

**Consultation on the interpretation and
application of the private patient
income cap – June 2008**



MONITOR CONSULTATION ON THE INTERPRETATION AND APPLICATION OF THE PRIVATE PATIENT INCOME CAP

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1. PURPOSE

This consultation document seeks views on the specific rules that NHS foundation trusts should follow in accounting for the income they earn from activities relating to the treatment of private patients and in ensuring they comply with the limitations placed on such income by section 44 of the National Health Service Act 2006 (the 2006 Act). This requirement is commonly referred to as the Private Patient Income cap (PPI cap).

Monitor, the Independent Regulator of NHS Foundation Trusts, is responsible for establishing the rules for NHS foundation trusts. In the case of the PPI cap, establishing clear rules for its implementation is not a simple issue and there is scope for different interpretations and approaches. The aim of this consultation is to allow for an informed discussion of the possible options and to allow interested parties to express their views to Monitor. The Monitor Board will use these responses to inform its decision on the rules to apply the PPI cap.

The restriction on the income earned by NHS foundation trusts from private patient charges is a legal requirement. This consultation does not seek to challenge this requirement. It is not a consultation on the legislation. It is a consultation on the approach Monitor should take in setting the detailed rules to interpret and apply the legislation.

The document is laid out in the following sections:

- Section 2 Background to the consultation, providing an introduction to NHS foundation trusts and the PPI cap.
- Section 3 Interpretation and application of the PPI cap. This section introduces the key issues in interpreting the legislation, Monitor's approach to date and possible alternative approaches.
- Section 4 Sets out three options for the rules governing the application of the PPI cap on which views are invited.

Consultation responses should be sent to Consultation@monitor-nhsft.gov.uk by 5pm on Tuesday 9 September 2008.

Alternatively written responses can be sent to:

Consultation of the interpretation and application of the PPI cap
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2 BACKGROUND TO THE CONSULTATION

2.1 Introduction to NHS foundation trusts

NHS foundation trusts were established with the aim of improving healthcare in England. The basic premise of the NHS foundation trust policy is that healthcare will be more efficient and effective if it is run locally by clinicians and managers than if directly managed from Whitehall.

Foundation trusts remain in the public sector and are committed to the core NHS principles of free care, based on need and not the ability to pay.

NHS foundation trusts have significant freedoms and, alongside these, new accountabilities.

The freedoms of NHS foundation trusts are designed to help them develop their own services and improve the quality of the care they deliver.

While they remain public institutions, NHS foundation trusts are free from central government control. They set their own strategies and make their own decisions to improve services for patients, within the framework of their contracts with commissioners. They can borrow commercially, retain surpluses and invest to meet local needs. NHS foundation trusts can enter into joint venture arrangements with other partners to provide health services and are also able to enter into commercial arrangements outside of the provision of healthcare in order to generate additional income to support their healthcare activities.

With these freedoms come important responsibilities. Boards of NHS foundation trusts are ultimately responsible for the success or failure of their organisation: there is no safety net. This is an important cultural shift and a new way of working. It fosters improved leadership, better financial management and innovation, all of which lead to improved health services for patients.

At a local level, NHS foundation trusts are accountable to local people and their staff through their members and governors, and to their primary care trust and other commissioners through their contracts for providing healthcare services.

NHS foundation trusts are accountable nationally to Parliament and to Monitor. Individual NHS foundation trusts lay their accounts before Parliament.

Monitor is responsible for authorising NHS foundation trusts, the design and operation of the financial and reporting regime within which they operate, and for holding NHS foundation trusts to account for compliance with their Terms of Authorisation. The Terms of Authorisation set out precisely and in detail the requirements placed on NHS foundation trusts. These include specific

performance requirements relating to finance (for example, to operate as a going concern) and service performance (including compliance with Department of Health national core standards and healthcare targets) and a number of important controls on NHS foundation trusts, designed to safeguard the interest of the taxpayer in NHS foundation trusts. The key controls are:

- limits on borrowing determined under Monitor's *Prudential Borrowing Code*;
- a requirement to provide mandatory services. Monitor currently treats all services commissioned by the NHS from foundation trusts as mandatory services. This means that an NHS foundation trust cannot withdraw from any service without Monitor's consent. Monitor will approve alterations to the mandatory services where the proposal is supported by the commissioner of the service;
- a block on the disposal of land or assets required for the delivery of mandatory services; and
- a cap on the proportion of income that an NHS foundation trust is allowed to earn from private patient charges (the PPI cap). The PPI cap and the rules which define it form the substance of this consultation.

2.2 NHS foundation trusts and the PPI cap

The legislation establishing NHS foundation trusts (as consolidated in the 2006 Act) makes specific provision to limit the proportion of income an NHS foundation trust can earn from private charges. The limit is set so that the proportion of income earned from private charges does not exceed the proportion of income accounted for by patient charges in the base year (2002/03 for all NHS foundation trusts that were previously NHS trusts).

In setting a cap on the proportion of income earned from private charges, the legislation seeks to provide a safeguard to ensure that NHS foundation trusts focus on their principal purpose of providing goods and services for the purposes of the health service in England. It is noteworthy that the PPI cap is not applied to NHS trusts, although it is the case that the Secretary of State for Health retains control over NHS trusts.

Establishing a limit on income from private charges based on the proportion of income accounted for by such charges in the base year has a number of consequences:

- there is a wide variation in the proportion of income NHS foundation trusts are allowed to earn from private charges. Many NHS foundation trusts have a PPI

cap of 0%. At the other end of the scale, the Royal Marsden NHS Foundation Trust has a PPI cap of 30.7%. The PPI cap for each NHS foundation trust is set out in annex A;

- for the NHS foundation trust sector as a whole the average PPI cap is 1.5%. Total private patient income across all NHS foundation trusts in 2007/08 was £165m (based on unaudited returns for 2007/08 from NHS foundation trusts);
- NHS foundation trusts can increase their income from private charges, but only if they also increase their NHS income by a similar proportion; and
- if an NHS foundation trust were to lose NHS income, for example, if its PCT decided to buy services from other providers, then it may have to reduce its income from private charges to stay within its PPI cap.

3. INTERPRETATION AND APPLICATION OF THE PPI CAP

3.1 Monitor's role in interpreting and applying the PPI cap

The 2006 Act creates a general capping power in relation to income from private charges and then assigns to Monitor, as the regulator, the role of developing detailed rules through the compliance and reporting regimes for NHS foundation trusts. It therefore falls to Monitor to interpret the requirements set out in the legislation and to provide clear, detailed rules for NHS foundation trusts to follow.

Monitor has had to interpret the legal framework and then provide a coherent and workable set of rules, aligned where possible with appropriate accounting principles that can be applied in practice by NHS foundation trusts. These rules are set out in the NHS foundation trust Financial Reporting Manual (the FReM).

This section of the document considers the key issues in setting the rules which satisfy the legislation and their effects on the PPI cap.

The key sections of the 2006 Act setting out the requirement for a PPI cap are:

- | | |
|---------------|---|
| Section 43(1) | <i>“An authorisation must authorise the NHS foundation trust to provide goods and services for purposes related to the provision of health care.”</i> |
| Section 43(2) | <i>“But the authorisation must secure that the principal purpose of the NHS foundation trust is the provision of goods and services for the purposes of the health service in England.”</i> |
| Section 44(2) | <i>“The power must be exercised.....with a view to securing that the proportion of the total income of an NHS foundation trust....derived from private charges is not greater than the proportion of the total income of the NHS trust derived from such charges in the base financial year.”</i> |
| Section 44(4) | <i>“Private charges means charges imposed in respect of goods and services provided to patients other than patients being provided with goods and services for the purposes of the health service.”</i> |

The legislation provides two clear requirements:

- 1 The PPI cap only relates to income arising from charges for goods and services provided to **patients**. Any income from charges for the provision of goods and services that are not provided (directly or indirectly) to patients are not included within the PPI cap; and
- 2 Charges relating to provision of goods and services to persons who are **patients for the purpose of the health service** are not included in the PPI cap. NHS foundation trusts are able to charge NHS patients for further services (such as car parking, telephones, private rooms) and the income from such charges will not count towards the PPI cap.

