

## Cover page

Meeting	Trust Board
Paper Title	NHS Provider Licence Conditions – Annual Self Certification for 2019/20
Date of meeting	28 May 2020
Date paper was written	18 May 2020
Responsible Director	Chief Executive Officer
Author	Governance Manager

### Executive Summary

NHS Trusts are required to self-certify that they can meet (or otherwise) the obligations set out in the NHS provider licence (which itself includes requirements to comply with the National Health Service Act 2006, the Health and Social Care Act 2008, the Health Act 2009 and the Health and Social Care Act 2012, and to have regard to the NHS Constitution) and confirm (or not) compliance with governance requirements.

Although NHS Trusts are exempt from needing a Provider Licence, directions from the Secretary of State require NHS Improvement (NHSI) to ensure that NHS Trusts comply with conditions equivalent to the licence as it deems appropriate.

Consequently, all provider NHS Trusts must self-certify the following after the financial year-end:

- Condition G6(3) - the provider has taken all precautions necessary to comply with the licence, NHS Acts and NHS Constitution
- Condition FT4(8) - the provider has complied with required governance arrangements

The Trust Board is required to approve the self-certification statements for 2019/20 and may be required to provide evidence it has done so to NHSE/I.

**Appendix A** - Self Certification Statements

**Appendix B** - Self-certification: guidance for NHS Trusts

Further statutory guidance to the NHS provider licence can be found in the supplementary Information Pack and via: <https://www.gov.uk/government/publications/the-nhs-provider-licence>

The Board of Directors is asked to **APPROVE** the statements in respect to the Trust's in-year compliance with the NHS Provider licence conditions as set out in the guidance..

Previously considered by	Executive Directors on 12/05/2020 and circulation to ARAC members on 19/5/2020.
--------------------------	---

The Board is asked to:				
<input checked="" type="checkbox"/> Approve	<input type="checkbox"/> Receive	<input type="checkbox"/> Note	<input type="checkbox"/> Take Assurance	
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 or Trust without formally approving it	For the intelligence of the Board without in-depth discussion required	To assure the Board that effective systems of control are in place	
Link to CQC domain:				
<input type="checkbox"/> Safe	<input type="checkbox"/> Effective	<input type="checkbox"/> Caring	<input type="checkbox"/> Responsive	<input checked="" type="checkbox"/> Well-led

Link to strategic objective(s)	<i>Select the strategic objective which this paper supports</i>
	<input checked="" type="checkbox"/> PATIENT AND FAMILY Listening to and working with our patients and families to improve healthcare
	<input checked="" type="checkbox"/> SAFEST AND kindest Our patients and staff will tell us they feel safe and received kind care
	<input checked="" type="checkbox"/> HEALTHIEST HALF MILLION Working with our partners to promote 'Healthy Choices' for all our communities
	<input checked="" type="checkbox"/> LEADERSHIP Innovative and Inspiration Leadership to deliver our ambitions
	<input checked="" type="checkbox"/> OUR PEOPLE Creating a great place to work
Link to Board Assurance Framework risk(s)	All

Equality Impact Assessment	<input checked="" type="radio"/> Stage 1 only (no negative impact identified) <input type="radio"/> Stage 2 recommended (negative impact identified and equality impact assessment attached for Board approval)
Freedom of Information Act (2000) status	<input checked="" type="radio"/> This document is for full publication <input type="radio"/> This document includes FOIA exempt information <input type="radio"/> This whole document is exempt under the FOIA
Financial assessment	n/a

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

Updated March 2019

We support providers to give patients safe, high quality, compassionate care within local health systems that are financially sustainable.

