NHS Providers

A PIVOTAL MOMENT FOR REGULATION

Regulation and oversight survey 2024

AUGUST 2024

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CONTENTS

KEY POINTS

- This year's regulation survey was conducted against a backdrop of continuing challenges to performance, finances and care quality, and ongoing industrial action. There have also been significant changes to regulation and provider oversight by the Care Quality Commission (CQC), NHS England (NHSE) and integrated care boards (ICBs).
- Over the past year we have been encouraged by the openness of the regulators to working constructively with trusts. As regulatory approaches continue to develop over the coming year, we look forward to our continued engagement and collaboration in ensuring the system works together for the benefit of patients and service users.
- Trust leaders told us that they have experienced an increased regulatory burden this year, particularly noting a lack of coordination between regulators. Some also question whether reporting requirements are realistic or proportionate. Similarly, concerns were raised around whether regulatory activity sufficiently considers the reality of the operating environment.
- In particular, there is a question as to whether regulators appropriately recognise the level of risk trusts have been absorbing this year in balancing the demands of financial and operational performance. Some respondents also expressed concern about the impact of growing system pressures on regulators' leadership behaviours.
- This survey reflects the first full year of statutory integrated care boards (ICBs). Against this backdrop, trust leaders reported an increase in the overall burden of regulation. 72% said that the burden of ICB regulation had increased, compared to 48% from NHSE and 36% from CQC. We will consider this further next year as new ways of working continue to embed.
- In our regulation survey last year, respondents were much more supportive of the role ICBs played as system partners and conveners than as performance managers. Our findings this year are consistent with this, with less than a third of trusts comfortable with the role of ICBs as performance managers of trusts and 62% seeing their activity as duplicating that of NHSE.
- Respondents questioned CQC's credibility, feeling its judgements were not objective enough, and its inspection teams lacked sector-specific expertise. This year trust leaders also pointed to weakening relationships at a local level, partly due to changes in CQC's approach to inspection and regulation.
- This year we also asked trust leaders about their thoughts on CQC's single-word ratings. The majority would like to see a move away from this approach, seeing it as too simplistic, often demoralising for staff, and confusing for patients.
- 23% of trusts perceived NHSE's oversight framework for 2022/23 as a support tool, while 77% saw it as a performance management tool. Overall, the results show a decline in confidence among trust leaders in the oversight framework when looking at its metrics, segmentation descriptions and decision-making.
- Encouragingly, more respondents this year (44%, up from 32% last year) thought that NHSE's operating framework has clarified the respective roles of ICBs, and NHSE regional and national teams. We will be keen to review trusts' perceptions next year, following the roll out of the new oversight framework for 2024/25 and the further implementation of the operating framework.

1 BACKGROUND AND INTRODUCTION

Regulation has an important role to play in public services – particularly those, such as the NHS, that manage high levels of risk, where good leadership, processes and governance are of paramount importance to safety. Trust leaders recognise that independent regulation and oversight can play a valuable role in holding up a mirror, providing impartial assessment and challenge, as well as appropriate transparency and accountability for service users and taxpayers. In a nationally-led public service, independent oversight is also important in maintaining focus on national-level priorities, and in providing support and assistance where improvement is needed.

These roles complement, but do not replace, the role of the trust board, which provides strong leadership, good governance, and the capacity and capability for self-reflection within the provider organisation.

The context for providers

This report focuses on trust leaders' views and experience of regulation during 2023/24.

The past year has once again proven challenging for the health service. Trusts have made significant progress, particularly on treating ever-increasing numbers of patients and reducing waiting times for the longest waiters. But they have achieved this amid an unprecedented combination of factors, including:

- Rising levels of demand and patient acuity, with people presenting with more complex conditions, requiring more resources and staff time to deliver their care.
- Persisting care backlogs and record numbers of people awaiting elective treatment.
- Challenges around care quality, safety, and culture, with intense scrutiny of maternity and inpatient mental health services, and the ambulance sector, in particular.
- Ongoing industrial action throughout the year involving multiple staff groups.
- Widespread staff exhaustion, burnout and low morale.
- Capacity shortfalls in related services such as social care, education, primary care, public health and housing, which directly affect people's health and which interface with the services trusts provide.
- The impact of years of underinvestment, with constraints on productivity including mounting deficits, workforce shortages, industrial action, and inadequate estates and facilities.

The regulatory context

In 2023/24, one year on from the passing of the Health and Care Act 2022, national bodies' approaches to regulation and oversight continued shaping, and adapting to, system working. At the same time, they were reacting to the increasingly difficult operating environment for providers. Oversight by NHSE, CQC and ICBs was therefore evolving within a complex and changing set of circumstances.

In line with its 2021 strategy, *A new strategy for the changing world of health and social care* (CQC, 2021), CQC has been working to transform its regulatory approach, with the aim of becoming more flexible, more responsive to risk, and more focused on whole systems rather than individual organisations. At the centre of this approach is a new single assessment framework (CQC, 2024a), devised to apply equally to providers, systems and local authorities.

During 2023/24 CQC trialled and implemented aspects of this new approach. From November 2023 it started rolling out the single assessment framework across England, and piloted its local authority and integrated care system assessments. While making these significant changes, CQC focused its activity where it judged there to be the greatest clinical risk, such as maternity services and, over the winter, emergency departments.

CQC has faced challenges with some key aspects of its new approach, including technical difficulties with its provider portal, while ICS assessments have been delayed for further refinements in discussion with the Department for Health and Social Care (DHSC). Kate Terroni, who became interim chief executive of CQC following Ian Trenholm's departure in June 2024, has recently publicly apologised for these difficulties (Booth R, 2024).

During the period covered by this survey trusts and ICBs were being assessed under NHSE's NHS oversight framework for 2022/23 (NHSE, 2022a). A refreshed framework for 2024/25 was being consulted on when this survey was conducted.

This year's survey also explored trusts' experiences of NHSE's operating framework (NHSE, 2022b), which was published in 2022 and signalled an intended shift in culture, mindset and how oversight is conducted. The framework aimed to describe the respective roles and accountabilities of providers, ICBs, NHSE national and regional teams, and to clarify NHSE's expanded remit following its organisational restructure. It gave ICBs an explicit role in overseeing trusts' performance: while NHSE retains statutory accountability for overseeing both ICBs and NHS providers, it will be discharging its functions relating to trusts in collaboration with ICBs.

ICBs offer the opportunity, as part of system working, to foster a sense of shared responsibility and collective endeavour among system partners. However, there is an inherent tension in their dual role as partners and conveners, as well as overseers, of providers. We have recently reflected on that tension, and identified the potential for conflicts of interest inherent in such complex relationships, in our response to NHSE's consultation on an updated oversight and assessment framework (NHS Providers, 2024a).

2023/24 was the first year in which trusts experienced significant oversight from both NHSE and ICBs. The impact of this is discussed in detail in the survey results.

