any exceptions to the group arrangements will only be by explicit agreement of the Director General, Finance and NHS Directorate and the DH Head of Internal Audit.
- x. Monitor's Internal Audit function is provided by the Health Group IA service. This is regulated through the agreed service level agreement.
- xi. For external audit, the C&AG audits Monitor's annual accounts and lays them before Parliament, together with his report. In the event that Monitor has set up and controls subsidiary companies, Monitor will, in the light of the provisions in the Companies Act 2006, ensure that the C&AG is appointed auditor of those company subsidiaries that it controls and/or whose accounts are consolidated within its own

xii. The C&AG:

- d. will consult the Department and Monitor on whom – the NAO or a commercial auditor – shall undertake the audit(s) on his behalf, though the final decision rests with the C&AG;
- e. has a statutory right of access to relevant documents including, by virtue of section 25(8) of the Government Resources and Accounts Act 2000, those held by another party in receipt of payments or grants from Monitor;
- f. will share with the Department information identified during the audit process and the audit report (together with any other outputs) at the end of the audit, in particular on issues impacting on the Department's responsibilities in relation to financial systems within Monitor;
- g. will, where asked, provide the Department and other relevant bodies with regulatory compliance reports and other similar reports which the Department may request at the commencement of the audit and which are compatible with the

independent auditor's role.

- xiii. The C&AG may carry out examinations into the economy, efficiency and effectiveness with which Monitor has used its resources in discharging its functions. For the purpose of these examinations the C&AG has statutory access to documents as provided for under section 8 of the National Audit Act 1983. In addition Monitor is to provide, in conditions to grants and contracts, for the C&AG to exercise such access to documents held by grant recipients and contractors and sub-contractors as may be required for these examinations; and shall use its best endeavours to secure access for the C&AG to any other documents required by the C&AG which are held by other bodies.

#### Delegated Authorities

- xiv. Monitor's delegated authorities are issued to it by the Department separately.
- xv. Monitor, as with all public bodies and government departments, must also operate within the existing set of efficiency controls. The full operational guidance will be provided to Monitor by the Department.
- xvi. Once the budget has been approved by the Department and subject to the Secretary of State's instruction and any other

processes set out in this document, Monitor has authority to incur expenditure approved in the budget without further reference to the Department, on the following conditions:

- h. Monitor will comply with its delegated authorities and relevant efficiency controls, which cannot be altered without the prior agreement of the Department or Cabinet Office, whilst also noting that authority to approve novel, contentious or repercussive proposals cannot be delegated from HM Treasury; and
- i. inclusion of any planned and approved expenditure in the budget will not remove the need to seek formal departmental approval where any proposed expenditure is outside the delegated limits or is for new schemes not previously agreed.

- xvii. Monitor must obtain the Department's prior written approval before entering into any undertaking to incur expenditure outside its delegations or not provided for in its business plan as approved by the Department. In addition, the Department's prior written approval is required when:
- j. incurring expenditure for any purpose that is or might be considered novel or contentious, or which has or could have significant future cost implications;

- k. making any significant change in the scale of operation or funding of any initiative or particular scheme previously approved by the Department;
  - l. making any change of policy or practice which has wider financial implications that might prove repercussive or which might significantly affect the future level of resources required; or
  - m. carrying out policies that go against the principles, rules, guidance and advice in *Managing Public Money*.
- xviii. For major projects, Monitor will participate in the Department's common assurance and approval process.



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**Annex C: Relationships with other ALBs**

2014

## Annex C – Relationships with other ALBs

i. In order to deliver its functions efficiently and effectively, and to support alignment across the whole system, Monitor has a general duty to work closely with most bodies within the health and social care industry and has a specific duty to co-operate with other Arm's Length Bodies (ALBs) and other bodies in the exercise of their functions. The key relationships with DH ALBs include:

- With CQC: Monitor and CQC will operate a joint licensing process for providers that require both an economic and quality licence and ensure that any conditions imposed upon registered providers and license holders are not inconsistent. Both bodies are required to assist each other in the exercise of their functions through sharing information relevant to their work.<sup>1</sup> The Department of Health is putting in place a new single failure regime in which CQC, led by the new Chief Inspector of Hospitals, will be responsible for assessing the quality of care.
- With NHS England: The NHS – at all levels – remains critical to the successful delivery of the Government's health goals. As two of the key system partners, it is important that Monitor and

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<sup>1</sup> <http://www.monitor-nhsft.gov.uk/home/news-events-publications/latest-press-releases/monitor-and-the-care-quality-commission-sign-mem>

NHS England work effectively together. To support this, NHS England and Monitor have agreed a Partnership Agreement that defines how this relationship will operate.

