

TRUST BOARD
29th May 2014

TITLE	Monitor self-certifications 2014/15
EXECUTIVE SUMMARY	<p>As part of the Annual Plan Review process 2014/15 the Board are required to submit two self-certification documents to Monitor. This paper details the first of these certifications which is due by 31st May.</p> <p>The second certification is due alongside the strategic plan by 30th June 2014.</p>
BOARD ASSURANCE (RISK)/ IMPLICATIONS	<p>Submission of the Annual Plan and associated certifications is a fundamental principle of the Trust's Licence.</p> <p>The Board needs to be confident that the certifications are accurate and underpinned by robust evidence.</p>
LINK TO STRATEGIC OBJECTIVE/BAF	Links to all Strategic Objectives.
STAKEHOLDER/ PATIENT IMPACT AND VIEWS	Not relevant
EQUALITY AND DIVERSITY ISSUES	None known
LEGAL ISSUES	The Health and Social Care Act 2012 requires the Trust to submit its Annual Plan to the regulator.
The Board is asked to:	Discuss and agree the certifications.
Submitted by:	George Roe, Head of Corporate Affairs
Date:	22 nd May 2014
Decision:	For Approval

Monitor self-certifications 2014/15

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 Monitor Licence; and
- 2) Compliance with the requirements of Monitor's *Risk Assessment Framework*.

2 2014/15 Certifications

As part of the Annual Planning process for 2014/15 the Trust are required to submit the following certifications to Monitor by 31st May:

- Licence General Condition 6 (systems for compliance with Licence conditions); and
- Continuity of Services Condition 7 – Availability of Resources.

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 31st May certifications

3.1 Licence General Condition 6 (statement 1)

On 1st April 2013 the Trust's Terms of Authorisation with Monitor 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 are 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 **Quality, Safety and Risk Management Strategy**. This is a five year strategy and was first implemented in 2012. The Strategy was devised in early 2012 following an extensive review of the risk management systems in place and approved by the Trust Board in May 2012. In March 2014 the Integrated Governance and Assurance Committee (IGAC) reviewed progress with the Strategy and discussed the focus for 2014/15. This was reported to Trust Board as part of the IGAC report for the 1st May meeting.
- the **Board Assurance Framework** which is reviewed and challenged at IGAC and Trust Board on a quarterly basis; and
- the **Trust Risk Register** with quarterly review of the risks and actions to mitigate at the Risk Scrutiny Committee, IGAC, Trust Executive Committee and Trust Board. The wide visibility of this Register allows 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 or governors of the Trust must meet Monitor's fit and proper test.

For the purposes of the Monitor Licence someone who is not a fit and proper person would come under the following categories:

- be an undischarged bankrupt;
- have undischarged arrangements with creditors;
- 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 this criteria as it is registered with the CQC and its directors and governors meet the 'fit and proper' test.

3.2 Continuity of Services Condition 7 – Availability of Resources

The Trust Board are required to certify that the Trust has the required resources for the next 12 months.

The Finance Committee discussed and approved the revenue and capital budget for the years 2014/15-2015/16 on 19th March 2014. The budget included a forecast

surplus of £1.5m in 2014/15 and £0.2m in 2015/16 with indicative quarterly and annual Continuity of Service Risk Ratings for 2014/15 and 2015/16 of no lower than '3' (out of 4) in any quarter or year-end.

The revenue and capital budget for the years 2014/15-2015/16 was also approved by the Trust Board on 27th March 2014.

4 Recommendation

The Board is recommended to confirm self-certification against the requirements of General Condition 6 and 7 of the Licence.

Enc.

Appendix I - NHS Provider Licence: Checklist of Compliance
Appendix II – Monitor certifications

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 Monitor such information and documents, and shall prepare or procure and furnish to Monitor such reports, as Monitor 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 Monitor 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 Monitor <i>'The Licensee shall pay fees to Monitor in each financial year of such amount as Monitor 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: Monitor guidance <i>'the Licensee shall at all times have regard to guidance issued by Monitor'</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 Trust Risk Register.
G7: Registration with the Care Quality Commission	Confirmed. The Trust is registered, without conditions, with the Care Quality Commission. An internal assurance process is in place to minimise the risk of non-compliance with Essential Standards of Quality and Safety.
G8: Patient eligibility and selection criteria	Confirmed. There is an annual review of the contract with commissioners to agree eligibility criteria, in accordance with Department of Health guidance.
G9: Application of Section 5 (Continuity of Services)	Refer to Section 5 below.
Section 2 – Pricing	
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>	Confirmed. No compliance issues identified.

