

THE CHANGING NATURE OF REGULATION IN THE NHS



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KEY POINTS

- The results of this year's survey illustrate the striking change in the regulatory landscape over the last 12 months as trusts and national bodies have increasingly focused on local system integration through sustainability and transformation partnerships (STPs) and integrated care systems (ICSs).
- Our survey findings show that trusts are concerned that the regulatory framework is not keeping pace with the developments taking place on the ground. They highlighted that the oversight of STPs and ICSs risks becoming an extra layer of performance management. Respondents also questioned whether STPs and ICSs can take on oversight and assurance roles for local systems without a statutory footing.
- The results demonstrate that there is a lack of clarity about the national policy direction for the system architecture, which only one in five (20%) trusts believe is clear. Trusts feel that the regulators and national bodies could do more to support them to work in collaboration with local partners and were in favour of NHS Improvement and NHS England working more closely together and developing new models of oversight at local systems level.
- Trusts also expressed an interest in co-producing a proportionate approach to oversight in partnership with the regulators and national bodies. This approach should balance the regulation of organisations and oversight of systems, and balance appropriate regulatory intervention with support to providers as they work to transform services.
- There has been no change since last year in the proportion of trusts reporting that the overall regulatory framework is working 'well' or 'very well' (down from 44% to 43%) or in the proportion who believe the regulatory system is good value for money (up from 7% to 8%). There is a sense that the improvements reported in last year's survey have stalled.
- Respondents reported that there has been an increase in the regulatory burden and in the number of ad hoc requests from the regulators over the last 12 months, with 67% reporting an increase. While the regulators have taken steps to coordinate their approaches with each other and other national bodies, these efforts have not yet been reflected in trusts' experiences. Trusts report that they continue to experience duplication in the requests from the regulators and other national bodies.
- There are mixed views among providers about how well the regulators understand the pressures trusts are facing and how well the regulators have engaged with them over the last year. The proportion reporting that the Care Quality Commission (CQC) has a 'very good' or 'good' understanding has increased in the last year (from 48% to 62%), however providers believe NHS Improvement's understanding of the sector has declined (from 89% to 75%).
- On the whole, respondents report feeling 'very satisfied' or 'satisfied' with the way the regulators' regional teams have engaged with them over the last 12 months. However, while this has increased for CQC (from 61% to 70%), it has declined for NHS Improvement (from 80% to 73%). Some trusts felt that changes in staff in the regional NHS Improvement teams had made it difficult to develop relationships and others suggested there is scope for improvement in the alignment of the regional and national teams.

- When asked about NHS Improvement's roll out of the single oversight framework (SOF) trusts said that it is working well and is well understood. However, respondents felt that the SOF still feels like a performance management tool rather than a support tool, and the proportion of trusts that believe NHS Improvement strikes a good balance between respecting trusts' autonomy and support has gone down from 58% last year to 47% this year.
- There is optimism about the potential positive impact of changes to the CQC's inspection model over the last year and the majority of respondents agreed that the new inspection approach would enable CQC to prioritise inspections more effectively and help them improve services and quality of care. However, many trusts believe it is too early for improvements to have been felt in practice and nearly two thirds (62%) of trusts were concerned that the new inspection approach will not reduce their administrative burden.

INTRODUCTION

This report outlines the results of our fourth regulation survey, which was carried out in January 2018. Our annual regulation survey explores NHS trusts and foundation trusts' experiences of regulation over the preceding 12 months and their views on the future of regulation, and identifies trends over time. As the strategic and operational context for the NHS evolves, providers have continued to experience changes in the regulatory environment over the last year. Many trusts are playing central roles in establishing new ways of collaborative working through STPs and ICSs. NHS trusts, with other local partners including commissioners and local authorities, are working through the practical complexities of local system working. They are increasingly feeling the pull between the current institutionally-focused regulatory model, and policy ambitions to develop methods of oversight for local systems.

Further to setting out its five-year strategy in 2016, CQC has implemented its new approach to regulating NHS trusts and foundation trusts including changes to its inspection and monitoring models. NHS Improvement has continued to develop its role and approach to regulating and supporting providers since its formation in 2016, with further work to define its operating model currently being undertaken under its new leadership. The two regulators are progressing in their aim to achieve greater alignment in the discharge of their respective functions, most visibly through their approaches to assessing trusts' leadership and use of resources. They have also been working to align their approaches and messages with other arm's length bodies, particularly NHS England.

The consequence of the changing NHS system architecture is that trusts are juggling a growing number of roles and expectations. Trusts are seeking to meet rising demand and incredibly stretching operational and financial targets, and at the same time, transform services in their local health economies through local integration and collaboration. Additional regulatory intervention and burden at this time risks overloading providers, and a risk-based and proportionate regulatory system is more important than ever. So too is the regulators' approach to how they balance the need for regulatory intervention with the need to support improvement in order to help the provider sector meet the challenges it is facing and deliver local change.

Our findings show that trusts welcome the regulators' continued focus on coordinating their approaches. They are optimistic about the potential positive impact of the regulatory changes introduced in the last year, but this has not yet translated into improvements in trusts' experiences. While there is support among providers for increasing collaboration locally, the lack of clarity about how the regulatory model is adapting to system integration, and the risk of additional regulatory burden, is of significant concern.

The responses suggest that improvements reported in last year's survey have stalled, with little change in trusts' experiences of the regulatory system over the last 12 months. Trusts report that their autonomy is increasingly confined and regulatory intervention does not always feel proportionate. Regulation and oversight continues to stretch trusts' capacity and impact heavily on time and resources. The findings indicate that the sector has experienced additional regulatory requirements and reporting in the last year.

Where we refer to the regulators we mean CQC and NHS Improvement. This report also reflects on trusts' experiences of interacting with NHS England.

For the purposes of analysis, when splitting the data by trust type they have been grouped into acute (acute, acute and community and specialist trusts) and non-acute (ambulance, community and mental health trusts).

About the survey

This report outlines the results of an online survey of NHS Providers' members – NHS trusts and foundation trusts – carried out in January 2018. The survey collected qualitative and quantitative information about trusts' experiences of the regulatory system over the last 12 months, and their perspectives on topical issues.

The survey questions were shared with NHS Improvement and CQC prior to the circulation of the survey. Each organisation had the opportunity to provide feedback on the questions, with suggested changes taken into account and reflected where possible.

We received responses from 86 trusts, representing 37% of the sector. Of the respondents:

- 46% were chairs and chief executives
- 37% were company secretaries
- the remaining 17% were other board-level directors.

Just under half (47%) of respondents had received a CQC rating of 'outstanding' or 'good', and 51% were rated as 'requires improvement' or 'inadequate'. The remaining 2% were either classified as 'no evidence to rate', or had not yet received a CQC rating.

Of the respondents, 62% had been allocated to segments 1 or 2 (maximum autonomy or targeted support), of NHS Improvement's SOF (NHS Improvement, 2017), with the remaining 38% in segments 3 and 4 (mandated support or special measures).

Please note that not all questions were answered by all respondents.

OVERALL REGULATORY FRAMEWORK

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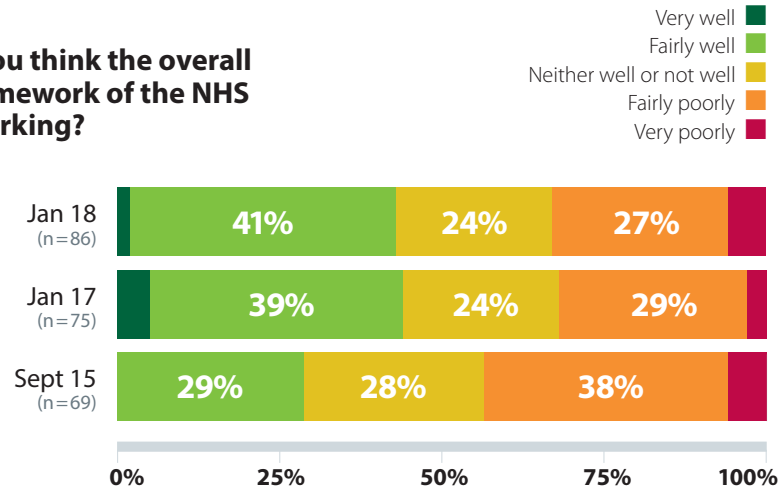
Over the last year, NHS Improvement has continued to make progress in implementing its new approach to regulation, following its formation in 2016 from the coming together of Monitor and the NHS Trust Development Authority. NHS Improvement has maintained its focus on supporting trusts to make improvements, however it has to strike a careful balance between this supportive approach and its regulatory functions. This is particularly important as NHS Improvement continues to apply financial control totals and challenging cost improvement programmes as regulatory levers. Since our last survey, CQC has begun to implement its new regulatory model, in which it takes a more tailored, risk-based approach to inspections and makes greater use of intelligence outside of the inspection period. The two regulators have also taken important steps forward in how they align their approaches, most clearly through their approaches to assessing trusts' leadership and use of resources.

