

Report to:	Public Board of Directors	Agenda item:	20
Date of Meeting:	31 May 2017		

Title of Report:	Board Certification Process
Status:	Approval
Board Sponsor:	Sarah Truelove, Director of Finance & Deputy Chief Executive
Author:	Lisa Thomas, Deputy Director of Finance
Appendices	Appendix 1: NHSI reporting template Appendix 2: Evidence to support G6 compliance Appendix 3: Self Certification Condition FT4- NHS FT Governance arrangements Appendix 4: Self certification Condition Co7- Commissioner Requested Services (CRS) Requirements

1. Executive Summary of the Report
<p>The Trust has an NHS Provider Licence and in the past, was required to submit six self-certifications, on an annual basis, to meet NHSI's Provider License conditions for NHS services, along with a declaration of risks against healthcare targets and indicators.</p> <p>However, new guidance was issued by NHSI on 21st April 2017. This now requires NHS Providers to self-certify only the following three Licence Conditions after the financial year-end: This paper outlines the recommended self-certifications the Trust has to make.</p>

2. Recommendations (Note, Approve, Discuss)
<p>The Board of Directors is asked to approve NHSI FT self-Certifications for Condition G6 and CoS7 and note progress with self-certification for FT4 and training of Governors.</p>

3. Legal / Regulatory Implications
<p>Not achieving financial duties will impact on the ability for the Trust to secure the economy, efficiency and effectiveness in its use of resources.</p>

4. Risk (Threats or opportunities, link to a risk on the Risk Register, Board Assurance Framework etc)
<p>Failure to meet the range of conditions of the NHS Provider Licence for a licensed provider can lead to NHSI imposing compliance and restoration requirements or monetary penalties. Ultimately it could lead to revocation of a providers licence. The greatest impact is most likely to be on reputation and the impact that has on patient choice and stakeholders confidence in the RUH as a provider of NHS services.</p>

5. Resources Implications (Financial / staffing)
Not Applicable

6. Equality and Diversity
Not Applicable

7.	References to previous reports
Standing Item	

8.	Freedom of Information
Public	

Background

On 1st April 2013, Monitor's healthcare licensing regime was implemented for all NHS Foundation Trusts (The Health and Social Care Act 2012). It replaced the Terms of Authorisation for Foundation Trusts and is the main tool NHSI (previously Monitor) uses for regulating providers of NHS services.

All NHS foundation trusts are required to self-certify whether or not they have complied with the conditions of the NHS provider licence, have the required resources available if providing commissioner requested services, and, have complied with governance requirements.

The Trust has an NHS Provider Licence and in the past, was required to submit six self-certifications, on an annual basis, to meet NHSI's Provider License conditions for NHS services, along with a declaration of risks against healthcare targets and indicators.

However, new guidance was issued by NHSI on 21st April 2017. This now requires NHS Providers to self-certify only the following three Licence Conditions after the financial year-end:

- The provider has taken all precautions necessary to comply with the licence, NHS Acts and NHS Constitution - **Condition G6 (3)**
- The provider has complied with required governance arrangement - **Condition FT4 (8)**
- If providing commissioner requested services, the provider has a reasonable expectation that required resources will be available to deliver the designated service - **Condition CoS7 (3)**

In addition whilst not a condition of license, the Trust must also review whether Governors have received enough training and guidance to carry out their roles. The Board are required to self-certify to this effect within the same timescales.

To help aid the process NHSI has provided templates (appendix 1) which boards can use if they wish. From July NHS Improvement will contact a select number of NHS Trusts and Foundation Trusts to ask for evidence they have self-certified. This can either be through providing the templates if they have used them, or by providing relevant Board minutes and papers recording sign off.

1. What is required?

From 2017/18 there is no longer a set process for assurance or how conditions are met, it is at provider's discretion as to how they carry this out. Overall the aim of self-certification is for providers to carry out assurance that they are in compliance with the conditions, and any internal process must ensure that the Board understand clearly whether the Trust could confirm compliance.

The individual requirements are as follows:

Self-Certification - Condition G6

This requires NHS Foundation Trust to have processes and systems that:

- Identify risks to compliance

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- Take reasonable mitigating actions to prevent those risks and a failure to comply from occurring.
- Providers must annually review whether these processes and systems are effective.

