

**Appendix**

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

# Board of Directors

**25th May 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-April 2016 to mid-May 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 CQC publishes its business plan for 2016/17**

The CQC has published its business plan for April 2016 to March 2017 setting out the first phase of its five-year strategy for health and adult social care regulation in England.

The plan for 2016/17 is set in the context of the increasing pressures faced by the health and care system in England, driven by changing care needs and financial demands on all public services. Providers and staff are being asked to deliver significant efficiency savings to ensure that the health and care system remains sustainable for the future, while meeting the more complex needs of the population, including those with multiple comorbidities and older people.

As a result, the way in which health and social care is delivered has begun to undergo a fundamental transformation - providers are changing the way services are organised and how they deliver care in response to pressure and opportunities to do things differently. Traditional boundaries between organisations and sectors are blurring and organisations are redesigning their services to meet changing needs.

The way services are regulated is evolving to reflect these changes, although the CQC states that its purpose remains unchanged: to make sure that health and social care services provide people with safe, high-quality and compassionate care, and to encourage improvement. More than ever, its focus will be on regulating for quality in a time of straitened public finances. Its priorities for 2016/17 will be:

1.Deliver its approach to regulation: this includes completing its first comprehensive inspection programme, which leads to services being rated as either outstanding, **good,** requires improvement or inadequate, as well as ensuring that registration processes support providers to deliver high-quality care while encouraging innovation. This follows an earlier announcement that the CQC has already completed comprehensive inspections of all 154 acute NHS trusts in England by the end of March 2016, as planned.

2. Shape the future of health and care regulation: this will ensure that its approach remains relevant to a changing environment, including by making better use of intelligence, developing a shared view of quality with providers, and developing a framework with NHS Improvement on how well NHS acute hospitals use their resources.

3. Build an effective, efficient, learning and values-based CQC: this covers developing the skills needed internally to embed culture and values and to respond to the changing needs of the organisation and wider system.

4. Demonstrate the difference CQC makes: this covers evaluating, measuring and reporting on performance, quality, management assurance, impact and value for money, using this evidence to learn and improve, and to be publicly accountable**.**

The full strategy for regulation over the next five years will be published next month**.**

<http://www.cqc.org.uk/content/cqc-publishes-business-plan-201617>

**2.2 Mental health funding not reaching the frontline**

A new survey has found that the government’s commitment to parity of esteem between mental and physical health services is being undermined by a failure to ensure funding increases reach the frontline.

NHS Providers and the Healthcare Financial Management Association (HFMA) surveyed finance directors in mental health trusts and chief finance officers in clinical commissioning groups (CCGs) to understand how the parity of esteem commitment is being implemented locally. More than half (55%) of England’s mental health trusts responded, along with 10% of CCGs.

The report, ‘Funding mental health at local level: unpicking the variation’ reveals that:

•Only half (52%) of providers reported that they had received a real terms increase in funding of their services in 2015/16.

•There is limited confidence that funding increases will be delivered this year, with only a quarter (25%) of providers saying they were confident that their commissioners were going to increase the value of their contracts for 2016/17.

•There is a lack of alignment between commissioners and providers over what it means to implement parity of esteem – there is confusion over what services should be covered, and how much investment should be made.

The report calls for greater clarity and transparency from the government and leaders of the arms-length bodies in the following key areas:

1. How much is being made available for mental health services, and in which areas

2. Linked to this, greater transparency across the system about how much is actually being spent on mental health services

3. Explicit alignment about what it means to meet parity of esteem commitments – this is because at both national and local level organisations are interpreting the requirements in different ways, which is leading to a patchwork of investment and services for patients

4. Better enforcement and support for local organisations – this is needed to help counter the significant local variation highlighted in this survey about how the rules are being interpreted and responded to. Where organisations are struggling to invest in line with the guidance, support should be required to ensure that challenges are addressed.

**2.3 Mental health services: preparations for improving access.**

Progress is being made by the Department of Health (DH) and NHS England in improving access to mental health services, the National Audit Office (NAO) has found, but significant risks to implementing the access and waiting times programme remain. The NAO's report finds the strongest areas are the clear objectives and strong leadership, with a governance framework being developed. The greatest challenges for the future are collecting data to show whether the standards are being met, building the mental health workforce and reinforcing incentives for providers. The NAO report is the first in a planned programme of work on mental health

<https://www.nao.org.uk/wp-content/uploads/2016/04/Mental-health-services-preparations-for-improving-access.pdf>

**2.4** [**Integrated care to address the physical health needs of people with severe mental illness: a rapid review**](http://www.journalslibrary.nihr.ac.uk/__data/assets/pdf_file/0006/164652/FullReport-hsdr04130.pdf).

