Audit Guidance Note 3 (AGN 03)
Supporting Information:
NHS trusts and foundation trusts (FTs)
February 2017

Background

This section provides some general information about the sector.

What's new?

The main changes to the supporting information include:

- Single Oversight Framework
- Sustainability and Transformation Plans
- Vanguards
- Foundation Trust Groups

NHS trusts and foundation trusts (FTs) are organised either by geographical area, or by their function (such as ambulance trusts, or mental health trusts). They provide health and care to patients who use their services.

Monitor and the NHS Trust Development Authority came together under the common heading of NHS Improvement from 1 April 2016. NHS Improvement is responsible for overseeing FTs and NHS trusts, as well as independent providers that provide NHS-funded care. NHS Improvement is the operational name for an organisation that brings together:

- Monitor
- NHS Trust Development Authority
- **Patient Safety**, including the [National Reporting and Learning System](#)
- **Intensive Support Teams**

The Care Quality Commission (CQC) monitors, inspects and regulates services to make sure they meet fundamental standards of quality and safety. CQC publishes their findings, including performance ratings. CQC also sets out what good and outstanding care looks like and can take action where care falls below standards.

### The legal framework

This section sets out the legislation that governs the audited body’s sector, together with any statutory guidance issued thereunder. It is included to provide auditors with information about the roles and responsibilities of the audited body as set out in law.

Note that as set out in AGN 03 and AGN 07, a conclusion on proper arrangements to secure VFM is to be reported by exception in respect of health bodies, including NHS trusts and FTs.

NHS trusts were first established by the [National Health Service and Community Care Act 1990](#).

The [Health and Social Care (Community Health and Standards) Act 2003](#) established the concept of FTs. FTs are designated as public benefit corporations authorised to provide goods and services for the purposes of the health service in England. They have greater financial and operational freedom from government than other NHS trusts, including the ability to borrow commercially and to operate a budget surplus to reinvest in future periods. It is the government’s aspiration that all NHS trusts will achieve FT status, although some of them may be merged with other trusts instead of becoming FTs.

The [National Health Service Act 2006](#) (as amended by the [Health and Social Care Act 2012](#)) sets out the legal framework for NHS trusts and FTs in England.

### Sector developments

This section sets out some of the current developments within the sector which may be of interest to auditors when completing their risk assessment. It is neither prescriptive nor exhaustive, and should not be used as a checklist. It does not cover developments at individual audited bodies and auditors are likely to need to draw on their own local knowledge.

AGN 03 describes what “proper arrangements” comprise for the purposes of the work under the Code, and the sector developments have been grouped according to sub-criteria set out in the AGN. The AGN states “Auditors are not required to consider all illustrative significant risks set
out… [and] should consider the illustrative significant risks insofar as they are consistent with their understanding of the audited body”.

Similarly, the sector-level developments are only intended to be considered where the auditor deems them relevant. And as the AGN further states, “where other matters come to the auditor’s attention which – in the auditor’s judgement – are relevant to the discharge of their duties in respect of VFM arrangements under the Code, their impact on the risk assessment should be considered, irrespective of whether or not the issue is explicitly referenced within the scope of proper arrangements”.

Therefore the auditor is ultimately responsible for preparing and documenting a risk assessment that mitigates the engagement risk.

Financial position and sustainability
As reported in the Department of Health Annual Report and Accounts 2015-16 and Consolidated Foundation Trust Annual Report and Accounts 2015-16, in 2015-16 the number of FTs reporting a deficit increased again to 101, compared with 78 in the previous year. 23 FTs (14%) received emphasis of matter paragraphs in their audit reports relating to the going concern assumption or financial performance (2014-15: 21 of 153, 14%). The rise in deficit is driven by the increase in operational costs, mainly caused by underlying increases in demand. Staff costs, particularly agency costs, have continued to increase.

For NHS trusts, in 2015-16 a total deficit of £1,351 million was reported (£473 million in 2014-15). Cost drivers in this sector are identical to those described above for the FT sector. The Comptroller and Auditor General (C&AG) issued unqualified opinions on the Department of Health (DH) and Consolidated Foundation Trust (CFT) accounts. The C&AG also issued explanatory reports on accounts, highlighting the pressures faced by the sector. The reports can be accessed here.