Providers must publish their G6 certification within one month following the deadline (end of the financial year). The RUH Board of Directors (‘the Licensee’) is required to self-certificate to the effect that it ‘Confirms’ or ‘Does not confirm’ that it had well established and effective processes and systems to identify risks and guard against their occurrence in 2016/17, and, that these are still in place and their implementation and effectiveness is regularly reviewed going forward.

Recommendation: Based on the evidence highlighted in Appendix 2, it is recommended to the Board that the ‘Condition G6’ Self Certification is formally signed-off as ‘Confirmed’.

Self-Certification - Condition FT4

Providers should review whether their governance systems meet the standards and objectives in the condition. There is no set standard or model to follow; instead in reaching the conclusion the Trust is compliant, the Trust should assess effective board and committee structures, reporting lines and performance and risk management systems.

The Board of Directors is required to self-certificate ‘Confirmed’ or ‘Not confirmed’ (by **30th June 2017**) to a number of governance-related statements (see Appendix 3 for summary of statement requirements) and set-out any risks and mitigating actions planned for each one within the NHSI self-declaration template.

Recommendation: The Board reviews the governance related statements and comments on the draft evidence prior to the next Board of Directors on 28th June 2017.

Self-Certification - Condition CoS7 (Commissioner Requested Services)

Trusts that have been specifically notified by their commissioners that they have been designated Commissioner Requested services, have to complete this declaration.

Not later than two months from the end of the Financial Year (by 31st May 2017), the RUH Board of Directors (‘the Licensee’) is required to self-certificate to the effect that it ‘Confirms’ one of the following three declarations about the resources required to provide ‘Commissioner Requested Services’ (CRS):

- A. The required resources will be available over the next financial year
- B. The required resources will be available over the next financial year but specific factors may cast doubt on this
- C. The required resources will not be available over the next financial year.

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Required resources include: management resources, financial resources and facilities, personnel, physical and other assets. (Providers do not need to state the other two are not confirmed).

The Trust's commissioners have designated all of the RUH services as Commissioner requested. Commissioner requested services are services commissioners consider should continue to be provided locally even if a provider is at risk of failing financially and which will be subject to regulation by NHS improvement. Providers can be designated as providing CSR because, there is no alternative provider close enough, removing the services would increase health inequalities, and removing the services would make other related services unviable.

Recommendation: Based on the evidence highlighted in Appendix 4, it is recommended to the Board that declaration B within the Condition CoS7 Self Certification is formally signed off as Confirmed

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Appendix 1- NHSI Templates for Board certification

Worksheet "G6 & CoS7"

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.

Please Respond

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

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.]

Signed on behalf of the board of directors, and, in the case of Foundation Trusts, having regard to the views of the governors

Signature

Signature

Name

Name

Capacity

[job title here]

Capacity

[job title here]

Date

Date

Further explanatory information should be provided below where the Board has been unable to confirm declarations under G6.

A

Certification on training of governors (FTs only)

The Board are required to respond "Confirmed" or "Not confirmed" to the following statements. Explanatory information should be provided where required.

2 Training of Governors

1 The Board is satisfied that during the financial year most recently ended the Licensee has provided the necessary training to its Governors, as required in s151(5) of the Health and Social Care Act, to ensure they are equipped with the skills and knowledge they need to undertake their role.

Please Respond

Signed on behalf of the Board of directors, and, in the case of Foundation Trusts, having regard to the views of the governors

Signature

Signature

Name

Name

Capacity

Capacity

Date

Date

Further explanatory information should be provided below where the Board has been unable to confirm declarations under s151(5) of the Health and Social Care Act

A

Corporate Governance Statement (FTs and NHS trusts)

The Board are required to respond "Confirmed" or "Not confirmed" to the following statements, setting out any risks and mitigating actions planned for each one

