

TRUST BOARD
08 June 2023

AGENDA ITEM	20.1	
TITLE OF PAPER	NHS England self-certifications	
Confidential	NO	
Suitable for public access	YES	
PLEASE DETAIL BELOW THE OTHER SUB-COMMITTEE(S), MEETINGS THIS PAPER HAS BEEN VIEWED		
<u>STRATEGIC OBJECTIVE(S):</u>		
Quality Of Care	<input checked="" type="checkbox"/>	✓
People	<input checked="" type="checkbox"/>	✓
Modern Healthcare	<input checked="" type="checkbox"/>	✓
Digital	<input checked="" type="checkbox"/>	✓
Collaborate	<input checked="" type="checkbox"/>	✓
EXECUTIVE SUMMARY		
	<p>As part of the Annual Plan Review process 2022/23 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 July.</p> <p>It is no longer a requirement to submit the templates; NHSE retain the option each year of contacting a select number of Foundation Trusts to ask for evidence that they have self-certified; either by providing the completed documents or relevant Board minutes recording sign-off.</p>	
RECOMMENDATION:	Discuss and agree the certifications	
SPECIFIC ISSUES CHECKLIST:		
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.
REVIEWED BY	Corporate Affairs Manager/Director of Operational Finance
PRESENTED BY	Chief Executive/Chief Financial Officer
DATE	25 May 2023
BOARD ACTION	Approve

NHS England self-certifications 2022/23

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 System Oversight Framework 2022/23.

2 2022/23 Certifications

As part of the Annual Planning process for 2023/24 the Trust is required to self-certify by 31 May that it has taken all precautions to comply with the licence, NHS Acts and NHS Constitution.

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

We are also required to submit the following certifications by 28 July:

- 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 1st April 2013 the Trust's Terms of Authorisation with NHS England 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.

The Trust's approach to risk for the year 2022/23 was detailed in the Risk Management Strategy and sets out our systematic approach to achieving effective enterprise risk management strategically, operationally and culturally. We aim for all our staff to understand and act proactively so that we maximise our success going forward and minimise things going wrong for our patients, staff and stakeholders. Senior managers and Directors are trained in risk management on joining the organisation and subsequently in accordance with the Trust's Mandatory Training Policy.

As part of the Trust's approach to risk management each sub-board committee has agreed their risk appetite to be exercised in relation to the strategic objective for which it has oversight and is documented within the Board Assurance Framework (BAF) and is a standing item on Committee agendas. Each sub-board committee also reports bi-annually to the Audit & Risk Committee to give assurance around management of the strategic risks. The Board Assurance Framework provides the means of assuring that the Trust will achieve its strategic vision and mission and has oversight by the Audit & Risk Committee and is reviewed by the Committee on a quarterly basis.

The Trust has sought to learn and share good practice through rigorous assessment of the Corporate Risk Register and to cascade this information both to and from relevant Divisional teams through constructive challenge, training and support. Divisional risk management is through Divisional Boards and Governance Meetings with oversight and scrutiny by the Trust Executive Committee.

All Divisions monitor their quality and financial risks regularly within each divisional governance framework and are reviewed every two months at Risk Scrutiny Committee and high scoring risks are recorded on the Corporate Risk Register which is reviewed at the Trust Executive Committee each month. During 22/23 a programme of Divisional risk deep dives was instituted and will be undertaken annually going forward to support detailed oversight and scrutiny in addition to the existing governance framework.

A risk assessment matrix is used to ensure a consistent approach is taken to assessing and responding to risks identified; and each sub-board committee decide, taking into account the grading of each risk, whether it is appropriate to tolerate, transfer, terminate or treat the risk. The rating for each risk will be matched to a certain level of management within the organisation.

