

**Report to the Meeting of the**

**Appendix to   
CEO report  
BOD 145/2017**

(agenda item: 05)

# Oxford Health NHS Foundation Trust

# Board of Directors

**29 November, 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-October 2017 to mid-November 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.

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**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. **Working Together to Safeguard Children**

The Department of Health are inviting views on changes to the statutory guidance Working Together to Safeguard Children, new child death review guidance and new regulations. The consultation is being held [here](https://consult.education.gov.uk/child-protection-safeguarding-and-family-law/working-together-to-safeguard-children-revisions-t/) and closes at 11:45 on 31 December 2017.

**OH position:**

* 1. **NHS Pension Scheme: proposed changes to regulations 2018**

**The Department of Health is seeking views on proposals to change NHS pension scheme regulations. The consultation is being held** [here](https://consultations.dh.gov.uk/nhs-pensions/reg-changes-2018-response/) **and closes at 11:59pm on 29 December 2017.**

**OH position: Many of the changes are practical and we watch with interest with regard to proposals for ensuring access to the pension scheme for staff delivering services under new integrated care models especially as we navigate these models in shadow form and progress our work with the GP Federations. Regulations that put the pension scheme changes in place are subject to final agreement by health ministers and HM Treasury.**

* 1. **Putting the Public at the Heart of our Work**

The Care Quality Commission (CQC) has published a new [Public Engagement Strategy](https://www.cqc.org.uk/publications/public-engagement-strategy-2017-21) to help make the CQC an even stronger regulator that is always on the side of people using care services.

The strategy sets out four priorities for 2017-2021:

1. Working with organisations that represent people who use services to help improve the quality of care.
2. Encouraging people to share their views and experiences of care with the CQC, improving the way it uses this information and reporting on the action taken.
3. Producing and promoting simple, clear and concise information for the public that explains what good care looks like and supports people to make decisions about services.
4. Improving the way the CQC works by involving and engaging the public in policies, plans and processes.

**OH position: The Trust continues to develop its own opportunities to engage the public, our Governors and their local representative groups, Healthwatch, overview and scrutiny committees, patient participation groups, patient advice and liaison services, and local voluntary-sector and community-sector organisations etc in supporting the Trust’s improvement plans. We will establish if there is any further opportunity to improve our involvement activity on finalisation of the CQC’s consultation.**

* 1. **CQC Regulatory Fees 2018/19**

The CQC are seeking views on proposals for how they should calculate the fees that providers of health and adult social care must pay in order to be registered.

The proposed changes mean that for NHS trusts, by moving away from the current fee bandings, the proposals could see 75% of individual trusts paying reduced fees and the largest 25% seeing an increase. The consultation will take place [here](https://www.cqc.org.uk/get-involved/consultations/regulatory-fees-201819-%E2%80%93-consultation) until midnight on 18 January 2018.

**OH position: The Trust will review the proposals and contribute accordingly to the consultation process.**

**2.5 Reporting and Rating NHS Trusts’ Use of Resources**

The CQC and NHS Improvement have started a consultation on plans to fully implement the process that both organisations will use to assess, report on and rate NHS trusts’ use of resources. The consultation takes place [here](https://webdataforms.cqc.org.uk/Checkbox/useofresources.aspx) and closes at **5pm** on **Wednesday 10 January 2018.**

**OH position: The Trust welcomes the joint approach the CQC and NHSI are taking to creating a use of resources assessment and that the proposals will be refined and tested over time.** **It could be useful to bring these ratings together to ensure that use of resources is seen in terms of its impact on quality of care and vice versa, but this warrants careful consideration both in terms of how it would be achieved but also the implications for the role ratings play. While the consultation focuses on the introduction of a use of resources assessment for NHS acute trusts only, we anticipate the CQC and NHSI will soon start developing sector-specific approaches for the specialist, community, mental health and ambulance sectors.** **The CQC use of resources rating takes precedence over the latest SoF use of resources ratings, due to how the annual CQC assessment ‘feeds in’ and becomes the most up to date SoF use of resources assessment. The CQC use of resources assessment holds trusts to higher standards through its numerous additional metrics. It should be the case that the SoF use of resources rating is based on a consistent set of standards - in the proposed approach however, it could be the case that a trust has its SoF use of resources rating reduced once it has been based on the additional metrics of its most recent CQC use of resources assessment. The Trust will support NHSP response to the consultation.**

**2.6 National Report to Ministers on the Responsible Officer Regulations and Medical Revalidation**

At the end of the fourth year of implementation of medical revalidation, the [National Report 2016/17](https://www.england.nhs.uk/publication/nhs-englands-national-report-to-ministers-on-the-responsible-officer-regulations-and-medical-revalidation/) (formerly the Senior Responsible Owner’s Report), provides evidence of a steadily improving picture of engagement.

