

Five key principles for regulation and oversight in a systems world

The direction of travel

Across the health and care sector, change is underway as integrated care systems (ICSs) prepare to become established in law, with responsibilities to plan and coordinate care for their populations.

As well as being accountable for the quality of care within their services, trust boards will also be increasingly expected to work in partnership with other trusts and wider partners within the system, such as local authorities.

Within this new context, the national bodies which regulate the quality and performance of NHS services, including the Care Quality Commission (CQC) and NHS England and Improvement (NHSE/I), are adapting their approaches to more closely align with these changes. This includes

- Assessing the performance of ICSs alongside trusts: NHSE/I will oversee the performance of ICSs against their responsibilities to plan and coordinate care, as part of its system oversight framework for 2021/22. CQC is also expected to have a role in reviewing quality of care across an ICS as set out in A new strategy for the changing world of health and social care.
- ICSs to be increasingly involved in the oversight of trusts: In future, NHSE/I intends to work through ICSs wherever possible, meaning ICSs will be increasingly involved in overseeing the performance of trusts.
- Consideration for system wide issues in assessments of trusts: Both regulators intend to better consider the impact of wider system factors, such as ICSs' decisions about funding, when regulating services delivered by trusts.

Our principles for regulation and oversight in the context of systems

There remain questions about what regulation and oversight within this systems world will look like in practice. Our new briefing, *Evolving regulation and oversight in a systems world*, sets out our five key principles to ensure it is effective and adds value.

- 1 Regulation should provide objective and independent judgement.

The regulatory bodies, principally CQC and NHSE/I, and ICSs will need to avoid any conflicts of interest. For example, in future, ICSs will have responsibilities for making decisions about strategy and funding that will influence the delivery of health and care services at trust-level. Trusts' performance will therefore be partly determined by these ICS decisions – and that will inevitably raise questions about the ICS's ability to objectively oversee trusts. It will be important for the regulators to put in place safeguards to ensure trusts have a means of challenging decisions made by their ICS (for example if they disagree with the funding allocations they have been given).

2 Regulation should be risk based and proportionate.

Any regulatory intervention in the day-to-day running of services should be proportionate to the performance of the trust or the system being assessed. Regulation is effective when it focuses in on areas of risk. It will also be important for regulators to set out criteria for decisions to intervene, such as if it decides to take enforcement action against a trust for the quality or safety of a service. When that happens, it is also important that trusts and systems feel that they can take charge of their own improvement.

3 Regulation and oversight arrangements should place minimal burden on providers and add value.

Trusts have long highlighted regulatory burden, which includes regulators' repeating or duplicating requests for information, as a longstanding issue. NHSE/I and CQC are keen to avoid this in future, which is welcome. As ICSs begin to settle into their new oversight responsibilities, there remain concerns about whether these might duplicate NHSE's oversight duties. It will be important for the regulators to ensure ICSs' new responsibilities do not cut across existing activity, but instead offer new insight into the quality and performance of trusts.

4 The context within which trusts, and systems, operate should be considered in any regulatory assessment.

Regulators should be mindful about the impact that this period of significant change will have on performance. ICSs are at different stages of development and maturity and this, coupled with new regulatory frameworks and a stretching operational task, could create a complex and volatile picture of performance. Trusts have also noted that regulation and oversight does not always align with their operational context, such as limits to funding and resources, and most notably, the challenges of recovering services from COVID-19. Resetting the regulatory regime to take the new statutory system into account offers an opportunity to better consider this broader context within which trusts operate.

5 Accountabilities should be clearly defined.

A prominent concern trust leaders have is the potential impact of system-focused regulation on their existing accountabilities. The concern is that trusts will be held to account for decisions made elsewhere in the system. It is important for new regulatory frameworks to ensure there is no ambiguity about where accountability for decisions about health and care services sits.

How can governors respond?

Governors may wish to gain assurance on their board's new duties to work in collaboration with other trusts and partners within the system in their roles. We would emphasise the need to ensure collaboration is pursued in situations where it would be beneficial to patients and service users. Additionally, governors may wish to take into account the benefits of collaboration for these groups as well as focusing on the individual performance of the board.

Governors will also need to take into consideration any future responsibilities delegated to their board by the ICS. A question for governors could be 'How is the board going to balance these new responsibilities with their own duties to ensure it is upholding the quality and safety standards of its own services?'