Foundation Trust Network

Government's response to the Francis Report

On the day briefing by the Foundation Trust Network (FTN)

1. Introduction

The government's initial response, 'Patients First and Foremost' sets out a thematic response to the Francis Report rather than explicitly responding to each of the 290 recommendations.

Key messages

- Summary ratings for hospitals and care homes overseen by an Independent Chief Inspector of Hospitals and Chief Inspector of Social Care;
- Statutory duty of candour for organisations which provide care and are registered with CQC;
- Review to reduce the bureaucratic burden on frontline staff and NHS providers by a third
- Pilot programme which will see nurses working for up to a year as a healthcare assistant as a prerequisite for receiving funding for their degree;
- Revalidation for nurses, code of conduct and training standards for healthcare and adult social care support workers.

The response is accompanied by a statement of common purpose signed by the chairs of organisations across the system and a refresh of the NHS Constitution following the recent consultation.

2. Summary of government's response

The following provides further briefing on each of the five themes in the government's response.

2.1 Preventing problems arising by putting the needs of patients first

- In his address to the Commons, the Secretary of State placed considerable emphasis on the new role of Chief Inspector of Hospitals as the 'national whistleblower' for the NHS who will help drive a new culture of 'zero harm' and compassionate care. CQC will also appoint a Chief Inspector of Social Care and is considering the merits of a Chief Inspector of Primary Care;

- Don Berwick's review of patient safety will report in July on measures to encourage zero tolerance of harm within the NHS. Sir Bruce Keogh's review of mortality outliers will report at a similar time;

- Patient experience measures (i.e. the friends and family test) will be central to inspection ratings;

- The Government supported a series of measures to improve information for the public:
  - The Government responded positively to the Nuffield Trust Review of Summary Ratings for health and care organisations which identified a gap in meaningful information for the public about the quality of care. However the Secretary of State is expected to push for a tighter timeframe for the development of a summary rating for hospitals than the 5-10 year 'route-plan' the Nuffield Trust suggested. CQC will publish the summary ratings alongside information on the performance of individual services such as cancer care or maternity;
  - Publically available information on surgeons' performance will follow the recent example set by heart surgeons in the following ten further services: cardiology, vascular, upper gastro

intestinal, colorectal, orthopaedic, bariatric, urological, head and neck and thyroid and endocrine surgery.

- The Information Centre for Health and Social Care will act as a single repository for all data accessed by the different regulators and will be encouraged to reduce duplication. The NHS Confederation is undertaking a Review of Bureaucracy to reduce unhelpful reporting.

FTN's view:
We welcome the new role of Chief Inspector of Hospitals however there is an obvious need to ensure the role provides appropriate provision for the different areas of service across the ambulance, mental health, community and acute sectors – and indeed that appropriate and fair consideration is given to regulating care across the full range of care settings.

Any new standards will need to take account of resource implications (not territory formally associated wit the development of NICE standards) and be applicable across a range of different types of trust.

The FTN has supported the Nuffield Trust's research into summary ratings for health and care organisations in the interests of improving transparent, meaningful information for the public. However we have reservations about whether the government has taken on board the Nuffield Trust's recommendation that given its complexity, hospital ratings should be developed over a 5-10 year plan building on implementation for GPs and social care initially.

Our members will welcome moves to better co-ordinate data use by the regulators and to remove unhelpful burdens on provider.

2.2 Detecting problems quickly

- Registration will be made stricter to ensure a clearer baseline of acceptable standards for entry to the health and care market;

- CQC will work with NICE, the Royal Colleges and providers to determine a new set of fundamental standards accompanied by guidelines for implementation. Providers will be required to 'comply' with the standards 'or explain' any differences. The process for developing these standards is expected to start after Easter and the FTN will engage on your behalf;

- CQC will continue to develop a new model of regulation taking into account the new Chief Inspector positions, and as previously announced following the consultation on its strategy for 2013-6. This will include:
  - Moving to a more risk based approach to inspection, where higher performers will receive less scrutiny, while those considered high risk will receive greater attention from the CQC;
  - Introducing differentiated inspection tailored for different services;
  - Recruiting more peers, and experts to serve on inspection teams.

- As previously announced, Ann Clwyd MP (Labour) and Tricia Hart (Chief executive, South Tees Hospitals NHS FT) are leading a review into how hospitals in the NHS should handle concerns and complaints including identifying and sharing good practice and standards. The FTN has already engaged with the review team and will be submitting evidence including examples of good practice on your behalf. To get involved, please contact Miriam Deakin.

FTN's view:
We welcome moves towards more differentiated inspection for different services and the efforts the CQC is making to introduce more peers and experts onto its inspection teams. This responds directly to feedback our members have made to the regulator and we appreciate the careful consideration that the CQC has given to our submission during the consultation on their strategy development and in wider conversations.

We agree that complaints and patient feedback form one key source of performance information for all trusts, as well as a central means to ensure patient concerns are addressed and problems rectified. We are actively engaged with the current review of NHS complaints to ensure appropriate local flexibilities underpinned by a robust national complaints system and we look forward to representing your views.

