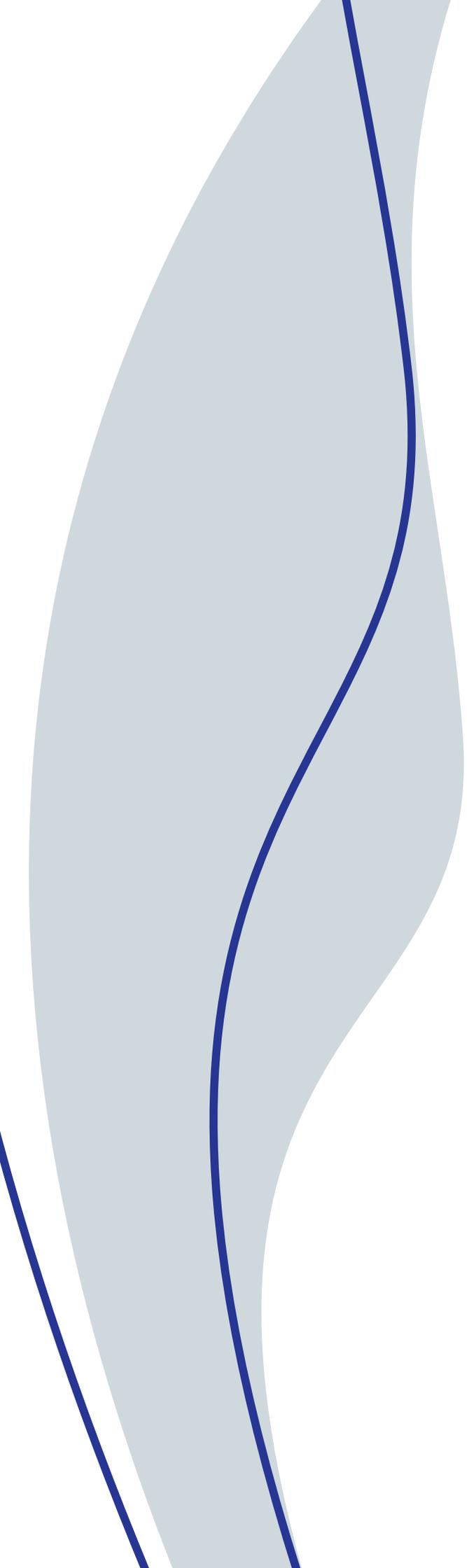




# REGULATION SURVEY 2015

## MAXIMISING VALUE FROM THE REGULATORY APPROACH



# INTRODUCTION

Last year we undertook our first survey of members which specifically explored their views on regulation. We committed to repeating this on an annual basis to build on our understanding of the benefits and challenges of provider regulation, to explore how the regulators are adapting to changes within the NHS provider sector, and to identify trends over time. This report outlines the results of our second annual survey, carried out in September – October 2015. The survey focused on our members' experience of regulation over the previous 12 months, as well as their views on the future of regulation.

Though there has been no legislative change, the NHS provider sector has experienced a number of changes to the regulatory system over the last 12 months, particularly following the 2015 general election. These include the establishment of the success regime, a geographical intervention regime involving providers, commissioners and other local partners across a local health and care economy; the announcement of NHS Improvement, due to become operational from 1 April 2016; a strengthened *Risk Assessment Framework* for foundation trusts; the introduction of new caps on agency and management consultancy spend; and the announcement that the Care Quality Commission (CQC) will start assessing providers' use of resources in the future.

The operational context has also shifted over the last 12 months. The provider sector is currently forecasting a deficit of approximately £2.1 billion for 2015/16 and the latest performance data shows that while referral to treatment targets are currently being met, other targets, such as A&E waiting times, are being missed at an aggregate level.<sup>1</sup> The CQC has also reported that 65 per cent of NHS foundation trusts and trusts are currently rated as 'requires improvement' or 'inadequate' for the quality of care they provide.<sup>2</sup>

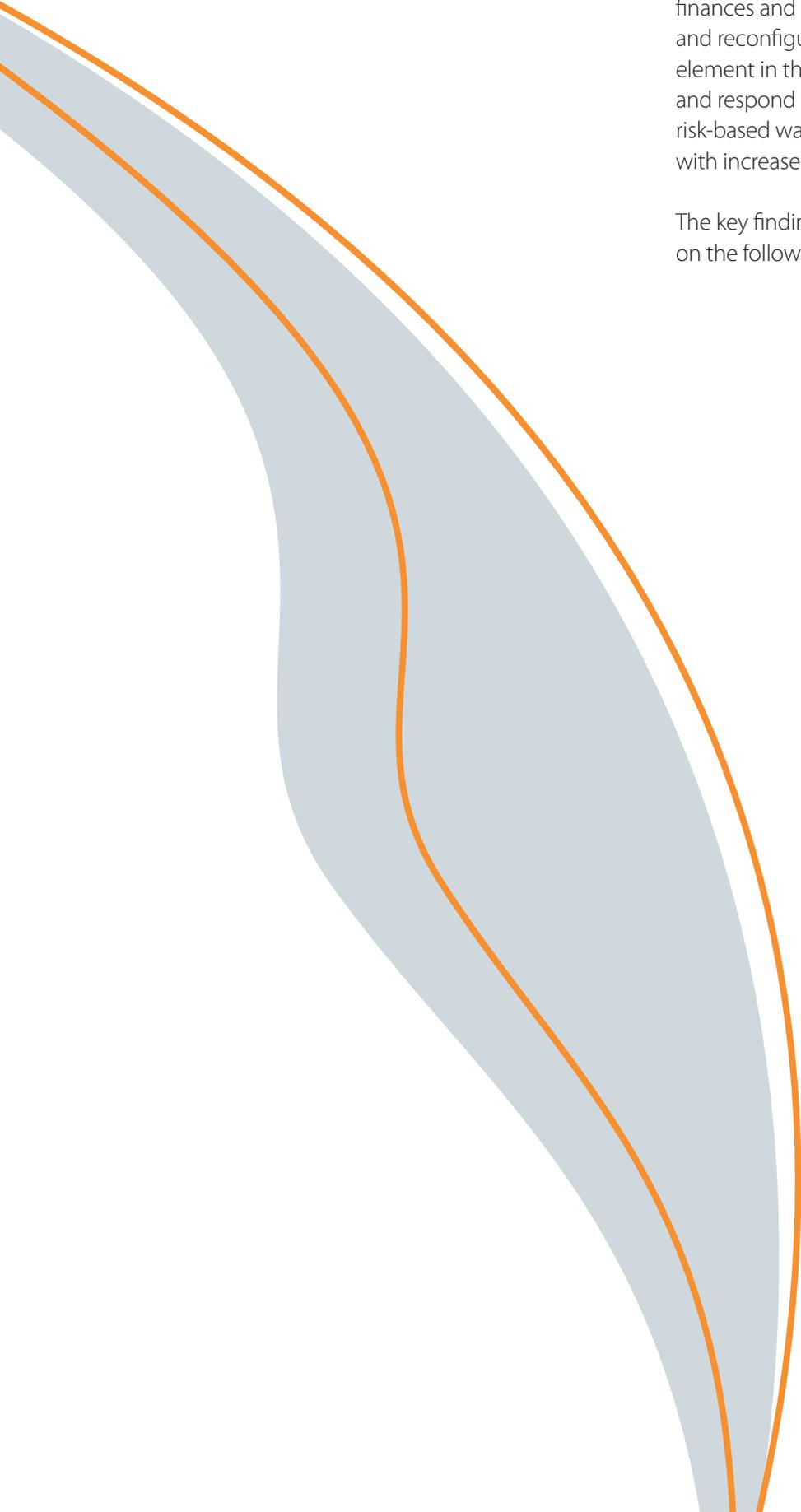
Despite these challenges, the sector is positive about the future of the NHS. The implementation of the NHS *Five year forward view* (5YFV) and the development of new care models is swiftly gaining momentum, with growing consensus that while they will not address all of the challenges in the system, moving to models of integrated care based on local needs is where the sector should be heading. There are now 50 vanguard sites piloting new care models and the rest of the sector is expected to collaborate with local partners to explore whether a new model could be implemented in their local health economy.

These changes mean that both providers and the regulators are operating in a very different and challenging environment to that of 12 months ago. Regulators are facing increased scrutiny to ensure the sector overcomes current challenges, maintains quality, transforms care and delivers efficiency savings. They are also attempting to balance a more supportive approach to improvement with their formal regulatory duties and pressure to obtain a tighter 'grip' on the sector.

The results of this year's survey show that our members have welcomed a shift in national rhetoric from intervention to support; they believe that the regulators have an understanding of the pressures they face at a local level and have highlighted the progress they have made in coordinating activity and providing more consistent messages. However alongside this, respondents felt that improvements could be made to the overall regulatory system and report a significant increase in regulatory reporting and overall scrutiny over the last 12 months. These increases result in additional burdens being placed on providers at an extremely challenging time, and can have an adverse impact on the time and space senior leaders have to transform services while maintaining day to day operations.