# Contents

1. Introduction .....	2
2. What is required? .....	3
3. NHS provider licence conditions .....	4
Condition G6 .....	4
Condition FT4 .....	4
Condition CoS7 (only foundation trusts that have CRS designated services) .....	5
4. Other self-certifications .....	7
Training of governors (foundation trusts only) .....	7
5. Useful resources .....	7
6. Deadlines .....	8
7. Audit.....	8

# 1. Introduction

1. This document provides guidance on the annual self-certification that NHS trusts and foundation trusts ('NHS providers') must complete under the NHS provider licence.
2. The annual self-certification provides assurance that NHS providers are compliant with the conditions of their NHS provider licence. Compliance with the licence is routinely monitored through the Single Oversight Framework but, on an annual basis, the licence requires NHS providers to self-certify as to whether they have:
  - a. effective systems to ensure compliance with the conditions of the NHS provider licence, NHS legislation and the duty to have regard to the NHS Constitution (condition G6);
  - b. complied with governance arrangements (condition FT4); and
  - c. for NHS foundation trusts only, the required resources available if providing commissioner requested services (CRS) (condition CoS7).
3. Although NHS trusts do not need to hold a provider licence, directions from the Secretary of State require NHS Improvement to ensure that NHS trusts comply with conditions equivalent to those in the licence as it deems appropriate.
4. NHS trusts are therefore legally subject to the equivalent of certain provider licence conditions (including conditions G6 and FT4) and must self-certify under these licence conditions. The CoS conditions do not apply to NHS trusts, so they are not required to self-certify under the CoS7 condition.
5. A template is provided to assist with recording of the self-certifications. Should you be audited by NHS Improvement this can be a useful tool to quickly illustrate compliance with some of the process. It is not mandatory to complete and is provided for record keeping purposes only. Please do not return to NHS Improvement unless specifically requested to do so.

## 2. What is required?

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

### NHS provider licence conditions

Condition G6(3)	The provider has taken all precautions to comply with the licence, NHS acts and NHS Constitution.	By 31 May
Condition G6(4)	Publication of condition G6(3) self-certification.	By 30 June
Condition FT4(8)	The provider has complied with required governance arrangements.	By 30 June
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.	By 31 May

7. It is up to the 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.
8. Detailed guidance on the requirements of each of these conditions can be found in Section 4 of this document. In Section 6, you will find links to resources including self-certification and templates that boards may use to record their self-certification if they find them helpful.

# 3. NHS provider licence conditions

## Condition G6

9. Condition G6(2) requires NHS providers to have processes and systems that:
  - a. identify risks to compliance with the licence, NHS acts and the NHS Constitution
  - b. guard against those risks occurring.
10. Providers must complete a self-certification after reviewing whether their processes and systems were implemented in the previous financial year and were effective (condition G6(3)).
11. Providers must publish their self-certification by 30 June (condition G6(4)).

### Guidance on using the template

- Providers should choose 'confirmed' or 'not confirmed' as appropriate.
- Providers choosing 'not confirmed' should explain why in the free text box provided.

## Condition FT4

12. Condition FT4 is about systems and processes for good governance. NHS providers must make a corporate governance statement under condition FT4(8) as to current and future compliance with condition FT4.
13. Before making the statement, providers should review whether their governance systems and processes enable them to achieve compliance with condition FT4. There is no set approach, but we expect any compliant approach to involve a review of the effectiveness of board and committee structures, reporting lines and performance and risk management systems.



14. NHS providers can find further information on governance by referring to:
  - a. the [well-led framework for governance reviews](#) (last updated June 2017)
  - b. the [NHS foundation trust code of governance](#) (July 2014)
  - c. [Single Oversight Framework](#) (last updated November 2017)
  - d. contacting their NHS Improvement regional regulation lead.

## Guidance on using the template

- Providers should select 'confirmed' or 'not confirmed' for each certification as appropriate and set out relevant risks and mitigating actions in each case.
- Providers choosing 'not confirmed' for any certification should explain why in the free text box provided.

