

**Appendix 1**

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

# Board of Directors

**27th April 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-March 2016 to mid-April 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.

As Chief Executive I 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.

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 National Whistleblowing Policy**

Following a public consultation on the draft policy in November last year, NHS Improvement and NHS England have published a single national integrated whistleblowing policy to help standardise the way NHS organisations should support staff who raise concerns.

Recommended by Sir Robert Francis in his Freedom to Speak Up review, this new policy contributes to the need to develop a more open and supportive culture that encourages staff to raise any issues of patient care quality or safety.

The new policy will ensure:

• NHS organisations encourage staff to speak up and set out the steps they will take to get to the bottom of any concerns;

• organisations will each appoint their own Whistleblowing Guardian, an independent and impartial source of advice to staff at any stage of raising a concern;

• any concerns not resolved quickly through line managers are investigated;

• investigations will be evidence-based and led by someone suitably independent in the organisation, producing a report which focuses on learning lessons and improving care;

• whistleblowers will be kept informed of the investigation’s progress; and

• high level findings are provided to the organisation’s Board and the policy will be annually reviewed and improved.

[**http://dmtrk.net/2J9J-PIM0-4WJY3J-BFIF4-1/c.aspx**](http://dmtrk.net/2J9J-PIM0-4WJY3J-BFIF4-1/c.aspx)

**2.2 Fines add to unnecessary financial burden facing NHS providers**

Analysis from NHS Providers, published in the Guardian, reveals that around £600m in funding will be withheld from hospital, community, mental health, and ambulance trusts this financial year as a result of fines imposed on them for breaching waiting time and other key performance targets, such as the four hour A&E target. This represents almost a quarter of the approximate £2.8bn deficit expected to be posted by NHS providers by the end of the 2015/16 financial year. The money generated through these fines, which are levied by local and national commissioners, has historically been reinvested back into providers to help them address the underlying causes of the performance target breaches. However, the policy has been changed by NHS England in two ways: from the start of the 2015/16 financial year, NHS England removed the ability of CCGs to waive fines; and in January 2016, NHS England removed the discretion of local CCGs to reinvest the funding. NHS Providers Chief Executive Chris Hopson said: “Imposing fines or refusing to pay the full cost of treatment makes no sense at all in this situation and does nothing to address the underlying reasons for trusts missing their performance targets.” He called on NHS system leaders to suspend fines for 2016/17.

http://www.theguardian.com/society/2016/mar/29/nhs-bosses-slam-600m-hospital-fines-over-patient-targets

**2.3 Monitor and NHS England publish 2016/17 national tariff**

Monitor and NHS England last week published the 2016/17 national tariff payment system, which will come into effect from 1 April. This year’s national tariff aims to give providers of NHS services the space to restore financial balance and support providers and commissioners to make longer term plans for their local health economies. NHS Providers Chief Executive, Chris Hopson, said: “Finally, after five years of an NHS tariff with undeliverable savings assumptions, which has played a key role in driving the NHS provider sector into a near £3bn annual deficit, providers are set a realistic headline 2% efficiency factor”. Chris added however that we should “be under no illusions” on how difficult the task for the provider sector in 2016/17 will be. He said: “Our latest view is that there will still be a provider sector deficit of at least £500m by the end of next year.” Chris emphasised the importance that CCGs use the increased tariff settlement to support mental health and community services that will not receive sustainability funding. [**https://www.gov.uk/government/publications/nhs-national-tariff-payment-system-201617**](https://www.gov.uk/government/publications/nhs-national-tariff-payment-system-201617)

**2.4 NHS eating disorder treatment waits revealed**  
The [BBC](http://nhsproviders.cmail20.com/t/t-l-diirjdk-khhttthjd-c/) reports that new figures show average waiting times for mental health treatment for eating disorders in England can vary from 20 days to 180 days depending on the trust. Data from 41 of the 55 mental health trusts also found that 1,576 people have waited 18 weeks to see a specialist since 2012, 742 waited 26 weeks and 99 a year. Waiting times for outpatient treatment have risen by 120% in some areas over the past four years, with patients routinely waiting more than 100 days for a specialist. Eating disorder charity Beat called for more investment in mental health treatment for eating disorders, saying early intervention was critical. The government introduced new targets for mental health last week but waiting times for adult eating disorder services were not included. The Department of Health said it was developing a pathway for treating adults with eating disorders to cut waiting times.