Where we refer to the regulators we mean the CQC, Monitor and the NHS Trust Development Authority (TDA). Although the TDA is an 'oversight body', rather than a statutory regulator, it does monitor the finance and performance of NHS trusts.

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- 1 Monitor (2015). Quarterly report on the performance of NHS foundation trusts and NHS trusts: six months ended 30 September 2015. London: Monitor. Available at: <https://www.gov.uk/government/publications/nhs-providers-quarterly-performance-report-quarter-2-201516> [Accessed 2 December 2015]
  - 2 Care Quality Commission (2015). The state of health care and social care in England 2014/15. London: Care Quality Commission. Available at <http://www.cqc.org.uk/content/state-care-201415> [Accessed 2 December 2015]

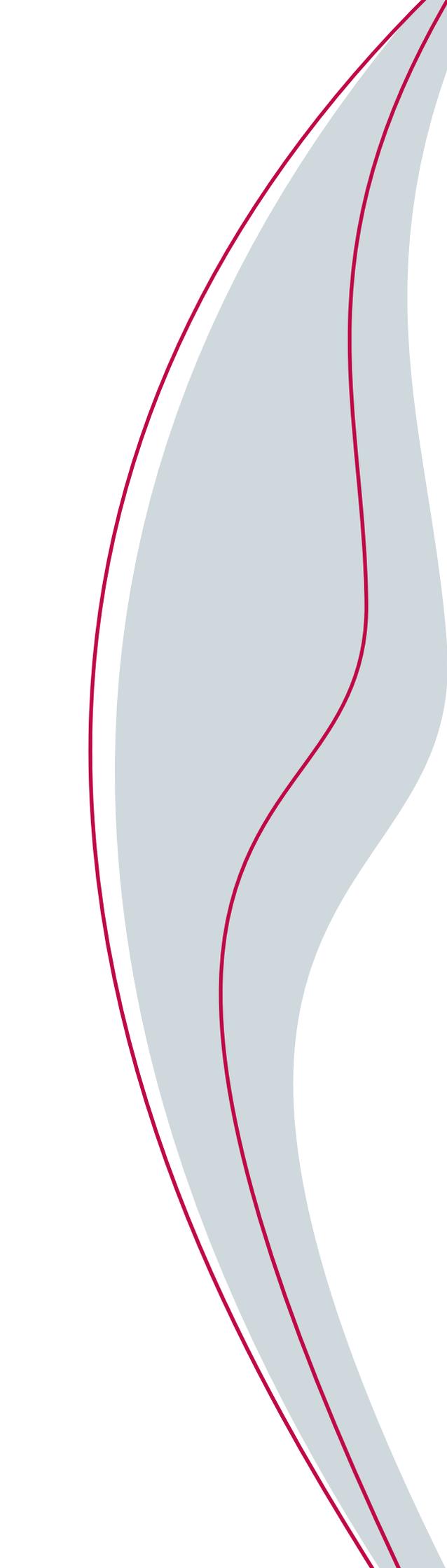


## SUMMARY OF KEY FINDINGS

While the sector continues to face unparalleled challenges, with rising demand set against shrinking finances and an intensifying pressure to improve quality and reconfigure care, regulation remains an important element in the NHS. It is crucial that the regulators adapt and respond to these changes in a proportionate and risk-based way, carefully balancing a supportive approach with increased intervention.

The key findings from the survey results are outlined on the following page.

- **Overall, the results of the survey demonstrate that the regulatory environment has become much more complex over the last 12 months.** The regulators are balancing a supportive approach with their formal regulatory duties, which can result in confusion and mixed messages. And while policy priorities are becoming more consistent, the roles of the regulators are becoming increasingly blurred. For example, Monitor has recently strengthened its *Risk Assessment Framework* of foundation trusts, while in parallel making a public commitment to provide more support on improvement and develop its improvement functions. The CQC has been tasked with assessing providers' use of resources and the coming together of Monitor and the TDA to create NHS Improvement presents both opportunities and challenges to the future of the regulatory regime.
- **The regulators have made helpful improvements in effectively coordinating their activity since last year and advice from the centre on key issues has become more consistent** (increase from 28 per cent to 36 per cent respondents stating they have coordinated activity 'effectively'). **However respondents to our survey continue to highlight concerns about duplication and the need for a more streamlined regulatory framework.** For example, improvements could be made by streamlining the overall regime, reducing the number of regulators and ensuring policy priorities are consistent. It is felt that this would deliver a more effective regime, enabling the sector to improve and delivering better value for money. Almost half (44 per cent) of respondents felt the regulatory framework is working either 'fairly poorly' or 'very poorly' and the majority (65 per cent) of respondents felt that the overall regulatory system provides either 'fairly poor' or 'very poor' value for money for taxpayers.
- **The regulatory burden has significantly increased over the last 12 months, particularly for foundation trusts.** Eighty-seven per cent of respondents felt that the overall regulatory burden had increased over the last 12 months, as well as the number of ad hoc requests (76 per cent felt that ad hoc requests had increased). This was felt more strongly by respondents from foundation trusts (98 per cent) than NHS trusts (69 per cent). Increasing requests from local commissioners and NHS England have also been cited as placing additional burdens on providers in this year's survey.
- **Blanket changes to regulation, which then affect successful trusts, can feel disproportionate.** Respondents from foundation trusts that have a better governance risk rating from Monitor are less likely to feel that current reporting requirements are proportionate to the risk they manage. Overall, respondents were broadly split on whether the current reporting requirements are proportionate to risk (43 per cent did feel that current reporting requirements were proportionate), however for foundation trusts this drops to 34 per cent if the trust has a green governance rating, compared to 60 per cent if they have a red rating.
- **While respondents felt that the regulators generally have a good understanding of the pressures faced by NHS providers, there was a sense that this understanding does not always alter their behaviour or assist with the development of realistic and effective solutions.** Concerns about unrealistic efficiency targets and challenges around workforce supply were specifically raised as issues of which the regulators are aware but yet this insight could be used more effectively at a national level to alleviate these pressures.
- **The establishment of NHS Improvement presents an opportunity for more consistency and a streamlined approach at a national and local level, as well as better coordination and a stronger provider voice,** according to survey respondents. However respondents also raised concerns about the different statutory remits of Monitor and the TDA and how this will be managed by NHS Improvement. Concerns were also raised about conflating improvement and regulation, the potential risk to the autonomy of foundation trusts, and an unclear future for the foundation trust pipeline.
- **Respondents were broadly split on their views of the CQC assessing providers' use of resources in the future** (40 per cent were supportive, 37 per cent were not supportive). Concerns were raised about the CQC's current ability to undertake this assessment and also the duplication this role will have with NHS Improvement.



## OVERALL REGULATORY SYSTEM

The regulators continue to face a difficult task in delivering an appropriate regulatory regime within the current environment. The provider sector is now forecasting a deficit of approximately £2.1 billion for 2015/16 and even with the front-loading of £8 billion extra investment in 2016/17, the sector is still expected to find £22 billion of efficiency savings, while also developing new care models, maintaining high quality care and meeting performance targets. While the regulators face increasing pressure to ensure the sector overcomes these challenges, it remains increasingly important that the regulatory regime is risk based, proportionate and adds value in order to remain effective.

There is growing recognition that these challenges cannot be overcome by individual organisations. Instead, a more collaborative approach is needed. At a local level, with partners across local health economies co-developing shared solutions. And at a national level, with the national bodies providing consistent messages and operating complementary intervention and support regimes. There have been some signals that the approach to regulation is shifting in response to this. The national bodies made a number of commitments in the 5YFV, published just over one year ago. They agreed to use flexibilities and discretion in the application of payment rules and regulatory approaches to support change, to introduce more joint working at a regional and local level and to develop a whole-system, geographically-based intervention regime.

Some of these commitments have already been implemented, such as the establishment of a 'success regime' which operates across a geographical area and focuses on short-term improvement, medium to long term transformation and developing local leadership capacity across a health system. The coming together of Monitor and the TDA, to create NHS Improvement, also signals a commitment at the national level to streamlining the regulatory framework and adopting a more supportive approach to transformation, as opposed to 'command and control'.

## Alignment and value for money

When asked about the overall regulatory system, respondents to our 2014 regulation survey highlighted the lack of alignment between the regulators. Concerns around alignment and consistency were centred on the foundation trust pipeline; trusts' experiences of double jeopardy; perceived conflicts between improving quality and maintaining financial sustainability; and a lack of coordination between the regulators.

This year we asked respondents for their views on how well the overall regulatory framework is currently working, to what extent the regulators are coordinating their activity and whether they believe the regulatory system provides value for money for taxpayers.