A pivotal moment for regulation

The underlying issues that affected providers in 2023/24 largely remain in place: the task trusts face, of balancing care quality, operational performance, and finances, is tougher than ever. For 2024/25, systems have been asked to reduce expenditure, including staff pay costs (with headcount reductions not ruled out), while maintaining quality of care and improving productivity.

During summer 2024 Lord Darzi is conducting a review of NHS performance (DHSC, 2024), and DHSC is developing a 10-year plan for the service (Anderson H, 2024), due to report in spring 2025.

At the time of writing, CQC's new assessment approach, its ratings and inspections, as well as its leadership and staffing, are subject to a review, commissioned by DHSC and led by Dr Penny Dash (Townsend E, West D, 2024). The review was launched in May 2024 under the Cabinet Office public bodies review programme (Parris C, 2023), and published its interim findings on 26 July 2024 (Dr Dash P, 2024). Dr Dash's interim report identified significant failings in CQC's effectiveness and made recommendations for steps the regulator should take to restore the confidence of health and care providers and the public in its processes and judgements.

NHSE's oversight and assessment framework is also in the process of being updated (NHSE, 2024) following a consultation in May-June 2024.

This report, therefore, comes at a crucial time for the NHS, and at a pivotal moment for regulation. As the new government sets expectations for delivery in the short term, and considers the long-term direction for the NHS, it is worth considering the impact of regulation on trusts, the extent to which it adds value, and how it can support or impede progress towards shared goals.

1

About this survey

This report details the results of our ninth annual survey on regulation and oversight. It was conducted during April and May 2024, and asked trust leaders to consider their experience of regulation during 2023/24. Responses came from trust chairs, chief executives, company secretaries, medical directors and nursing directors.

This year's survey received responses from 122 unique trusts, accounting for 58% of the provider sector and representing all regions and trust types. We are grateful to all those who contributed. We also thank CQC and NHSE who gave feedback on our proposed survey questions, and engaged with us and our members constructively in refining their respective regulatory approaches.

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.

SURVEY FINDINGS

2

Overall perceptions of regulation

Over the past year CQC and NHSE have continued with their programmes of transformation, while ICBs have taken on a more prominent and formalised oversight role within systems.

In an increasingly difficult operating environment, providers describe a regulatory system that is often too burdensome, duplicative, and detached from the pressures they are facing. They often question whether the regulatory system is helping them meet the challenges they face.

Respondents to our survey commented on the trade-offs between strict financial and headcount requirements, and the impact they can have on staffing numbers, the ability to meet performance standards, and the quality and safety of care.

> *The current focus on finance and headcount is going to have a significant impact on quality and safe staffing which is at odds with CQC regulation and providers having to balance the risk.*
>
> NURSING DIRECTOR, ACUTE TRUST

> *Increasing unrealistic levels of performance, outcome and staffing required [from national bodies and the government]. Increased oversight is [giving] false assurance as more attention and cost is driven into 'counting the bean' and presenting it nicely rather than being supported to deliver real change.*
>
> MEDICAL DIRECTOR, ACUTE TRUST

As pressure increases in the system, the leadership behaviours displayed by the regulators were not always in line with their own commitments in this respect, nor with their expectations of providers.

> *Some people's behaviours are dreadful. No doubt a direct result of top down pressure.*
>
> MEDICAL DIRECTOR, COMMUNITY TRUST

> *I think that there is a growing dissonance with the financial drive that is bringing back command [and] control and poor leadership behaviours.*
>
> NURSING DIRECTOR, ACUTE TRUST

Many member comments referred to an increasing disconnect between the reporting requirements of regulators and the operating environment of the health service – in particular, the extent to which there is recognition of the risks that organisations carry, including ones which are beyond their control.

> *All health care is inherently risky but the regulators think that risk can be eliminated. We need to learn to manage risk better not seek to avoid it.*
>
> CHAIR, ACUTE TRUST

> *Insufficient recognition of risks that organisations carry that are beyond their control. Too quick to quote other organisations that may be better placed on a specific metric without adequate understanding/analysis of the variables that are influencing respective positions. Too prone to taking simplistic high level view and apportioning fault based on that approach.*
>
> CHIEF EXECUTIVE, COMBINED ACUTE AND COMMUNITY TRUST

Trust leaders tend to report that regulators are not demonstrating an understanding of the pressures they are facing:

> *There is now a significant disconnect between the regulatory theory (and capability) from another era compared with the operational reality on the ground – they are light years away from understanding the real world challenges trusts are facing. We would all love to meet every standard for every patient but that simply isn't possible... I have yet to see any meaningful process which recognises this key point...*
>
> CHIEF EXECUTIVE, COMBINED ACUTE AND COMMUNITY TRUST

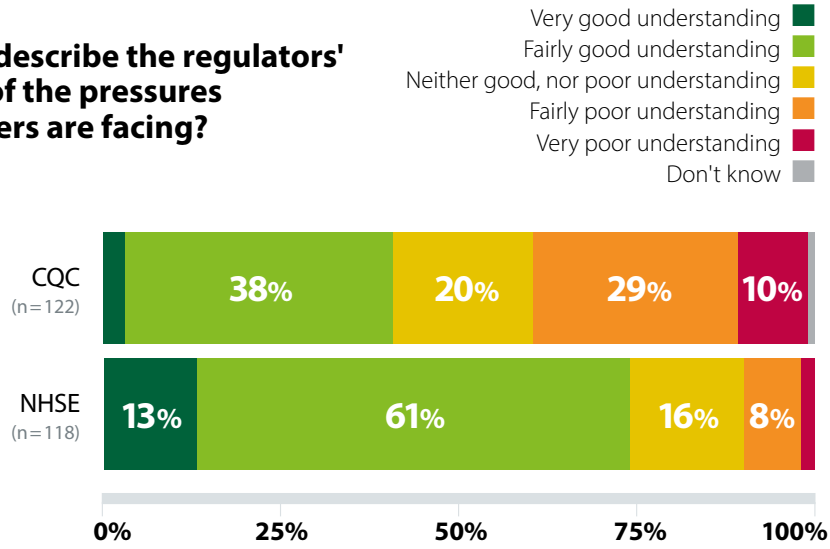
They remained more sceptical about CQC's understanding, in comparison with NHSE's. The percentage of respondents who thought CQC's understanding of the pressures was fairly good (38%) or very good (3%) was similar to last year (42%), but remained well below the results for 2019 and 2018 (52% and 62%, respectively).

> *The CQC in particular do not appear to understand the environment in which trusts operate.*
>
> COMPANY SECRETARY, COMBINED MENTAL HEALTH/LEARNING DISABILITY AND COMMUNITY TRUST

Around three quarters of respondents (74%) said that NHSE had a very good (13%) or fairly good (61%) understanding of the pressures that NHS providers are facing. This figure is above last year's findings, when 70% described their understanding as good, and has returned to levels observed in 2019 (73%) and 2018 (74%).

