



National Audit Office

Report

by the Comptroller
and Auditor General

Monitor

Monitor: Regulating NHS foundation trusts

Key facts

147

NHS foundation trusts
at 31 December 2013

25

NHS foundation trusts
in breach of their
regulatory conditions
at 31 December 2013

£48m

Monitor's budget for
core running costs in
2013-14

- 337** staff employed by Monitor at 31 December 2013
- 3** NHS foundation trusts breached their regulatory conditions within 12 months of being authorised
- 16 per cent** of NHS foundation trusts rated at 30 September 2013 as being at highest risk of governance failure
- 6 per cent** of NHS foundation trusts rated as being at highest risk of financial failure assessed on their position at quarter two of 2013-14
- 98** NHS trusts had not achieved foundation trust status at 31 December 2013

Summary

1 Monitor was created in 2004 as the independent regulator for NHS foundation trusts. It assesses NHS trusts for foundation trust status, and authorises those that meet the requirements to be financially sustainable, well led and locally accountable. It regulates NHS foundation trusts and intervenes where trusts are in significant breach of their regulatory conditions to help them become compliant again.

2 The government's aim is for all NHS trusts to become NHS foundation trusts, either in their own right or after merger or reconfiguration. NHS foundation trusts are self-governing, enjoy greater financial and operational freedoms than NHS trusts, and are directly accountable to Parliament. At 31 December 2013, there were 147 NHS foundation trusts providing acute, mental health, ambulance and community health services.

3 The Health and Social Care Act 2012 expanded Monitor's role. It is now the sector regulator for health services. Its new responsibilities include ensuring the continuity of services, setting prices for NHS-funded care jointly with NHS England from April 2014, and enforcing rules to prevent anti-competitive behaviour by healthcare commissioners and providers.

4 Monitor is an executive non-departmental public body sponsored by the Department of Health (the Department). It is independent of government in its regulatory judgements. In 2013-14, Monitor's budget for core running costs is £48 million and it has over 300 staff.

Our report

5 Monitor is an increasingly important part of the health system. Its responsibilities now stretch beyond regulating individual NHS foundation trusts to ensuring continuity of services for patients. Along with the other main regulator, the Care Quality Commission, Monitor is vital to making the reformed health system work effectively and giving the Department assurance in its stewardship role for the health system.

6 Monitor's remit is expanding with significant, high profile, new responsibilities. At the same time, its traditional role of regulating NHS foundation trusts is becoming more challenging. The number of NHS foundation trusts is expected to rise to meet the government's policy commitment. The threat to trusts' sustainability is growing as the need to make substantial efficiency savings in the NHS puts trusts under increasing financial pressure. And the focus on care quality and effective regulation is greater than ever in the wake of the problems at Mid Staffordshire NHS Foundation Trust. These factors mean that the extent and complexity of Monitor's work will increase.

7 Against this background, our review of Monitor is well timed. This report examines Monitor's performance in regulating NHS foundation trusts and how well it is responding to the new challenges it faces. We set out our audit approach in Appendix One and our evidence base in Appendix Two.

Key findings

Role, governance and resources

8 Monitor has made good progress in preparing for its expanded role.

Between 2010-11 and 2013-14, Monitor's core running costs more than trebled as it prepared to take on its new responsibilities. It met key milestones in 2013, including licensing all existing NHS foundation trusts and publishing a new NHS pricing framework jointly with NHS England. Recruiting the capability Monitor needs and having sufficient capacity, particularly among senior staff, remain key risks to a successful transition. At 31 December 2013, of the 450 staff Monitor expects it will need, 113 posts (25 per cent) remained vacant. Some 51 staff were filling essential roles on an interim basis (paragraphs 1.7, 1.8 and 1.16).

9 Monitor has more to do to explain how it will exercise its new responsibilities.

Stakeholders are unclear how Monitor will coordinate with other bodies including NHS England and the NHS Trust Development Authority. Some also raised concerns about what responsibility Monitor has for assessing the impact on trusts of the prices it sets, as well as potential tension between Monitor's new responsibilities to prevent anti-competitive behaviour while enabling integrated care. Monitor has published guidance on how it will interpret and enforce competition regulations. However, it has taken on some of its new powers more quickly than it has been able to publish guidance and explain to trusts how things will work in practice (paragraphs 1.9 to 1.11).