Although nearly a third (29 per cent) of respondents felt that the overall regulatory framework is working 'fairly well', it is important to highlight that almost half (44 per cent) felt that the regulatory framework is working either 'fairly poorly' or 'very poorly' (see figure 1). Alongside this, 65 per cent of respondents felt that the system currently provides 'fairly poor' or 'very poor' value for money for taxpayers (see figure 2).

A lack of demonstrable benefits to patients and providers; the overall complexity of the regulatory framework; the overlapping roles and number of regulators; lack of alignment around priorities and too much focus on institutions rather than systems with little cognisance of local challenges, were all key themes arising when respondents were asked about the overall regulatory system. A number of respondents also raised concerns around regulation becoming more politicised, rather than remaining independent and risk based in its approach.

*It is a very mixed bag. Some aspects are reasonable and desirable others are over-burdensome, over-complicated and repetitious or are of little value.*

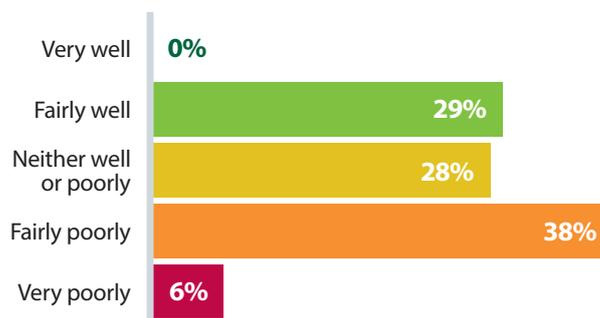
*Triggers compliance actions that do not necessarily help towards better patient safety or person-centred care.*

*It's not clear what overall regulation is attempting to achieve... it focuses on organisations when we are now trying to become systems.*

*The regulatory framework is extremely complicated and does not reflect the significant additional standards set out by other bodies...*

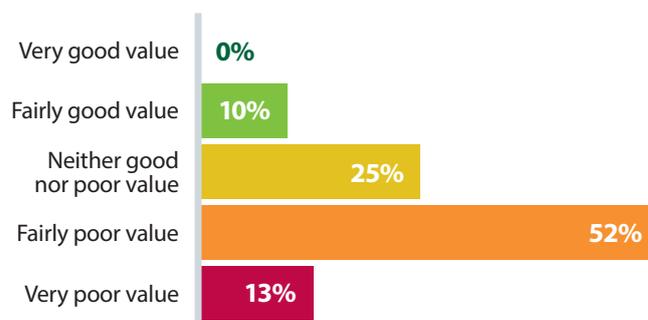
**Figure 1:**  
How do you think the overall regulatory framework of the NHS is currently working?

(n=69)



**Figure 2:**  
To what extent do you think the overall regulatory system of the NHS currently provides value for money for taxpayers?

(n=69)



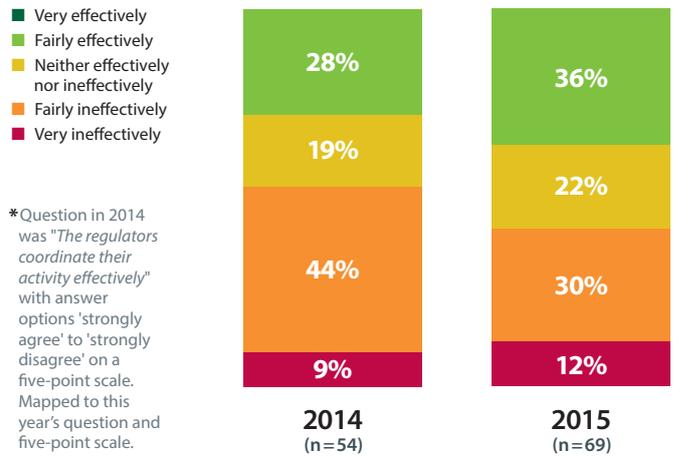
# Coordination

Our members often raise concerns about the regulators not coordinating activity such as data requests, planning timetables, and visits. This lack of planning and coordination at a national level places unnecessary additional burdens on providers who often already employ teams of staff to respond to regulatory requirements. It also takes up a disproportionate amount of leadership time, distracting from pursuing long term transformation. However our survey has shown that there have been improvements made in this area over the last 12 months.

In our 2014 survey only 28 per cent of respondents stated that they 'tend to agree' with the statement that 'the regulators coordinate their activity effectively', compared to 36 per cent this year stating that the regulators have coordinated their activity 'effectively' over the last 12 months (see figure 3).

Respondents to this year's survey felt that the regulators have made improvements in coordinating their activity and that the coming together of Monitor and the TDA offers another opportunity for further alignment. However, they felt that there is still tension between quality and finance priorities and questioned the need for multiple regulators. Respondents also felt that the new responsibility for the CQC to assess 'efficient use of resources' will be a good opportunity for the regulators to demonstrate how they are able complement each other - even when undertaking similar duties - rather than duplicate and place additional burdens on providers.

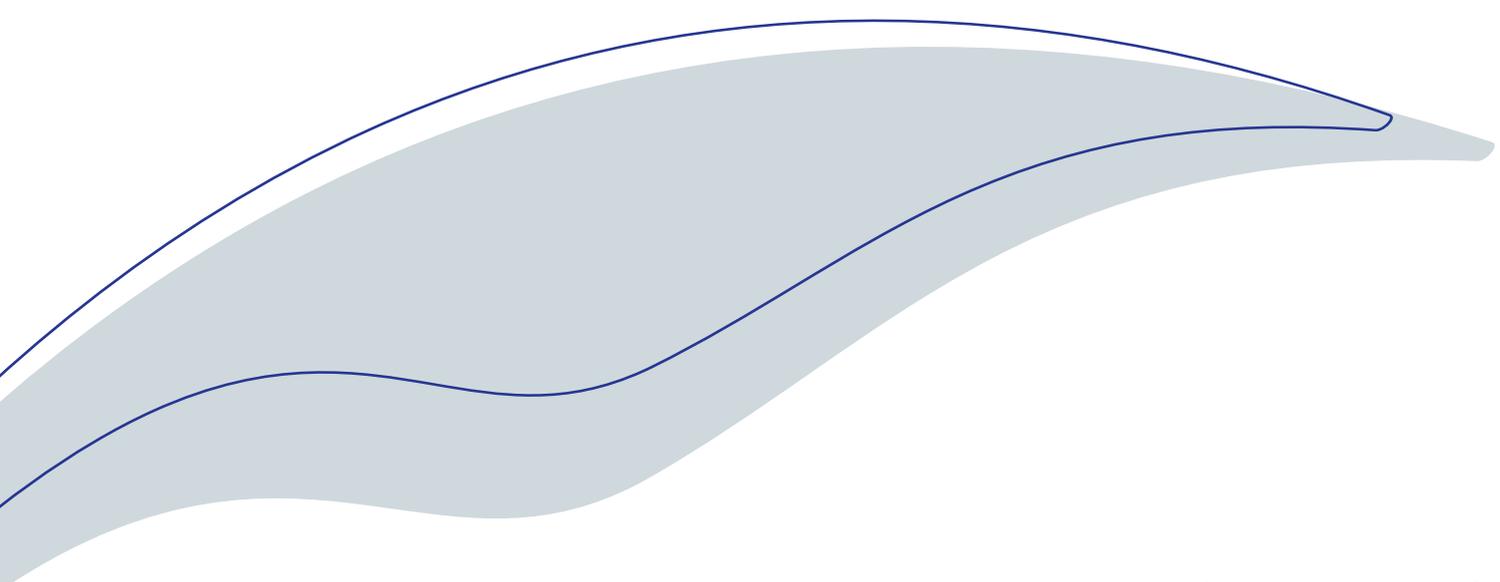
**Figure 3:**  
**To what extent do you think the regulators have coordinated their activity effectively over the last 12 months?\***



“ Regulation is important but there should be one regulator with all the responsibility.

“ You can see they are trying to join up... but is this for joining ups sake?...and if they do things hand in hand...perhaps we only need a single regulator?

“ I know there is some debate as to whether having two regulators is helpful or not...personally I believe that with the improvements made by the CQC over the last six months as long as the CQC and Monitor work closely together we could be close to making this work.



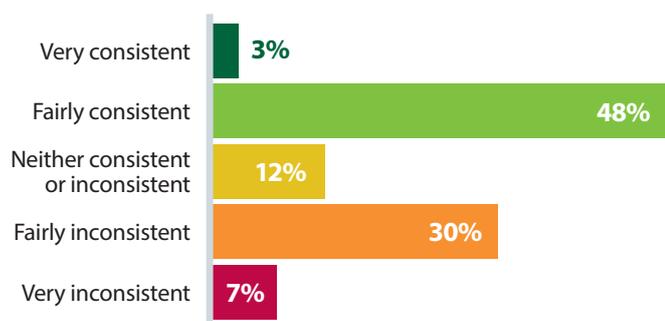
## Consistent national messages

With the plurality of national bodies now developing policy, since the structural changes following the Health and Social Care Act 2012, informal feedback we receive from members suggests that national messages are not always consistent, which then causes difficulties for implementation. We therefore took the opportunity to ask our members to what extent the advice their organisations received from the regulators had been consistent with policy making by other arm's length bodies. Respondents were broadly positive with just over half (51 per cent) stating that advice had been either 'very' or 'fairly consistent' (see figure 4).