1 Corporate Governance Statement	Response	Risks and Mitigating actions
1 The Board is satisfied that the Licensee applies those principles, systems and standards of good corporate governance which reasonably would be regarded as appropriate for a supplier of health care services to the NHS.		[including where the Board is able to respond 'Confirmed']
2 The Board has regard to such guidance on good corporate governance as may be issued by NHS Improvement from time to time		[including where the Board is able to respond 'Confirmed']
3 The Board is satisfied that the Licensee has established and implements: (a) Effective board and committee structures; (b) Clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees; and (c) Clear reporting lines and accountabilities throughout its organisation.		[including where the Board is able to respond 'Confirmed']
4 The Board is satisfied that the Licensee has established and effectively implements systems and/or processes: (a) To ensure compliance with the Licensee's duty to operate efficiently, economically and effectively; (b) For timely and effective scrutiny and oversight by the Board of the Licensee's operations; (c) To ensure compliance with health care standards binding on the Licensee including but not restricted to standards specified by the Secretary of State, the Care Quality Commission, the NHS Commissioning Board and statutory regulators of health care professions; (d) For effective financial decision-making, management and control (including but not restricted to appropriate systems and/or processes to ensure the Licensee's ability to continue as a going concern); (e) To obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making; (f) To identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of its Licence; (g) To generate and monitor delivery of business plans (including any changes to such plans) and to receive internal and where appropriate external assurance on such plans and their delivery; and (h) To ensure compliance with applicable trust requirements.		[including where the Board is able to respond 'Confirmed']
5 The Board is satisfied that the systems and/or processes referred to in paragraph 4 (above) should include but not be restricted to systems and/or processes to ensure: (a) That there is sufficient capability at Board level to provide effective organisational leadership on the quality of care provided; (b) That the Board's planning and decision-making processes take timely and appropriate account of quality of care considerations; (c) The collection of accurate, comprehensive, timely and up to date information on quality of care; (d) That the Board receives and takes into account accurate, comprehensive, timely and up to date information on quality of care; (e) That the Licensee, including its Board, actively engages on quality of care with patients, staff and other relevant stakeholders and takes into account as appropriate views and information from these sources; and (f) That there is clear accountability for quality of care throughout the Licensee including but not restricted to systems and/or processes for escalating and resolving quality issues including escalating them to the Board where appropriate.		[including where the Board is able to respond 'Confirmed']
6 The Board is satisfied that there are systems to ensure that the Licensee has in place personnel on the Board, reporting to the Board and within the rest of the organisation who are sufficient in number and appropriately qualified to ensure compliance with the conditions of its NHS provider licence.	Confirmed	[including where the Board is able to respond 'Confirmed']

Signed on behalf of the Board of directors, and, in the case of Foundation Trusts, having regard to the views of the governors

Signature

Signature

Name

Name

Further explanatory information should be provided below where the Board has been unable to confirm declarations under

A

Appendix 2- Self Certification condition G6- RUH support evidence of compliance

G6. Systems for Compliance with Licence Conditions and related obligations **Licensees are required to have systems and processes in place to ensure compliance with licence conditions and related obligations**

The Board of Directors is assured because:

- The Board of Directors has developed and approved a Strategic Framework for Risk Management which is reviewed and updated annually
- The Trust's Internal Auditors conduct a twice yearly review of the Trust's risk management processes
- The Board of Directors receives a quarterly report on the Trust's new top risks
- The Board Assurance Framework in place as the framework for identification and management of strategic risks.
- An Annual Governance statement is in place, and the Trust is compliant with the risk management and assurance framework requirements that support the Statement pursuant to the most up to date guidance from HM Treasury. This statement includes a description of the Trust's risk management and assurance frameworks. It is reviewed by the Trust's external auditors and presented to the audit committee as part of the Trust annual accounts before receiving sign of by the Board of Directors.
- Annual Head of Internal Audit Opinion
- The Board of Directors has established three Assurance Committees each chaired by a Non-Executive Director together with other Non-Executive Director members that ensure that there is effective monitoring and assurance arrangements in place to support the system of internal control.
- Audit Committee Provides assurance to the Board of Directors about the soundness of overall systems of governance and internal control. It reviews risk management Systems and Processes, Financial Risk Management and reviews allocated risk on the Board Assurance Framework.
- Clinical Governance Committee provides assurance that the key clinical systems and processes are effective and robust. It also reviews allocated risk on the Board Assurance Framework.
- Non-Clinical Governance Committee provides assurance that the non-clinical systems and processes are effective and robust. It reviews allocated risk on the Board Assurance Framework
- Regular internal audit programme that provides targeted risk based assurance, covering key areas of compliance and regulatory assurance to inform the Annual Governance Statement.

