

		Agenda Item	2020/
<b>MEETING</b>	<b>Board of Directors</b>		
<b>PAPER/REPORT TITLE:</b>	<b>Compliance with Provider Licence Condition General Condition 6, Continuity of Services 7 &amp; FT4 – Corporate Governance Statement</b>		
<b>DATE OF MEETING:</b>	Thursday, 21 May 2020		
<b>ACTION REQUIRED</b>	<b>For Approval</b>		
<b>EXECUTIVE DIRECTOR:</b>	Jenny Hannon, Director of Finance Mark Grimshaw Trust Secretary		
<b>AUTHOR(S):</b>	Mark Grimshaw, Trust Secretary		
<b>STRATEGIC OBJECTIVES:</b>	<p><b>Which Objective(s)?</b></p> <ol style="list-style-type: none"> <li>To develop a well led, capable, motivated and entrepreneurial <b>workforce</b> <input checked="" type="checkbox"/></li> <li>To be ambitious and <b>efficient</b> and make the best use of available resource <input checked="" type="checkbox"/></li> <li>To deliver <b>safe</b> services <input checked="" type="checkbox"/></li> <li>To participate in high quality research and to deliver the most <b>effective</b> Outcomes <input checked="" type="checkbox"/></li> <li>To deliver the best possible <b>experience</b> for patients and staff <input checked="" type="checkbox"/></li> </ol>		
<b>LINK TO BOARD ASSURANCE FRAMEWORK (BAF):</b>	<p><b>Which condition(s)?</b></p> <ol style="list-style-type: none"> <li>Staff are not engaged, motivated or effective in delivering the vision, values and aims of the Trust..... <input checked="" type="checkbox"/></li> <li>Potential risk of harm to patients and damage to Trust's reputation as a result of failure to have sufficient numbers of junior medical staff with the capability and capacity to deliver the best care. .... <input checked="" type="checkbox"/></li> <li>The Trust is not financially sustainable beyond the current financial year..... <input checked="" type="checkbox"/></li> <li>Failure to deliver the annual financial plan ..... <input checked="" type="checkbox"/></li> <li>Location, size, layout and accessibility of current services do not provide for sustainable integrated care or quality service provision ..... <input checked="" type="checkbox"/></li> <li>Ineffective understanding and learning following significant events..... <input checked="" type="checkbox"/></li> <li>Inability to achieve and maintain regulatory compliance, performance and assurance..... <input checked="" type="checkbox"/></li> <li>Failure to deliver an integrated EPR against agreed Board plan (Dec 2016) ..... <input checked="" type="checkbox"/></li> <li>Inability to deliver the best clinical outcomes for patients..... <input checked="" type="checkbox"/></li> <li>Potential for poorly delivered positive experience for those engaging with our services <input checked="" type="checkbox"/></li> </ol>		
<b>CQC DOMAIN</b>	<p><b>Which Domain?</b></p> <p><b>SAFE</b>- People are protected from abuse and harm <input type="checkbox"/></p> <p><b>EFFECTIVE</b> - people's care, treatment and support achieves good outcomes, <input type="checkbox"/> promotes a good quality of life and is based on the best available evidence.</p> <p><b>CARING</b> - the service(s) involves and treats people with compassion, kindness, dignity <input type="checkbox"/> and respect.</p> <p><b>RESPONSIVE</b> – the services meet people's needs. <input type="checkbox"/></p>		

	<p><b>WELL-LED</b> - the leadership, management and governance of the <input type="checkbox"/> organisation assures the delivery of high-quality and person-centred care, supports learning and innovation, and promotes an open and fair culture.</p> <p><b>ALL DOMAINS</b> <input checked="" type="checkbox"/></p>	
<b>LINK TO TRUST STRATEGY, PLAN AND EXTERNAL REQUIREMENT</b>	<p>1. Trust Constitution <input checked="" type="checkbox"/></p> <p>2. Operational Plan <input type="checkbox"/></p> <p>3. NHS Compliance <input checked="" type="checkbox"/></p>	<p>4. NHS Constitution <input type="checkbox"/></p> <p>5. Equality and Diversity <input type="checkbox"/></p> <p>6. Other: <a href="#">Click here to enter text.</a></p>
<b>FREEDOM OF INFORMATION (FOIA):</b>	<p>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</p>	
<b>RECOMMENDATION:</b> <i>(eg: The Board/Committee is asked to:-....)</i>	<p><b><i>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 2020.</i></b></p>	
<b>PREVIOUSLY CONSIDERED BY:</b>	<p><b>Committee name</b></p>	<p>Not Applicable Or type here if not on list: <a href="#">Click here to enter text.</a></p>
	<p><b>Date of meeting</b></p>	<p><a href="#">Click here to enter a date.</a></p>

## 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

Declaration 1, 2 & 3 are set out in this report for the Board to consider for self-certification.

