



Department  
of Health

**NHS**  
*England*

**Framework Agreement  
between the Department of Health and NHS England**

**2014**

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## 1. Purpose of this document

- 1.1. The purpose of this document is to define the critical elements of the relationship between the Department and NHS England (known in legislation as the National Health Service Commissioning Board).
- 1.2. This is the first framework agreement between the Department and NHS England. NHS England is a new organisation which is in its first full year of operation. As such, the agreement will be kept under review (see paragraph 13.5).
- 1.3. This document is focused on:
  - How the Department and NHS England will work in **partnership** to serve patients, the public and the taxpayer;
  - How both NHS England and the Department discharge their **accountability** responsibilities effectively.

## 2. NHS England's purpose

- 2.1. The general function of NHS England is to promote a comprehensive health service so as to improve the health outcomes for people in England. This is set out in the NHS Act 2006, as amended by the Health and Social Care Act 2012. The Secretary of State for Health is also subject to the same duty.
- 2.2. NHS England discharges this duty by:
  - Allocating funds to, guiding and supporting clinical commissioning groups (CCGs), and holding them to account. CCGs commission healthcare services to secure the best possible health outcomes for patients and communities;
  - Directly commissioning primary care (including GP services) and other services, such as specialised services (for example, those for rare diseases), offender (prisoner) healthcare and some services for members of the armed forces.<sup>1</sup>
- 2.3. NHS England works collaboratively with other arm's length bodies and with local government to discharge these duties effectively. NHS England's relationships with other bodies are discussed in section 12.
- 2.4. NHS England is accountable for ensuring that the health services which it and CCGs commission are high quality and deliver value for money. Wider regulation supports NHS England in delivering this accountability. The Care Quality Commission regulates health (and adult social care) providers, assuring that they meet essential quality and safety standards. Monitor uses

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<sup>1</sup> Those services commissioned by NHS England are set out in section 3B of the NHS Act 2006 and regulations made under it (SI 2012/2996); section 4 of the NHS Act 2006 and Parts 4-7 of the NHS Act 2006.

its licensing system to regulate the provision of healthcare services to ensure it is effective, efficient and economic, and maintains or improves the quality of services.

- 2.5. The duties imposed on NHS England relating to the way it discharges its general functions are set out in the NHS Act 2006 (as amended by the Health and Social Care Act 2012). The Act also gives NHS England a number of powers which it may use in discharging its duties.

### **3. Governance**

- 3.1. NHS England is led by a board made up of:

- A non-executive chair appointed by the Secretary of State for Health;
- No fewer than five more non-executive members, also appointed by the Secretary of State;
- A chief executive appointed by the non-executive members with the Secretary of State's consent (who in the first instance has been appointed directly by the Secretary of State);
- Any other executive board members appointed by the non-executive members: the total number of executive members must be fewer than the number of non-executive members.

- 3.2. The Permanent Secretary appoints a Senior Departmental Sponsor (SDS) who acts as NHS England's designated, consistent point of contact within the Department. The SDS acts as the link at executive level between NHS England and the senior officials of the Department, and also with ministers. Whilst the SDS role is facilitative and recognises the need for direct engagement between NHS England and other parts of the Department and ministers, it also supports the Permanent Secretary in holding NHS England to account and providing assurance on its performance. The SDS is currently the Director General for Finance and NHS. The SDS is supported by a Departmental sponsor team, which is the principal day-to-day liaison between the Department and NHS England.

#### *Process for setting objectives*

- 3.3. The process for setting objectives for NHS England is set out specifically in the NHS Act 2006 (as amended by the Health and Social Care Act 2012). A number of steps must be followed:

- 3.3.1. Before the start of each financial year, the Secretary of State prepares, lays before Parliament and publishes the Government's Mandate to NHS England. In preparing the Mandate, the Secretary of State must consult with NHS England and Health Watch England, and anyone else he considers appropriate. The Mandate sets out the objectives which NHS England must seek to achieve, sets NHS England's financial allocation (both total revenue and total capital resource use) for that financial year, and sets out any requirements which the Secretary of State considers

necessary to impose on NHS England to ensure that it achieves the objectives. The Secretary of State may also issue Financial Directions stemming from the specific and limited powers given in the Health and Social Care Act 2012 for the Secretary of State to direct NHS England on some financial matters.

