

NHS IMPROVEMENT CONSULTATION ON UPDATING THE SINGLE OVERSIGHT FRAMEWORK: NHS PROVIDERS RESPONSE

ABOUT NHS PROVIDERS

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 providers 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 96 per cent of all trusts in membership, collectively accounting for £65 billion of annual expenditure and employing more than 928,000 staff.

KEY MESSAGES

- We support NHS Improvement's (NHSI) iterative approach to developing the Single Oversight Framework (SOF) and its engagement with NHS Providers in doing so. A commitment to improving and developing the SOF is important as it will give flexibility to the framework in a continuously changing external environment and will help ensure it is fit for purpose.
- However, operating a flexible and iterative framework will come with its own complexities. Firstly, the SOF will need to be fully developed and confirmed as far as possible at some point, to ensure that constant revisions or updates don't impede providers' ability to understand and meet regulatory demands. Secondly, an iterative process to developing a regulatory framework may make it difficult to assess the combined and cumulative impact of changes to the nature of the framework itself and the regulatory burden it places on providers.
- In addition to this, given the current direction of travel of Sustainability and Transformation Partnerships (STPs) and Accountable Care Systems (ACSs), NHSI will need to continue to work closely with providers and other national bodies to ensure the new framework develops alongside STPs and ACSs, as well as the development of new models of care, and the emerging organisational structures needed to support these new approaches.
- We welcome the changes to improve the structure, format and presentation of the SOF document which is now clearer and easier to read. Our members would still benefit from further clarity and detail around NHSI's support offer and the decision-making process around segmentation.
- Our members would welcome further clarity on how specific metrics, such as the adult mental health out of area placements, will be applied.
- We recognise that NHSI should tailor support according to local needs, but NHSI should also ensure it adopts a consistent approach to operating the SOF across the provider sector.
- NHSI should base its oversight, using the SOF and underlying metrics, on the conditions of the NHS provider licence and provide more clarity on how the metrics included in the SOF align with the provider licence conditions.
- There is still a need for greater alignment of the special measures regimes with the SOF, as well as the STP ratings and CQC ratings.

INTRODUCTION

NHS Providers welcomes the opportunity to respond to NHS Improvement's (NHSI) consultation on [proposed updates to the Single Oversight Framework \(SOF\)](#). Our submission is informed by our [regulation survey](#), conducted in January 2017, and ongoing input and feedback from members.

We are pleased to see that NHSI has remained committed to keeping the SOF under review and is making changes in response to feedback from the sector based on its first year of implementation. Given the changing external environment and strategic context of the provider sector, namely the move towards system-level approaches through STPs and accountable care, it is essential for NHSI to have these developments within its field of vision and ensure the SOF does not misalign or contradict these wider developments.

Insofar as the SOF provides the means through which NHSI assesses and enforces the provider licence conditions, any proposed changes to the SOF or its metrics should be consulted on. We would therefore urge NHSI to undertake a formal consultation when any changes are proposed are to the SOF, in the vein of Monitor's robust consultation schedule that underpinned changes to the Risk Assessment Framework previously used for NHS Foundation Trusts. Open dialogue and meaningful engagement with providers is crucial to ensuring future iterations of the framework are practicable, particularly when new measures are to be introduced. We appreciate NHSI's engagement with us and our members on the SOF thus far and would be pleased to support this going forward.

We also note more broadly that healthcare regulation must be proportionate to risk and that the burden it imposes on NHS providers is minimised. Members continue to highlight in our annual regulation survey that they feel overburdened by regulation; in our 2017 survey, two thirds of trusts (68%) reported an increase in demand from regulators. Trusts have also reported varied experiences of the SOF to date, so ensuring a consistent use of the framework at a local level should also be a priority for NHSI. It is therefore pivotal that NHS trusts are engaged with throughout the development of the SOF so that any changes are fully considered and potential adverse consequences and additional burdensome requests are avoided.

