

Meeting Title	Board of Directors		
Date	27 May 2020	Agenda item	B.o.5.20.28

Self-certification with regard to the Provider Licence

Presented by	Tanya Claridge, Director of Governance and Corporate Affairs	
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Lead Director	John Holden, Director of Strategy and Integration	
Purpose of the paper	To provide the proposed content of the self-certification of the Provider Licence to the Board of Directors for approval.	
Key control	Board Assurance Framework	
Action required	For approval	
Previously discussed at/ informed by		
Previously approved at:	Committee/Group	Date
	Executive Management Team	18 May 2020
Key Options, Issues and Risks		
NHS Foundation Trusts are required to self-certify annually whether or not they have complied with the conditions of the NHS provider licence, have the required resources available if the Trust provides commissioner requested services and, have complied with governance requirements. The Trust has to self-certify in a number of categories with regard to the Provider Licence.		
Analysis		
<p>This paper provides a summary of the Provider Licence, the contextual information and sources of assurance for the Board of Directors to review and confirm. These documents are presented as follows:</p> <ul style="list-style-type: none">• The Provider Licence Conditions (attached at Appendix 1)• BTHFT compliance with the Provider Licence Conditions (attached at Appendix 2).• Certification on Training of Governors in accordance with s151(5) of the Health and Social Care Act 2012 (attached at Appendix 3)• Statements required to be confirmed by Board and published by the Trust (Appendix 4) <p>The Executive team asks the Board to note that it is satisfied with the content and completeness of the assurance associated with the self-certification of our compliance with the NHS Provider Licence (Appendix 2) and, the certification provided with regard to the Training of Governors (Appendix 3).</p>		
Recommendation		
<p>The Board is asked to:</p> <ol style="list-style-type: none">1. Approve the self-certifications made against all the Provider Licence Conditions as presented in appendix 22. Confirms the following declarations (as presented in appendix 4) <ul style="list-style-type: none">• Condition GS6(3) Providers must certify that their Board has taken all precautions necessary to comply with the licence, NHS Act and NHS Constitution. From the assurance provided the Trust Board of Directors is required to certify that it “is satisfied that.		

Meeting Title	Board of Directors		
Date	27 May 2020	Agenda item	B.o.5.20.28

during the financial year most recently ended, it has taken all precautions necessary to comply with the licence, NHS Act and NHS Constitution.”

- **Conditions to support continuity of service (CoS7)**

From the assurance provided the Trust Board of Directors is required to certify that it is satisfied that, during the financial year most recently ended, the Trust has acted in a way that secures access to the resources needed to operate Commissioner Requested Services.

- **Section 151(5) of the Health and Social Care Act 2012 Training of Governors**

From the assurance provided the Trust Board is required to certify that it “is satisfied that, during the financial year most recently ended, the Trust has provided necessary training to its governors, as required by S151(5) of the Health and Social Care Act, to ensure they are equipped with the skills and knowledge they need to undertake their role.”

Risk assessment						
Strategic Objective	Appetite (G)					
	Avoid	Minimal	Cautious	Open	Seek	Mature
To provide outstanding care for patients			g			
To deliver our financial plan and key performance targets			g			
To be in the top 20% of NHS employers					g	
To be a continually learning organisation				g		
To collaborate effectively with local and regional partners					g	
The level of risk against each objective should be indicated. Where more than one option is available the level of risk of each option against each element should be indicated by numbering each option and showing numbers in the boxes.	Low		Moderate	High	Significant	
	Risk (*)					
Explanation of variance from Board of Directors Agreed General risk appetite (G)						

Benchmarking implications (see section 4 for details)	Yes	No	N/A
Is there Model Hospital data relevant to the content of this paper?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Is there any other national benchmarking data relevant to the content of this paper?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Is the Trust an outlier (positive or negative) for any benchmarking data relevant to the content of this paper?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Meeting Title	Board of Directors		
Date	27 May 2020	Agenda item	B.o.5.20.28

Risk Implications (see section 5 for details)	Yes	No
Corporate Risk register and/or Board Assurance Framework Amendments	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Quality implications	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Resource implications	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Legal/regulatory implications	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Diversity and Inclusion implications	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Performance implications	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Regulation, Legislation and Compliance relevance
NHS Improvement: (please tick those that are relevant) <input checked="" type="checkbox"/> Risk Assessment Framework <input checked="" type="checkbox"/> Quality Governance Framework <input checked="" type="checkbox"/> Code of Governance <input checked="" type="checkbox"/> Annual Reporting Manual
Care Quality Commission Domain: Well Led
Care Quality Commission Fundamental Standard: Good Governance
NHS Improvement Effective Use of Resources
Other (please state):

Relevance to other Board of Director's Committee: (please select all that apply)					
Workforce	Quality	Finance & Performance	Partnerships	Major Projects	Other (please state)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

1 PURPOSE/ AIM

The purpose of this paper is to provide the proposed content of the self-certification of the Provider Licence to the Board of Directors for review and approval.

2 BACKGROUND/CONTEXT

NHS Foundation Trusts are required to self-certify annually whether or not they have complied with the conditions of the NHS provider licence (which itself includes requirements to comply with the National Health Service Act 2006, the Health and Social Care Act 2008, the Health Act 2009, and the Health and Social Care Act 2012, and have regard to the NHS Constitution). The Trust is also required to self-certify that it has the required resources available if providing Commissioner Requested Services and, that it has complied with governance requirements.

