

### Agenda Item 3.iv

Report to:	Board of Directors	Date: 6 April 2023
Report of:	Trust Secretary	
Report Title:	Annual Board Self-Certifications	
Principal Objective/ Strategy:	GOVERNANCE	
Board Assurance Framework Entries:	Not Applicable	
Regulatory Requirement:	Licence requirements	
Equality Considerations:	None believed to apply	
Key Risks:	Failure to comply with Regulator, Licence and other governance requirements	
For:	Consider and Approve each Statement and if unable to do so, agree what additional supporting commentary the Board wishes to add for the Annual self-certifications for consideration and approval.	

#### 1 Purpose

- 1.1 To provide the Trust Board with the draft the Annual self-certifications for consideration and approval.

#### 2 Background

- 2.1 The Board has for a number of years been required to declare annual compliance with NHSI (previously Monitor) certifications as part of the annual planning process from 2016 these submissions became part of the financial year end process. The self-certifications for 2022/23 are similar in content to previous years.

NHSE has consulted on the provider licence arrangements and the current requirement to publish a declaration of compliance with the licence conditions remains in place for the current i.e. the 2022/23 licence.

The new licence, which will formally apply for NHS Trusts as well as FTs, takes effect on 1st April 2023, and there is no requirement to publish a declaration for the new licence. The new licences for 2023/24 have been published and NHSE will not monitor compliance with the licence going forward. It will be left up to ICBs to consider if/how they wanted to monitor licence compliance. NHSE will use the licensing framework to take action against an NHS provider, if it had to, i.e. in relation to breach.

#### 3 Introduction

- 3.1 Under current guidance NHS foundation trusts are required to self-certify whether or not they have complied with the conditions of the NHS provider licence (which itself includes requirements to comply with the National Health Service Act 2006, the Health and Social Care Act 2008, the Health Act 2009, and the Health and Social Care Act 2012, and have regard to the NHS Constitution), have the required resources available if providing commissioner requested services, and have complied with other governance requirements.
- 3.2 The aim of self-certification is for providers to carry out assurance that they are in

compliance with the conditions.

#### **4 Annual self-certifications – Corporate Governance Statement Condition FT4(8)).**

4.1 The Board is required to approve the following compliance statements for 2022/23:

- 1) Annual self-certification of Licence compliance (General Condition 6);
- 2) That the provider has a reasonable expectation that required resources will be available to deliver the designated commissioner requested services (Condition CoS7(3).
- 3) The Annual self-certification on Governor training.

The draft certifications are attached for review and will be published to the Trust website following approval. These are supported by a summary of the structure of the licence at Appendix 4.

#### **5 What is the Board required to do**

5.1 Boards needs to consider and self-certify the following after the financial year end that it has complied with required governance arrangements (Condition FT4(8)). The draft statements setting out compliance against the criteria is attached at Appendix 2.

5.2 As in 2022 the self-certification for 2023 will not include a submission to NHSI but requires the self-certifications to be published.

5.3 NHSI retain the option of contacting a select number of NHS trusts and foundation trusts to ask for evidence that they have self-certified by providing the completed or relevant board minutes and papers recording sign-off.

#### **6 Recommendation**

The Board is requested to consider and approve:

##### **Appendix 1**

- i. NHSI self-certification template for “Corporate Governance Statement”

##### **Appendix 2**

- ii. Annual self-certification of Licence compliance (General Condition 6);
- iii. That the provider has a reasonable expectation that required resources will be available to deliver the designated commissioner requested services (Condition CoS7(3).

##### **Appendix 3**

- iv. The Annual self-certification on Governor training.

and if unable to do so, agree any additional supporting commentary the Board wishes to obtain or add to allow publication by the 30 June 2023.

