Special measures for finance reasons: guidance for trusts

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We support providers to give patients safe, high quality, compassionate care within local health systems that are financially sustainable.
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1. **Introduction**

1. Special measures apply when NHS trusts and foundation trusts (‘trusts’) have serious problems and where there are concerns that the existing leadership cannot make the necessary improvements without support. Trusts may be placed in special measures as a result of serious failures in quality of care and/or serious financial problems. Special measures consist of a set of interventions designed to remedy the problems at a trust within a reasonable timeframe.

2. This guidance describes how special measures work for financial reasons. It should be read alongside the parallel guidance on how special measures work for quality reasons. Although the special measures approach is a single framework for supporting trusts, there remain some important distinctions between what happens in relation to issues of finance and quality, including entry and exit considerations. Whatever the reason for going into special measures, the interventions that result will address the full range of issues at the trust.

3. This guidance supersedes the previously published policy, described as financial special measures, set out in Strengthening financial performance and accountability, Annex H, published July 2016 and in Criteria for exit from financial special measures.

4. It explains:

   - Why trusts are placed in special measures for financial reasons
   - How NHS Improvement places a trust in special measures for financial reasons
   - What happens to trusts in special measures for financial reasons
   - Removing trusts from special measures
2. Why trusts are placed in special measures for financial reasons

Trusts are put into special measures for financial reasons to achieve accelerated financial recovery and improve financial governance.

5. We are committed to helping the trust sector achieve and maintain sustainable finances and the best possible financial outturn. Agreement and delivery of trust control totals are essential to deliver these objectives.

6. Special measures for financial reasons help trusts facing the biggest financial challenges. The special measures approach consists of rapid planning and delivery of accelerated recovery activities, through greater control by NHS Improvement, consistent with the strongest mandated support for trusts under the Single Oversight Framework.

7. Where trusts enter special measures for financial reasons, they will be supported, and held to account, to deliver rapid, accelerated and sustainable financial recovery – including the development and delivery of a financial recovery plan and improved financial control.

8. We anticipate that trusts put into special measures for financial reasons have the potential to deliver significant financial recovery through actions within their own control.

9. We are clear that improvements to finance should not be at the expense of quality. We expect trusts to improve, or at least maintain quality, throughout their financial improvement. Where trusts have known quality issues – for example where they are also in special measures for quality reasons – we coordinate our support for financial and quality improvement.
10. We are also clear that improvements to finance should not be at the expense of other areas monitored under the Single Oversight Framework (such as NHS Constitution operational performance standards). We continue to oversee trusts with financial improvement support under the five themes of the Single Oversight Framework, and act as appropriate.
3. How NHS Improvement places a trust in special measures for financial reasons

A trust may be placed in special measures for financial reasons on the basis of objective criteria and other considerations.

11. NHS Improvement determines which trusts are put into special measures for financial reasons with reference to a set of objective criteria, but we also take into account other appropriate considerations. A trust is eligible to be considered for special measures for financial reasons, if:

**Objective criteria**

1. The trust has not agreed a control total and is planning or forecasting a deficit (or has recently delivered a significant year-end deficit).

Or:

2. The trust has agreed a control total but:
   - has a significant negative variance year to date against the control total plan and
   - is forecasting (or has recently delivered at year-end) a significant deficit.

Or:

3. The trust has an exceptional financial governance failure (e.g. significant fraud or irregularity).
Other considerations

12. Any trust meeting any of the objective criteria above is eligible to be considered for special measures for financial reasons, but may be excluded in light of other relevant considerations, for example where:

- there are exceptional mitigating circumstances
- it is already, or is about to be, subject to a significant package of regulatory action and/or intensive support for financial recovery
- the existing management does not require extra support – for example, if they already have a robust recovery plan approved by the board and NHS Improvement
- there is a recent track record of full-year delivery of plan and/or of agreed recovery actions.

