

**Report to the Meeting of the**

**Appendix to
CEO report
BOD 03/2018**

(agenda item: 4)

# Oxford Health NHS Foundation Trust

# Board of Directors

**31 January 2018**

**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-November 2017 to mid-January 2018 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. **Transforming Children and Young People’s Mental Health**

The government is asking people for their views on a green paper setting out measures to improve mental health support for children and young people. The green paper focuses on earlier intervention and prevention, especially in and linked to schools and colleges.

The proposals include:

* creating a new mental health workforce of community-based mental health support teams
* every school and college will be encouraged to appoint a designated lead for mental health
* a new 4-week waiting time for NHS children and young people’s mental health services to be piloted in some areas

<https://engage.dh.gov.uk/youngmentalhealth/>

**OH position:** CYP Directorate are drafting a response to the green paper consultation on behalf of the board and have arranged for senior clinicians and operational managers to review the draft in February before submission on the 2nd March. The new models through recent successful tenders reported in the CE Report will be supportive of the direction outlined in the documentation.

**2.2 Update on Carillion Liquidation**

Following the announcement that Carillion plc would be declaring insolvency, the NHS put into place contingency plans that have seen services for patients maintained without interruption. These contingency plans, held at a national level by NHS England and NHS Improvement and locally by individual trusts and private sector partners, have been in preparation for some months.

The NHS is a relatively small customer of Carillion plc, with 14 trusts receiving services from Carillion:

* For 13 trusts, Carillion plc is subcontracted by a PFI provider to operate some hard (such as building maintenance) or soft (such as catering, cleaning or portering) facilities management services
* Three trusts also directly contract Carillion to provide some services (two receive hard facilities management services, one receives soft facilities management services and one receives car parking management)
* There are also a number of smaller primary and community care properties with services provided by Carillion, these again are subcontracted services through others. These are being managed and supported by Community Health Partnerships
* There are two sites under construction

NHS England and NHS Improvement have had staff deployed to the six biggest hospital sites to offer assistance, but the vast majority of Carillion staff have turned up to work as normal.

**OH position:** The Trust is not a customer of Carillion plc

* 1. **Increasing access to talking therapies**

**NHS England announced that over one million referrals to NHS talking therapies for depression and anxiety were made last year according to new, official data.** Of the 1.4 million new referrals for talking therapies as part of [NHS England’s Increasing Access to Talking Therapies (IAPT) programme](https://www.england.nhs.uk/mental-health/adults/iapt/), 965,000 people began treatment, a 32,000 rise on patient numbers from the year before.

As well as increasing numbers of people getting treatment, performance statistics for 2016/17 show that waiting times are decreasing and recovery rates improving. The number of people recovering from their condition has increased on the previous 12 months, with over 50 per cent of patients making a recovery in every month of this year.

IAPT is a key element of NHS England’s improvements to mental health services, offering talking therapies to people with common conditions including depression and anxiety. Expanding access to this type of early intervention care will mean people’s conditions are spotted and treated sooner, reducing the need for more intensive, and higher cost, treatments.

The new findings come after the New York Times described the IAPT programme as “the world’s most ambitious effort to treat depression, anxiety and other common mental illnesses”.

**OH position:** As a Trust, we support this view and our IAPT sites - Talkspace Plus and Healthy Minds, meet or exceed all national targets, including waiting and recovery targets.  Both sites are early adopters for integrated IAPT (focusing on people with co-morbid long term physical health conditions) which is part of NHS England’s key element of improvements to mental health services. Both IAPT services have also received additional funding to develop employment advice services as part of the Employment advisors in IAPT programme. OHFT’s Buckinghamshire IAPT service Healthy Minds was recently featured in a New York Times article.

* 1. **National Early Warning Score**

On 19 December NHS England asked every hospital trust to adopt the Royal College of Physicians’ new clinical assessment system, also being targeted by the US Navy, that could save nearly 2,000 lives and 627,000 bed days every year.

The [National Early Warning Score](https://www.england.nhs.uk/nationalearlywarningscore/) (NEWS) has been produced by the Royal College of Physicians and is backed by the Royal College for Emergency Medicine, NHS Improvement, the Association of Ambulance Chairs and Sir Bruce Keogh, National Medical Director for NHS England.

