

# Provider Licence Declaration 2021-22

## Introduction to the provider licence

The Health and Social Care Act 2012 (the 'Act') gave Monitor (now NHS Improvement / England<sup>1</sup> – henceforth NHSI/E) new powers and duties. It states that their main duty is to protect and promote the interests of people who use health care services. The Act requires NHSI/E to introduce a licence for providers of NHS services. This licence sets out various obligations for providers of NHS services, and some specific obligations for NHS foundation trusts.

The Act requires everyone who provides an NHS health care service to hold a licence unless they are exempt under regulations made by the Department of Health (the exemption regulations).

## Overview of the provider licence

NHSI/E's standard licence conditions are grouped into seven sections. Some sections apply to all licence holders and some sections only apply to certain types of licence holder, for example, NHS foundation trusts.

General Conditions	The General Conditions apply to all providers and impose certain conditions, such as that directors must be "fit and proper" and providers must respond to information requests from NHSI/E
Licence conditions setting obligations about pricing	The Pricing Conditions oblige providers, for example, to record information that NHSI/E needs to set prices, check that the data is accurate and, where required, charge commissioners in accordance with the National tariff document.
Licence conditions setting obligations about choice and competition	These conditions oblige providers to help patients to make the right choice of provider, where appropriate, and to prohibit anticompetitive behaviour where it is against the interest of patients.
Licence condition to enable integrated care	The Integrated Care Condition enables the provision of integrated services by obliging providers not to do anything detrimental to enabling integrated care, where it is in the interests of patients.
Licence conditions that support continuity of services	These conditions apply to providers of Commissioner Requested Services – services whose absence would have a significant negative impact on the local population. They allow NHSI/E to assess the risk to services and how they will be protected.
Governance licence conditions for foundation trusts	These conditions only apply to foundation trusts and impose obligations around appropriate standards of governance

<sup>1</sup> NHS England and NHS Improvement leads the National Health Service (NHS) in England.

## Provider Licence – Enforcement

NHSI/E has power to investigate potential breaches of the licence and then to either impose requirements on NHS service providers where they find actual breaches, or accept undertakings from the provider, to make sure they return to compliance. The requirements they can impose range from obliging providers to take steps to restore compliance, requiring providers to restore the position before the breach or obliging them to pay a financial penalty. In exceptional circumstances, they can also consider revoking a licence.

NHSI/E's enforcement guidance explains the action they can take to enforce compliance with the provider licence and other regulatory obligations on providers and others required to provide NHSI/E with information needed to perform its functions. It sets out the proposed process for prioritising issues, deciding on the action to take and seeking input from stakeholders on their proposed actions.

[https://www.england.nhs.uk/wp-content/uploads/2021/01/ToPublishEnforcementGuidance28March13\\_0.pdf](https://www.england.nhs.uk/wp-content/uploads/2021/01/ToPublishEnforcementGuidance28March13_0.pdf)

## Self-certification: for NHS foundation trusts and NHS trusts

### *What is required?*

NHS providers need to self-certify the following conditions after the financial year end:

- |                   |  |
|-------------------|--|
| Condition G6(3)   | The provider has taken all precautions to comply with the licence, NHS acts and NHS Constitution   |
| Condition G6(4)   | Publication of condition G6(3) self-certification.   |
| Condition FT4(8)  | The provider has complied with required governance arrangements.   |
| Condition CoS7(3) | The provider has a reasonable expectation that required resources will be available to deliver the designated services for the 12 months from the date of the statement. This only applies to foundation trusts that are providers of CRS. |

### *How to self-certify?*

It is up to each provider how they undertake their self-certification process. However, any process should ensure that the provider's board understands clearly whether or not the provider can confirm compliance. For the 2020/21 self-certification, the Board received the report attached as Appendix 1 which set out the justifications for the Trust's position.

