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NHS Foundation Trust

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Private and Confidential

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BY EMAIL ONLY

Sam Shepherd
Policy Team Leader
Communications, Strategy and Insight
Cherwell District Council & Oxfordshire County Council

Dear Sam,

Thank you for your email enquiry dated 21st April 2020, raised on behalf of a member of the Oxfordshire Health Overview and Scrutiny Committee (HOSC). In order for the fullest possible response to the seven questions asked, we have consulted with Chief Officers and their relevant Service Leads, which in the current care climate has taken a little longer than hoped. Please accept our sincere apologies for the delay in responding to the questions.

How many staff on site are managed by outsourcing companies or agencies?

The Trust has three Private Finance Initiative (PFI) contracts, which provide a way of funding public capital projects using private sources of money to pay for the upfront costs of the design, build and maintenance. These contracts provide hard facilities management (estates services) and soft facilities management (portering, patient catering and domestic services) on the John Radcliffe Hospital, Churchill Hospital and Nuffield Orthopaedic Centre sites. The number of staff employed under these PFI contracts by the service providers are as follows:

John Radcliffe Hospital - 670 staff

Churchill Hospital - 210 staff

Nuffield Orthopaedic Centre - 84 staff

What PPE was provided by the Trust to staff managed by Bouygues and other PFI service providers e.g. G4S?

With respect to the Trust's three PFI contracts (including service providers Bouygues, G4S, Elior, Aramark & INC) the PPE that was required was provided by the Trust on wards and in departments for all staff attending these areas to access.

When was this provided?

PPE has been, and continues to be, provided by the Trust for all staff from the outset of the COVID-19 pandemic. At the outset PPE was collected from theatre stock and then by the OUH Soft FM Manager. However, upon review logistically it was more efficient to adopt a PPE model which involved providing all required PPE at point of use on the ward or department for all staff accessing those areas, a model that remains in place to date. As part of the PPE model implemented throughout the pandemic the Chief Nursing Officer and Director of Procurement advise that:

- The Executive Team review Personal Protective Equipment Trust levels daily; this information is provided by the Director of Procurement.
- The Trust is an active participant in the BOB ICS mutual aid/escalation process for any issues with PPE and has shared PPE with other trusts, when requested.
- At the weekend the Duty Executive reviews PPE levels with the duty manager.
- All four Clinical Divisional teams have a Senior Nurse nominated as their PPE lead who works with the Procurement team on a daily basis to control supply and demand of PPE.
- The Infection Prevention and Control team have continuously trained staff in line with the Public Health England guidance for PPE.
- The Chief Nursing Officer and Chief Medical Officer review all reported incidents since the pandemic commenced - there have been no reported incidents of lack of PPE.
- Information about PPE management has been shared with the Care Quality Commission (CQC) and forms part of the Trust's ongoing dialogue with inspectors in accordance with CQC Emergency Support Framework.

Are staff being put under pressure to return to work while reporting sick?

The health and wellbeing of all staff at OUH is of utmost importance to the Trust. Staff managed by PFI service providers are part of the OUH team and their health and wellbeing is just as important as that of staff employed directly by the Trust. Each of the PFIs have been asked to undertake wellness checks with their staff and have confirmed that these have been implemented. The largest provider of services (supporting the John Radcliffe Hospital) have also undertaken a one to one meeting with every employee to ensure that they understand briefings and are clear about arrangements for voluntary testing that have been put into place and are accessible to all staff. We are not aware of any pressure being applied to PFI staff to return to work while reporting sick.

How are the frontline outsourced staff who are vulnerable being treated?

The Head of FM Performance and Quality (PFI Contracts) reports with respect to the PFI contracts all the staff are considered frontline and have access to the Trust resources. This includes staff accommodation, Employee Assistance Programme, Here for Health including useful guides, access to free wellbeing apps, personal and team resilience tools and wellbeing support helpline, psychological support and counselling service. Staff have been invited to attend a programme of local and Trustwide listening events facilitated by the Freedom To Speak Up Guardian and supported by the Executive Team. All PFI staff are managed in accordance with OUH policies and procedures, which includes the interim Covid-19 guidance and managerial risk assessments for possible vulnerability. All OUH communications are sent via a central point in the Performance & Quality Contract Team to PFI organisations for communication to PFI staff. This approach ensures consistency and information from one source in OUH.

Is the Trust legally liable for Health and Safety breaches on its premises including those by outsourcing companies and agencies?

NHS Resolution (NHSR) confirm that in the case of subcontractors being involved, the usual legal principles will apply regarding any possible negligence and consideration of contractual terms. NHSR advise that COVID-19 does not mean that the Trust will automatically assume all liabilities on behalf of sub-contractors. In respect of the PFI contracts there are numerous health and safety obligations on the Trust in its various capacities: as employer, as healthcare provider, statutory body, contracting party, and landlord. The answers as to who is liable may be different for each one.

Employees

From the perspective of the porters who were on Retention of Employment (ROE) contracts, the Trust is ultimately liable to them (or their estate) for providing a safe place of work and ensuring their health and safety. That remains the case even if the Trust has outsourced the day-to-day management and supervision of those Retained Employees to a sub-contractor.

Sub-contractors

From the perspective of the management company, if they alone are responsible for a breach of Health and Safety (for example, if they ignored Trust policies), then it is almost certain that they will have breached the terms of their agreement with the Trust, and so be liable to the Trust for breach of contract. Specifically, under the PFI agreements, the Trust is fully indemnified by the Project Company (and/or the FM company) in these situations.

Regulatory Bodies

From the perspective of the Health and Safety (H&S) Executive or other regulatory bodies, the position is more complex. Where there has been a breach of H&S statutes or regulations, responsibility will depend on the specific duty in the statute/regulation which has been breached. Some duties will fall on everyone individually, in which case only the party who committed the breach would be liable (here, the managing company). Other duties will sit with the Trust alone and cannot be delegated or outsourced. Other duties still may be split between the parties according to primary obligations and secondary obligations, in which case the outsourcing FM Contractor would typically have to carry out the primary tasks and project co-ordination and the Trust would have secondary duties such as monitoring, authorising and overseeing.

Is there day to day monitoring underway to check there is not a disproportionate impact on workers whose ethnicity appears to raise the risk to them in terms of their rate of infection and fatalities?

The Trust wants to ensure that all BAME staff working at OUH feel safe and supported at all times. Guidance has been published to support managers having conversations with their staff that is in keeping with Regional and Government advice. Monitoring of all staff absence is reported to the executive team as part of the Covid-19 command and control activities. The Chief People Officer is working collaboratively with NHSE/I as a member of the Regional Mortality Disparity Panel to enable shared learning about the impact on workers whose ethnicity may appear to place them at increased risk. The Occupational Health have produced specific guidance for managers entitled 'Protecting our BAME Colleagues', which has been rolled out to our PFI contracts and staff are completing risk assessments. Information is also available as part of the Trust Covid-19 Health and Wellbeing strategy; there are wellbeing leads offering support to any staff in all areas, across all sites, with representation from staff in BAME groups.

I hope that the information provided provides you with answers to the questions the member from HOSC raised.

Yours sincerely,



Terry Roberts
Chief People Officer