The main areas of concern raised with regards to inconsistency were around the implementation of safe staffing guidance, as well as the inconsistency between introducing new caps on management consultancy spend but continuing with regulatory requirements to commission work from consultants that will breach that imposed cap, such as governance reviews.

**Figure 4:**  
Over the last 12 months, to what extent has the advice your organisation has received from the regulators been consistent with policy making by other arms length bodies?

(n=67)



“ Monitor/TDA – were clearly showing understanding until the recent letters demanding changes to control totals... ‘just try harder’ is not helpful.

“ I am absolutely sure they are fully aware – but are constrained by their remits.

## Regulators' understanding of local pressures

The establishment of NHS Improvement and commitment to providing more support suggests a shift in approach for the regulators. An understanding of local pressures and the challenges facing NHS providers will be crucial if the regulators are to begin delivering effective improvement support and enable providers to develop locally tailored solutions in collaboration with their local partners.

We therefore asked our members to what extent they thought the regulators understand the current pressures that NHS providers are facing. It is reassuring that the majority of respondents felt that the regulators have either a 'fairly good' or 'very good' understanding (see figure 5). However, respondents emphasised that this understanding is only valuable if it is used to inform national decision making and influence solutions development. It was generally felt that while the regulators understand the challenges, this was not necessarily reflected in their behaviour. For example, respondents raised frustrations with unrealistic efficiency targets, conflicts between staffing requirements and funding as well as workforce supply not being addressed at a national level, despite the regulators' appreciation of these challenges at a local level. It was also felt that the CQC's findings should be used to raise recognition that high quality care requires appropriate investment. It is important to note that the regulators can be constrained by their remit when operating an independent regulatory regime, however there may be opportunities for the regulators to use this insight to inform national decision making or in the development of support.

**Figure 5:**  
To what extent do you think the regulators understand the current pressures that NHS providers are facing?

■ Very good understanding  
■ Fairly good understanding  
■ Neither good nor poor  
■ Fairly poor understanding  
■ Very poor understanding



# REGULATORY BURDEN AND IMPACT

We asked our members whether the regulatory burden experienced by their organisation had increased, stayed the same, or decreased over the last 12 months. An overwhelming 87 per cent of respondents felt that it had increased, only 13 per cent felt it had stayed the same and none felt it had decreased (see figure 6). Interestingly the survey results suggest the biggest change has been felt by foundation trusts – 98 per cent of respondents from foundation trusts felt that the regulatory burden had increased (see figure 7).

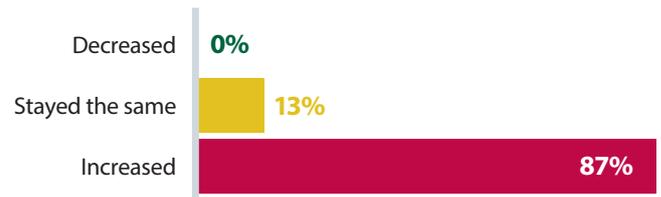
Foundation trusts cited Monitor’s recent change to its *Risk Assessment Framework* and move to monthly financial reporting as one of the key examples of the increased burden. Special measures, preparing for CQC inspections, and an increasing number of requests from NHS England via clinical commissioning groups (CCGs) were also given as examples of increased regulatory burden.

The number of ad hoc requests also came out as a key reason why the regulatory burden had increased with 79 per cent of respondents stating that the number of ad hoc requests in particular had increased over the last 12 months (see figure 8).

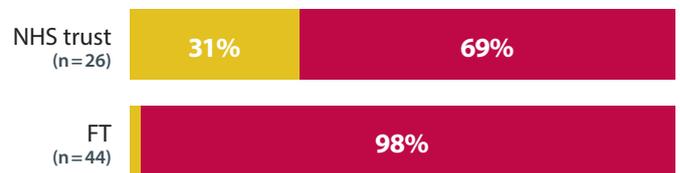
” *In particular via increased Monitor requirements and CCG micro management.*

” *More returns required, without obviously adding value to us as a provider or helping with solutions.*

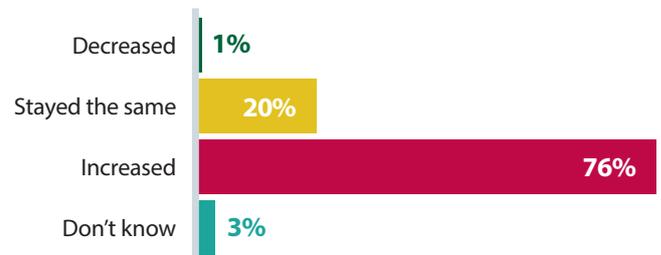
**Figure 6:**  
Has the regulatory burden experienced by your organisation increased, stayed the same, or decreased over the last 12 months?  
(n=70)



**Figure 7:**  
Has the regulatory burden experienced by your organisation increased, stayed the same, or decreased over the last 12 months?  
Legend: ■ Decreased ■ Stayed the same ■ Increased

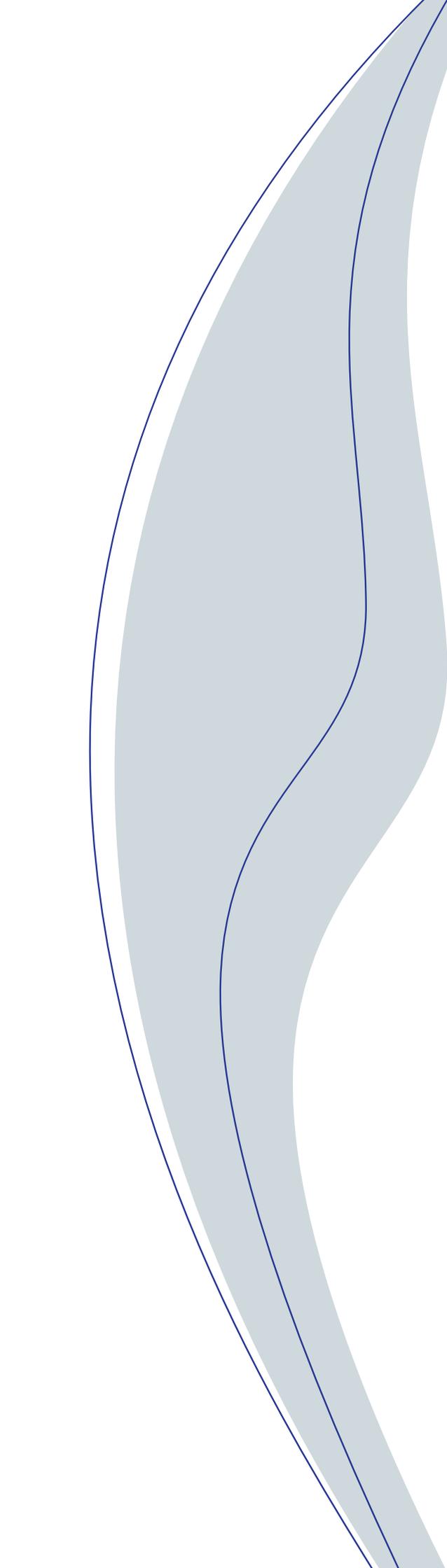


**Figure 8:**  
Have the number of ad hoc requests from the regulators increased, stayed the same, or decreased over the last 12 months?  
(n=70)



” *Submitting monthly financial reports is in flat contradiction to the rationale given to the public as to the benefits of NHS FT status.*

” *Disproportionate and usually around what is of political interest and not what really will make the difference.*



## Proportionate regulation

The regulators are committed to operating a risk-based regulatory regime, where the risk of non-achievement of regulatory requirements are assessed in terms of their likelihood and the impact they cause to desired outcomes. Proportionality is an important element of risk-based regulation as it means that any regulatory activity should be proportionate to the risks posed and also justify any associated compliance costs.

Given the current financial and operational pressures facing the sector and the pressure to develop new care models within this challenging context, a move to more central control through a strengthened regulatory regime may be considered a necessary intervention. However, it is uncertain whether regulation is the most effective lever or the most appropriate vehicle for overcoming some of these systemic challenges and achieving wider policy objectives. It could also be considered as inconsistent with the current commitment from regulation to provide more improvement support, mentioned above.

When we asked our survey respondents whether they felt the current reporting requirements of the regulators were proportionate to the levels of risk they manage, 43 per cent said yes. However when breaking down the results of respondents from foundation trusts, 66 per cent of respondents from foundation trusts with a better governance risk rating (green) felt that the reporting requirements were not proportionate (see figure 10).

