

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

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**Appendix to CEO Report BOD 02(iv)/2019**

(Agenda item: 4)

# Board of Directors

**31st January, 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 the end of 2018 to mid- January 2019 and includes any 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 Long Term Plan**

The NHS Long Term Plan also sets out plans to overcome the challenges that the NHS faces, such as staff shortages and growing demand for services, by:

**Doing things differently:** to give people more control over their own health and the care they receive, encourage more collaboration between GPs, their teams and community services, as ‘primary care networks’, to increase the services they can provide jointly, and increase the focus on NHS organisations working with their local partners, as ‘Integrated Care Systems’, to plan and deliver services which meet the needs of their communities.

**Preventing illness and tackling health inequalities:** the NHS will increase its contribution to tackling some of the most significant causes of ill health, including new action to help people stop smoking, overcome drinking problems and avoid Type 2 diabetes, with a particular focus on the communities and groups of people most affected by these problems.

**Backing our workforce:** will continue to increase the NHS workforce, training and recruiting more professionals – including thousands more clinical placements for undergraduate nurses, hundreds more medical school places, and more routes into the NHS such as apprenticeships. Making the NHS a better place to work, so more staff stay in the NHS and feel able to make better use of their skills and experience for patients.

**Making better use of data and digital technology:** providing more convenient access to services and health information for patients, with the new NHS App as a digital ‘front door’, better access to digital tools and patient records for staff, and improvements to the planning and delivery of services based on the analysis of patient and population data.

**Getting the most out of taxpayers’ investment in the NHS:** continue working with doctors and other health professionals to identify ways to reduce duplication in how clinical services are delivered, make better use of the NHS’ combined buying power to get commonly-used products for cheaper, and reduce spend on administration.

**What happens next**

Sustainability and Transformation Partnerships (STPs) and Integrated Care Systems (ICSs), now need to develop and implement their own strategies for the next five years. These strategies will set out how they intend to take the ambitions that the NHS Long Term Plan details, and work together to turn them into local action to improve services and the health and wellbeing of the communities they serve – building on the work they have already been doing.

This means that over the next few months, whether you are NHS staff, a patient or a member of the public, you will have the opportunity to help shape what the NHS Long Term Plan means for your area, and how the services you use or work in need to change and improve.

To help with this, we will work with local Healthwatch groups to support NHS teams in ensuring that the views of patients and the public are heard, and Age UK will be leading work with other charities to provide extra opportunities to hear from people with specific needs or concerns. More information is available at [www.longtermplan.nhs.uk](http://www.longtermplan.nhs.uk)

**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. Previous CEO Reports identified 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. We will continue to work with system partners and the Board and Council of Governors will be engaged in the development of our operational plan and in the systems’ response to the long term plan’s ambitions and obligations.**

1. **NHS Operational Planning and Contracting Guidance 2019/20**

The Government announced a five-year funding settlement for the NHS in June 2018. The new settlement provides for an additional £20.5 billion a year in real terms by 2023/24. In response, the NHS has developed the Long Term Plan reference above. 2019/20 will be the foundation year which will see significant changes proposed to the architecture of the NHS, laying the groundwork for implementation of the Long Term Plan.

To secure the best outcomes for patients and the public from this investment, there will be a bold set of service redesigns to reduce pressure across the NHS and improve care access and quality. There will also be a clinically-led review of standards; the development of a new financial architecture and the introduction of a more effective approach to workforce and physical capacity.

The ambition is that the long-term financial settlement will help put the NHS on a sustainable financial footing, moving away from a system in which deficits have become the norm, with the prospect of delivering financial balance for many organisations seemingly unachievable. Instead, the new financial framework will give local organisations and systems the space and support to shape their operational and financial plans to their circumstances, whilst reducing deficits year-by-year. The intention is to move away as swiftly as possible from individual organisational control totals, to support system working, reward success, and reduce uncertainty.

By allocating extra funds up-front it is anticipated that the majority of providers will return to balance. The quid pro quo is that next year no national reserves are being held to cover unauthorised deficits, so **each NHS organisation in 2019/20 must deliver its agreed financial position during 2019/20**. Capital expenditure will also be able subject to additional controls to ensure the NHS budget overall is balanced.

For 2019/20, every NHS trust, NHS foundation trust and clinical commissioning group (CCG), will need to agree organisation-level operational plans which combine to form a coherent system-level operating plan. This will provide the start point for every Sustainability and Transformation Partnership (STP) and Integrated Care System (ICS) to develop five-year Long Term Plan implementation plans, covering the period to 2023/24.

