

Report to the Meeting of the Oxford Health NHS Foundation Trust

Board of Directors

RR/App 16/2021
(Agenda item: 18)

14th April 2021

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. NHS Planning Guidance 2021-22

The 2021/22 priorities and operational planning guidance sets the priorities for the year ahead, against a backdrop of the challenge to restore services, meet new care demands and reduce the care back logs that are a direct consequence of the pandemic, whilst supporting staff recovery and taking further steps to address inequalities in access, experience and outcomes. The guidance only covers the first six months of the year, reflecting the uncertainty ahead in the new normal for the NHS. Under the new arrangements, block contracts are now in place until October 2021 meaning all trusts receive a set amount of core funding regardless of the activity levels achieved.

[**NHS England » NHS Operational Planning and Contracting Guidance**](#)

OH Position: The guidance is considered nationally to represent a realistic and achievable package of targets which when our workforce needs to recuperate from the height of the pandemic and winter, allows us time to recover sensibly. The priority in the guidance on staff wellbeing is welcomed. The Trust will develop plans to achieve as necessary to include the delivery of the COVID vaccination programme and to manage the increasing demand on mental health, learning disability and autism services.

2. Integration and Innovation: Working Together to Improve Health and Social Care for All - White Paper

This paper sets out legislative proposals for a Health and Care Bill. Many of the proposals build on [the NHS's recommendations in its Long Term Plan](#). There are some concerns in four key areas that NHS leaders want the government to address in the bill:

- 1.** Increased powers for the Secretary of State over the NHS
- 2.** Governance and accountability
- 3.** The duty to collaborate
- 4.** Pace and timescales

Proposals look to help integrated care systems play a greater role, delivering the best possible care, with different parts of the NHS joining up better; and the NHS and local government forming dynamic partnerships to address some of society's most complex health problems. It describes population health: using the collective resources of the local system, NHS, local authorities, the voluntary sector and others to improve the health of local areas.

[Integration and innovation: working together to improve health and social care for all \(HTML version\) - GOV.UK \(www.gov.uk\)](#)

OH Position: The Trust supports the ambitions to embed integration into the architecture and address the drawbacks of existing frameworks but we will need to await the detail of the legislation and any supporting implementation guidance in order to understand the full implications for us as a sovereign Foundation Trust and as part of an integrated system.

3. Consultation on the System Oversight Framework

NHSE/I has published its consultation on a system oversight framework for 2021/22. It sets out an oversight approach for the coming year, with a stronger emphasis on system performance, local priorities and a clearer framework for how regulators will work with and through ICSs and trusts to monitor and support performance. The framework describes a new segmentation process which will be used to determine freedoms and autonomy for providers and ICSs which will be used to determine freedoms and autonomy for providers

and ICs as well as identifying intervention and support needs. The consultation is open until 14th May.

https://www.engage.england.nhs.uk/consultation/system-oversight-framework-2021-22/user_uploads/b0381-consultation-on-a-new-nhs-system-oversight-framework-2021-22.pdf

OH Position: The Trust will support NHS Providers consultation response based on member feedback. We look forward to seeing further detail on what much of this will look like in practice including clarity on the intended approach in the case of a high performing trust working within segment 3 or 4 systems and the contribution of system partners towards supporting improvement.

4. CQC – New Five Year Strategy

The last update to the Board highlighted how the CQC had shared their thinking on a range of key areas, ahead of a formal consultation in January. It has since issued that consultation which registered providers were able to respond to by 4th March. The proposed strategy commits CQC to being a more flexible regulator to meet the increasingly complex care journey and advancements in innovation and technology. It also commits to using its powers and voice to reduce inequalities, eliminating discrimination and protecting human rights.

<https://www.cqc.org.uk/news/stories/developing-our-future-strategy>

OH Position: The Trust supported NHS Providers' response to the consultation.

5. Consultation for more flexible and responsive regulation

This consultation was issued only a couple of weeks after the consultation above, on the five year strategy. It focuses on CQC's planned further approach to its quality assessments and awarding ratings. There is a marked move away from reliance on comprehensive onsite inspections as the trigger for assessing quality and issuing ratings. It will place more reliance on good quality data from a variety of sources including service users' feedback, combined with focused onsite inspections where necessary to assess quality and change a rating. CQC is confident that there is now better data available because of the wider use of digital technology in health and social care, and it has improved IT capability to analyse information and provide a more up to date assessment of quality within an organisation.

