Sheffield Health and Social Care NHS Foundation Trust

Board of Directors (Open)

Date: **10 June 2020** **Item Ref:** 12

TITLE OF PAPER	**Self-certification against conditions G6, CoS7 and FT4 within the Provider Licence**
TO BE PRESENTED BY	David Walsh, Director of Corporate Governance
ACTION REQUIRED	It is recommended that Board: 1) Notes the discussions with NHSE/I in relation to the Trust's self-declaration given our regulatory status following the CQC inspection earlier this year; 2) Notes the prior consideration and approval of Appendix 1 by Audit and Risk Committee, including the approval of licence condition G6 by the statutorily required date of 31 May 2020; 3) Approves the self-certification in relation to licence conditions CoS7 and FT4.
OUTCOME	Compliance with required deadlines to self-certify, the outcome of which will be subsequently published on the Trust's website.
TIMETABLE FOR DECISION	Statutory compliance with the requirement to approve self-certification against condition G6 by 31 May 2020 – **completed by Audit and Risk Committee on 28 May 2020** Statutory compliance with the requirement to approve self-certification against conditions CoS7 and FT by 30 June 2020 – **approved by Audit and Risk Committee on 28 May 2020 and now required of Board.** Statutory requirement to publish self-certification against all three conditions on the Trust's website by 30 June 2020 – **to be undertaken by the Director of Corporate Governance following consideration of this item.**
LINKS TO OTHER KEY REPORTS / DECISIONS	NHS Foundation Trust governance arrangements
STRATEGIC AIM: **STRATEGIC OBJECTIVE:** **BAF RISK NUMBER:** **BAF RISK DESCRIPTION:**	Quality & Safety A101 Effective governance, quality assurance and improvement will underpin all we do A101iii Trust governance systems are not sufficiently embedded which may reduce the effective means by which executive directors can consistently and continually be held to account for the delivery of sound strategies, effective risk management of risk and service quality.

LINKS TO NHS CONSTITUTION & OTHER RELEVANT FRAMEWORKS, RISK, OUTCOMES ETC	• Provider Licence conditions • Board Assurance Framework • Head of Internal Audit Opinion • Annual Governance Statement
IMPLICATIONS FOR SERVICE DELIVERY & FINANCIAL IMPACT	CoS7 “Availability of Resource” considers the financial implication of the return
CONSIDERATION OF LEGAL ISSUES	Demonstrates the Trust’s compliance with elements of the Provider Licence

Author of Report	David Walsh
Designation	Director of Corporate Governance
Date of Report	3 June 2020

Sheffield Health and Social Care NHS Foundation Trust

SUMMARY REPORT

1. Purpose

For Approval	*For Assurance*	*For a collective decision*	*To report progress*	*To seek input from*	*For information*	*Other (please state below)*
X						

This paper provides Board with information which will enable it to self-certify against conditions of the Provider Licence.

2. Summary

2.1 Three Conditions of the Provider Licence

NHS foundation trusts are required to self-certify whether they have or have not complied with the specific conditions of the NHS Provider Licence, have the required resources available if providing commissioner requested services, and have complied with governance requirements.

The aim of self-certification is for the Trust to provide assurance it is compliant with the conditions or outline circumstances where this cannot be declared. It is up to Trusts to determine how this is carried out. NHS Improvement (NHSI) does not require trusts to submit the self-certification to them. However, there is a requirement to publish the self-certification. NHSI will contact a select number of NHS trusts and foundation trusts to ask for evidence that they have self-certified. This can be through the provision of relevant Board minutes and papers recording sign-off.

The proposed self-certification is included at Appendix 1.

2.2 Details of conditions

Condition G6(3) requires the Trust to take "all reasonable precautions" against the risk of failure to comply with (a) the conditions of the licence; (b) any requirements imposed on it; and (c) the requirement to have regard with the NHS Constitution. The condition requires the Trust to establish process to identify and guard against risks and review the effectiveness of these systems.

Condition FT4 also relates to good governance activity but stipulates some specific requirements including that the Trust establishes (a) effective board and committee structures, clear responsibilities for Board, committees and staff reporting into them and (c) clear reporting lines and accountabilities throughout the organisation, and also conditions relating to the escalation of quality and other issues to Board.

Condition CoS7 relates to the use of resources, specifically the necessity to have access to required resources, not to undertake activity creating a material risk that resources will not be available, and to comply with timescales for the publication of financial matters.