[**http://www.bbc.co.uk/news/uk-35983715**](http://www.bbc.co.uk/news/uk-35983715)

**2.5 MAC recommends nurses remain on shortage occupation list**

In its latest report, *Partial review of the shortage occupation list: review of nursing*, the Migration Advisory Committee recommended that nurses remain on the government’s shortage occupation list and criticized the health sector for failing to maintain a sufficient supply of UK nurses. Department of Health evidence to the MAC suggested it will be another three years before there are enough UK-born nurses to meet demand. NHS Providers director of policy and strategy, Saffron Cordery, said: “Given the shortages of nurses, it is vital that NHS providers are fully supported by the government to recruit nurses from outside of Europe to ensure safe and high quality care for patients.” Saffron added: “Although this recommendation is important in addressing an urgent issue, this step alone will not solve the workforce challenges across the NHS. There needs to be a clear national workforce strategy that supports providers as they work locally and across health systems to create a sustainable workforce”. [**https://www.gov.uk/government/publications/migration-advisory-committee-mac-partial-review-shortage-occupation-list-and-nursing**](https://www.gov.uk/government/publications/migration-advisory-committee-mac-partial-review-shortage-occupation-list-and-nursing)

**2.6 Reforming healthcare Education funding**

The government announced in the 2015 Spending Review that from 1 August 2017, all new nursing, midwifery and allied health professional students will receive funding and financial support through the standard student support system rather than through the current NHS bursary scheme.

From 1 August 2017, new students will no longer have their course fees paid by Health Education England (nor a bursary provided by the NHS Business Services Authority) but will have access to the standard student support system provided by the Student Loans Company to cover the cost of their tuition fees and means tested support for living costs.

The terms of repayment for the loans will be the same as all other graduates who have taken out a student loan when at university, including those who have studied in order to teach; a profession with comparable earnings to healthcare professionals. At present, repayment starts once a graduate is earning £21,000 and the repayments are 9% of income over £21,000.

At present, newly qualified nurses earning £21,700 will pay back around £5.25 a month. If their salary drops below £21,000 a year, then their repayments stop. If they haven’t paid back their loan after 30 years the balance is written off, as is the case for all other graduates on the standard student support package.

Views are being sought on how the proposed reforms on funding and financial support for nursing, midwifery and allied health professionals can be successfully implemented

<https://consultations.dh.gov.uk/workforce/healthcare-education-funding>

**2.7 Teaching hospitals warn NHS England puts provider rescue plan at risk**

HSJ reports teaching hospitals have warned that new conditions imposed by NHS England on quality incentive payments put efforts to bring the provider sector into the black at risk, and insist they are incompatible with the basis on which providers accepted their 2016/17 financial targets. A number of sources have said the “control totals” trusts agreed with NHS Improvement in February were based on the assumption that providers would receive most or all of their commissioning for quality and innovation payments this year, at little extra cost. However, providers say the specialised commissioning CQUIN payments – which NHS England did not publish until mid-March – will require significant additional investment; transfer unacceptable levels of financial risk to some providers; and are so numerous they will be extremely difficult to attain. NHS England has rejected the allegations, arguing that the value of the CQUIN payments will more than offset costs and the incentives are appropriate and achievable. NHS Providers chief executive Chris Hopson said: “Providers signed up to stretching 2016/17 control totals in February based on clear assumptions on specialised CQUINs. They are frustrated that, very late in the day, those CQUINs will now provide less money, require more investment, and will be much harder to deliver. This means these proposals will either have to be amended or the controltotals will have to be changed.”

[**http://www.hsj.co.uk/topics/finance-and-efficiency/exclusive-nhs-england-puts-provider-rescue-plan-at-risk-teaching-hospitals-warn/7003851.article?blocktitle=News&contentID=15303**](http://www.hsj.co.uk/topics/finance-and-efficiency/exclusive-nhs-england-puts-provider-rescue-plan-at-risk-teaching-hospitals-warn/7003851.article?blocktitle=News&contentID=15303)

**2.8 GMC national training survey open**

The General Medical Council runs an annual survey of all doctors in training in order to monitor the quality of postgraduate medical education and training in the UK. It is recognised that this year’s survey is taking place at a time when there are high levels of concern and frustration, and while the survey does not have any role in resolving the current dispute in England, it will provide a wealth of information about the experience of doctors in training throughout the UK, and inform the GMC’s work and other efforts to tackle problems facing this core part of the profession. The national training survey helps the GMC make sure that doctors receive high quality training, in a safe and effective clinical environment. A second survey asks postgraduate educational and clinical supervisors to share their views about the quality of education, protection of training resources and support they receive in their training role. For more information, visit the GMC website. Both surveys are now open and will close at noon on 4 May.