In the last year, there has also been a significant move to implement plans for local systems through STPs and ICSs. Trusts are increasingly working in collaboration with local system partners, including clinical commissioning groups (CCGs) and local authorities to deliver improvements across whole health economies. The health and care system is experiencing a major shift in how organisations work together, both at local and national levels, albeit within the existing legislative framework. NHS Improvement and NHS England are rightly working together more closely than ever. Our survey results show that this is crucial for supporting local systems to develop. As trusts seek to balance their organisational duties and leading and contributing to local systems, it is crucial that the regulators stay true to the principles of a risk-based and proportionate approach to regulation, and that they are joined up in their messages and methods.

Every year we ask NHS trusts how they feel the overall regulatory system is currently functioning. Last year, we reported a perception among trusts that the regulatory environment was heading in the right direction, with 44% respondents considering the overall regulatory framework to be working 'fairly' or 'very well', an increase from 29% in 2015. This year, 43% of respondents gave this response, which while consistent with the previous year, does suggest that improvements have stalled. Worryingly, a third (33%) of trusts believe that the overall framework is working 'fairly poorly' or 'very poorly'.

When asked about the overall regulatory system, trusts report concerns about a lack of coordination across the regulators and other national bodies, burdensome regulatory requirements, particularly in the context of facing increased operational pressures, and duplication in requests from the regulators. There were suggestions that trusts feel they constantly have to adapt to new approaches and requests from the regulators. Trusts also raised concerns about how well the regulatory framework is keeping up with the move to new models of care.

Figure 1
How well do you think the overall regulatory framework of the NHS is currently working?



“ There’s lots of change [in the overall regulatory framework] which limits its effectiveness as constantly having to respond to changes. It also indicates that it is not working effectively.

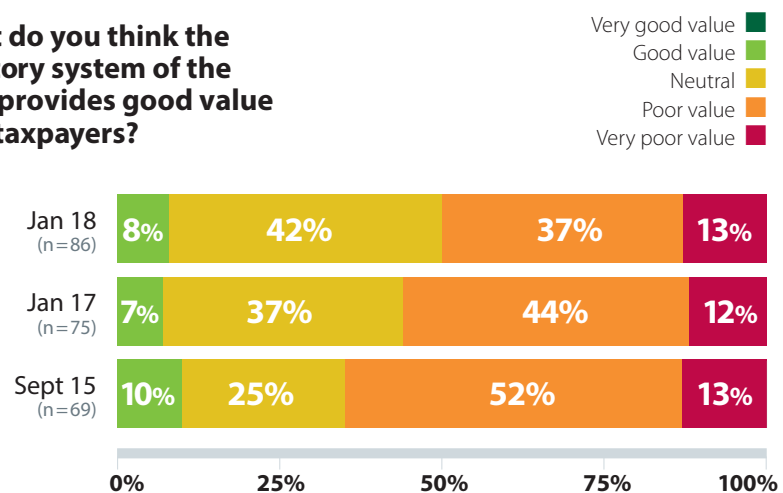
“ [The sector] strikes me as over-regulated, with duplicated functions and activity. The burden on CEOs and trusts as a whole needs quantifying in relation to the overall risk in the system.

Value for money

The NHS is facing intense financial pressure and trusts are managing a mismatch between the resources currently available to them and the political and public expectations of the NHS. In this context, demonstrating that the regulatory system adds value for money is crucial. Therefore it is worrying that only 8% of respondents said they think the regulatory system is 'good' value for money. Half of respondents (50%) reported that the regulatory system is 'poor' or 'very poor' value for money: a broadly similar proportion to last year (56%). Acute trusts take a less favourable view than non-acute trusts, with 59% reporting the system is poor value for money compared to 33%.

Many providers highlighted concerns about the increase in CQC fees in 2018-19. Some question whether an increase in fees is at odds with CQC's ambition to reduce the burden of reporting requirements and move towards risk-based model of inspection. Respondents suggested that better coordination across the regulators and national bodies and a focus on reducing duplication in requests would go some way to deliver better value for money.

Figure 2
To what extent do you think the overall regulatory system of the NHS currently provides good value for money for taxpayers?



“ I think we would benefit from a more streamlined regulatory approach which reduces overheads and redirects funds to the benefit of frontline organisations.

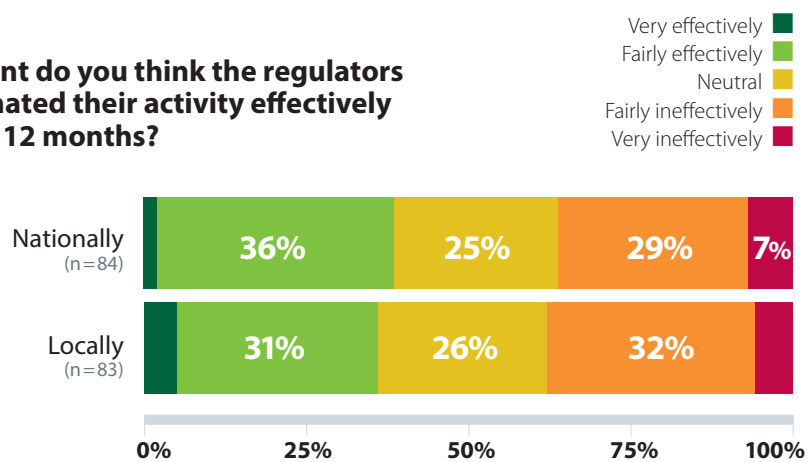
“ Significant money that could be focused at the frontline is spent with layers and layers of bureaucracy that cannot demonstrate that it is adding value.

Regulatory alignment and coordination

This year's survey shows a decline in trusts' experiences of how well the regulators have coordinated their activity over the last 12 months. Fewer respondents said they felt the regulators had coordinated effectively, at both a national level (38%) and at local level (36%), compared to last year (45%).

This is further indication that the improvements reported by trusts last year have stalled. Although respondents noted the regulators' ambitions to ensure better alignment and coordination, they suggested this has not translated into change in their experiences at local level. Trusts reported that they continue to experience overlap in the requests from the regulators and suggested that the regulators can take further steps to align their methods for gathering data. Some cited frustrations with the length of time it has taken the regulators to agree and clarify their approach to well-led assessments.

Figure 3
To what extent do you think the regulators have coordinated their activity effectively over the last 12 months?



“The leadership of CQC and NHS Improvement aspire to coordinate activity, but the evidence of achievement is limited at this stage.

“I feel that NHS Improvement and CQC are now sharing a common understanding of where a trust is in addressing improvement issues.

