

Government & Public Sector

October 2009

Department of Health

Assuring the Quality of Senior NHS Managers

Final Report



This report has been prepared for and only for the Department of Health in accordance with the terms of our project initiation document dated June 2009 and for no other party and/or purpose. We do not accept or assume any liability or duty of care for any other purpose or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing. Proposals, tenders, reports together with working papers and similar documents, whether interim or final and other deliverables submitted by PricewaterhouseCoopers LLP, contain methodologies, models, pricing information and other materials and work product, which are proprietary and confidential to PricewaterhouseCoopers LLP, or which have been provided to PricewaterhouseCoopers LLP by third parties who may have made such information available on foot of confidentiality agreements, either written, implied, or under the law of confidence. PricewaterhouseCoopers LLP clearly identifies all such proposals, tenders, reports and other deliverables as protected under the copyright laws of the United Kingdom and other countries. Such documents, presentations and materials are submitted on the condition that they shall not be disclosed outside the recipient's organisation, or duplicated, used or disclosed in whole or in part by the recipient for any purpose other than that for which they were specifically procured, pursuant to our engagement letter/ project initiation document. In the event that, pursuant to a request which the Department of Health has received under the Freedom of Information Act 2000, it is required to disclose any information contained in this draft report or any deliverable prepared by us, it will notify PwC promptly and consult with PwC prior to disclosing such information. The Department of Health agrees to pay due regard to any representations which PwC may make in connection with such disclosures and the Department of Health shall apply any relevant exemptions which may exist under the Act to such information.

© 2009 PricewaterhouseCoopers LLP. All rights reserved. "PricewaterhouseCoopers" refers to PricewaterhouseCoopers LLP (a limited liability partnership in the United Kingdom) or, as the context requires, the PricewaterhouseCoopers global network or other member firms of the network, each of which is a separate and independent legal entity.

Contents

Acknowledgements	i
Glossary of terms	ii
Executive Summary	i
1 Introduction	1
2 Key findings	6
3 Framework of Options	21
4 Conclusions	31
Annex A: Advisory Group Membership	33
Annex B: Bibliography	34

Acknowledgements

The study team is grateful to all those who have contributed to this study. In particular, we value and appreciate contributions from stakeholders within the healthcare sector and across other sectors and industries who have given up their valuable time in order to participate in the study. We are also grateful to the Department of Health for their guidance and support throughout the study and the members of the Advisory Group who we reported to.

Glossary of terms

AAIB	Air Accidents Investigation Branch
ACCA	Association of Chartered Certified Accountants
ACHE	American College of Healthcare Executives
ACHSE	Australian College of Health Service Executives
ACPO	Association of Chief Police Officers
ATPL	Airline Transport Pilot Licence
BAMM	British Association of Medical Managers
BERR	Department for Business, Enterprise and Regulatory Reform
BTP	British Transport Police
CAA	Civil Aviation Authority
CAA	Comprehensive Area Assessment
CARB	Chartered Accountancy Regulation Board
CATCH	Centre for the Assessment of Technical Competence
CCEA	Council for the Curriculum, Examinations and Assessment
CCHSE	Canadian College of Health Service Executives
CHE	Certified Health Executive
CHRE	Council for Healthcare Regulatory Excellence
CIEC	The Chemical Industry Education Centre
CIMA	Chartered Institute of Management Accountants
CIPFA	Chartered Institute of Public Finance and Accountancy
CPA	Comprehensive Performance Assessment
CPD	Continuing Professional Development
CPL	Commercial Pilots License
CPNI	Centre for the Protection of National Infrastructure
CQC	Care Quality Commission
DCELLS	Department for Education, Lifelong Learning and Skills
DECC	Department of Energy and Climate Change
Defra	Department for Environment, Food and Rural Affairs
DH	Department of Health
DSCF	Department for Children, Schools and Families
EASA	European Aviation Safety Agency
EBS	Enhanced Baseline Standard
ECHA	European Chemicals Agency
ECUK	The Engineering Council UK
EEA	European Economic Area
EINECS	European Inventory of Existing Commercial chemical Substances
FEANI	European Federation of National Engineering Associations
GCSE	General Certificate of Secondary Education
GCC	General Chiropractic Council
GMC	General Medical Council
GOC	General Osteopathic Council
GTC	General Teaching Council
HFMA	Healthcare Financial Management Association
HMI	The Health Management Institute
HMIC	Her Majesty's Inspectors of Constabulary

HMRC	Her Majesty's Revenue and Customs
HPDS	High Potential Development Scheme
HSCPC	The Health and Social Care Professionals Council
HSE	The Health and Safety Executive
ICAEW	Institute of Chartered Accountants in England and Wales
ICAI	Institute of Chartered Accountants in Ireland
ICAS	Institute of Chartered Accountants of Scotland
IDeA	Improvement and development agency arm
IET	Institution of Engineering and Technology
IFA	Institute of Financial Accountants
IHM	Institute of Healthcare Management
IOSH	Institute of Occupational Safety and Health
IRPE	International Register of Professional Engineers
ITT	Initial Teacher Training
LCS	Legal Complaints Service
MCC	Multi Crew Coordination Course
MOC	Maintenance of Certification
NCSL	National College for School Leadership
NEBOSH	The National Examination Board in Occupational Safety and Health
NGDP	National Graduate Development Programme
NHS	National Health Service
NLC	National Leadership Council
NPQH	National Professional Qualification for Headship
NSAPI	National Skills Academy for the Process Industry
OCPA	Office for the Commissioner of Public Appointments
Ofsted	Office for Standards in Education
PLAR	Prior Learning Assessment Recognition
PPL	Private Pilot Licence
PSNI	Police Service of Northern Ireland
PwC	PricewaterhouseCoopers LLP
QCA	Qualifications and Curriculum Authority
QIPP	Quality, Innovation, Productivity & Prevention
QPRT	Qualified Person Responsible for Training
QTS	Qualified Teacher Status
RCN	Royal College of Nursing
REACH	Registration, Evaluation and Authorisation of Chemicals
REL	Registered European Lawyers
RSC	Royal Society of Chemistry
SDT	Solicitors' Disciplinary Tribunal
SIP	School Improvement Partner
SOLACE	Society of Local Authority Chief Executives and Senior Managers
SRA	Solicitors Regulation Authority
SRG	Safety Regulation Group
TNA	Training Needs Analysis
UKSPEC	UK Standard for Professional Engineering Competence

Executive Summary

Introduction

1. Lord Darzi's report, *High Quality Care for all, NHS Next Stage Review* (Department of Health, 2008) notes that while the vast majority of managers within the NHS are performing to a high standard, there remains a small number of managers deemed to have significant performance issues. It asserts that any measures taken with regard to managers must be proportionate, and suggests that consideration be given to areas such as recruitment procedures and the NHS Code of Conduct. In addition, *High Quality Care for All* outlined a series of measures aimed at ensuring quality of care, including improving education and training and enabling NHS staff to lead. In the case of the latter, the National Leadership Council (NLC) has been set up with the aim of creating a step change in the development of leadership across healthcare.
2. It is within this context that PricewaterhouseCoopers (PwC) was commissioned in June 2009 by the Department of Health to undertake a research study around developing the evidence base to inform policy development in relation to quality assurance for NHS senior managers i.e. Chief Executive and Board level staff.
3. Our approach to this study comprised an extensive literature review examining approaches to regulating managers across a number of countries, and across a wide range of sectors, both public and private; consultation with around 30 stakeholders¹; a focus group with patient representatives; and the development of case studies. This evidence was then used to develop a list of potential options for quality assuring senior NHS managers. Each option was considered in terms of stakeholder views and experience, legal, financial and timescale implications and whether it was likely to be strategic².

Key research findings

4. Our literature review considered approaches to the regulation of managers across a number of sectors, including high risk industries such as oil and aviation, and in healthcare across a number of countries. The findings indicate that there are no accreditation or regulatory systems in place for generic managers that could easily be transposed or adapted into an NHS setting. Indeed, most of the regulatory systems identified in other sectors and countries focus on professional staff, such as lawyers, accountants and pilots.
5. In general, stakeholders believed that the vast majority of senior NHS managers are performing to a high standard and operating within a complex and challenging environment. There was also recognition that while senior managers do not tend to have direct contact with patients in the sense that doctors or nurses do, their actions can however have an impact on large numbers of patients. There was, therefore, a desire among the majority of stakeholders for further support for these senior NHS staff to assist them to continue to operate at an effective level and further develop. Ideally they also wanted a form of support which, in parallel with assisting senior managers to excel, would also provide a mechanism whereby if they were not performing at the required level this could be identified and addressed in a systematic

¹ Examples of the organisations with whom interviews were undertaken included: BAMM, CQC, CHRE, GMC, NHS Employers, Monitor and the RCN, Figure 1.2 in the Introduction section of this report lists all those who were consulted with.

² Supportive of The Better Regulation Executive's (which is part of the Department for Business, Innovation and Skills (BIS) and leads the regulatory reform agenda across government) better regulation principles i.e. Proportionate, accountable, consistent, transparent and targeted.

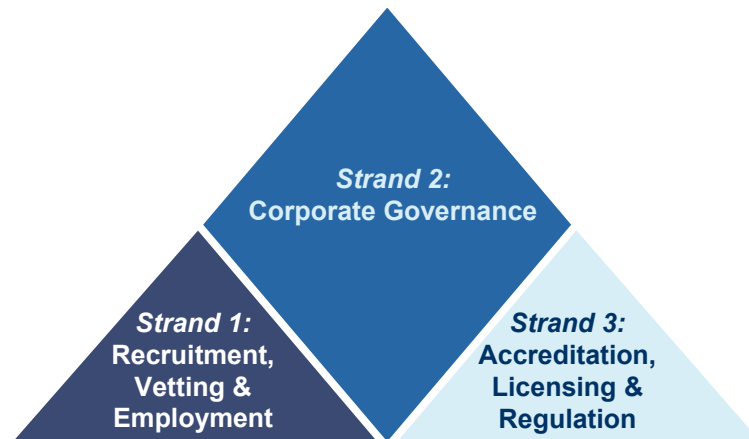
manner. It was considered by most respondents that this would, in reality, involve some form of prospective process, as to retrospectively apply would be extremely onerous.

6. The interviews considered what measures could be put into place in order to ensure quality at senior levels; for example, whether the current NHS Code of Conduct could be adapted and whether recruitment processes had the potential to be strengthened in order to provide safeguards.
7. Interviews with stakeholders explored these areas in addition to their views on the key success factors for fair and effective arrangements in quality assuring senior NHS managers. The recurring themes in these discussions were leadership, Board support and ongoing development opportunities. Many stakeholders highlighted a need to clarify the aims of any system to quality assure senior managers, suggesting that it should take a supportive and developmental approach as opposed to a primarily punitive stance, in order to encourage buy-in and public confidence and accountability.
8. In addition, interviewees stated that it was important that any measures undertaken were driven by the service itself to secure support and successful implementation. Many stakeholders also noted that the NHS has an obligation as a public service to be accountable. However, they highlighted that it was now constituted by a range of different organisational types and that this needed to be recognised in discussions around measures to assure the quality of senior managers, particularly in terms of any implementation actions.
9. The need for participation and securing support was also an area identified in discussions with senior representatives in the education sector regarding the national standards for headteachers. These standards are used to provide clear guidance to all school stakeholders on what should be expected from the role of a head. They also identify threshold levels of performance for candidates wanting to undertake the National Professional Qualification for Headship, a mandatory requirement for anyone aspiring to a headship role. At the time of writing (October 2009), the standards were being revised in order to ensure that they remain relevant and effective and education sector stakeholders noted that key success factors for the implementation of them would include ensuring that they are regularly revised in consultation with the sector and that buy-in is achieved.

