

**TRUST BOARD  
31 May 2018**

<b>AGENDA ITEM</b>	17.2	
<b>TITLE OF PAPER</b>	NHS Improvement self-certifications	
Confidential	<b>NO</b>	
Suitable for public access	<b>YES</b>	
<b>PLEASE DETAIL BELOW THE OTHER SUB-COMMITTEE(S), MEETINGS THIS PAPER HAS BEEN VIEWED</b>		
<b><u>STRATEGIC OBJECTIVE(S):</u></b>		
Best outcomes	<input checked="" type="checkbox"/>	✓
Excellent experience	<input checked="" type="checkbox"/>	✓
Skilled & motivated teams	<input checked="" type="checkbox"/>	✓
Top productivity	<input checked="" type="checkbox"/>	✓
<b>EXECUTIVE SUMMARY</b>		
<p>As part of the Annual Plan Review process 2018/19 the board must sign off on self-certification and publish on our website. We are required to submit two self-certification documents. This paper details the first of these certifications and the Corporate Governance Statement will be submitted to Board in June.</p> <p>It is no longer a requirement to submit the templates to NHS Improvement. From July, they will contact a select number of NHS foundation trusts to ask for evidence that they have self-certified. Evidence will be sought in either of two ways; by submitting the templates to NHS Improvement or by providing relevant Board minutes and papers recording sign-off.</p>		
<b>RECOMMENDATION:</b>	Discuss and agree the certifications	
<b>SPECIFIC ISSUES CHECKLIST:</b>		
Quality and safety		
Patient impact		
Employee		
Other stakeholder	Not relevant	

Equality & diversity	None known
Finance	
Legal	The Health and Social Care Act 2012 requires the Trust to submit its Annual Plan to the regulator
Link to Board Assurance Framework Principle Risk	Submission of the Annual Plan and associated certifications is a fundamental principle of the Trust's Licence.  The Board needs to be confident that the certifications are accurate and underpinned by robust evidence.
<b>AUTHOR(s)</b>	Liz Davies, Acting Company Secretary
<b>PRESENTED BY</b>	Simon Marshall, Director of Finance & Information
<b>DATE</b>	17 May 2018
<b>BOARD ACTION</b>	Approve

## **NHS Improvement self-certifications 2017/18**

### **1 Introduction**

As an authorised Foundation Trust the Board needs to be confident that robust arrangements are in place to ensure:

- 1) Compliance with the NHS Provider Licence; and
- 2) Compliance with the requirements of NHS Improvement's Single Oversight Framework.

### **2 2018/19 Certifications**

As part of the Annual Planning process for 2018/19 the Trust is required to submit the following certifications to NHS Improvement by 31 May:

- Licence General Condition 6 (systems for compliance with Licence conditions); and

We are also required to submit the following certifications by 30 June:

- Corporate Governance Statement;
- Joint Ventures and Academic Health Science Centre; and
- Training of Governors.

### **3 31 May certifications**

#### **3.1 Licence General Condition 6 (statement 1)**

On 1<sup>st</sup> April 2013 the Trust's Terms of Authorisation with NHS Improvement were replaced by the Licence (Licence Number: 110006). The Licence contains seven sections detailing conditions in conjunction with:

- General conditions
- Pricing
- Choice and Competition
- Integrated Care
- Continuity of Services
- NHS foundation trust conditions
- Interpretations and definitions

The certification due by the end of May requires confirmation of compliance with General Condition 6 which notes that the Licensee should 'take all reasonable precautions against the risk of failure to comply with:

- the conditions of this Licence;
- any requirements imposed on it under the NHS Acts; and
- the requirement to have regard to the NHS Constitution'.

The steps the Trust is expected to take (paragraph 2(a) and 2(b) of the Licence) are:

- the establishment and implementation of processes and systems to identify risk and guard against their occurrence; and
- regular review of whether those processes and systems have been implemented and of their effectiveness.

The Board is able to provide confirmation of meeting this condition through the robust risk management system in place throughout the Trust. This includes:

- **The Risk Management Strategy & Quality Strategy:** The Trust's approach to risk for the year 2017/18 is as set out in the Quality, Safety and Risk Management (QSRM) Strategy which identifies the roles and responsibilities of Directors, managers and staff in relation to identification and management of risks.
- We are in the process of implementing a new trust-wide Risk Management Strategy and Quality Strategy in alignment with the Trust's Strategy refresh. In March 2018 the Board approved the new integrated corporate governance framework setting out the sub-Board committee structure which is aligned with the themes of NHS Improvement's Single Oversight Framework (SOF). The implementation plan is being progressed and is due to be approved and signed off by Q1.
- The **Board Assurance Framework** is reviewed on a quarterly basis at the Quality and Performance Committee (QPC) and Trust Board; and the Financial Management Committee reviews the Trust's current Objective 4 "Top Productivity" key risks.
- As part of the revised governance regime, we will generate a new Board Assurance Framework, and refreshed Balanced Scorecard by end of Q1. Each sub-board committee will assess and manage the risk(s) on the delivery of the strategic objective under its remit, and the relevant section of the BAF will be reviewed as a standing agenda item.

