

		Agenda Item	2018/153
MEETING	Board of Directors		
PAPER/REPORT TITLE:	Compliance with General Condition 6 and Continuity of Services 7 of the Trust Provider Licence		
DATE OF MEETING:	Friday, 18 May 2018		
ACTION REQUIRED	For Approval		
EXECUTIVE DIRECTOR:	Colin Reid, Trust Secretary		
AUTHOR(S):	Click here to enter text.		
STRATEGIC OBJECTIVES:	<p>Which Objective(s)?</p> <ol style="list-style-type: none"> 1. To develop a well led, capable, motivated and entrepreneurial <i>workforce</i> <input checked="" type="checkbox"/> 2. To be ambitious and <i>efficient</i> and make the best use of available resource <input checked="" type="checkbox"/> 3. To deliver <i>safe</i> services <input checked="" type="checkbox"/> 4. To participate in high quality research and to deliver the most <i>effective</i> Outcomes <input checked="" type="checkbox"/> 5. To deliver the best possible <i>experience</i> for patients and staff <input checked="" type="checkbox"/> 		
LINK TO BOARD ASSURANCE FRAMEWORK (BAF):	<p>Which condition(s)?</p> <ol style="list-style-type: none"> 1. <i>Staff are not engaged, motivated or effective in delivering the vision, values and aims of the Trust</i> <input checked="" type="checkbox"/> 2. <i>The Trust is not financially sustainable beyond the current financial year</i> <input checked="" type="checkbox"/> 3. <i>Failure to deliver the annual financial plan</i> <input checked="" type="checkbox"/> 4. <i>Location, size, layout and accessibility of current services do not provide for sustainable integrated care or quality service provision</i> <input checked="" type="checkbox"/> 5. <i>Ineffective understanding and learning following significant events</i> <input checked="" type="checkbox"/> 6. <i>Inability to achieve and maintain regulatory compliance, performance and assurance</i> <input checked="" type="checkbox"/> 7. <i>Inability to deliver the best clinical outcomes for patients</i> <input checked="" type="checkbox"/> 8. <i>Poorly delivered positive experience for those engaging with our services</i> <input checked="" type="checkbox"/> 		
CQC DOMAIN	<p>Which Domain?</p> <p>SAFE - People are protected from abuse and harm <input type="checkbox"/></p> <p>EFFECTIVE - people's care, treatment and support achieves good outcomes, promotes a good quality of life and is based on the best available evidence. <input type="checkbox"/></p> <p>CARING - the service(s) involves and treats people with compassion, kindness, dignity and respect. <input type="checkbox"/></p> <p>RESPONSIVE – the services meet people's needs. <input type="checkbox"/></p> <p>WELL-LED - the leadership, management and governance of the organisation assures the delivery of high-quality and person-centred care, supports learning and innovation, and promotes an open and fair culture. <input type="checkbox"/></p> <p>ALL DOMAINS <input checked="" type="checkbox"/></p>		

LINK TO TRUST STRATEGY, PLAN AND EXTERNAL REQUIREMENT	1. Trust Constitution <input checked="" type="checkbox"/>	4. NHS Constitution <input type="checkbox"/>
	2. Operational Plan <input type="checkbox"/>	5. Equality and Diversity <input type="checkbox"/>
	3. NHS Compliance <input checked="" type="checkbox"/>	6. Other: Click here to enter text.
FREEDOM OF INFORMATION (FOIA):	1. This report will be published in line with the Trust's Publication Scheme, subject to redactions approved by the Board, within 3 weeks of the meeting	
RECOMMENDATION: <i>(eg: The Board/Committee is asked to:-....)</i>	<i>The Board is asked to confirm the statements included in the paper</i>	
PREVIOUSLY CONSIDERED BY:	Committee name	<i>Choose an item.</i> Or type here if not on list: <i>Click here to enter text.</i>
	Date of meeting	<i>Click here to enter a date.</i>

Executive Summary

All NHS Foundation Trusts at authorisation are issued with a 'Provider Licence' that sets out conditions by which trusts should operate. A number of conditions also require trusts to make declarations that are prescriptive and are required to be declared within specific timescales. The following declarations are required each year under the specific conditions of the licence:

- 1 Systems for compliance with licence conditions – in accordance with **General Condition 6** of the NHS provider licence
- 2 Availability of resources and accompanying statement – in accordance with **Continuity of Services condition 7** of the NHS provider licence. This is required if the Trust has been specifically designated as providing commissioner requested services (CRS) and have been notified by their commissioner. A CRS designation is not simply a standard contract with the commissioners to provide services. CRS are services commissioners consider should continue to be provided locally even if a provider is at risk of failing financially. Providers can be designated as providing CRS because:
 - i. There is no alternative provider close enough
 - ii. Removing the services would increase health inequalities
 - iii. Removing the services would make other related services unviable.
- 3 Corporate governance statement – in accordance with **condition FT4** of the NHS provider licence
- 4 Certification on AHSCs and governance – in accordance with Appendix E of the Risk Assessment Framework
- 5 Certification on training of Governors – in accordance with S151(5) of the Health and Social Care Act 2012

Declaration 1&2 are set out in this report for the Board to consider for submission to NHS Improvement.

