



TIAN News

December 2022

Introduction



As Christmas approaches, I am delighted to welcome you to our third edition of TIAN News. This edition spans another wide range of topical articles on new and emerging risk and governance issues, including:

- Latest updated 'Freedom to Speak Up' NHS Policy, and support for Audit Committees to meet their role overseeing this important area.
- Initial results of comparative benchmarking of NHS organisations' Financial Sustainability self-assessment scores.
- Guidance for dealing with Conflicts of Interest, and the new Liberty Protection Safeguards.
- Sharing learning from a recent "Governance Across Partnerships" event.

Louise Cobain, MIAA Executive Director of Assurance

Freedom to Speak Up (FTSU): Through the Audit Committee lens

The public inquiry into Mid Staffordshire NHS Foundation Trust exposed unacceptable levels of patient care and a staff culture that deterred staff from raising concerns. One of the principles that came out of that review focussed upon the fact that raising concerns should be part of a routine business process for any well-led NHS organisation. In light of this a requirement for all NHS bodies to appoint a FTSU "Guardian" was introduced in 2016.

The national guidance on FTSU was updated in June 2022, and NHS organisations should ensure they have an updated policy in place by 31 January 2024. All NHS organisations, and others providing NHS healthcare services in primary and secondary care in England, are required to adopt NHS England's mandated policy as the minimum standard. The aim of this is to normalise speaking up for the benefit of patients and workers and ensure all matters raised are captured and considered appropriately.

NHS Audit Committees are responsible for providing assurance to the Board on the organisation's systems and processes of internal control, and should therefore have oversight and challenge FTSU processes within the organisation. HFMA's NHS Audit Committee Handbook states

"the Financial Reporting Council's Risk management, internal control and related financial business reporting says that "...in considering communication systems, the board should also consider the company's whistleblowing procedures". This is frequently delegated to the audit committee in line with the UK Corporate Governance Code: "The audit committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action."

MIAA have issued a short summary guide to support audit committees in reviewing their organisation's FTSU arrangements. The guide is intended to prompt and inform discussion in this area, and sets out the key questions audit committee members should be considering, such as:

- Are FTSU policies and procedures easily accessible to all staff?
- Is there Executive Director ownership of FTSU?
- Is there sufficient resilience within the supporting FTSU Guardians and Champions?



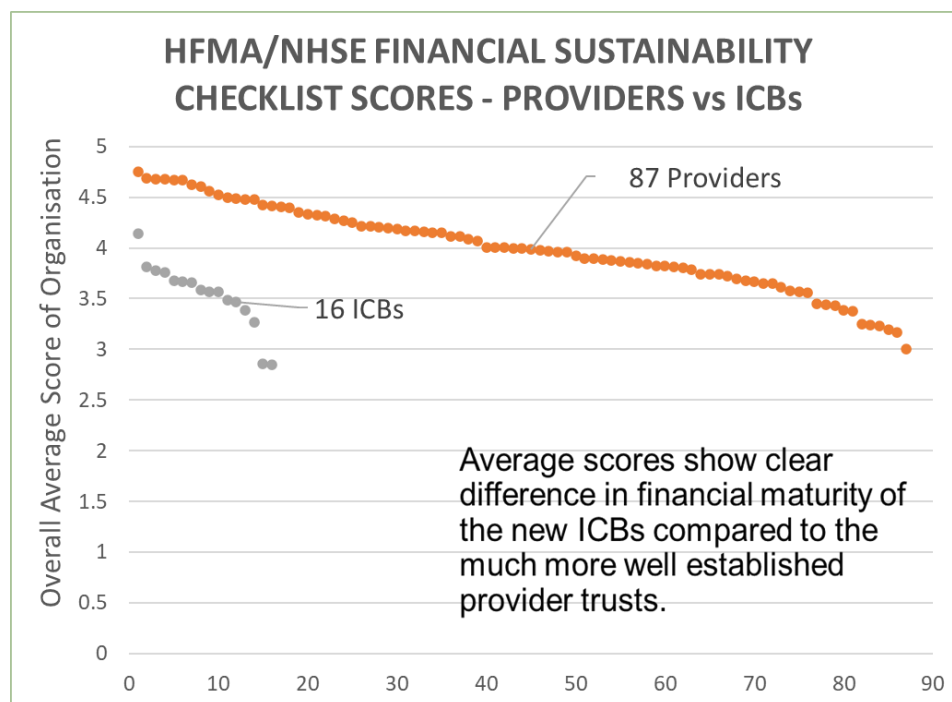
- Are mechanisms in place to enable staff to raise concerns openly and/or on a confidential basis?
- Is the effectiveness of these mechanisms assessed and reported to the Audit Committee or other appropriate committee?
- Are all concerns raised followed up including provision of feedback to the requestor?
- Are lessons learned and relevant actions taken from concerns raised?
- Are regular reports submitted to the Trust Board setting out any issues with regard to implementation of FTSU policy and procedures?

