



## TRUST BOARD

<b>DOCUMENT TITLE:</b>	<b>Declaration to NHS Improvement – General Condition 6 – systems for compliance with licence conditions</b>				
<b>SPONSOR (EXECUTIVE DIRECTOR):</b>	Jo Williams, Chief Executive & Tim Pile, Chair				
<b>AUTHOR:</b>	Simon Grainger-Lloyd, Director of Corporate Affairs & Company Secretary				
<b>DATE OF MEETING:</b>	1 June 2022				
<b>EXECUTIVE SUMMARY:</b>					
<p>The Board of Directors is required to make a set of declarations on an annual basis.</p> <p>The attached (main appendix) presents the proposed declaration to confirm or otherwise that the Trust has in place systems to enable compliance with its licence conditions.</p> <p>On this basis of the commentary and evidence base behind the statement of compliance for each condition, it is proposed that the Trust states 'CONFIRMED' to the following:</p> <p><b><i>'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 order 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 had regard for the NHS Constitution'</i></b></p> <p>The requirements of the declaration stipulate that it must have 'had regard to the views of governors' and therefore the proposed declaration and evidence base has been circulated to governors for comments.</p> <p>The remaining declarations will be presented to the Board at its July meeting.</p>					
<b>REPORT RECOMMENDATION:</b>					
The Board is asked to approve the G6 declaration.					
<b>ACTION REQUIRED</b> (Indicate with 'x' the purpose that applies):					
The receiving body is asked to receive, consider and:					
<b>Note and accept</b>	<b>Approve the recommendation</b>		<b>Discuss</b>		
	X				
<b>KEY AREAS OF IMPACT</b> (Indicate with 'x' all those that apply):					
Financial	x	Environmental	x	Communications & Media	x
Business and market share	x	Legal & Policy	x	Patient Experience	x
Clinical	x	Equality and Diversity		Workforce	x
Comments: [elaborate on the impact suggested above]					

**ALIGNMENT TO TRUST OBJECTIVES, RISK REGISTERS, BAF, STANDARDS AND PERFORMANCE METRICS:**

Compliance with the Self-certification: guidance for NHS FTs and specifically compliance with the Trust's licence to operate.

**PREVIOUS CONSIDERATION:**

Circulated to the Council of Governors for comments

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## 1 Section 1 – General Conditions

### 1.1 Condition G1 – Provision of information

1. Subject to paragraph 3, and in addition to obligations under other Conditions of this Licence, the Licensee shall furnish to NHS Improvement such information and documents, and shall prepare or procure and furnish to NHS Improvement such reports, as NHS Improvement may require for any of the purposes set out in section 96(2) of the 2012 Act.
2. Information, documents and reports required to be furnished under this Condition shall be furnished in such manner, in such form, at such place and at such times as NHS Improvement may require.
3. In furnishing information documents and reports pursuant to paragraphs 1 and 2 the Licensee shall take all reasonable steps to ensure that:
  - (a) in the case of information or a report, it is accurate, complete and not misleading;
  - (b) in the case of a document, it is a true copy of the document requested; and
4. This Condition shall not require the Licensee to furnish any information, documents or reports which it could not be compelled to produce or give in evidence in civil proceedings before a court because of legal professional privilege.

Lead Exec	Compliant	Comment	Evidence
SW/SGL	Y	All NHS Improvement returns have been prepared in the required format and delivered on time. There has been no adverse comment from NHS Improvement re late or incomplete returns. A copy of the audited annual reports and accounts for 2020/21 was submitted by the required deadline. All returns are reviewed buy at least one other person than the author.	<ul style="list-style-type: none"><li>• NHS Improvement monthly performance reports</li><li>• Confirmation receipts of declarations &amp; AR &amp; Accts from NHSI portal</li></ul>

## 1.2 *Condition G2 – Publication of information*

1. The Licensee shall comply with any direction from NHS Improvement for any of the purposes set out in section 96(2) of the 2012 Act to publish information about health care services provided for the purposes of the NHS and as to the manner in which such information should be published.
2. For the purposes of this condition “publish” includes making available to the public, to any section of the public or to individuals.

Lead Exec	Compliant	Comment	Evidence
SW/SGL	Y	FT Code of Governance requirements to publish on the website have been complied with, largely in the form of the Trust’s annual report	<ul style="list-style-type: none"> <li>• Screen shot of licence included on the Trust’s internet</li> <li>• Screen shot of annual report on website</li> </ul>

## 1.3 *Condition G3 – Payment of fees to NHS Improvement*

1. The Licensee shall pay fees to NHS Improvement in each financial year of such amount as NHS Improvement may determine for each such year or part thereof in respect of the exercise by NHS Improvement of its functions for the purposes set out in section 96(2) of the 2012 Act.
2. The Licensee shall pay the fees required to be paid by a determination by NHS Improvement for the purpose of paragraph 1 no later than the 28<sup>th</sup> day after they become payable in accordance with that determination.

Lead Exec	Compliant	Comment	Evidence
SW	Y	No fees have been levied by NHS Improvement during 2021/22.	None

## 1.4 *Condition G4 – Fit and proper persons as Governors and Directors (also applicable to those performing equivalent or similar functions)*

1. The Licensee shall ensure that no person who is an unfit person may become or continue as a Governor, except with the approval in writing of NHS Improvement.

2. The Licensee shall not appoint as a Director any person who is an unfit person, except with the approval in writing of NHS Improvement.
3. The Licensee shall ensure that its contracts of service with its Directors contain a provision permitting summary termination in the event of a Director being or becoming an unfit person. The Licensee shall ensure that it enforces that provision promptly upon discovering any Director to be an unfit person, except with the approval in writing of NHS Improvement.
4. If NHS Improvement has given approval in relation to any person in accordance with paragraph 1, 2, or 3 of this condition the Licensee shall notify NHS Improvement promptly in writing of any material change in the role required of or performed by that person.
5. In this Condition an unfit person is: (a)  
  
an individual;
  - (i) who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged; or
  - (ii) who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it; or
  - (iii) who within the preceding five years has been convicted in the British Islands of any offence and a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him; or
  - (iv) who is subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986; or(b) a body corporate, or a body corporate with a parent body corporate
  - (i) where one or more of the Directors of the body corporate or of its parent body corporate is an unfit person under the provisions of sub- paragraph (a) of this paragraph, or
  - (ii) in relation to which a voluntary arrangement is proposed under section 1 of the Insolvency Act 1986, or

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- (iii) which has a receiver (including an administrative receiver within the meaning of section 29(2) of the 1986 Act) appointed for the whole or any material part of its assets or undertaking, or
- (iv) which has an administrator appointed to manage its affairs, business and property in accordance with Schedule B1 to the 1986 Act, or
- (v) which passes any resolution for winding up, or
- (vi) which becomes subject to an order of a Court for winding up.

Lead Exec	Compliant	Comment	Evidence
SGL	Y	The Trust has continued the annual review of those who are required to meet the FPPT, and to apply the Trust policy. All required members of the Board completed a self-declaration in 2021 and new starter Mr Les Williams completed pre-employment check and the self-declaration in regard to FPPT. The annual round of self-declarations is underway as of June 2022. DBS checks for Board members have been refreshed during the year.	<ul style="list-style-type: none"><li>• FPPT policy</li><li>• FPPT declarations</li><li>• Personal files</li></ul>

## **1.5 Condition G5 – NHS Improvement guidance**

- 1 Without prejudice to any obligations in other Conditions of this Licence, the Licensee shall at all times have regard to guidance issued by NHS Improvement for any of the purposes set out in section 96(2) of the 2012 Act.
- 2 In any case where the Licensee decides not to follow the guidance referred to in paragraph 1 or guidance issued under any other Conditions of this licence, it shall inform NHS Improvement of the reasons for that decision.