The NAO has carried out a further review of financial sustainability of the NHS in England. The report, published in November 2016, finds that the financial performance of NHS bodies worsened considerably in 2015-16 and this trend is not sustainable. In 2015-16, NHS commissioners, NHS trusts and FTs reported a combined deficit of £1.85 billion, a greater than three-fold increase in the deficit position of £574 million reported in 2014-15. Provider trusts’ overall deficit grew by 185% to £2.45 billion, up from £859 million in 2014-15, against total income of £75.97 billion. In addition, two-thirds of NHS trusts (65%) and FTs (66%) reported deficits in 2015-16, up from 44% of NHS trusts and 51% of FTs in the previous financial year.

The report explains that the NHS entered the current financial year from a worse than expected starting point. This year’s plans were based on trusts ending 2015-16 with a combined deficit of £1.8 billion. The fact that trusts ended the year with an even larger deficit means that they will, overall, need to make more savings than planned to reach the intended starting position.

NHS trusts and FTs under financial stress continue to rely on financial support from DH and NHS England. The total amount of financial support funding provided by DH and NHS England in the last financial year was £2.4 billion. This was an increase of 32% from £1.8 billion in 2014-15.
The Autumn Statement, published on 23 November 2016, stated that the Government no longer seeks to deliver a surplus in 2019-20. However, it does not necessarily follow that pressure on public spending will decrease and therefore risks around sustainable resource deployment including medium to long term financial planning are unlikely to reduce.

NHS Improvement publish a quarterly report on the performance of NHS providers against financial and performance targets.

The auditor’s risk assessment: General arrangements

The following section contains contextual information that may be relevant to the body’s general arrangements. The material may be helpful to auditors when undertaking their risk assessment. The examples below are neither prescriptive nor exhaustive. Auditors should refer to the full ‘general arrangements’ and note that the supporting information does not substitute for the consideration of local context.

Informed decision making

NHS Five Year Forward View

NHS England, in partnership with several other national health bodies, published the NHS Five Year Forward View in October 2014. This report, endorsed by the government, sets out various models of care which could be provided in the future and the actions required to achieve these models. It represents the strategic direction that government expects commissioners and providers to take in order to improve VFM in the NHS. The extent to which the audited body has demonstrably aligned its strategic planning to this publication, and whether this indicates a significant engagement risk may be helpful to auditors when undertaking their risk assessment.

Managing performance

The following sources of information on secondary care performance may be useful to auditors in informing their risk assessment:

- The Health & Social Care Information Centre maintains Patient Recorded Outcome Measures (PROMs) on a selection of procedures. PROMS are published at the local health body level on a quarterly basis and are collated online. Where patients increasingly report that outcomes are ‘unchanged’ or ‘worsened’ (rather than ‘improved’) after procedures, it may be an indicator that provider services are not meeting the standards required.
• The Public Health Outcomes Framework (PHOF) provides data to assist in understanding how well public health is being improved and protected. New data were published on 1 November 2016. Statistics for individual providers can be found on the MyNHS website and may supplement providers’ own performance reporting.

Quality Report/Account

Providers must include a quality report/account in their annual report. Quality reports/accounts describe the quality of care the trusts provide to patients, and auditors undertake a limited assurance engagement testing selected indicators against the six dimensions of data quality. The findings of auditors’ work on the quality report/account may help to inform the VFM arrangements risk assessment.

Single Oversight Framework

NHS Improvement has developed a Single Oversight Framework. It replaces Monitor’s Risk Assessment Framework and TDA’s Accountability Framework and applies to both NHS trusts and FTs, effective from 1 October 2016. The framework seeks to align more fully with CQC, as CQC and NHS Improvement move towards a single combined assessment of quality and use of resources.

NHS Improvement will use the Single Oversight Framework to identify where providers need support in any of five areas (which are referred to as themes):

• Quality of care: NHS Improvement will use CQC’s most recent assessments of whether a provider’s care is Safe, Caring, Effective and Responsive, in combination with in-year information where available. It will also include delivery of the four priority standards for 7-day hospital services.

• Finance and use of resources: NHS Improvement will oversee a provider's financial efficiency and progress in meeting its financial control total.

• Operational performance: supporting providers in improving and sustaining performance against the NHS Constitution and other standards. These will include A&E waiting times, referral to treatment times, cancer treatment times, ambulance response times, and access to mental health services.