A framework of options

10. Feedback from the stakeholder consultation and literature review indicates that there is no 'one answer' to address quality assuring senior managers. Rather, the findings support a framework of options for implementation to assist with high standards in senior management, not just in recruitment of individuals but also to support them in their role and future development.
11. The options identified during the research fall into three main strands (Figure 1). Within the strands, there are a number of sub-options, and in many cases these are complementary but not necessarily so.

Figure 1: Framework of options identified in the research



12. Stakeholder feedback indicates that the first two strands of recruitment, vetting and employment and corporate governance were seen to be crucial in helping to ensure quality in senior NHS managers. In many sectors considered as part of the literature review, recruitment requires candidates to be members of a professional or regulatory body. However, this does not usually apply to generic managers. Patient representatives who took part in a focus group raised concerns about the transparency and robustness of existing recruitment and employment practices and noted that this can have a negative impact on public confidence. Indeed, many stakeholders suggested that some instances of poor performance stem from non compliance with good practice in recruitment and vetting processes and corporate governance.
13. Within Strand 1, options broadly centre around revising the NHS Code of Conduct, in light of the NHS Constitution and the fact that the Code predates the establishment of Foundation Trusts, and providing a directory of good practice guidance for recruitment and vetting processes. With regard to Strand 2, options relate to strengthening the role of the Board and the Remuneration Committee and considering an inspection role with more of a specific focus around the operation of the Board. Support and effective compliance around the appraisal and CPD processes for senior managers also sits within Strand 2, as robust performance management processes were considered to act as important levers for good performance.
14. Generally speaking, there was agreement across stakeholders that it would be useful to highlight good practice and provide support to NHS organisations around the areas addressed by Strands 1 and 2. Although that said, there was strong feedback that a number of NHS organisations were progressing good practice in these areas and that there was a range of helpful information available from public and private sectors in respect of latest thinking and recommendations on for example recruitment checks and corporate governance. Thus for a number of interviewees the focus was not necessarily 're-inventing the wheel' but, for example, in terms of recruitment and vetting procedures providing a directory of key reference documents to refer to for good practice and/or connecting with the range of relevant work occurring across the NHS currently to ensure linkages were identified.
15. Examples of the range of initiatives underway that stakeholders identified had relevance included: the work of the newly established NLC particularly around the Board Development work stream and the Top Leaders programme, Quality Accounts, revision of the Code of Conduct initiative³, NW Leadership Academy, the work of the IHM on *The Accredited Manager*

³ This is an initiative involving OrganisationHealth Psychologists Limited, IHM, RCN, BMA, HSE, DWP and DH around seeking a change to the culture of the NHS that would inspire managers from all professions to seek the highest positions and

– *assuring the delivery of high quality care* and also some of the work related to recommendations from the DH report: *Extending Professional and Occupational Regulation, 2009*.

16. In the case of Strand 3, the views of interviewees could be broadly classified into three groups, as follows:
 - Those who were not supportive at all;
 - Those who were prepared to explore the potential of introducing this strand but only on the basis that addressing Strands 1 and 2 were prerequisites; and
 - Those who were supportive and this largely centred around voluntary accreditation/ self regulation as a starting point.
17. There was not unanimous support for implementing a regulatory regime for senior NHS managers. A number of interviewees felt that this was not a proportionate response to either supporting high calibre senior managers or providing a mechanism for removing them where they were not performing at the appropriate level. However, it could be suggested that as the actions of senior NHS managers have potential consequences upon organisational performance and the experience of patients that querying the proportionality of risk associated with their actions is misleading. In addition regulation was considered to be a costly process to implement and in the current NHS landscape of QIPP (quality, innovation, productivity and prevention) interviewees did not consider that introduction of such regulation was the efficient application of financial resources. Although, it could be argued it does promote the quality and prevention agendas. Where stakeholders were in favour of regulation, more often than not, it was voluntary accreditation/ self regulation that was their preferred approach.
18. A number of interviewees who were supportive of applying Strand 3 identified key success factors in order for this strand to be effective. These centred on having an agreed set of benchmarks, ensuring that the system has credibility among the sector and the general public, and that this would be enhanced if there was an independent regulator/regulatory system for senior NHS managers. Providing ongoing training and development for senior managers was also identified. It was felt that having these factors in place would support this strand as being seen as a way to assist in 'professionalising' the role of senior NHS managers.
19. It was also identified that having a mixture of lay and professional individuals on the governing body and ensuring that a clear set of standards and disciplinary processes were in place would promote public confidence in such a regulatory system. This perception was supported by findings from the focus group with patient representatives, who stated that these factors would encourage and support their confidence in senior managers.

Conclusion

20. The evidence indicates that whatever approach is taken forward in seeking to quality assure senior NHS managers, that there is a need for clarity on the aims of any new system. The balance of opinion was that the primary aim of the work should be to improve quality in senior leadership and management, whilst at the same time developing a framework to address the issue of poorly performing managers.
21. Furthermore, in considering any of the identified options further, a process of communication and systematic engagement across NHS organisations and patient representative groups was felt to be not only desirable, but a prerequisite for securing the support and buy-in for the successful implementation of options.

one suggested outcome was a proposal to formulate a 'new' Code of Conduct' that could be jointly agreed and used to bring about a change in confidence.

1 Introduction

Background and context

- 1.1 Lord Darzi's report, *High Quality Care for all, NHS Next Stage Review* (Department of Health, 2008) highlights a need for NHS managers to be involved in clinical practice so that they can better support and challenge clinicians in providing the highest quality of care to patients. In order to achieve high quality of care for all patients, the report suggests that managers will need to be scrutinised more closely in the future.
- 1.2 A range of measures to be taken in order to improve the quality of care provided by the NHS is outlined in *High Quality Care for All*, which indicates that action must be taken to prevent cases of poor performance of senior NHS managers from happening in the future. The report states that any measures taken with regard to managers must be proportionate, and suggests that consideration should be given to recruitment procedures and the Code of Conduct.

"The Department will work with the profession, the NHS and other stakeholders to ensure that there are fair and effective arrangements to prevent poorly performing leaders from moving on to other NHS organisations inappropriately." Department of Health, 2008

- 1.3 Although a number of organisations have attempted to set up assurance mechanisms for NHS managers, currently, there are no mechanisms to 'regulate' the movement of senior NHS managers between NHS employers other than the current employment check standards which apply to all NHS staff.

Terms of Reference

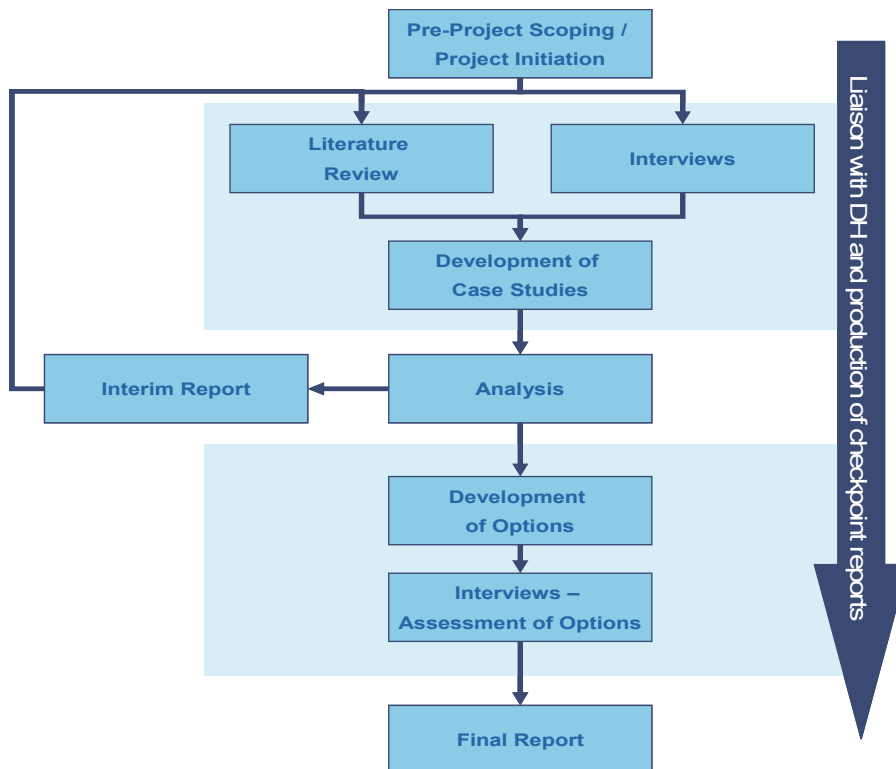
- 1.4 It is within this context that PwC was commissioned in June 2009 by the Department of Health to undertake a research study into what mechanisms could be put into place to quality assure the appointment and employment of senior managers within the NHS. In particular, the aim of the study was to develop an evidence base to inform policy development in relation to quality assurance for senior managers.
 - What existing or planned regulatory and accreditation systems or other models of assurance exist within healthcare (in the UK and worldwide), other sectors and other high-risk industries?
 - Would it be practical, cost effective and/ or beneficial to adapt or transpose these regulatory or accreditation systems into an NHS setting?
 - What Key Success Factors exist (for key stakeholders including the public, the profession and the NHS) for fair and effective arrangements to prevent poorly performing senior NHS managers from moving on to other NHS organisations inappropriately?
 - What standards of (i) competence and (ii) conduct would it be appropriate to apply to senior (Board level) NHS managers? How would these standards draw on the existing NHS Code of Conduct and what mechanisms would this Code provide to identify poorly performing leaders?

- Could more effective recruitment procedures and/ or other systems of assuring suitability for future employment be used to provide more effective and proportionate safeguards?
- How would potential systems compare against the performance of current systems (as a baseline comparator) in terms of costs, benefits and other measures?

Our approach

1.5 Our approach to this study was guided by the Advisory Group (Annex A for membership) we reported to, and comprised a literature review, stakeholder consultation, the development of case studies and the development of a number of potential options. The following figure outlines our approach.

Figure 1.1: Overview of our approach



Literature review

- 1.6 In order to explore what other regulatory systems currently exist or are planned in the UK and elsewhere, we undertook a review of the relevant literature. This included examining existing and planned regulatory approaches across a number of sectors, including high-risk industries, and countries, as outlined in the following table.

Table 1.1: Sectors and countries explored through literature review

Sectors	Countries
Accounting	Australia
Aviation	Canada
Chemicals	France
Education	Netherlands
Engineering	Republic of Ireland
Law	United Kingdom
Local government	USA
Nuclear	
Oil	
Policing	
Prisons	

- 1.7 Where approaches to quality assuring managers and professionals across these sectors and countries were identified, the degree to which they could be transferred or adapted for senior managers within the NHS was assessed.
- 1.8 Approaches to regulation and quality assurance identified in some areas were then used to develop case studies; these are included throughout this report. A full list of the documents reviewed for the study can be found in the supporting technical report.
- 1.9 An interim report was also produced in the course of this study which extensively focused on the findings of the literature review. The report was issued in July 2009 and much of the core detail it collated is reproduced in the supporting technical report.

Stakeholder consultation and the development of case studies

- 1.10 In order to provide further evidence to support the development of a scheme to assure the quality of the appointment and employment of senior NHS managers, we carried out in-depth interviews with stakeholders from a range of organisations, both within healthcare and across other sectors. Overall, in the region of 30 interviews were conducted. In addition, a focus group with patients (organised by National Voices⁴) was undertaken in order to gauge their views on approaches to quality assuring NHS managers. The following figure summarises the stakeholder organisations consulted as part of this study.

⁴ National Voices is an umbrella organisation established by and for the voluntary sector. It works to make sure that the voices of patients, carers and service users are heard and that their diverse needs and preferences are genuinely placed at the heart of policy development.

