NHS Providers

# IMPROVING REGULATION FOR THE FUTURE

## Regulation survey 2023

JULY 2023

# IMPROVING REGULATION FOR THE FUTURE
## Regulation survey 2023

## CONTENTS

# KEY POINTS

- This year's regulation survey was conducted against a challenging backdrop, marked by unprecedented operational and workforce pressures, increasing demand for care and industrial action. It took place as trusts and their partners adapted to statutory system working, and to new regulatory requirements introduced by NHS England (NHSE) and Care Quality Commission (CQC). Nevertheless, we received responses from 50% of our membership.
- Trusts continue to be supportive of the direction of travel indicated by the regulators. Around eight in 10 respondents supported the changes initiated by CQC to deliver more risk-informed and responsive regulation, and nearly six in 10 appreciated the clarity of the segmentation descriptions and the oversight metrics in the NHS oversight framework.
- However, support for these principles contrasts with trust leaders' experiences of regulation at the frontline. Only 14% agreed that regulators took operational pressures into account. The majority said that regulatory burden (52%) and ad hoc requests (59%) had increased.
- While supportive of the aims of CQC's programme of transformation, respondents had concerns about aspects of CQC's current approach. Trusts' concerns include: variable experiences of CQC inspections; a lack of confidence in the skills and expertise of CQC inspection teams; and a strong view, held by some, that the regulator's processes are flawed. Only 37% of respondents agreed that CQC's approach reflects the needs of their sector, down from 50% last year; and two-thirds disagreed that CQC's approach encourages providers to collaborate and integrate care.
- Trust leaders also reported cultural and behavioural challenges in their interactions with NHSE as a regulator. A majority of respondents (77%) perceived the NHS oversight framework as a performance management tool, as opposed to an improvement tool (31%).
- Respondents were very supportive of the potential role of integrated care boards (ICBs) as system partners and convenors, but held reservations about their role as performance managers, citing varying levels of maturity, and confusion and duplication between ICBs and NHSE.

1

# INTRODUCTION

This report sets out the findings of NHS Providers' eighth annual regulation survey, which explores NHS trusts' and foundation trusts' experiences of regulation. We asked respondents to reflect on their experience of regulation during 2022/23, with a specific focus on the roles of CQC and NHSE.

This year's survey was carried out between April and May 2023, against a backdrop of severe challenges relating to performance, finances, ongoing industrial action, and staff burnout.

This year also marks the first anniversary of the establishment of integrated care systems (ICSs) in law. The Hewitt Review recently reflected on how the oversight and governance of ICSs could enable them to succeed, balancing greater autonomy and robust accountability. Meanwhile, the CQC and NHSE have been adapting their own regulatory approaches within a new system environment, by making changes to their assessment, oversight and operating frameworks.

## The provider context

Following a period marked by Covid-19 and its legacy, 2022/23 was one of the most challenging on record for the NHS. The health service, and care quality, have come under pressure due to increasing demand and care backlogs in all sectors, staff shortages and staff burnout, difficulties with the flow of patients through the system, and industrial action.

This combination of operational and workforce challenges has come at a time when providers, and their partners, have been adapting to statutory system working, and to new regulatory requirements. Trusts' optimism about the improvements system working can offer therefore sit alongside their concerns over additional bureaucracy and undesirable complexity. While there remains considerable support in the provider sector for more flexible, supportive and risk-based regulation, this is mixed with frustration about a regulatory culture which continues to feel 'top-down', variable inspection quality, and a lack of appreciation for the context within which trusts and staff operate.

We are grateful to all the trust leaders who responded to our survey, whose views are reflected in this report. We are also grateful to CQC and NHSE for their feedback on our proposed survey questions, and for their commitment to engaging with us and our members constructively in refining their regulatory approaches.

1

# The regulatory context

## Care Quality Commission

Since the publication of its *new strategy for the changing world of health and social care* in 2021, CQC has been developing its new approach to regulation. The regulator has been working with providers, stakeholders and members of the public to co-create, test and pilot aspects of that new approach, including its new provider portal, which is expected to become operational this summer.

CQC has also been refining its new single assessment framework, which will apply across providers, systems and local authorities, and is currently scheduled to become operational later this year. CQC's four ratings and five key questions will remain central to the new framework, but they will be underpinned by a set of new quality statements, and six new evidence categories.

CQC's new powers to review and assess ICSs and local authorities, under the Health and Care Act 2022, became effective in April 2023. In preparation for these, the regulator has published updates and new interim guidance on its approach to local authority and integrated care system assessments. CQC will begin by reviewing data and published documentary evidence across all local authorities and ICSs, to form a national view of performance. It has also committed to a small number of pilot assessments to test the new single assessment framework with local authorities and ICSs.

The delivery of CQC's ambitious programme of transformation, and the move to a "smarter", more dynamic and flexible style of regulation, has also involved changes to its executive team and operational teams. Instead of being split by sector, CQC's operational teams will now work across four geographic areas or 'networks', with local teams featuring a mix of expertise and experience of different types of health and social care services.

We have been keen to understand trusts' views of these significant changes in approach, and to grasp their experience of CQC regulation within a period of extreme operational challenge.

1

## NHS England

In June 2022 NHSE published its NHS oversight framework for 2022/23, reflecting updated priorities for the NHS, the establishment of ICBs, and the formal merging of NHS Improvement into NHS England. It also accounted for NHSE's duty to undertake an annual performance assessment of ICBs under the Health and Care Act 2022.

In October 2022 NHSE published its new operating framework, which signalled an intended shift in culture, mindset and approach spanning the whole NHS. It aimed to provide clarity on the respective roles and accountabilities of providers, ICBs and the NHSE national and regional teams, and committed to the principles of collaboration and subsidiarity.

We have been keen to explore how NHSE has been living up to these commitments and to hear our members' views on the implementation of its oversight and operating frameworks over the past year.

## Integrated care systems and integrated care boards

ICSs were put on a statutory footing on 1 July 2022, following the passage of the Health and Care Act 2022 the previous April. Working through their two statutory parts, ICBs and integrated care partnerships (ICPs), ICSs have four key aims:

- Improving outcomes in population health and health care.
- Tackling inequalities in outcomes, experience and access.
- Enhancing productivity and value for money.
- Helping the NHS to support broader social and economic development.

ICBs were established as statutory bodies, with the function of arranging health services for their populations. We have therefore included some questions on ICBs in this year's survey, given their responsibilities for the oversight and performance management of NHS services alongside NHSE, which retains statutory accountability for the oversight of both ICBs and NHS providers. The driving principle, as described in the NHS oversight framework, is for NHSE to discharge its duties in collaboration with ICBs, asking them to oversee and seek to resolve local issues before escalation.

In this year's survey we asked trust leaders about their perceptions and experiences of working with ICBs, and about how ICBs have been discharging their functions in their first year of operation.

2

# ABOUT THE SURVEY

In April/May 2023 we surveyed chairs, chief executives, company secretaries, medical directors and nursing directors for their views and experiences of regulation during 2022/23.

This is the eighth in our series of annual surveys exploring our members' experiences of regulation and oversight over the previous 12 months. This year's survey received 105 responses, representing 50% of the provider sector. All regions and trust types were represented. We are grateful for all of the contributions.

In addition to the survey findings, the analysis and the commentary in this report is informed by our ongoing engagement with providers, and the experiences they have shared in our conversations with the regulators and beyond.

In this report, where we refer to 'the regulators' and 'national bodies' we mean CQC and NHSE.

Throughout the report, when making comparisons with previous years, we have used our 2022, 2019 and 2018 survey results. The results from our 2021 survey were not directly comparable due to the impact of the Covid-19 pandemic. We also added a number of new questions this year, to reflect legislative, statutory and policy changes.

# FINDINGS

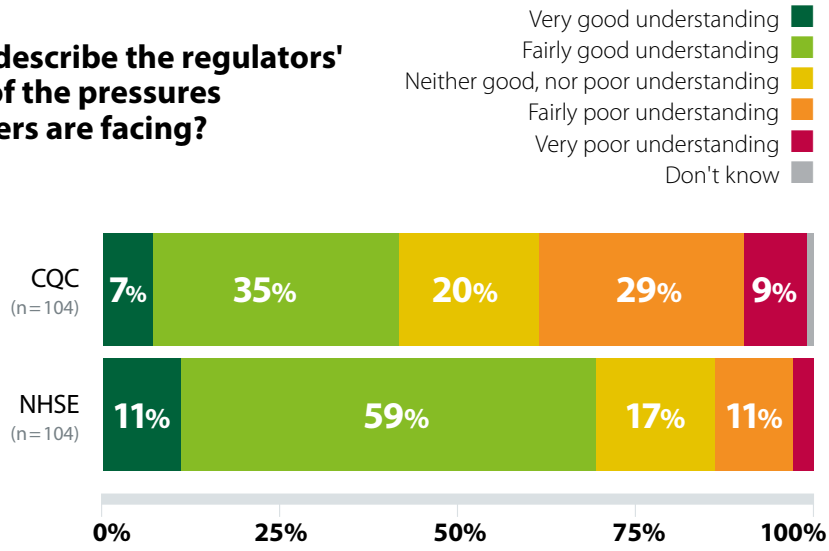
3

## Perceptions of regulation

In the context of a particularly challenging year for the NHS, we asked trust leaders how far regulators understood the pressures they are facing. The results are very similar to last year, with CQC in particular felt to have insufficient understanding of the broader pressures facing NHS providers and staff.