**OH position: The Medical Director reports to the Board annually with regard to the Trust’s position regarding Medical Revalidation.**

**2.7 There for us: a better future for the NHS workforce**

NHS Providers have published the ‘There for us: a better future for the NHS workforce’ report which says there are no domestic “quick fixes” to the severe workforce shortages in the NHS, and that any significant reduction in the number of overseas staff in the next few years is likely to have a serious and damaging impact on services for the public.

The report criticises the slow, disjointed, response from the Department of Health and its arms-length bodies to the NHS’s growing workforce challenges. It calls for urgent steps to ease intolerable pressures on front line staff, and to develop an NHS workforce fit to meet the growing and changing needs of the population.

The report calls for urgent steps to ease intolerable pressures on front line staff, and to develop an NHS workforce fit to meet the growing and changing needs of the population. The report provides a comprehensive overview of where the workforce challenges are greatest, how these have developed, and what needs to be done to address them.

It includes findings from a new survey of NHS mental health, community, ambulance and hospital trusts. Chairs and chief executives from more than half (51%) of NHS trusts responded to the survey. The main findings are:

* two thirds (66 per cent) said workforce concerns were the most pressing challenge in delivering high quality care
* the vast majority (85 per cent) said it would be important to recruit from outside the UK in the next three years
* Brexit was seen as the main barrier to recruitment outside the UK over the next three years. More than one in three (38%) mentioned this issue
* when asked for the biggest challenges to recruitment and retention at their trust, 60 per cent of trust chairs and chief executives cited work pressure and 38 per cent cited pay and reward
* an overwhelming majority (90 per cent) were doubtful that approaches taken by the Department of Health and its arms length bodies would help them to recruit and retain the staff they needed

The survey also includes powerful commentary from trust leaders reinforcing many of the report’s central conclusions. The report makes detailed recommendations aimed at government, the Department of Health and its arms-length bodies, regulators, and professional associations. These include:

* set out a fully funded plan to end the pay cap during this parliament
* urgently confirm the right to remain for the 60,000 EU staff working in the NHS
* commit to a future immigration policy that allows trusts to fill posts that cannot be taken – at least for the time being - by the domestic workforce
* work with trusts to set up an international recruitment programme that they can opt into
* a clear-sighted strategy to develop the health and care workforce the country requires with skills to meet growing and changing needs
* greater clarity on the timetable to grow the domestic supply of clinical staff, and backup options should initial plans not succeed as has happened in the past
* a set of short-term stop-gap solutions to address immediate workforce shortages
* much greater coherence in workforce strategy, eliminating the current fragmented approach and developing the right national/local relationship

[**https://nhsproviders.org/a-better-future-for-the-nhs-workforce**](https://nhsproviders.org/a-better-future-for-the-nhs-workforce)

**OH position: The Board receives regular reports with regard to the Trust’s focus on workforce challenges and will use the report to see if there is any learning with regards to the reports’ focus on what can be done at trust level to make the NHS a great place to work. These include the importance of tackling bullying, developing new roles, improving productivity and providing greater flexibility for staff.**

**2.8 WannaCry Cyber Attack Investigation**

The National Audit Office (NAO) has published its findings of an investigation into the WannaCry cyber attack and the NHS in England.

Its investigation focused on the ransomware attack's impact on the NHS and its patients; why some parts of the NHS were affected; and how the Department and NHS national bodies responded to the attack.

Some of the findings include:

* the attack led to disruption in at least 34% of trusts in England;
* thousands of appointments and operations were cancelled and in five areas patients had to travel further to accident and emergency departments;
* the Department of Health had developed a plan, which included roles and responsibilities of national and local organisations for responding to an attack, but had not tested the plan at a local level

**OH position: The Board has previously received reports and presentations with regard to cyber security and the impact internally with regard to the referenced attack above.**

**2.9 Public Health: Everyone’s Business**

NHS Providers has launched a new report in its publication series *Provider Voices*, which promotes the views of leaders from a range of trusts and other parts of the service on some of the key issues facing the NHS today.