Meeting Title	Board of Directors		
Date	27 May 2020	Agenda item	B.o.5.20.28

In addition, NHS Improvement requires the Trust to make a number of governance declarations which are certified by the Board of Directors. These declarations relate to the following conditions of the licence:

1. **Condition GS6(3)** Providers must certify that their Board has taken all precautions necessary to comply with the licence, NHS Act and NHS Constitution. The Foundation Trust is specifically required to publish the declaration for this condition.
2. **Condition FT4(8)** Providers must certify compliance with required governance standards and objectives.
3. **Section 151(5) of the Health and Social Care Act 2012 Training of Governors**
Providers must review whether their governors have received enough training and guidance to carry out their roles. It is up to providers how they do this.
4. **Conditions to support continuity of service (CoS7):** allows NHS Improvement to assess whether there is a risk to services and to set out how services will be protected if a provider gets into financial difficulty

NHS Improvement does not require any formal submission to NHSI however, they have stated that they will carry out spot checks to ensure that Boards have self-assessed and published details of their self-assessment.

3 ASSURANCE

The Provider Licence is split into six sections, which apply to different types of providers:

1. **General conditions (G):** general requirements applying to all licensed providers.
2. **Obligations about pricing (F):** obliges providers to record pricing information, check data for accuracy and, where required, charge commissioners in line with tariff. Applies to all licensed providers who provide services covered by national tariff.
3. **Obligations around choice and competition (C):** obliges providers to help patients make the right choice of provider, where appropriate, and prohibits anti-competitive behaviour where against patients' interests. This applies to all licensed providers.
4. **Obligations to enable integrated care (IC):** enables the provision of integrated services and applies to all licensed providers.
5. **Conditions to support continuity of service (CoS):** allows NHS Improvement to assess whether there is a risk to services and to set out how services will be protected if a provider gets into financial difficulty. This applies to providers of Commissioner Requested Services (CRS) only.
6. **Governance licence conditions for Foundation Trusts (FT):** provides obligations for Foundation Trusts around appropriate standards of governance. These conditions apply to Foundation Trusts only.

Meeting Title	Board of Directors		
Date	27 May 2020	Agenda item	B.o.5.20.28

The attached paper (Appendix 1: NHS Provider Licence Standard Conditions) lists all the above conditions in full detail and is provided for reference.

The attached paper (Appendix 2: Self Certification – NHS Provider Licence Conditions) provides a portfolio of the evidence to enable Directors to consider to support completion of the declarations required that the Trust meets the conditions of its Licence and identifies potential areas of risk proportionately and appropriately.

The attached paper (Appendix 3: Governors Training) provides assurance that the Foundation Trust's Governors have received training and guidance to carry out their roles as required in Section 151(5) of the Health and Social Care Act 2012.

The Board of Directors is asked to note that it is required to provide a specific declaration with regard to Condition FT4(8) of the provider licence in the form of a 'Corporate Governance Statement' as prescribed within appendix F of the 'Monitor Risk Assessment Framework'. To support the self-certification against the condition FT4(8) the Board of Directors will be required to certify that it is satisfied with the risks and mitigating actions against each area listed. The Corporate Governance Statement is not presented here for review due to the interdependencies with regard to statements confirmed within the Annual Report and the Annual Governance Statement 2019/20. The Corporate Governance Statement will be presented to the Executives for review and sign-off on 3 June and to the AAC on 10 June. The finalised statement will be presented to the Board of Directors for approval on 18 June 2020.

The attached paper (Appendix 4: Statements to be confirmed by Board) indicates those statements that the Board is required to confirm following its review of the information presented with regard to all self-certifications which are required to be published at the end of May 2020 and June 2020.

The Executive team confirms to the Board of Directors that it is satisfied with the content and completeness of the assurance associated with the self-certification of our compliance with the NHS Provider Licence (Appendix 2) and, the certification provided with regard to the Training of Governors (Appendix 3).

4 BENCHMARKING IMPLICATIONS

Not relevant to the contents of this paper.

5 RISK ASSESSMENT

There have been no risks identified in relation to compliance with the Foundation Trust's licensing conditions.

6 RECOMMENDATIONS

The Board is asked to:

- 3. Approve the self-certifications made against all the Provider Licence Conditions as presented in appendix 2**
- 4. Confirms the following declarations (as presented in appendix 4)**

Meeting Title	Board of Directors		
Date	27 May 2020	Agenda item	B.o.5.20.28

- Condition GS6(3) Providers must certify that their Board has taken all precautions necessary to comply with the licence, NHS Act and NHS Constitution.**
 From the assurance provided the Trust Board of Directors is required to certify that it “is satisfied that, during the financial year most recently ended, it has taken all precautions necessary to comply with the licence, NHS Act and NHS Constitution.”
- Conditions to support continuity of service (CoS7)**
 From the assurance provided the Trust Board of Directors is required to certify that it is satisfied that, during the financial year most recently ended, the Trust has acted in a way that secures access to the resources needed to operate Commissioner Requested Services.
- Section 151(5) of the Health and Social Care Act 2012 Training of Governors**
 From the assurance provided the Trust Board is required to certify that it “is satisfied that, during the financial year most recently ended, the Trust has provided necessary training to its governors, as required by S151(5) of the Health and Social Care Act, to ensure they are equipped with the skills and knowledge they need to undertake their role.”

7	Appendices
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Appendix 1: NHS Provider Licence Conditions

Appendix 2: BTHFT compliance with the Provider Licence Conditions

Appendix 3: Certification on Training of Governors in accordance with s151(5) of the Health and Social Care Act 2012

Appendix 4: Statements to be confirmed by Board