

Agenda Item 3.v

Report to:	Board of Directors	Date: 7 May 2020
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:	<p>Consider and Approve each Statement and if unable to do so, agree what additional supporting commentary the Board wishes to add for the:</p> <ol style="list-style-type: none"> 1) Annual self-certification of Licence compliance for publication by the 31 May 2020 2) Annual self-certification on Governor training due for publication by the 30 June 2020 <p>Consider how the work of the Board Committees might better support assurances concerning the annual declaration for the future and ensure the agendas and work of the committees is driven accordingly.</p>	

1 Purpose

- 1.1 To provide the Trust Board with draft copies of the Corporate Governance Statement and other annual Board self-certification statements 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 (separated with submission dates of either end of May or end of June); from 2016 these submissions became part of the financial year end process. The self-certifications for 2020 are similar in content to previous years.

3 Introduction

- 3.1 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.

- 3.3 It is for providers to decide how they carry out this self-certification process. However, the process should ensure that the Trust Board understands clearly whether or not it can confirm compliance. As in 2019 NHS foundation trust Board's must sign off the self-certification for 2020 having regard to the view of Governors.
- 3.4 To aid the self-certification process, NHSI has provided templates which Boards can use. These have been used to document the Trust certifications for 2020 and are attached to this paper.

4 What is the Board required to do

- 4.1 Boards need to self-certify the following after the financial year end:

NHS provider licence condition

- The provider has effective systems to ensure compliance with the conditions of the NHS provider licence, NHS legislation and the duty to have regard to the NHS Constitution (condition G6(3));
 - The provider has complied with required governance arrangements (Condition FT4(8));
 - For Foundation Trusts, that the provider has a reasonable expectation that required resources will be available to deliver the designated commissioner requested services (Condition CoS7(3)).
- 4.2 NHSE has confirmed that all Royal Papworth specialised services are Commissioner Requested Services.
- 4.3 As in 2019 the self-certification for 2020 will not include a submission to NHSI but requires the self-certifications to be published.
- 4.4 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..

5 Summary on Draft Self-certifications contained in Attachment 1

- 5.1 Compliance with Licence Conditions - Attachment 1
The Board is asked to support the 'confirmed' self-certification on licence requirements for General Condition 6 and Continuity of Services Condition 7.

Attachment 2 provides information on the structure of the licence and the Trusts compliance against these requirements.

- 5.2 Training of Governors – Attachment 3
The Board is asked to support the 'confirmed' self-certification on Training of Governors.

Attachment 4 sets out the evidence to support Board of Directors annual self-certification Training of Governors. This summary was reviewed and approved by the Governors Assurance Committee on the 9 March 2020.

6 Annual self-certification – Corporate Governance Statement

- 6.1 The Corporate Governance Statement will be brought to Board for approval with the

Annual Report on the 4 June for publication by the 30 June 2020.

7 Recommendation

Consider and Approve each Statement and if unable to do so, agree what additional supporting commentary the Board wishes to add for the:

- 1) Annual self-certification of Licence compliance (General Condition 6) for publication by the 31 May 2020;
- 2) That the provider has a reasonable expectation that required resources will be available to deliver the designated commissioner requested services (Condition CoS7(3) by 31 May 2020.
- 3) Annual self-certification on Governor training due for publication by the 30 June 2020.

Consider how the work of the Board Committees might better support assurances concerning these annual declarations for the future and ensure the agendas and work of the Committees is driven accordingly.

Attachment 1

NHSI self-certification template for General Condition 6 and Continuity of Services Condition 7 of the NHS Provider licence - due for Board approval by 31 May 2020

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	General condition 6 - Systems for compliance with license conditions (FTs and NHS trusts)	
	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	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 certificate.	Confirmed <i>(Trust Board to consider/challenge)</i>
	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.	Not Confirmed
	Or	
3c	In the opinion of the Directors of the Licensee, the Licensee will not have the Required Resources	Not confirmed

	available to it for the period of 12 months referred to in this certificate.	
	Statement of main factors taken into account in making the above declaration	
	<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><i>The going concern assessment is made in the context of the ongoing coronavirus outbreak. On 11 March 2020 the Chancellor of the Exchequer committed in Parliament, as part of the Budget 2020, that the NHS will receive all the resources needed to cope with coronavirus. This commitment was reaffirmed by Sir Simon Stevens, NHS Chief Executive, and Amanda Pritchard (NHS Chief Operating Officer, in a letter to NHS Chief Executive Officers on 17 March 2020. 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.</i></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.]

Additional words to be added depending on whether confirming 3a or 3b

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:

Section 1 General Conditions
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>
Section 2 Pricing conditions
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>
Section 3 Choice and competition conditions
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>
Section 4 Integrated Care Condition
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>
Section 5 Continuity of Services conditions
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 licensees 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>Licensees must act in a way to secure resources to operate commissioner requested services.</i>
Section 6 NHS Foundation Trust conditions

FT1: Information to update the register of NHS FTs – *FTs must provide whatever is requested by NHSI, including a copy of the Constitution and latest Annual Report and Accounts. Papworth provides these documents.*

FT2: Payment to NHSI in respect of registration and related costs – *NHSI may move to cost recovery.*

FT3: Provision of information to advisory panel – *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.*

FT4: NHS foundation trust governance arrangements – *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.*

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.

NHSI self-certification template for “Training of Governors” - due for Board approval by 30 June 2020

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

2	Training of Governors	
	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

Capacity

Date

Name

Capacity

Date

Governor Training 2019/20 – evidence to support Board of Directors annual self-certification due by 30 June 2020

Council of Governors	Board to Council presentation at every meeting.
	Governor Questionnaire - Included questions on training requirements and to inform plans for future training.
Audit Committee	2 Governors attend meetings and contribute to discussions. Supports appointment and review of External Auditors.
Quality & Risk Committee	2 Governors attend meetings and contribute to discussions. (Also Quality and Risk Management Group - Staff Governor attends. The QRMG reports to Q&R).
Patient and Public Involvement Committee	Review of Quality Accounts – supports learning on Trust quality agenda and outcomes during the year.
Fundraising Committee	2 Governors voting members – supports learning on the associated charity activities.
Governors' Assurance Committee	Meets as Task and Finish Group and oversees membership engagement, governor training and fulfilling statutory duties.
Induction	All new Governors to attend Trust Corporate induction New Governors offered mentors Separate Governor Induction session to be set for 2020
NHS Providers	The Trust is a member and Governors are able to access network meetings.

Trust Briefing	Weekly circulation of updates by the Communications Team.
Pre Governor Election sessions	Governor Stall: Governor led events held in the Atrium for those interested in becoming Governors.
Patient Safety Focus Groups	Governors involved.
PLACE Inspections	Governors involved in the annual inspection programme.
Patient and Carer Experience Group	Governors involved.
Familiarisation Visit to the New Hospital	All Governors were invited to join a familiarisation visit to the new hospital site ahead of the move.
Annual Members' Meeting – Insight event	Attended by Governors. Supports learning/update on Trust activities. Supports meeting members, Executive Directors and Non-executive Directors.
CQC	Governors attended CQC focus group.
Compassionate and Collective Leadership Programme	Governors have attended the CCL focus group
Research Symposium	14 November 2019 - Governors invited and attended
Clinical service presentations to CoG	<ul style="list-style-type: none"> i. Healthcare Science at Royal Papworth Hospital (Jun 19) ii. Rapid NSTEMI Pathway (Nov 19) iii. AMM (Sept 19) iv. Thoracic Oncology (<i>Mar 20 – planned but meeting deferred</i>)

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