

<b>Report to:</b>	<b>Public Board of Directors</b>	<b>Agenda item:</b>	<b>19</b>
<b>Date of Meeting:</b>	<b>30 May 2017</b>		

<b>Title of Report:</b>	<b>Licence Self-Certification Process</b>
<b>Status:</b>	<b>Approval</b>
<b>Board Sponsor:</b>	<b>James Scott, Chief Executive</b>
<b>Author:</b>	<b>Xavier Bell, Board Secretary</b>
<b>Appendices</b>	<b>Appendix 1: NHSI reporting templates</b> <b>Appendix 2: Evidence to support G6 compliance</b> <b>Appendix 3: Self Certification Condition FT4- NHS FT Governance arrangements</b> <b>Appendix 4: Self certification Condition Co7- Commissioner Requested Services (CRS) Requirements</b>

## 1. Executive Summary of the Report

The Trust operates under an NHS Provider Licence, and is required to self-certify on an annual basis 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 (CRS); and
- Complied with governance requirements.

NHS Improvement also requires the Trust to certify that during the financial year most recently ended the licensee has provided the necessary training to its Governors, as required in section 151(5) of the Health and Social Care Act, to ensure they are equipped with the skills and knowledge they need to undertake their role (this must be certified by the Board, having regard to the views of the governors).

Elements of the self-certification must be published by 31 May 2018, with final elements completed by 30 June 2018. This will therefore be the first of two papers to come to the Board in relation to licence self-certification, with the second being presented to the June Board of Directors meeting.

## 2. Recommendations (Note, Approve, Discuss)

The Board of Directors is asked to:

- (1) approve NHSI FT self-certification for Condition G6, noting that the Trust has certified that during 2017/18 it was not fully compliant with this condition;
- (2) approve NHSI FT self-certification for Condition CoS7; and
- (3) Note progress with self-certification for FT4 and certification relating to

training of Governors.

**3. Legal / Regulatory Implications**

Failure to comply with licence conditions (or failure to mitigate against /repair breaches) will result the Trust breaching its regulatory and statutory obligations.

**4. Risk (Threats or opportunities, link to a risk on the Risk Register, Board Assurance Framework etc)**

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.

**5. Resources Implications (Financial / staffing)**

Not Applicable

**6. Equality and Diversity**

Not Applicable

**7. References to previous reports**

This is an annual process and forms part of the Board's annual work-plan.

**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.

NHSI guidance, most recently updated in March 2018, requires NHS Providers to self-certify 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 arrangements - **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(s) - **Condition CoS7(3)**.

In addition whilst not a condition of licence the Trust must, within the same timescales, review and self-certify whether Governors have received enough training and guidance to carry out their roles. The view of governors will be canvassed at the meeting of the Council of Governors on 7 June 2018 and an update will be brought to Board at its June meeting.

To help aid the process NHSI has provided templates (Appendix 1) which boards can use if they wish. From July 2018 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?

There is no 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 the necessary due diligence to assure that they are in compliance with the conditions, and any internal process must ensure that the Board understand clearly whether the Trust is able to 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;
- 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.

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Providers must publish their G6 certification within one month of the end of the following year by answering “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 NHS Acts and have had regard to the NHS Constitution”

As NHS Improvement has found the Trust to be in breach of specific licence conditions during 2017/18 and the Trust has accepted this finding, the Board is unable to certify that it has taken all precautions as were necessary in order to comply with the conditions of the licence during 2017/18.

**Recommendation: as such, the recommendation to the Board is that the ‘Condition G6’ Self Certification is formally signed-off as “Not Confirmed” with respect to 2017/18.**

Appendix 2 sets out the evidence of ongoing compliance including processes and systems to guard against breach and actions taken to repair any breach, and provides evidence that the Trust is compliant with its licence moving forward.

#### **Self-Certification - Condition FT4**

Providers should review whether their governance systems meet the standards and objectives in this licence condition. There is no set standard or model to follow; instead in determining whether 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-certify “Confirmed” or “Not Confirmed” (by **30th June 2018**) to a number of governance-related statements (see Appendix 3 for summary of statement requirements).

By doing so, the Board is confirming compliance with this condition as at the date of the statement and anticipated compliance with this condition for the next financial year, specifying any risks to compliance with this condition in the next financial year and any actions it proposes to take to manage such risks.

