

**Report to the Meeting of the**

**Appendix to
oral CEO report
BOD 22/2018**

(agenda item: 4)

# Oxford Health NHS Foundation Trust

# Board of Directors

**28th February 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-January 2018 to mid-February 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.

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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**

**2.1 NHS Pay Review Body (NHSPRB) for 2018/19**

The Department of Health and Social Care has published the NHS Pay Review for 2018-2019.

The annual pay award for NHS staff on Agenda for Change contracts is determined by the government in the light of recommendations from the NHSPRB. In making its recommendations, the NHSPRB takes evidence from the 4 UK governments, trade unions, NHS Employers and other interested parties.

The government has confirmed that the across-the-board 1% public sector pay policy will no longer apply to pay awards for 2018-19. This is due to recognition that in some parts of the public sector, particularly in areas of skills shortage, flexibility to go above the one per cent may be required to ensure continued delivery of world class public services, including in return for improvements to public sector productivity.

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/676185/NHSPRB_evidence_for_OME_PDF1.pdf>

**OH Position:** The Trust will await the final recommendation with regard to pay policy and the funding proposition. A paper will be presented to the Nominations, Remuneration and Terms of Service Committee accordingly.

**2.3 NHS Counter Fraud Authority and supplemental directions 2017**

The NHS Counter Fraud Authority published directions on their functions and reporting requirements.

NHSCFA was established on 1 November 2017 to carry out the Secretary of State’s counter fraud functions in relation to the health service in England. The NHS Business Services Authority Directions 2016 are amended by the NHS Counter Fraud Authority Directions with supplemental directions 2017 to remove the functions carried out by NHS Protect, a division within NHS Business Services Authority which no longer exists.

The directions to NHS Trusts and Special Health Authorities describe their role in the prevention, detection and investigation of fraud in the health service, following the establishment of the NHSCFA.

<https://www.gov.uk/government/publications/nhs-counter-fraud-authority-and-supplemental-directions-2017>

**OH Position:** The Trust will continue to work with its Counter Fraud team in preventing, detecting and investigating fraud, and reporting to NHSCFA accordingly.

**2.4 Government acts to protect essential services from cyber attacks**

Bosses of Britain’s most critical industries are being warned to boost cyber security or face hefty fines for leaving themselves vulnerable to attack following a Department of Health and Social Care consultation. Energy, transport, water and health firms could be fined up to £17million if they fail to have the most robust safeguards in place against cyber attack.

New regulators will be able to assess critical industries to make sure plans are as robust as possible. A simple, straightforward reporting system will be set up to make it easy to report cyber breaches and IT failures so they can be quickly identified and acted upon. This will ensure UK operators in electricity, transport, water, energy, transport, health and digital infrastructure are prepared to deal with the increasing numbers of cyber threats.

It will also cover other threats affecting IT such as power outages, hardware failures and environmental hazards. Under the new measures recent cyber breaches such as WannaCry and high profile systems failures would be covered by the Network and Information Systems (NIS) Directive.

These incidents would have to be reported to the regulator who would assess whether appropriate security measures were in place. The regulator will have the power to issue legally-binding instructions to improve security, and – if appropriate – impose financial penalties.

**OH Position:** The new guidance aligns with existing cyber security standards**.** The Board has recently received assurances with regard to the robustness and effectiveness of the Trust’s IT/cyber security systems which will incorporate any new requirements with regard to the reporting of any future incidents as necessary.

<https://www.ncsc.gov.uk/guidance/nis-guidance-collection>

**2.5 Department of Health and Social Care single department plan**

The Department of Health and Social Care have published a single departmental plan which sets out their objectives and how they will achieve them.

Objectives:

1. Keep people healthy and support sustainable public services
2. Transform out of hospital care to keep people living healthier for longer in their community
3. Support the NHS to deliver high quality, safe and sustainable hospital care and secure the right workforce
4. Research and innovate to maximise health and economic productivity
5. Ensure accountability of the health and care system to Parliament and the taxpayer; and create an efficient an effective Department of Health

<https://www.gov.uk/government/publications/department-of-health-single-departmental-plan/department-of-health-single-departmental-plan>

**2.6 Changing how healthcare education is funded**

Part one of the government response to the consultation on reforms to the education funding for nursing, midwifery and allied health professionals outlines the basis of the government’s offer, including supplementary funding for travel, dual accommodation and childcare allowances.

To ensure the supply of postgraduate healthcare students, the response also clarifies their funding situation. The second part of the consultation response will include an updated impact assessment and equalities impact assessment and will be published in the autumn.

<https://www.gov.uk/government/consultations/changing-how-healthcare-education-is-funded>

**2.7 Update on guidance for the fit and proper person’s requirement**

The Care Quality Commission (CQC) have updated guidance on Regulation 5 - the fit and proper person’s requirement for directors. This is to reflect the changes outlined in their recent ‘next phase of regulation’ consultation. The guidance provides a more detailed explanation of what CQC interprets as serious mismanagement and serious misconduct. It also offers greater clarity about the obligations and responsibilities of those holding director roles.

The fit and proper person’s requirement (FPPR) was introduced in response to concerns raised following investigations into Mid Staffordshire NHS Foundation Trust and Winterbourne View Hospital. All providers registered with the CQC must assure themselves that all directors (or those in equivalent roles) who are responsible and accountable for delivering care are fit to carry out their responsibility for the quality and safety of care.

Providers are responsible for appointing, managing and dismissing their directors, and must carry out appropriate checks to make sure directors are suitable for their role. CQC’s role is to make sure that providers have appropriate recruitment and performance management processes in place. The CQC will take action against a provider if it believes they are failing to meet the requirement. They clarify it is not their role to regulate individuals or to assure that any individual is fit or proper. They will continue to check this when a provider applies to register, or to vary its registration, and when they carry out inspections using the well-led key question.

**OH Position:** The Director of Corporate Affairs has met with HR to ensure the changes are reflected in policy and in practice and assessed the current status for the Board against the new guidance. Any impact of provider collaborative arrangements such as New Care Models on the Trust’s process of assurance is being considered as necessary.

<http://www.cqc.org.uk/sites/default/files/20180119_FPPR_guidance.pdf>