

**Appendix**

**BOD 137/2016**

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

# Board of Directors

**1st December 2016**

**Legal, Regulatory and Policy Update**

**For: Information**

**Executive Summary**

This is the monthly report to inform the Board of Directors on recent regulation and compliance guidance issued by bodies such as Monitor, the Care Quality Commission, NHS England, NHS Trust Development Authority and other relevant bodies where their actions have a consequential impact on the Trust or an awareness of the change/impending change is relevant to the Board of Directors. This report covers the period from mid-October 2016 to mid-November 2016 and includes noteworthy contributions covered in the media and by health think tanks.

The Update Report is designed to reflect changes in legislation, guidance, the structure of the NHS, and government policy and direction on health and social care. A summation of the change is provided as a summary for each item. The Board of Directors is asked to consider and note the content of the report and where relevant, members should each be satisfied of their individual and collective assurances that the internal controls in place to deliver compliance against the Trust’s obligations are effective. Chairs of Board Committees should consider whether more detailed assurances relevant to their committees, are necessary, utilising this report as a constructive stimulant to inform the composition of meeting agendas and reporting focus as necessary or appropriate.

The Chief Executive will make certain Executive Directors are aware of the changes relevant to their portfolios and will take forward any key actions arising from the Legal, Regulatory and Policy Updates. Progress updates on any relevant actions will be reported to the Board of Directors, as pertinent and appropriate either through the report itself or via the relevant Board reports of individual Executives.

The Director of Corporate Affairs will continue to develop or enhance internal control mechanisms to support the Trust in complying and being able to evidence compliance with relevant mandatory frameworks/obligations.

**ADDENDUM TO CHIEF EXECUTIVE REPORT**

**LEGAL, REGULATORY AND POLICY UPDATE REPORT**

**1 PURPOSE OF REPORT**

This report provides an update to inform the Board of Directors on recent regulation and compliance guidance issued by such as Monitor, NHS England, the Care Quality Commission, NHS Trust Development Authority and other relevant bodies where their actions have a consequential impact on the Trust or an awareness of the change/impending change is relevant to the Board of Directors.

Proposals regarding any matters arising out of the regular Legal & Regulatory Update report will be received by the Executive Team Meeting to ensure that the Trust is updated in a timely fashion, to enable the Trust to respond as necessary or helpful to consultations and to ensure preparedness for the implications of, and compliance with changes in mandatory frameworks.

**2 LEGAL/POLICY UPDATES**

**2.1 Sustainability and Transformation Plans in the NHS – How are they being developed in Practice?**

Based on a series of interviews with senior NHS and local government leaders which took place throughout 2016, this report by the King’s Fund looks at how STPs have been developed in four parts of the country.

**Key findings**

* Local context and the history of collaboration within STP footprints have played a major role in determining the progress of the plans.
* Despite the focus on local ownership, key elements of the process have been ‘top-down’.
* National requirements and deadlines for the plans have changed over time, and guidance for STP leaders has sometimes been inconsistent and often arrived late.
* The approaches of national NHS bodies and their regional teams have not always been aligned.
* Tight deadlines have made it difficult to secure meaningful involvement in the plans from key stakeholders, including patients and the public, local authorities, clinicians and other frontline staff.
* Organisations face fundamental policy barriers to working together on STPs; existing accountability arrangements focus on individual rather than collective performance.

**Policy implications**

Based on these findings, the report makes a number of recommendations for the future of the STP process. It argues that STPs offer the best hope to improve health and care services despite having been beset by problems so far, and calls for a need to:

* secure the meaningful involvement of patients and the public in the plans, alongside clinicians, other frontline staff and local authorities
* develop governance arrangements that allow organisations to make collective decisions and share accountability
* improve national co-ordination and leadership of the STP process
* ‘stress-test’ STPs to ensure that the assumptions underpinning them are credible and the changes they describe can be delivered
* focus on the skills and resources needed to implement STPs, as well as the cultural aspects of making change happen

<https://www.kingsfund.org.uk/publications/stps-in-the-nhs>?

