

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

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**BOD 87/2019**

(Agenda item: 7)

# Board of Directors

**25th September, 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 August to mid-September 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 focus will where relevant ensure Executive Directors are aware of the changes related 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 routine 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. **Freedom to Speak Up: guidance for NHS FT Boards**

The guidance clarifies revised expectations of boards and board members in relation to Freedom to Speak Up and includes supplementary resources and a self-review tool.

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| This guide supports boards to create that culture; one where workers feel safe and able to speak up about anything that gets in the way of delivering safe, high quality care or affects their experience in the workplace. This includes matters related to patient safety, the quality of care, and cultures of bullying and harassment. To support this, managers need to feel comfortable having their decisions and authority challenged: speaking up should be embraced. Speaking up, and the matters that speaking up highlights, should be welcomed and seen as opportunities to learn and improve.  This guide is targeted at senior leaders because it is the behaviour of executives and non-executives (which is then reinforced by managers) that has the biggest impact on organisational culture. How an executive director (or a manager) handles a matter raised by a worker is a strong indicator of a trust’s speaking up culture and how well led it is. |

[**https://improvement.nhs.uk/resources/freedom-speak-guidance-nhs-trust-and-nhs-foundation-trust-boards/**](https://improvement.nhs.uk/resources/freedom-speak-guidance-nhs-trust-and-nhs-foundation-trust-boards/)

**OH Position: The Trust’s FTSU Guardian is part of a wider programme of activity focused on a culture of speaking up and promoted by the Trust in order to encourage staff to speak up about any issues of patient care, quality or safety. A revised self-assessment is to be considered by the Executive Team in October and by the Board in November. The outcome of this exercise of reflection on our current position will be used to identify areas for development in relation to Freedom to Speak up arrangements and ensure the Trust is focused on learning and improving the quality of patient care and the experience of staff and teams. The last self-assessment was completed in 2017.**

1. **Using the Friends and Family Test to improve patient experience**

*NHS England, NHS Improvement, have published* guidance which sets out the updated requirements of the NHS Friends and Family Test (FFT). These revisions to the FFT guidance are effective from 1 April 2020.

The changes result from a review, called the FFT Development Project, which was carried out during 2018/19, responding to the reported experiences of people who had been directly involved in implementing and using the FFT since its original roll-out to services between 2013 and 2015.

[**https://www.england.nhs.uk/publication/nhs-england-and-nhs-improvement-guidance-using-the-friends-and-family-test-to-improve-patient-experience/**](https://www.england.nhs.uk/publication/nhs-england-and-nhs-improvement-guidance-using-the-friends-and-family-test-to-improve-patient-experience/)

**OH Position: As a provider of services, the Trust will comply with the revised requirements and will provide the opportunity for people who use our services to give anonymous, quick, feedback via the FFT when they want to. We will use the mandatory standard FFT question described in the guidance looking to supplement the standard question with additional wording or graphics to ensure that people who would otherwise have difficulty providing feedback are more likely to be able to take part.**

1. **Meeting the NHS workforce challenge – HEE Business Plan for 2019/20**

Health Education England has published itsbusiness plan which sets out how HEE will respond to the challenges facing the NHS outlined in the Long Term Plan and interim People Plan. HEE plans to focus on three strategic long-term goals: Future Workforce; Current Workforce; and Quality and Patient Safety.

[**https://www.hee.nhs.uk/sites/default/files/documents/HEE%20Business%20Plan%202019-20%20FINAL.pdf**](https://www.hee.nhs.uk/sites/default/files/documents/HEE%20Business%20Plan%202019-20%20FINAL.pdf)

**OH Position: The Trust regularly acknowledges the increasing demand on services and the changing career expectations of staff, and plans for the significant pressures it faces, and will continue to face. As the Business Plan sets out how HEE is changing and responding, we welcome the opportunity outlined for enhanced working with such as Local Workforce Action Boards and Local Education Training Boards within the new regional and local NHS management arrangements. We are working with system partners to ensure that we can coordinate workforce activity in a more cohesive way as outlined in the Long Term Plan.**

1. **NHS Oversight Framework for 2019/20**

NHS Improvement has published a revised framework document.The NHS Oversight Framework for 2019/20 outlines the joint approach NHS England and NHS Improvement will take to oversee organisational performance and identify where commissioners and providers may need support.

