

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

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**RR/App 67/2021**

(Agenda item: 29)

# Board of Directors

**30th November 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 action/publications 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 consider a ‘True for Us’ position is also included to support improvement activity and focus of the Board and its committees.

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 where helpful to consultations and to ensure preparedness for the implications of, and compliance with changes in mandatory frameworks.

**BACKGROUND**

1. **NHS Providers’ State of the Provider Sector Report**

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| NHS Providers have published a new report *State of the provider sector*, which shows that trust leaders anticipate this being the "most difficult winter in the history of the health service".    Their report highlights trust leaders' deep concerns about the combined impact of increased demand for emergency care, growing waiting lists, significant and sustained staff shortages, potential staff burnout, the extra resource needed for vital vaccination campaigns and the prospect of high levels of COVID-19, flu and other respiratory viruses.    The survey shows trust leaders are particularly anxious about the magnitude of pressure they are already under before the NHS has reached its traditional peak of winter demand. In particular, the ambulance sector is under an enormous amount of pressure, with all ambulance services on the highest level of alert.    Trust leaders are clear that it is their responsibility to support their staff to provide the best possible care to all patients who need it, as rapidly and effectively as possible and are working hard to prepare for winter and to deliver vaccinations as fast as they possibly can. While *State of the provider sector* emphasises the significant pressures the NHS is under it also shines a spotlight on some of the achievements and innovations trusts and their partners in local systems have led so successfully over the past year.    [**State of the provider sector 2021: Survey findings (nhsproviders.org)**](https://nhsproviders.org/state-of-the-provider-sector-2021-survey-findings?utm_campaign=765229_State%20of%20the%20provider%20sector%20-%2016%20November%202021&utm_medium=email&utm_source=NHS%20Providers%20%28Policy%20and%20networks%29&Organisation=Oxford%20Health%20NHS%20Foundation%20Trust&dm_i=52PX,GEGD,3BV83W,1W8ZK,1) |

1. **Care Quality Commission's State of Care report 2020/21**

The report looks at the quality of care in our health and social care system over the past year. CQC’s assessment this year is that “*The system has not collapsed – but the system is composed of individuals, both those who deliver and receive care, and the toll taken on many of these individuals has been heavy*”.

Unsurprisingly the report highlights the workforce challenges, with staff being exhausted and depleted after a difficult 18 months. In particular, CQC notes the real struggle within social care to retain staff with staff vacancy rates having increased steadily from 6% in April 2021 to 10.2% in September 2021. With the difficulty of recruiting nurses, more and more providers are closing their nursing care homes. CQC states that if social care funding is to have any impact, it must be on developing a clearly defined career pathway for social care staff, which is linked to training and consistent investment and better pay. Otherwise staffing problems will reduce capacity and choice, and poorer quality of care will result. The overall effect will ripple into the wider health and care system creating a risk of a “*tsunami of unmet need*”.

The report:

* Highlighted ongoing challenges facing trusts and impact on patient experiences and quality of care.
* Acknowledged rise in demand for mental health services, and in particular young people.
* Raised quality concerns stemming from closed cultures –high risk in mental health services.
* Echoed calls that NHS workforce needs more support and to be rewarded for their work.
* Shared concerns about fragility of the social care sector and its wider impact on the health system.
* Right to focus on doing more to tackle health inequalities and emergency care pressures.
* Welcome recognition of impact extra funding to support discharges has had.

[**State of Care | Care Quality Commission (cqc.org.uk)**](https://www.cqc.org.uk/publications/major-report/state-care)

1. **NHS system oversight framework segmentation**

NHS England/Improvement have allocated trusts (including foundation trusts) and ICSs to one of four ‘segments'. A segmentation decision indicates the scale and general nature of support needs, from no specific support needs (segment 1) to a requirement for mandated intensive support (segment 4).

There are a number of different ratings within the NHS to highlight how an organisation is performing but this is the one overarching rating set by NHSE/I **which combines quality, safety, access standards and productivity.**

NHS England published its [SOF guidance and indicators](https://www.england.nhs.uk/publication/system-oversight-framework-2021-22/) in June but has not published performance against the indicators, nor its reasons for each organisation’s segmentation. It is thought that recent data is not available for many of the SOF indicators, and local financial performance in the NHS – which plays a big part – has been turned upside down by covid measures.

However, the guidance says: “Segmentation decisions will be determined by assessing the level of support required based on a combination of objective criteria and judgement. For individual organisations, segmentation decisions will be taken having regard to the views of system leaders. It says that CQC ratings overall and for “well led” will play a big part, as well as financial performance; and for segment four, so will long-standing/complex issues and failure to improve performance, or “a catastrophic failure in leadership or governance that risks damaging the reputation of the NHS”.

The update report to the last Board meeting highlighted that four areas had already been classed as requiring “intensive mandated support”: Devon; Lincolnshire; Norfolk and Waveney; and Shropshire, Telford and Wrekin.

