

Official

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23 July 2019

Dear Sarah Wilkinson,

Request to NHS Digital under section 255 of the Health and Social Care Act 2012 – Spend Comparison Scheme

I am writing to the Health and Social Care Information Centre (now known as and referred to in this letter as **NHS Digital**) on behalf of Monitor (referred to in this letter as NHS Improvement), and also on behalf of the trusts listed in Annex B to this letter.

Operational Productivity Programme

Understanding what providers spend money on and from which suppliers is essential in tackling provider deficits and, so, to providers operating efficiently, economically and effectively.

Launched by the Department for Health and Social Care (DHSC) in 2017, the Purchase Price Index and Benchmarking (PPIB) Programme tool was and remains the first national data set of all provider purchase order data. The PPIB has been a huge success with more than 113 million purchase order lines uploaded from 245 different organisations across all provider sectors, enabling the comparison of £11.3bn of NHS expenditure. Since its initial release, the PPIB has come to inform providers daily purchasing decisions and contract negotiations. Further, it provides a source of intelligence for regional cost improvement planning and is nationally important for the Getting It Right First Time (GIRFT) Programme and DHSC implementation of the Future Operating Model (FOM).

As the contract with the external service provider comes to an end, NHS Improvement has commissioned NHS Digital to build a next generation PPIB, to be known as the Spend Comparison Scheme, with expanded capabilities, in the NHS.

The information gathered from the Spend Comparison Scheme will be used to enable NHS Improvement to help providers reduce cost and improve quality of provider services. It will:

- inform NHS national aggregation initiatives such as Nationally Contracted Products;
- inform strategic programmes led by GIRFT, NHS Improvement and NHS Supply Chain;
- help providers to maximise use of their resources and improve efficiencies, as required by the provider licence;
- help identify the relationship between patient characteristics and cost; and
- support an approach to benchmarking for regulatory purposes.

NHS Improvement has contacted all the trusts set out in the list in Annex B and has requested their express authority in making this request also on their behalf. Those trusts that have expressly confirmed as at the date of this letter are detailed in Annex B. Further trusts may join at any time as further set out in Annex B by registering and joining the Spend Comparison Scheme. As set out in the scheme terms as available on the scheme portal, NHS Improvement will act as agent for each of those participating trusts and may on its own and on behalf of the participating trusts request that NHS Digital cease the system for the collection and analysis of data, at any time.

Section 255 request

I am writing to make a request under section 255 of the Health and Social Care Act 2012 (“HSCA”), in the name of NHS Improvement and on behalf of each trust listed in Annex B and those additional trusts who join the Spend Comparison Scheme (the participating trusts), that NHS Digital establishes and operates a system for the collection and analysis of provider purchase order and invoice data required to provide the Spend Comparison Scheme as more fully detailed in Annex A.

In respect of NHS Improvement’s request only, this is a mandatory request made by a principal body (Monitor) within the meaning of section 255(4).

As set out in the scheme terms, NHS Improvement will act as agent for each of the participating trusts and may on its own and on behalf of the participating trusts request that NHS Digital cease the system for the collection and analysis of data, at any time.

Prior to making this request, NHS Improvement has liaised and worked with NHS Digital as required by 257(4) of the HSCA and recognises this request must go through an established system of approvals within NHS Digital.

I’ve set out below full details of the relevant functions of NHS Improvement and the trusts and the data collection required pursuant to section 255(4) in the case of Monitor and section 255(2) in the case of participating trusts.

NHS Improvement’s and trusts’ relevant duties and functions

NHS Improvement has a general power under paragraph 15 of Schedule 8 to the HSCA, to do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions. NHS Improvement has a duty under section 62(1) of HSCA in exercising its functions to protect and promote the interests of people who use health care services by promoting the provision of health care services which are economic, efficient and effective; and to maintain or improve the quality of services.

NHS Improvement confirms that in accordance with section 255(4)(b) of the HSCA the information which could be obtained by NHS Digital complying with this request is information which it is necessary or expedient for NHS Improvement to have in relation to the discharge of its duties in connection with the provision of health services in England, as set out above and below.

NHS Improvement confirms on behalf of the participating trusts that in accordance with section 255(2) of the HSCA the information which could be obtained by NHS Digital complying with this request is information which it is necessary or expedient for the trusts to have in relation to the exercise of their functions, or of carrying out of activities, in connection with the provision of health care or of adult social care.

NHS Improvement is responsible for licensing providers of NHS services under Chapter 3, Part 3 of the HSCA.

The NHS provider licence includes a set of standard licence conditions, including conditions applicable to foundation trusts relating to governance arrangements (e.g. there is a requirement for licensees to establish and implement systems and/or processes to ensure compliance with licensee's duty to operate efficiently, economically and effectively).

Although NHS trusts do not have to hold a provider licence, they too must comply with the requirements of these licence conditions under the NHS Trust Development Authority (TDA)'s regime for NHS trusts.

NHS Improvement also has:

- a duty under HSCA section 64 and para 15 of Schedule 8 to promote provision of health care services which are economic, efficient and effective and to assist providers of NHS services to improve their operational productivity and financial sustainability.
- a general power under paragraph 15 of Schedule 8 to the HSCA, to do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of our function; and
- an express power under section 104 of the HSCA to require from foundation trusts any information, documents, records or other items which it considers is necessary or expedient to have for the purposes of any of its regulatory functions.

In connection with the latter power, corresponding duties on NHS foundation trusts are included in conditions 1 and 2 of the NHS provider licence. In particular, Condition 2 requires licensees to publish such information as NHS Improvement (Monitor) may require. And, as stated earlier, NHS trusts too must comply with the requirements of these licence conditions.

Trusts also have an independent duty to exercise their functions effectively, efficiently and economically. For NHS foundation trusts, under section 63 of the National Health Act 2006. For NHS trusts, under section 23 of the National Health Act 2006.

The system to be established and operated under this request will be called the Spend Comparison Scheme ("SCS") and will need to comply with the documented SCS Service Data Requirements

In making this mandatory request, NHS Improvement also requests that:

- pursuant to 260(4)(a) of the HSCA, if NHS Digital considers it has a duty under section 260(1) of the HSCA to publish the information which it obtains by complying with this request, that it publishes the information in such form, manner and timing as NHS Improvement requests from time to time;
- pursuant to section 262(5) of the HSCA, NHS Digital does not exercise the power conferred on it by section 261(1) or (4) of the HSCA to disseminate the information which it obtains by complying with this request, except to the participating trusts in accordance with the Spend Comparison Scheme and to such other persons for such purposes and at such times as may be agreed with NHS Improvement from time to time.

NHS Improvement hereby recognises that in submitting this request under section 255 of the HSCA in its name and on behalf of the participating trusts, NHS Digital is entitled to charge pursuant to section 257(3) a reasonable fee to NHS Improvement and each participating trust in respect of its cost of complying with this request.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Emily Lawson', with a long horizontal stroke extending to the right.

Emily Lawson

National Director of Transformation and Corporate Development