

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

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**Appendix to CEO Report BOD 18(ii)/2019**

(Agenda item: 4)

# Board of Directors

**27th February, 2019**

**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-January to mid-February 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. **Brexit ‘no deal’ – briefing for communications leads**

Further to the CE Report in January and the appended EU Exit documentation, at this point there is still no final deal agreed with the EU on arrangements and the relationships across a number of areas. With the potential for this to have a significant impact on the NHS and the wider healthcare sector, NHS Providers has issued a briefing to help trusts communicate with staff, patients and the public on the preparations to date for a possible ‘no deal’ Brexit.

<https://nhsproviders.org/media/605942/brexit-no-deal-briefing-feb-2019.pdf>

**OH Position: Trust level preparations were highlighted to the Board in January 2019 through circulation of the self-assessment, risk assessment and update report on the Trust’s readiness in the event of a no deal Brexit. The Department of Health and Social Care is leading national NHS preparations for a ‘no deal’ Brexit focusing on the 7 key areas identified in the report to Board. The Briefing itself is with the Director of Communications to develop appropriate internal communications; and the relevant Board Assurance Framework considerations have been identified.**

1. **Creation of Digital Unit, NHSX**

Health secretary Matt Hancock has announced NHSX, an organisation intended to oversee and help develop IT within the NHS. The new organisation will set national policy and set best practice for technology across the NHS, including standards setting, data sharing and transparency. A key requirement will be to ensure interoperability across both the health and broader care systems, as well as supporting the use of new technologies by the NHS.

It will also oversee the work of NHS Digital and work closely with the Government Digital Service and other parts of central government to ensure a degree of alignment across Whitehall. Other elements of its remit include:

* Helping to improve clinical care with agile, user-focused projects;
* Supporting the use of new technologies by the NHS, both by working with industry and via its own prototyping and development capability;
* Ensuring that common technologies and services, such as Hancock's NHS App, can be used across the NHS and various NHS organisations;
* Making sure that all source code is open by default so that contractors can easily see what needs to be done;
* Reforming procurement to help the NHS to buy the right technology based on standards, streamlined spend controls and new procurement frameworks;
* Setting a national strategy for cyber security standards; and,
* Developing digital training and skills.

1. **Mental health and wellbeing support for NHS staff**

By way of update to the Update Report submitted to Board in January, plans have progressed to give staff immediate access to dedicated mental health support as part of the upcoming workforce implementation plan as the government sets out new plans to provide better mental health and wellbeing support to NHS staff.

The new support will be based on recommendations by Health Education England (HEE) and includes:

* post-incident support for NHS frontline staff, such as peer group support or a more formal psychological assessment
* a dedicated mental health support service giving confidential advice and support 24 hours a day
* fast-tracked mental health referrals for NHS employees if requested as a priority from either a GP or an occupational health clinician
* improved rest spaces for on-call staff and trainees during and after their shifts, providing security, shower facilities and refreshments
* an ‘NHS workforce wellbeing guardian’ in every NHS organisation, responsible for championing mental health and wellbeing support for staff.

HEE made the recommendations in its [report on the mental health and wellbeing of NHS staff and learners](https://www.hee.nhs.uk/our-work/mental-wellbeing-report), commissioned by the Department of Health and Social Care last year.

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**OH Position: The measures should help us make positive progress on sickness absence rates, staff performance and retention and will enhance the extensive work we are already doing to address staff wellbeing reported through our workforce board reporting mechanism. The latest NHS staff survey showed nationally that less than a third of staff felt their organisation took positive action towards improving their health and wellbeing. The Trust’s survey results are being considered by the Board this month.**

1. **Kark Review – Fit and Proper Person Test (FPPT)**

The review has looked in particular at how effective the FPPT is in preventing unsuitable staff from being redeployed or re-employed in the NHS. The review was recommended by Dr Bill Kirkup in his report into Liverpool Community Health NHS Trust, in February 2018. The review of the [*Fit and proper person test*](https://www.gov.uk/government/publications/kark-review-of-the-fit-and-proper-persons-test) carried out by Tom Kark QC is now published.

It recommends that all directors (executive, non-executive and interim) should meet specified standards of competence to sit on the board of any health providing organisation. Where necessary, training should be available. It also recommends that a central database of directors should be created holding relevant information about qualifications and history. A number of recommendations set out in the review have been accepted by the government, while others have been folded into the wider workforce review being led by the NHS Improvement chair, Baroness Dido Harding.

**OH Position: It is understood that Directors have a duty to ensure patient safety and provide high-quality care and we will await finalisation of Baroness Harding’s review in order to implement the accepted changes as and when required as part of our existing FPPT procedures overseen by the Director of Corporate Affairs and Company Secretary for members of the Board.**

1. **NHS foundation trusts: FT Annual Reporting Manual (ARM) 2018/19**

NHSI has published an update to the FT ARM 2018/19. The main change brings an additional requirement where personal information is being included in the annual report and accounts.

**OH Position: Corporate Affairs, Finance and Quality & Risk Teams will ensure compliance with the guidance in developing the Annual Report and Accounts for 18/19.**

1. **Preparing the healthcare workforce to deliver the digital future**

The Secretary of State for Health and Social Care commissioned The Topol Review: Preparing the healthcare workforce to deliver the digital future, as part of the digital strategy. The Topol Review, led by cardiologist, geneticist, and digital medicine researcher Dr Eric Topol and produced by HEE, explores how to prepare the healthcare workforce, through education and training, to deliver the digital future.

The Topol Review is now published and it makes recommendations that will enable NHS staff to make the most of innovative technologies such as genomics, digital medicine, artificial intelligence and robotics to improve services. These recommendations support the aims of the NHS Long-Term Plan, and the workforce implementation plan, helping to ensure a sustainable NHS.

<https://topol.hee.nhs.uk/wp-content/uploads/HEE-Topol-Review-2019.pdf>

**OH Position: This is an exciting time to benefit and capitalise on technological advances and successful implementation will require investment in our teams as well as technology. Once recommendations are finalised we will give staff every encouragement to learn continuously and the support to implement technological advances.**

**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.