**NHS England » NHS system oversight framework segmentation**

**Trust position: As per the Finance Directors’ communication to the Board in November, the Trust is in segment 2 and the BOB ICS itself is in segment 3. Close attention will need to be played to our well led and CQC preparations. The intelligence used by the regulator to determine our ongoing position is important intelligence for the Board by way of one determinant of the perceptions of the quality of the Trust’s services and its financial performance.**

1. **Guide to developing a scheme of reservation and delegation for ICBs**

NHS England and NHS Improvement (NHSE/I) published a Guide to developing a scheme of reservation and delegation (SoRD) for integrated care boards (ICBs) on 27 October 2021. This short briefing summarises the new delegation powers expected to be conferred on ICBs in the Health and Care Bill, the likely content of the ICB’s SoRD, and the next steps for ICBs to take when developing their SoRD. This guide is intended to support designate ICB chairs, chief executives and other board members (when in post) to develop the SoRD.

While clinical commissioning groups are legally responsible for creating the SoRD, NHSE/I expects designate ICB appointments to lead its development in practice. All ICBs are required to publish a SoRD by the time they are formally established as statutory bodies (expected to be on 1 April 2022). The designate ICB board will agree the final ICB constitution, SoRD and other documents (e.g. delegation agreements, section 75 agreements, etc). The SoRD should be reviewed in line with the final Health and Care Bill, and then published on the ICB website. The guide includes a template SoRD, although NHSE/I states that there is no national model to define how ICBs should arrange how they exercise their functions and ICBs will want to design what works locally. NHSE/I does not have a role in approving the SoRD.

[**nhs-providers-on-the-day-briefing-on-the-icb-guide-to-developing-a-scheme-of-delegation-final.pdf (nhsproviders.org)**](https://nhsproviders.org/media/692395/nhs-providers-on-the-day-briefing-on-the-icb-guide-to-developing-a-scheme-of-delegation-final.pdf)

1. **Evolving Regulation and Oversight**

NHS Providers published [*Evolving regulation and oversight in a systems world*](https://protect-eu.mimecast.com/s/Wy7eC834vCwX9kLSzR_QD?domain=news.nhsproviders.org). This new briefing outlines the key implications for trusts of changes to the NHS regulatory framework, in the context of accelerating system working and legislative change.

Care Quality Commission (CQC) and NHS England and NHS Improvement are now adapting their approaches to reflect these changes. CQC's five year strategy, published earlier this years, looks to assess how care is provided across a local system and emphasises on how CQC can offer transparency to the public about the performance of integrated care systems (ICSs). Meanwhile, NHS England and NHS Improvement's system oversight framework for 2021/2022 reinforces the system-led coordination of integrated care, setting out how ICSs will be assessed alongside trusts, and how it expects systems will be involved in the oversight of providers. As such, their briefing highlights some of the opportunities this shift towards regulation *within* and *of* systems presents. It also explores the important unanswered questions and risks posed by these changes.

The briefing sets out five key principles for good regulation in the context of system-working:

* regulation should provide objective and independent judgement
* regulation should be risk-based and proportionate
* regulation and oversight arrangements should place minimal burden on providers and add value
* the context within which trusts, and systems, operate should be considered in any regulatory assessments

accountabilities should be clearly defined.

[**Evolving regulation and oversight in a systems world (nhsproviders.org)**](https://nhsproviders.org/evolving-regulation-and-oversight-in-a-systems-world?utm_campaign=732051_Evolving%20regulation%20and%20oversight%20in%20a%20systems%20world%20member%20email&utm_medium=email&utm_source=NHS%20Providers%20%28Policy%20and%20networks%29&Organisation=Oxford%20Health%20NHS%20Foundation%20Trust&dm_i=52PX,FOUR,13C8U6,1T4LF,1)

**Trust position: Over the coming months, the regulators will be developing and refreshing their approach in anticipation of new legislation from April 2022. NHS England and NHS Improvement will be updating the System Oversight Framework for 2022/23 and CQC continues the development of frameworks for reviewing ICSs. The Trust will continue to work through the implications of new legislation on accountabilities and the role of ICSs, and we will work with NHSP in support of addressing complexities.**

1. **Consultation: Transactions guidance**

This consultation document proposes changes to the NHS transactions guidance for trusts undertaking transactions, including mergers and acquisitions, last updated in 2017.

The proposed changes are intended to help ensure that transactions are a success: that they are executed safely and deliver significant benefits. They reflect the increasing role of systems and collaboration between providers in advance of a transaction, as well as the future organisation of services envisioned in The NHS Long Term Plan. When the legislative changes conceived in this plan and subsequently developed come into effect, regulators will further update the guidance, as needed. NHSE/I’s understanding of the risks and opportunities for trusts undergoing complex transactions has developed over time. One of their overarching aims has been to ensure the assurance work is focused on those areas that present highest risk and the factors identified as critical to success.

They will consider responses in determining how to update the guidance, and publish a response summary. They aim to implement updated guidance and appendices from 1 April 2022, subject to any appropriate transitional arrangements. **For trusts who have been through a Strategic Case process under the existing guidance, it is likely that the FBC review will be subject to the new guidance, but NHSE/I will consider this on a case by case basis. (Relevant with regard to the Warneford Development submissions)**

[**https://www.england.nhs.uk/publication/transactions-guidance-consultation/**](https://www.england.nhs.uk/publication/transactions-guidance-consultation/)

1. **Review of NHS Leadership**

The government has launched a review of leadership in health and social care to help to reduce regional disparities in efficiency and health outcomes. The review will be led by former Vice Chief of the Defence Staff General Sir Gordon Messenger, and will report back to Secretary of State for Health and Social Care Sajid Javid, in early 2022. Messenger will have a team from the Department of Health and Social Care and the NHS to support him led by Dame Linda Pollard, chair of Leeds Teaching Hospital.

