

Board of Directors – Public

Date: 26 May 2021

Item Ref: 19b

TITLE OF PAPER	Compliance against Provider Licence Conditions
TO BE PRESENTED BY	David Walsh, Director of Corporate Governance
ACTION REQUIRED	To approve the proposed submission included at Appendix 1.

OUTCOME	To comply with the requirement to make a submission in relation to compliance with Provider Licence conditions G6(3), FT4 and CoS7.
TIMETABLE FOR DECISION	26 May 2021
LINKS TO OTHER KEY REPORTS / DECISIONS	Annual Governance Statement report (separately listed on this agenda)
STRATEGIC AIM: STRATEGIC OBJECTIVE:	All
LINKS TO NHS CONSTITUTION & OTHER RELEVANT FRAMEWORKS, RISK, OUTCOMES ETC	Provider Licence Annual Governance Statement NHS Foundation Trust Code of Governance
IMPLICATIONS FOR SERVICE DELIVERY AND FINANCIAL IMPACT	None directly arising
CONSIDERATION OF LEGAL ISSUES	Breach of SHSC Constitution Standing Orders Breach of NHS Improvement's Governance regulations and Provider Licence.

Author of Report	David Walsh
Designation	Director of Corporate Governance
Date of Report	17 May 2021

Compliance against Provider Licence Conditions

1. Purpose

For approval	For assurance	For collective decision	To seek input from	To report progress	For information	Other (please state)
			x			

2. Summary

Foundation Trusts are required to make an annual declaration in relation to compliance with Provider Licence conditions G6(3), FT4 and CoS7.

G6(3) related to systems for compliance with licence conditions and related obligations. FT4 is in relation to Foundation Trust governance arrangements. CoS7 is related to the availability of resources to undertake required business.

Last year, advice was sought from NHSE/I which confirmed the Director of Corporate Governance's indicative opinion that SHSC was not in a position to declare compliance against conditions G6(3) or FT4. This was as a direct result of the CQC inspection which had highlighted issues which were likely to amount to breaches of those conditions. Compliance was declared in respect of condition CoS7.

The improvement actions arising from the Section 29a notice (requiring urgent actions) were not closed until the end of May 2020. The Back to Good programme and Well-Led Development Plan commenced last summer. As a result of these changes, the organisation has made significant improvements during 2020/21, despite the issues being made more challenging still by the global pandemic.

Nonetheless, a positive declaration needs to confirm compliance throughout the 2020/21 year, and the timing of the improvements that have taken place means this is not possible. NHSE/I have again been consulted and agree with this view.

It is therefore proposed that compliance is once again only declared against condition CoS7.

3 Next Steps

The declarations will be published in accordance with the mandated reporting arrangements.

4 Required Actions

To endorse the approach and approve the document at Appendix 1.

5 Monitoring Arrangements

N/A

6 Contact Details

David Walsh, Director of Corporate Governance (Board Secretary)
Email: david.walsh@shsc.nhs.uk

Sheffield Health and Social Care NHS Foundation Trust
Self-certification against Provider Licence Conditions 2020-21



Details of Condition	<p>General condition G6(3) – Systems for compliance with licence conditions and related obligations</p> <ol style="list-style-type: none"> 1. The Licensee shall take all reasonable precautions against the risk of failure to comply with: <ol style="list-style-type: none"> (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: <ol style="list-style-type: none"> (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	<ul style="list-style-type: none"> • Governance infrastructure and arrangements • Board and Committees (Audit & Risk, Finance & Performance, Quality Assurance, Workforce & Organisation Development, Remuneration, Data & Information Governance) • Trust’s Risk Management Strategy and risk management processes • Incident management processes and procedures • Speaking Up processes

	<ul style="list-style-type: none"> • Service User Engagement Group • Service User Safety Group • Clinical Effectiveness Group • Transformational Operational Group • Policy Governance Group <p>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.</p>
Evidence	<p>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</p>
Assessment	<p>The organisation has made significant improvements during 2020/21 to address issues highlighted by the CQC inspection undertaken in early 2020. Nonetheless, the formal publication of the CQC report and resultant timing of the improvement programmes to deliver those changes meant that for at least part of 2020/21 the changes required to confirm compliance against this condition had not been made.</p>
Self-certification	<p>Compliance status: Not confirmed</p>
Details of Condition	<p>FT4: NHS Foundation Trust Conditions governance arrangements</p> <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> (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;

	<ul style="list-style-type: none"> (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. <p>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.</p> <p>7. The Licensee shall publish within three months of the end of the financial year:</p> <ul style="list-style-type: none"> (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 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 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	The organisation has made significant improvements during 2020/21 to address issues highlighted by the CQC inspection undertaken in early 2020. Nonetheless, the formal publication of the CQC report and resultant timing of the improvement programmes to deliver those changes meant that for at least part of 2020/21 the changes required to confirm compliance against this condition had not been made.
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.

	<p>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:</p> <p>(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.”</p> <p>(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.”</p> <p>(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.”</p>
This means	<p>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:</p> <ul style="list-style-type: none"> • 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 and Committees
Evidence	<p>Going concerns assessment process External audit opinion Trust patient services contracts Financial reports and updates, including annual accounts and supporting narrative Financial plan</p>

Assessment

The organisation has made significant improvements during 2020/21 to address issues highlighted by the CQC inspection undertaken in early 2020. Nonetheless, the formal publication of the CQC report and resultant timing of the improvement programmes to deliver those changes meant that for at least part of 2020/21 the changes required to confirm compliance against this condition had not been made.

The areas giving rise to the CQC outcome did not impact upon compliance with this condition. In addition, during 2020/21, SHSC has been sufficiently resourced to undertake the significant changes detailed while also coping with the enormity of the impact of the Covid-19 pandemic.

It is felt that the organisation has complied with this condition.

Self-certification

Compliance status: Confirmed