## Condition CoS7 (only NHS foundation trusts that have CRS designated services)

15. Only NHS foundation trusts designated as providing CRS must self-certify under condition CoS7(3).

### What is commissioner requested service designation?

---

16. A CRS designation is not simply a standard contract with a commissioner to provide services. CRS are services commissioners consider should continue to be provided locally even if the provider is at risk of failing financially and, as such, are subject to closer regulation by NHS Improvement. Providers can be designated as providing CRS because:
  - there is no alternative provider close enough
  - removing the services would increase health inequalities
  - removing the services would make other related services unviable.
17. For more detailed guidance, refer to [the designation framework: defining CRS and location specific services](#) (28 March 2013).

## How do I know if my foundation trust is a CRS provider

---

18. NHS foundation trusts authorised before 1 April 2016 will have been specifically notified by their commissioner if they have been designated a CRS provider. They do not need to complete the CoS7 certification if they have not been notified.
19. Foundation trusts authorised on or after 1 April 2016 are automatically CRS designated for all services for 12 months from the date of authorisation. During this period, they must complete the CoS7 certification. After 12 months, unless they receive a specific designation from a commissioner, they are not designated a CRS provider and the CoS7 certification is not required.

### Guidance on using the template

- The template requires CRS-designated NHS foundation trusts to select 'confirmed' for one of three statements about the availability of resources required to provide commissioner designated services:
  - a. the required resources will be available for 12 months from the date of the statement;
  - b. the required resources will be available over the next 12 months, but specific factors may cast may doubt on this; or
  - c. the required resources will not be available over the next 12 months.
- Required resources include: management resources, financial resources and facilities, personnel, physical and relevant asset guidance.
- Only one statement should be confirmed (and providers do not need to state the other two are not confirmed). Providers should explain the reasons for the chosen statement in the free text box provided (condition CoS7(4)).

# 4. Other self-certifications

## Training of governors (NHS foundation trusts only)

20. NHS foundation trusts must review whether their governors have received enough training and guidance to carry out their roles. It is up to providers how they do this (but see [Monitor's guide for governors](#) for guidance).

### Guidance on using the template

- Providers should choose 'confirmed' or 'not confirmed' as appropriate for the certification.
- Providers choosing 'not confirmed' should explain why in the free text box provided.

# 5. Useful resources

21. This guidance is necessarily high level and should be read alongside:
  - a. the templates
  - b. [NHS provider licence](#) (last updated February 2013)
  - c. [the designation framework: defining CRS and location specific services](#) (last updated March 2013)
  - d. [the well-led framework for governance reviews](#) (last updated June 2017)
  - e. [the NHS foundation trust code of governance](#) (July 2014)
  - f. [Single Oversight Framework](#) (last updated November 2017).
22. If you have any questions not addressed in this guidance or any of the additional documents referred to, please contact your regional lead.

## 6. Deadlines

Boards must sign off on self-certification not later than:

- Condition G6: 31 May – must be published no later than by 30 June.
- Condition CoS7: 31 May
- Condition FT4: 30 June.

## 7. Audit

23. Please do not return the completed self-certifications or templates to NHS Improvement unless requested to do so.
24. NHS Improvement will retain the option each year of contacting a select number of NHS trusts and foundation trusts to ask for evidence that they have self-certified, either by providing the completed or relevant board minutes and papers recording sign-off.

Contact us:

**NHS Improvement**

Wellington House  
133-155 Waterloo Road  
London  
SE1 8UG

**0300 123 2257**

**[enquiries@improvement.nhs.uk](mailto:enquiries@improvement.nhs.uk)**  
**[improvement.nhs.uk](http://improvement.nhs.uk)**

 **[@NHSImprovement](https://twitter.com/NHSImprovement)**

This publication can be made available in a number of other formats on request.

**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.

Not confirmed

Please complete the explanatory information in cell E36

**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.

Please Respond

**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:

For the period of assessment from 1 April 2019 to 31 March 2020, the Trust has remained in quality Special Measures throughout the year and the Trust Board has been assisted by a dedicated NHSI Improvement Director. As a result of the CQC Inspection undertaken in-year, there are nine requirement notices to the Trust. The CQC also took urgent action and issued eight new conditions of registration and varied two existing conditions of registration as well as issuing a section 29A warning notice.