Regarding declaration 2; the Trust has not been designated by Liverpool CCG as providing “designated commissioner requested services”. The Trust does hold CRS relating to those commissioned by NHS England Specialist Commissioned Services and therefore a declaration is required.

## 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 2019/20; 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 placed 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 July 2018, Finance Performance and Business Development Committee 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. The Trust met its control total for 2019/20 and has raised the potential of lifting the enforcement undertaking with NHSI/E. 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 2019/20

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:**

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.

**Response: Confirmed** - 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.

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.

Independent Assurance is provided as and when required by the Trust's internal and External auditor.

**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 2019/20, 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 Trust exceeded its control total for 2019/20 and whilst an Operational Plan for 2020/21 was not required, the Trust’s draft Operational Plan was approved by the Board and delivered a breakeven budget after assumed Financial Recovery Fund of £3.5m as advised by NHSI/E. The revised post Covid-19 plan is also breakeven after an assumption of a Top Up from NHSI/E.

There is uncertainty as to how the financial regime will change post Covid-19 however it is likely that a system of block payments and top ups will continue for 2020/21. The Trust has a robust cash position and has undertaken a rolling 12-month cashflow based on current assumptions.

The Trust has more certainty on income in the short term due to Covid-19 and a paper has been submitted to Audit Committee detailing assurances on the Going Concern status of the organisation.

#### **Continuity of Service 7 Recommendation:**

**It is proposed that the Board for the current financial year 2020/21 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 expects to deliver a breakeven financial position in 2020/21 and expects to have the resources to deliver services for the following 12 months. Due to the impact of Covid-19, income is fixed to cover costs in the short term. Post Covid-19, the Trust will work with Commissioners as part of a system-wide approach to ensure sufficient income flows to the Trust to cover costs. The Trust has now paid back all historic distressed finance loans and has paid back or will have written***

*off the majority of capital loans. At present there is no requirement anticipated for distress finance, but this facility is available should it ever be required.”*

#### **FT4 – Corporate Governance Statement**

NHSI revised its governance reporting requirements for trusts in 2013/14. In order to comply with both the provider licence and the Risk Assessment of their licence, the Trust is required to provide a “forward looking governance statement” in the form of a Corporate Governance Statement (CGS) to NHS Improvement.

The statement, which is required to be declared by 30 June 2019, will confirm compliance with the licence condition FT4 and provide any risks to compliance with this condition during the next year and any mitigating actions it proposes to take to manage such risks.

Licence Condition FT4 - sets out the criteria that the Trust has to assess itself against when completing the Corporate Governance Statement.

In addition, the Trust was required to describe the ways in which it was able to assure itself of the validity of its Corporate Governance Statement in its Annual Governance Statement (AGS). The AGS has been submitted with the Trust Annual Report and Accounts 2019/20 as part of the year end reporting timetable.

The CGS replaces the board statements that NHS Foundation Trusts were previously required to submit with their annual plans under the FT Compliance Framework.

Additional compliance statements are also required relating to Joint Ventures and Governor Training.

The requirements of the self-declaration stipulate that it must have ‘had regard to the views of governors’ and therefore, the proposed response of ‘compliant’ was raised and discussed with the Council of Governors at their meeting on 14 May 2020. Key assurances that had cumulatively been provided throughout the year were outlined and the Council of Governors agreed with the view that the Trust was compliant with the licence conditions.

#### **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 2020 and published on the Trust website by 30 June 2020.

#### **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 2020.

## 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
<b>General licence conditions (G)</b>		
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.
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 should such a requirement become payable.
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

		<p>of Trust Board to make a 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).</p> <p>The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 does not require Governors to make a Fit and Proper Persons Declaration.</p>
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 Trust’s website sets out the service directories for each service. The Trust has an access policy recently updated 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 Commissioner Requested Service	Covers all services which the licensee has contracted with a Commissioner to provide as Commission Requested Services (CRS).”



<b>Pricing conditions (P)</b>		
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.	
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.	
<b>Choice and competition (C)</b>		
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.	The 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 as mergers or joint ventures.
<b>Integrated care condition (IC)</b>		
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. This approach has been particularly relevant during the Covid-19 pandemic response and the Trust is exploring how to ensure that this integrated working can continue where appropriate.