**Figure 1**

**How would you describe the regulators' understanding of the pressures that NHS providers are facing?**



3

## Care Quality Commission

42% of respondents thought that CQC's understanding of the pressures was fairly good (35%) or very good (7%), while 38% said it was fairly poor (29%) or very poor (9%). These results were a slight improvement on last year (41% – good; 43% – poor), but decidedly worse than in 2019 and 2018, when 52% and 62% respectively, described the regulator's understanding of the pressures facing trusts as good.

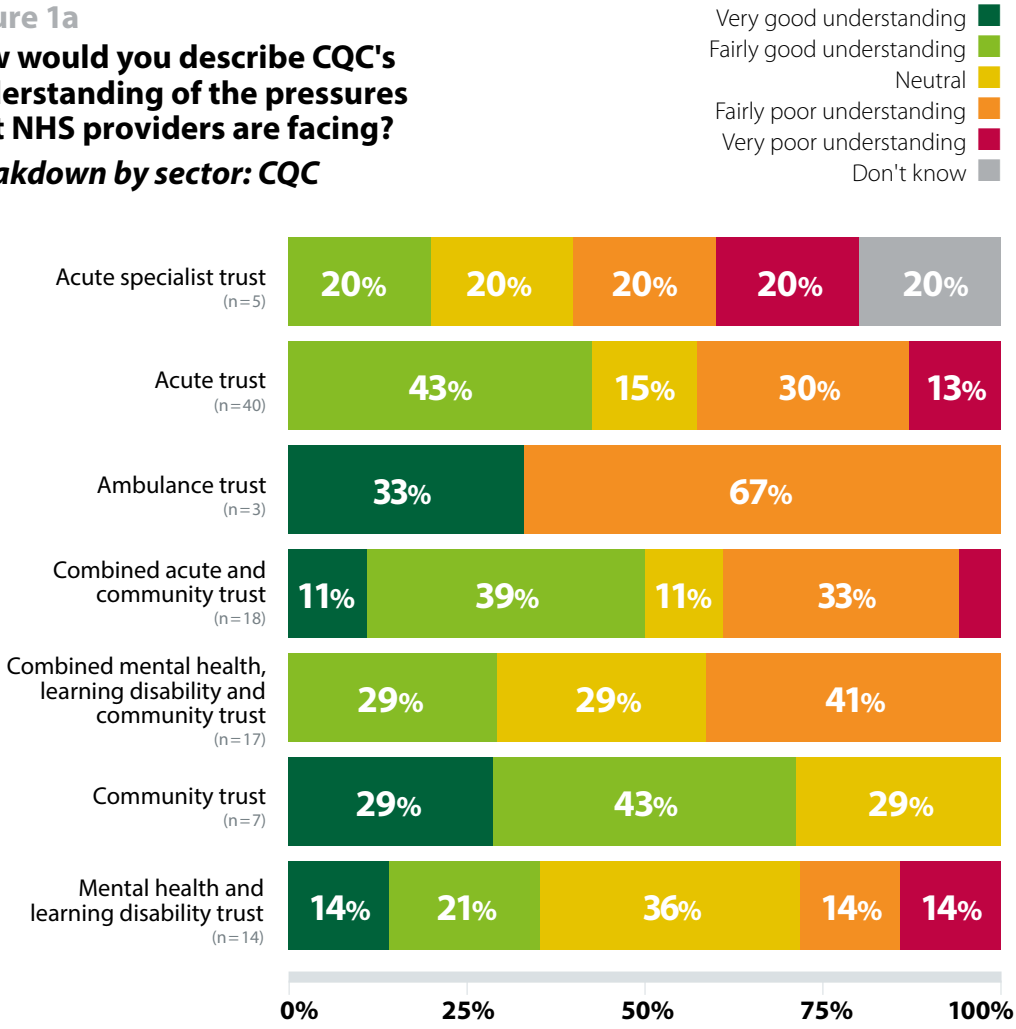
Responses varied by trust type:

- Community trusts were the most likely to say that CQC had a good understanding of the pressures that NHS providers are facing.
- In contrast to last year's results, respondents from ambulance trusts were most likely to say that CQC had a poor understanding of the pressures (67%) – the same percentage said that CQC's understanding was good in 2022.
- Perceptions in the mental health and learning disability sector have improved: 64% thought CQC had a very poor or fairly poor understanding of the pressures they faced last year; this year only 28% held that view.

**Figure 1a**

**How would you describe CQC's understanding of the pressures that NHS providers are facing?**

***Breakdown by sector: CQC***



3

## NHS England

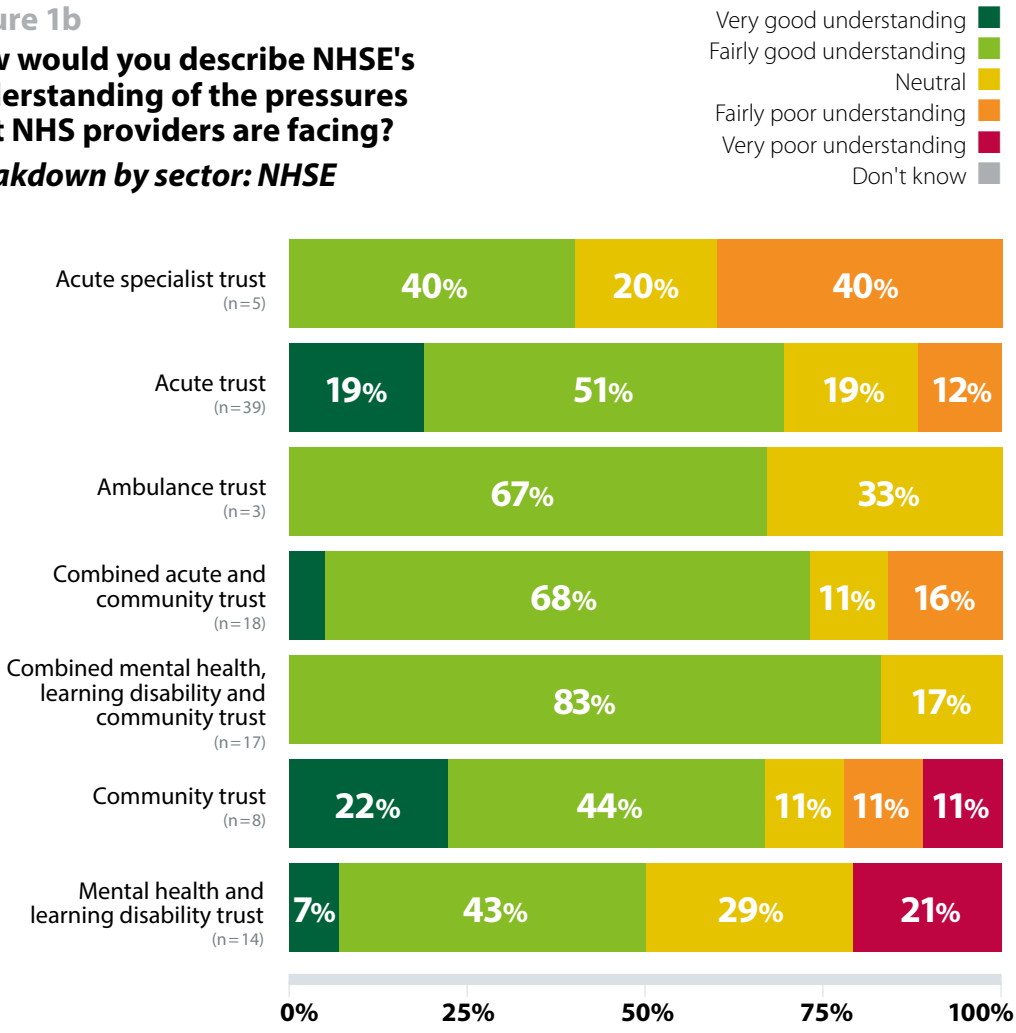
Seven in 10 (70%) respondents said NHSE had a very good (11%) or fairly good (59%) understanding of the pressures that NHS providers are facing. This is slightly higher than last year's findings (68%), but lower than the results from 2019 (74%) and 2018 (75%).

Trust leaders from combined mental health/learning disability trusts answered most favourably, while acute specialist trusts were the most likely to say that NHSE had a poor understanding.

**Figure 1b**

**How would you describe NHSE's understanding of the pressures that NHS providers are facing?**

***Breakdown by sector: NHSE***



3

Trusts' comments suggest that, although they feel colleagues in the regulators understand the pressures they face, regulatory approaches have not adapted to reflect this, and sometimes burden increases when times are hardest.

> *While I think that national bodies are aware of the pressures facing the frontline, they appear to be either unable or unwilling to tailor their requests for information appropriately. I do consider, however, that CQC locally appears more willing to try.*
>
> COMPANY SECRETARY, ACUTE TRUST

3

# The perceived burden of regulation

Overall, trusts continue to perceive an increasing regulatory burden and increasing ad hoc requests from the regulators.