Lead Exec	Compliant	Comment	Evidence
SW/SGL	Y	<p>FT Code of Governance requirements have been complied with as detailed in the annual report under the “comply or explain” section. The Trust adheres to the requirements of the Single Oversight Framework (ROH is Rated 2), albeit there has been a move this year to adopt the requirements of the System Oversight Framework (BSol ICS is Rated 3)</p> <p>New guidance to come into force from 1 July 2022 requiring a duty on Providers to collaborate and form part of a Provider Collaborative – will be reflected more fully in next year’s declarations</p>	<ul style="list-style-type: none"> <li>• Annual report 2021/22</li> <li>• Finance &amp; Performance Report, and Quality &amp; Safety Report</li> <li>• Agency staffing information included in Finance &amp; Performance papers and the Workforce Overview</li> <li>• New Health and Social Care Act requirements around collaboration and establishment of Integrated Care Systems</li> </ul>

## **1.6 Condition G6 – Systems for compliance with licence conditions and related obligations**

1. The Licensee shall take all reasonable precautions against the risk of failure to comply with:
  - (a) the Conditions of this Licence,
  - (b) any requirements imposed on it under the NHS Acts, and
  - (c) the requirement to have regard to the NHS Constitution in providing health care services for the purposes of the NHS.
2. 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.
3. Not later than two months from the end of each Financial Year, the Licensee shall prepare and submit to NHS Improvement a certificate to the effect that, following a review for the purpose of paragraph 2(b) the Directors of the Licensee are or are not satisfied, as the case may be that, in the Financial Year most recently ended, the Licensee took all such precautions as were necessary in order to comply with this Condition.
4. The Licensee shall publish each certificate submitted for the purpose of this Condition within one month of its submission to NHS Improvement in such manner as is likely to bring it to the attention of such persons who reasonably can be expected to have an interest in it.

Lead Exec	Compliant	Comment	Evidence
<b>PART 1</b>			
SW/SGL/GM re (a) and (b)	Y	<p>(A) Controls relating to this are described in the whole of this appendix</p> <p>(B) The Trust is registered with the CQC and the HTA as per the NHS Acts. The Director of Strategy &amp; Delivery holds the post of HTA designated individual.</p> <p>(C) The Board is not aware of any other significant requirements under the NHS Acts.</p>	<ul style="list-style-type: none"> <li>• This appendix</li> <li>• CQC registration certificate</li> <li>• HTA registration certificate</li> </ul>
CEO	Y	<p>The NHS constitution establishes the principles and values of the NHS in England. The constitution can be broken down into 6 key areas, 4 of which apply to requirements for the organisation: guiding principles, NHS values, rights of patients &amp; public and rights for staff.</p> <p>The Trust's five year strategy, approved in Autumn 2019, echoes the guiding principles in the NHS constitution including putting the patient at the heart of everything the organisation does, working across organisational boundaries and aspiring to achieve the highest standards of excellence &amp; professionalism. The strategy also provides a set of values that are</p>	<ul style="list-style-type: none"> <li>• Five year forward strategy and strategy refresh</li> <li>• Strategy refresh presented to the Board in May 2022.</li> <li>• Finance &amp; Performance overview</li> <li>• Quality &amp; Patient Safety report</li> <li>• Workforce overview</li> <li>• Annual complaints report</li> </ul>

Lead Exec	Compliant	Comment	Evidence
		<p>consistent with those in the NHS constitution including promoting respect &amp; dignity, commitment to quality of care and being compassionate. The measurement of the outcomes of these indicators is through consideration of a suite of reports received by the Board and its Committees and at an Executive level by reports to the weekly Executive meeting.</p> <p>In terms of compliance with the constitutional requirements relating to the rights of the public and patients, compliance is demonstrated through performance against the range of nationally commissioned targets set out in the Quality Account &amp; Annual Report. The specific relating to confidentiality &amp; consent are monitored respectively by an IG Group and by the Quality &amp; Safety Committee.</p> <p>In terms of complaints and redress, the Trust has made improvements to its processes for complaints handling during the year and strengthened adherence to Regulation 20: Duty of Candour guidance. A spot audit undertaken during the previous financial year shows complete compliance with cases reviewed.</p> <p>The right to drugs and treatments can be demonstrated by the Joint Formulary available on the internet.</p> <p>The Trust was inspected by the CQC in Quarter 3 2019/20 and maintained its regulatory rating as 'Good' across all domains.</p> <p>The Trust has seen a deterioration in the performance against the national Referral to Treatment Time standards as a result of the cessation of elective activity in line with the national response to the Covid-19 pandemic and the need to support system partners with restoration &amp; recovery. As elective activity resumes it is planned that</p>	<ul style="list-style-type: none"> <li>• National Staff Survey results</li> <li>• Quality Account</li> <li>• Quality &amp; Safety Committee meeting papers</li> <li>• Finance &amp; Performance Committee meeting papers</li> <li>• Staff Experience &amp; OD Committee papers</li> <li>• Quality Account 2020/21</li> <li>• Annual Report 2020/21</li> <li>• Data security toolkit submission and internal audit report</li> <li>• Minutes of Quality &amp; Safety Committee</li> <li>• Annual complaints reports to Quality &amp; Safety Committee and Trust Board</li> <li>• Duty of Candour updates as part of Quality &amp; Patient Safety report</li> <li>• Quality &amp; Safety Committee</li> <li>• CQC report and CQC action plan</li> <li>• Screenshot of joint formulary</li> <li>• Duty of Candour audit</li> <li>• NICE guidance internal audit and action plan</li> <li>• Performance against access targets included in</li> </ul>

Lead Exec	Compliant	Comment	Evidence
		<p>the situation will be improved. The Trust has worked with AccessAble to ensure that the estate of the Trust assists those requiring additional support with navigating the hospital to be provided with visuals and a step by step guide to accessing the hospital.</p> <p>There has been no regulatory enforcement action during the year or any undertakings imposed.</p> <p>Regarding the rights of staff, the Trust has policies and procedures in place to support staff and ensure that their needs are met appropriately. The Trust has a Freedom to Speak Up policy in place and has undertaken an assessment against the WRES and WDES standards which has flagged some work to do to improve the Trust's regard for equality &amp; diversity matters. An equality and diversity network and a Multi Minority Ethnic Group (MMEG) are in place in addition to a 'BeMySelf' forum and a Disability forum. The Trust has in place a Freedom to Speak Up Guardian who reports to the Director of Corporate Affairs &amp; Company Secretary. The Trust Board is supported by a Committee, the Staff Experience &amp; OD Committee, which seeks assurance on the Trust's adherence to staff-related policies, workforce matters and organisational development. The Committee also received regular updates from staff where they are able to describe the experience of working at the ROH and air any concerns they have around their employment circumstances and environment. The Health and Safety Group reviews any issues likely to impact on the staff's working environment from a legal perspective.</p>	<p>the Finance and Performance report</p> <ul style="list-style-type: none"> <li>• AccessAble narrative in workforce reports.</li> <li>• Health and Safety Group minutes.</li> <li>• Workforce policies, including Freedom to Speak Up</li> <li>• Establishment of the Equality &amp; Diversity network</li> <li>• Schwartz Round information</li> <li>• WRES assessment to Staff Experience &amp; OD Committee</li> <li>• Freedom to Speak Up presentation to Trust Board</li> <li>• Freedom to Speak Up Guardian role description</li> <li>• Staff Experience &amp; OD Committee terms of reference</li> <li>• National staff survey results</li> </ul>
<b>PART 2</b>			
SGL	Y	<p>The Trust has further improved its risk management processes over 2021/22, including a refresh of some of the risk registers of the Trust's major committees and groups. Further work is underway to improve the framework further which is set out in a risk improvement plan which is monitored by the Audit Committee and</p>	<ul style="list-style-type: none"> <li>• Annual Governance Statement</li> <li>• Board Assurance Framework</li> <li>• Corporate Risk Register</li> <li>• Risk improvement plan</li> </ul>

Lead Exec	Compliant	Comment	Evidence
		Executive Team. The Annual Governance Statement for 2021/22 sets out the framework of risk management within the Trust and provides an assessment of the effectiveness of these systems and processes. The Head of Internal Audit Opinion for 2021/22 confirms that the Trust has adequate internal control mechanisms, however there is further work to do. This is articulated further in the internal audit into the BAF and risk management undertaken in q4 201/22. The CQC inspection and the external well led inspections in 2019 did not highlight any weaknesses in the Trust's risk management framework.	<ul style="list-style-type: none"> <li>Internal audit review of BAF and risk management</li> <li>Risk management policy</li> <li>HOIA 2019/20</li> </ul>
<b>PART 3</b>			
SGL	Y	The approval and publication of the 2021/22 declaration will meet the required timetable.	<ul style="list-style-type: none"> <li>Trust Board paper which is published on the Trust's website in readiness for the Board meeting on 1 June.</li> </ul>

### **1.7 Condition G7 – Registration with the Care Quality Commission**

1. The Licensee shall at all times be registered with the Care Quality Commission in so far as is necessary in order to be able lawfully to provide the services authorised to be provided by this Licence.
2. The Licensee shall notify NHS Improvement promptly of:
  - (a) any application it may make to the Care Quality Commission for the cancellation of its registration by that Commission, or
  - (b) the cancellation by the Care Quality Commission for any reason of its registration by that Commission.
3. A notification given by the Licensee for the purposes of paragraph 2 shall: (a)
 

be made within 7 days of:

  - (i) the making of an application in the case of paragraph (a), or
  - (ii) becoming aware of the cancellation in the case of paragraph (b), and

(b) contain an explanation of the reasons (in so far as they are known to the Licensee) for:

(i) the making of an application in the case of paragraph (a), or

(ii) the cancellation in the case of paragraph (b).