## Trust Board

### COVER SHEET

Agenda Item (Ref)	22/23/060b	Date: 16/06/2022		
Report Title	Compliance with Provider Licence Condition General Condition 6, Continuity of Services 7 & FT4 – Corporate Governance Statement			
Prepared by	Eva Horgan, Chief Finance Officer & Mark Grimshaw, Trust Secretary			
Presented by	Mark Grimshaw, Trust Secretary			
Key Issues / Messages	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 report outlines the declarations that are required each year under the specific conditions of the licence and seeks approval of the Trust's position ahead of publishing on the Trust's website.			
Action required	Approve <input checked="" type="checkbox"/>	Receive <input type="checkbox"/>	Note <input type="checkbox"/>	Take Assurance <input type="checkbox"/>
	To formally receive and discuss a report and approve its recommendations or a particular course of action	To discuss, in depth, noting the implications for the Board / Committee or Trust without formally approving it	For the intelligence of the Board / Committee without in-depth discussion required	To assure the Board / Committee that effective systems of control are in place
	Funding Source (If applicable): N/A			
	For Decisions - in line with Risk Appetite Statement – N/A If no – please outline the reasons for deviation.			
	The Board is asked to agree the suggested declarations and responses and to request that the Trust Secretary ensures the declarations are made in accordance with the paper and published on the Trust's website by 30 June 2022.			
Supporting Executive:	Mark Grimshaw, Trust Secretary			

Equality Impact Assessment (if there is an impact on E,D & I, an Equality Impact Assessment **MUST** accompany the report)

Strategy  Policy  Service Change  Not Applicable

#### Strategic Objective(s)

To develop a well led, capable, motivated and entrepreneurial <b>workforce</b>	<input type="checkbox"/>	To participate in high quality research and to deliver the most <b>effective</b> Outcomes	<input type="checkbox"/>
To be ambitious and <b>efficient</b> and make the best use of available resource	<input type="checkbox"/>	To deliver the best possible <b>experience</b> for patients and staff	<input type="checkbox"/>
To deliver <b>safe</b> services	<input type="checkbox"/>		

#### Link to the Board Assurance Framework (BAF) / Corporate Risk Register (CRR)

Link to the BAF (positive/negative assurance or identification of a control / gap in control) <i>Copy and paste drop down menu if report links to one or more BAF risks</i>	Comment:
5.2 Failure to fully implement the CQC well-led framework throughout the Trust, achieving maximum compliance and delivering the highest standards of leadership	
Link to the Corporate Risk Register (CRR) – CR Number:	Comment:

#### REPORT DEVELOPMENT:

Committee or meeting report considered at:	Date	Lead	Outcome
N/A			

## 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.

## 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 2021/22; 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.

Following an investigation in November 2015, NHS Improvement acknowledged that the Trust had taken steps to address its financial challenges however they wished to determine what additional support they could offer the Trust as it seeks to reduce its financial deficit and ensure long term sustainability. On 8 April 2016 NHS Improvement took action, under the license for providers, and the Trust entered into an enforcement undertaking which requires specific actions to be taken in order that the Trust can return to a sustainable position.

In August 2021, a letter was received from Graham Unwin, Regional Director of Performance and Improvement NHS England and NHS Improvement – North West stating that “there are no longer reasonable grounds to suspect that the Trust is in breach of licence.”

The Trust acknowledged the letter, noting that no further action or monitoring would take place in respect of the Enforcement Undertakings, and that further detail was awaited regarding the segmentation relating to the new System Operating Framework.

- 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 2021/22

- 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 2021/22, 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 always 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 directors have a reasonable expectation that the Trust will continue to be a going concern for the following reasons:

- In 2021/22 the Trust achieved a surplus financial position.
- In 2021/22 the Trust did not require any additional revenue support loans to support the cash position. The Trust is no longer in receipt of distressed financing.
- During the prior 2020/21 financial year, the Trust's Neonatal Loans were extinguished per the Department of Health and Social Care (DHSC) and NHS England and NHS Improvement's announcement on 2 April 2020 regarding reforms to the NHS cash regime. As a result of these reforms, during 2020/21 the Trusts' Neonatal Capital Loans of £14.6m were repaid to the DHSC and the Trust was issued with a corresponding £14.6m of Public Dividend Capital (PDC) to allow the repayment.
- In 2021/22 the Trust continued to repay the yearly £0.6m principal balance of its Capital ITFF loan in accordance with the payment terms.

The Trust's expectation is that services will continue to be provided from the existing hospital sites in the short term.

In addition to the matters referred to above, the Trust has not been informed by NHSI that there is any prospect of its dissolution within the next twelve months, and it anticipates the continuation of the provision of services in the foreseeable future as evidenced by the inclusion of financial provision for those services in published documents and contracts for services with commissioners.