This is the full guidance, building on the first part published in December 2018. It accompanies five-year indicative CCG allocations and sets out the trust financial regime for 2019/20, alongside the service deliverables including those arising from year one of the Long Term Plan. CCGs and trusts should take action from April 2019 to begin implementing the measures set out in the LTP.

**System planning**

The guidance describes a single operational planning process for commissioners and providers, with clear accountabilities and roles at national, regional, system and organisational level.

All STPs/ICSs will produce a system operating plan for 2019/20 comprising a system overview and system data aggregation. STPs/ICSs should convene local leaders to agree collective priorities and parameters for organisational planning. It is expected systems will agree realistic shared capacity and activity assumptions from the outset to provide a single, system-wide framework for the organisational activity plans. These should be based on local trends derived from recent activity within a system. Ambition to contain growth should be collectively agreed and must be realistic. These plans need to be demonstrably aligned across providers and commissioners. Partners should adopt an ‘open book’ approach, sharing assumptions and plans with each other.

The organisations within each STP/ICS will be expected to take collective responsibility for the delivery of their system operating plan, working together to ensure best use of their collective resources.

NHSE and NHSI through their joint regional teams will have a key role in ensuring local accountability and will work in partnership with system leaders to jointly review draft and final system operating plan overviews and aggregate submissions, including the alignment of provider and commissioner plans and realistic phasing of non-elective and elective activity across the year. These should ensure that as much of the annual elective activity – particularly inpatient elective activity – occurs in the first half of the year, before winter. They should also contain effective winter plans, profiling additional winter activity, and the necessary capacity. NHS England/Improvement Regional Directors will assure plans against delivery priorities.

There will be a system control total for each STP/ICS which will be the sum of individual organisation control totals. All STPs/ICSs will have the opportunity to propose net-neutral changes, agreed by all parties, to organisation control totals ahead of the draft and final planning submissions. These proposals will be subject to approval by Regional Directors. Systems that intend to propose any control total changes should engage with their regional team at an early stage, as these will need to be finalised in line with the timetable.

ICSs will be expected to link a proportion of their Provider Sustainability Fund (PSF) and any applicable Commissioner Sustainability Fund (CSF) to delivery of their system control total. The full financial framework for ICSs will be communicated separately. STPs will also be allowed to do this if all parties agree to manage their finances in this way. This will be an important marker of system maturity and readiness to develop as an ICS.

**Financial Recovery Fund**

In 2019/20 there is a new Financial Recovery Fund (FRF) initially of £1.05bn, including £200m transferred from PSF, to support efforts to secure the financial sustainability of essential NHS services, with trusts able to cover current day-to-day running costs whilst they tackle unwarranted variation. It is acknowledged that trusts in deficit face a significant range of additional challenges, impacting on their ability to provide services including organisational morale, recruitment and retention of staff and the burden of cash management pressures.

The FRF will be allocated on a non-recurring basis to secure financially sustainable, essential NHS services in as many ICSs/STPs as possible. **In 2019/20 the FRF can only be accessed by trusts in deficit who sign up to their control totals.**

It is recognised that there is a need to give trusts and systems time to develop their medium term financial recovery plans. Initially, the distribution of the FRF will therefore be set nationally, with the aim of maximising the sustainability of NHS services in 2019/20. However, regulators expect recovery plans to be agreed during 2019/20 as a condition of receipt of the fund, and for all systems with deficit trusts to have recovery plans in place as part of the five-year system level strategic plans by December 2019. STPs/ICSs will need to demonstrate that their capital plans are an investable proposition.

From 2020/21 providers will only have access to this funding where financial recovery plans, agreed with NHS Improvement and NHS England regional teams, are in place to deliver significant year-on-year improvement. The recovery plan must set out how financial recovery will be delivered over a number of years. The fund will be paid on successful delivery of key milestones. Financial recovery plans will need to establish the drivers of financial performance, the actions required to make services sustainable at both trust and system level and agreed responsibilities to make this happen within the ICS/STP. These plans should draw on local understanding of the health system, but it is expected that all systems and trusts will implement proven initiatives, including the Model Hospital, RightCare and GIRFT, and the big opportunities identified within the Long Term Plan, such as redesigning outdated and unsustainable outpatients model to eliminate up to a third of face-to-face outpatient visits.

**Provider financial management**

All providers will be expected to plan against rebased control totals which have been communicated in January 2019 and will be presented in the financial section of the Board meeting. The 2019/20 control totals for providers in deficit will reflect a further 0.5% efficiency requirement on top of the 1.1% efficiency factor included in the tariff. It is important that providers plan for and deliver their control totals for 2019/20 to contribute to delivering financial balance across the NHS.