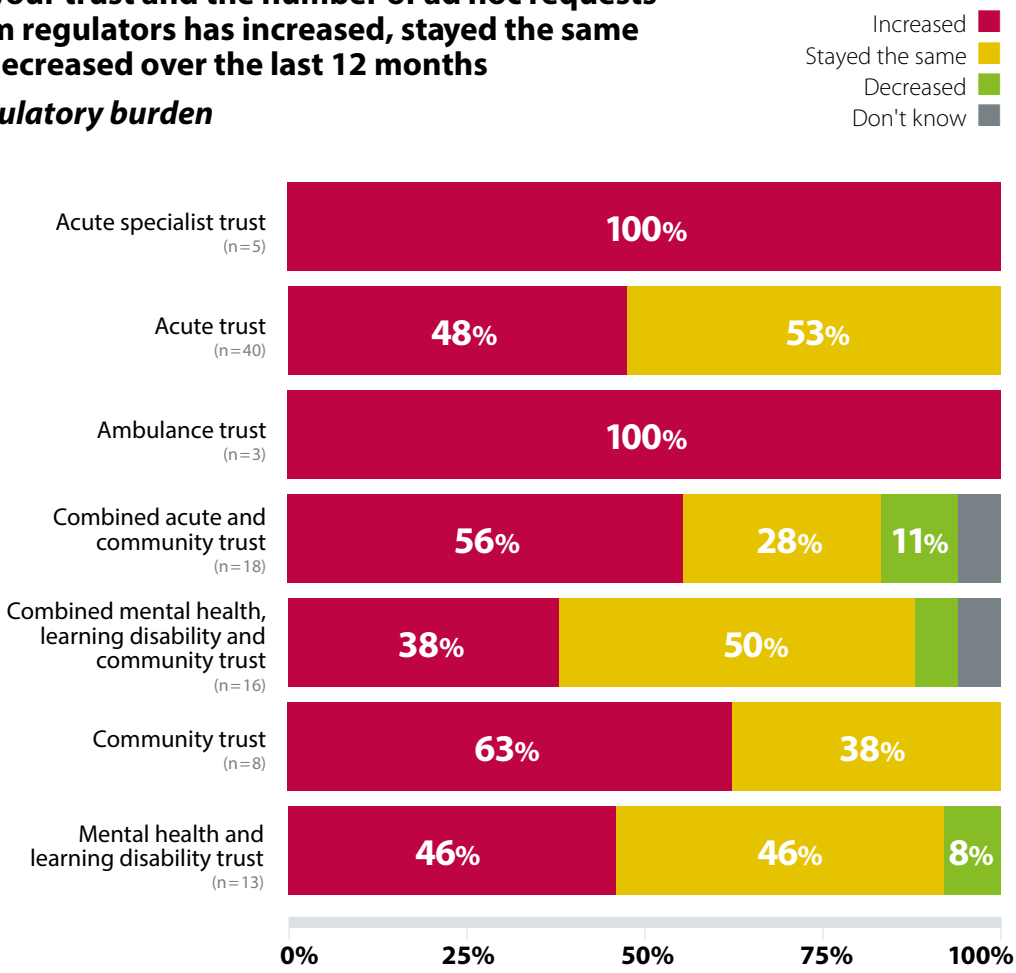
Just over half (52%) of respondents said the regulatory burden on their trust had increased, compared to 42% saying it had stayed the same. Only 4% said the burden had decreased over the past year.

Responses varied by trust type. All (100%) respondents from acute specialist trusts and ambulance trusts said that regulatory burden on their trust had increased over the past 12 months, whereas combined mental health/learning disability/community trusts were the least likely to report an increased regulatory burden.

**Figure 2a**

**Please indicate whether you think the burden on your trust and the number of ad hoc requests from regulators has increased, stayed the same or decreased over the last 12 months**

***Regulatory burden***



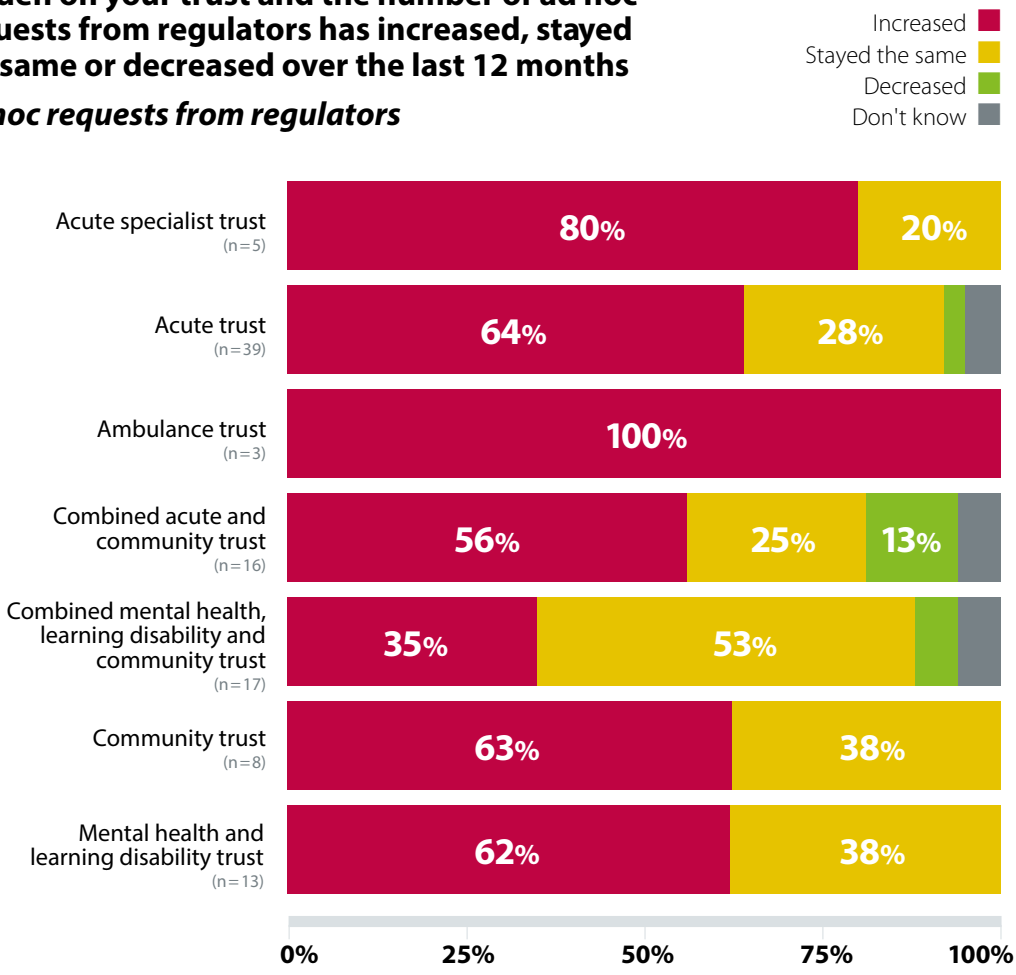
Just under six in 10 respondents (59%) thought that ad hoc requests from regulators had increased over the past 12 months, a third (33%) said they had stayed the same, and only 4% said that they had decreased.

Similar to results on regulatory burden, ambulance trusts were the most likely to say that ad hoc requests had increased – all respondents from this sector (100%) said that was the case.

**Figure 2b**

**Please indicate whether you think the regulatory burden on your trust and the number of ad hoc requests from regulators has increased, stayed the same or decreased over the last 12 months**

***Ad hoc requests from regulators***




We also asked trusts whether regulatory reporting requirements were proportionate to the level of risk they manage. Responses to this question were almost evenly split, with 49% reporting that the requirements were proportionate, and 50% saying they were not.

In their comments, trust leaders said that requests from regulators were often demanding and burdensome and that it would be helpful if ad hoc requests were reduced. While some reported a decrease in reporting requirements, many felt that pressure was rising and additional burden was brought in during times of extreme pressure.

3

*Regulation and oversight steps up in times of heightened pressure which applies further burden, intensity and pressure to providers, rather than being supportive or scaled back when pressure is greater.*

CORPORATE DIRECTOR, MENTAL HEALTH/LEARNING DISABILITY TRUST

*The increased reporting requirements do not seem to take into account the current pressures that NHS trusts are facing.*

CHIEF EXECUTIVE, COMBINED MENTAL HEALTH/LEARNING DISABILITY AND COMMUNITY TRUST

*Whilst I appreciate that Covid-19 was exceptional, the regulation lite environment was refreshing and I was hopeful that we would think before reinstating things, sadly it appears not...*

CHIEF EXECUTIVE, ACUTE TRUST

Respondents felt disappointed by a continued regulatory focus on inputs and targets, rather than on outcomes and improvement. They tended to feel micro-managed on operational performance by regulators, with a lack of recognition of the cumulative impact of pressures created by austerity, demographic change and industrial action, in addition to the ongoing impact of Covid-19 and long Covid. When reflecting on the role of the regulators, trust representatives felt subject to unrealistic requirements in a system which diverted efforts from patient care and sometimes prioritised financial scrutiny over care quality.

*Needs to feel more like an improvement partnership within a just culture framework – not being judged for non-deliverable performance targets.*

CHIEF EXECUTIVE, MENTAL HEALTH/LEARNING DISABILITY TRUST

*I accept that the level is right but I am concerned that the focus is skewed – so that the scrutiny is all about finance and less about safety and quality.*

COMPANY SECRETARY, ACUTE TRUST

*While I think the reporting is proportionate to the risk we carry, I do not think what they ask for suggests they understand the risk. Most of what is asked is irrelevant to risk.*

CHAIR, ACUTE TRUST

Respondents also commented on the lack of coordination between regulators, meaning that the same information was requested multiple times, leading to a significant increase in the time and resource burden. This has been a common theme over the years.

