

**Report to the Meeting of the**

**Appendix**

BOD 13(ii)/2017

# Oxford Health NHS Foundation Trust

# Board of Directors

**22nd February, 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-January 2017 to mid-February 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.

**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 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.

1. **LEGAL/POLICY UPDATES**
   1. **Quality Accounts**

Foundation trusts must publish quality accounts each year, as required by the Health Act 2009, and in the terms set out in the National Health Service (Quality Accounts) Regulations 2010 as amended. The quality report incorporates all the requirements of the quality accounts regulations as well as additional reporting requirements.

NHSI also require trusts to obtain external assurance on their quality reports citing that subjecting them to independent scrutiny improves the quality of data on which performance reporting depends. These requirements are part of obligations to foundation trusts regarding the information necessary for annual reports.

The quality report must contain (in the following order):

Part 1: Statement on quality from the chief executive of the NHS foundation trust

Part 2: Priorities for improvement and statements of assurance from the board

Part 3: Other information and two annexes:

* statements from NHS England or relevant clinical commissioning groups, local Healthwatch organisations, and overview and scrutiny committees
* a statement of directors’ responsibilities for the quality report

The document outlining the detailed requirements is at:

<https://improvement.nhs.uk/uploads/documents/Detailed_req_for_qual_repts_16-17.pdf>

The regulator has asked that our local improvement plans include the following information:

* + How we are implementing the Duty of Candour;
  + (where applicable) our patient safety improvement plan as part of the Sign Up To Safety campaign;
  + our most recent NHS Staff Survey results for indicators KF26 (percentage of staff experiencing harassment, bullying or abuse from staff in the last 12 months) and KF21 (percentage believing that Trust provides equal opportunities for career progression or promotion) for the Workforce Race Equality Standard\*; and
  + our CQC ratings grid, alongside how we plan to address any areas that require improvement or are inadequate, and by when we expect it to improve.

\* [www.england.nhs.uk/ourwork/gov/equality-hub/equality-standard/](http://www.england.nhs.uk/ourwork/gov/equality-hub/equality-standard/)

**OH position: As is routine, the Trust will comply with the obligations imposed and with best practice approaches to reporting through its Quality Account and Annual Report**

* 1. **Conflicts of Interest**

From 1 June this year, senior NHS staff will have to declare any gift over £50, refuse any hospitality more expensive than £75, seek prior permission to engage in outside employment, and make clear any shares they might hold in companies which do business with their organisation – amongst a series of other obligations.

These obligations form part of the final guidance on tackling [**conflicts of interest**](http://www.nationalhealthexecutive.com/Search/conflicts%20of%20interest), published [**in papers**](https://www.england.nhs.uk/wp-content/uploads/2017/02/board-papers-090217-item-5-coi.pdf) last week as part of NHS England’s board meeting. The guidance, written by a task and finish group led by Sir Malcolm Grant, was concluded after consideration of around 250 submissions from a September 2016 public consultation. In a bid to “protect taxpayers and the use of the NHS pound” by ensuring public money is spent “free from undue influence”, the group sought to “bring greater clarity and consistency” to the rules of conflicts of interest. This was largely done to complement existing management guidelines, such as NHS England’s statutory guidance released in 2015 for commissioners. The table below lists the main elements of the guidance:

|  |  |
| --- | --- |
| On gifts staff should… | • Decline anything that may affect their professional judgement  • Decline gifts from suppliers or contractors, save for low cost promotional items up to £6 in value  • Not ask for gifts and decline all offers of cash (or cash vouchers)  • Only accepts gifts with a value over £50 on behalf of their organisation and declare these. The same applies to multiple gifts from the same source with a cumulative value of over £50. |
| On hospitality staff should… | • Decline anything that may affect their professional judgement  • Accept without declaration hospitality up to £25, declare hospitality between £25 and £75 and refuse hospitality over £75 (unless exceptional senior approval is given)  • Declare modest offers of travel and accommodation and refuse offers which go beyond modest unless senior approval is given. These must also be declared. |
| On outside employment staff should… | • Declare any outside employment (where, when and what)  • Where contracts permit, seek prior permission from their organisation to engage in outside employment |
| On shareholdings staff should… | • Declare any shareholdings and ownership interests in companies or organisations which might do business with their organisation  • Not declare shares or securities held in collective investment or pension funds or units of authorised unit trusts |
| On patents staff should… | • Declare patents and intellectual property rights they hold which are or could be procured by their organisation  • Seek prior permission before entering into agreement with bodies to develop products or other work that impacts on organisational time, equipment or resources |
| On loyalty interests staff should… | • Declare positions of authority in other organisations that could be seen to influence decisions they take in their NHS role  • Declare when they sit on advisory groups or similar forums  • Declare involvement in recruiting people they know  • Declare when people they know do business with their organisation |
| On donations staff should… | • Seek prior organisational approval to engage in fundraising as part of their professional role  • Not routinely accept donations from suppliers  • Not solicit charitable donations unless this is a part of their role  • Ensure donations are made to a charitable fund, not an individual |
| On sponsored events staff | • Declare involvement with a sponsored event  • Not supply information which would allow a sponsor to gain |

**OH position: The guidance is being disseminated to increase awareness, and following publication of NHS England’s ‘model conflict of interest policy’ due before June, the Trust will update our current policies, as well as issue short guides for different groups of staff to help them understand what the guidance will mean for them.**

* 1. **Charging for overseas visitors and migrants**

The Department of Health has announced a series of proposed changes relating to how charging should be applied to overseas visitors using NHS services. The link provides details of the changes, looking at:

* what the changes are
* how it will differ from existing regulations
* the public accounts committee report on NHS treatment for overseas patients
* view on the proposals

[**https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/590027/Cons\_Response\_cost\_recovery.pdf**](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590027/Cons_Response_cost_recovery.pdf)

**OH position:** **Overseas patients are not a significant issue for the trust (and income is minimal). We have circulated the new guidance to Service Directors for them to consider any issues with regard to the practical implications of implementation.** **Financial services are not expecting to make any changes in response to the announcement due to a cost versus benefit judgement. Overseas patients using our services are so infrequent that the cost of setting up the necessary systems/processes would be highly likely to exceed the income generated.   It is anticipated that the DH require implementation from providers with sufficient levels of overseas patients to justify the costs involved. However, if the plans become a blanket regulatory approach across all NHS providers the Trust will take the necessary steps to comply which will require resource for minimal financial benefit.**

**2.4 Patient experience headlines tool launched**

HSI has developed a tool in partnership with trusts to enable staff to access key sources of published patient experience measures all in one place – friends and family, ambulance survey, A&E survey, community mental health survey, maternity survey, PLACE, CQC inspection ratings and more. Users can get a sense of how an organisation is doing compared to others with similar characteristics and can also move the data around and generate simple graphs.

<https://tableau.monitor.gov.uk/t/Public/views/PatientExperienceHeadlinesTool/CoverPage?%3Atoolbar=top&%3AisGuestRedirectFromVizportal=y&%3Aembed=y&%3AusingOldHashUrl=true>

**OH position: No response rates available for community or mental health, or outpatients.**

**2.5 Annual reporting manual for foundation trusts 2016/17**

Guidance for NHS FTs on producing their 2016/17 annual report and accounts has been published. The ARM includes some changes to the previous year’s guidance including changes to annual report staff costs, oversight disclosures, quality reports, sustainability reporting, staff survey disclosure, as well as the statement of comprehensive income under the financial reporting.

<https://improvement.nhs.uk/resources/nhs-foundation-trust-annual-reporting-manual-201617/>

**OH position: As is routine, the Trust will comply with the obligations imposed and with best practice approaches to reporting through its Annual Report**