

## Procedure for complying with the Monitor Compliance Framework

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## Version Control Summary

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1.0	April 2010	Mason Fitzgerald, Associate Director of Governance	Draft	A policy was required in order to set out how the Trust would comply with Monitor guidance

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## **1 Introduction**

- 1.1 NHS foundation trusts were created as new legal entities in the form of public benefit corporations by the National Health Service Act 2006 (“the Act”). The legislation gave NHS foundation trusts new freedoms, with trust boards having more autonomy to make financial and strategic decisions. In this new regime, the Trust Board are ultimately and collectively responsible for the financial performance and quality of healthcare delivery of their foundation trust.
- 1.2 Foundation Trusts are required to operate within their terms of authorisation issued by Monitor. In order to monitor Foundation Trust’s compliance with their terms of authorisation, Monitor has developed a Compliance Framework, which is updated each year. There are three components to the Compliance Framework:
- Annual risk assessment;
  - In-year monitoring; and
  - Intervention.
- 1.3 The Trust aims to be a leader in governance process and practice and as such, has developed this policy in order to ensure that it meets best practice in the sector and adheres to the Compliance Framework at all times.

## **2 Purpose**

- 2.1 The purpose of this procedure is to:
- Set out responsibilities and procedures for adherence to Monitor’s Compliance Framework
  - Provide assurance to the Board that robust processes are in place, and are followed in practice
  - Provide guidance to staff involved in the process regarding their responsibilities and issues subject to reporting
  - Promote an open and transparent relationship with Monitor, and relevant third parties

## **3 Scope of this procedure**

- 3.1 This policy covers all aspects of the Compliance Framework set out in Monitor’s *Compliance Framework 2010/11*, and all aspects of the Trust’s activity.
- 3.2 The policy will be updated on an annual basis following the annual revision of the Compliance Framework.

## **4 Duties**

- 4.1 A number of committees/individuals within the organisation have duties relevant to this policy:

### ***Trust Board***

The Trust Board is accountable for the performance of the Trust and for ensuring that the Trust complies with its Terms of Authorisation.

The Trust Board will review and approve submissions to Monitor, providing appropriate challenge to ensure that reporting requirements are met and substantial assurance is provided.

### ***Audit Committee***

The Audit Committee has responsibility for reviewing financial controls, and also reviews the establishment and maintenance of an effective system of integrated governance, risk management and internal control, across the whole of the organisation's activities.

As part of the Internal Audit Strategic Plan, Internal audit will carry out an annual review of the Trust's arrangements for adhering to the Compliance Framework and report this to the Audit Committee.

The Audit Committee will identify any financial control issues reportable to Monitor in accordance with this policy, and report these to the Board.

### ***Finance, Business and Investment Committee***

The Finance, Business and Investment Committee has responsibility to scrutinise current financial performance and future financial plans, review financial and business risks, and review proposals for major service developments.

The Finance, Business and Investment Committee will identify any financial performance or investment issues reportable to Monitor in accordance with this policy, and report these to the Board.

### ***Assurance Committee***

The Assurance Committee has responsibility of reviewing and monitoring the Board Assurance Framework (high level risk register) on behalf of the Board.

The Assurance Committee will identify any (non-financial) control issues reportable to Monitor in accordance with this policy, and report these to the Board.

### ***Chief Executive***

The Chief Executive is the Accountable Officer of the Trust and will certify Board statements and other submissions in accordance with Monitor requirements. The Chief Executive is responsible for reporting the results of Monitor assessments to the Members Council.

### ***Director of Finance***

The Director of Finance is the Chief Financial Officer of the Trust and is responsible for identifying issues and preparing submissions in accordance with this policy. The Director of Finance has a key role with the Monitor Relationship Management Team, as well as internal and external audit.

### ***Director of Performance & Business Development***

The Director of Performance and Business Development is responsible for the Trust's performance management system, as well as the development of the annual plan and individual service developments.

The Director of Performance & Business Development is the executive director with lead responsibility for engagement with the Monitor Relationship Management Team, for ensuring that proper reporting takes place in accordance with this procedure, and that proper records are kept.

### ***Director of Nursing & Quality***

The Director of Nursing & Quality has Board level responsibility for the Trust's Healthcare Governance Framework and Assurance functions, including registration with the Care Quality Commission.

### ***Associate Director of Governance***

The Associate Director of Governance supports the Director of Performance & Business Development and other executive directors and committees in accordance with their roles set out above.

The Associate Director of Governance is responsible for the development and maintenance of this policy, and as Secretary to the Trust Board and its committees, advising them of Monitor guidance and other governance issues.

