

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

#

**BOD 04/2020**

(Agenda item: 6)

# Board of Directors

**29th January, 2020**

**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-December 2019 to mid-January 2020 and includes any noteworthy contributions covered by health think tanks and a section in the Appendix on learning / ‘True for Us’ considerations.

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 and where relevant, a sense of the Trust’s position with regard to the change. **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. The Appendix should prompt consideration of commissioning any deep dive (‘true for us’ review) in order to enhance the level of assurance or to improve the control environment.**

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. A section in the Appendix to pick up learning or assess ‘True for Us’ is also included to support improvement activity and focus.

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. **Transforming health through innovation: integrating the NHS and academia**

This report finds that the UK’s world-leading biomedical and health research sector has contributed to major advances in patient care, as well as to the wealth of the nation. However, NHS staff increasingly lack the capacity to engage with research, and the number of clinical academics is declining. It calls for the support of leaders to achieve six key outcomes that will be essential to enhance the interface between the NHS and the UK’s academic biomedical and health research sector.

[**https://acmedsci.ac.uk/policy/policy-projects/nhs-academia-interface**](https://acmedsci.ac.uk/policy/policy-projects/nhs-academia-interface)

Report download:[**https://acmedsci.ac.uk/file-download/23932583**](https://acmedsci.ac.uk/file-download/23932583)

**OH Position: The R&D team will be engaging with the Clinical Trial Unit (CTU) leaders in the University to gain insight into how we can enhance the interface.**

1. **NHS workers feel confident to speak up… and more are doing so**

A new report published by the National Guardian’s Office reveals that over the last year cases of speaking up to guardians have risen by 73%, compared to 2017/18. There are now Freedom to Speak Up Guardians in every trust in England.

[**https://www.nationalguardian.org.uk/news/report-reveals-more-nhs-workers-feel-confident-to-speak-up-and-more-are-doing-so/**](https://www.nationalguardian.org.uk/news/report-reveals-more-nhs-workers-feel-confident-to-speak-up-and-more-are-doing-so/)

**Report**:[**https://www.nationalguardian.org.uk/wp-content/uploads/2020/01/speaking\_up\_data\_report\_2018-19.pdf**](https://www.nationalguardian.org.uk/wp-content/uploads/2020/01/speaking_up_data_report_2018-19.pdf)

**OH Position: The Board received a report from the Trust’s Speak Up Guardian at the last Board meeting.**

1. **Patient Safety Incident Response Framework**

NHS Improvement are in the process of developing a new Patient Safety Response Framework (PSIRF) to replace the current Serious Incident Framework. To ensure successful implementation of the PSIRF when rolled out in 2021, they are first working with a small number of early adopters who will shortly begin using an introductory version of the framework in their organisations.

[**https://improvement.nhs.uk/resources/future-of-patient-safety-investigation/**](https://improvement.nhs.uk/resources/future-of-patient-safety-investigation/)

Also: **About the new Patient Safety Incident Response Framework**, *NHS Improvement 15 Jan 2020*, [**https://improvement.nhs.uk/resources/about-new-patient-safety-incident-response-framework**/](https://improvement.nhs.uk/resources/about-new-patient-safety-incident-response-framework/)

**OH Position: Following publication of the framework in 2021 the Trust will assess the impact on current policy and procedure and act accordingly in order to respond to the changes.**

1. **Mental health funding and investment**

NHS Providers’ briefing looks at the financial and investment challenges facing mental health providers. It digests the financial and funding issues facing mental health trusts, including their current financial position, the impact of stigma on investment, how mental health services are commissioned, contracted and paid for, the transparency and governance of funding flows. It sets out a number of solutions to financial problems mental health trusts face.

[**https://nhsproviders.org/mental-health-funding-and-investment**](https://nhsproviders.org/mental-health-funding-and-investment)

**Trust position: Board have been fully apprised of the work with the OCCG to address underfunding. We are also working to progress improvements in data collection and data quality to give a better understanding of mental health activity, access and outcomes that can then enable better commissioning (demand and capacity). Furthermore, we are supporting a greater understanding within STP/ICS of the mental health and wellbeing needs of local populations to ensure mental health service delivery is prioritised accordingly**

1. **The economic influence of the NHS at the local level**

As the biggest employer in England and a significant economic force in local communities, the NHS has a unique opportunity to use its resources to influence the wellbeing of the population it serves and reduce the health inequalities that exist in England.