The review will also look at how to deliver the findings of proposals and commitments made in previous reports on leadership. Flagged as being the “most far-reaching review” of NHS leadership since the Griffiths reforms of the 1980s, it will examine the “pay and incentives” offered to the service’s most senior figures, as well as at “effective systems for intervention and recovery in both providers and integrated care systems”. The T&C state the review will be delivered to the health secretary “after four months and will be followed by a delivery plan with clear timelines on implementing agreed recommendations”.

[**Review of health and social care leadership in England: terms of reference - GOV.UK (www.gov.uk)**](https://www.gov.uk/government/publications/review-of-health-and-social-care-leadership-terms-of-reference/review-of-health-and-social-care-leadership-in-england-terms-of-reference)

In a letter to NHS Leadership on 23rd November, General Sir Gordon Messenger and Dame Linda Pollard wrote “We very much want the review to be regarded by you as an opportunity. Our starting premise is that the NHS and social care are staffed by a hugely impressive, dedicated, well-motivated workforce which deserves a system and a culture where its full talent and experience can flourish and where the right skills can be applied to where they are needed most. We acknowledge that the excellent leadership and management currently evident across many parts of the system can be built upon to the benefit of all.”

[**Letter from General Sir Gordon Messenger and Dame Linda Pollard on publication of the leadership review terms of reference, 23 November 2021 - GOV.UK (www.gov.uk)**](https://www.gov.uk/government/publications/review-of-health-and-social-care-leadership-terms-of-reference/letter-from-general-sir-gordon-messenger-and-dame-linda-pollard-on-publication-of-the-leadership-review-terms-of-reference-23-november-2021)

1. **The future of NHS Human Resources and Organisational Development**

NHS England has unveiled a plan to modernise the health service’s human resources and organisational development functions over the next decade. Published in November, the report outlines a 10-year strategy and contains 35 actions that set out how the NHS’s people profession will be developed to work differently during that time. It is the first major development plan for the service’s HR and OD functions for more than a decade.

[**https://www.england.nhs.uk/publication/the-future-of-nhs-human-resources-and-organisational-development-report/**](https://www.england.nhs.uk/publication/the-future-of-nhs-human-resources-and-organisational-development-report/)

**Trust position: Where actions are for the national team, timescales are set out. Where they are for organisations and systems, timescales are not provided and so the Trust will develop plans to respond to this report, based on our local and system priorities and current position.**

1. **Government to introduce COVID-19 vaccination as a condition of deployment for all frontline health and social care workers**

The last update report to the Board highlighted the consultation that had commenced in September. Following the consultation period, health and social care providers in England will be required to ensure workers, including volunteers who have face-to-face contact with service users, are fully vaccinated against COVID-19, unless they are exempt.

[**https://www.gov.uk/government/news/government-to-introduce-covid-19-vaccination-as-a-condition-of-deployment-for-all-frontline-health-and-social-care-workers**](https://www.gov.uk/government/news/government-to-introduce-covid-19-vaccination-as-a-condition-of-deployment-for-all-frontline-health-and-social-care-workers)

**Consultation response:** [**https://www.gov.uk/government/consultations/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector**](https://www.gov.uk/government/consultations/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector)

**Statement from the Health Secretary:** [**https://www.gov.uk/government/speeches/health-secretary-statement-on-vaccines-as-a-condition-of-deployment**](https://www.gov.uk/government/speeches/health-secretary-statement-on-vaccines-as-a-condition-of-deployment)

**Letter: Vaccination as a condition of deployment (VCOD) for all healthcare workers, *NHS England, 10 Nov 2021*:** [**https://www.england.nhs.uk/coronavirus/publication/vaccination-as-a-condition-of-deployment-vcod-for-all-healthcare-workers/**](https://www.england.nhs.uk/coronavirus/publication/vaccination-as-a-condition-of-deployment-vcod-for-all-healthcare-workers/)

**Trust position: The Trust will be required to ensure workers, including volunteers who have face-to-face contact with service users, are fully vaccinated against COVID-19, unless they are exempt. We await the publication of guidance that will clarify the requirements of implementation and in the meantime prepare, with the unions, the Trust’s response.**

1. **The latest on the Liberty Protection Safeguards (LPS)**

Previous updates to the Board have highlighted the impending changes but Capstick’s factsheets may be of interest. The LPS are due to be implemented in Spring 2022 and will replace the Deprivation of Liberty Safeguards (DoLS). We still await the draft Code of Practice and Regulations (originally due Spring 2021). A further delay in implementation looks likely. The DHSC has published a series of LPS factsheets which summarise the various aspects of the regime and the roles of those involved.