***OH position: The Chief Executive continues to appraise the Board monthly on developments with the STP and consultation plans in accordance with the Pre Consultation Business Case.***

**2.2 The King’s Fund Quarterly Monitoring Report**

The King’s Fund has published its 21st quarterly monitoring report (QMR) as part of its work to track, analyse and comment on the changes and challenges the healthcare system is facing. It provides an update on how the NHS is coping as it continues to grapple with productivity and reform challenges under continued financial pressure. For the first time general practice is included in the report. The QMR combines publicly available data on selected NHS performance measures with views from NHS finance directors and clinical commissioning group (CCG) finance leads. The report includes analysis of:

* The Sustainability and Transformation Fund
* Control totals
* Meeting finance and performance targets
* Commissioners
* Latest forecasts from NHS Improvement and NHS England

*How is the NHS performing?*

Despite the introduction of the Sustainability and Transformation Fund, the financial reset and the use of a new financial `special measures’ regime, financial performance in providers continues to slide. As a result, reducing the net provider deficit to £250 million from the forecast £644 million at quarter one looks increasingly unlikely and indeed, there are greater risks it will rise rather than fall. This is despite a quarter of all trusts now reporting delays or cancellations of capital spending in order to support their finances.

<http://qmr.kingsfund.org.uk/2016/21/overview>

***OH position: The Chief Executive continues to appraise the Board monthly on developments with the STP and Board has undertaken detailed discussion with regard to control totals and STF funding in the context of its operational plan submission.***

**2.3 Overall Patient Experience Scores: 2016 Community Mental Health Survey update**

NHS England has published the latest statistical information on [patients’ experience of mental health services in the NHS](https://www.england.nhs.uk/statistics/2016/11/15/overall-patient-experience-scores-2016-community-mental-health-survey-update). This is an update to include results from the 2016 Community Mental Health Survey. This survey is part of a rolling programme of NHS patient surveys overseen by the [Care Quality Commission (CQC)](http://www.cqc.org.uk/cmhsurvey), which cover a range of services including outpatients, A&E, children’s inpatient and day-case, maternity and adult inpatient.

# The 2016 survey included 58 NHS trusts in England, including combined mental health and social care trusts, Foundation Trusts and community healthcare social enterprises that provide mental health services. Eligible patients were aged 18 years or over, who had received specialist care or treatment for a mental health condition in September, October or November 2015. Responses were received from nearly 13,300 patients, with a national response rate of 28%. The survey shows that the Overall Patient Experience Score for community mental health services increased between 2015-16 and 2016-17, up from 74.7 out of 100 to 75.2 out of 100, though this change is slight. On average, a score of 60 suggests patients found the service ‘good’ and a score of at least 80 suggests patients found the service ‘very good’.

# National Clinical Director for Mental Health Tim Kendall welcomed the survey.  He said: “I am very pleased that we are doing very well in a number of important areas. For example, more than 9 in 10 (93%) service users say the person or people they saw listened carefully to them; and the majority (89%) of service users say they were given enough time to discuss their needs and treatment. And overall, two-thirds of service users rate their experience as very good. In some areas, such as crisis care, we still have a lot to do. Much of the work we are now focussing on in the Five Year Forward View for Mental Health is aimed to improve patient experience and to get timely access to high quality services; and for people in crisis this is now a major priority for me and the team over the next few years.”

<https://www.england.nhs.uk/mentalhealth/2016/11/15/overall-patient-experience-scores/>

<http://www.cqc.org.uk/content/community-mental-health-survey-2016>

***OH Position: The provisional results from the national survey were shared along with details of the actions being taken in the patient experience and involvement quality report presented to Board in October 2016. The final results were published on 15th Nov 2016.***

**2.4 Changes to the NHS patient survey programme following consultation**

Following feedback from a public consultation earlier this year, the Care Quality Commission will be improving how it manages the NHS patient survey programme. These changes include extending the scope and frequency of the A&E survey, continuing the survey on children and young people, and piloting a new survey on people’s experiences of NHS healthcare in the community. The programme is made up of a series of surveys, which allow people who have received NHS-funded care to share their experiences. These are then collated and reported on at provider and national levels so that the system can learn from the findings. In May, the CQC launched the consultation, which proposed a number of changes to the frequency and format of some of these surveys in order to enhance the value of the information they provide and ensure that they remain relevant and useful. The regulator received over 200 responses during the consultation from providers, commissioners, patient groups, system partners and members of the public. In response to the consultation, the CQC will be introducing a series of changes to the programme from April 2017. These changes are detailed on the CQC website, where the full response to the consultation can also be found. <http://www.cqc.org.uk/content/changes-nhs-patient-survey-programme-following-consultation>

