



# **NHS England & NHS Improvement: Scheme of Delegation**

Approved by NHS England and NHS Improvement Boards on 17 September 2021

## Contents

<b>1 Introduction</b> .....	<b>3</b>
1.1 Delegation of NHS England Functions	3
1.2 Delegation of NHS Improvement Functions	4
1.3 General	5
1.4 Reservation of Functions, Duties and Powers to the Boards	6
1.5 Caution over the use of Delegated Functions	6
1.6 Ability to Delegate Delegated Functions	6
1.7 Failure to Comply with Standing Orders, Rules of Procedure, Scheme of Delegation and Standing Financial Instructions	7
1.8 Committees and Sub-committees	7
<b>2 Scope, exercise of functions and interpretation</b> .....	<b>9</b>

# 1 Introduction

This Scheme of Delegation (the Scheme) sets out the arrangements for the delegation of functions within both NHS England and NHS Improvement (which covers both Monitor and NHS Trust Development Authority (NHS TDA) functions), as approved by the Boards. The delegation of functions of NHS England is set out in Annex A and the delegation of functions of NHS Improvement is set out in Annex B.

The Scheme reflects the current joint working arrangements between NHS England and NHS Improvement initially put in place from 1 April 2019 and further developed since. The organisations made a commitment to transform the way they work to provide a single system view, single messaging and shared leadership to support and enable integrated care across England, whilst ensuring that both organisations continue to respect the separate statutory responsibilities exercisable by NHS England and NHS Improvement.

The organisations work under a single operating model to deliver all aspects of the existing organisations with shared governance, systems and processes, organisation structures and capabilities, culture and behaviours and financial set up.

Under these arrangements, a substantial number of senior post holders have joint contracts of employment with both NHS England and NHS Improvement (Monitor and NHS TDA) in order to discharge functions and perform duties for each organisation. In performing their duties, and specifically in discharging those functions delegated to them under this Scheme, all employees must have due regard to all potential conflicts of interest between the duties they owe to each employer. Where an employee identifies the potential for any such conflict, they should report this immediately in accordance with the Conflicts of Interest policy.

## 1.1 Delegation of NHS England Functions

1.1.1 The NHS Commissioning Board (operating as, and referred to in this document as, NHS England) may<sup>1</sup> arrange for the exercise of any of its functions on its behalf by:

- any Non-Executive Member;
- any Employee (including any Executive Member)); or
- a Committee or Sub-committee.

1.1.2 NHS England may also act in joint committee with a CCG or a Special Health Authority under Section 13Z of the NHS Act 2006 (as amended).

1.1.3 The exercise of these powers is subject to such directions as may be given by the Secretary of State.

1.1.4 NHS England is under a statutory duty to carry out its functions effectively, efficiently and economically<sup>2</sup>.

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<sup>1</sup> paragraph 13 of Schedule A1 of the NHS Act 2006 (as amended),

<sup>2</sup> Section 13D NHS Act 2006.

1.1.5 The delegation and accountability from Parliament and the Secretary of State for Health and Social Care to NHS England and the Chief Executive in his role as Accounting Officer are set out in:

- the NHS Act 2006 (as amended);
- the Health and Social Care Act 2012; the Government's mandate to NHS England and NHS Improvement, part of the NHS Accountability Framework;
- and such other regulations or directions that may be issued from time to time

1.1.6 The NHS England Board remains accountable for all of its functions under the NHS Act 2006, including those it delegates and therefore requires information about the exercise of delegated functions to assure it and enable it to maintain a monitoring role.

## **1.2 Delegation of NHS Improvement Functions**

1.2.1 The functions of Monitor and NHS TDA are exercisable by the members of Monitor and the members of NHS TDA respectively. All members of the board of NHS Improvement are appointed as members of both Monitor and NHS TDA<sup>3</sup> and as such are able to exercise the functions of each body.

1.2.2 Monitor may arrange for the exercise of its functions by a committee, sub-committee or employee of Monitor, and NHS TDA may arrange for the exercise of its functions by a committee, sub-committee or employee of NHS TDA<sup>4</sup>. A committee or sub-committee which is appointed as a committee or sub-committee of both bodies is therefore able to exercise the relevant functions of either body, as may be delegated in accordance with this scheme. An individual employed by both bodies is able to exercise the relevant functions of either body, as may be delegated in accordance with this scheme.