- With NHS Trust Development Authority: The NTDA has an important role in driving quality improvement work in NHS Trusts as they seek to meet the standards that are required for Foundation Trust standard. Monitor and the NTDA will need to work closely together to manage the assessment and authorisation process for this process. Also, as part of the new single failure set up by the Department, the NTDA will oversee improvements for NHS Trusts, whilst Monitor will oversee the process for Foundation Trusts.
- With NHS Information Centre: Monitor will be able to require the Information Centre to collect information where necessary to allow Monitor to fulfil its statutory duties, subject to the constraints in the Health and Social Care Act 2012, or made in regulations.
- With Medicines and Healthcare products Regulatory Agency: MHRA and Monitor will support each other's respective regulatory roles.
- With National Institute of Clinical Excellence: Monitor will work with NICE on the pricing for NHS services and will use NICE's disease and condition-based guidance and quality

standards as a reference when reviewing providers who are failing to meet registration standards.

- With Health Education England: HEE will be responsible for the quality assurance framework around education and training commissioning and will work with Monitor to ensure that education and training outcomes support the delivery of service quality outcomes.
- With Health Research Authority: HRA and Monitor will share common standards for research governance for providers of activities regulated by Monitor and for research involving ionising radiation.



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**Annex D: Wider Guidance**

2014

## Annex D: Wider guidance

The following general guidance documents and instructions apply to Monitor. The Department may require Monitor to provide additional management information on an ad hoc basis. Where this is the case, the Department will provide Monitor with clear reasons for the request and will allow as much time as possible to comply with the request.

### General

- Managing Public Money [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212123/Managing\\_Public\\_Money\\_AA\\_v2\\_-\\_chapters\\_annex\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v2_-_chapters_annex_web.pdf)
- Appropriate adaptations of sections of *Corporate Governance in Central Government Departments: Code of Good Practice* and its related guidance [http://www.hm-treasury.gov.uk/psr\\_governance\\_corporate.htm](http://www.hm-treasury.gov.uk/psr_governance_corporate.htm)
- The Parliamentary and Health Service Ombudsman's *Principles of Good Administration* <http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-of-good-administration>
- Principles for Economic Regulation [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31623/11-795-principles-for-economic-regulation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31623/11-795-principles-for-economic-regulation.pdf)
- Consolidation Officer Memorandum, and relevant DCO letters;
- The *NHS Records Management code of practice* [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4131747](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4131747)

- other relevant guidance and instructions issued by HM Treasury in respect of Whole of Government Accounts
- other relevant instructions and guidance issued by the central departments
- specific instructions and guidance issued by the Department, including requests for information
- any departmental plans to ensure continuity of services
- recommendations made by the Public Accounts Committee, or by other Parliamentary authority, that have been accepted by the Government and are relevant to NHS CB.

### Audit and Risk

- *Public sector internal Audit Standards* [http://www.hm-treasury.gov.uk/d/public\\_sector\\_internal\\_audit\\_standards\\_december2012.pdf](http://www.hm-treasury.gov.uk/d/public_sector_internal_audit_standards_december2012.pdf)
- *Audit and Risk Assurance Committee Handbook* [http://www.hm-treasury.gov.uk/d/audit\\_and\\_risk\\_assurance\\_committee\\_handbook.pdf](http://www.hm-treasury.gov.uk/d/audit_and_risk_assurance_committee_handbook.pdf)
- Treasury guidance *Management of Risk: Principles and concepts* <https://www.gov.uk/government/publications/orange-book>
- HMT Guidance on Tackling Fraud