Figure 1.2: Stakeholders consulted

<p>UK health sector representatives:</p> <ul style="list-style-type: none">• British Association of Medical Managers• British Medical Association• Care Quality Commission• Council for Healthcare Regulatory Excellence• Department of Health (Workforce and Professional Standards)• Foundation Trust Network• General Medical Council• Health Professions Council• Institute of Healthcare Managers• Local Government Employers• Managers in Partnership• NHS Employers• NHS Confederation• NHS Institute for Innovation and Improvement• NHS Trust Chief Executives• NHS Trust Manager Representative• Monitor• Primary Care Trust (PCT) Manager• Royal College of Nursing• Scottish Government Professional Advisor• Strategic Health Authority (SHA) Manager <p>Representatives from other sectors:</p> <ul style="list-style-type: none">• Chartered Management Institute• Civil Aviation Authority• General Teaching Council• Heads, Teachers and Industry (education)• Manager from a major oil company• Private sector experts on recruitment and vetting processes <p>Patient Group:</p> <ul style="list-style-type: none">• Focus group with ten panel members from National Voices

- 1.11 The interviews explored views and experiences of approaches to quality assurance and their financial implications, perceptions of key success factors in regulation, and views on Board Governance. Where examples of good practice were identified, these were used to develop case studies in conjunction with the literature review.

Development of options

- 1.12 Following the literature review and initial stakeholder consultation, the study team developed a list of potential options for the quality assurance of senior managers within the NHS. A series of criteria were used to assess the appropriateness of the options, as follows:
- *Strategic:* Is the option supportive of Better Regulation Principles? (proportionate, accountable, consistent, transparent, targeted);
 - *Legal:* Does the option have legal implications, for example, relating to Human Rights and/or Employment Law⁵?

⁵ As part of this study, alongside information collation and development of options there has been liaison with representatives from the legal team at DH over the potential implications of some of the emerging findings. The DH has provided a level of initial legal advice and this has been incorporated as far as is feasible. However any further considerations of the evidence base presented in this report would require more thorough legal scrutiny and could perhaps be contemplated alongside recommendations from DH report: *Extending Professional and Occupational Regulation*, 2009, which identifies further work being required around the legal implications of for example licensing regimes for health and social care workers. This report also identifies that the Government has proposed a strategic review of the regulatory system in 2011 and it recommends that as part of this whether consideration should be given to the introduction of a new legislative framework for professional regulation.

- *Financial*: What are the costs of the option and how will it be funded?; and
 - *Timescale*: Can the option be implemented in the short, medium or long-term?
- 1.13 Once the list of options was developed, further feedback was collated primarily via the Advisory Group members, including legal advice from the Department of Health, to further explore the implications of each option.

Scope and structure of the report

- 1.14 The remainder of this report presents:
- Key findings from the stakeholder consultation and literature review;
 - Options identified during the course of the research;
 - Conclusions; and
 - Annexes comprising membership of the Advisory Group and a short bibliography.
- 1.15 In addition, there is a separate, technical report for this study, which contains additional information from the literature review and stakeholder consultation, and a full bibliography.

2 Key findings

Introduction

- 2.1 This section of the report presents a high level overview of approaches to regulation across other countries and sectors, followed by feedback from the interviews with stakeholders and the literature review as well as key findings from a focus group with patient representatives. This section is structured as follows:
- Overview of approaches to regulation in other sectors and countries;
 - Feedback from stakeholder interviews and literature review; and
 - Feedback from focus group with patient representatives.

Overview of approaches to regulation in other sectors and countries

- 2.2 Our review of the literature indicates that generic managers are rarely regulated in their own right. Rather, the emphasis and focus centres on professional staff, for example accountants, lawyers, engineers and health care professionals such as doctors and nurses. In some sectors, managers tend to come from the predominant professional background in the sector, and thus would be subject to the regulation through their professional status. A range of approaches to regulation are in place, ranging from top-down military command-and-control to more decentralised models, for example, self-regulation.
- 2.3 While a range of formal regulatory controls are in place in healthcare internationally to ensure quality in the performance of health practitioners, this is not the case for healthcare managers. There are, however, a number of professional organisations for managers within the UK and in other countries, for example, the Institute of Healthcare Managers in England. Such organisations often publish standards of practice for managers, have development frameworks in place and promote Codes of Conduct and ethics.
- 2.4 Whilst no other country formally regulates healthcare managers to the extent that other professionals in healthcare are regulated, there are examples of organisations representing healthcare managers in Canada and Australia and setting out educational standards, as outlined in the following figure.

Accreditation and Regulation of Managers Internationally

In Canada, the Canadian College of Health Service Executives (CCHSE) administers a comprehensive Certified Healthcare Executive programme, administered by a Professional Standards Board. This requires managers to demonstrate prior knowledge, experience and CPD in order to be admitted, along with setting out a process for reaccreditation on a five yearly basis.

In Australia, the Australian College of Health Service Executives (ACHSE) has set out a Code of Ethics for members, along with details of CPD requirements. The organisation also accredits formal healthcare management courses in academic institutions throughout Australia.

- 2.5 Across the countries reviewed (Ireland, America, Australia, Canada, the Netherlands and France) and where detail has been available, it appears that the roles healthcare managers are increasingly being called upon to perform are crucial, especially in terms of acting as change agents in the process of reform. As a result, the European Observatory on Healthcare

Systems and Policies has identified that this promotes the need for professional managers in healthcare⁶. They also suggest that there is a need for longer term planning of both recruitment and career development to produce managers with the appropriate skills (leadership and technical) in order to meet emerging needs.

2.6 Our literature review and subsequent research with stakeholders has indicated that there are three recurring areas for consideration when examining options for quality assuring senior managers. These are as follows:

- Recruitment, vetting and employment;
- Corporate governance; and
- Accreditation, licensing and regulation.

2.7 The remainder of this section of the report considers each of these areas in greater detail, outlining key stakeholder feedback in relation to each of the areas, as well as further references to findings from the literature review undertaken where felt to be relevant.

The Australian Institute of Health and Welfare

The Australian Institute of Health and Welfare (<http://www.aihw.gov.au/safequalityhealth/index.cfm>) established the Health Care Safety and Quality Unit which was set up to support the development of an evidence base for safety and quality in healthcare. The main role of the unit is to develop and maintain a national system of information that enhances the safety and quality of healthcare.

The unit works in collaboration with The Australian Commission on Safety and Quality in Health Care which was set up in 2006 to develop a national strategic framework and associated work program that will guide its efforts to improve safety and quality across the health care system in Australia. Quality standards are also developed and implemented by a number of 'certification providers':

- Quality Improvement Council
- Australian Council on Health Standards
- International Organization for Standardization

The standards cover a broad range of important issues:

- Leadership and management
- Human resources
- Information management
- Consumer engagement
- Financial management
- Continuous improvement
- Safe practice and environment
- Planning and review

Accreditation is becoming more accepted as a requirement for receipt of government funding because it provides a tangible indicator of an organisation's attainment of specified levels of quality. A typical accreditation process includes:

- Internal assessment - A written internal assessment report against the quality standards would be submitted to the accreditation provider
- External review – investigation by external team would look at the internal report, a visit and interviews with the key stakeholders
- Written report
- Accreditation
- Periodic reviews

Programme of assurance:

There is currently no programme of obtaining assurance over quality data although there has been a focus in recent years to drive the quality agenda in Australia and different states have methods of reporting their quality information. Accreditation reviews take place on the basis of risk and include a self-assessment process and systematic external peer review survey; however no validation of information is performed.

⁶ The European Observatory on Healthcare Systems Series (2006) *Human resources for health in Europe*.

Feedback from stakeholder interviews and literature review

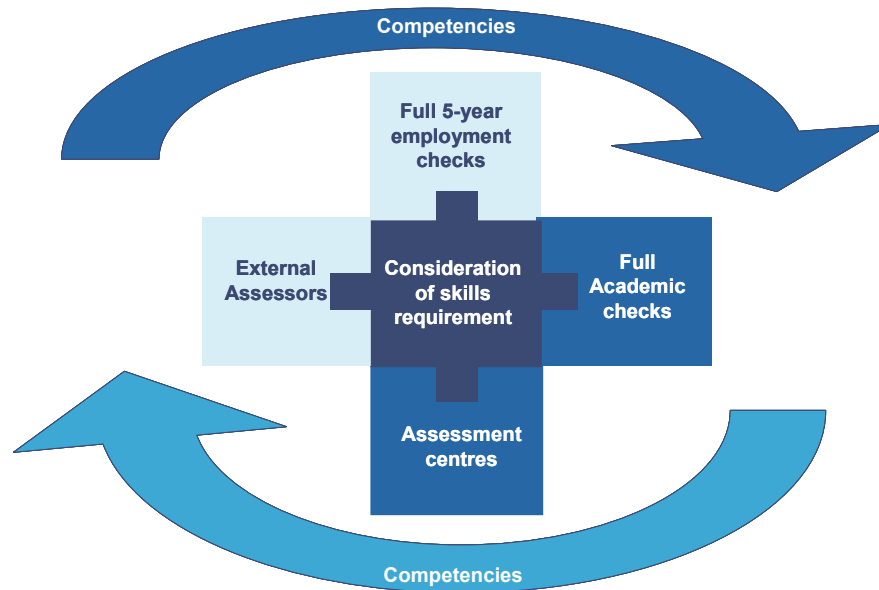
Recruitment, vetting and employment

- 2.8 In many of the sectors considered as part of the literature review, recruitment tends to require individuals to hold membership of a professional or regulatory body. However, this does not usually apply to generic managers, except where they come from a particular professional background within the sector.
- 2.9 Many stakeholders suggested that good practice recruitment and vetting processes for senior positions within the NHS are not always consistently applied. As such, they believed that strengthening processes around recruitment and vetting could help prevent cases of poor quality management by helping to ensure that only high calibre individuals with proven management abilities are appointed to senior positions. This would involve not only reviewing processes and their compliance but also the governance of the appointments process at a local organisational level.

“There should be a rigorous process with a set of standards you have to achieve if you want to go for a Chief Executive post.” (NHS Stakeholder)

- 2.10 In particular, many respondents stated that there was scope for improvement around the vetting process for senior manager positions, with examples of references being sought only after the individual takes up their posts cited by some respondents. Currently, NHS Employers guidance state that that a three-year employment history check should be undertaken, and that this should go further than simply requesting references. However, NHS Employers ideally recommend that a five-year employment check is undertaken for executive directors.
- 2.11 When undertaking recruitment, some respondents asserted the importance of considering the skills and competency requirements of the role being recruited for alongside the organisation’s overall strategy. They also suggested that an analysis of skills gaps among their existing senior management team should be undertaken, to ensure that the appointment meets any need identified within the organisation.
- 2.12 Assessing the candidate’s skills rigorously and through a range of methods was thought to be important by many respondents. For example, the use of external assessors and assessment centres to include competency-based interviewing and psychometric tests were suggested. Figure 2.1 illustrates examples of good practice in recruitment and vetting noted by stakeholders.

Figure 2.1: Aspects of good practice in recruitment and vetting



Source: Stakeholder interviews, Summer 2009

- 2.13 There are a number of good practice guides with regard to these areas already published, for example, Centre for the Protection of National Infrastructure (2008) *A Good Practice Guide on Pre-Employment Screening*. Stakeholders felt that a directory or a guide of such publications would be useful.
- 2.14 The literature review highlighted a number of competency frameworks and codes of conduct across the different sectors and professions reviewed. Many stakeholders suggested that competencies should be central to any approach to quality assuring senior NHS managers.
- 2.15 In most cases, codes of conduct cover all employees in the particular sector, and not specifically managers. The Harvard Business Review (October 2008) advocates the use of codes of conduct as a means of making managers a 'true profession'.

