

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

#

**Appendix to CEO Report BOD 30(ii)/2019**

(Agenda item: 5)

# Board of Directors

**27th March, 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-February to mid-March 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. **Proposals for possible changes in legislation**

The NHS long term plan sets out NHS England’s and NHS Improvement’s (NHSE/I) view that the current policy direction towards collaboration and integration within local systems can “generally” be achieved within the current statutory framework, but that “legislative change would support more rapid progress”. The plan included an overview of barriers to collaborative working which NHSE/I would like to address via legislative change. They have now published an engagement document setting out their top level proposals for change. These were described in terms of the plan depending “mainly on collective endeavour”, with local and national NHS bodies needing to work together to redesign care around patients.

<https://www.longtermplan.nhs.uk/wp-content/uploads/2019/02/nhs-legislation-engagement-document.pdf>

**OH Position: There are a number of possible opportunities and risks in here for the Trust as an aspirant ICS and some of this supports our current thinking regarding our general direction of travel and future system structures. If possible the Director of Corporate Affairs will attend a round table event in order that we give views before the end of the consultation on 25 April 2019.**

1. **Mental Health Services – addressing the care deficit**

NHS Providers published a new report on the current operating environment for mental health services and its impact on the sector, based on a survey of chair and chief executives of mental health trusts. This report uses that frontline feedback to identify the challenges and their impact on the services mental health trusts provide. As well as giving a brief overview of the current policy context, it explores three important elements of the current care deficit in mental health provision:

* the demand challenge;
* the workforce challenge;
* the system challenges.

Although the NHS long term plan, and the Five year forward view for mental health before it, have set out ambitious plans and increased investment to improve the quality, volume and accessibility of mental health care in England, the survey found a substantial care deficit in mental health remains that must be addressed.

The survey also revealed the impact of socio-economic factors on demand for mental health services is a particular concern among mental health trust leaders – in addition to longstanding issues around workforce and funding.

<https://nhsproviders.org/mental-health-services-addressing-the-care-deficit/conclusion>

1. **Clinically led review – NHS access standards**

The NHS National Medical Director was asked by the Prime Minister in June 2018, to review the core set of NHS access standards, in the context of the model of service described in the NHS Long Term Plan, and informed by the latest clinical and operational evidence, recommend any required updates and improvements to ensure that NHS standards:

* promote safety and outcomes;
* drive improvements in patients experience;
* are clinically meaningful, accurate and practically achievable;
* ensure the sickest and most urgent patients are given priority;
* ensure patients get the right service in the right place;
* are simple and easy to understand for patients and the public; and
* not worsen inequalities.

The interim report published in March 2019 sets out the initial proposals for testing changes to access standards in mental health services, cancer care, elective care and urgent and emergency care. These proposals will now be field tested at a selection of sites across England, before wider implementation. The approach and timeframe for this testing varies across the four service areas according to the nature of care and the changes that are being proposed.

The information gathered through field testing, and engagement will inform final recommendations from this Review, and ahead of full implementation beginning spring 2020. <https://www.england.nhs.uk/clinically-led-review-nhs-access-standards/>

**OH Position: This further enhances the importance of proper demand and capacity modelling across mental health services, and the need for that to be baked into any financial settlement for mental health covering the next few years. We need to be confident that our plans for service development will give us enough capacity to cope with the expected workload to these thresholds as they come into play and will bring this into our discussions with commissioners. Firstly, the Trust will work to model what they mean for OHFT.**

1. **Monitoring the Mental Health Act**

The CQC ‘Monitoring the Mental Health Act’ is their annual report on the use of the Mental Health Act (MHA). It looks at how providers are caring for patients, and whether patient’s rights are being protected. The key findings of monitoring visits are:

* There is a general trend of improvement in the areas that they have measured. This echoes their experience of inspection visits.
* Their greatest concern is about the quality and safety of care provided on mental health wards; in particular on acute wards for adults of working age.
* Their MHA review visits find an increasing amount of care planning that is detailed, comprehensive and developed with patients and carers being involved. However, a substantial proportion of the care plans of detained patients that they have examined are still of a poor quality.

The CQC will pay particularly close attention to the use of restrictive interventions. The Secretary of State for Health and Social Care has asked CQC to carry out a review of segregation, prolonged seclusion and restraint in settings that accommodate people with mental health problems, a learning disability or autism. They will publish an interim report in May 2019 and a final report by spring 2020. However, they will share learning with partner organisations as we go along.

<https://www.cqc.org.uk/publications/major-report/monitoring-mental-health-act-report>

**OH Position: We will continue to review such reports in order to learn and improve. We welcome the statement in the Long Term Plan that capital investment from the forthcoming Spending Review will be made available to upgrade the physical environment for inpatient psychiatric care.**

1. **Changes to the leadership structure of NHS England and NHS Improvement**

Over the last year NHS England and NHS Improvement have been working together to develop the implementation approach for the NHS Long Term Plan and their own joint working arrangements. They have made a lot of progress in that time and as plans have evolved their boards have decided to make some changes to their new leadership structure to provide effective leadership and support to the NHS.

They are moving to a single Chief Executive and single Chief Operating Officer model, and therefore are creating a single, combined post of Chief Operating Officer covering both organisations. This role will report directly to Simon Stevens as the Chief Executive of NHS England who will lead both organisations. The Chief Operating Officer will, for regulatory purposes, also be the identified Chief Executive of NHS Improvement and, in that capacity, will report to Dido Harding as Chair of NHS Improvement. The seven regional directors, the National Director of Emergency and Elective Care and the National Director for Improvement will report directly to the new Chief Operating Officer.

The new Chief Operating Officer role will be different in scope and nature from the role Ian Dalton chose to take eighteen months ago, and he has therefore decided to leave NHS Improvement and pursue a different challenge.

<https://www.england.nhs.uk/2018/12/nhs-england-and-nhs-improvement-announce-new-senior-leadership-posts/>

**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.

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