**Continuity of Service 7 Recommendation:**

**It is proposed that the Board for the current financial year 2022/23 confirm that:**

***“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. “***

***“The Trust expects to deliver a breakeven financial position in 2022/23 per draft plans to be agreed with the Cheshire and Merseyside Integrated Care System. The Trust expects to have the resources to deliver services for the following 12 months. The Trust has now paid back all historic distressed finance loans and has only a small remaining capital loan balance. 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 2022, 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 2021/22 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 12 May 2022. 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 and published on the Trust website.

#### **RECOMMENDATION**

The Board is asked to agree the suggested declarations and responses and to request that the Trust Secretary ensures the declarations are made in accordance with the paper and published on the Trust’s website by 30 June 2022.



**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 of Trust Board to make a declaration against the requirements on an annual basis and

		<p>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 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	Covers all services which the licensee has contracted with a Commissioner to provide as Commission Requested Services (CRS).

	Service	
<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 mergers or joint ventures.
<b>Integrated care condition (IC)</b>		

<p>1. Provision of integrated care</p>	<p>Requires Licensee to act in the interests of people who use healthcare services by facilitating the development and maintenance of integrated services.</p>	<p>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.</p> <p>Whilst Cheshire and Merseyside Command and Control arrangements were stepped down during 2021/22, the Trust continued to play an active role in the Cheshire and Mersey Hospital Cell system recovery and reset work with appropriate offers of support to the system. One aspect of this was through regional support to Gynaecology Oncology and taking a leadership role in decisions affecting women's services for the region. The Trust is the identified as Gynaecology Oncology Hub for Cheshire and Mersey. The Trust also chairs the Maternity Gold Command call on a weekly basis where staffing and acuity issues are discussed. If a provider is challenged to staff their unit, then proactive help to distribute elective work can be discussed to hopefully prevent a divert of services. If a divert is required, then the providers can discuss who is in a position to help.</p> <p>Towards the end of 2022, the Trust also opened a mobile CT Scanner on the Crown Street site which is helping to increase the local diagnostic offer for the system. This was part of funding secured to open a Community Diagnostic Centre (CDC) on the Crown Street site. A permanent CT and MRI scanner will be in place during 2022/23.</p> <p>Support was also provided to Liverpool University Hospitals NHS Foundation Trust (LUHFT) to provide colorectal surgery and by taking over Non-Obstetric Ultrasound scanning activity. The partnership with LUHFT has been strengthened through 2021/22 and a 'Partnership Board', first established before the start of the pandemic but then subsequently paused, has re-started with a refreshed membership and Terms of Reference. This refresh has resulted in a bimonthly meeting pattern and working groups for complex gynae, shared maternity care and anaesthetics are now in place.</p> <p>Other long-standing partnerships continued throughout the year. This included the Liverpool Neonatal Partnership (LNP) with Alder Hey NHS Foundation Trust. Assurance was provided to the Board throughout the year on the progress that the LNP is making, and it is fully expected that this will continue to go from strength to strength in 2022/23, particularly with the building of a new state-of-the-art Surgical Neonatal Intensive Care Unit (NICU) on the site of Alder Hey Children's NHS Foundation Trust.</p>
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		<p>At the beginning of 2021/22, the Trust took over the hosting of the Cheshire and Merseyside Local Maternity and Neonatal System (LMNS), an organisation that I was already the Senior Responsible Officer for. Whilst not operationally responsible for the LMNS, the hosting arrangement has enabled the Trust to develop closer relationships – something that will become increasingly important in the successful delivery of the Ockenden recommendations.</p> <p>The Trust sees itself as a key partner in progressing a Cheshire and Merseyside Integrated Care System with the Chair and senior Executives involved in developing models of governance and service delivery. I have been nominated as the workforce lead in the development Cheshire and Merseyside Acute and Specialist Trust (CMAST) Provider Collaborative.</p>
<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.	<p>The Trust has an asset register in place.</p> <p>The Trust would require NHSI/E Consent to the disposal of any relevant assets</p> <p>The Trust would not dispose of an asset that would impact on its ability to provide 'Commissioner Requested Services'</p>
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 'high' assurance received from an internal audit in 2021/22. The Trust complies wherever 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. The Board receives assurance on the good financial governance from MIAA through their internal</p>

		audit reports. This remained 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 agree a breakeven position in 2022/23. It therefore expects to have the resources to deliver services for the following 12 months, following planning with the Integrated Care System.</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