In other words, the legislation establishes two clear tests for inclusion of income within the PPI cap. First, there must be a service provided to a patient, and second, the patient must not be a patient for the purpose of the health service.

Beyond this, there is scope for different interpretations of how the PPI cap should be applied. This arises from the interpretation of two main points:

- whether the PPI cap should relate only to goods and services provided directly by the NHS foundation trust or should include other arrangements such as joint ventures; and
- whether the PPI cap should apply only to goods and services that are provided directly to patients or should also include goods and services provided by an NHS foundation trust to a third party which in turn provides goods and services to private patients.

The following sections discuss the possible interpretations, starting with the approach Monitor has taken to date, and then considering the potential implications of a wider interpretation on the two questions above.

3.2 Explanation of Monitor's approach to date

In applying the PPI cap, Monitor has interpreted section 44 of the 2006 Act in light of section 43 which sets out the functions of NHS foundation trusts. In essence, Monitor considers that the sections on the PPI cap should be read as relating to NHS foundation trusts' purpose of providing healthcare to patients. Therefore, Monitor interprets "*private charges*" in section 44(4) as meaning: "*charges imposed in respect of goods and services provided **by the NHS foundation trust** to patients other than patients being provided with goods and services for the purposes of the health service.*"

Under Monitor’s interpretation NHS foundation trusts must include within the PPI cap any income they earn from the provision of private healthcare by the NHS foundation trusts themselves.

The ability of NHS foundation trusts to form joint ventures and enter into other financial arrangements has been considered by Monitor. In line with Monitor’s interpretation that the PPI cap covers services provided by the trust itself, Monitor has to date required NHS foundation trusts to include the relevant proportion of income from any arrangement over which they have control. Monitor has required NHS foundation trusts to include the relevant proportion of income from subsidiaries, and Joint Arrangements which are Not Entities (JANEs) but has not required NHS foundation trusts to include income from other arrangements in which the NHS foundation trust has an interest but no overall control (for example, joint ventures, associates).

The rules for NHS foundation trusts in respect of the PPI cap are set out in the FReM which is updated annually by Monitor. The text of the 2006/7 FReM is reproduced at annex B. The 2007/08 FReM, in which the text of the 2006/7 FReM relating to the PPI cap is replicated, makes it clear that the PPI cap is currently under review and a decision will be taken by Monitor’s Board following this consultation.

The income to be included within the PPI cap under Monitor’s existing interpretation, arrived at following accounting and legal advice and previous consultations, is summarised in the table below.

Table 1: Coverage of PPI cap under Monitor’s current interpretation

	Provision by the NHS FT	Subsidiaries	JANEs
Provision of healthcare to patients other than for the purpose of the health service (private patients) <ul style="list-style-type: none"> ▪ UK private patients ▪ Overseas private patients 	All income included	Relevant proportion of income included Subsidiaries are separate entities over which the parent firm retains control through exerting a dominant influence	Relevant proportion of income included JANEs are joint arrangements which are not separate entities
Provision of ancillary services to private patients (where identifiable) <ul style="list-style-type: none"> ▪ Hotel charges 	All income included Some income may not be separately identifiable and represent de minimus levels, for example car parking fees for private patients. NHS foundation trusts are not expected to include this income	Relevant proportion of income included	Relevant proportion of income included

Monitor considers that this approach is both clear and workable for NHS foundation trusts. It has been subject to three separate consultation exercises (in December 2005, October 2006 and November 2007) as part of the annual consultation on updates to the FReM.

In the 2005 and 2006 consultations Monitor received one response on the PPI cap rules, which Monitor did not consider required amendment to its proposed approach. Monitor's consultation on the 2007/08 FReM closed on 7 December 2007. Comments were not specifically sought on the PPI cap rules as there was no proposed change to them. However, as usual, comments were invited generally. Unison, a trade union, responded in December 2007 challenging Monitor's approach to the PPI cap (see below). Pending resolution of this challenge, Monitor has stated that it will not finalise its 2008/9 FReM in respect of private patient income and the PPI cap.

3.3 Challenge to Monitor's approach

The basis of Unison's challenge is that Monitor should not restrict the PPI cap to income arising only from private patient charges applied by the NHS foundation trust directly or by entities under its direct control.

Unison argues that the phrase "*income ... derived from private charges*" in section 44 of the 2006 Act requires a much wider application of the PPI cap to include any arrangement where the income arises from the provision of goods and services to private patients, regardless of whether or not the NHS foundation trust provides those services.

As we understand Unison's argument, such an interpretation of section 44 would require the PPI cap to be applied in a manner that would include income from:

- a wider range of the potential financial structures and commercial arrangements into which an NHS foundation trust may enter; and
- the provision of goods and services to other entities which provide healthcare services to private patients.

Section 4 of this document considers the extensions to the PPI cap which would be associated with each of these interpretations.

3.4 Extending the PPI cap to cover a wider range of commercial arrangements

One of the freedoms of NHS foundation trusts is their ability to enter into joint arrangements with third parties. Such arrangements may allow an NHS foundation trust to work with a partner with specific expertise or attract new sources of investment. In other cases, a joint arrangement with a private healthcare provider may enable the service to reach a critical mass at which point it becomes viable.

The ability of NHS foundation trusts to enter into joint arrangements has implications for the application of the PPI cap. Monitor's approach to date has required NHS foundation trusts to include income from any joint arrangement under their control within the calculations of the PPI cap.

NHS foundation trusts may also enter into joint arrangements where they do not have overall control (for example, joint ventures or associates). Currently, income from such arrangements is not included in the calculation of private patient income. Part of the challenge by Unison to Monitor's application of the PPI cap is that income from such arrangements should be included. The rest of this section of the document considers how such arrangements could be brought into the PPI cap.

Table 2 (on page 11) sets out the range of joint arrangements that could potentially be adopted by an NHS foundation trust and the summary accounting treatment for each.

Table 2: Possible joint arrangements and their summary accounting treatment

Financial Structure	Subsidiaries	JANES (Joint Arrangement that is Not an Entity)	Joint Ventures	Associates	Investments
Nature of relationship	Investor exercises a dominant influence over its investee	A contractual arrangement under which the participants engage in joint activities that do not create an entity because it would not be carrying on a trade or business of its own	Investor holds a long-term interest and shares control under a contractual arrangement	Investor holds a participating interest and exercises significant influence	Investor holds an interest
Principal features	Control is the ability of an entity to direct the operating and financial policies of another entity with a view to gaining economic benefits from its activities. To have control the parent organisation must have both: i) the ability to deploy the economic resources of the investee or to direct it; and ii) the ability to ensure that any resulting benefits accrue to itself (with corresponding exposure to losses) and to restrict the access of others to those benefits	Tends to be based on long term relationship under some form of contractual agreement between the parties	Acting together, the venturers can control the venture and there are procedures for such joint action Each venturer has a veto over strategic policy decisions There is usually a procedure for settling disputes between venturers and, possibly, for terminating the joint venture	Investor has a long term interest and is actively involved, and influential, in the direction of its investee through its participation in policy decisions	Investor has limited influence or its interest is not long-term
Accounting treatment under UK GAAP	The investor should consolidate the assets, liabilities, results and cash flows of its subsidiaries on a line by line basis An adjustment should be made to account for minority interests	Participants in a JANE that is not an entity should account for their own assets, liabilities and cash flows, measured according to the terms of the agreement governing the arrangement	The investor should use the gross equity method of accounting. This is equity accounting with additional disclosures under which the investor's share of the aggregate gross assets and liabilities underlying the net amount included for the investment is shown on the face of the balance sheet and, in the profit and loss account, the investor's share of the investee's turnover is noted	The investor should use the equity method of accounting. The investor's consolidated profit and loss account should include its share of its associate's operating profit /loss immediately after group operating profit/loss. At and below the level of profit before tax, the investor's share of the relevant amounts for associates should be included within the amounts for the group. The investor's consolidated balance sheet should include as a fixed asset investment the investor's share of the net assets of its associates shown as a separate item	The investor recognises dividend payments in the I&E account

Accounting treatment for the various joint arrangements

Monitor has where possible followed generally accepted accounting practice (“GAAP”) in producing the FReM.

