



BY EMAIL

NHS Foundation Trust Chief Executives
NHS Trust Chief Executives
Clinical Commissioning Group Accountable Officers

2 June 2015

As we all know, the NHS is facing substantial financial pressure over the next five years. The NHS has developed the Five Year Forward View which the Government has accepted and the Government has committed to provide the additional £8bn funding identified in the plan. NHS leaders, with our support, are focussed on planning how to deliver the £22bn efficiency savings identified in the plan. A collective effort across the whole NHS will be needed to deliver those savings.

2015-16 is a particularly challenging year. The NHS is facing increased prices for agency staff, pressures on the prices paid for clinical and non-clinical supplies and increased litigation costs, amongst other items. The current planned provider financial deficit is not sustainable and needs to be addressed.

Sound financial discipline is a necessary underpinning to the continued improvements in quality and performance that we all want to see. It is important that the NHS acts together to ensure we achieve the most from our collective bargaining power and work together to reduce these pressures where we can. Many of you have told us that your greatest concern is on the price of agency staff, where rates for individual shifts are rapidly reaching exorbitant levels.

This letter outlines some specific measures which we are taking to focus the collective bargaining power of the NHS, as well as a number of other initiatives designed to reduce cost pressures on litigation, procurement and increase the supply of nursing staff.

We have been working closely with NHS England (NHSE), Monitor and the NHS Trust Development Authority (TDA) on what specific measures to adopt. As a result, we will require providers who are receiving financial support from the Department to comply with these controls, along with all NHS Trusts, Foundation Trusts in breach of their licence and CCGs. The Department will continue to apply similar controls to all of its Arms' Length Bodies. However to have maximum effect, we are asking all other parts of the NHS to apply them. Indeed we expect all parts of the system to support these necessary measures and work with us to make them as effective as possible as we implement them. The Department has asked NHSE, Monitor and the TDA to support their sectors in moving towards financial balance and specifically to take the lead in introducing these controls.

NHSE, Monitor and the TDA will write later today setting out the details of the controls and how they relate to your organisations, but in summary:

- Organisations will be required to procure all agency staff from frameworks. Off-framework arrangements will not be permitted except in exceptional circumstances;



- NHS Trusts and Foundation Trusts in receipt of financial support or in breach of their licence will have a ceiling put on the level of spend they are able to incur on agency staff;
- A shift-based or day/hourly rate-cap will be set for agency staffing. Exceeding this cap will only be possible in exceptional circumstances;
- All professional services consultancy contracts above £50,000 will require sign-off from NHSE, Monitor or the TDA. Similar controls on these three bodies will continue to be exercised by the Department ;
- The Department will be writing separately to set out expectations on the remuneration of Very Senior Managers.

Monitor will also be consulting on changes to the regulatory regime for Foundation Trusts through its Risk Assessment Framework.

Implementation

The control over consultancy applies with immediate effect for all CCGs, Arms' Length Bodies, NHS Trusts and Foundation Trusts in receipt of financial support. The controls over agency staff will be rolled-out as soon as practicable from 1 July and be fully in place by the start of September. They will initially apply to nursing staff and then to other clinical and management staff. NHSE, Monitor and the TDA will be working with you over the next few weeks on how this control will operate.

Details about how the limits on agency spend and the use of non-framework suppliers will operate will be discussed with your regulators over the next few weeks, but we are clear that exceptions will be rare. However while the focus is necessarily on saving money, we are clear that this should not compromise patient safety. Where there is a high risk to patient safety the 'exceptions process' should be followed and we are consulting with Monitor and the TDA on how this will work.

We are also working on other initiatives designed to reduce the cost pressures on the system. There are three particular items where we are looking for your support to develop proposals and take the work forward:

- The Department and NHS Litigation Authority (NHSLA) are working with the Ministry of Justice and others in Government to review a number of issues including the potential to introduce fixed legal costs for clinical negligence and reviewing whether 'After the Event Insurance' costs should continue to be recoverable from the defendant in a clinical negligence claim.
- Health Education England (HEE) and the NHS system leaders are working to bring nurses back into the workplace. HEE have invested in training additional numbers of nurses which will begin to yield an increase in nursing staff numbers from 2017. In the interim, HEE and NHS leaders are investing in a continued major national campaign that will allow former nurses to return to the workforce. HEE's programme fast tracks experienced nurses back into the NHS in 3-6 months.
- We are looking to change how the NHS leverages better shared procurement options to maximise the benefit to the NHS. Our intention is that use of collective procurement channels will be mandatory for all providers in receipt of financial support, to apply from



later this financial year. However, we are looking to consult widely on how this will be developed.