- 3.3.2. The Mandate incorporates the NHS Outcomes Framework, a set of health outcomes and corresponding indicators which are used to measure progress and hold NHS England to account.
- 3.3.3. In turn, NHS England produces a business plan before the start of each financial year. This sets out how NHS England proposes to meet its legal duties and deliver the objectives set out in the Mandate in the coming financial year and the next two financial years. The Department provides guidance to support this process, which includes target budgets covering administration, programme, revenue and capital funding. Just as the Department aspires to achieve agreement with NHS England on the Mandate, NHS England aspires to reach agreement with the Department on its business plan. To facilitate comment from the Department, including relevant ministers, the business plan will be shared and discussed in advance of clearance with NHS England's board. The NHS England board will be made aware of any concerns the Department may have.
- 3.4. Except where the Secretary of State has made a specific direction, NHS England is responsible for determining how best to distribute the available funding between direct commissioning and CCGs, taking expert and independent advice from the Advisory Committee on Resource Allocation.
- 3.5. Before the start of each financial year NHS England publishes the funding allocated to each CCG, guidance for CCGs on carrying out their commissioning responsibilities and any relevant financial directions for CCGs. NHS England must do this in good time for CCGs to inform their planning for the following financial year: normally this will mean publishing CCG allocations no later than 1 January for the following financial year.
- 3.6. CCGs have equal responsibility with local authorities for developing a joint understanding of local population health and care needs through Joint Strategic Needs Assessments (JSNAs); and a strategy (a shared set of priorities) to address these in Joint Health and Wellbeing Strategies (JHWSs). Each CCG develops their own commissioning plan in line with any JSNA or JHWS prepared by the relevant health and wellbeing board, and must be able to justify any parts of their plans which are not consistent <sup>2</sup>.

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<sup>2</sup> JSNAs and JHWSs form the basis of NHS and local authorities' own commissioning plans, across health, social care, public health and children's services. Health and wellbeing boards were established in every upper-tier and unitary authorities in England on 1 April 2013. Health and wellbeing boards are forums for local authorities, the NHS, local Healthwatch, communities and wider partners, to share system leadership across the health and social care system. The statutory minimum membership of health and wellbeing boards include a minimum of one elected member, a

These plans are shared with NHS England as they develop to allow it to ensure that statutory requirements are being met. Performance is monitored through the CCG Assurance Framework<sup>3</sup>, which NHS England has developed to provide transparency and accountability of the quality of services that CCGs commission for their patients. Day-to-day liaison between NHS England and CCGs takes place through NHS England's Local Area Teams.

#### *Discharge of statutory functions*

- 3.7. NHS England ensures that it has appropriate arrangements in place for the discharge of each of the statutory functions for which it is responsible and is clear about the legislative requirements associated with each of them, specifically any restrictions on the delegation of those functions. It ensures that it has the necessary capacity and capability to undertake those functions, and will ensure that it has the statutory power to take on a statutory function on behalf of another person or body before it does so. NHS England also ensures that there is periodic audit<sup>4</sup> of the discharge of its statutory functions so that the delivery of them remains effective, efficient and legally compliant.

#### *Cross-government clearance*

- 3.8. In addition to internal governance, cross-government clearance is required for major new policy decisions of the type set out in Cabinet Office guidance.<sup>5</sup> Although such cases are likely to be small in number, the Secretary of State is responsible for obtaining clearance and NHS England will adhere to any conditions applied through the clearance process. There will also be cases where the Secretary of State must consult Cabinet colleagues before giving the Government's view, even if collective agreement is not required. In such cases, NHS England will supply the Secretary of State with any information he or she needs in a timely fashion.

## **4. Accountability**

### *Secretary of State*

- 4.1. The Secretary of State is accountable to Parliament for the health system (as its "steward"), including NHS England. The Department of Health supports him or her in this role. This involves:

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CCG and local Healthwatch representative, the Directors of Adult Social Services; Public Health; and Children's Services.

<sup>3</sup> An interim CCG assurance framework was published on 7 May 2013 (available at <http://www.england.nhs.uk/2013/05/07/interim-ccg-af/>)

<sup>4</sup> NHS England include a review of this in its three-year audit cycle and take steps to sufficiently assure its board on an annual basis and include details of this within its governance statement.

<sup>5</sup> Guide to Cabinet and Cabinet Committees, <http://www.cabinetoffice.gov.uk/resource-library/cabinet-committees-system-and-list-cabinet-committees>, pages 6-8

- Setting national priorities and monitoring the whole system's performance to ensure it delivers what patients, people who use services and the wider public need and value most;
- Determining the level of resource allocations across the health and care system as a whole;
- Setting objectives for NHS England through the Mandate;
- Supporting the integrity of the system by ensuring that funding, legislation and accountability arrangements protect the best interests of patients, the public and the taxpayer;
- Accounting to Parliament for NHS England's performance and the effectiveness of the health and care system overall.

4.2. To support this accountability, the Secretary of State holds regular accountability meetings with NHS England. These take place once every two months and are attended by NHS England's chair and other senior NHS England officials, and by the Senior Departmental Sponsor and the Permanent Secretary. The focus of the meeting is on strategic issues and any issues of delivery which the SDS believes it is appropriate to bring to this meeting, including compliance with the framework agreement. These meetings support the shared principles (set out in paragraph 6.1) and are structured to promote openness, constructive challenge and the identification and resolution of strategic issues.

*The Principal Accounting Officer and NHS England's Accounting Officer - accounting to Parliament*

4.3. The Department of Health's Permanent Secretary is the Principal Accounting Officer (PAO) and so is accountable in Parliament for the general performance of the health system in England, including NHS England. This requires him or her to gain assurance that NHS England is discharging its statutory duties and meeting the financial and clinical objectives set out in the Mandate. In this way the PAO is able to give Parliament an informed account of the Department's stewardship of the public funds it distributes and manages.