Our [response to the original SOF document](#) argued that NHSI needs to clarify the direction of travel for regulation and improvement support over the medium to longer term. We want to see a greater acknowledgement of the impact of whole-system issues on individual providers, and further detail on understanding of how a provider's contribution to the local transformation agenda will be taken into account as part of their individual performance, as well as a realistic 'ask' of providers. We remain committed to the principles of board autonomy and local accountability, and encourage NHSI to progress its work on how the provider sector can move back to a framework of earned autonomy so that the erosions thereof do not continue indefinitely. We are keen to continue our dialogue with NHSI in these areas.

PRESENTATION OF THE SOF DOCUMENT

We recognise the efforts made by NHSI to update the presentation and content of the SOF document. We agree that the proposed changes add clarity to some of the details in the document and make it easier to navigate, particularly moving the triggers from the annexes so that they are listed under each theme. It would also be helpful to move the information describing the relationship between the SOF and the statutory obligations of Monitor and NHS TDA nearer to the beginning of the document.

While it is positive to see that the revised SOF provides an overview of NHSI's improvement support offer, we and our members would be keen to see additional information and detail summarising the nature of the support available under each of the themes, or a signpost to where this is available. There is also a need for NHSI to provide more clarity on how decisions about overall segmentation are taken, including how performance against the themes, as well as the metrics within each theme, is weighted. It is also unclear how a provider needs to be performing against each metric to be placed in a particular segment. This was highlighted by respondents to our regulation survey, with one respondent commenting that "no one can explain the overall criteria/weighting which determines your actual segment".

In addition, NHSI still needs to develop the SOF to better reflect the requirements of mental health, community and ambulance sectors. We are keen to work with NHSI to integrate the relevant performance measures and improvement support into frameworks for our members in these sectors.

CHANGES TO SOF METRICS AND TRIGGERS

We agree in principle that the metrics used to assess providers' performance under the SOF themes should reflect policy developments and changes to national planning guidance, as this will reflect the reality in which trusts will be expected to operate, and we expect all national bodies to reflect this greater alignment in their approaches to avoid any inconsistencies. However, the metrics also need to align with the requirements set out in the [NHS provider licence](#), which forms the legal basis that NHSI has for regulating NHS foundation trusts. While NHS trusts are exempt from the requirement to apply for and hold a provider licence, they are expected to comply with the same conditions as directed by the secretary of state.

In the main we welcome NHSI's explanation of their design and rationale for including or excluding metrics. However, we would like to see NHSI demonstrate a clear focus on streamlining the burden and complexity of regulation on provider trusts by ensuring the framework remains proportionate (perhaps by explicitly introducing a 'one-in-one-out' approach to the number of metrics) and aligned with other regulatory bodies such as the CQC. NHSI will need to carefully consider any changes to the SOF to avoid making constant revisions that might impede providers' ability to understand and meet regulatory demands. In addition, NHSI must also not lose sight of the combined and cumulative impact of any changes to the SOF, in relation to both the nature of the framework itself and the regulatory burden it imposes on providers.

At the same time, however, there are some specific concerns among NHS provider trusts about some of the proposed changes to the metrics and indicators that trigger consideration of potential support.

There is value in NHSI drawing out the emphasis on the requirement for providers to notify NHSI of significant actual or prospective changes in performance or risk outside routine monitoring. However, we are concerned that this could lead to risk aversion among providers or, due to a lack of detail, providers sharing information with NHSI that is neither helpful nor relevant. Likewise, having this catch-all requirement may be perceived as increasing the risk of unnecessary intervention. We would welcome clarity around which of the changes merit reporting.

Changes under the quality of care theme

We recognise the rationale behind the proposed change to the CQC rating trigger under the quality of care theme from an 'inadequate' or 'requires improvement' rating against any of the safe, effective, caring or responsive key questions to a rating of 'inadequate' or 'requires improvement' in an overall rating. However, we would urge NHSI to

ensure there is a clear understanding of what sits underneath the overall rating so that support is tailored appropriately to individual providers. We also note that NHSI will need to ensure the SOF remains aligned with CQC ratings going forward, as the latter has recently finished [consulting on possible changes to its approach to ratings](#) in the future.

