

BOARD MEETING

25 May 2017

Paper Title:	Annual Self-certification Statements for 2016/17
Section:	Public
Lead Director:	Liz Romaniak, Director of Finance, Contracting and Facilities
Paper Author:	Paul Hogg, Trust Secretary
Agenda item:	17
Presented For:	Approval

1. Purpose of this Report:

To approve the first of two Annual Plan self-certification statements required by NHS Improvement.

2. Summary of Key Points

Guidance issued in April 2017 requires FTs to self-certify 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 required resources available if providing commissioner requested services; and
- complied with governance requirements.

3. Board Consideration

The Board is asked to self-certify (through approval of the return at Appendix 2):

- that the Board has taken all precautions necessary to comply with the licence, NHS Act and NHS Constitution (Licence Condition G6(3)); and
- if providing Commissioner Requested Services (CRS) that they have a reasonable expectation that required resources will be available to deliver the designated service (Licence Condition CoS7(3)).

4. Financial Implications

None.

5. Legal Implications

Compliance with the Trust's terms of authorisation as a Foundation Trust.

6. Assurance

	Assurance provided?
Board Assurance Framework	Yes
CQC Themes (see below)	Yes
Single Oversight Framework	Yes
Other (please specify):	

This paper provides assurance in relation to the following CQC Key Question:

Well led:	Do the leadership, management and governance of the organisation make sure it's providing high-quality care that is based around individual needs, encourages learning and innovation, and promotes an open and fair culture?
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6. Equality Impact Assessment

Not applicable.

7. Previous Meetings/Committees Where the Report Has Been Considered:

Audit Committee	<input type="checkbox"/>	Quality & Safety Committee	<input type="checkbox"/>	Remuneration Committee	<input type="checkbox"/>	FB&I Committee	<input type="checkbox"/>
Executive Management team	<input checked="" type="checkbox"/>	Directors' Meeting	<input type="checkbox"/>	Chair of Committees' Meeting	<input type="checkbox"/>	MH Legislation Committee	<input type="checkbox"/>

Assurance papers underpinning this report have been submitted to the committees identified above.

8. Risk Issues Identified for Discussion

Risk	Likelihood	Implication	Mitigation
The Board fails to submit the required templates to NHS Improvement before the deadline.	Low.	Increased regulatory scrutiny and damage to reputation.	Board papers in May and June 2017.
The Board cannot provide sufficient evidence in support of its declaration, if selected to do so by NHS Improvement.	Low.	Increased regulatory scrutiny.	Board papers in May and June 2017. Other governance-related documents such as the Annual Report, Quality Report, Committee papers and quarterly returns.

9. Links to Strategic Drivers

Patient Experience	Quality	Value for Money	Relationships
The Trust's declarations are relevant to all Strategic Drivers			

10. Publication Under Freedom of Information Act

This paper has been made available under the Freedom of Information Act.

11. Recommendations:

That the Board:

- Considers and self-certifies each statement and if unable to do so, agree what supporting commentary it wishes to submit.

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Annual Self-certification Statements for 2016/17

1. Background

NHS Improvement oversees NHS Foundation Trusts' (FTs) compliance with their licence conditions and collects information to assess compliance through annual and quarterly monitoring. Guidance issued in April 2017 requires FTs to self-certify 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 required resources available if providing commissioner requested services; and
- complied with governance requirements.

2. Report detail

FTs are required to submit two self-certification statements. The first submission, due by 31 May 2017 and covered in this paper, requires FTs to self-certify:

- that the Board has taken all precautions necessary to comply with the licence, NHS Act and NHS Constitution (Licence Condition G6(3)); and
- if providing Commissioner Requested Services (CRS) that they have a reasonable expectation that required resources will be available to deliver the designated service (Licence Condition CoS7(3)).

The second submission, due by 30 June 2017, requires FTs to certify that the Trust is compliant with the required governance standards and objectives (Licence Condition FT4(8)). As this involves demonstrating effective Board and Committee structures, reporting lines and performance and risk management systems, this will be considered at the June Board meeting following approval of the 2016/17 Annual Report and Accounts and Annual Governance Statement.

There is no set process for assurance or to demonstrate how any of these conditions have been met; it is up to individual Boards to decide how they wish to evidence this when making the self-certification statements and clearly understand whether or not they can confirm compliance.

