

Monitor

Making the health sector
work for patients

Risk assessment framework for independent sector providers of NHS services



About Monitor

Monitor is the sector regulator for health services in England. Our job is to protect and promote the interests of patients by ensuring that the whole sector works for their benefit.

For example, we make sure foundation trust hospitals, ambulance trusts and mental health and community care organisations are well led and are run efficiently, so they can continue delivering good quality services for patients in the future. To do this, we work particularly closely with the Care Quality Commission, the quality and safety regulator. When it establishes that a foundation trust is failing to provide good quality care, we take remedial action to ensure the problem is fixed.

We also set prices for NHS-funded services, tackle anti-competitive practices that are against the interests of patients, help commissioners ensure essential local services continue if providers get into serious difficulty, and enable better integration of care so services are less fragmented and easier to access.

Executive summary

Monitor's main duty, as the sector regulator for health services, is to protect and promote the interests of patients. One of the main ways we do this is through the powers we implement via the NHS provider licence. Eligible providers of NHS services must hold the licence and comply with it. Part of that licence implements Monitor's duty to safeguard essential healthcare services, known as commissioner requested services (CRS). We use the ['Risk assessment framework'](#) to help identify financial risk at licensed providers of CRS.

The 'Risk assessment Framework'

The 'Risk assessment framework' has applied to NHS foundation trusts since October 2013. From 1 April 2014, independent sector providers of NHS services who are not exempt are also subject to Monitor's licensing regime. The financial parts of the 'Risk assessment framework' therefore also apply to all licensed independent sector providers of CRS from 1 April 2014, and we have a duty to monitor financial risk at those organisations. This expands the protection of services from those provided by NHS foundation trusts to all services provided for the NHS which are designated by commissioners as CRS.

For both NHS foundation trusts and independent providers, our monitoring of financial risk aims to:

- identify any signs of a provider getting into financial difficulty early enough for all concerned to take steps to safeguard essential NHS services
- allow commissioners to concentrate on securing health services for NHS patients, confident that Monitor is assessing risks to the continuity of essential services
- be proportionate: we do not want our risk reporting requirements to discourage providers from moving into new NHS services, expanding their existing NHS services to benefit patients or continuing to treat NHS patients.

Assessing financial risk at independent providers

We have adapted the existing 'Risk assessment framework' to monitor independent providers because:

- in contrast with NHS foundation trusts, which tend to have a limited number of commissioners, annually agreed standard contracts and relatively predictable income streams, independent providers are likely to have many customers including NHS commissioners, bespoke contracts and other less predictable, often non-NHS, income: this may make their cash flow less predictable

- independent CRS providers potentially have a variety of corporate and financial structures, ranging from subsidiaries of larger companies to local charities
- some independent providers also provide substantially lower levels of CRS as a proportion of their overall services than NHS foundation trusts.

The adaptations reflect these differences while still ensuring equivalent oversight of risk at all providers, making monitoring of independent providers neither stricter nor more lenient than that of NHS foundation trusts.

This document sets out our overall approach to monitoring financial risk at independent providers of CRS, taking into account the input provided from the consultation we ran from December 2013 to February 2014.

Our approach

In assessing risk, we use three elements, incorporating:

- an indicative risk rating, adapted from our approach at NHS foundation trusts, covering liquidity and debt service, for internal purposes only
- other high-level information on financial performance – including revenue, margins, working capital and cash flow – in order to make a broader risk assessment
- other relevant information with a bearing on financial robustness – eg debt repayment schedules, exception reports and auditor opinions.

This spread of information is intended to allow us to assess risk while ensuring we have the information with which to finetune our overall approach to risk at independent CRS providers.

We also plan to be proportionate in these assessments, tailoring the detail of our oversight (in terms of scope of forward-looking horizon and frequency of monitoring) to the amount of CRS provided and the risk identified at the provider.

Developing our framework 2014/15

Just as we do with NHS foundation trusts, we will need to develop our approach to risk assessment at independent providers over time. In line with regulatory best practice we will learn from our experience of applying this 'Risk assessment framework' to independent providers through 2014/15, and review and refine our approach as necessary.

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1. Introduction

1.1 About Monitor and our role

Monitor was established in 2004 to act as the independent regulator of NHS foundation trusts. There were initially three elements to our role:

- assessing NHS trusts' financial sustainability, governance and legal constitution to ensure they met the requirements to be authorised as an NHS foundation trust
- ensuring NHS foundation trusts' ongoing compliance with the terms of that authorisation and
- supporting the development of NHS foundation trusts' financial, governance and organisational capability.

The [Health and Social Care Act 2012](#) (the 2012 Act) made changes to the way healthcare is regulated and gave Monitor the role of sector regulator for healthcare in England with a number of new responsibilities and powers. Monitor's main duty is now to protect and promote the interests of people who use healthcare services.

These changes to regulation include the introduction of an NHS provider licence, which means all providers of NHS services (unless exempt under the Exemptions Regulations¹) require an NHS provider licence from Monitor. The standard licence conditions can be found [here](#) and Monitor's Licensing Application Guidance can be found [here](#).