- 4.2 The Members Council does not have any responsibilities under this policy, but will receive reports from the Chief Executive regarding the results of Monitor assessments. Monitor will also notify the Members Council of any formal intervention, and may communicate directly with them.

## 5 Monitor's Compliance Framework

### 5.1 Monitor's Compliance Philosophy

5.1.1 Monitor's Compliance Framework is designed to enable NHS Foundation Trusts to innovate, respond to local wishes and provide better healthcare. Monitor will maintain an environment conducive to innovation by focusing on providing a regulatory platform that ensures NHS Foundation Trusts maintain their viability: staying solvent, governing themselves effectively within their constitution, engaging with patients, service users and commissioners, providing all the services that they are required to deliver by law, and complying with other conditions set out in their authorisation.

5.1.2 Monitor will not involve itself in determining healthcare strategy or operational policies in NHS Foundation Trusts.

5.1.3 The following principles shape Monitor's approach to regulation:

- **Self-regulation:** Boards are responsible for ensuring that NHS Foundation Trusts comply with their Authorisation and statutory obligations at all times;
- **Proportionality:** Monitor takes a risk-based approach to regulation, intervening only when necessary. The intensity of Monitoring of an NHS Foundation Trust is guided by the risk of a significant breach of their Authorisation;
- **Transparency:** Monitor will use a transparent method for assessing risks to compliance, as set out in the regulatory framework;
- **Trust-based approach:** Monitor expects NHS Foundation Trusts to disclose issues speedily and candidly. Monitor will seek to adopt a collaborative approach to resolve issues before considering intervention;
- **Confidentiality:** Monitor will not, unless it has a statutory obligation to do so, disclose confidential information without prior agreement;
- **Minimal duplication of regulation:** Monitor will not usually act where other bodies have a lead regulatory role unless they have exhausted their powers and an NHS Foundation Trust still risks a breach of their Authorisation; and
- **Minimal information requirements:** Monitor aims to minimise the information requirements it places on NHS Foundation Trusts. Its requirements should in any case be a sub-set of the information requires to discharge its functions effectively.

5.1.4 There are three components to the Compliance Framework:

- Annual risk assessment;
- In-year monitoring; and
- Intervention.

5.1.5 For both annual risk assessment and in-year monitoring, Monitor will assign a risk rating in two areas – finance and governance (including mandatory goods and services). Monitor will use these ratings to guide the intensity of its monitoring and signal to the NHS Foundation Trust its degree of concern with specific or a range of issues identified and evaluated.

## 5.2 Annual Planning and Monitoring Cycle

5.2.1 By 31 May each year, NHS Foundation Trusts are required to submit an annual plan to Monitor. Requirements for the content of the annual plan are set out in the publication *Annual Plan: Advice for NHS Foundation Trusts*, which is updated annually by Monitor.

5.2.2 Monitor will assess the risks identified in the annual plan and assign a risk rating in two areas – finance and governance.

## 5.3 In year-reporting and monitoring

5.3.1 NHS Foundation Trusts will need to provide three types of in-year reports:

- Regular reports including in-year data submissions and audited annual report and accounts
- Exception reports, which may relate to any in-year issue affecting compliance with the Authorisation
- Ad hoc reports, at Monitor’s request

### Timeline for annual planning and monitoring cycle

Date:	Trust	Monitor
31 January	Trust Submits Q3 monitoring report	
February/March		Monitor assesses Q3 report and publishes risk ratings
23 April	Trust submits draft accounts to Monitor	
30 April	Trust submits Q4 monitoring report	
31 May	Trust submits annual plan	
May/June/July		Monitor assesses Q4 report and publishes risk ratings, and assesses the annual plan



20 July	Trust submits annual report & accounts	
31 July	Trust submits Q1 monitoring report	
August/September		Monitor verifies preliminary risk rating against audited accounts, publishes annual plan risk ratings, and assesses Q1 report and publishes risk ratings
31 October	Trust submits Q2 monitoring report	
November/December		Monitor assesses Q2 report and publishes risk ratings

## 5.4 Intervention

5.4.1 If Monitor is satisfied that an NHS Foundation Trust is failing to comply with its Authorisation, or any requirement it has under any relevant legislation, and that the failure is “significant”, or that the Trust is likely to repeat an earlier significant failing, Monitor has the power to intervene by:

- Requiring the Trust to do, or not to do, specific things within a selected period;
- Removing any or all of the directors or council members, and appointing interim directors or council members;
- Requiring the Trust to take steps to obtain a moratorium or make proposals for a voluntary arrangement; and
- Obtaining an order transferring the property and liabilities of the Trust to another NHS body and/or providing for the dissolution of the NHS Foundation Trust.

