

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

**Appendix to CEO Report BOD 66/2018**

(Agenda item: 7)

# Board of Directors

**24th May, 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-April 2018 to mid-May 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.

**Governance Route/Approval Process**

This is a monthly report.

**Recommendation**

The Board of Directors is invited to consider and note the content of the report and where relevant, members should each be satisfied where relevant of their individual and collective assurances that the internal plans and controls in place to deliver compliance against any Trust’s obligations are appropriate and effective.

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

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

1. *A risk assessment has been undertaken around the legal issues that this report presents and there are no issues that need to be referred to the Trust Solicitors*
2. *Strategic Objectives –N/A*

***LEGAL, REGULATORY AND POLICY UPDATE***

**SITUATION**

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.

**BACKGROUND**

1. **Medicine safety: indicators for safer prescribing**

Following recommendations in the [report of the Short Life Working Group on reducing medication-related harm](https://www.gov.uk/government/publications/medication-errors-short-life-working-group-report), the Medicines Safety Programme is developing a series of prescribing indicators.

The experimental indicators link prescribing data with hospital admissions for the first time. The purpose is to identify prescribing that could potentially increase the risk of harm and that may be associated with hospital admission.

The aim of the indicators is to:

* support local reviews of prescribing
* minimise unnecessary prescribing
* identify where alternative medicines or medicines that reduce risk could be prescribed
* reduce the number of patients who are potentially at increased risk of harm from medicines and the number of hospital admissions associated with that risk

**OH position: At the moment these indicators use only primary care prescribing data and only a limited number of reasons for admission to acute hospitals, so are useful for CCGs and wider health systems but yet to be specific to such as OHFT. The longer term plan is to combine both primary care and secondary care prescribing data and to have a broader range of indicators, including for mental health, but this is unlikely to be delivered for some time.**

1. **Clinical Excellence Awards - equality analysis on proposed changes**

NHS Employers and the British Medical Association proposed changes to the way NHS consultants are rewarded for their performance. This publication considers how the proposals may affect protected groups.

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/704956/equality-analysis-on-proposed-amendments-to-clinical-excellence-awards.pdf>

**OH position: The Trust will respond accordingly as and when the proposals developed by the negotiating parties are approved and amendments to the consultant contract are clarified.**

1. **Mental Health Act and Learning Disabilities review**

Three significant reports have been published in the month with a focus on mental health and learning disabilities, but with relevance to all NHS foundation trusts. NHS Providers have published a helpful overview briefing which provides a summary of each along with NHS Providers’ view.

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The reports are:

• **The Government’s Green Paper on mental health: failing a generation** – a joint report by the Health and Social Care Select Committee and the Education Select Committee which sets out the ambition that children and young people who need help for their mental health are able to get it when they need it. <https://www.parliament.uk/business/committees/committees-a-z/commons-select/health-and-social-care-committee/news/green-paper-on-mental-health-report-published-17-19/>

• **The Learning Disabilities Mortality Review (LeDeR) Programme** – the annual report by the Healthcare Quality Improvement Partnership, on behalf of NHS England <https://www.hqip.org.uk/resource/the-learning-disabilities-mortality-review-annual-report-2017/#.WvKiAH__qHs>

• **The interim report of the Independent Review of the Mental Health Act** – the review being chaired by Professor Sir Simon Wessely and commissioned by the Department of Health and Social Care <https://www.gov.uk/government/publications/independent-review-of-the-mental-health-act-interim-report>

**OH position: The Trust will continue to do all it can to provide the best possible care with the resources available. As part of our mortality review programme we already review the deaths of people with learning disabilities, and look to identify learning from those deaths, and take forward the learning into service improvement initiatives. With regard to the review of the MH Act, the final report is due to be published in September 2018 and we welcome the review and its focus on not only legislative change but also on improving the quality of mental health services whilst recognising operational challenges.**

1. **Regulation of Nursing Associates in England**

The government consulted on amendments made to the Nursing and Midwifery Order 2001 and subordinate legislation in order to give the Nursing and Midwifery Council the correct legal powers to effectively regulate the nursing associate profession.

