

**House of Commons Health Committee**  
**Annual accountability hearing with Monitor (2013)**  
**Written note from The King's Fund**

- 1) The King's Fund is an independent charity working to improve health and health care in England. We help to shape policy and practice through research and analysis; develop individuals, teams and organisations; promote understanding of the health and social care system; and bring people together to learn, share knowledge and debate. Our vision is that the best possible care is available to all.

**Introduction**

- 2) We welcome the opportunity to inform the Health Committee's annual accountability hearing with Monitor. Since last year's hearing Monitor has found itself facing sustained scrutiny, not least because of the issues arising from the Francis report, but also as its role in competition becomes clearer.

**Competition and co-operation**

- 3) There is a clear advantage in a sector-specific regulator that understands the nuances of health care provision. Since the previous hearing, Monitor has sought to clarify its role in relation to competition, although there are still only a limited number of cases to draw on. Recent experience of the application of competition law to the NHS, however, does suggest a clash of cultures between the NHS and the competition authorities. There remains a lack of clarity about the implications of the increased involvement of the competition authorities for provider-led initiatives to improve quality by centralising specialist services or to rationalise through merger.
- 4) There are clearly lessons to be learned by the NHS from the Competition Commission's recent decision to reject the proposed merger between Bournemouth and Poole hospitals. However, the risk is that this and other decisions result in competition law being seen as an impediment to service change. Monitor, working with the Office of Fair Trading and Competition Commission, need to ensure that scrutiny of merger and reconfiguration plans is proportionate and sensitive to the particular requirements of the health sector.
- 5) The joint statement issued by the competition authorities and Monitor following the Bournemouth and Poole merger decision indicates that they are committed to doing this and to ensuring that 'the merger review process is well understood, and operates as quickly and predictably as possible'. The statement makes clear that Monitor will have a bigger role in future in scrutinising and challenging the strategies of foundation trusts at an earlier stage. There is also an expectation that the competition authorities will give 'significant weight' to Monitor's advice. This offers the promise of mergers being reviewed more appropriately in future, provided that Monitor is able to call on relevant expertise in framing its recommendations.
- 6) Monitor will need to strengthen its own capabilities if it is to rise to this challenge and ensure that the interests of patients and concerns about quality and safety are at the forefront of its considerations.
- 7) In terms of procurement, ongoing cases such as the procurement of cancer services in Manchester will provide further insight into Monitor's approach to the application of procurement law. In previous evidence to this Committee, we have stressed the need for detailed guidance and support for commissioners to help them sensitively navigate procurement law if they are not to become

disproportionately risk averse. In the past, commissioners have tended to adopt a cautious approach to procurement, engaging in sometimes cumbersome and unnecessary tendering processes for fear of finding themselves in breach of competition law. This risk is that, faced with further confusion and uncertainty, they become even more risk averse, potentially undermining efforts to deliver integrated care. It is therefore essential that Monitor, working with NHS England, provides clear detailed guidance and ongoing support for commissioners.

### **Price setting**

- 8) We welcome the fact that Monitor has taken the opportunity of changes in the organisational architecture of the NHS and the shifting of responsibilities for the payment system to review how Payment by Results should develop.
- 9) While Payment by Results continues to have a role, alternative complementary payment systems are also needed to provide incentives that support the development of innovative local models of care, particularly in the direction of integrated care. As such we welcome Monitor's decision to agree to new rules for agreeing local prices and 'flexibilities', which are now referred to as 'local variations'.
- 10) Despite high-level support for integrated care from ministers and government, the progress in developing innovative payment systems that provide the right financial incentives for integrated care continues to be slow and there is a need for a much greater sense of urgency from Monitor to enable this.

### **Scope**

- 11) The Health Select Committee's report following the previous annual accountability hearing recognised that Monitor has a 'complex and demanding remit'. Indeed, as we have highlighted in our work, there is a high risk of regulatory failure, particularly if Monitor fails to attract sufficient staff with the right mix of skills and expertise. The task of authorising the remaining NHS trusts alone requires a significant expansion of its existing capacity, and its oversight of existing foundation trusts is likely to become increasingly challenging as more of them get into financial difficulties. As the Committee recognised in the report of last year's accountability hearing, Monitor has a complex and demanding remit. We are concerned about the expansion in the scope of Monitor's work. We note with interest discussions in Monitor's board papers of future health services research, for example, on the future of small hospitals. While it is important that Monitor takes a proactive approach to looking at the challenges facing the sector, this work should not detract from core functions.

### **Relationship with CQC**

- 12) We welcome the Memorandum of Understanding signed by the CQC as a sign of progress towards better joint working between the regulators. However, further work is needed, as the Berwick report identified, to reduce complexity and overlap between the different regulators.