



Response to the consultation on the revised NHS enforcement guidance

Introduction

The Healthcare Financial Management Association (HFMA) is the professional body for finance staff in healthcare. This is our response to NHS England's [Consultation on the revised NHS enforcement guidance](#).

The response has been drafted by members of HFMA's Policy and Research Committee, Governance and Audit Committee and Provider Technical Issues Group.

The response is submitted from the HFMA in its capacity as a representative organisation.

Response

Question 1: To what extent do you agree with the proposed changes to:

a. introduce a two-tier approach to ICB enforcement that includes an undertakings process?

b. align the enforcement guidance with current policy and operational best practice, including reducing the emphasis on investigations and removing the prioritisation framework?

Please explain your reasons.

We fully agree with the introduction of a two-tier approach to integrated care board (ICB) enforcement that includes an undertakings process. As set out in paragraphs 32-35, we welcome the alignment of approach between provider and ICB undertakings.

We also agree with the alignment of the enforcement guidance with current policy and operational best practice, including reducing the emphasis on investigations and removing the prioritisation framework. However, it would be helpful to ensure the guidance is clear on how potential areas for enforcement action are identified.



Question 2: Please provide any additional comments on how the guidance could be improved.

The guidance would benefit from a short summary of the action that NHS England may take in certain circumstances and what those circumstances are likely to be. Paragraph 7 of the document states that the guidance explains when NHS England may decide to take action – this is not clear at the moment, and we suggest that this should be the focus of the document as this is what NHS bodies need to understand. The process that will be followed if NHS England does decide to act is secondary to understanding the circumstances that might lead to action.

To do this we suggest that the document is re-ordered so that it starts with the potential enforcement measures that are available to NHS England focussing on when they are likely to be used. The flow chart on page 27 is a useful overview (although there is a typo in the second box down on the left which should have an OR in front of Operate without a licence). The sections on how NHS England will gather information, make its decision and the appeal procedures should be next.

Explaining what is meant by some of the functions would be helpful – for example, the document refers to the patient choice requirement but does not define what this actually means in this context. Is it evidence that patients have been denied their choice or that it is not made clear to patients that they can choose an alternative provider. Equally, paragraph 18 would be much clearer with the addition of an example of when a function has not been discharged properly.

The legal framework should be towards the end of the document or an appendix – it will be important for an NHS body to understand the basis for any enforcement action when the process has been triggered but the legislation is complex and, in some places, the 2022 Act is not fully enacted so it will change. Currently, this section is very difficult to read and does not clearly set out what will happen and why.

We welcome the emphasis on the collaborative process NHS England will follow with ICBs and providers noting in particular, paragraph 14 stating, 'In keeping with a system-led approach, NHS England will discharge its duties in collaboration with ICBs, asking the ICB to oversee and seek to resolve local issues before escalation. Where NHS England intervenes directly with individual providers, this will happen with the awareness of the relevant ICB'.

The following points should be explored in the guidance:

- recognition of the variation between ICBs, in terms of size, maturity of relationships and governance arrangements. This will have an impact on enforcement arrangements. Getting the balance right between ICB involvement, whilst not appearing to take on the role of regulator, is key.
- recognition that ICBs and providers are still working out what the 'day to day oversight of providers', referred to in paragraph 10, means in practice
- we welcome the transparency of approach set out in the guidance, as referred to in paragraph 14, as well as paragraph 115 which sets out potential stakeholders. In practice there will need to be an agreed approach to communications which is open and transparent but balances the need for both the system and constituent organisations to be aware of issues without creating information overload and risking key messages getting lost.
- with greater collaboration, there is expected to be an increase in organisational interdependencies such as provider collaboratives, place-based working, management of system risk. In some cases, these will include arrangements with non-NHS bodies and it is not clear how their role will be reflected in deciding whether enforcement action should be taken
- recognition of the new financial duty on both individual organisations and as a systems
- recognition of the vast scale of the challenge facing the NHS and social care, within a context of increased financial pressure over the coming years which may lead to the need for some difficult decisions over service provision going forward.

About the HFMA

The Healthcare Financial Management Association (HFMA) is the professional body for finance staff in healthcare. For over 70 years, it has provided independent and objective advice to its members and the wider healthcare community. It is a charitable organisation that promotes best practice and innovation in financial management and governance across the UK health economy through its local and national networks.

The association also analyses and responds to national policy and aims to exert influence in shaping the wider healthcare agenda. It has particular interest in promoting the highest professional standards in financial management and governance and is keen to work with other organisations to promote approaches that really are 'fit for purpose' and effective.

The HFMA offers a range of qualifications in healthcare business and finance at undergraduate and postgraduate level and can provide a route to an MBA in healthcare finance. The qualifications are delivered through HFMA's Academy which was launched in 2017 and has already established strong learner and alumni networks.

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