

Report to:	Public Board of Directors	Agenda item:	14
Date of Meeting:	24 June 2020		

Title of Report:	NHSI Licence Self-Certification Process
Status:	Approval
Board Sponsor:	Libby Walters, Interim Chief Executive
Author:	Adewale Kadiri, Head of Corporate Governance
Appendices	Appendix 1: NHSI reporting templates 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 operates under an NHS Provider Licence, and is required to self-certify on an annual basis whether or not it has:</p> <ul style="list-style-type: none"> 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. <p>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).</p> <p>The Board must sign off on self-certification no later than</p> <ul style="list-style-type: none"> G6(3): 31 May 2020 (I had expected this to have been postponed in line with the adjusted Annual Report and Account timelines), publication by 30 June 2020 CoS7 – 31 May 2020 FT4: 30 June 2020

2. Recommendations (Note, Approve, Discuss)
<p>The Board of Directors is asked to:</p> <ol style="list-style-type: none"> approve NHSI FT self-certification for Condition G6; 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

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 2019, 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); – by 31 May**
- The provider has complied with required governance arrangements - **Condition FT4(8); – by 30 June**
- 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) - by 31 May.**

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 and an update will be brought to Board at its July meeting.

To aid the process NHSI has provided templates (Appendix 1) which boards can use if they wish. To fulfil the requirement to publish the self-certification, the templates, proposed by NHS Improvement, will be completed and signed by the Chair and Chief Executive. These documents will then be added to the Key Publications section of the Trust's website.

NHSI indicate that they may contact licensees to ask for evidence they have self-certified. This could either be by assessing the templates, if used, or 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 providers' discretion as to how this is done. Overall the aim of self-certification is for providers to carry out the necessary due diligence to assure themselves that they are in compliance with the conditions, and any internal process must ensure that the Board understands 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:

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- Identify risks to compliance;
- Take reasonable mitigating actions to prevent those risks from occurring;
- Providers must annually review whether these processes and systems are effective.

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 the Trust has not been in breach of any of its licence conditions during 2019/20, the Board is able to certify that it has taken all precautions as were necessary in order to comply with the conditions of the licence during the year.

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”.

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-certificate “Confirmed” or “Not Confirmed” (by **30th June 2020**) 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.

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 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 2020 meeting of the Board of Directors.

Self-Certification - Condition CoS7 (Commissioner Requested Services)

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Only NHS Foundation Trusts designated as providing Commissioner Requested Services (CRS) are required to 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 2020), the RUH Board of Directors 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.

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

The Trust’s commissioners have designated all of the RUH services as Commissioner Requested. Providers can be designated as providing CRS 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 signed off as Confirmed.

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:
 Capacity: [job title here]
 Date:

 Name:
 Capacity: [job title here]
 Date:

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

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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.	Confirmed	[including where the Board is able to respond 'Confirmed']	Please complete Risks and Mitigating actions

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

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

<p>Signature</p> <p>_____</p> <p>Name <input style="width: 100%;" type="text"/></p> <p>Capacity <input style="width: 100%;" type="text" value="[[job title here]]"/></p> <p>Date <input style="width: 100%;" type="text"/></p>	<p>Signature</p> <p>_____</p> <p>Name <input style="width: 100%;" type="text"/></p> <p>Capacity <input style="width: 100%;" type="text" value="[[job title here]]"/></p> <p>Date <input style="width: 100%;" type="text"/></p>
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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

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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 has been drafted as part of the Annual Report, and the Trust is compliant with the risk management and assurance framework requirements that support the Statement, in line with the most up to date guidance from HM Treasury. This statement includes a description of the Trust's risk management and assurance frameworks. It has been reviewed by the Trust's external auditors and presented to the Board's Audit Committee in advance of sign off by the Board of Directors;
- The Head of Internal Audit Opinion does not identify any significant gaps or issues;
- The Board of Directors has established four Assurance Committees each chaired by a Non-Executive Director, with other Non-Executive Directors as members, which ensure that effective monitoring and assurance arrangements are in place to support the system of internal control;
- The 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 the Board Assurance Framework;

- The Audit Committee approves and oversees an internal audit programme that provides targeted risk based assurance, covering key areas of the Trust's business. This also helps 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 that 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 managing 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 the 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 2019/20 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. This includes the provision of opportunities for externally provided training (from NHS Providers for example), dedicated briefings and seminars on specific topics either as requested by the Council of Governors or recommended by the Board, and the provision of information in written and other forms on various aspects of the Trust's work.

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 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.
- An annual operating plan is in place (including financial plan);
- Agreed contracts with all commissioners for 2020/21 (subject to variation later in the year in relation to the COVID-19 emergency)
- Detailed QIPP plans are in place and are monitored via the Better Value, Better Care Committee 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 2020/21;
- The People Committee and the Strategic workforce committee monitor and oversee workforce issues within the Trust.