Figure 1

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



The perceived burden of regulation

In line with previous years, trust leaders feel the regulatory burden and regulators' ad hoc requests are increasing:

- 53% believed the overall regulatory burden has increased and 43% believed it has stayed the same, with no significant change year on year.
- While most (52%) said there had been an increase in ad hoc requests this year, more (59%) reported an increase in last year's survey.
- Maternity services, in particular, were associated with additional regulatory requirements, reflecting CQC's focus on these services during 2023/24.
- The perceived increase in regulatory burden seems to be driven by the new oversight role given to ICBs: trust leaders are most likely to say the burden from ICBs has increased, rather than that coming from CQC and NHSE.

There was some variation by trust type:

- Members from acute specialist (71%), acute (63%) and community trusts (57%) were most likely to report an increased regulatory burden.
- Similarly, members from acute (78%) and community (67%) trusts were the most likely to say that the number of ad hoc requests from regulators had increased.

2

> *I understand the level of risk is high and the need for assurance is also therefore high, but the burden of regulatory reporting etc is huge with no clearly demonstrable outcomes from either regulator to determine why all of it is required.*
>
> COMPANY SECRETARY, ACUTE TRUST

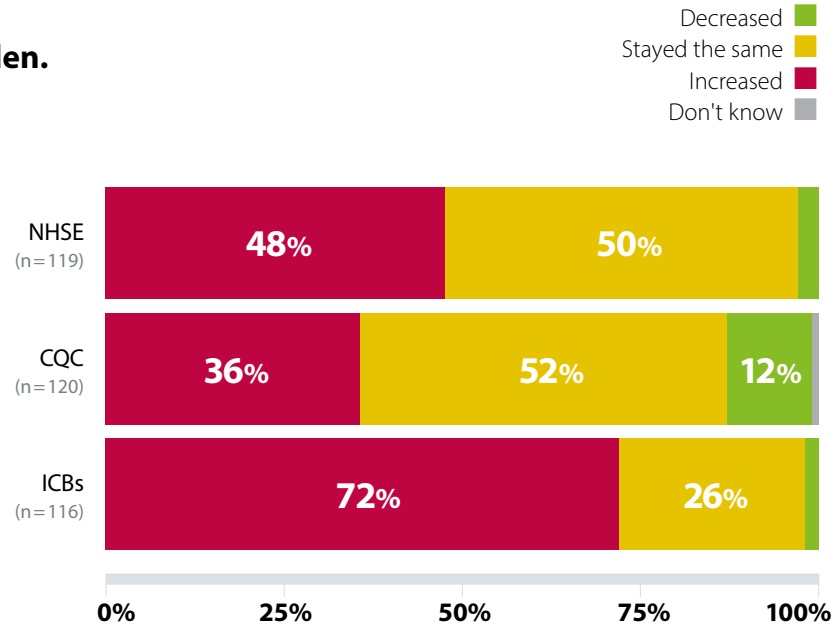
Trust leaders' comments pointed to persistent issues around duplication, frequency of reporting and unrealistic expectations, contributing to the burden of regulation.

> *These requests are often duplicated or at least not coordinated with different parts of the system asking for slightly different information sets covering different timeframes or metrics, which increases the burden further.*
>
> COMPANY SECRETARY, COMBINED ACUTE AND COMMUNITY TRUST

For the first time this year we explored regulatory burden and ad hoc requests by regulator, with the inclusion of ICBs due to their role overseeing trust performance.

Respondents were much more likely to say that the burden of regulation and the ad hoc requests coming from ICBs have increased, compared to those coming from CQC and NHSE. Almost three-quarters (72%) said the burden of regulation coming from ICBs had risen, while more said the burden from NHSE and CQC had stayed the same rather than increased.

Figure 2a
Regulatory burden.

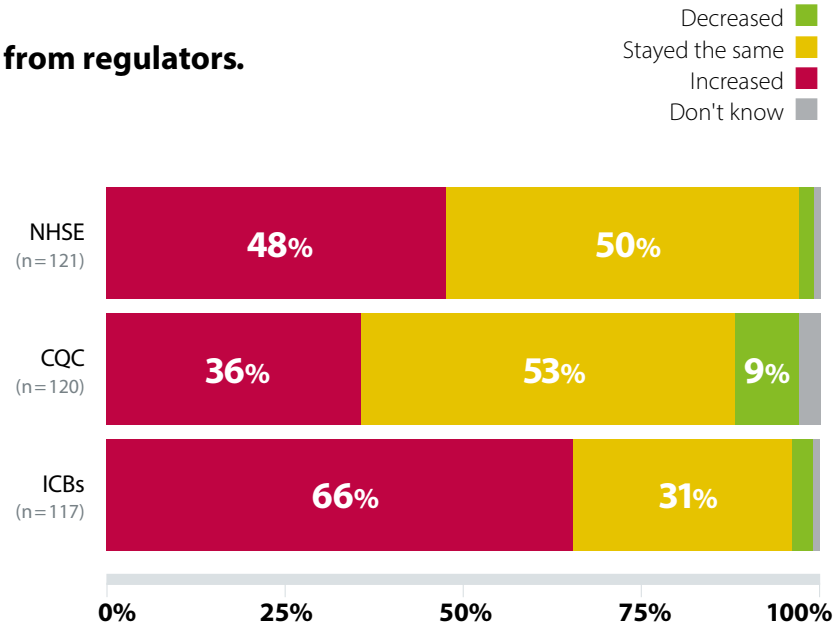


> *We seem to have introduced another layer of scrutiny and oversight with the creation of ICBs. I am not sure that we have seen much benefit for our communities from this additional introduction.*
>
> CHAIR, COMBINED MENTAL HEALTH/LEARNING DISABILITY AND COMMUNITY TRUST

> *Very much increased since inception of the ICB.*
>
> CHAIR, ACUTE TRUST

Two-thirds of respondents (66%) said that ad hoc requests coming from ICBs had increased, compared to 48% in relation to NHSE and 36% in relation to CQC.

Figure 2b
Ad hoc requests from regulators.



> *The amount of regulation/assurance requirements can be a challenge from ICBs, particularly for organisations such as ours that cover four places and two ICBs. The amount of ad hoc CQC requests has increased...*
>
> NURSING DIRECTOR, COMBINED MENTAL HEALTH/LEARNING DISABILITY AND COMMUNITY TRUST

Given their new role in oversight, it is unsurprising to see trusts reporting an increase in ad hoc requests coming from ICBs. However, the responses and comments presented elsewhere in this report indicate that the perception of an increasing burden is also associated with lack of clarity and distinction of roles between ICBs and NHSE, and a resulting duplication of regulatory demands.

2

The role and contribution of integrated care boards

Since being formally established by the Health and Care Act in 2022, ICBs have been positioned as leaders in their systems, with the clear expectation that they should oversee most providers on a day-to-day basis.

