

Response form for the *Developing the new NHS Provider Licence: A Framework Document*

If you would like any part of the content of your response (as distinct from your identity) to be kept confidential, you may say so in a covering letter.

We would ask you to indicate clearly which part or parts of your response you regard as confidential. We will endeavour to give effect to your request, but as a public body which is subject to the provisions of the Freedom of Information legislation, we cannot guarantee confidentiality.

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Nature of organisation: Professional membership organisations

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Please write your answers to the following questions below. Please expand the boxes or continue on further sheets if necessary. Then follow the instructions at the end of this form to return your response to Monitor.

Question 1: Do you agree that the proposed modular structure is appropriate for the licence? If not, why not? What alternative structure would you suggest and why?

Although we do not believe that licensing should apply to community eye care providers, we feel that a modular structure is the most appropriate model for licensing NHS providers where licensing is appropriate.

Question 2: Do you believe that we should remove or amend any of these proposed chapters of the licence? If so which ones and why?

No. Proportionality is key and elements of the proposed chapters should only apply to providers where these are relevant.

Question 3: What, if any, chapters would you like to see added to the proposed provider licence? In responding, please bear in mind that additional chapters can be included only if, and to the extent that, they reflect the contents of the Bill.

None – the proposed structure is already comprehensive

Question 4: To what extent do you feel that these would be reasonable requirements for all licensees?

We feel strongly that there are risks here of the licensing process becoming extremely burdensome. We would urge Monitor not to replicate or duplicate any other forms of regulations but, where necessary, simply to make these existing forms of regulation a requirement for a licence to be granted.

We also have experience of NHS regulators and other bodies being overly free in their interpretations of their “information requirements”. Any information requirements should pass the “necessary” and “proportionate” tests. They should not be used as fishing expeditions for vaguely interesting or desirable but not necessarily necessary information.

As noted above, given that community optical practices operate in a fully open and highly-competitive commercial market, much of the information that Monitor might require of providers who only operate in quasi-, managed or monopoly markets, would be commercially sensitive and inappropriate for functioning markets.

Question 5: Do you think these requirements would meet the objectives of proportionate and effective regulation? What might be done from the outset to ensure these objectives are better met? Please provide reasons for your alternative suggestions and bear in mind that additional requirements can be included only if, and to the extent that, they reflect the contents of the Bill.

No, not in the case of community eye care providers as explained above. In our view community eye care providers already meet all Monitor’s proposed requirements making further regulation by Monitor unnecessary. Community eye care providers should therefore be exempted from the Monitor regime.

Question 6: Do you agree that requiring licensees to provide us with good quality costing information is necessary for us to be able to set fair prices for NHS-funded services? If not, why not? What alternatives can you suggest?

In the case of NHS sight-testing services, we have been given assurances by Ministers that prices and contractual regulations will continue to be negotiated and set at national level by the NHS Commissioning Board. There will be no need therefore for community eye care providers to provide this information to Monitor or any other body.

Question 7: What, if any, risks can you identify that could lead to particular kinds of providers being disadvantaged as a result of our Pricing conditions?

Even in the NHS internal market (where we believe Monitor will have an important role) it is unclear why Monitor would necessarily need “complete information” on activity levels, costing and performance from providers to carry out these functions. We fear this could impose a very significant and disproportionate cost on providers and hence commissioners’ funds.

Question 8: Do you believe that our Competition Oversight and Integrated Care conditions would be effective in ensuring compliance with the relevant Principles and Rules for Co-operation and Competition? If not, why not?

Yes, in the case of providers which operate in quasi-, internal or managed markets, but not for those, such as community eye care providers, which already operate in genuinely open and transparent markets.

Question 9: Can you identify any ways in which we could better enable the delivery of integrated care services through our licence?

In the case of community eye care providers, which we argue should be exempt from the licensing regime, integration is already enabled and supported through the existing requirements on providers:

- **to issue patients with a prescription and contact lens specification (or statement that they do not require visual correction) which can be taken to any other community eye care provider of the patient's choice for the purchase of spectacles, contact lenses or other optical products**
- **to provide patients with copies of clinical records and copies of any referral or other communications about them with other eye care providers including eye hospitals, specialist optometrists, low vision providers and sight loss charities.**

Question 10: Are there further steps that would need to be taken to ensure that our proposed Continuity of Service conditions would appropriately protect services without unduly constraining organisations' ability to raise and allocate funds and to develop innovative business models?

Community eye care providers operate in an entirely open, highly- competitive, commercial market. When practices open, close, merge or transfer patient safety and continuity of care are controlled for by

- **the registration requirements (including codes of conduct and professional guidance) on optometrists, opticians and ophthalmic medical practitioners**
- **the requirement to transfer clinical records to the patient's new practice when a practice transfers to a new owner or elsewhere with the patient's agreement**
- **or, if the practice is closing altogether, to transfer clinical records temporarily to the NHS Commissioning Board for eventual allocation to a new practice of the patient's choice.**

Other issues such as "prudent financial management" and "managing financial distress and failure" are entirely matters for the practice or business which, because their very livelihoods depend on it, compete rigorously to offer quality of service and remain in business.

Question 11: Does our proposed approach to ensuring continuity of services through our licence appropriately align the risks of financial failure with the regulatory burden on licensees? What else can we do to ensure our approach is proportionate and risk-based?

See response to Question 10.

Question 12: Do you believe that we would be able to effectively regulate foundation trusts through our licence? If not, please could you detail specific areas of concern?

This is not really a question for us. However, as referrers of some 800,000 patients a year to NHS Foundation Trust eye clinics, we believe that Monitor will be able effectively to regulate Foundation Trusts through the licence. To seek to do more than that would impose an unnecessary burden on Foundation Trusts and hence the NHS budget and public purse.

Question 13: Do you agree that the requirements we would make of foundation trusts in our role as foundation trust registrar would be broadly equivalent to those made of other types of provider?

N/A

Question 14: Can you identify any further costs or benefits of the licensing regime to patients and service users, the public or providers?

No. Other than that these requirements are not appropriate for community eye care providers, which should be exempt.

Question 15: Do you consider that the burden that our proposed licensing regime would place on providers is too high or too low? Please provide reasons for your views.

In the case of community eye care providers, this burden would be both disproportionate and unnecessary as we have explained above.

Engagement process

Thank you for responding to this engagement document. Please save this document, and email it to licensing@monitor-nhsft.gov.uk with 'Licensing Conditions Engagement' in the subject line.

Alternatively, you can fax your response to 020 7340 2401, or post it to:

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Licensing Conditions Engagement
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London SE1 8UG

This document - *Developing the new NHS Provider Licence: A Framework Document* – was issued on 15 November 2011. Please submit your initial responses to the questions and any other comments that you have by **5pm on 12 December 2011**. There will also be subsequent opportunities to respond to this document.

If you wish to do so, you can request, that your name and/or organisation be kept confidential and excluded from the published summary of responses. Please tick this box to ensure confidentiality.