



Board of Directors
NHS Improvement Self-Certifications
10 June 2021

1. Introduction

- 1.1. Consistent with the previous year the Board 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 2020/21. Views should therefore be informed by the work of the Audit Committee throughout 2020/21 as well as the conclusions drawn in the Annual Governance Statement.
- 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).
- 1.4. Note that the provider licence states that these certifications should be made no later than two months following the year-end. Due to the timing of meetings and the change to the reporting deadline, they certifications are considered by the Audit Committee and Board of Directors two weeks later than this.
- 1.5. 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. A two week delay enables the Audit Committee and Board of Directors to consider these certifications in the context of the other year-end reporting and is therefore considered to be a reasonable approach.
- 1.6. The draft certifications were presented for initial review at the Audit Committee on 4 June 2021. The Audit Committee recommended their approval to the Board of Directors at its meeting on 10 June 2021.

2. Executive Summary

- 2.1. Whilst the Trust has faced challenges in relation to COVID-19, performance and finance it is proposed that the Board continues to take necessary precautions to comply with the conditions of the licence, and continues to meet the conditions for holding a licence at the year end. It is important to identify the uncertainties regarding the financial regime for the final six months of 2021/22 and this is reflected in the recommended response.
- 2.2. Similarly, the Board recognises the need to continue to review, refresh and enhance governance processes and structures, and a number of changes have been made during 2020/21 with further changes likely as part of the reflections on the new governance structure in 2021/22.

3. Key considerations

General Condition 6

- 3.1. 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
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- 3.2. 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.

- 3.3. NHS England and 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.

- 3.4. 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.
- 3.5. This includes a strong focus on risk management, with the Executive Management Group receiving a suite of risk management reports on a monthly basis, including a risk dashboard, the Organisational Risk Register, Board Assurance Framework and cyclical directorate risk reports. The Executive Management Group reports into the Board of Directors, with individual Directors also sharing relevant updates with the respective Board committees.
- 3.6. In addition, the Audit Committee sought assurance over the risk management processes and controls in place, as it is the Board committee with responsibility for seeking assurance over the risk management control environment.
- 3.7. 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 EMG and Board during the year.
- 3.8. The BAF was reviewed less frequently than usual in the first six months of the year due to a combination of factors:
- The impact of the pandemic on the usual strategic planning cycle – this meant that objectives from the previous year were carried forwards and therefore a revised BAF was not drafted; and
 - There were a number of key changes happening in respect of the governance structure and Executive Director responsibility areas. Once the new governance structure was agreed and launched in September 2020, the BAF was fully reviewed and updated.
- 3.9. Compliance with some elements of the Trust's licence are reported separately to the Board committees to provide additional assurance. For example the People and Development Committee received assurance that fit and proper person tests are carried out annually on each Board Member to confirm ongoing compliance with this requirement.
- 3.10. 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. Assurance was provided to the Committee in April 2021 in this respect, as Governor committees were mostly stood down during 2020/21.
- 3.11. Paragraph 2(b) itself refers to the need to regularly review whether the processes and systems have been implemented and how effective they are.
- 3.12. In late 2019/20 the Board undertook a review a self-assessment against the NHS Improvement / CQC Well-Led Framework. Whilst the self-assessment itself was not repeated in 2020/21, the Well-Led Framework was used to inform the review of the governance structure in 2020/21. In addition, the Board demonstrated its commitment to good governance and continuous improvement through the externally facilitated Board development programme, delivered by NHS Providers.
- 3.13. Throughout 2020/21 a number of internal and external reviews of processes and systems have been undertaken, including but not limited to:
- Review of the coronial process involving both an external review and internal scrutiny through a dedicated task and finish group;

- Review of disclosure and barring service processes which involved the establishment of a dedicated task and finish group to oversee this work;
- Internal review of governance structures early in 2020/21 to inform the new governance structure;
- External observation of the Board of Directors' meeting and other aspects of our governance by NHS Providers to inform the Board development programme;
- Internal audit reviews;
- Clinical audit reviews;
- External audit work to support the year end opinions; and
- Internal reviews of committee / group effectiveness (although this was impacted by COVID-19).

