

**Consultation on amendments to
the *Compliance Framework***

Dated 31 January 2008



1. Introduction

1.1. Developing the regulatory framework

Monitor continues to develop a regulatory framework within which boards of NHS foundation trusts can meet their ongoing financial, clinical quality and service performance obligations. This framework includes but is not limited to:

- complying with the terms of Authorisation (“the Authorisation”);
- improving financial performance to fund investment and innovation in healthcare provision whilst maintaining financial security;
- developing the effectiveness of local accountability;
- encouraging engagement with commissioners;
- implementing effective governance; and
- meeting clinical quality and service performance standards and targets.

The *Compliance Framework*, which is at the core of Monitor’s regulatory framework, was first published on 31 March 2005. Since then, Monitor has updated it to incorporate additions which came out of consultation exercises on areas such as clinical quality, service line reporting, amendments to the financial risk ratings and amendments to accommodate mental health trusts becoming NHS foundation trusts. Monitor has also published or updated other mandatory and non-mandatory guidance.

It has always been recognised that, with the benefit of experience and over time, Monitor would continue to review the regulatory framework. An important part of this process is the opportunity for stakeholders to provide input.

The NHS in England: The Operating Framework for 2008-09 (‘the Operating Framework’) was issued in December 2007. Following this, we are now able to issue this consultation document which sets out Monitor’s proposed amendments to the *Compliance Framework* to take effect from 1 April 2008.

This document explains how Monitor intends to develop and enhance the effectiveness of the *Compliance Framework* to take account of the Operating Framework. It also describes the general principles as to how Monitor will implement its compliance activities in the context of a move towards contracted performance driven by local commissioning requirements. In particular this document focuses on:

- healthcare targets and national core standards for 2008/09 by which we will directly assess service performance as indicators of effective governance;

- other service performance measures forming part of contractual arrangements with commissioners;
- proposed changes to self-certifications by boards;
- the introduction of International Financial Reporting Standards (IFRS) with effect from 2008/09; and
- proposed amendments to reporting requirements for membership information and election turnout rates, so as to better reflect the engagement of members.

A summary of the proposed changes to the *Compliance Framework* in each of these areas is set out in Sections 2 to 6.

1.2. Consultation process and timing

At the end of each section, we have highlighted what we think are the key questions which are relevant to the consultation process. This will assist recipients to focus on what we believe to be the main considerations. The consultation questions are repeated in Section 7.

If there are other matters which you would like to raise in connection with the proposed amendments to the *Compliance Framework*, please feel free to do so. More details about the consultation process are included in Section 8.

Responses to this consultation are invited by 20 March 2008. Monitor will consider all the responses received from consultees by this date with a view to issuing a revised *Compliance Framework* during April 2008. In advance of 1 April 2008, we will be in a position, subject to the results of the consultation, to provide a firm indication of the healthcare targets and standards and relative weightings we will use in 2008/09.

1.3. Future consultation on other changes

It is likely that the first ambulance trusts will be in a position to apply for foundation trust status during 2008/09. We will consult in due course on proposed amendments to the *Compliance Framework* to accommodate ambulance trusts becoming NHS foundation trusts.

2. Healthcare targets

2.1. Introduction

How Monitor uses service performance as one measure of good governance

Good governance remains crucial in enabling an NHS foundation trust to continue to comply with its Authorisation. Service performance measures have proved to be one of the most important set of indicators of actual and potential governance failures. They also provide an objective basis for

Monitor to take action – most often in co-operation with trusts, but if necessary through the use of its statutory powers of intervention.

As such, Monitor will continue to use service performance measures as one bellwether of governance. At the same time, our approach remains risk-based and not one of performance management. Where possible, the amount of information we collect is kept to the minimum necessary to enable us to fulfil our compliance role and identify potential breaches of a trust's authorisation at an early stage and then ensure timely resolution.

It is the board of an NHS foundation trust's responsibility to ensure that action plans are implemented to rectify any breach or potential breach of the Authorisation.

