

# NHS Resolution response to: NHSE/I's System Oversight Framework 2021/22 Consultation

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## About NHS Resolution

NHS Resolution is an arm's-length body of the Department of Health and Social Care. We provide expertise to the NHS on resolving concerns and disputes fairly, sharing learning for improvement and preserving resources for patient care.

Our main functions are:

- **Claims Management:** dealing with claims for compensation on behalf of the NHS in England. The bulk of our workload is handling negligence claims on behalf of the members of our indemnity schemes: NHS organisations and independent sector providers of NHS care in England and since April 2019, beneficiaries of state-backed indemnity for general practice;
- **Practitioner Performance Advice:** managing concerns raised about the performance of doctors, dentists and pharmacists;
- **Primary Care Appeals:** dealing with appeals and disputes between primary care contractors and NHS England; and
- **Safety and Learning:** helping providers of NHS care to understand their own claims risk profiles to target safety activity and share learning across the health service nationwide.

## Response to consultation

**Question: Do you agree that the proposed approach to oversight set out in this document meets the purposes and principles set out in section 2: 'Purpose and Principles'? If not, how could the proposed approach be improved?**

1. NHS Resolution is supportive of the purpose and principles of NHS England/Improvement's (NHSE/I) framework, particularly its plan to "*provide an objective basis for decisions about when and how NHS England and NHS Improvement will intervene in cases where there are serious problems or risks to the quality of care*".<sup>1</sup>
2. NHS Resolution is not a regulator and our ability to directly influence care or enforce standards is limited. However, like many other insurers and indemnifiers internationally we have sought to use what we know from the claims we receive to inform and, where possible, incentivise improvement in terms of quality of care across the system.
3. Collaborative working is key to our work in convening those who can directly influence improvement, sharing what we know and securing consensus on how we should use the

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<sup>1</sup> NHSE/I, [Consultation on a new NHS System Oversight Framework 2021/22](#) (page 3)

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pricing levers we hold. One example is our [Maternity Incentive Scheme](#) (MIS) which supports the delivery of safer maternity care through an incentive element to trusts contributions to the Clinical Negligence Scheme for Trusts' (CNST).

4. Furthermore, our [Practitioner Performance Advice](#) provides expertise to the NHS on resolving concerns fairly, share learning for improvement and preserve resources for patient care. Through this avenue, we provide a range of core services to NHS organisations and other bodies such as advice, assessment and intervention, training courses and other expert services. Our [Safety and Learning](#) team is also key to improving outcomes and standards by working closely with NHS care providers to identify and target areas for improvement and ensure that learning is shared and implemented to improve safety standards across patient care.
5. The information that NHS Resolution holds, therefore, could be of value when used alongside other relevant data across the system especially when it comes to assessing quality and performance of healthcare providers, identifying any possible areas of concern and recommending keys areas of change to improve the quality of care to prevent claims.
6. As such, we would be keen to further understand how outside agencies, including NHS Resolution, can align with this framework and contribute to the assessment of segmentation, as noted in point 3 of the frameworks aims: *“describe how NHS England and NHS Improvement will work with the Care Quality Commission (CQC) and other partners at national, regional and local levels to ensure our activities are aligned”*.
7. We would welcome a conversation with NHSE/I about how we can align our work and contribute to this proposed approach to oversight.

**Question: Do you agree that oversight arrangements for place-based systems and individual organisations within the ICS should reflect both the performance and relative development of the ICS? Do you agree that the proposed approach will support NHS England and NHS Improvement regional teams to work together to develop locally appropriate approaches to oversight? If not, how could the proposed approach be improved?**

8. NHS Resolution is largely supportive of this approach to oversight.
9. There are many benefits to assessing quality and performance at a system level, and NHS Resolution is supportive of place-based leadership and oversight at a local level. However, accountability around identification, management, reporting and the resolution of concerns, alongside associated robust governance processes, is vital. Accountability helps to ensure that concerns are managed quickly, learning is shared across the system, and the quality of care is improved.
10. Working together to ensure that ICSs, individual healthcare providers and arm's length bodies (ALBs), including NHS Resolution, have visible, robust and direct lines of communication will be key in assessing the quality of services, improving the sharing of learning and escalating concerns quickly and efficiently to reduce incidents of harm.
11. Consistency in how the system assesses performance and shares learning and good practice is also important. NHS Resolution would be happy to work with NHSE/I, CQC and

other system leaders to identify how we may continue and improve upon existing processes.