3

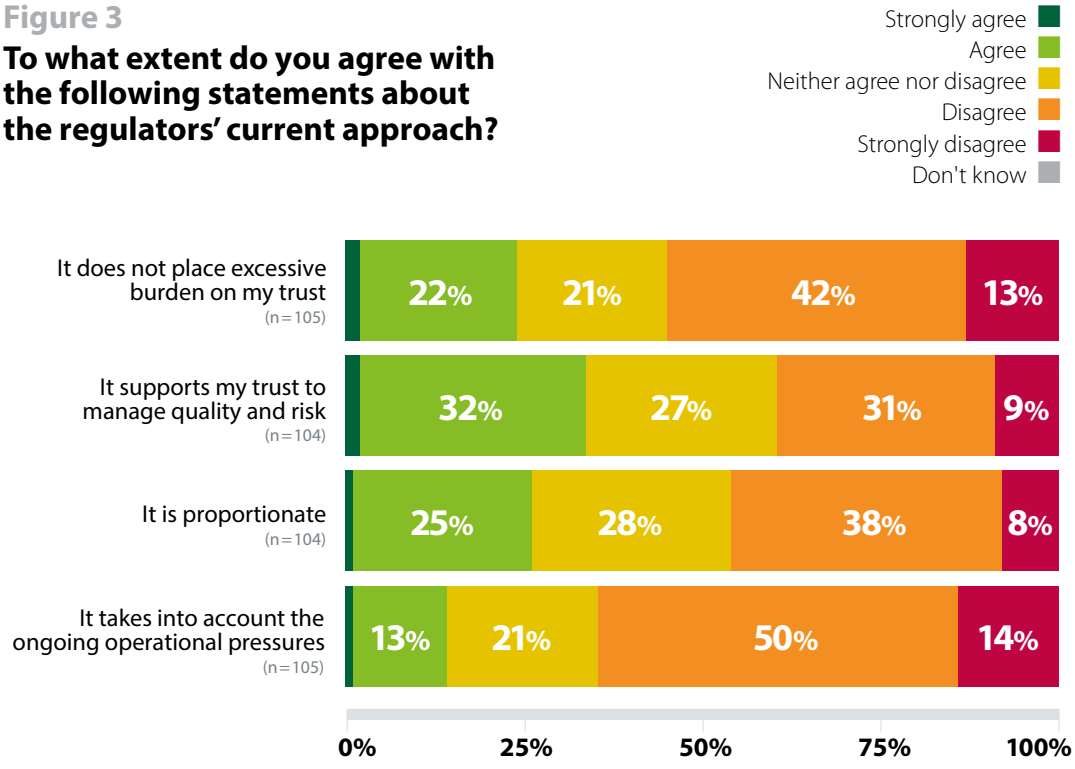
*It would be helpful if there was a degree of co-ordination amongst regulators – a recent example is that we have had several regulatory visits from different bodies on the same matter – where the burden on time and resource could have been reduced by sharing the outcome.*

COMPANY SECRETARY, ACUTE TRUST

The sentiment in the comments above is reflected in responses about specific aspects of regulators' approach (see figure 3 below).

**Figure 3**

**To what extent do you agree with the following statements about the regulators' current approach?**




- Almost two-thirds (64%) disagreed (50%) or strongly disagreed (14%) that regulators took ongoing operational pressures into account, with only 14% agreeing.
- Well over half of respondents (55%) disagreed with the statement that regulators' approach did not place excessive burden on their trust, and almost half of respondents (46%) thought regulators' approach was not proportionate.
- Two-fifths (40%) of respondents disagreed (31%) or strongly disagreed (9%) that regulators' approach supported their trust to manage quality and risk.
- Responses varied by trust type for the different statements. The proportion of those who disagreed was highest among ambulance and acute specialist trusts.

4

# CARE QUALITY COMMISSION

Over the past two years CQC has been working to make the ambitions of its new strategy a reality. It has committed to 'smarter', risk-informed regulatory style, based on flexibility, objectivity and responsiveness, and has been trialling and testing aspects of this new approach with patients, providers and stakeholders.

We have asked members for their response to CQC's ambitions for transformation, alongside their current experiences of CQC regulation.

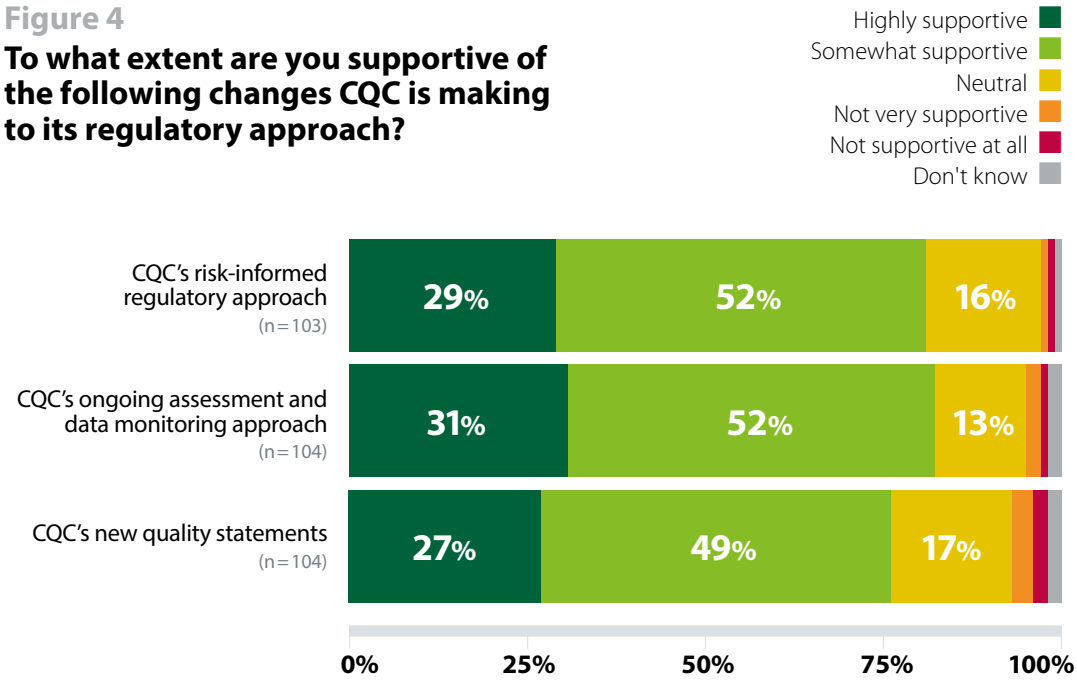
## Views on CQC's developing regulatory approach

Figure 4 below shows overwhelming support for CQC's developing approach, in similar vein to last year's results. Responses for all statements were positive, with around eight in ten respondents being supportive of each one:

- Just over four in five respondents (81%) were supportive (52%) or highly supportive (29%) of CQC's risk-informed regulatory approach, focusing on areas of risk and safety concerns.
- A similar proportion (83%) were supportive (52%) or highly supportive (31%) of CQC's ongoing assessment and data monitoring approach, aiming to move away from routine inspections and to be more flexible and responsive to changes in quality and safety within services.
- Just over three quarters (76%) were supportive (49%) or highly supportive (27%) of CQC's new quality statements, developed in co-production with people who use services and set to replace the current key lines of enquiry, prompts and ratings characteristics.
- Only between 2 and 5% of respondents were not supportive of these changes.

**Figure 4**

**To what extent are you supportive of the following changes CQC is making to its regulatory approach?**



# 4

Respondents were cautiously optimistic about changes to CQC's approach. They welcomed them in principle, but acknowledged they did not have the evidence to make an informed judgement yet. One comment said that the new framework appeared to be more dynamic, giving a real time assessment rather than a snapshot in time.

> *For me, the proof of this risk-based approach will be in its implementation – it is a commendable, modern approach that makes sense, but it depends on what they class as 'risk and safety concerns' – I hope this is not judged simply by sensational newspaper headlines.*
>
> COMPANY SECRETARY, ACUTE TRUST

Other respondents identified the areas where CQC needs to develop and change to improve its approach. These included:

- Better reflecting the system and operational context in its reporting.
- Better supporting providers to improve.
- Being more collaborative in its dialogue with trusts.
- Being more transparent as to the components of a 'good' or 'outstanding' service.
- Using the right sources of information/intelligence to make its judgements.
- Being more objective when rating/re-rating services.
- Re-considering its approach to providers rated as 'requires improvement', given there was a shared feeling that these providers were 'stuck' in this category and not prioritised for re-inspection due to being considered low-risk.

> *The flexibility in ratings needs to move both ways – I am a bit concerned that CQC will be quick to downgrade a trust based on one piece of data but will require months of improved performance to upgrade – needs to be equitable in both directions. Also, the data boundaries need to be transparent – what does it require to be good/outstanding etc.*
>
> CHIEF EXECUTIVE, ACUTE TRUST

There were also those who were sceptical about the success of CQC's programme of transformation. One respondent stated that fundamental change in the culture of CQC was needed to bring about the desired results.

