HFMA briefing
October 2019

A summary of the NHS recommendations for an NHS Integrated Care Bill

Introduction

Ahead of the Queen's speech, NHS England and NHS Improvement published recommendations to Government and Parliament for an NHS Integrated Care Bill[1]. It is intended to help implement the *NHS long term plan* (the Plan)[2]. Its proposals do not contain legislation that would trigger wholesale reorganisation of the NHS.

The recommendations have been developed in response to NHS England and NHS Improvement's consultation on *Proposals for possible changes to legislation* (the Consultation)[3], and the Health and Social Care Select Committee's *Legislative proposals inquiry* (the Inquiry)[4]. Widespread engagement was used to determine a broad and strong consensus from within the NHS and beyond and included consideration of equalities assessment. The HFMA responded to both the Consultation[5] and the Inquiry[6].

This briefing summarises and reflects on the 23 recommendations made, across eight key themes, for an NHS Integrated Care Bill.

[1] NHS, *The NHS's recommendations to Government and Parliament for an NHS Bill*, September 2019
[2] NHS, *The NHS Long Term Plan*, January 2019
[3] NHS, *Implementing the NHS long-term plan: Proposals for possible changes to legislation*, February 2019
[4] Health and Social Care Committee, *NHS long-term plan: legislative proposals*, February 2019
[5] HFMA, *HFMA response to proposals for possible changes to legislation*, April 2019
[6] HFMA, *HFMA evidence to the Health and Social Care Committee's NHS long-term plan: legislative proposals inquiry*, April 2019

Summary of recommendations

Promoting collaboration

Recommendation 1: Remove the Competition and Markets Authority (CMA) function to review mergers involving NHS foundation trusts

Recognising the view that the Competition and Markets Authority (CMA) is not the right body to make decisions about the NHS, NHS England and NHS Improvement recommend that the CMA roles in the NHS should be repealed. NHS England and NHS Improvement will continue to review proposed transactions to ensure there are clear patient benefits. Recommendations aim to address concerns about the potential impact on patient choice, such as the retention of NHS Improvement's power to set licence conditions in relation to patient choice.

As reflected in the HFMA response to the Consultation, the HFMA supports this move to support greater system working and the reduction in any additional bureaucracy and unnecessary costs associated with transforming services. Continued review by NHS England and NHS Improvement on proposed organisational changes will be important to ensure a rigorous assessment is undertaken on whether the proposals are likely to achieve their objectives.

Recommendation 2: Remove NHS Improvement's specific competition functions and its general duty to prevent anti-competitive behaviour

In line with the view that the primary role of NHS Improvement is to support the improvement in quality of care and use of NHS resources, it is recommended that its general competition powers and duties are removed. It is proposed that NHS Improvement would no longer have general competition law powers to enforce the *Competition Act 1998*, or to conduct market studies or make market investigation references under the *Enterprise Act 2002*. However, it would retain its ability to set licence conditions relating to patient choice and competition as a safeguard against the risk that providers could develop models which are not in patients' interests.

As collaboration is a key component of implementing the Plan, and in the light of the proposal in relation to the CMA, the HFMA supports the recommendation to remove NHS Improvement's functions in relation to competition.

Recommendation 3: Remove the need for NHS Improvement to refer contested licence conditions or national tariff provisions to the CMA

While retaining the explicit duties to consult on proposed changes to licence conditions and tariff, it is recommended that contested licence conditions or national tariff provisions are no longer required to be referred to the CMA. This reflects the view that NHS needs to hold itself collectively responsible for achieving effective, efficient and high-quality care across the whole NHS.

With safeguards in place such as obligations to engage and consult, the application of public law principles and the accountability arrangements to the Secretary of State and Parliament, it is felt that there is no need for additional oversight from a third party.

The HFMA agrees that the NHS needs to hold itself collectively responsible across the whole NHS. However, as reflected in the HFMA's response to the Consultation, by removing these requirements there would be no independent arbiter for disputes between NHS provider bodies and NHS Improvement.