### Finance

- *Government Financial Reporting Manual (FRoM)* [http://www.hm-treasury.gov.uk/frem\\_index.htm](http://www.hm-treasury.gov.uk/frem_index.htm)
- Fees and Charges Guide, Chapter 6 of *Managing Public Money*
- Departmental Banking: A Manual for Government Departments, Annex 5.7 of *Managing Public Money*
- relevant Dear Accounting Officer letters;
- *Regularity, Propriety and Value for Money* [http://www.hm-treasury.gov.uk/psr\\_governance\\_valueformoney.htm](http://www.hm-treasury.gov.uk/psr_governance_valueformoney.htm)
- *Improving spending control* [http://www.hm-treasury.gov.uk/improving\\_spending\\_control.htm](http://www.hm-treasury.gov.uk/improving_spending_control.htm)

## HR

- *Model Code for Staff of Executive Non-departmental Public Bodies* (Cabinet Office) [http://www.civilservice.gov.uk/wp-content/uploads/2011/09/5\\_public\\_body\\_staffv2\\_tcm6-2484.pdf](http://www.civilservice.gov.uk/wp-content/uploads/2011/09/5_public_body_staffv2_tcm6-2484.pdf)

## FOI

- relevant Freedom of Information Act guidance and instructions (Ministry of Justice);

## Estates and Sustainability

- *Greening Government Commitments* <http://sd.defra.gov.uk/documents/Greening-Government-commitments.pdf>
- Government Property Unit National Property Controls and standards for office accommodation (available from DH)

- The Department of Health's Property Asset Management procedures (available from DH)

## Information Governance and Security

- *The NHS Information Governance Toolkit* <https://www.igt.connectingforhealth.nhs.uk/>
- HMG IA Standard No. 6: *Protecting Personal Data and Managing Information Risk* (available from DH)
- HM Government's *Security Policy Framework* <http://www.cabinetoffice.gov.uk/resource-library/security-policy-framework>
- *The NHS Information Security Code of Practice* [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_074142](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_074142)
- *The NHS Confidentiality Code of Practice* [http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_4069254.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4069254.pdf)

## Transparency

- The Prime Minister's commitments on transparency <http://www.number10.gov.uk/news/statements-and-articles/2010/05/letter-to-government-departments-on-opening-up-data-51204>
- Guidance on HM Treasury website <http://www.hm->

[treasury.gov.uk/psr\\_transparency\\_index.htm](http://treasury.gov.uk/psr_transparency_index.htm)

- Cabinet Office *Code of Conduct for Board Members of Public Bodies*  
[http://www.civilservice.gov.uk/wp-content/uploads/2011/09/code-of-conduct\\_tcm6-38901.pdf](http://www.civilservice.gov.uk/wp-content/uploads/2011/09/code-of-conduct_tcm6-38901.pdf)
- *Code of Practice for Ministerial Appointments to Public Bodies*  
<http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2012/02/Code-of-Practice-2012.pdf>



Department  
of Health



**Framework Agreement  
between the Department of Health and Monitor**

**Annex E: Summary of Monitor's accountability arrangements**

2014

## **Annex D: Summary of Monitor's accountability arrangements.**

- i. As highlighted in section 5.1 of the Framework Agreement, Monitor is accountable to Parliament, the Secretary of State, and to the Department of Health's Principal Accounting Officer (PAO) for different aspects of its functions.
- ii. This annex provides a high-level summary of how those accountability flows work.

### **Monitor's accountability to Parliament**

- i. As an independent economic regulator, Monitor is directly accountable to Parliament for its operational and regulatory functions. The need for independent economic regulators to have this primary line of accountability directly to Parliament is set out in the *Principles for Economic Regulation*<sup>1</sup>.
- ii. In practice, this means that Monitor is required to submit its accounts to Parliament, and, it is required to account for its overall performance as an organisation to Parliament. The latter often taking the form of appearances before the Health

1

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31623/11-795-principles-for-economic-regulation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31623/11-795-principles-for-economic-regulation.pdf)

Select Committee and the Public Accounts Committee.

### **Monitor's accountability to the Secretary of State**

- i. The Secretary of State for Health has overall responsibility for the performance of the health and care system. This includes being accountable to Parliament for how the Department of Health's arm's length bodies perform.
- ii. This accountability means that the Secretary of State needs to be kept up to date with the work of all the arm's length bodies, even where they have independence over regulatory or operational decisions. To achieve this, the Secretary of State has established clear accountability arrangements that are set out in section 5 of the main Framework Agreement.
- iii. In addition to this, the Health and Social Care Act 2012 provides the Secretary of State with powers to direct Monitor in cases of significant failure to perform its functions.
- iv. The same legislation also gives the Secretary of State the power to appoint the Chair and Non-Executive Director.
- v. Further details on these arrangements can be found in the main body of the Framework Agreement.