> *Based on its track record we can have no confidence in its ability to deliver this approach.*
>
> EXECUTIVE DIRECTOR, ACUTE TRUST

4

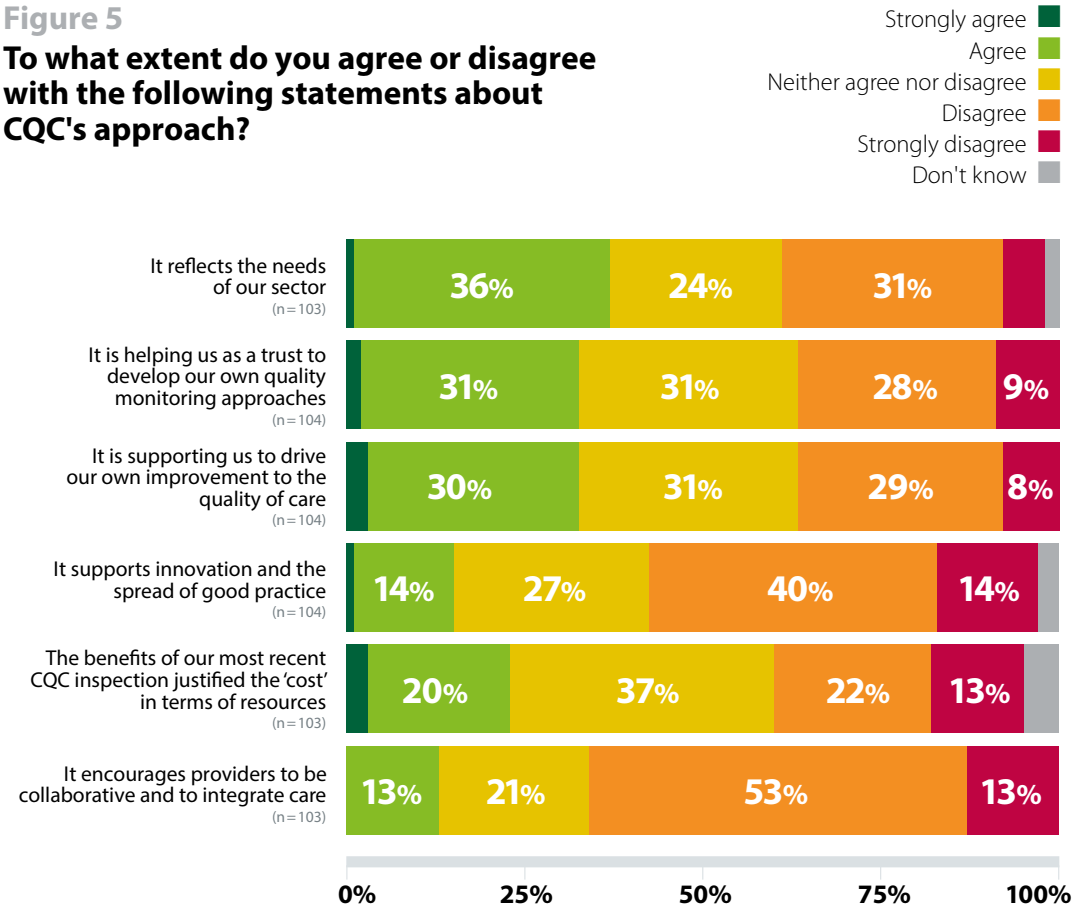
# Experiences of CQC regulation

As was the case in last year's survey, trust leaders were much less positive about their current experiences of CQC regulation than they were of the regulator's ambitions for the future (see figure 5 below).

- Only 37% of respondents agreed (36%) or strongly agreed (1%) that CQC's approach reflected the needs of their sector. This is down from 50% last year (48% agree, 2% strongly agree). The same percentage (37%) disagreed (31%) or strongly disagreed (6%) with this statement.
- More people disagreed (37%) than agreed (33%) that CQC's approach was helping their trust develop their own quality monitoring approaches.
- Fewer people agreed (23%) than disagreed (35%) that the benefits of their most recent CQC inspection justified the 'cost' in terms of resources.
- 15% of respondents agreed (14%) or strongly agreed (1%) that CQC's approach supports innovation and the spread of good practice, while over half (54%) of them disagreed (40%) or strongly disagreed (14%).
- Trust leaders responding to the survey were least optimistic about CQC's ability to encourage providers to collaborate and integrate care (66% disagreed).

**Figure 5**

**To what extent do you agree or disagree with the following statements about CQC's approach?**



# 4

Most of the comments in this section were negative about aspects of CQC's current regulatory approach. When commenting on CQC as a whole, several respondents queried whether the regulator had become too 'bureaucratic' and 'out of touch' and whether it was 'fit for purpose'.

> *Hard to imagine how it could be worse*
>
> CHIEF EXECUTIVE, ACUTE TRUST

> *I used to really respect the CQC process but recent personal experience and shared experience of others has changed that and frankly I don't feel this regulator is fit for purpose any longer.*
>
> CHIEF EXECUTIVE, AMBULANCE TRUST

A number of comments questioned the expertise of CQC inspection teams. Similar to last year's survey, trust leaders reported discrepancies between the inspection they experienced and what was reflected in the subsequent inspection report. They also spoke of factual inaccuracies, lack of appreciation of the operational context, and limited opportunities to challenge the process.

> *The CQC inspectors appear to be disorganised, uninformed, often unprofessional in approach and add no value to an already challenged system.*
>
> CHAIR, COMBINED MENTAL HEALTH / LEARNING DISABILITY AND COMMUNITY TRUST

> *Latest CQC inspection on maternity services was conducted by an inexperienced team and with an agenda of finding inadequacy. The draft findings and rating were disproportionately negative to what the inspectors found.*
>
> CHIEF EXECUTIVE, ACUTE TRUST

There were some positive comments, including about a recent inspection which, despite a rating downgrade, had helped the trust reset its direction. Another respondent appreciated the recent 'positive' light touch approach of the regulator. Some contrasted a negative overall view of the regulator with a positive experience of their local team. Trust leaders valued the consistency of relationship and the trust built with their local CQC teams, and struggled where this was lacking.

> *We have found the CQC inspections to be fair and evidenced based, recognising the operational context we have post-Covid.*
>
> CHIEF EXECUTIVE, COMBINED ACUTE AND COMMUNITY TRUST

4

> *My recent experience of interactions with the CQC is patchy... On the one hand, I find our local team approachable, responsive and often helpful. However, overall, I find the organisation to still be overly bureaucratic, slow and out of touch. I am particularly frustrated by the amount of time it takes for them to deal with relatively simple changes to registration.*
>
> COMPANY SECRETARY, ACUTE TRUST

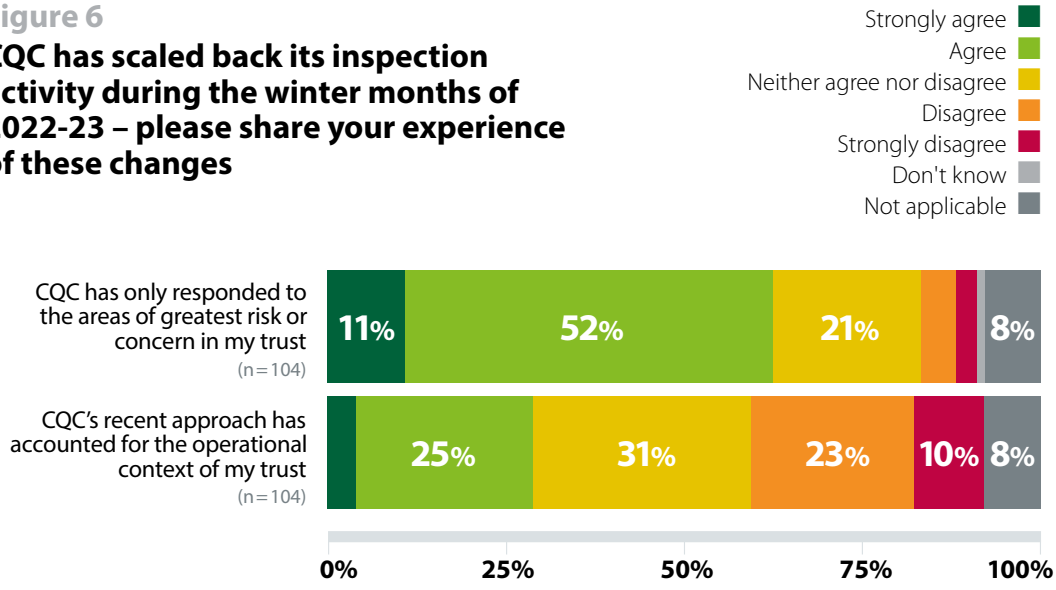
# CQC's response to winter pressures

During the winter months of 2022/23 CQC **recognised the unprecedented pressures** in the sector, and **adapted its risk-based approach** (applied since the Covid-19 pandemic), to only respond to the most serious risks to patient and public safety in NHS services. It also made adjustments in its approach to registration, and to the inspection of adult social care services, to create more capacity for discharge and thus alleviate pressures in health and social care. We asked members about their experiences of this scaled back approach.

While a sizeable majority of respondents (63%) agreed (52%) or strongly agreed (11%) that CQC had only responded to the areas of greatest risk or concern during the winter months of 2022/23, a much smaller proportion agreed that the regulator's recent approach had accounted for the operational context of their trust (29% agreed or strongly agreed, while 33% disagreed or strongly disagreed).

**Figure 6**

**CQC has scaled back its inspection activity during the winter months of 2022-23 – please share your experience of these changes**



# 4

Despite CQC's reported approach to scale back on-site activity during the winter months, in their comments trust leaders were mainly negative about the way in which CQC handled its activity during the unprecedented winter pressures. They felt CQC did not do enough to account for the context, and in some cases completely disregarded it. One respondent said they still had an inspection during this time, that was not linked to any areas of concern.