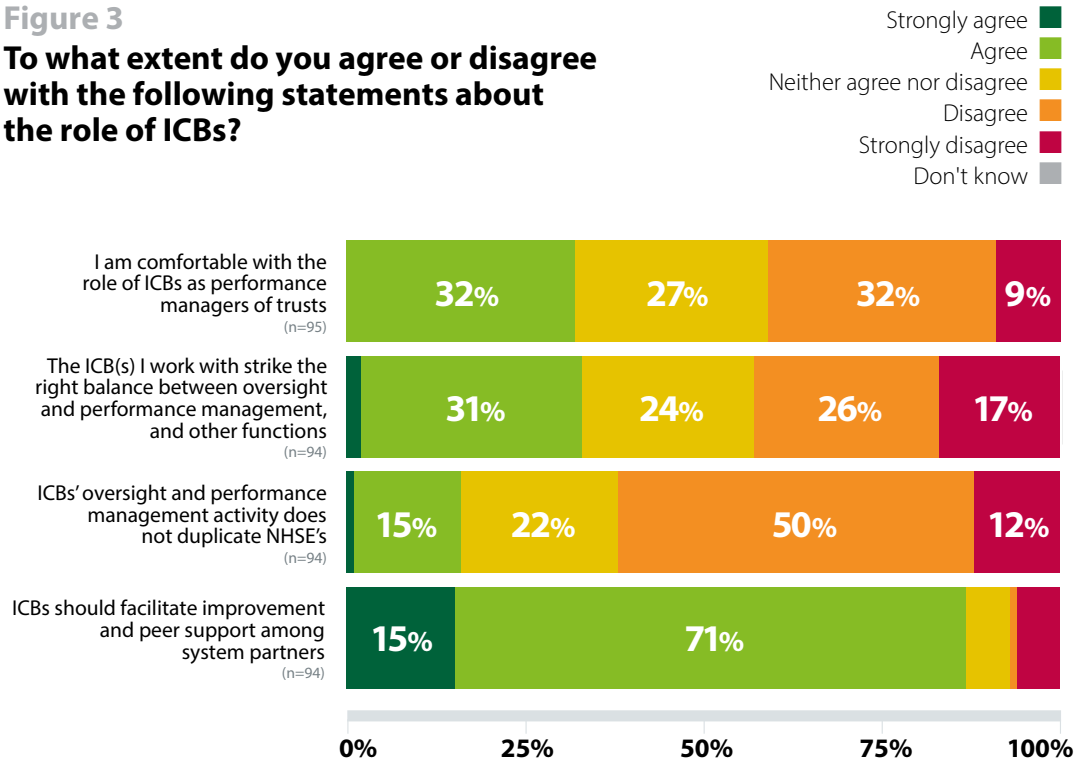
In our regulation survey last year, respondents were much more supportive of ICBs as system partners and conveners, rather than as performance managers. We also heard consistent feedback on the differences in maturity, behaviours and relationships with partners in their systems between ICBs.

Figure 3 below reiterates the views and concerns we heard in last year's survey:

- 86% agreed or strongly agreed that ICBs should facilitate improvement and peer support among system partners.
- Less than a third (32%), however, agreed that they are comfortable with ICBs' role as performance managers of trusts, as set out in NHSE's operating and oversight frameworks. This is down from 37% last year. No representatives from ambulance trusts agreed with this statement, and three quarters of community trusts disagreed.
- More respondents disagreed or strongly disagreed (43%) than agreed or strongly agreed (33%) that the ICBs they work with strike the right balance between oversight and performance management, and other functions. Again, all ambulance trust respondents disagreed.

Figure 3

To what extent do you agree or disagree with the following statements about the role of ICBs?



Only 16% agreed or strongly agreed that ICBs' oversight and performance management activity does not duplicate NHSE's. No respondents from ambulance and community trusts agreed with this statement.

Respondents gave mixed feedback in their comments about ICBs. Some shared positive local experiences of working with ICBs, and of them being an improvement on their predecessor – clinical commissioning groups (CCGs).

> *We work well with our ICB... they allow us to get on with our core business but are there if we need support.*
>
> NURSING DIRECTOR, COMBINED ACUTE AND COMMUNITY TRUST

However, most comments identified challenges in relation to ICBs, linked to their variable maturity, leadership capacity and capability.

> *Highly variable in construction, delivery and maturity.*
>
> NURSING DIRECTOR, COMBINED ACUTE AND COMMUNITY TRUST

> *ICBs are duplicative and highly reliant on leadership capacity and capability. Collaborative system working happens by chance and not as an intention.*
>
> CHIEF EXECUTIVE, ACUTE TRUST

There were many comments around the persisting lack of clarity around their role, the duplication with NHSE, and the difficulty linked to the dual role they have been given.

> *There needs to be much greater clarity about the role of the ICB. There is clearly significant variation between how ICBs operate, which needs attention.*
>
> CHIEF EXECUTIVE, COMBINED MENTAL HEALTH/LEARNING DISABILITY AND COMMUNITY TRUST

> *ICB role unclear. Difficult to move between regulation to partnership working. Immaturity of ICB leadership teams. Behaviours challenging in recent weeks as financial pressures have escalated.*
>
> COMPANY SECRETARY, ACUTE TRUST

> *There remains a fair amount of overlap in our experience between their role and that of the London regional office of NHSE.*
>
> COMPANY SECRETARY, MENTAL HEALTH/LEARNING DISABILITY TRUST