“True professions have codes of conduct, and the meaning and consequences of those codes are taught as part of the formal education of their members. A governing body, composed of respected members of the profession, oversees members’ compliance... The profession promises, we will ensure that our members are worthy of your trust; that they will not only be competent to perform the tasks they have been entrusted with, but they will conduct themselves with high standards and integrity.” (Harvard Business Review 86, no. 10, October 2008)

- 2.16 It was suggested that the NHS Code of Conduct could be reviewed in light of predating Foundation Trust establishment and the introduction of the NHS Constitution, and be used more consistently to set out standards and benchmarks for senior managers. In order to enable the latter to happen, there was felt to be a need to incorporate a revised Code of Conduct in all NHS organisations employment contracts. This is recommended to happen currently but there was felt to be patchy adherence to it.

"The NHS Code of Conduct was fine when it was first published, but now it is too interpretative, too woolly, I don't know what some of it means. Employers interpret it in varied ways, if they interpret it at all. How many managers have been dismissed because they explicitly broke the Code of Conduct? I would say hardly any." (NHS Stakeholder)

2.17 Some respondents felt that currently, the focus of recruitment and performance appraisal for senior managers overly emphasises financial management abilities, and suggested additional competencies or measures that should be considered:

- Leadership skills; for example, by considering peer and staff feedback and staff turnover figures;
- Communication skills; and
- Focus on quality.

2.18 The education sector in the UK provides an example of the use of an agreed set of standards and competencies for the recruitment and development of those in senior positions, as illustrated in the following figure.

Case Study: Use of a competency framework to drive standards in education

The *National Standards for Headteachers* are used to provide clear guidance to all school stakeholders on what should be expected from the role of a head. The Standards provide a framework for professional development and action and are designed to assist in the recruitment of headteachers and in performance management processes. They also identify threshold levels of performance for candidates wanting to undertake the National Professional Qualification for Headship (NPQH), a mandatory requirement for anyone aspiring to a headship role. The six key areas of the standards are:

- Shaping the Future;
- Leading Learning and Teaching;
- Developing Self and Working with Others;
- Managing the Organisation;
- Securing Accountability; and
- Strengthening Community.

Within each of these key areas, the knowledge requirements, professional qualities and actions needed to achieve the core purpose of a head are identified.

At the time of writing (October 2009), the Standards were being revised in order to ensure that they remain relevant and effective. One stakeholder from the education sector noted that key success factors for the implementation of standards include ensuring that they are regularly revised in consultation with the sector and that buy-in is achieved.

"For the National Standards for Headteachers we had to get the buy-in from the profession; there is an enormous buy-in that has to be got." (Stakeholder)

2.19 Alert letters were identified in the research as a possible means of vetting for managers. Currently, an alert notice is a means by which an NHS employer can make other bodies aware that a healthcare professional may pose a threat to patients or staff. An alert notice is issued by the Strategic Health Authority at the request of an employer (or ex-employer) who has reason to believe that a registered healthcare professional, about whom they have concerns, may be seeking permanent or temporary work elsewhere in the NHS in their professional capacity.

2.20 The literature review highlights concerns regarding the transparency and efficacy of alert letters. Stakeholders also felt that this could be problematic and highlighted these issues especially with regard to maintaining some form of list/register for senior NHS managers in England and the implications for potential breaches of human rights and employment law.

Corporate governance

- 2.21 The issue of corporate governance was discussed regularly by stakeholders during the research. The majority of stakeholders believed that corporate governance was pivotal and the role of the Board in determining a supportive culture of such governance and ensuring the right people were in post and supported at a senior level was essential. In particular, some respondents suggested that there can be issues around the calibre and experience of Board members and a lack of compliance with governance processes.

"Governance practices should be strengthened; this should happen regardless of what model is adopted." (NHS Stakeholder)

- 2.22 Stakeholders within the Foundation Trust sector stressed the need for autonomy for Boards to determine and set their own arrangements to support effective recruitment and corporate governance. A feature of Foundation Trust Boards is the role of an Independent Director, and this was identified by a number of stakeholders as an additional safeguard to provide reassurances around supporting senior managers. A feature of the role involving having responsibility for standards of care and legality of actions. There is also a variation on this role applied in the Local Government sector.
- 2.23 In July 2009, the Walker report was published as a result of the failures in the UK banking system in 2008 which led to critical losses across the UK economy. Sir David Walker was asked to review corporate governance within the banking system and in July 2009, a draft report was produced for consultation (open for consultation until 1st October 2009) with the final report to be published in November 2009. This report highlighted a number of areas that to varying degrees were discussed in a number of stakeholder interviews.

The Walker report (A Review of Corporate Governance in UK Banks and Other Financial Industry Entities) July 2009 – Examples of areas highlighted in the report:

- The role of a Senior Independent Director should provide a sounding Board for the Chairman, for the evaluation of the Chairman and to serve as a trusted intermediary.
- The remit of the remuneration committee should be extended where necessary to cover all aspects of remuneration policy on a firm-wide basis with particular emphasis on the risk dimensions.
- The remuneration committee report should confirm that the committee is satisfied with the way in which performance objectives are linked to related compensation structures for executives whose total remuneration is expected to exceed that of the median of executive board members.
- Managers asked to publicly sign up to a Code of Conduct, or publicly state why they cannot sign up.

- 2.24 Some stakeholders called for greater transparency and rigour regarding the role of the Remuneration Committee across NHS organisations especially in terms of providing constructive challenge on the performance of senior management. In addition, it was suggested that their performance review should take into account a wider range of measures covering corporate, clinical and financial governance, and not simply focusing on budgetary management.

- 2.25 A number of interviewees also highlighted the need for Board members to be able to understand what information to request and how to analyse the data they are provided with – the work being undertaken around Quality Accounts⁷, could go some way to addressing this.
- 2.26 Work is currently ongoing in relation to ways in which quality accounts could be validated, assured or audited; this is an evolving area as assurance over non-financial reporting is a relatively new concept.

“It is very important to discuss patient care at Board level and give this priority on the agenda; not just focus on money and targets. Topics such as infection rates and complaints should be discussed regularly.” (NHS Stakeholder)

- 2.27 This view was supported by stakeholders from the education sector who were contacted as part of the study. They stated that Boards must have an understanding of what they are looking for and provide clarity on their specification. For example, in the case of education, it was highlighted that head-teachers needed clarity around the expectations of them with regard to information requirements. The need for the Board to be clear on their roles and responsibilities was also emphasised.

“It comes back to a governing body’s understanding of the role. Often governors don’t quite understand the governance role that they have. It’s not interfering with the day to day running. Making sure the right procedures are in place, the Chair understands the role, the head of the senior team is asked to report on the right things, so the governors have the right information.” (Education Stakeholder)

- 2.28 Another important factor highlighted in the research was the provision of support to senior managers through CPD, TNA and appraisal processes. Some stakeholders suggested that setting out clear expectations for managers in terms of the competencies required, and providing them with support, particularly when newly appointed or just taking on a post, could help to avoid incidences of poor management at senior levels. In particular, robust performance management processes, together with effective training and CPD, were thought to play an important role in ensuring high standards of performance from senior managers and in helping to prevent incidences of poor performance.

“There is a need for better support and development for senior managers; increasingly they have a short ‘shelf life’ and they are not being given the opportunity to develop in roles and get a range of experiences.”
“There is a clear need to separate actions of an individual from organisational failings.....management posts should be identified in terms of the required competencies, then a system should be designed to assess these competencies. People need to be equipped to undertake senior roles. (NHS Stakeholders)

- 2.29 Professional bodies were also noted as a potential means of support for senior managers. Most of the sectors reviewed in our research have particular professional and regulatory bodies; however, these are not generally specifically for managers (with the exception of Local Government and Prisons). One stakeholder suggested that a professional body could provide valuable support to senior NHS managers, but that this body would need to be separate from any regulatory mechanism.

⁷ In *High Quality Care for All*, Lord Darzi said publishing quality performance would help patients and their carers make better informed choices about health care and allow clinical teams to benchmark, compare and improve their performance. *High Quality Care for All* proposed that all providers of NHS care should produce Quality Accounts to provide the public with information on the quality of care they provide. The Department of Health has introduced legislation to require the publication of Quality Accounts from April 2010. Designing the format and content of Quality Accounts is being facilitated by the DH, and steered by stakeholders, including the regulators, NHS management, clinicians, professional organisations, patient groups and the public.

- 2.30 Some stakeholders also highlighted work underway that may have relevance, for example, the IHM work on piloting *The Accredited Manager – assuring the delivery of high quality care*, and Leadership Quality Certificates. In the case of the latter, it is envisaged that these will be seen as ‘badges of excellence’ rather than minimum threshold standards. However, as this work is still at a developmental stage it is recommended that it is borne in mind to determine at a later stage if specific linkages can be made to options around quality assuring senior NHS managers.
- 2.31 Inspection processes in the majority of sectors reviewed are undertaken on an organisational basis, with limited or no focus on the quality of leadership and management. Education is a key exception to this, as Ofsted inspections have an explicit focus on the quality of leadership and management within a school, using a series of criteria to rank the performance of the headteacher and the senior management team.

“Certainly some of Ofsted’s powers in terms of looking at a person’s ability to lead are easily transferable to the NHS. Leadership and management are seen as absolutely key to a school’s performance in inspection.” (Education Stakeholder)

- 2.32 Discussions with representatives from the Local Government sector also highlighted the role of inspection or peer review. The Local Government sector has an improvement and development agency arm (IDeA) which also has an organisational development and leadership aspect, as well as a voluntary peer review programme. This programme enables a Council to call in a team (e.g. senior officials and/or Councillors from other Councils) to review how it operates and look at not only service delivery but managerial relationships and governance and formally report back to the Council.

Accreditation, licensing and regulation

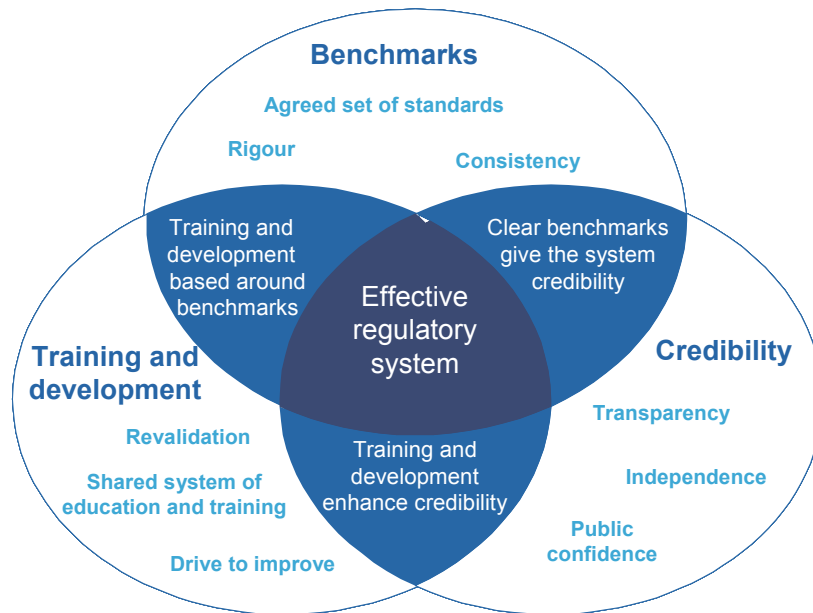
- 2.33 The literature did not identify any regulatory systems in place with respect to generic managers in other sectors or internationally in health. The focus of all existing accreditation and regulatory mechanisms is professional staff i.e. accountants, lawyers, engineers, doctors and nurses.
- 2.34 There were differing views among stakeholders regarding whether any kind of regulation should be introduced for senior managers in their own right. Broadly, stakeholders could be classified into three groups:
- Those who were resistant;
 - Those who were prepared to explore the potential of introducing some form of regulation, but only on the basis that issues around addressing recruitment and corporate governance were addressed as prerequisites; and
 - Those who were supportive of introducing a form of regulation.