Regarding declaration 2; the Trust has not been designated by Liverpool CCG as providing designated commissioner requested services. This is being kept under review and further discussions with LCCG will take place during 2018/19. The Trust however has CRS with regard to NHS England Specialist Commissioned Services and therefore a declaration is required.

Declaration 3, 4 & 5 is required to be submitted by 30 June 2018 and will be approved at the 1 June 2018 Board.

Report

General Condition 6

Declaration 1 states

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 2017/18; the Licensee took all such precautions as were necessary in order to comply with:

- i. the conditions of the licence;

Response: **Confirmed**

Comment: the Trust has taken all precautions as necessary to comply with the conditions of the licence (see attached review of the provider licence). However the Trust was put in breach of its licence under section 106 of the Health and Social Care Act 2012 by NHS Improvement in April 2016 and was required to enter into an enforcement undertaking to take the necessary steps to address its long term sustainability.

On 23 October 2017, FPBD undertook a review of the enforcement undertaking and noted that significant progress had been made against each of the provisions. NHSI had indicated that, as the original conditions in the undertaking were largely met, the conditions may be superseded by more relevant undertakings in light of the Trust's forward plan. No new or additional provisions have yet been provided.

- ii. any requirements imposed on it under the NHS Acts; and

Response: Confirmed

Comment: There have been no additional requirements imposed on the Trust under the NHS Acts during 2017/18

- iii. have had regard to the NHS Constitution in providing health care services for the purposes of the NHS

Response: Confirmed

Comment: The Trust continues to have regard to the provisions contained within the NHS Constitution through the formulation and adoption of trust policies and procedures. The NHS constitution is in line with the Trust's overall vision, aims and values. The Trust governance structure reflects the needs of the NHS constitution and the rights of patients, service users and staff.

Declaration 2 states: The board declares that the Licensee continues to meet the criteria for holding a licence.

The two criteria for holding a Licence are:

1. the Trust must be registered with the Care Quality Commission (CQC); and
2. the directors and governors of the Trust must meet NHS Improvement's fit and proper test.

1. the Trust must be registered with the Care Quality Commission (CQC) – **Response: Confirmed**
2. For the purposes of the Provider Licence someone who is not a fit and proper person would fall within the following categories:
 - be an undischarged bankrupt;
 - have undischarged arrangements with creditors;
 - be subject to a moratorium period under a debt relief order;
 - have received a prison sentence of three months or longer during the previous five years;
 - be subject to a disqualification order or undertaking

Comment: During the financial year 2017/18 the Trust remained registered with the CQC and all the directors and governors continue to meet NHS Improvement's fit and proper persons test.

Response: Confirmed

Overall response:

the Board of Directors on behalf of the Licensee is satisfied, as the case may be that, in the Financial Year most recently ended [2017/18], 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

Continuity of Services Condition 7 – Availability of resources

The Board needs to be satisfied that as:

- Licensee it shall at all times act in a manner calculated to secure that it has, or has access to, the Required Resources.
- Licensee it 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.
- Licensee, not later than two months from the end of each Financial Year, it 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:

Either:

(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.”

or:

(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”.

or:

(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”.

In considering the above declarations the Board should be consider whether it has the management, financial, facilities, staff and physical and other assets to meet the needs of CRS. The recently approved operation plan sets out the requirements to meet the delivery of the trust’s services in line with the agreed control total with NHSI, recognising that the trust would continue with an ongoing deficit and a requirement for distressed financing.

Last year the Board approved (b) above as this recognises that the Trust has the resources available to meet its CRS requirements however noting that: *the Trust had received a modified audit opinion arising from ongoing deficits and an ongoing requirement for distressed financing. However the Trust is deemed to be a going concern and plans to receive ongoing cash support from the Department of Health and Social Care. The Trust has agreed its control total for 2017/18 and expects to have the resources to deliver services for the following 12 months.*

Continuity of Service 7 Recommendation:

It is proposed that the board for the current financial year 2018/19 confirm that:

“after making enquiries the Board of 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 in making the above declaration, the Board would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to provide Commissioner Requested Service.