- 3.14. 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.
- 3.15. The Head of Internal Audit Opinion concluded that good assurance could be provided for 2020/21 (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.
- 3.16. Due to the pandemic the usual quarterly meetings with NHS England and Improvement did not occur during the year. NHS England and Improvement continued to assess the Trust and as at 24 May 2021 the Trust maintained the segmentation rating of 2 (on a scale of 1 to 4 with 1 being the best segment score) in respect of support needs identified due to operational performance. This is consistent with the previous year.
- 3.17. 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
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- 3.18. **It was therefore proposed that the Board should confirm compliance with the statement in respect of General Condition 6. At its meeting on 10 June 2021 the Board of Directors confirmed compliance with General Condition 6.**

Continuity of Service Condition 7

- 3.19. 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.]

- 3.20. 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 was been received from Commissioners on this.
- 3.21. Three 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 sector, with some not completing the declaration as they had not had confirmation from commissioners that any of their services were designated as CRS.
- 3.22. It was therefore proposed that the Board took 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.
- 3.23. It was proposed that the Board should confirm compliance with **statement 3b**, i.e. that there is a reasonable expectation that the Trust will have the required resources available to deliver the CRS for the next 12 months. Required resources include: management resources, financial resources and facilities, personnel, physical and other assets. However, the Board would like to draw attention to certain factors which may cast doubt on the ability of the Trust to provide CRS.
- 3.24. This would reflect the positive assurances that the Board of Directors has had regarding the funding and resourcing situation for the first six months of 2021/22 but reflect the significant uncertainty regarding the funding arrangements for the second half of 2021/22. This uncertainty is shared by the whole provider sector at present.
- 3.25. The following positive assurances can be cited:
- The Trust achieved its planned deficit in line with the new temporary financial framework for the year.

- The Trust received sufficient non-recurrent funding during the last financial year to enable it to achieve the level of resourcing outlined in the demand and capacity review. The positive impact of this on the performance against targets can be evidenced. Recent investment in demand and capacity review technology will enable dynamic and regular in-house forecasting to occur going forwards.
- The Trust has continued to make good progress in respect of recruitment and retention. The Trust has been able to recruit to some of its harder to fill positions, including those within the Clinical Assessment Service (CAS). The new paramedic apprenticeship has also recently launched, supporting effective career progression and development for staff.
- COVID-19 has had an inevitable impact on the Trust's sickness figures and there will be longer term mental health and wellbeing implications for staff. The Trust has made significant efforts to ensure that staff health and wellbeing is at the forefront of its agenda with the establishment of a 'help hub' and number of different service offerings available to staff.
- The Trust has continued to provide an integrated service with clear linkages between Unscheduled Care, Scheduled Care and the 999 and 111 Emergency Operations Centre (EOC) functions. The Trust played an integral role in the launch of 111 First and direct bookings into emergency departments. This level of integration proved to be invaluable during the peak of COVID-19, providing resilience and enabling the Trust to continue to provide responsive services at the time of greatest pressure. This meant that the Trust was able to cope with the peak of demand more efficiently and effectively than other trusts with less integration.
- The Trust has embraced the learnings from the pandemic and is seeking to embed the efficiencies identified in respect of new ways of working. Initiatives such as home working for CAS clinicians enables the service to be more agile and flexible in responding to spikes in demand.

- 3.26. Formal guidance on 2021/22 planning, contracting and the financial regime for the period from 1 April 2021 to 30 September 2021 has been released. To date, however, there has been no formal clarity on the arrangements from 1 October 2021 to 31 March 2022, although an anticipated transfer to revised contracting arrangements is expected.
- 3.27. Given this level of uncertainty around the funding levels for the last six months of the year it is prudent to reflect this risk in the response to Continuity of Service Condition 7 and therefore it was recommended that the Board respond with statement 3b.
- 3.28. **At its meeting on 10 June 2021 the Board of Directors confirmed its compliance with statement 3b for the reasons outlined above.**
- 3.29. The certification for the Continuity of Service Condition 7 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 the Council of Governors' meetings, a dedicated development session and the establishment of a Governor task and finish group on the topic.
- 3.30. 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 resource.

3.31. **At its meeting on 10 June 2021 the Board of Directors confirmed that it was satisfied that the views of Governors had been appropriately taken into account when making the declaration.**

4. Conclusion

4.1. In summary on 10 June 2021 the Board of Directors:

- Confirmed compliance with General Condition 6; and
- Confirmed compliance with statement 3b in respect of Continuity of Services Condition 7, based on the factors outlined in paragraphs 3.25 and 3.26.