## **Monitor's accountability to the Principal Accounting Officer**

- i. As Monitor is funded by the Department of Health, it needs to account for its use of public funds to the Department's PAO. This is achieved in two ways. Firstly, the PAO approves Monitor's budget. Secondly, the PAO can request evidence from Monitor to demonstrate that public money is being used appropriately and that governance standards are being met. This may take a variety of forms such as (but not limited to) regular financial management reporting, or annual governance statements. The details of this accountability arrangement are set out in more detail in section 5.8 of the main document.
- ii. Finally, the PAO will also need to assure themselves that Monitor's future activities should be funded by the Department. The PAO will therefore review, and may provide comments on, Monitor's strategy and business plan.
- iii. Further details on these arrangements can be found in the main body of the Framework Agreement.

# **Protocol for Public and Parliamentary Accountability**

**between the Department of Health  
and Monitor**

## **INTRODUCTION**

1. The Department of Health (DH) and its arms-length bodies (ALBs) place great importance on public and Parliamentary accountability. The reforms to the NHS and social care system mean that many of the new or existing Arms Length Bodies (ALBs) now share responsibility for accounting to the public and to Parliament for policies, decisions and activities across the health and social care sector. This reflects the reality that DH and its Ministers remain responsible for the system overall, and will need support from the ALBs to provide assurance that the system is working well (including by providing information for Ministers to provide to Parliament).
2. This protocol is intended to reflect the situation over the next 12 months. It will be reviewed periodically to ensure that the arrangements remain fit for purpose.

## **PURPOSE**

3. The purpose of this protocol is to set out robust public and Parliamentary accountability arrangements and to ensure continued good communication and effective collaborative working between the two organisations. The Framework Agreement between DH and Monitor sets out the principles by which the two organisations will work together.
4. The protocol will take effect from 1<sup>st</sup> April 2013.

## **WORKING TOGETHER**

5. Both organisations agree to:
  - Share information about topics of interest to the public and sensitive/contentious issues; and
  - Advise each other of changes to roles, responsibilities and strategic direction or policy.

- Monitor and the Department have agreed to provide a list of the named contacts for both organisations; this can be found at **Annex A**.
- The Department and Monitor will work collaboratively to ensure that both quality and performance standards are maintained.

## 6. **DH will**

- Send clear, unambiguous commissions for answers to Parliamentary Questions (PQs) and briefings, allowing as much time as possible within Parliamentary and other timescales for Monitor to provide the information required. Ensure that an appropriate level of senior civil servant oversight is applied to Monitor's responses.
- Provide advice, support and guidance on the following:
  - Information risk management and will advise Monitor on mandatory controls and reporting
  - NHS and social care complaints handling

## 7. **Monitor will**

- Ensure that correspondence contributions, briefings and PQ replies are provided to the required standard and returned within the deadlines set.
- In line with its internal governance arrangements, Monitor will ensure that information it provides to DH is cleared at an appropriate level within the organisation.
- Ensure that FOI responses meet the requirements of FOI legislation on timeliness and provision of information. In addition, to embrace the Government's commitment to openness and transparency.
- Ensure that responses to requests made and issues raised under DP legislation are handled in a timely and appropriate way in line with the requirements of the legislation and good information privacy standards.
- Secure and maintain capacity and capability to ensure that:
  - At least 90% of correspondence addressed to Monitor is replied to within 18 working days (Whitehall Standard);
  - FOI requests are responded to within 20 working days of receipt in line with legislation; and
  - DPA requests are responded to within 40 calendar days in line with legislation.

## **ROLE OF THE DH SPONSOR BRANCH**

8. The DH sponsor branch's primary role is to liaise between Monitor and the wider Department (and, where necessary, the rest of Government). It is a supportive and facilitative relationship, based on trusting that Monitor is best placed to carry out its own business. The sponsor will, however, be expected to assure him/ herself that Monitor's own public and Parliamentary work and contribution to that of DH, both meet the required DH standards.