Consistent national messages

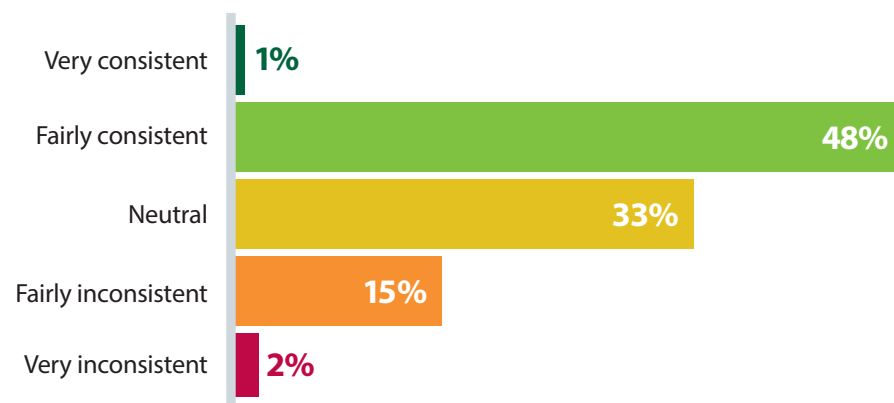
Each year we ask trusts to tell us the extent to which the advice their organisation has received from the regulators has been consistent with policy making by other arm's length bodies. Just under half (49%) reported that it had been 'very' or 'fairly' consistent, a similar proportion to last year (47%). This view was more likely to be taken by non-acute providers (62%) than acute providers (43%).

The lack of change over the last year is disappointing given the increasing emphasis on collaboration across systems both locally and nationally. Some respondents reported that the national bodies do not always appear to share priorities and continue to work in organisational silos. As in last year's survey, consistency in messages from the regulators and from NHS England was also raised by respondents. There was a sense that this is improving, although trusts emphasised the need for the national bodies to coordinate their approaches to developing national policy and guidance. They also suggested the national bodies could do more to ensure consistency in how they are supporting trusts to implement changes. As providers, commissioners and other services are expected to work together to transform care, it is more important than ever that the national bodies are coordinated and consistent in their messages and approaches.

Figure 4

To what extent has the advice your organisation has received from the regulators been consistent with policy making by other arm's length bodies (such as NHS England and Health Education England) over the last 12 months?

(n=85)



“ Better than it used to be but a long way to go still. New planning guidance is an encouraging example of better coordination.

“ NHS England and NHS Improvement are inconsistent with differing views on commissioners and providers.

Regulators' understanding of local pressures

In order to be able to respond to intelligence from and about providers, regulate activities in a proportionate way, and provide support that is tailored to trusts' specific needs, the regulators need to have a good understanding of the pressures that trusts are facing.

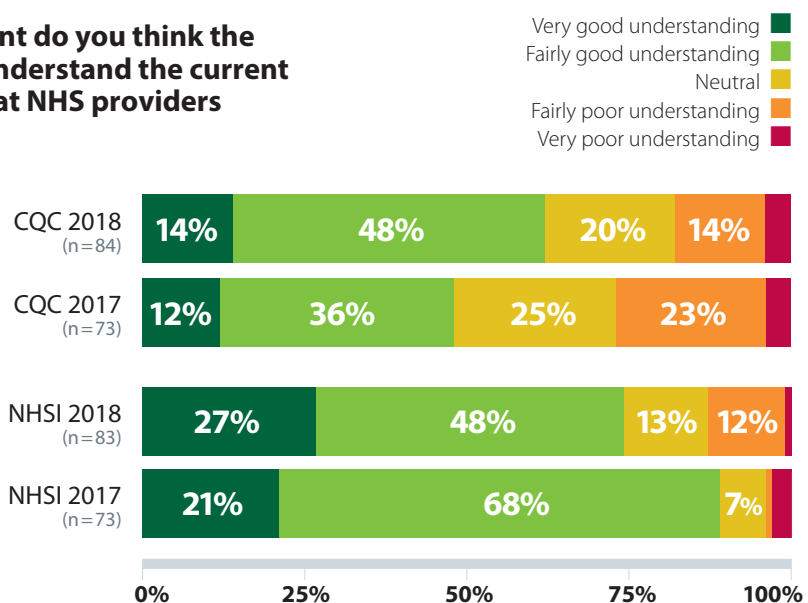
On the whole, the majority of respondents believe that the regulators have a 'very good' or 'fairly good' understanding of the pressures facing providers. Three quarters (75%) said NHS Improvement has a good understanding, and 62% felt CQC has a good understanding. However there is a mixed picture in terms of how this has changed over the last year. The proportion reporting that CQC has a good understanding has increased since our last survey (from 48% to 62%), however providers believe NHS Improvement's understanding of the sector has declined over the same period (from 89% to 75%).

When asked about the regulators' understanding of local pressures, trusts reported that while the regulators appear to understand the challenges, they do not always behave in ways that reflect this understanding. As one trust commented, the message from the regulators is often:

"We understand the pressures on A&E caused by increased demand, delayed discharges etc... When are you going to get to 95%?"

There were suggestions that this is a result of a lack of communication between regional and national teams within the regulators. Other trusts felt that the regulators understand the pressures but do not understand how to support trusts to overcome them. There were also suggestions that the regulators' response to pressures is too slow.

Figure 5
To what extent do you think the regulators understand the current pressures that NHS providers are facing?



“ There is evidence of a good understanding that there are pressures – but not necessarily of how those pressures can be assuaged while still maintaining patient safety and the quality of care.

“ The regulatory system cannot solve the problems in itself and the lack of people within it who have run a complex healthcare system make it difficult to value some of their demands and requirements.

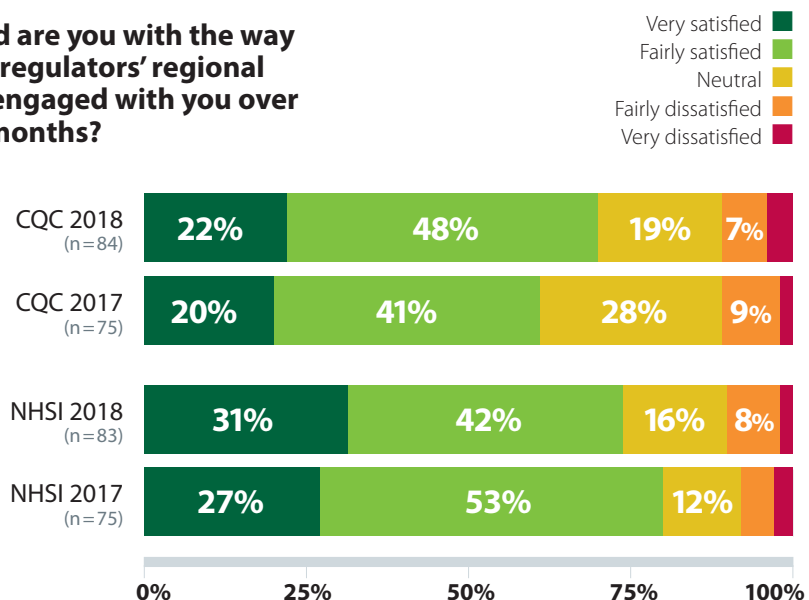
“ While regulators say they understand the pressures, they then act as though the pressures don't exist.

Engagement with the regulators

The majority of respondents reported feeling ‘very satisfied’ or ‘satisfied’ with the way the regulators’ regional teams have engaged with them over the last 12 months. The findings suggest an improvement in trusts’ relationships with regional CQC teams, with 70% reporting they feel satisfied this year, up from 61% in last year's survey. However, the proportion of trusts who report feeling satisfied with the engagement with regional NHS Improvement teams has declined since last year (from 80% to 73%).

Trusts’ experiences of engaging with the regulators’ regional teams varied considerably. Some reported feeling very satisfied with local relationships and the professional and supportive approach taken by regional teams. Other trusts felt that changes in staff in the regional teams had made it difficult to develop relationships and meant it had taken longer for the regional teams to develop an understanding of the specific issues facing trusts. There was also a sense among some trusts that while their engagement with regional teams had been positive over the last 12 months, a lack of clarity within the regulators about the responsibilities of the national and regional teams had led to confusion and duplication.

Figure 6
How satisfied are you with the way in which the regulators’ regional teams have engaged with you over the past 12 months?



“ We have suffered from ad hoc senior regional input over the past 12 months which doesn't help strengthen awareness of areas which are improving and building relationships with the team.

“ The junior team can miss out on the subtleties and nuances which are important.

“ The [CQC and NHS Improvement] regional teams have engaged in a highly professional manner with the trust.

“ The overlap and blurred accountabilities between the regional and central NHS Improvement teams has been an issue especially around management of cash, capital and business cases.

