

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

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**RR/App\_BOD 27/2020**

(Agenda item: 30)

# Board of Directors

**26th November, 2020**

***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 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. **CQC updates guidance on the regulation of services for autistic people and/or people with a learning disability**

Following feedback from people who use services the CQC has updated its guidance, so it has a stronger focus on outcomes for people including the quality of life people are able to experience and the care they receive. Now called Right support, right care, right culture, the guidance outlines three key factors that CQC expects providers to consider if they are, or want to, care for autistic people and/or people with a learning disability.

[**https://www.cqc.org.uk/news/releases/cqc-updates-guidance-regulation-services-autistic-people-andor-people-learning**](https://www.cqc.org.uk/news/releases/cqc-updates-guidance-regulation-services-autistic-people-andor-people-learning)

**Guidance:** [**https://www.cqc.org.uk/guidance-providers/autistic-people-learning-disability/services-autistic-people-people-learning-0**](https://www.cqc.org.uk/guidance-providers/autistic-people-learning-disability/services-autistic-people-people-learning-0)

Another CQC report:

**CQC Report on restrictive practices - Out of Sight - who cares?**

….looks at the use of restraint, seclusion and segregation in care services for people with a mental health condition, a learning disability or autistic people. In the report the CQC are calling for improved community-based capacity and capability across education, health and care for people with a mental health condition, a learning disability, or autistic people, after their review found undignified and inhumane care in some hospital settings providing complex care. Creating a package of care to meet individual needs was often seen as too difficult to get right and people had fallen through the gaps.

In a [new blog](https://protect-eu.mimecast.com/s/fWynCLZ4khklO8VCB0GdNv?domain=lnks.gd) Kevin Cleary, Deputy Chief Inspector for Hospitals and lead for mental health, and Debbie Ivanova, Deputy Chief Inspector for Adult Social Care, discuss findings.

For more information and to download the full report [**Out of sight – who cares?: Restraint, segregation and seclusion review | Care Quality Commission (cqc.org.uk)**](https://www.cqc.org.uk/publications/themed-work/rssreview)

**OH Position: Re the first guidance, The Associate Clinical Director of LD Services has confirmed she has discussed the guidance with the Lead for CQC Standards & Quality in relation to our services across the Trust.  Whilst directed predominantly at social care services and not linked into the standards for hospital settings, the service has agreed that the three key points should influence the Trust’s stance as it is aligned to the Trust’s values. As part of our commitment we are scoping the level 1 autism training for all staff employed in the trust as mandatory, and looking to run a series of autism seminars in the spring/summer to take an more in-depth look at aspects of care that need to be considered to support those with autism effectively.  We are also rolling out training on PBS as a model of care that has its base in person centred care which is effective for those with autism and LD.  The RAS team has had its funding agreed by the CCG to support with the inputs necessary for our inpatient settings to ensure that all required reasonable adjustments are made for those with autism and or LD on main stream wards.**

**With regard to the out of sight report, it was highlighted to the Board in September’s update that OHFT continues 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 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.**

1. **COVID-19: Key legal considerations arising from the pandemic**

This document looks at the legal liabilities that are likely to arise due to the environment created by the pandemic and suggests ways in which trust boards could respond. The document is deliberately broad, covering a range of issues that have been raised as areas of concern.

[**https://nhsproviders.org/resource-library/briefings/covid-19-key-legal-considerations-arising-from-the-pandemic**](https://nhsproviders.org/resource-library/briefings/covid-19-key-legal-considerations-arising-from-the-pandemic)

**OH Position: The Executive Management Committee is considering if decisions during COVID that were reasonable under one set of circumstances might be seen differently with the benefit of hindsight. This means placing events in the context of the knowledge, advice and guidance available at the time is important.** **The EMC, strategic and tactical commands have enhanced records for decision making to capture context fully and contemporaneously and will be reviewing if there is any area where this has not been done, to correct any omitted information as early as possible, noting that this is the case.**

1. **Use of electronic forms under the Mental Health Act accelerated by the pandemic**

On 1 October 2020 The Mental Health (Hospital, Guardianship and Treatment) (England) (Amendment) Regulations 2020 were laid before Parliament. The Explanatory Memorandum to the Regulations confirms that they allow for certain statutory forms used for the exercise of powers of admission, detention, assessment and treatment under the Mental Health Act 1983 (‘the Act’) to be served by electronic means.