Providers that sign up to their control totals and are therefore eligible to earn PSF will be exempt from most contract financial sanctions. The sanction for 52-week waits applies to all providers and commissioners. Where a commissioner applies contract sanctions, the use of the resultant funding will be subject to sign off by the joint NHSE/I regional teams.

**Mental Health Investment**

CCGs must continue to increase investment in mental health services, in line with the Mental Health Investment Standard (MHIS). For 2019/20 the standard requires CCGs to increase spend by at least their overall programme allocation growth plus an additional percentage increment to reflect the additional mental health funding included in CCG allocations for 2019/20. The minimum percentage uplift in mental health spend for each CCG will be shown in the financial planning template. In order to deliver the service expansions planned for 2019/20, CCGs will (other than by local exception requiring prior agreement with NHS England) also need to increase the share of their total mental health expenditure that is spent with mental health providers. As in 2018/19, each CCG’s achievement of the mental health investment standard will require governing body attestation and in every case will be subject to independent auditor review.

The level of investment required by CCGs in mental health will be significant. It is important that commissioners achieve value for money for this investment, and so contracts must include clear deliverables supported by realistic workforce planning. Commissioners and providers will need to work together, supported by STPs/ICSs, to make sure that these deliverables are met and to agree appropriate action where they are not.

STP/ICS leaders, including a nominated lead mental health provider, will review each CCG’s investment plan underpinning the MHIS to ensure it covers all of the priority areas for the programme and the related workforce requirements. Any concerns that proposed investments will be inadequate to meet the programme requirements should be escalated to the regional teams.

Where a commissioner fails to achieve the mental health investment requirements, NHS England will consider appropriate regulatory action, including in exceptional circumstances imposing directions on the CCG. To support the assessment of mental health investment plans, NHS England will also look at mental health spend per head, and as a percentage of CCG allocations.

Spend on Children’s and Young People’s (CYP) mental health must also increase as a percentage of each CCG’s overall mental health spend. In addition, any CCGs that have historically underspent their additional CYP allocation must continue to make good on this shortfall.

**NHS Standard Contract**

NHS England is publishing a draft NHS Standard Contract for 2019/20 for consultation. The final version of the Contract will be published in February 2019. NHS commissioners must use the NHS Standard Contract when commissioning any healthcare services other than core primary care.

**The national deadline for signature of new contracts for 2019/20 (or agreement of variations to update existing non-expiring contracts) is 21 March 2019.** Where NHS commissioners and providers cannot reach agreement by this date, they will enter a nationally coordinated process for dispute resolution.

Boards need to be actively involved in the oversight of operational planning to ensure credible, Board-approved plans, against which in-year performance can be judged

<https://www.england.nhs.uk/wp-content/uploads/2018/12/nhs-operational-planning-and-contracting-guidance.pdf>

**OH Position: The Finance Director and Director of Strategy/CIO will present the Trust’s position with regard to its operational and financial planning assumptions engaging with the Board and with the Council of Governors, in addition to system partner collaborations in order to deliver an approved organization plan by the required timeline.**

1. **Quality Report requirements 18/19**

NHS Improvement requires all NHS foundation trusts to produce quality reports as part of their annual reports. Quality reports help trusts to improve public accountability for the quality of care they provide. The quality report incorporates all the requirements of the quality accounts regulations as well as any additional reporting requirements.

Foundation trusts are also required to obtain external assurance on their quality reports. Subjecting them to independent scrutiny improves the quality of data on which performance reporting depends. These requirements are part of regulatory requirements to foundation trusts as to the information to be included in their annual reports

<https://improvement.nhs.uk/documents/3600/Detailed_requirements_for_quality_report.pdf>

**OH position: The Quality and Risk team are responsible for the collation of the Quality Report and Account, with the Director of Corporate Affairs’ team responsible for the collation of the Annual Report. Each team is working to the published guidance and engaging with the Council of Governors at their February strategic session with regard to the chosen quality indicators subject to external assurance.**

1. **Brexit**

The Department of Health and Social Care (DHSC) has issued further operational guidance to assist NHS organisations with their business continuity planning for a no-deal EU Exit scenario. NHS organisations should follow the instructions contained in this document, and further guidance will be issued to support operational readiness for EU Exit as the situation develops. 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.

<https://www.gov.uk/government/publications/brexit-operational-readiness-guidance-for-the-health-and-social-care-system-in-england>   
  
**OH Position: A self-assessment, risk assessment and update report on the Trust’s readiness in the event of a no deal Brexit are appended to the Chief Executive’s report to the January Board of Director’s meeting.**

1. **Modernising the Mental Health Act**

An independent review into the Mental Health Act has been published setting out a clear case for change: the rate of detention is rising; the patient’s voice is lost within processes that are out-of-date and can be uncaring; there is unacceptable overrepresentation of people from black and minority ethnic groups amongst people detained; and people with learning disabilities and or autism are at a particular disadvantage. There is concern about being out-of-step with our human rights obligations.