The NHS Oversight Framework for 2019/20 has replaced the provider Single Oversight Framework and the clinical commissioning group (CCG) Improvement and Assessment Framework (IAF), and will inform assessment of providers in 2019/20. It is intended as a focal point for joint work, support and dialogue between NHS England and NHS Improvement, CCGs, providers and sustainability and transformation partnerships, and integrated care systems

[**https://improvement.nhs.uk/resources/nhs-oversight-framework-201920/**](https://improvement.nhs.uk/resources/nhs-oversight-framework-201920/)

**OH Position: We welcome clarification of the developments in regulatory oversight frameworks as they align to emerging developments in system working and ICS delivery models. The Trust will continue to develop its annual planning, reporting and financial and operational information to support an improvement culture across the Trust and the system. We welcome support from regulators to help the Trust continuously improve. Teams will familiarise themselves with the updated guidance such that each is clear on relevant escalations, reporting and support opportunities.**

1. **Mental Health Implementation Plan 19/20 - 23/24**

At the beginning of the year, the NHS Long Term Plan renewed a commitment to pursue an ambitious transformation of mental health care in England. The recently published Mental Health Implementation Plan provides a new framework to ensure we deliver on this commitment at the local level.

The Five Year Forward View for Mental Health, published in 2016, represented a major step, securing an additional £1 billion in funding for mental health, so that an additional 1 million people could access high quality services by 2020/21.

In line with funding commitments, ambitious goals have been outlined to improve mental health services. The publication promotes that by 2023/24, 370,000 adults and older adults with severe mental illnesses will have greater choice and control over their care – including dedicated provision for groups with specific needs, such as adults with eating disorders or a ‘personality disorder’ diagnosis. An additional 345,000 children and young people will access support via NHS-funded mental health services and school- or college-based Mental Health Support Teams. The current, targeted suicide prevention programme will be rolled out to every local area, and all systems will provide suicide bereavement services for families and staff. Importantly, the shift towards more integrated, population-level health systems will support more localised and personalised responses to health inequalities across the prevention and treatment spectrum.

**OH Position: The Trust will retain its emphasis on ensuring that inpatient care, when required, is of a high quality. The growing role of NHS-led provider collaboratives in delivering whole pathways of care for populations have already started to show us that short stays, close to home linked with quality community services can deliver improved patient care.** **STPs and ICSs’ are developing 5-year plans, submitting a draft at the end of September 2019, and a final version by mid November 2019 – which is being considered further, at the September Board meeting. Systems will be expected to work in partnership with mental health providers to develop these plans and it is expected that local health systems will work jointly to develop and confirm CCG Mental Health Investment Plans across the 5 years including working with a lead mental health provider, in line with the planning requirement for 2019/20.**

1. **Conflicts of Interest**

NHS Providers has begun publication of a series of briefing notes. While it has been universal good practice for trust board members to declare, register and publish their interests, the NHS is reported to have lagged behind much of the public sector in ensuring that senior staff who make important policy and financial decisions also register their interests.

Each publication is intended to deal with a different barrier to compliance with a short case study setting out an approach to dealing with it. The first case study covers utilising supportive technology. In addition to these short publications, NHSP will review progress being made in trusts over time and they are also working with trusts to capture good practice in recording and managing conflicts of interest.

**OH Position: The Trust reviewed its Conflicts of Interest Policy in 2018 and is implementing revised guidance. We will utilise these good practice updates in order to improve staff practice where relevant and where cost effective.**

1. **Telling patients the truth when something goes wrong in ‘Medical Malpractice**

The Professional Standards Authority this summer, published a report created in January 2019 evaluating the progress of professional regulators regarding the duty of candour. According to recent research by NHS Resolution, embedding the duty of candour in a healthcare organisation is an important factor in determining whether an incident becomes a claim as well as being a key part of learning and improving.

The PSA considers progress to have been made, but felt it was difficult to establish the extent of the regulators’ success in encouraging candour. This was because success was both hard to measure and the range of factors which affect professionals’ candour to patients. The report concludes that cross-sector collaboration between organisations and individuals is needed to produce professionals who are candid and work in supportive environments.

[**https://www.professionalstandards.org.uk/docs/default-source/publications/research-paper/telling-patients-the-truth-when-something-goes-wrong---how-have-professional-regulators-encouraged-professionals-to-be-candid-to-patients.pdf?sfvrsn=100f7520\_4**](https://www.professionalstandards.org.uk/docs/default-source/publications/research-paper/telling-patients-the-truth-when-something-goes-wrong---how-have-professional-regulators-encouraged-professionals-to-be-candid-to-patients.pdf?sfvrsn=100f7520_4)

**OH Position: Embedding the duty of candour is an essential focus at the Trust not only to meet regulatory standards and professional duties but in recognition that together with transparency and saying sorry meaningfully when things go wrong is vital for everyone involved in an incident, including the patient, their family, carers, and the staff that care for them.**

1. **Primary Care Networks**

The Community Network, a partnership between NHS Providers and NHS Confederation, have published a new briefing on primary care networks (PCNs), which acts as a guide to support provider organisations to engage effectively with these new structures.   
  