### NHSI self-certification template for “Corporate Governance Statement” - due for Board approval by 30 June 2023

The Board is required to respond “Confirmed” or not “Confirmed” to the following statements, setting out any risks and mitigating actions planned for each one

4	Corporate Governance Statement	Response	Risks and mitigating actions (including where Board is able to respond “Confirmed”)
1	The Board is satisfied that the Trust 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.	Confirmed	
2	The Board has regard to such guidance on good corporate governance as may be issued by NHSI from time to time	Confirmed	
3	<p>The Board is satisfied that the Trust implements:</p> <p>(a) Effective board and committee structures;</p> <p>(b) Clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees; and</p> <p>(c) Clear reporting lines and accountabilities throughout its organisation.</p>	Confirmed	<p>Board and Committee effectiveness considered in our self-assessment process and a positive assessment of Committee performance for 2022/23.</p> <p>Executive and Non-Executive Director have agreed portfolios and performance review processes are in place. There are clear reporting lines and accountabilities in place across the organisation.</p>
4	<p>The Board is satisfied that the Trust effectively implements systems and/or processes:</p> <p>(a) To ensure compliance with the Licensee’s duty to operate efficiently, economically and effectively;</p> <p>(b) For timely and effective scrutiny and oversight by the Board of the Licensee’s operations;</p> <p>(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;</p>	Confirmed	Quality, performance and financial systems and processes are in place that allow for timely reporting and review through Committee and Board; and that deliver compliance with the duties, standards and legal requirements placed on the Trust.

	<p>(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);</p> <p>(e) To obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making;</p> <p>(f) To identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of its Licence;</p> <p>(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</p> <p>(h) To ensure compliance with all applicable legal requirements.</p>		
5	<p>The Board is satisfied that the systems and/or processes referred to in paragraph 4 should include but not be restricted to systems and/or processes to ensure:</p> <p>(a) That there is sufficient capability at Board level to provide effective organisational leadership on the quality of care provided;</p> <p>(b) That the Board's planning and decision-making processes take timely and appropriate account of quality of care considerations;</p> <p>(c) The collection of accurate, comprehensive, timely and up to date information on quality of care;</p> <p>(d) That the Board receives and takes into account accurate, comprehensive, timely and up to date information on quality of care;</p> <p>(e) That the 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</p> <p>(f) That there is clear accountability for quality of care throughout the Trust including but not restricted to systems and/or processes for escalating and resolving quality issues including escalating them to the Board where appropriate.</p>	Confirmed	Where we have recommendations for improvement identified through feedback from our staff and patients, external and internal audits, or our programmes of quality improvement, we develop and agree action plans with identified leads to ensure that remedial measures are put in place. Actions plans are monitored through the relevant Trust Committees with escalation to the Board where required.
6	<p>The Board is satisfied that there are systems to ensure that the Trust 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.</p>	Confirmed	

# DECLARATION

Signed on behalf of the board of directors, and having regard to the views of the governors

**Name** Professor John Wallwork

**Capacity** Chairman

**Date**

**Name** Eilish Midlane

**Capacity** Chief Executive

**Date**

## Appendix 2

### NHSI self-certification template for General Condition 6 and Continuity of Services 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 and 2	<b>General condition 6 - Systems for compliance with license conditions (FTs and NHS trusts)</b>	
	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.	Confirmed
3	<b>Continuity of services condition 7 - Availability of Resources (FTs designated CRS only)</b>	
	<b>Either</b>	
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 certificate.	Confirmed
	<b>Or</b>	
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.	Not Confirmed
	<b>Or</b>	
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.	Not confirmed

	<b>Statement of main factors taken into account in making the above declaration</b>	
	<p>In making the above declaration, the main factors which have been taken into account by the Board of Directors are as follows:</p> <p>The going concern assessment has been prepared in the context of known internal and external factors that exist at the time of writing.</p> <p>Royal Papworth Hospital NHS Foundation Trust's Board of Directors has carefully considered the principle of 'Going Concern', after making enquiries, and considering the uncertainties that are described in the accounts, the Directors have a reasonable expectation that the Trust will have access to adequate resources to continue in operational existence for the foreseeable future. For this reason, they continue to adopt the going concern basis in preparing the accounts.</p>	

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

**Name**

**Name**

**Capacity**

**Capacity**

**Date**

**Date**

Further explanatory information should be provided below where the Board has been unable to confirm declarations under G6.
[e.g. key risks to delivery of CRS, assets or subcontractors required to deliver CRS, etc.] The Board is able to confirm the declaration under G6

**NHSI self-certification template for “Training of Governors” - due for Board approval by 30 June 2023**

The Board is required to respond “Confirmed” or not “Confirmed” to the following statements. Explanatory information should be provided where required.