10 Monitor's governance has not been good practice in that the same person acted as both chair and chief executive for nearly three years. The Secretary of State appointed an interim chair in January 2014 and expects to make a permanent appointment in autumn 2014. The Department approves Monitor's budget and business plan. The Department has not systematically assessed Monitor's performance, but is seeking to strengthen its oversight of its arm's-length bodies (paragraphs 1.13 and 1.14).

Assessing and authorising trusts

11 Monitor has rigorous processes and standards for assessing NHS trusts applying for foundation trust status, which it has adapted and strengthened. Monitor uses quantitative and qualitative evidence in assessing applicant trusts, which it tests by comparing evidence from different sources. Trusts must show that they are financially sustainable, well led and locally accountable. In July 2010, Monitor introduced new criteria for testing trusts' governance arrangements for ensuring care quality in the light of lessons from failings in patient care at Mid Staffordshire NHS Foundation Trust. It has kept under review its assumptions for testing trusts' financial plans and updated them to reflect the more challenging financial environment (paragraphs 2.2, 2.3, 2.6, 2.8 and 2.9).

12 NHS trusts are finding it more difficult to meet the standard Monitor applies. The assessment process is taking longer, and the number and proportion of successful applications has fallen over the last four years. Monitor authorised just two trusts in 2012-13. At 31 December 2013, 98 NHS trusts had not attained foundation trust status. Evidence from NHS foundation trusts is that Monitor's assessment process had a beneficial impact on their trust, although it demanded a lot of management time (paragraphs 2.5, 2.7, 2.10, 2.13 and 2.14).

13 Monitor's assessment has focused primarily on the strength of individual applicant trusts, rather than wider risks in local health economies. The interdependence and viability of organisations in local health economies will be an increasingly important part of Monitor's assessments, in view of the need to ensure that services are sustainable. Monitor is considering how to engage better with commissioners, local authorities and other stakeholders as part of its assessments and how to analyse the viability of local health economies (paragraph 2.9).

14 Few NHS foundation trusts have got into difficulty soon after being authorised, indicating that Monitor's assessment decisions have been sound. Monitor has set a standard for authorisation which it considers good NHS trusts can achieve. Its aim is that no trust should breach its regulatory conditions within 12 months of authorisation. Just three of the 147 trusts authorised since Monitor was established in 2004 did so. For some trusts that got into difficulty after authorisation, it is likely that some of the underlying issues were present at the point of authorisation (paragraphs 2.15 to 2.19).

Addressing risk in NHS foundation trusts

15 The growth in risk in the foundation trust sector may put unsustainable pressure on Monitor's capacity to regulate trusts in difficulty or maintain continuity of services. At 30 September 2013, Monitor rated 16 per cent of NHS foundation trusts as highest risk in governance terms, compared with 13 per cent at 31 March 2012; and 6 per cent as highest risk in financial terms, compared with 2 per cent at 31 March 2012. At 31 December 2013, 25 NHS foundation trusts were in breach of their regulatory conditions, an all-time high. The enhanced monitoring and intervention that these trusts require takes an increasing amount of Monitor's resources (paragraphs 3.6, 3.11, 3.14, 3.30 and 3.31).

16 Monitor has historically used mainly retrospective performance measures in assessing risk, but it strengthened its approach in October 2013. The metrics Monitor uses to assess governance risk, such as performance against clinical targets, have not always warned of underlying issues. Similarly, the indicators that Monitor used to calculate financial risk ratings did not consider trusts' future commitments and projections. Monitor changed its risk assessment framework in October 2013 and now includes information from third parties, including patients and whistleblowers, in assessing governance risk. From summer 2014, Monitor plans to publish forecast 'continuity of service' ratings as an indicator of the risk of future financial failure (paragraphs 3.7, 3.9, 3.12 and 3.13).