Lead Exec	Compliant	Comment	Evidence
GM	Y	The ROH was registered with CQC throughout the financial year. The ROH is registered without conditions currently. The Executive Lead for the CQC is the Chief Nurse. The Nominated Individual for the CQC is the CEO.	<ul style="list-style-type: none"><li>• Screenshot of CQC website</li><li>• CQC acute insight reports</li><li>• CQC inspection reports from 2019</li></ul>

## **1.8 Condition G8 - Patient eligibility and Selection criteria**

1. The Licensee shall:

- (a) set transparent eligibility and selection criteria,
- (b) apply those criteria in a transparent way to persons who, having a choice of persons from whom to receive health care services for the purposes of the NHS, choose to receive them from the Licensee, and
- (c) publish those criteria in such a manner as will make them readily accessible by any persons who could reasonably be regarded as likely to have an interest in them.

2. “Eligibility and selection criteria” means criteria for determining:

- (a) whether a person is eligible, or is to be selected, to receive health care services provided by the Licensee for the purposes of the NHS, and
- (b) if the person is selected, the manner in which the services are provided to the person.

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Lead Exec	Compliant	Comment	Evidence
JW	Y	<p>The Trust has in place a policy for patient access which has been approved both internally and by the CCG). Application of this policy is overseen by the Clinical Services Manager (Patient Access, Performance and Outpatients Department) who reports directly to the Chief Operating Officer (COO). The policy is currently undergoing a refresh but there is no suggestion that it contains outdated guidance and therefore remains accurate and relevant.</p> <p>The Trust has also implemented the Royal College of Surgeons 'Clinical guide for surgical prioritisation during the Coronavirus pandemic' when triaging patients for surgery.</p>	<ul style="list-style-type: none"> <li>• Patient Access policy</li> <li>• Screen shot of patient access policy on intranet</li> <li>• Screens shot of referral page on internet site</li> </ul>

Type	Name	Modified By	Review Date
	24 Hour Food Access Policy	Bourne, Sonia	01/04/2018
	Overseas Visitors Access to Treatment Policy - September 2017	Roberts, Adam	30/09/2020
	Patient Access Policy - January 2018	Roberts, Adam	31/01/2020
	Patient Information Policy	Bourne, Sonia	01/02/2017

**1.9 Condition G9 – Application of Section 5 (Continuity of Services)**

1. The Conditions in Section 5 shall apply:
  - (a) whenever the Licensee is subject to a contractual or other legally enforceable obligation to provide a service which is a Commissioner Requested Service, and
  - (b) from the commencement of this Licence until the Licensee becomes subject to an obligation of the type described in sub-paragraph (a), if the Licensee is an NHS foundation trust which:
    - (i) was not subject to such an obligation on commencement of this Licence, and
    - (ii) was required to provide services, or was party to an NHS contract to provide services, as described in paragraph 2(a) or 2(b);

for the avoidance of doubt, where Section 5 applies by virtue of this subparagraph, the words “Commissioner Requested Service” shall be read to include any service of a description falling within paragraph 2(a) or 2(b).

2. A service is a Commissioner Requested Service if, and to the extent that, it is:
  - (a) any service of a description which the Licensee, being an NHS foundation trust with an authorisation date on or before 31 March 2013, was required to provide in accordance with condition 7(1) and Schedule 2 in the terms of its authorisation by NHS Improvement immediately prior to the commencement of this Licence, or
  - (b) any service of a description which the Licensee, being an NHS foundation trust with an authorisation date on or after 1 April 2013, was required to provide pursuant to an NHS contract immediately before its authorisation date, or
  - (c) any other service which the Licensee has contracted with a Commissioner to provide as a Commissioner Requested Service.
3. A service is also a Commissioner Requested Service if, and to the extent that, not being a service within paragraph 2:
  - (a) it is a service which the Licensee may be required to provide to a Commissioner under the terms of a contract which has been entered into between them, and

- (b) the Commissioner has made a written request to the Licensee to provide that service as a Commissioner Requested Service, and either
  - (c) the Licensee has failed to respond in writing to that request by the expiry of the 28<sup>th</sup> day after it was made to the Licensee by the Commissioner, or
  - (d) the Commissioner, not earlier than the expiry of the [28<sup>th</sup>] day after making that request to the Licensee, has given to NHS Improvement and to the Licensee a notice in accordance with paragraph 4, and NHS Improvement, after giving the Licensee the opportunity to make representations, has issued a direction in writing in accordance with paragraph 5.
- 4. A notice in accordance with this paragraph is a notice:
  - (a) in writing,
  - (b) stating that the Licensee has refused to agree to a request to provide a service as a Commissioner Requested Service, and
  - (c) setting out the Commissioner's reasons for concluding that the Licensee is acting unreasonably in refusing to agree to that request to provide a service as a Commissioner Requested Service
- 5. A direction in accordance with this paragraph is a direction that the Licensee's refusal to provide a service as a Commissioner Requested Service in response to a request made under paragraph 3(b) is unreasonable.
- 6. The Licensee shall give NHS Improvement not less than [28] days' notice of the expiry of any contractual obligation pursuant to which it is required to provide a Commissioner Requested Service to a Commissioner for which no extension or renewal has been agreed.
- 7. If any contractual obligation of a Licensee to provide a Commissioner Requested Service expires without extension or renewal having been agreed between the Licensee and the Commissioner who is a party to the contract, the Licensee shall continue to provide that service on the terms of the contract (save as agreed with that Commissioner), and the service shall continue to be a Commissioner Requested Service, for the period from the expiry of the contractual obligation until NHS Improvement issues either:
  - (a) a direction of the sort referred to in paragraph 8, or



- (b) a notice in writing to the Licensee stating that it has decided not to issue such a direction.
- 8. If, during the period of a contractual or other legally enforceable obligation to provide a Commissioner Requested Service, NHS Improvement issues to the Licensee a direction in writing to continue providing that service for a period specified in the direction, then for that period the service shall continue to be a Commissioner Requested Service.
- 9. No service which the Licensee is subject to a contractual or other legally enforceable obligation to provide shall be regarded as a Commissioner Requested Service and, as a consequence, no Condition in Section 5 shall be of any application, during any period for which there is in force a direction in writing by NHS Improvement given for the purposes of this condition and of any equivalent condition in any other current licence issued under the 2012 Act stating that no health care service provided for the purposes of the NHS is to be regarded as a Commissioner Requested Service.
- 10. A service shall cease to be a Commissioner Requested Service if:
  - (a) all current Commissioners of that service as a Commissioner Requested Service agree in writing that there is no longer any need for the service to be a Commissioner Requested Service, and NHS Improvement has issued a determination in writing that the service is no longer a Commissioner Requested Service, or
  - (b) NHS Improvement has issued a determination in writing that the service is no longer a Commissioner Requested Service; or
  - (c) it is a Commissioner Requested Service by virtue only of paragraph 2(a) above and 3 years have elapsed since the commencement of this Licence; or
  - (d) it is a Commissioner Requested Service by virtue only of paragraph 2(b) above and either 3 years have elapsed since 1 April 2013 or 1 year has elapsed since the commencement of this Licence, whichever is the later; or
  - (e) the contractual obligation pursuant to which the service is provided has expired and NHS Improvement has issued a notice pursuant to paragraph 7(b) in relation to the service; or
  - (f) the period specified in a direction by NHS Improvement of the sort referred to in paragraph 8 in relation to the service has expired.