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

Name

Capacity [job title here]

Capacity [job title here]

Date

Date

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

To provide assurance that the Board and its Committees are discharging their duties effectively, all terms of reference are to be independently reviewed and recommendations for a revised Committee structure implemented during the forthcoming year. In effectively monitoring financial and quality performance, the Board Committees will continue to provide assurance at each Trust Board meeting and the relevant risks within the Board Assurance Framework are reviewed by each Committee monthly, with updates acknowledged and approved by the Board. The Audit & Risk Assurance Committee reviews the processes for the management of the BAF which is also independently assessed, forming a key part of the Head of Internal Audit opinion at year-end. However, the Trust is unable to confirm compliance with this licence condition whilst it remains in quality Special Measures, is rated as 'Inadequate' by CQC and continues to have significant challenges in delivering key national standards. These include the 4 hour Emergency Access Target, 18 weeks referral to treatment – incomplete pathways, 62 day cancer performance standard and the 6 week wait diagnostics standard. Furthermore, the Trust reported an outturn financial deficit for the period stated of £35.4m against a control total deficit of £17.4m (both figures excluding Provider Sustainability Funding and Marginal Rate Emergency Tariff income).

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.	Not confirmed	For the reporting year, a number of significant control issues are noted within the Trusts Annual Governance Statement and therefore compliance with this licence condition cannot be confirmed. These relate primarily to: • Regulatory compliance and quality of services • Governance failures • Financial performance • A number of personnel changes have taken place at Trust Board level. The Trust has identified improvements in its systems and processes to provide assurance of compliance with good governance. This has been informed by the HIA opinion for 19/20 (Limited Assurance) and CQC Well Led assessment (Inadequate). The Trust is committed to making improvements and has full support from NHSIE to ensure improvements to quality governance are implemented and embedded under the guidance of the new CEO who commenced in post in Feb-2020. REF1
2 The Board has regard to such guidance on good corporate governance as may be issued by NHS Improvement from time to time	Not confirmed	For the reporting year, a number of significant issues have become apparent regarding the Trust's Governance arrangements and therefore compliance with this licence condition cannot be confirmed. Particular regard to any new requirements and/or best practice guidance and/or learnings from external review that are will be applied to the Board of Directors through the CEO's report as standing Board item. Sources include: • Regulatory bodies relevant to the Trust • National and regional networks • Formal and informal reports by external stakeholders REF1
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.	Not confirmed	The Trust has been assessed as 'Inadequate' for the Well-Led domain by CQC for the period stated and therefore compliance with this licence condition cannot be confirmed. The Board is receiving independent recommendations to restructure its committees so that assurance roles and accountabilities for performance delivery are explicit, understood and agreed. Key milestones are identified as: • Individual accountabilities of executive Directors (and other senior leaders) are evidenced through job descriptions and contracts • Approval and implementation of a new Performance Management Framework, and review of the BAF and organisational level risks • Independent review of Scheme of Delegation, Standing Orders and Standing Financial Instructions with evidenced implementation of subsequent recommendations REF1
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.	Not confirmed	The Trust has been assessed as 'Inadequate' for the Well-Led domain by CQC for the period stated and therefore compliance with this licence condition cannot be confirmed. The Board is already assured that: • The Quality & Safety Committee reviews a range of quality metrics and monitors progress against the CQC action plan while other Committees have a clear focus on patient safety and patient experience. • The Trust has a Risk Management Strategy, Board Assurance Framework and Corporate Risk Register which is being independently assessed for effectiveness. • The Board and Committees receive the BAF and CRR on a frequent basis. • Systems of internal control are subject to regular audit and the Audit & Risk Assurance Committee has provided independent oversight and challenge. In response to its most recent CQC assessment across all domains, the Board is committed to implementing independent recommendations to be assured that: • The committee architecture is designed to evidence to the Board that the Trust is operating effectively, efficiently and economically. • Committees are tested to ensure oversight, scrutiny and delivery of performance around finance, operations, quality and workforce, and evidence steps to escalate appropriately. • The Quality Account highlights quality improvements made during the period and clearly describes priorities. • The Trust has clear and fit-for-purpose Standing Orders, Standing Financial Instructions and Scheme of Delegation that determines the framework for financial decision-making, management and control. • There are robust accountability systems in place to monitor effectiveness and efficiency schemes. • The Board committee calendar ensures up-to-date information is provided to meetings for scrutiny and assurance. • The Trust has an annual planning process that ensures business plans are developed and supported. • The governance, risk and control processes are independently assessed to ensure the Trust remains compliant, and recommendations to improve are implemented. • The Trust Board receives accurate, triangulated information, primarily through the development of an Integrated Performance Report that meets the Board's needs for effective decision making. REF1
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.	Not confirmed	The Trust has been assessed as 'Inadequate' for the Well-Led domain by CQC for the period stated and therefore compliance with this licence condition cannot be confirmed. In response to its most recent CQC Well-Led assessment, the Board is committed to implementing independent recommendations to be assured that: • Evidence of effective objective setting and performance review process is in place for Board members, portfolios are reviewed on an annual basis and skills are refreshed and kept up to date through a range of development opportunities. • There is a robust quality impact assessment process in place with Senior Clinical and Executive oversight. • A regular integrated performance and business intelligence report is brought to Board and a range of other quality metrics are reported through the Board Committees. • Board members are actively involved in quality initiatives including 'Genral' walks and membership of operational committees (as appropriate). • Clear escalation mechanisms and routes are evident to ensure matters are referred up to Board committees where authority to act cannot be delegated. • All Board Committees have a standing item on each agenda allowing them to escalate directly to the Board REF1
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.	Not confirmed	A The Trust has been assessed as 'Inadequate' for the Well-Led domain by CQC for the period stated and therefore compliance with this licence condition cannot be confirmed. To assure future compliance, the Board is committed to ensuring: • The Trust has in place a formal and rigorous appointments process to the Board with independent assurance that it is fit-for-purpose. • It can be evidenced that all Board Directors continue to meet NHS Improvement's fit and proper persons test. • Executive and Senior Leadership roles and responsibilities are reviewed and refined. Any newly created key roles will include Board involvement at interview where appropriate. REF1

