



**RCN Policy and International Department
Policy briefing 03/14
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Monitor and regulating the Independent Sector

A Briefing on Monitor's Consultation 'Risk
assessment framework: addendum for assessing risk
at independent providers of Commissioner
Requested Services'

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Introduction

Monitor as the sector regulator in health is responsible for regulating both NHS Foundation Trusts and the independent providers of healthcare (where they provide services worth more than £10 million a year, or provide services that are designated as Commissioner Requested Services (CRS)).¹ This new responsibility for licensing and the exemptions (such as exemptions for those delivering less than £10 million worth of services) were already consulted on.

This briefing provides an overview of Monitor's proposed approach to regulating the independent sector by adapting their existing Risk Assessment Framework.² This **reflects concerns arising from a lack of scrutiny of the financial sustainability of independent organisations in the past**: although in social care, this has been shown by the failure of Southern Cross. This is the **first time that such monitoring will take place**.

This briefing aims to help our members understand Monitor's proposed approach and asks for members to share their expertise and judgement on whether this is the right approach to take. Key questions are listed below.

1. Are you reassured that patients and their carers will receive care from sustainable independent providers?
2. If not, what else would you like to see Monitor do to identify unsustainable independent providers?

A full list of Monitor's consultation questions, to which the RCN will be responding, are provided in the Appendix. The Monitor consultation closes on 6 February 2014 so please send your thoughts to policycontacts@rcn.org.uk by **29 January 2014** to inform the RCN response.

Proposed approach to monitoring financial risk

Monitor has set out a summary of their approach to monitoring financial risk in independent providers (see below). The key metrics that Monitor will look at are to do with **whether the provider has sufficient cash flow to meet their operating needs and to make repayments on their debts**. They will look at:

- liquidity: this measure is intended to assess the underlying cash position of the provider, ie, is its liquidity (expressed in days of liquid assets) a concern?; and
- capital servicing capacity: this measure indicates whether the provider can meet its financing obligations, ie, is its ability to service debts or other financing obligations (including interest and debt repayment and non-elective dividend payments) a concern?

They will also be looking at parent company guarantees and bank covenants. Based on the information that Monitor will be looking at, we believe that they should know who owns the company. Monitor will also seek assurance about the future position of the organisation – a crucial

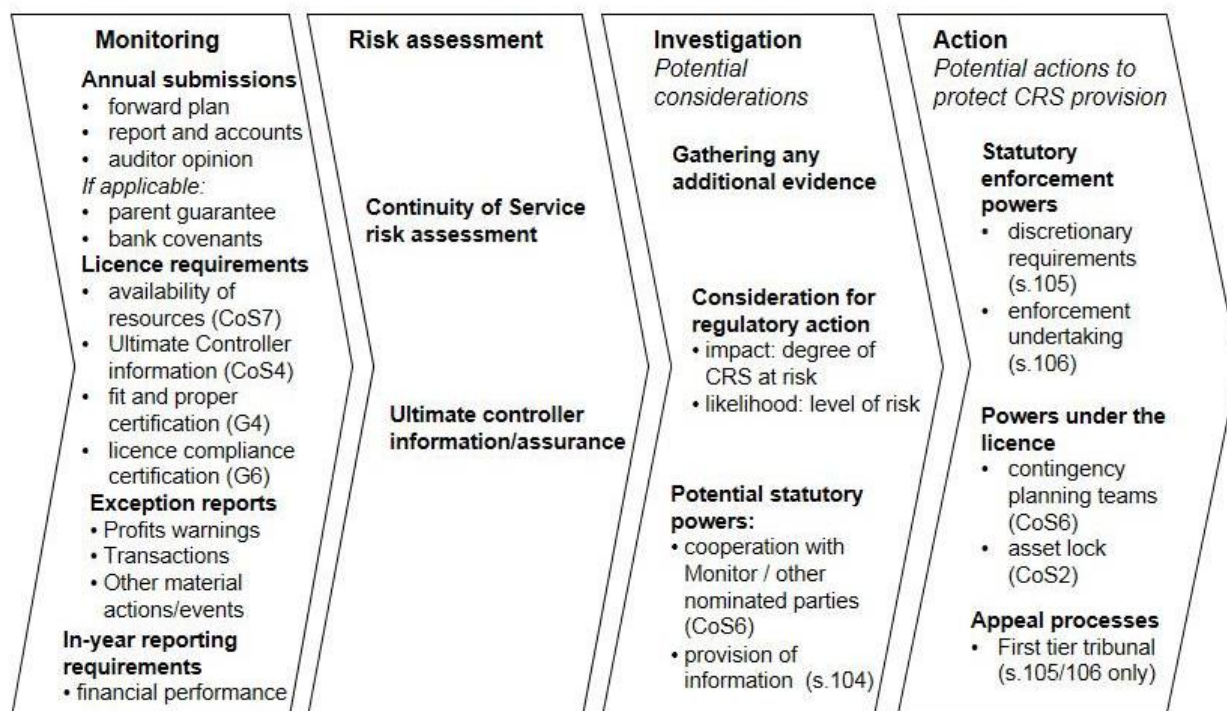
¹ Monitor, [Who needs a licence?](#)

² Full details are available [here](#)

issue if we are to try to be proactive and protect those who are using services and avoid disruption driven by poor financial decisions.

