

Meeting Title	Board of Directors		
Date	21 September 2023	Agenda item	Bo.9.23.21

## Compliance with Code of Governance for NHS Provider Trusts and amendments to the NHS Provider Licence and Enforcement Guidance

Presented by	Laura Parsons, Associate Director of Corporate Governance/Board Secretary		
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Lead Director	Matthew Horner, Director of Finance		
Purpose of the paper	To provide an update on the actions required by the Trust to ensure compliance with the Code of Governance for NHS Provider Trusts and to confirm the amendments to the NHS Provider Licence and Enforcement Guidance effective from April 2023.		
Key control	N/A		
Action required	For information		
Previously discussed at/informed by	Executive Team Meeting: November 2022 and September 2023 Board of Directors: January 2023		
Previously approved at:	Committee/Group	Date	
	N/A		

### 1. Compliance with Code of Governance for NHS Provider Trusts

In January 2023 the Board received a detailed paper which included reference to the newly published [Code of Governance for NHS Provider Trusts](#) (effective from 1 April 2023). The Board noted the assessment that had been undertaken by the Trust with regard to compliance with the new code and agreed a series of actions identified to address those areas where partial compliance had been identified. The Board agreed to receive an update on progress against the actions identified. The update is attached at Appendix 1. Three actions remain open; the target completion dates are outlined in the plan.

### 2. Amendments to NHS Provider Licence

Following a consultation process, the revised [NHS Provider Licence](#) was published by NHS England on 31 March 2023 and became effective immediately from 1 April 2023.

The NHS Provider Licence forms part of the oversight arrangements for the NHS. It sets out conditions that providers of NHS-funded healthcare services in England must meet to help ensure that the health sector works for the benefit of patients, now and in the future. All NHS foundation trusts and NHS trusts are required to hold a licence.

The need to change the licence has arisen from changes to the statutory and operating environment, including a shift of emphasis from economic regulation and competition to system working and collaboration. The proposed changes bring the licence up to date, reflecting the new legislation (Health and Care Act 2022) and supporting providers to work effectively as part of integrated care systems (ICSs).

#### Key Changes

- **Reflecting expectations around collaboration and co-operation** - through a new licence condition outlining expectations of how providers should work together across the newly formed ICSs to deliver core system objectives.

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- **Reflecting the Triple aim and health inequalities** - through a new licence condition that mirrors the expectations set out in the 2022 Act, for providers to consider the Triple Aim and health inequalities in their work.
- **Reflecting digital obligations to enable system working and promote digital maturity** - through a new licence condition and a separate amendment to the governance conditions.
- **Reframing integrated care as a positive obligation to integrate service provision and reduce health inequalities** - to encourage providers to actively participate in service integration to improve the quality of health care services, provide place-based integrated care, and reduce inequalities of access and outcomes.
- **Reflecting the importance of personalised care** – by expanding the existing personalised care and patient choice condition to require providers to support the implementation and delivery of personalised care by having regard for relevant guidance and legislation, offering people control to manage their own health and wellbeing.
- **Removal of the competition condition** - to reflect a shift in healthcare priorities from competition to collaboration and the fact that NHS England does not have statutory functions relating to competition oversight.
- **Enhancing the oversight of key services provided by the independent sector by:**
  - Broadening the range of providers where continuity of services (CoS) conditions will apply to include hard to replace providers.
  - Expanding the scope of CoS conditions to include quality governance standards to enhance risk mitigation and co-operation with NHSE in the event that an independent sector provider is experiencing serious quality issues which threaten service delivery.
- **Tackling climate change and delivering Net Zero** – by including a new requirement to ensure providers have regard to guidance on tackling climate change.
- **Technical amendments:**
  - Modifying costing conditions and separating them from the other pricing conditions.
  - Amending the pricing conditions to reference the National payment scheme and removing the condition related to local modifications.
  - Streamlining reporting requirements – by removing requirements around self-certification for NHS trusts and FTs.
  - Applying existing core conditions on all licensees to NHS trusts and updating language to reflect the current statutory framework.
  - Removing obsolete conditions.
  - Amending the Fit and Proper Person condition – in line with the Health and Social Care Act 2008 (Regulated Activities) Regs 2014 and as per the statutory consultation conducted in 2021.

The Executive Team has agreed that, rather than wait to assess the Trust's position against the new licence conditions at year end, a proactive review will be undertaken to confirm our position and our plans in relation to the licence conditions, including digital and net zero. This will be considered by the Executive Team and an update, together with next steps, will be provided to the Board in November.

### 3. Amendments to the Enforcement Guidance

NHS England has also issued revised and expanded [enforcement guidance](#) to ensure alignment with new legislation and its new responsibilities arising from the 2022 Health and Care Act.

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The NHS enforcement guidance was first introduced in 2013 alongside the NHS provider licence. The changes reflect new legislative, statutory and policy requirements, including NHSE's statutory accountability for the oversight of both integrated care boards (ICBs) and NHS providers.

The revised enforcement guidance describes NHSE's enforcement powers and approach in relation to ICBs, NHS trusts, foundation trusts, licensed independent providers of NHS services, and licensed NHS controlled providers. It explains the regulatory and statutory processes in the event of enforcement action and subsequent rights of appeal.

Changes to the guidance:

- Introduction of a two-tier approach to ICB enforcement, which ensures parity with NHS provider organisations. This means that undertakings would be used where there is reasonable suspicion of ICB failure to discharge its functions, while directions would follow where NHSE is satisfied there is a failure.
- Revisions to the language to reflect the change from Monitor to NHS England as the regulatory body for NHS foundation trusts.
- The extension of the provider licence to NHS trusts.

What hasn't changed:

- NHSE had planned to introduce new enforcement powers in relation to patient choice but, as changes to the regulations have not yet been made, the current procurement, patient choice and competition regulations remain applicable.
- NHSE's enforcement powers in relation to providers have not changed. The revised guidance, however, is aligned with the principles of the oversight framework, which state that NHSE will be working with and through ICBs wherever possible to encourage local resolution before escalation.

### Recommendations

The Board is asked to:

- Review and note the assessment of compliance with the Code of Governance or NHS Provider Trusts at Appendix 1;
- Note the update provided with regard to the amendments to the NHS Provider Licence and the Enforcement Guidance; and
- Note the plan to undertake a proactive review against the new licence conditions and provide an update and next steps at the next Board meeting in November.

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Risk assessment						
Strategic Objective	Appetite (G)					
	Avoid	Minimal	Cautious	Open	Seek	Mature
To provide outstanding care for 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)						

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 type="checkbox"/>	<input checked="" type="checkbox"/>
Is there any other national benchmarking data relevant to the content of this paper?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input checked="" type="checkbox"/>

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 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
<b>NHS England: (please tick those that are relevant)</b> <input type="checkbox"/> Risk Assessment Framework <input type="checkbox"/> Quality Governance Framework <input checked="" type="checkbox"/> Code of Governance <input type="checkbox"/> Annual Reporting Manual
<b>Care Quality Commission Domain: Well Led</b>
<b>Care Quality Commission Fundamental Standard: Good Governance</b>
<b>Other (please state):</b>

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"/>