The PPI cap is a concept unique to NHS foundation trusts, and as such GAAP does not provide specific advice on the accounting practices to be followed. It is therefore for Monitor to determine a reasonable approach in the FReM.

It is possible to argue by analogy with GAAP that 100% of income from subsidiaries and share of operating profits for joint ventures and associates should be used in the calculation of private patient income for the purpose of the PPI cap, as these are the amounts that would be consolidated into the parent company’s accounts under GAAP. However, such an approach ignores other GAAP requirements, for example, to adjust for minority interests, and could lead to misstatement in the level of private patient income by NHS foundation trusts.

In the light of these considerations, advice received by Monitor is that if income relating to subsidiaries, joint ventures and associates is to be included in the calculation of private patient income for the purpose of the PPI cap, it should be on the basis of the relevant proportion of the income of the relevant subsidiary, joint venture or associate.

Investments

Investments are different from the other commercial arrangements discussed above. The investor has limited influence in the company in which the investment is made or may have an interest that is not for the long term.

NHS foundation trusts have legal powers to make investments. Monitor does not consider that the PPI cap was intended to restrict NHS foundation trusts from making investments.

It could be argued that income from investments should be included in the calculation of private patient income where the company in which the investment is made provides goods and services to private patients. This could be done, for example, on the basis of the relevant share of the income of the investee arising from private patient charges or the relevant proportion of the dividend paid. Calculating the proportion of the investee’s income which related to private patient charges, however, would be practically difficult.

Notwithstanding Monitor’s view on the powers of NHS foundation trusts to invest, one option (option 3), which represents the widest interpretation of the relevant provisions of the 2006 Act, includes the possibility of income from investments counting towards the PPI cap.

Charities

The definition of private patient income could be further extended to include the income earned by charities in providing goods and services to private patients, where the charity has a relationship with an NHS foundation trust. In general Monitor does not accept this view. Charities are separate legal entities regulated by the Charity Commission, which lays down strict requirements on the purpose and activities of any charity.

However, there may be circumstances where a charity could be considered a subsidiary. In such circumstances, it may be appropriate to include the relevant proportion of the income of the charity within the calculation of private patient income for the purpose of the PPI cap.

3.5 Extending the PPI cap to include other sources of income arising from the provision of goods and services to other bodies which provide healthcare to private patients

The previous section considered the possibility of taking a wider view of the PPI cap to include income from the provision of goods and services to private patients so that any arrangement in which the NHS foundation trust has an interest is included.

Under its broadest interpretation, the phrase '*derived from private charges*' (in section 44(2) of the 2006 Act) could be taken to include any transaction where the economic value is ultimately derived from a charge to a private patient. Under such an interpretation whether the NHS foundation trust or another body entirely levies the charge is not relevant. Adopting such an approach would significantly change the operation of the PPI cap and bring a wide range of other financial arrangements within its scope. These are summarised in table 3 on page 14.

Table 3: Sources of income for NHS foundation trusts which could be interpreted as falling within the PPI cap

Source of Income	Example
Provision of clinical goods and services to providers of private health services <ul style="list-style-type: none"> - Lab services - Provision of nursing staff - Provision of lab time - Pharmaceuticals 	<ul style="list-style-type: none"> - Clatterbridge Centre for Oncology NHS Foundation Trust manufactures chemotherapy drugs and supplies to private providers
Provision of facilities management goods and services to providers of private health services <ul style="list-style-type: none"> - Rental agreements - Laundry services 	<ul style="list-style-type: none"> - Chesterfield Royal Hospital NHS foundation trust provides facilities management services to a local private provider
Charitable income arising from charities funded through the provision of services to private patients	<ul style="list-style-type: none"> - Donations from a charity to an NHS foundation trust where the donation was funded by charges placed on private patients

Incorporating the above sources of income may introduce a number of technical challenges in accounting for private patient income. Many providers treat both NHS and private patients – indeed many NHS trusts and NHS foundation trusts provide services to both NHS and private patients. NHS foundation trusts would be required to identify whether their services were ultimately used to support provision to private patients or NHS patients in order to calculate their private patient income.

NHS foundation trusts would need to be able to allocate the use of their goods and services to individual patients treated by the entity to which they provide the service, or make a reasonable estimate of the proportion of the goods and services they provide which are used to support the treatment of private patients.

Putting such systems in place is likely to be complicated, bureaucratic and expensive.

3.6 Services to patients for the purpose of the health service

The 2006 Act limits the application of the PPI cap to income arising from fees and charges for patients who are not patients for the purpose of the health service.

The definition of “*for the purpose of the health service*” is therefore significant to the interpretation of the PPI cap.

Monitor considers the legislation was intended to limit the activity of NHS foundation trusts in relation to treating private patients.

In the light of this, Monitor is currently of the view that income from a range of activities which are not directly funded by a PCT or NHS body can be interpreted as being for the purpose of the health service and excluded from the PPI cap. The current list of such income sources is set out in table 4. Monitor is not proposing options in this consultation which would see any of these included in the PPI cap.

Table 4: Sources of income Monitor considers should be interpreted as for the purposes of the health service

Source of income	Example	Possible treatment under the PPI cap
Income from insurers under the NHS Personal Injury scheme (and other insurance products excluding private health insurance)	- NHS organisations can reclaim the costs of treating patients from insurers for example in relation to road traffic accidents	Currently excluded from the definition of PPI. Activity is clearly for the purpose of the health service
Provision of healthcare to EEA nationals under reciprocal agreements or in an emergency	- Treatment costs covered under reciprocal agreements such as the E111 and E112 schemes	Currently excluded from the definition of PPI. Activity is clearly for the purpose of the health service. Note overseas patients who are not treated under reciprocal agreements do count towards the calculation of PPI
Provision of care services to public bodies other than NHS bodies	- Some NHS foundation trusts provide services to the military under contract to the Ministry of Defence - There may be circumstances where NHS foundation trusts provide services under contract to a local authority or the prison service	Currently excluded. As the definition of private charges is based on excluding patients for the purpose of the health service this stance relies on interpreting the work for other public bodies as being for the purpose of the health service. However Monitor does not believe Parliament intended these contracts to fall within the definition of PPI
Provision of ambulance cover to public events	- Ambulance trusts are paid to provide cover at major public events	To date no NHS ambulance trusts have been authorised as NHS foundation trusts but this income would fall outside of the existing definition of PPI

4. OPTIONS FOR CONSULTATION

This section of the document takes the different possible ways of setting the rules for the PPI cap and organises them into three options for consultation.

Monitor is seeking views from NHS foundation trusts and all other interested parties on the option they consider would be most appropriate. Monitor accepts there are other possible options and would welcome responses suggesting any considered more appropriate than those Monitor has suggested.

The options are set out in a matrix form allowing for comparison between them, and for easier modification if respondents identify further cells of the matrix which they believe should be included or excluded in the PPI cap.

