

**NHS Foundation Trust Self Certification Requirements**

**Background**

To maintain the NHS Provider Licence, NHS Foundation Trusts are required by NHS Improvement to self-certify on an annual basis the following two declarations:

* Condition G6(3) – the Trust has complied with the conditions of the NHS provider licence (which itself includes requirements to comply with the National Health Service Act 2009, and the Health and Social Care Act 2012, and have regard to the NHS Constitution),
* Condition CoS7(3) – the Trust has the required resources available to provide services if providing commissioner requested services.

The aim of the self-certification is for Trust Boards to carry out assurance that they are in compliance with these conditions, and have taken into account the views of governors. There is no set assurance process prescribed by NHS Improvement, however suggested templates have been provided to facilitate Board sign off.

To comply with the timescales for self-certification prescribed by NHS Improvement, the Board must sign off the declarations no later than 31 May 2017.

NHS Improvement will be conducting an audit of selected Trusts to ask for evidence of self-certification.

**General Condition G6 – Systems for Compliance with Licence Conditions**

The Board is asked to respond “confirmed” or “not confirmed” to the following statement:

“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.”

Note that licence condition G6 is shown in full in Appendix 1. Paragraph 2(b) requires that the systems and processes in place to identify risk to compliance with licence conditions are effective and regularly reviewed.

**It is recommended that the Board confirms the above statement**, due to the following evidence:

* External assurance:
  + No concerns raised by NHS Improvement
  + CQC registration and “Outstanding” overall and well-led ratings
  + Accreditation with the NHS Litigation Authority
  + Assurance from External Auditors in relation to:
    - Annual Governance Statements
    - Quality Accounts
    - Annual Accounts
* Assurance from the Trust’s Internal Audit programme on relevant topics including:
  + Assurance Framework
  + FT Governance
  + Quality Impact of Financial Delivery Plan
  + NHS improvement Single Oversight Framework
  + Performance Management - NHS Improvement EIP and IAPT Targets and Indicators, and workforce indicators
  + Information Governance Toolkit
* Relevant papers presented to the Board of Directors
* Relevant papers presented to Trust Board standing committees:
  + Quality & Performance Committee
  + Resource & Business Assurance Committee
  + Mental Health Legislation Committee
  + Audit Committee
* The Risk Management Strategy, the Board Assurance Framework and Corporate Risk Register
* Comprehensive evidence has also been provided to the Trust Board in previous years and there has not been any material events in 2016/17 that have impacted upon the Trust’s ability to state compliance with the above requirements.

**Board Self Certification Sign off**

The Board ‘confirmed’ compliance with General Condition G6(3) at the Board of Directors Meeting held in public on, Wednesday 24 May 2017.

**Continuity of Services Condition 7 – Availability of Resources (Commissioner Requested Services only)**

The Board is asked to respond “confirmed” to one of the following three options:

Either (*recommended*):

“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.”

Or:

“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.”

Or:

“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.”

Note that “required resources to continue to provide commissioner requested services” covers management, financial and staff resources, plus facilities and physical assets. Please see Appendix 2 for the full licence condition.

**It is recommended that the Board confirms the first statement above** *(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)* due to the following evidence**:**

* Board approval of the 2017-18 budget and financial plans in March 2017
* External assurance from external auditors in relation to annual accounts, financial systems and processes
* Assurance from the Trust’s internal audit programme in relation to financial systems and processes
* Board approval of the 5 Year Strategy 2017-2022 and Service Development Strategy in January 2017
* 2017-19 Standard NHS Contracts 2017-19 Update presented to the Trust Board in February 2017
* Board approval of the NTW Solutions Business Case in March 2017
* Safer Staffing updates presented regularly to the Trust Board
* Other relevant papers presented to the Trust Board
* Relevant papers presented to the Resource & Business Assurance Committee
* There has not been any material events in 2016/17 that have impacted upon the Trust’s ability to state compliance with the above requirements.

The Board is required to provide a statement of the main factors taken into account when making this declaration. **It is recommended that the evidence shown above be provided to NHS Improvement to meet this purpose.**

**Governors’ views**

It is a requirement that Trust Boards should take the views of Governors into account when agreeing the declarations included within this report. Much of the evidence presented above has been presented to Governors throughout 2016-17 through formal Council of Governors meetings, through engagement sessions and through other Governor meetings such as the Governors Quality Group. Governors have also attended (as observers) Trust Board and standing committees, and also participated in PLACE visits and other visits to Trust services. Through all of these measures, Governors have considered the evidence provided therefore **it is recommended that the Board declare that the above decisions have been made with regard to the views of the Governors.**

**Board Self Certification Sign off**

The Board ‘confirmed’ compliance with General Condition CoS7(3) at the Board of Directors Meeting held in public on, Wednesday 24 May 2017.

**Appendix 1**

**Condition G6 – Systems for compliance with licence conditions and related obligations**

1. The Licensee shall take all reasonable precautions against the risk of failure to comply with:
   1. the Conditions of this Licence,
   2. any requirements imposed on it under the NHS Acts, and
   3. 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:
   1. the establishment and implementation of processes and systems to identify risks and guard against their occurrence; and
   2. 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.
4. The Licensee shall publish each certificate submitted for the purpose of this Condition within one month of its submission to Monitor in such manner as is likely to bring it to the attention of such persons who reasonably can be expected to have an interest in it.

(Please note throughout that Monitor has since been replaced by NHS Improvement)

**Appendix 2**

**Condition CoS7 – Availability of resources**

1. The Licensee shall at all times act in a manner calculated to secure that it has, or has access to, the Required Resources.
2. The Licensee shall not enter into any agreement or undertake any activity which creates a material risk that the Required Resources will not be available to the Licensee.
3. The Licensee, not later than two months from the end of each Financial Year, shall submit to Monitor a certificate as to the availability of the Required Resources for the period of 12 months commencing on the date of the certificate, in one of the following forms:
   1. “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.”
   2. “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 which may cast doubt on the ability of the Licensee to provide Commissioner Requested Services”.
   3. “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”.
4. The Licensee shall submit to Monitor with that certificate a statement of the main factors which the Directors of the Licensee have taken into account in issuing that certificate.
5. The statement submitted to Monitor in accordance with paragraph 4 shall be approved by a resolution of the board of Directors of the Licensee and signed by a Director of the Licensee pursuant to that resolution.
6. The Licensee shall inform Monitor immediately if the Directors of the Licensee become aware of any circumstance that causes them to no longer have the reasonable expectation referred to in the most recent certificate given under paragraph 3.
7. The Licensee shall publish each certificate provided for in paragraph 3 in such a manner as will enable any person having an interest in it to have ready access to it.
8. In this Condition:

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| “distribution” | includes the payment of dividends or similar payments on share  capital and the payment of interest or similar payments on public dividend capital and the repayment of capital; |
| “Financial Year” | means the period of twelve months over which the Licensee normally prepares its accounts; |
| “Required Resources” | means such:   * management resources * financial resources and financial facilities, * personnel, * physical and other assets including rights, licences and consents relating to their use, and * working capital   as reasonably would be regarded as sufficient to enable the Licensee at all times to provide the Commissioner Requested  Services. |