We are also supportive of the introduction of the E.coli infections metric, given the national push on this following the Government's target set out in the [Next steps on the five year forward view](#).

Changes under the finance and use of resources theme

The changes under the finance and use of resources (UoR) theme are by and large helpful and represent progress in the right direction. We are pleased to see that NHSI is not implementing capital controls and change in cost per weighted activity unit in the finance score this year. We are also pleased to see the updated SOF reflects the new UoR assessment, but would welcome further clarity in the SOF document of how the UoR fits with the CQC's approach given the [final framework and consultation response](#) were published in August 2017.

We believe that the proposed changes represent a missed opportunity in terms of revisiting how this UoR framework aligns with the financial special measures regime for trusts, as these are two seemingly parallel systems of financial oversight to which providers are held to account. There needs to be greater clarity about how these two systems will interact and align. Our members would also welcome clarity around what a financial support looks like once a trigger has been flagged, in particular the difference between support packages in segment 3 and 4.

We were also disappointed to see that the updated SOF document does not address the underlying issue that is the mismatch between available resources and demands on services that sometimes make performance issues beyond providers' direct control; the resulting regulatory support and intervention will have limited effectiveness if these fundamental national issues remain unresolved.

Changes under the operational performance theme

Our members have expressed concern at some of the proposed changes to the operational performance metrics and triggers. Although we support the ambition in principle to reduce inappropriate adult mental health out of area placements, which is in line with the policy priorities of the [Five year forward view for mental health](#), this new metric is likely to be a cause for concern and contention for providers that are not yet part of a new mental health care model which gives them control over the commissioning budget. Members have highlighted to us that out of area placements usually result from factors beyond providers' direct control, for example fractured commissioning arrangements or insufficient capacity in community-based crisis teams. We also note that this new metric will be measured against "locally agreed trajectories". Our members would welcome greater clarity on how these trajectories will be agreed and ensure that there is consistency and fairness in how performance is measured across the board and that there is clear input from providers.

We understand the move to amend operational performance triggers so that they are linked to Sustainability and Transformation Fund (STF) trajectories for A&E performance only as this reflects the change in focus in the national planning guidance for 2017/18. At the same time, there needs to be an appropriate balance between absolute and relative performance. Members see the use of both the STF trajectory for A&E performance and the breach of the absolute threshold of 95% for two months as likely to cause confusion if, for instance, a trust is on track to meet its allocated STF trajectory but also breaches the absolute threshold.

Similarly, while we understand the need to include a focus on the efficiency of patient flow through organisations to minimise delayed transfers of care (DTOCs) given the current national focus on this issue, including it within the SOF raises questions as to how this might affect a trust's segment and how it will be measured in an objective way.

Changes under the strategic change theme

As STPs continue to develop – with some areas moving towards ACSs – it is imperative for NHSI to ensure that its framework remains robust and keeps pace with these system developments. The proposed changes to the SOF signal NHSI's intention to take system-wide leadership into account, as measured through the new STP metrics. We believe further work is necessary to clarify how NHSI intends to measure the contribution of individual providers to local systems as currently the strategic change theme is underdeveloped. The STP metrics provide an assessment of the overall STP, whereas given the nature of the SOF, this theme ought to reflect each provider's participation in and contribution to their STP footprint. We would welcome the opportunity to work with NHSI to develop its approach under this theme and its metrics further. Any additional triggers against this theme need to be considered carefully and remain objective. NHSI also needs to clarify how it will regulate and support new organisational forms with different accountability structures, as well as how it will align the commissioner and provider oversight frameworks in a way that makes sense for STPs.

CONCLUSION

Overall we are pleased to see that NHSI is delivering on its commitment to review the SOF, but would encourage NHSI to establish a regular review of the SOF and to evaluate its impact. We also note more broadly that it continues to be difficult to separate the framework from the wider policy context, continued financial pressure and the reality of greater grip and control from the centre. For this reason, we look forward to working with colleagues at NHSI throughout the future development of the SOF and welcome the opportunity to facilitate continued engagement with our members.