Where respondents wish to propose an alternative option it would be helpful if they could identify the rules by which the option could be applied in the FReM and the reasons for their fit with the 2006 Act.

Option 1 Monitor's current approach

This option sets out the approach Monitor has taken to date.

Option 1 Monitor's current approach

	NHS foundation trust	JANEs (Joint Arrangements that are Not Entities)	Subsidiaries	Associates including agency arrangements	Joint Ventures including companies limited by shares, companies limited by guarantee, and community interest companies	Investments
Provision of healthcare to UK patients other than for the purpose of the health service (private patients)	All income included	Relevant proportion of income included	Relevant proportion of income included	Excluded	Excluded	Excluded
Provision of healthcare to overseas private patients	All income included	Relevant proportion of income included	Relevant proportion of income included	Excluded	Excluded	Excluded
Provision of ancillary services to private patients (where identifiable)	Income included (beyond de minimus levels)	Relevant proportion of income included (beyond de minimus levels)	Relevant proportion of income included (beyond de minimus levels)	Excluded	Excluded	Excluded
Provision of clinical goods and services to providers of services to private patients	Excluded	Excluded	Excluded	Excluded	Excluded	Excluded
Provision of facilities management goods and services to providers of services to private patients	Excluded	Excluded	Excluded	Excluded	Excluded	Excluded
Donations from charities funded through the provision of services to private patients	Excluded	Excluded	Excluded	Excluded	Excluded	Excluded

Implications

Under this option NHS foundation trusts would continue to be required to include within the PPI cap any income they earn from the provision of private healthcare, including the relevant proportion of income earned by their subsidiaries or any JANEs.

Income arising from any joint arrangement over which the NHS foundation trust does not have control, or from the provision of goods and services to third parties which then provide private healthcare, would not be included in the PPI cap.

The approach to the FReM

Under this option, the FReM would remain materially unchanged (minor presentational changes have been made to allow easy comparison between the 3 options)

FReM wording under Option 1

Private patient income

Section 44 of the 2006 Act requires that the proportion of private patient income to the total patient related income of NHS foundation trusts should not exceed its proportion whilst the body was an NHS Trust in 2002/03 (the Private Patient Cap). If the predecessor NHS Trust was not in existence in 2002/03 the proportion in the first year of existence of the predecessor NHS Trust should be used. The NHS foundation trust's Private Patient Cap is set out in the NHS foundation trust's Terms of Authorisation. If the cap is amended by Monitor subsequent to authorisation then the revised cap should be disclosed with a narrative disclosure as to why the change has been made.

The following table should be included in the notes to the income and expenditure account:

	200x/xx	2002/03 [or state base year]
Private patient income		
Total patient related income		
Proportion (as a percentage)	%	%

Private patient income is defined as:

- patient related income arising from charges imposed by the NHS foundation trust in respect of goods and services provided by the NHS foundation trust directly to patients other than for the purposes of the National Health Service; and
- the relevant proportion of any income from subsidiaries (as defined by FRS 2) arising from charges in respect of goods and services provided directly to patients other than for the purposes of the National Health Service. The relevant proportion is in relation to the interest held over the period in which the income arose. Income from joint arrangements that are not entities also falls within the scope of the definition of private patient income.

For the avoidance of doubt, income receivable in relation to NHS patients but not receivable from NHS bodies (e.g. NHS Injury Scheme income) and income for EEA, other overseas patients treated under reciprocal healthcare agreements and treatment given in an accident and emergency department are not private patient income. Further guidance in this area is set out in the National Health Service (Charges to Overseas Visitors) Regulations 1989, as amended, located on the Department of Health's website.

Patient related income includes the following:

- income received from PCTs and specialist commissioners for contracted patient care

services;

- income received from other NHS trusts for contracted patient care services;
- income received from the Department of Health for patient care services;
- other income for patient care services (including NHS Injury Scheme income, income from the Ministry of Defence, local authorities, the prison service, etc.);
- any amounts received from SHAs for patient care services, including income for overseas patients treated under reciprocal agreements; and
- non-NHS private patient income as defined above.

Any income receivable from NHS bodies that is not related to the provision of healthcare and falls outside the scope of contracts for patient care should not be included in the calculation of patient related income.

NHS foundation trusts should also include within this note narrative explaining that section 44 of the 2006 Act requires that the proportion of private patient income to the total patient related income of NHS foundation trusts should not exceed its proportion whilst the body was an NHS Trust in 2002/03 or the base year.

Option 2 Including income from a wider range of joint arrangements

This option would address concerns that income arising from NHS foundation trusts engaging as minority partners in joint arrangements to deliver private healthcare is not captured within the current definition of the PPI cap.

Option 2 Including income from a wider range of joint arrangements

	NHS foundation trust	JANEs (joint arrangements that are not entities)	Subsidiaries	Associates including agency arrangements	Joint Ventures including companies limited by shares, companies limited by guarantee, and community interest companies	Investments
Provision of healthcare to UK patients other than for the purpose of the health service (private patients)	All income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included	Excluded
Provision of healthcare to overseas private patients	All income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included	Excluded
Provision of ancillary services to private patients (where identifiable)	Income included (beyond de minimus levels)	Relevant proportion of income included (beyond de minimus levels)	Relevant proportion of income included (beyond de minimus levels)	Relevant proportion of income included (beyond de minimus levels)	Relevant proportion of income included (beyond de minimus levels)	Excluded
Provision of clinical goods and services to providers of services to private patients	Excluded	Excluded	Excluded	Excluded	Excluded	Excluded
Provision of facilities management goods and services to providers of services to private patients	Excluded	Excluded	Excluded	Excluded	Excluded	Excluded
Donations from charities funded through the provision of services to private patients	Excluded	Excluded	Excluded	Excluded	Excluded	Excluded

Implications

This option would extend the definition of private patient income so that any involvement of the NHS foundation trust in the provision of goods and services to private patients from which the NHS foundation trust received income would be included, regardless of whether the NHS foundation trust itself directly controlled the delivery of care.

This approach would place more restrictions on NHS foundation trusts than the current one by making income earned from joint ventures and associates count towards the PPI cap.

Under this option the NHS foundation trust would include its share of the income of the associate or joint venture arrangement within its calculation of private patient income. Income would be included in proportion to the respective interests held over the period within which the income arose. Monitor does not believe these arrangements are currently widespread. However the implications of adopting this option could be significant for those hospitals that have developed such arrangements, and it could further restrict future options.

Approach to the FReM

The section below sets out how Option 2 would be worded within the FReM.

FReM wording under Option 2

Private patient income

Section 44 of the 2006 Act requires that the proportion of private patient income to the total patient related income of NHS foundation trusts should not exceed its proportion whilst the body was an NHS Trust in 2002/03 (the Private Patient Cap). If the predecessor NHS Trust was not in existence in 2002/03 the proportion in the first year of existence of the predecessor NHS Trust should be used. The NHS foundation trust's Private Patient Cap is set out in the NHS foundation trust's Terms of Authorisation. If the cap is amended by Monitor subsequent to authorisation then the revised cap should be disclosed with a narrative disclosure as to why the change has been made.

The following table should be included in the notes to the income and expenditure account:

	200x/xx	2002/03 [or state base year]
Private patient income		
Total patient related income		
Proportion (as a percentage)	%	%

Private patient income is defined as:

- patient related income arising from charges imposed by the NHS foundation trust in respect of goods and services provided by the NHS foundation trust directly to patients other than for the purposes of the National Health Service;
- the relevant proportion of any income from subsidiaries (as defined by FRS 2) joint ventures or associates (as defined by FRS 9) arising from charges in respect of goods and services provided directly to patients other than for the purposes of the National Health Service. The relevant proportion is in relation to the interest held over the period in which the income arose. Income from Joint Arrangements that are Not Entities

(JANEs) also falls within the scope of the definition of private patient income.