Getting better value for the NHS collaboration

Recommendation 4: Regulations made under section 75 of the *Health and Social Care Act 2012* should be revoked and the powers in primary legislation under which they are made should be repealed

Recommendation 5: The commissioning of NHS healthcare services is removed from the scope of the Public Contracts Regulations 2015

The NHS is currently subject to two sets of procurement rules: the *National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 (PPCCR)* made under section 75 of the *Health and Social Care Act 2012*; and the *Public Contracts Regulations 2015 (PCR)*, a set of public procurement rules which transposed the *EU Directive on Public Procurement* into UK law.

NHS England and NHS Improvement noted that there is strong support both of these recommendations. The removal of missioning of NHS healthcare services from the *Public Contracts Regulation 2015* would remove the presumption of automatic tendering of NHS healthcare services valued at more than £615,278 over the lifetime of the contract. It also recommends Monitor's specific focus and functions in relation to enforcing competition law should be abolished. These recommendations would allow discretion in when to use procurement processes and increase the ability of NHS commissioners to integrate services. Recommendation 6 sets out proposals for a new procurement regime.

The HFMA supports the relaxation of procurement requirements, recognising that it is difficult to work collaboratively when services must be subject to competitive tender. The movement of service provision between providers (both in the NHS and outside of the NHS) is unsettling for staff and patients and does not necessarily result in an improved patient experience.

Recommendation 6: Introduce a new NHS procurement regime, supported by statutory guidance

Recommendation 6 sets out proposals for a new procurement regime. In the initial Consultation this was referred to as the 'best value duty'. In line with engagement feedback, the new regime will be provisionally named 'a new NHS procurement regime'. It is proposed that the new regime to set out rules about how the NHS undertakes procurement is co-produced with stakeholders including the NHS Assembly. Draft proposals will be published alongside the Bill to inform Parliamentary consideration and a separate dedicated public consultation will be undertaken.

The new regime covers all arrangements, not just arrangements with NHS statutory providers and must ensure transparency. A range of factors must be considered including quality of care, integration with other services, patient choice, access and inequalities, and social value.

The HFMA welcomes further consultation on specific proposals for the new NHS procurement regime to ensure the impact it might have on NHS bodies, their staff and patients is fully understood. The HFMA's response to the Consultation set out areas where further clarity is needed and we will continue to work closely with our members and NHS England and NHS Improvement as draft proposals are developed.

Recommendation 7: Amend the power to set standing rules in primary legislation to ensure that patient choice rights are protected

The PPCCR currently contain important protections around patient choice, which complement and further strengthen other provisions around choice set out in other parts of legislation, in guidance and in NHS commissioning contracts.

In order to retain important protections around patient choice currently included in the PPCCR, it is recommended that the power to set standing rules in primary legislation is amended and the rules include the provisions on choice currently in the PPCCR. The standing rules should be amended to ensure regulations 'must' include provisions for patient choice, rather than 'may'. This is a new recommendation that has been developed as a result of the Consultation.

Increasing the flexibility of national NHS payment systems

Recommendation 8: Where NHS England and NHS Improvement specifies a service in the national tariff, then the national price set for that service may be either a fixed amount or a price described as a formula

The aim of this recommendation is to allow specific flexibilities to set a blended tariff using a national formula, rather than only being able to set a fixed national price. NHS England and NHS Improvement would determine whether any particular price is a fixed amount or a formula, be able to apply different formulae to different services and specify the individual element of that formula. Tariff changes, alongside the new procurement regime (see recommendation 6) aim to guard against the risk of introducing competition solely on price as opposed to quality.

As raised in the HFMA's response to the Consultation, it is not expected that this would vary significantly from the current approach i.e. with the use of the market forces factor as a formula applied to the average cost of a service to determine a price which reflects local factors.

Recommendation 9: NHS England and NHS Improvement could amend one or more provisions of the national tariff during the period which it has effect

This recommendation will enable NHS England and NHS Improvement to update prices in-year to reflect changes such as the cost of medicines included in tariffs. 28 days consultation with those affected by proposed changes will be required and it cannot be applied if the change is so significant as to require a new national tariff and full consultation.

The HFMA strongly supports this proposal as long as mid-tariff period adjustments are used only when there are developments which make the original tariff unworkable. This would be particularly important when a multi-year tariff is set.