People with mental health conditions have a lower life expectancy and poorer physical health outcomes than the general population. Evidence suggests that this discrepancy is driven by a combination of clinical risk factors, socioeconomic factors and health system factors. The objective of this research was to explore current service provision and map the recent evidence on models of integrated care addressing the physical health needs of people with severe mental illness primarily within the mental health service setting.

<http://www.journalslibrary.nihr.ac.uk/__data/assets/pdf_file/0006/164652/FullReport-hsdr04130.pdf>

**2.5 CentreForum Commission on Children and Young People's Mental Health: State of the nation.**

This first report from the Commission reveals the problems that young people face when trying to access mental health care. Services turn away, on average, nearly a quarter (23 per cent) of children and teenagers referred to them by their GPs, teachers or others. The analysis of services’ eligibility criteria shows that this is often because there are high thresholds for access to their services, preventing often the most effective treatment of mental health conditions - early intervention**.**

<http://centreforum.org/live/wp-content/uploads/2016/04/State-of-the-Nation-report-web.pdf>

**2.6 Guidance for commissioners of psychiatric intensive care units (PICU).**

This guidance was produced in partnership with the National Association of Psychiatric Intensive Care and Low Secure Units (NAPICU) to support the commissioning of high-quality PICUs and improve patient experience. It seeks to empower and enable commissioners, managers and clinicians to jointly develop high quality PICUs. It provides summary guidance which will assist commissioners to meet the needs of their local population, and achieve the ambitions of the Five Year Forward View focusing on patient safety, clinical effectiveness and patient experience.

<http://napicu.org.uk/guidance-for-commissioners-of-psychiatric-intensive-care-units-picu-2016/>

**2.7** **No difference in patient mortality for weekend vs weekday admissions to psychiatric hospitals.** Interim findings from a NIHR HS&DR study, published in The Lancet, have found that there is no significant difference in risk of mortality for patients admitted to a psychiatric hospital at the weekend versus during the week.

<http://www.nets.nihr.ac.uk/news/all/2016/weekend-admissions-and-patient-mortality-in-psychiatric-hospitals>

**2.8 Healthcare Safety Investigation Branch**

Shortcomings in the current approach to investigating and learning from patient safety incidents have been highlighted by the reports of the Mid Staffordshire Inquiry, the Morecambe Bay Investigation, and the Public Administration Select Committee report “Investigating Clinical incidents in the NHS”. The latter made specific recommendations on the need to establish an independent, learning-focused patient safety investigation body that would investigate the most serious patient safety issues, and promote a just and learning culture across the healthcare system.

The Government, in their response to those recommendations, have made a commitment to establish an independent patient safety investigation function The report, “Learning not Blaming”1, determined that the new investigation function will be based on five principles:

* Objectivity: its activities should focus on learning and improvement, and •not finding fault, attributing blame or holding people to account.
* Transparency: acting as an exemplary model of openness and •engagement with patients and their families throughout the investigation process.
* Independence in action, thought and judgement: able to operate without •fear or favour, examine the causes of incidents and direct its findings to any organisation or individual.
* Expertise: be staffed by experts in patient safety, investigation, human •factors and healthcare provision.
* Learning for improvement: produce findings that will help deliver practical solutions and address the causes of safety issues, and support local investigators and commissioners.

As the Expert Advisory Group, they were asked to advise the Department of Health and Secretary of State for Health on the establishment of this function. In particular, they have been asked to provide advice on its purpose, role and operation. This report sets out their response.

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522785/hsibreport.pdf>

**2.9 Mental health crisis care: health based places of safety funding**

This guidance document sets out how local crisis care concordat groups can apply for funding to increase the capacity and number of health based places of safety.

If someone is having a mental health crisis and they come to the attention of the police, they may need to be taken to a place of safety – somewhere that is designated as safe under the Mental Health Act.

The best place of safety is in a health setting, so that people, including children and young people, get the care they need for their mental health. This funding programme aims to increase and improve health based places of safety and continue to reduce police cells being used as an alternative. Bids for a share of the £15 million fund will be managed by the Department of Health.

<https://www.gov.uk/government/publications/mental-health-crisis-care-health-based-places-of-safety-funding>