1.2.3 The exercise of these powers by NHS TDA is subject to such directions as may be given by the Secretary of State.

1.2.4 Monitor is under a statutory duty to carry out its functions effectively, efficiently and economically<sup>5</sup>.

1.2.5 The functions of Monitor and NHS TDA are set out primarily in:

- the National Health Service Act 2006
- the Health and Social Care Act 2012

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<sup>3</sup> The National Health Service Trust Development Authority (Amendment) Regulations 2015 (SI 2015 no 1559) amend the regulations governing the membership of NHS TDA (SI 2012 no. 922) so as to enable joint non-executive director positions between Monitor and NHS TDA. Joint executive appointments are also permitted under the governing legislation of the two bodies (SI 2012 no 922 (NHS TDA) and Schedule to 2012 Act Monitor)).

<sup>4</sup> See paragraph 11(2) of Schedule 8 to the 2012 Act and regulation 11 of SI 2012 no 922.

<sup>5</sup> Paragraph 11(1) of Schedule 8 to the 2012 Act.

- and such other regulations or directions that may be issued from time to time.
- 1.2.6 The NHS Improvement Board remains accountable for all functions of Monitor and NHS TDA, including those delegated in accordance with this scheme, and therefore require information about the exercise of delegated functions to assure it and enable it to maintain a monitoring role (see rule 5.11.5 of the Rules of Procedure).

### **1.3 General**

- 1.3.1 The purpose of this document is to set out arrangements made by NHS England, Monitor and NHS TDA for the exercise of their respective functions, in particular the delegation of functions of those bodies to committees and to employees, and the matters which are reserved to the respective Boards.
- 1.3.2 Any function of any of those bodies not specifically delegated under this Scheme may be delegated by the relevant Board by a separate Board resolution.
- 1.3.3 In addition to this Scheme, the NHS England and NHS Improvement Standing Financial Instructions provide for the reservation and delegation of various functions and decisions of the respective bodies relating to financial matters.

#### ***Chief executives***

- 1.3.4 The Chief Executive of NHS England is responsible for the overall performance of the executive functions of NHS England. Under paragraph 15, Schedule A1 of the NHS Act 2006, the Chief Executive is the Accounting Officer for NHS England.
- 1.3.5 As Accounting Officer, the Chief Executive of NHS England has the responsibilities as set out in HM Treasury Guidance Managing Public Money, including ensuring that NHS England acts in accordance with the legislative framework that established it and with the terms of the Framework Agreement agreed between NHS England and the Department of Health and Social Care.
- 1.3.6 The Chief Executive of NHS England, together with the Chief Financial Officer, is responsible for ensuring the discharge of NHS England's obligations under any Financial Directions from the Secretary of State.
- 1.3.7 The Chief Executive of NHS Improvement is both the Chief Executive of Monitor and the Chief Executive of NHS TDA. Overall responsibility for the day-to-day management of NHS Improvement is delegated to the Chief Executive/Chief Operating Officer, who is able to exercise any function not specifically reserved to the Board or delegated to a committee, sub-

committee or other employee (see rule 5.11.9 of the Rules of Procedure). The Board, however, maintains ultimate responsibility for all its functions.

1.3.8 The Board of NHS Improvement may choose to delegate to the Chief Executive of NHS Improvement specific matters which would otherwise be reserved to the Board (as set out in the matters reserved to the Board). In addition, the Chief Executive may act in any way consistent with Monitor and NHS TDA's statutory obligations to enable him to be satisfied that:

- NHS Improvement's functions are properly exercised in accordance with legislation, applicable directions from the Secretary of State for Health and Social Care and the Government's mandate to NHS England and NHS Improvement;
- in his capacity as Accounting Officer, Monitor and NHS TDA funds are properly applied and accounted for in accordance with the instructions, memoranda and guidance issued by the Department of Health and Social Care, HM Treasury and the Cabinet Office.

#### **1.4 Reservation of Functions, Duties and Powers to the Boards**

1.4.1 The Boards have the overall function of establishing and maintaining the strategic direction of NHS England and NHS Improvement.