Recommendation 10: Remove the requirement for providers to apply to NHS Improvement for local modifications to tariff prices

Once integrated care systems (ICSs) are fully developed the requirement to apply for local modifications to tariff prices will be removed as any modifications to tariff prices should be agreed within the ICS and providers and commissioners would still be able to agree local modifications to tariff prices.

The HFMA agrees that once ICSs are working effectively, the current power for provider bodies to apply to NHS Improvement for local modifications to tariff prices should not be needed, as all parties in the ICS should be in agreement. However, until that point is reached, ICSs will have to work within the current legislative requirements and it should be explicit what this power currently means for them and how they can work within the existing legislation.

Recommendation 11: NHS England and NHS Improvement should be able to include provisions in the national tariff on pricing of public health services under section 7A agreements with NHS England

To enable better integration of public health series with local commissioned services, this provision allows for the national tariff and the regime for NHS pricing to be extended to cover public health services commissioned by NHS England or clinical commissioning groups (CCGs) under

arrangements with the Secretary of State under section 7A of the *National Health Service Act 2006*. The HFMA agrees that it would be simpler for the national tariff to include all services provided in a patient pathway.

Integrated service provision

Recommendation 12 – the Secretary of State should continue to have the power to establish NHS trusts (for prescribed purposes) and NHS trusts should continue to be part of the NHS legislative framework.

By revoking the provisions in the *Health and Social Care Act 2012* for the abolition of NHS trusts and related repeals and amendments this would confirm the retention of the NHS trust model and the Secretary of State would be able to establish new NHS trusts for the specific purpose of delivering the integrated care provider (ICP) contract (or similar arrangement), without the potential uncertainty if the provisions for abolition remain in place. It is also proposed that primary legislation would include provision for regulations that would govern how the power to establish new NHS trusts is to be exercised, including the application process.

NHS England and NHS Improvement recognise that organisational change alone will not address barriers to better service integration, with the importance of culture, relationships and leadership being other key enablers.

The HFMA supports any measure that will allow NHS bodies to work in an integrated manner to provide patient focused care and agree that organisational change can overcome some barriers i.e. information governance and sharing. However, the creation of a new body will not remove all barriers and establishing new organisations is resource heavy and creates uncertainty. We also note the importance of engaging and working with local authorities to ensure effective integration.

Managing resources efficiently

Recommendation 13: To introduce a reserve power to be able to set capital limits on an NHS foundation trust.

As a result of the feedback to the Consultation, NHS England and NHS Improvement have not proposed a general power to set capital limits on foundation trusts. The HFMA welcomes this decision.

Instead, NHS England and NHS Improvement recommend a narrow 'reserve power' be added to the face of the Bill to provide an ultimate safeguard to the taxpayer. Each use of the power should apply to a single named foundation trust individually and will automatically cease at the end of the current financial year. NHS England and NHS Improvement should publish why it was necessary to use the reserve power, what steps it had taken to avoid requiring its use and the response of the foundation trust.

Every part of the NHS working together

Recommendation 14: To introduce a facilitative provision in legislation to allow both (i) joint committees of CCGs and NHS providers and (ii) joint committees of providers only (NHS trusts and foundation trusts)

This proposal would introduce another option for increasing integrated system working which is not possible under the current legislation. It would allow commissioners and providers of NHS services to come together to make legally binding decisions about their statutory functions, in conjunction with other delivery partners including local authorities, primary care providers and independent and

voluntary providers. The powers would also separately enable closer collaboration between two or more providers.

There is no intention to change existing accountability arrangements of NHS commissioners and providers. However, joint committees should ensure transparency and fairness of decision-making to support accountability to its constituent organisations.

The HFMA supports the addition of powers to allow CCGs and NHS providers to create joint committees where they decide that it would be the most appropriate way forward.

Recommendation 15: To allow the designated nurse and secondary care doctor appointed to CCG governing bodies to be clinicians who work for local providers

The proposal to make a limited change to the requirements of the governing body to remove the restriction to appoint clinicians who work for local providers reflect the greater move to collaboration and the benefit of useful insight for CCGs.