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 \_\_\_\_\_

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

A Further for the Trust being placed into Quality Special Measures in 2019, there has been considerable change during the year at Board level, with interim appointments at Chief Executive, Director of Nursing, Midwifery & Quality, Finance Director and Director of Corporate Governance. The Trust successfully recruited a new Chief Executive who commenced in post in February 2020, and it is anticipated that Board stability, capacity and capability will quickly improve upon reaching its substantive establishment in 2020/21, with the continued support of a dedicated NHS Improvement Director. The risk of underachievement against access standards in 19/20 was anticipated by the Trust Board and fully acknowledged by NHSIE and is a fundamental underlying issue driving the need for service reconfiguration. The Trust recognised that the consistent delivery of national performance standards will continue to present a risk and as such has declared this within the Quality Account. Ongoing financial under-performance is recognised and acknowledged, further compounded by the unavoidable financial consequences of the COVID-19 outbreak which commenced in early 2020. Underlying financial shortcomings have been fully disclosed and the Board is working closely alongside NHSI in the development and delivery of robust financial recovery plans. The Trust acknowledges a current heavy reliance on bank and agency staff to maintain safe staffing levels due to ongoing difficulties recruiting and retaining key staff. The Trust continues to work with partners across the health sector in developing strategies to address workforce gaps and improve recruitment across multiple disciplines. The Trust Board is totally committed to the support, oversight and scrutiny of sustained improvement in the coming year. REF1