1.4.2 It is for each Board to decide which matters it does not delegate. Those matters are reserved for decision by each Board. For NHS England these are set out in section 1 of Annex A of this Scheme and for NHS Improvement these are set out in section 1 of Annex B of this Scheme.

1.4.3 Each Board, in full session, may decide on any matter it wishes that is within its legal powers.

1.4.4 Each Board reserves the ability to, at any time, withdraw the delegation of a function and exercise that function or further delegate it.

#### **1.5 Caution over the use of Delegated Functions**

1.5.1 Functions are delegated to Committees, Sub-Committees, Non-Executive Members, Executive Members and employees, provided they do not use such delegated functions, duties and powers in a manner that is likely to be a cause for public concern and that they be exercised responsibly.

#### **1.6 Ability to Delegate Delegated Functions**

1.6.1 The Committees, Sub-committees, Executive and Non-Executive Members and employees to which a function has been delegated may not further delegate that function, unless specifically authorised to do so under this Scheme or as part of the delegation of that function.

1.6.2 Each Chief Executive and the Chair of the Audit and Risk Assurance Committee (or their nominated deputies) may in so far as it is reasonable

and appropriate in an emergency delegate the authority to make urgent decisions to alternative individuals or committees to those identified in this Scheme. Such alternative delegated authority shall continue for the period considered reasonable by the relevant Chief Executive and Chair in the relevant emergency context. The making of such arrangements by a Chief Executive and the Chair will be reported to the next formal meeting of the Board for formal ratification.

1.6.3 This Scheme should be used in conjunction with other processes and procedures established and set out in other documents within the Governance Manual, including the NHS England's Standing Orders, NHS Improvement's Rules of Procedure and the Standing Financial Instructions.

1.6.4 Managing Directors of hosted organisations have the authority to delegate functions delegated to them as recorded in the relevant Operating Framework, which has been approved by the National Director who is Senior Responsible Officer for the relevant hosted organisation.

## **1.7 Failure to comply with NHS England's Standing Orders, NHS Improvement's Rules of Procedure, Scheme of Delegation and Standing Financial Instructions**

1.7.1 Failure to comply with the various documents in the Governance Manual may result in disciplinary action in accordance with the relevant disciplinary policy and procedure at that time.

1.7.2 If for any reason the reservation of powers or delegations detailed in this document are not complied with, including the exercise of powers without proper authority, full details of the non-compliance and any justification for non-compliance shall be reported to the next formal meeting of the Audit and Risk Assurance Committees for determining or ratifying action.

1.7.3 Notwithstanding the above, all members of the Boards and all employees must report any instance of non-compliance to the Chief Financial Officer, Chief Executive or General Counsel for NHS Improvement immediately they become aware of it.

## **1.8 Committees and Sub-committees**

1.8.1 The Boards of NHS England and NHS Improvement may appoint Committees and provide for the appointment of Sub-committees. In addition, as part of the joint working arrangements between NHS England and NHS Improvement, Committees of Monitor and NHS TDA may meet in common with the equivalent Committee of NHS England.

1.8.2 The Boards may arrange for the delegation of the functions of NHS England and NHS Improvement to Committees and Sub-committees, in accordance with the following paragraphs.

## ***NHS England***

- 1.8.3 The NHS England Board may delegate any function for which it is responsible to a Committee or Sub-committee of NHS England, provided it has not delegated that function elsewhere in this Scheme (see also the Standing Orders).
- 1.8.4 The Board may delegate its responsibility for determining the powers and functions of a Committee and its responsibilities under rules SO6 of the Standing Orders in relation to such a Committee, to the Chief Executive of NHS England (see SO6 of the Standing Orders).
- 1.8.5 A Committee may delegate any of the functions of NHS England for which it is responsible to a Sub-committee of that Committee, subject to the provisions of the Committee's terms of reference.
- 1.8.6 Each Committee has delegated responsibility for exercise of those functions falling within their terms of reference (as approved by the Board), other than any matter reserved to the Board (see SO6 of the Standing Orders). The Committees which have been appointed by the Board and the functions delegated to those committees are not set out in this Scheme, although this may be specified in the Standing Orders.