The Operating Framework

There are a number of important changes proposed in the Operating Framework as to the way in which the effectiveness of healthcare delivery is designed to be assessed and measured in NHS trusts. Whilst the Operating Framework does not apply to NHS foundation trusts, it does provide a reasonable starting point for considering how priority objectives from that document can best be reflected in the *Compliance Framework*.

The Operating Framework is divided into three main categories:

- national requirements;
- national priority for local delivery; and
- local action.

The requirements of each of these categories will be reflected in contracts between commissioners and NHS foundation trusts. The *Compliance Framework* directly measures specific targets which are national requirements and other service performance targets, which provide a good indication of effective governance. Where contracted service performance is not being delivered, and the failure may be significant, Monitor will take regulatory action. If necessary, this may include Monitor intervening under its statutory powers.

The service performance targets which we propose to measure directly in 2008/09 are set out in Appendix 1.

Monitor welcomes the move towards locally negotiated contracts to take account of commissioner requirements. This is a sensible way for strong providers and commissioners to plan, agree and deliver services, as well as to incentivise good performance and penalise shortfalls. The approach relies heavily on good information, quality negotiation between skilled parties, appropriate incentives and effective dispute resolution mechanisms. All

parties involved have a duty to co-operate to ensure that it can be achieved whilst ensuring a reasonable and equitable approach.

The Authorisation anticipates that an NHS foundation trust will enter into a contract with its commissioners within 12 months of authorisation and requires the delivery of mandatory goods and services. There is also a statutory duty on NHS foundation trusts to co-operate with other NHS bodies. A failure by an NHS foundation trust to meet these requirements could lead to regulatory action by Monitor. Where this failure is significant this could result in intervention.

National requirements

Where national requirements, which reflect the Department of Health's highest priority objectives for providers, can be measured on a reliable and timely basis, Monitor is proposing to include these targets in the *Compliance Framework*.

National priority for local delivery

Not all service performance requirements included in the Operating Framework as national priority for local delivery will be explicitly covered in the Authorisation, or the *Compliance Framework*. Many of these will be monitored by commissioners through contractual arrangements.

Local action

To the extent local action applies to NHS foundation trusts, any failure in delivery is likely to be a matter for discussion between commissioners and providers. It is envisaged that only in extreme cases would Monitor become involved.

2.2. Proposed changes to the *Compliance Framework*

To reflect the above, Monitor is proposing to measure service performance in 2008/09 in accordance with the revised targets (including weightings, thresholds and monitoring periods) set out in Appendix 1. The delivery of these and other targets will be measured against contractual arrangements agreed between NHS foundation trusts and their commissioners.

In developing our proposals on targets, weightings and thresholds we have taken account of the following:

- national requirements as set out in the Operating Framework. It is proposed that these priorities are weighted 1.0 within the revised *Compliance Framework*. This reflects the position of these targets as national priorities;
- existing healthcare targets. To the extent existing healthcare targets provide an indication of good governance it is proposed that these are retained in the revised *Compliance Framework*. Each of these is weighted

0.5. These targets, whilst not national requirements as above, provide a good indication of effective governance and in the event that two targets are breached, as a minimum an amber rating for the service performance element of governance risk should be triggered;

- national core standards for 2008/09. It is proposed that each core standard will continue to be weighted 0.4. This reflects the previous weighting, with three breaches of core standards alone giving rise to an amber rating for governance risk;
- previously the *Compliance Framework* included two mental health-specific service performance targets as indicators of good governance. We are proposing to replace them and increase the number of indicators. We have reviewed the mental health indicators on which the Healthcare Commission is currently consulting. We are proposing to include four of these as targets which we believe are measurable and provide a fair indication of the governance within a mental health foundation trust. Each will be weighted 1.0. Given the limited number of targets relating to mental health trusts, failure to meet each of these is viewed as a failure of governance and the proposed weighting reflects this, with the resulting impact on governance risk ratings.

Monitor is proposing to continue to issue governance risk ratings for service performance according to overall aggregate scores as follows:

green	= less than 1.0
amber	= from 1.0 to 2.9
red	= 3.0 or more

As is currently the case, where a national requirement (target weighted 1.0) is breached in three consecutive quarters, a red governance rating will be awarded. In addition, we are proposing that a breach of the same target weighted 0.5 for three consecutive quarters will similarly result in an amber rating for governance risk.