“Regulation of managers is like using a sledgehammer to crack a nut.”

“Whilst managers do not provide direct patient care, they still have an important influence over service provision and thus should be subject to some level of regulation.” (NHS Stakeholders)

- 2.35 Regardless of the approach to regulation proposed, a number of key success factors for effective regulation were cited by stakeholders in the research. These tended to centre on having an agreed set of benchmarks, ensuring that the system has credibility among the sector and the public, and providing training and development for senior managers. The following figure illustrates the key success factors identified.

Figure 2.3: Key success factors of effective regulation



Source: Stakeholder interviews, Summer 2009

- 2.36 An agreed set of standards was viewed as key to an effective regulatory approach; stakeholders suggested that this could comprise a set of defined competencies or a Code of Conduct or Ethics. Training and development for senior managers was also viewed as important, with revalidation a key element of this, so that there was an ongoing monitoring mechanism in place and not a 'one off' attainment. Achieving credibility for the system was considered to be essential to its success. Some stakeholders suggested that this could be brought about by having a mixture of lay and professional people appointed independently on the governing body, and ensuring that clear standards and disciplinary processes are in place where complaints are brought. The independence of any regulatory body and maintaining this was also indicated to be central to gaining confidence by both NHS senior managers and the patient representatives that were consulted with.
- 2.37 The majority of respondents were in favour of senior managers funding any regulatory approach themselves or through a mixed funding approach where they would pay half of the costs, for example. This would involve a subscription approach, similar to that in place for doctors. It was noted that senior managers are a relatively small group, and as such, the costs of regulation are likely to be greater.

"Given the smaller numbers compared to doctors, the regulatory machine could be smaller; but it would probably be a few hundred pounds a head, to be paid by the members. There is a perception they are well paid compared to doctors so if they do not have to pay but doctors do, that would be seen as unfair." (NHS Stakeholder)

- 2.38 Potential costs identified by stakeholders included costs for staff registration, transitional costs, legal costs (depending on the approach taken), employer costs and revalidation costs.
- 2.39 Four potential models of regulation were identified during the research: voluntary accreditation/ self regulation; licensing regime; employer-based regulation; and statutory regulation. These are considered in the following paragraphs.

Model 1: Voluntary accreditation/ self-regulation

- 2.40 Of the stakeholders who were in favour of introducing some form of regulation, the majority believed that voluntary accreditation/ self regulation would be the most effective and proportionate means of quality assuring senior managers. They noted that this approach would likely comprise identification of agreed competencies and an accreditation process with a revalidation aspect.

"I would be drawn to the notion that the profession of management needs to self regulate. I don't think it can be done by employers; they will always apply different interpretations. That would give managers standing with colleagues and the self-regulatory body could also withdraw the licence. Employers should only employ those who are licensed in the same way as the GMC [General Medical Council] and other bodies." (NHS Stakeholder)

- 2.41 In particular, many respondents thought that undertaking accreditation and training would help to provide assurances regarding the quality of senior management. Our literature review⁸ indicates that currently, relatively few governments believe accreditation in the healthcare sector as a whole meets their needs for the control of healthcare quality. They suggest various reasons why most governments tend to reject the idea of accreditation, for example, that development of local accreditation standards can be costly and time consuming and requires sophisticated management structures to underpin them.

The Value of Management Qualifications (2007), Chartered Management Institute (CMI)

The Value of Management Qualifications (2007), a report by the CMI, discusses the findings of a UK-wide online survey of CMI members. The report indicates that managers are "*significantly under-qualified compared to other professional occupations*". For example, only 39% of managers and senior officials were found to be qualified at Level 4 (Level 4 S/NVQ in Management & Leadership) and above compared to 81% of those in other professional occupations, while 41% of managers hold below a Level 2 (Level 2 S/NVQ in Team Leading) qualification. A majority (64%) of employers surveyed thought that management qualifications were likely to grow in importance over the next five years.

In addition, the report highlights a number of perceived benefits in undertaking learning and qualifications for managers and the organisations in which they work. For example, managers who are more qualified are more likely to invest in qualifications across their workforce, while many employers are increasingly using qualifications as a form of quality assurance. The survey conducted for the report found mainly positive perceptions of management qualifications from the perspective of both employers and managers;

- The majority of employers believed that **productivity gains, staff attraction rates and professional reputation are improved** where management qualifications have been undertaken; and
- Key benefits of qualifications noted by managers included **portability of qualifications, improved chances of employment, and evidencing their abilities** as a manager.

- 2.42 In the UK, The British Association of Medical Managers (BAMM) has developed a set of standards for medical managers: The BAMM Standards of Medical Management and Leadership. Consultation for the standards is undertaken each year and they are designed to

⁸ The European Observatory on Healthcare Systems Series (2002) *Regulating entrepreneurial behaviour in European health care systems* (The European Observatory on Health Systems and Policies supports and promotes evidence-based health policy-making through comprehensive and rigorous analysis of the dynamics of health care systems in Europe).

ensure that they align with NHS strategy. These standards are used within their qualification *Fit to Lead*, which was established in 2004 and provides successful candidates with a Certificate in Advanced Medical Leadership.

- 2.43 The course includes one-to-one coaching and mentoring, a three-day residential programme and online support for candidates. The course is tailored to the individual, for example, where particular skills needs are identified.

"We look at the competencies, analyse gaps in the candidate's skills, attitudes and behaviours and measure whether they have the ability to perform in a senior management role. It is assessed by a portfolio against our standards and on 360 degree feedback through their organisation." (NHS Stakeholder)

- 2.44 In addition to the perceived benefits of accreditation and revalidation, many respondents thought that a voluntary accreditation/ self regulation approach could provide openness and transparency, as well as being perceived as more likely to obtain buy-in from the sector than other models, such as statutory regulation.

Model 2: Employer-led regulation

- 2.45 A small minority of respondents suggested that voluntary accreditation/ self regulation may not be successful, and as such, employer-led regulation should be introduced. This model clearly sets out the employer's responsibilities, and a pilot of this approach was recently undertaken in Scotland, as outlined in the following figure.

Employer-led regulation pilot, NHSScotland

Background

Between 2007 and 2008, a pilot of employer-led regulation was undertaken for Healthcare Support Workers employed by NHSScotland. The pilot aimed to test out arrangements for such a model across three NHS Boards and one independent hospital. The elements of the model are as follows:

- **A set of induction standards** focusing on the concepts considered to be important for public protection;
- **A Code of Conduct** for Healthcare Support Workers;
- **A Code of Practice for Employers**; and
- **A centrally held list of names** of those who meet the required standards.

An evaluation of the pilot was undertaken by the Scottish Government in 2009 to assess the implementation, operation and potential impact of the pilot.

Key findings from the evaluation

The pilot found some evidence that implementation of the standards had the potential to improve patient safety and public protection. It found that Healthcare Support Workers were motivated to take part in order to make improvements and that pilot staff became more aware of relevant staff governance policies. However, the report notes that rolling out the pilot across all NHS Boards in Scotland would have significant resource implications, relating to a lead/ local coordinator role, training and assessment, administration costs and a national coordinator role. In addition, it indicates that a communications strategy would be required to inform stakeholders of the proposed way forward.

The evaluation found unanimous support for the standards and the Code of Conduct, recommending, for example, that:

- The standards should be mandatory;
- The standards should be revised, potentially to reflect 'core' and 'role specific' criteria;
- Clarification of the implications of not meeting the standards at Board and individual level should be made; and
- Mechanisms for monitoring working to the Code of Conduct should be reviewed.

Source: Healthcare Support Workers in Scotland: Evaluation of a National Pilot of Standards and Listing in Three NHS Boards (2009)

- 2.46 As outlined above, the employer-led regulation pilot in Scotland has had some positive outcomes. Recommendations contained within the DH report: *Extending Professional and Occupational Regulation*, 2009, indicate that upon finalisation of the formal outcomes of the Scottish pilot, the DH should draw on the evidence to inform the development of a 'menu' of regulatory alternatives identified in its report which include voluntary self regulation, employer based regulation and a licensing regime amongst others.

Model 3: Licensing regime

- 2.47 A small number of stakeholders were in favour of introducing licensing for senior managers, suggesting that through this approach they would be required to hold prerequisite training and qualifications, and that their licence could be 'barred' or removed after a complaints and investigatory process. Licensing was seen by some stakeholders as potentially a more robust alternative than self regulation.
- 2.48 The education sector is in the process of implementing a licensing regime for teachers, as outlined in the following figure. This work is still very much in the early stages; therefore it is too early to understand its implications and outcomes.

Case Study: Licensing teachers in the education sector

The new 'licence to teach' currently being put into place for teachers will be similar to that used for doctors and solicitors. The licence is linked to a new professional development entitlement for teachers and requires them to keep their skills up to date and demonstrate (approximately every five years) that their professional practice and development meets the standards required for the profession.

Roll-out

The licence is intended to be implemented initially using a risk-based approach, for example, looking at supply teachers and those who have not practised for some time. The licence would eventually be rolled out to all teachers and headteachers.

Revalidation

Although policies and processes around where teachers lose their licence are yet to be defined, it is likely that in most cases, teachers would be given the opportunity to regain their licence through refreshment training and supervised practice. The system would likely involve some form of moderation at a local level to ensure that judgements are congruent from school to school.

Model 4: Statutory regulation

- 2.49 Few stakeholders interviewed as part of this study were in favour of implementing statutory regulation. For many, it was viewed as disproportionate for managers, costly to implement and unlikely to achieve buy-in from the sector. A small number of respondents, however, felt that this approach was merited, and that its costs could be justified.

"Regulation systems should be seen as supportive and developmental rather than regulatory or punitive."

"Regulation....readiness, we are a million miles away, none of it is impossible, I imagine there is antipathy.....you have to make people want to do it. The key to failure is to turn it into a game where it's a set of hoops people have to jump through." (NHS Stakeholders)

- 2.50 A report by the House of Lords, *Science and Technology – Sixth Report* (2000), discusses approaches to the regulation of practitioners of Complementary and Alternative Medicine. It outlines how statutory regulation could be brought about; either through a profession pursuing its own Act of Parliament which established a statutory regulatory body, or through pursuing statutory regulation through the provisions of the Health Act 1999.
- 2.51 The report also highlights the advantages and disadvantages of introducing statutory regulation. It notes that the advantages centre on having a legally established register of

practitioners and the legal backing afforded by this. In particular, the protection of title which ensures that only registered individuals can use a particular title, and that those who are struck off a list due to misconduct have nowhere else to register. However, the report indicates that statutory regulation is expensive to implement, particularly where the number of individuals to be included within the regime is small.

Feedback from focus group with patient representatives

- 2.52 A focus group was held with patient representatives in order to gather their views on quality assuring senior managers within the NHS. The group discussed their perceptions of senior managers and views on how the role should be carried out, together with ideas and viewpoints on approaches to assisting with high standards in senior management. There was recognition among participants that there are examples of good practice and existing policies and organisations that could play a role in assuring the quality of senior managers, and as such the need to avoid duplication with existing work was highlighted.
- 2.53 In discussing the role of senior managers within the NHS, some patient representatives highlighted a need for senior executives to establish the ethos of the organisation; to empower staff and draw on their expertise; and to ensure that patient care is central to their work. Strong communication and interpersonal skills were viewed as crucial; indeed, it was suggested that in some cases, staff perceive managers as separate and distant, with a lack of communication between senior managers and “frontline” staff thought to have a potentially negative impact on the performance of senior management. Figure 2.4 presents an overview of some of the key themes from the focus group; these are considered in greater detail in the following paragraphs.