17 Monitor's interventions have helped trusts in difficulty to improve. Assessing the impact Monitor has is difficult because of the range of influences on a trust and the difficulty of demonstrating what would have happened if Monitor had not taken action. However, people we interviewed at our case study trusts considered that they took faster or more effective action, or both, because of Monitor than they would have done otherwise. Monitor's interventions have worked well where the underlying issues are internal to the trust, such as poor leadership or financial management. NHS foundation trusts have regularly taken radical action, such as changing their chair or chief executive, in response. Monitor has often also required trusts to commission external consultancy support or employ turnaround directors (paragraphs 3.21 and 3.24 to 3.27).

18 Monitor's influence has been less effective where the cause of the trust's difficulties relate to underlying issues in the local health economy. For an increasing number of trusts in difficulty, the underlying causes are rooted in the local health economy, for example where commissioners are in financial difficulty. In recent months, Monitor has changed its approach to intervening in these trusts. In some cases it has started working with commissioners, the local authority and the NHS Trust Development Authority to find solutions to address these wider issues. Monitor needs to rely on informal influence in these situations, as well as its formal powers of intervention (paragraphs 3.16 to 3.17 and 3.28).

19 Monitor has started to increase its work to strengthen governance and financial management in NHS foundation trusts to try to reduce the risk of trusts getting into difficulty. Monitor seeks to support and develop the foundation trust sector. For example, it provides training to strengthen the capability of boards and publishes good practice guidance. To date, Monitor has devoted only a small proportion of its resources to this type of work, and it has not assessed the overall impact or reach of this activity (paragraphs 3.31 to 3.33).

Conclusion on value for money

20 We consider that Monitor has achieved value for money in regulating NHS foundation trusts. Its processes for assessing and monitoring trusts are robust, its judgements have mostly been sound, and it has refined its approach in the light of experience. The balance of evidence suggests that Monitor has generally been effective in helping trusts in difficulty to improve. Its impact is particularly clear where the issues arise from weaknesses in trusts' internal management.

21 Monitor recognises that it needs to adapt how it regulates to address underlying weaknesses in local health economies that increase the risk of financial or clinical failure in individual trusts. It has started to take a more holistic and proactive approach in a number of cases. It will need to continue to develop its approach and work closely with other agencies within the NHS, as well as the Department, if it is to continue to be an effective regulator and provide value for money.

Recommendations

22 Monitor is acting in a number of the areas we have highlighted. Our recommendations are designed to reinforce these actions, and help Monitor meet the challenges it faces in regulating NHS foundation trusts in an increasingly difficult environment and in taking on significant new responsibilities.

- a Monitor should supplement its formal powers of intervention by fully using informal powers of influence and persuasion to broker solutions.** Increasingly the difficulties NHS foundation trusts face cannot be solved by the trusts alone. They require integrated action across local health economies. Monitor needs to work closely with other bodies, including local commissioners, to develop solutions that maximise benefit for the NHS overall. It must ensure that its staff have the skills and authority to adopt this kind of approach.
- b Monitor should, working with the Care Quality Commission, address gaps in its clinical expertise and understanding of frontline NHS operations.** Monitor could improve its capability by training its existing employees or recruiting staff with relevant NHS experience and clinical skills. However, it is the Commission that regulates the quality and safety of the care that NHS foundation trusts provide. Monitor should draw on the Commission's knowledge and skills as far as possible to avoid duplication.

- c Monitor needs to explain more fully to the NHS how it will exercise its new responsibilities.** There is currently a gap in understanding, and therefore concern, about how Monitor will apply its new powers to benefit patients. In particular, Monitor must make clear how it will weigh up the benefits to patients of potential improvements in the quality of care and cost savings that may arise from service reconfiguration and integration against reduced choice and competition.
- d Monitor should assess the value of its work to strengthen financial management and governance in NHS foundation trusts and identify which activities are the most effective.** Monitor's regulatory approach has been effective but there is a question as to how 'scalable' the approach is if the number of trusts in breach of their regulatory conditions continues to grow. Monitor needs to establish the best ways of reducing risk in the foundation trust sector and focus resources on these areas.
- e The Department should appoint a permanent chair of Monitor as soon as possible.** Monitor was unable to comply with its own guidance on corporate governance, as the same person was both the chair and the chief executive for three years. The Department appointed an interim chair in January 2014. An independent chair is needed to boost the capacity of Monitor's senior team, hold the executive management to account and strengthen Monitor's accountability to Parliament.