Monitor has recently strengthened its *Risk Assessment Framework* for foundation trusts. It has replaced the 'continuity of services' risk rating with a 'financial sustainability' risk rating, which now includes two additional measures and it has also introduced monthly financial reporting requirements for all foundation trusts, rather than just those under investigation or in breach of a licence condition. When respondents from foundation trusts were asked whether Monitor's new *Risk Assessment Framework* would be helpful in supporting their trust better manage risk only 27 per cent felt that it would be 'fairly helpful' (see figure 11). One respondent felt that new changes to the *Risk Assessment Framework* actually made it more difficult to reinvest in transformation, stating that the "*new Risk Assessment Framework makes it more difficult to use financial freedoms to reinvest in service transformation because it triggers highest risk and doesn't differentiate planned deficit from unplanned.*"

These results suggest that foundation trusts, particularly those that are not currently facing any regulatory intervention and would prefer to concentrate on developing and improving their services, are experiencing a disproportionate increase in regulation and reduction in their autonomy.

This evidence (including the results outlined in figure 7, which show that a higher proportion of respondents from foundation trusts reported an increase in regulatory burden over the last 12 months, compared to NHS trusts) suggests that foundation trusts are experiencing the most significant shift in regulation towards more central control and intervention, bordering on a performance management approach.

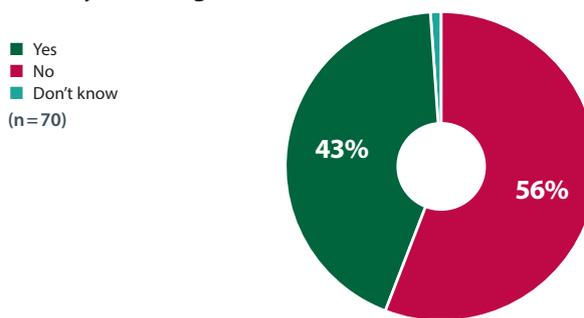
” *Broadly proportionate; focus still more on money and performance than on quality and safety.*

” *More returns required, without obviously adding value to us as a provider or helping with solutions. In particular NHSE daily/weekly returns and conference calls did not add value to us operationally but consumed time.*

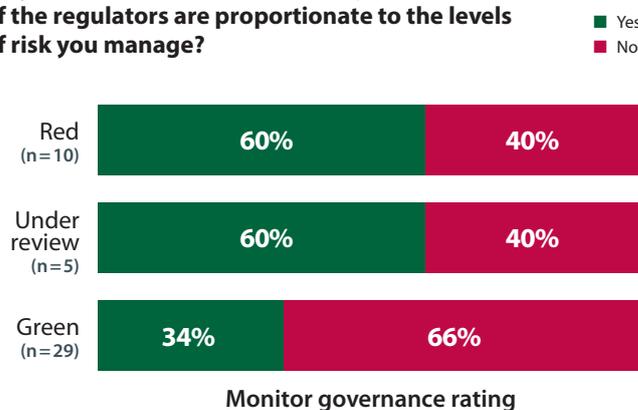
” *The problem being because of the increased financial risks, not just for us but for others, the burden of reporting is increasing significantly but providing no added value.*

” *This is the result of the risk averse nature of the CQC and Monitor – they seem more concerned with avoiding being criticised for missing something than managing an even handed process...*

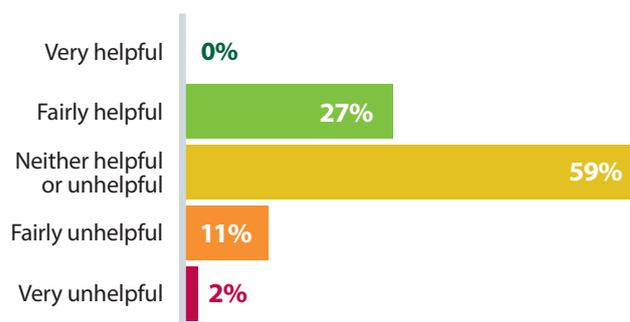
**Figure 9:**  
Do you think the current reporting requirements of the regulators are proportionate to the levels of risk you manage?

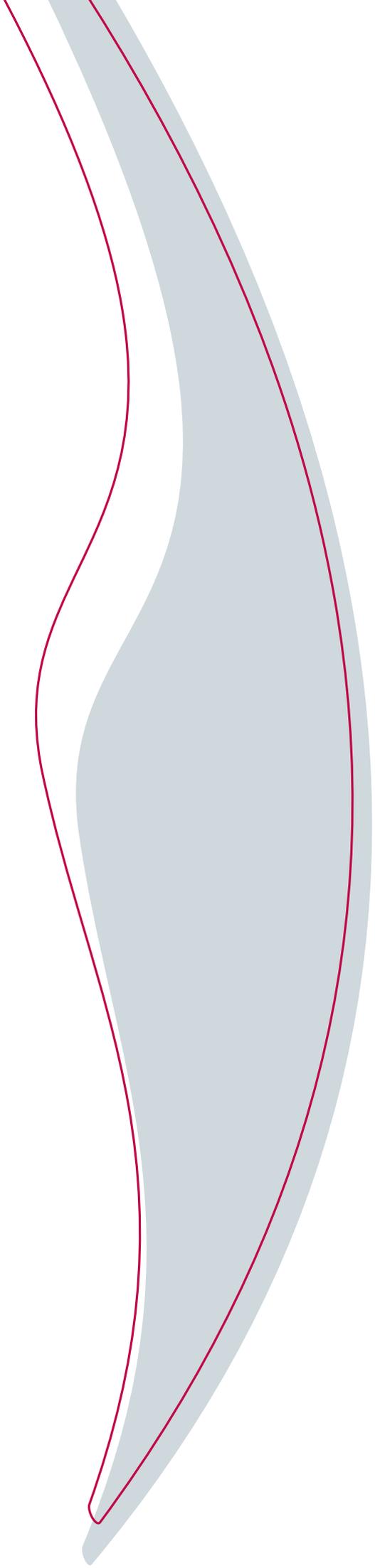


**Figure 10:**  
Do you think the current reporting requirements of the regulators are proportionate to the levels of risk you manage?



**Figure 11:**  
To what extent do you think the strengthened Risk Assessment Framework will be helpful in supporting your trust to better manage risk? (n=70)





## Impact of regulation

Last year, we asked respondents about the impact of regulation on their organisation. We provided 13 options for respondents to choose and they were able to select up to three options. The most cited areas of impact in 2014 were: 'cost more in staff and leadership time than expected, or in previous years'; 'provided focus to strategic an operational planning'; 'caused fear of punitive action among directors and staff'; and 'distracted organisation from focusing on agreed priorities'. This year, we asked respondents to describe the impact regulation has had on their organisation in their own words.

A clear theme emerged of the time regulation takes up internally, including taking senior management and clinical time away from patient care, with little visible benefit or return for the trust. Regulation was often described as a distraction and responding to requests from the regulators is seen as the biggest burden.

”

*A huge amount of senior time management and senior nursing time which detracts from patient care and running of the hospital.*

”

*A significant admin burden. It has become endless paper returns sometimes with fairly clear threats for non compliance. It takes up a lot of people's time.*

”

*Much valuable time is spent preparing for multiple updates, briefs and calls. We don't always receive feedback and are often asked for multiple, duplicative information from the various regulators. It is not clear that information provided has impact or changes the approach or provides assurance. The same questions are asked many times, the fundamental issues and challenges are static.*

”

*TDA regulation has/is both proportionate and effective and is more supportive than punitive.*

”

*It can be incredibly distracting from the day job, and for a community trust, often shows little understanding that our business is not the same as that in an acute setting.*

# Foundation trust pipeline

When asked about the impact of regulation, respondents from NHS trusts currently pursuing foundation trust status highlighted the frustration over the uncertainty of the pipeline; however they also described the impact of regulation more positively, highlighting good relationships and shared objectives with the regulators.

This supports the feedback we receive from members about the foundation trust status application process and their widespread support for the process as a journey to improvement. While the assessment process is rigorous, time consuming and the bar to success is high, the dual pillars of local accountability and the sense of ownership and autonomy generated by gaining foundation trust status remain essential in the challenging times currently facing the sector. Our members who have been through the assessment process and succeeded say they value the transformative nature of the process.

Despite the lag in foundation trust status authorisations, it seems that the majority of NHS trusts do have a clear trajectory towards a sustainable organisational form. When asked, 71 per cent of respondents from NHS trusts said their organisation does have a clear trajectory (see figure 12). Seventeen per cent felt that their organisation does not have a clear trajectory towards a sustainable organisational form and when asked how the TDA was supporting their organisation to identify a clear plan, respondents stated that support is currently focused on day-to-day operational challenges, rather than exploring a long term strategic plan.