## **6 Procedures for complying with the Compliance Framework**

### **6.1 Annual Planning**

- 6.1.1 The Director of Performance & Business Development has responsibility for the annual planning process.
- 6.1.2 The process normally begins in November each year, and the Trust consults with the Members Council and the membership on its draft plans, and the draft annual plan will normally be submitted to the Trust Board in March.
- 6.1.3 The final annual plan will be approved by the Trust Board and submitted to Monitor by 31 May.
- 6.1.4 Monitor will convene a meeting with the Trust in June to discuss the annual plan. This meeting is attended by relevant directors and the Trust Chairman.
- 6.1.5 Monitor will publish its risk assessment of the annual plan in June/July.
- 6.1.6 The Chief Executive will communicate the results to the Members Council at its next meeting following publication of the results.

### **6.2 Annual Reports and Accounts**

- 6.2.1 The Associate Director of Governance has responsibility for submission of the Annual Report and Accounts.
- 6.2.2 The Associate Director of Governance eads on the production of the annual report, and the Director of Finance leads on the production of the annual accounts. The annual report and accounts will be prepared in line with the requirements of the Monitor Financial Reporting Manual (FReM), which is updated each year.
- 6.2.3 The draft annual report and accounts will be submitted to the Trust's auditor by 23 April, and the draft accounts will also be submitted to Monitor.
- 6.2.4 The audited accounts and final text of the annual report will be submitted to Monitor by 8 June, and laid before parliament by 7 July. Copies of the laid reports will be submitted to Monitor by 20 July.
- 6.2.5 The Trust will hold an Annual General Meeting in or before September in order to publish the Annual Report & Accounts.

### **6.3 In-year submissions**

- 6.3.1 The Associate Director of Governance has responsibility for coordinating in-year submissions to Monitor.
- 6.3.2 The Associate Director of Governance will prepare a report for the Board that sets out:
  - Finance returns:
    - Quarterly financial templates
    - Year to end financial information
    - In Year finance declaration

- Governance returns:
    - Statement from the Board self-certifying that all targets have been met over the period and that sufficient plans are in place to ensure that all known targets which will come into force will also be met
    - Results of any elections for council members
    - Report on any changes to the Board of Directors or the Members Council
    - Details of any exception reports made in the period
- 6.3.3 The report will include details of the Trust's performance against Monitor and Care Quality Commission targets, as well as the Board Assurance Framework.
- 6.3.4 In preparing the report, the Associate Director of Governance will consult with relevant staff and review relevant information as set out in Appendix 1.
- 6.3.5 The report shall highlight any issues of non-compliance, and set out the corrective action that is being taken.
- 6.3.6 In reviewing the report, the Trust Board will:
- Ensure that Board challenge is appropriate and independent to previous discussions on issues
  - Refer to other Board reports where relevant (i.e. finance report)
  - Request further information and/or assurance from relevant executive directors
  - Consider whether substantial assurance has been provided
  - Formally approve the submission, including the self-certification
- 6.3.7 In the event that timing of Board meetings prevents the Board receiving the report before submission to Monitor, it will be reviewed and approved by the Chief Executive and Trust Chairman, and reported to the following Board meeting.
- 6.3.8 The Associate Director of Governance will report to the Board on the results of Monitor's assessments.
- 6.3.9 The Chief Executive will report to the Members Council on the results of Monitor's assessments.
- 6.3.10 Internal audit will carry out an annual review of the Trust's arrangements for adhering to the Compliance Framework and report this to the Audit Committee.

#### **6.4 Exception reports**

- 6.4.1 The Director of Performance & Business Development has responsibility for exception reporting to Monitor.

- 6.4.2 Relevant directors have responsibility for informing the Director of Performance & Business Development of any issues which may be subject to exception reporting, as soon as they arise.
- 6.4.3 The Associate Director of Governance will, as part of preparing the quarterly compliance report, request positive returns from relevant directors regarding issues which may be subject to exception reporting.
- 6.4.4 Guidance on the issues that may be subject to exception reporting, and the format for reporting, is set out in Appendix 2.