The system was developed by the Royal College of Physicians with the aim of creating a standardised approach to clinical assessment across the country. It is estimated that the NEWS is now being used in over 70% of trusts but NHS England is setting the goal of having the system in place across every acute and ambulance setting by 2019.

Having the NEWS adopted as the standard system will mean NHS staff who move between trusts are using a consistent set of measures for diagnosing patients.

Under the system, patients are assessed on a series of key measures:

* Breathing rate
* Pulse rate
* Blood pressure
* Temperature
* Level of consciousness
* Oxygen saturation

The results are plotted on a NEWS chart which then gives a score for each measure and the combined number then shows the level of clinical care needed and the risk of deterioration. A low score of between 1-4 would lead to an assessment by a registered nurse, a medium score of between 5-6 would prompt an urgent review from an acute clinician, such as a ward-based doctor, and a high score of seven or more would see an emergency assessment by a critical care team and a likely patient transfer to a high dependency unit.

**OH position:** The Trust has adopted NEWS in some of its community services but further assessment would be necessary before any decision to roll out more widely was considered.

**2.5 Sugary drinks face NHS ban if action is not taken**

The NHS is taking action on sugar, with almost two thirds of NHS trusts now signed up to a voluntary scheme to reduce sales of sugary drinks to 10 per cent or less of sold beverages. Some NHS Trusts have gone further and have introduced their own bans on sugary drinks. As well as hospitals, 14 national suppliers have signed up to the voluntary scheme including WH Smith, Marks & Spencer, Greggs and the Royal Voluntary Service.

However, 91 NHS Trusts are yet to join the voluntary scheme to limit the sale of sugary drinks, which can lead to tooth decay, obesity, diabetes, heart disease and even cancer.

Hospitals and suppliers have been warned that if they don’t take action to reduce sales of sugary drinks by the end of March 2018, a ban will be introduced in 2018 instead.

**OH position:** The Trust have signed up for this initiative with Carpenters and are monitoring sales accordingly. Carpenters have already evidence a reduction in the quantity of full sugar drinks on sale.

**2.6 RCN Employment Survey 2017**

The Royal College of Nursing (RCN) has published the findings from the [2017 RCN Employment Survey](https://www.rcn.org.uk/news-and-events/news/nursing-staff-stretched-to-breaking-point-over-pay). It found that nearly three out of four nurses say they feel worse off than they did five years ago, while almost a quarter have had to take on another job simply to make ends meet.

Findings included:

* almost three out of four (70%) reported feeling financially worse off than they were five years ago;
* almost a quarter of respondents (24%) say they are thinking of leaving their job because of money worries;
* four in 10 (41%) say money worries are making them lose sleep.
	1. **The State of Medical Education and Practice in the UK: 2017 report**

The General Medical Council (GMC) published their seventh [annual report on the state of medical education and practice in the UK](https://www.gmc-uk.org/static/documents/content/SoMEP-2017-final-executive-summary.pdf) which sets out an overview of issues that feature prominently in healthcare.

It examines the GMC data relating to the changing medical register and explores the patterns of complaints about different groups of doctors.

In the 2016 report the GMC highlighted the ‘state of unease’ gripping the UK’s medical profession. This was the first time the GMC had expressed such a serious concern about the pressure on doctors and the effect this was having on their morale and wellbeing. From feedback, behaviour and choices – it is clear that this ‘unease’ has continued through 2017.

* 1. **Facing the Facts: Shaping the Future**

Health Education England has published its drafted national workforce strategy – [Facing the Facts: Shaping the Future.](https://hee.nhs.uk/our-work/planning-commissioning/workforce-strategy)

A consultation is now open on the draft document, with a final report to be next July to coincide with the NHS 70th anniversary.

Measures to ‘future-proof’ the NHS workforce include:

* Targeted retention schemes to encourage staff to continue working in healthcare;
* Improvements to medical training and support for junior doctors;
* A far-reaching technology review across England;
* Making the NHS a more inclusive and ‘family-friendly’ employer.