<b>2</b>	<b>Training of Governors</b>	
	The Board is satisfied that during the financial year most recently ended 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.	Confirmed

Signed on behalf of the board of directors, and having regard to the views of the governors

**Name** Professor John Wallwork

**Name** Eilish Midlane

**Capacity** Chairman

**Capacity** Chief Executive

**Date**

**Date**

**Governor Training 2022/23 – evidence to support Board of Directors annual self-certification due by 30 June 2023**

Council of Governors	Board to Council presentations are undertaken at each meeting.
Audit Committee	2 Governors attend meetings and contribute to discussions. Supports appointment and review of External Auditors.
Quality & Risk Committee	2 Governors attend meetings as observers. They have been invited to raise questions through the Chair of the meeting.
Performance Committee	2 Governors attend meetings as observers. They have been invited to raise questions through the Chair of the meeting.
Patient and Public Involvement Committee	Governor Committee assists with review of Quality Accounts priorities and supports learning on Trust quality agenda and outcomes during the year.
Fundraising Group	Governors attend the Fundraising Group which is an open forum for our supporters. A Charity update is circulated to the full CoG at each meeting and provides oversight of Charity Activities.
Induction	The Trust has run the NHSP Governor Induction Programme delivered over four sessions between November 2022 and February 2023 and governors who were new to the Trust in the last two sets of elections were invited to join the programme which was well received. New Governors were also offered mentors.
Values & Behaviours Workshops	All Governors have been invited to attend our Values and Behaviour Workshops delivered either in person or online joining with staff from across the Trust.
NHS Providers	The Trust is a member and Governors are able to access network meetings.  Governors joined the NHS Providers annual Governor Focus Conference which was held virtually NHS Providers Governor Focus conference 5, 6 and 7 July 2022.. Governors joined the NHS Providers Governor Workshops on 30 January 2023 and 9 February 2023
Trust Briefing	Governors received regular briefings in addition to the main programme of meetings and an informal

	Governor Briefing with the Non-Executive Directors was held prior to Board meetings (until these returned to a monthly schedule).
Pre-Governor Election sessions	On hold since 2020/21
Quality & Safety Rounds	<p>Patient Safety Visibility Rounds: 1 July at 09:00 to 10:00 (Patient Safety) 22 July at 09:00 to 10:00 (15 Steps)</p> <p>Governors joined visibility rounds on: 9 February 2023 (15 Steps Day Ward) 9 February 2023 (15 Steps Ward 5 South)</p>
PLACE Inspections	Reinstated and Governors joined our PLACE inspection 11/11/2022.
Patient and Carer Experience Group	Governors involved virtually in 2022/23
Familiarisation visit to the hospital	On hold in 2022/23. To be reviewed now Governors are returning to site.
Annual Members' Meeting	Held virtually and attended by Governors and Trust members. Supports learning/update on Trust activities. Supports meeting members, Executive Directors and Non-executive Directors.
CQC	<p>Governors attended CQC focus group at the last inspection in 2019. Governor focus group was also set up for the external Well Led review undertaken in March 2022.</p> <p>In 2022 Governors have acted as 'peer reviewers' in our programme of inspection that reports to our Fundamentals of Care Board.</p>
Strategic developments	<p>The Council of Governors has received presentations on:</p> <ul style="list-style-type: none"> <li>• ICS System Development Update</li> </ul>

	<ul style="list-style-type: none"> <li>• Cambridgeshire &amp; Peterborough Shared Care Record</li> </ul> <p>Governors have been well represented at system ICB Governors meetings which have provided updates on the changes in the Integrated Care Systems.</p>
Clinical and service presentations to CoG	<ul style="list-style-type: none"> <li>i. Patient Story - Diabetes Specialist Nurse 15 June 2022</li> <li>ii. Patient Story - Respiratory Medicine 16 November 2022</li> </ul>

*The Board is reminded that Governor training is a standing item in the Governor Matters paper for the Council of Governors.*

## Structure of the licence

**NHS Improvement's (NHSI)** licence is the main tool with which providers are regulated and it sets out a number of obligations, these are summarised in the six sections below:

