

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

#

**Appendix to CEO Report BOD 136(ii)/2018**

(Agenda item: 5)

# Board of Directors

**30th November, 2018**

**Legal, Regulatory and Policy Update**

**For: Information**

**Executive Summary**

This is the monthly report to inform the Board of Directors on recent legislation, 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 2018 to mid-November 2018 and includes noteworthy contributions covered 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.

**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 – 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. **NHS Violence Reduction Strategy**

Safeguarding of NHS staff is now the responsibility of individual NHS trusts, following the disbanding of NHS Protect in March 2017.  Further to this, and a national increase in incidents, on 31 October 2018 the Secretary of State for Health & Social Care, Matt Hancock, announced the launch of the first ever NHS Violence Reduction Strategy, with new measures intended to: protect NHS staff against deliberate violence and aggression; and prosecute offenders.  <https://www.gov.uk/government/news/stronger-protection-from-violence-for-nhs-staff>

The most recent national NHS staff survey set out that over 15% of NHS employees had experienced violence from patients, their relatives or the public in the last 12 months – the highest figure for 5 years.  The new measures proposed include offering more high quality training in dealing with violent situations and the development (with providers) of a new system to enable staff to record assaults, abuse or harassment more easily (which may therefore provide improved national data to underpin analysis of the reasons behind the national rise in reported violence).

The quality of NHS trusts’ plans to reduce violence against staff will also be scrutinised as part of Care Quality Commission (CQC) inspections and the aim is for offenders to be prosecuted more quickly as a result of new joint work between the NHS, the police, the Crown Prosecution Service, the Social Partnership Forum and the Royal College of Nursing.

**OH Position: Oxford Healthcare Improvement Centre is already commencing work across five wards to reduce restrictive practices and this is likely to also reduce incidences of violence and aggression.  However, given staffing levels and challenges in the target areas, this project may progress slowly and require support.  The Senior Responsible Officer for this area is the Medical Director.  The Trust already supports the direction of travel which the announcement of the new strategy indicates.  As noted by the Mental Health Network of the NHS Confederation, the new strategy has the potential to ‘turbocharge’ existing efforts across the country to tackle violence against NHS staff.**

1. **Long-term plan should grant local freedom to ICSs and STPs**

In a recent commentary piece in the HSJ, NHS Confederation chief executive Niall Dickson wrote that NHS leaders expect the long-term plan to signal "make or break time" for local systems working in health and social care. He summarises findings from a recent survey of leaders of NHS commissioners and provider organisations. The survey, which had 64 responses, found that 61% of healthcare leaders said they agree sustainability and transformation partnerships and integrated care systems represent the right approach for partnership working between the NHS and local government. The survey also found that systems are hard to establish, as 86% of NHS leaders said only "moderate" or "a little" progress had been made implementing the vision of the Five-year forward view in their area. Mr Dickson discusses the challenges facing STPs/ICSs and ways to address them, especially through increased freedom for local systems.

1. **Collaborative working – tacking governance challenges in practice**

In recent years there has been a wholesale shift in the national policy focus, from promoting competition between provider organisations within a purchaser/provider split, to a clear expectation that local health and care organisations collaborate to make the best use of public funding and accelerate the integration of services for patients.

The NHS Provider new briefing, *Collaborative working: Tackling governance challenges in practice*, outlines a series of case studies that examine emerging governance systems in more detail. The publication aims to support provider boards and their partners in identifying what the most important considerations are when developing new governance mechanisms to underpin collaborative relationships.

<https://nhsproviders.org/media/518716/collaborative-working-tackling-governance-challenges-in-practice.pdf>

**OH Position: This guidance usefully brings together insights from the provider sector and shares some of the work trusts are leading with their partners in sustainability and transformation partnerships (STPs) and integrated care systems (ICSs) across the country. This will no doubt make a valuable contribution to discussions about how best to develop robust mechanisms in support of system working in Oxfordshire supporting us and our partners in identifying what the most important considerations are when developing new governance mechanisms to underpin the collaborative relationships developing in Oxfordshire and ongoing already in Buckinghamshire.**

1. **An improvement resource for the deployment of nursing associates in secondary care**

The National Quality Board (NQB) publication Supporting NHS providers to deliver the right staff, with the right skills, in the right place at the right time: Safe, sustainable and productive staffing (2016) outlines the expectations and framework within which decisions on safe and sustainable staffing should be made to support the delivery of safe, effective, caring, responsive and well-led care on a sustainable basis.

We have designed this improvement resource for use by all those involved in clinical establishment setting, approval and deployment – from the ward/care setting manager to the board of directors. It focuses on safe deployment of the role and does **not** go into detail about staffing uplift; education; use of agency staff; recruitment or retention.

This improvement resource focuses specifically on the deployment of nursing associates in secondary care, which includes: acute adult and children inpatients (including emergency departments) and outpatients; mental health inpatients and outpatients; learning disability inpatient and outpatients, and community care for all these speciality areas.

It is designed to be used by all those involved in clinical establishment setting, approval and deployment ‒ from the ward/care area manager to the board of directors. Although the National Institute for Health and Care Excellence (NICE) staffing guidelines predate the nursing associate role, they are a useful benchmark and have helped inform its development. <https://engage.improvement.nhs.uk/nursing-directorate/nursing-associate-improvement-resource/user_uploads/nursing-associate-safe-staffing-consultation_1nov18.pdf>

**OH Position: The ability of healthcare professionals to adapt and innovate is critical to achieving high-quality care in the right place and at the right time. By modernising, we can shape a workforce fit for purpose.** **The nursing associate (NA) role is designed to bridge the skills gap between the health care support worker and more senior registered professional and provide a new route into the registered nurse (RN) pathway. The more senior registered professional will continue to be the primary assessors and prescribers of care while NAs deliver and adapt care, contributing to assessment within agreed parameters. The Board, and the Quality Committee via upward escalation from the QSCWL receive regular updates with regard to our implementation of this new role.**

1. **Effective clinical governance for the medical profession**

In particular, this new handbook is designed for those individuals or groups of individuals who play an important leadership role in delivering and assuring the quality of clinical governance processes for doctors. In our case this will be the board and, in some circumstances, individual doctors. Those involved in managing and delivering clinical governance will also find the handbook a useful resource.