• Strategic change: working with system partners to consider how well providers are delivering the strategic changes set out in the Five Year Forward View, with a particular focus on their contribution to Sustainability and Transformation Plans, new care models, and, where relevant, implementation of devolution.

• Leadership and improvement capability: building on the joint CQC and NHS Improvement Well Led Framework, NHS Improvement are developing a shared system view with CQC on what good governance and leadership looks like, including organisations’ ability to learn and improve.
Sustainable resource deployment

Sustainability and Transformation Plans (STPs)

In December 2015, the NHS Shared Planning Guidance 2016-17 to 2020-21 outlined a new approach with the aim of further integrating health and care services. To do this, every local health and care system in England is required to produce a multi-year Sustainability and Transformation Plan (STP), showing how local services will evolve and become sustainable over the next five years. Local health and care systems came together in January 2016 to form 44 groupings known as footprints. The health and care organisations within these geographic footprints are developing STPs which are intended to drive sustainable transformation in patient experience and health outcomes over the longer-term. Plans are expected to include investments in prevention, new models of care, plans to moderate the levels of activity growth, use of the RightCare programme to ensure best value, and a programme of operational efficiency improvement for providers, including through their response to the Carter Review.

A map of the footprints is available on the NHS England website and further planning guidance is also provided in the NHS Operational Planning and Contracting Guidance 2017 – 2019.

The footprints are not statutory bodies, but discussion forums which aim to bring together health and care leaders to support the delivery of improved health and care based on the needs of local populations. They do not replace existing local bodies, or change local accountabilities. STPs were required to be completed and submitted to NHS England for review during October 2016. STPs will become operational from 1 April 2017.

There are a number of areas that have the potential to be significant risks in the agreement and delivery of STPs. These include:

- delays in producing and agreeing STPs or in obtaining approval from regulators;
- lack of clear and measureable outcomes;
- lack of capacity within organisations to implement the plans;
- lack of a clear accountability structure for delivery;
- potential conflicts between STP plans and the strategic plans of individual organisations;
- insufficient funding to deliver transformational change; and
- whether the assumptions within the STP are reasonable.

Vanguards

NHS England has also developed a blueprint of various new care models called Vanguards that CCGs are key in developing in their areas. Each vanguard site will take a lead on the development of new care models. NHS England has a webpage setting out the Vanguards.
throughout England. These could evolve into various governance models and auditors would need to consider the impact on their VFM risk assessment for the schemes in place within their area.

One of the local models for changing service delivery to improve services and delivering cost savings was the Cambridge and Peterborough UnitingCare partnership. Cambridgeshire and Peterborough CCG awarded a five-year contract to provide older people and adult community services.

The successful bidder was UnitingCare Partnership LLP, a limited liability partnership, set up to fulfil the requirements of the contract. The partners in the organisation were Cambridge University Hospitals NHS Foundation Trust and Cambridgeshire and Peterborough NHS Foundation Trust.

The contract failed after just eight months with a loss to the NHS of £8.9m in contract set up or bidder costs, in part due to a lack of consideration of VAT implications and inadequate data to support costings. As a result of the failure, NHS England has paused similar contracts while undertaking its own review of what went wrong and is developing an assurance framework for similar procurements in future. The NAO has published a report into the reasons for the collapse of this contract and lessons learned that will be useful to consider in the context of changes to service delivery under the STP and Vanguard programmes.

Financial reset

On 21 July 2016 NHS Improvement and NHS England published a financial ‘reset’ set out in the Strengthening financial performance and accountability in 2016-17 document. The actions complement a wider set of existing measures aimed at supporting the NHS in achieving financial sustainability, including:

- setting financial control totals for every provider and CCG;
- rigorous implementation of tighter agency controls;
- accelerated deployment of RightCare to all health economies during 2016-17;
- national action to implement Lord Carter’s recommendations on operational efficiency;
- the creation of efficiency improvement and intervention capability within NHS Improvement; and
- transformational efficiency programmes being developed through STPs.