<b>Section 1 General Conditions</b>
G1: Provision of information – <i>Royal Papworth supplies information/returns as requested.</i>
G2: Publication of information – <i>Information on Royal Papworth services are on the website.</i>
G3: Payment of fees – <i>NHSI can charge a fee but have not done so to date.</i>
G4: Fit and proper persons test – <i>Ensuring that disqualified directors, undischarged bankrupts etc. do not become or continue as Directors or Governors. Royal Papworth has requirements set out in the Constitution and an annual declaration is also required.</i>
G5: Monitor guidance – <i>Requirement to pay due regard to NHSI guidance – Royal Papworth complies with all NHSI mandatory guidance.</i>
G6: Systems for compliance with licence conditions and related obligations – <i>Taking all reasonable precautions against the risk of failure to comply with the licence, NHS Acts and NHS Constitution, including the establishment and implementation of processes and systems to identify risks and guard against their occurrence – Risk management processes in place (DATIX). Board Committee and Executive Director review of BAF and risks.</i>
G7: Registration with the CQC – <i>Papworth is registered and received a rating of “Outstanding” in the last inspection (2019). Internal mock CQC inspections are undertaken regularly and the last rating was ‘Good’ (Feb 2020)</i>
G8: Patient eligibility and selection criteria – <i>Eligibility and selection criteria for patients must be developed and applied in a transparent manner. Information on services and who can access these are on the Royal Papworth website.</i>
G9: Continuity of Services – <i>This sets out the conditions under which a service is designated as commissioner requested service (CRS).</i>
<b>Section 2 Pricing conditions</b>
P1: Recording of information – <i>Required only if NHSI requests in writing.</i>
P2: Provision of information – <i>Submissions to NHSI as requested.</i>
P3: Assurance report on submissions to NHSI - <i>Specific assurances of accuracy of submissions as required by NHSI.</i>
P4: Compliance with national tariff – <i>Commissioners and providers required to provide services in line with the tariff.</i>
P5: Constructive engagement concerning local tariff modifications – <i>Providers to agree these with Commissioners.</i>
<b>Section 3 Choice and competition conditions</b>
C1: Patient choice – <i>where the system allows for patient choice of provider, then patients should be provided with information about that choice at the points in the system where choice is available.</i>

C2: Competition oversight – <i>the licensee shall not enter into an agreement that distorts/restricts competition.</i>
<b>Section 4 Integrated Care Condition</b>
IC1: Provision of Integrated care - <i>This is a broadly defined prohibition: the licensee shall not do anything that could reasonably be regarded as detrimental to enabling integrated care. It also includes a patient interest test.</i>
<b>Section 5 Continuity of Services conditions</b>
CoS1: Continuing provision of Commissioner requested services – <i>This condition prevents licensees from ceasing to provide commissioner requested services.</i>
CoS2: Restriction on the disposal of assets – <i>A register of assets is required in the provision of commissioner requested services.</i>
CoS3: Standards of corporate governance and financial management – <i>Requires the licensee to have due regard to adequate standards of corporate governance and financial management, including risk rating methodology.</i>
CoS4: Undertaking from the ultimate controller – <i>This is used to prevent parent companies putting in place arrangement which would force a subsidiary to break its licence conditions</i>
CoS5: Risk pool levy – <i>This obliges licencees to contribute, if required, towards the funding of a risk pool.</i>
CoS6: Cooperation in the event of financial distress – <i>When NHSI has concerns about the ability of a licensee to carry on as a going concern then it is obliged to cooperate with NHSI.</i>
CoS7: Availability of resources – <i>Licencees must act in a way to secure resources to operate commissioner requested services.</i>
<b>Section 6 NHS Foundation Trust conditions</b>
FT1: Information to update the register of NHS FTs – <i>FTs must provide whatever is requested by NHSI, including a copy of the Constitution and latest Annual Report and Accounts. Papworth provides these documents.</i>
FT2: Payment to NHSI in respect of registration and related costs – <i>NHSI may move to cost recovery.</i>
FT3: Provision of information to advisory panel – <i>This is an external panel formed by the regulator and would consider questions brought by Governors. As the Board and Council are aware these issues are only those that have not been resolved following exhausting all internal mechanisms.</i>
FT4: NHS foundation trust governance arrangements – <i>This requires NHSFTs to apply 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.</i>
Under this condition of our licence the Board is required to submit a corporate governance confirming compliance with this condition at the date of the statement and anticipated for the next financial year.