

Board of Directors (in Public)

Item 6.1

Subject: Board Self-Certifications 2017
Date of Meeting: 30th May 2016
Prepared by: Lucy Lavan, Director of Corporate Affairs
Presented by: Lucy Lavan, Director of Corporate Affairs

BAF Ref	Impact on BAF
3.2	none

1. Executive Summary

The purpose of the paper is to request that the Board completes the annual self-certification process as required by the NHS Provider Licence.

There are three declarations for the Board's consideration:

- i) Condition G6(3) – Providers must certify **by 31 May 2017** that their Board has taken all precautions necessary to comply with the NHS Provider Licence and NHS Acts and have had regard to the NHS Constitution; **(Appendix 1)**
- ii) Condition CoS7(3) – Providers providing Commissioner Requested Services (CRS) must certify by **31st May 2017** that they have a reasonable expectation that required resources will be available to delivered the designated services. **(Appendix 1)**
- iii) Condition FT4(8) – Providers must certify by **30th June 2017** compliance with required governance standards and objectives; foundation trusts must also certify that they have provided adequate training to Governors. **(Appendix 2);**

This report provides the Board with assurances to support the above Board self-certifications.

It is critical that the Board is satisfied with the controls and assurances in place to support the Board declarations as NHS Improvement could call into question the self-declaration process, in the event that there is a breach or potential risk of breach of the conditions within the provider licence.

The Board is asked to consider the sufficiency of assurances provided and approve the draft declarations set out at Appendices 1 and 2.

2. Background

NHS Improvement has advised that for 2017, no returns or information submissions are required but that Board self-certification is needed in order that providers carry out the necessary assurance that they remain in compliance with the conditions of the licence. Templates have been provided to assist with the process (Refer Appendices 1 and 2) and these contain the same statements as those certified by the Board in 2016. Boards are required to choose 'confirmed' or 'not confirmed', as appropriate for each declaration.

Where 'not confirmed' is chosen, an explanation is required using the 'free text' box provided. The Board must sign off the self-certification, taking into account the views of governors. The deadlines for completion of this process are noted above.

From July 2017, NHS Improvement intends to undertake an audit exercise and will select a number of providers who will be asked to provide evidence that they have self-certified.

3. General Condition 6

General Condition 6 states that:

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 Trust has in place robust systems for ensuring compliance with licence conditions. In April 2017, the Audit Committee undertook its annual comprehensive review of compliance with the provider licence and continues to review on a quarterly basis, an updated compliance checklist of key provisions with the aim of confirming continued compliance and / or identifying any emerging risks. The Board's governance arrangements including the Committee structure support compliance and risks are escalated to the Board with any gaps in controls and assurances reflected in the Board Assurance Framework.

The Trust has processes in place to ensure compliance with any new requirements imposed on it under NHS Acts, with the Audit Committee receiving a regular update from external audit on new regulatory requirements. The constitution of Liverpool Heart and Chest Hospital NHS FT has been subject to regular review and new policies and processes have been introduced as needed, including those to ensure compliance with the fit and proper persons regulations.

On an annual basis the Board receives a comprehensive report on compliance with the requirements of the NHS Constitution. This report has been considered by the Quality and People Committees, before receipt by the Board at its May meeting.

The Board is asked to consider the attached declarations of compliance (Appendix 1), confirm its satisfaction with the systems in place for compliance with licence conditions and support the recommended responses of 'confirmed'.

4. Condition CoS7

Commissioner Requested Services (CSR) are those services that commissioners consider should be provided locally even if a provider is at risk of failing financially. Providers can be designated as providing CRS because:

- There is no alternative provider close enough;
- Removing services would increase health inequalities;
- Removing the services would make other related services unviable.

Liverpool CCG no longer designates CRS (Commissioner Requested Services) but the Trust continues to have a portfolio of CRS designated by NHS England for specialist service provision.

The Board is required to confirm that it has the required resources available to continue to provide these services over the next financial year and must explain the reasons to support this declaration.

The key assurances received by the Board to support this declaration include the Going Concern Report provided by the Chief Finance Officer in March 2017 and the fact that the Trust is categorised within Segment 1 (lowest risk) under NHSI's Single Oversight Framework.

The Board is asked to consider the attached declarations of compliance (Appendix 1), confirm its satisfaction with the systems in place for compliance with licence conditions and support the recommended responses of 'confirmed'.

5. Condition FT 4

Providers should review whether their governance systems achieve the objectives set out in the licence condition (Refer Appendix 2).

Mersey Internal Audit Agency (MIAA) was asked to review the adequacy and sufficiency of evidence available to support each of the statements required to self-certify Condition FT4, taking into account the findings of the 2016 CQC Inspection, the recent 'Well Led' review and other internal assurances including the annual review of compliance with the NHS Foundation Trust Code of Governance (July 2014).

MIAA's report is attached (Appendix 3) for the Board's consideration. Each of the 20 Board statements has been assigned a 'green' risk rating based upon the adequacy of the evidence provided to support the statements. Improvement opportunities have been identified and a follow up on progress of actions agreed following previous reviews was undertaken.

In conclusion, MIAA found that *'Taking into account the findings from this review the Board can take reasonable assurance that the processes upon which the Trust relies for preparing and assessing compliance with the 20 statements in the governance Condition are appropriately designed and consistently applied'*.

The Board is asked to consider the attached declarations of compliance (Appendix 2), confirm its satisfaction with the assurance provided by MIAA in relation to its evaluation of the adequacy and sufficiency of evidence provided in respect of each statement and support the recommended responses of 'confirmed'.

6. Training of Governors

The Board is required to declare compliance with other certifications relating to the training of governors. Providers must review whether the governors have received enough training and guidance to carry out their role.

The Board has previously received assurance on the provision of training to Governors in 2016/17, through the annual review of the Council of Governors undertaken in November

2016 and as part of the review of compliance with the Code of Governance (March 2017) and disclosures within the Trust's annual reports. In March 2017, a paper on the Board certifications was presented to the Council of Governors and this included a summary of the training provided to Governors in the last 12 months. Governors confirmed their satisfaction with the training provided.

7. Views of Governors

As noted above, the Council of Governors reviewed a draft assurance paper based on the expected self-certification requirements for 2017 at its last meeting held on 6th March 2017. Governors had no views or issues in relation to the statements for the Board's consideration.

8. Recommendations

The Board of Directors is asked to :

- i) Review the Board declarations in relation to Licence Conditions G6 and CoS7(Appendix 1)) and support the recommendation that both statements can be 'confirmed', with inclusion of the suggested narrative in relation statement of main factors taken into account in determining the availability of future resources.
- ii) Review the external assurance report provided by MIAA (Appendix 3) and schedule of supporting evidence of compliance with Licence Condition FT4;
- iii) Review the Board declarations in relation to Licence Condition FT4 and Training of Governors (Appendix 2) and support the recommendation that all statements can be 'confirmed'.
- iv) Confirm its satisfaction that the Board has received sufficient assurance in respect of the 2017 self-declaration process, noting the possibility that the Trust could be selected for audit and also that the self-declaration process could be subject to external scrutiny should the Trust be found to be in breach or potential risk of breach of its provider licence.