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11. The Licensee shall make available free of charge to any person who requests it a statement in writing setting out the description and quantity of services which it is under a contractual or other legally enforceable obligation to provide as Commissioner Requested Services.
12. Within [28] days of every occasion on which there is a change in the description or quantity of the services which the Licensee is under a contractual or other legally enforceable obligation to provide as Commissioner Requested Services, the Licensee shall provide to NHS Improvement in writing a notice setting out the description and quantity of all the services it is obliged to provide as Commissioner Requested Services.
13. Unless it is proposes to cease providing the service, the Licensee shall not make any application to NHS Improvement for a determination in accordance with paragraph 10(b):
  - (a) in the case of a service which is a Commissioner Requested Service by virtue only of paragraph 2(a) above, in the period of 3 years since the commencement of this Licence or
  - (b) in the case of a service which is a Commissioner Requested Service by virtue only of paragraph 2(b), in the period until the later of 1 April 2016 or 1 year from the commencement of this Licence.
14. In this Condition “NHS contract” has the meaning given to that term in Section 9 of the 2006 Act.

Lead Exec	Compliant	Comment	Evidence
SW	Y	As a result of Covid, NHS commissioners and NHS Trusts/NHS Foundation Trusts were not required to sign contracts between them for 2021/22.	<ul style="list-style-type: none"><li>NHS Finance and Contracting Guidance 2021/22</li></ul>

## **2 Section 2 – Pricing**

### **2.1 Condition P1 – Recording of information**

1. If required in writing by NHS Improvement, and only in relation to periods from the date of that requirement, the Licensee shall:
  - (a) obtain, record and maintain sufficient information about the costs which it expends in the course of providing services for the purposes of the NHS and other relevant information, and
  - (b) establish, maintain and apply such systems and methods for the obtaining, recording and maintaining of such information about those costs and other relevant information,as are necessary to enable it to comply with the following paragraphs of this Condition.
2. From the time of publication by NHS Improvement of Approved Reporting Currencies the Licensee shall maintain records of its costs and of other relevant information broken down in accordance with those Currencies by allocating to a record for each such Currency all costs expended by the Licensee in providing health care services for the purposes of the NHS within that Currency and by similarly treating other relevant information.
3. In the allocation of costs and other relevant information to Approved Reporting Currencies in accordance with paragraph 2 the Licensee shall use the cost allocation methodology and procedures relating to other relevant information set out in the Approved Guidance.
4. If the Licensee uses sub-contractors in the provision of health care services for the purposes of the NHS, to the extent that it is required to do so in writing by NHS Improvement the Licensee shall procure that each of those sub-contractors:
  - (a) obtains, records and maintains information about the costs which it expends in the course of providing services as sub-contractor to the Licensee, and establishes, maintains and applies systems and methods for the obtaining, recording and maintaining of that information, in a manner that complies with paragraphs 2 and 3 of this Condition, and
  - (b) provides that information to NHS Improvement in a timely manner.
5. Records required to be maintained by this Condition shall be kept for not less than six years.

## 6. In this Condition:

“the Approved Guidance”	means such guidance on the obtaining, recording and maintaining of information about costs and on the breaking down and allocation of costs by reference to Approved Reporting Currencies as may be published by NHS Improvement;
“Approved Reporting Currencies”	means such categories of cost and other relevant information as may be published by NHS Improvement;
“other relevant information”	means such information, which may include quality and outcomes data, as may be required by NHS Improvement for the purpose of its functions under Chapter 4 (Pricing) in Part 3 of the 2012 Act.

Lead Exec	Compliant	Comment	Evidence
SW	Y	<p>The annual National Cost Collection (NCC) is now implemented and Mandated replacing the previous Reference Cost collection. The Trust is adhering to the National Costing Guidance and providing detailed Patient level information to NHSE/I achieving a 100% score within NHSE's costing assurance tool against a national average of 81%.</p> <p>The direction of travel from NHSE/I is to implement quarterly collections to understand the complex costs of services within the NHS during the Covid-19 pandemic and future state. The Trust continues to develop and improve the way in which costs are being reported and allocated in conjunction with Clinicians.</p>	<ul style="list-style-type: none"> <li>• NCC return</li> </ul>

## 2.2 Condition P2 – Provision of information

1. Subject to paragraph 3, and without prejudice to the generality of Condition G1, the Licensee shall furnish to NHS Improvement such information and documents, and shall prepare or procure and furnish to NHS Improvement such reports, as NHS Improvement may require for the purpose of performing its functions under Chapter 4 in Part 3 of the 2012 Act.
2. Information, documents and reports required to be furnished under this Condition shall be furnished in such manner, in such form, at such place and at such times as NHS Improvement may require.
3. In furnishing information documents and reports pursuant to paragraphs 1 and 2 the

Licensee shall take all reasonable steps to ensure that:

- (a) in the case of information or a report, it is accurate, complete and not misleading;
  - (b) in the case of a document, it is a true copy of the document requested; and
4. This Condition shall not require the Licensee to furnish any information, documents or reports which it could not be compelled to produce or give in evidence in civil proceedings before a court because of legal professional privilege.

Lead Exec	Compliant	Comment	Evidence
SW	Y	<p>The Trust has completed all required information with regards to monthly, quarterly and annual performance data.</p> <p>In addition, the Trust has provided ad-hoc information as requested.</p>	<ul style="list-style-type: none"> <li>Confirmatory emails from NHS Improvement</li> </ul>

### 2.3 ***Condition P3 – Assurance report on submissions to NHS Improvement***

1. If required in writing by NHS Improvement the Licensee shall, as soon as reasonably practicable, obtain and submit to NHS Improvement an assurance report in relation to a submission of the sort described in paragraph 2 which complies with the requirements of paragraph 3.
2. The descriptions of submissions in relation to which a report may be required under paragraph 1 are:
  - (a) submissions of information furnished to NHS Improvement pursuant to Condition P2, and
  - (b) submissions of information to third parties designated by NHS Improvement as persons from or through whom cost information may be obtained for the purposes of setting or verifying the National Tariff or of developing non-tariff pricing guidance.
3. An assurance report shall meet the requirements of this paragraph if all of the following conditions are met:
  - (a) it is prepared by a person approved in writing by NHS Improvement or qualified to act as auditor of an NHS foundation trust in accordance with paragraph 23(4) in Schedule 7 to the 2006 Act;

- (b) it expresses a view on whether the submission to which it relates:
- (i) is based on cost records which have been maintained in a manner which complies with paragraph 2 in Condition P1;
  - (ii) is based on costs which have been analysed in a manner which complies with paragraph 3 in Condition P1, and
  - (iii) provides a true and fair assessment of the information it contains.

Lead Exec	Compliant	Comment	Evidence
SW	Y	The Trust has complied fully with an externally commissioned audit of our costing and coding systems and outputs that took place in January / February 2015.  No similar reviews since.	<ul style="list-style-type: none"> <li>• Audit report</li> <li>• E-mail exchanges confirming externally commissioned audit occurred</li> </ul>

## 2.4 ***Condition P4 – Compliance with the National Tariff***

1. Except as approved in writing by NHS Improvement, the Licensee shall only provide health care services for the purpose of the NHS at prices which comply with, or are determined in accordance with, the national tariff published by NHS Improvement, in accordance with section 116 of the 2012 Act.
2. Without prejudice to the generality of paragraph 1, except as approved in writing by NHS Improvement, the Licensee shall comply with the rules, and apply the methods, concerning charging for the provision of health care services for the purposes of the NHS contained in the national tariff published by NHS Improvement in accordance with, section 116 of the 2012 Act, wherever applicable.

Lead Exec	Compliant	Comment	Evidence
SW	Y	Due to Covid the NHS introduced block payments for all Trusts to provide certainty for all organisations providing NHS-funded services under the NHS Standard Contract. This minimised the burden of formal contract documentation and contract management processes, so that staff could focus fully on the COVID-19 response. The Trust has continued throughout 2021/22 to submit accurate activity and tariff submissions to Commissioners.	<ul style="list-style-type: none"> <li>• Standard contract</li> </ul>

## 2.5 ***Condition P5 – Constructive engagement concerning local tariff modifications***

1. The Licensee shall engage constructively with Commissioners, with a view to reaching agreement as provided in section 124 of the 2012 Act, in any case in which it is of the view that the price payable for the provision of a service for the purposes of the NHS in certain circumstances or areas should be the price determined in accordance with the national tariff for that service subject to modifications.

