Legislating for Integrated Care Systems: five recommendations to Government and Parliament

NHS England and NHS Improvement (NHSE/I) has today published its summary of, and response to, feedback received from the recent *Integrating Care* engagement exercise on the strategic direction of system working. You can read our response to the original proposals here.

This briefing sets out how the proposals have developed since November 2020, summarises NHSE/I's revised recommendations to Government for legislative change, and provides NHS Providers' initial views. If you have any comments, or would like to discuss the proposals further, please contact Georgia Butterworth, policy advisor (georgia.butterworth@nhsproviders.org).

Development of the proposals

In November 2020, NHSE/I published *Integrating Care*, which set out their vision of the future of Integrated Care Systems (ICSs) and asked for views in response to four consultation questions on whether to put ICSs on a statutory footing and, if so, how best to achieve this. You can read our summary here. The latest proposals, published today in *Legislating for Integrated Care Systems*, build on those put forward by NHSE/I in November 2020 and the previous iteration in September 2019.

We drew on extensive engagement with trust leaders to inform our response to the *Integrating Care* paper, which was submitted at the beginning of January 2021, and we continued to discuss key issues with NHSE/I and DHSC over the intervening weeks. We held a number of detailed bilateral meetings with key officials and senior leaders in both organisations to influence their positioning, as well as discussing with other key stakeholders – including the think tanks and other membership bodies – and participating in a broader stakeholder group where the updated proposals were discussed. We have also supported NHSE/I and DHSC to engage with different parts of the membership in recent months, including our NHS Bill Member Reference Group of chairs and CEOs, strategy directors and specific segments of the provider sector including the Community Network.

We have been in discussion with NHSE/I and DHSC over the past couple of weeks about the new, combined legislative option for ICSs to create a new NHS ICS body alongside a wider statutory partnership including local government and potentially other partners. We understand this proposal

was developed by NHSE/I in response to stakeholder feedback that their preferred option ('option 2' – a mandatory statutory ICS board) was impossible to align with the different accountability structures in the NHS and local government. This new proposal could well offer a response to concerns we, and others, raised about the multiple objectives of the ICS and the need to involve partners to deliver a meaningful focus on health inequalities. However, it also raises a host of new practical questions and we have flagged the need for full engagement and consultation particularly given this is a new development since the closure of the engagement period.

Summary of feedback received and recommendations

NHSE/I's summary of the feedback they received on *Integrating Care* concludes that there is support for putting ICSs on a stronger statutory footing than previously, citing enhanced system working during the pandemic and building on "several years of extensive co-production [...] with stakeholders".

In response to this feedback, NHSE/I has made five recommendations to Government on how to legislate for ICSs, which the Government has already accepted. Below we set out each of the five legislative recommendations NHSE/I is making to Government, and a summary the supporting evidence NHSE/I drew from the engagement period.

While some respondents, including NHS Providers, were concerned about the pace of change, NHSE/I says that an extension to the engagement timeframes would have prevented the NHS from influencing the Government's thinking in time for the Bill.

Q1: Do you agree that giving ICSs a statutory footing from 2022, alongside other legislative proposals, provides the right foundation for the NHS over the next decade?

- 49.2% of respondents agreed with the proposals, 43% disagreed, and 7.8% were neutral.
- Overall, NHSE/I noted a high level of support from the NHS to put ICSs on a statutory footing, but responses to this question were "nuanced and qualified", including caveats around more clarity on the role of local government, the voluntary sector and patients/service users. NHS Providers supported the overall direction of travel but did not express a preference between the options given trust leaders had a broad range of views about whether ICSs needed a statutory footing, and if so, how best to achieve this.
- NHSE/I also heard that legislative underpinnings should be "short, simple, and enabling", and designed to recognise the heterogeneity of ICSs.

- NHSE/I reassured respondents that NHS ICS bodies will be statutory public NHS bodies, not private entities, in response to concerns about 'privatisation' of the NHS in some way.
- NHSE/I does not propose legislative requirements for establishing place-based arrangements.

Legislative Recommendation 1: The Government should set out at the earliest opportunity how it intends to progress the NHS's own proposals for legislative change.

