

Executive Summary
Report to the Board of Directors
Held on 24 May 2022

Subject	Self-certification against the conditions of the Provider Licence 2021-22
Supporting TEG Member	Sandi Carman, Assistant Chief Executive
Author	Judith Green, Corporate Governance Manager
Status	Approval

PURPOSE OF THE REPORT

To provide assurance of compliance with the conditions of the NHS Provider Licence in accordance with the NHS Improvement self-certification guidance and to

KEY POINTS

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, 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 governance requirements.

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

Provider licence condition reference	Provider licence condition	Deadline for Board sign off
Condition G6 (3)	The provider has taken all precautions necessary to comply with the licence, NHS acts and NHS Constitution	31 May 2022
Condition FT 4 (8)	The provider has complied with required governance arrangements	30 June 2022
Condition CoS 7 (3)	If providing commissioner requested services, the provider has a reasonable expectation that required resources will be available to deliver the designated services	31 May 2022

Providers must also review whether their Governors have received enough training and guidance to carry out their roles and should confirm / not confirm as appropriate.

The purpose of the self-certification is for providers to carry out assurance that they are in compliance with the conditions. There is no set process for assurance on how to do this. No documentation returns or information submissions are required, although NHSEI can request a copy of the self-certification for auditing purposes.

For 2021/22 Statutory reporting deadlines in respect of year-end reports / statements used as evidence for assurance have been extended past the deadline for this self-certification process. The self-certification for 2021/22 draws on the content of a several draft documents which are being completed in readiness for the submission to the Audit Committee on 13 June 2022 for approval at the Board of Directors on 13 June 2022. Drafting work is at a stage to allow conclusions to be drawn. As there is no reason to believe that these will materially change, the following documents have been used within this self-certification.

- Draft Annual Reports and Accounts 2021/22
- Draft Annual Governance Statement 2021/22
- Interim Head of Internal Audit Opinion Statement 2021/22

In consultation with the Membership Manager the Lead Governor has reviewed the section relating to provision of Governor training and guidance and supports the submission as attached on behalf of the Governors.

The self-certification for the Trust for 2021/2022 is attached to this paper.

The self-certification specifically supports the statement made within the Annual Governance Statement in respect of disclosing compliance and validity of condition FT(4) of the Provider Licence (Corporate Governance Statement).

IMPLICATIONS

AIM OF THE STHFT CORPORATE STRATEGY		TICK AS APPROPRIATE
1	Deliver the Best Clinical Outcomes	✓
2	Provide Patient Centred Services	✓
3	Employ Caring and Cared for Staff	✓
4	Spend Public Money Wisely	✓
5	Deliver Excellent Research, Education & Innovation	✓
6	Create a Sustainable Organisation	✓

RECOMMENDATIONS

The Board of Directors is asked to:

- **APPROVE** the content of the self-certification (attached at Appendix A and Appendix B) for signature by the Trust Chair.
- **NOTE** that the final approved version of the self-certification must be published on the Trust website within a month following the Board of Directors sign-off.

APPROVAL PROCESS

Meeting	Date	Approved Y/N
TEG	18 May 2022	Y
Board of Directors	24 May 2022	

Self-certification against Provider Licence Conditions 2021-22



Condition G6(3): Systems for compliance with licence conditions and related obligations

Details of Condition

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 to the generality of paragraph 1, the steps that 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.

Not later than two months from the end of each Financial Year, the Licensee shall prepare and submit to Monitor a certificate to the effect that, following a review for 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

- Well-embedded governance infrastructure and arrangements
- Board and Board Committee Structure
- Trust Executive Group (TEG), Management Board / Clinical Management Board
- Trust's Framework for Risk Management including Safety and Risk Committee

Evidence

- Draft Annual Report and Accounts 2021/22 including Annual Governance Statement and Accountability Section setting out governance arrangements
- Integrated Risk and Assurance Report (IRAR) and Risk Register
- Interim Head of Internal Audit Opinion Statement 2021/22

Self-certification

Following a review for the purpose of paragraph 2(b) of licence condition G6, the Directors of the Licensee are 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 the conditions of the licence, any requirements imposed on it under the NHS Acts, and have had regard to the NHS Constitution.