## **MULTI-ISSUE POLICY AREAS**

9. Responses to issues that span across more than one ALB should, where there is no lead ALB already, be coordinated by the main DH sponsor team (which could include delegating the work to the lead ALB). It will be the responsibility of the DH sponsors to ensure that there are no "Orphan" policy areas or issues – all should be allocated according to statutory responsibility.

## **MONITORING THE IMPLEMENTATION OF THE PROTOCOL**

10. DH will establish a Public and Parliamentary Review Group to keep public and Parliamentary accountability arrangements under review. Its purpose being to satisfy itself that DH and its ALBs are responding appropriately and timeously to all public and Parliamentary business.

## Monitor sponsorship

The Department of Health's Monitor sponsorship team recognises the concerns and occasional frustrations that Monitor encounters while doing business with us. We feel we have made some progress already and are adding value in such areas as managing the Department's asks of Monitor.

We frequently push back on unreasonable requests or tight deadlines, educating DH colleagues about Monitor's role if they do understand it. For example, we worked very closely with the Treasury and DH colleagues to explain what was realistic for Monitor to achieve on off payroll tax arrangements, given that they did not own any direct levers to get the information from FTs.

We have pushed hard around NED recruitment, to ensure that the Monitor Board was quorate, and have ensured that Monitor's views have been fed into policy debates around the marginal rate tariff, and the procurement pipeline – such that we are the only sponsor team within the Department to have gained Earned Autonomy over professional services and consultancy

Following complaints of short deadlines for various briefings and PQs, the sponsor team instigated a "Lunch and Learn" session with DH staff that was well received by the 60 DH colleagues in attendance. Monitor's feedback is that the process has had an impact. This was complimented by articles in the DH Life magazine that goes to all staff, and, in the SSU newsletter which goes to all sponsor teams.

However, there is more to do, and we understand the central point that sponsorship is a two-way process. For that reason, we undertake to develop our support and 'championing' of Monitor within the Department, and where necessary around the NHS System.

To this end, we undertake as far as possible to:

1. **Provide a single point of contact for the Department's engagement with Monitor** – we have been working to establish the Monitor sponsorship team as the single point of contact for any requests that need to go to Monitor, such as PQs. We have done this by regularly publicising our role within the Department both through internal communications and through speaking to relevant colleagues. While, in practice, it can be difficult to ensure that all such requests are handled by the sponsor team, and without wishing to cut across regular, informal contact between Monitor and DH colleagues, we will continue to reinforce a message across DH that the default assumption is that the sponsor team is the single point of contact.
2. **Ensure that the Department is more joined up** – one of the areas where communication has not worked as well as it could is around different parts of the Department being aware of publications and projects that Monitor is undertaking. For example, Monitor has sometimes told our press team that they are publishing a document but this message hasn't promulgated throughout the Department. Monitor and the Department met to discuss this issue recently and have agreed that a) forthcoming publications/projects will be discussed quarterly in one of the meetings between Helen Buckingham and Tim Jones and b) that DH press office, DH Private Office, and the sponsorship team will share information more regularly.
3. **Represent Monitor's interests within the Department and across Government** – one of the key functions of the sponsorship team is to represent Monitor's interests within the Department. We already do much in this area. We explain Monitor's likely position on specific issues to colleagues. We push back on internal colleagues who make unreasonable requests on Monitor. And we recently defended Monitor's position on off-payroll remuneration arrangements such that agreement could be reached with other Government departments as to the approach.

However, there are further areas – such as recruitment and appointments – where more can be done. Specifically, we are discussing recent Monitor appointments more widely across the Department specifically to minimise process and learn lessons. In principle we will extend this approach to other areas of frustration.

4. **Raise awareness** – part of the way we can champion Monitor within the Department is to raise awareness of their functions internally. The lunch and learn session that we ran in 2013/14 was a good start to this. However, we should build on this by running similar sessions again and taking opportunities to explain Monitor’s role in suitable internal communications and meetings.
5. **Develop our understanding of Monitor** - we have been discussing with colleagues in Monitor, the possibility of developing a work shadowing scheme between the sponsor team and Monitor. The benefit of this is that it will deepen our understanding of each other’s work and working culture. This will enable us to work more effectively together.
6. **Streamline processes** – we are aware that Monitor sometimes feel frustrated by the Department’s processes and the number of meetings they have with the Department. Where possible, we will streamline processes and, if we can, the number of meetings we have with Monitor.

Monitor sponsorship team

Department of Health