NHS Improvement advises that the guidance relating to these statements should be read alongside the documents listed below. Board members will be familiar with most of these through previous Board papers and development sessions:

- the NHS provider licence (last updated 14 February 2013);
- the designation framework: defining CRS and location specific services (last updated 28 March 2013);
- the well-led framework for governance reviews (April 2015);
- the NHS foundation trust code of governance (July 2014); and
- the Single Oversight Framework (September 2016).

To assist the Board in the self-certification process, a summary of the related Licence conditions and commentary have been included at Appendix 1. NHS Improvement has provided FTs with two templates, with the first of these included at Appendix 2.

3. Monitoring and review

From July 2017, NHS Improvement will contact a selected number of FTs to ask for evidence on how they have self-certified. This can either be through providing the templates or by providing relevant Board minutes and papers recording sign-off.

4. Timescales/Milestones

The Chair and Chief Executive are required to complete Appendix 2, subject to Board discussion and approval.

5. Recommendations

That the Board:

- Considers and self-certifies each statement and if unable to do so, agree what supporting commentary it wishes to submit.

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Licence Conditions Self-Assessment

Licence condition	Compliance confirmed
Section 1 – General Conditions	
G1: Provision of information 'The Licensee shall furnish to [NHS Improvement] such information and documents, and shall prepare or procure and furnish to NHSI such reports, as NHSI may require for any of the purposes set out in section 96(2) of the 2012 Act'	The Trust complies with this condition as required. All information requested from NHSI is responded to in a timely manner in the format requested. EMT also has quarterly relationship management meetings with NHSI staff to share informal information / intelligence.
G2: Publication of information 'The Licensee shall comply with any direction from NHSI for any of the purposes set out in section 96(2) of the 2012 Act to publish information about health care services provided for the purposes of the NHS and as to the manner in which such information should be published.'	The Trust complies with this condition as required. The Trust publishes information as required in accordance with Monitor's Code of Governance and the Annual Reporting Manual.
G3: Payment of fees to NHSI 'The Licensee shall pay fees to NHSI in each financial year of such amount as NHSI.'	None required at present.
G4: Fit and proper persons 'The Licensee shall ensure that no person who is an unfit person may become or continue as a Governor. The Licensee shall not appoint as a Director any person who is an unfit person.'	The Trust complies with this condition. Declarations have been made from Directors and Governors and included in the 2016/17 Annual Report.
G5: Monitor guidance 'The Licensee shall at all times have regard to guidance issued by NHSI.'	The Trust complies with this condition. NHSI guidance is reviewed in detail upon publication by the relevant lead Director.
G6: Systems for compliance with licence conditions and related obligations 'Requires providers to take all reasonable precautions against the risk of failure to comply with the licence and other important requirements'	The Trust complies with this condition. Robust risk management system are in place including Board Assurance Framework and Corporate Risk Register, both quarterly reviewed and approved by the Board.
G7: Registration with the Care Quality Commission 'The Licensee shall at all times be registered with the Care Quality Commission.'	The Trust complies with this condition. The Trust is registered without conditions with the CQC and this this position is reviewed annually by the Trust Board (in May).
G8: Patient eligibility and selection criteria 'Requires licence holders to set transparent eligibility and selection criteria for patients and apply these in a transparent manner.'	The Trust complies with this condition as part of the contracting of services with commissioners. Eligibility criteria is agreed at service level specifications.
G9: Application of Section 5 (Continuity of Services)	The Trust complies with this condition and agrees its commissioner requested services on an annual basis. It continues to deliver all commissioner requested services. This is reviewed annually as part of the annual planning and contract negotiation process.
Section 2 - Pricing	
P1: Recording of information 'The Licensee shall obtain, record and maintain sufficient information about the costs which it	The Trust complies with this condition and its implementation is in line with Trust current financial