There is an increasing and welcome recognition in society today of the importance of poor mental health and its consequences for those who battle such challenges, their families and society. At the same time concerns have arisen about the nature of the care received by those with mental illness, and in particular about the rising levels of coercion within mental health services. This Review is a consequence of these concerns, and tries to address them.

In the foreword, the Independent Review sets out some of the background and problems faced:

* The complex balance between respecting a person’s autonomy and the duty of a civilised State to protect the vulnerable.
* The problem of fear – held by patients, the public, and professionals involved in the system.
* The rise of coercion and the continuing legacy of stigma, discrimination and racism in society.

It is recognised that there is no simple solution to the issue of autonomy versus protection. This is a fundamental tension that no amount of legislation, recommendations, reports or inquiries can ever solve - and this report is no exception to this. The reader will see that there is caution in the recommendations to avoid absolute solutions as much as possible.

Is a need to rebalance the system to be more responsive to the wishes and preferences of the patient, to take more account of a person's rights, and to improve as much as possible the ability of patients to make choices even when circumstances make this far from easy.

The reviewers needed to manage the tensions between autonomy and protection, and between aspiration and practicality – the health service we would like, and the one that can be funded. These tensions have compelled the review to make choices. This Review will not and cannot deliver a perfect system however, it aspires to deliver a much-improved system that, at its core, places the patient in higher esteem.

Recommendations

* A purpose and a set of principles should be included in the Act itself.
* There should be four new principles covering: choice and autonomy, least restriction, therapeutic benefit, and the person as an individual.
* MHA regulations and forms should be amended to require professionals to record how the principles have been taken into consideration, and to enable local auditing and monitoring and CQC should consider this as part of their monitoring and inspection role.

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/762206/MHA_reviewFINAL.pdf>

**OH Position: The MHA team are reviewing the recommendation in the report to establish any learning in advance of any potential changes to the legislation.**

1. **Mental Health Bulletin 2017-18 Annual Report**

This publication provides the most detailed picture available of people who used NHS funded secondary mental health, learning disabilities and autism services in England during the financial

year 2017-18.

<https://digital.nhs.uk/data-and-information/publications/statistical/mental-health-bulletin/2017-18-annual-report#key-facts>

1. **CQC review the use of restraint, prolonged seclusion and segregation - LD**

The CQC has announced it is to review the use of restraint, prolonged seclusion and segregation for people with mental health problems, a learning disability and/or autism

<https://www.cqc.org.uk/news/stories/cqc-review-use-restraint-prolonged-seclusion-segregation-people-mental-health-problems>

1. **The role of volunteers in the NHS**

This report was commissioned by Royal Voluntary Service and Helpforce and was published in December, with the aim to ascertain the perceptions of frontline NHS staff working in acute care about the operational pressures they face, how they understand the roles and value of volunteers and what gaps there are that volunteers could help fill. The report sets out the findings from a survey, series of semi structured interviews and a non-systematic literature review.

* Frontline staff recognise the broad range of activities carried out by volunteers in NHS hospitals
* The overwhelming majority of frontline staff agree that volunteering in hospitals adds value forpatients, staff and volunteers
* The majority of frontline staff enjoy working with volunteers, with some variation between different staff groups
* The main challenge for frontline staff is a lack of clarity regarding role boundaries

<https://www.kingsfund.org.uk/sites/default/files/2018-12/Role_volunteers_NHS_December_2018.pdf>

**OH Position: The Director of Corporate Affairs/Company Secretary set up a voluntary services function and recruited a Community Involvement Manager in June 2017 to develop this function (in addition to developments in community involvement and the charity). Significant progress has been made in the utilization of volunteers across the Trust and a strategy is currently being finalized in order to set out the Trust’s strategic intent with regard to the development of volunteering.**

1. **Patient Safety Strategy for the NHS – Consultation**

The strategy reveals plans for a new patient safety support team, which will be drafted in to help trusts identified as having safety specific challenges. NHS Improvement published the draft safety strategy shortly before Christmas as part of a consultation running until 15 February 2019.

The strategy is being developed alongside the NHS Long Term Plan and will be relevant to all parts of the NHS, be that physical or mental health care, in or out of hospital and primary care.

**OH Position: The Quality and Risk team will contribute as necessary to the consultation and welcome any learning or improvements that may come out of the strategy when it is eventually published.**

**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 or prepare for compliance against any Trust’s obligations are appropriate and effective.