[**Department for Health and Social Care publishes Liberty Protection Safeguard factsheets (capsticks.com)**](https://www.capsticks.com/insights/department-for-health-and-social-care-publishes-liberty-protection-safeguard-fact-sheets)

**Trust position: The MHAC is overseeing preparations and has acknowledged there will be a lot to get to grips with when the new regime is implemented. Forward planning regarding personnel and procedures is supporting a smooth transition further down the line and a business case for a LPS Lead is being formulated. Much work is progressing at ICS level to include the Local Authorities.**

1. **CQC’s Scope to be widened**

The Health and Care Bill 2021 proposes several new powers and duties for the CQC, including the:

* power to require NHS England (NHSE) to appoint a special administrator for both Foundation Trusts (FTs) and non-FTs
* duty to assess the performance of local authorities in relation to the discharge of their adult social care functions
* power to police new hospital food standards (to be set by the Secretary of State)
* duty to co-operate with the Health Services Safety Investigations Body in relation to its investigations

*Comment:* The special administrator role is consistent with the proposals for NHSE becoming the regulator of FTs and non-FTs, a power currently enjoyed only by the CQC. The devil will be in the detail regarding local authority performance, but the regime is likely to mirror the present form of inspections and ratings, warning notices and ‘special measures’. The food safety changes are likely to bring hospital food standards in line with other CQC standards, for example safe care and duty of candour.

[**What does the Health and Care Bill mean for CQC regulation? (capsticks.com)**](https://www.capsticks.com/insights/what-does-the-health-and-care-bill-mean-for-cqc-regulation)

1. **Why all trusts and health boards can benefit from close working with their NHS charity**

In the context of our own ambitions for the Oxford Health Charity, this is an interesting blog amplifying the ongoing bedrock of public support for the NHS means all trusts could benefit from working with their own NHS charity – with charities able to be agile and to respond to immediate needs that trust budgets aren't always able to. And benefits go beyond the financial. The OH Corporate Trustee will be considering the next phase of the OH Charity strategy in the New Year.

[**https://nhsproviders.org/news-blogs/blogs/why-all-trusts-and-health-boards-can-benefit-from-close-working-with-their-nhs-charity**](https://nhsproviders.org/news-blogs/blogs/why-all-trusts-and-health-boards-can-benefit-from-close-working-with-their-nhs-charity)

**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 and updates**

**West Suffolk NHS Foundation Trust fined £2,500 for failures in complying with duty of candour regulation**

*CQC, 26 Oct 2021*

[**https://www.cqc.org.uk/news/releases/west-suffolk-nhs-foundation-trust-fined-failures-complying-duty-candour-regulation**](https://www.cqc.org.uk/news/releases/west-suffolk-nhs-foundation-trust-fined-failures-complying-duty-candour-regulation)

**Adult inpatient and acute mental health services at Black Country Healthcare NHS Foundation Trust remain requires improvement following CQC inspection**

*CQC, 26 Oct 2021*

A focused inspection was carried out at the trust’s acute wards for adults of working age and psychiatric intensive care unit (PICU), following concerns raised about the quality of care, staff attitudes and engagement with patients.

[**https://www.cqc.org.uk/news/releases/adult-inpatient-acute-mental-health-services-black-country-healthcare-nhs-foundation**](https://www.cqc.org.uk/news/releases/adult-inpatient-acute-mental-health-services-black-country-healthcare-nhs-foundation)

**CQC finds improvement at Leicestershire Partnership NHS Trust, but calls for further progress**

*CQC, 29 Oct 2021*

The inspection, beginning in May and carried out over three months, assessed the trust’s acute wards for working-age adults and psychiatric intensive care units. It also assessed its long-stay rehabilitation mental health wards for working-aged adults and its wards for people with a learning disability or autism.

[**https://www.cqc.org.uk/news/releases/cqc-finds-improvement-leicestershire-partnership-nhs-trust-calls-further-progress**](https://www.cqc.org.uk/news/releases/cqc-finds-improvement-leicestershire-partnership-nhs-trust-calls-further-progress)

**CQC inspection report on Sheffield CAMHS wards published**

*CQC, 10 Nov 2021*

CQC carried out an unannounced focused inspection of three wards, due to concerns about the quality of services being provided to children and young people. We found a number of concerns around the safety of care being provided to vulnerable people, and so the safe domain remains rated requires improvement.

[**https://www.cqc.org.uk/news/releases/cqc-inspection-report-sheffield-camhs-wards-published**](https://www.cqc.org.uk/news/releases/cqc-inspection-report-sheffield-camhs-wards-published)

**CQC publishes report on Avon and Wiltshire Mental Health Partnership NHS Trust**

*CQC, 10 Nov 2021*

The wards for older people with mental health problems have had their caring and well-led ratings moved down from good to requires improvement. The rating for safe remains requires improvement, while the ratings for effective and responsive remain good. The key question, ‘is the trust well led’ was rated as good – an improvement from the last inspection.

[**https://www.cqc.org.uk/news/releases/cqc-publishes-report-avon-wiltshire-mental-health-partnership-nhs-trust-0**](https://www.cqc.org.uk/news/releases/cqc-publishes-report-avon-wiltshire-mental-health-partnership-nhs-trust-0)

**South West London and St. George’s Mental Health NHS Trust**

*CQC, 20 Oct 2021*

The acute wards for adults of working age and psychiatric intensive care units at South West London and St. George’s Mental Health NHS Trust, have retained their rating of good overall, though some improvements are needed.