**Recommendation: The Board reviews and discusses the governance related statement, and that a further report setting out evidence of compliance be presented at the June 2018 meeting of the Board of Directors.**

#### **Self-Certification - Condition CoS7 (Commissioner Requested Services)**

Only NHS Foundation Trusts designated as providing Commissioner Requested Services (CRS) must self-certify under CoS7(3). CRS are services which commissioners consider should continue to be provided locally even if a provider is at risk of failing financially and are subject to regulation by NHS Improvement. The RUH has been designated as providing CRS by all of its main commissioners, and all services provided by the Trust are considered to be CRS.

Not later than two months from the end of the Financial Year (by 31 May 2018), the

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RUH Board of Directors is required to self-certify 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.

Required resources include: management resources, financial resources and facilities, personnel, physical and other assets.

**Recommendation: Based on the evidence highlighted in Appendix 4, it is recommended to the Board that declaration B is 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

Capacity

Date

Date

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

A:

## Worksheet "FT4 declaration"

### 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')	Please Respond
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')	Please Respond
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')	Please Respond
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		(including where the Board is able to respond 'Confirmed')	Please Respond
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')	Please Respond
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.  Signed on behalf of the Board of directors, and, in the case of Foundation Trusts, having regard to the views of the governors	Confirmed	(including where the Board is able to respond 'Confirmed')	Please complete Risks and Mitigating actions
<p>Signature _____</p> <p>Name: _____</p>		<p>Signature _____</p> <p>Name: _____</p>		
Further explanatory information should be provided below where the Board has been unable to confirm declarations under				
A				Please Respond

## Worksheet "Training of governors"

### 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

[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 s151(5) of the Health and Social Care Act

A



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

### **G6 - Systems for Compliance with Licence Conditions and related obligations**

**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.**

**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.**

**The Board of Directors is assured of ongoing compliance 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, and has provided assurance that these are fit for purpose;
- 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, and is reviewed regularly by Executive Directors and the Board's assurance committees;
- 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 Board's Audit Committee as part of the Trust annual accounts before receiving sign off by the Board of Directors;
- Annual Head of Internal Audit Opinion does not identify any significant gaps or issues;
- 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 risks 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 risks on the Board Assurance Framework;
- Audit Committee approves a regular internal audit programme that provides targeted risk based assurance, covering key areas of compliance and regulatory assurance to inform the Annual Governance Statement.

The Trust has taken the following actions to repair any breach of licence terms in 2017/18, and to guard against recurrence:

- The Trust has commissioned an external developmental well-led review, carried out by Ernst & Young. This review assessed the Trust against the CQC's well-led framework in line with NHS Improvement's guidance. The Board has received the output of this review, which will contribute to the Trust's assessment in this domain by the CQC as part of their routine inspection which will take place this year, and relevant recommendations in relation to the Trust's governance systems, structures and processes are being implemented. The review found that "the governance processes and systems within the Trust are generally strong and support the delivery of the desired outcomes within the Well-Led framework";
- The Trust has agreed a work-plan with its Internal Auditors for 2018/19 that includes review of systems and processes identified as in need of specific review and assurance; and
- The Trust has successfully filled two substantive posts within the Executive Team to ensure the Board is sufficient in number.

## 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:
  - 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.
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:
  - 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 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
- f) 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 2017/18 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 is in place (including financial plan);
- Signed contracts with all commissioners for 2018/19 (the second year of a two year contract);
- The Trust has refreshed its strategy in 2017/18;
- Trust has a board subcommittee (the Strategic Assurance Committee) in place, to ensure its strategy and business plans are aligned and delivered;
- Detailed QIPP plans are in place and monitored by the Executive Team and Management Board to ensure delivery of service transformation and quality and efficiency improvement schemes without an adverse impact on services;
- The Trust has an approved Capital programme for 2018/19;
- Strategic workforce committee monitors and oversees workforce within the Trust.

However the Trust is in discussions with key commissioners around block payments for Non-Elective activities in 2018/19, and has yet to confirm the availability and quantum of funding for winter pressures in-year. Additionally, the QIPP programme has not been fully identified with a gap of circa £4.5m. The STP within which the RUH sits has a substantial deficit and is currently developing a financial recovery plan, and it is unclear what, if any, impact this will have on the RUH.