<b>Continuity of service (CoS)</b>		
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.	The Trust has robust and comprehensive corporate and financial governance arrangements in place with substantial assurance received from an internal audit in 2019/20. The Trust complies wherever possible with Corporate Governance good practice including the Code of Governance and follows guidance issued by NHSI.  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. The Board receives assurance on the good financial governance from MIAA through their internal audit reports. This remains the case throughout the Covid-19 pandemic.
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>The Trust expects to achieve a breakeven position in 2020/21 and expects to have the resources to deliver services for the following 12 months, following assurances from NHSI/E and changes in the financial regime in response to Covid-19.</p>
<b>Foundation Trust conditions (FT)</b>		
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 disbanded in January 2017.
4. NHS Foundation Trust governance arrangements	Gives NHS Improvement continued oversight of the governance of foundation trusts.	The Trust has sound corporate governance processes in place and reviews of these arrangements are a core part of the internal audit annual work program.

Worksheet "G6 & CoS7"

Financial Year to which self-certification relates

2019/20

Please complete the explanatory information in cell

**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 licence 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 certificate.

Please Respond

**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.

Please Respond

**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:

The Trust expects to deliver a breakeven financial position in 2020/21 and expects to have the resources to deliver services for the following 12 months. Due to the impact of Covid-19, income is fixed to cover costs in the short term. Post Covid-19, the Trust will work with Commissioners as part of a system-wide approach to ensure sufficient income flows to the Trust to cover costs. The Trust has now paid back all historic distressed finance loans and has paid back or will have written off the majority of capital loans. At present there is no requirement anticipated for distress finance, but this facility is available should it ever be required

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 Trust Chair

Capacity Chief Executive

Date 21 May 2020

Date 21 May 2020

## Corporate Governance Statement (CGS)

	Corporate Governance Statement A	Current arrangements B	Response C	Risks and mitigating actions D
1	The Board is satisfied that the Trust applies 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.	<ul style="list-style-type: none"> <li>• Review of NHSI Code of Governance – No ‘Non-Compliance’ with exception of the well-led review external review requiring to be undertaken in 2020/21.</li> <li>• Membership of NHS Providers and the Company Secretary networks</li> <li>• Reviews of NHSI and other bulletins by the Board and regular updates from the external auditors through the audit committee.</li> <li>• The Trust has an internal audit programme and assurance cycle.</li> <li>• External auditors provide assurance on the content of the Trust Annual Report and Accounts, the Quality Report and provide an opinion on Trust annual governance statement.</li> </ul>	Confirmed	<p>Non-Compliance with Code of Governance re: external well-led review - The latest external well-led review was undertaken by Deloitte (reporting to the Board in May 2017). A self-assessment was undertaken by the Board in April 2020 and an external review will be commissioned in 2020/21.</p> <p>CQC Review – ‘Well-led’ identified as ‘Requires Improvement’ - The action plan for the Well-Led self-assessment will be aligned with the findings from the 2020 CQC Report which identified the</p>

				Trust as 'Requires Improvement' for the 'well-led' aspect.
2	The Board has regard to such guidance on good corporate governance as may be issued by NHS Improvement from time to time	<ul style="list-style-type: none"> <li>Trust Secretary in post, identification of any changes in guidance.</li> <li>Receipt and Review of regular updates from NHS Improvement</li> <li>Membership of NW FT Company Secretary network and NHS Providers Company Secretary Network.</li> <li>Regular communications from legal advisors and internal and external auditors.</li> </ul>	Confirmed	
3	<p>The Board is satisfied that the Trust implements:</p> <p>(a) Effective board and committee structures;</p> <p>(b) Clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees; and</p> <p>(c) Clear reporting lines and accountabilities throughout its organisation.</p>	<ul style="list-style-type: none"> <li>Review of Board and Committee structure undertaken. Constant review of performance of Board and committee's undertaken and annual report from each committee is presented to the Board for noting.</li> <li>Annual Governance statement provides the Board with assurance surrounding the responsibilities of the Board and its committees.</li> <li>Board approved terms of reference of Board Committees providing details of reporting lines, responsibilities and membership.</li> <li>Board approved a Board Terms of Reference in May 2020.</li> <li>Clear reporting lines within the Board, Executive and Divisions provided through the Trusts operational and corporate governance framework and Workforce strategies developed in line with Trust's Vision, Aims and Value's</li> <li>The Trust's has recently revised divisional structure, implemented from 1 April 2019 has shown signs of embedding.</li> </ul>	Confirmed	Further work required to embed the Trust's divisional governance structure to ensure consistency of reporting and assurances through the Board's governance structure.