*Primary care networks: a quiet revolution* draws on official guidance and discussions with both PCN leaders and providers of community services. It explores the role of PCNs, what the emerging picture is, what this means for providers of community services and, crucially, how we can work together effectively.

**Trust position: The Trust recognizes how PCNs will play a vital role in supporting the move to integrated working across local systems. Board have been apprised of the work thus far with regard to the Trust’s collaboration with the Oxfordshire GP Federations and will consider at its September private meeting options in this regard.**

1. **Hospital food review announced by government**

The DHSC have announced a review whichfollows the deaths of 6 people linked to an outbreak of listeria in contaminated food earlier this year. New national standards for healthcare food for patients, staff and visitors will also be developed by NHS England, NHS Improvement and Public Health England (PHE). These new standards will reflect government nutrition advice, as outlined in [PHE’s Eatwell guide](https://www.gov.uk/government/publications/the-eatwell-guide). The review will also look at how to increase the number of hospitals with their own kitchens and who have their own chefs.

[**https://www.gov.uk/government/news/hospital-food-review-announced-by-government**](https://www.gov.uk/government/news/hospital-food-review-announced-by-government)

**OH Position: A proposal is currently being considered with regard to the Trust’s café provision. The review will extend its focus to consider the potential for the social enterprise to engage in the need to provide healthy options that aid recovery and for meals to be tailored to the individual needs of the patient. The aim of a new model of delivery via a social enterprise model is also to provide people with mental health problems and learning disabilities, meaningful activity, training opportunities and support into employment. Running the cafes in partnership with a suitable social enterprise provider would be an exciting venture for OHFT to further establish its social impact as a foundation trust, leading the way in innovation.**

1. **Building healthier communities: the role of the NHS as an anchor institution**

The Health Foundation describes Anchor institutions as large, public sector organisations that are unlikely to relocate and have a significant stake in a geographical area. The conclusion sets out actions and opportunities for the NHS to harness its considerable influence to have an even greater impact on the health and wellbeing of communities.

Our report identifies five ways in which NHS organisations act as anchor institutions:

* [employment](http://reader.health.org.uk/building-healthier-communities/chapter-3-the-nhs-as-an-employer)
* [procurement and commissioning for social value](http://reader.health.org.uk/building-healthier-communities/chapter-4-the-nhs-as-a-purchaser-and-commissioner-for-social-value)
* [use of capital and estates](http://reader.health.org.uk/building-healthier-communities/chapter-5-the-nhs-as-a-land-and-capital-asset-holder)
* [environmental sustainability](http://reader.health.org.uk/building-healthier-communities/chapter-6-the-nhs-as-a-leader-for-environmental-sustainability)
* [as a partner in a place](http://reader.health.org.uk/building-healthier-communities/chapter-7-the-nhs-as-a-partner-across-a-place)

[**https://www.health.org.uk/publications/reports/building-healthier-communities-role-of-nhs-as-anchor-institution**](https://www.health.org.uk/publications/reports/building-healthier-communities-role-of-nhs-as-anchor-institution)

**OH Position: The Trust’s emerging People strategies/plans, including the focus of the STP workforce workstream each look to widen access to employment for local people and at how to support the health and wellbeing of staff through improved working conditions. Apprenticeships are just one example of widening access to employment at the Trust and the application for wider employer status would support the Trust in upskilling a wider sector of the local population. Furthermore, we are broadening participation opportunities through our pre-employment programmes, work placements and volunteer work experience and peer support workers. Further examples of the Trust’s work in this area includes through the STP and the growing focus on place-based approaches to improve health outcomes, and NCM which channel assets across wider geographies to improve the wellbeing of populations. The ICS will be a key delivery mechanism for partners in the system to collaborate for the benefit of local communities. Also, see above re café provision.**

**Learning:**

1. **CQC inspection reports (with relevance to OHFT learning)**

To keep members of the Board apprised of inspection and improvement outcomes in other parts of the country, included in this report is the CQC reports of comparable Trusts.

* 1. **South West Yorkshire Partnership NHS Foundation Trust: Good**

This is a Yorkshire provider of mental health, community health and learning disability services to a large geographical area covering Barnsley, Calderdale, Kirklees and Wakefield. The trust also provides some low and medium secure services to the whole of Yorkshire and Humber.

