



**Report to the Meeting of the
Oxford Health NHS Foundation Trust**

Board of Directors

30th September, 2020

RR/App_BOD 15/2020
(Agenda item: 21)

READING ROOM PAPER

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 Addendum to pick up learning or assess a 'True for Us' position 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. **NHS People Plan**

[We are the NHS: People Plan 2020/21 – action for us all](#), along with [Our People Promise](#), sets out what our NHS people can expect from their leaders and from each other. It builds on the creativity and drive shown by NHS teams in their response, to date, to the COVID-19 pandemic and the [interim NHS People Plan](#). It focuses on how we must all continue to look after each other and foster a culture of inclusion and belonging, as well as take action to grow our workforce, train our people, and work together differently to deliver patient care. This plan sets out practical actions for employers and systems, as well as the actions that NHS England and NHS Improvement and Health Education England will take, over the remainder of 2020/21. It includes specific commitments around:

- **Looking after our people** – with quality health and wellbeing support for everyone
- **Belonging in the NHS** – with a particular focus on tackling the discrimination that some staff face
- **New ways of working and delivering care** – making effective use of the full range of our people’s skills and experience
- **Growing for the future** – how we recruit and keep our people, and welcome back colleagues who want to return

<https://www.england.nhs.uk/ournhspeople/>

OH Position: It is well rehearsed that the NHS needs more people, working differently, in a compassionate and inclusive culture. Responses to the pandemic have highlighted the enormous contribution of all staff and the ability to change practice at pace. The People Leadership and Culture Committee will ensure momentum continues to transform Oxford Health’s workforce, by overseeing delivery against the Trust’s response to the People Plan thus keeping our staff, as well as our service users at the heart of all we do. A local People Plan is being developed also via the BOB ICS workstream structures.

2. **Getting it right for everyone: meeting the needs of people with a learning disability and autistic people in NHS services**

A new report by NHS Providers calls for immediate action to tackle stigma and the historic underfunding of services for people with a learning disability and autistic people. However the report also highlights the fact that most learning disability and autism services are providing people with good care according to Care Quality Commission.

<https://nhsproviders.org/getting-it-right-for-everyone>

OH Position: This report is a helpful overview of what has worked well, and an opportunity to reflect on the valuable work done across the NHS and to draw lessons accordingly. The LD service at the Trust is demonstrating their commitment to coproducing high-quality, person-centred support, and learning for these groups of individuals and the Quality Committee receives regular reports on progress against expected standards of quality and its improvement plans. These are aligned to the NHS improvement standards and the commitments with in the NHS long term plan.

3. **New framework launched to help NHS and public sector organisations manage cyber threats**

A cyber security services framework has been launched for the NHS and public sector, which can be used to procure external support and services to help manage cyber security risks, increase resilience, and recover in the event of an incident.

<https://digital.nhs.uk/news-and-events/news/cyber-framework-launched>

OH Position: Significant activity to safeguard the Trust against the threat of cyber attack has been regularly reported via the Finance and Investment Committee and the Audit Committee and continues to be a key feature of risk management. This framework will be reviewed against Trust practice and any gaps identified will be progressed accordingly.

4. Ombudsman paints stark picture of NHS complaint handling and launches public consultation to drive improvement

The PHSO report finds that there is inconsistency in complaint handling across the NHS, leading to variable outcomes; investigations are often carried out by staff who have limited or no training; and organisations too often see complaints negatively. A number of key organisations have now joined with PHSO to develop a draft non-statutory framework to promote consistent, high quality complaint handling in the NHS, and have launched a public consultation on the final version.

<https://www.ombudsman.org.uk/news-and-blog/news/ombudsman-paints-stark-picture-nhs-complaint-handling-and-launches-public>

Report: <https://www.ombudsman.org.uk/publications/making-complaints-count-supporting-complaints-handling-nhs-and-uk-government>

Framework and consultation: <https://www.ombudsman.org.uk/csf>

OH Position: The Trust recognises the importance of consistent and compassionate responses to complaints and welcomes the development of, and engagement in a voluntary approach. It is hoped the non-statutory framework will support the Trust continue to deliver improvements that will ensure consistent, high quality complaint handling. Sub-committee structures report into the Quality Committee and to Board reporting where members are appraised on key themes of complaints and their handling.

5. Third phase of NHS response to COVID-19

Letters detailing Phase 3 and its implementation include mental health planning, restoration of community services and finance submission guidance.

<https://www.england.nhs.uk/coronavirus/publication/third-phase-response/>

OH Position: The executive team are overseeing progress against each element of the implementation with executive leads assigned accordingly. System reporting on progress is via the ICS and NHSE.

6. New agreement between CQC and Getting It Right First Time (GIRFT)

CQC and Getting It Right First Time (GIRFT) have published a new Memorandum of Understanding (MoU) agreement. GIRFT is a national programme designed to improve

care within the NHS by reducing unwarranted variations. The agreement confirms that the GIRFT team will regularly update CQC on the findings of their reviews of individual clinical specialities and will inform CQC of any safety concerns identified during those reviews.