Licence holders must comply with the conditions of their licence. We monitor their compliance with those conditions over time and may take action where they do not comply. We began issuing licenses to NHS foundation trusts from 1 April 2013 and began licensing other eligible NHS service providers from 1 April 2014.

Monitor's regulatory principles

Consistent with principles that apply to our oversight of NHS foundation trusts, we are committed to a regulatory approach for independent providers that is:

- **patient-focused** – where we identify issues at licence holders, we will be guided by the interests of patients in assessing the risks and the need for action
- **evidence-based** – we base our actions on the available and relevant evidence

¹ [National Health Service \(Licence Exemptions, etc\) Regulations 2013](#)

- **proportionate** – we ensure that our actions address solely the material risks identified so that we do not over reach our regulatory remit
- **transparent** – we strive to communicate clearly and openly to licence holders, commissioners and other stakeholders the reasons for any actions we take in delivering the right outcomes for patients; and
- **co-operative** – we work with other regulators and organisations and, to avoid duplication, we take their conclusions into account when deciding our regulatory approach wherever this is possible and appropriate.

Further information on our role can be found on our website: www.monitor.gov.uk. The website also provides information on [who needs a licence](#).

1.2 The ‘Risk assessment framework’ for independent providers

One of Monitor’s statutory duties is to assess risk to the continued provision of key services, or ‘commissioner requested services’ (CRS).

Commissioner requested services

When their local healthcare economy is operating normally, commissioners identify any services they commission that would have to remain in the area if a provider were to fail because:

- there is no alternative provider close enough
- or removing them would increase health inequalities
- or removing them would make dependent services unviable.

These services should be ‘designated’ CRS.

Guidance on how commissioners should designate services as CRS can be found [here](#). In our oversight of a provider’s ability to continue providing CRS, we primarily rely on three conditions in the NHS provider licence: Continuity of Services (CoS) licence conditions 3, 4 and 7 (full details are set out in Appendix 1):

- **CoS Licence Condition 3** requires providers of CRS to maintain ‘systems and standards of corporate governance and of financial management’ considered suitable for providers of CRS and which reasonably safeguard against the risk of the provider no longer being a going concern. In doing so, providers must take account of Monitor’s risk-rating methodology and maintain a risk rating equal to or greater than the level we consider acceptable.
- **CoS Licence Condition 4** Independent providers of CRS may be part of larger corporate structures who have the ability to influence the operations of the provider. This could be via intercompany guarantees or drawdown arrangements, for example. This licence condition enables Monitor to gain assurance regarding the influence (or potential influence) of an ‘ultimate

controller' on the financial stability of the provider and consequently on its ability to continue to deliver CRS. Where providers have such ultimate controller(s), we can use this condition to complement any direct risk assessment of the licensee.

- **CoS Licence Condition 7** requires providers of CRS to inform Monitor on an annual basis whether or not they have sufficient resources – including managerial, financial and physical resources – to provide these CRS. The assurance needs to be made after taking account of the providers' financial obligations (including dividend and interest payments). If the basis of these assurances changes during the year, providers should inform Monitor of this immediately.

Guidance on other conditions of our licence – covering other CoS requirements and pricing, competition and integrated care – can also be found on our website.

Independent providers of commissioner requested services

As a group, NHS foundation trusts have similar organisational and financial operating models. They provide a mixture of elective and non-elective services to NHS commissioners which form the bulk of their activity and income. Independent providers, on the other hand, represent a more diverse set of operating models, with varying levels of exposure to NHS services and in many cases a wider range of customers including NHS commissioners. Unlike NHS foundation trusts, independent providers are not public bodies and may have different ownership and governance arrangements.

We will use 2014/15 to learn more about risk factors at independent providers and may revise our financial risk assessment methodology accordingly. Consequently, although we collect similar information to NHS foundation trusts (as set out in the 'Risk assessment framework for foundation trusts' published 27 August 2013) we shall also, given their differences described above, collect other information from independent providers to gain a comparable overview of drivers of risk. For the most part, the information we collect should have already been generated by the provider for their own use. It includes:

- information to allow us to use the revised definitions of liquidity and capital servicing capacity currently in place for NHS foundation trusts
- forward-looking and in-year financial information
- where applicable, information to assess the current and future impact of debt on providers, including forward-looking debt maturity profiles and banking covenants and
- annual reports and accounts (including auditors' opinions) and other information where appropriate.

When did the ‘Risk assessment framework’ come into force for independent providers?