[Public health: everyones’ business?](http://nhsproviders.org/provider-voices-public-health)addresses a topic which has never been more important nor more challenging. The report features 12 interviews that look at concerns including:

* promoting the public health role as we move towards accountable care
* dealing with the challenges of constrained funding
* harnessing digital technology
* developing the role of the public health clinician
* working to shape the wider determinants of health inequalities.

The report uses 12 interviews with NHS trust leaders, from the hospital, mental health and ambulance sectors, as well as academics, system leaders, local government representatives, and those with strategic responsibility for delivery and commissioning, to help gain a better understanding of NHS providers’ role in shaping and delivering public health and care.

**2.10 Mental Health Services for Children and Young People Face Growing Pressures**

The Care Quality Commission (CQC) has published its initial review of mental health services for children and young people.

This is the first phase of a major thematic review requested by the Prime Minister.

Findings include:

* whilst most specialist services provide good quality care too many young people find it difficult to access services;
* when concerns are identified children and young people, and their families, often struggle to navigate the complicated system of services;
* there is a lot of variation in the quality of care that is provided

These will inform the government’s forthcoming green paper on children and young people’s mental health.

<http://www.cqc.org.uk/news/releases/cqc-completes-initial-review-mental-health-services-children-young-people>

**OH position: The report confirms many of the issues raised in the Five Year Forward View for Mental Health published in 2016 and in particular, comments on the difficulties children and young people face in accessing appropriate support for their mental health concerns from a system that is fragmented and where services vary in quality. During phase two of the thematic review, CQC will undertake fieldwork to identify what helps local services to achieve, or hinders them from achieving, improvements in the quality of mental health services for children and young people, as set out in the NHS’s Five Year Forward View for Mental Health and the Trust will continue to understand the findings of CQC thematic reviews in terms of its own improvement activity and local system influence.**

**2.11 Single Oversight Framework for NHS Providers**

The Single Oversight Framework (SOF) sets out how NHS Improvement oversee NHS trusts and NHS foundation trusts, using one consistent approach. It helps us to determine the type and level of support needed to meet these requirements

The objective is to help providers to attain and maintain Care Quality Commission ratings of ‘Good’ or ‘Outstanding’, meet NHS constitution standards and manage their resources effectively, working alongside their local partners.

The first version of the SOF was published in September 2016. In November 2017 the SOF was updated to:

* reflect changes in national policy priorities and standards
* clarify certain processes and definitions
* improve the structure and presentation of the document

The framework will help NHS Improvement to identify NHS providers' support needs across five themes:

* quality of care
* finance and use of resources
* operational performance
* strategic change
* leadership and improvement capability

NHS Improvement monitors providers’ performance under each of these themes and consider whether they require support to meet the standards required in each area. They [segment individual trusts](https://improvement.nhs.uk/resources/single-oversight-framework-segmentation/) into four categories according to the level of support each trust needs. Where improvements in performance are required, they develop a package of support with the provider to help them achieve this.

**OH position: We support the ambition to reduce inappropriate out of area placements which is in line with our own priorities and those set out in the 5YFVMH. The metric itself will no doubt be challenging until we are part of a new care model which gives control over the commissioning budget. We will continue to push the need to ensure the SOF develops alongside developments in STPs and ACSs as well as the development of new models of care and the emerging organisational structures needed to support these new approaches.**

**2.12 The Government Must Deliver Certainty for EU Staff**

A British Medical Association (BMA) survey of EEA doctors has found that almost half are considering leaving following the EU referendum result, with almost one in five having already made solid plans to relocate elsewhere.

Its survey found:

* Almost half (45%) are considering leaving the UK following the referendum vote, with another 29 per cent saying they are unsure about whether they will leave;
* of those considering leaving, more than a third (39%) have made plans to leave, meaning almost one in five EEA doctors (18 per cent) have made plans to leave the UK;
* a majority (77%) said a negative outcome to Brexit negotiations on citizens’ rights would make them more likely to consider leaving the UK.