*Generally positive – we have good relations with our local offices. However, the delay to our FT progress, caused by a lack of capacity at the CQC, has been extremely frustrating.*



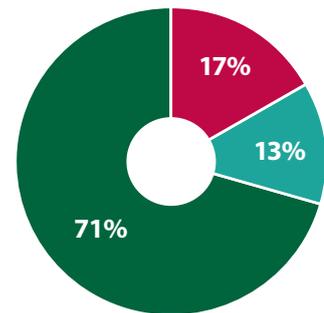
*It is recognised that measures required to satisfy regulatory requirements are consistent with the trust's overall strategy and objectives, and ultimately serve the best interests of patients. As the trust has pursued its application for FT status, there has been an administrative burden associated with the significant level of information and assurance required by the regulators.*



*The uncertainty over the FT model has been challenging for providers currently in the FT pipeline.*

**Figure 12:**  
**Does your organisation have a clear trajectory towards a sustainable organisational form?**

■ Yes  
■ No  
■ Don't know  
(n=24)



## CQC INSPECTIONS

The CQC has made significant progress in implementing a new quality regulatory regime over the last three years. It has now inspected over 60 per cent of NHS foundation trusts and trusts and publishes an annual *State of Care* report detailing the current level of quality across England's health and care system. The CQC is currently developing its forthcoming five-year strategy and has undertaken an early engagement exercise on various options for adapting its regulatory model, building on the improvements it has made, rather than developing a completely new approach. This engagement demonstrates the CQC's commitment to developing its model in response to the changing environment and needs of the sector. The results of our survey should provide some useful insight for the CQC while it continues to consider potential changes.

We asked respondents whose organisation had received a CQC inspection in the last 12 months a series of questions about their experience. We had 44 respondents in total for these questions. This represents 61 per cent of providers that received a new CQC rating between October 2014 and September 2015.

## Benefits and challenges

We asked respondents to describe the benefits and challenges of their CQC inspection. When considering the benefits of their organisation's inspection, respondents felt that they provided additional clarity and focus to issues of which the board was already aware, leading to the refinement of improvement plans. It was also felt that CQC inspections provided the opportunity for high performing trusts to highlight areas of excellence and good practice, and respondents would like to see this element of the CQC's inspection regime continue in the future.

” *Clarified the trust's areas of service improvement.*

” *It has confirmed the trust's self-assessment of its strengths and weaknesses and given a sound basis for targeting an improvement in future ratings.*

” *It provided an opportunity to highlight and demonstrate excellent and good areas of practice, a chance for staff to showcase.*

The main challenge highlighted by respondents was the excessive data and evidence requests made prior to, during and after an inspection. Responding to these requests takes up a huge amount of resource and respondents felt that requests were often duplicated and the data or evidence provided was not always taken into account or referenced in the final report.

Other clear themes around the challenges of inspections, which are also consistent with feedback we receive from members through other means, were around the reputational impact of a poor rating and the consequences this can have on workforce supply and public confidence, as well as the significant effect it has on staff morale. Respondents raised concerns around the aggregation of ratings and the inconsistency between feedback from inspectors during an inspection and the final inspection report.

” *Huge volumes of data collected and shared with the CQC in advance of the inspection but once the inspection was underway it was clear that this information had not been scrutinised or shared with the inspection team.*

” *The amount of time involved in preparation and handling the inspection was a major exercise at a time when the frontline is challenged every day to meet targets and performance.*

” *Excessive requests for data before, during and after inspection. Also the duplication in terms of requests proved very time consuming to manage.*

” *Inconsistent messaging on scope and process from the CQC inspection team during inspection feedback and draft report.*

” *The initial feedback was not consistent with written reports.*

## Value of inspections

The cost of inspections to providers has not been quantified and would be difficult to do so as it would require an assessment of direct, indirect and opportunity costs, and would vary greatly depending on the structure of the organisation. However, we asked respondents a general question on whether they felt the benefits their trust gained from the inspection justified the 'cost' in resources to the trust of preparing for, and hosting, the inspection team. Thirty two per cent of respondents felt that the benefits did justify the 'cost', this has decreased from 50 per cent in 2014 (see figure 13) when we asked the same question (it is important to note that we only had 14 respondents to this question in 2014, compared to 44 in 2015).

When commenting on the benefits versus the cost of inspections, respondents felt that a more streamlined and less intensive inspection process could offer more value for money. These concerns were also raised when respondents were asked about the regulatory system providing value for money for taxpayers.

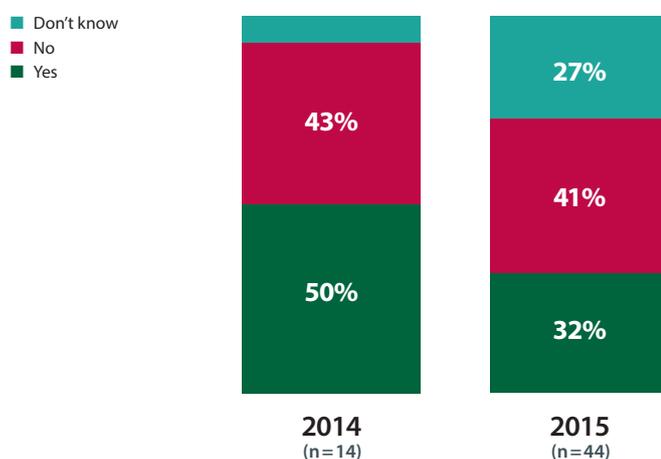


*The same benefit could be derived from a slimmer, more streamlined process.*



*Although many positives came from this I do not believe it was VFM [value for money].*

**Figure 13:**  
**Overall, do you feel the benefits that your trust gained from the inspection justified the 'cost' in resources to the trust of preparing for, and hosting, the inspection team?**



## LOOKING FORWARDS: THE FUTURE OF REGULATION

A number of changes to regulation have either been announced or implemented at pace since the 2015 general election. While there has been no legislative process underpinning these changes, the way in which the regulators discharge their duties, prioritise their responsibilities and operate at a local level on a day-to-day basis can have a substantial impact on providers.

This survey presented an opportunity to ask our members for their thoughts on the future regulation. We specifically concentrated on two areas:

- 1 The CQC assessing trusts' use of resources
- 2 The establishment of NHS Improvement

### CQC assessing use of resources

The CQC has an existing objective in the Health and Social Care Act 2008 to encourage "the efficient and effective use of resources in the provision of health and social care services" and in July 2015 the secretary of state announced that the CQC would start to assess NHS foundation trusts and trusts' use of resources. This means that the CQC will begin to assess the extent to which providers are using their resources in the most efficient way possible. 'Resources' may include staff, equipment and facilities. The CQC is currently developing an approach to undertake these assessments and plans to pilot this approach in acute trusts only from April 2016.

We asked respondents to our survey whether they supported this development. It is important to note that at the time of the survey, there was little information available on how the CQC would approach this assessment. Since then, the CQC has published a signposting document *Delivering cost effective care in the NHS*<sup>3</sup> which outlines more detail on their developing plans.

3 Care Quality Commission (2015). *Delivering cost effective care in the NHS*. London: Care Quality Commission. Available at: <http://www.cqc.org.uk/content/hospital-inspections-next-phase-your-views> [Accessed 2 December 2015]

Forty per cent of respondents were supportive of the CQC assessing a provider's use of resources in the future, compared to 37 per cent who were not (see figure 14). NHS trusts were more supportive of this development than foundation trusts (see figure 15). Those who were supportive emphasised the need for a reduction in regulation in other areas and for the CQC's role in efficiency to at least align with the role of Monitor and the TDA (NHS Improvement), rather than this be an additional area of assessment. Respondents also highlighted the need for the CQC to recruit inspectors that have the right level of expertise to undertake this role effectively.

For those who were not supportive, the overlap with the role of Monitor and the TDA and the expected increase in regulation as a result of this new responsibility for the CQC came out strongly as the main reasons for their concerns. A number of respondents also felt that this would overlap with other assessments of governance processes and, wider than that, is not appropriate for a regulator to assess an organisation's efficient use of resources as this responsibility ultimately lies with the board.