“the Trust had received a modified audit opinion arising from ongoing deficits and an ongoing requirement for distressed financing. However the Trust is deemed to be a going concern and plans to receive ongoing cash support from the Department of Health. The Trust has agreed its control total for 2018/19 and expects to have the resources to deliver services for the following 12 months”.

NEXT STEPS

Once the declarations have been agreed by the board, the declarations will be signed on the Board's behalf by the Chairman and Chief Executive by 31 May 2018 and published on the trust website by 30 June 2018.

RECOMMENDATION

The Board agrees the suggested declarations and responses and requests that the Trust Secretary ensures the declarations are made in accordance with the paper set out above and published on the Trust's website by 30 June 2018.

Declarations required by General condition 6 and Continuity of Service condition 7 of the NHS provider licence

The board are required to respond "Confirmed" or "Not confirmed" to the following statements (please select 'not confirmed' if confirming another option). Explanatory information should be provided where required.

1 & 2 General condition 6 - Systems for compliance with license conditions (FTs and NHS trusts)

1 Following a review for the purpose of paragraph 2(b) of licence condition G6, the Directors of the Licensee are satisfied 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.

Confirmed OK

3 Continuity of services condition 7 - Availability of Resources (FTs designated CRS only)

EITHER:

3a 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

OR

3b 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 (as described in the text box below) which may cast doubt on the ability of the Licensee to provide Commissioner Requested Services.

Confirmed Please fill details in cell E22

OR

3c 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.

Statement of main factors taken into account in making the above declaration

In making the above declaration, the main factors which have been taken into account by the Board of Directors are as follows:

As in the previous year, the Trust has received a modified audit opinion arising from ongoing deficits and an ongoing requirement for distressed financing. However the Trust is deemed to be a going concern and plans to receive ongoing cash support from the Department of Health. The Trust has agreed its control total for 2018/19 and expects to have the resources to deliver services for the following 12 months.

Signed on behalf of the board of directors, and, in the case of Foundation Trusts, having regard to the views of the governors

Signature 

Signature 

Name Robert Clarke

Name Kathryn Thomson

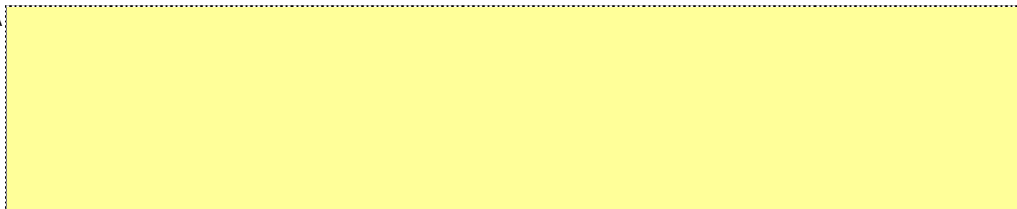
Capacity Chair

Capacity Chief Executive

Date 18 May 2018

Date 18 May 2018

Further explanatory information should be provided below where the Board has been unable to confirm declarations under G6.

A 

Liverpool Women's NHS Foundation Trust

Provider Licence

This paper provides assurance that the Trust complies with the terms of its Licence and sets out a broad outline of the licence conditions and any issues for Board to note.

The provider licence is split into six sections, which apply to different types of providers.

1. General conditions (G) – general requirements applying to all licensed providers.
2. Obligations about pricing (F) – obliges providers to record pricing information, check data for accuracy and, where required, charge commissioners in line with tariff. Applies to all licensed providers who provide services covered by national tariff.
3. Obligations around choice and competition (C) – obliges providers to help patients make the right choice of provider, where appropriate, and prohibits anti-competitive behaviour where against patients' interests. This applies to all licensed providers.
4. Obligations to enable integrated care (IC) – enables the provision of integrated services and applies to all licensed providers.
5. Conditions to support continuity of service (CoS) – allows NHS Improvement to assess whether there is a risk to services and to set out how services will be protected if a provider gets into financial difficulty. Applies to providers of commissioner requested services (CRS) only.
6. Governance licence conditions for Foundation Trusts (FT) – provides obligations for Foundation Trusts around appropriate standards of governance. Applies to Foundation Trusts only.