Regulatory burden and impact

As in previous surveys, we asked providers whether the overall regulatory burden experienced by their organisation had increased, stayed the same, or decreased over the last 12 months. The results suggest that the regulatory burden on trusts remains excessively high; this is the fourth of our surveys in which respondents have reported an increase in regulatory demands.

This year, more than two thirds (67%) reported that the regulatory burden had increased over the last 12 months, with 28% suggesting it had stayed the same and only 2% reporting a decrease.

The pressure is compounded by ad hoc requests for information. Nearly two thirds (62%) of respondents reported that there had been an increase in ad hoc requests in the last 12 months. However, there is some room for optimism that this is moving in the right direction, having reduced from 76% two years ago.

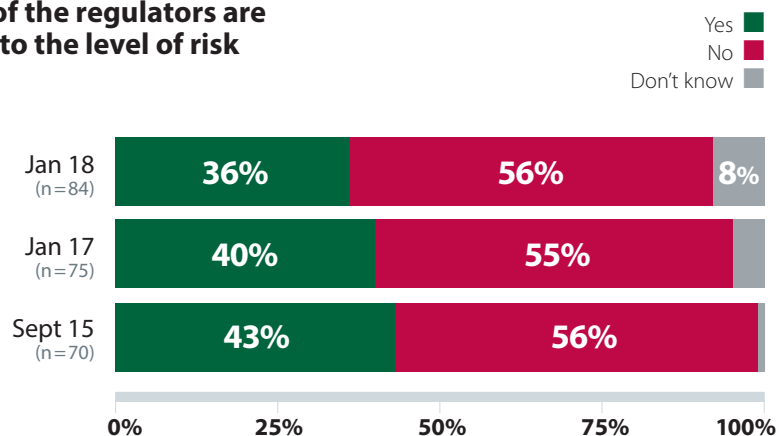
“ We had over 200 requests following a two day inspection.

Proportionality

It is important that the regulatory system is proportionate and risk-based, and that the regulators' focus is on seeking assurance that boards leading their organisations effectively.

In light of this, it is concerning that over half (56%) of trusts did not feel that the current reporting requirements are proportionate to the level of risk they manage. The proportion of trusts that do think it is proportionate (36%) has declined over the last two years. There were different views within the sector, with 30% of acute trusts suggesting the reporting requirements are proportionate to risk, compared to 47% of non-acute trusts.

Figure 7
Do you think the current reporting requirements of the regulators are proportionate to the level of risk you manage?



Respondents pointed out that regulation and reporting alone do not help trusts to manage the risks and challenges they are facing. There was a view among some providers that the regulators do well to adapt their approach depending on the level of risk a provider is managing, but others warned that the regulators' response to concerns can at times feel disproportionate. Some trusts suggested that regulators' requirements can, at times, have a detrimental effect, as meeting requests to provide information and assurance to the regulators diverts resources away from the management of risks and challenges. Others reported particularly heavy-handed responses from the regulators when risks at a trust had been flagged, or when their trust had entered special measures, which they thought had restricted the trusts' ability to address the issues.

“The ever increasing expansion of [CQC's] powers could give rise to either overly light or overly heavy handed management and intervention.

“The number of returns for the digital incident across the NHS [in 2017] was out of proportion to the scale of the issue and took the experts away from dealing with the incidents due to the specialist natures of the requests.

OVERSIGHT AND REGULATION OF SYSTEMS AND NEW ORGANISATIONAL FORMS

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For the first time this year, we asked trusts about the oversight and regulation of systems. Over the last 12 months the implementation of local system plans, through STPs and ICSs, has been a focus for providers, their local partners, and the national bodies.

There is a prevailing view that greater collaboration at local system level has the potential to transform the delivery and experience of care in line with the vision set out in the *Five year forward view* (NHS England, 2014). In March 2017 NHS England published *Next steps on the five year forward view* (NHS England, 2017a) which made clear the expectation that STPs evolve as long-term partnerships rather than time limited plans, as well as an ambition for STP footprints to become ICSs.

However, the move to locally-based collaboration has not been accompanied by change to the legislative framework. Responsibility and accountability for the commissioning and the provision of services sits with CCGs and trusts boards and competition between organisations is underpinned legislatively by the Health and Social Care Act 2012. While the current legal frameworks certainly do not prevent partnership working and integration in different forms, this makes for a complex environment for trusts, their partners, and the regulators, to navigate.

The national bodies' responsibilities and regulatory frameworks also remain aligned to sectors and institutions under existing legislation. Currently, NHS Improvement monitors and assures the performance of NHS trusts and foundation trusts through the SOF, while NHS England carries out this role for CCGs using the CCG Improvement and Assessment Framework (NHS England, 2017b).

STPs and ICSs have no legal status and derive their decision making powers from the statutory bodies which comprise them. Nevertheless, they are increasingly being used as the vehicle to deliver national policy; initiatives and increasingly funding are now passed down for delivery at STP footprints. For example, this includes the introduction of system control totals with the ability to apply to NHS Improvement and NHS England to adjust organisational control totals as long as the system target is met.

A system-level approach to planning services can ensure that care pathways are designed around the needs and experiences of patients, rather than around traditional organisational boundaries. Oversight at a collective system level is important because the consequence of contributing to a system-level plan may be that some individual organisations are disadvantaged or advantaged; the potential risks and gains need to be shared appropriately across organisations and monitored at a system level. System-level oversight should also provide a mechanism through which to manage the impact of any performance issues among individual providers or commissioners on other organisations in the system.

The refresh to the planning guidance in 2018-19 (NHS England and NHS Improvement, 2018) offered an initial description of how the regulatory system will start to evolve to align with system collaboration. It set out NHS England and NHS Improvement's intention to focus on the assurance of system plans, rather than organisation-level plans, for those ICSs judged mature enough to become operational. It is also the intention that ICSs fully adopting a

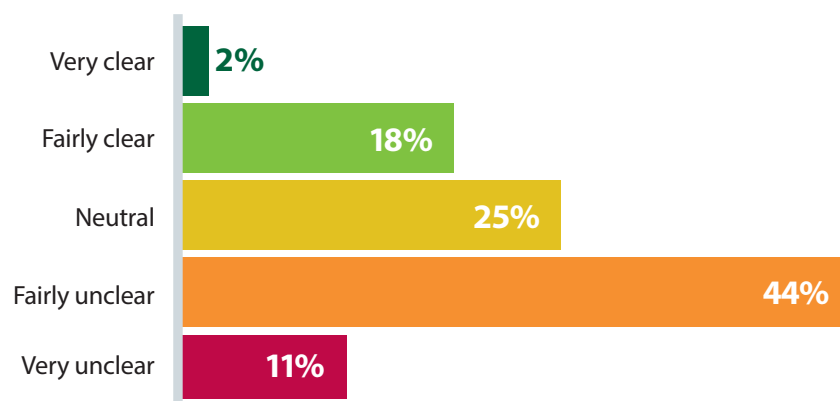
systems approach will operate under a more autonomous regulatory relationship with NHS England and NHS Improvement, who will exercise their intervention powers alongside the system leadership. For example, the planning guidance refresh described that where there is a case for regulatory intervention in a trust or CCG, it is expected that the ICS leadership will play a key role in agreeing the remedial action to be taken. There is a risk that this new approach, involving both national regulators and local system leaders, will create additional complexity and lead to a lack of clarity – for trusts and for the public – about who is responsible for holding providers to account.

Barriers to system collaboration

NHS trusts support the principle of collaboration at the heart of the STP/ICS approach and many trust leaders are spending considerable time developing local system relationships and plans. However, the results of our survey suggest that there is a lack of clarity about the end state that local systems should be seeking to reach and the implications of local system approaches for the regulatory framework. Only one in five (20%) of respondents said that they feel the national policy direction for the overall system architecture is clear, and 55% said it felt 'fairly' or 'very unclear'. The difference was marked between types of providers, with 16% of acute trusts reporting they felt the direction is clear, compared to 28% of non-acute trusts. The national bodies must provide clarity about the core aims of STPs and ICSs and avoid overloading them, for example, with requests to monitor and deliver new policy aims which may not all be appropriate for a system level footprint.