Appendix 3-

Self-Certification Condition FT4- NHS Foundation Trust governance arrangements

1. The Board is satisfied that the Licensee applies those principles, systems and standards of good corporate governance which reasonably would be regarded as appropriate for a supplier of health care services to the NHS.
2. The Board has regard to such guidance on good corporate governance as may be issued by NHSI from time to time.
3. The Board is satisfied the Royal United Hospitals NHS Foundation Trust implements:
 - Effective board and committee structures;
 - Clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees; and
 - Clear reporting lines and accountabilities throughout its organisation.
4. The Board is satisfied that Royal United Hospitals Bath NHS Foundation Trust effectively implements systems and/or processes:
 - a. to ensure compliance with the Licence holder's duty to operate efficiently, economically and effectively;
 - b. for timely and effective scrutiny and oversight by the Board of the Licence holder's operations;
 - c. to ensure compliance with health care standards binding on the Licence holder including but not restricted to standards specified by the Secretary of State, the Care Quality Commission, the NHS Commissioning Board and statutory regulators of health care professions.
 - d. for effective financial decision-making, management and control (including but not restricted to appropriate systems and/or processes to ensure the Licence holder's ability to continue as a going concern);
 - e. to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making;
 - f. to identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of its Licence;
 - g. to generate and monitor delivery of business plans (including any changes to such plans) and to receive internal and where appropriate external assurance on such plans and their delivery; and
 - h. To ensure compliance with all applicable legal requirements.
5. The Board is satisfied that the systems and/or processes referred to in paragraph 5 should include but not be restricted to systems and/or processes to ensure:
 - that there is sufficient capability at Board level to provide effective organisational leadership on the quality of care provided;
 - that the Board's planning and decision-making processes take timely and appropriate account of quality of care considerations

- the collection of accurate, comprehensive, timely and up to date information on quality of care;
- that the Board receives and takes into account accurate, comprehensive, timely and up to date information on quality of care;
- that Royal United Hospitals Bath NHS Foundation Trust including its Board actively engages on quality of care with patients, staff and other relevant stakeholders and takes into account as appropriate views and information from these sources; and
- that there is clear accountability for quality of care throughout Royal United Hospitals Bath NHS Foundation Trust including but not restricted to systems and/or processes for escalating and resolving quality issues including escalating them to Board where appropriate.

6. The Board of Royal United Hospitals Bath NHS Foundation Trust is satisfied that there are systems to ensure that it has in place personnel on the Board, reporting to the Board and within the rest of the organisation who are sufficient in number and appropriately qualified to ensure compliance with the Conditions of this Licence.

Training of Governors

The Board is satisfied during the 2016/17 financial year, the Trust has provided the necessary training to its Governors, as required in S151(5) of the Health and Social Care Act, to ensure they are equipped with the skills and knowledge they need to undertake their role.

Appendix 4- Self certification Condition Co7- Commissioner Requested Services (CRS) Requirements

CoS7- Providers designated as providing Commissioner Requested Services will have the required resources to continue to provide those services.

B 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.

The Board of Directors is assured through the following documents and processes:

- Trust continues to operate on a going concern basis, the Trust has not nor does it intend to apply to the Secretary of State for the dissolution of the Foundation Trust.
- Annual operating plan (including financial plan) –
- Agreed signed contracts with all commissioners for 2017/18.
- Trust has board subcommittee Fit for the Future in place, to ensure strategic plan is in place. Refresh of 3 year strategy due to commence summer 2017.
- Detailed QIPP plans are in place and monitored via Management Board to ensure delivery of service transformation and quality and efficiency improvement schemes without an adverse impact on services.
- Capital programme
- Strategic workforce committee monitors and overseas workforce

However on the 10th April 2017 BaNES CCG wrote to the Trust and highlighted the financial risks it is facing in 2017/18. Specifically the letter outlined the level of QIPP the CCG is required to delivery in year and some of the measures it is considering in response. The CCG signalled it might need to cap expenditure within the RUH (and other providers) in the coming year.