**Question: Do you support the proposed approach to segmentation across ICSs, trusts and CCGs? (b) How could the proposed approach be improved to better inform oversight arrangements and effectively target support capacity?**

12. NHS Resolution is supportive of the proposed approach to segmentation across ICSs, trusts and CCGs which the overarching aim of providing support to those areas most in need. This approach could help to ensure that unwarranted variation in performance is limited across England's healthcare providers.
13. For ICSs, trusts and CCGs in segment 1, allowing them lighter oversight arrangements and greater autonomy is welcomed. However, there is a risk that, given that those providers will be viewed as "consistently high performing", there could be delayed recognition of possible deterioration of performance. This risk is heightened because there will be lighter oversight for those trusts and given that those providers will likely want to remain in segment 1. We recommend that NHSE/I consider how to manage this possible risk to ensure that any deterioration in performance in any speciality is identified, notified, escalated and managed quickly and efficiently as appropriate.
14. We welcome the approach to intervention and mandated support for providers placed in segment 3 or 4. NHS Resolution could be a source of additional support to providers in these segments with regards to establishing a fair culture and approaches to managing concerns and complaints, alongside in relation to recovery support arrangements. We would therefore be happy to support NHSE/I with the suggested approach to the management of providers in those segments.
15. For example, NHS Resolution is supporting ongoing work across the health care system aimed at improving the management of complaints, concerns and claims which could, in turn, benefit providers in segments 3 and 4. Initiatives include, but are not limited to:-
  - a. **Just and learning culture:** NHS Resolution is committed to working with system partners to create a just and learning culture in the NHS. We work to achieve this aim through several initiatives which include: the [Maternity Incentive Scheme](#), [Early Notification Scheme](#), *Being fair* and our [claims scorecards](#). *Being fair*, for example, sets out the rationale for organisations adopting a more reflective approach to learning from incidents and supporting staff while recognising whatever the culture, dealing with concerns about a professional's practice can be challenging.
  - b. **Duty of candour:** NHS Resolution has consistently stated that candour and apologies are vital. Our [Saying Sorry guidance](#) highlights to clinicians that saying sorry is always the right thing to do, is not an admission of liability and it acknowledges that something could have gone better. Saying sorry is the first step to learning from what happened and preventing it recurring.
  - c. **Alternative Dispute Resolution (ADR):** NHS Resolution's claims mediation service has been designed to support patients, families and NHS staff in working together towards the resolution of incidents, complaints, legal claims and costs disputes – avoiding the unnecessary expense, time, stress and potential emotional

distress of going to court.<sup>2</sup> Mediation is proven to be an effective forum for claims resolution by providing injured patients and their families with the opportunity to receive face-to-face explanations and apologies. Time can be spent listening and responding to the particular concerns of a patient and their family.<sup>3</sup>

16. Having robust relationships with providers through this framework could also provide NHS Resolution with the avenue to escalate problems with the system and individual providers when identified through our own data. Our intelligence and data could be a useful tool to learn from harm when it has occurred and to prevent it from recurring across the system. As such, we would welcome the opportunity to work with NHSE/I to establish a clear mechanism for escalation if we, via our Claims or Advice departments, identify a concern.
17. We also recommend that the oversight metrics used to assess performance and to support segmentation, as proposed in this consultation, should be aligned with the CQC evidence and Key Lines of Enquiry (KLOEs) which assist CQC with a consistent approach to their inspections.<sup>4</sup> NHS Resolution has been working with CQC to ensure alignment in this area and to promote consistency in our understanding of 'what good looks like'.
18. NHS Resolution would be happy to contribute to the development of these metrics to ensure that they are robust and meaningful across the system.

**Question: Do you have any additional suggestions that could improve the proposed approach to oversight, support and intervention?**

19. We welcome reference to 'compassionate leadership' in this consultation document and would like to highlight the importance of this being modelled throughout the system. Consistent and compassionate leadership is vital in order to address the challenges that remain as a barrier to the adoption of a just and learning culture, as highlighted in our *Being fair* report.<sup>5</sup>
20. NHS Resolution would welcome a discussion with regards to how NHSE/I plan to determine which provider falls into which segmentation category and how these decisions are monitored over time, as there may be opportunities for NHS Resolution to make a meaningful contribution to that analysis. We would also be happy to contribute to the establishment of the place-based model.
21. We recommend that existing incentive arrangements, including our Maternity Incentive Scheme, are factored into this approach so that they continue to have the intended positive impact upon quality of care and are used to complement this suggested framework.
22. As noted above, we would welcome the opportunity to support NHSE/I and the framework identify and promote opportunities to encourage the adoption of a fair culture, especially with regards to consent and managing concerns and complaints, alongside how to embed that culture into the system.

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<sup>2</sup> NHS Resolution, [Alternative dispute resolution](#)

<sup>3</sup> NHS Resolution, [Mediation in healthcare claims – an evaluation](#) (February 2020)

<sup>4</sup> CQC, [The five key questions we ask](#)

<sup>5</sup> NHS Resolution, [Being Fair](#) (2019)