<p>4</p>	<p>The Board is satisfied that the Trust effectively implements systems and/or processes:</p> <p>(a) To ensure compliance with the Licensee’s duty to operate efficiently, economically and effectively;</p> <p>(b) For timely and effective scrutiny and oversight by the Board of the Licensee’s operations;</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 Care Quality Commission, the NHS Commissioning Board and statutory regulators of health care professions;</p> <p>(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);</p>	<p>a) Strong systems of financial and quality governance in place. All statutory audits and reporting requirements fulfilled via Audit Committee and or the Finance Performance and Business Development Committee.</p> <p>b) Performance review, service reporting arrangements, service review, performance dashboards at all levels within the organisation with systems for appropriate escalation and review to ensure timely and effective scrutiny and oversight of all operations.</p> <p>c) Effective systems and processes in place to ensure with national and local healthcare standards - internal and external assurance systems are in place and reported through the Trust’s integrated governance framework.</p> <p>d) Financial plans agreed by the Board and discussed with Governors. Cost Improvement programme agreed with services and corporate departments and quality impact assessed. Contracts and business development managed appropriately. Workforce strategies developed to meet service demands, and workforce plans reviewed to minimise the use of agency/temporary staff. Robust procurement scrutiny to minimise costs and number of tender waivers. Annual and rigorous review of the Trust as a Going Concern overseen by Audit Committee and reported to Board.</p>	<p>Confirmed</p>	<p>Despite uncertainty relating to the Covid-19 pandemic, the Trust expects to achieve a breakeven position in 2020/21 and to have the resources to deliver services for the following 12 months. This has taken into consideration assurances from NHSI/E and changes in the financial regime in response to Covid-19.</p>
----------	---	--	------------------	---

	<p>(e) To obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making;</p> <p>(f) To identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of its Licence;</p> <p>(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</p> <p>(h) To ensure compliance with all applicable legal requirements.</p>	<p>e) Robust integrated governance structure in place. Board and committee structures fully serviced. Accurate, comprehensive, timely, up-to-date information available for Board and Board committees.</p> <p>f) Financial and operational risks identified in planning process and reported through the Board Assurance Framework/Corporate Risk Register. Oversight of the risks are provided through the integrated governance framework/structure and reported to the Board. GC6 and CoS7 approved by Board as “in compliance” with the licence.</p> <p>g) Effective Strategic and business planning arrangements in place embedded within the Trust and reviewed with Governors, CCG and NHSI.</p> <p>h) Applicable legal requirements, against principal objectives and activities of the organisation reviewed and managed appropriately as part of the Trust's governance arrangements. Each Executive areas of responsibility require that they take account of any changes to legal requirements.</p>		
5	<p>The Board is satisfied that the systems and/or processes referred to in paragraph 4 (above) should include but not be restricted to systems and/or processes to ensure:</p> <p>(a) That there is sufficient capability at Board level to provide</p>	<p>a) Board capability reviewed against strategic direction and business plans. Focus on quality of care. Robust</p>	Confirmed	



	<p>effective organisational leadership on the quality of care provided;</p> <p>(b) That the Board’s planning and decision-making processes take timely and appropriate account of quality of care considerations;</p> <p>(c) The collection of accurate, comprehensive, timely and up to date information on quality of care;</p> <p>(d) That the Board receives and takes into account accurate, comprehensive, timely and up to date information on quality of care;</p> <p>(e) That the Trust, 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</p>	<p>appraisal arrangements in place across the Trust. Medical Revalidation and appraisal systems in place and Leadership Management Development implemented across the Trust.</p> <p>b) Quality of care fully integrated within all planning and decision-making processes.</p> <p>c) (and d) Performance, integrated governance reports, patient experience and quality of care initiatives routinely provided to Board Committees and reported to the Board by exception. Board receives overarching Performance (operations and Finance) reports.</p> <p>d) Board receives a Patient/ Staff Story at each Board meeting unless one is not available and receives presentations on quality of Care at both Board and Board committees and where necessary at Board development workshops. Quality is prominent within each Board and Board Committee agenda.</p> <p>e) Board and Board Committees receive Patient Stories and presentations from staff on quality of care provided by the trust. Executive and NED ward and department visits to be undertaken to assess staff and patient care. Friends and Family Test systems in place and reported through the Governance Structure. Quality Strategy and Patient Experience Strategy in place and reviewed by QC and Board. The Board through QC receives reports on complaints (integrated governance report). There is active engagement between the Board and the Council of</p>		
--	---	---	--	--

