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# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

**BOD 31/2023**

(Agenda item: 10

# Board of Directors

**24th May 2023**

**Corporate Affairs Update Report**

**For: Awareness and Assurance**

**Executive Summary**

The Reading Room contains the detail of this regular report to inform the Board of Directors on recent legislation, regulation and compliance/policy guidance issued by bodies such as 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 and its committees’ business. 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.

With regard to the concept of ‘True for Us’ and the section in the report; I continue to remind Board members, the effects of corporate failure cast a long shadow forward. In consequence each failure of a business becomes magnified in terms of the analysis of its impact and the mood to blame. The responsibility to avoid corporate failure lies with the directors who may or may not be able to take evasive action. As reported to the last meeting, the Corporate Affairs directorate is developing further the concept of ‘True for Us’ reviews in connection with corporate governance because failures contribute significantly to the collapse of confidence in the Trust but importantly enhance the effectiveness of risk and controls management. The process will support identification of warning signals to support the ongoing learning and development of successful mitigating actions and will be led by the Deputy Director of Corporate Affairs working closely also with the Chief Nurse’s team. There will be an important role for the Audit committee in this programme given the effectiveness of control environments will be reflected upon.

**Risk Management**

The Code of Governance for the NHS replicates Provision 28, UK Corporate Governance Code (July 2018) and states that “*the board should carry out a robust assessment of the company’s emerging and principal risks. The board should confirm in the annual report that it has completed this assessment, including a description of its principal risks, what procedures are in place to identify emerging risks, and an explanation of how these are being managed or mitigated*.”

Included in the Reading Room is the latest iteration of the Board Assurance Framework to ensure Board members continue to have a universal view of the Trust’s strategic risk profile. This is the May 2023 edition of the BAF. The main changes from the last Board reporting at the end of March, include:

* BAF 1.6 has been substantially revised and updated, with the changes approved by the Quality Committee at its meeting on 04 May 2023 and now provided for further Board approval if required.  BAF 1.6 has been: (i) reworked from its previous focus upon Demand and Capacity in Primary, Community and Dental Care services to focus more upon Sustainability of these services; and (ii) the current risk rating has been reduced from red/extreme at 16, to orange/high at 12.  Following review at the Audit Committee, the Quality Committee reviewed BAF 1.6 and approved the revised scope, controls and risk rating; and
* BAF 2.1 and 2.2 (Workforce Planning and Recruitment) are under review and may be replaced by a new combined risk on Adequacy of Staffing, which is under development and cannot be published until agreed.  Monitoring of the new combined risk will be by the People, Leadership & Culture Committee.

As such, the Trust’s extreme/red-rated risks continue to relate to workforce, recruitment, financial sustainability and major capital projects; which are themes consistent with current and emerging health sector risks as benchmarked by the Trust’s Internal Auditors, PwC and as played out in reports included in the body of this update from such as the CQC and in the Health Service Journal reporting.

The Trust’s risks at a strategic level on the Board Assurance Framework (**BAF**), and at an operational level on the Trust Risk Register (**TRR**), are considered in more detail through the work of Board Committees in particular the Finance & Investment Committee, the People, Leadership & Culture Committee and the Quality Committee which have monitoring oversight of specific risks; further oversight is provided through the work of the Audit Committee which is responsible for reviewing the content, processes and format of the BAF and TRR to seek assurance as regards risk management processes. Board members should pay particular attention to the TRR also in order to challenge constructively if it capture the realities of operational delivery. As previously reported, a deeper review of the strategic objectives and associated risks will be conducted on finalisation of the Trust strategic planning activity being led by the Director of Strategy and Partnerships.

**Impact Reporting – Corporate Affairs**

* **Communications, Involvement and Engagement**

This month’s report again includes in the Reading Room examples of the impact of specific team functions beyond the compliance and regulation aspects of the remit of the Director of Corporate Affairs/Company Secretary in order to alert the Board to activity across the Corporate Affairs portfolio. Ongoing iterations of the update report will include these updates as considered pertinent/useful in the prevailing circumstances.