<http://www.gmc-uk.org/education/surveys.asp>

**2.9 The human factor in organisational cultures of safety and improvement**  
Writing in [National Health Executive](http://nhsproviders.cmail20.com/t/t-l-ditruud-khhttthjd-p/), policy advisor Cassandra Cameron analyses the impact human factors can have on driving safety improvement in the NHS. Cassandra writes that quality and patient safety are the highest priorities of provider boards, adding that trusts will have noticed a renewed national focus on building cultures of safety and improvement across NHS organisations, and a greater proficiency at learning from mistakes and spreading good practice. However, despite a strong reporting culture in trusts, widespread translation of reporting into routine learning and demonstrable improvement has yet to happen. Cassandra says the reasons why error persists are myriad and complex, however local leadership remains key: provider boards must drive their own organisations towards a culture of greater learning and improvement. Cassandra highlights the commonalities between trusts that are recognised for their strong safety culture, and discusses both the clinical and cultural case for a ‘human factors’ approach in healthcare. She writes that the growing application of human factors, drawing on peers’ good practice and ample supporting guidance, can deliver greater insights for boards into their own behaviour and of their staff and patients, to help cultivate more highly performing organisations and better care.

<http://nhsproviders.cmail20.com/t/t-l-ditruud-khhttthjd-p/>

**2.10 Royal College of Physicians (RCP)**

**End of life care audit - dying in hospital: national report for England 2016.** This report shows that there has been steady progress in the care of dying people since the previous audit carried out in 2013 and published in 2014. This is the first audit to be carried out since the official withdrawal of the Liverpool Care Pathway. Whilst it shows documented improvements in patient experience and quality of care, it highlights room for improvement in the provision of palliative care services on a 24/7 basis.

[**http://kingsfundmail.org.uk/21A8-4499R-MFGQMA-21NUMB-1/c.aspx**](http://kingsfundmail.org.uk/21A8-4499R-MFGQMA-21NUMB-1/c.aspx)

**2.11 Local Government Association (LGA)**

**The community pharmacy offer for improving the public's health: a briefing for local government and health and wellbeing boards**

This briefing for councillors, senior council officers and commissioners describes the increasing role of community pharmacy in public health and explains councils' role and duties. A number of case studies are included to illustrate a variety of collaborative approaches by community pharmacies working with councils and other community partners.

<http://kingsfundmail.org.uk/21A8-4499R-MFGQMA-21LRPM-1/c.aspx>

**2.12 Health Foundation: Fit for purpose: workforce policy in the English NHS**As modern health care becomes ever more complex, designing effective ‘workforce policy’ - how the health service plans, trains, regulates, pays and supports its people to ensure affordable, good quality care - is one of the central challenges facing the system today. This report gives an overview of the components of workforce policy in the English NHS and the bodies which shape it. It argues that government and national leaders need a radical new approach to inspire an NHS workforce that is too often stressed, stretched and disaffected.

<http://kingsfundmail.org.uk/21A8-4499R-MFGQMA-21NVQO-1/c.aspx>

**2.13 Care Quality Commission (CQC) Fees scheme 2016/17**

This document outlines the changes to revised fees that providers will have to pay to cover the chargeable costs of CQC regulation for 2016/17. These new fees will take effect from 1 April 2016. http://kingsfundmail.org.uk/21A8-4499R-MFGQMA-21NXV1-1/c.aspx

**2.14 NHS England 2016/17 business plan**

This business plan builds on three guiding principles to shape the work of NHS England for the year ahead: constancy of purpose and priorities; coherent national support for locally-led improvement; and solving today's issues by accelerating tomorrow's solutions.

<http://kingsfundmail.org.uk/21A8-4499R-MFGQMA-21O0WC-1/c.aspx>

**2.15 NHS England devolves powers to Manchester leaders, giving them greater responsibility for integrated health and care budgets and commissioning decisions.**

Greater Manchester has become the first English region to gain control of its health spending. From 1 April, the £6bn health and social care budget will be managed by councils and health groups as part of an extension of devolved powers. The Greater Manchester Strategic Partnership will now make decisions on how to target specific health issues. Integrating health and social care services will ease the pressure on hospitals, said the government. The new partnership, chaired by Lord Peter Smith, comprises 37 organisations including hospital trusts, NHS England, the 10 borough councils and GP commissioners.