Lead Exec	Compliant	Comment	Evidence
SW	Y	No additional changes have been requested locally for 2021/22.	<ul style="list-style-type: none"> <li>• Standard contract</li> <li>• NHSE contract for specialised services</li> </ul>

### 3 Section 3 – Choice and Competition

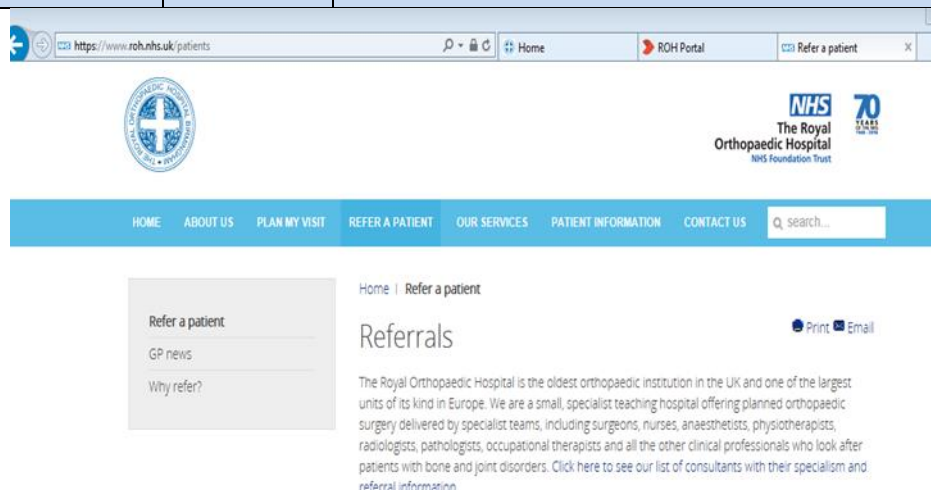
#### 3.1 *Condition C1- The right of patients to make choices*

1. Subsequent to a person becoming a patient of the Licensee and for as long as he or she remains such a patient, the Licensee shall ensure that at every point where that person has a choice of provider under the NHS Constitution or a choice of provider conferred locally by Commissioners, he or she is notified of that choice and told where information about that choice can be found.
2. Information and advice about patient choice of provider made available by the Licensee shall not be misleading.
3. Without prejudice to paragraph 2, information and advice about patient choice of provider made available by the Licensee shall not unfairly favour one provider over another and shall be presented in a manner that, as far as reasonably practicable, assists patients in making well informed choices between providers of treatments or other health care services.
4. In the conduct of any activities, and in the provision of any material, for the purpose of promoting itself as a provider of health care services for the purposes of the NHS the Licensee shall not offer or give gifts, benefits in kind, or pecuniary or other advantages to clinicians, other health professionals, Commissioners or their administrative or other staff as inducements to refer patients or commission services.

Lead Exec	Compliant	Comment	Evidence
MP	Y	<p>Pre-Covid 19 pandemic all patients accessing services are offered two reasonable dates with three weeks' notice as part of their referral process, and subsequently a choice of operation date where applicable. As a routine part of our consenting documentation a record of clinical procedural options is made and narrative discussion recorded, determined by consultant</p> <p>In response to the Covid 19 pandemic elective surgery was ceased. Patient choice in regard to outpatient appointments was therefore limited to virtual appointments</p> <p>Post Covid, processes have been developed to offer a blended model of face to face &amp; virtual appointments (via telephone and/or via the attend anywhere digital platform) with the aim of ensuring those patients who are not digitally enabled remain able to choose how to access Trust services in a way</p>	<ul style="list-style-type: none"> <li>• Referral page on internet</li> <li>• Consent policy</li> <li>• Access policy</li> </ul>



		<p>that suits their preferences and personal requirements.</p> <p>The Trust offer virtual appointment via telephone or its video platform, Dr Doctor. This means that virtual appointments are available even to patients who are not digitally enabled to undertake video consultation. There is work underway to see if old IT equipment held by the Trust could be used to bridge any gaps created by digital poverty. Virtual appointments are the default consultation media where ever clinically appropriate. This is to ensure the Trust is working towards the Department of Health target of virtual appointments. If a patient would rather be seen face to face for whatever reason their needs would be accommodated by the Trust wherever possible.</p>	
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### 3.2 Condition C2 – Competition oversight

1. The Licensee shall not:
  - (a) enter into or maintain any agreement or other arrangement which has the object or which has (or would be likely to have) the effect of preventing, restricting or distorting competition in the provision of health care services for the purposes of the NHS, or
  - (b) engage in any other conduct which has (or would be likely to have) the effect of preventing, restricting or distorting competition in the provision of health care services for the purposes of the NHS,

to the extent that it is against the interests of people who use health care services.

Lead Exec	Compliant	Comment	Evidence
MP	Y	The ROH has never knowingly done anything anti-competitive.	<ul style="list-style-type: none"> <li>• Standing Financial Instructions</li> <li>• Birmingham Hospitals Alliance Procurement Collaborative agreement</li> </ul>

## **4 Section 4 – Integrated care**

### **4.1 Condition IC1 – Provision of integrated care**

1. The Licensee shall not do anything that reasonably would be regarded as against the interests of people who use health care services by being detrimental to enabling its provision of health care services for the purposes of the NHS to be integrated with the provision of such services by others with a view to achieving one or more of the objectives referred to in paragraph 4.
2. The Licensee shall not do anything that reasonably would be regarded as against the interests of people who use health care services by being detrimental to enabling its provision of health care services for the purposes of the NHS to be integrated with the provision of health-related services or social care services by others with a view to achieving one or more of the objectives referred to in paragraph 4.
3. The Licensee shall not do anything that reasonably would be regarded as against the interests of people who use health care services by being detrimental to enabling it to co-operate with other providers of health care services for the purposes of the NHS with a view to achieving one or more of the objectives referred to in paragraph 4.
4. The objectives referred to in paragraphs 1, 2 and 3 are:
  - (a) improving the quality of health care services provided for the purposes of the NHS (including the outcomes that are achieved from their provision) or the efficiency of their provision,
  - (b) reducing inequalities between persons with respect to their ability to access those services, and
  - (c) reducing inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
5. The Licensee shall have regard to such guidance as may have been issued by NHS Improvement from time to time concerning actions or behaviours that might reasonably be regarded as against the interests of people who use health care services for the purposes of paragraphs 1, 2 or 3 of this Condition.

Lead Exec	Compliant	Comment	Evidence
MP/GM	Y	<p>The Trust has an Accessible Information Standard policy and has a forum that monitors its ongoing compliance with the standard, although due to the COVID-19 pandemic there had been a pause with this forum meeting. There is an Accessible Information Standard internet page for patients to obtain information about how to request communications in different formats and inform them what the Trusts obligations are</p> <p>The interactive text messaging service makes it easier for patients to request a reschedule or cancellation of appointment. Data on which patients are and are not accessing these services will be used to identify areas of potential digital exclusion</p> <p>Appointment letters are now available electronically which allows patients to be able to increase font size as well as us read aloud software and potentially internet based translation software</p> <p>The Trust is currently working with Synertec to enable sending letters in other formats such as braille, large print, extra large print and easy read</p> <p>The Trust has access to interpreting services 24/7 via telephone and can be face to face if required</p> <p>At our outpatient desks the Trust has the loop up system for individuals with hearing loss</p> <p>For patients with complex needs the Trust has; A dementia strategy; A Learning Disability strategy; A Mental health policy</p> <p>Staff are trained in a range of forums to ensure compliance against theses policies</p> <p>The Trust has in place a Patient Engagement &amp; Experience Group and regularly holds 'Coffee Catch Up' events to aid patient engagement, for which the scope, which currently includes joint care services, is to be expanded to include all orthopaedic specialties. The Trust has also introduce 'Smiley Face' around the hospital in key areas to encourage feedback. In addition, on-going work is underway to refresh and reinvigorate the Patient Engagement framework in the Trust which will be supported by the Deputy Chief Nurse.</p>	<ul style="list-style-type: none"> <li>• Accessible Information Standard</li> <li>• AccessAble</li> <li>• Dr Doctor interactive text messaging system</li> <li>• Electronic letters</li> <li>• Synertec</li> <li>• Learning Disabilities Strategy</li> <li>• Dementia Strategy</li> <li>• Mental Health policy</li> <li>• Patient Experience &amp; Engagement Strategy</li> <li>• ICS development documents</li> <li>• Governance documents supporting the UHB restoration and recovery pathway</li> <li>• Citizen engagement summary</li> <li>• Expansion of the Patient Experience team.</li> </ul>

