

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

# 

**Appendix to CEO report**

**BOD 58(ii)/2019**

(Agenda item: 7)

# Board of Directors

**24th May, 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-March to mid-May 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. **Visiting children in residential special schools and colleges**

The Children’s Commissioner for England has written to all CAMHS tier 4 units, both NHS and private hospitals, in England that provide hospital services for children andto all Directors of Children’s Services in England to raise awareness of responsibilities under S.85 and 86 of the Children Act 1989, and to give information about the *Help at Hand* advice and representation service.

In November 2017 the Department for Education and the Department of Health issued statutory guidance entitled: *‘Statutory visits for children with special educational needs and disabilities or health conditions in long-term residential settings’,*

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/656849/Visiting\_children\_in\_residential\_special\_schools\_and\_colleges.pdf](https://protect-eu.mimecast.com/s/Q8f7C6WZqTrrYopiplChO?domain=assets.publishing.service.gov.uk)

In summary the guidance requires where a child is provided accommodation by health authorities for a consecutive period of at least three months (or intention to do so) there is a requirement to notify the Director of Children’s Services of the responsible authority where the child is normally resident.

 The local authority will then take such steps as are reasonably practicable to enable them to determine whether the child’s welfare is adequately safeguarded and promoted while he is accommodated by the accommodating authority; and consider the extent to which (if at all) they should exercise any of their functions under this Act with respect to the child.

In Section 86 the same duty extends to private hospitals, but these are required to notify the local authority in which they are geographically located.

* **Help at Hand Service**

The Help at Hand service supports, advises and makes representations on behalf of children who are in care, or are care leavers, or are otherwise working with local authority children’s social care, or are living away from home in some other provision such as residential school, hospital or youth custody. The primary purpose of Help at Hand is to ensure that all decisions and plans made for children living away from their families, are made taking their views and wishes into account and in their best interests, whilst ensuring their rights are maintained. Further information about Help at Hand can be found at:

[https://www.childrenscommissioner.gov.uk/help-at-hand/](https://protect-eu.mimecast.com/s/AheDC794rsAA1m8uWpUg5?domain=childrenscommissioner.gov.uk)

**OH Position: We have been invited to enter into dialogue with our local authority(ies) children’s service to establish the best route for referrals and liaison, so that there is a robust system to carry out these S.85 and S.86 duties. We will additionally ensure awareness and promotion of the Help at Hand service and its role and remit to local health advocacy services, and to children in hospital for long periods. This will help ensure children’s needs including education are being met, including early discharge planning working with the child and parents.**

1. **NHS Long Term Plan – NHSE&I funding**

Building on the collaborative approach to developing The Long-Term Plan, an NHS Assembly will be formed as a new national forum to bring together a range of stakeholders from across the health and care system to advise the two boards as part of a “guiding coalition” to support the implementation of The Long-Term Plan. The Assembly will comprise around fifty individuals, drawn from national and frontline clinical leaders, patient leaders, staff representatives, health and care system leaders and voluntary, community and social enterprise sector leaders, who will bring their experience, knowledge and links to wider networks to inform the discussion and debate of the Assembly.

The document in the link provides information about NHS England’s and NHS Improvement’s funding in 2019/20. It also sets out how NHS England and NHS Improvement will support The Long-Term Plan through distribution of funding, people and resources, to transform local health and care systems. <https://improvement.nhs.uk/about-us/corporate-publications/publications/nhs-england-and-nhs-improvement-funding-and-resource-201920-supporting-nhs-long-term-plan/>

1. **What the long-term plan means for system working**

This briefing is a part of a series of updates from NHS Providers on the progress of sustainability and transformation partnerships (STPs) and integrated care systems (ICSs), and the implementation of the long term plan. It is intended to support trust board directors, their line reports and foundation trust governors to make sense of the rapidly evolving national policy direction with regard to system working.

This briefing addresses the commitments set out in the plan and analyses what they mean for providers within a system context under six key themes: the future of system working, legislative change, governance and accountability, regulation, finances and population health and integration. See link here: [what the long term plan means for the future of system working](https://protect-eu.mimecast.com/s/NfJACz6ZJTMRpxjtqVYLk?domain=nhsproviders.cmail19.com).

**OH Position: As part of the STP and existing and emerging ICSs, the Trust will continue to work to model what this means for OHFT and for its part in the healthcare system.**

1. **Organization-wide improvement in health care**

The Health Foundation launched their new report [*The Improvement Journey: why organisation-wide improvement in health care matters, and how to get started.*](https://protect-eu.mimecast.com/s/QOQoCmqJpijjlB7HGrxoip?domain=nhsproviders.cmail19.com) The report is a practical guide to developing an organisation-wide approach to improvement and summarises the benefits of such an approach, outlining the key elements and steps NHS trust leaders should adopt when pursuing this agenda. In addition to the [report](https://protect-eu.mimecast.com/s/8bWbCnRKqI77DA1s9wj7C_?domain=nhsproviders.cmail19.com), the Health Foundation have developed a [poster](https://protect-eu.mimecast.com/s/FeGOCoZLrhrrYj1T1KAC0j?domain=nhsproviders.cmail19.com) which shows the six key steps in the improvement journey: assessing readiness, securing board support, securing wider organisational buy-in and creating a vision, developing improvement skills and infrastructure, aligning activity and sustaining an organisation-wide approach.

**OH Position: We will continue to review such reports in order to learn and improve and will ensure ongoing recognition of the Board’s support for OH’s improvement journey.**

1. **We still need to talk about Boards**

In the summer of 2015 NHS Providers published a paper *We need to talk about boards*, in the context of the *Five year forward view* and the debate that ensued about legal and organisational forms. Much has changed since then, with the publication of the NHS long term plan and the drive towards system working, with its emphasis on collaboration rather than competition.

However, even in the context set out above, individual organisations remain important. They are the only bodies corporate within systems with the legal powers to make decisions and are legally accountable for the outcomes of that decision making. Directors are answerable to the board even when making decisions under delegated powers and all board members are liable for the ensuing outcomes. For providers, this means the board, which embodies the organisation, remains the legitimate unit of decision making. So while system working is likely to impact on the way in which boards work, it has made board oversight more important than ever.

<https://nhsproviders.org/we-still-need-to-talk-about-boards>

**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**