<https://www.cqc.org.uk/news/stories/new-agreement-between-cqc-getting-it-right-first-time-girft>

7. £62 million to help discharge people with learning disabilities or autism into the community

Funding will be given to local councils to accelerate discharge of patients with learning disabilities or autism (or both) from mental health hospitals into the community. The funding can be spent on costs associated with discharge, including establishing community teams, funding accommodation and staff training. In addition, a new independent oversight panel has been set up to improve care and support for inpatients with learning disabilities or autism.

<https://www.gov.uk/government/news/62-million-to-help-discharge-people-with-learning-disabilities-or-autism-into-the-community>

OH Position: OHFT are keen to help people to be supported within their local communities and to continue to work to achieve shorter lengths of stay and ensure that any admissions are avoided where possible. In part of our response to this we have amended our MH pathway to support with local access for people with learning disabilities where reasonable adjustments can be made and we are also in partnership with our OCC and CCG commissioners looking to develop a local provision that will be used to support those in crisis without the requirement to admit to hospital.

8. New NHS 'Exemplars' to help close inequality gap for people with a learning disability

The NHS has called on local NHS organisations across the country to become learning disability 'Exemplars' to help drive forward improvements in care. Seven Exemplars will trailblaze new ways of working to help make improvements to health and access to care. Their focus will include increasing the uptake of annual health checks and the number of people with a learning disability who get their flu jab. Important lessons from trailblazers will be rolled out as good practice across the NHS.

<https://www.england.nhs.uk/2020/07/new-nhs-exemplars-to-help-close-inequality-gap-for-people-with-a-learning-disability/>

9. One year on and one pandemic later

Another long-read, this time from the Community Network, run by NHS Providers and NHS Confederation, examines what's happened to primary care networks and other forms

of primary and community care collaboration. A year since the introduction of primary care networks (PCNs), it is timely to look back on how collaboration between secondary, community and primary care is evolving.

<https://nhsproviders.org/one-year-on-and-one-pandemic-later>

10. **New report: Being A Patient**

This is the first report from the Patients Association programme of work on patient experience. It suggests that it is time for a fresh look at patient experience. While there is considerable activity in the health and care system devoted to measuring patient experience, the approach is considered quite narrow and it suggests doesn't truly capture things from the patient's point of view.

<https://www.patients-association.org.uk/blog/new-report-being-a-patient>

11. **COVID-19 Insight: Promoting partnership working to drive better experiences and outcomes for people**

In the third of their regular COVID-19 insight reports, the CQC again put the focus on collaboration between providers. Of note is that the report includes what concerns have prompted them to carry out a number of inspections in recent months, and at the challenges that providers have faced in caring for people detained under the Mental Health Act or subject to a deprivation of liberty.

<https://www.cqc.org.uk/news/stories/promoting-partnership-working-drive-better-experiences-outcomes-people>

Full report: <https://www.cqc.org.uk/publications/major-report/covid-19-insight-issue-3>

OH Position: Of note, the report highlights CQC inspectors have seen that, with providers increasingly looking towards the introduction of the Liberty Protection Safeguards (LPS), providers' focus on DoLS has waned and training in some areas has stagnated. Poor understanding of DoLS has remained a fundamental issue. This together with the delays and uncertainty over the progress of LPS may mean there is an increasing risk of people being deprived of their liberty without the proper authorisation. The next MHA Committee will consider this matter accordingly.

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**

Addendum A

AWARENESS/LEARNING/'TRUE FOR US'/THOUGHT PIECES

CQC Inspections

None of note since last report

Mental Capacity Report

Highlights include: (1) In the Health, Welfare and Deprivation of Liberty Report: Liberty Protection Safeguards (LPS) delayed to April 2022, and capacity conundrums; (4) In the Wider Context Report: capacity and the Mental Health Tribunal, a change of approach to s.117 aftercare and lessons learned from a close encounter with triage.

<https://www.39essex.com/mental-capacity-report-july-2020/>

How to get the most out of inspection

“What a good inspection looks and feels like.”

[https://www.cqc.org.uk/sites/default/files/20200708 how to get the most out of inspection.pdf](https://www.cqc.org.uk/sites/default/files/20200708%20how%20to%20get%20the%20most%20out%20of%20inspection.pdf)

The impact of COVID-19 on community health services

This report captures the community sector’s response during the pandemic and showcases the achievements of community providers and their staff. It seeks to learn from community providers’ experiences of the pandemic to secure transformation for the longer term and makes a number of recommendations for support from government and the national NHS bodies to enable this.