## ***NHS Improvement (Monitor and NHS TDA)***

- 1.8.7 In accordance with rules 6.1.1 and 6.1.2 of the Rules of Procedure, the Board may appoint Committees and each committee should usually be appointed as a Committee of both Monitor and NHS TDA. A Committee or Sub-committee of Monitor may consist of or include persons who are not members or employees of Monitor. A Committee or Sub-committee of NHS TDA may consist of or include persons who are not Executive or Non-Executive members or employees of NHS TDA.
- 1.8.8 Each Committee has delegated responsibility for exercise of those functions falling within their terms of reference (as approved by the Board), other than any matter reserved to the Board (see rule 5.11.7 of the Rules of Procedure). The Committees which have been appointed by the Board and the functions delegated to those Committees are not set out in this Scheme, although this may be specified in another annex to the Rules of Procedure.

## 2 Scope, exercise of functions and interpretation

- 2.1.1 This Scheme applies to all the directorates and employees of NHS England and NHS Improvement, other than the Healthcare Safety Investigation Branch. The exercise of functions by HSIB is subject to the National Health Service Trust Development Authority (Healthcare Safety Investigation Branch) Directions 2016 and arrangements made by NHS TDA under those directions.
- 2.1.2 This Scheme also applies to organisations hosted by NHS England, and the employees working within such hosted organisations, including:
- a. NHS England hosted Commissioning Support Units;
  - b. NHS Interim Management and Support;
  - c. NHS Sustainable Development Unit;
  - d. NHSX;
  - e. Strategic Clinical Networks;
  - f. Clinical Senates; and
  - g. Employees of NHS England working within recognised devolution areas.
- 2.1.3 Where a function is delegated to more than one director, each director may exercise that function in respect of matters or cases falling within the remit of the directorate or team for which they are a director or, in the case of a Regional Director, in respect of the region for which they are responsible.
- 2.1.4 Where a function is delegated to Regional Directors, each Regional Director may exercise that function in respect of the region for which they are responsible.
- 2.1.5 A Regional Director may also exercise a function in respect of another region, whether generally or in relation to particular cases, if agreed by the Regional Director for that other region, the Chief Operating Officer or Chief Executive of NHS England.
- 2.1.6 A delegated function must be exercised in accordance with any statutory requirement which applies to the exercise of that function. This may include duties that apply generally to the exercise of functions by public and NHS bodies, such as the duty to have regard to the NHS Constitution (section 2 of the Health Act 2009) and the Public Sector Equality Duty (section 149 of the Equality Act 2010), or general duties specific to NHS England, Monitor or the NHS TDA (e.g. the general duties of NHS England in sections 13C to 13 13P of the NHS Act 2006 and the general duties of Monitor in sections 62 and 66 of the Health and Social Care Act 2012).

### *Deputising etc*

- 2.1.7 In this scheme, references to the holder of a named post includes references to an employee formally deputising for the post holder; for example, during a period of absence, leave or to cover a vacant post, subject to such

deputising arrangements being formally documented and signed off by the appropriate Director or Chief Executive. Records should be retained locally for audit. Accountability for the discharge of the relevant functions will, however, remain with the designated post holder.

2.1.8 In addition, where a function is delegated to a postholder in accordance with this Scheme, then unless the context otherwise requires and subject to any alternative arrangements agreed by the Boards:

2.1.8.1 an employee in the postholder's team who reports direct to that postholder and is an employee of the body whose function is to be exercised, may exercise that function, if authorised in writing by the postholder (such authority must be retained for audit purposes);

2.1.8.2 the function may be exercised by the postholder's line manager, if:

- a) the line manager is an employee of the body whose function is being exercised, and
- b) the postholder is absent, the post is vacant or the postholder has requested the manager to exercise the function in question in relation to a particular matter.

2.1.9 As explained at paragraph 1.8.9, the subsequent sections of this Scheme do not specify the functions that have been delegated to Committees rather than employees.