The wide visibility of the Corporate Risk 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 England certification

Appendix I

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

Licence Condition	Compliance confirmed
Section 1 – General Conditions	
G1: Provision of information <i>'the Licensee shall furnish to NHS England such information and documents, and shall prepare or procure and furnish to NHS England such reports, as NHS England may require for any of the purposes set out in section 96(2) of the 2012 Act'</i>	Confirmed. No compliance issues identified.
G2: Publication of information <i>'The Licensee shall comply with any direction from NHS England 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.
G3: Payment of fees to NHS England <i>'The Licensee shall pay fees to NHS England in each financial year of such amount as NHS England may determine'</i>	Confirmed. No compliance issues identified.
G4: Fit and proper persons <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.
G5: NHS England guidance <i>'the Licensee shall at all times have regard to guidance issued by NHS England'</i>	Confirmed. No compliance issues identified.
G6: Systems for compliance with licence conditions and related obligations	Confirmed. No compliance issues identified. Risk Management system in place throughout the Trust including Board Assurance Framework and Corporate Risk Register.
G7: Registration with the Care Quality Commission	<p>In January 2023 the CQC conducted an unannounced focused inspection at St Peter's Hospital as part of the national maternity inspection programme with a focus on the Safe and Well led Domains for our Maternity Service.</p> <p>The CQC published their Inspection Report on 29 March 2023 and we received an Inadequate rating for our maternity service; the overall rating for the Trust remains unchanged at 'good'.</p> <p>Providing safe, high quality care for our patients is our priority</p>

	<p>and the CQC recognised some areas of good practice which included our engagement with women and the community to plan and manage services.</p> <p>We take the concerns raised during the inspection extremely seriously. Following the inspection in January we have been taking urgent action to make significant improvements to the quality and safety of care provided.</p> <p>This includes:</p> <ul style="list-style-type: none"> • Increasing clinical staff in our maternity triage unit to care for women safely; • Extending the unit to improve the experience and dignity of those in our care and; • Taking action to ensure staff training compliance, and Infection Prevention and Control (IPC) across the service are improved. <p>We remain committed to giving both those using our maternity service and the CQC confidence in the quality and safety of our care. We have an action plan in place on the detailed actions for improvement and time frames and will be monitored via the Quality of Care Committee.</p> <p>The foundation trust is fully compliant with the registration requirements of the Care Quality Commission.</p>
<p>G8: Patient eligibility and selection criteria</p>	<p>Confirmed. There is an annual review of the contract with commissioners to agree eligibility criteria, in accordance with Department of Health guidance.</p>
<p>G9: Application of Section 5 (Continuity of Services)</p>	<p>Refer to Section 5 below.</p>
<p>Section 2 – Pricing</p>	

<p>P1: Recording of information <i>'the Licensee shall obtain, record and maintain sufficient information about the costs which it expends in the course of providing services'</i></p>	Confirmed. No compliance issues identified.
<p>P2: Provision of information <i>'the Licensee shall furnish to NHS England such information and documents, and shall prepare or procure and furnish to NHS England such reports, as NHS England may require for the purpose of performing its functions'</i></p>	Confirmed. No compliance issues identified.
<p>P3: Assurance report on submissions to NHS England <i>'If required in writing by NHS England the Licensee shall, as soon as reasonably practicable, obtain and submit to NHS England an assurance report in relation....to costing.'</i></p>	Confirmed. No compliance issues identified.
<p>P4: Compliance engagement concerning local tariff modifications <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 England'</i></p>	Confirmed. The Trust only provides health services priced in compliance with, or are determined in accordance with, the NHS National Payment Scheme.
<p>P5: Constructive engagement concerning local tariff modifications <i>'The Licensee shall engage constructively with Commissioners'</i></p>	Confirmed. The trust engages actively and constructively with its Commissioners.
Section 3 – Choice and competition	
<p>C1: The right of patients to make choices <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></p>	Confirmed. No compliance issues identified.
<p>C2: Competition oversight <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></p>	Confirmed. No compliance issues identified.
Section 4 – Integrated care	
<p>IC1: Provision of integrated care <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>	Confirmed. No compliance issues identified.
Section 5 – Continuity of Services	
<p>COS1: Continuing provision of Commissioner Requested Services <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>	Confirmed. No compliance issues identified.