2.3 Taking action promptly

- There will be a single failure regime, co-ordinated across the CQC, Monitor and the TDA.
  - No trust will be rated highly if it is in breach of fundamental standards. Trusts will be given tight timeframes to rectify any breaches identified by the regulator before they are placed into a failure regime, and ultimately into administration;
  - CQC's powers of enforcement and intervention will be delegated to Monitor and the TDA (for NHS trusts) however CQC will have the right to trigger the administration process;
  - The CQC will not be given the Health and Safety Executive's powers however they will work more closely with HSE to enable them to fulfil that role more effectively.

FTN's view:
We welcome the government's recognition of the need to develop a more co-ordinated, proportionate and risk based approach to regulation and failure. We look forward to engaging with CQC, Monitor and the TDA on the detail of these proposals on our members' behalf.

2.4 Ensuring robust accountability

- The government has endorsed Francis's recommendation to introduce a statutory duty on organisations as well as new corporate sanctions for concealing information or manipulating data. The FTN understands that the intention is that criminal sanctions will not apply below board level and we are committed to exploring with the Department how such sanctions can appropriately apply given existing legislation and a need to both support and attract talented applicants to become trust board members;

- The removal of 'gagging clauses' from employment contracts have been well publicised in the national press, and the government's response endorses this approach. The Secretary of State confirmed severance payments will also be reviewed;

- As previously announced, the General Medical Council (GMC) and the Nursing and Midwifery Council (NMC) have been asked to review and strengthen their procedures for holding individual professionals to account;

- A register of 'debarred' NHS Managers will be developed for individuals deemed to fail in these roles. This avoids the additional bureaucracy of assessing and registering all NHS managers for positive attributes;

- The Chief Inspector of Hospitals will ensure hospitals are recruiting, training and supporting healthcare assistants drawing on recommendations from Camilla Cavendish's current review in to the same. The Chief Inspector will also have responsibility for ensuring trusts are debarring

healthcare assistants with unsuitable conduct. A Code of Conduct for health care assistants and social care support workers has been published today with minimum training standards.

FTN's view:
The FTN fully supports the principles of transparency and local accountability and our members take these responsibilities seriously. However we have expressed reservations about whether additional criminal sanctions are necessary in law and whether they will encourage the culture of openness at the heart of the Francis recommendations. We will work with the government to understand the full implications of an organisational duty of candour for our members.

The development of a register of 'debarred' managers and healthcare assistants seems to us a more reasonable proposition that the bureaucracy of assessing all NHS managers and healthcare assistants regularly to maintain a 'positive' register.

However, our members will wish to understand the detail of these proposals, including objective and clear guidance on conduct which could lead to being added to the register and the appeals process for removal from the register. We would also want to understand the implications for recruitment of managers and healthcare assistants and for managing these processes at local levels.

Considerable emphasis seems to be placed on the role of the Chief Inspector of Hospitals and we would wish to engage with the CQC about how this will work in practice.

2.5 Leadership and motivation of NHS staff

- Nurses will be required to spend a year working as healthcare assistants or support workers providing basic care as a prerequisite for their nursing degree training;
- Proportionate and affordable approach for nurses skills to be revalidated to be led by NMC;
- The Leadership Academy will encourage the development of more leaders from outside of the NHS and from among clinicians;
- The DH will ensure all of its civil servants have experience and secondments at the frontline.

FTN's view:
The vast majority of NHS staff are dedicated and caring professionals and we welcome measures which support employees to fulfil pressurised roles in often distressing circumstances. Nurses play a central role in maintaining the quality of patient care, however everyone has a responsibility for quality and compassion, and we are equally concerned that due support and attention be given to the role of medics and other professions.

We welcome the department's renewed focus on leadership within the NHS, particularly a focus on identifying and developing talented clinicians and others within the service.

3 FTN's media response

Chris Hopson, Chief Executive of the FTN, said:

"The FTN cautiously welcomes the Government's response. A welcome because the response feels considered and proportionate and avoids the temptation to slap excessive regulation on the NHS which simply wouldn't have worked. A cautious welcome because the devil will be in the detail. Overall, Jeremy Hunt has successfully balanced the need for action with pragmatism and a proper sense of what will actually work on the ground.

"We welcome the more effective, rather than onerous, CQC inspection regime with expert, peer, clinical input and earned autonomy. We applaud the pragmatic approach to regulating trusts and a single failure regime with CQC, Monitor and the TDA working together, rather than creating a single monolithic super regulator. The decision to avoid the unnecessary statutory registration and regulation of NHS managers is sensible, as are steps to create a bigger recruitment pool for the most senior NHS leaders. We also appreciate the emphasis on cutting unnecessary bureaucracy and moving to a smaller number of clear, essential, 'irreducible minimum', standards.

"We have two main concerns. Firstly, ensuring that the proposed 'high bar' for criminal sanctions is appropriate as the NHS needs the best and the brightest on trust boards. Second, the single aggregate assessment for hospitals and other trusts has to be meaningful, if it is to be useful".

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