

Meeting Title	Board of Directors		
Date	11 May 2023	Agenda item	Bo.5.23.21a

Self-certification with regard to the Provider Licence and Review of Compliance with the NHS Foundation Trust Code of Governance

Presented by	John Holden, Director of Strategy and Integration		
Author	Jacqui Maurice, Head of Corporate Governance		
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 and the review of compliance with the NHS FT Code of Governance for approval.		
Key control	Board Assurance Framework		
Action required	For approval		
Previously discussed at/informed by	Executive Team Meeting (ETM) Audit Committee (AC)		
Previously approved at:	Committee/Group	Date	
	ETM	3 April 2023	
	AC	18 April 2023	

Key Options, Issues and Risks

Self Certification with regard to the Provider Licence

NHS Foundation Trusts are required to self-certify annually whether or not they have complied with the conditions of the NHS provider licence.

In addition, NHS England (NHSE) 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:

- 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.
- Condition FT4(8):** Providers must certify compliance with required governance standards and objectives.
- 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.
- Conditions to support continuity of service (CoS7):** Allows NHSE 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.

As reported to the Board of Directors in January 2023, the [Guidance on Good Governance and Collaboration](#) was enacted by NHSE in October 2022. Therefore the Trust is also required to review its compliance in relation to this guidance for 2022/23. The key characteristics and illustrative minimum behaviours and KLOEs have been added to the template the Trust has in place for seeking compliance with the Provider Licence (under condition FT4). The Executive Lead is identified as the Director of Strategy and Integration.

This paper provides a summary of the Provider Licence, the contextual information and sources of

Meeting Title	Board of Directors		
Date	11 May 2023	Agenda item	Bo.5.23.21a

assurance which the Executive Directors reviewed and confirmed on 3 April 2023. These documents are presented as follows:

- BTHFT self-assessment of compliance with the Provider Licence Conditions (including the information required with regard to Good Governance and Collaboration) ([Appendix 1](#))
- Certification on Training of Governors in accordance with s151(5) of the Health and Social Care Act 2012 ([Appendix 2](#))
- Statements required to be confirmed by the Board and published by the Trust ([Appendix 3](#))

The Board will be required to provide a specific declaration with regard to Condition FT4(8) of the provider licence in the form of a '**Corporate Governance Statement**'. To support the self-certification against Condition FT4(8), the Board of Directors will be required to certify that they are satisfied with the risks and mitigating actions against each area listed. The Corporate Governance Statement was **not** presented for Executive review due to the interdependencies with regard to statements confirmed within the Annual Report and the Annual Governance Statement 2022/23. The Corporate Governance Statement will be presented to ETM for review and sign-off on 12 June 2023, and to the Audit Committee on 22 June 2023. The finalised statement will be presented to Board for approval on 27 June 2023.

NHS England (NHSE) has now launched an updated NHS provider licence, together with their response to the recent consultation. The new provider licence applies from 1 April 2023 and aims to: support effective system working; enhance the oversight of key services provided by the independent sector; address climate change; and make a number of necessary technical amendments.

Compliance with the NHS Foundation Trust Code of Governance

The NHS Foundation Trust Code of Governance (the Code) was first published in 2006, revised in 2010, and further updated in 2014 as a result of the Health and Social Care Act 2012.

The Code contains a relatively small number of statutory requirements, which the Foundation Trust must comply with. These are highlighted as such in the attached document. However, in general, the Code provides non-mandatory best practice advice. If the Foundation Trust is non-compliant then this does not constitute a breach of the Provider Licence and, for the majority of provisions, a Foundation Trust is simply required to explain any deviation from the Code within the Annual Report.

A review of compliance with each provision has been undertaken by the Corporate Governance Team, and a summary of the findings is attached in Appendix 4. There are no areas of non-compliance being reported.

From 1 April 2023 the new Code of Governance for NHS Provider Trusts will replace the NHS Foundation Trust Code of Governance as reported at the Board of Directors on 19 January 2023.

The Audit Committee received and reviewed the document on 18 April 2023 and confirmed it was assured by the report.

Recommendations

It is recommended that the Board of Directors:

1. Approves the self-certification against the conditions provided by the Trust in relation to the Provider Licence Conditions ([Appendix 1](#)).

Meeting Title	Board of Directors		
Date	11 May 2023	Agenda item	Bo.5.23.21a

2. Confirms the following declarations:

- **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)**

“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 (as described in the text box below) which may cast doubt on the ability of the Licensee to provide Commissioner Requested Services.”

NB This declaration depends on the outcome of the financial planning process, therefore further information will be added in relation to the relevant factors once that process is complete.

- **Section 151(5) of the Health and Social Care Act 2012 Training of Governors (Appendix 3)**

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.”

3. Confirms its approval of the compliance statements with regard to each provision within the Code of Governance.

Meeting Title	Board of Directors		
Date	11 May 2023	Agenda item	Bo.5.23.21a

Risk assessment						
Strategic Objective	Appetite (G)					
	Avoid	Minimal	Cautious	Open	Seek	Mature
To provide outstanding care for our patients, delivered with kindness			g			
To deliver our financial plan and key performance targets			g			
To be one of the best NHS employers, prioritising the health and wellbeing of our people and embracing equality, diversity and inclusion					g	
To be a continually learning organisation and recognised as leaders in research, education and innovation				g		
To collaborate effectively with local and regional partners, to reduce health inequalities and achieve shared goals					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)						

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 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 England: (please tick those that are relevant)
<input type="checkbox"/> Risk Assessment Framework <input 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 Academy: (please select all that apply)			
People	Quality & Patient Safety	Finance & Performance	Other (please state)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>