Legislative Recommendation 2: ICSs should be put on a clear statutory footing, but with minimum national legislative provision and prescription, and maximum local operational flexibility. Legislation should not dictate place-based arrangements.

Q2: Do you agree that option 2 offers a model that provides greater incentive for collaboration alongside clarity of accountability across systems, to Parliament and most importantly, to patients?

- 48% of responses agreed with the proposals, 39.9% disagreed, and 12.1% were neutral.
- NHSE/I identified no clear and definitive preference for one model over the other, with option 2 (repurposing CCGs as the statutory NHS ICS body) receiving support due to the benefits of clearer accountability for the NHS, and option 1 (a mandatory statutory committee) receiving support as a better model for health and care system partnership (particularly from local authorities and the voluntary sector).
- NHSE/I has therefore decided to adopt both options 1 and 2 in combination. NHSE/I now proposes that the NHS ICS body and local authorities should be required by statute to establish a statutory health and care partnership, which would be made up of a wider group of organisations than the NHS ICS body and required to develop an overarching plan to cover health, social care and public health. The NHS ICS board would have regard to that plan when developing their health plan, and local authorities would also have regard to that plan in exercising their functions.
- NHSE/I does not propose changing the accountability structures of NHS trusts and foundation trusts, and agrees that statute should not cut across existing models for partnership working. NHSE/I will develop and issue revised guidance to explain how foundation trust directors' and governors' duties can better support collaborative system working. NHSE/I also commits to working with the provider sector to navigate the complexity of working across several ICSs.
- NHSE/I states that statutory ICSs will continue to hold CCG duties and functions, including around public engagement, with patient and voluntary sector representation expected at the health and care partnership and place level. NHSE/I will work with stakeholders to develop guidance on how these arrangements can be most effectively discharged.
- Legislation should set out core requirements in terms of openness and transparency in appointments and decision-making at ICS level, including holding meetings in public.

Legislative Recommendation 3: ICSs should be underpinned by an NHS ICS statutory body *and* a wider statutory health and care partnership. Explicit provision should also be made for requirements about transparency.

Q3: Do you agree that, other than mandatory participation of NHS bodies and local authorities, membership should be sufficiently permissive to allow systems to shape their own governance arrangements to best suit their populations needs?

- 54.5% agreed with the proposals, 37.3% disagreed, and 8.2% of respondents were neutral.
- NHSE/I concluded that the NHS ICS board membership should consist of the ICS chair (formally appointed by NHSE) and chief executive, and as a minimum also draw representation from NHS trusts and foundation trusts, general practice and a local authority, with flexibility for systems to add members to suit their local circumstances.
- Formal accountability for spending and performance (and meeting statutory duties) would flow from the ICS AO (the chief executive) to NHSE AO to Parliament.
- Respondents were concerned about a primary care 'representative' being insufficient clinical input at ICS level. NHSE/I reiterated that primary care will play a key role in ICSs, including at place-level committees. NHSE/I will work with stakeholders to develop guidance on professional involvement.

Legislative Recommendation 4: There should be maximum local flexibility as to how an ICS health and care partnership is constituted, for example using existing arrangements such as existing ICS partnership boards or health and wellbeing boards where these work well. The composition of the board of the NHS ICS body must be sufficiently streamlined to support effective decision-making. It must be able to take account of local circumstances as well as statutory national guidance. Legislation should be broadly permissive, mandating only that the members of the NHS ICS body must include a chair and CEO and as a minimum also draw representation from (i) NHS trusts, (ii) general practice, and (iii) a senior local authority officer. As with CCGs now, NHSE/I should approve all ICS constitutions in line with national statutory guidance.

Q4: Do you agree, subject to appropriate safeguards and where appropriate, that services currently commissioned by NHSE should be either transferred or delegated to ICS bodies?

- 42.5% of respondents agreed with the proposals, 43.7% disagreed, and 13.9% were neutral.
- Most responses were supportive of the principles behind the specialised commissioning proposals but raised a number of issues that will need to be addressed as part of a phased approach to implementation, including the right geographic footprints (population size) for specialised services (ICS, groups of ICSs, or national) and resources/funding to follow functions. NHSE/I recognises that this is not a simple process and will work with stakeholders to ensure legislation is flexible. NHSE/I will carefully consider how and which services are transferred/delegated, and ensure all systems are

fully prepared for any new responsibility. NHSE/I will continue to have a role in setting national standards and service specifications.