NHS trusts will also be subject to a fairly significant change to move away from the current system where a trust can be subject to a complex calculation to determine its overall Trust rating. In the future, a NHS trust will get a **single** overall rating at Trust level, rather than the current approach of also having trust level ratings for each of the five key questions. This single overall rating will be based on CQC's overall assessment of the organisation's

performance against the key question of Well-Led, including findings from service level assessments. However, CQC will still continue to publish ratings against the five key questions at core service and location levels. The consultation closed on 23rd March 2021.

OH Position: It appears that this move will result in an even greater focus on 'Well led' in determining a Trust's overall rating; however, the detail as to how this will work is still awaited and the Trust will respond accordingly at that time.

[Consultation on changes for more flexible and responsive regulation - consultation document | Care Quality Commission \(cqc.org.uk\)](#)

6. Saving and improving lives: the future of UK clinical research delivery

The Board were apprised in the November report '*why should members of the board care about clinical research*', and this publication presents a UK-wide vision for the future of clinical research delivery and reinforces how clinical research is the way we improve the prevention, detection, diagnosis and treatment of disease. It sets out ambitions to create a patient-centred, pro-innovation and digitally enabled clinical research environment and ensures that patients are supported to take part in research that is of relevance to them. The ambitions set out determination that the UK is at the forefront of a healthcare revolution and the vision sets out how to deliver a clinical research ecosystem which capitalises on innovation, delivers for all research sponsors, is resilient in the face of future healthcare crises and offers fresh hope for patients across the UK.

[The future of UK clinical research delivery - GOV.UK \(www.gov.uk\)](#)

OH Position: The Trust's strategy, to be presented to the April Board meeting has a focus on delivery of research as an essential part of effective patient care, with ambitions to foster a culture positive about research, and where staff feel empowered and supported to take part in delivery as part of their job.

7. Reforming the Mental Health Act (MHA)

The government is proposing a wide range of changes to the MHA underpinned by 4 principles which are:

- Choice and autonomy – ensuring service users' views and choices are respected;
- Least restriction – ensuring the MHA's powers are used in the least restrictive way;
- Therapeutic benefit – ensuring patients are supported to get better, so they can be discharged from the MHA; and
- The person as an individual – ensuring patients are viewed and treated as individuals

The changes of operational and strategic importance include:

- New guiding principles and where they should be applied to embed in every day practice
- Changing detention criteria and the processes/powers for challenging detentions, renewals, granting leave, and discharge
- Changing the way people with a learning disability and autistic people are treated in law and reducing reliance on inpatient services
- Treating children and young people equally and providing care and treatment plans for all receiving inpatient care
- Introducing a 'simpler dividing line' between the Mental Health Act and the Mental Capacity Act
- Extending CQC's monitoring powers to consider the effectiveness of local joint working
- Legislating for culturally competent advocacy services, and tackling disparities in BAME experience more broadly

<https://www.gov.uk/government/consultations/reforming-the-mental-health-act>

OH Position: The Head of Information Governance is leading the Trust's response to the consultation which closes on 21st April 2021.

8. Legislating for Integrated Care Systems: five recommendations to Government and Parliament

This document makes five specific recommendations to Government on the question of how to legislate to place Integrated Care Systems (ICSs) on a statutory footing. These recommendations seek to build on the successful integration, collaboration and partnership efforts of ICSs to date.

<https://www.england.nhs.uk/publication/legislating-for-integrated-care-systems-five-recommendations-to-government-and-parliament/>

9. Code of practice for the international recruitment of health and social care personnel in England

The Code promotes high standards of ethical practice in the international recruitment and employment of health and social care personnel. It sets out the UK's approach to supporting health and social care systems and workforce, alongside safeguards on active recruitment from countries with the most pressing universal health coverage related health and social care workforce needs. It is based on the principles set out in the World Health Organisation global code of practice on the international recruitment of health personnel.

