

Self-certification against Provider Licence Conditions 2022-23

Condition General Condition 6: Systems for compliance with licence conditions and related obligations

<p>Details of Condition</p>	<p>The Licensee shall take all reasonable precautions against the risk of failure to comply with:</p> <ul 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.
<p>Self-certification</p>	<p>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.</p> <div style="background-color: red; color: white; padding: 10px; text-align: center; font-weight: bold; font-size: 1.2em;"> NOT CONFIRMED </div> <p><i>It is recommended that a 'Not Confirmed' declaration is made.</i></p> <p><i>The Board of Director's review in May 2022 of the Trust's self-certification against provider licence conditions for 2021/22 noted as a risk to future compliance the failure to address concerns raised by regulators following in-year inspection work. This risk was referenced in the 2021/22 Corporate Governance Statement. This self-certification for 2022/23 reflects the fact that at the date of this assessment the Trust was subject to enforcement undertakings in relation to suspected breaches of its provider licence.</i></p>
<p>Explanation</p>	<p>The Trust has entered into enforcement undertakings that acknowledge that there were reasonable grounds to suspect that the Trust was in breach of its licence conditions. The undertakings entered into by the Trust are set out a letter signed by the Trust (6 December 2022) and NHS England (13 December 2022) and outline a set of actions the Trust has committed to undertake to secure that the suspected breaches that follow from CQC inspection findings do not continue or recur.</p> <p>In summary, the Care Quality Commission (CQC) undertook an inspection of the acute and community services provided by the Trust between 5 October 2021 and 11 November 2021. The CQC report, published on 5 April 2022 downgraded the Trust's CQC overall</p>

rating as 'requires improvement'. The report rated the effective, responsive, caring, and well-led areas as 'requires improvement' and the safe areas as 'inadequate'. The Trust was previously rated as 'good' overall in the report published in November 2018.

The CQC issued the Trust with one section 29A warning notice and a requirement notice in relation to 85 breaches of legal requirements in five core services and in relation to overall governance.

These quality and governance breaches were deemed to demonstrate a failure of the Trust's governance arrangements, in particular but not limited to a failure by the Trust to:

Establish and effectively implement systems and/or processes to:

- a. Ensure compliance with care health standards specified by the CQC;
- b. identify and manage material risks to compliance with the Conditions of its Licence; and
- c. ensure the matters relating to quality of care specified in FT4(6)(c) (collection of accurate, comprehensive timely and up to date information), FT4(6)(d) (the Board receives and takes into account such information), FT4(6)(e) (Board actively engages on quality of care), and FT4(6)(f) (clear accountability for quality of care).

These notices also followed conditions imposed by the CQC in March 2021 under Section 31 of the Health and Social Care Act 2008, on the registration of the Trust in respect of the regulated activity of Maternity and midwifery services. These conditions relate to the Trust's maternity unit and the final inspection report issued on 9 June 2021 lowered the Trust's rating for maternity services at the Jessop Wing from 'outstanding' to 'inadequate'.

The conditions required the Trust to take action to ensure a safe and effective service and in response the Trust submitted a detailed action plan to the CQC on 12 April 2021 at which point many of the inspection recommendations had already been implemented, including changes to governance and local risk processes and the appointment of additional staff.

A Maternity Improvement Board chaired by the Chief Executive with membership including the Chief Nurse as Maternity Safety Champion was established to provide a forum for joint Executive and Triumvirate oversight and scrutiny of the implementation the Trust's Maternity Services Improvement Plan. This forum reports into the Trust Board of Directors via a monthly Maternity and Neonatal Safety Report.

Following receipt of the April 2022 CQC Inspection Report, the Trust put in place an Improvement Programme focused on 17 Outcomes identified through analysis of the must do requirements of the CQC report, oversight of which has taken place at NHS England Regional Quality Board meetings. The Trust has reported updates in relation to actions and improvements undertaken in Maternity Services and for the 17 Outcomes pertaining to the main CQC inspection (October – November 2021). These matters have also been reported to the Board of Directors through the above referenced Maternity and Neonatal Safety Report and the CQC Action Plan updates.