For the avoidance of doubt, income receivable in relation to NHS patients but not receivable from NHS bodies (e.g. NHS Injury Scheme income) and income for EEA, other overseas patients treated under reciprocal healthcare agreements and treatment given in an accident and emergency department are not private patient income. Further guidance in this area is set out in the National Health Service (Charges to Overseas Visitors) Regulations 1989, as amended, located on the Department of Health's website.

Patient related income includes the following:

- income received from PCTs and specialist commissioners for contracted patient care services;
- income received from other NHS trusts for contracted patient care services;
- income received from the Department of Health for patient care services;
- other income for patient care services (including NHS Injury Scheme income, income from the Ministry of Defence, local authorities, the prison service, etc.);
- any amounts received from SHAs for patient care services, including income for overseas patients treated under reciprocal agreements;
- the relevant proportion of income received by subsidiaries, JANEs, joint ventures and associates arising from the provision of goods and services to NHS patients; and
- non-NHS private patient income as defined above.

Any income receivable from NHS bodies that is not related to the provision of healthcare and falls outside the scope of contracts for patient care should not be included in the calculation of patient related income.

NHS foundation trusts should also include within this note narrative explaining that section 44 of the 2006 Act requires that the proportion of private patient income to the total patient related income of NHS foundation trusts should not exceed its proportion whilst the body was an NHS Trust in 2002/03 or the base year.

Option 3 Including a wider range of joint arrangements and any income from the provision of goods and services to providers of private healthcare

This option represents the widest interpretation of the 2006 Act and would capture any income to the NHS foundation trusts which was connected with the provision of private healthcare whether by the NHS foundation trust or some other body. Option 3 includes all the arrangements included in Option 2 and adds income received from the provision of goods and services to third parties which provide private health care, income from investments and charitable donations that are funded by the provision of private healthcare.

Option 3 Including a wider range of joint arrangements, investments and donations and any income from the provision of goods and services to providers of private healthcare

	NHS foundation trust	JANes (Joint Arrangements that are Not Entities)	Subsidiaries	Associates including agency arrangements	Joint Ventures including companies limited by shares, companies limited by guarantee, and community interest companies	Investments
Provision of healthcare to UK patients other than for the purpose of the health service (private patients)	All income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included
Provision of healthcare to overseas private patients	All income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included
Provision of ancillary services to private patients (where identifiable)	Income included (beyond de minimus levels)	Relevant proportion of income included (beyond de minimus levels)	Relevant proportion of income included (beyond de minimus levels)	Relevant proportion of income included (beyond de minimus levels)	Relevant proportion of income included (beyond de minimus levels)	Relevant proportion of income included
Provision of clinical goods and services to providers of services to private patients	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included
Provision of facilities management goods and services to providers of services to private patients	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included	Relevant proportion of income included
Donations from charities funded through the provision of services to private patients	Relevant proportion of donations included	Donations included in determining the relevant proportion of income	Donations included in determining the relevant proportion of income	Donations included in determining the relevant proportion of income	Donations included in determining the relevant proportion of income	Donations included in determining the relevant proportion of income

Implications

Adopting this approach would have more significant consequences for the application of the PPI cap. This interpretation would encompass a considerably wider range of income than the approach currently set out in the FReM.

In addition to the implications of Option 2, adopting Option 3 would require NHS foundation trusts to include in their calculation of private patient income:

- (i) income from the provision of goods and services to third parties which then used those goods and services to provide services to private patients;
- (ii) income from investments, where the income of the company in which the NHS foundation trust had invested is derived from charges to private patients; and
- (iii) donations from charities where the donation was funded by private patient charges.

These are discussed briefly below.

(i) Income from the provision of goods and services to third parties

This option would require NHS foundation trusts to include income from the provision of goods and services to third parties, if those goods and services were then used to provide services to private patients. A wide range of services could potentially be included. For example, income from the provision of drugs or laboratory services to private health care providers would be included as private patient income. Income from rental agreements or provision of facilities management services (for example, laundry services) would also be included.

NHS foundation trusts would have to introduce systems to identify whether the services they provide to other entities are used to support the treatment of private patients. As many providers (not least NHS organisations) provide care for both private and NHS patients this could be both complex and bureaucratic. NHS foundation trusts would need to be able to allocate the use of their goods and services to individual patients treated by the entity to whom they provide the service, or make a reasonable estimate of the proportion of the goods and services they provide that are used to support the treatment of private patients.

Many NHS organisations are involved in such activities. If this option were to be adopted the baseline for the PPI cap would also need to be recalculated to include this wider range of services. Arrangements to provide goods and services to providers of private care that were in place in 2002/03 could continue. However, where NHS foundation trusts have increased their activity in these areas since 2002/03 they may have to unwind their arrangements with the

subsequent loss of services and potentially write off of investments. In some cases the impact could fall on both private and NHS patients.

NHS foundation trusts would also face limits on their ability to provide services to private healthcare providers even when such provision has no impact or a positive impact on NHS provision. For example, an NHS foundation trust may be prevented from leasing spare capacity to a private healthcare provider even if the capacity was not required to treat NHS patients. Alternatively, NHS foundation trusts may be prevented from providing laboratory services even if this had no implications for meeting NHS demand and could earn returns for re-investment in the NHS.

(ii) Investments

Under this option the relevant proportion of the income of the company in which the NHS foundation trust had invested would be included in the NHS foundation trust's calculation of private patient income.

The relevant proportion of income would need to be calculated to take account of the proportion of the company's income related to the provision of goods and services to patients other than for the purpose of the health service, and the NHS foundation trust's interest in the company over the relevant period. This is likely to be practically difficult.

(iii) Donations

Income from donations would be included in the calculation of private patient income under this option, if the donation was funded from charges to private patients.

On receipt of charitable donations NHS foundation trusts would need to take account of how the charity raised the funds. If the charity raised them from provision of services to private patients then the relevant proportion of the donation would have to be included as private patient income.

Approach to the FReM

The section below sets out how Option 3 would be worded within the FReM.

Possible FReM wording under Option 3

Private patient income

Section 44 of the 2006 Act requires that the proportion of private patient income to the total patient related income of NHS foundation trusts should not exceed its proportion whilst the body was an NHS Trust in 2002/03 (the Private Patient Cap). If the predecessor NHS Trust was not in existence in 2002/03 the proportion in the first year of existence of the predecessor NHS Trust should be used. The NHS foundation trust's Private Patient Cap is set out in the NHS foundation trust's Terms of Authorisation. If the cap is amended by Monitor subsequent to authorisation then the revised cap should be disclosed with a narrative disclosure as to why the change has been made.

The following table should be included in the notes to the income and expenditure account:

	200x/xx	2002/03 [or state base year]
Private patient income		
Total patient related income		
Proportion (as a percentage)	%	%

Private patient income is defined as:

- patient related income arising from charges imposed by the NHS foundation trust in respect of goods and services provided by the NHS foundation trust directly to patients other than for the purposes of the National Health Service;
- the relevant proportion of any income from subsidiaries (as defined by FRS 2), Joint Ventures or Associates (as defined by FRS 9) arising from charges in respect of goods and services provided directly to patients other than for the purposes of the National Health Service. The relevant proportion is in relation to the interest held over the period in which the income arose. Income from joint arrangements that are not entities also falls within the scope of the definition of private patient income;
- the relevant proportion of any income of companies in which the NHS foundation trust holds investments arising from charges in respect of goods and services provided directly to patients other than for the purposes of the National Health Service;
- income to the NHS foundation trust from the provision of goods and services to another entity which uses them to provide goods and services to patients other than for the purpose of the National Health Service. NHS foundation trusts will need to determine whether the goods and services they provide are to be used for the provision of goods and services to private patients. Where they cannot allocate the use of the goods and services directly to individual patients the NHS foundation trust will need to make a

reasonable estimate of the goods and services used in the treatment of private patients; and

- donations from charities where the donation was funded from charges imposed on patients other than for the purposes of the National Health Service;

For the avoidance of doubt, income receivable in relation to NHS patients but not receivable from NHS bodies (e.g. NHS Injury Scheme income) and income for EEA, other overseas patients treated under reciprocal healthcare agreements and treatment given in an accident and emergency department are not private patient income. Further guidance in this area is set out in the National Health Service (Charges to Overseas Visitors) Regulations 1989, as amended, located on the Department of Health's website.