The ‘Risk assessment framework’ for independent sector providers of CRS applies from 1 April 2014 for providers whose CRS status is confirmed on that date, or from the date on which its CRS status is confirmed. For our purposes, ‘confirmed’ means either:

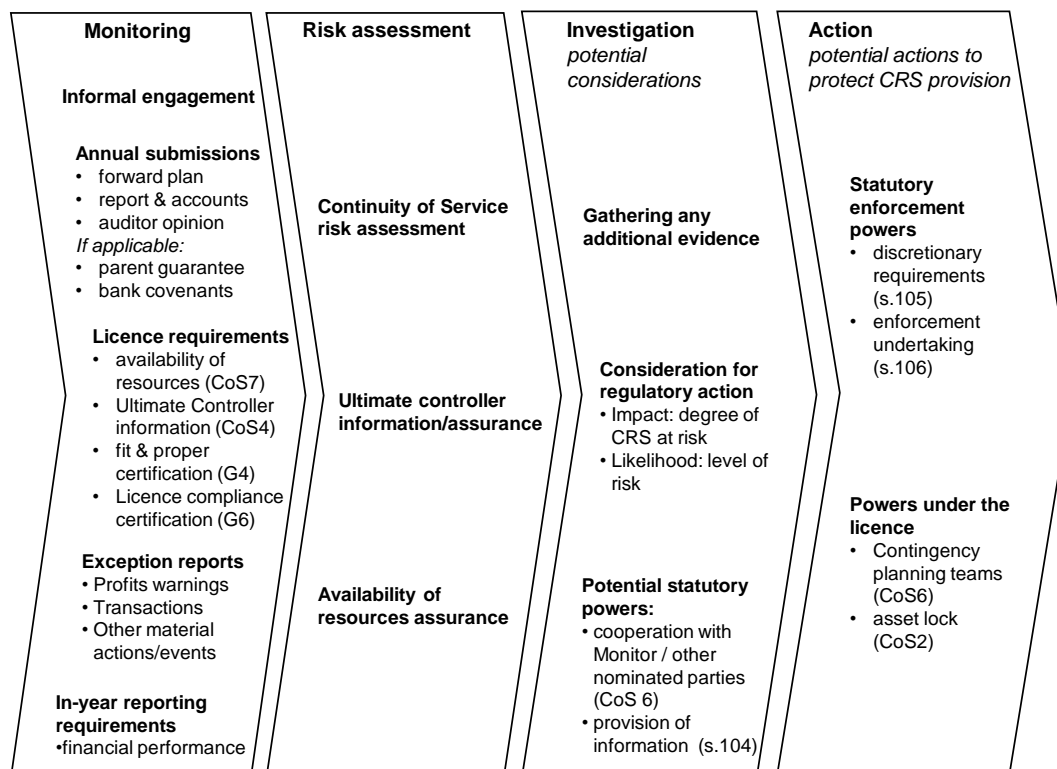
- a commissioner has formally designated one or more of the provider’s services as CRS (and this has been accepted by the provider); or
- a CRS review process has formally confirmed the CRS designation of one or more of the provider’s services.

Who does this ‘Risk assessment framework’ apply to?

The ‘Risk assessment framework’ for independent sector providers applies to providers of CRS, as designated by NHS commissioners, who are not NHS foundation trusts.

Licence holders **that do not provide CRS are not be subject to Monitor’s CoS regime** as set out in the ‘Risk assessment framework’. Commissioners must inform us of their intention to designate CRS providers and, on receiving this information, we will formally confirm CRS status to individual providers.

Diagram 1: Monitor’s regulatory approach to ensuring continuity of services



1.3 The purpose of this document

This document describes how we carry out our role to ensure the continued delivery of key NHS services at independent providers of CRS.

Our intention is to use as straightforward a framework as possible and to focus our resources on the providers of greatest concern in a proportionate fashion. Where we identify that CRS are at **potential** risk, we will apply judgement in deciding whether further investigation into the provider is needed. This document describes our framework for:

- annual and in-year monitoring processes for independent providers of CRS
- the composition of an initial assessment of risk to the continued delivery of CRS – recognising that this may change as we consider the actual dynamics of risk at independent providers during 2014/15
- other elements of our oversight regime, including submissions, forward financial information, other information and exception reporting and
- using the above information to assess potential issues of compliance with the relevant aspects of the licence at independent providers of CRS.

For an overview of how we intend to investigate problems that come to light through application of the 'Risk assessment framework', please refer to our ['Enforcement Guidance'](#), which describes in full the principles that guide our decisions on taking regulatory action and what action we may take.

