

Board of Directors

7th July, 2022

Report Title:	Provider Licence- Annual compliance declarations
Executive/NED Lead:	Rachel Driver, Director of Communication and Engagement
Report author(s):	Steve Parsons, Interim Trust Secretary
Previously considered by:	Audit and Risk Committee

Approval

 Discussion

 Information

 Assurance

Executive summary		
<p>As a Foundation Trust, the Trust is required by law to operate within the terms of the Provider Licence issued by NHS England/ Improvement (acting currently as Monitor). Part of the requirements are that each Trust considers, on an annual basis, its level of compliance with the Licence's provisions, and make a declaration accordingly in public Board.</p> <p>The draft declarations were reviewed by the Audit and Risk Committee at its meeting on 26th May 2022, and the proposed declarations are recommended to the Board for approval by the Committee.</p> <p>This paper outlines the analysis of the current compliance with the conditions of the Licence, and invites the Board to make compliant declarations.</p>		
Action Required of the Board		
<p>The Board is invited to-</p> <ol style="list-style-type: none"> a. Consider the evidence appended to this report regarding compliance with the NHS Improvement Provider Licence; b. Agree- <ol style="list-style-type: none"> i. A compliant declaration regarding Condition G6; ii. The proposed declaration that the Board anticipates that the Trust will have access to the Required Resources for the coming 12 months; iii. The compliant declarations regarding compliance with Licence Condition FT4; iv. The compliant declaration regarding the training of Governors. 		
Link to Strategic Objectives (SO)		Please tick
SO1	Keep people in control of their health	<input checked="" type="checkbox"/>
SO2	Lead the integration of care	<input type="checkbox"/>
SO3	Develop our centres of excellence	<input type="checkbox"/>
SO4	Support and develop our staff	<input checked="" type="checkbox"/>
SO5	Drive technology enabled care	<input type="checkbox"/>
Risk Implications for the Trust <i>(including any clinical and financial consequences)</i>		<p>The risks are-</p> <ul style="list-style-type: none"> • Reputational, if the Trust has to publicly declare a lack of compliance with the obligations • Compliance, if NHS E/I determine that there is a breach of the Licence requirements
Trust Risk Appetite		
Legal and regulatory implications <i>(including links to CQC outcomes, Monitor, inspections, audits, etc.)</i>		Compliance with the Provider Licence is a statutory requirement, which is enforced by NHS England/ Improvement (as Monitor).

Financial Implications	N/A
Equality and Diversity	The Licence condition to comply with all applicable legislation includes an obligation under the Licence to comply with legal obligations for equality and diversity, including the Public Sector Equality Duty.

Provider Licence- Annual compliance declarations

Background

As a provider of health-care services, the Trust is required to be licenced by the Care Quality Commission. As Foundation Trust, the Trust is also required to hold a Provider Licence issued by Monitor (now part of NHS England/ Improvement). Similar arrangements are now required of non-FT's, but on a non-statutory basis.

Part of the Licence Conditions are requirements to make declarations of compliance on an annual basis. These are against three areas-

- i. Compliance in general with the conditions of the Provider Licence, under Condition G6;
- ii. Compliance with the requirement to have access to all necessary resources (including people, buildings, finance and technical support) to deliver any Commissioner-Requested Services currently in place under the Licence;
- iii. Compliance with the specific conditions for the governance of Foundation Trusts set out in condition FT4;
- iv. Compliance with the statutory requirement to ensure Governors have the skills and experience to undertake their role.

General Compliance with the Licence Conditions- G6

The declaration under Condition G6 (as expressed in the NHS Improvement template) covers whether the Directors are satisfied that, in the 2021-2022 financial year-

- a. The Trust took all necessary precautions to comply with the requirements of the Provider Licence;
- b. The Trust took all necessary precautions to comply with any requirements imposed under the NHS Acts;
- c. The Trust had regard to the provisions of the NHS Constitution.

Given the way the declaration is worded, the Board must be satisfied as to all three elements before a compliant declaration could be made. For the period in question, that compliance was conditioned on the guidance and requirements issued on a national and regional basis relate to COVID-19, which in some cases could be seen as cutting across the usual operation of the Provider Licence requirements. Those COVID-19 requirements took priority as they were issued under the *Civil Contingencies Act* provisions and the NHS Emergency Preparedness, Resilience and Responsiveness (EPRR) framework whilst the Trust (and the NHS nationally and locally) were in an EPRR Level 3 or Level 4 situation. As the Board is aware, the NHS remains at a national EPRR Level 3 status at present.

As currently advised, management considers that during the 2021-2022 year, and making appropriate allowance for COVID-19 matters as outlined above, the Trust complied with the requirements of Condition G6, and recommend that a compliant declaration is made accordingly.

Required Resources for Commissioner-Requested Services

This declaration relates to the Continuity of Service requirements in the Licence, which (in outline) impose requirements to ensure that any services which the CCG has formally identified as essential to health services in its area (Commissioner-Requested Services- CRS) are provided as the priority for the licenced provider.

The CRS requirements for the year to the end of May 2023 are expected to be the same as for the previous year. The Trust's business planning for the year indicates that (subject to achieving the projected level of Cost Improvement Schemes) the Trust should have sufficient resources to continue to provide the CRS (as a priority for service provision if

necessary, although this is not expected to arise) and therefore approval of a full-compliant declaration is recommended.

As in previous years, achievement of CRS would be subject to any national or regional requirements implemented under the EPRR arrangements if pandemic conditions were to recur. Whilst those conditions are not anticipated, if EPRR requirements were implemented the Trust could expect those to be taken into account in assessing the reasonableness of the declaration.

Corporate Governance systems- Condition FT4

Condition FT4 sets out some detailed requirements for the effective corporate governance of Foundation Trusts, which are reflective of other provisions now contained in the Well-Led documentation agreed between CQC and NHS Improvement. The Licence includes an annual requirement on the Board to declare their compliance with the requirements during the previous year, and anticipated compliance during the current financial year (given that the declaration will be made in May or June). That statement must also identify any risks to achievement of compliance, and the actions being taken to manage any such risks.¹

Appended is an analysis of the requirements, risks and management actions, together with a suggested declaration. In summary the recommendation is to declare compliance with all six required statements.

Governor skills and knowledge

The final declaration to be made regards compliance with the statutory duty on the Trust to ensure that Governors have the skills and knowledge necessary for them to discharge their duties.

The recommendation to declare compliance with this requirement, based on the various developmental sessions that have been held with and for Governors during the course of the year. The Board will also be aware that the Secretary has been asked to put in place a more formalised programme for the future, to ensure that Governors can access development designed to meet their requirements.

1 Condition FT4.8(a).