Over the next few weeks NHSE, Monitor and the TDA will be working with you to develop these plans further, but we are looking to you for your collective support in delivering the efficiencies needed to ensure that the £8bn additional funding is used to best effect and we can deliver a sustainable NHS.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D Williams'.

DAVID WILLIAMS
DIRECTOR GENERAL, FINANCE, COMMERCIAL and NHS



ANNEX A

1. Agency Staff Controls

The total spend by providers on agency staffing was over £3.3bn in 2014-15 - an increase of more than 28% since the previous year. Much of the increase has been driven by individual provider assessments of the number of additional nursing staff required to meet safe staffing levels and which is met from the agency market. Agency staff are generally more expensive than employed or 'bank' staff. Agency staff engaged through framework arrangements often offer a good value and flexible resource, but there are an increasing number of agency engagements which are procured off-framework, at vastly increased rates. There is evidence that some agencies hold back agency staff at framework rates to force trusts into a situation where they have to engage off the framework. The controls we are putting in place are designed to improve the collective bargaining power of the NHS by requiring agency staff to be procured from a framework and at less than a maximum allowable rate per shift.

Use of Frameworks: All agency staff will be procured from existing framework agreements. Off-framework arrangement may only be used in exceptional circumstances. All providers have access to one or more local framework arrangements and all providers have access to a national framework operated by Crown Commercial Services. Requiring providers to use only these frameworks will reduce the average cost of agency nursing staff. Where providers wish to procure off-framework this will be in exceptional circumstances and will be overseen by the Trust Development Authority or Monitor. Similar controls already apply to the Department and its Arms' Length Bodies (ALBs) and will be extended to Clinical Commissioning Groups (See FAQ below).

Application of a shift based rate cap: There will be maximum rates set for grades and specialities of staff on a geographical basis. Breaking this cap will only be permitted in exceptional circumstances and will be overseen by one of the Trust Development Authority, Monitor, the Department or NHSE. Requiring providers to engage only at levels below this cap will reduce the average cost of agency staff. Initially this cap will apply to nursing staff, but will be extended to other clinical, medical and management/administrative staff. Capped rates will be reduced from the initially set level over time.

Setting of a ceiling for Agency spending by providers: There are currently no limits on the amount of resource which providers can spend on Agency resources. For providers in receipt of financial support or in breach of their Monitor licence, a maximum level of agency spend will be set. The level will be set locally by the TDA or Monitor based on reductions in current levels of spend, a percentage of overall nursing costs, geographical workforce factors, the relative size and nature of the trust the type of services that a trust delivers and the type of trust (acute, mental health, community, etc). Spend against the ceiling will be overseen by the TDA and Monitor who will consider what action is required if the cap is breached.



2. Management Consultancy

NHS providers spent £420m on consultancy services in 2014-15, with a further £160m spent by NHSE and clinical commissioning groups. Consultancy can be a good source of independent advice and provide additional capacity to support delivery, but this is not always the case.

For CCGs and providers in receipt of financial support or in breach of their Monitor licence all consultancy contracts above £50,000 would require approval in advance from NHSE, Monitor or TDA. An organisation intending to procure or let a consultancy contract will submit a request for approval to TDA or Monitor who will then consider whether in their view it represents good value for money. The decision on approval will be made by a panel of senior staff from Monitor or the TDA.

Approval would most likely be given for contracts which were in support of a national programme such as 'Vanguard' or internal/external audit. Monitor are developing guidance on behalf of the sector on the type of consultancy that is likely to be approved.

Consultancy which is approved will be subject to subsequent reporting on the value-added by that consultancy work and Monitor and TDA will maintain a database of the consulting work engaged by the sector to understand more fully what the sector is paying for.

Similar arrangements already apply to the Department and its ALBs and these controls will continue.

Application to bodies other than providers

The Department and its ALBs (including NHSE) are already subject to similar controls, and these will continue. The controls will also apply to CCGs.

3. Very Senior Managers Pay

Junior staff in the NHS are subject to tight restraint over their pay, but this is not always transparently the case for the pay of very senior managers. VSMs have some of the most important jobs in the country but it is vital that we do not lose sight of the need to ensure that executive pay remains proportionate and justifiable. Latest figures show that half of all directors in provider trusts are paid between £100,000 and £142,500, with more than a fifth over £142,500. The department is asking all provider remuneration committees to review their policies on executive remuneration and consider whether they remain justifiable. We are specifically asking remuneration committees to ensure that Treasury guidance on off-payroll engagements for senior staff are followed rigorously. This guidance requires all board members and all staff with significant financial responsibilities to be on payroll. We are also announcing a series of measures on transparency and disclosure, the use of retire and return provisions and that we will consult on a national VSM pay framework and benchmarked rates for executive roles. We are looking for these to be applied voluntarily but will consider taking additional legal powers if this is necessary.