The document sets out the agreed legal responsibilities of individual NHS bodies. Specifically, it confirms action to dramatically cut the annual trust deficit, and sharpen the direct accountability of trusts and CCGs to live within the public resources made available by Parliament and the Government in 2016-17. These individual accountabilities will be supplemented by the STPs. The actions and requirements set out within this document and the trust’s responses will be important for auditors to consider as part of their risk assessment process.
It also sets out a series of actions designed to support the NHS to achieve financial sustainability and improve operational performance, and introduces a new special measures regime, which will be used with providers and commissioners that fail to meet the financial discipline expected of the NHS. Where providers enter financial special measures, NHS Improvement will establish the range of regulatory action required. The document includes a list of providers that have been identified as the first cohort to go into financial special measures, however, it is important for auditors to note that this list may not show the latest position.

**Care Quality Commission**

CQC publishes ‘Hospital Intelligent Monitoring’ reports for each NHS trust as part of its regulatory function. These take the form of risk assessments, focusing on whether services are safe, effective, caring, responsive, and well-led.

The latest assessments were published in May 2015. CQC undertakes inspections at provider sites and these findings are a key area for auditors to consider for their risk assessment. Where a CQC inspection report is expected to be published after the audit opinion deadline, auditors should discuss the draft findings with the trust in the first instance to determine if the results are likely to impact on the VFM arrangements conclusion. Auditors should not delay issuing the conclusion unless the inspectorate’s report is likely to affect the auditor’s conclusion.

CQC published its annual State of Care report on 13 October 2016. The report sets out the CQC’s assessment of the quality of health and adult social care across England in 2015-16 based on its inspections of services and the ratings awarded to providers. The CQC found that good care is being delivered and has been improved upon across health and adult social care, but has concerns as to the sustainability of this position. The report notes the increased pressure on providers leading to care contracts becoming uneconomic and undeliverable, the delays in people leaving hospital, and the need for urgent and emergency health services to improve. The CQC also says it has seen some evidence that collaboration with other services and sectors to meet the challenges ahead is starting to happen.

**Working with partners and other third parties**

Accountability for services cannot be transferred to third parties, and bodies’ arrangements to monitor the performance of services and to ensure action is taken where standards fall, need to be appropriate to the method of delivery.

**Better Care Fund**

The Better Care Fund (BCF) came into being during 2015-16. BCF takes the form of a local single pooled budget that aims to fund ways that the NHS and local government throughout England can work more closely together. Through the BCF initiative, CCGs were required to establish joint arrangements with local authorities to operate a pooled budget to deliver more integrated health and social care. NHS England maintain a webpage of resources for BCF.
including a slide presentation of the changes to the fund for 2016-17. NHS trusts and FTs may be involved as provider organisations in local BCF arrangements.

**Mergers**

The legal framework for NHS trusts allows for the merger of two or more local health bodies. Mergers may be proactive to secure better efficiencies or outcomes, or reactive to a developing situation such as provider failure. NHS Improvement maintains guidance on the procedure to agree a merger, that also has regard to the Competition and Markets Authority as the authority responsible for ensuring that competition and markets work well for consumers.

**Foundation trust groups**

A foundation trust group is where a number of trusts work together under a single group structure. The structure goes beyond informal arrangements based solely on goodwill, peer improvement, ‘buddying’ arrangements or joint board appointments, but stops short of full integration from a merger or acquisition.

Foundation trust groups are one of the new models of care that are being explored as part of the acute care collaboration. Thirteen vanguards are currently trialling different models of collaborating in the delivery and governance of acute services across multiple providers to improve clinical and financial sustainability. Guidance is available on the NHS Improvement website. Auditors may wish to consider the impact of participation in a foundation trust group in considering VFM arrangements.

**Sustainability and Transformation Plans (STPs)**

STPs are being produced on a footprint wide basis and involve joint working by commissioners and providers of health and social care including CCGs, NHS trusts and FTs, and local government bodies. In some areas, there may not be a history of working together between STP organisations which could potentially increase the risk to the successful implementation of the STP.
Governance reporting

This section sets out the Annual Governance Statement reporting requirements for the audited body mapped against the description of proper arrangements. Auditors might find this useful when considering the “subject matter” as defined in AGN 03 in order to prepare their risk assessment.

Local bodies’ own governance reporting provides helpful, although not necessarily comprehensive, information about the subject matter for auditors’ work.