Care Quality Commission

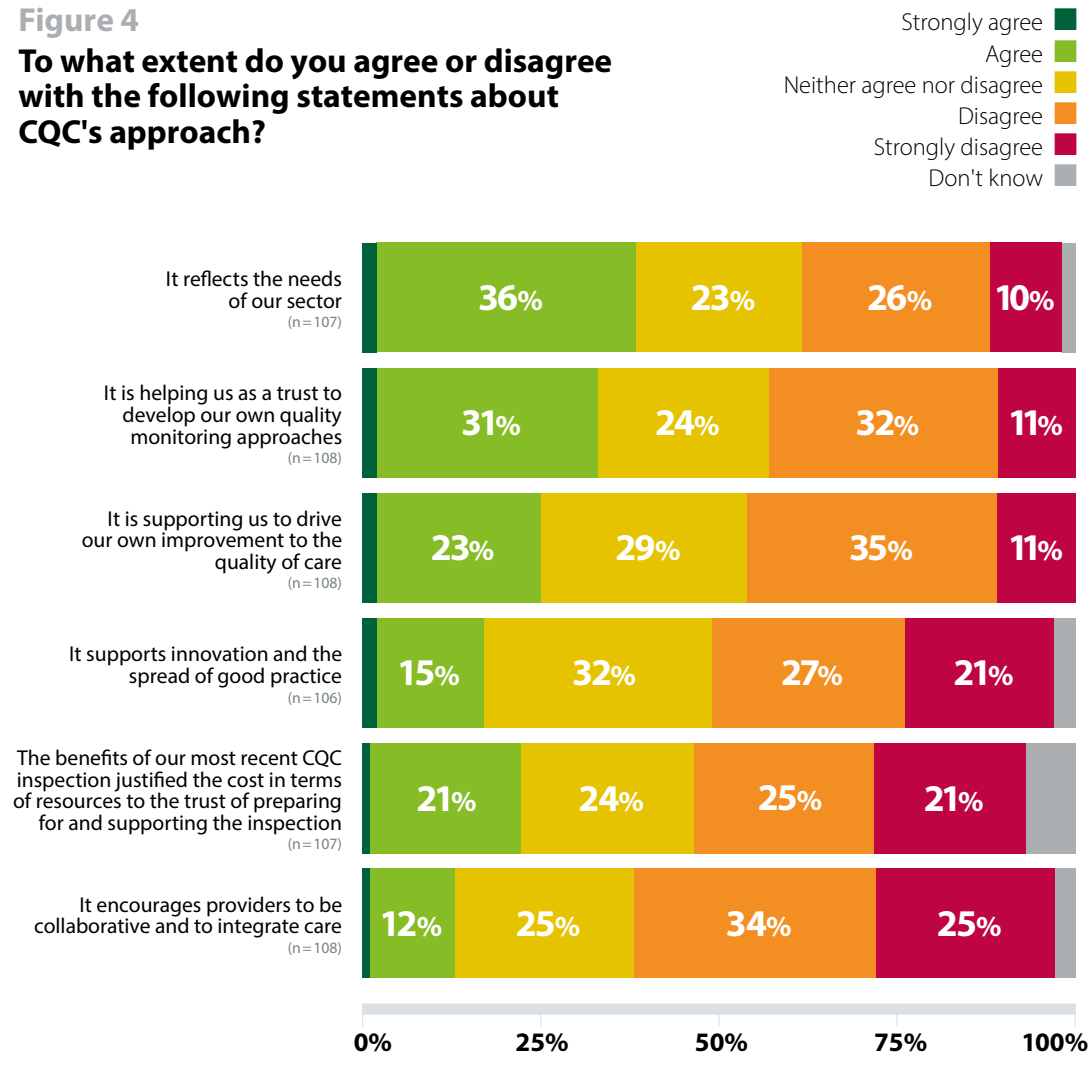
We asked our members for their thoughts and experiences of CQC's regulation in 2023/24, while it was in the process of trialling and implementing aspects of its new regulatory approach. We have repeated some questions from previous years, but also added in some new questions to test recent changes and areas of heightened public interest.

Experiences of CQC regulation

When asked about different aspects of CQC regulation, trust leaders were least satisfied with CQC's ability to encourage providers to collaborate and integrate care (59% disagreed or strongly disagreed, and only 13% agreed or strongly agreed). Community trusts were most sceptical about CQC's ability to encourage collaboration and integration, with 83% disagreeing or strongly disagreeing and none agreeing.

Figure 4

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



Views were most split on the regulator's ability to reflect the needs of different sectors. Acute specialist trusts were most satisfied, with 70% agreeing.

Most comments discussed a range of concerns about CQC's current approach, which are similar to those raised in response to last year's regulation survey. They questioned the regulator's credibility, objectivity and consistency, described variable experiences of inspections, and suggested there was insufficient expertise among CQC inspection teams. Comments also referred to a disconnect between CQC's national and local teams, and to weakening relationships at a local level, partly due to the move to the regulator's new approach.

> *The methodology and quality of inspectors varies considerably. CQC inspectors attend and are judging areas in which they do not have the appropriate expertise or experience. Different trusts have different experience of how inspections are undertaken and there is no basic standard. It is also very difficult to challenge anything that they do, or how judgements are made.*
>
> COMPANY SECRETARY, COMBINED MENTAL HEALTH/LEARNING DISABILITY AND COMMUNITY TRUST

> *The trust's relationship with the local CQC team is virtually non-existent and contact has reduced considerably over the last 12 months as the CQC has restructured and developed its new approach. There is a significant risk that the CQC's organisational memory of the trust has disappeared.*
>
> OTHER, COMBINED MENTAL HEALTH/LEARNING DISABILITY AND COMMUNITY TRUST

Some trust leaders volunteered reflections on CQC's new approach, saying that their exposure to date had been "relatively benign", but that it was too early to say what its real impact would be, especially given the delay to system assessments.

> *I think it is too early to tell if this new approach is going to be helpful or a hindrance – the process remains unclear and I think we need to see it actually be used and proved accurate before we can determine if it is in fact helpful.*
>
> COMPANY SECRETARY, ACUTE TRUST

There were also references to low local visibility and to lack of coordination with other national bodies as a result of the new approach to regulation.

> *With the new operational structure in place (with CQC) and with lack of relationship inspector concept within [the] new framework, the CQC engagement meeting opportunities are becoming less frequent than before. We find it beneficial to regularly engage with the regulator and would welcome thoughts on how we continue to build this relationship.*
>
> COMPANY SECRETARY, ACUTE TRUST

Views on CQC's single-word ratings

CQC's four ratings for health and social care services ('outstanding', 'good', 'requires improvement' and 'inadequate') were introduced in 2013 (CQC, 2013), following a review commissioned by the then Secretary of State for Health (Nuffield Trust, 2013). When these were introduced, five possible purposes of ratings were identified: to increase public accountability; to aid choice; to help improve the performance of providers; to identify and prevent failures in the quality of care; and to provide public reassurance for the quality of care.

These ratings are the same as those used by Ofsted, whose approach has recently come under significant scrutiny, including criticism by the House of Commons Education Committee, in its inquiry into Ofsted's Inspections (UK Parliament, 2024).

In this year's survey we asked for trust leaders' thoughts on CQC's ratings. While we understand that a change in CQC's four-point rating scale would require secretary of state approval, we have recently recommended (NHS Providers, 2024b) that CQC re-evaluates the success of its ratings and considers the addition of a narrative rating qualifier as part of its new provider assessment reports.

We appreciate the complexity of CQC's ratings used in the context of trusts, including separate ratings at a service and key question level. Given their public visibility and prominence, however, most of our members' comments relate to overall provider ratings.

While some respondents found the single-word rating approach helpful, clear and understandable to the public, the majority of comments supported a move away from this approach. They believed it was too simplistic, especially for large organisations such as trusts. Some also reflected that it was demoralising for staff and confusing for patients.

> *Single word assessments in any assessment framework of complex systems is deeply flawed... In statistical terms it [is] like assuming that a mean is a true representation of the data ignoring range, mode, median, or any nonparametric measure – totally excluding any qualitative methodology. All single word assessments in any context should be removed.*
>
> MEDICAL DIRECTOR, ACUTE TRUST

> *Ofsted has been a natural experiment in the inadequacy of one word judgements.*
>
> CHAIR, COMBINED MENTAL HEALTH/LEARNING DISABILITY AND COMMUNITY TRUST

Some respondents favoured a narrative descriptive judgement, which they felt would be fairer and better at capturing differences in the quality of care between trusts with the same rating. They believed that single word ratings lacked context, and did not account for the breadth of evidence provided to CQC.