2. Assessing risk to the continuity of services at independent providers of commissioner requested services

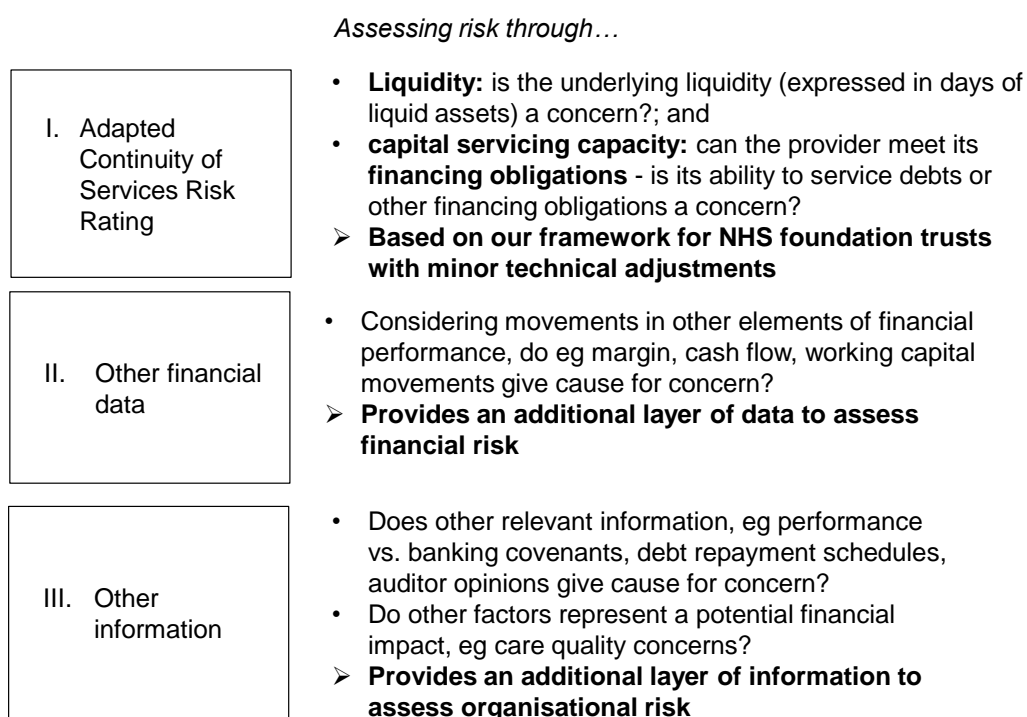
2.1 Introduction

For independent providers, the 'Risk assessment framework' is used to assess any risk to the continued delivery of CRS. We may, where we judge the risk to be sufficiently serious, act to:

- use our powers to investigate whether there has been a breach and, if so, the extent of a breach of the CoS licence conditions
- depending on the outcome of an investigation, undertake enforcement action to address or pre-empt financial failure (see our ['Enforcement Guidance'](#) for more detail) or
- put in place a 'contingency planning team' to support a financial recovery and/or advise us on the implications of failure at distressed providers for the CRS they provide.

Our financial monitoring focuses on the risk of independent providers of CRS no longer being a going concern. We use three main approaches to assess financial risk – see Diagram 2 below.

Diagram 2: Monitor's approach to assessing risk at independent sector providers of commissioner requested services



As different types of organisations are likely to have different drivers of financial risk, we will develop further our approach to assessing risk at independent providers of CRS during 2014/15. Although we are using an adapted version of our approach to foundation trusts as a starting point, we are aware that this may not provide a full picture of risk at independent providers. We are therefore using the other information above to complement the metrics we use to assess risk at NHS foundation trusts. While we use an indicative risk rating internally, this represents a starting point in our risk assessment, and we do not intend to publish these ratings in 2014/15.

2.2 Assessing risk to continuity of services

We collect financial information from independent providers of CRS to support our risk assessment. This comprises:

- two financial measures underpinning the continuity of services risk rating (see Diagram 3 below):
 - **liquidity**: the fundamental working capital position of the organisation and
 - **capital servicing capacity**: the degree to which the provider can meet its **financing obligations**

If a licensee can demonstrate a sufficiently robust corporate guarantee replicating a wholly unconditional working capital facility, Monitor will consider incorporating this in the liquidity component above

- an assessment of other financial data, including:
 - forward-looking and in-year income and expenditure, balance sheet and cash flow information
- where applicable, other information, including:
 - debt maturity profiles and banking covenants and the extent to which the provider is meeting these commitments
 - annual reports and accounts (including auditors' opinions) and
 - other information such as planned transactions.

This information should be commonly available to boards and senior management teams. On designation of services as CRS, we will send templates to providers setting out the information to be provided and the definitions to be used.

Our framework is intended to flag material concerns regarding the above information, or variance from planned projections. Where we have such concerns we may, usually following discussions with the licensee, choose to investigate.

Diagram 3: Calculating the continuity of services risk rating

Metric	Definition	Rating categories			
		1	2	3	4
Liquidity ratio (days)	$\frac{\text{Working capital balance} \times 360}{\text{Annual operating expenses}}$	< 0	0	10	30
Capital servicing capacity (times)	$\frac{\text{Revenue available for capital service}}{\text{Annual debt service}}$	< 1.25	1.25x	1.75x	2.5x

Continuity of Service Risk Assessment

We assign four levels of risk to the continuity of services:²

Risk rating	Description and consequences
4	Low risk - Monitor continues to monitor performance based on the size and risk.
3	Emerging or residual financial concern - we may perform monthly monitoring.
2	The financial position is such that the provider of CRS may be subject to investigation to see if it could be in breach of its CoS licence conditions. We may also start taking an active role in ensuring the continuity of services using provisions in the relevant licence conditions, eg requesting the co-operation of the provider to assess risk to services; preventing the disposal of assets used in the provision of CRS.
1	As level 2 above and in addition in extreme cases Monitor may consider the level of risk represents financial distress and initiate contingency planning and/or other action to ensure continuity of services and access.

² For NHS foundation trusts, Monitor aggregates both liquidity and capital servicing capacity into a single rounded risk rating. As we learn more about the risk dynamics at independent sector providers, we will consider liquidity and capital service separately in assessing risk 2014/15. Consequently if either represents a significant risk against the scale we may use this as the basis for investigation.