		<p>The Trust has in place a Learning Disability User Group.</p> <p>The Trust has worked in partnership with AccessAble to create Detailed Access Guides to facilities, wards and departments at the ROH. The Guides are 100% facts, figures and photographs and give patients useful information to plan their visit to the hospital and assure them that we are accessible and have considered their needs. The free Accessibility Guide is for staff and visitors and is available at <a href="http://www.roh.nhs.uk">www.roh.nhs.uk</a> and <a href="http://www.AccessAble.co.uk">www.AccessAble.co.uk</a> and on the AccessAble App.</p> <p>Throughout the pandemic there was positive patient engagement on a range of matters but most notably on virtual clinic appointments. The Safeguarding team were intimately involved in designing the service to ensure that those most vulnerable patients and clinically urgent patients were provided with face to face appointments as a priority.</p> <p>The Trust is a key member of the developing Integrated Care System to allow the shaping of seamless services within the City and is working collaboratively particularly with University Hospitals Birmingham NHSFT to deliver region wide restoration and recovery.</p> <p>The Trust has a joint governance forum with BWCH to oversee patients cared on pathway between the two providers.</p> <p>Inequalities Metrics regarding waiting lists are currently included in the sub board / board committee papers to support the monitoring of inequalities and explore the patient waiting list (PTL) across a range of measures. This will be refined throughout 22/23 supported by a detailed health population needs assessment due to be published in May 22/23</p>	<ul style="list-style-type: none"> <li>• Terms of reference for Inequalities Group</li> </ul>
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## 5 Section 5 – Continuity of Services

### 5.1 *Condition CoS1 – Continuing provision of Commissioner Requested Services*

1. The Licensee shall not cease to provide, or materially alter the specification or means of provision of, any Commissioner Requested Service otherwise than in accordance with the following paragraphs of this Condition.
2. If, during the period of a contractual or other legally enforceable obligation to provide a Commissioner Requested Service, or during any period when this condition applies by virtue of Condition G9(1)(b), NHS Improvement issues to the Licensee a direction in writing to continue providing that service for a period specified in the direction, then the Licensee shall provide the service for that period in accordance with the direction.
3. The Licensee shall not materially alter the specification or means of provision of any Commissioner Requested Service except:
  - (a) with the agreement in writing of all Commissioners to which the Licensee is required by a contractual or other legally enforceable obligation to provide the service as a Commissioner Requested Service; or
  - (b) at any time when this condition applies by virtue of Condition G9(1)(b), with the agreement in writing of all Commissioners to which the Licensee provides, or may be requested to provide, the service as a Commissioner Requested Service; or
  - (c) if required to do so by, or in accordance with the terms of its authorisation by, any body having responsibility pursuant to statute for regulating one or more aspects of the provision of health care services in England and which has been designated by NHS Improvement for the purposes of this condition and of equivalent conditions in other licences granted under the 2012 Act.
4. If the specification or means of provision of a Commissioner Requested Service is altered as provided in paragraph 3 the Licensee, within [28] days of the alteration, shall give to NHS Improvement notice in writing of the occurrence of the alteration with a summary of its nature.
5. For the purposes of this Condition an alteration to the specification or means of provision of any Commissioner Requested Service is material if it involves the delivery

or provision of that service in a manner which differs from the manner specified and described in:

- (a) the contract in which it was first required to be provided to a Commissioner at or following the coming into effect of this Condition; or
- (b) if there has been an alteration pursuant to paragraph 3, the document in which it was specified on the coming into effect of that alteration; or
- (c) at any time when this Condition applies by virtue of Condition G9(1)(b), the contract, or NHS contract, by which it was required to be provided immediately before the commencement of this Licence or the Licensee's authorisation, as the case may be.

Lead Exec	Compliant	Comment	Evidence
SW	Y	<p>The Trust has not had cause to cease to provide, or materially alter the specification or means of delivery of any Commissioner Requested Services.</p> <p>Any issues with regards to existing services, or proposals for new services, are discussed constructively through the Joint Clinical Commissioning Group meetings or other such key stakeholder meetings which include clinical and managerial representation from the Trust and its commissioners.</p>	<ul style="list-style-type: none"> <li>• Schedule of commissioning meetings</li> <li>• Minutes of commissioning meetings</li> </ul>

## 5.2 ***Condition CoS2 – Restriction on the disposal of assets***

1. The Licensee shall establish, maintain and keep up to date, an asset register which complies with paragraphs 2 and 3 of this Condition (“the Asset Register”)
2. The Asset Register shall list every relevant asset used by the Licensee for the provision of Commissioner Requested Services.

3. The Asset Register shall be established, maintained and kept up to date in a manner that reasonably would be regarded as both adequate and professional.
4. The obligations in paragraphs 5 to 8 shall apply to the Licensee if 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.
5. The Licensee shall not dispose of, or relinquish control over, any relevant asset except:
  - (a) with the consent in writing of NHS Improvement, and
  - (b) in accordance with the paragraphs 6 to 8 of this Condition.
6. The Licensee shall furnish NHS Improvement with such information as NHS Improvement may request relating to any proposal by the Licensee to dispose of, or relinquish control over, any relevant asset.
7. Where consent by NHS Improvement for the purpose of paragraph 5(a) is subject to conditions, the Licensee shall comply with those conditions.
8. Paragraph 5(a) of this Condition shall not prevent the Licensee from disposing of, or relinquishing control over, any relevant asset where:
  - (a) NHS Improvement has issued a general consent for the purposes of this Condition (whether or not subject to conditions) in relation to:
    - (i) transactions of a specified description; or
    - (ii) the disposal of or relinquishment of control over relevant assets of a specified description, and

the transaction or the relevant assets are of a description to which the consent applies and the disposal, or relinquishment of control, is in accordance with any conditions to which the consent is subject; or the Licensee is required by the Care Quality Commission to dispose of a relevant asset.
9. In this Condition:



“disposal”	<p>means any of the following:</p> <p>(a) a transfer, whether legal or equitable, of the whole or any part of an asset (whether or not for value) to a person other than the Licensee; or</p> <p>(b) a grant, whether legal or equitable, of a lease, licence, or loan of (or the grant of any other right of possession in relation to) that asset; or</p> <p>(c) the grant, whether legal or equitable, of any mortgage, charge, or other form of security over that asset; or</p> <p>(d) if the asset is an interest in land, any transaction or event that is capable under any enactment or rule of law of affecting the title to a registered interest in that land, on the assumption that the title is registered,</p> <p>and references to “dispose” are to be read accordingly;</p>
“relevant asset”	<p>means any item of property, including buildings, interests in land, equipment (including rights, licences and consents relating to its use), without which the Licensee’s ability to meet its obligations to provide Commissioner Requested Services would reasonably be regarded as materially prejudiced;</p>
“relinquishment of control”	<p>includes entering into any agreement or arrangement under which control of the asset is not, or ceases to be, under the sole management of the Licensee, and “relinquish” and related expressions are to be read accordingly.</p>

10. The Licensee shall have regard to such guidance as may be issued from time to time by NHS Improvement regarding:
- (a) the manner in which asset registers should be established, maintained and updated, and
  - (b) property, including buildings, interests in land, intellectual property rights and equipment, without which a licence holder’s ability to provide Commissioner Requested Services should be regarded as materially prejudiced.

Lead Exec	Compliant	Comment	Evidence
SW	Y	<p>The Trust maintains an up-to-date asset register, which is audited as part of the annual audit of the accounts.</p> <p>The Trust has a policy in place regarding the disposal of all assets, which includes the process for the disposal of relevant assets.</p> <p>Asset disposal forms are completed and authorised for any asset disposals.</p>	<ul style="list-style-type: none"> <li>Asset register</li> <li>Asset disposal policy</li> <li>Asset disposal forms</li> <li>Annual accounts – asset disposal</li> </ul>

### 5.3 *Condition CoS3 – Standards of corporate governance and financial management*

1. The Licensee shall at all times adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as:
  - (a) suitable for a provider of the Commissioner Requested Services provided by the Licensee, and
  - (b) providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern.
2. In its determination of the systems and standards to adopt for the purpose of paragraph 1, and in the application of those systems and standards, the Licensee shall have regard to:
  - (a) such guidance as NHS Improvement may issue from time to time concerning systems and standards of corporate governance and financial management;
  - (b) the Licensee's rating using the risk rating methodology published by NHS Improvement from time to time, and
  - (c) the desirability of that rating being not less than the level regarded by NHS Improvement as acceptable under the provisions of that methodology.