A Risk Maturity Assessment was carried out by BDO LLP in September 2017. This was primarily an advisory piece of work and the assessment did not generate an assurance opinion. Following this, BDO delivered a Board masterclass in January 2018 on Risk Management Training which will inform the refresh of the BAF.

- **Trust Risk Register** Currently risk oversight is through the Trust Executive Committee and Risk Scrutiny Committee. Divisional risk management is through Divisional Boards and Governance Meetings with exception reporting to Risk Scrutiny Committee.
- The Trust's new risk management strategy outlines the building blocks for managing risk and the way in which our risk profile will be incorporated in a Risk Register. Oversight of the Risk Register will be undertaken by the Trust Executive Committee or successor committee and submitted to Trust Board via the proposed Audit and Risk Committee. The wide visibility of this Register will allow significant level of management, clinician and Board oversight and challenge of the key operational risks to the Trust.

The conditions within our Licence are detailed at Appendix I with assessment of compliance made against each condition.

### **Licence General Condition 6 (statement 2)**

The Trust is asked to confirm that it meets the criteria for holding a Licence.

The two criteria for holding a Licence are:

1. the Trust must be registered with the Care Quality Commission (CQC); and
2. the directors and governors of the Trust must meet the fit and proper person' test under the NHS Provider Licence.

For the purposes of the NHS Provider Licence someone who is not a fit and proper person would fall under the following categories:

- as an individual be undischarged bankrupt;
- as an individual have undischarged arrangements with creditors;
- as an individual be subject to a moratorium period under a debt relief order;
- have received a prison sentence of three months or longer during the previous five years; or
- be subject to a disqualification order or undertaking.

For the purposes of this declaration the Trust meets the criteria as it is registered with the CQC and its directors and governors meet the 'fit and proper' test.

Assurance that this test has been met has been obtained through a number of ways:

- pre-employment checks which are conducted for all Board members;
- bankruptcy checks which have been conducted for all Board members since the regulations came into force; and
- Disclosure and Barring Service (DBS) checks which are completed for all Board members on joining the Trust.

## **4 Recommendation**

The Board is recommended to confirm self-certification against the requirements of General Condition 6 of the Licence.

Enc.

**Appendix I - NHS Provider Licence: Checklist of Compliance**

**Appendix II – NHS Improvement certification**

## Appendix I

### NHS Provider Licence: Checklist of Compliance to underpin self-certification against General Condition 6

Licence Condition	Compliance confirmed
<b>Section 1 – General Conditions</b>	
<b>G1: Provision of information</b> <i>'the Licensee shall furnish to NHS Improvement such information and documents, and shall prepare or procure and furnish to NHS Improvement such reports, as NHS Improvement may require for any of the purposes set out in section 96(2) of the 2012 Act'</i>	Confirmed. No compliance issues identified.
<b>G2: Publication of information</b> <i>'The Licensee shall comply with any direction from NHS Improvement for any of the purposes set out in section 96(2) of the 2012 Act to publish information about health care services'</i>	Confirmed. No compliance issues identified.
<b>G3: Payment of fees to NHS Improvement</b> <i>'The Licensee shall pay fees to NHS Improvement in each financial year of such amount as NHS Improvement may determine'</i>	Confirmed. No compliance issues identified.
<b>G4: Fit and proper persons</b> <i>'The Licensee shall ensure that no person who is an unfit person may become or continue as a Governor'</i> <i>'The Licensee shall not appoint as a Director any person who is an unfit person'</i>	Confirmed. Governor eligibility and disqualification criteria and code of conduct ensures compliance. Trust Employment policies ensure compliance.
<b>G5: NHS Improvement guidance</b> <i>'the Licensee shall at all times have regard to guidance issued by NHS Improvement'</i>	Confirmed. No compliance issues identified.
<b>G6: Systems for compliance with licence conditions and related obligations</b>	Confirmed. No compliance issues identified. Risk Management system in place throughout the Trust including Board Assurance Framework and Trust Risk Register.
<b>G7: Registration with the Care Quality Commission</b>	The CQC undertook a focused, unannounced responsive inspection of the hospital in September 2017. The inspection focussed on care on the medical wards and a number of fundamental standards were found not to be met in one or two ward areas. The report was published on 9 January 2018 and the Trust action plan was submitted to CQC on 6 February 2018. The Trust retains its CQC rating of Good.