Further information on this, including a copy of the full Insight guide, is available at www.miaa.nhs.uk/category/blog/briefings/. Louise can be contacted on louise.cobain@miaa.nhs.uk / 07795 564916.

NHSE Financial Sustainability Audit

Following NHSE writing in May to require all NHS bodies to undertake a self-assessment against the HFMA's Guide on Financial Sustainability, TIAN auditors have recently been busy reviewing organisation's self-assessments. The initial scoring from over 100 different NHS organisations across the country was analysed and summarised into a briefing issued at the end of October to help inform clients and their Audit Committees.

The results showed a number of interesting differences between organisations of different size and type, with a big difference in scores evident between the newly created ICBs and more well-established Provider Trusts:



Digging into the data by type and size of organisation also identified some interesting differences.



Table 1: Overall Average Scores

Type of Organisation	No of Organisations	Average Overall Score	Variation from Average
All Types of NHS Organisation	103	3.93	-
a) ICBs	16	3.56	(0.37)
b) All Providers	87	4.01	+0.08
c) Mental Health	19	3.85	(0.08)
d) Ambulance	4	4.10	+0.17
e) Other Providers	13	3.99	+0.06
f) Acute	51	4.07	+0.14
g) Acute <10,000 Staff	42	4.10	+0.17
h) Acute >10,000 Staff	9	3.94	+0.01

Scores By Area

The Self-Assessment Checklist has questions grouped into 8 key themes – see Table 2 below for the average scores in each area by Organisation Type. The area scored highest was ‘Finance Governance Framework’ with an average of 4.18 overall. The lowest scored area for Providers was ‘Culture Training & Development’ at 3.67, however for ICBs the lowest scoring area was ‘Cost Improvement & Efficiency Plans’ with an average of only 3.08.

Table 2: Average Scores by Key Theme

Key Theme	Average all 103 Organisations	Average for 16 ICBs	Average for 87 Providers
Business & Financial Planning	3.95	3.61	4.02
Budget Setting	4.15	3.88	4.21
Budget Reporting & Monitoring	3.96	3.47	4.04
Forecasting	3.87	3.77	3.88
Cost Improvement & Efficiency Plans	3.74	3.08	3.86
Board Reporting	4.01	3.61	4.08
Financial Governance Framework	4.18 (highest)	3.93	4.23
Culture Training and Development	3.59 (lowest)	3.15	3.67
OVERALL AVERAGE SCORE	3.93	3.56	4.01

For a copy of the full TIAN Benchmarking Briefing, or further information on this work, please contact your local TIAN team.



New Statutory Responsibilities for NHS organisations under Liberty Protection Safeguards

In April 2009 the Deprivation of Liberty Safeguards (DoLS) came into effect as part of the Mental Capacity Act 2005. DoLS provides a process to follow when adults in a care home or hospital have significant restrictions placed on them, in order to provide them with the care and support that is in their best interests, to ensure their rights are maintained.