[**https://www.lexology.com/library/detail.aspx?g=d6f49e85-0c14-4319-93d1-bfa4e158b085**](https://www.lexology.com/library/detail.aspx?g=d6f49e85-0c14-4319-93d1-bfa4e158b085)

**OH Position: OH welcomes the changes which should assist in responding to the needs of patients quickly and appropriately. The next MHA Committee will consider its own legal and regulatory update and will ensure the importance of starting to formulate procedures to deal with the changes and ensure agreements are in place regarding service, receipt and scrutiny of forms is assured. Before these changes come into effect on 1 December 2020, the government plans to publish guidance giving a practical steer on how they are to be implemented on the ground. This guidance is expected to cover issues such as the working protocols and agreements which organisations will need to establish locally on the use of e-mail for MHA forms - e.g. the practicalities of hospital managers giving advance agreement and/or receiving forms electronically.**

1. **CQC - Developing our future strategy**

As part of how they are developing their next strategy the CQC are sharing their latest thinking on a range of key areas, ahead of a formal consultation in January. This is built on four central and interdependent themes that determine the changes they want to make to how they regulate: People, Smart, Safe, Improve.

[**https://www.cqc.org.uk/news/stories/developing-our-future-strategy**](https://www.cqc.org.uk/news/stories/developing-our-future-strategy)

1. **Effective regulation and assessment of the CQC's contribution**

Three pieces of research have been carried out to look into areas where CQC’s regulation has contributed to improving the quality of health and care services, and where they can improve it. The CQC are using the findings from this research to inform their Strategy for 2021 and beyond.

[**https://www.cqc.org.uk/about-us/transparency/external-reports-research**](https://www.cqc.org.uk/about-us/transparency/external-reports-research)

1. **Mental health rehabilitation inpatient services – 2019 update**

This report is a follow-up to their 2018 briefing on mental health rehabilitation inpatient services. In 2019, the CQC sent a second request for information to 114 providers to review progress. The report makes recommendations to improve the care for people in mental health rehabilitation inpatient services.

[**https://www.cqc.org.uk/publications/themed-work/mental-health-rehabilitation-inpatient-services-%E2%80%93-2019-update**](https://www.cqc.org.uk/publications/themed-work/mental-health-rehabilitation-inpatient-services-%E2%80%93-2019-update)

**OH Position: This report will be reviewed by the quality team and operational teams to understand any learning or improvement opportunities for the Trust.**

1. **How many terms should foundation trust governors serve?**

This is a question that is asked quite frequently and while typically foundation trusts have been guided by the foundation trust code of governance provisions in respect of non-executive directors (NEDs), the code does not address the number of governor terms. Our analysis looks at the key statutory duties for governors, which require an outside perspective and degree of independence. You can read our full guidance in the briefing.

[**https://nhsproviders.org/resource-library/briefings/how-many-terms-should-foundation-trust-governors-serve**](https://nhsproviders.org/resource-library/briefings/how-many-terms-should-foundation-trust-governors-serve)

**OH Position: The Trust’s Constitution provides flexibility in third terms for both NEDs and Governors, with the latter being allowed to stand for up to 4 terms in exceptional circumstances. We report the exception via our Annual Report in accordance with the comply or explain principles of the Code of Governance.**

1. **Why should members of a trust board care about clinical research?**

Robert Peveler, clinical director for NHS engagement at the NIHR Clinical Research Network outlines how clinical research can be beneficial to a trust and why the board should care.

[**https://nhsproviders.org/news-blogs/blogs/why-should-members-of-a-trust-board-care-about-clinical-research**](https://nhsproviders.org/news-blogs/blogs/why-should-members-of-a-trust-board-care-about-clinical-research)

1. **COVID-19 is magnifying inequalities and “risks turning fault lines into chasms”**

The CQC’s annual assessment of the state of health and social care in England looks at the quality of care over the past year. This includes the period before the full impact of COVID-19 began to be felt and CQC’s routine inspections were suspended as a result of the pandemic. Pre-COVID-19, care was generally good, but with little overall improvement and some specific areas of concern.

[**https://www.cqc.org.uk/news/releases/covid-19-magnifying-inequalities-%E2%80%9Crisks-turning-fault-lines-chasms%E2%80%9D-%E2%80%93-focus-now-must**](https://www.cqc.org.uk/news/releases/covid-19-magnifying-inequalities-%E2%80%9Crisks-turning-fault-lines-chasms%E2%80%9D-%E2%80%93-focus-now-must)

**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.**

**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**

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**Addendum A**

**AWARENESS/LEARNING/’TRUE FOR US’/THOUGHT PIECES**

**CQC Inspections**

**CQC published a report on South West London and St George's Mental Health NHS Trust** *CQC, 26 Oct 2020*

The focused inspection, which took place in August 2020, was in response to concerns that some staff did not understand how to care for patients with eating disorders including at mealtimes.