13. We will not place a trust in special measures for financial reasons unless we are satisfied that it is in breach of its licence conditions (or the equivalent conditions applicable to an NHS trust\(^1\)) or we have reasonable grounds to suspect a breach, in relation to financial governance.

14. Special measures involve the use of our enforcement powers. A trust in special measures will be subject to enforcement action to mandate support and require the trust to carry out specific actions which form part of the special measures intervention. For trusts already in (suspected) breach in relation to financial governance and subject to enforcement action (eg enforcement undertakings), this may involve either amending existing enforcement action or extra enforcement action, depending on the circumstances. Any trust in special measures is automatically in segment 4 of the Single Oversight Framework.

\(^1\) NHS trusts must comply with conditions equivalent to many of the licence conditions which apply to foundation trusts – see https://improvement.nhs.uk/news-alerts/provider-bulletin-7-december/
4. What happens to trusts in special measures for financial reasons?

Trusts in special measures for financial reasons have specific mandated support to deliver accelerated financial recovery.

15. When a trust is in special measures, NHS Improvement’s support and intervention:

• is more intensive and accelerated than normal
• is mandated by us, consistent with the Single Oversight Framework
• uses our existing legal powers\(^2\) and related guidance. Enforcement action (eg undertakings) will be determined for each trust (foundation trusts and NHS trusts) in special measures.

16. Although each trust’s package of financial interventions will be bespoke, and the approach may evolve over time, typical mandated support for trusts is as set out below. This list is not exhaustive and we may apply or vary actions at our discretion.

Oversight, governance and support

Standard

• Financial Improvement Notice issued
• NHS Improvement executive director sponsor for each trust
• Regular formal progress and challenge meetings with executive director sponsor, typically every 1-2 months
• A financial improvement director, appointed by NHS Improvement

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\(^2\) For example, for NHS foundation trusts, using the powers of Monitor set out in the Health and Social Care Act 2012 to accept undertakings, impose discretionary requirements and insert additional licence conditions
• Appointment of turnaround/recovery support, including an NHS Improvement team and possibly wider support, eg peer support
• Board vacancies filled on the direction of NHS Improvement
• Trust required to publish on its website home page that it is in special measures for financial reasons, and the reasons for this – with a link to the Financial Improvement Notice (issued by NHS Improvement)
• Any foundation trust in special measures for financial reasons required to notify its Council of Governors, and give the reasons for it and the planned response.

Possible – at NHS Improvement’s discretion

• NHS Improvement-appointed board adviser
• Board changes

Controls

Standard

• NHS Improvement control of applications for Department of Health and Social Care (DHSC) financing
• Higher DHSC interest rate charges for new borrowing

Possible – at NHS Improvement’s discretion

• Department of Health and Social Care financing provided in exchange for assets (eg transfer of ownership of land) rather than as loans
• Peer review of expenditure controls

Accelerated recovery

Standard

• Rapid roll-out of extra controls and other measures to immediately strengthen financial control, including those set out in NHS Improvement guidance including NHS Improvement’s Grip and Control checklist
• Rapid (within a month) development of a financial recovery plan, which must, among other requirements:
– set out actions to deliver rapid financial recovery and deliver the trust’s control total, showing a trend in underlying cost reduction. These should include, but not be limited to efficiencies set out in the Carter Review,\(^3\); workforce review (including agency), organisational form and accelerated proposals on sub-scale service consolidation or closure if applicable
– set out a trajectory to break even in an appropriate timescale as determined by NHS Improvement
– focus on actions and activities within the trust’s control, rather than longer term or structural issues in this initial period
– maintain or improve quality of services for patients, be consistent with the delivery of improved performance, have buy-in from key stakeholders and be quality-assured and agreed by the trust’s board.
• Delivery of financial recovery plan – including monthly financials and key activity milestones.

**Possible – at NHS Improvement’s discretion**

• Diagnostic phase, before the trust develops its financial recovery plan
• Specialist support, eg to reduce agency use, implement cost controls, etc.

