

## BOARD MEETING

24 May 2018

Paper Title:	Annual Self-certification Statements for 2017/18
Section:	Public
Lead Director:	Liz Romaniak, Interim Chief Executive
Paper Author:	Paul Hogg, Director of Corporate Affairs
Agenda Item:	16
Presented For:	Approval
Paper Category:	Governance & Compliance

### Executive Summary:

The Board is asked to consider and approve the first of two Annual Plan self-certification statements required by NHS Improvement.

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)).

### Recommendations:

That the Board:

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

**Governance/Audit Trail:**

<b>Meetings where this item has previously been discussed (please mark with an X):</b>					
<b>Audit Committee</b>		<b>Quality &amp; Safety Committee</b>		<b>Remuneration Committee</b>	<b>Finance, Business &amp; Investment Committee</b>
<b>Executive Management Team</b>	x	<b>Directors</b>		<b>Chair of Committee Meetings</b>	<b>Mental Health Legislation Committee</b>
<b>Council of Governors*</b>	x				

\*in part

<b>This report supports the achievement of the following strategic aims of the Trust: (please mark those that apply with an X):</b>	
Consolidation of Market Share : being great in our patch	x
Manage the impacts of the whole system of reduced health and social care funding: working in partnership to develop cost effective out of hospital services and pathways to support the delivery of sustainable services	x
Secure Funding for new or expanded services	x

<b>This report supports the achievement of the following Regulatory Requirements: (please mark those that apply with an X):</b>	
<b>Safe:</b> People who use our services are protected from abuse and avoidable harm	x
<b>Caring:</b> Staff involve people who use our services and treat them with compassion, kindness, dignity and respect	x
<b>Responsive:</b> Services are organised to meet the needs of people who use our services	x
<b>Effective:</b> Care, treatment and support achieves good outcomes, helps to maintain quality of life people who use our services and is based on the best available evidence.	x
<b>Well Led:</b> 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.	x
<b>NHSI Single Oversight Framework</b>	x

<b>Equality Impact Assessment :</b>
Not applicable

<b>Freedom of Information:</b>
<p><b>Publication Under Freedom of Information Act</b></p> <p>This paper has been made available under the Freedom of Information Act.</p>

## Annual Self-certification Statements for 2017/18

### 1. Background and Context

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 2018 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. Project/Proposal

FTs are required to submit two self-certification statements. The first submission, due by 31 May 2018 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 2018, 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 2017/18 Annual Report and Accounts and Annual Governance Statement.

NHS Improvement advises that 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. 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. Risk Issues Identified

The following risks are highlighted:

<b>Risk</b>	<b>Likelihood High/Medium/Low</b>	<b>Implication</b>	<b>Mitigation</b>
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 2018.
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 2018. Other governance-related documents such as the Annual Report, Quality Report, Committee papers and quarterly returns.

#### **4. Communication and Involvement**

The Council of Governors was apprised of the self-certification deadlines at the Council of Governors meeting on 10 May. The Trust is required to publish this self-certification on its website by 31 May 2018 (and the second self-certification by 30 June 2018).

#### **5. Monitoring and review**

NHS Improvement has indicated that it will conduct spot audits and select certain FTs to demonstrate that the self-certification process has been carried out, including request for signed templates and other documentary evidence (e.g. signed Board minutes). Spot audits are expected to commence in July 2018.

## Licence Conditions Self-Assessment

Licence condition	Compliance confirmed
<b>Section 1 – General Conditions</b>	
<b>G1: Provision of information</b> ‘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.
<b>G2: Publication of information</b> ‘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.
<b>G3: Payment of fees to NHSI</b> ‘The Licensee shall pay fees to NHSI in each financial year of such amount as NHSI.’	None required at present.
<b>G4: Fit and proper persons</b> ‘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 is now compliant with this condition, following the recent CQC inspection report. Declarations have been made from Directors and Governors and are included in the 2017/18 Annual Report.
<b>G5: Monitor guidance</b> ‘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.
<b>G6: Systems for compliance with licence conditions and related obligations</b> ‘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.
<b>G7: Registration with the Care Quality Commission</b> ‘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 position is reviewed annually by the Trust Board (in May). The Trust Board and its Committees are closely monitoring a detailed action plan which addresses the requirements identified by the recent CQC inspection.
<b>G8: Patient eligibility and selection criteria</b> ‘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.
<b>G9: Application of Section 5 (Continuity of</b>	The Trust complies with this condition and agrees its

<b>Services)</b>	commissioner requested services as part of the annual contract negotiation process. It continues to deliver all commissioner requested services, including, where appropriate, implementing service business continuity plans.
<b>Section 2 - Pricing</b>	
<b>P1: Recording of information</b> 'The Licensee shall obtain, record and maintain sufficient information about the costs which it expends in the course of providing services.'	The Trust complies with this condition and its implementation is in line with Trust current financial procedures. The Trust has undertaken a re-basing exercise for LA contracts which has reset the agreed contract values in line with costs, a similar exercise is underway with the CCG contracts.
<b>P2: Provision of information</b> '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.
<b>P3: Assurance report on submissions to Monitor</b> '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.
<b>P4: Compliance engagement concerning local tariff modifications</b> '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.
<b>P5: Constructive engagement concerning local tariff modifications</b> '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.
<b>Section 3 – Choice and competition</b>	
<b>C1: The right of patients to make choices</b> '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.
<b>C2: Competition oversight</b> '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.
<b>Section 4 – Integrated Care</b>	
<b>IC1: Provision of integrated care</b> 'The Licensee shall not do anything that reasonably would be regarded as against the	The Trust complies with this condition. This is part of the Trust's strategy and as such the Trust engages in

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.'	significant partnership work. Details of which are reported in the Trust's Annual Report and Operational Plan.
<b>Section 5 – Continuity of Services</b>	
<b>COS1: Continuing provision of Commissioner Requested Services</b> '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
<b>COS2: Restriction on the disposal of assets</b> '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.'	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.
<b>COS3: Standards of corporate governance and financial management</b> 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.'	The Trust complies with this condition. Appropriate systems of corporate and financial governance are evidenced by risk ratings, annual governance statement, CQC inspection, internal and external audit reports, compliance with FT Code of Governance, robust financial planning, monthly monitoring of financial and performance risks. The Trust Board and its Committees are closely monitoring a detailed action plan which addresses the requirements identified by the recent CQC inspection.
<b>COS4: Undertaking from the ultimate controller</b> '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.'	Not applicable.
<b>COS5: Risk pool levy</b> '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.'	The Trust would comply with this condition as the requirement arose.
<b>COS6: Co-operation in the event of financial stress</b> '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.'	The Trust would comply with this condition as the requirement arose.
<b>COS7 Availability of resources</b> 'The Licensee shall at all times act in a manner calculated to secure that it has, or has access to the Required Resources.'	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

	<p>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>
--	---