2.1.10 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Scheme shall have the same meaning as in the National Health Service Act 2006, the 2012 Act, or in regulations, orders or directions made under those Acts. In addition, the following terms shall have the meanings specified below:

the 2012 Act	means the Health and Social Care Act 2012
the Board	means the board of NHS England or the board of NHS Improvement, as the case may be
the Board of NHS Improvement	means the boards of both Monitor and the NHS TDA
Capital Guidance	means the NHS Improvement Guidance <i>Capital regime, investment and property business case approval guidance for NHS trusts and foundation trusts</i> and any guidance replacing that guidance
Chair	means: (a) in relation to NHS England, the person appointed by the Secretary of State as the chair of NHS England; (b) in relation to NHS Improvement means the person appointed by the Secretary of State as chair of NHS Improvement (appointed as both the chair of Monitor and NHS TDA),

	and references to the chair include references to the deputy/vice chair where authorised to act in the absence of the chair
CMA	the Competition and Markets Authority
Committee	means: (a) in relation to NHS England, a committee of NHS England, and (b) in relation to NHS Improvement, a committee of NHS Improvement (whether a committee of Monitor or NHS TDA or both)
Committee Member	means a person appointed as member of a Committee
Deputy/Vice Chair	means the Non-Executive Member appointed by the Board to act as deputy/vice chair
Executive Member	means a member of the Board who has responsibility for overseeing the organisation's management (as a National Director), and, in the case of NHS Improvement, has been appointed as both an executive member of Monitor and an officer member of NHS TDA
FT	means an NHS foundation trust
HSIB	means the Healthcare Safety Investigation Branch
National Director	means a director of NHS England and NHS Improvement who is a member of the NHS Executive – as of 3 June 2021 this is one of the following directors: <ul style="list-style-type: none"> <li>• Chief Operating Officer</li> <li>• the Regional Directors</li> <li>• Chief Financial Officer</li> <li>• National Medical Director</li> <li>• Chief Nursing Officer</li> <li>• Chief People Officer</li> <li>• Chief Commercial Officer</li> <li>• National Director of Transformation</li> <li>• National Director Digital</li> <li>• National Director of Primary Care, Community Services and Strategy</li> <li>• National Director of Improvement</li> <li>• National Director for Emergency and Elective Care</li> </ul> <p>For the purposes of Annex B to this Scheme (NHSI Functions), the term also includes the Director of Provider Development</p>
National Director Digital	Means the NHS England and NHS Improvement National Director Digital and the Chief Executive of NHSX
NHS Act 2006	means the National Health Service Act 2006
NHS England	means the National Health Service Commissioning Board
NHS Improvement	means Monitor and NHS TDA
NHS TDA	means the National Health Service Trust Development Authority

Non-Executive Member	means a member of the Board who does not have any management responsibilities, and, in the case of NHS Improvement, has been appointed as both a non-executive member of Monitor and a non-officer member of NHS TDA
Operating Framework	sets out the planning, performance and financial requirements for organisations and the basis on which they will be held to account
PPCCR	the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 (SI 2012 no 500)
Regional Director	means a person appointed to as director for a region of NHS Improvement and England (and a member of the NHS Executive), to provide strategic leadership for those bodies across the region, including co-ordination and oversight of local team
Rules of Procedure	means the Rules of Procedure of NHS Improvement
SCCL	means the Supply Chain Coordination Limited
Secretary	means the member of NHS England and NHS Improvement's staff appointed as secretary to the Board
Secretary of State for Health and Social Care	Means the Secretary of State for Health and Social or, where relevant within the context of legislative powers to direct or require anything of NHS England or NHS Improvement, any Secretary of State so empowered.
Scheme of Delegation	means this Scheme
Sub-committee	means a sub-committee of a Committee
TDA Directions	means the National Health Service Trust Development Authority Directions and Revocations and the Revocation of the Imperial College Healthcare National Health Service Trust Directions 2016
Transactions Guidance	means NHS Improvement's <i>Transactions guidance – for trusts undertaking transactions, including mergers and acquisitions</i> , including appendices and addendums, or any guidance replacing that guidance

2.1.11 Within this document, unless the context otherwise requires:

- a. words imparting any gender include any other;
- b. words in the singular include the plural and words in the plural include the singular; and
- c. a reference to an enactment is a reference to that enactment as amended.