[**https://www.cqc.org.uk/news/releases/south-west-london-st-george%E2%80%99s-mental-health-nhs-trust-retains-its-cqc-rating-good**](https://www.cqc.org.uk/news/releases/south-west-london-st-george%E2%80%99s-mental-health-nhs-trust-retains-its-cqc-rating-good)

**Elmleigh hospital, Southern Health NHS Foundation Trust**

*CQC, 15 Oct 2021*

The CQC has published a report following a focused inspection of the acute wards for adults of working age, and psychiatric intensive care units at Elmleigh hospital in Havant, an acute mental health hospital. The inspection took place in August, to see if the hospital had made the required improvements identified at a previous inspection.

[**https://www.cqc.org.uk/news/releases/cqc-publishes-report-elmleigh-hospital%E2%80%99s-wards-acute-wards-adults-working-age**](https://www.cqc.org.uk/news/releases/cqc-publishes-report-elmleigh-hospital%E2%80%99s-wards-acute-wards-adults-working-age)

**COVID-19 Insight: Issue 14. Medicines Management**

*CQC, Nov 2021*

In this month’s report, the CQC look at medication safety in NHS trusts, focusing on the role of medication safety officers.

[**CQC IV Insight number 14 slides**](https://www.cqc.org.uk/sites/default/files/20211116%20CQC%20IV%20Insight%20number%2014%20slides.pdf)

**Amendment to the Health and Care Bill**

*UK Parliament via CQC, 20 Oct 2021*

This new clause imposes a duty on the Care Quality Commission to carry out reviews and assessments into the overall functioning of the system for the provision of NHS Care and adult social care services within the area of each integrated care board." The amendment has been published as a PDF document. The section related to CQC oversight of ICSs is on page 10.

**Amendments:**[**https://publications.parliament.uk/pa/bills/cbill/58-02/0140/amend/health\_rm\_pbc\_1020.pdf**](https://publications.parliament.uk/pa/bills/cbill/58-02/0140/amend/health_rm_pbc_1020.pdf)

**CQC statement:** [**https://www.cqc.org.uk/news/stories/statement-dr-rosie-benneyworth-government%E2%80%99s-amendment-health-care-bill**](https://www.cqc.org.uk/news/stories/statement-dr-rosie-benneyworth-government%E2%80%99s-amendment-health-care-bill)

**Clinical Law Insight: Autumn 2021**

*Capsticks, 15 Nov 2021*

Round up and analysis, includes discussion of hospital-acquired Covid-19, fraud and the government response to the Independent Medicines and Medical Devices Safety Review (IMMDSR).

[**https://www.capsticks.com/insights/clinical-law-insight-autumn-2021**](https://www.capsticks.com/insights/clinical-law-insight-autumn-2021)

**A solution to the community deprivation of liberty dilemma at last?**

*DAC Beachcrift LLP (via Lexology - free registration required), 9 Nov 2021*

The question of whether and how adults with mental capacity can be deprived of their liberty in the community - for example, via restrictions imposed for the protection of others - has in recent years been a real legal headache for mental health practitioners. This problem has recently been considered by the High Court in the case of Cumbria, Northumberland Tyne & Wear NHS Foundation Trust and Secretary of State for Justice v EG

[**https://www.lexology.com/library/detail.aspx?g=a6eef753-8596-46d4-9297-72542553e449**](https://www.lexology.com/library/detail.aspx?g=a6eef753-8596-46d4-9297-72542553e449)

**Ombudsman welcomes Venice Commission’s Opinion on Health and Care Bill**

*PHSO, 19 Oct 2021*

The Venice Commission has found that proposals in the Health and Care Bill could undermine public trust in the Parliamentary and Health Service Ombudsman (PHSO), and must be revised.

[**https://www.ombudsman.org.uk/news-and-blog/news/ombudsman-welcomes-venice-commissions-opinion-health-and-care-bill**](https://www.ombudsman.org.uk/news-and-blog/news/ombudsman-welcomes-venice-commissions-opinion-health-and-care-bill)

**New inquiry: NHS litigation reform**

*Health and Social Care Committee*

The Committee has launched a new inquiry to examine the case for the reform of NHS litigation against a background of a significant increase in costs, and concerns that the clinical negligence process fails to do enough to encourage lessons being learnt to promote future patient safety.

[**https://committees.parliament.uk/committee/81/health-and-social-care-committee/news/158271/new-inquiry-nhs-litigation-reform/**](https://committees.parliament.uk/committee/81/health-and-social-care-committee/news/158271/new-inquiry-nhs-litigation-reform/)

**Better together: A public health model for mentally healthier integrated care systems**

*Centre for Mental Health, 19 Oct 2021*

The report outlines how integrated care systems can adopt a public health model to use their budgets, powers and influence to support better mental health outcomes for all.