Existing requirements to support Annual Governance Statements for 2015-16 are set out below. Note that some governance statement requirements could provide information relevant to more than one sub-criterion, and are included more than once. Auditors should not consider these categorisations as prescriptive or exhaustive, or use the framework as a ‘checklist’.

The extent to which the information contained in the governance statement will inform the auditor’s risk assessment will depend on the auditor’s knowledge of the audited body and the quality of the evidence supporting the body’s governance statement.

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<th>Informed decision making</th>
<th>NHS trusts</th>
<th>FTs</th>
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<tr>
<td>• Describe the Accountable Officer responsibilities including, responsibility for maintaining a sound system of internal control that supports the achievement of the organisation’s policies, aims and objectives, whilst safeguarding quality standards and public funds.</td>
<td>• Describe the key ways in which: leadership is given to the risk management process.</td>
<td>• Describe the key ways in which risk management is embedded in the activity of the organisation.</td>
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<td>• The Accountable Officer’s responsibilities as set out in the Accountable Officer Memorandum demonstrating an understanding of propriety and accountability issues.</td>
<td>• Describe the key elements of the risk management strategy, including the way in which risk (or change in risk) is identified, evaluated, and controlled. Include mention of how risk appetites are determined.</td>
<td>• Brief description of steps which have been put in place to assure the Board that the Quality Report presents a balanced view and that there</td>
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<td>• Information about the board’s committee structure, its attendance records and the coverage of its work.</td>
<td>• Explicitly describe the key elements of the quality governance arrangements, including how the quality of performance information is assessed and how assurance is obtained routinely on compliance with Care Quality Commission registration requirements.</td>
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<td>• The board’s performance including its assessment of its own effectiveness.</td>
<td>• The foundation trust is fully /is not fully compliant with the registration requirements of the Care Quality Commission.</td>
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<td>• Highlights of board committee reports, notably by the audit committees.</td>
<td>• Explicitly include how risks to data security are being managed and controlled as part of this process.</td>
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<td>• An account of corporate governance, including the board’s assessment of its own corporate governance.</td>
<td>• Describe key ways in which risk management is embedded in the activity of the organisation.</td>
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<td>• A summary of quality governance, including arrangements for assurance on the content and publication of the Quality Account, clinical audit,</td>
<td>• Brief description of steps which have been put in place to assure the Board that the Quality Report presents a balanced view and that there</td>
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### Supporting Information: NHS trusts and foundation trusts (FTs)

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<th><strong>Sustainable resource deployment</strong></th>
<th><strong>are appropriate controls in place to ensure the accuracy of data.</strong></th>
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<td><em>never events</em>, serious untoward incidents (SUls) and explanations of follow-up action.</td>
<td><em>Describe the process that has been applied in maintaining and reviewing the effectiveness of the system of internal control, including some comment on the role and conclusions of the board, the audit committee, if relevant, the risk/clinical governance/quality committee/risk managers/risk improvement manager, clinical audit, internal audit and other explicit review/assurance mechanisms.</em></td>
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<td>• Confirmation that arrangements in place for the discharge of statutory functions have been checked for any irregularities, and that they are legally compliant.</td>
<td><em>Describe any serious incidents relating to information governance including data loss or confidentiality breach. As a minimum this should include details of any incidents classed as Level 2 in the Information Governance Incident Reporting Toll and disclose whether these cases have been reported to the Information Commissioner’s Office (ICO) and detail any action taken by the ICO.</em></td>
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<td>• Describe how risk is assessed, including the organisation’s risk profile, and how it has been managed: include a brief description of the organisation’s major risks, including clinical risk, any newly identified in-year risks and future risks and a summary of any data security breaches or lapses including the advice of the Caldicott Guardian and any issues that were reported to the Information Commissioner.</td>
<td>• Description of the principal risks to compliance with the NHS foundation trust condition 4 (FT governance) and actions identified to mitigate these risks, particularly in relation to the effectiveness of governance structures, the responsibilities of directors and sub-committees, reporting lines and accountabilities between the board, its sub-committees and the executive team, the submission of timely and accurate information to assess risks to compliance with the trust’s licence and the degree and rigour of oversight the board has over the trust’s performance.</td>
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<td>• An assessment of the evidence about the effectiveness in practice of the risk management processes in place. Including an outline of the actions taken, or proposed to deal with any significant internal control issues or gaps in control. This should include reference to any improvement notices, risk assessments or reports published about the organisation of internal audit and executive managers. Disclose any revealed deficiencies as risks have materialised.</td>
<td>• Describe the key ways that the trust is able to assure itself of the validity of its Corporate Governance Statement, required under NHS foundation trust condition 4(8)(b).*</td>
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<td>• As an employer with staff entitled to membership of the NHS Pension Scheme, control measures are in place to ensure all employer obligations contained within the Scheme regulations are complied with. This includes ensuring that deductions from salary, employer’s contributions and payments into the Scheme are in accordance with the Scheme rules, and that member Pension</td>
<td><em>Describe the Accountable Officer responsibilities including, responsibility for maintaining a sound system of internal control that supports the achievement of the organisation’s policies, aims and objectives, whilst safeguarding quality standards and public funds.</em></td>
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<td>• Describe how the risk and control mechanism works including the leadership given to the Accountable Officer.</td>
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### Working with partners and other third parties