2.3 Consideration

After sharing an initial view on this matter with Audit and Risk Committee, that view was tested with NHS Improvement given the context of the situation. It is normal for NHS Foundation Trusts and NHS Trusts to confirm compliance in their self-certification against licence conditions. Following the findings of the CQC inspection, it was proposed that the self-certification would not confirm compliance. This was discussed with NHS Improvement's Locality Director for South Yorkshire and Bassetlaw, Alison Knowles, who supported the initial view that we had taken.

It is felt that the Trust can demonstrate full compliance with Condition CoS7.

In relation to the other conditions, the Trust must recognise the significant governance and assurance issues that have been identified. The Trust has complied with all specific requirements imposed upon it as a result of the inspection outcome, and met the deadline to respond to the 'must do' and 'should do' actions by the end of May.

Processes are in place and it is felt that Condition G6(3) may have been to a large extent satisfied. However, the fundamental requirement that the Trust take "all reasonable precautions" against the risk of failure has clearly not been achieved so this falls short of the requirement. It is felt that the Trust cannot therefore demonstrate compliance with Condition G6(3).

There are specific requirements under Condition FT4 which directly reflect shortcomings identified by the CQC, particularly in relation to the "ward to Board" escalation weaknesses. Actions are in place to address these issues, and much activity has already taken place. However, it is not felt the Trust can justify a position of compliance with this condition during 2019/20.

3 Next Steps

Once the self-certification is signed-off, the Director of Corporate Governance will publish a copy of the self-certification on the Trust's website no later than 30 June 2020. The statement will be presented to the Council of Governors at the earlier opportunity (given changes to arrangements arising from Covid-19).

4 Actions

Trust Board is asked to make a final determination in view of the discussion within this paper following its approval by Audit and Risk Committee.

5 Monitoring Arrangements

The self-certification will be published within the required timescales. NHSI may select the Trust for audit purposes.

6 Contact Details

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Appendix 1

Sheffield Health and Social Care NHS Foundation Trust Self-certification against Provider Licence Conditions 2019-20

Details of Condition	**General condition G6(3) – Systems for compliance with licence conditions and related obligations** 1. 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 2. Without prejudice the generality of paragraph 1, the steps 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. 3. Not later than two months from the end of the financial year, the Licensee shall prepare a certificate to the effect that, following a review of the purpose of paragraph 2(b) the Directors of the Licensee are or are not satisfied as the case may be that, in the financial year most recently ended, the Licensee took all such precautions as were necessary in order to comply with this condition.
This means	This means a provider is required to have in place effective systems and processes to ensure compliance, identify risks to compliance and take reasonable mitigating actions to prevent those risks and a failure to comply from occurring.
Assurance	• Governance infrastructure and arrangements • Board and Committees (Audit & Risk, Finance & Performance, Quality Assurance, Workforce & Organisation Development, Remuneration, Data & Information Governance) • Executive Director's Group

	• Trust's Risk Management Strategy and risk management processes • Incident management processes and procedures • Speaking Up processes • Service User Engagement Group • Service User Safety Group • Clinical Effectiveness Group • Transformational Operational Group • Policy Governance Group The Trust regularly reviews these processes and systems and their effectiveness. This has included a range of internal audit reports and management reviews of systems and processes. It has also included Board workshops on the BAF and risk appetite.
Evidence	Annual report and Account Annual Governance Statement Head of Internal Audit Opinion Corporate Risk Register Board Assurance Framework Governance and Risk Management Internal Audit Report
Assessment	A CQC inspection of the Trust in 2020 found that significant improvements were required as an outcome of "inadequate was returned". The inspection found that the Trust did not have systems and processes in place which were operated effectively to assess, monitor and mitigate the risks relating to the health, safety and welfare of service users in receiving Trust services. Significant and immediate issues were addressed by the Trust by a deadline of 29 May 2020, and programmes of improvement works have been developed to deliver against the 'must do' and 'should do' areas for focus identified by the CQC. In view of this, and despite the evidence of some compliance in respect of this condition, it would be unjustified to confirm compliance for 2019/20.
Self-certification	**Compliance status: Not confirmed**