> *The CQC inspections are hugely stressful for all staff involved and mostly tell us what we already know, especially in relation to urgent and emergency care. A more descriptive narrative judgement would be fairer.*
>
> COMPANY SECRETARY, COMBINED ACUTE AND COMMUNITY TRUST

Even those who favoured single-word ratings tended to think that these would be appropriate if reviewed more frequently or if supported by a clear narrative.

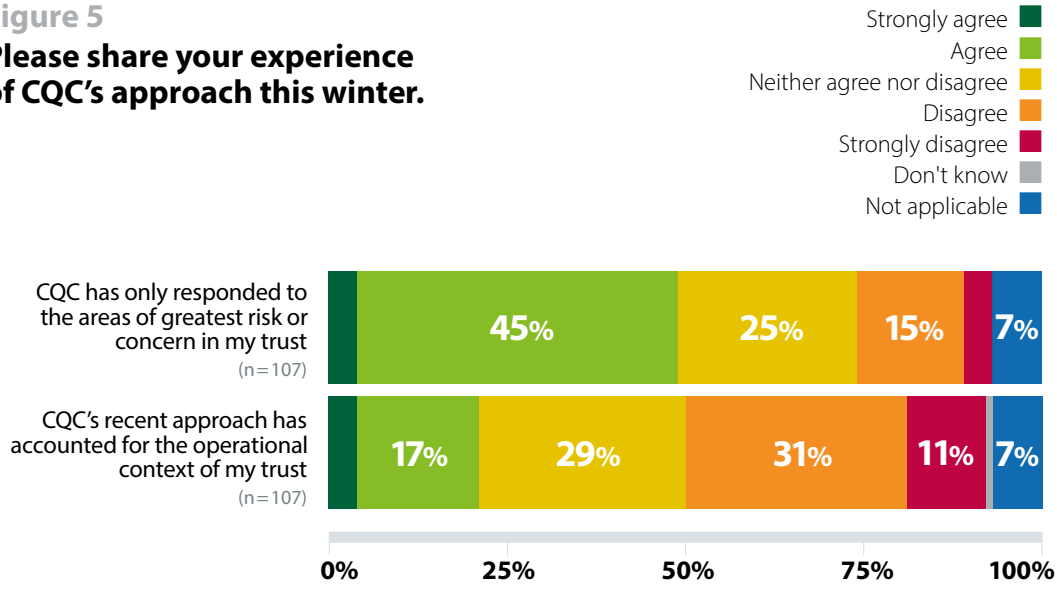
CQC's approach during winter 2023/24

CQC has publicly recognised the need for proportionate oversight (CQC, 2024b) in times of significant operational pressure, and committed to supporting NHS leaders as they manage risk "in an environment of heightened demand, resourcing pressures and limited capacity". It said that during winter it would focus on emergency department inspections, to identify and act on risk, but also encourage a system-wide approach to accountability for issues of concern and promote risk sharing.

We asked our members to share their experience of CQC's approach during the past winter:

- Just under half (49%) agreed or strongly agreed that CQC has only responded to the areas of greatest risk or concern in their trust, down from 63% last year.
- 21% agreed or strongly agreed that CQC's recent approach has accounted for the operational context of their trust, down from 29% last year.

Figure 5
Please share your experience of CQC's approach this winter.



In the comments, respondents gave mixed feedback on CQC's approach over the past winter. Several said CQC had not taken the operational context into account, including industrial action, or the environment in which trusts operate.

> *CQC wanted to visit on the Monday after a weekend strike – under pressure they changed but in this scenario they did not consider industrial action/ operational pressure.*
>
> MEDICAL DIRECTOR, ACUTE TRUST

> *CQC approaches inspections on a very superficial level and does not take account of the environment in which trusts operate.*
>
> COMPANY SECRETARY, COMBINED MENTAL HEALTH/LEARNING DISABILITY AND COMMUNITY TRUST

We have welcomed the proposed approach of the regulator last winter, recognising "the need to keep regulatory oversight proportionate" (CQC, 2024b), and have noted their intention to become better able to represent the operational context of providers in the future. We are conscious, however, that CQC is still in the process of implementing its new approach and these changes are not yet being reflected in providers' perceptions. Our findings suggest that it will take some time before trusts report a change in the extent to which CQC accounts for system issues or operating context.

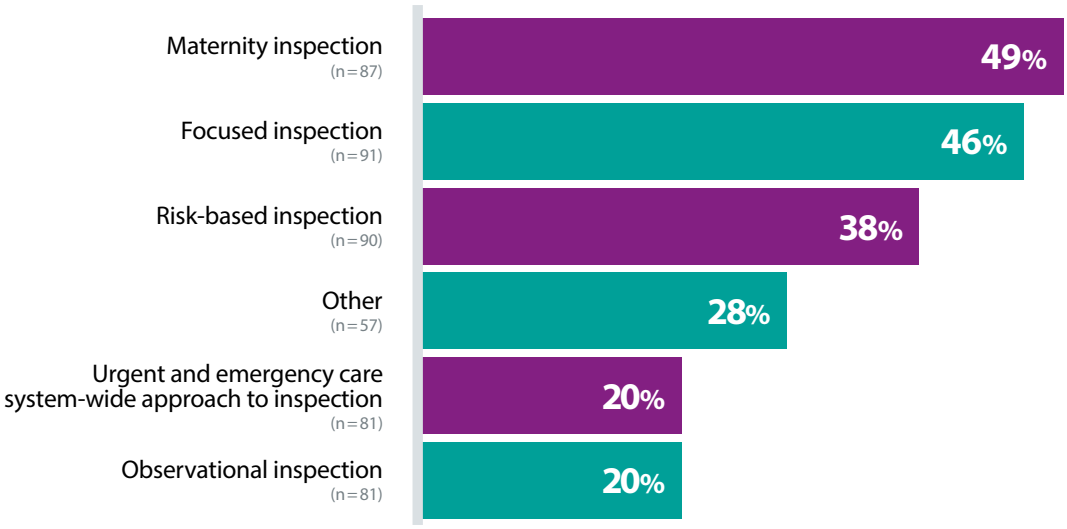
> *Our inspection was solely focused on us as an ambulance service – little regard to system issues.*
>
> CHAIR, AMBULANCE TRUST

CQC inspection and regulatory 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 6 below shows that just under half of respondents (49%) have experienced a maternity inspection in the past year,[1] compared with 35% last year, demonstrating the increased national and CQC focus on maternity.

Figure 6

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.

Some respondents found the process helpful and said it was very well received internally.

> *These reports are always useful in the sense [that] they hold the mirror up to the organisation, even if [we] don't fully agree with report. The issue is the time and effort and also consistency of inspectors...*
>
> CHAIR, COMBINED ACUTE AND COMMUNITY TRUST

1 Please note, only acute and combined acute and community trusts responded to this question.

Others said that the assessment and associated report were poor, and that the inspection team involved lacked sector-specific expertise.