” *But only if this reduces regulation elsewhere.*

” *The board of directors has responsibility for the organisation's use of resources and receives assurances in this regard.*

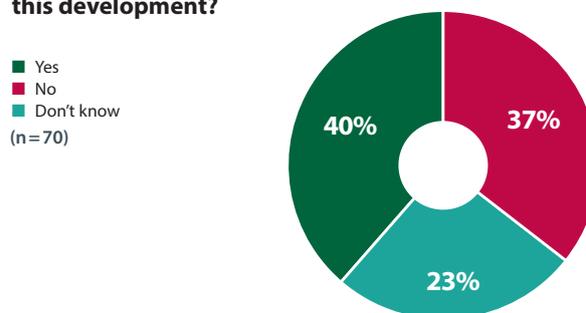
” *This is not appropriate for the CQC; nor indeed for other regulators. These decisions all involve judgement by the board, and (within limits) should be left there.*

” *It will increase the overlap between the CQC and the TDA/Monitor. It is almost moving towards the CQC being the primary regulator.*

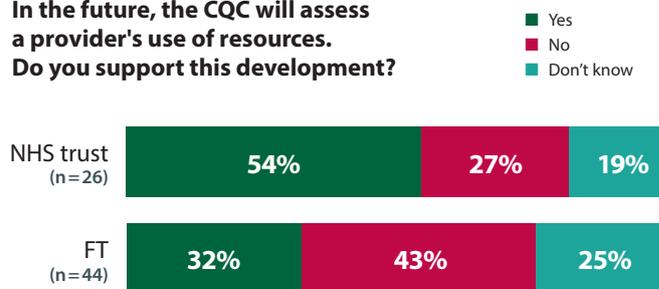
” *This creates more overlaps with the Monitor role. The CQC has no remit over commissioning and it is this gap that needs to be addressed.*

” *Could be a step towards becoming quasi directors of the board.*

**Figure 14:**  
In the future, the CQC will assess a provider's use of resources. Do you support this development?



**Figure 15:**  
In the future, the CQC will assess a provider's use of resources. Do you support this development?



# NHS Improvement

Monitor and the TDA will be coming together to operate as NHS Improvement from 1 April 2016. The newly formed organisation will also house the patient safety function from NHS England, the advancing change team from NHS Improving Quality, and the intensive support teams from NHS Interim Management and Support. Its principal focus will be to drive and support both urgent and operational improvement at the frontline and the long term sustainability of the healthcare system. Alongside this new role, NHS Improvement will retain the role as the health sector regulator.<sup>4</sup>

We asked respondents to the survey what they thought the potential benefits and challenges were by Monitor and the TDA coming together to operate as NHS Improvement.



*Hope that NHS Improvement will allow an appropriate degree of earned autonomy for trusts, and avoid a more interventionist model of improvement support.*



*On the whole this is seen as a really positive move... This should lead to streamlining, better data management, greater assurance and sharing of learning and best practice... It will enable the system to work together to achieve the best value for money, avoid wastage and deliver the efficiencies needed for a sustainable health system.*



*Single focus on provider success - remove avoidable costs of duplication - more streamlined journey for aspirant FTs.*



*An obvious risk is that all providers are treated on a lowest common denominator basis. Also regulation and improvement are fundamentally different concepts - very hard to hold in one organisation even with Chinese Walls.*

An outline of the key benefits themes raised by respondents can be found below.

- **A more consistent approach at a local health economy level.** As NHS Improvement will have responsibility for all providers, our survey respondents felt that this creates an opportunity for a more consistent and supportive approach across whole geographical areas and focus on co-developing solutions.
- **Better coordination, system alignment and a stronger provider voice.** Respondents felt that there would be an opportunity for NHS Improvement to reduce regulatory fragmentation, develop a more consistent regulatory approach (while retaining foundation trust autonomy), streamline the foundation trust application process and act as a stronger voice on the needs and concerns of providers, and the issues they face, within the wider NHS.
- **Opportunity to harness the TDA's local focus and operational approach with Monitor's focus on precision.** These elements of both organisations were considered important to retain by our survey respondents. They felt that they should be developed and integrated throughout NHS Improvement, rather than lost or subsumed by one approach.
- **Potential to reduce the costs of regulation.** Respondents felt that, in time, the new organisation would be in a position to offer better value for money for tax payers.

The key challenges raised by respondents are detailed below.

- **Concerns about the conflation of regulation and improvement.** Respondents felt that the role of an improvement body and that of a regulator is quite different and conflating the two may result in confusion over what constitutes regulation and what is improvement support.
- **Uncertainty over the future of the foundation trust pipeline for NHS trusts and current autonomy for foundation trusts.** The lack of clarity around what this change will mean for aspirant foundation trusts still hoping to achieve foundation trust status and the freedoms this affords them was raised a number of times by respondents.

<sup>4</sup> Monitor (2015). Progress with establishment of NHS Improvement. London: Monitor. Available at: <https://www.gov.uk/government/publications/monitor-board-papers-for-30-september-2015-meeting> [Accessed 25 November 2015]

- **Risk of a shift from regulation to performance management.** Respondents felt that the two organisations coming together would result in further moves away from risk-based regulation to one of increased oversight and management.
- **Difference in statutory remit and accountability structures for Monitor and the TDA.** Concerns were raised around the distinction between the two organisation's accountability structures. Monitor is accountable to parliament regulating independent and autonomous organisations, whereas the TDA is directed by and accountable to the secretary of state. Respondents raised concerns about how this would be managed within the new organisation and considered whether the 'coming together' should be underpinned by legislative change.
- **Continued risk of regulatory confusion and fragmentation without more alignment with the CQC.** This would enable a move towards one approach to judging, supporting and helping all trusts improve.

Other areas respondents raised when asked about NHS Improvement included a risk of instability during the transition at a very fragile time for the sector and some confusion or lack of clarity around the future of competition and how NHS Improvement will approach competition going forwards.

” *A whole system approach is increasingly necessary. An acute trust cannot solve its problems if it has bed blocking by  $\geq 100$  patients because the system outwith the trust cannot deliver.*

” *There needs to be more joined up thinking about cause and effect, so support might come in the form of better recognition that tariff is inadequate for certain procedures and more needs to be done to properly resource the system.*

” *Need practical support (£ and leadership) to help develop a common narrative and support delivery.*

## Improvement support

We took the opportunity to ask our members what types of improvement support would be most welcome to them and their partners in their local health economy. The key theme from these responses was around the need for a 'whole systems' approach to local health economy challenges, supported by a common view on policy priorities and high quality performance from the national bodies, along with realistic expectations on solutions.

Other key areas where respondents felt support would be welcomed were around working in partnership with NHS England to introduce a stronger accountability and performance management system of commissioners. It was felt this would help foster shared accountability for challenges experienced across local health economies. Respondents would also welcome NHS Improvement providing access to expert advice on key challenges such as sustainable models of care, therefore reducing the need for consultants. Facilitating peer-to-peer learning, sharing of good practice and providing support with collaborative solutions development were also areas that respondents would welcome support.

There was a plea made by many respondents not to implement multiple 'improvement/support projects' at once – coherence and consistency is key to making it work. Respondents from outside the acute sector also highlighted the need to ensure that support offered is sector-appropriate, as often it is very acute focused.

” *It is important that the regulatory approach is consistent across all system partners including social care. The level of accountability applied to each system partner is different via different vehicles and regulators and therefore fragmented and inconsistent.*

” *Support for bringing about whole system transformation and in particular how CCGs can be encouraged to make ambitious commissioning decisions.*

## CONCLUSION

The overall message from this year's survey is clear: the burden regulation places on providers has continued to increase; and despite improvements made to the alignment of policy priorities and coordination between the regulators, much more can be done to streamline the regime to ensure it is effective and delivers better value for money.

The survey also demonstrates that there has been a shift in the attitudes of the regulators over the last 12 months, with more focus on support and enabling providers to improve, as well as recognising that challenges can often be systemic and cannot always be controlled by individual institutions. However alongside this shift in attitudes the regulators continue to use more traditional regulatory levers to effect change, such as the recent strengthening of Monitor's *Risk Assessment Framework* and the CQC taking on responsibility to assess providers' use of resources. This can result in inconsistent behaviour and mixed messages; and signals that the regulatory framework is becoming much more complex with potential a growing number of potentially conflicting responsibilities. However without legislative change we recognise that the regulators will continue to be somewhat constrained by their remit.