4.4. NHS England's chief executive is its Accounting Officer (AO). The AO may be called to account for the performance of the NHS in Parliament. The PAO can also be held to account in Parliament since the PAO's oversight should allow him or her to assess the adequacy of NHS England's stewardship of public funds and discharge of its duties. This assessment includes making judgments about whether NHS England and the system of CCGs it finances and empowers are operating to adequate standards of regularity, propriety, feasibility and value for money (assessed for the Exchequer as a whole).

*Reviewing performance*

4.5. The PAO's oversight of NHS England's performance relies upon the provision of information, and processes to enable both parties to review performance.

- 4.5.1. The information provided to the Department by NHS England includes (not an exhaustive list):
- Statutory financial statements (for NHS England and for a consolidation of NHS England and CCGs);
  - In-year and year-end performance against budgetary controls, on both NHS England itself and the consolidation of CCGs, on a quarterly basis;
  - Cash inflows and outflows on a monthly basis;
  - Six-monthly reports on performance against the Mandate and NHS Outcomes Framework, including risk management assurance prepared for the NHS England Board and assessment against the objectives in the business plan, and supported by qualitative information supplied by third parties;
  - Regular statistics on performance related to rights and pledges set out in the NHS Constitution (such as waiting times and access)<sup>6</sup>.
- 4.5.2. The processes in place to enable the Department and NHS England to review performance includes:
- Bi-monthly accountability meetings between the Secretary of State and the Chair of NHS England, attended by both the PAO and NHS England's AO;
  - Monthly accountability meetings between the SDS and NHS England's Director of Policy and Chief Financial Officer.

*NHS England's Accounting Officer and CCG Accountable Officers*

- 4.6. In the same way that the PAO must gain assurance on NHS England's activity and plans, NHS England's AO must gain assurance from the accountable officers of each CCG that they are discharging their duties and meeting their financial and clinical objectives. NHS England must ensure that it obtains sufficient timely information to enable it to assess the performance of each CCG in order that it can give the Department of Health a clear account of the quality of its implementation of its functions and remits. This includes:
- The same financial information as required by the Department for NHS England at the same frequency;
  - An initial process for authorising CCGs to take on their full statutory responsibilities (all CCGs have now been authorised but some still have conditions and NHS England are reviewing these quarterly until the conditions are satisfactorily resolved);
  - Quarterly reports against the CCG Assurance Framework (see paragraph 3.6).

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<sup>6</sup> The frequency of data publication varies according to the dataset used, and may be weekly, monthly or quarterly, but is at least quarterly.



## *Reports*

- 4.7. As soon as practicable after the end of each financial year, NHS England must publish a report setting out how it has discharged its statutory duties and what progress it has made towards its objectives. NHS England must lay the report before Parliament and send a copy to the Secretary of State. In turn, the Secretary of State must consider NHS England's annual report and set out his or her assessment of NHS England's performance in a letter. The letter must be published and laid before Parliament.
- 4.8. NHS England must also prepare annual accounts and submit them to the Secretary of State and the Comptroller and Auditor General by a date set by the Secretary of State – more detail on this process is in paragraphs 9 and 10 of Annex B.
- 4.9. In each financial year, each CCG must provide NHS England with a report setting out how it has discharged its duties and contributed to the delivery of relevant joint health and wellbeing strategies. NHS England may direct CCGs as to the form and content of the report and the deadline for submission. The CCG must publish the report and hold a public meeting to present it. In turn NHS England must conduct a performance assessment of each CCG and publish a report summarising the results of each performance assessment.
- 4.10. The Secretary of State will also publish the NHS Outcomes Framework. This provides a national level overview of progress against key outcomes; sets out an accountability mechanism between the Secretary of State for Health and NHS England for the effective spend of the NHS budget; and acts as a catalyst for driving up quality throughout the NHS by encouraging a change in culture and behaviour.

## *Intervention*

- 4.11. NHS England is responsible for the delivery of its objectives and the Department will limit the circumstances in which it will intervene in its activities. The following constraints do, however, apply:
  - 4.11.1. Parliament requires that funds voted for statutory purposes are protected: if any funds are spent outside the statutory functions of the NHS England the Department could seek adjustments to the grant in aid for running costs (administration) to compensate.
  - 4.11.2. The Secretary of State may remove any non-executive member from the Board on the grounds of incapacity, misbehaviour or failure to carry out his or her duties as a non-executive member.
  - 4.11.3. If the Secretary of State considers that NHS England is significantly failing in its duties and functions he is able to intervene and issue directions to NHS England. This also applies where he or she considers NHS England has failed to act in the interests of the health service. In

the first instance, the Secretary of State could direct NHS England about how it carried out its functions. If NHS England failed to comply with such directions, the Secretary of State could either discharge the function himself, or make arrangements for another body to do so on his behalf. The Secretary of State has a duty to, and so will always, publish his reasons for any intervention.

