

Monitor

Making the health sector
work for patients

Off-payroll arrangements at NHS foundation trusts

Introduction

Monitor's role, as sector regulator for health services in England, is to protect and promote the interests of patients by ensuring that the whole sector works for their benefit. One aspect of this is ensuring NHS foundation trusts are well governed and are meeting requirements designed to safeguard patients and tax payers.

We have therefore been working with the Health and Social Care Information Centre (HSCIC) to make sure that foundation trusts understand and are complying with tax arrangements recommended by HM Treasury.

We were pleased to find that the large majority of NHS foundation trusts are following the Treasury's advice. Where they are not, each trust has provided reasonable mitigating factors and assurances of further action. This document describes our findings in more detail.

Keeping tax fair: our monitoring role

As part of its commitment to tackling tax avoidance and ensuring everyone pays their fair share, HM Treasury reviewed the tax arrangements of senior public sector employees. The results were published in May 2012,¹ and [HM Treasury's report](#)² included four recommendations about 'off-payroll' employment in the public sector (see annex to this document).

On 20 August 2012, David Nicholson, Chief Executive of NHS England, [wrote to all NHS providers](#), asking them to fulfil the recommendations. Recommendation 3 set out a monitoring role for us, requiring that all four measures 'should be implemented within three months – and implementation will be monitored after one year, reporting back to the Chief Secretary to the Treasury and the Minister for the Cabinet Office.'

An initial data collection from all NHS trusts and NHS foundation trusts was made by HSCIC after one year, in May 2013. We built on that work and contacted NHS foundation trusts who were not fully meeting all the recommendations to find out:

- the reasons behind any failures
- what trusts were doing to rectify any failures.

At the same time the NHS Trust Development Authority carried out similar monitoring for NHS trusts.

¹ For more information, see <https://www.gov.uk/government/news/review-of-tax-arrangements-for-nhs-organisations-submission-to-h-m-treasury>

Our monitoring process and our findings

From the initial HSCIC data collection, we identified 51 NHS foundation trusts that were not meeting one or more of the Treasury's recommendations regarding off-payroll employment.

The issues identified by HSCIC in May 2013 were as follows:

- 1 foundation trust did not respond
- 4 foundation trusts submitted an uncompleted return without giving an explanation for this
- 42 foundation trusts had at least one board member or senior member of staff with significant financial responsibility employed through an off-payroll arrangement. 65 individuals were involved in total, in the following posts:
 - 3 chief executives
 - 7 non-executive directors
 - 22 other executive board members
 - 33 senior officials with significant financial responsibility
- 7 foundation trusts had sought assurance about the tax arrangements for fewer than 20% of their relevant off-payroll engagements
- 24 foundation trusts had one or more individual relevant engagements where assurance has been requested but not received, involving 92 individuals.

In January 2014, we asked these 51 foundation trusts to participate in a second data collection exercise so we could establish whether they had made progress in or had resolved the issues preventing them from meeting the Treasury recommendations.

We received responses from all 51 trusts. This second data collection revealed that:

- 21 of the foundation trusts had no outstanding issues
- all 51 trusts had met the recommendation to seek assurance regarding the tax arrangements of at least 20% of their relevant off-payroll engagements
- 20 foundation trusts have one or more engagements covered by the recommendations where assurance has been requested but not received, involving a total of 86 individuals
- 23 foundation trusts still have at least one board member or senior member of staff with significant financial responsibility employed through an off-payroll

arrangement. 47 individuals were involved in total, in the following posts:

- 3 chief executives
- 4 non-executive directors
- 15 other executive board members
- 25 senior officials with significant financial responsibility.

We spoke to all 23 of these trusts, seeking to understand the reasons for this and the steps being taken to rectify the situation. A detailed summary of the findings of our data collection and the explanations from trusts [can be viewed here](#).

Of the 23 trusts that still have at least one board member or senior member of staff with significant financial responsibility engaged through an off-payroll arrangement, 9 (39%) are subject to enforcement action by Monitor:

1. Heatherwood and Wexham Park Hospitals NHS Foundation Trust
2. Kettering General Hospital NHS Foundation Trust
3. The Queen Elizabeth Hospital, King's Lynn, NHS Foundation Trust
4. Mid Staffordshire NHS Foundation Trust
5. Milton Keynes Hospital NHS Foundation Trust
6. Peterborough and Stamford Hospitals NHS Foundation Trust
7. The Rotherham NHS Foundation Trust
8. Sherwood Forest Hospitals NHS Foundation Trust
9. Southend University Hospital NHS Foundation Trust

These trusts also account for 30 (or 64%) of all the board members and senior staff with significant financial responsibility engaged on an off-payroll basis within the foundation trust sector. There are a number of reasons that these trusts are more likely to engage very senior members of staff on an off-payroll basis, including the need to attract high performing interim staff to carry out effective improvement strategies as well as the difficulty of attracting permanent employees to work at trusts that are perceived to be failing or may even cease to exist in their current form in the foreseeable future (ie Heatherwood and Wexham Park and Mid Staffordshire).

This leaves 14 trusts that still need to meet the recommendations fully. All 14 have plans to end their off-payroll arrangement(s) within the next six months, by:

- ending a fixed term role
- undertaking a substantive recruitment process
- moving the interim engagement onto payroll
- the return of a permanent employee from sick leave or secondment.

Our conclusion

In general, our monitoring has assured us that NHS foundation trusts know:

- about HM Treasury recommendations in respect of off-payroll arrangements
- that they should comply with the recommendations
- that, if they have not yet fully complied, they should do so as soon as possible.

We require foundation trusts to publish details of their off-payroll engagements annually within their statutory accounts.³ This will enable governors and members of foundation trusts, local people and politicians to continue the process of holding management to account. Monitor will review these disclosures, once the accounts have been published, and if no general improvement is observed will consider what further action might be taken to ensure foundation trusts recognise the importance of implementing the Treasury recommendations.

³ The disclosure requirements can be found in Annex 8 of the ['NHS Foundation Trust Annual Reporting Manual 2013/14'](#) and follow a similar format to the data collection template used by HSCIC in undertaking the first monitoring exercise.

Annex: Summary of HM Treasury recommendations

The recommendations are summarised on page 15 of [the review](#):

‘The review recommends that, in central government departments and their arm’s length bodies, for all new engagements and contract renewals:

- board members and senior officials with significant financial responsibility should be on the organisation’s payroll, unless there are exceptional circumstances – in which case the Accounting Officer should approve the arrangements – and such exceptions should exist for no longer than six months;
- engagements of more than six months in duration, for more than a daily rate of £220, should include contractual provisions that allow the department to seek assurance regarding the income tax and NICS obligations of the engagee – and to terminate the contract if that assurance is not provided;
- these measures should be implemented within three months – and implementation will be monitored after one year, reporting back to the Chief Secretary to the Treasury and the Minister for the Cabinet Office; and
- if it emerges that any departments have not abided by these rules, sanctions will apply – with departmental resource budgets reduced by up to five times the payment in question.

Departments should also seek to apply these principles to existing contracts – subject to ensuring value for money for the taxpayer – and report to Parliament on the outcome as part of the 2012-13 annual report and accounts process.

The Secretaries of State for Health and Education will also consider how to take forward the principles of this approach in the NHS organisations and non-maintained schools that fall under Managing Public Money guidance.’



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