Condition	Provision	Comments
General licence conditions (G)		
1. Provision of information	Obligation to provide NHS Improvement with any information it requires for its licensing functions.	The Trust is currently obliged to provide NHS Improvement with any information it requires and, within reasonable parameters, to publish any information NHS Improvement requires it to. We have systems in place to identify and respond to routine and ad-hoc requests. Formal articulation of this Condition, therefore, does not present any issues for the Trust although the Conditions are so broad the obligation could become overly burdensome.
2. Publication of information	Obligation to publish such information as NHS Improvement may require.	
3. Payment of fees to NHS Improvement	Gives NHS Improvement the ability to charge fees and for licence holders to pay them.	There are currently no plans to charge a fee to Licence holders. Trust Board should note that there is, currently, no provision in the budget for such a requirement
4. Fit and proper persons	Prevents licensees from allowing unfit persons to become or continue as governors or directors.	The Care Quality Commission (CQC) published the fit and proper person requirements to take effect from 1 October 2014. The Trust has included the requirement for members of Trust Board to make an annual declaration against the requirements on an annual basis and has robust arrangements in place for new appointments to the Board (whether non-executive or executive). Governors confirm at appointment that they comply with the requirements.

5. NHS Improvement guidance	Requires licensees to have regard to NHS Improvement guidance.	The Trust responds to guidance issued by NHS Improvement. Each Executive has a responsibility to review Guidance relating to their areas of responsibility and bring any matter to the attention of the other Executive and Board (and to Board Committees)
6. Systems for compliance with licence conditions and related obligations	Requires providers to take reasonable precautions against risk of failure to comply with the licence.	<p>Reviews of the provider licence are undertaken to take into account its conditions within the Board assurance framework and risk processes – failure to comply with the licence is reported to the Board and includes interpretation by NHSI to the Trust’s compliance – see enforcement undertaking April 2016.</p> <p>The Trust has a Risk Management Strategy that provides a framework for managing risk across the Trust in line with best practice and Dept. of Health and Social Care Guidelines.</p> <p>The Board Assurance Framework provides assurance regarding the delivery of the Trust’s strategic objectives. Real time assessment of the risks and mitigation at all levels within the Trust and reviewed within the Integrated Governance Structure.</p> <p>Independent Assurance is provided as and when required by the Trust’s internal and External auditor.</p>
7. Registration with the Care Quality Commission (CQC)	Requires providers to be registered with the CQC and to notify NHS Improvement if their registration is cancelled.	The Trust is registered with the Care Quality Commission (CQC).
8. Patient eligibility and selection criteria	Requires licence holders to set transparent eligibility and selection criteria for patients and apply these in a transparent manner.	The Trusts website sets out the service directories for each service. The Trust has an access policy that complies with NHSI guidance and best practice. This is made available to the public on the Trust website.
9. Application of section 5 (which relates to continuity of services)	Sets out the conditions under which a service will be designated as a CRS	Covers all services which the licensee has contracted with a Commissioner to provide as a Commission Requested Service (CRS).” See CoS1.
Pricing conditions (P)		
1. Recording of information	Obligation of licensees to record information, particularly about costs.	The Trust responds to guidance and requests from NHS Improvement. Information provided is approved through the relevant and appropriate authorisation processes. The Trust has established financial systems, independently audited which provide service cost information.
2. Provision of information	Obligation to submit the above to NHS Improvement.	
3. Assurance report on submissions to NHS Improvement	Obliges licensees to submit an assurance report confirming that the information provided is accurate.	

4. Compliance with the national tariff	Obliges licensees to charge for NHS health care services in line with national tariff.	All contracts are agreed annually with Commissioners and are in line with the national tariff where applicable.
5. Constructive engagement concerning local tariff modifications	Requires licence holders to engage constructively with commissioner and to reach agreement locally before applying to NHS Improvement for a modification.	See P4.
Choice and competition (C)		
1. Patient choice	Protects patients' rights to choose between providers by obliging providers to make information available and act in a fair way where patients have a choice of provider.	The Trust has in place a service directory setting out the services available. Commissioners monitor the Trust's compliance with the legal right of choice as part of contract monitoring in line with NHS Standard Contract requirements.
2. Competition oversight	Prevents providers from entering into or maintaining agreements that have the effect of preventing, restricting or distorting competition to the extent that it is against the interests of health care users.	Trust Board considers that it has no arrangements in place that could be perceived as having the effect of preventing, restricting or distorting competition in the provision of health services. The Trust is aware of the requirements of competition in the health sector and would seek legal and/or specialist advice should Trust Board decide to consider any structural changes, such mergers or joint ventures.
Integrated care condition (IC)		
1. Provision of integrated care	Requires Licensee to act in the interests of people who use healthcare services by facilitating the development and maintenance of integrated services.	The Trust actively works with its partners, through formal and informal mechanisms to foster and enable integrated care and is involved in projects aimed at developing new ways of working and new models of delivery.
Continuity of service (CoS)		
1. Continuing provision of commissioner requested services (CRS)	Prevents licensees from ceasing to provide CRS or from changing the way in which they provide CRS without the agreement of relevant commissioners.	The Trust does have designated Commissioner requested Services with NHS England. Amendment to Service Specifications would be in accordance with commissioner agreement prior to variation of the contract.
2. Restriction on the disposal of assets	Licensees must keep an up-to-date register of relevant assets used in commissioner requested services (CRS) and to seek NHS Improvement's consent before disposing of these assets IF NHS Improvement has concerns about the licensee continuing as a going concern.	The Trust has an asset register in place. The Trust would require NHSI Consent to the disposal of any relevant assets The Trust would not dispose of an asset that would impact on its ability to provide 'Commissioner Requested Services'