Lead Exec	Compliant	Comment	Evidence
SW for financial management	Y	The Trust has a range of financial policies and controls in place to meet this licence condition. These policies and controls are audited annually by our Internal Auditors	<ul style="list-style-type: none"> <li>Financial policies</li> <li>Internal audit reviews of</li> </ul>

		and recommendations and actions are monitored by Audit Committee.  The Trust was subject to a block contract arrangement during the year set out into two six monthly segments (H1 and H2) in line with the national response to the global COVID-19 pandemic.	financial management <ul style="list-style-type: none"> <li>• Audit Committee minutes</li> <li>• Annual Report</li> </ul>
SGL for corporate governance	Y	The Trust's segmental rating remained at 2 during the year.  The Trust during the year implemented some interim governance arrangements in line with the mandate from NHS England issued at the start of the last calendar year while the NHS responded to the Omicron wave of the pandemic.	<ul style="list-style-type: none"> <li>• Single Oversight Framework segment correspondence from NHSI</li> <li>• Annual Governance Statement</li> </ul>

#### 5.4 ***Condition CoS4 – Undertaking from the ultimate controller***

1. The Licensee shall procure from each company or other person which the Licensee knows or reasonably ought to know is at any time its ultimate controller, a legally enforceable undertaking in favour of the Licensee, in the form specified by NHS Improvement, that the ultimate controller ("the Covenantor"):
  - (a) will refrain for any action, and will procure that any person which is a subsidiary of, or which is controlled by, the Covenantor (other than the Licensee and its subsidiaries) will refrain from any action, which would be likely to cause the Licensee to be in contravention of any of its obligations under the 2012 Act or this Licence, and
  - (b) will give to the Licensee, and will procure that any person which is a subsidiary of, or which is controlled by, the Covenantor (other than the Licensee and its subsidiaries) will give to the Licensee, all such information in its possession or control as may be necessary to enable the Licensee to comply fully with its obligations under this Licence to provide information to NHS Improvement.
2. The Licensee shall obtain any undertaking required to be procured for the purpose of paragraph 1 within 7 days of a company or other person becoming an ultimate controller of the Licensee and shall ensure that any such undertaking remains in force for as long as the Covenantor remains the ultimate controller of the Licensee.
3. The Licensee shall:

- (a) deliver to NHS Improvement a copy of each such undertaking within seven days of obtaining it;
  - (b) inform NHS Improvement immediately in writing if any Director, secretary or other officer of the Licensee becomes aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached, and
  - (c) comply with any request which may be made by NHS Improvement to enforce any such undertaking.
4. For the purpose of this Condition, subject to paragraph 5, a person (whether an individual or a body corporate) is an ultimate controller of the Licensee if:
- (a) directly, or indirectly, the Licensee can be required to act in accordance with the instructions of that person acting alone or in concert with others, and
  - (b) that person cannot be required to act in accordance with the instructions of another person acting alone or in concert with others.
5. A person is not an ultimate controller if they are:
- (a) a health service body, within the meaning of section 9 of the 2006 Act;
  - (b) a Governor or Director of the Licensee and the Licensee is an NHS foundation trust;
  - (c) any Director of the Licensee who does not, alone or in association with others, have a controlling interest in the ownership of the Licensee and the Licensee is a body corporate; or
  - (d) a trustee of the Licensee and the Licensee is a charity.

Lead Exec	Compliant	Comment	Evidence
SW/SGL	Y	The ROH is a health service body so this is not applicable	<ul style="list-style-type: none"> <li>• None</li> </ul>

## 5.5 *Condition CoS5 – Risk pool levy*

1. The Licensee shall pay to NHS Improvement any sums required to be paid in consequence of any requirement imposed on providers under section 135(2) of the 2012 Act, including sums payable

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by way of levy imposed under section 139(1) and any interest payable under section 143(10), by the dates by which they are required to be paid.

2. In the event that no date has been clearly determined by which a sum referred to in paragraph 1 is required to be paid, that sum shall be paid within 28 days of being demanded in writing by NHS Improvement.

Lead Exec	Compliant	Comment	Evidence
SW	Y	The Trust has not been required to make any risk pool levies during 2021/22	<ul style="list-style-type: none"><li>• None</li></ul>

### 5.6 *Condition CoS6 – Co-operation in the event of financial stress*

1. The obligations in paragraph 2 shall apply if 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.
2. When this paragraph applies the Licensee shall:
  - (a) provide such information as NHS Improvement may direct to Commissioners and to such other persons as NHS Improvement may direct;
  - (b) allow such persons as NHS Improvement may appoint to enter premises owned or controlled by the Licensee and to inspect the premises and anything on them, and
  - (c) co-operate with such persons as NHS Improvement may appoint to assist in the management of the Licensee's affairs, business and property.

Lead Exec	Compliant	Comment	Evidence
SW	Y	The Trust has not received any such notice from NHS Improvement during the financial year.	<ul style="list-style-type: none"><li>• Finance and performance overview</li></ul>

### 5.7 *Condition CoS7 – Availability of resources*

1. The Licensee shall at all times act in a manner calculated to secure that it has, or has access to, the Required Resources.

2. The Licensee 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.
3. The Licensee, not later than two months from the end of each Financial Year, 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:
  - (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.”
  - (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”.
  - (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”.
4. The Licensee shall submit to NHS Improvement with that certificate a statement of the main factors which the Directors of the Licensee have taken into account in issuing that certificate.
5. The statement submitted to NHS Improvement in accordance with paragraph 4 shall be approved by a resolution of the board of Directors of the Licensee and signed by a Director of the Licensee pursuant to that resolution.
6. The Licensee shall inform NHS Improvement immediately if the Directors of the Licensee become aware of any circumstance that causes them to no longer have the reasonable expectation referred to in the most recent certificate given under paragraph 3.
7. The Licensee shall publish each certificate provided for in paragraph 3 in such a manner as will enable any person having an interest in it to have ready access to it.
8. In this Condition:

“distribution”	includes the payment of dividends or similar payments on share capital and the payment of interest or similar payments on public dividend capital and the repayment of capital;
“Financial Year”	means the period of twelve months over which the Licensee normally prepares its accounts;
“Required Resources”	<p>means such:</p> <p>(a) management resources,</p> <p>(b) financial resources and financial facilities, (c) personnel,</p> <p>(d) physical and other assets including rights, licences and consents relating to their use, and</p> <p>(e) working capital</p> <p>as reasonably would be regarded as sufficient to enable the Licensee at all times to provide the Commissioner Requested Services.</p>

Lead Exec	Compliant	Comment	Evidence
SW	Y	<p>The Trust Board approved the Trust’s financial and operational plan for 2021/22 that evidences that the financial resources and working capital required to deliver sustainable services are in place. The Board also approved the 2021/22 capital plan which reviewed the physical assets required for this purpose.</p> <p>With regard to the availability of sufficient personnel there remain some risks in relation to sufficient clinical staffing, although this is an improving position, and this risk is not believed to be sufficiently serious to impact upon NHS Improvement’s license requirements as arrangements are in place to ensure sufficient safe staffing.</p>	<ul style="list-style-type: none"> <li>Operational plan considered by the Finance &amp; Performance Committee</li> </ul>

## **6 Section 6 – NHS Foundation Trust Conditions**

### **6.1 Condition FT1 – Information to update the register of NHS foundation trusts**

1. The obligations in the following paragraphs of this Condition apply if the Licensee is an NHS foundation trust, without prejudice to the generality of the other conditions in this Licence.
2. The Licensee shall ensure that NHS Improvement has available to it written and electronic copies of the following documents:
  - (a) the current version of Licensee’s constitution;
  - (b) the Licensee’s most recently published annual accounts and any report of the auditor on them, and
  - (c) the Licensee’s most recently published annual report,and for that purpose shall provide to NHS Improvement written and electronic copies of any document establishing or amending its constitution within 28 days of being adopted and of the documents referred to in sub-paragraphs (b) and (c) within 28 days of being published.
3. Subject to paragraph 4, the Licensee shall provide to NHS Improvement written and electronic copies of any document that is required by NHS Improvement for the purpose of Section 39 of the 2006 Act within 28 days of the receipt of the original document by the Licensee.
4. The obligation in paragraph 3 shall not apply to:
  - (a) any document provided pursuant to paragraph 2; (b)any document originating from NHS Improvement; or
  - (c) any document required by law to be provided to NHS Improvement by another person.
5. The Licensee shall comply with any direction issued by NHS Improvement concerning the format in which electronic copies of documents are to be made available or provided.



6. When submitting a document to NHS Improvement for the purposes of this Condition, the Licensee shall provide to NHS Improvement a short written statement describing the document and specifying its electronic format and advising NHS Improvement that the document is being sent for the purpose of updating the register of NHS foundation trusts maintained in accordance with section 39 of the 2006 Act.