This and the further progression of the Trust’s improvement journey to focus on five improvement workstreams and three areas of intensive support align to the requirements for a ‘Recovery Plan’ as detailed within the Trust’s enforcement undertakings agreed with NHS England. As such, assessment of progress in delivering and embedding these recovery actions forms a key part of the Trust’s agreed NHS Operating Framework 2022/23 exit criteria.

In parallel, the CQC returned to re-inspect five core services (Surgery, Medicine, Urgent and Emergency Care and Maternity) in September 2022 and the report from this reinspection published on 22 December 2022 acknowledged significant progress made. As such, ratings for both the effective and safe domains have improved to Good from a previous rating of Requires Improvement. Notably, Maternity services are no longer rated as Inadequate, and a similar outcome was also achieved for Urgent and Emergency Care core service.

The exit criteria, and an assessment of progress being made towards their achievement, has defined the improvements required for the Trust to transition from the Intensive Assurance and Improvement Segment to the Enhanced Assurance and Improvement Segment of the National Quality Board Quality Risk Response and Escalation Guidance. As such, an acknowledgement for the reduced need for NHS England oversight of the Trust with agreement in January 2023 that the Quality Board would, going forward, be led by the South Yorkshire Integrated Care Board (ICB) leadership team.

Further progress against the Trust’s recovery actions will be taken into account when future consideration is given to whether the Trust should move from Segment 3 to Segment 2 within the NHS Operating Framework.

Condition FT4: NHS foundation trust governance arrangements [Corporate Governance Statement]

The Board of Directors is required to indicate it is compliant with the following statements, or if not, state why it is not compliant. In addition, the Board is invited to identify any risks and mitigating actions in relation to each of the statements.

<p>Details of Condition</p>	<p>FT4 (2) 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.</p> <p><i>It is recommended that a ‘Confirmed’ declaration is made as the Board of Directors is assured from the work of the Audit Committee, its internal and external auditors and their opinions received during the year. The Trust has during 2022/23 commissioned and undertaken a Well-led development review to seek external assurance on its governance and leadership arrangements.</i></p>	<p>CONFIRMED</p>
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FT4 (3) Without prejudice to the generality of paragraph 1 and to the generality of General Condition 5, the Licensee shall have regard to such guidance on good corporate governance as may be issued by Monitor from time to time.

CONFIRMED

It is recommended that a 'Confirmed' declaration is made. During 2022/23 the Board of Directors commissioned and has undertaken a Well-led development review to seek external assurance that its governance and leadership arrangements align to best practice guidance on corporate governance.

FT4 (4) 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.

CONFIRMED

It is recommended that a 'Confirmed' declaration is made.

The Board has an established committee system which provide the mechanism for assurance reporting to the Trust Board of Directors. Committee terms of reference / work plans set out responsibilities / reporting lines and are reviewed annually. The effectiveness of Board committee arrangements was assessed as part of the Well-led development review. There are well embedded reporting arrangements to the committee structure of the Board via a supporting framework of Executive-led committees and management groups.

FT4
(5)

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.

**NOT
CONFIRMED**

It is recommended that a 'not confirmed' declaration is made. The Trust is not currently compliant with paragraphs (c) and (f) by virtue of the enforcement undertakings referred to [above](#).

In respect of the other paragraphs of this condition, assurance / evidence forming the Trust's system of internal control is cited in table A.

In relation to paragraph (a) the Trust's strategic environment will continue to be challenging as we seek to recover from the pandemic whilst delivering significant productivity and efficiency gains; navigate the changing NHS management and financial management arrangements; and deal with a range of workforce and service issues. Mitigating actions sit within the Trust's Getting Back on Track programme which encompasses not only recovery of performance and activity, improved productivity and efficiency while also acting as the driver for CQC improvement work.