**https://www.centreformentalhealth.org.uk/publications/briefing-57-better-together**

[**https://www.centreformentalhealth.org.uk/sites/default/files/publication/download/CentreforMentalHealth\_Briefing57\_BetterTogether.pdf**](https://www.centreformentalhealth.org.uk/sites/default/files/publication/download/CentreforMentalHealth_Briefing57_BetterTogether.pdf)

**Fund to help end cycle of homelessness and hospital readmissions**

*DHSC, 7 Oct 2021*

£16 million for pilot projects in 17 areas to support people experiencing homelessness after being discharged from hospital. Currently, patients who are homeless in hospital are more than twice as likely to be readmitted to hospital in an emergency compared with patients with housing. **Buckinghamshire, Oxfordshire and Berkshire West (led by Oxford City Council and Reading Borough Council) is a funding recipient.**

[**https://www.gov.uk/government/news/fund-to-help-end-cycle-of-homelessness-and-hospital-readmissions**](https://www.gov.uk/government/news/fund-to-help-end-cycle-of-homelessness-and-hospital-readmissions)

**What does the new Health and Care Bill mean for NHS financial management?**

*King's Fund (blog), 19 Oct 2021*

Looks at where and how decisions about money in the NHS will be made; what will be different and what remains similar to the current structure.

[**https://www.kingsfund.org.uk/blog/2021/10/health-and-care-bill-nhs-financial-management**](https://www.kingsfund.org.uk/blog/2021/10/health-and-care-bill-nhs-financial-management)

**Trust-wide improvement: Board bites**

*NHS Providers, 24 Sep 2021*

Supported by The Health Foundation, NHSP delved into what it really means to have a systematic approach to improvement and what learning can be drawn from the experiences of COVID-19. They explored diverse experiences of organisation-wide improvement, with differing investment levels, and type and rigour of method used. This briefing highlights what they've learnt so far.

[**https://nhsproviders.org/resource-library/briefings/trust-wide-improvement-board-bites**](https://nhsproviders.org/resource-library/briefings/trust-wide-improvement-board-bites)

**What every board member needs to know about improvement and quality assurance**

*Good Governance Institute (via King's Fund)*

This report is intended to guide and support boards in developing and maintaining robust quality assurance and improvement processes within their organisations. It contains a maturity matrix, and provides best practice examples and key questions to help boards translate theory into practice.

[**https://www.good-governance.org.uk/publications/news/what-every-board-member-needs-to-know-about-improvement-and-quality-assurance**](https://www.good-governance.org.uk/publications/news/what-every-board-member-needs-to-know-about-improvement-and-quality-assurance)

**Health Inequalities: A core concern**

NHS Provider, Oct 2021

NHS Providers has published a briefing, [*Health inequalities: a core concern*](https://protect-eu.mimecast.com/s/iMRUCz6ZJTmMVLyun83yG?domain=news.nhsproviders.org), that highlights the leading role trusts can play in creating lasting change in how inequalities in care are understood and dealt with across the NHS.

Forthcoming legislation firmly positions integrated care systems as the primary level at which partners will come together to make plans, including to address health inequalities. Meanwhile guidance issued by NHS England puts a welcome emphasis on the role of place-based arrangements in identifying and narrowing inequalities. It will be necessary therefore to avoid confused and conflicting accountability in this new system-wide focus on health inequalities.

[**Welfare facilities for healthcare staff.**](https://protect-eu.mimecast.com/s/CiiJCgpzjsYANPKH0A2Bn?domain=comm.knowledgeshare.nhs.uk)

NHS Employers; 2021.

This guidance, developed by the NHS Staff Council’s Health, Safety and Wellbeing Partnership Group, aims to support NHS organisations to improve their provision of staff welfare facilities. It includes the case for improving and providing welfare facilities and the legal requirements for organisations to have suitable and sufficient facilities for staff.[**https://www.nhsemployers.org/sites/default/files/2021-09/HSWPG%20Welfare%20facilitied%20report%20v3.pdf**](https://www.nhsemployers.org/sites/default/files/2021-09/HSWPG%20Welfare%20facilitied%20report%20v3.pdf)

**New National Guardian for the NHS appointed**

*National Guardian's Office, 11 Nov 2021*

Clinical leader and registered nurse, Dr Jayne Chidgey-Clark, has been appointed as the new National Guardian for Freedom to Speak Up in the NHS in England.

[**https://nationalguardian.org.uk/2021/11/11/new-national-guardian-for-the-nhs-appointed/**](https://nationalguardian.org.uk/2021/11/11/new-national-guardian-for-the-nhs-appointed/)

**ICS Network progress report: April to October 2021**

*NHS Confederation, 9 Nov 2021*

Since its formal launch in March 2021, the NHS Confederation’s Integrated Care Systems Network (ICS Network) has supported its members from across all 42 ICSs to exchange ideas, share experiences and challenges, and influence the national agenda. This report summarises the progress that the network has made so far.

[**https://www.nhsconfed.org/publications/ics-network-progress-report**](https://www.nhsconfed.org/publications/ics-network-progress-report)

**Must Know: Integrated health and care - How do you know your council is doing all it can to promote integration to improve health and social care outcomes at a time of change?**

*Local Government Association, 29 Oct 2021*

This Must Know includes examples of health and care systems that have focused on developing strong partnerships both across the system at integrated care systems (ICS) level and in place-based partnerships and updates the 2020 Must Know on integration.