[**https://www.kingsfund.org.uk/publications/economic-influence-nhs-local-level**](https://www.kingsfund.org.uk/publications/economic-influence-nhs-local-level)

**OH Position:** **The long- term plan makes a specific commitment to explore how the NHS can take on this role more often in the future and the ICS will no doubt support**  **how NHS organisations in our system can sustainably invest in local businesses, while protecting efficiency, to influence health at the population level.**

1. **System approaches to workforce challenges in the NHS**

NHS Providers discusses examples of Trusts working with system partners to tackle workforce pressures and plan for the future.

[**https://nhsproviders.org/news-blogs/blogs/system-approaches-to-workforce-challenges-in-the-nhs**](https://nhsproviders.org/news-blogs/blogs/system-approaches-to-workforce-challenges-in-the-nhs)

**Trust Position: The HRD is a member of the BOB ICS workstream working with system partners on integrated solutions to workforce challenges across the local systems.**

**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**

**Appendix A**

**AWARENESS/LEARNING/’TRUE FOR US’**

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 appendix is the CQC reports of relevance or of ‘outstanding’ Trusts.

* 1. **Northamptonshire Healthcare NHS Foundation Trust:** **Outstanding**

Northamptonshire Healthcare NHS Foundation Trust (NHFT) started as a mental health trust before expanding to incorporate both physical and mental health community services. The trust was formed in April 2001 following the merger of Northampton Community Healthcare NHS Trust and Rockingham Forest NHS Trust and achieved Foundation Trust status in May 2009.

NHFT is one of the Foundation Trusts in the country which offers an integrated provision across all ages including mental health, learning disability, community health and prison health services. The trust provides services across the area of Northamptonshire to a population of 733,000 and employs more than 5,000 staff to deliver care and treatment.

The trust offers a comprehensive range of physical, mental health and specialist services, many of which are provided in hospital, or from general practitioner surgeries or clinics. Services are delivered from a total of 25 locations. The trust has sites located in Northampton, Corby, Daventry, Kettering and East Northamptonshire.

Their rating of the trust stayed the same. However, the overall rating of mental health services improved at this inspection due to an aggregation of core service ratings.

They rated it as outstanding because:

* + The absolute clarity of culture and leadership made it easy for staff, patients and stakeholders to understand what the trust did. The trust had a firmly embedded vision, values and strategy ‘road map’ which strongly underpinned the eight domains of the well-led key question.
	+ Leaders had an inspiring shared purpose and strived to deliver and motivate staff to succeed. There was compassionate, inclusive and effective leadership. Leaders had an in-depth understanding of services they managed, including the issues, challenges and priority of their services. They explained clearly how each team worked to provide high quality, safe care. Leaders were visible and approachable for staff, patients and carers.
	+ Staff knew and understood the provider’s vision and values and how these applied in the work of their teams. All staff were passionate, caring, focused on putting patients first, and viewed patient recovery as a priority. Staff consistently displayed the values in their interactions with colleagues, patients and carers.
	+ They heard many examples of quality improvement and innovation that had a wide-reaching impact for staff and patients. Staff collected analysed data about outcomes and performance and engaged actively in local and national quality improvement activities. Improvement methods and skills were available and used across the trust. Staff were empowered to lead and deliver change. The trust had an ethos of sharing work and learning from others
	+ Their findings from the other key questions demonstrated that governance processes operated effectively at team level. Staff managed performance and risk well. Teams had access to the information they needed to provide safe and effective care and used that information to good effect.
	+ There was a strong focus on patient and staff safety as a priority agenda. The trust had made improvements to how they learnt from investigations into serious incidents and engaged and supported families and relatives throughout the process.
	+ The organisational wide approach, culture and practice of co-production continued to grow from strength to strength. The opportunities for staff, patients, carers and stakeholders to be part of service delivery and innovation were extensive.
	+ They saw numerous examples of very effective use of information that steered decision making and priority setting across the trust.
	+ The trusts’ approach to Freedom to Speak Up, equality, diversity, inclusion and cultural expectations of how staff behaved was well advanced. This underpinned how the trust operated internally and in the wider system.
	+ They were aware of how extensive the board involvement and influence had in the wider system to direct and lead system discussion, planning and performance to the benefit of people in the county.
	+ They were impressed by how the trust continued to celebrate success, internally and externally, and saw how a conscious decision to do so, had a clear and positive impact on improving and sustaining staff morale.
	+ Staff across the trust felt respected, supported and valued in their teams. The trust promoted equality, diversity, inclusion and wellbeing within day to day work. Staff had ample opportunities for further development and career progression. Staff felt able to raise concerns or challenge senior staff without fear of retribution. The trust placed a strong emphasis on staff well-being and leaders saw this as a priority focus for those who worked at the trust. The board had invested in well-being events, changed policies, well-being conversations and promoted work-life balance as integral to ‘team NHFT’.
	+ They heard about the work the board had done with governors to develop relationships and embed their position with the board had been effective and valued by all those yhry spoke with.