4.12. CCGs have been set up to shape local services around the needs and choices of patients. NHS England therefore limits the circumstances in which it will intervene in a CCG's activities. It is expected that it will be exceptional for a CCG to fail. Nevertheless, where NHS England believes that a CCG is failing (or there is a significant risk of a CCG failing) to discharge any of its functions, it has a number of powers to intervene. It may:

- Issue directions to a CCG;
- Remove specific functions from a CCG and exercise them itself or direct another CCG to perform them;
- Replace a CCG's accountable officer;
- Vary the constitution of CCG;
- Dissolve a CCG.

## **5. NHS England's board**

5.1. NHS England is governed by its board. The role of the board is as described in the corporate governance code for central government departments<sup>7</sup> and includes holding its executive management team to account and ensuring the organisation is able to account to Parliament and the public for how it has discharged its functions.

5.2. The board is led by a non-executive Chair, who is responsible to the Secretary of State for ensuring that NHS England's affairs are conducted with probity, and that NHS England's policies and actions support it in the discharge of its functions and duties efficiently and effectively and meet the objectives set out in the business plan and the Mandate. The Senior Departmental Sponsor ensures that there is an annual objective setting and review process in place for the Chair. The non-executive directors are responsible for appointing the Chief Executive and executive directors.

5.3. NHS England's Chair and non-executive directors are appointed by the Secretary of State. Appointments are transparent, made on merit, and are regulated by the Commissioner for Public Appointments. Chair appointments are subject to pre-appointment scrutiny by Parliament.

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<sup>7</sup> The corporate governance guidelines (available at [http://www.hm-treasury.gov.uk/psr\\_governance\\_corporate.htm](http://www.hm-treasury.gov.uk/psr_governance_corporate.htm)) are written for central government departments, although, as it says in the guidelines, "the principles in the Code generally hold across other parts of central government, including departments' arm's length bodies".

5.4. The responsibilities of the chief executive are:

- Safeguarding the public funds and assets for which the chief executive has charge;
- Ensuring propriety, regularity, value for money and feasibility in the handling of those funds;
- The day-to-day operations and management of NHS England;
- Ensuring that NHS England is run on the basis of the standards (in terms of governance, decision-making and financial management) set out in *Managing Public Money*, including seeking and assuring all relevant financial approvals;
- Appointing and holding to account the Accountable Officer of each CCG through an annual CCG performance assessment;
- Together with the Department, accounting to Parliament and the public for NHS England's financial performance and the delivery of its objectives, and for the proper functioning of the whole of the commissioning system;
- Accounting to the Department's Permanent Secretary, who is Principal Accounting Officer for the whole of the Department of Health's budget, providing a line of sight from the Department to NHS England and CCGs;
- Reporting quarterly to the PAO on performance against the Mandate and the NHS Outcomes Framework, to be discussed at one of the formal monthly accountability meetings chaired by the Secretary of State.

5.5. The responsibilities of the board as a whole include supporting the Accounting Officer in ensuring that NHS England exercises proper stewardship of public funds, including compliance with the principles laid out in *Managing Public Money*; and ensuring that total capital and revenue resource use in a financial year by itself and by clinical commissioning groups does not exceed the amount specified by the Secretary of State.

5.6. The board should ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control. NHS England has established an Audit Committee set chaired by an independent non-executive member with significant experience of financial leadership at board level. The committee should have at least three members and at least half of these should be main board members. Other members need not be main board members but should be able to demonstrate relevant sectoral experience at board level. The internal and external auditors must be invited to all meetings and be allowed to see all the papers.

## **6. Partnership working**

6.1. To support the development of the relationship, the Department of Health and NHS England have agreed to a set of shared principles:

- Working together with each other, and with the Department's other arm's length bodies, for patients, people who use services and the public, demonstrating our commitment to the values of the NHS set out in its Constitution;

- Respect for the importance of autonomy throughout the system, and the freedom of individual organisations to exercise their functions in the way they consider most appropriate;
  - Recognition that the Secretary of State is ultimately accountable to Parliament and the public for the system overall. NHS England supports the Department in the discharge of its accountability duties, and the Department supports NHS England in the same way;
  - Working together openly and positively. This will include working constructively and collaboratively with other organisations within and beyond the health and social care system.
- 6.2. To support these principles, NHS England and the Department follow an ‘open book’ approach. In the case of issues with an impact on the development or implementation of policy, the Department expects to be kept informed by NHS England. In the same way, the Department seeks to keep NHS England apprised of developments in policy and Government. There are likely to be some issues where the Department or NHS England will expect to be consulted by the other before the Department or NHS England makes either a decision or a public statement on a matter. The Department and NHS England will make clear which issues fall into this category in good time. The sponsor team is responsible for ensuring that this works effectively.
- 6.3. To support the Secretary of State and the Principal Accounting Officer in their accountability functions, the Secretary of State has the power to direct NHS England to disclose such information to the Secretary of State as he feels necessary to fulfil his duties with respect to the health system. It is therefore expected that the Department will, when required, have full access to NHS England’s files and information. If necessary, the Senior Departmental Sponsor’s team are responsible for prioritising these requests for information.

