Monitor - Competition, Oversight & Integrated Care (Tranche 2)

The Optical Confederation represents the 12,000 optometrists, 6,000 dispensing opticians, 7,000 optical businesses and 45,000 ancillary staff in the UK, who provide high quality and accessible eye care services to the whole population. The Confederation is a coalition of five optical representative bodies: the Association of British Dispensing Opticians (ABDO), the Association of Contact Lens Manufacturers (ACLM), the Association of Optometrists (AOP), the Federation of Manufacturing Opticians (FMO) and the Federation of (Ophthalmic and Dispensing) Opticians (FODO). As a Confederation we work with others to improve eye health for the public good.

We welcome the opportunity to contribute to this second consultation.

Licence condition and PRCC mapping

As described in our other consultation responses to this second tranche, in addition to being bound as NHS providers by the principles of PRCC, community eye care is provided in a highly competitive, open market system which has delivered and continues to deliver significant benefits for patients and the NHS, including quality, access, choice and value for money.

The optical market is already specifically structured to deliver choice through competition. It already operates a system of any qualified provider under the national sight testing (General Ophthalmic Services) contract whereby any provider can enter the market subject to meeting minimum national criteria on premises, staff, equipment and record-keeping.

Promotional activity is already subject to

- the General Ophthalmic Services (GOS) regulations
- regulation by our sector specific regulator, the General Optical Council
- as well as advertising standards.

Any promotional activity which might be considered to breach any of the above can be and is routinely challenged through these channels.

In addition, the sector is subject to existing competition legislation, the OFT and Competition Commission jurisdictions. This ensures that if, for example, a merger was proposed that could be argued to restrict patient (or consumer) choice either locally, regionally or nationally, it can be referred to the OFT.

Licence Condition 1: provision of integrated health care services

As a result of our genuine market-based system, patients have very wide choice of optical providers including independent practitioners, corporate high street opticians, supermarkets and, where appropriate, domiciliary providers for housebound patients.

Under the regulations governing sight testing, professional Codes of Conduct issued by our sector specific regulator the General Optical Council and each NHS contract with each NHS provider, community optical providers are already required

- to issue a patient with a prescription (or a statement that no prescription or change in prescription is required) immediately following a sight test so the patient can have any necessary spectacles or contact lenses made up and fitted at any practice of their choice
- providers compete vigorously for each and every patient on grounds of quality, access and cost
- regulations require appropriate referrals to be made to other appropriate clinicians, including informing the GP and the patient of the reason for the referral (and a copy of the referral notification), thus ensuring services integrate around the patient as required.

Where enhanced Primary Ophthalmic Services (POS) are commissioned locally, these are invariably in line with one of the evidence-based national pathways which specifically provide for integrated care, appropriate referral, cross-linkages and integrated care between services.

It follows, therefore that a requirement to provide eye care "in an integrated way" would be unnecessary in the community optical sector and, by adding a further burden to an already highly efficient sector, would not, in any way, help ensure "that patients and users are treated swiftly, appropriately and efficiently along a care pathway". In fact imposing further burdens on the sector could have the opposite effect to driving some good providers out of the market thereby reducing competition and choice. We would also refer you to the attached paper titled *Optical Market Benefits March 2012* which provides additional evidence of the competitive nature of the community optical market.

Q4. Do you think that it is appropriate for Monitor to require co-operation in the licence?

A4. No, this is not appropriate in the case of community optical practice where existing regulatory regimes already provide a fail-safe system.

Q5. What other mechanisms could Monitor use to meet its responsibilities to enable health care services to provided in an integrated way?

A5. The NHS Commissioning Board could instead make this a requirement in standard NHS contracts.

In our view, the contractual route is preferable to additional regulation in most sectors, in particular for a genuine and open market such as ours. The contractual route (which already exists) should continue to be used, combined with the sufficient existing regulation, which must be the preferred route on the grounds of proportionality.

Moreover, if integration were not working under these existing systems, it is hard to see how a further regulatory burden would improve things. However, as we have said, we believe the system is working in our sector and that to impose further regulation would be an unnecessary and retrograde step.

Q6. Should Monitor define in further detail what is meant by "seemless care" and, if so, what do you think is an appropriate definition? What guidance would you like to see accompany this obligation? "A6: "seemless care" must mean prompt, effective and appropriate handover between clinicians, services and sectors. This should include relevant information so that the patient is not required to give it more than once (other than for identity confirmation purposes), patients being fully informed about the steps in the pathway they are following so that they fully understand what is happening and do not feel they are simply being passed from pillar to post.

A.6. From our (community) perspective, integration most often falls down within the systems for providing information and feedback about patients referred to and from secondary sector. We expect this is primarily due to other pressures on resources. Specifying what "seamless" means eg resourcing and prioritising effective handover of patients (including feedback to practitioners along the patient pathway) would be beneficial.

Licence condition 2: the right of patients to make choices

It is worrying to read about the rationale for this requirement but we recognise – sadly – that this might be necessary for traditional NHS services. However it would not be necessary or appropriate for our sector. Operating, as we do, on the basis of fair competition where each and every patient counts for the practice, the provision of information and choice is integral to the way our market is structured and providers have operated as such over many years.

The community optical sector already has to comply with

- the Code of Conduct of the Advertising Standards Authority
- and the Code of Practice for the Promotion of NHS funded services

and, unlike any other area of NHS care, patients have a wide choice of practices and providers across the country, both for sight tests and the dispensing of spectacles or contact lenses, and with appointments and opening times of their choice and

convenience as standard eg some practices are open late into the evening, on Saturdays and Sundays.

