DAC Beachcroft Partner Anne Crofts discusses the role of NHS Improvement and risk management in driving integration.

**Why this area is important**

NHS Improvement brings together the Foundation Trust (FT) regulator, Monitor, and the Trust Development Agency (TDA), which regulated standard NHS Trusts. It replaces Monitor’s Risk Assessment Framework and the TDA’s Accountability Framework with a single oversight framework that will treat FTs and NHS Trusts in similar positions accordingly – unless there are good reasons not to.

Importantly, it also has a new key strategic role in supporting delivery of the NHS Five Year Forward View (5YFV) and will be required to approve Sustainability and Transformation Plans (STPs) for a five-year trajectory to 2021, with each STP’s funding dependent on achieving a series of milestones.

NHS Improvement is still a developing organisation, establishing its new unified regulatory remit looking at standalone trusts and taking on its new role looking at whole health economies under the STP process. This will involve a different approach and a different emphasis.

**Key issues**

NHS Improvement will oversee and provide support with the aim of achieving a good or outstanding Care Quality Commission (CQC) rating. It will offer help around five themes; quality, finance, operational performance, leadership and improvement capability, and importantly, strategic change.

Under the latter heading, NHS Improvement will consider how trusts are doing in terms of delivering the changes set out in the 5YFV with a focus on STPs, and consider the Carter review’s recommendations on how local health economies can come together to create efficiencies. It will be working closely with NHS England in this area.

Using the single oversight framework it will segment the sector and rate trusts in one of four categories: having no evident concerns; emerging or minor concerns; serious issues; or critical issues.

NHS Improvement will offer optional support across the sector providing tools that can be drawn on to improve specific aspects of performance. And where it has identified serious or critical issues that could find a trust in breach of its licence, NHS Improvement will offer mandatory guidance that could require senior managerial changes, the appointment of new management teams or agreeing a recovery trajectory and then supporting providers to deliver.

**Potential solutions**

Well performing trusts can expect light touch regulation with less obligations on reporting, and more autonomy. Although oversight plans are still being shaped the overarching idea is to

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**AT A GLANCE**

- NHS Improvement will look to treat Foundation Trusts and Non Foundation Trusts in the same way
- It will regulate individual trusts and have an oversight and approval of Sustainability and Transformation Plans (STP) to achieve the aims of the 5YFV
- Individual trust assessments will also depend on how they are performing in terms of delivery of their local STP
develop a common definition of what success looks like, and for FTs and NHS Trusts to be on equal footing in terms of regulation.

However, the legislative regime for FTs and NHS Trusts is still different; for example, FTs have broader freedoms and powers to set up new organisations, such as limited liability companies or LLPs to deliver care or back office services. This might be perceived as a potential barrier to FTs and NHS Trusts collaborating more closely across STPs, for example by establishing shared service companies, unless there is either greater consensus around how far trusts’ powers extend in this area or there is a change in the relevant legislation.

NHS Improvement will have a direct role in scrutinising individual trust transformation plans under the new framework, although they will also have regard to how those plans fit in with the STP.

There will remain a level of scrutiny if, for example, a trust were to embark on a joint venture or partnership that involves risk over and above the level of statutory delegation.

NHS Improvement will also have a critical role in advising the Competitions and Mergers Authority on any trust’s proposed merger or acquisition, which would need to be aligned with plans in STPs.

More information
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