[**https://www.cqc.org.uk/news/releases/cqc-publish-report-south-west-london-st-georges-mental-health-nhs-trust**](https://www.cqc.org.uk/news/releases/cqc-publish-report-south-west-london-st-georges-mental-health-nhs-trust)**; Report (pdf):**

[**https://api.cqc.org.uk/public/v1/reports/0e00ad5c-a97b-4f04-8c7f-4d9f6f7dee65?20201023073834**](https://api.cqc.org.uk/public/v1/reports/0e00ad5c-a97b-4f04-8c7f-4d9f6f7dee65?20201023073834)

**Care Quality Commission tells Devon Partnership NHS Trust that it must urgently improve the quality of some services** *CQC, 30 Oct 2020*

The CQC has told Devon Partnership NHS Trust that it must make urgent improvements to the quality of its medium forensic inpatient or secure wards. This inspection was undertaken following information about the death of a patient and other safety concerns reported to CQC.

[**https://www.cqc.org.uk/news/releases/care-quality-commission-tells-devon-partnership-nhs-trust-it-must-urgently-improve**](https://www.cqc.org.uk/news/releases/care-quality-commission-tells-devon-partnership-nhs-trust-it-must-urgently-improve)**; Report (pdf):**

[**https://api.cqc.org.uk/public/v1/reports/21804e0b-4d9c-4db4-9e32-ac1b81f80b5b?20201028090936**](https://api.cqc.org.uk/public/v1/reports/21804e0b-4d9c-4db4-9e32-ac1b81f80b5b?20201028090936)

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**COVID-19: Visiting people in a mental health, learning disability and autism inpatient setting**  *NHS England, 23 Oct 2020*

Letter from Ray James, National Director for Learning Disability and Autism, and Claire Murdoch, National Mental Health Director, making it clear providers MUST take all steps possible to enable families to make safe regular visits to their loved ones.

[**https://www.england.nhs.uk/coronavirus/wp-content/uploads/sites/52/2020/04/C0799-\_Visitor\_letter\_for\_mental\_health\_learning\_disability\_and\_autism\_providers\_231020.pdf**](https://www.england.nhs.uk/coronavirus/wp-content/uploads/sites/52/2020/04/C0799-_Visitor_letter_for_mental_health_learning_disability_and_autism_providers_231020.pdf) **(via** [**https://www.england.nhs.uk/coronavirus/publication/letters/**](https://www.england.nhs.uk/coronavirus/publication/letters/)**)**

**See also: Visiting healthcare inpatient settings during the COVID-19 pandemic,** [**https://www.england.nhs.uk/coronavirus/publication/visitor-guidance/**](https://www.england.nhs.uk/coronavirus/publication/visitor-guidance/)**.**

**Coronavirus guidance for clinicians and NHS managers** *NHS England, 6 Nov 2020*

NICE is now the single point of advice on caring for people with coronavirus and the management of COVID-19 in different healthcare settings. 24 of the COVID-19 specialty guides, including Palliative Care; Management of patients with a learning disability, autism or both; and Management of remote consultations, have now moved to its website.

[**https://www.england.nhs.uk/coronavirus/**](https://www.england.nhs.uk/coronavirus/)

**NICE speciality guides:** [**https://www.nice.org.uk/covid-19/specialty-guides**](https://www.nice.org.uk/covid-19/specialty-guides)

**New information governance portal** *NHSX, 1 Oct 2020*

NHSX has launched an online portal which will provide a one stop shop for access to national information governance (IG) guidance for NHS frontline staff, IG professionals and the public.

[**https://www.nhsx.nhs.uk/information-governance/**](https://www.nhsx.nhs.uk/information-governance/)

**Independent review of NHS hospital food** *DHSC, 26 Oct 2020*

The review makes recommendations on how NHS trusts can prioritise food safety and provide more nutritious meals to both staff and patients.