[Post-legislative scrutiny of DoLS](#), in conjunction with a Supreme Court judgment in [P v Cheshire West and Chester Council](#) ('Cheshire West' case) (and the subsequent significant increase in DoLS applications), led to the Government requesting the Law Commission to review the process and make recommendations. The [Law Commission reported in 2017](#) and in 2019 the Mental Capacity (Amendment) Bill received Parliamentary approval.

The most significant change that will be brought about when the new legislation is enacted (date still TBC) is that the DoLS will be replaced by what is being called 'Liberty Protection Safeguards' (LPS). LPS will place new statutory responsibilities on NHS organisations as 'Responsible Bodies'. There is therefore a significant amount of work for NHS organisations to do to prepare for implementation. Local Authorities are also Responsible Bodies under the new safeguards.

360 Assurance is undertaking a project to support clients with their preparations for implementation of LPS. This has seen their mental health and mental capacity specialist join a number of groups across their geography, as well as meeting with clients individually to determine the support that would be of most benefit.

Before individual organisations can confirm what they need to have in place and start to enact these plans, decisions need to be made about what, if anything, will be done across the integrated care system geography and whether any collaborative arrangements put in place cover all Responsible Bodies (Local Authorities, ICBs and NHS Trusts) or simply the NHS ICS partners or even a sub-set of these. To support this process 360 Assurance have produced a '[Questions to be determined at the ICS level](#)' document. Also available is a [flowchart of the LPS process](#) and a set of accompanying [questions for organisations to consider](#).

Further information is available from 360 Assurance's dedicated webpage: [Liberty Protection Safeguards – Welcome to 360 Assurance](#) or by contacting elaine.dower@nhs.net.

Conflicts of Interest Checklist

MIAA have issued a recent client checklist on managing Conflicts of Interest in line with the national guidance issued by NHS England. The guidance was specifically produced to support newly formed Integrated Care Boards in establishing their arrangements, though the rules in this area apply equally to all NHS bodies. The checklist covers the key elements, split across the following areas:

- Overall Governance arrangements;
- Declarations and maintaining Registers of Interest, Gifts and Hospitality;
- Maintaining Registers of Interest, Gifts and Hospitality;
- Decision Making Processes and Contract Monitoring; and
- Identifying & Managing Non-Compliance.

Further information on this, including a copy of the full Checklist, is available at www.miaa.nhs.uk/category/blog/briefings/

Developing System Working – Governance Across Partnerships

On 29 September 2022 Audit Yorkshire and 360 Assurance held an event, in conjunction with The Good Governance Institute, focussed on some of the challenges posed by "Governance across Partnerships". The event examined two fundamental aspects of governance: 'Establishing objectives'



and 'Risk management' and considered how they can be best achieved across partner organisations with different aims, performance targets, pressures and financial incentives.

Feedback from the day was very positive, so we will be looking to arrange more such hybrid events in future. If you missed it then recordings of each of the presentations can be found using the links below:

- [Dr Chris Clayton](#) 'Meeting the challenge of deconstructing the traditional NHS objectives of treating ill-health and instead working to prevent ill-health occurring'.
- [Aidan Rave](#) 'Why it is vital that the ICP (and the ICS generally) is a genuinely equal partnership and how the input of Local Authorities can be maximised'.
- [Mason Fitzgerald & Siân Gascoigne](#) 'Development of system risk management'
- [Phil Robson](#) 'Personal reflections on partnership working in a Welsh Context, including the identification and mitigation of risk'
- [Alex Rothwell](#) 'Combatting fraud risks across partnerships'
- [Steve Connor](#) 'Assurance in a changing governance environment'

Further information on events can be found [here](#) or by emailing kirstie.anderson@york.nhs.uk

Merry Christmas and a very happy New Year from all at TIAN!



Find us at: 

Get in touch: To find out more, or if you have feedback on any areas covered in this edition, please contact: **Mike Townsend, Managing Director of Barts Assurance | M: 07523 933348 | E: michael.townsend@nhs.net | www.bartsassurance.net | @bartsassurance**