<b>G8: Patient eligibility and selection criteria</b>	Confirmed. There is an annual review of the contract with commissioners to agree eligibility criteria, in accordance with Department of Health guidance.
<b>G9: Application of Section 5 (Continuity of Services)</b>	Refer to Section 5 below.
<b>Section 2 – Pricing</b>	
<b>P1: Recording of information</b> <i>'the Licensee shall obtain, record and maintain sufficient information about the costs which it expends in the course of providing services'</i>	Confirmed. No compliance issues identified.
<b>P2: Provision of information</b> <i>'the Licensee shall furnish to NHS Improvement such information and documents, and shall prepare or procure and furnish to NHS Improvement such reports, as NHS Improvement may require for the purpose of performing its functions'</i>	Confirmed. No compliance issues identified.
<b>P3: Assurance report on submissions to NHS Improvement</b> <i>'If required in writing by NHS Improvement the Licensee shall, as soon as reasonably practicable, obtain and submit to NHS Improvement an assurance report in relation....to costing.'</i>	Confirmed. No compliance issues identified.
<b>P4: Compliance engagement concerning local tariff modifications</b> <i>'the Licensee shall only provide health care services for the purpose of the NHS at prices which comply with, or are determined in accordance with, the national tariff published by NHS Improvement'</i>	Confirmed. The Trust only provides health services priced using the National Tariff.
<b>P5: Constructive engagement concerning local tariff modifications</b> <i>'The Licensee shall engage constructively with Commissioners'</i>	Confirmed. The trust engages actively and constructively with its Commissioners.
<b>Section 3 – Choice and competition</b>	
<b>C1: The right of patients to make choices</b> <i>'the Licensee shall ensure that at every point where that person has a choice of provider under the NHS Constitution or a choice of provider conferred locally by Commissioners, he or she is notified of that choice and told where information about that choice can be found'.</i>	Confirmed. No compliance issues identified.
<b>C2: Competition oversight</b> <i>'The Licensee shall not enter into or maintain any agreement or other arrangement which has the object or which has (or would be likely to have) the effect of preventing, restricting or distorting competition in the provision of health care services'</i>	Confirmed. No compliance issues identified.
<b>Section 4 – Integrated care</b>	
<b>IC1: Provision of integrated care</b>	

<p><i>'The Licensee shall not do anything that reasonably would be regarded as against the interests of people who use health care services by being detrimental to enabling its provision of health care services for the purposes of the NHS to be integrated with the provision of such services'</i></p>	<p>Confirmed. No compliance issues identified.</p>
<p><b>Section 5 – Continuity of Services</b></p>	
<p><b>COS1: Continuing provision of Commissioner Requested Services</b> <i>'The Licensee shall not cease to provide, or materially alter the specification or means of provision of, any Commissioner Requested Service except where permitted to do so in the contract'</i></p>	<p>Confirmed. No compliance issues identified.</p>
<p><b>COS2: Restriction on the disposal of assets</b> <i>'The Licensee shall establish, maintain and keep up to date, an asset register'</i> <i>'The Licensee shall furnish NHS Improvement with such information as NHS Improvement may request relating to any proposal by the Licensee to dispose of, or relinquish control over, any relevant asset'</i></p>	<p>Confirmed. Asset register maintained.</p>
<p><b>COS3: Standards of corporate governance and financial management</b> <i>'The Licensee shall at all times adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as:</i> <i>(a) suitable for a provider of the Commissioner Requested Services provided by the Licensee, and</i> <i>(b) providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern'</i></p>	<p>Assessment of Trust position against NHS Improvement's Code of Governance presented and approved at Audit Committee in May 2018. Robust financial plan and quarterly profile that is approved as part of the two year Operating Plan submission. Monthly NHS monitoring of performance and risks at Finance Committee.</p>
<p><b>COS4: Undertaking from the ultimate controller</b> <i>'The Licensee shall procure from each company or other person which the Licensee knows or reasonably ought to know is at any time its ultimate controller, a legally enforceable undertaking in favour of the Licensee'</i></p>	<p>Not applicable (relates to non-FT whose ultimate controller may be a separate legal organisation).</p>
<p><b>COS5: Risk pool levy</b> <i>'The Licensee shall pay to NHS Improvement any sums required to be paid in consequence of any requirement imposed on providers...by way of levy'</i></p>	<p>Confirmed. No compliance issues identified.</p>
<p><b>COS6: Co-operation in the event of financial stress</b> <i>'if NHS Improvement has given notice in writing to the Licensee that it is concerned about the ability of the Licensee to carry on as a going concern...the Licensee will: provide such information as NHS Improvement may direct to Commissioners, allow such persons as NHS Improvement may appoint to enter premises owned or controlled by the Licensee and co-operate with such persons as NHS Improvement may appoint to assist in the management of the Licensee's affairs, business and property'</i></p>	<p>Confirmed. No compliance issues identified.</p>
<p><b>COS7 Availability of resources</b> <i>'The Licensee shall at all times act in a manner calculated to secure that it has, or has access to,</i></p>	<p>Confirmed. Robust plan and quarterly profile that is approved as part of the</p>