[**https://www.gov.uk/government/publications/independent-review-of-nhs-hospital-food**](https://www.gov.uk/government/publications/independent-review-of-nhs-hospital-food)Press release: [**https://www.gov.uk/government/news/new-blueprint-for-better-hospital-food**](https://www.gov.uk/government/news/new-blueprint-for-better-hospital-food)

**COVID-19 transmission in hospitals: management of the risk - a prospective safety investigation** *Healthcare Safety Investigation Branch (HSIB), Oct 2020*

This prospective patient safety investigation looks at how hospitals can minimise the likelihood of patients catching coronavirus (COVID-19) on acute hospital wards. Our investigation aims to help the NHS understand how to reduce the risks of hospital transmission of COVID-19.

[**https://www.hsib.org.uk/documents/258/hsib-summary-report-covid-19-transmission-hospitals.pdf**](https://www.hsib.org.uk/documents/258/hsib-summary-report-covid-19-transmission-hospitals.pdf)

**New framework launched to strengthen mental health support services** *HEE 30 Oct 2020*

The new competence framework aims to strengthen training and help drive recruitment and diversity within the mental health peer support workforce, in line with the NHS Long Term Plan and People Plan.

[**https://www.hee.nhs.uk/news-blogs-events/news/new-framework-launched-strengthen-mental-health-support-services**](https://www.hee.nhs.uk/news-blogs-events/news/new-framework-launched-strengthen-mental-health-support-services)

**Competence framework and benchmarking report:** [**https://www.hee.nhs.uk/our-work/mental-health/new-roles-mental-health/peer-support-workers**](https://www.hee.nhs.uk/our-work/mental-health/new-roles-mental-health/peer-support-workers)

**NHS strengthens mental health support for staff**  *NHS England, 20 Oct 2020*

NHS staff will get rapid access to expanded mental health services that are being rolled out across the country as part of efforts to deal with the second wave of coronavirus. NHS England and NHS Improvement will invest an extra £15 million to strengthen mental health support for nurses, paramedics, therapists, pharmacists, and support staff.

[**https://www.england.nhs.uk/2020/10/strengthening-mental-health-support-for-staff/**](https://www.england.nhs.uk/2020/10/strengthening-mental-health-support-for-staff/)

**Digital Boards: Digital download** *NHS Providers, 26 October*

All NHS trusts have established ways of bringing patient and service user views to the board. But how close are we to our users' digital experience? Trust leaders have shared some practical ideas to bring these essential stories and viewpoints to the board's attention. This board briefing note sums up what NHSP has heard so far. This is the first in a series designed to highlight key messages.

[**https://nhsproviders.org/resource-library/briefings/digital-boards-digital-download**](https://nhsproviders.org/resource-library/briefings/digital-boards-digital-download)

**The bigger picture: Learning from two decades of changing NHS care in England**

*The Health Foundation, Oct 2020*

A look at the care and treatment provided by the NHS in England over the past two decades as measured by health care activity. Provides a framework for understanding the drivers of health care activity, describes how supply and demand side factors interact, and how policy can influence the care the NHS provides. We look at the overall trends in activity and how specific services have changed.

[**https://www.health.org.uk/publications/reports/the-bigger-picture**](https://www.health.org.uk/publications/reports/the-bigger-picture)

**NHS continuing healthcare failing to provide care for most vulnerable, says Ombudsman** *Parliamentary and Health Service Ombudsman, 4 Nov 2020*

Incorrect and delayed decisions about NHS-funded care packages are having a devastating impact on people’s lives, leaving some without essential care, while some people are having to pay out hundreds of thousands of pounds in care costs while they wait for decisions.

[**https://www.ombudsman.org.uk/news-and-blog/news/nhs-continuing-healthcare-failing-provide-care-most-vulnerable-says-ombudsman**](https://www.ombudsman.org.uk/news-and-blog/news/nhs-continuing-healthcare-failing-provide-care-most-vulnerable-says-ombudsman)

**Supreme Court reaffirms illegality doctrine in negligence claims** *Capsticks, 30 Oct 2020*

In the negligence claim brought by the claimant, the defendant Trust admitted liability for its negligent failure to return the claimant to hospital when her psychiatric condition deteriorated. The Supreme Court has confirmed that a claimant cannot recover damages for loss as a result of having committed a criminal offence.

[**https://www.capsticks.com/insights/supreme-court-reaffirms-illegality-doctrine-in-negligence-claims**](https://www.capsticks.com/insights/supreme-court-reaffirms-illegality-doctrine-in-negligence-claims)

**Advancing mental health equalities strategy** *NHS England, 16 Oct 2020*

This strategy summarises the core actions that we all need to take to bridge the gaps for communities faring worse than others in mental health services. It is also an important element of the overall NHS plans to accelerate action to address health inequalities in the next stage of responding to COVID-19.