#### *Clinical advice*

- 6.4. The Department has an on-going need for advice from clinical experts in order to inform its understanding of the reality of NHS delivery, support high level policy development and support its accountability to Parliament and the public. NHS England employs directly a number of clinical advisers and has access to others through formal networks. NHS England has agreed that the Department should use these advisers when it has a need for clinical advice, with the costs of providing advice to the Department being met out of NHS England’s overall funding allocation. The Department and NHS England have agreed to develop a protocol setting out the practical detail of how they will work together. This will be reviewed at regular intervals to ensure that the arrangements work for both NHS England and the Department.

#### *Emergency preparedness, resilience and response*

- 6.5. Both NHS England and the Department have specific responsibilities for planning for and managing the response to emergencies, as key players in an extended team that works across government. NHS England has specific

functions under the NHS Act 2006 (as amended by the Health and Social Care Act 2012) and the Civil Contingencies Act 2004, including a duty to ensure effective plans are in place, take part in national exercises, and coordinate responses. The Secretary of State has cross-government responsibility to provide assurance on the health system's emergency preparedness.

- 6.6. NHS England and the Department have agreed to work together to provide assurance that NHS England's responsibilities are being discharged in the context of cross-Government responsibilities. To that end NHS England and the Department have established an oversight group (with other bodies) to provide assurance for emergency planning, resilience and response.

### *Public and Parliamentary Accountability*

- 6.7. The Department and its arm's length bodies share responsibility for accounting to the public and to Parliament for policies, decisions and activities across the health and care sector. Accountability to Parliament will often be demonstrated through parliamentary questions, MPs' letters and appearances before parliamentary committees. Accountability to the public may be through the publication of information on NHS England's website, as well as through responses to letters from the public and responses to requests under the Freedom of Information Act.
- 6.8. The Department and its ministers remain responsible to Parliament for the system overall, so often has to take the lead in demonstrating this accountability. Where this is the case, NHS England supports the Department by, amongst other things, providing information for ministers to enable them to account to Parliament. In turn, the Department provides leadership to the system for corporate governance, including setting standards for performance in accountability.
- 6.9. NHS England, however, has its own responsibilities in accounting to the public and to Parliament, and its way of handling these responsibilities has been agreed with the Department. In all matters of public and parliamentary accountability the Department and its arm's length bodies will work together considerately, cooperatively and collaboratively, and any information provided by NHS England will be timely, accurate and, where appropriate, consistent with information provided by the Department. To facilitate this, the Department and NHS England have agreed a public and parliamentary accountability protocol that sets out how they will work together to secure the confidence of the public and Parliament, and to maintain the service levels that MPs and the public have come to expect.

## **7. Transparency**

- 7.1. NHS England is an open organisation that carries out its activities transparently. It demonstrates this by proactively publishing on its website key information on areas including pay, diversity of the workforce,

performance, the way it manages public money and the public benefits achieved through its activities, and by supporting those who wish to use the data by publishing the information within guidelines set by the Cabinet Office<sup>8</sup>. NHS England holds open board meetings in line with the Public Bodies (Admission to Meetings) Act 1960 and publishes an annual report (see paragraph 4.7). The annual report includes a governance statement, which is reviewed by the Senior Departmental Sponsor.

- 7.2. To underpin the principles of good communication, ‘no surprises’ and transparency, NHS England and the Department have put in place arrangements for managing communications. Further details are provided in Annex C.
- 7.3. NHS England’s executive and non-executive board members will operate within the general principles of the corporate governance guidelines set out by HM Treasury<sup>9</sup>. They will also comply with the Cabinet Office’s Code of Conduct for Board Members of Public Bodies<sup>10</sup> and with the rules on disclosure of financial interests contained in the provisions<sup>11</sup> on the membership of NHS England’s board.
- 7.4. NHS England has developed a code of conduct for all staff which will comply with the principles in the Cabinet Office’s model code for staff of executive non-Departmental public bodies<sup>12</sup>, which includes rules on conflicts of interest, political activity and restrictions on lobbying.
- 7.5. NHS England will take all necessary measures to ensure that:
  - Patient, personal and/or sensitive information within its care and control is well managed and protected through all stages of its use, including through compliance with the Data Protection Act;
  - It provides public assurance in respect of its information governance practice by completing and publishing an annual information governance assessment using an agreed assessment mechanism;
  - It meets its legal obligations for records management, accountability and public information by compliance with relevant standards, including government and NHS codes of practice on confidentiality, security and records management.

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<sup>8</sup> The guidance is available on the Gov.UK website at:

<https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments>

<sup>9</sup> The corporate governance guidelines (available at [http://www.hm-treasury.gov.uk/psr\\_governance\\_corporate.htm](http://www.hm-treasury.gov.uk/psr_governance_corporate.htm)) are written for central government departments, although, as it says in the guidelines, “the principles in the Code generally hold across other parts of central government, including departments’ arm’s length bodies”.