2.2.1 Implementing our risk assessment approach

Monitoring frequency

In addition to assessing financial risk Monitor has a range of other obligations for NHS foundation trusts, including:

- oversight of their governance
- preparation of annual consolidated reports and accounts for the sector
- supporting guidance for NHS foundation trusts, including the Code of Governance and the Quality Governance Framework, and
- monitoring capital expenditures.

We consequently collect a significant amount of monitoring data – on both an annual and a quarterly basis – from NHS foundation trusts, in addition to that set out in the equivalent section of the ‘Risk assessment framework for NHS foundation trusts’.

These roles do not apply to our oversight of independent providers of CRS, and so the information we collect is focused on assessing risk to sustainability of their services. While NHS foundation trusts are large NHS bodies, providing a high volume of NHS services, independent providers of CRS may be more diverse, with varying levels of CRS and different ownership structures. Consequently, we vary the level of oversight according to:

- **the level of CRS provided** – the greater the value of CRS a licensee provides, the more complex any effort to address the risk of financial failure of that provider is likely to be, with a corresponding need to identify issues sooner
- **the level of risk** – as with NHS foundation trusts, the greater the level of risk, the greater the need for timely information. Where a provider of CRS is shown to have a greater degree of financial risk, we will require financial information on a more frequent basis or in greater detail.

Information collected from or about providers, both NHS foundation trusts and independent providers, will continue to be treated by Monitor with an appropriate level of confidentiality consistent with its legal duties and its regulatory principles as described at the outset of the ‘Risk assessment framework’.

The table below indicates (i) the frequency of monitoring and (ii) the degree of forward-looking information we will incorporate in our assessment.

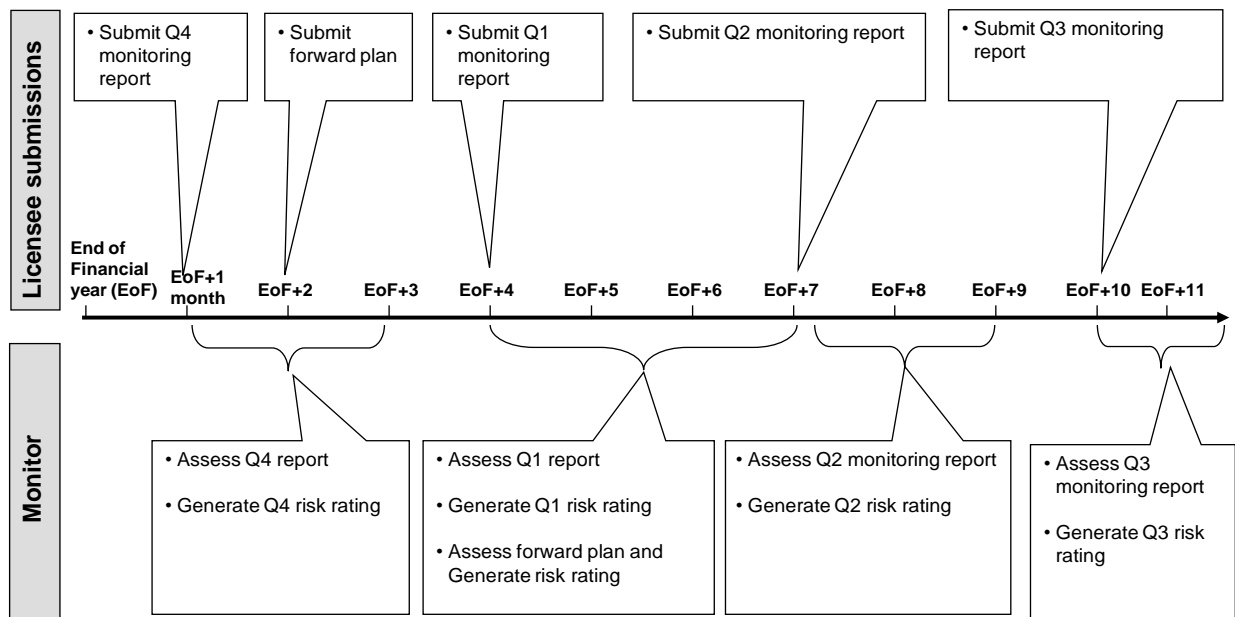
Table 1: Monitoring frequency/forward-planning for independent providers of CRS
Risk rating (liquidity and/or capital service)

CRS Value	Forward-looking	4	3	2	1
≥£15m	3 years	Quarterly	Quarterly/ monthly	Monthly	Monthly
<£15m	2 years	Six-monthly	Quarterly	Monthly	Monthly
<£5m	12 months	Annually	Six-monthly	Monthly	Monthly

The monitoring cycle

Although some independent providers have financial year ends and planning cycles that are aligned with those of NHS foundation trusts, ie 1 April to 31 March, we use in-year submissions (either quarterly or six monthly) based on the licensee’s year-end. Diagram 4 below describes the in-year and annual risk assessments for those independent providers of CRS subject to quarterly monitoring. This differs for providers monitored on a six-monthly or annual basis. We will set a reporting schedule for each individual provider who enters the CRS oversight regime.