The HFMA notes that this does result in a conflict of interest which will need to be managed. The conflict is slightly different to the one which GPs currently have, as CCGs only have delegated powers to co-commission primary care, whereas they are directly responsible for commissioning secondary healthcare.

Recommendation 16: To introduce a specific power to issue guidance on joint appointments, with a view to providing greater clarity on such appointments across different organisations

NHS England and NHS Improvement propose consideration is given to whether an explicit power is needed so that they can issue statutory guidance, subject to consultation, which could clarify the circumstances in which joint appointments across different organisational types can be made.

Recognising the potential for conflicts of interest and the need to understand how these will be managed, the HFMA welcomes further guidance and will engage with NHS England and NHS Improvement as this is developed.

Shared responsibility for the NHS

Recommendation 17: To place a new statutory duty on providers and commissioners of NHS services to have regard to the triple aim of better care for all patients, better health for everyone, and sustainable use of NHS resources, when considering any aspect of health service provision; and include a requirement to collaborate with other bodies with a view to promoting the triple aim

There are limited explicit legislative provisions to ensure the NHS as a whole works together to reach financial balance or to take responsibility for wider population health outcomes. NHS England and NHS Improvement therefore propose a new legal duty that requires those organisations that plan services in a local area (CCGs) and NHS providers of care to promote the ‘triple aim’ of better health for the whole population, better quality care for all patients and financially sustainable services for the taxpayer, both for their local system and for the wider NHS.

The triple aim duty will reflect the need to engage local communities and build on existing duties of local authorities and CCGs to engage patients and citizens, to collaborate in the performance of their functions, to integrate care delivery and to improve the health and wellbeing of residents. NHS England and NHS Improvement’s recommendations clarify what is meant by the triple aim:

Better care for all patients	The focus of this aim is to improve the patient experience of care, which includes both quality and satisfaction. Quality of care tends to encompass the following attributes: • safe • effective • timely • efficient • equitable • people-centred.
Better health for everyone	This aim of 'better health for everyone' is to encourage organisations to work together to make the health system work better for everyone. Organisations will be expected to set out how they are considering and working together to think and act on the broader determinants of population health. Consideration of the need to reduce health inequality is a core component of this aim.
Sustainable use of resources	This aim is focused on ensuring the best use of NHS and public resources. Resources is understood broadly to encompass staff, equipment, estates, expertise and money. We propose that 'sustainable' is used for this Duty instead of the originally stated 'efficient'.

NHS Improvement and NHS England's recommendations state that they are not proposing to mandate specific requirements to demonstrate how this duty has been considered/ met. The new duty will be reflected in provider licence conditions.

Although the HFMA fully supports the ambition of the triple aim, we are concerned that further consideration is needed to clarify how NHS bodies will demonstrate that they have achieved or taken decisions to work towards the achievement of this triple aim, including what data would be required to demonstrate achievement and whether it is available. This will need to be addressed to ensure that additional management time and resource is not diverted from patient centred service delivery to demonstrating that this new responsibility has been achieved.

Planning our services together

Recommendation 18: To allow groups of CCGs to be able to use joint and lead commissioner arrangements to make decisions and pool funds across all their functions

NHS England and NHS improvement recommend that where joint committees and committees in common meet at the same time and place, groups of CCGs in joint and lead commissioner arrangements can make decisions about, and pool funds across, all their functions. There are proposed exceptions to this, such as having specific committees and maintaining a register of interests, which remain the responsibility of the individual CCG. The HFMA supports this proposal.

Recommendation 19: To allow CCGs to carry out delegated functions, as if they were their own, to avoid the issue of 'double delegation'

This proposal means that although NHS England continues to be accountable for its functions, when services are delegated to CCGs, CCGS are responsible for them. This will allow CCGs to work jointly with other CCGs and/or local authorities to promote greater integration of local services.

Subject to proper arrangements being in place to manage conflicts of interests, the HFMA agrees that joined up commissioning of primary care will allow for proper planning across wider geographical areas than is currently possible.