Figure 8
To what extent do you feel the national policy direction for the overall system architecture is clear?

(n=83)



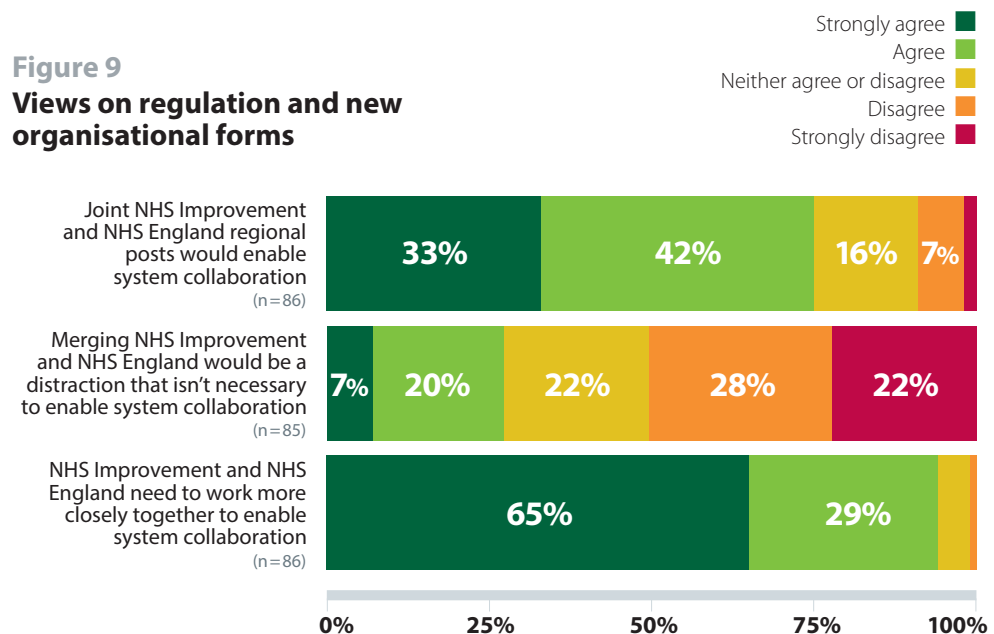
While the current legal and regulatory frameworks do not prevent collaboration and integration in different forms, they do make for a complex environment for trusts and their partners to navigate. The majority (80%) of respondents to our survey 'agreed' or 'strongly agreed' that current legislation and accountability structures act as a barrier to system collaboration.

“The regulatory frameworks are not keeping pace with the developments taking place on the ground.”

We sought to understand trusts’ views on how NHS Improvement and NHS England are supporting system collaboration. There is overwhelming support among trusts for the plans recently set out by the two bodies to work more closely together at regional level and align their approaches nationally.

Respondents overwhelmingly agreed (94%) that NHS Improvement and NHS England need to work more closely together to enable system collaboration. Three quarters (75%) agreed that joint NHS Improvement and NHS England regional posts would help local collaboration. Views were more mixed about the benefits of merging NHS Improvement and NHS England: half of trusts (50%) disagreed with the statement ‘Merging NHS Improvement and NHS England would be a distraction that is not necessary to enable system collaboration’, while only 27% agreed.

Figure 9
Views on regulation and new organisational forms



Sharing risks and rewards between local system partners provides an important foundation for enabling local systems to align resources with population needs and focus on outcomes for the whole system without creating extra risk for individual organisations. This is particularly important for decisions that are likely to significantly affect some organisations, such as service reconfigurations. Over half of trusts (59%) responding to our survey said they agreed that financial risk pooling is needed to enable system collaboration.

Aligning system oversight and regulation of organisations

As the models and frameworks for local systems evolve, oversight and assurance models will need to respond to ensure that the oversight of systems does not add an additional layer of performance management. Ideally, any additional regulatory requirements at systems level require a commensurate reduction in existing regulation on individual organisations.

In 2017, NHS England published an indicative baseline STP progress assessment, which provided each STP with an overall rating based on performance across nine domains,¹ and signalled a move towards the performance assessment of local health systems. Our survey asked respondents to give their views on how well the STP assessments and ratings captured performance. It asked respondents to rate on a scale of 1-5 how well the STP assessments and ratings captured the performance of local health systems, where 1 represented 'not well' and 5 represented 'very well'. The most common score, selected by 35% of respondents was 3, which was fairly consistent for both acute and non-acute providers. Providers in London were most positive about STP assessments and rating capturing local health system performance (giving an average score of 3.2), where as those in the Midlands and East of England were the least positive (average score 2.6).

“ *While the assessment may quantitatively capture performance in local health system it does not accurately map the challenges with in local systems.* ”

“ *I think we are still struggling to make sense of the effectiveness of STPs and this makes it difficult to understand the merits of the baseline assessments.* ”

Trusts welcome the national bodies' focus on developing new regulatory models to reflect the practical changes being made locally. Among the respondents, 81% agreed that NHS Improvement and NHS England need to develop new models of oversight to hold systems to account for collective performance.

However, designing and implementing a new model of system oversight is complex and the risks involved need to be managed. Trusts are particularly concerned about the potential for duplication in oversight if they are held to account by the national regulator and also by the local system. In addition to contributing to local system plans, trusts still have institutional responsibilities and are also held to account for these responsibilities; any new oversight at system level must complement existing, institutionally-focused regulation. This is also important because STPs and ICSs do not have the levers to be able to force trusts and other local partners to take action, or intervene if there are problems.

“ There is a risk that the ICS approach simply adds an extra layer into the assurance system.

“ Due to being in the first wave ICS therefore additional oversight has occurred from both NHS England and NHS Improvement. This has been time consuming.

Nearly two thirds of respondents (61%) said they agreed that STPs/ICSs should have the flexibility to develop local assurance frameworks to hold organisations to account at a local level. However, some trusts shared the view that STPs/ICSs cannot take on responsibility for oversight without a statutory footing. Some respondents highlighted the potential conflict of interest arising from a situation in which STPs/ICSs, which derive their decision making powers from the statutory bodies which comprise them, is holding those organisations to account. There were also concerns that local systems do not yet have the infrastructure or leadership to be able take on this role.

“ STPs cannot become the vehicle [for local system oversight] without proper authority and accountability.

“ STP is not mature enough yet and doesn't have the necessary governance or statutory powers. Plus for those trusts that cover a wider footprint than the STP they are based in it would not be appropriate.

That being said, it is the case that more established and developed local partnerships will benefit from negotiating additional freedoms and flexibilities with the national bodies. In these cases, NHS Improvement and NHS England will need to consider which elements of oversight must remain at national level, and which can be transferred to local systems.

Figure 10
NHS Improvement and NHS England need to develop new models of oversight to hold systems to account for collective performance

(n=85)

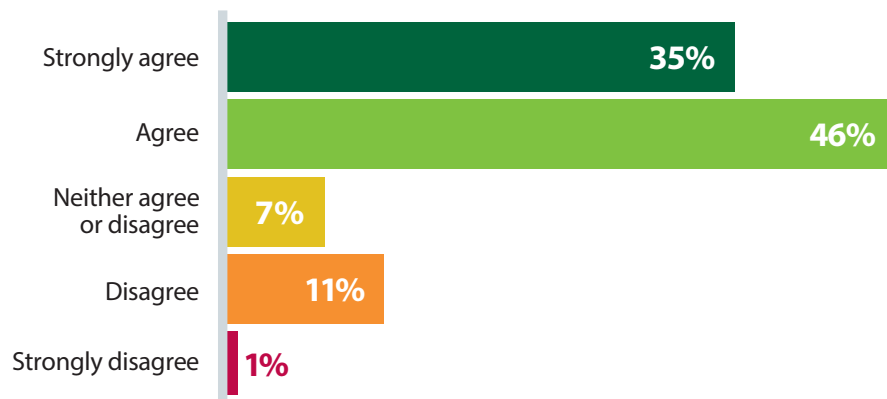
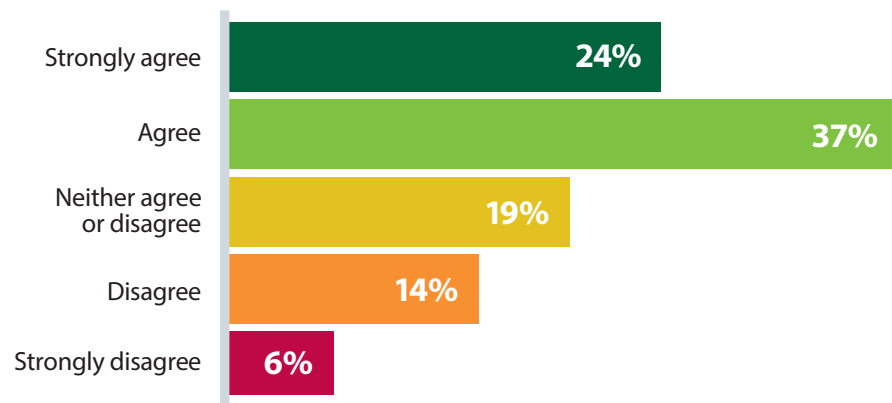