<https://nhsproviders.org/resource-library/reports/the-impact-of-covid-19-on-community-health-services>

Mental health services and COVID-19: preparing for the rising tide

Mental health services have faced unprecedented challenges due to COVID-19. They quickly and effectively moved to different ways of working to protect service users and staff. We expect demand for mental health support to increase and to remain high for some time. This will have serious implications on resourcing and staff wellbeing. This report from the NHS Reset campaign considers what mental health services need to prepare for the expected surge in demand.

<https://www.nhsconfed.org/resources/2020/08/mental-health-services-and-covid19-preparing-for-the-rising-tide>

See also: Looking Forward: How the Mental Health System Will Model and Meet the Demand <https://www.nhsconfed.org/resources/2020/08/looking-forward>

Lean, light and agile: governance and regulation in the aftermath of COVID-19

In days and weeks, commissioners and providers across the healthcare sector have transformed clinical practice on a scale that would ordinarily take several months and years. This report reflects the discussions held with front line health leaders and partners, including the Care Quality Commission, exploring the learning and what it means for a fundamental reset of governance and regulation in the NHS.

<https://www.nhsconfed.org/resources/2020/08/lean-light-and-agile-governance-and-regulation>

Milton Keynes Hospitals NHS Foundation Trust v HMRC [2020] UKUT 231 (TCC)

Upper Tribunal decides that HMRC are entitled to assess under section 73(2) VATA 1994 in respect of VAT overclaimed by an NHS Trust under the contracted out services system. Why it matters: By confirming that HMRC may issue assessments under section 73, VATA 1994, for overclaims under section 41, VATA 1994, the UT has confirmed that the recipients of such assessments have a right to appeal to the FTT under section 83, VATA 1994.

<https://www.lexology.com/library/detail.aspx?g=60c0da9d-98d8-4d84-b058-0d6e9885b082>

Action for equality: The time is now

NHS Confederation (Health and Care Women Leaders Network), 9 Sep 2020

The new report includes analysis of board-level data on over 3,000 directors across NHS trust boards in England and arm's-length bodies, and over 70 interviews. It makes 16 recommendations for action which focus on the behavioural responses required of senior individuals within NHS boardrooms.

<https://www.nhsconfed.org/resources/2020/09/action-for-equality-the-time-is-now>

Technology and innovation for long-term health conditions

This paper, commissioned by the Academic Health Science Network, looks at four digital innovations in health services from the UK and the Nordic countries.

<https://www.kingsfund.org.uk/publications/technology-innovation-long-term-health-conditions>

The impact of Covid-19 on the use of digital technology in the NHS

This briefing explores how Covid-19 has changed the use of technology in the NHS, what has enabled these changes to happen, some possible risks and downsides and what might happen next.

<https://www.nuffieldtrust.org.uk/research/the-impact-of-covid-19-on-the-use-of-digital-technology-in-the-nhs>

Investigating deaths of health and social care workers who contracted COVID-19

In July 2020, the Department of Health and Social Care developed guidance that sets out the process for investigating the deaths of health and social care workers from COVID-19.

<https://www.lexology.com/library/detail.aspx?g=aa843901-8e81-4aa4-96e6-9cd9736712f5>

The road to renewal: five priorities for health and care

This long read from the King's Fund sets out five priorities to help guide the approach to renewal across health and care based upon the experiences of Covid-19.

<https://www.kingsfund.org.uk/publications/covid-19-road-renewal-health-and-care>

Commission for Equality in Mental Health: Briefing 2

The Commission for Equality's second briefing explores the inequalities in access to mental health services, identifying the factors that make services inaccessible, and sharing ideas that could improve access to support for people who experience inequalities.

<https://www.centreformentalhealth.org.uk/commission-equality-mental-health-briefing-2>

NHS Providers response to CQC strategy engagement, Parts 1 and 2

Part 1: NHS Providers' response to engagement exercises on the three themes of the CQC's strategy development: 'driven by people's needs', 'smarter regulation', and 'systems'.

<https://nhsproviders.org/resource-library/briefings/nhs-providers-response-to-cqc-strategy-engagement>

Part 2: Response to 'systems', the role of NHSEI, ICSs and the context trusts are operating within. <https://nhsproviders.org/media/689937/cqc-strategy-engagement-phase-2-systems-draft-2.pdf>

Reward 2019 survey results

Infographic showing results of NHS Employers survey asking employers in the NHS about their approach to rewarding staff and how a reward strategy is embedded in the organisation.

<https://www.nhsemployers.org/case-studies-and-resources/2020/07/reward-survey-2019-results>

The Patient Experience Library

"The patient experience corner of the measurement maze is a tangle of datasets emerging from the Friends and Family Test, CQC patient surveys, NHS England patient surveys, complaints data, and more. ... It sets a challenge: what if a Chief Executive of a Trust said, "I want all the patient experience data for this Trust and I want it now"."

<https://www.patientlibrary.net/cgi-bin/library.cgi?page=Blog;top=165>

Library: <https://www.patientlibrary.net/cgi-bin/documents.cgi>