



Board of Directors
Self-Certifications 2019/20

1. Introduction

- 1.1. Consistent with the previous year the Board of Directors is required to approve self-certifications as part of our year-end requirements.
- 1.2. The certification in relation to General Condition 6 of the NHS provider licence asks the Board to confirm that all reasonable precautions against the risk of failure to comply with the licence and other important requirements were taken during 2019/20. Views should therefore be informed by the work of the Audit Committee throughout 2019/20 as well as the conclusions drawn in the Annual Governance Statement. This certification requires sign-off by the Board prior to 31 May 2020.
- 1.3. The certification in relation to Continuity of Service 7(3) of the NHS provider licence asks the Board to confirm that the Trust has a reasonable expectation that required resources will be available to deliver Commissioner Requested Services (CRS). This certification requires sign-off by the Board prior to 31 May 2020.
- 1.4. Consistent with the approach taken last year, the Trust does not have to submit its self-certifications to NHS England and Improvement, but must be able to demonstrate and evidence a robust internal sign-off process.
- 1.5. The draft self-certifications were presented to the Board of Directors at its meeting on 27 May 2020 and this paper summarised the final agreed self-certification responses.

2. General Condition 6

- 2.1. The self-certification in relation to General Condition 6 requires the Board to confirm compliance with the following statement:

Declarations required by General condition 6 and Continuity of Service condition 7 of the NHS provider licence

The board are required to respond "Confirmed" or "Not confirmed" to the following statements (please select 'not confirmed' if confirming another option). Explanatory information should be provided where required.

1 & 2 General condition 6 - Systems for compliance with license conditions (FTs and NHS trusts)

- 1 Following a review for the purpose of paragraph 2(b) of licence condition G6, the Directors of the Licensee are satisfied 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

OK

- 2.2. For clarity and to assist in the Board's assessment of the proposed responses, General Condition 6 has been reproduced below:

1. The Licensee shall take all reasonable precautions against the risk of failure to comply with:

- (a) the Conditions of this Licence,
- (b) any requirements imposed on it under the NHS Acts, and
- (c) the requirement to have regard to the NHS Constitution in providing health care services for the purposes of the NHS.

2. Without prejudice to the generality of paragraph 1, the steps that the Licensee must take pursuant to that paragraph shall include:

- (a) the establishment and implementation of processes and systems to identify risks and guard against their occurrence; and
- (b) regular review of whether those processes and systems have been implemented and of their effectiveness.

3. Not later than two months from the end of each Financial Year, the Licensee shall prepare and submit to Monitor a certificate to the effect that, following a review for the purpose of paragraph 2(b) the Directors of the Licensee are or are not 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 this Condition.

2.3. NHS Improvement has summarised this as:

- A provider is required to have in place effective systems and processes to ensure compliance, including:
 - Identifying risks to compliance; and
 - Taking reasonable mitigating actions to prevent those risks and a failure to comply from occurring.

2.4. The Trust has a governance structure in place with regular reporting of issues, decisions and actions through to the Board committees and the Board on a regular basis.

2.5. This includes a strong focus on risk management, with the Executive Risk Management Group (ERMG) reporting directly into the Board during the year, providing transparency and focus on risk at Board level. In addition, the Audit Committee sought assurance over the risk management processes and controls in place.

2.6. In addition, the Board Assurance Framework (BAF) is mapped to the Board committees, and the relevant extracts are reviewed at every meeting, ensuring that strategic risks play a prominent role in committee debate and decision-making. The BAF and Organisational Risk Register (ORR) were also presented to both the ERMG and Board on a quarterly basis during the year.

2.7. Compliance with some elements of the Trust's licence are reported separately to the Board committees to provide additional assurance. For example the Workforce Committee received assurance that fit and proper person tests are carried out annually on each Board Member to confirm ongoing compliance with this requirement.

2.8. The Governor Governance Committee oversees the fit and proper person test for Governors as well as providing broader Governor scrutiny of governance issues relating to the Council, including compliance with Governor policies and attendance requirements.

- 2.9. Paragraph 2(b) itself refers to the need to regularly review whether the processes and systems have been implemented and how effective they are.
- 2.10. During 2019/20 the Board undertook a review of its previous self-assessment against the NHS Improvement / CQC Well-Led Framework.
- 2.11. In addition an in-depth review of the governance structure within the Trust commenced in Autumn 2019. A detailed proposal for change was developed and approved in Quarter 4 with a plan to implement the new structure from 1 April 2020. The full implementation of the new structure was impacted by COVID-19 but there is an ongoing commitment to implement the structure in early 2020/21.
- 2.12. Throughout 2019/20 a number of internal and external reviews of processes and systems have been undertaken, including but not limited to:
- Internal audit reviews;
 - Clinical audit reviews;
 - External audit work to support the year end opinions;
 - CQC responsive unannounced inspection within the Emergency Operations Centre to investigate a complaint; and
 - Internal reviews of committee / group effectiveness (although this was impacted by COVID-19).
- 2.13. Where reviews have highlighted areas where the Trust needs to enhance processes and systems, action plans have been developed to ensure that associated actions are implemented on a timely basis.
- 2.14. The Head of Internal Audit Opinion concluded that good assurance could be provided for 2019/20 (please note this is a draft opinion at the time of writing and therefore cannot be fully confirmed) which provides positive evidence of the effectiveness of systems and processes.
- 2.15. Internal Audit have recently completed an audit of the Board Assurance Framework and Risk Management. A rating of 'good assurance' has been received.
- 2.16. An unannounced responsive inspection of the Emergency Operations Centre was carried out by the CQC on Monday 3rd June 2019. This was in relation to a patient safety concern that they had directly received and which related to the management of medicines, staff competencies, inappropriate triaging, training and poor culture. The final CQC report noted that the allegations made to the CQC were unfounded. The responsive inspection provided assurance that the service was safe, effective and well-led. There were two areas of improvement identified by the inspection team which were addressed and closed out during the year.
- 2.17. Both the Board and Governors have been provided with regular updates on the Trust's segment position in respect of the Single Oversight Framework. The letters from NHS Improvement confirming the quarterly position following the Quarterly Review Meetings form part of the public Board agenda. The Trust has undoubtedly faced challenges during the year, both operationally and financially, but has consistently achieved a segmentation rating of 2 (on a scale of 1 to 4 with 1 being the best segment score). This is based on the latest rating published by NHS England and Improvement in May 2020.
- 2.18. A segment score of 2 is defined as follows within the Single Oversight Framework:

2 Providers offered targeted support – potential support needed in one or more of the five themes, but not in breach of licence (or equivalent for NHS trusts) and/or formal action is not needed

2.19. It was therefore proposed that the Board should confirm compliance with the statement in respect of General Condition 6. At its meeting on 27 May 2020 the Board of Directors confirmed its compliance with General Condition 6.

3. Continuity of Service Condition 7

3.1. The self-certification in relation to Continuity of Service Condition 7 requires the Board to confirm a response to one of the following statements and provide an explanation in the yellow box:

3 Continuity of services condition 7 - Availability of Resources (FTs designated CRS only)

EITHER:

3a 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. Please Respond

OR

3b 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. Please Respond

OR

3c 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. Please Respond

Statement of main factors taken into account in making the above declaration

In making the above declaration, the main factors which have been taken into account by the Board of Directors are as follows:

[e.g. key risks to delivery of CRS, assets or subcontractors required to deliver CRS, etc.]

3.2. Commissioners have formally confirmed that the Unscheduled Care service is classified as CRS. The Trust also put forward a case to Commissioners in October 2016 to demonstrate that NHS111 and Scheduled Care also meet the criteria for CRS status, but no feedback has been received from Commissioners on this.

3.3. Two years ago at the request of the Audit Committee a benchmarking exercise was undertaken with other ambulance trusts to determine whether there was a collective understanding of which services should be designated as CRS. This exercise demonstrated a lack of consistency across the trusts, with some not completing the declaration as they had not had confirmation from commissioners that any of their services were designated as CRS.

3.4. It was therefore proposed and agreed that the Board takes a prudent approach as per previous years and responds to the statement on the assumption that all services have CRS status – this means that there would be a greater resource requirement in order to continue to run the services for the next 12 months.

- 3.5. The Board of Directors spent time carefully considering and debating the response to Continuity of Services Condition 7 and following this confirmed compliance with statement 3b:

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.

- 3.6. In making the declaration the main factors which have been taken into account by the Board of Directors are:

- The Trust secured a four year funding and efficiency plan with its commissioners. Additional non-recurrent funding was received to support the Trust over winter 2019/20 and this enabled a year-on-year improvement in performance to be made. It evidenced the difference that appropriate investment to enable the Trust to resource itself to the required levels can make to target achievement and ultimately patient care.
- Prior to COVID-19 productive commissioning discussions were being held with commissioners in respect of adjustments to our 4-year plan to take into account evidenced changes in demand profile following a further external demand and capacity review. At the time of this declaration there is no absolute clarity on how contracting decisions will be made in the medium and long-term. In order to meet demand and deliver against targets, the demand and capacity review demonstrated that the Trust would require additional investment of a material value.
- There is therefore significant uncertainty at this time as to whether the Trust will receive sufficient funding to enable it to deliver its Commissioner Requested Services in line with contracts and national standards.
- In addition, the model of delivery and the resulting demand for some of the Trust's key services, such as NHS111 and Integrated Urgent Care, may be adjusted on a national basis following the experiences of the sector in managing COVID-19. Should changes be prescribed nationally the future requirements both in terms of funding and resource is therefore unclear.
- COVID-19 also presents a significant level of uncertainty going forwards in terms of both finances and staffing resource to meet COVID-19 related demand. Whilst the Trust has moved quickly to establish a 'review and rebuild' cell to capture the learnings and maintain the service innovations delivered and has increased well-being and mental health support for staff, the future implications of COVID-19 on the service are not possible to accurately predict.

- 3.7. The certification for CoS7 also references the need to ensure that the Board has due regard to the views of Governors. Governors were closely involved with the commencement of the Trust's strategic refresh, with feedback sought through several Council of Governors' meetings and the establishment of a dedicated Governor task and finish group on the topic. The strategic refresh was paused due to COVID-19 but no concerns were raised by Governors regarding the ability of the Trust to continue to deliver its services in line with plan, and therefore it can be concluded that Governors would also have a reasonable expectation of the Trust's ability to continue to deliver its services.

- 3.8. Governors have been kept abreast of developments in respect of the Trust's COVID-19 response and of the Trust's role in the North East and Cumbria Integrated Care system.

Governors are fully informed of the relative position of the Trust in respect of funding and resources.

- 3.9. The Board of Directors was satisfied that the views of Governors had been appropriately taken into account when making the declaration.

4. Conclusion

4.1. In summary on 27 May 2020 the Board of Directors:

- Confirmed compliance with General Condition 6;
- Confirmed compliance with statement 3b in respect of Continuity of Service Condition 7, based on the factors outlined in paragraph 3.6.