***OH Position: The current changes affect acute/community outpatient services and not the services of the Trust. The Trust will continue to use the existing CQC survey programme to understand the experiences of people using its services and will encourage patient participation such that the results continue to contribute to improvement.***

**2.5 New NHS ‘bond’ could accelerate capital investment**  
The [HSJ](http://nhsproviders.cmail20.com/t/t-l-hilijjd-otuudahi-n/) reported that NHS Improvement is seeking greater flexibility around capital spending and is looking to create an “NHSI Bond”. Jim Mackey, chief executive for NHSI speaking to the HSJ said some of the NHS estate is in an “unacceptable” condition. The new bond could help providers that want to sell assets realise some of the capital before the sales goes through helping to accelerate investment. The Department of Health’s capital budget has been frozen in cash terms over the course of this parliament, equating to a real terms cut.

<https://www.hsj.co.uk/topics/finance-and-efficiency/exclusive-new-nhs-bond-could-unlock-capital-funds-says-jim-mackey/7013334.article>

**2.10 NHS managers should be regulated in the same way as clinicians**

In an exclusive article with the HSJ, Sir Robert Francis QC argued it was time for a “radical rethink” about how regulators operate. Sir Robert argued that senior NHS managers should be regulated in the same way as clinicians to ensure public trust and confidence. The Mid Staffordshire public inquiry chair also used the article to call on regulators to do more for patient safety and to question the effectiveness of the fit and proper person test, doubting its ability to “achieve a level playing field between all healthcare leaders”.

<https://www.hsj.co.uk/topics/>

**2.11 Men less likely to seek mental health help than women**  
New figures reveal that men are far less likely to seek medical support for a mental health problem than women, according to the [Observer](http://nhsproviders.cmail19.com/t/t-l-htdrjjt-otttdnik-a/). A survey commissioned by the Mental Health Foundation found that not only are men far less likely than women to seek professional support, they are also less likely to disclose a mental health problem to friends and family. The YouGov survey, the largest of its kind, polled more than 2,500 people who have had mental health problems, and showed 28% of men admitted that they had not sought medical help, compared with 19% of women. Mark Rowland, director at the Mental Health Foundation, said the findings showed that there needed to be a cultural shift in the approach to the issue. He said: “Mental health is so central to our experience of being alive that if we’re ever to rise to the challenge of preventing mental health problems, it will be because men feel more able to share when they are vulnerable.”

<https://www.theguardian.com/society/2016/nov/05/men-less-likely-to-get-help--mental-health>

***OH position: Information provided to Clinical and Service Directors to inform engagement activity and awareness campaigns.*** Adult services are ***very aware re such as Men- Thames Valley which is signed up to be a calm zone: This was initiated via the SPIN network – suicide prevention and intervention network of which the Trust is a crucial part***

[***https://www.thecalmzone.net/help/helpline/helpline-thames-valley/***](https://www.thecalmzone.net/help/helpline/helpline-thames-valley/)

***Our partners also engage people who wouldn’t access traditional services as do other Charites that the Trust links to - for instance; ‘men in sheds’***

**2.12 CQC annual review of monitoring the MHA**

The Care Quality Commission’s (CQC) [annual review of monitoring the Mental Health Act](http://www.cqc.org.uk/content/monitoring-mental-health-act-report) in 2015/16, was laid in Parliament on Friday 18 November.  The CQC has found a lot of good practice across England which it is encouraging all providers to learn from.  To support this the report has outlined how several healthcare services are using the Act to maximise people’s recovery, wellbeing and support when they have been detained. This includes where services are meeting and exceeding the expectations of the Act, helping people to understand their rights while detained and involving them in both the planning of their care and future treatment.

However, it also raises concerns that it found too little improvement across the system in response to recommendations from last year’s report. Progress needs to happen at a faster pace for key issues, such as patient involvement and protection of rights. The CQC found that less than half of the inspected psychiatric inpatient wards had sufficiently trained their staff in the ‘Code of Practice’ (national guidance that explains how professionals should carry out their responsibilities under the Mental Health Act) and more than half had not updated their own policies to reflect the updated Code of Practice (introduced in April 2015). There is therefore urgency for change, with more needing to be done by all stakeholders – providers, commissioners, national bodies and regulators – to ensure people receive high-quality and effective care and treatment under the MHA.

***OH position: The report has been formally received by the Trust and is being considered by the Mental Health Act Committee.***