[**https://www.england.nhs.uk/publication/advancing-mental-health-equalities-strategy/**](https://www.england.nhs.uk/publication/advancing-mental-health-equalities-strategy/)

**Making mental health care fairer for all** *NHS England [blog], 16 Oct 2020*

Studies show that black men are far more likely than others to be diagnosed with severe mental health problems, but uptake of services from this community is still very low. The Advancing Mental Health Equalities Strategy includes our commitment to develop the Patient and Carer Race Equality Framework (PCREF) which will allow us to work directly with ethnically diverse groups.

[**https://www.england.nhs.uk/blog/making-mental-health-care-fairer-for-all/**](https://www.england.nhs.uk/blog/making-mental-health-care-fairer-for-all/)

**Health inequalities: time to act** *NHS Confederation, 29 Sep 2020*

Engagement with NHS Confederation members is showing an increasing awareness that the NHS has not designed services in a way that accounts for the diverse needs of communities, and as a result, the outcomes experienced have been unequal**.**

[**https://www.nhsconfed.org/resources/2020/09/health-inequalities-time-to-act**](https://www.nhsconfed.org/resources/2020/09/health-inequalities-time-to-act)

**Case study, West Yorkshire and Harrogate:** [**https://www.nhsconfed.org/resources/2020/09/health-inequalities-shared-learning-w-yorks-and-harrogate**](https://www.nhsconfed.org/resources/2020/09/health-inequalities-shared-learning-w-yorks-and-harrogate)

**Case study, Cheshire and Merseyside:** [**https://www.nhsconfed.org/resources/2020/09/health-inequalities-shared-learning-cheshire-and-merseyside**](https://www.nhsconfed.org/resources/2020/09/health-inequalities-shared-learning-cheshire-and-merseyside)

**NHS commits to become ‘carbon net zero’**  *NHS England, 1 Oct 2020*

NHS England convened the NHS Net Zero Expert Panel in January following the launch of the Climate Assembly UK, to take and analyse evidence on how the health service can contribute to nationwide carbon reduction efforts. Based on the findings of the report the NHS has formally adopted two targets, set as the earliest possible credible dates for the NHS to achieve net zero emissions.

[**https://www.england.nhs.uk/2020/10/nhs-becomes-the-worlds-national-health-system-to-commit-to-become-carbon-net-zero-backed-by-clear-deliverables-and-milestones/**](https://www.england.nhs.uk/2020/10/nhs-becomes-the-worlds-national-health-system-to-commit-to-become-carbon-net-zero-backed-by-clear-deliverables-and-milestones/)

**Workplace health and wellbeing interventions** *NHS Employers, 19 Oct 2020*

The Institute of Employment Studies (IES) has published a new report exploring the evidence base of health and wellbeing interventions used in healthcare and their implications for wellbeing outcomes.

[**https://www.nhsemployers.org/news/2020/10/new-report-on-workplace-health-and-wellbeing-interventions-published**](https://www.nhsemployers.org/news/2020/10/new-report-on-workplace-health-and-wellbeing-interventions-published)

**Staff wellbeing during the pandemic and legal considerations for employers**

*Capsticks, 19 Oct 2020*

There is no general obligation on employers to adjust duties and job descriptions to enable homeworking, although many employers will have looked at redeployment and temporary changes. Employers must be clear that their statutory and common law duty in respect of health and safety extends to mental health as well as physical health.

[**https://www.capsticks.com/insights/staff-wellbeing-during-the-pandemic-and-legal-considerations-for-employers**](https://www.capsticks.com/insights/staff-wellbeing-during-the-pandemic-and-legal-considerations-for-employers)

**Mental Capacity and the Decisions made by The Court of Protection** *Herrington Carmichael LLP 6 Oct 2020*

Outlines the work of the Court of Protection in mental capacity decisions. Refers to cases relating to force feeding from Northamptonshire Healthcare NHS Foundation Trust and from Avon and Wiltshire Mental Health Partnership.

[**https://www.lexology.com/library/detail.aspx?g=6038c9f7-47c5-4bce-a777-5d0f2cc21483**](https://www.lexology.com/library/detail.aspx?g=6038c9f7-47c5-4bce-a777-5d0f2cc21483)