Figure 11
STPs/ICSs should have the flexibility to develop local assurance frameworks to hold organisations to account at a local level

(n=85)



Although trusts expressed concerns about a potential increase in regulatory burden, more than half of respondents to our survey agreed that system oversight could be aligned with regulatory requirements at an organisational level. We asked trusts to reflect on which elements of performance they think can be held to account at a system level, which elicited a very broad range of suggestions. Some respondents thought that NHS constitutional targets – quality measures such as patient experience, length of stay and out of area placements – delayed transfers of care and population health outcomes could be overseen at system level. While some respondents felt that organisations could be held to account for financial performance at system level, others were clear that they did not think this was appropriate.

“ *This should be possible, but will require a mature debate, with learning from other regulated sectors.* ”

“ *My view is that it's one or the other – both would be a nightmare!* ”

NHS IMPROVEMENT OVERSIGHT

4

At the time of last year's survey, NHS Improvement had recently been formed from the merger of Monitor and the NHS Trust Development Agency. We sought to understand trusts' initial experiences of the first formal segmentation process, which determines the approach that NHS Improvement takes with trusts with regard to both oversight and support. Through the SOF – which applies equally to NHS trusts and foundation trusts – NHS Improvement sought to reposition its approach with a greater emphasis on support and on enabling sector-led improvement. This approach has continued, and become embedded, over the last year.

In 2017, NHS Improvement asked trusts to deliver more demanding savings through ambitious cost improvement programmes (CIP) in order to meet financial control totals. For the second year, NHS Improvement, in discussion with trusts, set control totals, with trusts' access to sustainability and transformation funding contingent upon meeting their control total and performance targets.

In this year's survey, we gathered trusts' views on a range of aspects relating to NHS Improvement's role, including the segmentation process under the SOF, the support offer and trusts' experiences of the balance between organisational autonomy and regulatory oversight and intervention.

Trusts' perspectives on the Single Oversight Framework

Nearly two thirds (62%) of respondents to this year's survey were allocated to segments 1 or 2, with the remaining placed in the lower segments. Last year, the majority (88%) of trusts told us that the segment to which their trust had been allocated matched their expectation prior to allocation.

This year, now that the SOF and segmentation process have had more opportunity to bed in, we sought trusts' views on how the SOF is applied by NHS Improvement. The results suggest that providers consider the SOF as more of a performance management tool than a support tool. This view was more commonly held by acute providers compared to non-acute providers.

Figure 12
Trust's rating of the single oversight framework
(out of 10)

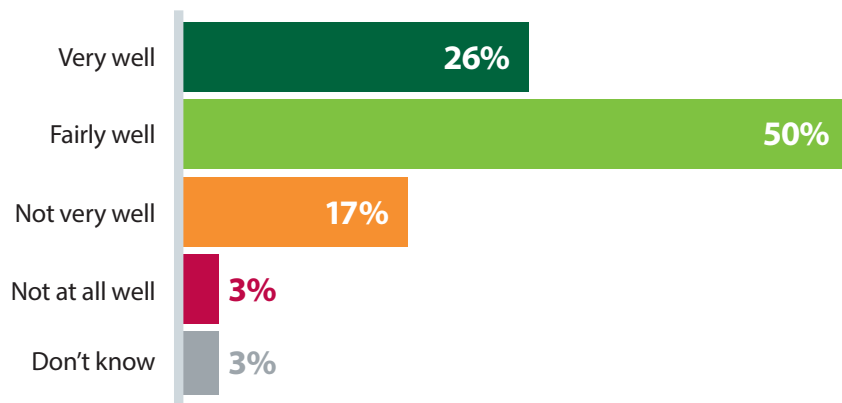
(n=86)



We also asked trusts about how well they felt they understood the decision-making for their segmentation under the SOF. The results indicate that the application of the SOF is working well and is understood by trusts. Three quarters of providers (76%) said they understood the decision making process well, and of these, 26% suggest they understand it 'very well'. Non-acute trusts report feeling more confident that they understand the decision-making well (87%) compared to acute trusts (70%).

Figure 13
How well do you feel you understand the decision-making for your SOF segmentation?

(n=86)



Perspectives on the support offer

Since last year's survey, NHS Improvement has become more established and trusts have become more familiar with its role and support offer. In light of this, this year we asked respondents to reflect on the value of the support they have received and the extent to which they felt the support had been appropriately tailored to their trust.

It is important that NHS Improvement's support offer has a positive impact on financial position of trusts given NHS Improvement's focus on helping the sector to achieve financial balance. Therefore, it is disappointing that our survey found that although some trusts value the support there is still considerable room for improvement. We asked trusts to rate the value that NHS Improvement's support adds to the financial position of their organisation on a scale of 1 to 5, where 1 represented 'no value' and 5 represented 'high value'. Trusts gave an average score of 2.6 and the most common rating was 3.

“ *Would welcome help that is more about medium to longer term financial restructuring, rather than short-term incremental improvements.* ”

“ *I am not sure that the current regulatory activity is focused on supporting organisations to deliver the highest quality care and for providing assurance to the public. I am concerned that NHS Improvement is very heavily focused on achieving the national control total as its primary aim.* ”

We also asked trusts about the extent to which they agreed that the support their trust has received from NHS Improvement has been appropriately tailored to their sector (acute, community, ambulance, mental health). Over half (51%) agreed that it had been appropriately tailored. Among non-acute trusts, 20% disagreed that the support had been appropriately tailored, compared to 15% of acute trusts.

Over the last year, a number of initiatives and support tools, such as the model hospital and assessments of trusts' use of resources have been rolled out within the acute sector only. It is crucial that trusts across all sectors have the opportunity to access and take advantage of improvement tools, otherwise well-intentioned initiatives may inadvertently lead to polarisation of the sector and a disparity in the improvements experienced by people using services.

“ *There is a definite disparity in the parity of esteem of mental health organisations as opposed to acute.* ”

“ *I think our new local and sub regional NHS Improvement and NHS England team are trying to operate a tailored oversight and support.* ”

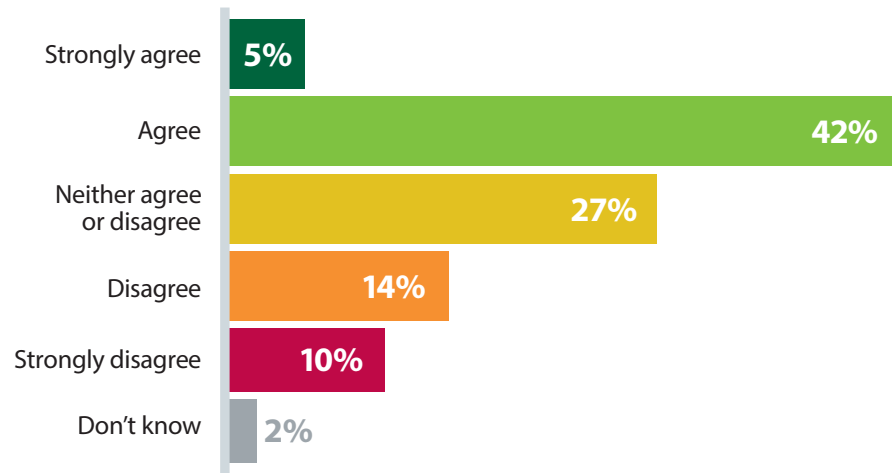
“ *Not sure there is much focus on [support for] mental health or community. [NHS Improvement is] consumed by acute sector woes.* ”

Balance between autonomy and support

Striking the right balance between provider autonomy and regulatory assurance is essential for trust boards to feel empowered to drive their own improvement. The results this year suggest that there is a danger that this balance is not being achieved. Over the last year, the proportion of trusts that believe NHS Improvement strikes a good balance between respecting trusts' autonomy and support has declined. Less than half (47%) agreed there was a good balance, down from 58% who agreed with this in 2017. Views were more positive among non-acute trusts (57% of whom agreed it was balanced) compared to acute trusts (41% of whom agreed).