Diagram 4: Annual planning and monitoring cycle for independent providers of CRS

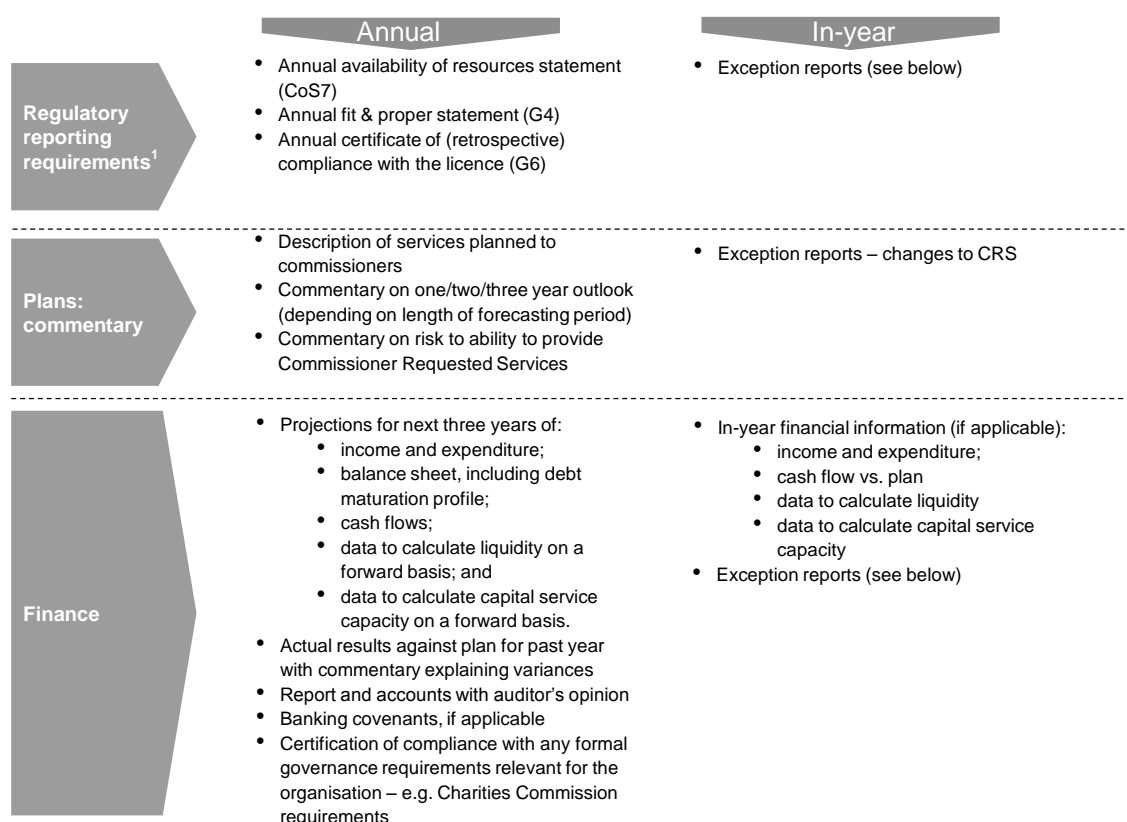


Risk to continuity of CRS is assessed at three stages:

1. **annually**, when we receive historical and forward financial information from providers
2. **in-year**, for providers meeting the criteria in Table 1 above, when we receive year-to-date financial information³ during the provider's financial year and
3. **by exception**, if a provider of CRS informs us of a material financial event or we receive relevant information through another source, and which may lead to concerns regarding the provider's ability to continue providing CRS and subsequent investigation.

These mirror the reporting requirements of NHS foundation trusts. Diagram 5 details the annual and in-year information submissions.

Diagram 5: Monitoring requirements for independent providers of commissioner requested services



¹ In addition, CRS providers with an Ultimate controller (as per Cos4) will need to submit a one-off Ultimate Controller undertaking

³ In some cases monthly or even more frequently, depending on the level of risk presented by a provider.

2.2.2 Annual submissions

Depending on their size, independent providers of CRS should submit forward financial projections (ie a forward plan) on an annual basis to assist us in assessing risks to the sustainability of the CRS they provide.

What Monitor will do with the information

Where the forward plan, or any subsequent deviation from or adaptation of it, reveals potential risk to the continuity of those services, we may seek further information to understand the situation and any consequences for CRS. This may involve using further financial information, over and above the two measures that inform the CoS risk rating.

2.2.3 In-year submissions

We use financial submissions from independent providers of CRS meeting the criteria in Table 1 above to calculate the year-to-date CoS risk rating.

What Monitor will do with the information

Where the actual rating for the past monitoring period is a 1 or 2, or where other trends in financial data are of concern, we may consider whether further information or an investigation is appropriate.

