

## **NHS White Paper Consultation**

### **Liberating the NHS - Regulating Healthcare Providers:**

**Q1.** Do you agree that the Government should remove the cap on private income of foundation trusts? If not, why; and on what practical basis would such control operate?

**A1** The former cap set as a percentage of final NHS Trust year income can be viewed as arbitrary and there is a case for this being removed. However it is important to learn the lessons of recent litigation that highlighted significant public sensitivity relating to this issue in the light of local access and waiting times for residents.

Developments that increase private income to benefit NHS funded care should be encouraged and addressed as part of the Trusts business plan endorsed by the Trust Board, Governors and members of the FT. Concerns from the public relating to quality, access or waiting times as a result of these initiatives could be referred and reviewed by Health Watch, Monitor or the Care Quality Commission.

**Q2.** Should statutory controls on borrowing by foundation trusts be retained or removed in the future?

**A2** Foundation Trust Borrowing limits are part of an overall set of financial controls. If an FT has a requirement to borrow substantially more than their limit this could be considered by Monitor and approved or declined on the basis of whether the business case is robust and affordable and enables the FT to keep within its terms of Authorisation.

**Q3.** Do you agree that foundation trusts should be able to change their constitution without the consent of Monitor?

**A3** Yes with member, governor and Board support, providing this is consistent with the legal form prescribed in legislation.

**Q4.** What changes should be made to legislation to make it easier for foundation trusts to merge with or acquire another foundation trust or NHS trust? Should they also be able to de-merge?

**A4** tbc

**Q5.** What if any changes should be made to the NHS Act 2006 in relation to foundation trust governance?

**A5** Directors of Finance of Foundation Trusts should be members of a CCAB body and not just qualified.

**Q6.** Is there a continuing role for regulation to determine the form of the taxpayer's investment in foundation trusts and to protect this investment? If so, who should perform this role in future?

**A6** Part of the effective economic regulation of Trusts is the monitoring of the taxpayer interest and without conclusive arguments that this should change it is recommended that the status quo remains. This role could be performed by tender from the audit firms or from bodies such as CIPFA.

**Q7.** Do you have any additional comments or proposals in relation to increasing foundation trust freedoms?

**A7**

**Q8.** Should there be exemptions to the requirement for providers of NHS services to be subject to the new licensing regime operated by Monitor, as economic regulator? If so, what circumstances or criteria would justify such exemptions?

**A8** No

**Q9.** Do you agree with the proposals set out in this document for Monitor's licensing role?

**A9** Yes providing that there is not a diminution of the standards required to become a Foundation Trust

**Q10.** Under what circumstances should providers have the right to appeal against proposed license modifications?

**A10** NC

**Q11.** Do you agree that Monitor should fund its regulatory activities through fees? What if any constraints should be imposed on Monitor's ability to charge fees?

**A11** This may be appropriate if the current levels of funding are provided to commissioners and this is not simply a further cost pressure for the sector

Price increases could be linked to percentage increases for other similar regulatory bodies

**Q12.** How should Monitor have regard to overall affordability constraints in regulating prices for NHS services?

**A12** The Department of Health could retain a role in agreeing with Monitor an overall cap uplift for tariff prices.

**Q13** Under what circumstances and on what grounds should the NHS Commissioning Board or providers be able to appeal regarding Monitor's pricing methodology?

**A13** There is potential for conflict of interest in ensuring Foundation Trusts continue to be sustainable and setting the tariff prices they charge Commissioners. The approach outlined at Q12 should assist in mitigating the requirement for appeal or arbitration

**Q14.**How should Monitor and the Commissioning Board work together in developing the tariff? How can constructive behaviors be promoted?

**A14** By the development of tariffs based on best practice evidence based care pathways – with due regard to quality standards

**Q15.**Under what circumstances should Monitor be able to impose special license conditions on individual providers to protect choice and competition?

**A15** In relation to the continued provision of specialized services or the creation of such a service in an area that is recommended by a Health Needs Assessment but is not supportable by a Foundation Trust

**Q16.**What more should be done to support a level playing field for providers?

**A16** NC

**Q17.** How should we implement these proposals to prevent anti-competitive behavior by commissioners? Do you agree that additional legislation is needed as a basis for addressing anticompetitive conduct by commissioners and what would such legislation need to cover? What problems could arise? What alternative solutions would you prefer and why?

**A17** It is important that the provision of services is quality assured and that new providers are licensed by the CQC. An perceived anti-competitive behaviour by GPs as providers of service should be reviewed by the NHS Commissioning Board .

**Q18.**Do you agree that Monitor needs powers to impose additional regulation to help commissioners maintain access to essential public services? If so, in what circumstances, and under what criteria, should it be able to exercise such powers?

**A18** Yes – in the instances where a Foundation Trust may review providing services because it may be providing those services above national tariff and there are no established further providers to carry out this work.

**Q19.**What may be the optimal approach for funding continued provision of services in the event of special administration?

**A19** A risk pooling approach by levying charges on regulated providers is an approach that could be adopted, providing this was proportionate to the level of risk within the Market for Health Provider Failure.

**Q20.**Do you have any further comments or proposals on freeing foundation trusts and introducing a system of economic regulation?

**A20** No

**Q21.** What action needs to be taken to ensure that no-one is disadvantaged by the proposals, and how do you think they can promote equality of opportunity and outcome for all patients, the public, and where appropriate, staff?

**A21** New proposals need full post implementation review to assess whether there is any individual or groups that become disadvantaged as a result.