> *CQC reports on emergency departments and urgent and emergency care usually say that they noted how busy it was and that we are stressed. That is as far as accounting for context goes.*
>
> EXECUTIVE DIRECTOR, ACUTE TRUST

> *At our last inspection staff were explicitly told that they weren't interested in the context, they were just here to check on safety. Blows triangulation apart at the seams.*
>
> CHIEF EXECUTIVE, AMBULANCE TRUST

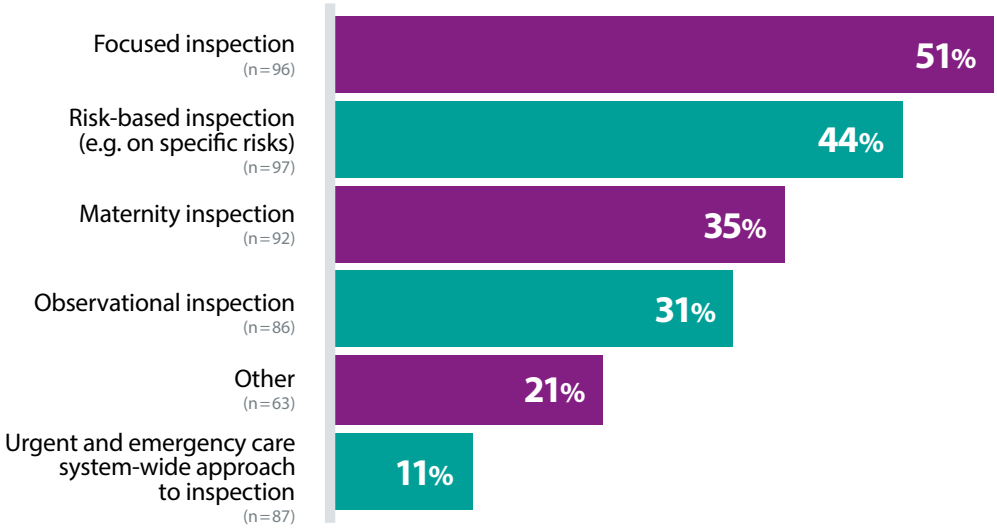
4

# CQC inspection activity

In consultation with CQC, we identified the most common inspection types that CQC had undertaken in the past year, as these differed from previous years. Figure 7 below shows that over a half of respondents (51%) experienced a focused inspection in the past year, closely followed by those who experienced a risk-based (44%) or a maternity (35%) inspection. Just over one in five (21%) said they had undergone 'other' inspections, which primarily included a mental health act or a well-led inspection.

**Figure 7**

**Please select the type(s) of CQC inspection your trust has received in the last 12 months**




We asked a separate question on whether trusts had undergone a CQC well-led inspection in the last 12 months, and what their view was on the assessment process. The responses we received were very mixed.

> *The inspection team was woefully underprepared and underpowered. No chief executive, ex-chief executive, ex executives or NED, with no experience of large tertiary acute. Disrespectful and unprofessional. Added no value as a process – draft report unrecognisable from the feedback given – no final report seven months on from the inspection. Will add no value to our improvement journey.*
>
> EXECUTIVE DIRECTOR, ACUTE TRUST

> *Concerned by the opaqueness and apparent lack of understanding of their own process – for example their inability to explain different rating for trust and hospital, despite being a single-site trust. Inconsistency of approach and questions about experience of inspectors.*
>
> MEDICAL DIRECTOR, ACUTE TRUST

*The well-led felt structured, informed and well organised.*

ASSOCIATE DIRECTOR, COMBINED MENTAL HEALTH /LEARNING DISABILITY AND COMMUNITY TRUST

*Held a mirror up to the trust. Since report reflected the experience of frontline colleagues, pointed to areas requiring greater focus from the board and other senior leaders in the trust.*

CHAIR, COMBINED ACUTE AND COMMUNITY TRUST

## CQC's new powers of system and local authority assessment

Our survey also asked about people's views on CQC's new powers to review and assess the performance of ICSs and local authorities against their Care Act duties, and whether they were on the right track to doing that effectively.

Respondents' views were mainly neutral – they felt it was too early to judge, as they hadn't seen enough evidence of the new approach in action.

The remaining comments were split between those who were positive about the changes and those who felt that a lot of work was still needed for this approach to succeed. Those who were doubtful of CQC's preparedness pointed out at CQC's continuing trust-based focus, or highlighted concerns with CQC's current skillset/expertise.

*From what we have seen so far, we think the new system is an improvement to the old system – language appears to have changed to be more supportive, and ongoing submission of evidence is better than submission under and Provider information return(PIR) pre-inspection.*

DIRECTOR OF GOVERNANCE, ACUTE TRUST

*No and nor do they have the skill set or experience to do this. It will become tick box and black and white as they cannot understand the complexity of the system. To be fair, many of us can't so how do we expect them to?*

CHIEF EXECUTIVE, ACUTE TRUST

*A whole new approach is needed. The CQC is beyond repair or reform. Not appropriate to extend the CQC's remit when it is so poor at its current role.*

EXECUTIVE DIRECTOR, ACUTE TRUST

5

# NHS ENGLAND

Through the latest NHS oversight framework for 2022/23 and its new operating framework, NHSE has made steps to clarify the expectations of trust and system oversight, and to provide further clarity on the respective roles and accountabilities of providers, ICBs and the NHSE national and regional teams. Importantly, in these documents the regulator has expressed a commitment to culture change and more collaborative ways of working.

Together with our members, we have fed back on the frameworks and on the importance of their fair and objective application. We now look forward to contributing to the oversight framework's next review and consultation, and to monitoring the progress and impact of the operating framework.

## The NHS oversight framework

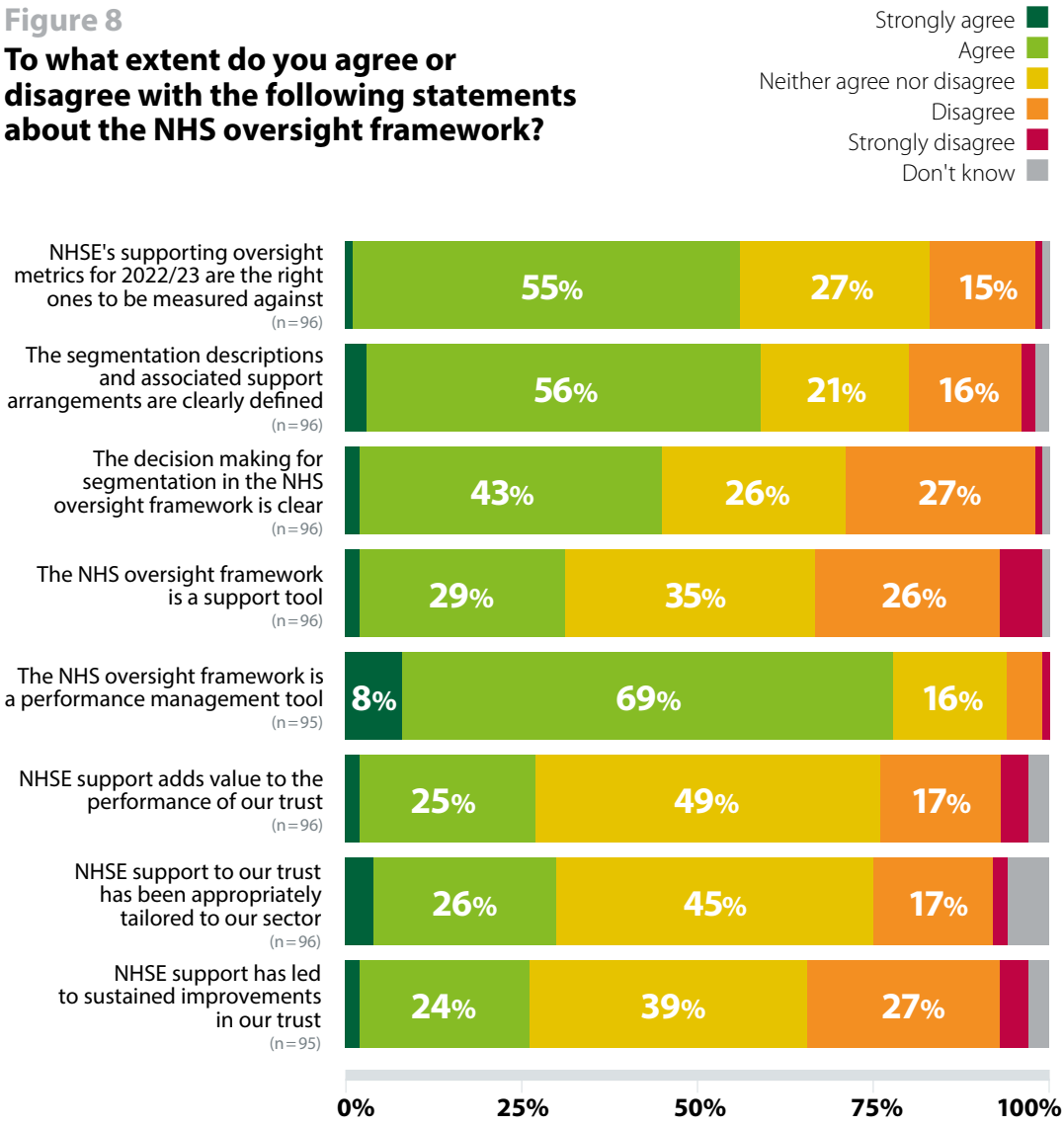
In our survey we asked members about their views on the oversight framework for 2022/23 and on NHSE's support, as experienced by their trust (see figure 8 below).

Well over half of respondents (56%) agreed (55%) or strongly agreed (1%) that NHSE's supporting oversight metrics for 2022/23 were the right ones to be measured against. And almost three in five (59%) agreed (56%) or strongly agreed (3%) that the segmentation descriptions and associated support arrangements were clearly defined in the framework.

However there remains a strong tendency to view the framework as a performance management tool. Less than a third (31%) agreed that the NHS oversight framework was a support tool, while more than three quarters of respondents agreed (69%) or strongly agreed (8%) that it was a performance management tool. These views were even more pronounced than last year, demonstrating that a clear shift in culture, approach and local implementation would be required before NHSE regulation feels primarily supportive.