Section 2 consultation questions

- Do you agree that the targets proposed provide an effective basis on which to measure the service performance element of governance?
- Do you agree with the proposed revised weightings for each target and national core standard?
- Do you agree with the proposed thresholds?
- Do you agree with the proposed monitoring periods?

- Do you agree that the service performance element of governance risk ratings should be measured in accordance with the proposed overall aggregate scores?
- Do you agree with the proposal to give an amber rating where a target weighted 0.5 is breached in three consecutive quarters?
- Do you agree with the overall approach that contractually agreed performance levels should form the basis of a decision as to whether regulatory action is required?

More details about the consultation process are included in Section 8.

3. Self-certification on service performance

3.1. Introduction

As set out in Appendix C3 of the *Compliance Framework*, the board of an NHS foundation trust is required to self-certify on service performance and in particular anticipated compliance with healthcare targets and national core standards.

Taking into account the results of the self-certification reviews which were completed in eleven foundation trusts in December 2007, we are proposing to amend the wording contained within this self-certification and also to clarify the expectations Monitor has of boards of NHS foundation trusts in considering whether they are able to provide this confirmation.

3.2. Proposed changes to the *Compliance Framework*

To ensure that there is clarity for boards of NHS foundation trusts on self-certification in relation to service performance it is proposed that the wording be amended to the following:

“The board is satisfied that plans in place **are sufficient** to ensure ongoing compliance with all existing targets (after the application of thresholds) and national core standards and with all known targets going forward”.

It is also proposed that the revised *Compliance Framework* includes the following illustration on the areas we will expect boards of NHS foundation trusts to consider to enable them to sign this declaration.

In order to self-certify on service performance as set out above we would expect boards to:

- have a full understanding of the basis on which healthcare targets and national core standards are measured as included in the Authorisation and the *Compliance Framework*;

- be confident that they are receiving accurate information as to current and expected levels of performance against each of the healthcare targets and national core standards;
- use forecasting and extrapolation of historic trends to predict future performance;
- satisfy themselves that systems are in place to ensure risk to delivery has been properly assessed;
- maintain systems to monitor and regularly report on performance against healthcare targets and national core standards;
- where performance issues have occurred or are predicted, to have an integrated understanding as to how action plans will deliver the required reductions to meet a specific healthcare target or national core standard;
- use internal audit and other independent advice to provide assurance; and
- review and challenge performance on an ongoing basis.

To the extent that there is a significant difference between an NHS foundation trust's self-certification and actual performance and delivery against all targets and national core standards, Monitor may explore the basis for the self-certification.

Section 3 consultation questions

- Do you agree that the wording of the service performance self-certification should be amended as proposed?
- Do you agree that the above includes the correct considerations that boards should be taking into account when self-certifying compliance with targets and national core standards?
- Do you think there are other considerations that boards should be taking into account when self-certifying compliance with targets and national core standards?

4. Self-certification of compliance with the Hygiene Code

4.1. Introduction

NHS foundation trusts are required to comply with all legal obligations. The Operating Framework specifically requires NHS organisations to comply with *the Code of Practice for the Prevention and Control of Healthcare Associated Infections* (which includes the Hygiene Code) and implement best practice from "Saving Lives".

Monitor is also proposing that it receives specific assurance from boards that NHS foundation trusts are and will continue to comply with the Hygiene Code.

4.2. Proposed changes to the *Compliance Framework*

To ensure that NHS foundation trusts have appropriate infection control practices and procedures in place to comply with the Hygiene Code, Monitor is proposing that NHS foundation trusts complete an additional self-certification at the annual plan stage and in-year on a quarterly basis. The proposed wording of this self-certification is as follows:

“The board is satisfied that plans in place are sufficient to ensure ongoing compliance with the *Code of Practice for the Prevention and Control of Healthcare Associated Infections* (including the Hygiene Code).”

