

# NHS financial framework: ICB and system finance business rules

27 January 2023

## Introduction

1. The [NHS Oversight Framework](#) details the overall principles, responsibilities and ways of working for oversight, including the key metrics and factors NHS England will consider when determining support needs, and the circumstances in which it considers formal regulatory intervention may be necessary to address particular issues. The National Health Service Act 2006 (the 2006 Act), as amended by the Health and Care Act 2022, sets out the statutory financial duties of NHS England, integrated care boards (ICBs), NHS foundation trusts and NHS trusts.
2. This document sets out the ICB and system<sup>1</sup> finance business rules from 1 April 2023. In prior financial years, finance business rules have been released on an annual basis as part of the financial planning guidance. This approach is intended to give ICBs and systems greater certainty of the financial rules they will be required to operate within over the longer term, and the consequences of any breach.
3. This document should be read alongside the relevant [NHS operational planning and contracting guidance](#).

## Summary

4. The finance business rules are summarised in the table below, which should be read in conjunction with the detailed information that follows in this document.

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<sup>1</sup> For the purposes of this guidance, 'systems' are defined to be the ICB and those partner NHS foundation trusts and NHS trusts mapped for the purposes of [financial apportionment](#).

Rule	ICB	System
<a href="#">Capital resource use</a>		Collective duty to act with a view to ensuring that the capital resource use limit set by NHS England is not exceeded
<a href="#">Revenue resource use</a>	Duty to meet the resource use requirement set by NHS England	Collective duty to act with a view to ensuring that the revenue resource use limit set by NHS England is not exceeded
<a href="#">Breakeven duties</a> (achieve financial balance)	Duty to act with a view to ensuring its expenditure does not exceed the sums it receives	Objective to break even – that is, duty to seek to achieve system financial balance
<a href="#">Financial apportionment</a>	Revenue and capital resources of all trusts apportioned exclusively to a principal ICB	
<a href="#">ICB administration costs</a>	Duty not to exceed the ICB running cost allowance limit set by NHS England	
<a href="#">Risk management</a>	Local contingency decision required to show how financial risks will be managed	
<a href="#">Prior year's under and overspends</a>		Maintain as a cumulative position
<a href="#">Repayment of prior year's overspends</a>		All overspends are subject to repayment
Mental Health Investment Standard	Comply with standard as set out in relevant planning guidance	
Better Care Fund	Comply with minimum contribution as set out in relevant planning guidance	

## Limits and objectives

- As set out in section 223M of the 2006 Act (as inserted by [section 29 of the Health and Care Act 2022](#)), each ICB and its partner trusts<sup>2</sup> must exercise their functions with a view to ensuring that, in respect of each financial year:
  - local capital resource use does not exceed the limit set by NHS England

<sup>2</sup> Regarding resource use, NHS trusts and NHS foundation trusts are referred to collectively in this guidance as trusts.

- local revenue resource use does not exceed the limit set by NHS England.

### **Joint financial objective for ICBs and their partner NHS trusts and NHS foundation trusts**

NHS England sets the following financial objective in exercise of the powers conferred by section 223L of the National Health Service Act 2006.

ICBs and their partner NHS trusts and NHS foundation trusts should exercise their functions with a view to ensuring that local revenue resource use does not exceed income in each financial year. For the purposes of assessing this financial objective, the expenditure and income for NHS trusts and NHS foundation trusts that are partners to more than one ICB should be apportioned in accordance with the apportionment directions set by NHS England with respect to sections 223M and 223N (see [Financial apportionment of trusts](#) below).

This financial objective applies in relation to the financial year ending 31 March 2023 and each subsequent year, unless the objective is changed at a later date.

6. As set out above, NHS England has set the objective that each ICB, and the partner trusts that have their resource use [apportioned](#) to it, in accordance with the financial direction set out below, should seek to deliver a financially balanced system, which may be referred to as a 'breakeven duty'.
7. ICBs also have a duty to act with a view to ensuring that they deliver financial balance individually (section 223GC of the 2006 Act). This is to promote careful financial management and to reflect legislation that requires NHS England and ICBs to manage within a fixed budget. Where an ICB considers it necessary to deliver overall system financial balance but with a deficit in the ICB itself, NHS England should be notified at the earliest opportunity. Additionally, each ICB should ensure it does not exceed its running cost allowance, which is published as part of [ICB allocations](#).

## Financial apportionment of trusts

### **Financial direction for the apportionment of the use of resources by NHS trusts and NHS foundation trusts**

NHS England gives the following direction in exercise of the powers conferred by section 223M(3) of the National Health Service Act 2006.

For the purposes of applying the financial duties of integrated care boards and their partner NHS trusts and NHS foundation trusts under sections 223M and 223N of the National Health Service Act 2006 (as inserted by section 29(5) of the Health and Care Act 2022), NHS England hereby directs that where a trust is the partner of more than one integrated care board, its total use of capital and revenue resources is apportioned to the integrated care board relating to that trust as set out in the [NHS Organisation Data Service](#) directory.

This direction applies in relation to the financial year ending 31 March 2023 and each subsequent year, unless varied or revoked by further direction.