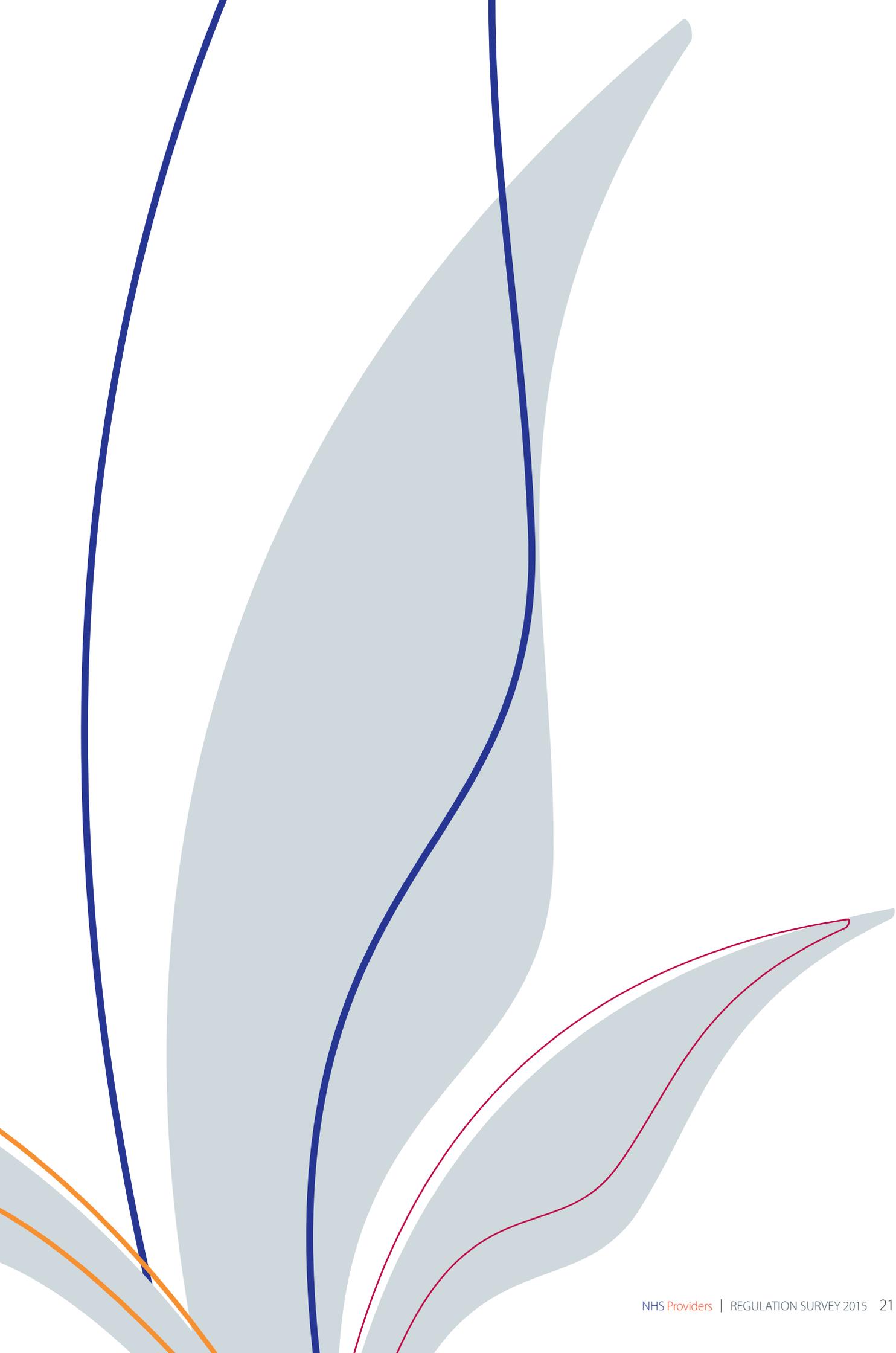
Nonetheless we must carefully consider whether regulation is the most appropriate vehicle for achieving current policy objectives and overcoming some systemic challenges within the sector. The establishment of NHS Improvement and the development of the CQC's forthcoming five-year strategy offer a timely opportunity to do this and we look forward to working with our members and the two organisations to explore how the regulatory framework can enable NHS providers to deliver sustainable, high quality care.

While we do this, it is important to remember that regulation exists to provide assurance that providers are meeting minimum quality standards and operating with probity. We must recognise that regulation alone cannot prevent or impose good care. It cannot overcome financial challenges or force service reconfiguration. It cannot substitute for strong and proactive leadership, and must not act as a barrier to providers overcoming these challenges or stifle innovation and the development of new care models. These must be and should continue to be the responsibility of provider boards. Instead, we should consider all possible approaches to address the fundamental systemic issues currently facing the sector.

## NEXT STEPS

We are committed to working with our members and the regulators to maximise the value and benefits delivered by the current regulatory framework and how it is developed in the future. We hope that the results of this survey can help support this. We have an ongoing dialogue with the regulators and will consider the results of this survey in collaboration with them to ensure our members concerns are acted on. We will use the results of this survey to develop our position and long term vision for how the regulatory framework can best enable NHS providers to deliver sustainable, high quality care. We welcome the regulators commitment to working with us and our members to do this.





## About the survey

This report outlines the results of an online survey of NHS Providers' members – NHS foundation trusts and trusts – carried out between 10 September and 1 October 2015.

We collected both qualitative and quantitative information covering experiences of the regulatory regime over the last 12 months, as well as to capture their feedback on topical issues.

The survey questions were shared with the CQC, Monitor, and the TDA prior to the circulation of the survey. Each organisation had the opportunity to provide feedback on the questions and make suggestions for changes and/or additional questions. Suggestions for changes were taken into account and reflected where possible.

There were 70 responses to the survey (26 NHS trusts and 44 NHS foundation trusts), representing 32 per cent of NHS Providers' membership and 29 per cent of the provider sector. This response rate has increased from 55 respondents in 2014. Forty-one per cent of respondents were provider chairs or chief executives, 32 per cent were company secretaries and 27 per cent were other board level directors. Please note that not all questions were answered by all respondents. The response rate for each question is labelled as 'n=' within the graph.

## For further information

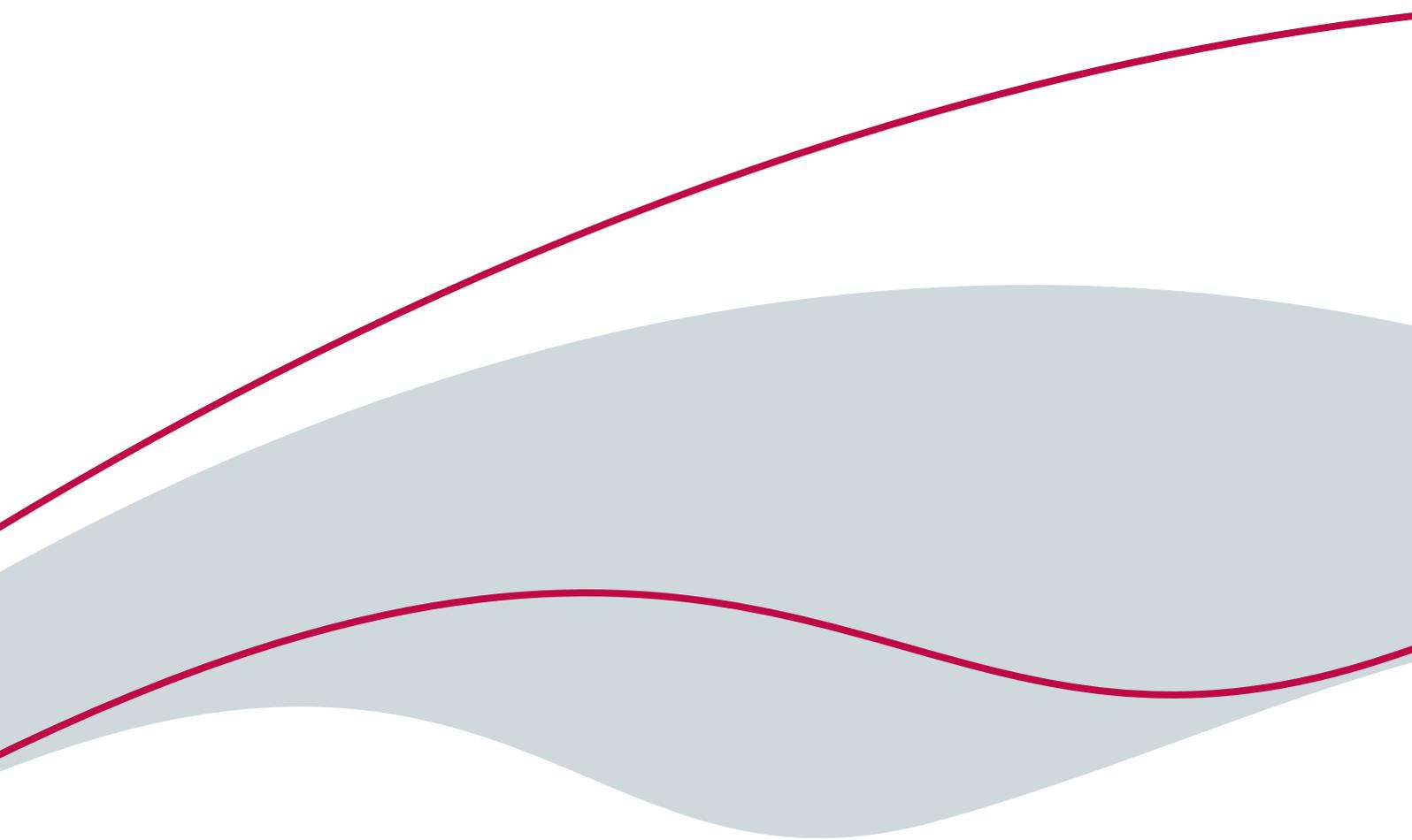
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## Acknowledgements

We would like to thank the respondents to the survey and the regulators for their input into the survey design.



**NHS Providers** is the membership organisation and trade association for the NHS acute, ambulance, community and mental health services that treat patients and service users in the NHS. We help those NHS foundation trusts and trusts to deliver high quality, patient focused, care by enabling them to learn from each other, acting as their public voice and helping shape the system in which they operate.

NHS Providers has more than 90 per cent of all NHS foundation trusts and aspirant trusts in membership, collectively accounting for £65 billion of annual expenditure and employing more than 928,000 staff.



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