Patient related income includes the following:

- income received from PCTs and specialist commissioners for contracted patient care services;
- income received from other NHS trusts for contracted patient care services;
- income received from the Department of Health for patient care services;
- other income for patient care services (including NHS Injury Scheme income, income from the Ministry of Defence, local authorities, the prison service, etc.);
- any amounts received from SHAs for patient care services, including income for overseas patients treated under reciprocal agreements
- the relevant proportion of income received by subsidiaries, JANEs, joint ventures and associates arising from the provision of goods and services to NHS patients;
- income to the NHS foundation trust from the provision of goods and services to another entity which uses them to provide goods and services to NHS patients; and
- non-NHS private patient income as defined above.

Any income receivable from NHS bodies that is not related to the provision of healthcare and falls outside the scope of contracts for patient care should not be included in the calculation of patient related income.

NHS foundation trusts should also include within this note narrative explaining that section 44 of the 2006 Act requires that the proportion of private patient income to the total patient related income of NHS foundation trusts should not exceed its proportion whilst the body was an NHS Trust in 2002/03 or the base year.

4.1 Case studies

The following case studies provide examples of the kind of arrangements NHS foundation trusts have in place and the potential implications of changing the application of the PPI cap. These case studies are for illustration and the facts are as presented by the NHS foundation trusts in pre-consultation discussions. Opinions as to potential implications are those of the NHS foundation trusts concerned.

Case Study 1

Poole Hospital NHS Foundation Trust provides facilities management and pathology services to a private hospital operator, and the income the Trust receives is not currently considered to be private patient income. The Trust is not directly involved in the provision of services to private patients and the net income generated from the contractual arrangements is invested in developing the Trust's NHS services.

Including this income in the definition of private patient income would result in the Trust breaching its PPI cap and its Terms of Authorisation, and necessitate a review of the contractual arrangements. In the event these were terminated, the Trust would no longer have this income stream for reinvestment in the Trust's NHS services, some staff may need to be redeployed in the Trust or potentially made redundant.

Case Study 2

Basildon and Thurrock University Hospitals NHS Foundation Trust has provided a range of private patient services for a number of years and the type of service provided has not changed since the Trust's PPI cap was set at authorisation on 1 April 2004.

However, in July 2007 the Trust opened a new Cardiac Centre that provides services to both private and NHS patients. The key driver of this service development, which is supported by commissioners, is to ensure that local patients do not have to travel as far for cardiac services as was previously the case.

Private services are performed by Ramsay Healthcare, an independent company selected through competitive tender. Ramsay treats private patients from facilities that it rents within the Cardiac Centre from the Trust. Ramsay invoices the private patients and receives the income. In return for the use of the fully

serviced beds in the Trust (including use of wider Trust services such as theatres), Ramsay pays a rental charge which has a fixed element and also a variable element based on the volume of patients treated. Ramsay employs its own staff, except for qualified nurses whom they second from the Trust for a separate payment.

The Trust has received advice from its external auditors and legal advisers that the rental income, and also the income from providing qualified nurses on secondment, should not be treated as private patient income. (Both of these income streams are classified as 'other operating income - other' in the Trust's accounts).

Although the Cardiac Centre may have been affordable if the business case had been submitted on the assumption it would treat NHS patients only, the Trust decided to include private patient work for the following reasons:

- the Cardiac Centre makes a positive financial contribution to the Trust that is reinvested in the provision of services to NHS patients;
- consultants do not need to travel to other trusts to perform private patient work in their non-contracted hours, which improves clinical safety as they are on site at the Cardiac Centre for a larger percentage of their time;
- the inclusion of a private patient facility in the Cardiac Centre assists in the recruitment and retention of cardiologists for the Trust; and
- there is no adverse impact on the range and volume of care provided to NHS patients.

In the event the FReM rules required income from Ramsay to count towards the PPI cap, the Trust considers it would need to close the private patient section of the Cardiac Centre to avoid breaching its PPI cap and Terms of Authorisation. Potential impacts would include the absence of income to be reinvested for the benefit of NHS patients at the Trust, and adverse effect on recruitment and retention of staff, and staff exit costs.

Case Study 3

Liverpool Women's NHS Foundation Trust currently provides in vitro fertilisation (IVF) services from a standalone facility owned by the Trust, which currently treats approximately 900 NHS patients and 500 private patients.

The Trust has signed a 10-year contract with North West Fertility Ltd to provide IVF services to private patients. The key driver for the IVF clinic is to provide high quality IVF services to all patients and to allow continuity of service for NHS patients who wish to continue on a private basis.

The private clinic referrals include:

- NHS patients who wish to continue with their treatment beyond the NHS entitlement;
- patients who are not entitled to treatment under the NHS (e.g. over 39 years of age); and
- patients who choose a private clinic for all of their treatment.

North West Fertility is a private limited company that operates independently of the Trust, which makes its own commercial decisions and also works in partnership with the Trust for the provision of IVF services. The Trust charges North West Fertility for the provision of the following services:

- drugs;
- HFEA Fees;
- costs of services allocated between both parties based on weighted work load units, typically on a 60%/40% split to reflect relative value; and
- contribution to overheads based on a fixed payment (including a rental charge at commercial rates) plus a variable charge to reflect increased levels of activity.

North West Fertility is responsible for payment of consultants for work undertaken with private patients, whilst the Trust pays consultants under the terms and conditions of the Consultant Contract for NHS activities.

The benefits achieved from including the private patient activity in the IVF facility include:

- ability to attract consultants and scientists that will have a positive impact on all staff and patients;
- the largest laboratory site in England to support provision of IVF services for all patients; the laboratory also undertakes work for a number of other trusts;
- investment in the facility to comply with EU clean air standards and to provide environmental improvements for all patients;
- training opportunities for staff due to the size of the facilities;
- additional services available for all patients, including sperm bank and egg freezing;
- efficiencies achieved or additional costs incurred from increased activity are shared by both parties through the recharge mechanism;
- the model encourages the delivery of NHS contracts and services as this has a benefit through the RVU charges; and
- any spare capacity is fully utilised from private patient referrals and positive contributions can be maintained.

In the event the FReM rules required income the Trust receives from North West Fertility to count towards the PPI cap, the Trust would breach its PPI cap and its terms of Authorisation. Rectification options for the Trust would include termination of the contractual arrangements. The impact of termination would include the loss of benefits as outlined above, disruption to patient services (both NHS and private), a possible adverse effect upon the Trust's reputation for the provision of women's services and potential redundancy of NHS staff.

4.2 Consultation questions

Monitor is seeking responses to the following questions:

1. Which of the options set out in this consultation document do you consider is the most appropriate, and why?
2. Do you consider that there are any modifications which could be made to any of the options which would provide a more appropriate approach, and if so what are they?
3. Are the rules to implement each option (as set out in the text for the FReM for each option) clear and workable, and if not how should they be amended?
4. Do you agree with excluding the income raised from the services set out in section 3.6 from the calculation of private patient income? Please give reasons.
5. What do you consider would be the impact of adopting each of the options, on your organisation and on the delivery of NHS care as a whole?
6. Are there any other comments you would like to make?