Summary of findings

* + There was a strong culture of openness, honesty and learning. There was evidence of sharing practice with others, and an ethos for embracing constant opportunity for learning and improving. The trust had formed a strong relationship with a neighbouring trust and embraced a ‘buddy’ relationship. The trust board were clear that this was not only an opportunity to support another NHS organisation, but an opportunity to improve and learn for themselves.

However:

* Oversight of both safe management of medicines and levels of restraint and seclusion, required improved governance and targeted action.

[**https://www.cqc.org.uk/provider/RP1/inspection-summary#overall**](https://www.cqc.org.uk/provider/RP1/inspection-summary#overall)

* 1. **South Warwickshire NHS Foundation Trust: Outstanding**

South Warwickshire NHS Foundation Trust (SWFT) provides acute hospital and community health services for approximately half a million people across Warwickshire and young people and family services in Coventry and Solihull. The trust provides district general hospital services at Warwick Hospital. Community inpatient care is provided at Stratford-upon-Avon Hospital, Royal Leamington Spa Rehabilitation Hospital and Ellen Badger Hospital. The trust also provides neuro rehabilitation at the Central England Rehabilitation Unit (CERU), based at Royal Leamington Spa Rehabilitation Hospital. The trust also provides community services for adults; children, young people and families;

community urgent care; community end of life care, and community urgent and emergency care.

Their rating of the trust improved. They rated it as outstanding because:

* They rated safe, effective, caring as good, and responsive and well led as outstanding. They found all four of the core services inspected as outstanding for being well led. In rating the trust, they took into account the current ratings of the eight services not inspected this time.

They rated well-led for the trust overall as outstanding because:

* Staff treated patients and their families with great compassion and kindness, respected their privacy and dignity, and took account of their individual needs. Patients and their families were truly respected and valued as individuals by an exceptional service.
* Staff found innovative ways to provide emotional support to patients, families and carers to minimise their distress. Staff routinely empowered patients to have a voice and ensured a person centred approach and went above and beyond to support them. Feedback about services was extremely positive.
* There was compassionate, inclusive and effective leadership at all levels. Leaders had the skills and abilities to run the service and deliver high-quality, patient centred care. Staff understood the trust’s vision and values, and their role in achieving them.
* Staff felt truly respected, supported and valued. They were highly motivated and committed to improving the quality and sustainability of care and people’s experiences.
* Staff at all levels were clear and passionate about their roles and accountabilities and had regular opportunities to meet, discuss and learn.
* The trust engaged well with patients, families, the local community and external partners to help improve services. All staff were highly committed to continually learning and improving services. There was a strong record of sharing work locally, nationally and internationally.
* Patients’ individual needs and preferences were central to the delivery of tailored services.
* Staff worked collaboratively with others in the wider system and local organisations to plan care and improve services.
* There was a proactive approach to understanding the needs and preferences of different groups of people and to delivering care in a way that met those needs, which was accessible and promoted equality.
* People could access the service when they needed it, in a way and time that suited them and received the right care at the right time. It was easy for people to give feedback and raise concerns about care received.
* The trust had enough staff to care for patients and keep them safe. Staff understood how to protect patients from abuse and managed safety well. The service controlled infection risk well. Staff assessed risks to patients, acted on them and kept good care records. They managed medicines well.
* The trust managed safety incidents well and learned lessons from them.
* Staff collected safety information and used it to improve the service.
* Staff provided great care and treatment and prescribed pain relief when they needed it. Managers monitored the effectiveness of the service and made sure staff were competent.
* Staff worked well together for the benefit of patients, advised them on how to lead healthier lives, supported them to make decisions about their care, and had access to good information.