Recommendation 20: Give NHS England the ability to delegate its functions to groups of CCGs, in order to enable them to collaborate more effectively to arrange services for their combined populations

Currently NHS England is only able to delegate functions to individual CCGs, limiting the scope to commission services across a wider geographical footprint. NHS England and NHS Improvement recommend using legislation to allow groups of CCGs to come together to make decisions for their combined areas about delegated services, and that NHS England is able to make joint decisions about its functions with a group of CCGs across their combined areas. While delegation could only happen on terms that NHS England and NHS Improvement considers appropriate, specific safeguards will be introduced. The HFMA supports this proposal.

Recommendation 21: Enable NHS England to enter into formal joint commissioning arrangements with CCGs including providing the ability to pool budgets in relation to specialised commissioning

In line with the recommendations for collaborative commissioning of NHS England's wider directly commissioned services, this allows for a single set of arrangements between NHS England and a number of CCGs. Without these changes, CCGs and NHS England would not be able to make decisions about specialised services in joint committees. The legislation should also clarify that budgets can be pooled under such joint arrangements, to enable the smooth implementation of joint decisions about improving patient pathways. The HFMA supports this proposal.

Recommendation 22: to remove the barriers for NHS commissioners to enter into collaborative arrangements or section 7A functions that will enable these commissioners to work with others and make decisions about delivering statutory functions – both their own and those delegated to them

These changes would enable arrangements for section 7A services to be on the same footing as that of other NHS England functions, i.e. to have the ability to jointly commission with, or delegate to, one or more CCGs so that local areas are able to make joined-up decisions about services for their populations. The HFMA supports this proposal.

Joined up National Leadership

Recommendation 23: To create a single organisation which combines all the relevant functions of NHS England (NHS Commissioning Board) and NHS Improvement (Trust Development Aauthority and Monitor)

It is recommended that NHS England and NHS Improvement merge to create a single organisation. Monitor and the Trust Development Authority should be abolished, with their functions added as necessary to the existing legislative basis of NHS England

The HFMA supports closer working arrangements which will mean that all regulatory bodies are speaking with a single voice, which is clearly understood throughout the whole of the NHS. However, we note our concern over the challenge of bringing together two very different regulatory arrangements.

Conclusion

NHS England and NHS Improvement has made a series of recommendations to Government for legislative change, based on the response to their Consultation and recommendations made by the Health and Social Care Select Committee. A unifying theme of the proposals is to make it easier to integrate care and for NHS organisations to work together in the interests of patients.

The Queen's speech[7] stated that new laws will be taken forward to help implement the Plan so it is expected that these recommendations will be used as the basis for these laws.

The HFMA welcomes the use of legislative change to overcome some of the current barriers to transformation and allow for changes set out in the Plan to be delivered.

While welcome, these proposals for legislative change do not address critical issues relating to primary care, value added tax and collaboration with local authorities. Some of the issues facing the NHS are not going to be resolved by legislation, such as workforce, culture, leadership and the quality of local relationships.

[7] Cabinet Office and Prime Minister's Office, *Queen's Speech 2019*, October 2019

About the HFMA

The Healthcare Financial Management Association (HFMA) is the professional body for finance staff working in healthcare. For 70 years it has provided independent support and guidance to its members and the wider healthcare community.

It is a charitable organisation that promotes the highest professional standards and innovation in financial management and governance across the UK health economy through its local and national networks. The association analyses and responds to national policy and aims to exert influence in shaping the healthcare agenda. It also works with other organisations with shared aims in order to promote financial management and governance approaches that really are 'fit for purpose' and effective.

The HFMA is the biggest provider of healthcare finance and business education and training in the UK. It 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 association is also an accredited provider of continuing professional development, delivered through a range of events, e-learning and training. In 2019 the HFMA was approved as a main training provider on the Register of Apprenticeship Training Providers and will be offering and developing a range of apprenticeships aimed at healthcare staff from 2020.

HFMA

1 Temple Way, Bristol BS2 0BU

T 0117 929 4789

F 0117 929 4844

E info@hfma.org.uk

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HFMA is also a limited company registered in England and Wales, no 5787972. Registered office: 110 Rochester Row, Victoria, London SW1P 1JP

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