<p>P2: Provision of information <i>'the Licensee shall furnish to Monitor such information and documents, and shall prepare or procure and furnish to Monitor such reports, as Monitor may require for the purpose of performing its functions'</i></p>	Confirmed. No compliance issues identified.
<p>P3: Assurance report on submissions to monitor <i>'If required in writing by Monitor the Licensee shall, as soon as reasonably practicable, obtain and submit to Monitor 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 Monitor'</i></p>	Confirmed. The Trust only provides health services priced using the National Tariff.
<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 Monitor with such information as Monitor may request relating to any proposal by the Licensee to dispose of, or relinquish control over, any relevant asset'</i></p>	Confirmed. Asset register maintained.
<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></p>	Assessment of Trust position against Monitor's Code of Governance presented and approved at Audit Committee in May 2014. No areas of non-compliance identified.

<p>(a) suitable for a provider of the Commissioner Requested Services provided by the Licensee, and (b) providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern'</p>	<p>Robust financial plan and quarterly profile that is approved as part of the two year Operating Plan submission. Monthly monitoring of performance and risks at Finance Committee.</p>
<p>COS4: Undertaking from the ultimate controller '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'</p>	<p>Not applicable (relates to non-FT whose ultimate controller may be a separate legal organisation).</p>
<p>COS5: Risk pool levy 'The Licensee shall pay to Monitor any sums required to be paid in consequence of any requirement imposed on providers...by way of levy'</p>	<p>Confirmed. No compliance issues identified.</p>
<p>COS6: Co-operation in the event of financial stress 'if Monitor 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 Monitor may direct to Commissioners, allow such persons as Monitor may appoint to enter premises owned or controlled by the Licensee and co-operate with such persons as Monitor may appoint to assist in the management of the Licensee's affairs, business and property'</p>	<p>Confirmed. No compliance issues identified.</p>
<p>COS7 Availability of resources 'The Licensee shall at all times act in a manner calculated to secure that it has, or has access to, the Required Resources'</p>	<p>Confirmed. Robust plan and quarterly profile that is approved as part of the Operating Plan submission to Monitor. The plan delivers forecast surplus of £1.5m after payment of the PDC Dividend. Forecast positive cash balance at 31st March 2015.</p>
Section 6: NHS Foundation Trust conditions	
<p>FT1: Information to update the register of NHS foundation trusts 'The Licensee shall ensure that Monitor has available to it written and electronic copies of the following documents: (a) the current version of Licensee's constitution; (b) the Licensee's most recently published annual accounts and any report of the auditor on them, and (c) the Licensee's most recently published annual report'</p>	<p>Confirmed. No compliance issues identified.</p>
<p>FT2: Payment to Monitor in respect of registration and related costs 'the Licensee must pay to Monitor a fee in respect of Monitor'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 The Licensee shall have regard to such guidance on good corporate governance as may be issued by Monitor from time to time. The Licensee shall establish and implement: (a) effective board and committee structures;</p>	<p>Confirmed. No compliance issues identified. Confirmed. Effective Board and Committee structures in place with new</p>

<p><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></p> <p><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></p> <p><i>(a) to ensure compliance with the Licensee’s duty to operate efficiently, economically and effectively;</i></p> <p><i>(b) for timely and effective scrutiny and oversight by the Board of the Licensee’s operations;</i></p> <p><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></p> <p><i>(e) to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making;</i></p> <p><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></p> <p><i>(g) to generate and monitor 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></p> <p><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 Monitor within three months of the end of each financial year:</i></p> <p><i>(a) a corporate governance statement</i></p>	<p>WOD Committee introduced in 2013/14. Scheme of Delegation approved at Audit Committee in May 2014.</p> <p>Compliance with condition confirmed through General Condition 6.</p> <p>Confirmed. Systems and processes in place to ensure appropriate staffing levels including new WOD Committee established in 2013/14 and Temporary Staffing Board. Safer Staffing Framework approved at Trust Board in March 2014. Reporting against this Framework will be reported regularly to Trust Board and WOD Committee.</p> <p>Confirmed. Part of Strategic Plan submission by 30 June 2014.</p>
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**Appendix II
Monitor 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

Continuity of services condition 7 - Availability of Resources

EITHER:

After making enquiries the Directors of the Licensee have a reasonable expectation that the Licensee will have the Required Resources available to it after taking account distributions which might reasonably be expected to be declared or paid for the period of 12 months referred to in this certificate.

Confirmed

OR

After making enquiries the Directors of the Licensee have a reasonable expectation, subject to what is explained below, that the Licensee will have the Required Resources available to it after taking into account in particular (but without limitation) any distribution which might reasonably be expected to be declared or paid for the period of 12 months referred to in this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to provide Commissioner Requested Services.

N/a

OR

In the opinion of the Directors of the Licensee, the Licensee will not have the Required Resources available to it for the period of 12 months referred to in this certificate.

N/a