## **7 References**

*Monitor Compliance Framework, March 2010*

## Appendix 1

### Procedure for preparing in-year submissions

In preparing in-year submissions, the Associate Director of Governance will review the information set out below (in conjunction with the lead identified below where necessary):

Reporting area:	Lead(s):	Information to be reviewed:
<b>Finance:</b>		
Finance report (quarterly template, year to end information)	Director of Finance	Finance reports submitted to Finance, Business and Investment Committee & Trust Board
<b>Governance:</b>		
Board self-certification	Director of Performance & Business Development	Quarterly Performance report submitted to the Trust Board
	Director of Nursing & Quality	CQC review reports/regulatory action and resulting responses
	Director of Nursing & Quality	Board Assurance Framework
	Head of Internal Audit	Internal audit reports completed during the period
	Associate Director of Governance	Minutes of relevant Board/Members Council committee meetings
	Associate Director of Governance	Any relevant internal/external investigations/reports
Elections	Associate Director of Governance	Any results of elections held in the period
Changes to the Board of Directors and Members	Associate Director of	Register of Board of Directors and Members

Council	Governance	Council
Exception reporting	Associate Director of Governance	Any exception reports made during the period



**Appendix 2**  
**Exception reporting**

The Trust is required to report to Monitor any material, actual or prospective changes which may affect its Terms of Authorisation, and which have not been previously notified to Monitor.

Areas of exception reporting are set out below:

<b>Responsible director(s):</b>	<b>Reporting issue:</b>
<b>Finance:</b>	
Director of Finance	Unplanned significant reductions in income or significant increases in costs
Director of Finance	Requirements for additional working capital facilities beyond those incorporated in the prudential borrowing limit (PBL)
Director of Finance	Failure to comply with the NHS Foundation Trust Financial Reporting Manual (FReM)
Director of Finance	Discussions with external auditors which may lead to a qualified audit report
Director of Performance & Business Development	Major investments/service developments (as set out in the Trust's Policy for High Risk Service Developments) or applications for an "investment adjustment"
<b>Governance:</b>	



Director of Performance & Business Development Director of Nursing & Quality	Failure or likely failure to meet national core standards or targets over the quarter
Director of Nursing & Quality	Failure or likely failure to comply with the Hygiene Code
Director of Performance & Business Development	Significant contractual or non-contractual dispute with another NHS body
Associate Director of Governance	Any other events suggesting material issues with governance processes and structures (e.g. removal of director(s) for abuse of office)
Director of Finance Associate Director of Governance	Adverse report from internal auditors
Director of Nursing & Quality Associate Director of Governance	Risk of loss of Care Quality Commission registration for some or all services
Director of Finance Director of Performance & Business Development Director of Nursing & Quality	Significant third party investigations that may suggest material issues with governance (e.g. fraud, Care Quality Commission reviews or investigations, National Patient Safety Agency Reports) Any planned or unplanned Care Quality Commission inspections

Associate Director of Governance	Proposals to vary the authorisation
Director of Nursing & Quality	SUIs and other patient safety issues which may impact the Authorisation
Director of Nursing & Quality	A complaint or other matter which may give rise to a material adverse impact on the reputation of an NHS Foundation Trust (e.g. adverse coroners report)
Medical Director	Reporting of breaches in information governance (including data losses), and any failure to achieve a minimum of Level 2 performance against key requirements in the DOH Information Governance Toolkit
Director of Nursing & Quality Associate Director of Governance	Any change in NHS Litigation Authority rating
Director of Finance	Any change in external audit provider
<b>Mandatory services:</b>	
Director of Finance	Proposals to vary mandatory service provision or dispose of assets, including cessation or suspension of mandatory services or variation of Authorisation or asset protection processes
Director of Nursing & Quality	Loss of accreditation of a mandatory service
Director of Finance	Impact of introduction of new services where these give rise to material increases in costs

<b>Other risks:</b>	
Director of Nursing & Quality Director of Operations Associate Director of Governance	Enforcement notices from other bodies implying potential or actual significant breach of any other requirement in the Authorisation (e.g. Health & Safety Executive or fire authority notices)

Exception reports should be completed by the responsible director in the following format:

*The issue that has arisen, the area(s) of Authorisation to which it applies, and the magnitude of the issue including the timeframe in which it will come into effect or, if it has already done so, when it occurred:*

*Where an application is to be made to vary the Authorisation, details of the variation requested together with evidence that the necessary governance procedures have been completed, including receipt of consents from all relevant parties and full assessment of the potential implications:*

*Where relevant, the proposed actions to address the issue(s) and the criteria and process to determine the effectiveness of these actions:*

*A list of the third parties which the Trust intends to notify of the issue(s) as well as a proposal of the support required from Monitor (if any):*