Monitor – Stakeholder Engagement (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.

As indicated in the responses to previous Monitor consultations, as a sector, we fully support the Monitor aims of "promoting the provision of health care services which is: economic, efficient and effective; and maintains or improves the quality of those services" as well as the aim to "protect and promote the interests of people who use health care services".

Case for Exemption

However, as we have already made clear in our responses to the Framework Document last November and the first tranche of consultation documents earlier this year, we feel strongly that, on all available evidence, the provision of primary ophthalmic services (POS) - including the sight testing service (general ophthalmic services – GOS) - should be exempted from the Monitor licensing requirements under Clause 82 of the Health and Social Care Bill.

Uniquely in NHS provision, in addition to regulation under Companies legislation, by the Office of Fair Trading, Advertising Standards Authority, etc:

- eye care services are recognised as low risk by regulators and insurers alike
- eye care services are delivered though a genuinely open and highly competitive market-driven system which delivers quality, access, choice and value to patients
- providers compete vigorously to meet the needs and wishes of every single NHS patient
- year on year the competitive market improves quality and choice whilst driving down cost

- there is a zero risk of a failure in the sector adversely affecting patients
- patients are already protected by the double regulation of the General Optical Council on both optical bodies corporate (ie those who use the protected titles of optometrist or optician) and optical practitioners.

The General Optical Council is the optics specific regulator and regulation includes compliance with guidance developed by the optical professional bodies and professional duties on optical bodies corporate and individual practitioners to make "the care of the patient their first and continuing concern"[1]. In addition the General Optical Council also operates an Optical Consumer Complaints Services (OCCS) for non-clinical complaints.

Evidence for Exemption

As a result of this unique and already highly regulated system the market operates at maximum efficiency to bring high-quality individualised eye care services to all, in every community, with the quality and value of eye care is constantly increasing.

Unlike many areas of the NHS where the Monitor regime is expected to add value, it has never been necessary for community eyecare services to be designated as "essential services" nor has it been necessary for the NHS to step in to ensure continuity of services or to intervene to keep services afloat.

NHS sight testing is already delivered through a highly-competitive, open market, retail system where providers compete with one another for patients on the basis of quality, access and price. Moreover the national GOS contract, which has served the NHS and patients well for many years, contains provisions for, and no barriers to, new entrants to the sight testing market.[2] A number of publications have reviewed the optical market and found it to function very effectively, delivering choice, equity of access; and have deemed it a potential model for other parts of the health service to follow.[3,4,5] The most recent of these, the Bosanquet Report, argued that community eye care is a model service which already exemplifies the ambitions of the NHS reforms (as identified in the White Paper) (p.4 Bosanquet 2010).[5]

Despite performing 21 million sight tests per year, as a sector we arguably have the lowest levels of NHS and consumer complaints, the numbers of which, despite the presence of national brand names, informed patients (through advertising) and easily accessible complaints services, remain vanishingly small.

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[1] Codes of Conduct for Business and Individual Registrants, General Optical Council
[2] NHS England (2008) General Ophthalmic Services Contracts Regulations 2008 available here http://www.legislation.gov.uk/uksi/2008/1185/pdfs/uksi_20081185_en.pdf
[3] Mintel (2008) Opticians Report – February 2008
[4] Speirs, J (2003) Patients, Power and Responsibility – see Chapter 19 '*With eyes to see: one people, one market, one service'*
[5] Bosanquet, N. (2010) *Liberating the NHS: Eye Care, Making a Reality of Equity and Excellence*

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.

There is no evidence to suggest that the eye care market requires further regulation either to protect patients or to improve quality.

On the contrary, the imposition of another layer of regulation though Monitor would be duplicatory, disproportionate and force an unnecessary and costly burden on a very efficient sector. This could only add to the costs and reduce efficiency without bringing any identifiable additional benefit for patients or the NHS.

If Monitor requires any further evidence to support our case for exemption, perhaps you would please let us know so that we may provide it. We would also be very happy to meet to discuss our case in greater detail if that would be helpful.

Inappropriateness to Primary Ophthalmic Services

As we have argued previously, it is clear that neither the proposed licensing structure nor the proposed chapters should apply to eye care provision.

The Government has already been clear that eye care providers will not be required to register with the Care Quality Commission precisely for the reasons set out above and we would argue strongly for a similar exemption from Monitor registration on the same basis.

This is further demonstrated by the fact that the proposal (page 4) to implement the criteria in stages means that the first criterion – registration with the Care Quality Commission - if implemented in isolation as planned, would not apply to eye care.

As stated by our pharmacist colleagues for community pharmacy, we also seek confirmation that community optical practices would not be disqualified or disadvantaged by being exempt from requiring a licence (from Monitor) when competing to provide NHS services via Any Qualified Provider (AQP) or through any contract mechanism with commissioners.

Consultation and Responses

As we have already offered, if Monitor, the Department of Health, or the NHS Commissioning Board, considers that any aspect of our current regulatory framework does not align with Monitor's aims, we would be happy to work with them to consider how this divergence might be corrected without imposing additional, disproportionate, and costly regulation. We do not believe, however, that there are any areas where we are not already fully aligned.

Furthermore, not only would the licence itself impose an unnecessary cost burden on the provision of General Ophthalmic Services, the budget for which is already small

at only £478m in 2012-13, the individual licensing chapters which we believe would be particularly unnecessary and inappropriate for eye care are

- pricing
- continuity of services
- competition and integration.

It is against this background that we respond to the specific consultation questions below.

Q1. Do you agree with our choice of license criteria? If not, which, if any criteria would you suggest omitting or adding?

A1. None of these should apply to primary ophthalmic services (POS). We are not in a position to judge the appropriateness for other services.

Q2. Do you agree with our choice of categories of persons who should satisfy the license criteria? If not, which if any categories of persons would you suggest omitting or deleting?

A2. Again, this should not apply to optics. However, in our sector, a person who has been erased from a professional register is considered unfit to run an optical business. We query whether similar exemptions should not apply to other services?

Q3. Do you have any comments on the assessment to the benefits of introducing the license criteria to applications and license conditions initially and thereafter through application only?

A3. This seems a sensible and proportionate approach for large, high cost NHS providers such as Foundation Trust hospitals. But, as argued above, the "registration with CQC criterion" would not apply to eye care and we do not believe that the other licensing conditions are appropriate or necessary either.

This response has been submitted by:
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