

**Report to the Meeting of the**

**Appendix to   
CEO report  
BOD 106/2017**

(agenda item: 5)

# Oxford Health NHS Foundation Trust

# Board of Directors

**21 September, 2017**

**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 NHSI, the Care Quality Commission, NHS England, 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-August 2017 to mid-September 2017 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 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 any 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 Executive team meeting agenda 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.

**Author:** Kerry Rogers, Director of Corporate Affairs & Company Secretary

**Lead Executive:** Kerry Rogers, Director of Corporate Affairs & Company Secretary

**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 NHSI, NHS England, the Care Quality Commission 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 where necessary be received by the Executive Team Meeting to ensure timely updates, 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.

1. **LEGAL/POLICY UPDATES**
   1. **Delayed Transfer of Care**

NHS England has published bed availability and occupancy figures for quarter 1. Despite a slight easing of pressure, new figures from NHS England show bed occupancy rates and delayed transfers of care (DTOCs) for patients who are medically fit to move on after treatment have remained stubbornly high. The NHS has been told to bring the DTOC rate down to 3.5% by September. The quarterly data covering April, May and June show the rate fell to 5.2%, compared with 5.6% in the previous quarter.

<http://nhsproviders.org/news-blogs/news/disruption-from-delayed-transfers-remains-severe-and-widespread>

**OH position: The Board has been appraised of the work the Trust is doing and with OUH regarding Oxfordshire’s DTOC rates**

* 1. **Practical guide for large scale change launched**

**NHS England has launched a refreshed guide to support health and care leaders to deliver large scale change.** The guide will help them meet the challenges set out in the Next Steps on the NHS Five Year Forward View published earlier this year. NHS England’s Sustainable Improvement team and the Horizons team have refreshed and updated a 2011 publication, Leading Large Scale Change: A Practical Guide, to reflect today’s unique health and care landscape and challenges.

The refreshed guide was launched Monday 11 September and provides a vital and comprehensive round-up of all the latest thinking and practical approaches and tools that can be used in advancing large scale change programmes.

<https://www.england.nhs.uk/2017/09/practical-guide-for-large-scale-change-launched/>

**OH position: The guidance will be considered to help successfully take forward our STP, new care model, accountable care system and any other large scale change programmes and gives the knowledge and expertise required to mobilise and implement the changes set out in the NHS Five Year Forward View.**

* 1. **NHS commits to better care for expectant and new mums with mental health**

The NHS is set to deliver more personalised care to expectant and new mums with serious mental ill health. The four new Mother and Baby Units revealed this month will allow women to stay with their babies while receiving the specialist care they need.

As many as one in five women experience mental ill health during pregnancy or in the year after birth, covering a wide range of conditions including severe depression, anxiety and in some cases postpartum psychosis, affecting around two in every 1000 new mothers and strongly associated with maternal suicide.

These new units will provide in-patient support for women and their babies with the most complex and severe needs who require hospital care, who are experiencing severe mental health crisis including very serious conditions like post-partum psychosis.

The four selected providers, with the first new mental health Mother and Baby unit expected to open in 2018, will be:

* Kent and Medway NHS and Social Care Partnership Trust
* Devon NHS Partnership Trust
* Lancashire Care NHS Foundation Trust
* Norfolk and Suffolk NHS Foundation Trust

There are currently 15 dedicated mother and baby units, the four new eight-bedded units will allow more women to receive treatment with their babies. Areas will also receive a share of £15 million capital funding to support this ambitious development. NHS England is also increasing bed numbers in the existing units, which will expand capacity by 49 per cent by the end of 2018/19.

**2.4 New analysis highlights ‘unjustifiable’ variance in CAMHS spending**  
The Royal College of Psychiatrists has found vast differences in how much clinical commissioning groups are investing in young people’s mental health services. They found that a third of CCGs spent less than planned on children and young persons and eating disorder services in 2016/17, and that 22 cut overall mental health funding in real terms from 2015/16 to 2016/17. The college said the variance “seemed unjustifiable” because of the 13-fold difference in spending between the top and bottom CCGs. The analysis showed that while four CCGs spent more than £100 per head of the population aged 0-17 in 2016/17, one spent less than £10 per child and young person. Professor Wendy Burn, the college president, said the analysis suggested that money allocated for child and adolescent mental health services is not always reaching the front line. The report has mapped out what each CCG in the country spent on mental health services for children and young people last year.

<http://www.rcpsych.ac.uk/mediacentre/pressreleases2016/underfundedcamhsresearch.aspx>

**OH position: The Trust continues to champion increased investment and as previously reported to Board, contract negotiations for this year included commitments in mental health spending for next year which include on children’s services.**

**2.5 Use of Resources Assessment Framework**

Following sector-wide feedback, NHSI have produced this framework, finalising an approach to the Use of Resources assessment. This will help NHSI to better understand how effectively and efficiently providers are using their resources – including finances, workforce, estates and facilities, technology and procurement – to provide high quality, efficient and sustainable care for patients, and will help deliver tailored support to providers.

The Use of Resources assessment will also help identify providers’ support needs under the Single Oversight Framework (SOF), and deliver targeted support accordingly. As previously reported to Board NHSI are now updating the SOF to reflect these and other changes in our oversight approach and will publish an updated version in October.

NHSI will start undertaking the assessments from September 2017 but due to the availability and quality of productivity data, will initially only undertake Use of Resources assessments in the acute non-specialist sector. They will include specialist acute, ambulance, mental health and community services in the Use of Resources framework after April 2019, once appropriate metrics have been developed.

Initially, the CQC will publish the Use of Resources Rating and report separately to its overall quality rating. However, from early 2018 it is anticipated there will be combined ratings for Use of Resources and quality. A joint consultation with CQC will be launched in the autumn to seek stakeholders’ views on how a combined rating could be developed and applied.

<https://improvement.nhs.uk/resources/use-resources-assessment-framework/>

**2.6 Updated guidance for trusts undertaking transactions**

NHSI is updating its [transactions guidance](https://improvement.nhs.uk/resources/supporting-nhs-providers-considering-transactions-and-mergers/) to consolidate Monitor and TDA advicew which it is anticipated will be published in the next month, following the publication of the updated Single Oversight Framework referenced earlier. In the meantime, the Trust is to continue to use existing guidance.

**OH position: On publication of the SOF and new transactions guidance the Director of Corporate Affairs will review accordingly and identify any impact on our decision making frameworks or governing documents and notify the Board of Directors accordingly.**

**2.7 Clinical negligence spend quadruples over a decade.**A National Audit Office report calls for a [coherent plan to address the rise](http://nhsproviders.cmail20.com/t/t-l-kdxpt-ntistdkd-a/), as [NHS Resolution increases surveillance operations](http://nhsproviders.cmail20.com/t/t-l-kdxpt-ntistdkd-f/) on claimants of NHS negligence.