2021/22

Please complete the explanatory information in cell E36

**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 2022/23 per draft plans to be agreed with the Cheshire and Merseyside Integrated Care System. The Trust expects to have the resources to deliver services for the following 12 months. The Trust has now paid back all historic distressed finance loans and has only a small remaining capital loan balance. 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

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Name Robert Clarke

Capacity Trust Chair

Date 16 June 2022

Signature

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Name Kathryn Thomson

Capacity Chief Executive

Date 16 June 2022

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

Corporate Governance Statement (CGS)

	Corporate Governance Statement <b>A</b>	Current arrangements <b>B</b>	Response <b>C</b>	Risks and mitigating actions <b>D</b>
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 – Only one ‘explain’ issue identified (regarding balance of the Board – only non-compliant between September 2021 and December 2021)</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	Latest (2020) CQC Review – ‘Well-led’ identified as ‘Requires Improvement’ - The Trust has closed out all actions following the CQC inspection (third line assurance sought from internal audit) and has also undertaken an external well-led review that has resulted in recommendations which the Trust has made significant progress with during 2021/22.
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 (reaffirmed in April 2022).</li> <li>• Clear reporting lines within the Board, Executive and Divisions provided through the Trust's operational and corporate governance framework and Workforce strategies developed in line with Trust's vision, aims and values.</li> <li>• The Trust's divisional structure, implemented from 1 April 2019, has shown signs of continued embedding although this requires further strengthening.</li> </ul>	Confirmed	Further work required to enhance the Trust's divisional governance structures to ensure consistency of reporting and assurances through the Board's governance and performance frameworks.
4	<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>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>	Confirmed	The Trust expects to agree a breakeven plan for 2022/23, and therefore it will have the resources to deliver services for the following 12 months.

	<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>(e) To obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making;</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>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>		
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	<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>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 the BAF 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 effective organisational leadership on the quality of care provided;</p>	<p>a) Board capability reviewed against strategic direction and business plans. Focus on quality of care. Robust appraisal arrangements in place across the Trust. Medical Revalidation and appraisal systems in place and Leadership Management Development implemented across the Trust.</p>	Confirmed	

	<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>b) Quality of care fully integrated within all planning and decision-making processes. QIAs implemented as part of business cases.</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, workforce 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 (it is always the first section on the Board 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, whilst limited to the pandemic, have continued to be undertaken to assess staff and patient care (sometimes virtually). Friends and Family Test systems in place and reported through the Governance Structure. Clinical &amp; 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 Governors (CoG) - Board members</p>		
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	(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.	invited to 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.	Constitution sets out required numbers and qualifications for Board members. <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. Assurance recently provided on 'single points of failure'.</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>			
	<p>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.</p>	<p>Governors receive induction training and will have, as part of the induction, one to one sessions with the Trust Secretary and Chair at appointment. External training is provided where appropriate. Internal training is also provided at and during Council, Council sub-group 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 briefings on matters relating to quality and patient experience, finance and performance measures and any additional requirements.</p> <p>A new initiative put into place during 2021/22 has been the sharing of governors training and briefing opportunities with partner NHS organisations in the Liverpool City region. This has been in recognition that governors across the city are often dealing with the same issues, and this has only increased as the NHS continues to move towards more collaborative ways of working under the developing Integrated Care System model. Examples of this included financial awareness sessions, Equality, Diversity &amp; Inclusion, and general governor</p>	Confirmed	

		training on roles and responsibilities. This is something that will continue to grow into 2022/23 and beyond.		
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**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	Latest (2020) COC Review – 'Well-led' identified as 'Requires Improvement' - The Trust has closed out all actions following the COC inspection (third line assurance sought from internal audit) and has also undertaken an external well-led review that has resulted in recommendations which the Trust has made significant progress with during 2021/22.
2 The Board has regard to such guidance on good corporate governance as may be issued by NHS Improvement from time to time	Confirmed	[including where the Board is able to respond 'Confirmed']
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 enhance the Trust's divisional governance structures to ensure consistency of reporting and assurances through the Board's governance and performance frameworks.
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	The Trust expects to agree a breakeven plan for 2022/23, and therefore it will have the resources to deliver services for the following 12 months.
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	[including where the Board is able to respond 'Confirmed']
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	[including where the Board is able to respond '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   
Name Robert Clarke

Signature   
Name Kathryn Thomson

Further explanatory information should be provided below where the Board has been unable to confirm declarations under FT4.

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Please Respond