

Draft Guidance on good governance and collaboration: consultation

NHS Providers response

About us

NHS Providers is the membership organisation for the NHS acute, mental health, community and ambulance services that treat patients and service users in the NHS. We help NHS trusts and foundation 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 all trusts in England in voluntary membership, collectively accounting for £104bn of annual expenditure and employing 1.2 million staff.

About this consultation

On 27 May 2022 NHS England (NHSE) published its [Draft Guidance on good governance and collaboration](#) for [consultation](#). In our response below we have addressed the online survey questions by topic area, rather than responding individually to each consultation question. This response provides our organisational view and reflects the feedback we have received from our members.

Aims of the guidance

This new guidance sets a clear expectation that providers will collaborate with their system partners in the context of statutory integrated care systems (ICSs). We appreciate the clarity of the guidance, its clear link with recent legislative changes, and the useful basis it provides for complying with the governance conditions of the NHS provider licence.

It is particularly welcome that the guidance focuses on the good governance required for collaboration as the means by which boards direct and control their organisations, rather than the structures or processes underpinning good governance.

We agree with the aims of the guidance to set clear expectations for how providers should work and collaborate with partners, for example via place-based partnerships and provider collaboratives, and the governance arrangements that must be in place to support this.

We appreciate the emphasis on system-minded leadership and the right organisational and individual behaviours that must be in place, in order to deliver on the triple aim duty (better health and wellbeing for everyone, better quality of health services for all, and sustainable use of NHS resources).

We also appreciate the focus on reducing health inequalities and ensuring equitable access to services, as well as the recognition that different areas will have different priorities.

We agree that effective collaboration is necessary, particularly in the context of contentious issues, and appreciate the opportunity for providers to influence these via their involvement in place-based partnerships and provider collaboratives. Our members have, however, shared apprehension about delivering on decisions that they might not have necessarily been involved in making. Some shared their organisation's experience of spanning multiple ICSs, but not being strongly involved in integrated care board (ICB) decision-making and priority setting.

Key areas for collaboration

We believe that the three key areas for collaboration are consistent with the new expectations of providers and system partners and feel that the illustrative minimum behaviours are helpful. Given that system working is still developing, and the recent passage of the Health and Care Act raises new questions for trust governance, however, it would be useful to have some good practice examples, which would help substantiate these.

Characteristics of governance arrangements that support effective collaboration

It is welcome that the guidance sets out the characteristics of governance arrangements to support effective collaboration, alongside clear descriptions and useful prompts in the key lines of enquiry. We agree with the way that these characteristics are phrased, as they provide enough context without being too specific, and they align with the principles of accountability, subsidiarity and collaborative working, which we firmly support.

It is also useful to see an explicit reference in the guidance to the system oversight framework (SOF), explaining that NHS England could intervene and act upon poor governance/collaboration via the SOF.

We support the expectation of informal resolution in the first instance, and the role of ICSs in helping to facilitate resolution early on in the process, with formal dispute resolution procedures in place to ensure trusts can draw on a third party, or support from NHSE when necessary. We hope that the guidance will thus be used as a last resort in NHSE judgements of provider performance under the SOF.

Equality and health inequalities

The proposals in the draft guidance are sensible and in line with the triple aim and the overarching goal to reduce health inequalities. The impact of the proposals is yet to be seen, but we believe that they should have a positive impact on people and groups with protected characteristics.

Evolving expectations of trusts' collaboration as part of system and place-based partnerships and provider collaboratives

By taking collective responsibility for shared outcomes across the system, trusts and their partners will be able to address system-wide operational challenges and risks to delivery. While trust leaders support this approach in principle as the only way of solving collective challenges, they are concerned about how this will align with their statutory duties and accountabilities. Trusts are also concerned that current oversight and regulatory regimes are still focused on providers, which is not yet supporting collective risk management at system level.

Our members have shared their unease about the unclear and potentially overlapping accountabilities between their organisations, place-based partnerships, provider collaboratives, ICBs and ICPs. They have also noted that the requirements and metrics they will need to comply with are new and will need time to become established. Providers are thus keen for regulators to recognise the complexity of the new environment they will be operating in and to account for this in their approach to regulation and oversight.

General comments

This is an important guidance document, and we support its aims, but we are apprehensive about the timing of its publication. The guidance is being issued under the NHS provider licence, while the licence is undergoing a fundamental review, and consultation on it is not expected until later this year.

While it makes sense to issue this guidance now, to account for the new legislation and the official launch of ICSs, we would have hoped the publication of these two documents would be better aligned.

We are keen to continue working with NHS England to address the policy questions raised in this consultation response, as the provider licence is reviewed. We are grateful to the team developing the guidance for working closely and iteratively with NHS Providers and our members prior to the consultation and to date. This ongoing engagement has been particularly helpful and constructive for us, and hope this has also been the case for you.

We are also keen to support the health and care system to navigate the implementation of this guidance.

Our 'asks' on behalf of our members are:

- An appreciation of the complexity of the new statutory framework and that this is recognised in NHSE's approach to regulation and oversight.
- Further guidance in navigating this complexity and some scenario testing with our members.
- A period of learning and adaptation as ICSs and the new ways of working bed in, reflected in NHSE's approach to oversight and enforcement.
- Continuing co-production with the team developing this guidance and continuing constructive work with the provider licence team at NHS England.