The strategy acknowledges rising demand and pressure on NHS staff, noting 42,000 vacancies across nursing, midwifery and allied health professions. The strategy suggests without further action to reduce demand the NHS will need to grow by 190,000 posts by 2027.

**OH position:** The Trust will contribute to the consultation in order to best influence the final version of the strategy which will be published in July 2018. The Board is regularly appraised of the Trust’s own work with regard to local workforce matters and improvement activity.

* 1. **NHS Become First Healthcare System in the World to Publish Numbers of Avoidable Deaths**

The NHS will become the first healthcare organisation in the world to publish estimates of how many patients may have died because of problems in their care.

The publication follows a promise by the health secretary after a 2016 Care Quality Commission report found that the NHS was missing opportunities to learn from patient deaths, and that too many families were not being included or listened to when an investigation happened.

The data will be published each quarter by individual trusts. 171 of the 223 trusts in England have already released or are releasing their first estimates by the end of December.

Each trust will make its own assessment of the number of deaths due to problems in care. The data will not be comparable and will not be collated centrally. This will allow trusts to focus on learning from mistakes and sharing lessons across their organisations and their local healthcare systems.

**OH position:** The Trust has already commenced publication and the recent Board seminar provided Board members with a full understanding of the requirements and Trust actions.

* 1. **NHS Faces Exceptional Winter Pressures**

NHS England has published its combined performance summary for December and the winter daily sitreps up to January 7.

The figures show:

* Emergency admissions in December reached 520,163 – the highest monthly figure on record
* The general and acute average bed occupancy was 95.0 per cent
* 4 hour performance in major (type 1) A & E departments was 77.3 per cent – the lowest on record

**OH position:** The CE and COO Reports highlight the situation locally.

* 1. **Further to go to Close the Mental Health Funding Gap**

The King’s Fund has published its analysis of mental health service spending titled ‘*Funding and staffing of NHS mental health providers: still waiting for parity’*

It argues that the gap between spending on NHS acute hospitals and NHS mental health providers widened last year, despite increasing income for 84% of mental health trusts. Income for mental health trusts rose by less than 2.5% in 2016/17 compared with over 6% for acute and specialist trusts.

It also reveals that the number of mental health nurses has fallen 13% since 2009. One in ten of all specialist mental health posts are currently vacant.

**OH position:** The Board discusses regularly the mental health spending gap and the CE engages to influence national policy when opportunities arise and along with colleagues represents this position locally to commissioners – including the previous agreements for 2018/19 associated with negotiating the current year contract risk share agreement.

* 1. **Revised Never Event Framework**

Following consultation, a revised version of the [Never Events policy and framework](https://improvement.nhs.uk/resources/never-events-policy-and-framework/) and updated Never Events list have been published. This list now includes two additional types of Never Event.

These aim to provide clarity for staff providing and commissioning NHS-funded services who may be involved in identifying, investigating or managing Never Events and ensuring there is a focus on learning and improvement. The revised policy and framework come into effect on 1 February 2018, in line with the updated 2017-19 NHS Standard Contract.

**OH position:** The policy was recently shared such that board members were made aware of the framework. Local policies and procedures remain in-line with the revised national policy and framework and the updates have been noted.

* 1. **Guidance for pay for VSMs**

Ahead of publication of the very senior manager (VSM) national pay framework by the Department of Health (DH), this brief guide provides advice to NHS trusts seeking executive VSM salary approval and NHS foundation trusts seeking VSM salary opinion. From 1st January 2018 The Treasury has revised the threshold for senior pay controls in the NHS from £142,500 to £150,000.

NHS foundation trusts should seek the opinion of NHS Improvement, DH and the Minister of State for Health before confirming VSM salaries at appointment or any individual/group VSM pay increase (outside of any nationally recommended cost of living increase). The process includes on-payroll VSM appointments (substantive and fixed term) in all NHS foundation trusts where the annual salary is £150,000 or above (irrespective of whether the new salary is an increase or not)

<https://improvement.nhs.uk/uploads/documents/Guidance_on_pay_for_VSMs_-_ed3.pdf>

**OH position:** The framework will be shared with the Nominations, Remuneration and Terms of Service Committee at its January meeting and will be referenced in any proposals regarding VSM salaries going forward, as relevant.