Their overall approach is set out in the diagram below.

Diagram 1: Monitor’s proposed Continuity of Services regime for independent providers



Source: Monitor, [Risk assessment framework: addendum for assessing risk at independent providers of Commissioner Requested Services](#), December 2013

Monitor is also proposing to request information from providers at different time intervals depending upon the level of risk and the value of the services provided. Monitors proposals are set out below. Monitor will also take a closer look when there are concerns from CQC about the quality of services delivered by a provider as they recognise that meeting CQC requirements can “require healthcare providers to spend significantly more to meet safety/quality requirements”. (p. 19)

Table 1: Proposed monitoring frequency/forward-planning for independent providers of CRS

CRS Value	Forward-looking	Risk rating			
		4	3	2	1
≥£15m	3 years	Quarterly	Monthly (discretion)	Monthly	Monthly
<£15m	2 years	Six-monthly	Quarterly	Monthly	Monthly
<£5m	12 months	Annually	Six-monthly	Monthly	Monthly

Source: Monitor, [Risk assessment framework: addendum for assessing risk at independent providers of Commissioner Requested Services](#), December 2013

If Monitor is concerned about the financial sustainability of a provider it can take action: Monitor can investigate and then determine what action to take, if any. If necessary, Monitor has powers to revoke a license as set out in their [enforcement guidance](#).

RCN Position

The RCN remains concerned about fragmentation of care and spiralling transactions costs associated with increasing the number of providers of healthcare to patients across England.³

The RCN has [previously said](#) that we support the forward looking approach of Monitor in assessing risk and that looking at metrics relating to cash flow makes sense (albeit we look to others to provide financial expertise to know if the precise metrics are appropriate). We [did not however agree](#) with the Department of Health to exempt providers who deliver services that are worth less than £10 million. However this decision has already been made by the Department of Health, it is not up to Monitor to decide.

The RCN is also aware that much rests on the performance of Commissioners for monitoring of providers to work well: if a provider delivers less than £10 million worth of NHS services it will only be scrutinised by Monitor where Commissioner(s) designate those services as being essential (technically termed Commissioner Requested Services or CRS). If they don't, then scrutiny for the financial health of those providers rests with the Commissioners and shareholders. That may be sufficient if the Commissioner is able to conduct scrutiny: however we are aware that Commissioners have considerable workloads and may be dealing with multiple providers, and there will be variation in their approaches to contract monitoring across the country.

The RCN also wants to ensure sufficient monitoring of both quality and finance (and we see an intrinsic link between the two – just as noted by Monitor themselves). We are therefore interested in how well Monitor and the Care Quality Commission (CQC) are working together to ensure that providers are both delivering high quality compassionate care, and are financially sound.

Tell us what you think

This briefing intends to provide an overview of how Monitor proposes to monitor the financial sustainability of independent providers of healthcare. Please tell us what you think, in order to help us respond to Monitor. **Please email us at policycontacts@rcn.org.uk by 29 January 2014.**

³ See also RCN, [Royal College of Nursing Response to a suite of consultations relating to competition from Monitor including guidance for commissioners on 'Section 75' Regulations](#), July 2013

Appendix: Full list of Monitor's consultation questions

Consultation question 1: Given that we are developing our approach to assessing risk at these providers during 2014/15, what are your views as to whether Monitor should publish its risk ratings for independent sector providers of CRS in 2014/15?

Consultation question 2: Do you agree with the proposed approach to assessing risk at independent sector providers of CRS? If not please provide your reasons.

Consultation question 3: Do you agree with the proposed:

- i. components of the risk rating?
- ii. definitions (see Appendix 2)?
- iii. thresholds?
- iv. consequences for each risk rating?

Consultation question 4 (i): Do you agree with the proposed approach to using the risk ratings in conjunction with other financial information to assess risk?

Consultation question 4 (ii):

Do you agree with the proposed additional information Monitor will request to assess risk to ongoing provision of CRS?

- i. financial information
- ii. other information

Consultation question 5: Do you agree with the proposed approach to making our oversight of independent sector providers of CRS proportionate to the amount of CRS they provide and their level of risk?

Consultation question 6: Do you agree with the proposed approach to monitoring forward-looking and in-year financial performance at independent sector providers of CRS?

Consultation question 7: Do you agree with the proposed approach to requiring exception reports from independent sector providers of CRS?

Consultation question 8: What do you think of the proposed approach that independent sector providers of CRS with acceptable investment grade credit ratings should not also need to be risk rated by Monitor?

Consultation question 9: Do you agree with the proposed minimum areas in which Monitor may request "ultimate controller" related information from independent sector providers of CRS?

Consultation question 10: What are your views of the overall regulatory processes associated with the proposed framework in relation to financial risk, relative to that in place for NHS foundation trusts?

Do you have any further comments on our overall regulatory approach to tailor the Risk assessment framework for independent providers in the manner proposed in this consultation?