**Charity, Involvement & Volunteering**: Included is the Charity and Involvement impact report which evidence for Board the extensive activity regarding the charity, volunteering and involvement as well as a forward view. Board members are encouraged to read the vast activity undertaken over recent weeks and to look to get involved in the charity where possible. I did over 10 miles for OHC ROSY appeal in April and ran (and walked) for the OHC at the Blenheim 7k Fun Run last weekend where the charity team had a strong presence.

The report also incorporates this month a specific focus on Voluntary Services through a review of our position against the Investing in Volunteers Standard. This is a nationally recognised standard for the support and development of volunteering within organisations. The use of this standard ensures our Trust programme is providing a positive and meaningful experience for those involved and boosts potential for volunteers to consider further opportunities within the Trust or wider NHS, in line with our involvement in the Volunteer to Career programme.

Finally, this section concludes with the **communications and engagement** report highlighting an extensive array of activity in recent weeks, and again a forward view of upcoming focus. Another very busy period for the team and significant support afforded a number of areas of import. The annual staff awards in April were a great opportunity to recognise and celebrate our colleagues, both in teams, individuals, and volunteers. It was a return to face-to-face events after Covid, and was very well attended. Feedback about the chance to share best practice and network was also very positive, and we received very positive coverage from the Oxford Mail.

This event complements our regular monthly Exceptional People Award, and our nursing Bee and Daisy awards, ensuring we have a substantial programme of staff recognition.  April saw a general focus on staff engagement, with publicity around the value of PDR, listening to staff opinions via the Pulse Survey, and the continued revamp of our weekly staff Bulletin to manage a steady flow of relevant and timely information to staff.   Work is ongoing to assess the scope and capacity of the team and ensure that our priorities are aligned with the business objectives of the Trust.

**Compliance matters and prospective analysis**

The Legal Regulatory and Policy 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 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 controls in place to deliver compliance against any Trust’s obligations are effective.** The Appendix should, on a risk basis, prompt consideration of the need to commission any deep dive (or ‘true for us’ reviews) 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.

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 routine Board reports of individual Executives.

The principal Committee meetings of the Board are aligned to the cadence of the Board calendar, with the Chair of each Committee providing the Board with their latest updates and recommendations for approval. Following the final report of the Good Governance Institute as part of the external review against the Well Led framework into quality governance, the Chair of each Committee has since November adopted a ‘Three A’s’ approach to upward reporting to Board (Advice, Alert, Assure). In addition to the matters in this report, the Board will need to use the Committee Chair’s updates to also influence its identification and assessment of new/emerging risk.

Early consideration of matters in this report supports a prospective understanding of risk and opportunity. Chairs and members 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.

**In this month’s Legal and Regulatory Update**, there has been a much smaller number of legal and regulatory matters of import than in many previous reports. A number of publications have significance for the Trust.

The **provider licence** is one such areas, andforms part of the oversight arrangements for NHS providers. The NHS Oversight Framework (SOF) details the overall principles, responsibilities and key metrics for oversight, while the provider licence serves as the legal mechanism for any formal regulatory intervention and underpins mandated support for the most challenged providers.

The need to change the licence has arisen from changes to the statutory and operating environment, including a shift of emphasis from economic regulation and competition to system working and collaboration. The changes bring the licence up to date, reflecting the new legislation and supporting providers to work effectively as part of integrated care systems (ICSs).

Requirements around self-certification for NHS trusts and foundation trusts, have been removed due to duplication with annual reporting requirements and to reduce regulatory burden by removing reporting requirements from General Condition 6 (Systems for compliance), which requires licensees to self-certify against the licence, and Foundation Trust Condition 4/Controlled Provider condition 1, which requires foundation trusts to report on past and future compliance with the licence and to prepare a Corporate Governance Statement.

This will streamline requirements and reduce burden. However, we may at some point wish to consider the usefulness of the Corporate Governance Statement in focusing Board attention to governance processes and compliance issues and decide if there is benefit in continuing this process internally.

It is noted the range of other reporting mechanisms will continue, such as the annual report, annual governance statements and through any CQC well-led review. These will require the Board to continue to assess compliance with corporate governance standards, and evidence of this compliance will continue to be considered as part of well-led assessments. On balance, any reduction in duplication and regulatory burden is welcome.