Figure 2.4: Key themes from focus group with patient representatives



Patients' voice

- 2.54 There was consensus among participants that the views and experiences of patients have an important role to play in assisting with high standards in senior management. Participants argued that chief executives and directors need to understand the patient's perspective in order to deliver high standards and quality of care.
- 2.55 Many participants suggested that patients could play a more systematic role in assisting with high standards in senior management, for example, by providing different insights and

feedback. In addition, some participants suggested that patients could play a role in the recruitment of senior managers.

"I was at a meeting where a patient explained to this manager what it was like being a patient and having to go to different hospitals, and all the ordeals she had been through in her treatment. It opened his eyes completely." (Patient representative)

Recruitment

- 2.56 The importance of carefully considering the skills requirements of an organisation and appointing the most appropriate person in accordance with this was highlighted by some patient representatives. In addition, some concerns regarding nepotism in appointments to senior posts were noted, for example, *"jobs for the boys"*; and questions were raised regarding who is responsible for making appointments and how this process is quality assured.
- 2.57 It was also noted that recent high-profile cases where a senior executive was able to move on to another senior position despite poor performance having been identified in a previous role gave participants the impression that there is a lack of due diligence in recruitment to chief executive and director posts. Patient representatives therefore called for more robust processes around recruitment to be put into place and for greater transparency in the appointments process.

"I know of a hospital where they hired a chief executive who had been fired before by the same hospital; to us as patients it looked like musical chairs." (Patient representative)

Measuring performance

- 2.58 There was general agreement among patient representatives in the focus group that a broad range of measures should be used systematically in order to fully understand the performance of senior NHS managers. Many participants raised concerns that some senior managers can be too focused on achieving targets, sometimes to the detriment of relationships with staff and to the quality of patient care.

"I have seen chief executives who do not have any empathy or clinical awareness; they view clinicians as a production line." (Patient representative)

- 2.59 To this end, many participants were in favour of using feedback from patients and staff, for example, through a 360 degree feedback mechanism, to assess the leadership and managerial skills of senior NHS managers. Some patient representatives suggested that an external form of inspection, such as the role of Ofsted in education, could improve the robustness of performance management.

Supporting and training

- 2.60 Participants put forward a number of suggestions for supporting senior managers in their role and assisting with high standards. These centred on mentoring programmes, drawing on the support of networks, and sharing and disseminating good practice.
- 2.61 Training for senior managers was thought to have an important role to play in ensuring quality in senior management. In particular, some participants noted the value of *"shop floor"* training, whereby chief executives and directors would work *"on the frontline"* for a week in order to gain a new perspective, and to better understand the views and experiences of staff and patients.

"A few years ago there was a programme called 'Back to the Shop Floor'. The chief executive worked as an ancillary for a week, and no one knew who she was. In fact she had never really worked on the shop floor, so it was a very valuable experience for her. It completely changed her attitude." (Patient representative)

Regulating senior managers

- 2.62 It was suggested in the focus group that statutory regulation for managers would be disproportionate and unnecessary. However, there was some support among group members for a more light touch approach, for example, voluntary accreditation.
- 2.63 Some patient representatives believed that a primarily punitive approach to quality assuring managers would not be appropriate, and were in favour of a more positive approach whereby individuals could be recognised for their profession on a more voluntary basis. They felt that such an approach could encourage chief executives and directors to participate, and therefore assist in encouraging high standards in senior management.

"It could be a bit like the Institute of Marketing; so if you see this as your professional life you would want to be part of that." (Patient representative)

Gaining public confidence

- 2.64 Focus group participants noted that transparency and robustness in recruitment and employment procedures were crucial in encouraging public confidence in senior managers. They agreed with the views of some stakeholders, suggesting that having a clear set of standards and disciplinary processes, and a mix of lay and professional people on any governing or regulatory body would help to build confidence among the public.
- 2.65 There were some concerns that "lip service" is paid to reports on leadership and management, and it was noted that substantial pay-offs for senior executives where poor performance had been identified have a negative impact on public confidence.

"We don't need screens for people to hide behind and that's what's happened in the past." (Patient representative)

3 Framework of Options

Introduction

- 3.1 Following a review of the relevant literature and in-depth interviews with a range of stakeholders, a list of potential options for the quality assurance of NHS senior managers was created. This section of the report presents an outline of the options for quality assuring senior NHS managers identified in the course of this research. This section is structured as follows:
- A framework of options;
 - Strand 1 options: Recruitment, vetting and employment;
 - Strand 2 options: Corporate governance; and
 - Strand 3 options: Accreditation, licensing and regulation.

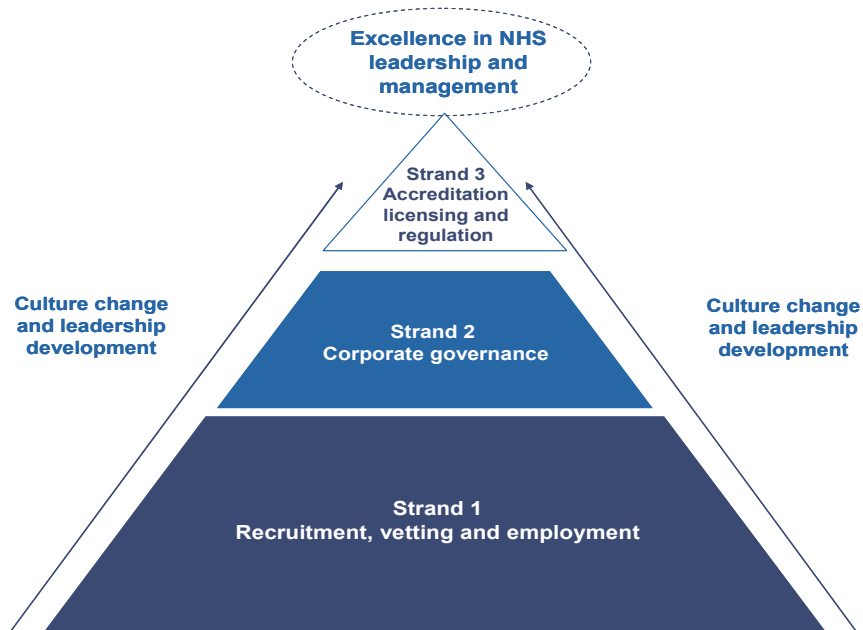
A framework of options

- 3.2 In general, there was a sense among the stakeholders interviewed that the majority of senior managers operating within the NHS are performing to a high standard or have the potential to do so where additional support can be provided. Nonetheless, it was often suggested that there are a small number of poorly performing senior managers whose actions can have a negative impact for a large number of patients.

“Whilst the number of poorly performing managers is low, the problem is still significant as due to the nature of NHS business, the impact is high.” (NHS Stakeholder)

- 3.3 In terms of addressing this issue, discussion with stakeholders in a number of cases identified a need for clarity on the aims of any new system. The balance of opinion was that the primary aim of the work should be to improve quality in senior leadership and management, whilst at the same time developing a framework to address the issue of poorly performing managers.
- 3.4 Our research has indicated that there is no single option or model of regulation which has the potential to effectively quality assure senior managers within the NHS alone. Rather, findings from our stakeholder consultation and literature review indicate that a number of areas relating to the recruitment and employment of senior managers should be addressed together in order to assure quality in senior management.
- 3.5 We have identified a list of options for quality assuring senior managers in the NHS; these options fall into three broad strands, as outlined in Figure 3.1.

Figure 3.1: Framework of options identified in the research

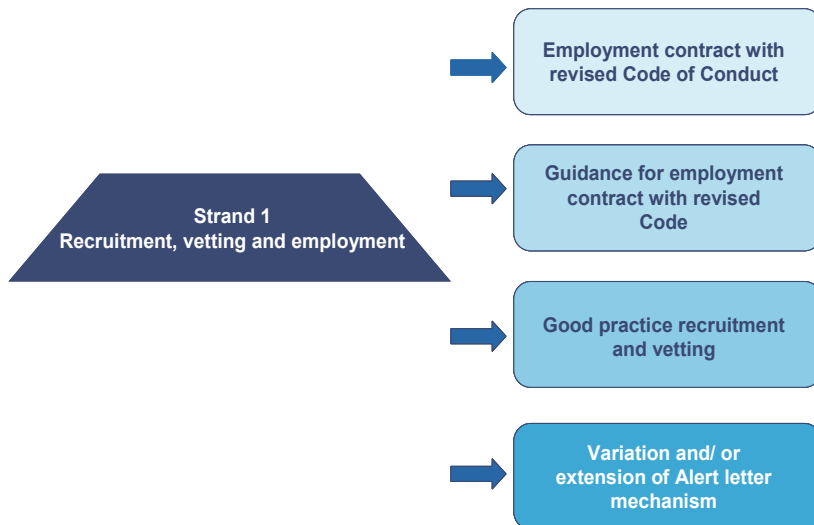


3.6 The research suggests that Strands 1 and 2, recruitment, vetting, employment, and corporate governance are core and involve addressing procedures and processes that are already largely in place but where enhancement and improved compliance are required. If processes around recruitment, vetting and employment and corporate governance are not addressed, it is possible that any model of regulation or accreditation which forms the basis of Strand 3 would not be fully successful.

Strand 1 options: Recruitment, vetting and employment

3.7 The options within this strand focus on ensuring that those recruited to senior positions within the NHS are of an appropriate calibre and have the ability to carry out their role. Figure 3.2 outlines the options within Strand 1; these options are described in greater detail in the following paragraphs.

Figure 3.2: Options within Strand 1



3.8 Table 3.1 summarises under the criteria of legal, financial, timescale and strategic points for consideration for each option, while the paragraphs that immediately follow the table provide an overview of stakeholder and literature review feedback where relevant.

Table 3.1: Strand 1 – Summary of options and criteria for consideration

	Legal	Financial	Timescale	Strategic
Standard Employment contract with revised Code of Conduct	<p>Equality risk assessment required in the first instance</p> <p>NHS Code of Conduct created under a statutory provision, which needs to be considered in potentially altering the Code.</p>	<ul style="list-style-type: none"> • 'One- off' and likely to be small scale. • Related to getting agreement on standard contract content and level of review of Code of Conduct 	Short – medium term	Yes - Although potential issues around employment contract being kept consistent & organisational desire for 'tailoring' to fit local needs
Guidance on employment contract detail and revised Code of Conduct	<p>Equality risk assessment required in the first instance</p> <p>Issuing guidance on employment contract detail should be fine, but if there is any statutory vehicle behind the guidance or the requirements within these would have to be considered.</p> <p>As per above for Code of Conduct</p>	<ul style="list-style-type: none"> • 'One- off' and likely to be small scale 	Short - medium term	Yes
Good practice recruitment and vetting	<p>Issuing guidance on recruitment procedures should be fine, but if there is any statutory vehicle behind the guidance or the requirements within these would have to be considered and quality risk assessment required</p>	<ul style="list-style-type: none"> • NHS Employers recruitment standards already in place as well as a range of others e.g. CPNI. Initial costs in reviewing and re-issuing good practice checklists. • Implications for HR staff time resource to ensure compliance with good practice. 	Short-medium term	Yes
Variation and/or extension of Alert Letters	<p>Literature review suggests case law around enforcement of 'barring' mechanism can be somewhat problematic.</p> <p>From an employment law perspective, if such an initiative were introduced, consideration would be required around the reasonableness of any procedure in relation to discipline and dismissal.</p>	<ul style="list-style-type: none"> • Sub option of Strand 1 with potentially the greatest financial implications 	Short – medium term	Some concerns around consistency and transparency

Stakeholder feedback

Employment contract with revised Code of Conduct

3.9 This option would involve the creation of a standard contract of employment which would contain the NHS Code of Conduct. The Code would be revised to ensure that it is fit for purpose, with clearly defined competencies, and this would be incorporated as a mandatory part of the contract.

3.10 While the majority of stakeholders were not in favour of introducing a standard employment contract due to a perceived need to adapt contracts for local contexts, most were supportive of revising the Code of Conduct and standards or competencies to underpin it. Indeed, many respondents believed that competencies should be central to any approach to quality assuring senior managers within the NHS.