<http://www.bbc.co.uk/news/uk-england-manchester-35933922>

**2.16 GPs facing ‘unsustainable’ pressures from immigration and ageing population**

The Daily Telegraph reports that GPs across England are seeing an extra 80 patients a week and facing “unsustainable” pressure caused by an ageing population and high immigration levels, according to an Oxford University study from the Nuffield Department of Primary Care and Health Sciences. The study, based on an analysis of over 100 million GP and nurses sessions at nearly 400 general practices, quantified the workload, finding the number of weekly consultations had increased from 902 in 2007 to 984 in 2014. While the number of face-to-face GP sessions had risen by 6.38%, telephone consultations had nearly doubled in that time. The study authors warned that as the time with a patient nears the 10-minute allocated slot, doctors and nurses have little time to perform other duties before seeing other patients.

[**http://nhsproviders.cmail20.com/t/t-l-ditruud-khhttthjd-z/**](http://nhsproviders.cmail20.com/t/t-l-ditruud-khhttthjd-z/)

**2.17 Bringing together physical and mental health**

Until now, most efforts to promote integrated care have focused on bridging the gaps between health and social care or between primary and secondary care. But the NHS five year forward view has highlighted a third dimension – bringing together physical and mental health. This report makes a compelling case for this ‘new frontier’ for integration. It gives service users’ perspectives on what integrated care would look like and highlights 10 areas that offer some of the biggest opportunities for improving quality and controlling costs.

Efforts to develop integrated care should focus more on the integration of physical and mental health, addressing in particular four major challenges:

* high rates of mental health conditions among people with long-term physical health problems
* poor management of ‘medically unexplained symptoms’, which lack an identifiable organic cause
* reduced life expectancy among people with the most severe forms of mental illness, largely attributable to poor physical health
* limited support for the wider psychological aspects of physical health and illness.

There is much that can be achieved within existing structures to bring together mental and physical care at the clinical level. But this needs to be supported by wider changes such as development and evaluation of new service models, changes to professional education and increased use of new payment systems and contracting models.

[**http://www.kingsfund.org.uk/publications/physical-and-mental-health**](http://www.kingsfund.org.uk/publications/physical-and-mental-health)

**2.18 Guidance on implementing overseas charging regulations** This guidance seeks to provide help and advice on the implementation of the National Health Service (Charges to Overseas Visitors) Regulations 2015, which has been amended by the National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2015.

Not everyone is entitled to free NHS hospital treatment in England. This guidance explains what should happen when an overseas visitor needs NHS treatment provided by an NHS hospital in England. The guidance is intended for staff at relevant NHS bodies, including clinicians, senior managers and clerks, and in particular staff with a responsibility to identify and charge overseas visitors. The Department of Health strongly recommends that relevant NHS bodies have a designated person/s – hereafter referred to as an Overseas Visitor Manager (OVM) – to oversee the implementation of the Charging Regulations. All staff, including clinicians and managers, have a responsibility to ensure that the charging rules work effectively.

The success of the charging rules also depends on NHS staff being aware and supportive of the role of the OVM. The OVM should be given the authority to ensure that the charging rules can be properly implemented in all departments.

[**https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations**](https://www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations)

**2.19 NHS Outcomes Framework 2016-2017**

The NHS Outcomes Framework will remain unchanged for 2016 to 2017.

NHS Outcomes Framework 2016 to 2017 at-a-glance document lists the indicators along with their status. The department will work to develop indicators that are not yet live, and keep the existing indicators under review.

Data for the indicators of the NHS Outcomes Framework, as well as technical specifications of the indicators, are published on the [Health and Social Care Information Centre indicator website](http://www.hscic.gov.uk/indicatorportal). More information about the role of the NHS Outcomes Framework and the objectives government sets for NHS England can be found in the [mandate to NHS England for 2016 to 2017](https://www.gov.uk/government/publications/nhs-mandate-2016-to-2017).

[**https://www.gov.uk/government/publications/nhs-outcomes-framework-2016-to-2017**](https://www.gov.uk/government/publications/nhs-outcomes-framework-2016-to-2017)

**2.20 NHS Improvement to take further action against Southern Health**

NHS Improvement has informed Southern Health NHS Foundation Trust that it intends to take further regulatory action at the trust to ensure urgent patient safety improvements are made, following a warning notice being issued by Care Quality Commission (CQC).

<https://www.gov.uk/government/news/nhs-improvement-intends-to-take-further-action-at-southern-health>

**2.21 Agency Spend**

Monitor has published [the complete rules](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510391/agency_rules__23_March_2016.pdf) for trusts and foundation trusts on agency expenditure which supersede all previous guidance. This document outlines details on how to comply with the rules from 1 April 2016. It includes further information on:

* an agency price cap reduction to 55% above basic pay rates from 1 April
* the requirement to use approved frameworks for all agency procurement from 1 April
* set expenditure ceilings on the total amount individual trusts can spend on agency staff from 1 April