The trust had seven active locations at the time of inspection. These locations were spread across different hospital sites. There were 471 inpatient beds across the trust over 30 wards. The trust employs approximately 4,700 staff in both clinical and non-clinical support roles and is commissioned to provide services by a number of organisations: NHS England specialist commissioning, local commissioning groups, they work with local health and care partnerships which cover the Calderdale, Kirklees, Wakefield and Barnsley area and are part of the integrated care systems covering West Yorkshire and Harrogate.

The CQC’s rating of the trust improved with a rating of ‘good‘ for reasons which included:

* The trust board and senior leaders had the appropriate range of skills, knowledge and experience to perform their role. The trust had a clear vision and set of values which were embedded and respected across the organisation.
* Leadership development opportunities were available, including opportunities for staff below team manager level. The leadership and management development offer to staff took an inclusive approach, the pathway was open to both registered clinicians and non-registered support staff.
* The trust’s target rate for appraisal compliance was 95%. At the time of inspection, the overall appraisal compliance rate was 97%. The appraisal process was aligned to the trust values and staff spoke positively regarding this process. On the whole staff felt respected, supported and valued within their teams.
* The trust had a policy on restrictive practices which had recently been introduced. Each ward now had a reducing restrictive practice log/risk assessment which recorded the local restrictions in place, and what the risk assessment was with and without each restriction in place, what the decision was, and the plan for review of any restrictive practice. This had helped services identify and reduce restrictive practices across the inpatient wards. [**https://www.cqc.org.uk/sites/default/files/new\_reports/AAAJ3345.pdf**](https://www.cqc.org.uk/sites/default/files/new_reports/AAAJ3345.pdf)
  1. **SLAM - good**

The trust serves a population of 1.3 million people across the London boroughs of Lambeth, Lewisham, Southwark and Croydon and employs more than 5,000 staff, including over 1,200 nurses. Staff provide services to around 64,000 patients in the community and 3,700 patients in hospital every year. The trust has a turnover of £381 million and made a

surplus of £10.5 million in 2017/2018. The trust provides some national specialist mental health services. The service provides the following core services:

* Acute wards for adults of working age and psychiatric intensive care units
* Long stay/rehabilitation mental health wards for working age adults
* Wards for older people with mental health problems
* Child and adolescent mental health wards
* Forensic inpatient/secure wards
* Wards for people with learning disabilities or autism
* Mental health crisis services and health-based place of safety
* Community-based mental health services for older people
* Community-based mental health services for adults of working age
* Community services for people with learning disabilities or autism
* Specialist community mental health services for children and young people

The trust operates from eight registered locations including four hospitals, Maudsley Hospital, Ladywell Unit, Lambeth Hospital and the Bethlem Royal Hospital. The trust provides 786 inpatient beds in 49 wards. It provides community mental health and out-patient services from a number of team bases in the London boroughs of Lambeth, Lewisham, Southwark and Croydon.

At that inspection, the CQC’s rating of the trust stayed the same –good, for reasons which included:

* The trust had a high calibre board, with a wide range of appropriate skills and experience, who were open and determined to continue making the necessary changes to provide high quality care to their local communities.
* Since the last inspection, the directorate structures and borough-based working for local services had become more embedded. The directorate structures ensured clinical leaders had manageable spans of control. The numbers of matrons across the organisation had been increased to support teams to provide high quality care. This was leading to improved partnership working to address challenges in boroughs with partners to meet the needs of local people.
* The board had improved oversight of operational issues. The governance processes had been strengthened with each directorate having a monthly quality and performance review. Links with wards and teams were also being strengthened. This was supported by a business information system which made information available in an accessible format at all levels of the organisation. This was enabling achievements and concerns to be escalated appropriately. The trust was identifying problem areas and work was, for the most part, underway to resolve matters.

[**https://www.cqc.org.uk/sites/default/files/new\_reports/AAAJ5348.pdf**](https://www.cqc.org.uk/sites/default/files/new_reports/AAAJ5348.pdf)

**Other links to recently published inspection reports are provided below:**

Dorset Healthcare University NHS Foundation Trust: **Outstanding**

Latest inspection: 30 April 2019 to 4 June 2019

Report published: 31 July 2019

<https://www.cqc.org.uk/provider/RDY>

Leicestershire Partnership NHS Trust: **Requires improvement**

Latest inspection: 11, 12 and 17 June 2019

Report published: 9 August 2019

<https://www.cqc.org.uk/provider/RT5>

Gateshead Health NHS Foundation Trust: **Good**

Latest inspection: 02 April to 11 April

Report published: 14 August 2019

<https://www.cqc.org.uk/provider/RR7>

**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 of the Trust’s obligations are appropriate and effective.

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