Section 4 consultation questions

- Do you agree with the proposal to include an additional self-certification in relation to the Hygiene Code?
- Do you agree with the proposed wording for the self-certification?

5. International Financial Reporting Standards

5.1. Introduction

International Financial Reporting Standards (IFRS) are being implemented for accounts preparation in the NHS in 2008/09. The accounting treatment for Private Finance Initiatives (PFI) is currently subject to consultation by the Treasury, and as such final guidance remains to be issued by them.

5.2. Proposed changes to the *Compliance Framework*

Due to the uncertainty surrounding the implementation of IFRS with regard to PFI schemes, and the timing of the issue of any further guidance from HM Treasury, we are proposing that we do not revise the *Compliance Framework* to reflect the impact of the introduction of IFRS.

We are therefore proposing the following:

- NHS foundation trusts should prepare and submit their annual plans for 2008/09 in accordance with UK GAAP;
- NHS foundation trusts should prepare and submit their quarterly returns during 2008/09 in accordance with UK GAAP;
- financial risk ratings for NHS foundation trusts will continue to be calculated as currently set out in Section 2 of the *Compliance Framework*; and
- NHS foundation trusts will be required to prepare their annual accounts for 2008/09 under IFRS, taking account of the FT iFReM 2008/09 (which

remains to be issued), and then submit an analysis to Monitor, which reconciles IFRS compliant accounts to Q4 submissions to Monitor.

Section 5 consultation questions

- Do you agree with the proposal not to amend the *Compliance Framework* for 2008/09 to reflect the impact of the implementation of IFRS?
- Do you agree with the proposal for NHS foundation trusts to prepare and submit annual plans and quarterly submissions in line with UK GAAP?
- Do you agree with the proposal that NHS foundation trusts be required to prepare a reconciliation from their annual accounts for 2008/09 (prepared under IFRS) to their Q4 submission?

6. Membership and local accountability

6.1. Introduction

Local engagement through membership and elected governors is key to ensuring NHS foundation trusts' accountability. Monitor continues to consider how best to ensure that focus on the development of an active and effective membership, which is representative, remains a key objective for NHS foundation trusts. Membership plans should include growth in numbers of members but also measure and develop the effectiveness of the engagement between NHS foundation trusts and their members.

Chapter 2 of the *Compliance Framework* sets out the minimum current requirements for membership planning to meet the obligation for NHS foundation trusts to grow a representative membership.

6.2. Proposed changes to the *Compliance Framework*

To ensure that NHS foundation trusts have as a minimum a well developed approach to the design and implementation of membership plans which incorporate measures as to the effectiveness of their engagement with members, Monitor is proposing to require NHS foundation trusts as part of their annual plan submissions to include the following additional information:

- analysis of public constituency membership by gender; and
- election turnout rates.

Monitor will use this information to assess whether NHS foundation trusts are complying with the Authorisation with respect to the requirement that actual membership is representative of those eligible for each membership category. The submission of this information will also assist Monitor to collate and share information on membership to support evidence as to the effectiveness of local engagement and accountability within NHS foundation trusts.

Section 6 consultation questions

- Do you agree that the additional information requirements on membership are appropriate to provide assurance as to the effectiveness of membership plans?

More details about the consultation are included in Section 8.

7. Summary of the consultation questions

Section 2

- Do you agree that the targets proposed provide an effective basis on which to measure the service performance element of governance?
- Do you agree with the proposed revised weightings for each target and national core standard?
- Do you agree with the proposed thresholds?
- Do you agree with the proposed monitoring periods?
- Do you agree that the service performance element of governance risk ratings should be measured in accordance with the proposed overall aggregate scores?
- Do you agree with the proposal to give an amber rating where a target weighted 0.5 is breached in three consecutive quarters?
- Do you agree with the overall approach that contractually agreed performance levels should form the basis of a decision as to whether regulatory action is required?

Section 3

- Do you agree that the wording of the service performance self-certification should be amended as proposed?
- Do you agree that the above includes the correct considerations that boards should be taking into account when self-certifying compliance with targets and national core standards?
- Do you think there are other considerations that boards should be taking into account when self-certifying compliance with targets and national core standards?