Responses should be sent to Consultation@monitor-nhsft.gov.uk by 5pm Tuesday 9 September 2008. Monitor will publish a summary of the responses received.

Alternatively written responses can be sent to:

Consultation of the interpretation and application of the PPI cap
Monitor
4 Matthew Parker Street
London
SW1H 9NP

Monitor will also be consulting on the 2008/09 FReM over the summer of 2008. Consultees whose interest is limited to the PPI cap may choose only to respond to this consultation on the interpretation and application of the PPI cap.

What happens next?

The responses to the consultation will be analysed and used to inform the Monitor Board in deciding how to apply the PPI cap to NHS foundation trusts. The Board's decision will be published in late 2008.

If the Board reaches a decision to change the application of the PPI cap then it will also consider the practical implications of any such change and the potential need for an appropriate transition mechanism for NHS foundation trusts affected.

Glossary

Associates

When a parent company has an interest that falls short of giving it control, but which does give it substantial influence, the company is regarded as an associate rather than a subsidiary.

Commissioners / specialist commissioners

This consultation document refers to commissioners of local health and social care services within Primary Care Trusts (PCTs) and specialist commissioners, who commission more specialist services across a wider geographical area (regionally or nationally).

Dividends

The share of a company profits that it decides to pay to its shareholders.

EEA

European Economic Area.

FReM (Financial Reporting Manual)

This manual is produced by Monitor and sets out the financial reporting rules for NHS foundation trusts. Changes to the FReM are consulted on each year.

FRS2 (Financial Reporting Standard 2)

FRS2 is a financial reporting standard issued by the Accounting Standards Board. It sets out the conditions under which an organisation qualifies as a parent undertaking, which should prepare consolidated financial statements for itself and its subsidiaries. In general an investor that controls an investee entity is deemed to be that entity's parent and should therefore account for that entity as a subsidiary.

GAAP (Generally Accepted Accounting Principles)

The set of legal regulations and accounting standards that dictate best practice. In general, Monitor rules encourage NHS foundation trusts to follow GAAP.

JANEs (Joint Arrangements that are Not Entities)

An arrangement under which participants engage in joint activities that do not create a separate entity, because it would not be carrying on a trade or business of its own i.e. it is an extension of the participants' existing business.

Joint ventures

Two or more businesses working together on a single project, who have agreed to share profits, costs and control.

Reciprocal healthcare agreement

If a country has a reciprocal healthcare agreement with another country its citizens are entitled to urgent medical treatment while visiting that country, either free or at reduced cost.

Subsidiaries

A company is the subsidiary of another if the latter either owns a controlling stake (usually 50% or more of ordinary shares) or has control of it through other means (such as a management contract that gives it complete control). The company that has the controlling interest is called the parent company.

Terms of Authorisation (ToAs)

These are the terms agreed by Monitor when it authorises NHS foundation trusts. The ToA sets out the detailed conditions a foundation trust must continue to meet regarding finance, governance and mandatory services.

Annex A

Private Patient Income and the Private Patient Income cap for NHS foundation trusts at the end of Q4 2007/08

The table below provides details of the PPI cap for each NHS foundation trust (at 31 March 2008) and the private patient income for each NHS foundation trust based on unaudited returns from the NHS foundation trusts to Monitor.

NHS foundation trust	Private Patient Cap %	Private Patient Income £m 2007/08
Aintree University Hospitals NHS Foundation Trust	0.0%	0.0
Barnsley Hospital NHS Foundation Trust	0.1%	0.0
Basildon and Thurrock University Hospitals NHS Foundation Trust	0.6%	1.2
Basingstoke and North Hampshire NHS Foundation Trust	2.1%	2.2
Berkshire Healthcare NHS Foundation Trust	0.0%	0.0
Birmingham Children's Hospital NHS Foundation Trust	1.0%	0.4
Birmingham Women's NHS Foundation Trust	2.2%	0.2
Blackpool Fylde and Wyre Hospitals NHS Foundation Trust	0.0%	0.6
Bradford Teaching Hospitals NHS Foundation Trust	1.1%	1.2
Calderdale and Huddersfield NHS Foundation Trust	0.4%	0.5
Cambridge University Hospitals NHS Foundation Trust	2.0%	5.2
Camden and Islington NHS Foundation Trust	0.0%	0.0
Central and North West London NHS Foundation Trust	0.0%	0.0
Chelsea and Westminster Hospital NHS Foundation Trust	3.5%	6.9
Cheshire and Wirral Partnership NHS Foundation Trust	0.0%	0.0
Chesterfield Royal Hospital NHS Foundation Trust	0.1%	0.1
Christie Hospital NHS Foundation Trust	9.1%	8.7
City Hospitals Sunderland NHS Foundation Trust	0.3%	0.5
Clatterbridge Centre for Oncology NHS Foundation Trust	2.2%	0.4
Countess of Chester Hospital NHS Foundation Trust	0.6%	0.5
County Durham and Darlington NHS Foundation Trust	0.2%	0.2
Cumbria Partnership NHS Foundation Trust	0.0%	0.0
Derby Hospitals NHS Foundation Trust	1.1%	2.0
Doncaster and Bassetlaw Hospitals NHS Foundation Trust	0.2%	0.3
Dorset County Hospital NHS Foundation Trust	0.0%	0.5
Dorset Healthcare NHS Foundation Trust	0.0%	0.0
East London NHS Foundation Trust	0.0%	0.0
Frimley Park Hospital NHS Foundation Trust	4.9%	5.9
Gateshead Health NHS Foundation Trust	0.3%	0.4
Gloucestershire Hospitals NHS Foundation Trust	2.0%	5.0
Gloucestershire Partnership NHS Foundation Trust	0.0%	0.0
Greater Manchester West Mental Health NHS Foundation Trust	0.0%	0.0
Guy's and St Thomas' NHS Foundation Trust	2.5%	12.3
Harrogate and District NHS Foundation Trust	3.0%	1.8
Heart of England NHS Foundation Trust	0.2%	0.6
Heatherwood and Wexham Park Hospitals NHS Foundation Trust	0.0%	2.3
Hertfordshire Partnership NHS Foundation Trust	0.0%	0.0
Homerton University Hospital NHS Foundation Trust	0.2%	0.3
James Paget University Hospitals NHS Foundation Trust	1.3%	0.8
King's College Hospital NHS Foundation Trust	3.5%	11.7
Lancashire Care NHS Foundation Trust	0.0%	0.0