Amendments have been made to the **Fit and Proper Persons** condition in line with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. We have always assessed the regulations against the Act in any event.

The Rt Hon **Hewitt Review** highlights an ambitious and extensive review seeking to maximise the opportunities ICSs bring to improve population health and wellbeing. There is welcome recognition throughout of the issues hindering progress and placing unhelpful burdens on system players. The report recognises that without investment, workforce and leadership development, recurrent and multi-year funding, reduction of duplicative or unnecessary data requests, and effective planning (centrally and locally), systems will be unable to achieve their potential. The report also makes the case for reducing the number of national targets to give local leaders the ‘time and space’ to lead. Hewitt suggests that there should be no more than ten national priorities, and that local priorities should be treated with equal weight. The political appetite for such significant change (and necessary investment over the longer term) is not yet known but the Department of Health and Social Care (DHSC) has so far only committed to review the report’s recommendations.

The appendix includes a number of **CQC reviews** offering members of the Board opportunity to consider our own position against some of the areas of good governance highlighted to be suboptimal. Local and peer Trusts Southern Health, AWP and Oxford University Hospitals NHS FTs have each been inspected with reports published.

Also in the appendix is the announcement that the implementation of the **Liberty Protection Safeguards (LPS**) will not go ahead this side of a general election(anticipated to be in Autumn 2024). The legislation outlining the LPS – the long-awaited replacement to the Deprivation of Liberty Safeguards (DoLS) – was passed in May 2019 and was originally due to be implemented in October 2020 with the reforms in the hands of any incoming government in late 2024.

Even if the LPS is one of the new government’s priorities in late 2024, the timescale to revive the policy, deal with the outstanding controversies, and set up afresh the road map to implementation suggests it could be some time. By then, of course, other related policy issues, such as any reform of the Mental Health Act, may mean a change in approach. This of course, leaves us with all the problems with the current system that LPS was supposed to address, and the MHA&L Committee gave consideration to LPS delays at its meeting in May.

The **True for Us section** of this report continues to elaborate on the unacceptable reports of abuse and poor care, in recent months in particular in mental health and learning disability services. The development of our True for Us framework will ensure there are reviews of our services as well as our approach to oversight and assurance of safety, quality of care and management of risk. The True for Us section references a number of high profile reviews each finding significant weakness in the oversight, curiosity and awareness of Boards and executive teams.

This routine section of the report will always seek to amplify how every board member must examine the culture within the Trust and how they listen and respond to staff. It promotes that we each take steps to assure ourselves, and the communities we serve, that the leadership and culture across our organisation(s) positively supports the care and experience we provide. Board members need to reflect on how effective assurance mechanisms are at ‘reading the signals.’ The Deputy Director of Corporate Affairs will conduct True for Us reviews going forwards.

**Governance Route/Approval Process**

This is a routine report with direct relevance to the Board and its committees and serves to provide early insight into the changing legal, regulatory and policy environment thereby allowing a risk based approach to stimulating further enquiry where relevant. The governance framework (Board, committees, legal duties and management functions) facilitate responsive and effective decision making, ensuring the Board and its Committees and the Executive Management Committee and senior management are able to collaborate, consider issues and respond.

Good governance is at the core of successful operation, ensuring considered and efficient decision making in furtherance of our overarching strategy and long-term sustainability. In discharging its duties the Board is supported by its various Board Committees. The principal Committee meetings of the Board are aligned to the cadence of the Board calendar, with the Chair of each Committee providing the Board with their latest updates and recommendations for approval. In addition to the matters in this report, and other Board reporting, the Board will need to use the Committee Chair’s updates to also influence its identification and assessment of new/emerging risk to performance or objectives.

**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 and reassurance that the internal plans and controls in place to deliver compliance against relevant Trust 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.

**Author and Title: Kerry Rogers, Director of Corporate Affairs & Company Secretary**

**Lead Exec: 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 all aspects of each of the Strategic Objectives/Priorities of the Trust*