

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

**BOD 70/2021**

(Agenda item: 17)

# Board of Directors

**29th September, 2021**

**Legal and Regulatory Update**

**For: Information and Assurance**

**Executive Summary**

The Reading Room contains the detail of the regular 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 since the last report to Board and includes any noteworthy contributions covered by health think tanks and a section in the Addendum to this report 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 the need to commission any deep dive (‘true for us’ review) in order to enhance the level of assurance or to improve the control environment, and/or decisions about the focus of any relevant Board Committee.**

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.

**In this meeting’s Legal and Regulatory Update**, Board members will note the ongoing surge of documentation and guidance with regard to the development of the Integrated Care Systems to align with their statutory status from April 2022 and the passage of the Health and Care Bill.

The Healthcare Safety Investigation Branch has undertaken some thematic work which is a useful read in terms of our own assessment of what might be ‘True for Us’. HSIB’s work so far suggests that it may be beneficial for the NHS to explore how the application of safety management principles could build on the foundations developed by the NHS Patient Safety Strategy.

Also, with the theme of learning and ‘True for Us’ assessment, the CEO and CMO, as recent employees of Southern Health, were keen that Board was alerted to the outcome of the latest inquiry. The Reading Room appendix to this report reminds all of the sad circumstances leading to the July 2019 independent investigation into the quality of investigations in relation to the deaths of five service users in the care of Southern Health NHS Foundation Trust between 2011 and 2015.

The Stage 1 investigation was chaired by Nigel Pascoe QC and his report was published in February 2020. The report concluded that there had been a number of areas where further investigation was needed, and recommended a Stage 2 public investigation, to review the extent to which improvements had been made by the trust and identify and recommend further improvements in specific policy areas.

The wider Stage 2 public investigation was conducted by Nigel Pascoe QC, the independent Chair, assisted by a Panel of three experts: Dr Mike Durkin, former National Director of Patient Safety at NHSI, Dr Hilary McCallion, former Executive Director of Nursing and mental health nurse, and Priscilla McGuire, Ofsted inspector, CCG vice-chair and a Patient and Public Voice Partner.

The report examined six key areas:

•             Whether a new process is needed for complaints and investigations

•             How complaints and investigations are handled

•             How the Trust should communicate with families

•             How well action plans are implemented

•             How the CCG is monitoring improvements

•             How the Trust has improved and whether further improvements are needed

39 recommendations and 9 Learning Points were identified. These focused on:

•             the policy and practical elements of complaints handling

•             engagement with service users, families and carers

•             communication and liaison

•             independent investigatory structures

•             action plans

•             supervisory structures and links with the CCG and future ICS

Relevance to OHFT is the learning that can be generalised. The next phase following publication of the report is an intention to move forward a process of constructive and necessary reform across the NHS and the region and so the Trust will be considering the report in the context of its own learning and improvement journey. The 460+ page report is available from the Director of Corporate Affairs, to include an opportunity to read a more digestible summary should members of the Board wish to obtain copies.

Finally, despite a real appetite among provider and commissioner NEDs to be more involved and make a meaningful contribution to systems, many do not yet feel fully engaged in systems. The report from the NHS Confederation highlights constructive NED relationships throughout a system is mutually beneficial, and achievable, with or without legislation and guidance. The report shares examples of where NEDs have successfully engaged with their systems and integrated their independent voice which may be useful context for our Non-Executive Directors and their role in our ICSs’ development.

**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 be aware of 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. 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.

**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/Priorities*** *– this report relates to or provides assurance and evidence against aspects of each of the Strategic Objectives/Priorities of the Trust*