expends in the course of providing services.'	procedures. The Trust has undertaken a re-basing exercise for CCG and LA contracts which has reset the agreed contract values in line with costs.
P2: Provision of information 'The Licensee shall furnish to NHSI such information and documents, and shall prepare or procure and furnish to NHSI such reports, as NHSI may require for the purpose of performing its functions.'	The Trust would comply with this condition as the requirement arose.
P3: Assurance report on submissions to Monitor 'If required in writing by NHSI the Licensee shall, as soon as reasonably practicable, obtain and submit to NHSI an assurance report in relation....to costing.'	The Trust would comply with this condition as the requirement arose.
P4: Compliance engagement concerning local tariff modifications 'The licensee shall only provide health care services for the purpose of the NHS at prices which comply with, or are determined in accordance with, the national tariff published by Monitor'	The Trust complies with this condition – national tariff or local tariff agreed with commissioners. The majority of the Trust's contracts are block contracts. Local tariffs are agreed for AQP Podiatry and cost per case activity.
P5: Constructive engagement concerning local tariff modifications 'The Licensee shall engage constructively with Commissioners.'	The Trust complies with this condition – the Trust engages actively and constructively with its commissioners through regular meetings, submission of information and KPIs and formal contracting negotiations.
Section 3 – Choice and competition	
C1: The right of patients to make choices 'The licensee shall ensure that at every point where that person has a choice of provider under the NHS Constitution or a choice of provider conferred locally by Commissioners, he or she is notified of that choice and told where information can be found.'	The Trust complies with this condition, where applicable to the Trust's services, and has service specifications and procedures which are compliant with this condition, where relevant.
C2: Competition oversight 'The licensee shall not enter into or maintain any agreement or other arrangement which has the object or which has (or would be likely to have) the effect of preventing, restricting or distorting competition in the provision of healthcare.'	No compliance issues identified.
Section 4 – Integrated Care	
IC1: Provision of integrated care 'The Licensee shall not do anything that reasonably would be regarded as against the interests of people who use healthcare services by being detrimental to enabling its provision of health care services for the purposes of the NHS to be integrated with the provision of such services.'	The Trust complies with this condition. This is part of the Trust's strategy and as such the Trust engages in significant partnership work. Details of which are reported in the Trust's Annual Report and Operational Plan.
Section 5 – Continuity of Services	
COS1: Continuing provision of Commissioner Requested Services 'The Licensee shall not cease to provide, or materially alter the specification or means of provision of, any Commissioner Requested Service except where permitted to do so in the contract.'	The Trust complies with this condition. See G9

<p>COS2: Restriction on the disposal of assets ‘The Licensee shall establish, maintain and keep up to date, an asset register’ to any proposal by the Licensee to dispose of, or relinquish control over, any relevant.’</p>	<p>The Trust complies with this condition – asset register maintained and would comply with the terms of the condition regarding asset disposal as required. Trust reviews any possible disposals through FBIC.</p>
<p>COS3: Standards of corporate governance and financial management The Licensee shall at all times adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as: (a) suitable for a provider of the Commissioner Requested Services provided by the Licensee, and (b) providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern.’</p>	<p>The Trust complies with this condition. Appropriate systems of corporate and financial governance are evidenced by risk ratings, annual governance statement, CQC inspection (well-led), internal and external audit reports, compliance with FT Code of Governance, robust financial planning, monthly monitoring of financial and performance risks.</p>
<p>COS4: Undertaking from the ultimate controller ‘The Licensee shall procure from each company or other person which the Licensee knows or reasonably ought to know is at any time its ultimate controller, a legally enforceable undertaking in favour of the Licensee.’</p>	<p>Not applicable.</p>
<p>COS5: Risk pool levy ‘The Licensee shall pay to NHSI any sums required to be paid in consequence of any requirement imposed on providers... by way of any levy.’</p>	<p>The Trust would comply with this condition as the requirement arose.</p>
<p>COS6: Co-operation in the event of financial stress ‘The Licensee shall provide such information as NHSI may direct to Commissioners and to such other persons as NHSI may direct, allow such persons as NHSI may appoint to enter premises owned or controlled by the Licensee and to inspect the premises and anything on them, and co-operate with such persons as NHSI may appoint to assist in the management of the Licensee’s affairs, business and property.’</p>	<p>The Trust would comply with this condition as the requirement arose.</p>
<p>COS7 Availability of resources ‘The Licensee shall at all times act in a manner calculated to secure that it has, or has access to the Required Resources.’</p>	<p>The Trust is compliant with this condition having made a Sustainability declaration and completed a detailed Board review of risks to the delivery of the financial plan. Also through quarterly risk ratings submitted against the SOF. Approval of the Trust as a going concern has been discussed and minuted at Audit Committee in adopting the Annual Report.</p>

[Insert completed NHSI template here]

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