- Confirmation that arrangements in place for the discharge of statutory functions have been checked for any irregularities, and that they are legally compliant.
- Information about the board’s committee structure, its attendance records and the coverage of its work.

### Scheme records

- Scheme records are accurately updated in accordance with the timescales detailed in the Regulations.

### Board’s performance

- The board’s performance including its assessment of its own effectiveness.

### Control measures

- Control measures are in place to ensure that all the organisation’s obligations under equality, diversity and human rights legislation are complied with.

### Risk assessments

- The FT has undertaken risk assessments and Carbon Reduction Delivery Plans are in place in accordance with emergency preparedness and civil contingency requirements, as based on UKCIP 2009 weather projects, to ensure that this organisation’s obligations under the Climate Change Act and the Adaptation Reporting requirements are complied with.

### Resource management

- Describe the key process that has been applied to ensure that resources are used economically, efficiently and effectively, including some comment on the role of the board, internal audit and any other review or assurance mechanisms.

- Describe the key ways in which: staff are trained or equipped to manage risk in a way appropriate to their authority and duties. Include comment on guidance provided to them and ways in which you seek to learn from good practice.
Sector resources

This section sets out some of the key stakeholders and their publications that auditors might find useful when preparing their risk assessment. Where a framework or guidance suggests “best practice” this will not necessarily map onto proper arrangements for VFM, where adequate practice may suffice. Auditors might wish to add value and make the audited body aware of “best practice” guidance they identify.

**National Audit Office**: The NAO scrutinises public spending for Parliament. It publishes various outputs relevant to the audited body’s sector; in this case on health and social care. Reports that might be of particular interest to auditors of NHS trusts include:

- A short guide to the Department of Health (published September 2015)
- Care Quality Commission (published July 2015)
- Care Act first-phase reforms (published June 2015)
- Departmental Overview 2015-16 Department of Health (published December 2016)
- NHS Ambulance Services (published January 2017)
- Health and social care integration (published February 2017)

The following organisations produce publications on their websites from time to time which auditors may find helpful:

- **Nuffield Trust**: The Nuffield Trust describes itself as “an authoritative and independent source of evidence-based research and policy analysis for improving health care in the UK”. It publishes a range of comments and articles on topical issues facing the NHS.

- **The King’s Fund**: The King's Fund is an independent charity working to improve health and health care in England. In July 2016, the King's Fund report its “Deficits in the NHS 2016” report. This briefing draws on data from quarterly monitoring reports, secondary research and interviews with health care leaders to consider commissioner and provider finances in the round and to provide an overview of the factors that have led to the NHS going into deficit. A report examining the content of sustainability and transformation funds was published in February 2017.

- **House of Commons Library**: Produces succinct and helpful briefings to support Members in their duties, and are also useful to other readers. Notes likely to be of interest to auditors of NHS trusts includes “The structure of the NHS in England”.

- **The Health Foundation**: is an independent charity committed to bringing about better health and health care for people in the UK. It produces informative reports on issues affecting the NHS. In July 2016, the Health Foundation issued a report A Perfect Storm: an impossible climate for NHS providers finances.
CQC: monitors, inspects and regulates services to make sure they meet fundamental standards of quality and safety. CQC publishes their findings, including performance ratings. CQC also sets out what good and outstanding care looks like and can take action where care falls below standards.