Figure 14
NHS Improvement strikes a good balance between respecting trusts' autonomy and support in its approach to overseeing providers?

(n=85)



Feedback from respondents highlighted that among some trusts there is a perception that NHS Improvement's priority is on ensuring the provider sector achieves financial balance. Control totals will have been in operation for three years by the end of 2018/19. There is a danger that what was conceived as a short-term solution becomes a long-term feature of the regulatory system that risks undermining trusts' autonomy and does not align with the move to system collaboration.

“ *The NHS Improvement team strike a reasonable balance, but the deployment of regulatory intervention takes place within a framework that doesn't leave much room for genuine autonomy.* ”

“ *Believe we are given autonomy where appropriate for our low risk and high quality.* ”

“ *All too often a 'crisis' results in a huge overreaction and autonomy disappears very quickly.* ”

“ *[NHS Improvement] say they understand why we have been unable to sign our control total that required an in year CIP of 11% but have made no changes next year where the CIP remains the same.* ”

CARE QUALITY COMMISSION

CQC inspections

In line with its five year strategy, CQC introduced its next phase inspection model in 2017, following the completion of its programme of comprehensive inspections. The new approach involves a more intelligence-driven and risk-based approach to inspections. CQC is moving towards a more responsive inspection model, which sees resources targeted to areas where concerns about quality of care are greatest. As part of the new approach, CQC has made changes to the provider information request (PIR) to attempt to streamline the information that trusts are required to provide in advance of inspections.

Earlier this year, CQC also consulted on changes to its fee structure in 2018-19 as part of its move to a full chargeable cost recovery model. From this year, CQC will be removing the existing banding structure and each trust will pay a different fee, charged in proportion to trusts' turnover levels. There will be no minimum fee or maximum fee. While the majority of providers will experience a reduction in fees, around one quarter of providers will see a substantial increase. In the move to a full cost recovery model, there is a risk that CQC will become dependent on a small number of providers for a significant proportion of its income. CQC should recognise that this burden may affect the relationship those providers have with CQC and ensure they mitigate this.

Other changes introduced in 2017 represent an important step forward in how the CQC and NHS Improvement are aligning their approaches. CQC introduced its assessments of how well-led a provider is, based on the well-led framework which was developed in partnership with NHS Improvement. Trusts will undergo this assessment each year following a targeted inspection of at least one core service. In addition, towards the end of 2017, a small number of trusts underwent new assessments of their use of resources. These assessments are carried out by a team from NHS Improvement who provide their findings to CQC in order for CQC to write the assessment report and decide a trusts' rating for use of resources, which is then combined with CQC's existing five quality ratings for the trust.


As in previous surveys, we asked respondents to reflect on their most recent CQC inspection and share their views on the process and their interaction with CQC. Nearly half (49%) of the respondents had received a new PIR, indicating they had undergone a new-style inspection. Where there are differences in the responses between those trusts who reported they had received a new PIR compared to those who did not, they have been highlighted.

It is important to caveat that the findings provide a snapshot in time, with some of the changes to CQC's inspection approach still at a relatively early stage of implementation. That said, these early findings provide a valuable insight into how the new approaches are starting to bed in.

CQC's new inspection approach


The results showed that trusts are, overall, supportive of CQC's direction of travel and support the move to its new approach to regulation. The majority of respondents (81%) either 'fully' or 'partially agreed' that the new inspection approach would enable CQC to prioritise inspections more effectively and help them improve services and quality of care (74%). Encouragingly, among those trusts that reported they had received a new PIR, these figures were 85% and 81% respectively. In addition, 62% felt that the new approach would reflect the needs of their particular sector.


Among those trusts that reported having received a new PIR, 80% said they thought the new inspection approach would help the trust develop their own quality monitoring approaches, compared to 63% among all respondents.

 *The new approach should reduce interventions and make them more risk based which will be welcome.*

However, there was a general consensus that the potential positive impacts of this new approach are yet to be delivered in practice and more time is needed for the new approaches to bed-in. Trusts recognise that CQC are still in the early stages of implementation and expressed hope that it will learn and refine its approach over time. Many trusts reported that the new inspection approach still feels very resource intensive and burdensome, and 62% of respondent felt that the new approach would not reduce the administrative burden on trusts at all. Among those trusts who reported having received a new PIR, 71% gave this response.

Many trusts expressed concerns that the PIR and ad hoc data requests remain burdensome. Disappointingly, of those trusts that had received a new PIR, only 5% suggested it was less resource intensive than previous pre-inspection information collections, and 36% said it was more resource intensive. The responses suggest there is further work to do to reduce the burden of data collection prior to inspection. However this may be due, to some extent, to trusts having to get to grips with the new information collection process.

 *The PIR was extremely onerous and the information supplied did not seem to get through to the inspection team.*

 *The PIR required slightly more intensive resource than previous pre-inspection information collection, but this was at least in part due to the novel nature of the process.*

Some respondents commented that requests for ad hoc information from CQC have increased, particularly emphasising additional requests during and/or after inspections. Some trusts reported that they receive requests for information that is already provided through the PIR, or other means, for example, the daily sitrep data and to the National Reporting and Learning System.

“Engagement process with CQC has led to good partnership working but increased burden for trusts in terms of time commitments – monthly half-day meetings, fortnightly telephone discussions to go through issues log [involving] requests for follow-up information that is outside routine business.

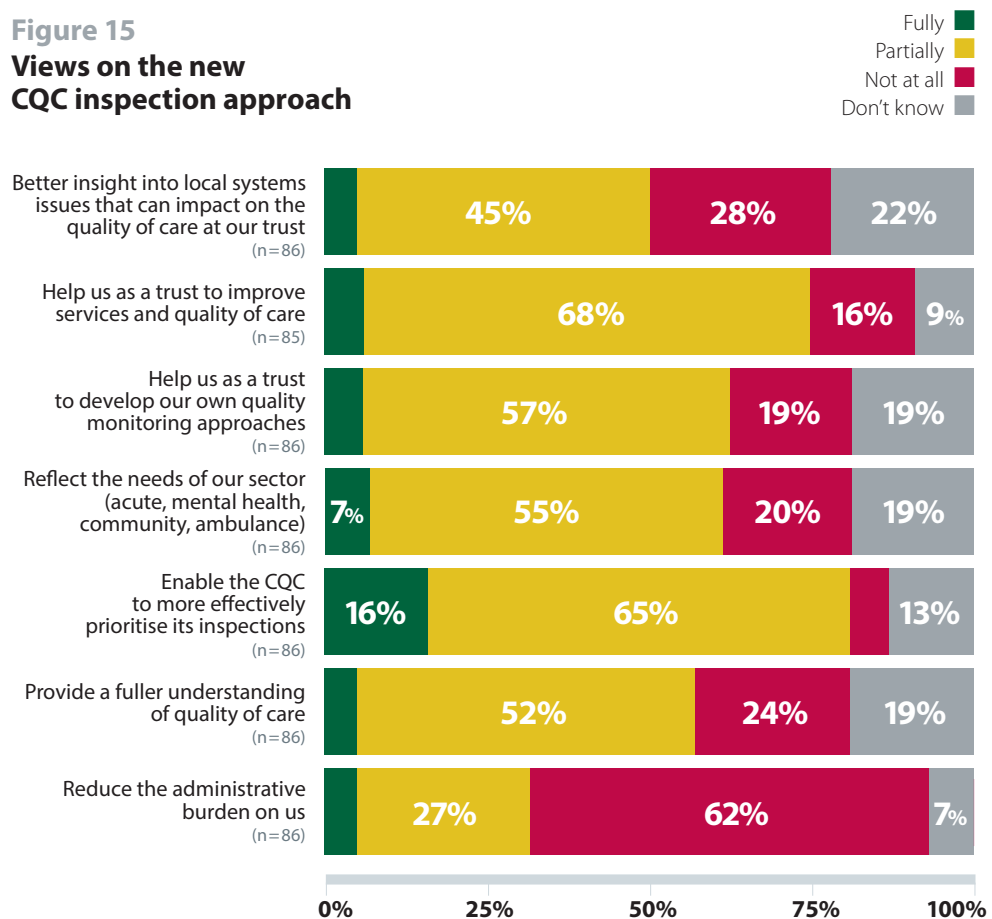
“New engagement process is very resource intensive, requests for ad hoc information have increased significantly.