8. Under the legislation, the system financial duties rest on each ICB and its partner trusts. As each trust may be the partner of more than one ICB, the legislation provides for NHS England to apportion a trust's resource use for these purposes to one or more ICBs. As set out in the financial direction above, NHS England has apportioned the capital and revenue resources of all trusts exclusively to a single principal ICB, as set out in the [NHS Organisation Data Service](#) directory.<sup>3</sup> The objectives of this approach are to ensure that the ICB and trusts' mutual responsibilities are clear (such as to meet system financial balance) and to provide stability and continuity in planning relationships.
9. While the measure of system financial balance will be based on the mapping of a trust to a principal 'host' system, this does not change the requirement for all commissioners to work with the providers of their commissioned services to support financial sustainability and agree contractual terms that underpin this. Likewise, trusts that are formal partners of more than one ICB are required to confirm that their operational and financial plans are compatible with and align to all relevant system plans. In these cases, systems may agree local risk-sharing arrangements to reflect a

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<sup>3</sup> To refer to the full list of ICB financial apportionment relationships, access the "ICB financial apportionment" tab within the file titled "ICB partner organisations" on the ODS webpage using the hyperlink provided.

trust's service provision to multiple systems, while recognising that for the purposes of the statutory financial duties, their resource use counts only towards their host system's duties.

10. In exceptional cases, trusts and the relevant ICBs may propose to NHS England that changes are made to the financial apportionment arrangements for future years. We would expect that such a change is based on a material change to the relationship between the trust and current host ICB: for example, the trust is no longer a partner of the ICB; a material service change has made the current apportionment relationship insignificant; or, in the case of ambulance providers, the lead commissioner has changed. Any changes in financial apportionment will only be implemented from the start of a financial year and should be formally agreed at least two months in advance of the start of the planning round for that year. We would expect that all such requests are discussed and mutually agreed by the relevant trust, ICB and NHS England regional director.

## Risk management approach

11. Risk management remains a vital part of system planning. System plans, which must be agreed by ICBs and trusts, should show how financial risks will be managed. Where systems consider it appropriate to support risks to expenditure that may not otherwise be mitigated, the ICB should set aside an appropriate local contingency. While there is no nationally mandated contingency requirement, NHS England regional teams will continue to play an important role in supporting systems to assess the appropriateness of their risk management approach.

## Prior year's under and overspends

12. Given the requirement for systems and ICBs to seek to deliver a breakeven position each year, they should not plan for any in-year surplus or deficit. Any system or ICB that is overspending will be expected to take all necessary steps to correct its rate of expenditure to address the overspend.
13. In the event a system overspends for the year (and so does not achieve the breakeven objective set under section 223L of the 2006 Act), the amount of the overspend will be carried forward and maintained as a cumulative system position. Cumulative system overspends will be subject to [repayment](#) as set out below. This is a change from prior finance business rules in that over (and under) spends will now be assessed on a system basis, rather than from considering just the ICB.

14. Systems are required to maintain the higher of a cumulative breakeven position and the amount carried over from the previous financial year, subject to agreed drawdown of prior year' surpluses.

## ICB drawdown

15. Access to any historical surplus for non-recurrent expenditure will be aligned to performance through the [NHS Oversight Framework](#), and subject to national affordability. Any approved drawdown must be used for non-recurrent investment.

## Treatment of historical CCG cumulative under and overspend

16. ICBs were established with a single brought-forward balance derived from any net historical clinical commissioning group (CCG) underspend plus any CCG under or overspend in 2021/22. Where the resulting brought-forward balance for the ICB was a:
  - **Net historical overspend** – the balance was frozen and, as long as the system and ICB achieve breakeven for each of the following two years (being 2022/23 and 2023/24), will then be written off. ICBs failing to deliver this requirement will have this balance reinstated and therefore it will become repayable.
  - **Net historical underspend** – the balance was retained as a system surplus, held by the ICB, for future non-recurrent investment, as above.

## Repayment of prior year's overspends

17. All system overspends are subject to repayment. To allow a system time to stabilise its spending, repayments will not start until the second year following the year in which the overspends first arose. Repayments will be applied in the financial year being taken into account for the purposes of that year's breakeven objective, so in effect the repayment will be treated as expenditure in that year.
18. The amount subject to repayment is the total cumulative system overspend, ie the net position of the ICB and of those trusts [apportioned](#) to it, plus any reinstated historical CCG overspend.
19. From 2024/25, repayments will be captured in planning templates through a new 'repayment planning' category and transacted through an in-year non-recurrent allocation reduction at the start of each financial year.
20. So that repayments are achieved over a sensible timescale and at a realistic pace, any overspends will be repaid over a three-year period, subject to an annual cap set at 0.5% of the ICB allocation.

21. As long as the system meets the repayment obligations set out in paragraph 20, NHS England's intention is that any residual balance would be frozen at the end of the third year, and as long as the system then achieves breakeven for each of the following two years, the frozen balance would be written off.
22. If the system fails to meet the requirements set out in paragraph 21 in any given year, NHS England's intention is that any frozen balances would again be reinstated, and the repayment process will begin again.