<sup>10</sup> The Cabinet Office’s Code of Conduct for Board Members of Public Bodies is available at: <http://www.bl.uk/aboutus/governance/blboard/Board%20Code%20of%20Practice%202011.pdf>

<sup>11</sup> The provisions are available at <http://www.england.nhs.uk/about/reg-interests/>

<sup>12</sup> [http://www.civilservice.gov.uk/wp-content/uploads/2011/09/5\\_public\\_body\\_staffv2\\_tcm6-2484.pdf](http://www.civilservice.gov.uk/wp-content/uploads/2011/09/5_public_body_staffv2_tcm6-2484.pdf)

- 7.6. NHS England's Senior Information Risk Owner and Caldicott Guardian will work together to ensure that both patient and other personal information are handled in line with best practice in government and the wider public sector.

### *Whistleblowing*

- 7.7. NHS England, as with the Department and all its ALBs, has whistleblowing policies and procedures in place that comply with the Public Interest Disclosure Act 1998 and best practice guidance.<sup>13</sup> The Act prohibits the use of confidentiality clauses that seek to prevent staff from speaking out on issues of public interest.

### *Sustainability*

- 7.8. As a major public sector body, NHS England has a key role to play in driving forward the government's commitment to sustainability in the economy, society and the environment. As a minimum, NHS England should comply with the Greening Government Commitments<sup>14</sup> that apply to all government departments, executive agencies and non-departmental public bodies, set out in the action plan for driving sustainable operations and procurement across government. Reporting is via the Department (including the consolidation of relevant information in the Department's annual resource account).

## **8. Audit**

- 8.1. The Comptroller and Auditor General through the National Audit Office (NAO) audit NHS England's annual accounts and will lay them before Parliament, together with his report.
- 8.2. The Comptroller and Auditor General may also choose to conduct a value-for-money audit of any aspect of NHS England's work: NHS England will cooperate fully with the NAO in pursuing such audits, and give them full access to all relevant files and information.
- 8.3. As specified in the NHS Act 2006 (as amended by the Health and Social Care Act 2012), CCG accounts should be audited in accordance with the Audit Commission Act 1998, or any subsequent legislation, by an auditor appointed in accordance with arrangements made by NHS England. NHS England have also ensured that each CCG has a duly constituted Audit Committee. In addition, the Comptroller and Auditor General may examine a CCG's accounts.

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<sup>13</sup> <http://www.nhsemployers.org/EmploymentPolicyAndPractice/UKEmploymentPractice/RaisingConcerns/Pages/RaisingConcerns.aspx>

<sup>14</sup> <http://sd.defra.gov.uk/documents/Greening-Government-commitments.pdf>

- 8.4. NHS England is responsible for establishing and maintaining internal audit arrangements in accordance with the Public Sector Internal Audit Standards. NHS England's internal audit function reports to its Audit Committee, and considers issues relating to NHS England's adherence to its business plan and compliance with the Mandate. The Department's Audit and Risk Committee remit includes assurance of risk management, corporate governance and assurance arrangements in all its subsidiary bodies and so NHS England's Audit Committee should work closely with the Departmental committee.

## **9. Delegations and financial management**

- 9.1. Details of NHS England's financial arrangements, including funding allocation, in-year reporting, preparation of accounts, and the accounting officer's responsibilities in relation to financial management and NHS England's accounts, are provided in Annex B.
- 9.2. NHS England's overall revenue and capital resources are set out in the Mandate. The Department issues financial directions to accompany the Mandate in order to set technical controls to ensure that NHS England's total expenditure adheres to the budgetary controls as specified in HM Treasury's Consolidated Budgeting Guidance. More details are provided in Annex B.
- 9.3. NHS England's delegated authorities are issued to it by the Department, including those areas where NHS England must obtain the Department's written approval before proceeding. NHS England will adhere to these delegated authorities. NHS England will issue similar delegations to CCGs.
- 9.4. NHS England must demonstrate that it is delivering its functions in the most efficient manner, and must provide timely returns to the Department where these are required either by it or by other departments within central government.
- 9.5. NHS England, as with all public bodies and government departments, must operate within any relevant set of efficiency controls. These controls may affect areas of spend such as information communications technology (ICT), marketing and advertising, procurement, consultancy, the public sector estate, recruitment, major projects or strategic supplier management. The Department will ensure that NHS England is kept informed of any efficiency controls in operation.
- 9.6. As part of the government's approach to managing and delivering public service at a reduced cost base, NHS England, as with all other arm's length bodies and the Department, uses a standardised arrangement to receive its back office support, including the relevant elements of finance and accounting, HR, payroll, procurement and ICT, wherever this offers best value to the taxpayer overall, and is affordable within NHS England's management cost envelope. Details of the services between NHS England



and the service provider will be set out in a contract or where appropriate a service level agreement.

- 9.7. A shared or standardised value for money approach also applies to the use of estate. NHS England complies with guidance on property and asset management, as set out in Annex B, and the principles set out by the Department's Estate Strategy Optimisation Board.
- 9.8. Part 9 of the NHS Act 2006 sets out the powers to charge users for a limited number of NHS services, and accompanying secondary legislation lists the charges which can be applied.