“In terms of the Code of Conduct, competency combined with ethics would probably be best, if we can agree a measurable set of competencies. Beefing up the Code of Conduct with a revised ethical code would be useful.” (NHS Stakeholder)

Guidance for employment contract with revised Code

- 3.11 Guidance would be issued to all Trusts for this option. The guidance would outline the core aspects to be included in all Employment Contracts, including the revised NHS Code of Conduct.
- 3.12 In general, stakeholders were more receptive to guidance being issued on what should be included in employment contracts, and on the revised Code of Conduct. There may be legal implications if there is any statutory vehicle behind the guidance or requirements within the Code of Conduct.

Good practice in recruitment and vetting

- 3.13 A strengthening of processes around recruitment to senior leadership positions would be undertaken through this option. Specifically, this would involve collating a directory of guidance for Trusts identifying good practice requirements for recruitment procedures for posts at Director and Chief Executive level. Areas for coverage would include the following:
- Assessing the required competencies and developing a detailed job specification;
 - Employment checks and references;
 - Good practice in assessment centres;
 - Competency based interviews;
 - Appointment of external assessors;
 - Effective scrutiny by the Board and its appointments committee;
 - Role of Appointments Commission and use of head hunters;
 - Appointment of Interims; and
 - Use of management consultants.
- 3.14 Making processes around recruitment more rigorous was frequently cited by stakeholders as a key means of helping to quality assure senior NHS managers. Most were supportive of more emphasis being given to compliance with best practice recruitment and vetting procedures issuing a checklist of good practice to employers. Some stakeholders also suggested that Trust Boards should play a key role in approving and overseeing recruitment at a senior level. As a result, this option would involve not only reviewing processes and their compliance but also the governance of the appointments process at a local organisational level.

“I have come across instances whereby a person is appointed and commences in post, with references sought afterwards. I have also seen psychometric tests used but not taken into account in the decision-making process. This is unacceptable and recruitment processes need to be improved and tightened up to stop this happening.” (NHS Stakeholder)

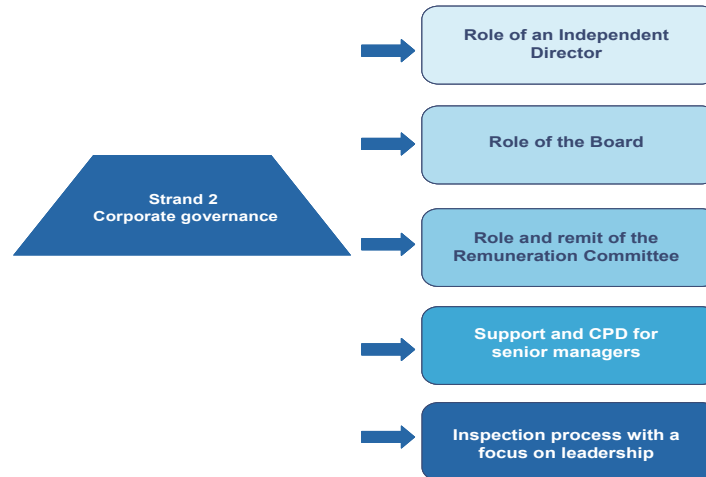
Variation and/ or extension of Alert letter mechanism

- 3.15 Currently, Alert Letters are used to make all NHS organisations aware of a doctor or other registered health professional whose performance or conduct could place patients or staff at serious risk. This option would involve extending the Alert Letter mechanism to include NHS senior managers, with the potential to ‘bar’ individuals or remove them from a register.
- 3.16 There were mixed views among stakeholders regarding using the Alert Letter mechanism to support quality assuring senior managers in the NHS. The balance of stakeholder feedback is that the focus of approaches to quality assuring managers should centre on supporting and developing the future leaders of the NHS, rather than taking a primarily punitive stance.

Strand 2 options: Corporate governance

3.17 This strand comprises a number of options designed to strengthen and improve the governance of Boards within the NHS. Corporate governance can play an important role in providing safeguards for leadership and management at the highest levels.

Figure 3.3: Options within Strand 2



3.18 Table 3.2 summarises under the criteria of legal, financial, timescale and strategic points for consideration for each option, while the paragraphs that immediately follow the table provide an overview of stakeholder and literature review feedback where relevant.

Table 3.2: Strand 2 – Summary of options and criteria for consideration

	Legal	Financial	Timescale	Strategic
Role of an Independent Director	Limited	<ul style="list-style-type: none"> Negligible 	Short term	Yes - Links with Monitor corporate governance guidance and feedback from the Local Govt sector.
Role of the Board	Potential implications – dependent on linkages with other work in progress i.e. Quality Accounts	<ul style="list-style-type: none"> Likely to be small scale Linked to strengthening existing processes 	Short term	Yes – Linkages with NLC and role of the Board work-stream
Role and remit of the Remuneration Committee	Limited	<ul style="list-style-type: none"> Likely to be small scale Linked to providing guidance 	Short-medium term	Yes
Support and CPD for senior managers	Limited	<ul style="list-style-type: none"> Could be time implications i.e. in terms of staff taking 'time out' to ensure they are up to date with all CPD requirements 	Short-medium term	Yes
Inspection process with a focus on leadership	Thought to be limited - to be discussed	<ul style="list-style-type: none"> Costs could be minimised if undertaken by an existing organisation charged with an oversight and accountability role for NHS 	Medium-long term	Yes

Stakeholder feedback

Role of an Independent Director

- 3.19 A nominated member of the Board would act as an Independent Director. This role would have responsibility for ensuring standards of care and legality of actions. This model is currently used in Local Government, where a director sitting on the Board acts as a formal challenge to the Chief Executive.
- 3.20 The majority of stakeholders were in favour of strengthening corporate governance in order to provide oversight mechanisms for senior managers, and were receptive to the suggestion of an Independent Director on Trust Boards.

Role of the Board

- 3.21 Within this option, the Board's role is increased. For example, the Board would have responsibility for examining performance in terms of quality, and not simply through reviewing financial management.
- 3.22 Overall, stakeholders identified this as a key opportunity for quality assuring senior NHS staff. For example, many called for increasing the role and pro-activeness of the Board, and ensuring that they consider and understand a wide range of performance indicators, and not simply financial management. Potentially, their work could link with Quality Accounts to make the best use of the available data.

"They need to bring objectivity and challenge, and define what they need to receive on a regular basis. They need to know how to triangulate what they are being given, for example, high locum cover, out of kilter mortality rate, and complaints. Someone needs to get underneath that, structuring the reporting so that it is meaningful, being smart about how they report." (NHS Stakeholder)

Role and Remit of the Remuneration Committee

- 3.23 The Remuneration Committee advises the Board about the performance, development and remuneration of senior NHS managers. Within this option, the role and remit of the Committee could be extended and made more rigorous, with, for example, a responsibility to provide constructive challenge to Chief Executives and Directors.
- 3.24 There was a view among many stakeholders that the Remuneration Committee could play a greater role in terms of accountability and performance management. For example, it was suggested that they should provide challenge to Chief Executives, and that their performance reviews should take into account a wider range of indicators. There were also calls for greater transparency and rigour around their work.

"The Board and Chair of the Remuneration Committee need to be at the centre of accountability within the Trust." (NHS Stakeholder)

Support and CPD for senior managers

- 3.25 A greater focus would be placed on providing support to senior managers and ensuring that they are availing of appropriate Continuing Professional Development (CPD). This would be carried out through CPD, TNA and appraisal processes.
- 3.26 All stakeholders emphasised the need for senior managers to be supported in their role and to be given increased opportunities in terms of learning and development opportunities. This was thought to be particularly important where an individual is newly appointed or working in a Trust that is facing challenging circumstances. The importance of having robust performance

appraisal processes in place was highlighted as something that in reality did not always happen. One stakeholder who had had experience working in healthcare in Australia highlighted the focus placed on CPD for managers there, suggesting that more could be done to continually develop and train senior managers within the NHS.

“In Australia there were sessions set up where they would put 50 managers in a room and get in the best person from the private sector to spend a day explaining recruitment or succession planning or such like. They are constantly being prompted and guided in what is best practice. There just isn’t the same level of training once you are in post in the UK.” (NHS Stakeholder)

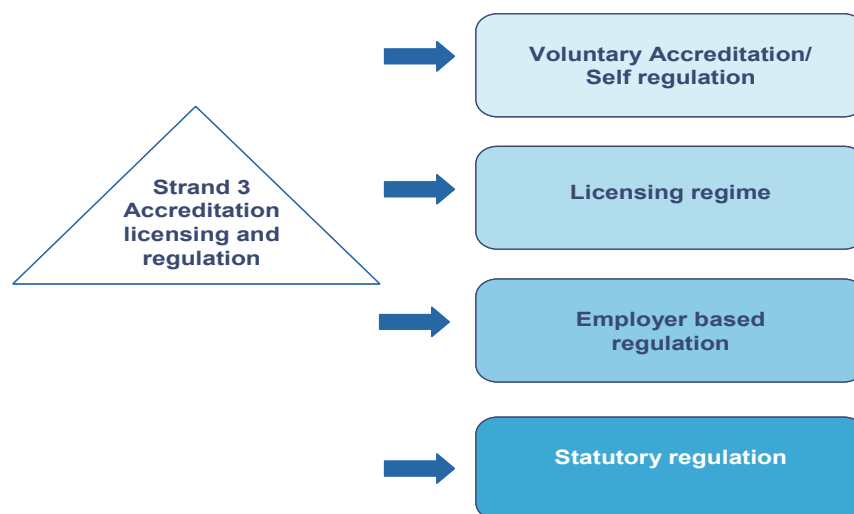
Inspection process with a focus on leadership

- 3.27 Inspections would include a more specific assessment of the quality of management and leadership. However, this may need careful consideration alongside SHA work around talent and leadership plans.
- 3.28 Stakeholders provided mixed feedback regarding inspection processes focusing on leadership and management. There was some concern that this would duplicate existing work; however, some stakeholders were receptive when the Ofsted inspection programme in education was referenced.
- 3.29 This option has potential cost implications, although these could be minimised if it was undertaken by an existing organisation charged with an oversight and accountability role for the NHS. Some stakeholders did consider that such an inspection process could be incorporated as part of existing inspections or reviews but others felt this needed further consideration.

Strand 3 options: Accreditation, licensing and regulation

- 3.30 The third strand comprises options for accrediting, licensing and regulating senior NHS managers. For this strand, it is likely that only one option would be implemented at any one time, if at all. Ideally, the options from Strands 1 and 2 would be implemented before looking to introduce a model of regulation identified within Strand 3. In addition, the importance of ensuring that any regulatory body is independent and not self-serving was highlighted.

Figure 3.4: Options within Strand 3



3.31 The costs of any regulatory option would be difficult to determine until the exact mechanism for regulation was confirmed. However, they are likely to be more expensive than any of the options identified in Strands 1 and 2, as Strand 3 involves the introduction and setting up of new processes compared to these strands. As a result, a review of the regulatory costs of some of the health professional groups can give a useful guide as to what the range of costs may be if regulation of senior managers were introduced (Table 3.3).

Table 3.3: Examples of some of the regulatory costs of health professional groups (2007/08)⁹

	Number of Registrations	Registration Fee per person (£)	Regulatory Costs ¹⁰ (£)	Committee expenses (£)	Professional fees (£) (including legal services)	Registration, Standards, Governance, Legn Changes, Publicity (£)
General Chiropractic Council	2,918	812	879,009	151,352	78,677	45,881
General Medical Council	166,195	410	47,550,000			17,927,000
General Osteopathic Council	3,458	750	310,746	314,990	341,280	93,767
Health Professions Council	185,689	76		385,780	2,519,697	

Source: Annual Reports of Professional Bodies

3.32 Table 3.4 summarises under the criteria of legal, financial, timescale and strategic points for consideration for each option, while the paragraphs that immediately follow the table provide an overview of stakeholder and literature review feedback where relevant.