Section 4

- Do you agree with the proposal to include an additional self-certification in relation to the Hygiene Code?
- Do you agree with the proposed wording for the self-certification?

Section 5

- Do you agree with the proposal not to amend the *Compliance Framework* for 2008/09 to reflect the impact of the implementation of IFRS?
- Do you agree with the proposal for NHS foundation trusts to prepare and submit annual plans and quarterly submissions in line with UK GAAP?
- Do you agree with the proposal that NHS foundation trusts be required to prepare reconciliation from their annual accounts for 2008/09 (prepared under IFRS) to their Q4 submission?

Section 6

- Do you agree that the additional information requirements on membership are appropriate to provide assurance as to the effectiveness of membership plans?

8. Consultation process

8.1. Responding to consultation

There is a form for you to respond to the consultation on the Monitor website at www.monitor-nhsft.gov.uk. It would be appreciated if all responses to the consultation could be completed on the form and sent by email to: consultation@monitor-nhsft.gov.uk.

If you do not have web and email access, then please write to us at:

Compliance Framework consultation

Monitor

4 Matthew Parker Street

London SW1H 9NL

or alternatively please fax your response to 020 7340 2401.

The consultation period closes at 5pm on Thursday 20 March 2008

If you would like further copies of this document, you can:

- download a copy (pdf file) from our website www.monitor-nhsft.gov.uk;
- email your request to enquiries@monitor-nhsft.gov.uk; or
- write to us at: Monitor, 4 Matthew Parker Street, London, SW1H 9NL.

8.2. Consultees

This is a public consultation and is open to all to comment. This consultation document has been sent to a wide range of parties including:

- NHS foundation trusts;
- other NHS providers and commissioners;
- health regulators;
- Government departments and agencies;
- patient representative bodies;
- think tanks/research organisations;
- professional/trade bodies; and
- finance and accounting bodies.

If you have further suggestions of other interested parties who should be consulted, please contact consultation@monitor-nhsft.gov.uk

8.3. Next Steps

Monitor will consider all the responses to the consultation and a summary of these including Monitor's response will be published. It is intended that the amended *Compliance Framework* will be published during April 2008. Both the summary of the responses and the final framework will be published on the website, www.monitor-nhsft.gov.uk.

In advance of 1 April 2008, subject to the results of the consultation, we will provide a firm indication of the healthcare targets and standards and relative weightings we will use in 2008/09.

Appendix 1

Targets – weightings and thresholds		
Targets – weighted 1.0 (national requirements)	Threshold	Monitoring period
Clostridium difficile year on year reduction (to fit the trajectory for the year as agreed with PCT – assumed a 15% reduction if no level agreed in a contract)	0	Quarter
MRSA maintaining the annual number of MRSA bloodstream infections at less than half the 2003/04 level (to fit the trajectory for the year –assumed target is 50% of 2003/04 level if no contract agreed)	0	Quarter
Maximum waiting time of 31 days from decision to treat to start of treatment extended to cover all cancer treatments	0	To be achieved from December 2008 and monitored quarterly thereafter
18-week maximum wait by 2008 ** Admitted patients: <ul style="list-style-type: none"> • This will incorporate the data completeness measures outlined by the Department of Health as a minimum requirement • Maximum time of 18 weeks from point of referral to treatment 	90%	To be achieved from December 2008 and monitored monthly thereafter
18-week maximum wait by 2008 ** Non-admitted patients: <ul style="list-style-type: none"> • This will incorporate the data completeness measures outlined by the Department of Health as a minimum requirement • Maximum time of 18 weeks from point of referral to treatment 	95%	To be achieved from December 2008 and monitored monthly thereafter
Targets – weighted 0.5	Threshold	Monitoring period
Maximum waiting time of four hours in A&E from arrival to admission, transfer or discharge	98%	Quarter
Maximum waiting time of 31 days from diagnosis to treatment for all cancers***	98% *	Quarter
Maximum waiting time of 62 days from urgent referral to treatment for all cancers***	95% *	Quarter
People suffering heart attack to receive thrombolysis within 60 minutes of call (where this is the preferred local treatment for heart attack)	68%	Month
Maximum waiting time of two weeks from urgent GP referral to first outpatient appointment for all urgent suspect cancer referrals	98%	Quarter
Mental health targets – weighted 1.0	Threshold	Monitoring period
100% receiving follow-up contact within 7 days of discharge from hospital	95%	Quarter
Minimising delayed transfers of care	No more than 7.5%	Annual
Adult inpatient care provided within single sex accommodation for all service users from 1 April 2008	0	Quarter
Admissions to inpatient services had access to crisis resolution	90%	Quarter