> *Was not helpful, was driven by erroneous factors. The report was appallingly written, in grammar, style and fact.*
>
> CHIEF EXECUTIVE, COMBINED ACUTE AND COMMUNITY TRUST

> *I would not describe it as helpful. Inspectors lacked sector expertise, there was not an observation done of several key meetings – including quality committee. The core services and well led aspects of the service went on over a nearly seven-week period. It felt clear that they knew where they 'felt' we were before they had left on day one.*
>
> CHIEF EXECUTIVE, MENTAL HEALTH/LEARNING DISABILITY TRUST

NHS England

The NHS oversight framework

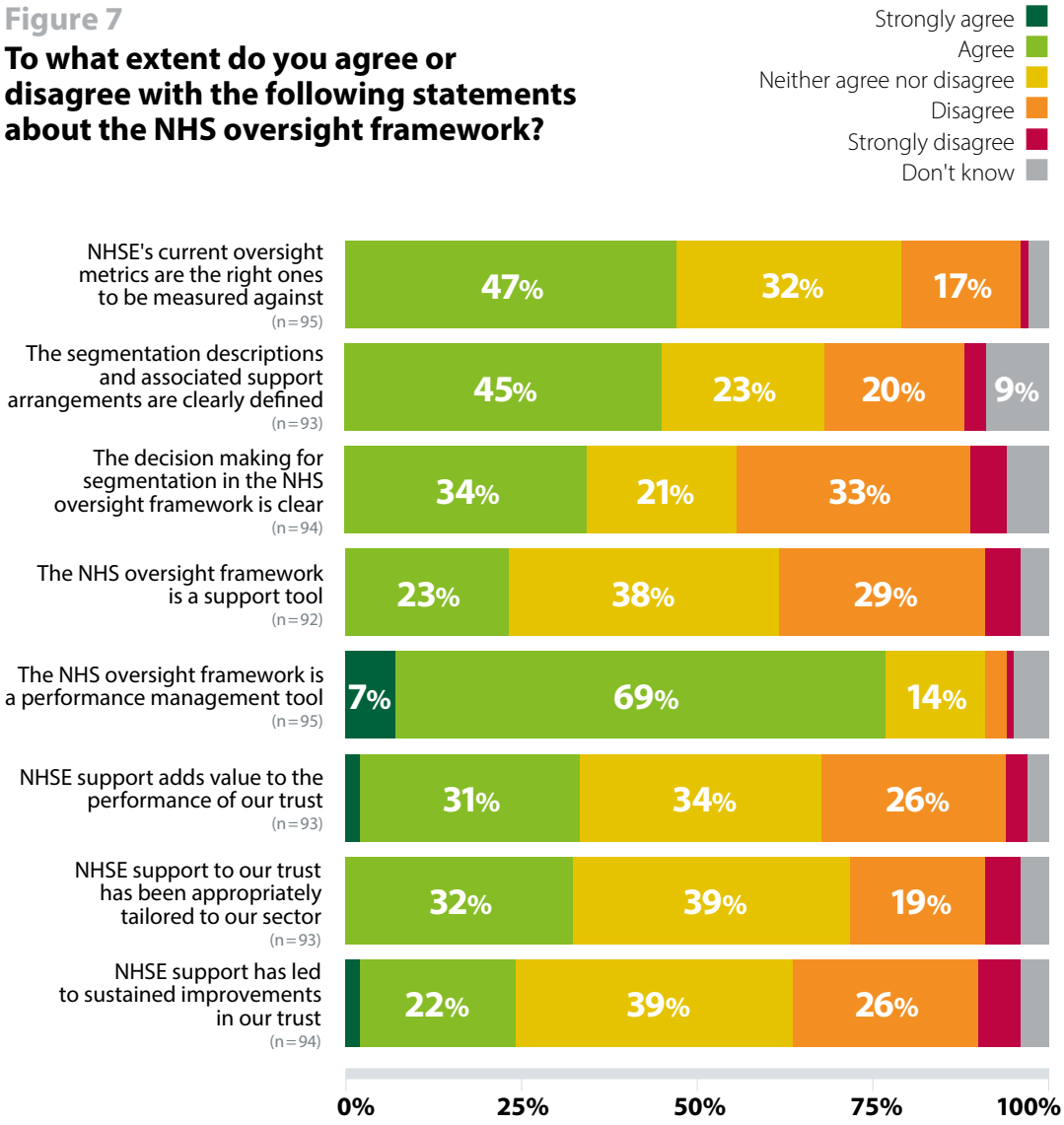
Our survey reflects the experiences of trust in 2023/24, when NHSE was using the NHS oversight framework for 2022/23 (NHSE, 2022a).

Taken as a whole, the results show a decline in confidence among trust leaders in the oversight framework:

- Under half (47%) of respondents agreed that NHSE's oversight metrics were the right ones to be measured against, which is down from 56% agreeing or strongly agreeing last year.
- Those agreeing that segmentation descriptions and associated support were clearly defined dropped from 59% agreeing or strongly agreeing last year to 45% agreeing in 2024.
- Those agreeing or strongly agreeing that decision making for segmentation was clear dropped from 45% in 2023 to 34% agreeing in 2024.
- There was also a decline in the percentage of respondents who agreed or strongly agreed the framework is a support tool (from 31% last year to 23% this year).
- In line with last year's responses, over three quarters of respondents (77%) perceived the framework as a performance management tool.

Figure 7

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



NHSE's operating framework

NHSE's operating framework was published in 2022, aiming to bring clarity to oversight and to embed the principles of collaboration and system working. As in last year's survey, we have tested the perceptions of our members as to whether these aims have been achieved.

We have seen some positive shift in these perceptions compared with last year:

- This year 44% of respondents agreed that NHSE's operating framework has clarified the respective roles of ICBs, and NHSE regional and national teams. This is up from 32% agreeing or strongly agreeing last year.