This consultation response sets out the government analysis of the responses received and addresses specific questions and issues raised by respondents.

There was broad support for the legislative proposals set out in the consultation and as a result the Department of Health and Social Care plans to move forward with the proposals and lay the order in Parliament for debate.

**OH position: The Trust will respond and will support staff accordingly as and when the proposals developed by the negotiating parties are approved and amendments to legislation are passed.**

1. **Plans to strengthen NHS response to cyber attacks**

A new multi-million pound Microsoft package will ensure NHS systems have the most up-to-date software with the latest security settings.

The deal with Microsoft will ensure all health and care organisations are using the latest Windows 10 software with up-to-date security settings to help prevent cyber attacks.

Since 2017 the government has invested £60 million to address cyber security weaknesses. A further £150 million will be spent over the next 3 years to improve the NHS’s resilience against attacks. This will include setting up a new digital security operations centre to prevent, detect and respond to incidents.

The centre will:

* allow NHS Digital to respond to cyber attacks more quickly
* allow local trusts to detect threats, isolate infected machines and kill the threat before it spreads

Other measures to improve cyber security include:

* £21 million to upgrade firewalls and network infrastructure at major trauma centre hospitals and ambulance trusts
* £39 million spent by NHS trusts to address infrastructure weaknesses
* new powers given to the Care Quality Commission to inspect NHS trusts on their cyber and data security capabilities
* a data security and protection toolkit which requires health and care organisations to meet 10 security standards
* a text messaging alert system to ensure trusts have access to accurate information – even when internet and email services are down

**OH position: The Board reviewed its assurance statement at its May EBOD meeting, and received detailed updates on our cyber security systems and controls during the year. We welcome additional provision and control measures supported centrally.**

1. **NHS England pledges specialist mental health services for new mums in every part of the country**

NHS England has confirmed that new and expectant mums will be able to access specialist perinatal mental health community services in every part of the country by April next year. The health service is now spending £23 million rolling out the second wave of community perinatal services to underserved parts of the country.

<https://www.england.nhs.uk/north/nhs-england-pledges-specialist-mental-health-services-for-new-mums-in-every-part-of-the-country/>

**OH position: The new pathway is an important step in improving services and achieving parity of esteem. The Trust will implement necessary changes and awaits further clarification given NHS England has pledged to publish guidance for a number of pathways by the end of 2018-19 including:**

* **urgent and emergency community based mental health response times;**
* **urgent and emergency community based mental health response blue light services;**
* **acute mental health care; and**
* **children and young people’s mental health.**

1. **Guidance for Boards on freedom to speak up in NHS Trusts/Foundation Trusts**

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| Effective speaking up arrangements protect patients and improve the experience of NHS workers. This guidance contributes to the need, set out by Sir Robert Francis in his *Freedom to Speak Up* review, to develop a more open and supportive culture that encourages staff to speak up about any issues of patient care, quality or safety. The accompanying self-review tool supports the standards laid out in the guidance and helps trusts' review around the eight key lines of enquiry set out in the well-led framework.  This guide sets out our expectations of boards in relation to Freedom to Speak Up (FTSU). Meeting the expectations set out in this guide will help a board to create a culture responsive to feedback and focused on learning and continual improvement.  This guide is accompanied by a self-review tool. Regular and in-depth reviews of leadership and governance arrangements in relation to FTSU will help boards to identify areas of development and improve.  The Care Quality Commission (CQC) assesses a trust’s speaking up culture during inspections under key line of enquiry (KLOE) 3 as part of the well-led question. <https://improvement.nhs.uk/documents/2468/Freedom_to_speak_up_guidance_May2018.pdf>  **OH Position: The new FSU Guardian at the Trust will look at completing the self-review tool and developing an improvement action plan to evidence our commitment to embedding speaking up and to evaluate how healthy the trust’s speaking up culture is.** |

**RECOMMENDATION**

The Board of Directors is invited to consider and note the content of the report and where relevant, members should each be satisfied where relevant of their individual and collective assurances that the internal plans and controls in place to deliver compliance against any Trust’s obligations are appropriate and effective.