Table 3.4: Strand 3 – Summary of options and criteria for consideration

	Legal	Financial	Timescale	Strategic
Voluntary accreditation/ Self regulation	Equality risk assessment required in the first instance Additional opinion required on legal issues around removal from a voluntary register, and disciplinary & appeals procedures No legal impediment to a disbarred registrant from continuing to practise without being voluntarily registered	<ul style="list-style-type: none"> Professional staff time costs likely to form the largest proportion Also could be costs around accrediting organisations, providers i.e. wider systems costs Transitional costs Likely to be the most cost effective Strand 3 sub option 	Medium term	Yes Also potential linkages with work of NLC and NHS Top Leaders programme
Licensing regime	Equality risk assessment required in the first instance - potential further implications if statutory option preferred over a voluntary one Additional opinion required on legal issues around removal of licence, and disciplinary & appeals procedures	<ul style="list-style-type: none"> Professional staff time costs Transitional costs and costs to support organisation overseeing licensing Some costs could be covered by managers through an annual subscription 	Medium-long term	Concern regarding proportionality dependent on what the focus of licensing is being seen to address i.e. addressing poor performance or trying to 'professionalise' NHS management
Employer based	Equality risk assessment required in the first instance Additional legal opinion	<ul style="list-style-type: none"> Professional staff time costs Transitional costs Costs linked to creating and 	Medium-long term	Element of concern regarding proportionality

⁹ GCC detail is 2007 Annual Report, GMC 2008 Annual Report, GOC 2007/08 Annual Report & HPC 2008/09 Annual Report

¹⁰ (Including: education committee, investigating and Professional conduct committees & fitness to practice)

	Legal	Financial	Timescale	Strategic
regulation	required on removal from registers / lists of regulated staff, and associated disciplinary and appeals procedures.	maintaining registers/lists of regulated staff		
Statutory regulation	Considerable implications, including equality risk assessment and disciplinary and appeals considerations	<ul style="list-style-type: none"> Professional staff time costs Transitionary costs Costs likely to be substantial especially around 'fitness to practice' costs Could be reduced if an existing body took over licensing or regulation 	Long term	Concerns regarding proportionality

Stakeholder feedback

Voluntary Accreditation/ Self regulation

- 3.33 This model would involve the identification of agreed competencies for senior managers. Chief Executives and Directors would undertake an accreditation process with a revalidation aspect. The process could take a systems based approach, through the accreditation of individuals, organisations and providers. Linkages could usefully be made with existing work, for example, *Inspiring Leaders: Leadership for Quality*, the NHS Top Leaders Programme and Leadership for quality certificates.
- 3.34 This approach could be administered through an existing professional body, which may set out educational standards and have a focus on CPD, competencies and codes of conduct. The body could have disciplinary procedures in place which would be transparent and accessible to the public.
- 3.35 Where stakeholders were in favour of introducing some form of regulation, voluntary accreditation/ self regulation was the preferred route and seen as a potential progression once processes in relation to Strands 1 and 2 are strengthened. It was noted by some stakeholders that attention should be given to the viability of a voluntary regime and providing external confidence in it, for example, by ensuring that the governing body has a mix of professional and lay people, and that it is not run by registrants.
- 3.36 Research from Budd and Mills (2000) into professional organisation of Complementary and Alternative Medicine outlines features of an effective voluntary self-regulating professional body. The key features centre on maintaining a register of individuals, setting and maintaining standards of education and accreditation and having in place transparent mechanisms for upholding standards within the profession, as outlined in the following figure.

Features of an Effective Self-Regulatory Body

- Maintains a register of individual members or member organisations;
- Sets educational standards and runs an accreditation system for training establishments;
- Maintains professional competence among its members with an adequate programme of Continuing Professional Development;
- Provides codes of conduct, ethics and practice;
- Has in place a complaints mechanism for members of the public;
- Has in place a disciplinary procedure that is accessible to the public;
- Requires members to have adequate professional indemnity insurance;
- Has the capacity to represent the whole profession; and
- Includes external representation on executive councils to represent patients or clients and the wider public interest.

Source: Budd and Mills (2000)

- 3.37 There can be a concern with voluntary/self regulation that it can be seen as ‘self protectionism’ and offers insufficient assurance to the public, that said those stakeholders that were supportive of Strand 3, considered it to be the best starting point.

“If you do not have a proper regulatory system with teeth, they don’t pay any attention. Ideally I would like everyone to be so proud of what they do that they want to self-regulate.....” (NHS Stakeholder)

Licensing regime

- 3.38 With a licensing regime, senior managers would be required to hold prerequisite training and qualifications. This approach would include a mechanism to support ‘barring’ or removing an individual licence, following a complaints and investigatory process. The licensing process could be either statutory or voluntary.
- 3.39 A level of favourable feedback was indicated for a licensing regime amongst a small number of stakeholders. In particular, those who found the licensing arrangements for teachers an interesting development were in favour of introducing licensing for senior managers. However, it should be noted that this is still very much an evolving area.
- 3.40 Recommendations contained within the DH report: *Extending Professional and Occupational Regulation*, 2009, indicate that the Working Group who overseen the study suggest the DH undertake further work in respect of the legislative implications of a licensing regime for health and social care workers, and it would be helpful if this was inclusive of NHS senior managers.

Employer based regulation

- 3.41 This approach to regulation involves clearly setting out the employer’s role and responsibilities. This would be similar to the pilot model used in Scotland regarding Healthcare Support Workers, which involves a set of induction standards and a Code of Conduct for Healthcare Support Workers, and a Code of Practice for NHS Scotland Employers.
- 3.42 Many stakeholders were not clear on how this approach would work in practice. A minority of respondents were familiar with the pilot undertaken within NHSScotland; however, they still felt that the model had yet to prove itself. While the findings of the evaluation of this pilot found some favourable outcomes, it also raised concerns regarding the implications of rolling out the model on a large scale.

Statutory regulation

- 3.43 A statutory approach to regulation would have aims and functions similar to those of good voluntary self-regulation. However, this model has the force of law behind it to ensure that its aims are met. A key element of this approach involves protection of title, so that only practitioners who are registered with the relevant statutory regulatory body can legally use a particular title.
- 3.44 Overall, the majority of stakeholders were resistant to this option, highlighting concerns around proportionality and overly onerous cost implications. This model is also likely to have significant legal implications, centring on equality risk assessment and disciplinary and appeals considerations.

“Accreditation and licensing should be a safety mechanism for people to take on their posts; part of it is around the sheer burden of accountability. The rules become unclear on how they are going to be dealt with. Actually, a set of codes and a rigorous, self-regulated community based framework gives you the support and can be seen within a better, more solid framework.....I think it would actually encourage people to take senior positions.” (NHS Stakeholder)

4 Conclusions

- 4.1 In general, the majority of senior managers within the NHS are viewed as performing to a high standard within a complex and challenging environment. Stakeholders identified the need for mechanisms with a primary aim of further supporting these senior staff to operate at a high level and continue their development journey, and which ideally could also provide a means for effectively addressing any performance management issues that might transpire for these individuals.
- 4.2 In considering the original terms of reference for this project we found that:
- Whilst there were some interesting arrangements in other sectors and in the international healthcare arena, *there was not a model for regulation or the accreditation of senior managers in place elsewhere that could be readily applied to the NHS.*
 - When asked about *key success factors* for fair and effective arrangements to prevent poorly performing senior NHS managers from moving on to other NHS organisations, the majority response was that *the primary aim of any work undertaken should be to improve quality in senior leadership and management. It was felt that this was best addressed by developing a framework which could also be applied in those cases of poorly performing managers.* The words and themes that were *repeatedly identified by all stakeholders were: leadership, Board support and ongoing development opportunities* for individual managers.
 - There was *support for the NHS Code of Conduct* and it being an integral part of employment contracts, and the annual appraisal process to help determine and identify the performance of senior NHS managers. However, there was *strong feedback for it to be reviewed and revised in light of the NHS Constitution and the fact that it predated the establishment of Foundation Trust status.* The identification of competencies for senior managers around leadership was also supported but there were mixed views as to whether this should be as part of a regulatory framework or not.
 - There was *support for more effective recruitment and vetting procedures* to provide more effective and proportionate safeguards. *Stakeholders considered that there was a lot of good practice guidance available* in the recruitment and vetting of staff and there needed to be *improved compliance across a number of NHS organisations.*
 - A framework of options contained within three strands has been suggested in this report and they have been *compared on the basis of financial, legal, timescale, strategic and stakeholder feedback terms.* Our research has indicated that approaches to quality assuring senior managers should be addressed primarily through the *strengthening of existing processes (i.e. Strands 1 and 2).* Both these strands had the support of the majority of stakeholders, and whilst there would be some legal and financial implications they would not be as onerous as those for Strand 3. In *Strand 3* options around *accreditation, licensing and regulation were explored.* There was *not unanimous stakeholder support for introducing regulation* for senior managers. However, *where it was favoured it tended to be voluntary/self regulation* that was supported.

- 4.3 In terms of next steps, further work is required in determining agreement on mechanisms and their implementation. Wider stakeholder consultation would also be an important part of this work, to ensure that the potential implementation of the options identified do promote external confidence in senior managers. Buy-in from the entire NHS system and the public will be vital to success.
- 4.4 There also is a range of relevant work, for example, the work of the NLC on Board development, and the Top Leaders programme, as well as, Quality Accounts and the DH report: *Extending Professional and Occupational Regulation*, 2009, where it is important that potential linkages and vehicles for taking forward actions and recommendations are considered and harnessed.

Annex A: Advisory Group Membership

Ian Dalton	Department of Health
David Bramley	Department of Health
Jo-Anne Wass	Department of Health
Gavin Lerner	Department of Health
Siobhan O'Reilly	Department of Health
Dan Murphy	Care Quality Commission
Harry Cayton	Council for Healthcare Regulatory Excellence
Jan Parkinson	Local Government Employers
Jon Restell	Managers in Partnership
Karen Straughair	PCT Representative
Mike Deegan	Foundation Trust Representative
Sian Thomas	NHS Employers
Sue Hodgetts	Institute of Healthcare Management

Annex B: Bibliography

Budd, S and Mills, S. (2000) *Professional Organisation of Complementary and Alternative Medicine in the United Kingdom 2000: A Second Report to the Department of Health*. Exeter: University of Exeter

Chartered Management Institute (2007) *The Value of Management Qualifications: the perspective of UK employers and managers*. London: Management Standards Centre

Department for Education and Skills (2004) *National Standards for Head teachers*. Nottingham: DfES

Department of Health (2002) *Code of Conduct for NHS Managers* [online]

Department of Health (2008) *High Quality Care for all, NHS Next Stage Review*. Department of Health, 2008

Department of Health (2006) *The regulation of the non-medical healthcare professions: A review by the Department of Health*. Department of Health

Khurana, R., and Nohria, N., (2008) "It's time to make Management a True Profession" in *Harvard Business Review* 86, no. 10, October 2008.

NHS (2002) *Code of Conduct for NHS Managers*. Department of Health

Scottish Government (2009) *Healthcare Support Workers in Scotland: Evaluation of a National Pilot of Standards and Listing in Three NHS Boards*. Edinburgh: Scottish Centre for Social Research

The European Observatory on Healthcare Systems Series (2002) *Regulating entrepreneurial behaviour in European health care systems*. Open University Press

The European Observatory on Healthcare Systems Series (2006) *Human resources for health in Europe*. Open University Press

The Walker Review Secretariat (2009) *A review of corporate governance in UK banks and other financial industry entities*. London: HM Treasury