\(^3\) *Operational Productivity and Performance in English NHS Acute Hospitals: Unwarranted Variations* Lord Carter of Coles, February 2016
5. Removing trusts from special measures

NHS Improvement will use defined considerations when determining whether to remove a trust from special measures,

17. To be considered for removal from special measures a trust must demonstrate to our satisfaction that it has met the following conditions.⁴

Financial recovery plan

18. The trust has developed a financial recovery plan, quality assured and agreed by its board, and agreed with us – in line with our requirements.

Governance

19. Any significant financial governance failures have been addressed, necessary actions taken to avoid similar failures in future, and such actions agreed with us.

No adverse impact on quality

20. There has been no, and there is no significant likelihood of, deterioration in quality or patient safety indicators as a direct result of actions taken by the trust as part of financial recovery. This includes no concerns raised by the Care Quality Commission as the result of any financial recovery initiatives taken by the trust, and no detrimental impact on quality improvements where a trust is also in, or at risk of going into, special measures for quality reasons.

⁴ Although these conditions will be applied in most cases, in exceptional cases NHS Improvement may decide that one or more conditions do not apply, or should be modified.
Delivery of financial recovery

21. The trust has robust project management office systems, and other required capability, capacity, systems and processes, to deliver the financial recovery plan.

22. The trust knows of no unplanned pressures, on the date its performance is reviewed, that would materially impact the delivery of the full year plan and the exit run rate.

23. The trust has a sustained track record of performance in line with its financial recovery plan and:
   • is meeting the agreed monthly financial forecast (separately considering the recurrent/underlying run rate) with minimal variance
   • is meeting the monthly cost improvement programme (CIP) trajectory with minimal variance and
   • has achieved the recovery plan’s year-to-date activity milestones necessary to deliver financial improvements in future months, with minimal variance.

24. Also, for a trust to be considered for removal from special measures:
   • we must have no significant concerns about the ability of the trust’s governance to deliver the financial recovery plan, including whether the leadership has the necessary capacity, capability and commitment and
   • we must know of no unplanned pressures, on the date the trust’s performance is reviewed, that would materially impact the delivery of the full year plan and the income and expenditure exit run rate.

25. We may also take into account other relevant factors before making a final decision; for example, the trust’s capability and capacity to continue to sustain the financial recovery.

26. If we decide the trust should be removed from special measures for financial reasons, then either:
   • where the trust was only in special measures for financial reasons: the trust is no longer in special measures and moves to segment 3 of the Single Oversight Framework (unless at the same time there is a decision to apply
special measures for quality reasons, in which case it remains in segment 4) or

- where the trust was in special measures for both financial and quality reasons: the trust will remain in special measures for quality reasons, and remain in segment 4 of the Single Oversight Framework.

27. In each case the trust’s existing enforcement action will be revised to reflect that it is no longer in special measures for financial reasons (although it may remain in special measures for quality reasons) and the Financial Improvement Notice will be withdrawn. We may consider a new package of support to ensure the trust maintains recovery in line with its recovery plan, with new enforcement action where appropriate.

28. Where we consider it would not be appropriate to remove the trust from special measures for financial reasons, it will remain in special measures for financial reasons.

29. If it is not appropriate for the trust to be removed from special measures for financial reasons within a reasonable timeframe (as determined by NHS Improvement), we may, for example:

- make changes to the approach and support to address the reasons for the delay and/or
- make changes to board membership and/or
- initiate an organisational form change if the issues are due to organisational capability or capacity (eg require the trust to enter a foundation group) and/or
- initiate a wider local health economy process if the issues are structural.

Fit with the Single Oversight Framework

30. The activities set out above are consistent with the Single Oversight Framework approach. The approach covers the most intensive and accelerated activities mandated for those trusts in segment 4 of the Single Oversight Framework.