

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

**Appendix to CEO Report BOD 106(ii)/2018**

(Agenda item: 5)

# Board of Directors

**27th September, 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-July 2018 to mid-September 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 with direct relevance to the Board.

**Recommendation**

The Board of Directors is invited 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 plans and controls in place to deliver compliance against any Trust’s obligations are appropriate and effective.

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**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 – all relevant*

***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. **CQC Report on sexual safety on mental health wards**

In its report published this month, the Care Quality Commission (CQC) shared its findings and recommendations after reviewing patient safety incidents.

The report follows engagement with trusts, national bodies, organisations representing people who use services and individuals with direct experience of sexual safety incidents. The analysis of nearly 60,000 reports made between April and June 2017 found 1,120 sexual incidents involving patients, staff, visitors and others described in 919 reports – some of which included multiple incidents.

<https://www.cqc.org.uk/publications/major-report/sexual-safety-mental-health-wards>

**OH Position:** **The safety and dignity of people who need care, and of the staff who deliver it, is an absolute priority for the Trust. This report provides valuable insight into how very serious incidents such as these are captured, reported and addressed - as well as the steps that can be taken to prevent them. Oxford Health works collaboratively with stakeholders, including patients, the police and safeguarding teams, to ensure that sexual safety incidents are taken seriously and addressed appropriately.**

1. **New UK Code of Governance**

The Financial Reporting Council (FRC) has published the new UK corporate governance code which comes into force from 1 January 2019. Annual reporting compliance with the code is a listing requirement for companies with a premium listing in equity shares, however the code should be of interest to all board members as a benchmark of good corporate governance which is tried and tested not least as the code of governance for NHS foundation trusts has historically been updated in line with the code.

The new UK code stresses the need for organisations to build trust by fostering strong relationships with their key stakeholders. It requires organisations to set and develop a corporate culture that is aligned with the organisation’s purpose and its strategy, which promotes integrity and values diversity.

The new code is based on key general principles and on more specific provisions in common with previous iterations of the code. However, in the new code there is greater emphasis on the application of the principles with clear, meaningful reporting to stakeholders. The code also places an onus on stakeholders to assess explanations of noncompliance carefully, not adopt a tick-box approach. It is also more concise and should prove to be easier to apply and report on.

The relevance of the new code to the NHS is twofold:

* First it represents the latest thinking on the application of good corporate governance which is a tried, tested and trusted framework for the leadership and direction of organisations in the UK, so it should be of interest to all board led organisations
* Secondly the Code of Governance for NHS Foundation Trusts, last revised in 2014, has been based on the UK Code and traditionally has been revised with each new iteration of the UK Code.

Key changes

There is a new provision to promote greater board engagement with the workforce to understand their views. The code asks boards to describe how they have considered the interests of stakeholders when performing their duty to promote the success of the organisation.

The new code places far greater emphasis than ever on the need for boards to create a culture which aligns the organisation’s values with strategy. Importantly the code asks boards to assess how the board leads in generating and preserving value over the long-term, a significant move from achieving short term gain.

The code emphasises the need for boards to have the right mix of skills and experience to ensure constructive challenge and to promote diversity. It stresses the need to refresh boards and for robust succession planning. It also asks that meaningful consideration is given to the length of term that chairs remain in post, so that a clear division of power exists between chair and chief executive.

The new code strengthens the role of the nomination committee in succession planning and ensuring a diverse board. It stresses the importance of external board evaluation including reports to the nomination committee on details of the contact the external board evaluator has had with the board and individual directors.

The new code emphasises that remuneration committees should take into account workforce remuneration and related policies when setting director remuneration. It also warns that formulaic calculations of performance related pay should be rejected in favour of the application of discretion when deciding pay awards.

The code can be found on The Financial Reporting Council’s website. <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf>

**OH position: The new code represents a significant change that should have a positive impact on the application of corporate governance. We will await confirmation from NHS Improvement about the prospect of updating the code for NHS foundation trusts to ensure it is also relevant for the NHS and in line with the UK code of governance and the Director of Corporate Affairs will update the Board accordingly in due course.**

1. **Kark review of Fit and Proper Persons check**

The Kark Review, led by Tom Kark QC, will look at how effective the Fit and Proper Persons Requirement is in preventing unsuitable staff from being redeployed or re-employed in the NHS, clinical commissioning groups, and independent healthcare and adult social care sectors.

The current Fit and Proper Persons Requirement is designed to ensure that senior staff who are responsible for quality and safety of care, are fit and proper to be in their roles.

The review was recommended by Dr Bill Kirkup in his report into Liverpool Community Health NHS Trust, in February 2018.