- A limited number of responses directly mentioned section 7A public health services. All were supportive or supportive in principle of the proposal, with a minority seeking further detail.
- NHSE/I confirmed its commitment to the contractual model for general practice and will undertake a comprehensive primary care commissioning transformation programme, to ensure the safe and effective transfer of these functions to ICS bodies.
- NHSE/I sees the ICS body as establishing place-based committees and delegating functions and money to them. Local authorities would also be able, voluntarily, to pool functions and money into these committees. Membership should be determined locally, but should consider being broad-based with representatives from Primary Care Networks, social care, public health, mental health services, acute care as well as voluntary sector organisations and patient groups.
- NHSE/I will produce guidance in line with future legislative proposals to ensure both system and place-based arrangements are sufficiently clear and transparent.

Legislative recommendation 5: Provisions should enable the transfer of appropriate primary medical, dental, ophthalmology and pharmaceutical services by NHS England to the NHS ICS body. Provision should also enable the transfer or delegation by NHS England of appropriate specialised and public health services we currently commission. And at the same time, NHS England should also retain the able to specify national standards or requirements for NHS ICSs in relation to any of these existing direct commissioning functions.

NHS Providers view

The publication of NHSE/I's five new recommendations for legislative change is largely grounded in its original 2019 proposals but also reflects the evolution of national policymakers' thinking over the past couple of years, and in response to learning from the pandemic. Trust leaders fully support the future vision of a health and care system based on collaboration, integration for patients, and partnership working.

We are pleased to see that a number of our comments on the *Integrating Care* proposals have been acknowledged, notably the fact that there is 'no one size fits all' for ICSs and that any legislative framework must be enabling rather than prescriptive. We therefore particularly welcome recommendation 2, which calls for minimal national legislative provision and prescription for ICSs, as maintaining local flexibility around ICS membership and place-based arrangements is key. We are also encouraged that the overall message heard by NHSE/I is "proceed, but carefully" and, we would add, "in collaboration with the health and care sector".

We welcome NHSE/I's confirmation that NHS trust and foundation trust accountability structures will not change, although there is a lot of detail still to be worked through regarding how that fits with the NHS ICS board's roles and responsibilities without overlap. NHSE/I's commitment to producing advice on how foundation trust directors' and governors' duties can support collaborative system working is welcome and responds directly to our calls.

However, we are concerned about the lack of clear majority support for the way forward evident in the detail of the feedback received across the sector. We therefore encourage NHSE/I (jointly with DHSC) to clearly set out a plan for engaging further with the health and care sector, to co-produce the detail and implementation of the proposals. Overall trust leaders are concerned about the timing of this policy development process in the midst of the pandemic response, and the level of support available for the transition and then implementation during COVID-19 recovery. A formal stakeholder engagement process is therefore essential in the next phase of guidance and Bill drafting to ensure expectations are realistic.

We are particularly concerned that NHSE/I has recommended option 1 and 2 for ICSs in combination, and that the Government has already agreed to legislate to give effect to this proposal, without full engagement or consultation on this option. While we welcome the fact that this combined option addresses our concerns about ICSs' multiple objectives (i.e. allowing for a forum to focus on health inequalities alongside a more internally focused and narrowly defined NHS commissioning and planning body), full consultation on any new proposals as significant as this is essential. This proposal raises new questions about governance and accountability and how the two boards will work effectively together.

We welcome the proposed flexibility around the membership of the NHS ICS body, which will be drawn from trusts, general practice and a local authority. However, it is unclear what this means for systems where there are many organisations, how this will align with an effective decision making board at trust level and how best to ensure strong representation of all sectors (e.g. mental health/community/ambulance/primary care) and non-NHS providers? It would help to set out how the functions, responsibilities and governance of the ICS NHS board and wider partnership will align to deliver the new collaborative future set out in the vision behind these proposals.

We look forward to working closely with NHSE/I on the next phase of policy development and guidance, with DHSC in response to today's White Paper on the drafting of the Health and Care Bill, and with Government and parliament as the Bill progresses.

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