Lancashire Teaching Hospitals NHS Foundation Trust	0.5%	0.8
Leeds Partnerships NHS Foundation Trust	0.0%	0.0
Lincolnshire Partnership NHS Foundation Trust	0.0%	0.0
Liverpool Women's NHS Foundation Trust	1.8%	0.1
Luton and Dunstable Hospital NHS Foundation Trust	1.8%	1.9
Mid Staffordshire NHS Foundation Trust	1.2%	0.0
Milton Keynes NHS Foundation Trust	0.5%	0.3
Moorfields Eye Hospital NHS Foundation Trust	13.7%	9.0
Norfolk & Waveney Mental Health NHS Foundation Trust	0.0%	0.0
North Essex Partnership NHS Foundation Trust	0.0%	0.0
North Tees and Hartlepool NHS Foundation Trust	0.1%	0.0
Northern Lincolnshire and Goole Hospitals NHS Foundation Trust	1.8%	1.5
Northumbria Healthcare NHS Foundation Trust	0.1%	0.2
Oxleas NHS Foundation Trust	0.0%	0.0
Papworth Hospital NHS Foundation Trust	6.1%	4.6
Peterborough and Stamford Hospitals NHS Foundation Trust	0.6%	0.6
Poole Hospital NHS Foundation Trust	0.4%	0.3
Queen Victoria Hospital NHS Foundation Trust	0.1%	0.1
Rotherham Doncaster and South Humber Mental Health NHS Foundation Trust	0.0%	0.0
Royal Berkshire NHS Foundation Trust	1.6%	2.9
Royal Devon and Exeter NHS Foundation Trust	1.2%	1.5
Royal National Hospital For Rheumatic Diseases NHS Foundation Trust	1.3%	0.2
Salford Royal Hospitals NHS Foundation Trust	0.4%	0.6
Salisbury NHS Foundation Trust	0.6%	0.4
Sheffield Children's Hospital NHS Foundation Trust	0.2%	0.1
Sheffield Teaching Hospitals NHS Foundation Trust	0.8%	3.5
Sherwood Forest Hospitals NHS Foundation Trust	0.2%	0.1
South Devon Healthcare NHS Foundation Trust	0.3%	0.5
South Essex Partnership NHS Foundation Trust	0.0%	0.0
South London and Maudsley NHS Foundation Trust	0.0%	0.0
South Staffordshire and Shropshire Healthcare NHS Foundation Trust	0.0%	0.0
South Tyneside NHS Foundation Trust	0.1%	0.1
Southend University Hospital NHS Foundation Trust	1.7%	1.1
Stockport NHS Foundation Trust	0.1%	0.1
Tameside Hospital NHS Foundation Trust	0.0%	0.0
Taunton and Somerset NHS Foundation Trust	1.6%	0.7
Tavistock and Portman NHS Foundation Trust	0.0%	0.0
The Newcastle Upon Tyne Hospitals NHS Foundation Trust	1.2%	4.8
The Rotherham NHS Foundation Trust	0.1%	0.1
The Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust	0.7%	1.1
The Royal Marsden NHS Foundation Trust	30.7%	38.1
The Royal Orthopaedic Hospital NHS Foundation Trust	4.3%	1.3
University College London Hospitals NHS Foundation Trust	5.9%	8.1
University Hospital Birmingham NHS Foundation Trust	1.2%	2.9
University Hospital of South Manchester NHS Foundation Trust	0.1%	0.1
Wirral University Teaching Hospital NHS Foundation Trust	0.8%	1.1
Yeovil District Hospital NHS Foundation Trust	3.7%	2.5
York Hospitals NHS Foundation Trust	0.8%	0.8

The approach to Private Patient Income as set out in the FReM

The 2007/08 NHS foundation trust Financial Reporting Manual (FReM) makes it clear that this issue is currently under review and a decision will be taken by the Monitor Board following this consultation. The section of the FReM relating to PPI is reproduced below.

Private patient income

Section 44 of the 2006 Act requires that the proportion of private patient income to the total patient related income of NHS foundation trusts should not exceed its proportion whilst the body was an NHS Trust in 2002/03 (the Private Patient Cap). If the predecessor NHS Trust was not in existence in 2002/03 the proportion in the first year of existence of the predecessor NHS Trust should be used. The NHS foundation trust's Private Patient Cap is set out in the NHS foundation trust's Terms of Authorisation. If the cap is amended by Monitor subsequent to authorisation then the revised cap should be disclosed with a narrative disclosure as to why the change has been made.

The following table should be included in the notes to the income and expenditure account:

	200x/xx	2002/03 [or state base year]
Private patient income		
Total patient related income		
Proportion (as a percentage)	%	%

Private patient income is defined as patient related income arising from charges imposed by the NHS foundation trust in respect of goods and services provided by the NHS foundation trust directly to patients other than for the purposes of the National Health Service. For the avoidance of doubt, income receivable in relation to NHS patients but not receivable from NHS bodies (e.g. NHS Injury Scheme income) and income for EEA, other overseas patients treated under reciprocal healthcare agreements and treatment given in an accident and emergency department are not private patient income. Further guidance in this area is set out in the National Health Service (Charges to Overseas Visitors) Regulations 1989, as amended, located on the Department of Health's website.

Patient related income includes the following:

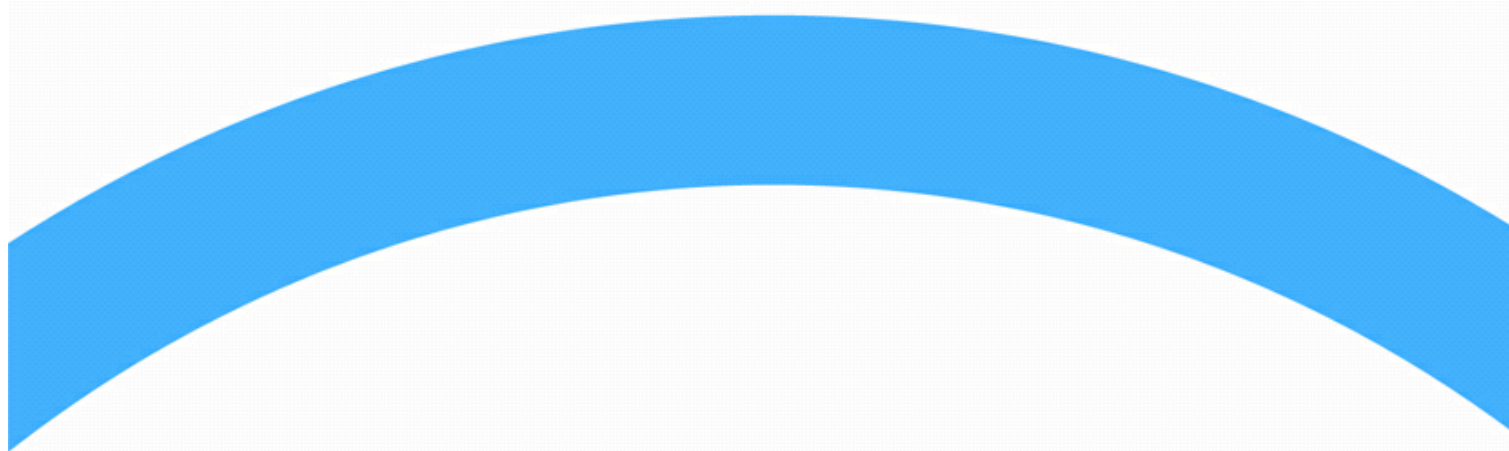
- income received from PCTs and specialist commissioners for

- contracted patient care services;
- income received from other NHS trusts for contracted patient care services;
- income received from the Department of Health for patient care services;
- non-NHS private patient income;
- other income for patient care services (including NHS Injury Scheme income, income from the Ministry of Defence, local authorities, the prison service, etc.); and
- any amounts received from SHAs for patient care services, including income for overseas patients treated under reciprocal agreements.

Where an NHS foundation trust prepares group accounts, patient related income and private patient income receivable by the NHS foundation trust, and the relevant proportion from its subsidiaries (as defined by FRS2), should be included in the calculation of private patient income and patient related income for the purposes of the Private Patient Cap. Income from joint arrangements that are not entities also falls within the scope of the definition of private patient income and patient related income. Income from associate relationships, joint ventures and investments (as defined by UK GAAP) falls outside the scope of the definition of private patient income and patient related income.

Any income receivable from NHS bodies that is not related to the provision of healthcare and falls outside the scope of contracts for patient care should not be included in the calculation of patient related income.

NHS foundation trusts should also include within this note narrative explaining that section 44 of the 2006 Act requires that the proportion of private patient income to the total patient related income of NHS foundation trusts should not exceed its proportion whilst the body was an NHS Trust in 2002/03 or the base year.



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