**Figure 8**

**To what extent do you agree or disagree with the following statements about the NHS oversight framework?**




There was variation by sector:

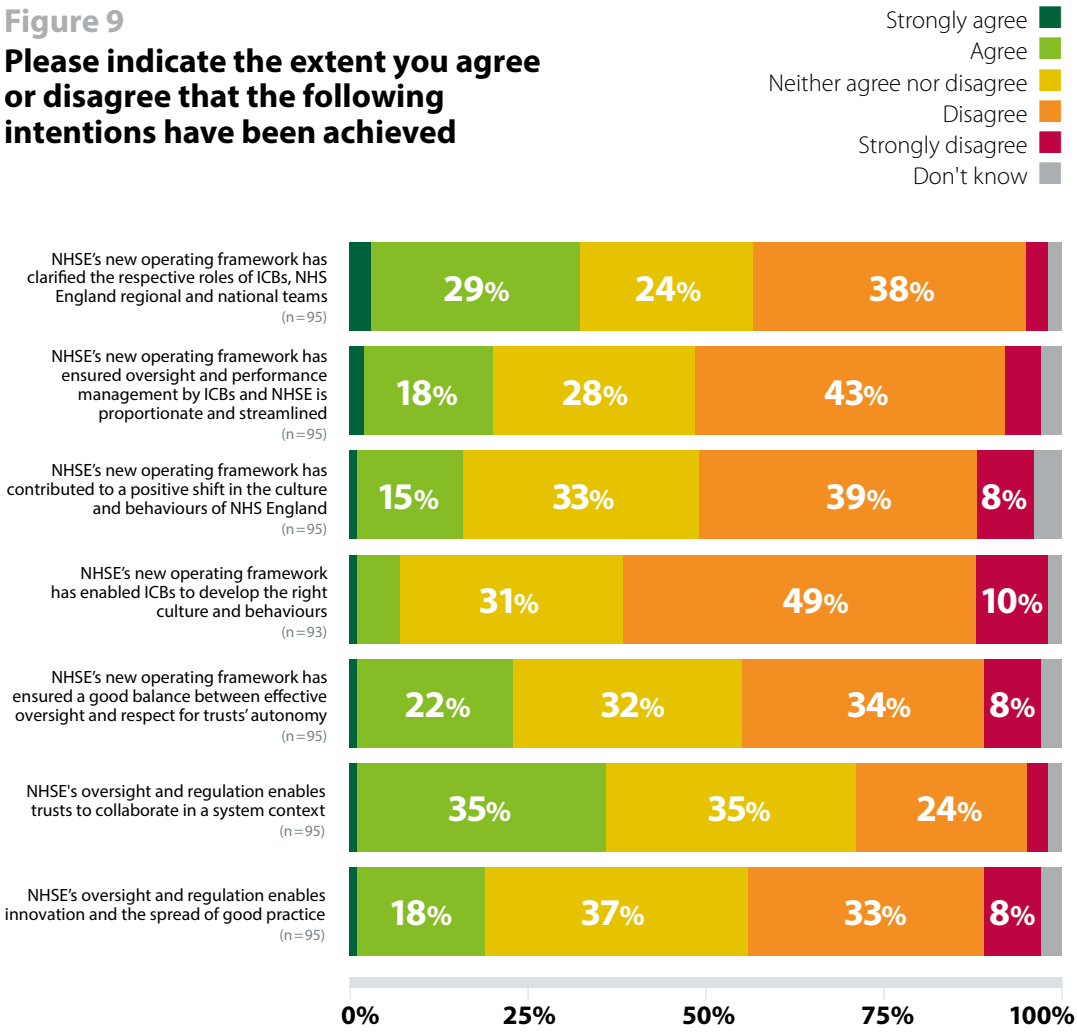
- Ambulance trusts were the most likely to say that the oversight metrics were not adequate and to disagree with the statement that the oversight framework is a support tool. Ambulance trusts were also the least likely to think that NHSE's support adds value to the performance of their trust, and that it had been appropriately tailored to their sector. All respondents from ambulance trusts also agreed with the definition of the oversight framework as a performance management tool.
- Community trusts were the most likely to view the framework as a support tool (57% agreed), and to think that NHSE support had been appropriately tailored to their sector (43% agreed).

# NHS England's operating framework

The operating framework, published in October 2022, aimed to provide clarity in relation to oversight, set out the vision of the new NHSE, embed the principles of collaboration, and lay the foundations of an improved culture. We wanted to test to what extent these aims have been achieved, and asked members about these different aspects for the first time this year (see figure 9 below).

**Figure 9**

**Please indicate the extent you agree or disagree that the following intentions have been achieved**




Over a third of respondents (36%) agreed (35%) or strongly agreed (1%) that NHSE's oversight and regulation enabled trusts to collaborate in a system context. Over a quarter disagreed (27%).

On all other areas the majority disagreed that the positive intentions of the operating framework had been realised to date. Over one in three (41%) disagreed that the operating framework had provided clarity on the respective roles of ICBs and NHSE regional and

national teams, while just under a third agreed (32%). More disagreed than agreed that the operating framework had ensured proportionate and streamlined oversight by ICBs and NHSE, and that it had contributed to a positive shift in culture and behaviours in NHSE. The largest majority of almost six in 10 respondents (59%) disagreed that the framework had enabled ICBs to develop the right culture and behaviours thus far, with just 7% agreeing.

There was variation by trust type and, once again, ambulance trusts held the most negative views in relation to several statements on the framework. All respondents from this sector (100%) disagreed that the framework had contributed to proportionate and streamlined oversight and performance management. All respondents from the ambulance sector also disagreed that it had enabled positive shift in culture in NHSE and that it had enabled ICBs to develop the right culture and behaviours.

When commenting on NHSE's regulation and oversight, trust leaders brought up a range of issues, such as the overlap of functions between NHSE and ICBs, or the sense that the regulator was removed from the reality in which trusts operate – for example, a perceived requirement for systems to agree unrealistic financial plans.

What seemed to remain a commonly held view, despite some positive relationships with regional teams and some encouraging direction of travel set from the top, was that the culture and behaviours displayed by NHSE were still not where they should be.

> *The oversight framework talks about collaboration and support, but we still hear NHS England colleagues talk about "choices and consequences" and give a sense of "if you were any good at your jobs, the position would be different". There are still too many people in NHSE that believe that bullying people is the way to improve performance.*
>
> CHIEF EXECUTIVE, ACUTE TRUST

# THE ROLE AND CONTRIBUTION OF INTEGRATED CARE BOARDS

6

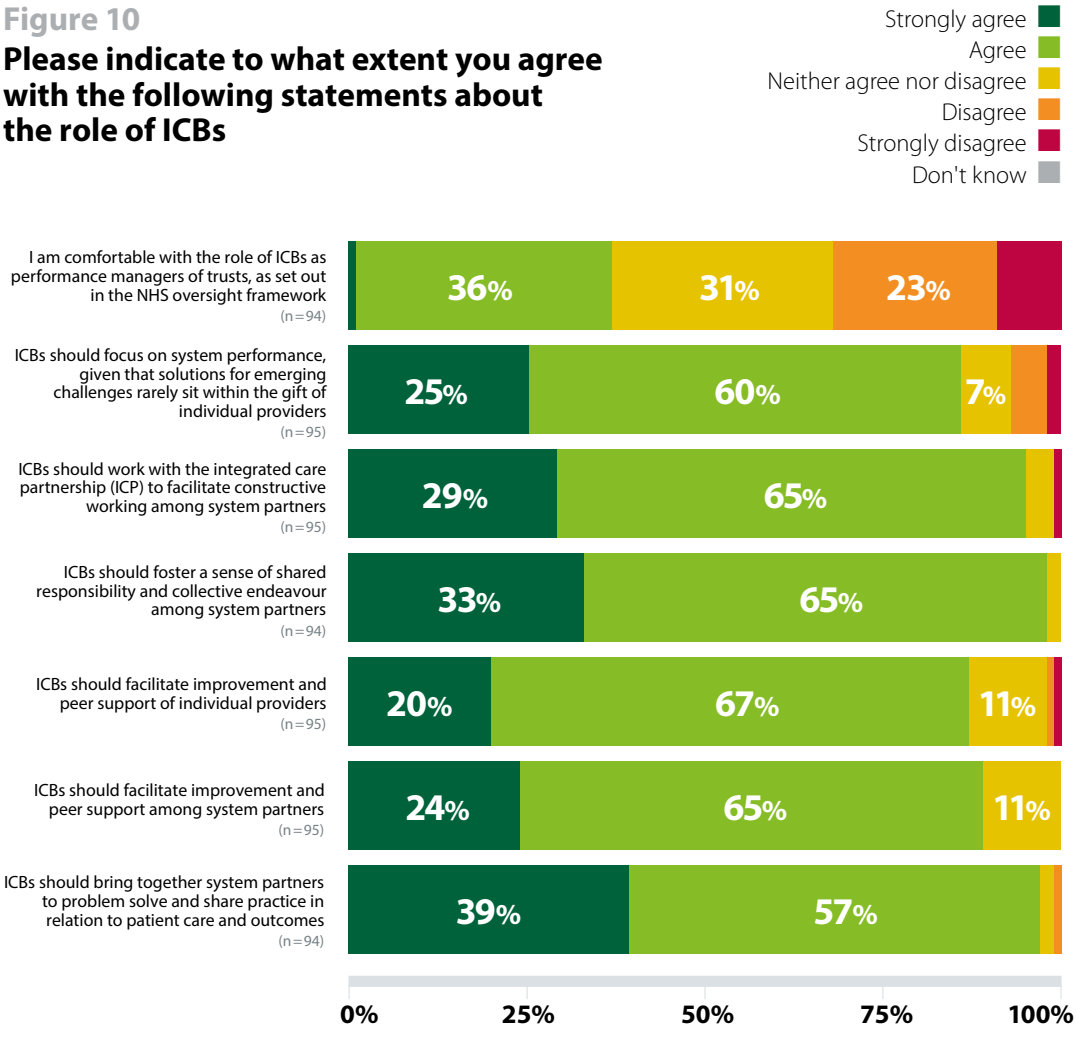
NHSE's operating model and oversight framework aim to clarify the role of ICBs in the new context of system working, positioning them as the first line of oversight and performance management of trusts. The Hewitt Review also reflected on the role and responsibilities of ICBs, reemphasising the principles of the two frameworks and the importance of subsidiarity and effective co-design.