<p><i>the Required Resources'</i></p>	<p>Operating Plan submission to NHS Improvement. Forecast to have adequate resources in 2018/19 as confirmed within Annual Plan.</p>
<p><b>Section 6: NHS Foundation Trust conditions</b></p>	
<p><b>FT1: Information to update the register of NHS foundation trusts</b> <i>'The Licensee shall ensure that NHS Improvement has available to it written and electronic copies of the following documents:</i> <i>(a) the current version of Licensee's constitution;</i> <i>(b) the Licensee's most recently published annual accounts and any report of the auditor on them, and</i> <i>(c) the Licensee's most recently published annual report'</i></p>	<p>Confirmed. No compliance issues identified.</p>
<p><b>FT2: Payment to NHS Improvement in respect of registration and related costs</b> <i>'the Licensee must pay to NHS Improvement a fee in respect of NHS Improvement's exercise of its functions'</i></p>	<p>Confirmed. No compliance issues identified.</p>
<p><b>FT3: Provision of information to advisory panel</b> <i>'The Licensee shall comply with any request for information or advice made of it'</i></p>	<p>Confirmed. No compliance issues identified.</p>
<p><b>FT4: NHS Foundation Trust governance arrangements</b> <i>The Licensee shall have regard to such guidance on good corporate governance as may be issued by NHS Improvement from time to time.</i></p> <p><i>The Licensee shall establish and implement:</i> <i>(a) effective board and committee structures;</i> <i>(b) clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees; and</i> <i>(c) clear reporting lines and accountabilities throughout its organisation</i></p> <p><i>The Licensee shall establish and effectively implement systems and/or processes:</i> <i>(a) to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;</i> <i>(b) for timely and effective scrutiny and oversight by the Board of the Licensee's operations;</i> <i>(c) to ensure compliance with health care standards binding on the Licensee including but not restricted to standards specified by the Secretary of State, the Care Quality Commission, the NHS Commissioning Board and statutory regulators of health care professions for effective financial decision-making, management and control (including but not restricted to appropriate systems and/or processes to ensure the Licensee's ability to continue as a going concern);</i> <i>(e) to obtain and disseminate accurate, comprehensive, timely and up to date information for Board</i></p>	<p>Confirmed. No compliance issues identified. Confirmed.</p> <p>Effective Board and Committee structures in place. Scheme of Delegation approved at Audit Committee and the Trust Board in October 2017.</p> <p>Compliance with condition confirmed through General Condition 6.</p>

<p><i>and Committee decision-making;</i>  <i>(f) to identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of its Licence;</i>  <i>(g) to generate and NHS Improvement delivery of business plans (including any changes to such plans) and to receive internal and where appropriate external assurance on such plans and their delivery; and</i>  <i>(h) to ensure compliance with all applicable legal requirements</i></p> <p><i>The Licensee shall ensure the existence and effective operation of systems to ensure that it has in place personnel on the Board, reporting to the Board and within the rest of the Licensee's organisation who are sufficient in number and appropriately qualified to ensure compliance with the Conditions of this Licence.</i></p> <p><i>The Licensee shall submit to NHS Improvement within three months of the end of each financial year:</i>  <i>(a) a corporate governance statement</i></p>	<p>Confirmed. Systems and processes in place to ensure appropriate staffing levels including WOD Committee established in 2013/14. Safer Staffing Framework approved at Trust Board in March 2014 and reported monthly as part of the Quality Report to Trust Board. Acuity Review submitted to Board every 6 months.</p> <p>Confirmed. As per deadline to be submitted by 30 June 2018.</p>
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## Appendix II NHS Improvement certifications

### General condition 6 - Systems for compliance with license conditions



Following a review for the purpose of paragraph 2(b) of licence condition G6, the Directors of the Licensee are satisfied, as the case may be that, in the Financial Year most recently ended, the Licensee took all such precautions as were necessary in order to comply with the conditions of the licence, any requirements imposed on it under the NHS Acts and have had regard to the NHS Constitution.

**AND**

The board declares that the Licensee continues to meet the criteria for holding a licence.

Confirmed

Confirmed