2.2.4 Exception reports

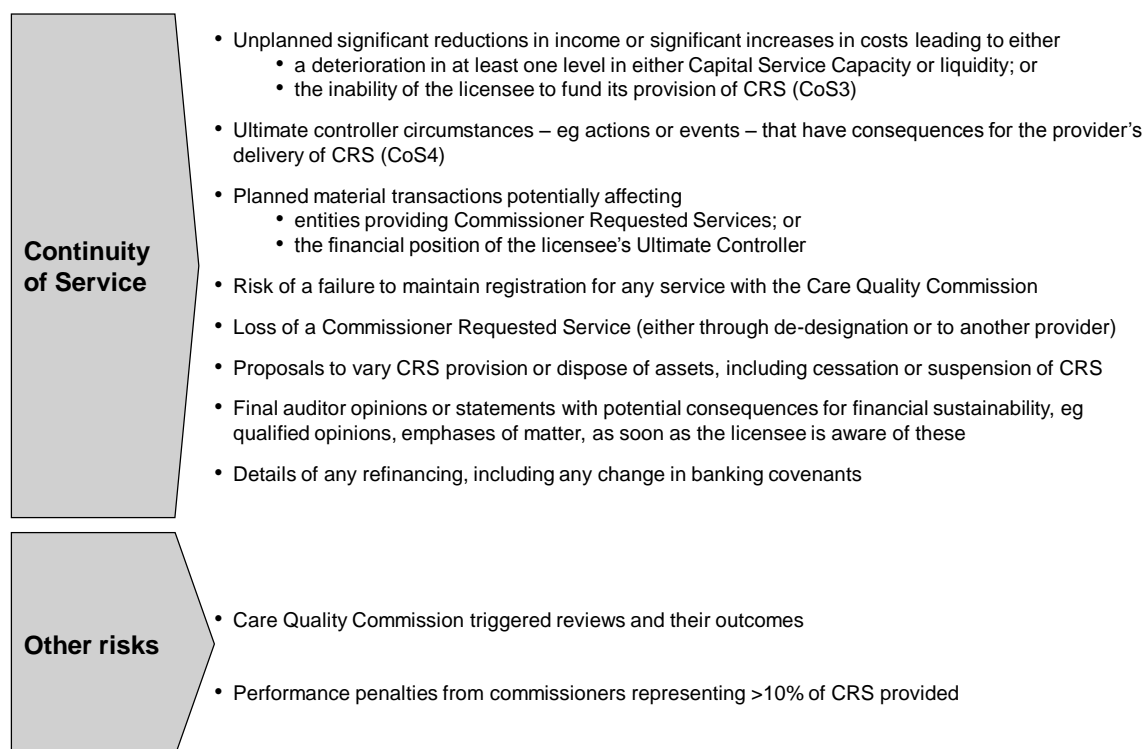
Material in-year changes in providers' financial and other circumstances can have significant implications for their financial stability. For example:

- Care Quality Commission (CQC) warning notices or other regulatory requirements can require healthcare providers to spend significantly more to meet safety/quality requirements
- material transactions can have far-reaching consequences for revenues and costs
- losing a major contract (eg greater than 10% of revenue) can leave a provider organisation with significant 'stranded' assets and costs, at least for a period
- refinancing may affect a provider's ability to service its financing costs and
- exceptional or one-off income may conceal the provider's actual financial position.

In addition, providers may experience several smaller factors that may result cumulatively in greater risk to the ongoing provision of services. Where an independent sector provider of CRS is aware of anything that has or will have a material impact on its ability to provide CRS, it should inform Monitor. Diagram 6 sets out examples.

Diagram 6: Examples of exception reporting triggers (non-exhaustive)

(CRS providers should report to Monitor any information that may, in their view, have material implications for financial risk and/or compromise their ability to continue providing Commissioner Requested Services)



Providers making exception reports to Monitor of the above should, in the first instance, indicate:

- the amount of CRS affected
- the potential impact on the provider’s income or costs, with reference to the provider’s EBITDA⁴ margin and cash flow and/or
- any changes to the provider’s ability to finance its operations, eg as a result of a change in cash flows, banking covenants or forward debt repayment profile.

Where we are made aware of such issues we may request additional information to assess the appropriate actions to take and when.

⁴ Earnings before interest, taxes, depreciation and amortisation.

Transactions

Where an independent provider of CRS carries out a transaction amounting to greater than 10% of its net assets, total revenue or capital, they should inform Monitor of the transaction. This is consistent with the reporting threshold for NHS foundation trust transactions. Upon receiving notification of an upcoming transaction, Monitor may request further information to assess any risk to CRS.

What Monitor will do following an exception report

Upon receiving exception reports, we will consider what response would be appropriate in all the circumstances. We may request additional information to assess the appropriate actions to take and when.

Ultimate controller and Monitor's use of Continuity of Services Licence Condition 4

In some cases, licensees may form part of larger structures and any assessment of risk to the ongoing provision of CRS needs to consider the extent to which intra-group financial and legal arrangements could affect the financial position of the licensee in a way that could impact on the provision of CRS.

Where there is such an ultimate controller as defined in Continuity of Service Licence Condition 4 (CoS4), this requires an undertaking from the controller(s) to refrain from causing the licensee to contravene its obligations in either the 2012 Act or the licence. The controller should also provide the licensee with any information that it possesses or can obtain to enable the licensee to comply with its obligation to provide information to Monitor. We will consider the appropriate form of this for licensees and, if we consider it necessary, discuss the appropriate information required from specific licensees.