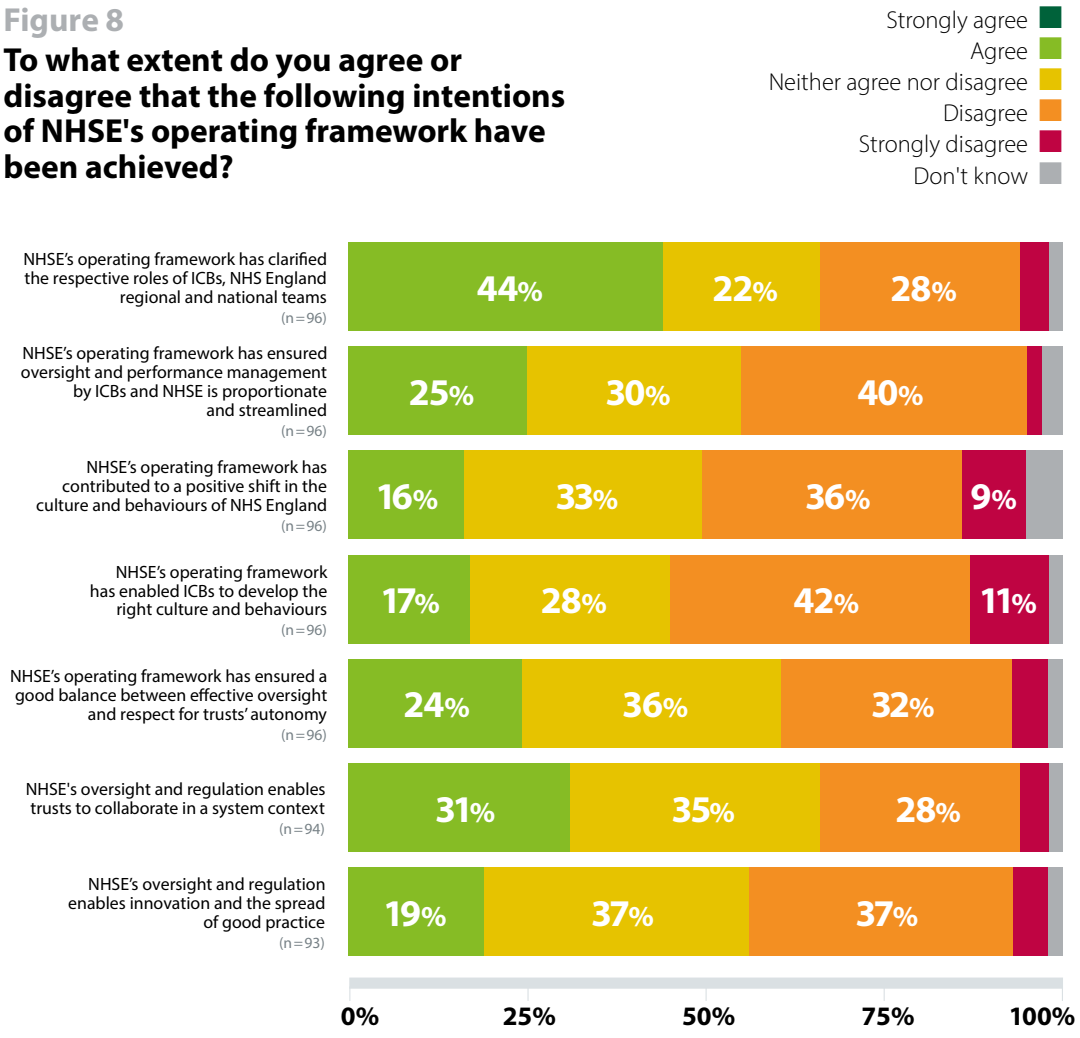
- One quarter (25%) of respondents agreed with the statement that the operating framework has ensured proportionate and streamlined oversight and performance management by ICBs and NHSE. This is up from 20% last year.

However:

- Much smaller percentages of respondents agreed that the operating framework has had a positive impact on NHSE's (16%) and on ICBs' (17%) culture and behaviours.
- Just over three in ten respondents (31%) agreed that NHSE's oversight and regulation had enabled trusts to collaborate in a system context, down from 36% last year.

Figure 8

To what extent do you agree or disagree that the following intentions of NHSE's operating framework have been achieved?



3 CONCLUSION

During 2023/24 providers struggled to manage regulatory demands and to meet increasingly stretching government expectations while managing continuing pressures to finances, performance and staffing.

Trusts leaders reported that regulatory requirements remained too high and detached from the reality that trusts are operating within. They also spoke of unrealistic expectations, including in relation to the inherent risks that organisations carry, some of which are beyond their control. There were also concerns regarding the leadership behaviours displayed by the national bodies and ICBs, which were not always in line with their own commitments in this respect, nor with their expectations of providers.

The perception of an increasing regulatory burden continued to dominate the responses and the associated commentary. What is new this year is the level of concern relating to ICBs' demands, rather than those of NHSE or CQC, being a key driver of increased burden. We continued hearing of duplication of functions and requests, especially between ICBs and NHSE.

Providers' reflections on CQC continued to identify a lack of trust and credibility, and a perception that the regulator is not sufficiently accounting for the operational pressures they are facing. We heard once more that trusts' experiences of CQC inspections were highly variable and there was often insufficient expertise among CQC teams. Respondents were also worried about weakening relationships with CQC at a local level, associated in part with the move to the regulator's new approach.

Additionally, this year we asked trust leaders about their thoughts on CQC's single-word ratings. While some felt these were clear and helpful for the public's understanding, the majority supported a move away from this approach, which they saw as too simplistic, and often demoralising for staff and confusing for patients.

While NHSE's approach to assessment and oversight of providers may be updated under its 2024/25 framework, our survey results are worth reflecting on ahead of its implementation. Trust leaders' confidence in the 2022/23 framework has declined, and this year a smaller percentage of trust leaders perceived it as a support tool.

Regulation has an important role to play in public services such as the NHS, providing independent assessment and challenge, ensuring transparency and accountability, and supporting providers to improve. Trust leaders welcome the intended move towards a smarter, more streamlined approach to regulation. However, these survey results indicate that these aspirations are still far from being reflected in trusts' day-to-day experiences, and much more needs to be done before trust leaders have confidence that, overall, the regulatory system adds value.

4 NEXT STEPS

Our recent report on good quality regulation (NHS Providers, 2024b) was triggered by the findings of last year's regulation survey. It demonstrated the trust sector's commitment to the principles of good regulation and the benefits that it could bring, and set out the characteristics of value-adding regulation and oversight.

We are encouraged by the regulators' desire for collaboration and co-production with trusts, and we will continue working with them to make sure that their work benefits patients and service users, as well as those they regulate.

The good regulation principles we have described will also be at the front of our mind as we engage with the new secretary of state, with Dr Penny Dash and Professor Lord Darzi, as they conduct their important reviews of the health service's performance and regulation.

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APPENDIX
Survey sample

Figure 9

Trust type	Count	%	% of sector
Acute specialist trust	10	8%	67%
Acute trust	42	34%	59%
Ambulance trust	4	3%	40%
Combined acute and community trust	27	22%	55%
Combined mental health /learning disability and community trust	17	14%	57%
Community trust	7	6%	50%
Mental health /learning disability trust	15	12%	75%
Grand Total	122	100%	58%

Figure 10

Region	Responses	% of responses	% of sector
East of England	14	11%	64%
London	15	12%	43%
Midlands	24	20%	60%
North East and Yorkshire	20	16%	61%
North West	20	16%	65%
South East	18	15%	62%
South West	11	9%	58%
Grand Total	122	100%	58%

Figure 11

Region	Responses	% of responses
Chair	22	18%
Chief executive	37	30%
Company secretary	23	19%
Medical director	11	9%
Nursing director	20	16%
Other (including associate director, corporate director, director of governance)	9	7%
Grand Total	122	100%

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Interactive version

This report is also available in a digitally interactive format via:
www.nhsproviders.org/A-pivotal-moment-for-regulation-regulation-and-oversight-survey-2024

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