## 10. Risk management

- 10.1. NHS England will ensure that it deals with the risks that it faces in an appropriate manner, according to best practice in corporate governance, and has developed a risk management strategy in accordance with the Treasury guidance *Management of Risk: Principles and Concepts*<sup>15</sup>. It has adopted and implemented policies and practices to safeguard itself against fraud and theft, in line with HM Treasury guidance<sup>16</sup>. It should also take all reasonable steps to appraise the financial standing of any firm or other body with which it intends to enter into a contract or to give grant or grant-in-aid.
- 10.2. NHS England has developed a regular (at least every two months) reporting process through which the Executive Team assures the board of financial and operational performance against the business plan at its regular meetings. This assurance report includes information on risks and how they are being managed in accordance with the Treasury guidance mentioned above. The information prepared is shared with the Department to enable the Department to assure itself on risk management. Specific arrangements are in place in relation to emergencies – see paragraph 6.4. The Audit Committee of NHS England reviews arrangements for risk assurance and reports its findings to the board. The Finance and Investment Committee meets on a monthly basis to monitor financial performance in depth on behalf of the board.
- 10.3. NHS England and the Department will agree a process and trigger points for the escalation of risks to the Department's Audit and Risk Committee, where those risks will have a potentially significant impact on NHS England, the Department or the wider system that requires a co-ordinated joint response. Risks to the wider system that arise from the NHS England's operations, identified by NHS England, the Department or another body, will be flagged in the formal quarterly accountability meetings chaired by the Senior Departmental Sponsor. Such risks may also be flagged by NHS England's board and escalated to the Department's Audit and Risk Committee for consideration. It is the responsibility of NHS England and its sponsor to keep

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<sup>15</sup> <https://www.gov.uk/government/publications/orange-book>

<sup>16</sup> [http://www.hm-treasury.gov.uk/psr\\_managing\\_risk\\_of\\_fraud.htm](http://www.hm-treasury.gov.uk/psr_managing_risk_of_fraud.htm).

each other informed of significant risks to, or arising from, the operations of NHS England within the wider system.

- 10.4. NHS England has effective and tested business continuity management (BCM) arrangements in place to be able to respond to disruption to business and to recover time-critical functions where necessary. In line with Cabinet Office guidelines, the BCM system should aim to comply with ISO 22301 Societal Security – Business Continuity Management Systems.

## **11. Human resources**

- 11.1. NHS England is responsible for recruiting staff, but will comply with any departmental or government-wide recruitment controls. The Department ensures that NHS England is made aware of any such controls. Very senior managers in NHS England are subject to the Department of Health pay framework for very senior managers in arm's length bodies, and may be subject to additional governance as specified by the Department. The Department ensures that NHS England is aware of any such requirements or restrictions.
- 11.2. As set out in Schedule A1 of the NHS Act 2006 (as inserted by Schedule 1 of the Health and Social Care Act 2012), NHS England must obtain the approval of the Secretary of State in respect of policies relating to remuneration, pensions, allowances or gratuities. The processes for doing this are set out below.
- 11.2.1. In relation to remuneration, NHS England, as with all executive non-departmental public bodies, is subject to the pay remit process, which regulates the pay setting arrangements for its staff (those who are not very senior managers). The pay remit provides a framework within which NHS England sets:
- The pay envelope for the year;
  - Pay strategies;
  - Pay reporting.
- 11.2.2. HM Treasury has delegated the approval of executive non-departmental public bodies' pay remits to parent departments. NHS England is therefore required to submit its pay remit proposals to the Department for approval.
- 11.2.3. Very senior manager remuneration is subject to the recommendations of the Senior Salaries Review Body.
- 11.2.4. In relation to pensions, the organisational pension scheme is the NHS Pensions scheme, which is administered by the NHS Business Services Authority and has rules set down in legislation.

- 11.3. Like all departments and arm's length bodies, NHS England must follow any requirements for disclosure of pay or pay-related information.
- 11.4. Subject to its financial delegations, NHS England is required to comply with the Department's and HM Treasury's approval processes in relation to contractual redundancy payments. All novel or contentious payments require the Department's and HM Treasury's approval. Special severance payments are always considered novel or contentious (this includes any proposal to make a payment as a result of judicial mediation).

### *Equalities*

- 11.5. The public sector equality duty requires NHS England (as a public body) to have due regard to the need to:
  - Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 11.6. The provisions of the Equality Act 2010 (Specific Duties) Regulations 2011 require NHS England, as a public body, to:
  - Annually publish information to demonstrate compliance with the Public Sector Equality Duty. This information must include, in particular, information relating to persons who share a relevant protected characteristic who are its employees (provided the organisation has 150 or more employees) and other persons affected by its policies and procedures.
  - Prepare and publish one or more objectives it thinks it should achieve to meet the Public Sector Equality Duty.<sup>17</sup>
- 11.7. NHS England have provided information to CCGs advising them of their duties.