Any provider which did not offer choice and convenience would soon go out of business and be seamlessly replaced by others who could, and are therefore already appropriately incentivised to offer ongoing high quality care.

It follows that we do not believe these requirements should be duplicated for the community optical sector by additional regulation. This would simply be an additional burden without evidence of need or any demonstrable benefit.

Q7. What information do you think Monitor should direct licencees to publish to help patients make well-informed choices between providers?

A7. All optical providers provide sight testing and eye care to a high standard (underpinned by NHS standards and the GOC Codes of Conduct) and already advertise effectively to communicate any additional or specialised services they offer. This condition is not therefore applicable to community optical practice.

Q8. Are there any impediments to licensees publishing this information and what could Monitor do to help overcome them?

A8. Not applicable to optical practice.

Licence condition three: competition oversight

As previously described, the community optical sector is already structured to foster competition – this is how good businesses thrive and grow, thus ensuring the forces of creative destruction are free to operate ie patients have a free choice of practice and move to better providers, and practices that cannot offer what patients want cease to operate.

National Sight Testing Services (General Ophthalmic Services)

Under the national contract for sight testing, there is no scope for commissioners and providers to collude to pervert competition. Neither commissioners nor providers would have any power to do so and there would be no incentive for them to seek to do so.

Locally Commissioned Services

As far as locally commissioned (enhanced) services are concerned, again these are provided on a competitive basis.

An excluded competitor who was not given the choice of providing the service on an Any Qualified Provider basis could challenge and seek legal re-dress – supported by the Optical Confederation – for any breach of the principle of open competition.

We would also argue that any such breach would render the provider an "unfit person" to provide General Ophthalmic Services (GOS), that their NHS contracts should be revoked and that any registration with the General Optical Council should be challenged. There is a national "blacklisting" system already in operation to prevent any such providers entering the market to provide GOS work unless the ban is lifted.

The systems we have described elsewhere already deliver competition and choice which

- improve quality and the safety of service provision
- improve health and well-being
- improve standards and reduce inequalities in access and outcomes
- lead to better informed patients
- generate confidence in the NHS
- and provide extremely good value for money.

Any additional regulation would not only be unnecessary but would impose a cost burden on the sector which would inhibit rather than promote competition and choice by potentially driving providers that are operating on very tight margins out of the market altogether (we regret to say that in the current economic climate a sizable number of optical providers could not carry the burden of additional regulation). We doubt this can be what Monitor or the government intends.

In the case of eye care, if for some reason, the current application of the PRCC were not felt to be strong enough, this could easily be remedied by making compliance with the PRCC a condition for holding and retaining a GOS contract.

Q9 Do you think that the licence conditions should be more prescriptive about what behaviour would be likely to constitute a breach or could this be dealt with in guidance?

A9. This is not relevant to optical practice. However, given our experience of regulation within our own sector, we do not think it would possible to be prescriptive about all the types of behaviours that might constitute a breach and so these are better dealt with in guidance.

Q10. Do you envisage any challenges in enforcing this licence condition?

A10. Such a condition would be unnecessary in optics, so for us enforcement is not relevant.

Q11. What guidance would you like to see accompany this obligation?

A11. In our view, the most helpful guidance in these areas would be clear guidance to NHS commissioners on how to prevent conflicts of interest and collusion arising in commissioning – transparency and full disclosure of interests (for example if a commissioner or close family member is a shareholder in a bidding body) must be in the public interest and should be enshrined in the principles for commissioning rather than licence conditions for providers.

Licence Condition 4 - informing the OFT of mergers

Community optical providers operate in a flourishing open and competitive market, where new entrants are constantly coming and going, challenging any potential local, regional or indeed national monopolies and the status quo.

Community optical providers are already bound by the conditions of the Enterprise Act including voluntary notification to the OFT. In our case, community optical providers are private or public businesses and not NHS- owned – in fact the NHS accounts for a relatively small proportion of sectoral income on average (less than 20%). In extreme cases therefore any unwinding that needed doing would be the responsibility of the companies concerned and would not involve any risk or cost to the NHS.

Another aspect which would be particularly unnecessary for our sector is the proposal that all mergers (however small the providers involved) should be notified to the OFT. As described above the community optical sector already operates as an open market based on AQP, and should a merger be proposed that threatens to reduce competition or endangers our open market, another provider could, and we predict would, refer this for investigation by the OFT.

There is no need therefore for further regulation in respect of community optical providers in this area.

Q12-14. None of the above should apply to optics.

Licence condition 5: a review by Monitor and mergers involving NHS Trusts

National Sight Testing Service

All NHS General Ophthalmic Services contracts will be overseen by the NHS Commissioning Board which would refuse to grant a contract if this were felt to inhibit competition, breach the PRCC requirements, or put patient access, choice or quality at risk. Additional licensing conditions are therefore unnecessary for our sector.

Locally Commissioned Services

Locally commissioned (enhanced) services can only in effect be commissioned

from practices with existing General Ophthalmic Services contracts and therefore the risk of vertical integration with a NHS trust leading to loss of competition or choice is negligible, and additional regulation completely unnecessary.

We hope the above responses and explanations are helpful and are happy for this response to be made public.

We would also be very happy to meet with Monitor to discuss should any of the above be unclear or Monitor feel that further evidence is required.

This response has been submitted by
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