[**https://www.local.gov.uk/publications/must-know-integrated-health-and-care-how-do-you-know-your-council-doing-all-it-can**](https://www.local.gov.uk/publications/must-know-integrated-health-and-care-how-do-you-know-your-council-doing-all-it-can)

**Inclusive leadership survey findings**

*NHS Confederation, 28 Oct 2021*

Key findings from the Health and Care LGBTQ+ Network survey which looked at the current picture of inclusive leadership. When it came to whether managers at their place of work reflected the diversity of the broader workforce, this was not felt to be the case.

[**https://www.nhsconfed.org/articles/inclusive-leadership-survey-findings**](https://www.nhsconfed.org/articles/inclusive-leadership-survey-findings)

**NHS health and wellbeing framework**

*NHS England, 4 Nov 2021*

This framework is a high-level culture change toolkit aimed at health and wellbeing staff, human resources (HR) and organisational development (OD) staff, HR and OD directors, wellbeing guardians, managers and leaders and anyone with an interest in health and wellbeing.

[**https://www.england.nhs.uk/publication/nhs-health-and-wellbeing-framework/**](https://www.england.nhs.uk/publication/nhs-health-and-wellbeing-framework/)

**Workforce Redesign**

***NHS Employers, 16 Nov 2021***

Workforce redesign report is about seeking new ways of working for existing staff to develop their current skills and gain support in building resilience and confidence; meeting the needs of new organisational systems and processes to improve patient care.

[**https://www.nhsemployers.org/articles/workforce-redesign**](https://www.nhsemployers.org/articles/workforce-redesign)

**UK health services make landmark pledge to achieve net zero**

***DHSC, 9 Nov 2021***

All UK health services commit to net zero carbon emissions and build climate resilience through COP26 Health Programme. Currently, health systems are substantial sources of greenhouse gas emissions, accounting for around 4.6% of the worldwide total.

[**https://www.gov.uk/government/news/uk-health-services-make-landmark-pledge-to-achieve-net-zero**](https://www.gov.uk/government/news/uk-health-services-make-landmark-pledge-to-achieve-net-zero)

**See also: Open letter to NHS trusts on net zero commitment, *DHSC*,** [**https://www.gov.uk/government/publications/open-letter-to-nhs-trusts-on-net-zero-commitment**](https://www.gov.uk/government/publications/open-letter-to-nhs-trusts-on-net-zero-commitment)

**Going green: what do the public think about the NHS and climate change?**

***The Health Foundation, 25 Oct 2021***

This long read explores public perceptions of climate change, health and the NHS. It highlights key findings from a nationally representative survey of 1,858 UK adults, conducted by Ipsos MORI in July 2021.

[**https://www.health.org.uk/publications/long-reads/going-green-what-do-the-public-think-about-the-nhs-and-climate-change**](https://www.health.org.uk/publications/long-reads/going-green-what-do-the-public-think-about-the-nhs-and-climate-change)

**Case Study: Working harder than ever to support patients and communities: examples from across the NHS**

*NHS Confederation, 11 Nov 2021*

Case studies including community and mental health services

[**https://www.nhsconfed.org/case-studies/working-harder-ever-support-patients-and-communities**](https://www.nhsconfed.org/case-studies/working-harder-ever-support-patients-and-communities)

**Winter preparedness in the NHS**

*NHS England, 25 Oct 2021*

Letter from Pauline Philip, National Director for Emergency and Elective Care about planning for winter. In acknowledgement of the current position the Winter Operating Model is enacted from 1 November 2021 – it is expected that as in previous years it will remain active until 29 April 2022.

[**https://www.england.nhs.uk/publication/winter-preparedness-in-the-nhs/**](https://www.england.nhs.uk/publication/winter-preparedness-in-the-nhs/)

**Caring for older patients with complex needs**

*The Health Foundation, 10 Nov 2021*

With integrated care systems (ICSs) to be established as statutory bodies from April 2022, there is a clear opportunity to make a step change in terms of linking up patient data and using the insights generated to reduce delays in discharge and improve quality of care and patient experience.

[**https://health.org.uk/publications/long-reads/caring-for-older-patients-with-complex-needs**](https://health.org.uk/publications/long-reads/caring-for-older-patients-with-complex-needs)

**High Profile failings – learning/’true for us’**

A number of high profile corporate governance failures continually litter the headlines over recent weeks and the events that damage such organisations do not just happen. They are commonly linked to boards being blind to the underlying risks that threaten their organisations and to the effectiveness of governance systems. Whilst these are predominantly headline news items with some containing merely allegations – they are presented to the Board in this report to stimulate consideration of the importance of corporate governance (and perception) and the risk of it being ‘true for us’.

**An acute trust has been fined £2.5m after pleading guilty to charges of failing to provide safe care after the deaths of two patients.**

The Care Quality Commission brought charges against The Dudley Group Foundation Trust earlier this year over care failings in two separate cases which the regulator said exposed two patients to “significant risk of avoidable harm”. The trust pleaded guilty to the charges in July and was fined during a sentencing hearing in November.

The CQC said the care both patients received at Russells Hall Hospital was undermined by the Dudley Group’s failure to address known safety failings which the regulator repeatedly raised with the trust in the months before their deaths. The CQC said the trust did not take all reasonable steps to make improvements, despite its intervention.