Details of Condition	**FT4: NHS Foundation Trust Conditions governance arrangements** 1. The Licensee shall apply those principles, systems and standards of good corporate governance which reasonably would be regarded as appropriate for a supplier of health care services in the NHS. 2. Without prejudice to the generality of paragraph 1 and to the generality of General Condition 5, the Licensee shall: (a) have regard to such guidance on good corporate governance as may be issued by NHS Improvement from time to time; and (b) comply with the following paragraphs of this Condition. 3. The Licensee shall establish and implement: (a) effective board and committee structures; (b) clear responsibilities for its Board, its 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 Licensee shall establish and effectively implement systems and/or processes: (a) to ensure compliance with the Licensees' 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 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 change 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 systems and/or processes referred to above include, but are not restricted to, systems and/or processes that ensure: (a) sufficient capability at Board level to provide effective organisational leadership on the quality of care provided; (b) 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) the Board receives and takes into account accurate, comprehensive, timely and up-to-date information on quality of care; (e) that the Licensee including the 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) there is a clear accountability for quality of care throughout the Licensee's organisation 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 Licensee shall ensure the existence and effective operation of systems to ensure it has in place personnel on the Board, reporting to the Board and within the rest of the Licensee's organisation who are sufficient in number and appropriately qualified to ensure compliance with the Conditions of this Licence 5. 7. The Licensee shall publish within three months of the end of the financial year: (a) a corporate governance statement by and on behalf of its Board 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.
This means	This means Providers should review whether their governance systems meet the standards and objectives in this Condition. There is not a standard / set model, but any compliant approach would involve effective Board and Committee structures, reporting lines and performance and risk management systems.

Assurance	Governance infrastructure and arrangements Board and Committees (Audit & Risk, Finance & Performance, Quality Assurance, Workforce & Organisation Development, Remuneration, Data & Information Governance) Executive Director's Group Business planning processes Business Planning Group Incident management processes and procedures Appraisal process for Board Members and Executive Directors CQC inspection process and outcomes Review meetings with CQC Review meetings with NHS Improvement Trust's Risk Management Strategy and risk management processes Service User Safety Group Policy Governance Group
Evidence	Annual Board Statements Annual Operational Plan Annual Report and Accounts Annual Governance Statement Annual Quality Report Head of Internal Audit Opinion Strategic Planning and Performance Framework 2017-2019 Trust Constitution and Standing Orders Standing Financial Instructions and Scheme of Delegation Terms of Reference for Board Committees Management arrangements Performance report Allocate Health Roster and Safe Care Fit and Proper Persons Requirement processes Appraisal process for Board Members and Executive Directors Robust responsible officer arrangements for medical staff Governor induction Governor training and development opportunities via NHS Providers Governor informal meetings
Assessment	A CQC inspection of the Trust in 2020 found that significant improvements were required as an outcome of

	"inadequate was returned". The inspection found that the Trust did not have systems and processes in place which were operated effectively to assess, monitor and mitigate the risks relating to the health, safety and welfare of service users in receiving Trust services. Significant and immediate issues were addressed by the Trust by a deadline of 29 May 2020, and programmes of improvement works have been developed to deliver against the 'must do' and 'should do' areas for focus identified by the CQC. In view of this, and despite the evidence of some compliance in respect of this condition, it would be unjustified to confirm compliance for 2019/20.
Self-certification	**Compliance status: Not confirmed**

Details of Condition	**CoS7: Availability of Resources** 1. The Licensee shall at all times act in a manner calculated to secure that it has, or has access to, the required resources. 2. The Licensee shall not enter into any agreement or undertake any activity which creates a material risk that the required resources will not be available to the Licensee. 3. The Licensee, not later than two months from the end of each financial year, shall publish a certificate as to the availability of the requires resources for the period of 12 months commencing on the date of the certificate, in one of the following forms: (a) "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 of distributions which might reasonably be expected to be declared or paid for the period of 12 months referred to in this certificate." (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 case doubt on the ability of the Licensee to provide Commissioner Requested Services." (c) "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."
This means	This means that providers designated as providing Commissioner Requested Services will have the required resources to continue to provide those services; for example, management, financial, facilities and resources. Commissioner Requested Services are services that: • should continue to be provided locally even if a provider is at risk of failing financially; • there is no alternative provider close enough; • removing them would increase health inequalities; • removing them could make other related services unviable.

Assurance	Board of Directors Audit & Risk Committee, Finance Information & Performance Committee, Workforce & Organisation Development Committee Executive Director's Group
Evidence	Going concerns assessment process External audit opinion Trust patient services contracts Financial reports and updates, including annual accounts and supporting narrative Financial plan
Assessment	A CQC inspection of the Trust in 2020 found that significant improvements were required as an outcome of "inadequate was returned". The inspection found that the Trust did not have systems and processes in place which were operated effectively to assess, monitor and mitigate the risks relating to the health, safety and welfare of service users in receiving Trust services. Significant and immediate issues were addressed by the Trust by a deadline of 29 May 2020, and programmes of improvement works have been developed to deliver against the 'must do' and 'should do' areas for focus identified by the CQC. The areas requiring improvement highlighted by the CQC did not bring into question the extent to which the Trust had complied with this condition. In consideration of this, and the evidence that the Trust has complied, a confirmed compliance status is justified.
Self-certification	**Compliance status: Confirmed**