17 January 2018

Ian Dalton CBE
Chief Executive, NHS Improvement

By email

Dear Ian

THE FINANCIAL IMPACT OF CURRENT WINTER PRESSURES ON PROVIDERS

As you know, the NHS frontline is currently experiencing unprecedented pressures, which means many trusts are likely to incur higher, emergency care related, spending than expected and, following the recent NEPP recommendation, are likely to lose significant amounts of elective income. A number of providers have, in recent days, asked us to raise the issue of how this will be dealt with.

We welcome a number of recent decisions: the decision of the NEPP to pause fines for mixed sex ward breaches; the confirmation of the 0.5% CQUIN risk-reserve for providers who have met their control total; the CQC's decision to pause inspections over January; and the allocation of extra winter funding in the Budget. But, given the requirement to reduce the provider sector deficit, how stretching most control totals are and the unprecedented pressures now being experienced, trusts tell us they think further actions are needed.

Lower elective activity and commissioner / provider financial balance
If fewer elective operations take place as a result of the NEPP decision, there will be a significant resource transfer to commissioners, away from providers, with commissioners potentially realising larger surpluses than expected. Providers will also, rightly, be looking for reimbursement from commissioners for the extra unexpected urgent and emergency care costs they will be incurring. We believe there is a strong rationale to therefore look at how the financial flows between providers and commissioners can be adjusted to reflect this. Three possible ideas include (there are others):

- *Reimbursing the full cost of additional emergency activity*

We know that many providers are having to undertake additional emergency activity at a premium, well above the national price and contracts agreed with commissioners, with the impact magnified by the impact of the marginal rate emergency tariff (MRET). We could therefore consider suspending or amending the operation of MRET in quarter 4. For those commissioners and providers not operating MRET, commissioners could be asked / required to work with providers to price the additional activity undertaken over this period.

- *Pausing use of the readmission penalty*

We could look at pausing the readmission penalty, in the same way as NEPP has

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suspended mixed sex breach fines. Although there is a clear clinical rationale for the penalty, it is forecast to take over £200m out of the provider sector in 2017/18.

- *Year end reconciliation / discussion*

We know that year end financial flows between providers and their CCGs are subject to a final year end reconciliation / discussion and providers and commissioners could be asked to reflect an agreed loss of elective income / extra urgent and emergency care cost element, where appropriate.

Sustainability and transformation funding (STF)

As you know, trusts depend on access to STF to hit their control totals. However, since providers need to meet both financial targets and A&E performance trajectories to receive their full STF allocations, the number of trusts earning their full STF allocation is now likely to be much smaller than previously expected. This would have a knock on impact in terms of both a much larger pot of unearnt STF potentially being created, and this potentially being distributed amongst a much smaller pool of providers. Your team will be aware that there was significant disquiet among many providers about the distortive impact of the allocation of unearnt STF last year. This distortive impact looks like it could be much worse this year, on current plans. It's worth noting that some of the trusts most at risk here are those who have tried to do the right thing for their local systems and the wider service – for example by taking more patients on ambulance divert.

We recognise the need to maintain financial discipline and support delivery of NHS constitutional standards and the current importance of the STF's role in achieving these objectives (though you will know that we do not believe this is a sustainable way of managing NHS provider finances long term). But we feel there is a strong rationale to quickly look at how the STF operates in Q4 to ensure this reflects the likely performance reality on the ground.

If we can make this adjustment, and the provider / commissioner financial flows can be adjusted as outlined above, then we should be able to avoid magnifying the distortive effects. If we can't make appropriate adjustments, then we should look at these bonus and incentive arrangements to avoid the distortive impact described above. Clearly any action would need to be taken speedily to have an impact and to give trusts the certainty they need.

The agency cap

We support the strong and effective action that trusts, working closely with NHS Improvement, have taken over the last two years to reduce agency spend. We recognise the need for this to continue.

The current pressures mean that many trusts have been struggling with their agency staff cap, with many having to use a higher proportion of temporary staff than expected. Breaching the agency staff rules has a number of implications for trusts including, in conjunction with other single oversight framework metrics, formal regulatory action. Overriding the agency rules results in a lot of reporting and bureaucracy, with trusts required to report back on a weekly basis with an explanation of each instance where a rule has been overridden. We urge NHSI to take a proportionate regulatory approach during this unprecedented period of pressure and would suggest NHSI reviews the operation of its agency rules for the rest of the winter period.

Given their roles I have copied this letter to Dido Harding, Simon Stevens, Paul Baumann, Matthew Swindells, Jeremy Hunt, David Williams and Catherine Frances at the Treasury as well as to Elizabeth O'Mahony and Pauline Philip.

I look forward to hearing from you and stand ready to discuss the issues of this letter in more detail. We will be sharing a copy of this letter with the HSJ so that members are aware that we are raising these issues with you.

Best wishes

Saffron Cordery
Director of Policy and Strategy and Deputy Chief Executive, NHS Providers

cc Dido Harding, Simon Stevens, Paul Baumann, Matthew Swindells, Jeremy Hunt, David Williams, Catherine Frances, Elizabeth O'Mahony, Pauline Philip.