It aims to provide boards with a description of the core principles underpinning effective clinical governance for doctors focussing particularly on responsibilities outlined in the Responsible Officer (RO) regulations. In doing so it acts as a resource to support organisations in evaluating the effectiveness of their local arrangements including:

• Leadership, delivery and quality of clinical governance for doctors

• Medical revalidation

• Identifying and responding to concerns about doctors

• Pre-employment checks for doctors

<https://www.gmc-uk.org/-/media/documents/governance-handbook-2018_pdf-76395284.pdf>

**OH Position: The Board requires assurance that poor performance from our clinicians and clinical teams is identified early, and have robust and fair processes to address such issues should they occur. These recommendations describe what we are required to do to create an effective clinical governance system, outlining responsibilities of the Board in providing leadership and oversight. A formal gap analysis will be undertaken, and consideration will be given to using the checklist contained within the recommendations in order to inform this.  The outcome will be reported into the Trust’s Mortality Review Group with upwards escalation, as may be required, to the Safety quality sub-committee and potentially the Quality Committee.**

1. **New metrics are under development to measure local health systems against the ambitions of the NHS long-term plan.**

The ambition described in *Next Steps on the Five Year Forward View* can only be delivered through place-based partnerships spanning commissioners, local government, providers, patients, communities, and the voluntary and independent sectors. Whilst legislation requires an annual assessment of each CCG, commissioning and other arrangements, including assurance, increasingly take place at a multi-organisational level.

*Next Steps* committed NHS England and NHS Improvement to develop an integrated oversight framework to assess how well a healthcare system is performing. As STPs/ICSs develop, careful attention is being given to the alignment of metrics and the oversight arrangements for CCGs and those arrangements for STPs/ICSs that NHS England and NHS Improvement are jointly developing.

NHS England and NHS Improvement are working together to develop an integrated oversight framework that will provide a consistent means of assessing system-level performance, i.e. looking at quality, access to care and health outcomes from the point of view of patients and local communities.

The framework is intended as a focal point for joint work, support and dialogue between NHS England, NHS Improvement, CCGs, providers and STPs/ICSs. Data is updated regularly, with the most recent data for each metric published each quarter, enabling everyone to see, in-year, what is working well and what is off-track. NHS England’s national and regional teams are working together to ensure that the breadth of the framework is discussed with the leaders of CCGs during the year, through a targeted programme of local conversations, drawing on expertise and insight from the national programme teams.

[Documents published for clinical commissioning groups this month](https://www.england.nhs.uk/wp-content/uploads/2018/11/CCG-IAF-2018.19.pdf) revealed a “new integrated oversight framework” is being developed for integrated care systems and sustainability and transformation partnerships. While NHS Improvement and NHS England will continue to look at trust level and CCG level data, the new framework “will… reflect a population based approach to improving health outcomes and reducing health inequalities”.

The regulators said this would provide “greater focus on the performance of the local healthcare system as a whole”. It is not clear what the new metrics will be or when the framework will be released. But the documents state the framework will be “informed by the long-term plan” so that healthcare systems can be assessed by metrics that reflect the plan’s “ambition”.

NHS England has already said its long-term plan will include a renewed focus on clinical outcomes and better integration of care. It will also form a “key part of regular performance discussions between NHS England, NHSI and STPs/ICSs” in future.
The new framework is part of a “set of principles” NHS England and NHSI are developing to ensure they speak with “one voice” when regulating health economies.

The documents said the pair would set “consistent expectations for local health systems” and work with STP and ICS leadership to tackle problems in individual organisations rather than “making uncoordinated national interventions”. It said this action would “stimulate the further growth of self-governing systems”.

They also introduced new CCG metrics for 2018-19. These include providing data on how many people with severe mental health illness are receiving physical check ups; the total investment in primary care transformation; and the number of patients waiting six weeks or more for a diagnostic test. The regulators would then introduce demand management oversight to see if CCGs are saving cash in areas they said they would be able to.

**OH position: Whilst striving to maintain a high degree of continuity we acknowledge the rapidly changing environment in terms of the new care models and partnerships that are emerging to transform health and care services. The framework also needs to be flexible to maintain its relevance and alignment to the highest local priorities for CCGs and their partners in STPs/ICSs. This month’s CEO Report identifies the Oxfordshire System Agreements approach, and CCGs are expected to focus on the strength and effectiveness of their system relationships, and using all the levers and incentives available to them, to make progress. The annual assessment will take in to account how well CCGs, as individual organisations, have contributed to the performance of their local systems and to measurable improvement. While NHS Improvement and NHS England will continue to look at trust level and CCG level data, the new framework will "reflect a population based approach to improving health outcomes and reducing health inequalities". The regulators said this would provide "greater focus on the performance of the local healthcare system as a whole". It is not clear what the new metrics will be or when the framework will be released. But the documents said the framework will be "informed by the long-term plan" so that healthcare systems can be assessed by metrics that reflect the plan's "ambition".**

**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.