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Condition FT4(8): NHS foundation trust governance arrangements

Details of Condition

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 to the NHS.
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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 Monitor from time to time; and
 - (b) comply with the following paragraphs of this Condition.
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3. The Licensee shall establish and implement:
 - (a) effective board and committee structures;
 - (b) clear responsibilities for its Board, for 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.
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4. The Licensee shall establish and effectively implement systems and/or processes:
 - (a) to ensure compliance with the Licensee's 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 CQC, 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 to continue 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 changes 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.
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** refer to appendix B for statements referencing mitigations in place for risks identified by regulatory inspection work during 2021/22*

APPENDIX A

5. The systems and/or processes referred to in paragraph 5 should include but not be restricted to systems and/or processes to ensure:
- (a) that there is sufficient capability at Board level to provide effective organisational leadership on the quality of care provided;
 - (b) that 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) that the Board receives and takes into account accurate, comprehensive, timely and up to date information on quality of care;
 - (e) that the Licensee 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
 - (f) that there is 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.

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6. The Licensee shall ensure the existence and effective operation of systems to ensure that 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

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** refer to appendix B for statement referencing mitigations in place for identified risk managed in-year*

7. The Licensee shall submit to Monitor within three months of the end of each 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.

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This means This means that Providers should review whether their governance systems meet the standards and objectives in the 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**
- Well-embedded governance infrastructure and arrangements
 - Board and Board Committee Structure
 - Board Governance Business Continuity Arrangements during successive waves of the Covid-19 Pandemic
 - Trust Executive Group, Management Board / Clinical Management Board
 - Risk Reporting, Escalation and Assurance arrangements
 - Business Planning Processes
 - Robust Performance Management Framework

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Evidence

- Incident Management processes and procedures including Command and Control arrangements established in response to the Covid-19 pandemic
- Patient Experience Committee
- Raising concerns process
- Duty of Candour process
- Appraisal process for Board of Director members
- Standards for Business Conduct arrangements overseen by Audit Committee
- Annual Board Statements
- Draft Annual Reports and Accounts 2021-22 including Annual Governance Statement and Accountability Section
- Interim Head of Internal Audit Opinion Statement 2021/22
- Trust Constitution including Standing Orders, Standing Financial Instructions and Scheme of Reservation and Delegation
- Terms of Reference for Board Committees and Annual Reports
- Effectiveness Survey for the Board of Directors (Autumn 2021)
- Management Arrangements
- Quality Governance Arrangements and Framework for Delivery
- Framework for Risk Management
- Integrated Performance Report
- Quality and Safety Integrated Performance Report
- Integrated Risk and Assurance Report / Risk Register
- Fit and Proper Persons requirement processes 2021-22
- Declarations of Interest Register (Declare) and May 2022 compliance data
- Appraisal process for Executive Directors and Non-Executive Directors
- Freedom to Speak Up reporting to Board
- Safer Nursing Care Tool and Care Hours Per Patient Day
- Data Security and Performance Toolkit submission 2022
- Robust Responsible Officer arrangements for Medical Staff
- Mandatory and Statutory training compliance reporting to Board
- Governor Forum and Governor Briefings
- Command and Control Arrangements
- Board Governance Business Continuity Plans

APPENDIX A

Risks and Mitigation Actions

The Board's assurance framework articulates the risks to the delivery of the Trust's strategic aims. Risks that align to self-certification statements made above can be confirmed in the attached appendix (Appendix B)

Condition CoS7(3): Availability of Resources

Details of Condition

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 submit to NHS Improvement a certificate as to the availability of the Required 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 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 cast 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:

- 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 would make other related services unviable

APPENDIX A

Assurance

- Board of Directors
- Audit, Finance and Performance and Human Resources and Organisational Development Committees
- Trust Executive Group

Evidence

- Going Concern assessment process
- Trust patient services contract(s)
- Financial Reports and updates
- Financial Plan 2022/23
- Capital Programme 2022/23

Self-certification

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.

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APPENDIX A

Governor Training (not a licence condition)

Details of Condition	S151 (2) of the Health and Social Care Act:[Providers] must take steps to secure that the governors are equipped with the skills and knowledge they require
This means	This means that providers must review whether their governors have received enough training and guidance to carry out their roles. It is up to providers how they do this.
Assurance	<ul style="list-style-type: none">• A programme of governor training and support is available and accessed by governors
Evidence	<ul style="list-style-type: none">• Governors induction following election• Bespoke training sessions delivered by NHS Providers as part of the GovernWell programme (not during Covid-19 pandemic)• Governors attendance at various NHS Providers GovernWell events (not during Covid-19 pandemic)• Full time Membership Manager to provide support and guidance to Governors• Regular programme of Governor / Board engagement opportunities• Regular Chair and Chief Executive Briefings during Covid-19 pandemic to provide information and guidance to Governors and support their engagement with Trust• Involvement in Directorate and Corporate work programmes/schemes
Self-certification	The Board is satisfied that during the financial year most recently ended the Licensee 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.

