

# **The new NHS Landscape – a brief overview**

**Council of Governors' meeting, 18 April 2013**

Anna Milanec, Trust Secretary

Alan Tobias, Chairman

## **Francis Report of the Mid Staffs NHS FT Public Enquiry**

“What Francis is saying chimes with what the FTGA believes is the governor’s role – to encourage openness and accountability between trusts, patients and the public.

For our members, the report’s central recommendation – that trusts should ensure openness, transparency and candour throughout the system about matters of concern – is vital.

Dianah Pritchett-Farrell, chair of the Foundation Trust Governors Association

## **Francis Report** of the Mid Staffs NHS FT Public Enquiry

Robert Francis QC suggests that all commissioners, providers, regulators and ancillary organisations in healthcare services should consider the recommendations of his report and, at the earliest practicable opportunity, outline to what extent they accept those recommendations. They should also identify how they plan to implement them.

## Francis Report of the Mid Staffs NHS FT Public Enquiry

- **290 Recommendations** made in the Report, including:
- **greater regulation** from the coalface to the boardroom, in particular:
  - all staff should be trained, qualified and regulated, **including healthcare assistants**
  - a **'fit and proper person'** test should be met before appointment as a director of an NHS body, with senior management to be disqualified if they do not meet a code of conduct

## Francis Report of the Mid Staffs NHS FT Public Enquiry

- 290 Recommendations (cont)
- accountability with real teeth – including **criminal sanctions** in some cases for poor quality care or for cover up
- a statutory “**duty of candour**” for healthcare providers, doctors and nurses
- more focus on **compassion** in recruitment, training and promotion of staff, alongside technical skills or academic qualifications

## **Francis Report of the Mid Staffs NHS FT Public Enquiry**

Recommendations: Enhancement of the role of Governors:

74. Monitor and the CQC should publish guidance for governors suggesting principles they expect them to follow in recognising their obligation to account to the public, and in particular in arranging for communication with the public served by the foundation trust and to be informed of the public's views about the services offered.

## **Francis Report of the Mid Staffs NHS FT Public Enquiry**

Recommendations: Enhancement of the role of Governors:

75. The Council of Governors and the board of each foundation trust should together consider how best to enhance the ability of the council to assist in maintaining compliance with its obligations and to represent the public interest. They should produce an agreed published description of the role of the governors and how it is planned that they perform it. Monitor and the Care Quality Commission should review these descriptions and promote what they regard as best practice.

## **Francis Report of the Mid Staffs NHS FT Public Enquiry**

Recommendations: Enhancement of the role of Governors:

76. Arrangements must be made to ensure that governors are accountable not just to the immediate membership but to the public at large – it is important that regular and constructive contact between governors and the public is maintained.

## **Francis Report of the Mid Staffs NHS FT Public Enquiry**

Recommendations: Enhancement of the role of Governors:

77. Monitor and the NHS Commissioning Board should review the resources and facilities made available for the training and development of governors to enhance their independence and ability to expose and challenge deficiencies in the quality of the foundation trust's services.

## **Francis Report of the Mid Staffs NHS FT Public Enquiry**

Recommendations: Enhancement of the role of Governors:

78. The Care Quality Commission and Monitor should consider how best to enable governors to have access to a similar advisory facility in relation to compliance with healthcare standards as will be available for compliance issues in relation to breach of a licence (pursuant to section 39A of the National Health Service Act 2006 as amended), or other ready access to external assistance.

## The NHS Provider Licence

The Health and Social Care Act 2012 (the Act) makes changes to the way NHS service providers will be regulated, and gives Monitor new duties and powers. These changes include the introduction of a Monitor Licence for providers of NHS services.

## The NHS Provider Licence

In breach of Licence Conditions (generally):

Monitor have issued the licence to the Trust which contains conditions to which the Trust were required to give undertakings:

- A&E target breaches to be rectified from Q2 2013/2014 for at least three clear quarters, i.e. until 31<sup>st</sup> March 2014;
- To develop governance plans that demonstrate compliance with Monitor's Board Governance Memorandum and Quality Governance Framework

## The NHS Provider Licence

In breach of Licence Conditions (generally):

Where Monitor is satisfied that the NHS foundation trust has breached, or is breaching, an additional licence condition that was included under section 111 of the Act, we may use our powers to require the foundation trust to remove, suspend or disqualify one or more of the foundation trust's directors and/or governors or, if the foundation trust does not do so, Monitor may make such changes.

## The NHS Provider Licence

As well as nine standard sections for all health care providers, there are four licence conditions that will apply only to NHS foundation trusts.

These conditions cover the provision of information that Monitor has a duty to maintain on the register of NHS foundation trusts and the possibility of associated fees, an obligation to provide information requested by an advisory panel, and a condition that enables Monitor to continue oversight of the governance of NHS foundation trusts.

## Sections of Monitor's Standard Licence Conditions

### General Conditions

The General Conditions apply to all providers and impose certain conditions, such as that directors must be "fit and proper" and providers must respond to information requests from Monitor.