<p>COS2: Restriction on the disposal of assets <i>'The Licensee shall establish, maintain and keep up to date, an asset register'</i> <i>'The Licensee shall furnish NHS England with such information as NHS England 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>COS3: Standards of corporate governance and financial management <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>Financial plan and profiling for 2023/24 approved as part of the Operating Plan submission. The 2023/24 financials are being monitored based on that submission and will be reported monthly to NHSI. There is monthly monitoring of performance, workforce, finance and BAF strategic risks at Modern Healthcare Committee.</p>
<p>COS4: Undertaking from the ultimate controller <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>COS5: Risk pool levy <i>'The Licensee shall pay to NHS England 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>COS6: Co-operation in the event of financial stress <i>'if NHS England 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 England may appoint to enter premises owned or controlled by the Licensee and co-operate with such persons as NHS England 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>COS7 Availability of resources <i>'The Licensee shall at all times act in a manner calculated to secure that it has, or has access to, the Required Resources'</i></p>	<p>Confirmed. The Trust reported a deficit position for 2022/23. Whilst the Trust is currently forecasting a deficit plan for 2023/24, it is working with system partners to ensure that the Trust and system as a whole returns to financial balance in future years.</p>
<p>Section 6: NHS Foundation Trust conditions</p>	
<p>FT1: Information to update the register of NHS foundation trusts <i>'The Licensee shall ensure that NHS England 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,</i></p>	<p>Confirmed. No compliance issues identified.</p>

<p>and (c) the Licensee's most recently published annual report'</p>	
<p>FT2: Payment to NHS England in respect of registration and related costs 'the Licensee must pay to NHS England a fee in respect of NHS England's exercise of its functions'</p>	<p>Confirmed. No compliance issues identified.</p>
<p>FT3: Provision of information to advisory panel 'The Licensee shall comply with any request for information or advice made of it'</p>	<p>Confirmed. No compliance issues identified.</p>
<p>FT4: NHS Foundation Trust governance arrangements <i>The Licensee shall have regard to such guidance on good corporate governance as may be issued by NHS England from time to time.</i></p> <p><i>The Licensee shall establish and implement:</i></p> <ul style="list-style-type: none"> (a) effective board and committee structures; (b) clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees; and (c) clear reporting lines and accountabilities throughout its organisation <p><i>The Licensee shall establish and effectively implement systems and/or processes:</i></p> <ul style="list-style-type: none"> (a) to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively; (b) for timely and effective scrutiny and oversight by the Board of the Licensee's operations; (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); (e) to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making; (f) to identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of its Licence; (g) to generate and NHS England 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 (h) to ensure compliance with all applicable legal requirements <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</i></p>	<p>Confirmed. No compliance issues identified. Confirmed.</p> <p>Effective Board and Committee structures in place. Scheme of Delegation approved at Audit & Risk Committee and subsequently at Trust Board in February 2023.</p> <p>Compliance with condition confirmed through General Condition 6.</p> <p>Confirmed. Systems and processes in place to ensure appropriate staffing levels including People Committee. In compliance with the safer staffing framework requirement; safe staffing was reported bi-monthly as part of the Workforce Report to the People Committee and Safe Staffing and Review of Adult</p>

<p><i>Conditions of this Licence.</i></p> <p><i>The Licensee shall submit to NHS England within three months of the end of each financial year:</i></p> <p><i>(a) a corporate governance statement</i></p>	<p>Ward Nursing Establishments biannual report.</p> <p>Confirmed. To be submitted to Board by 28 July 2023.</p>
--	---

Appendix II NHS England 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.

Confirmed

AND

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

Confirmed