3. NHS Improvement risk rating (standards of corporate governance and financial management)	Licensees are required to adopt and apply systems and standards of corporate governance and management, which would be seen as appropriate for a provider of NHS services and enable the Trust to continue as a going concern.	<p>The Trust has robust and comprehensive corporate and financial governance arrangements in place with assurance received from an internal audit in 2017/18. The Trust complies where-ever possible with Corporate Governance good practice including the Code of Governance and follows guidance issued by NHSI.</p> <p>The Trust maintains good financial governance processes such that it can continue as a going concern, the directors have a reasonable expectation that the Trust has adequate resources to continue in operational existence for the foreseeable future, with continued distressed finance support.</p>
4. Undertaking from the ultimate controller	Requires licensees to put a legally enforceable agreement in place to stop the ultimate controller from taking action that would cause the licensee to breach its licensing conditions.	Does not apply to the Trust.
5. Risk pool levy	Obliges licensees to contribute to the funding of the 'risk pool' (insurance mechanism to pay for vital services if a provider fails).	This condition has not been enacted by NHS Improvement. If it was this would create a significant cost pressure on the Trust.
6. Co-operation in the event of financial stress	Applies when NHS Improvement has given notice in writing to the Licensee that it is concerned about the ability of the Licensee to carry on as a going concern and in such circumstances obliges the licensee to co-operate with NHS Improvement.	The Trust is aware it needs to co-operate with NHS Improvement in such circumstances.
7. Availability of resources	Requires licenses to act in a way that secures resources to operate commissioner requested services (CRS).	<p>The Trust has sound and robust processes and systems in place to ensure it has the resources necessary to deliver its services. Trust undertakes robust contract discussions and undertakes early identification of CIP schemes supported by PID, QIA and EIA.</p> <p>in the previous year, the Trust has received a modified audit opinion arising from ongoing deficits and an ongoing requirement for distressed financing. However the Trust is deemed to be a going concern and plans to receive ongoing cash support from the Department of Health. The Trust has agreed its control total for 2018/19 and expects to have the resources to deliver services for the following 12 months.</p>
Foundation Trust conditions (FT)		
1. Information to update the register of NHS foundation trusts	Obliges foundation trusts to provide information to NHS Improvement.	See G1. The Trust is currently obliged to provide NHS Improvement with any information it requires, including information to update its entry on the register of NHS foundation trusts.
2. Payment to NHS Improvement in respect of registration and related costs	The Trust would be required to pay any fees set by NHS Improvement.	NHS Improvement has undertaken not to levy any registration fees on foundation trusts without further consultation.

3. Provision of information to advisory panel	NHS Improvement has established an independent advisory panel to consider questions brought by governors. Foundation trusts are obliged to provide information requested by the panel.	The independent advisory panel was established in April 2013 and the Trust provides a briefing on the Panel for the Governors. The Trust's governors understand the role and remit of the Panel and the seriousness of any reference to it, representing a breakdown of the existing communication channels between the Trust Board and the Council of Governors.
4. NHS Foundation Trust governance arrangements	Gives NHS Improvement continued oversight of the governance of foundation trusts.	<p>The Trust has sound corporate governance processes in place and reviews of these arrangements are a core part of the internal audit annual work programme. This was also evidenced in the outcome of the well-led review of the Trust's governance arrangements.</p> <p>A review of the provisions will be undertaken and reported to the 1 June Board meeting. Both the GC6 and FT4 findings will be included on the trust website by 30 June 2018.</p>