[Code of practice for the international recruitment of health and social care personnel - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/code-of-practice-for-the-international-recruitment-of-health-and-social-care-personnel-in-england)

10. COVID-19 mental health and wellbeing recovery action plan

The government published its COVID-19 mental health and wellbeing recovery action plan on 27 March 2021, which aims to respond to the mental health impacts of the pandemic during 2021/22 via a cross-government approach. It also sets out the full allocation of the additional £500m for mental health announced in the spending review last autumn.

Key points:

- The COVID-19 mental health and wellbeing recovery action plan recognises that some people will need further specialist support in the coming months and years as, while the full scale of future difficulties is not yet known, demand for mental health services is expected to rise. The government emphasises that delivering the NHS' ambitious mental health improvement programme is all the more vital in this context.
- The plan provides further detail on where the additional £500 million investment for mental health announced at the spending review last autumn will be targeted. There will be funding:
 - to accelerate delivery of key commitments the NHS long term plan such as access to children and young people's mental health support, expansion of adult community support and sustaining and enhancing crisis support
 - to invest in training and education of the NHS mental health workforce, and begin implementing mental health act reforms
 - to tackle critical care 'backlogs' as a result of the pandemic such as for people with a learning disability and/or autism, memory assessment and dementia diagnosis, and physical outreach for those with serious mental illness (SMI).

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/973936/covid-19-mental-health-and-wellbeing-recovery-action-plan.pdf

The [national suicide prevention strategy progress report](#) has been published alongside the plan, which sets out data and trends on suicide and self-harm, progress against existing commitments, and further steps government will be taking to reduce suicide and self-harm going forwards.

11. Freedom to Speak Up annual report published

The National Guardian's Office (NGO) recently published its [Annual report for 2020](#), highlighting progress made in *Freedom to speak up* in the last year, and the impact the pandemic has had on speaking up. The report outlines how its work relates to helping the NHS create a 'learn not blame' culture, and details its year in numbers, including the rise in cases brought to guardians, up 32% to 16,199. It also details how the NGO is seeking to embed the learning seen so far, including through its annual *Speak up* month in October,

network meetings, training, case review recommendations and through conferences and events.

OH Position: The Trust's FTSU Guardian will capture the learning for the Trust and highlight any relevant actions in the next FTSUG report to the Board of Directors.

12. Building a Digital Strategy

Digital Health covers a new report, [Building a digital strategy](#), which is the latest guide published as part of the [Digital Boards programme](#). The guide aims to support trust leaders sustain the momentum on digital built up during the pandemic. It has been jointly produced by NHS Providers and Public Digital, in partnership with Health Education and NHSX.

OH Position: The Trust has been reappraising its digital ambitions in light of the changes made during the response to COVID-19 and is refreshing its digital strategy in order to set a clear vision for the future. As all board members need to take responsibility for the digital strategy the guide is designed for those who have an oversight role and will review, approve and assure that the digital strategy is on track. The Digital Boards programme, supported by HEE and NHSX, offers free development sessions for individual trust boards to support them in these conversations, and the Trust is in the process of arranging the same.

13. NHS complaint standards

The Parliamentary and Health Service Ombudsman (PHSO) has published the [NHS complaint standards](#), a framework to set out how organisations providing NHS services should approach complaint handling. They apply to NHS organisations in England and independent healthcare providers who deliver NHS-funded care.

The standards aim to support organisations in providing a quicker, simpler and more streamlined complaint handling service, with a strong focus on early resolution by empowered and well-trained staff. They also place a strong emphasis on senior leaders regularly reviewing what learning can be taken from complaints, and how this learning should be used to improve services. The standards are being tested in pilot sites in 2021 and will be refined and introduced across the NHS in 2022.

OH Position: This framework is a helpful overview of what works well, and an opportunity to reflect on the valuable work done across the NHS and to draw lessons accordingly. The standards will be implemented once introduced.

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

CQC demands improvements at Greater Manchester Mental Health NHS Foundation Trust *CQC, 11 Feb 2021*

The Trust must improve the quality of care provided to patients in its acute ward for adults of working age and psychiatric intensive care unit (PICU) at Park House, North Manchester General Hospital. The unannounced, focused inspection took place in December following concerns regarding the safety of patients and leadership on the ward.