“The new regime was a partial assessment that attempted breadth but had no depth.

Some respondents commented on the number of changes in the CQC inspection approach in recent years and the impact this has on trusts in having to understand and adapt to new approaches. There was a view that inspection changes are made too soon before a thorough understanding of the existing approach – and what is working well or not – can be developed.

“The picture is confusing and we have been told different things by CQC at different times.

Figure 15
Views on the new CQC inspection approach



Benefits and challenges of inspections

As in previous years, we asked providers to describe the benefits of their most recent CQC inspection. The most common source of praise among NHS trusts was that inspections offered an additional opportunity for provider boards to focus on quality and safety, identify areas for improvement and celebrate successes. Respondents reported that they found it useful to understand their progress since the last inspection.

Two thirds (66%) of respondents reported that their most recent CQC inspection had not highlighted any new areas of concern that the board weren't already aware of, the same proportion as in last year's survey. This suggests that trust boards have a good understanding of the challenges within their organisations. Some trusts reported that CQC inspections helped uncover pockets of good practice that had not previously been recognised, which indicates that CQC's move to more focused inspections is having a valuable impact. Respondents emphasised the value of an external independent inspection in providing assurance to the trust board, stakeholders and the public. It was also noted that a positive CQC inspection and rating can have a motivating impact on staff.

“ *It has provided an opportunity to refocus our organisation on quality and safety and not just on performance.* ”

“ *Some very detailed issues were highlighted that had not been specifically visible at board level.* ”

“ *The inspection allowed us to demonstrate how proud we are of what we have achieved.* ”

“ *Useful to give assurance to the board that our understanding of the quality of our services was generally correct.* ”

While 37% of respondents felt the benefits of their CQC inspection justified the cost in resources to the trust of preparing for and hosting the inspection team, 39% felt that it did not, and the rest were unsure. It is concerning that although a similar proportion to last year felt the cost was justified, the proportion has decreased from 50% since 2014. A higher proportion of non-acute providers felt the benefits of CQC inspection justified the cost (47%) compared to acute providers (35%).

The lack of change in the last year in the proportion of trusts that consider the benefits of CQC inspections justify the cost, despite the optimism about CQC's new inspection approach, could relate to a concerns raised by respondents about the cost of CQC fees. A number of trusts questioned whether benefits of CQC regulation and inspection justified the increase in fees in 2018/19 and suggested this money could be more usefully spent on frontline activities. Other trusts commented that preparing for, and undergoing, CQC inspections diverted attention and resources away from the trusts' main duties.

“ The trust understands the position of CQC that it needs to become self-funding, but the fees increases are difficult to swallow.

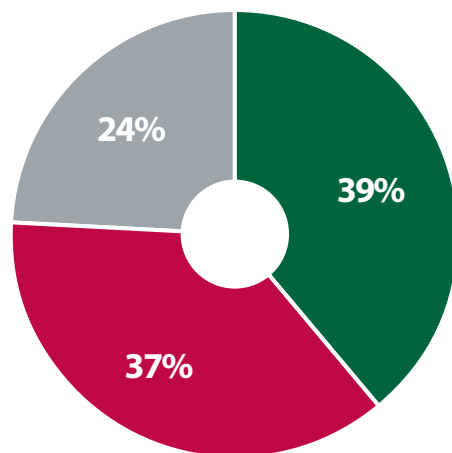
“ It took a huge effort and diverted resources away from more important matters.

“ There were many benefits from the inspection process and outcome, but this was offset by the significant work that was done in preparation and hosting the inspection.

Figure 16
Overall, do you feel the benefits that your trust gained from the inspection justified the 'cost' in resources to the trust of preparing for, and hosting, the inspection team?

(n=84)

■ Yes
■ No
■ Don't know



We also asked trusts to describe some of the challenges of inspections. The most common area for improvement cited by trusts was the make-up of inspection teams. Respondents highlighted the importance of having experienced inspectors with the appropriate skills and knowledge, who are well-briefed on the trust and its context. Trusts emphasised the need for inspections to follow a standardised approach, rather than inspection teams forming judgements on subjective opinions or anecdotes. They also highlighted the importance of consistency, with several trusts reporting that variation persists in the quality of the inspection and inspection team. Another common area for improvement suggested by respondents was reducing the burdensome, and sometimes duplicative, data requests.

“ It is vital that assessors have appropriate skills, knowledge and credibility to undertake inspections effectively and credibly.

“ The amount of time and resources consumed by the process was significant.


“ Some CQC judgements are unduly influenced by the views of individual inspectors.

Post-inspection reports

We asked trusts to describe their experiences of the factual accuracy check process. Among the 44% of respondents who had challenged their CQC inspection report during the factual accuracy check there were a wide range of experiences. While some had pointed out small inaccuracies, others had had significant disagreements. There were also mixed experiences of the response from, and interaction with, CQC during the process.


 *Response from CQC inspection team was helpful and prompt.*

 *We previously challenged a report and were very soundly criticised for being defensive.*

 *Factual accuracy comments were ignored.*

Well-led

Trusts reported a range of views on the experience of the well-led inspection. Some felt that the process was positive and constructive, and helped to identify priorities for the board to take forward. However, concerns were raised about the experience of inspectors and whether inspections were carried out on the basis of clear assessment criteria. Some trusts reported discrepancy in the approaches and understanding of the assessment process between CQC and NHS Improvement, suggesting that there are areas for improvement in how the regulators collaborate on these assessments.

 *We found our own internal well-led inspection more valuable.*

 *The well-led inspection felt poorly briefed, poorly resourced and poorly focused.*

 *The outcome has given us a set of clear priorities for the coming year.*

CONCLUSION

The results of this year's survey illustrate the striking change in the regulatory landscape over the last 12 months as trusts, and the national bodies, have increasingly focused on local system integration. In the context of greater collaboration through STPs and ICSs it is essential that further progress is made to ensure alignment across the regulators and other national bodies. Trusts, and their local partners, are looking for clarity on the national policy direction for local systems. As this is developed, it is crucial that assurance and oversight models are streamlined and aligned.

There is an opportunity for the regulators and the provider sector to co-produce a proportionate approach to oversight that balances the regulation of organisations and oversight of systems, and balances appropriate regulatory intervention with support to providers as they work to transform services.

There is also a sense among respondents to this year's survey that many of the improvements they reported last year have stalled. It is disappointing that there has been little change in trusts' perceptions of how well the regulatory system is working or the value for money it offers. The burden of regulation on trusts is still seen to be onerous and there is further progress to be made to deliver a truly proportionate and risk-based regulatory system.

Trusts describe an environment in which their autonomy is increasingly restricted. The continuing reliance on financial regulatory tools risks undermining individual provider boards' ability to develop and maintain the vision for their organisation, empower staff and drive their own improvements. Despite these concerns, a majority of trusts believe the regulators have a good understanding of the pressures trusts face and trusts remain optimistic about the changes that have been put in place by regulators over the last year.

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