FT4
(6)

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.

NOT
CONFIRMED

It is recommended that a 'not confirmed' declaration is made. The Trust is not currently compliant with paragraphs (c) (d) (e) and (f) by virtue of the Enforcement Undertakings referred to [above](#).

In respect of the other paragraphs of this condition, assurance / evidence forming the Trust's system of internal control is cited in table A.

External assurance has been sought via the Well-led development review which took into account progress being made to address findings from CQC inspection work. Implementation of an agreed Well-led Action Plan which also incorporates recommendations from the independent healthcare governance review undertaken in 2021, will strengthen / address any areas of identified weakness.

FT4
(7)

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.

CONFIRMED

It is recommended that a 'confirmed' declaration is made.

The Trust has undertaken appraisals with all directors. In addition as part of the process to appoint new Non-Executive Directors to the Board, it has reviewed the balance of skills, knowledge and experience of its Non-Executive Directors and considered this against current and future challenges and opportunities faced by the Trust. The Non-Executive Director membership of Board Committees and portfolio responsibilities is reviewed annually. The Board of Directors has an established policy and practice to ensure that all Board members and 'fit and proper persons'.

The Board is assured through its People Committee around actions being taken to mitigate the workforce risks in relation to recruitment and retention. The Board Assurance Framework (BAF) provides a mechanism for operational staffing risks to be escalated to the Board of Directors. During 2022/23, the Trust has continued to expand its workforce including an extensive Nurse Recruitment / internationally educated Nurse Recruitment Programme. This and the recruitment of additional midwives, midwifery support assistants has addressed findings within the April 2022 CQC report.

Sources of assurance / evidence are cited in table A.

Continuity of Service condition 7: 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”.

It is recommended that statement (a) is made to align with conclusions drawn from the going concern assessment process reported within the Trust's 2022/23 Annual Report.

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.

CONFIRMED

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

- A programme of governor training and support is available and accessed by governors

Evidence

- Governors induction following election
- 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 including Out and About Visits
- Regular Chair Board briefings to support their engagement with Trust
- Involvement in Directorate and Corporate work programmes/schemes

It is recommended that the following declaration is confirmed on the basis of the assurance / evidence cited above. This recommendation has the support of the Lead Governor.

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.

CONFIRMED

Table A - Assurances and Evidence Sources


Assurances

- Board and Board Committee Structure
- Trust Executive Group, Management Board / Clinical Management Board
- Risk Reporting, Escalation and Assurance arrangements
- Business Planning Processes
- Robust Performance Management Framework
- Raising concerns process
- Duty of Candour process
- Appraisal process for Board of Director members
- Fit and Proper Persons processes for Board members

Evidence

- Draft Annual Reports and Accounts 2022/23 including Annual Governance Statement and Accountability Section
- Interim Head of Internal Audit Opinion Statement 2022/23
- Going Concern Statement within draft Annual Report and Accounts 2022/23
- Trust Constitution including Standing Orders, Standing Financial Instructions and Scheme of Reservation and Delegation
- Terms of Reference for Board Committees and Annual Reports
- External Well-led Review Report 2022
- Corporate Strategy / Objectives and reporting of delivery progress
- Management Arrangements
- Quality Governance Arrangements and Framework for Delivery
- Financial Plan 2023/24 / Five Year Capital Plan
- Framework for Risk Management
- Integrated Performance Report and Integrated Quality and Safety Report
- Board Assurance Report / Corporate Risk Register Report
- Fit and Proper Persons Declarations 2022/23
- Appraisal process for Executive Directors and Non-Executive Directors
- Board Skills Audit
- Freedom to Speak Up reporting to Board
- Safer Nursing Care Tool and Care Hours Per Patient Day
- Robust Responsible Officer arrangements for Medical Staff
- Mandatory and Statutory training compliance reporting to Board
- Trust patient services contract(s)

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	23 May 2023