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This self-certification is signed by Annette Laban, Chair of Sheffield Teaching Hospitals NHS Foundation Trust on behalf of the Board of Directors

Signed	
Dated	24 May 2022

APPENDIX B

Self-certification against Provider Licence Conditions 2021-22	
Self-Certification Statement	Risk and Mitigating Actions
<p>4. The Licensee shall establish and effectively implement systems and/or processes:</p> <p>(a) to ensure compliance with the Licensee’s duty to operate efficiently, economically and effectively;</p>	<p><i>Failure to sustain financial stability due to an inability to predict future income</i></p> <p>Our external strategic landscape continues to be driven by government policy, focused on managing systems rather than organisations, recognising the need to integrate services. This is driving uncertainty around future funding models and a change to future commissioning arrangements, including allocation of resources at an ICS level.</p> <p>The inability to predict future income and the impact of this on Trust’s business planning and resource allocation processes will require the need to effectively mitigate associated risks threatening the financial stability of the Trust. We will need to continue to keep abreast of developments relating to funding arrangements, maintain active engagement in regional system work and mitigate any risks emerging from revised arrangements.</p>
	<p><i>Inability to appropriately identify and utilise capital monies in future years</i></p> <p>A further future strategic financial risk relates to changes in the allocation of capital funding to a system-wide Operational Capital Envelope and a failure to secure sufficient capital funding to fund necessary investment. Again, there will be a need to continue to closely monitor developments in capital allocations to ensure the Trust is best placed to identify future capital monies and progress plans.</p>
<p>4. The Licensee shall establish and effectively implement systems and/or processes:</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 CQC, the NHS Commissioning Board and statutory regulators of health care professions;</p>	<p><i>Risk of failure to address concerns raised by regulators following in-year inspection work.</i></p> <p>In-year inspections of our services by the CQC have resulted in a several areas being identified for significant improvement.</p> <p>Following an unannounced inspection of the maternity service in March 2021, the CQC imposed conditions on the Trust’s registration and final inspection report issued on 9 June 2021 lowered our rating for maternity services at the Jessop Wing from Outstanding to Inadequate.</p> <p>The Trust was issued with a Section 29a Warning Notice (S29a) by the CQC following a further unannounced inspection of core services in October 2021 and the well-led review that took place in November 2021. The warning notice requires improvement to be made by 17 July 2022.</p> <p>The Quality Committee will provide oversight of the Trust’s comprehensive action plan to address the findings of the CQC inspection report published on 5 April 2022. Actions specific to Maternity Services have been incorporated within the Maternity Improvement Plan developed following the unannounced inspection visit to maternity services at the Jessop Wing in March 2021.</p>

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	<p><i>Performance against national operational performance targets</i></p> <p>As is the case across the NHS, the Trust has seen waiting lists grow significantly. This has been the consequence of the need to suspend a significant amount of clinical activity during early waves of the Covid-19 pandemic, plus the significant impact that the pandemic has had on the health and wellbeing of our patients, which as a result, means that we are seeing an increased demand on our emergency pathways and greater acuity and dependency among our patients on both our emergency and planned care pathways.</p> <p>As a result of this, the Trust’s performance against NHS constitutional standards has deteriorated.</p> <p>A Patient Care Recovery Plan is being developed which supports clinical teams to deliver their recovery plans. An organisation wide structure will ensure improvement and transformation is embedded across patient pathways whilst linking into ongoing work around enablers such as supporting the workforce through improved recruitment and retention and ensuring we have the appropriate estate and inpatient bed infrastructure for this programme.</p>
<p>6. The Licensee shall ensure the existence and effective operation of systems to ensure that 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><i>Staffing / skill mix not adequate to provide high quality services</i></p> <p>Staff absence due to Covid-19, combined with national shortages across key areas of the workforce creating staffing pressures has been a key strategic risk for the Trust during 2021/22 with emphasis placed on this within the CQC report published in April 2022.</p> <p>The Trust continues to undertake significant urgent work to address this risk with mitigating actions including:</p> <ul style="list-style-type: none"> – the recruitment of over 500 additional nurses and midwives through national and international initiatives; – maximising use of bank and agency staffing, as well as creating internal redeployment schemes to support areas with urgent staffing needs; – continued focus on Covid secure working and staff testing to reduce the risks of staff absence due to Covid-19 infection; and – integrating workforce planning with the annual business planning cycle to identify and plan for future workforce needs. <p>Further work across these mitigations will continue in 2022/23 with regular reviews of progress to determine effectiveness and identify any need for further action on this risk.</p>