### Licence conditions setting obligations about pricing

The Pricing Conditions oblige providers, for example, to record information that Monitor needs to set prices, check that the data is accurate and, where required, charge commissioners in accordance with the National Tariff document.

### Licence conditions setting obligations around choice and competition

These conditions oblige providers to help patients to make the right choice of provider, where appropriate, and to prohibit anti-competitive behaviour where it is against the interests of patients.

### Licence condition to enable integrated care

The Integrated Care Condition enables the provision of integrated services by obliging providers not to do anything detrimental to enabling integrated care, where it is in the interests of patients.

### Licence conditions that support continuity of services (CoS)

These conditions apply to providers of Commissioner Requested Services – services whose absence would have a significant negative impact on the local population. They will allow Monitor to assess whether there is a risk to services, and they set out how services will be protected if a provider gets into financial difficulties.

### Governance licence conditions for foundation trusts

These conditions only apply to foundation trusts and impose obligations around appropriate standards of governance.

## The NHS Provider Licence

Nine general, standard conditions:

- **General Condition 1: Provision of information**
- This condition contains an obligation for all licensees to provide Monitor with any information required for licensing functions.

## The NHS Provider Licence

Nine general, standard conditions:

### **General Condition 2: Publication of information**

This licence condition obliges licensees to publish such information as Monitor may require.

### **General Condition 3: Payment of fees to Monitor**

The Act gives Monitor the ability to charge fees and this condition obliges licence holders to pay fees to Monitor if requested.

## The NHS Provider Licence

Nine general, standard conditions:

### **General Condition 4: Fit and proper persons**

This licence condition prevents licensees from allowing unfit persons to become or continue as governors or directors (or those performing similar or equivalent functions). In exceptional circumstances and at Monitor's discretion, they may issue a licence without the licensee having met this requirement.

## The NHS Provider Licence

Nine general, standard conditions:

### **General Condition 5: Monitor guidance**

This licence condition requires licensees to have regard to any guidance that Monitor issues.

### **General Condition 6: Systems for compliance with licence conditions and related obligations**

This licence condition requires providers to take all reasonable precautions against the risk of failure to comply with the licence and other important requirements.

## The NHS Provider Licence

Nine general, standard conditions:

### **General Condition 7: Registration with the CQC**

This licence condition requires providers to be registered with the CQC (if required to do so by law) and to notify Monitor if their registration is cancelled.

### **General Condition 8: Patient eligibility and selection criteria**

This condition requires licence holders to set transparent eligibility and selection criteria for patients and to apply these in a transparent manner.

## The NHS Provider Licence

Nine general, standard conditions:

### **General Condition 9: Application of Section 5 (Continuity of Services)**

- This condition applies to all licence holders. It sets out the conditions under which a service will be designated as a Commissioner Requested Service. If a licensee provides any Commissioner Requested Services, all the Continuity of Services Conditions apply to the licence holder.

## The NHS Provider Licence

Four conditions just for NHS Foundation Trusts:

### **NHS Foundation Trust Condition 1: Information to update the register of NHS foundation trusts**

This licence condition ensures that NHS foundation trusts provide required documentation to Monitor.



## The NHS Provider Licence

Four conditions just for NHS Foundation Trusts:

- **NHS Foundation Trust Condition 2: Payment to Monitor in respect of registration and related costs**
- If Monitor moves to funding by collecting fees, the regulator may need this licence condition to charge additional fees to NHS foundation trusts to recover the costs of registration.

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## The NHS Provider Licence

Four conditions just for NHS Foundation Trusts:

- **NHS Foundation Trust Condition 3: Provision of information to advisory panel**
- The Act gives Monitor the ability to establish an advisory panel that will consider questions brought by governors. It is Monitor's current intention to establish this panel. This licence condition requires NHS foundation trusts to provide the information requested by an advisory panel.
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## The NHS Provider Licence

Four conditions just for NHS Foundation Trusts:

- **NHS Foundation Trust Condition 4: NHS foundation trust governance arrangements**
- This condition will enable Monitor to continue oversight of governance of NHS foundation trusts.

## SUHFT Constitution

- Constitutional changes no longer approved by Monitor – although they must be sent an up to date, approved version;
- Approved by both Governors, Directors, and also members if there are any clauses affecting the duties or roles of Governors;
- Governance Committee have been discussing some changes;
  - Number of Governors on Council to be reduced?
  - Number of Constituencies to be reduced?
  - Term – 2 x 3 years to remain as it always has been?
  - Change, 2 year ‘rest’ period to only one year?
  - Significant Transactions – definition needs to be determined, or decide not to have a definition?
  - Incorporate up to date Governor role, in how much detail?

## NHS Constitution

Some technical amendments was made to ensure that the NHS Constitution is up-to-date for the introduction of the new health and care system on 1 April 2013, including

- patient involvement
- feedback
- duty of candour
- end of life care
- integrated care
- complaints
- patient information
- staff rights, responsibilities and commitments
- dignity, respect and compassion
- This will be subject to a separate presentation when it is clear what effects the changes will have for the Trust.