In our conversations with NHSE, and in our commentary on the Hewitt Review, we have highlighted the inherent tension in ICBs being positioned as convenors and equal partners within their systems, and in overseeing performance. We have identified the challenging position this puts both trusts and ICBs in, and the potential for conflicts of interest.

Figure 10 below reveals overwhelming support from trust leaders for ICBs' role in fostering a sense of shared responsibility and collective endeavour among system partners (98% agreed), as well as in bringing system partners together to solve problems and share practice on patient care and outcomes (96% agreed). Trusts were also very supportive of ICBs' constructive work with ICPs (94% agreed), their role in improvement and peer support (89% agreed), and their focus on system performance (85% agreed).

**Figure 10**

**Please indicate to what extent you agree with the following statements about the role of ICBs**



6

Views were markedly split on the role of ICBs as performance managers of trusts: only 37% were comfortable with this role, while just under a third (32%) disagreed. Acute trusts were the most sceptical, with 44% disagreeing.

While supportive of the aims of ICBs, many respondents said that it was too early to assess their impact and highlighted variable maturity across systems.

> *They remain too early in their development to draw strong views on.*
>
> COMPANY SECRETARY, ACUTE SPECIALIST TRUST

> *Some ICBs are more mature than others. Some haven't settled on effective governance yet.*
>
> COMPANY SECRETARY, ACUTE SPECIALIST TRUST

Several comments highlighted confusion and lack of clarity around the role of ICBs, with some saying that ICB leaders themselves were unclear.

> *It is early days but we are still very confused about the role of ICBs. If ICBs are to do performance management they are too small in the [REGION] and do not have the skills and governance in place to do this effectively.*
>
> CHIEF EXECUTIVE, ACUTE TRUST

> *Our ICB leaders are confused. They don't see themselves or want to be performance managers but NHSE are pushing that. They are too wrapped up in making the governance look shiny, reducing headcount and preparing for delegation of services to be interested in anything else. We do not have the right ICB leaders... They simply cannot do it.*
>
> CHIEF EXECUTIVE, ACUTE TRUST

Several respondents pointed out the importance of culture and behaviours.

> *ICBs function differently due to different behaviours and approach; therefore it's more about the culture based on past experience.*
>
> COMPANY SECRETARY, COMMUNITY TRUST

6

A large number of comments reflected views on the optimal role for ICBs – there was a strong feeling that ICBs should focus on collaboration across a system.

> *I feel strongly that ICBs should play a key role in bringing about strong, constructive collaborative working across the system, including working with individual partners to improve performance. Locally, we are nowhere near there yet – there is still far too much jockeying for advantage…*
>
> COMPANY SECRETARY, COMMUNITY TRUST

There was scepticism around the role of the ICB as performance manager.

> *It is too early to say if the changes will clarify and improve the role of ICB but I am concerned that mixing performance/oversight with system-wide partnership development is incompatible. It requires the ICB to play two roles which could be in conflict.*
>
> CHIEF EXECUTIVE, ACUTE TRUST

> *ICBs must not duplicate the performance management and oversight which is already embedded and proportionate in trusts.*
>
> CHAIR, COMBINED MENTAL HEALTH /LEARNING DISABILITY AND COMMUNITY TRUST

> *ICBs' role in performance management needs to be focussed at system rather than individual providers to avoid duplication. There remains tension between statutory provider boards and ICB board committees.*
>
> COMPANY SECRETARY, ACUTE TRUST

A couple of respondents pointed out the potential of provider collaboratives to improve system working, based on their current experience.

> *My experience is that ICBs are still trying to resolve internal appointments and have yet to start in earnest, while grappling with major deficits. Their potential for improved system working is as yet untapped. By contrast, one of our provider collaboratives (for acute and specialist services) is effective in filling some of the gap for system working.*
>
> NED (AND IMMEDIATE PAST ACTING CHAIR), COMBINED ACUTE AND COMMUNITY TRUST

6

The introduction of ICBs was often associated with an increased burden, while the confusion and duplication between NHSE and ICBs was highlighted multiple times. Some trust leaders reported that requests from ICBs had been more onerous than those coming from the regulators themselves.

> *The requests for information from NHSE [are] suffocating and they now include ICBs in this so we are now asked for the same thing on multiple occasions. Even worse, the ICB request from executives but their managers then go directly to our managers so the request is coming like a scattergun and in the end no one knows who is doing what.*
>
> CHIEF EXECUTIVE, ACUTE TRUST

> *Still very confused between ICB and NHSE – duplication abounds. Lots of people asking similar questions with slightly different requirements – needs streamlining!*
>
> CHIEF EXECUTIVE, ACUTE TRUST

> *It has been the requests from the ICB that have at times becomes onerous rather than those from NHSE or CQC and with limited usefulness.*
>
> CHIEF EXECUTIVE, MENTAL HEALTH / LEARNING DISABILITY TRUST

7

# CONCLUSION

The past year has exposed trusts and system partners to unprecedented operational challenges, which have tested the resilience and adaptability of the NHS. Over the last 12 months we have also seen the formal introduction of ICSs, and a set of vital but often competing responsibilities for ICBs. Regulators have been transforming their approaches to make them better suited to system working, and to the evolving expectations of the public and those they regulate.

In this challenging context, our survey shows that NHS providers remain optimistic about the benefits of system working and appreciative of regulators' commitments to cultural change, to alignment with a new system context, and to a more flexible, responsive and risk-informed approach.

However, trust leaders' experiences of regulation often do not meet their expectations. They report an increase in regulatory burden and ad hoc requests from the regulators and are disappointed by a continued regulatory focus on inputs and targets, rather than on outcomes and improvement. They continue to feel that regulators are often unaware of, or worse, that they actively disregard, the operational pressures that providers are facing. Some made concerning observations that, on balance, the focus of regulation does not helpfully prioritise quality and safety.

This year's survey undoubtedly makes for more challenging reading with regard to trust leaders' relationship with CQC. Trust leaders remain cautiously optimistic about the changes CQC has committed to, and about its new role in assessing systems and local authorities. But in this survey trusts have also shared some unsatisfactory experiences of inspections, raising questions about whether CQC is encouraging providers to collaborate and integrate care, and to adequately support innovation and the spread of good practice. Given the vital role that care quality regulation plays in any health system, it is very concerning that many doubt the soundness of CQC's processes.

Trusts are mostly satisfied with the NHS oversight metrics, but still tend to think of the oversight framework as a performance management, rather than a support, tool. They also remain unconvinced that the new operating framework is yet having the desired impact on culture and behaviours. Trusts continue to feel there is a lack of clarity and unhelpful duplication between the roles of ICBs and NHSE, despite supporting the role of the ICB as a convenor and partner in systems.

The story of this year's regulation survey is therefore clear and powerful – change is needed and desirable; however, it needs to be underpinned by a clear shift in culture and behaviours, and must come with clarity on the purpose of regulation and the distinctive roles of CQC, NHSE and ICBs. Trusts recognise the importance and value of good, risk-based regulation, and they are receptive to a more open and collaborative regulatory approach by both CQC and NHSE. They are also firm believers in the potential offered by system working.

We will continue working with CQC and NHSE over the year ahead to discuss, test and refine their developing approaches, remaining a constructive critical friend. We will also continue to make the case for regulation that is meaningful for patients and service users, and that evolves to meet the changing needs of the system and of those regulated.

8

# APPENDIX: SURVEY SAMPLE

Figure 11

| Trust type | Count | % | % of sector |
|---|---|---|---|
| Acute specialist trust | 5 | 5% | 33% |
| Acute trust | 40 | 38% | 52% |
| Ambulance trust | 3 | 3% | 30% |
| Combined acute and community trust | 18 | 17% | 43% |
| Combined mental health /learning disability and community trust | 17 | 16% | 59% |
| Community trust | 8 | 8% | 53% |
| Mental health /learning disability trust | 14 | 13% | 64% |
| Grand Total | 105 | 100% | 50% |

Figure 12

| Region | Responses | % of responses |
|---|---|---|
| East of England | 14 | 13% |
| London | 9 | 9% |
| Midlands | 18 | 17% |
| North East and Yorkshire | 18 | 17% |
| North West | 22 | 21% |
| South East | 13 | 12% |
| South West | 11 | 10% |
| Grand Total | 105 | 100% |

Figure 13

| Region | Responses | % of responses |
|---|---|---|
| **Chair** | 19 | 18% |
| **Chief executive** | 29 | 28% |
| **Company secretary** | 21 | 20% |
| **Medical director** | 10 | 10% |
| **Nursing director** | 12 | 11% |
| **Other (including associate director, corporate director, director of governance)** | 14 | 13% |
| **Grand Total** | 105 | 100% |

**NHS Providers** is the membership organisation for the NHS hospital, mental health, community and ambulance 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 all trusts in England in voluntary membership, collectively accounting for £115bn of annual expenditure and employing 1.4 million people.

157-197 Buckingham Palace Road
London SW1W 9SP
020 3973 5999
enquiries@nhsproviders.org
www.nhsproviders.org
@NHSProviders