

NHS England – Draft guidance on good governance and collaboration

Introduction

NHS England (NHSE) published its *Draft guidance on good governance and collaboration* for consultation on 27 May 2022. The consultation is [available on NHS England's website](#) and is open for comments until 8 July 2022. This briefing summarises the content of the guidance and includes NHS Providers' view. We will be working closely with NHSE during the consultation period and would welcome your feedback, which would help us in the drafting of our response to the consultation. We also encourage you to respond directly to NHSE's consultation. To share your views or for any questions you may have, please contact Mariya Stamenova (policy advisor for regulation) on mariya.stamenova@nhsproviders.org.

Overview of contents

This guidance is issued under the NHS provider licence, which is currently being reviewed and which we expect will be updated to apply to both NHS trusts and foundation trusts alike. It sets out what NHS England expects from providers in terms of collaboration and the good governance that must be in place to support it. It reflects the expectation for providers to collaborate with partners to agree shared objectives through integrated care partnerships (ICPs) and to collaborate on the delivery of the five-year joint plan and annual capital plan through system, place-based arrangements, and provider collaboratives. The guidance also forms the basis of how NHSE will oversee this aspect of provider performance under the NHS System Oversight Framework (SOF).

In addition to their existing duties to deliver safe, effective care, and effective use of resources, the success of individual trusts and foundation trusts will increasingly be judged against their contribution to the objectives of the integrated care system (ICS). The guidance sets expectations of providers in terms of collaboration in three key areas and gives illustrative (non-exhaustive) minimum behaviours.

The three areas of focus are:

- 1 Providers will engage consistently in shared planning and decision-making.** This relates to consistent and constructive participation with partners in system and place-based partnerships and provider collaboratives. Providers are expected to help develop shared plans and priorities and reach shared decisions, ensuring that open sharing of information and appropriate delegations are in place.
- 2 Providers will consistently take collective responsibility with partners for delivery of services across various footprints including system and place.** This relates to enabling a shared understanding of performance, supporting arrangements for working together to manage any risks to delivery, and contributing to a culture which supports continuous system improvement.
- 3 Providers will consistently take responsibility for delivery of improvements and decisions agreed through system and place-based partnerships, provider collaboratives, or any other relevant forums.** This relates to ensuring that organisational plans are integrated with the five-year joint system plan; annual capital plan is agreed with the integrated care board (ICB) and its partners; and that the organisation implements shared decisions and plans agreed through all relevant forums in a timely manner.

The guidance also defines five characteristics of governance arrangements to support effective collaboration and sets out key lines of enquiry that are likely to indicate whether or not a provider is acting in line with this guidance and the underlying obligations. These characteristics are as follows:

- 1** Developing and sustaining strong working relationships with partners
- 2** Ensuring decisions are taken at the right level
- 3** Setting out clear and system-minded rationale for decisions
- 4** Establishing clear lines of accountability for decisions
- 5** Ensuring delivery of improvements and decisions

The guidance sets an expectation that, where partners are concerned that a provider is failing to collaborate effectively, they will seek to resolve the matter informally with the provider in the first instance. If insufficient, this intervention will be followed by an informal attempt by leaders of the ICB (or other relevant forums) to facilitate resolution. Where necessary, and in discussion with leaders of an ICB, NHSE will intervene to resolve situations where poor governance means that a provider is failing to collaborate in line with this guidance or its governance obligations in the NHS provider licence.

Appendix A of the guidance includes three scenarios illustrating ways in which providers can collaborate effectively to: plan and shape system improvements; collectively manage performance; and deliver agreed improvements and decisions.

NHS Providers view

This new guidance on good governance and collaboration formalises the collaborative ways of working that trusts and their system partners have been implementing for some time. As part of the national policy shift towards ICSs, trusts have worked together and with wider partners increasingly closely to address collective issues, improve population health and tackle health inequalities. With the new Health and Care Act 2022 embedding collaboration and integration in the legislative framework underpinning the NHS, this guidance sets some expectations for what this will look like in practice.

The focus on good governance required to support collaboration as the means by which boards direct and control their organisations – rather than structures or processes underpinning good governance – is welcome. It is also welcome that the guidance sets out the characteristics of governance arrangements to support effective collaboration, alongside clear descriptions and useful prompts in the key lines of enquiry.

Given the scale of operational pressures and structural reform already underway, trust leaders are clear that any statutory guidance should only contain ‘must dos’ and avoid overloading the system. It is also essential that the national policy framework remains sufficiently flexible to respect the diversity of the ICS landscape.

While we agree with the importance of this guidance and support its aims, we are apprehensive about the timings for its publication. The guidance is being issued under the NHS provider licence while the licence is undergoing a fundamental review, and consultation on it is not expected until later this year. While it makes sense to issue this guidance now to align with the new legislation, we would have hoped these documents would be better aligned.

Supporting trusts and their partners to take decisions and manage risk effectively in the new context of system working is essential. While the guidance goes some way to supporting systems to do so and sets some clear expectations for collaboration, there are some important outstanding issues.

Firstly, trust leaders are concerned about unclear and potentially overlapping accountabilities between their organisations, place-based partnerships, provider collaboratives, ICBs and ICPs. Secondly, trust boards will not only need to navigate their organisational statutory duties, but also take decisions above and beyond the bounds of their organisation and in line with the triple aim of better health and wellbeing for everyone, better quality of health services for all, and sustainable use of NHS

resources. Trust leaders are already concerned about how to navigate this complexity and potential tension, and would welcome some scenario testing with NHS England.

In addition, by taking collective responsibility for shared outcomes across the system, trusts and their partners will be able to address system-wide operational challenges and risks to delivery. While trust leaders support this approach in principle as the only way of solving collective challenges such as maintaining patient flow through the system, they are concerned about how this will marry up with their statutory duties and accountabilities. Trusts are also concerned that current oversight and regulatory regimes are still focused on providers, which is driving behaviours and not supporting collective risk management at system level.

Finally, this guidance is published under the provider licence governance condition and forms the basis of how providers' collaboration will be overseen in terms of the SOF. It implies that NHSE could intervene and act upon poor governance/collaboration. We support the expectation of informal resolution in the first instance, and the role of ICSs in helping to facilitate resolution early on in the process, with formal dispute resolution procedures in place to ensure the trust can draw on a third party or support from NHSE when this is necessary. We therefore hope that the guidance will be used as a last resort in NHSE judgements of provider performance under the SOF.

In the past few months, we have had the opportunity to engage constructively with NHS England on the review of the provider licence, to bring it in line with current reality, the new legislation and its application to NHS trusts, in addition to foundation trusts. We have facilitated engagement with members and have been able to feed into the proposals.

We are aware that the guidance on good governance and collaboration is issued under the provider licence, where it will be explicitly referenced. We are therefore keen to continue to work with NHS England to address the policy questions raised in this briefing as the provider licence is reviewed. We are also keen to support the health and care system to navigate its implementation.

We will be responding to the guidance consultation and encourage you to share your views with us, so we can reflect them in our response.