	(f) That there is clear accountability for quality of care throughout the Trust including but not restricted to systems and/or processes for escalating and resolving quality issues including escalating them to the Board where appropriate.	Governors (CoG) - Board members attend all CoG meetings and Council Group meetings.  f) Escalation of reporting embedded in the Trust. Systems in place to allow for escalation to the Board as required through the integrated operational and corporate governance structures.		
6	The Board is satisfied that there are systems to ensure that the Trust has in place personnel on the Board, reporting to the Board and within the rest of the organisation who are sufficient in number and appropriately qualified to ensure compliance with the conditions of its NHS provider licence.	<p>Constitution sets out required numbers and qualifications for Board members.</p> <ul style="list-style-type: none"> <li>• Reviews undertaken by the Board and Governors Nominations Committee at time of recruitment of Executive and Non-Executive directors on the board mix, need and experience</li> <li>• The NEDs provide challenge and scrutiny through attendance at Board and Board Committees regarding appropriate staffing levels.</li> <li>• Through use of board assurance framework and risk management Strategy at Board, Board Committees and Sub Committees and Groups within the Trust Governance Structure</li> <li>• The financial and operational plan includes details on transformation and HR requirements including mitigation of risks associated with future workforce requirements.</li> </ul>	Confirmed	

**Other Statements:**

The numbering in this document follows that provided in the NHS Improvement template.

	Corporate Governance Statement	Current arrangements	Response	Risks and mitigating actions
6	<b>Training of Governors</b>			
	The Board is satisfied that during the financial year most recently ended the Trust 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.	Governors receive induction training and will have, as part of the induction, one to one sessions with the Trust Secretary at appointment. External training is provided through the NW Secretaries Group. Internal training is also provided at and during Council, Council Committee meetings and workshops to deal with specific areas of their roles and responsibilities. The Trust Secretary is available to respond to any matters that Governors may require clarification and if appropriate ad hoc training is provided should this be necessary. The Council committee structure provides additional training on matters relating to quality and patient experience, finance and performance measures and any additional requirements.	Confirmed	

Worksheet "FT4 declaration"

Financial Year to which self-certification relates

2019/20

Please Respond

Corporate Governance Statement (FTs and NHS trusts)

The Board are required to respond "Confirmed" or "Not confirmed" to the following statements, setting out any risks and mitigating actions planned for each one

Corporate Governance Statement	Response	Risks and Mitigating actions
1 The Board is satisfied that the Licensee applies 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.	Confirmed	Non-Compliance with Code of Governance re: external well-led review - The latest external well-led review was undertaken by Deloitte (reporting to the Board in May 2017). A self-assessment was undertaken by the Board in April 2020 and an external review will be commissioned in 2020/21.  CQC Review - 'Well-led' identified as 'Requires Improvement' - The action plan for the Well-Led self-assessment will be aligned with the findings from the 2020 CQC Report which identified the Trust as 'Requires Improvement' for the 'well-led' aspect.
2 The Board has regard to such guidance on good corporate governance as may be issued by NHS Improvement from time to time	Confirmed	N/A
3 The Board is satisfied that the Licensee has established and implements: (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	Further work required to embed the Trust's divisional governance structure to ensure consistency of reporting and assurances through the Board's governance structure.
4 The Board is satisfied that the Licensee has established and effectively implements 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 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 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.	Confirmed	Despite uncertainty relating to the Covid-19 pandemic, the Trust expects to achieve a breakeven position in 2020/21 and to have the resources to deliver services for the following 12 months. This has taken into consideration assurances from NHSI/E and changes in the financial regime in response to Covid-19.
5 The Board is satisfied that the systems and/or processes referred to in paragraph 4 (above) 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 including but not restricted to systems and/or processes for escalating and resolving quality issues including escalating them to the Board where appropriate.	Confirmed	N/A
6 The Board is satisfied that there are systems to ensure that the Licensee has in place personnel on the Board, reporting to the Board and within the rest of the organisation who are sufficient in number and appropriately qualified to ensure compliance with the conditions of its NHS provider licence.	Confirmed	N/A

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

Worksheet "Training of governors"

Financial Year to which self-certification relates

Please Respond

Certification on training of governors (FTs only)

The Board are required to respond "Confirmed" or "Not confirmed" to the following statements. Explanatory information should be provided where required.

Training of Governors	Response
1 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

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: Trust Chair	Capacity: Chief Executive
Date: 21 May 2020	Date: 21 May 2020