In any event, where a licensee has an ultimate controller for the purposes of CoS4, we will request information on, among others:

- intercompany guarantees underpinning the liquidity of the licensee
- 'cash sweep' and other group treasury management practices affecting the cash and other liquid assets held by the licensee and
- any calls that the controller has over the assets (liquid or otherwise) of the licensee.

We are publishing the required format of the ultimate controller undertaking separately. It can be found on our website.

Appendix 1: Continuity of Services Licence Conditions 3, 4 and 7

Continuity of Services Licence Condition 3

The Licensee shall at all times adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as:

- suitable for a provider of the Commissioner Requested Services provided by the Licensee, and
- providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern.

In its determination of the systems and standards to adopt for the purpose of paragraph 1, and in the application of those systems and standards, the Licensee shall have regard to:

- such guidance as Monitor may issue from time to time concerning systems and standards of corporate governance and financial management;
- the Licensee's rating using the risk rating methodology published by Monitor from time to time; and
- the desirability of that rating being not less than the level regarded by Monitor as acceptable under the provisions of that methodology.

Continuity of Services Licence Condition 4

1. The Licensee shall procure from each company or other person which the Licensee knows or reasonably ought to know is at any time its ultimate controller, a legally enforceable undertaking in favour of the Licensee, in the form specified by Monitor, that the ultimate controller ('the Covenantor'):

- (a) will refrain from any action, and will procure that any person which is a subsidiary of, or which is controlled by, the Covenantor (other than the Licensee and its subsidiaries) will refrain from any action, which would be likely to cause the Licensee to be in contravention of any of its obligations under the 2012 Act or this Licence, and
- (b) will give to the Licensee, and will procure that any person which is a subsidiary of, or which is controlled by, the Covenantor (other than the Licensee and its subsidiaries) will give to the Licensee, all such information in its possession or control as may be necessary to enable the Licensee to comply fully with its obligations under this Licence to provide information to Monitor.

2. The Licensee shall obtain any undertaking required to be procured for the purpose of paragraph 1 within 7 days of a company or other person becoming an ultimate controller of the Licensee and shall ensure that any such undertaking remains in force for as long as the Covenantor remains the ultimate controller of the Licensee.
3. The Licensee shall:
 - (a) deliver to Monitor a copy of each such undertaking within seven days of obtaining it
 - (b) inform Monitor immediately in writing if any Director, secretary or other officer of the Licensee becomes aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached, and
 - (c) comply with any request which may be made by Monitor to enforce any such undertaking.
4. For the purpose of this Condition, subject to paragraph 5, a person (whether an individual or a body corporate) is an ultimate controller of the Licensee if:
 - (a) directly, or indirectly, the Licensee can be required to act in accordance with the instructions of that person acting alone or in concert with others, and
 - (b) that person cannot be required to act in accordance with the instructions of another person acting alone or in concert with others.

Continuity of Services Licence Condition 7

Availability of resources

1. The Licensee shall at all times act in a manner calculated to secure that it has, or has access to, the Required Resources.
2. The Licensee shall not enter into any agreement or undertake any activity which creates a material risk that the Required Resources will not be available to the Licensee.
3. The Licensee, not later than two months from the end of each Financial Year, shall submit to Monitor a certificate as to the availability of the Required Resources for the period of 12 months commencing on the date of the certificate, in one of the following forms:
 - (a) 'After making enquiries the Directors of the Licensee have a reasonable expectation that the Licensee will have the Required Resources available to it after taking account distributions which might reasonably be expected to be declared or paid for the period of 12 months referred to in this certificate.'
 - (b) 'After making enquiries the Directors of the Licensee have a reasonable expectation, subject to what is explained below, that the Licensee will have the Required Resources available to it after taking into account in particular

(but without limitation) any distribution which might reasonably be expected to be declared or paid for the period of 12 months referred to in this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to provide Commissioner Requested Services.'

- (c) 'In the opinion of the Directors of the Licensee, the Licensee will not have the Required Resources available to it for the period of 12 months referred to in this certificate.'
4. The Licensee shall submit to Monitor with that certificate a statement of the main factors which the Directors of the Licensee have taken into account in issuing that certificate.
 5. The statement submitted to Monitor in accordance with paragraph 4 shall be approved by a resolution of the board of Directors of the Licensee and signed by a Director of the Licensee pursuant to that resolution.
 6. The Licensee shall inform Monitor immediately if the Directors of the Licensee become aware of any circumstance that causes them to no longer have the reasonable expectation referred to in the most recent certificate given under paragraph 3.
 7. The Licensee shall publish each certificate provided for in paragraph 3 in such a manner as will enable any person having an interest in it to have ready access to it.
 8. In this Condition:

'distribution'	Includes the payments of dividends or similar payments on share capital and the payment of interest or similar payments on Public Dividend Capital and the repayment of capital
'Financial Year'	Means the period of 12 months over which the licensee normally prepares its accounts
'Required Resources'	<p>Means such</p> <ol style="list-style-type: none"> (a) management resources (b) financial resources and financial facilities (c) personnel (d) physical and other assets including rights, licences and consents relating to their use (e) working capital <p>As reasonably would be regarded as sufficient to enable the licensee at all times to provide the Commissioner Requested Services.</p>



Making the health sector
work for patients

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