However:

* Not all staff were up-to-date with mandatory and safeguarding training, but it was improving.
* Appraisal completion rates were below the trust target for allied health professional, nursing support and administrative staff groups in some areas.
* Some people could not always access the therapy service when they needed it. The service had effective plans in place to prioritise and mitigate this.
* Not all equipment in the emergency department (ED) was checked, and records kept that in line with trust policy and monitor all chemicals are stored safely.
* Consultant hours in the ED did not meet national guidance.
* Staff did not always complete or update risk assessments for each patient in medical care and did not always identify clear actions to remove or minimise risks.

[**https://www.cqc.org.uk/provider/RJC**](https://www.cqc.org.uk/provider/RJC)

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

**South West London and St George's Mental Health NHS Trust: Good**

Latest inspection: 03 Sep to 18 Oct 2019

Report published: 20 December 2019

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

**Leeds and York Partnership NHS Foundation Trust: Good**

Latest inspection: 9 July to 19 Aug 2019

Report published: 20 December 2019

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

**Southport and Ormskirk Hospital NHS Trust: Requires improvement**

Latest inspection: 09 July to 22 August 2019

Report published: 29 November 2019

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

**Norfolk and Suffolk NHS Foundation Trust: Requires improvement**

Latest inspection: 07 Oct to 06 Nov 2019

Report published: 15 January 2020

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

1. **Investigations/Legal cases/precedents**

This section of the Appendix is to support the Board and its committee chairs, and executive functional leads in horizon scanning and considering in learning from others what might be ‘True for Us’.

**Medical Malpractice Forward View 2020**

Capsticks 20 Jan 2020

In their annual review of events in the year ahead which could impact the healthcare, life sciences and medical malpractice sectors, Capsticks consider seven key decisions on topics including the duty of care owed, the doctrine of vicarious liability, and compensation following illegal acts. Fixed recoverable costs are on the horizon, while mediation is likely to continue to grow and they expect to see more challenges in the courts against dishonest claimants.

The report following the Paterson inquiry will publish its findings this year and Capsticks consider what may come out of this. Finally, they consider how the growth of telemedicine, AI and robotics will present potential new legal challenges."

<https://www.capsticks.com/insights/medical-malpractice-forward-view-2020>

**Mental Capacity Report**

*39 Essex Chambers, 19 Nov 2019*

(1) In the Health, Welfare and Deprivation of Liberty Report: two deprivation of liberty cases making clear what should (and should not) happen before the court; two important cases about reproductive rights and capacity, and capacity under stress in different contexts;

(4) In the Wider Context Report: news from the National Mental Capacity Forum (and a survey they need completing); an important case about the intersection of capacity, inherent jurisdiction and the Mental Health Act 1983 in the context of force-feeding.

<https://1f2ca7mxjow42e65q49871m1-wpengine.netdna-ssl.com/wp-content/uploads/2019/11/Mental-Capacity-Report-November-2019-Compendium-Screen-Friendly.pdf>

**Campaigns and trends**

**NHS tells gambling giants to improve the odds for mental health**

*DHSC, 16 Jan 2020*

<https://www.england.nhs.uk/2020/01/nhs-tells-gambling-giants-to-improve-the-odds-for-mental-health/>

Also: Country’s top mental health nurse warns video games pushing young people into ‘under the radar’ gambling, *NHS England, 18 Jan 2020*, <https://www.england.nhs.uk/2020/01/countrys-top-mental-health-nurse-warns-video-games-pushing-young-people-into-under-the-radar-gambling/>

**Older people encouraged to ditch “stiff upper lip” approach to mental ill health**

*NHS England, 13 Jan 2020*

NHS England and Age UK have joined forces in a campaign to encourage older people to access treatment for mental health conditions, as new analysis shows a majority of older people do not seek help.

<https://www.england.nhs.uk/2020/01/older-people-encouraged-to-ditch-stiff-upper-lip-approach-to-mental-ill-health/>