## **12. Relations with the Department's other arm's length bodies**

- 12.1. NHS England works in partnership with the Department and its other arm's length bodies, in the interests of patients, people who use services and the public, to maximise the health and wellbeing gain for the population, and working to the values set out in the NHS Constitution.
- 12.2. The Department and its arm's length bodies have complementary but distinct roles within the system to ensure that service users receive high quality

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<sup>17</sup> This was required by 6 April 2013, and is required every four years thereafter.

services which deliver value for public money. The following sets out the related functions of some of NHS England's key partners.

- 12.2.1. The Care Quality Commission (CQC) is the independent regulator of health and social care services in England. Its role is to make sure that care provided meets national standards of quality and safety. It does this by registering providers, inspecting and continually monitoring them. It has a range of enforcement powers, including issuing fines or warnings; stopping admissions into a care service; and suspending or cancelling a care service's registration. NHS England will take into account the CQC's assessments of individual services when making commissioning decisions and producing commissioning guidance.
- 12.2.2. Healthwatch England is a committee of CQC. It has the power to recommend that action is taken by CQC when there are concerns about health and social care services. It advises NHS England (amongst others) to make sure that the views of the public and people who use services are taken into account. NHS England must consult Healthwatch England on commissioning guidance for CCGs before it is published.
- 12.2.3. The NHS Trust Development Authority (TDA) performance manages NHS Trusts, amongst other functions. NHS TDA will use these powers, where necessary, to intervene to resolve quality failings amongst NHS trusts. NHS England will use information from the Quality Surveillance Groups it has set up, which bring together different parts of local health and care economies to share information to protect the quality of care that patients receive across all services, to identify persistent quality failings in NHS trusts to share with NHS TDA.
- 12.2.4. Monitor has a main duty to protect and promote patients' interests by ensuring that healthcare services are provided effectively, efficiently and economically, while the quality of services is maintained or improved. It carries out a number of activities to discharge this duty:
  - Regulating foundation trusts to ensure that they focus on good leadership and holds their boards to account for the early identification and effective resolution of problems.
  - Working with NHS England to create a list of prices for NHS services, called the National Tariff. NHS England leads on which services should be included, and Monitor leads on what the prices should be.
  - Investigating if commissioners or providers behave in ways that make competition between different providers unfair, where that could act against patients' interests. NHS England will co-operate with Monitor's investigations.
  - Stepping in to help ensure that services continue to be delivered if a provider gets into serious financial difficulty, although ensuring

essential services for patients continue is ultimately the responsibility of commissioners, i.e., NHS England and the CCGs.

- 12.2.5. The National Institute for Health and Care Excellence (NICE) provides a range of information services for commissioners and develops quality standards and performance metrics. NHS England directs NICE to produce quality standards and must have regard to them in its commissioning functions.
- 12.3. NHS England has close relationships with these arm's length bodies, and with others, such as Public Health England and Health Education England. Details of the working arrangements with these bodies are set out in a partnership agreement.
- 12.4. Care is provided by provider organisations. NHS England and the CCGs a) ensure that care is commissioned from providers on the basis of national standards of quality and safety, and b) seek to secure continuous improvement in the quality of services (effectiveness, safety and patient experience). NHS England and CCGs work with providers to ensure that services meet commissioning specifications.

### **13. Review**

- 13.1. The Secretary of State issues a new Mandate to NHS England before the start of each financial year in line with the schedule and process set out in the NHS Act 2006 (as amended by the Health and Social Care Act 2012). The Outcomes Framework and Accounting Directions will be updated as necessary.
- 13.2. NHS England publishes a business plan before the start of each financial year as required by the NHS Act 2006 (as amended by the Health and Social Care Act 2012) for that year and the two following financial years. This will set out how NHS England intends to achieve the objectives and comply with the requirements specified in the Mandate.
- 13.3. The Department regularly reviews NHS England's performance at formal accountability meetings. In addition, the Department will undertake an in-depth review of NHS England as an Executive Non-Departmental Public Body (ENDPB) on at least a triennial basis, and will review all its other arm's length bodies on the same basis.
- 13.4. NHS England is established by the NHS Act 2006 (as amended by the Health and Social Care Act 2012). Any change to its core functions or duties including mergers, significant restructuring or abolition would therefore require further legislation. If this were to happen, the Department would then be responsible for putting in place arrangements to ensure a smooth and orderly transition, with the protection of patients being paramount. In particular, the Department is to ensure that, where necessary, procedures are in place in NHS England so the Department can obtain independent

assurance on key transactions, financial commitments, cash flows, HR arrangements and other information needed to handle the transition effectively and to maintain the momentum of any on-going and / or transferred work.

- 13.5. This agreement will be reviewed every three years, or sooner upon request of either party to ensure that it remains current and fit for purpose. An early refresh may be required in light of NHS England's status as a new organisation to ensure that it reflects developing arrangements for partnership working and accountability.

**Signed on behalf of NHS England:**

**Sir Malcolm Grant**  
**Chairman**  
**Date: 11 February 2014**

**Signed on behalf of the Department of Health:**

**Richard Douglas CB**  
**DIRECTOR-GENERAL, FINANCE and NHS DIRECTORATE**  
**Date: 11 February 2014**