British Dental Association

Memorandum of evidence to
the House of Commons Health Select Committee

Monitor

June 2011
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Executive summary and general points

1. The British Dental Association (BDA) is the professional association and trade union for dentists practising in the UK. Its 23,000-strong membership is engaged in all aspects of dentistry including general practice, salaried services, the armed forces, hospitals, academia and research, and includes students.

2. In its present form, the Health and Social Care Bill requires Monitor to license primary care providers. The Secretary of State can create exemptions via regulation. As we made clear in our response to the Government’s White Paper Regulating Healthcare Providers, the BDA does not consider that imposing a further level of bureaucracy on primary dental care will provide any benefit to patients, dentists or commissioners.

3. Monitor has made it clear that it regards its priority to be the licensing and regulation of Foundation Trusts and not primary care providers. The BDA welcomes this practical approach to market regulation. We have sought clarification from Ministers that dental practices will be exempt but await confirmation.

4. General dental practice has always existed in a competitive market. Patients can choose which practice they attend. An effective and clear system of market regulation already exists. The Office of Fair Trading already has the authority to address patient concerns and anti-competitive behaviour. We seek assurances that there will be no duplication of regulation in this area.

5. In order to ensure that the dental budget is spent in the most appropriate way, the BDA considers that it will be more important for the NHS Commissioning Board’s commissioning processes to be held up to scrutiny, a role Monitor explained as being in the Bill already in its evidence to the Committee in February and which we also called for in our response to Regulating Healthcare Providers.

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1 In Monitor’s responses to the NHS reform White Papers, c.f paragraph 12 below.
2 This role is supported by Monitor in its evidence to the Committee in February: http://www.publications.parliament.uk/pa/cm201011/cmselect/cmhealth/796/796we05.htm
Response

6. We believe that all regulation must be proportionate, non-duplicative, tailored to the sector, in patients’ best interests and represent value for money. We have grave doubts that regulation of primary care dental providers by the Care Quality Commission fulfils these criteria and cannot see the advantage in economic regulation by Monitor.

7. Privately-funded health and social care providers are excluded from regulation by Monitor on the grounds that they already exist in a market. We consider that the same applies to dentistry, including those with an NHS contract, as dental practices are independent businesses. We understand from its response to Regulating Healthcare Providers that Monitor does not see primary care as an area for regulation or licensing and we seek assurance that this is the Government’s understanding too.

8. As private businesses, all primary care dental practices (including practices offering only NHS services) are subject to existing competition laws and are, where necessary, regulated by the Office of Fair Trading (OFT). There does not appear to be any reason to suggest that OFT’s role in relation to dentistry, whether NHS or private, is to be discontinued. This role has been in evidence as recently as in June 2011, when OFT released its findings on the impact of a merger between Integrated Dental Holdings and Associated Dental Practices. In order to maintain high levels of quality in NHS dental care, the companies were obliged to relinquish NHS contracts in certain areas.

9. The NHS Co-operation and Competition Panel investigates cases arising in procurement, mergers and advertising for NHS-funded services and this body will in future become part of Monitor.

10. In the Government’s response to the Future Forum’s recommendations it states that:

“We will retain our proposals to give Monitor concurrent powers with the Office of Fair Trading, to ensure that competition rules can be applied by a sector-specific regulator with expertise in healthcare.”

11. The dental profession recognises the importance of regulation in markets but we have concerns that “concurrent powers” will result in confusion and duplication. We ask the Committee to seek clarification and assurance from Monitor that, if this proposal is taken forward, clear processes will be put in place to delineate the separate roles of the OFT and Monitor to avoid duplication.

12. In its response to Regulating Healthcare Providers Monitor itself recommends exempting holders of General Medical Service and Personal Medical Services contracts from registration saying that:

“Our initial view is that primary care provision could potentially be exempt from the requirement to hold the economic regulator's licence where the services are under the GMS/PMS contracts. Our reasoning is as follows:

- there are no requirements to set prices associated with this form of provision;

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5 Monitor Response to Regulating Healthcare Providers 11 October 2010 p. 18
• there is no identified need for sector-specific competition provisions; and

• the arrangements for ensuring continuity of services can be managed through commissioners and there is therefore no need to put such regulatory requirements on these providers.

However, because we would not be licensing GPs, it would be necessary to impose provisions on all other providers of NHS care.”

Monitor’s reasoning applies to holders of General Dental Service and Personal Dental Service contracts as well, with the exception of NHS patient charges which in any event are set by Parliament. It follows that, if the body charged with regulating providers of NHS care does not deem it appropriate to license general medical practitioners, general dental practitioners should also be exempt from the licensing structure.

The role

13. The BDA welcomed the assurances given by the Secretary of State, Andrew Lansley MP, to the Health Select Committee’s further inquiry into commissioning to the effect that the functions being given to Monitor are primarily a reconfiguration of its existing role, rather than new powers.

14. It is proposed that Monitor will have a role in ensuring that commissioning is based on quality of outcome and “wider social benefit” rather than just price. The BDA welcomes this approach and considers that Monitor should apply this scrutiny to the decision-making of commissioners of care.

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6 Examination of witnesses (questions 433-528) Health Committee – Minutes of Evidence
7 Choice and Competition NHS Future Forum 2011