Lead Exec	Compliant	Comment	Evidence
SGL	Y	There were some amendments to the Constitution proposed to the Council of Governors at their meeting in January 2020. There have been no further amendments made during the last financial year. The audited annual report and accounts for 2020/21 were provided to NHSI according to the required timetable.	<ul style="list-style-type: none"> <li>Annual report &amp; accounts</li> <li>Paper to Council of Governors proposing changes to the Constitution.</li> </ul>

## 6.2 ***Condition FT2 – Payment to NHS Improvement in respect of registration and related costs***

- The obligations in the following paragraph of this Condition apply if the Licensee is an NHS foundation trust, without prejudice to the generality of the other conditions in this Licence.
- Whenever NHS Improvement determines in accordance with section 50 of the 2006 Act that the Licensee must pay to NHS Improvement a fee in respect of NHS Improvement's exercise of its functions under sections 39 and 39A of that Act the Licensee shall pay that fee to NHS Improvement within  
28 days of the fee being notified to the Licensee by NHS Improvement in writing.

Lead Exec	Compliant	Comment	Evidence
SW	Y	No fees have been levied by NHS Improvement during 2021/22	<ul style="list-style-type: none"> <li>None</li> </ul>

## 6.3 ***Condition FT3 – Provision of information to advisory panel***

- The obligation in the following paragraph of this Condition applies if the Licensee is an NHS foundation trust, without prejudice to the generality of the other conditions in this Licence.
- The Licensee shall comply with any request for information or advice made of it under

Section 39A(5) of the 2006 Act.

Lead Exec	Compliant	Comment	Evidence
SGL	Y	No request for a referral to the advisory panel was received from members of the Council in the financial year.	<ul style="list-style-type: none"> <li>None</li> </ul>

#### 6.4 ***Condition FT4 – NHS foundation trust governance arrangements***

1. This condition shall apply if the Licensee is an NHS foundation trust, without prejudice to the generality of the other conditions in this Licence.
2. The Licensee shall apply 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.
3. Without prejudice to the generality of paragraph 2 and to the generality of General Condition 5, the Licensee shall:
  - (a) have regard to such guidance on good corporate governance as may be issued by NHS Improvement from time to time; and
  - (b) comply with the following paragraphs of this Condition.
4. The Licensee shall establish and implement:
  - (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.
5. The Licensee shall establish and effectively implement 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.
6. The systems and/or processes referred to in paragraph 5 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's organisation including but not restricted to systems and/or processes for escalating and resolving quality issues including escalating them to the Board where appropriate.
7. The Licensee shall ensure the existence and effective operation of systems to ensure that it has in place personnel on the Board, reporting to the Board and within the rest of the Licensee's organisation who are sufficient in number and appropriately qualified to ensure compliance with the Conditions of this Licence.
8. The Licensee shall submit to NHS Improvement within three months of the end of each financial year:
- (a) a corporate governance statement by and on behalf of its Board confirming compliance with this Condition as at the date of the statement and anticipated compliance with this Condition for the next financial year, specifying any risks to compliance with this Condition in the next financial year and any actions it proposes to take to manage such risks; and
- (b) if required in writing by NHS Improvement, a statement from its auditors either:
- (i) confirming that, in their view, after making reasonable enquiries, the Licensee has taken all the actions set out in its corporate governance statement applicable to the past financial year, or
- (ii) setting out the areas where, in their view, after making reasonable enquiries, the Licensee has failed to take the actions set out in its corporate governance statement applicable to the past financial year.

Lead Exec	Compliant	Comment	Evidence
SGL	Y	<p>The corporate governance framework is set out within the Trust's annual report and specifically within the Annual Governance Statement. The Director's report within the Accountability Report outlines the Board composition and skills and also references the architecture of the Board &amp; its committees.</p> <p>The Performance report section outlines the performance against a range of quality metrics.</p>	<ul style="list-style-type: none"> <li>• Annual Report</li> <li>• Safe staffing reports</li> <li>• Presentation to the CQC for the virtual well led assessment</li> <li>• Head of Internal Audit opinion</li> </ul>

		<p>The safe staffing report seen at Quality &amp; Safety Committee provides assurance to the Board that there is adequate nurse staffing cover to maintain a safe level of care for patients.</p> <p>The Corporate Governance Declaration will be published by 30 June 2022 as required and will be presented at the Board meeting on 6 July for ratification.</p> <p>The Trust has not received any regulatory enforcement action or undertakings applied during the year.</p> <p>During the year, the Trust underwent a virtual assessment against the CQC well led framework which did not raise any concerns or lead to a formal inspection.</p> <p>The end of year assessment from the Head of Internal Audit was that there were no matters of significance to include within the section of the annual report concerning lapses in internal control.</p>	
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## 7 Section 7 – Interpretation and Definitions

### 7.1 Condition D1 – Interpretation and Definitions

1. In this Licence, except where the context requires otherwise, words or expressions set out in the left hand column of the following table have the meaning set out next to them in the right hand column of the table.

“the 2006 Act”	the National Health Service Act 2006 c.41;
“the 2008 Act”	the Health and Social Care Act 2008 c.14;
“the 2009 Act”	the Health Act 2009 c.21;
“the 2012 Act”	the Health and Social Care Act 2012 c.7;
“the Care Quality Commission”	the Care Quality Commission established under section 1 of the 2008 Act;
“clinical commissioning group”	a body corporate established pursuant to section 1F and Chapter A of Part 2 of the 2006 Act;
“Commissioner Requested Service”	a service of the sort described in paragraph 2 or 3 of condition G9 which has not ceased to be such a service in accordance with paragraph 9 of that condition;
“Commissioners”	includes the NHS Commissioning Board and any clinical commissioning group;
“Director”	includes any person who, in any organisation, performs the functions of, or functions equivalent or similar to those of, a director of:  (i) an NHS foundation trust, or  (ii) a company constituted under the Companies Act 2006;
“Governor”	includes any person who, in any organisation, performs the functions of, or functions equivalent or

	similar to those of, a Governor of an NHS foundation trust as specified by statute;
“the NHS Acts”	the 2006 Act, the 2008 Act, the 2009 Act and the 2012 Act;
“NHS Commissioning Board”	the body corporate established under section 1E of, and Schedule A1 to, the 2006 Act;
“NHS foundation trust”	a public benefit corporation established pursuant to section 30 of, and Schedule 7 to, the 2006 Act.

2. Any reference in this Licence to a statutory body shall be taken, unless the contrary is indicated, to be a reference also to any successor to that body.
3. Unless the context requires otherwise, words or expressions which are defined in the 2012 Act shall have the same meaning for the purpose of this Licence as they have for the purpose of that Act.
4. Any reference in the Licence to any provision of a statute, statutory instrument or other regulation is a reference, unless the context requires otherwise, to that provision as currently amended.

## **Self-Certification Template - Conditions G6 and CoS7**

### **The Royal Orthopaedic Hospital NHS Foundation Trust**



Foundation Trusts and NHS trusts are required to make the following declarations to NHS Improvement:

*Systems or compliance with licence conditions - in accordance with General condition 6 of the NHS provider licence*

*Availability of resources and accompanying statement - in accordance with Continuity of Services condition 7 of the NHS provider licence (Foundation Trusts designated CRS providers only)*

These Declarations are set out in this template.

Templates should be returned via the Trust portal.

#### **How to use this template**

- 1) Save this file to your Local Network or Computer.
- 2) Enter responses and information into the yellow data-entry cells as appropriate.
- 3) Once the data has been entered, add signatures to the document.



## Worksheet "G6 & CoS7"

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

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

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

- 1 Following a review for the purpose of paragraph 2(b) of licence condition G6, the Directors of the Licensee are satisfied that, in the Financial Year most recently ended, the Licensee took all such precautions as were necessary in order to comply with the conditions of the licence, any requirements imposed on it under the NHS Acts and have had regard to the NHS Constitution.

Confirmed

OK

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

EITHER:

- 3a After making enquiries the Directors of the Licensee have a reasonable expectation that the Licensee will have the Required Resources available to it after taking account distributions which might reasonably be expected to be declared or paid for the period of 12 months referred to in this certificate.

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.

OR

- 3c In the opinion of the Directors of the Licensee, the Licensee will not have the Required Resources available to it for the period of 12 months referred to in this certificate.

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

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

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: Jo Williams

Name: Tim Pile

Capacity: Chief Executive

Capacity: Chair

Date: 01 June 2022

Date: 01 June 2022

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

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