Link to the terms of reference are on the website at**:** <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730040/Kark_Review_of_the_Fit_and_Proper_Persons_Requirement.pdf>

**OH position: The Director of Corporate Affairs will provide an update to the Board once the implications of the review on current regulation are known following the report’s recommendations to the Department of Health and Social Care by autumn 2018.**

1. **National conversation with Health and Care staff begins**

Secretary of State Matt Hancock is launching [a new digital platform](https://dhscworkforce.crowdicity.com/) called ‘TalkHealthandCare’, which staff can use to post ideas, questions and challenges for government. The platform will be available on computers, phones and tablets. It will continually update to reflect the views and ideas of staff. The platform will also include events, forums and webinars for staff across the country.

TalkHealthandCare has been launched following feedback from staff that too often they do not feel valued at work. Some of the known issues that TalkHealthandCare will seek views on include:

* improving shift patterns and juggling home and work lives
* speeding up the use of helpful technologies that cut out paperwork
* training and development

In particular, the Secretary of State has expressed concern about the high number of reports of bullying and harassment. He has reiterated his wish to ensure these issues are not accepted and ‘put in the too difficult pile’. To help protect paramedics from violence and increase prosecutions, the Department of Health and Social Care announced earlier this year that, as part of a pilot, [body cameras would be issued to ambulances and paramedics](https://www.gov.uk/government/news/paramedics-to-be-given-body-cameras-to-protect-them-from-abuse). NHS employers are also introducing fast-access systems to speed up access to free mental health support and physiotherapy for their staff.

While NHS England and NHS Improvement are developing more ways to prevent and reduce violence against health and care staff, TalkHealthandCare will seek views on what needs to be done to make staff feel safe and secure at work. The department is also launching a new workforce panel of staff who the Secretary of State will meet with as a sounding board on issues affecting health and care staff across the country.

1. **Consultation to improve learning disabilities staff training**

The Department of Health and Social Care will seek views on its plans to expand awareness training for health and care staff who work with people with learning disabilities.

The proposed training could cover:

* relevant legislation
* making adjustments to the way care is provided
* how to provide care that helps people reach their full potential

The consultation will ask for views from people who have experience of learning disabilities, NHS and social care providers and the general public. The government [announced the consultation as part of a series of measures](https://www.gov.uk/government/publications/government-response-to-the-learning-disabilities-mortality-review-leder-programme-2nd-annual-report) in response to a report from the first national mortality review of learning disability published in May 2018, known as the Learning Disabilities Mortality Review (LeDeR) Programme which was included in this Board report earlier in the year.

The measures recognise a need for better awareness among health and care staff about making reasonable adjustments to the way that care or information is provided to people with learning disabilities. Other measures announced include:

* sharing the learning from the [named social worker pilot](https://www.innovationunit.org/publications/%20department-of-health-named-social-worker%20/#_blank), which explored one-to-one support for people with learning disabilities, autism and mental health needs
* plans for a long-term study of the impact of integrated community support for people with learning disabilities
* testing and developing a quality-of-life standard for people with learning disabilities that can be used to measure the effectiveness of support

**OH position: The Trust will participate in the consultation process once published and envisages this will build upon the steps we are already putting in place across the BOB STP in workforce development, in conjunction with Health Education England (HEE) which includes exploration of mandatory three tiered training in LD and Autism (aligned to the process we already have in place for dementia).   The Trust continues to monitor adherence to the 6 Healthcare for All standards for which the Board has also received assurance reports and which will no doubt be influenced by future developments.**

1. **CQC publishes – Quality Improvement in hospital trusts**

Where a culture of improvement is driven by the hospital trust’s leaders, QI becomes a frontline activity in many trusts, where staff are directly able to listen to patients and implement changes that make a real difference to patient care.

We wanted to explore further to hear trusts’ experiences of QI as a systematic approach to improving service quality, efficiency and morale – not just as a mechanism to problem solve in failing parts of the organisation, but as a way of expanding improvement beyond organisational or functional boundaries, so that impact is possible across the wider health and social care system.

This report is not a ‘how-to guide’, but uses the words of hospital staff and case studies of successful initiatives to share learning about trusts on a journey of QI – where curiosity and humility are essential improvement behaviours. We describe what the organisations look like, rather than prescribing how to get there.

<https://www.cqc.org.uk/sites/default/files/20180911_QI_hospitals_FINAL.pdf>

**OH position: The initiation of the Centre for Oxfordshire Healthcare Improvement puts QI as a key strategic priority for the Trust and we are committed to delivering sustainable, high-quality. The Centre is committed to delivering high-quality care through embedding a systematic and effective approach to QI. The Board will continue to be appraised of the centres role in improving safety.**

**RECOMMENDATION**

The Board of Directors is invited 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 plans and controls in place to deliver compliance against any Trust’s obligations are appropriate and effective.