Failings included errors in the hospital’s initial assessments and monitoring of both patients, which hindered the timely escalation of concerns. Each patient’s case was considered as an individual offence, for which the trust was fined around £1.26m each.

**Daily Insight: ‘Self serving’ trust hauled over coals**

Nottinghamshire Healthcare Foundation Trust was found to have unfairly sacked a forensic psychiatrist over a patient’s death in a recently published decision, having been strongly criticised in the process. ET decision: <https://www.gov.uk/employment-tribunal-decisions/ms-b-mcinerney-v-nottinghamshire-healthcare-nhs-ft-2601862-2019>

**French firm sues CCGs over £85m contract award**

A medical gas supplier is suing commissioners in the East of England region over the award of an £85m contract. In October, the region’s 15 clinical commissioning groups awarded the 10-year contact for home oxygen services to BOC, the incumbent supplier, ahead of French multinational Air Liquide.

Air Liquide has now filed papers with the High Court accusing the CCGs of applying “undisclosed criteria or sub-criteria throughout the evaluation [of different bids]… relating to unspecified features of local geography or circumstance”. It also claims the CCGs were inconsistent in how they evaluated the two bids, resulting in Air Liquide being treated less favourably. The papers add “there was (and is) a real risk” that the CCGs’ bid evaluators were “biased in favour of BOC”.

West Essex CCG, the lead commissioner, told *HSJ*in a statement: “The procurement was conducted fairly, transparently, without bias, and we intend to file a defence… The supply of home oxygen services to users in the region will be unaffected by the legal action.”

According to the court papers, Air Liquide was scored at 70.6 per cent in the evaluation process, and was awarded the highest possible score for price. However, BOC scored 71.98 per cent overall, with a higher score for quality “by a margin that meant it achieved the highest aggregate score”.

**Trust focused on reputation failed to recognise concerns**

A focus on ‘reputation management’ was a factor in how an acute trust failed to properly investigate serious safety concerns in a dysfunctional department where consultants were ‘divided along ethnic lines’. An external review into the urology services at University Hospitals of Morecambe Bay Foundation Trust has identified 520 cases where patients suffered “actual or potential harm”, including several cases where patients died.

The review, commissioned by NHS England, has found “multiple individual, team, organisational, and regulatory shortfalls which have resulted in a systemic failure to deliver good urological care at all times”. Much of the report focuses on the trust’s failure to properly investigate concerns being raised, and to sort out poor relationships within the department.

The report found there was a failure by the trust to manage the relationships effectively, with limited investigation of concerns, and a “tolerance of poor behaviours”. The review says there was a significant opportunity for the trust to intervene in the issues, after “the long-term nature of the ‘noise’ in urology reached the relatively new executive team”.

“Whilst there were genuinely held views to support incident reports, the content of email communications and claims of discrimination, the resulting investigations were weak and lacked transparency which enabled mistrust to continue unabated.” The report also referenced numerous other instances which should have prompted more action or investigation from executives and the board. Earlier this year the trust’s leadership was rated “inadequate”, with an overall “requires improvement” rating for the organisation.

The Niche review was also critical of the General Medical Council,in terms of the “hugely extended timescales involved in responding to referrals” of individual consultants. It said: “In one case it was four years before the GMC closed a patient’s family’s complaint, and currently a referral made in November 2017 continues four years later.

“We are also concerned that doctors are not informed of all complaints against them and nor are their employers (the GMC views some complaints raised to them as not requiring any action). As a result, there is no single perspective of the totality of concern of an individual doctor shared amongst all relevant stakeholders and the doctor themselves.

**The leadership of a newly merged acute trust has been rated ‘inadequate’ after inspectors criticised executives for being seen as ‘out of touch’ and displaying ‘bias’ towards a hospital they had previously run.**

The Care Quality Commission also found serious failings around patients’ safety in the emergency services at Liverpool University Hospitals Foundation Trust, which was rated “requires improvement” overall.

The trust received a warning notice for these issues in the summer. The CQC, which has now published its full report after the July inspection, said the leadership issues centred on a lack of action being taken in response to clear problems with the services. It said the trust was “much worse” than comparators for whistleblowing alerts, with 15 reported over an eight-month period.

The report added: “Included in this have been significant whistleblowing contacts from senior clinical staff, including nursing and medical staff, stating their lack of confidence in trust leadership and the trust’s ability to manage risks. These have often related to concerns about communication issues, with the sense that the trust had not been open or listened to their concerns.”

The regulator also said senior leaders were seen as “out of touch” with what was happening on the front line and being unable to understand the risks or issues described by staff. It added: “For example, we were told the chief executive had visited the accident and emergency department following the introduction of a new electronic records system.

“The executive view was this had been a successful implementation. However, the staff experience had been entirely the opposite experience; significant issues had been found with the new system, which had severely impacted on service delivery and continuity in the emergency department…“We were told that neither the medical director nor the executive chief nurse attended the weekly patient safety meetings. We had concerns that the trust systems for oversight and assurance of clinical effectiveness together with patient safety, and direct line of reporting, remained unclear.”