<https://www.cqc.org.uk/news/releases/cqc-demands-improvements-greater-manchester-mental-health-nhs-foundation-trust>

CQC publishes reports on Avon and Wiltshire Mental Health Partnership NHS Trust *CQC, 10 Feb 2021*

Forensic inpatient and secure wards: <https://www.cqc.org.uk/news/releases/cqc-publishes-report-avon-wiltshire-mental-health-partnership-nhs-trust%E2%80%99s-forensic>

Community-based mental health services of adults of working age:

<https://www.cqc.org.uk/news/releases/cqc-publishes-report-avon-wiltshire-mental-health-partnership-nhs-trust%E2%80%99s-community>

CQC publish report on Bradford District Care NHS Foundation Trust *CQC, 17 Feb 2021*

This was an unannounced focused inspection of their acute wards for adults of working age and psychiatric intensive care units, prompted in part by reports of serious incidents

on some wards which gave inspectors concerns about the safety and quality of the care being provided.

<https://www.cqc.org.uk/news/releases/cqc-publish-report-bradford-district-care-nhs-foundation-trust>

CQC publishes a report on Littlebrook Hospital part of Kent and Medway NHS and Social Care Partnership Trust

CQC, 16 Feb 2021

The Care Quality Commission has published the findings from a focused inspection of Acute wards for adults of working age and psychiatric intensive care units to follow up on a number of concerns we had about the seclusion of patients, the environment and complaints from patients and carers.

<https://www.cqc.org.uk/news/releases/cqc-publishes-report-littlebrook-hospital-part-kent-medway-nhs-social-care-partnership>

Recruiting for Diversity: A guide for NHS Provider organisations

Guidance published last week by the Seacole Group [Recruiting for Diversity: A Guide for NHS Provider Organisations](#) brings together simple steps in good practice that will have a meaningful impact on all types of board diversity and ensure opportunities are open and attract people from all backgrounds. It's an excellent resource for encouraging all types of diversity and demonstrates the ally focused nature of these networks.

Working together to improve patient care: how PCNs are working in partnership to support people's mental health *NHS Confederation, 4 Feb 2021*

This briefing was developed jointly by the NHS Confederation's Mental Health Network and PCN Network and provides examples of three models of partnership working that are currently underway in primary care to support mental health at place level.

<https://www.nhsconfed.org/resources/2021/02/mhn-pcn-briefing-working-together-to-improve-patient-care>

Monitoring the quality of care and safety for people with a learning disability and/or people who are autistic in inpatient care *NHS England, 1 Feb 2021*

Guidance for commissioners to support the quality oversight of clinical commissioning group-commissioned inpatient care for people with a learning disability and/or people who are autistic.

<https://www.england.nhs.uk/publication/monitoring-the-quality-of-care-and-safety-for-people-with-a-learning-disability-and-or-people-who-are-autistic-in-inpatient-care/>

Supporting the mental health of NHS staff *Mind, BMA, Feb 2021*

This guide aims to provide practical advice, hints and tips to help NHS leaders and line managers to create mentally healthy cultures and support better mental health. It includes information about mental health stigmas, and how to break them down.

<https://www.mentalhealthatwork.org.uk/resource/supporting-the-mental-health-of-nhs-staff/>

Shared learning in community health services *NHS Confederation, 11 Feb 2021*

23 case studies (at launch), across themes from digital transformation to delivering more care in the community, to share examples of good practice and partnership working and enable providers to learn from each other.

<https://www.nhsconfed.org/networks/community-network/shared-learning-in-community-health-services>

Understanding clinical decision-making at the interface of the Mental Health Act (1983) and the Mental Capacity Act (2005) *Partnership for Responsive Policy Analysis and Research (PREPARE)/University of York (via King's Fund), Feb 2021*

A key interface of the MHA and the MCA arises where an individual lacks the capacity to decide whether to be admitted to hospital to receive care and treatment, and are not objecting to admission or treatment, then the decision of which Act to use for these purposes is that of professionals involved. This report looks at that decision-making process.

<https://www.york.ac.uk/healthsciences/research/health-policy/research/health-policy-projects/prepare/reports/>