home treatment teams		
National core standards – weighted 0.4		
Each national core standard	0	Report by exception

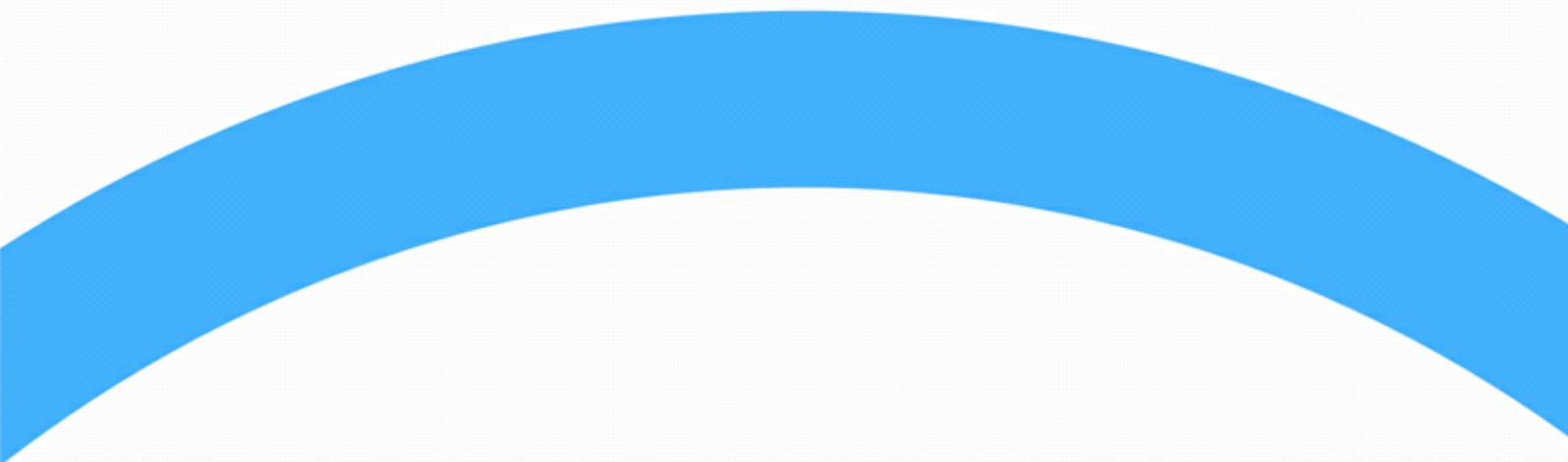
* Specialist cancer trust treating one tumour type may be subject to a specific threshold based on tumour type's clinical exception rate

** The NHS in England Operating Framework for 2007/08 introduced key milestones to be achieved as a minimum by all providers by the end of March 2008 as follows:

- 85% of pathways where patients are admitted for hospital treatment should be completed within 18 weeks; and
- 90% of pathways that do not end in admission should be completed within 18 weeks.

where NHS foundation trusts have failed to meet these milestones boards will be expected to provide detailed action plans which show how the target is to be achieved by 31 December 2008.

***Measurement of performance against this target will take account of the re-allocation of late shared breaches (subject to these being completed in line with the agreed Healthcare Commission ratification process and there being written evidence that both Chief Executives, from referrer and recipient, approve the re-allocation)



Monitor

Independent Regulator
of NHS Foundation Trusts

4 Matthew Parker Street
London SW1H 9NL

T: 020 7340 2400

W: www.monitor-nhsft.gov.uk

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