

should have conducted an open tender process in line with OJEU regulations. Instead, the contract was procured through a direct award and it therefore appears that OJEU regulations have been breached. Furthermore, a single tender waiver form has not yet been approved by the trust, over a year after the work began. These issues represent significant governance failings.

44. We acknowledge that, at times, the trust needs to make appointments of individuals or organisations urgently in order to address serious concerns, and that NHS Improvement and CQC have encouraged the trust to do so in the past. This necessary urgency should not preclude the trust from seeking the required approvals retrospectively and in a timely manner, but such approvals have not been sought in these instances.
45. We also identified an example of an interim individual who has demanded payment through a company rather than through the trust bank as the trust thought had been agreed. This has only come to light several months after the individual has started work (he has not yet been paid). While a decision has not yet been made, the trust is concerned that payment through a company will not be compliant with IR35 rules. The trust must ensure that all contractual and payment-related issues are confirmed in writing before start dates.
46. The overarching reason for non-compliance with policies appears to be a lack of management focus on compliance and, in some cases, a disregard for the relevant policies. The trust was not able to offer explanations for the breaches identified with the exception of PwC demand and capacity work, for which the trust was unaware that splitting the cost with commissioners (with each half being below the threshold) did not remove the need to submit a business case, given that the trust was the contracting party.
47. FIC received reports on consultancy and interim staff spend in July and August 2017, but these have not included comprehensive assurances on NHS Improvement policy compliance. They have also contained errors and omissions, limiting the value of these reports for assurance purposes.
48. A 2016 internal audit report on compliance with NHS Improvement agency controls provided 'significant assurance with minor improvement opportunities' that approval requirements were being adhered to. Board members were aware of and taking assurance from this report. As far as we can determine, the scope of this work did not include compliance with interim agency VSM requirements, for which we have identified issues above.
49. We have seen no evidence that breaches of NHS Improvement's policies have been identified internally, rectified and learned from.