

Board of Directors Meeting

Report

Subject: Monitor Quarter 1 Self Certification
Date: 30th July 2015
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Lead Director: Kerry Rogers, Director of Corporate Services/Company Secretary

Status: Approval (Self Certifications and supporting documents)

	Self asst	Breach	Commentary
Q1 14/15	Red	Cdiff 1.0 Year target 37 RTT non admitted 1.0 A&E 1.0 Cancer 62ww-all cancers 1.0 TOTAL – 4.0 CQC	5 th Quarter breach (16 cases vs 25% target 9) 3 rd Quarter breach RTT non admitted 2 nd Quarter breach A&E 1 st Quarter breach Cancer2ww
Q2	Red	Cdiff 1.0 Year target 37 RTT non admitted 1.0 RTT admitted 1.0 A&E 1.0 TOTAL – 4.0 CQC	6 th Quarter breach (35 cases vs 50% target 19) 4 th Quarter breach RTT non admitted Prev breaches but not consecutive 3 rd Quarter breach A&E
Q3	Red	Cdiff 1.0 Year target 37 RTT non admitted 1.0 A&E 1.0 TOTAL 3.0 CQC	7 th Quarter breach (45 cases vs 75% target 28) 5 th Quarter breach RTT non admitted 4 th Quarter breach 3 rd Quarter breach A&E
Q4	Red	Cdiff 1.0 Year target 37 RTT non admitted) RTT admitted)2.0 RTT incomplete) A&E 1.0 62 days from urgent GP 1.0 TOTAL 5.0	8 th Quarter breach (67 cases vs 100% target 37)* 6 th Quarter breach RTT non admitted Last breached in Q2 14/15 Last breached in Q3 13/14 5 th Quarter breach 1 st Quarter breach
Q1 15/16	Red	RTT non admitted) RTT admitted)1.0 RTT incomplete) Cancer 62 days from Urgent GP referral 1.0 TOTAL 3	7 th Quarter breach 2 nd Quarter breach 2 nd Quarter breach 2 nd Quarter breach

*Q4 – clarification from Monitor regarding Cdiff target – relates to lapses in care.

Monitor has previously clarified that the Trust is assigned a Red governance risk rating which will continue alongside the Trust's Licence conditions.

The Board in its May Annual Plan highlighted performance risks in respect of:

- Referral to treatment time, 18 weeks in aggregate, admitted patients,
- Referral to treatment time, 18 weeks in aggregate, non-admitted patients,
- Referral to treatment time, 18 weeks in aggregates, incomplete pathways,
- A & E Clinical Quality – Total Time in A & E under 4 hours
- Cancer 62 Day Waits for first treatment (from urgent GP referral) – post local breach re-allocation
- C. Diff due to lapses in care

Board will need to reflect on future risks to test (and learn) appropriate declarations have been made in the Annual Plan submission

This report which supports the enclosed Board self-certifications is to ensure all Board members are clear of their responsibility to ensure the accuracy and appropriateness of the declarations being made.

Monitor's role is to assess risk and intervene to ensure compliance with all aspects of the Trust's Licence. To do this, Monitor relies primarily on the information it receives directly from NHS foundation trusts, but will consider indirect third party reports on a variety of specific issues, *and as such it is important that any significant third party interventions are highlighted by the Trust itself.*

Finance (continuity of services), governance, and mandatory (commissioner requested) services form the core of the Trust's Licence to operate. Monitor will review these areas directly, primarily from information provided in our *Annual Plan* and in-year monitoring submissions. Monitor will also take into account any exception or third party reports regarding significant issues.

At the completion of the annual risk assessment and each quarterly review, the Trust receives risk ratings and a summary of key issues to be followed up either by the Board or by Monitor. Monitor also publishes a summary of the results, together with a commentary. These will following receipt, be presented to Board members through the agenda each quarter.

The number of Declarations the Board is required to make on a quarterly basis was described in detail in the Director of Corporate Services Risk Assurance Report to the October 13 Board of Directors' meeting. Two appropriate responsible officers must make two separate declarations, and included below is the proposed declaration for Q1 **each of which must be approved by the Board:**

- Finance (Continuity of Services) Declaration – **Not confirmed**
- Governance Declaration – **Not confirmed**

If the Trust has recorded failures to achieve any of the healthcare targets or indicators we are unable to sign 'confirmed' on the Governance Declaration

If we are unable to sign 'confirmed' on the Finance Declaration ***we are required to send further details to Monitor with our return which the Chief Finance Officer will present to the meeting and which is discussed in further depth at the Finance Committee.***

*To emphasise the importance of the Boards' self-certification process the Director of Corporate Services invites Board members to recall the **December 2012 FT Bulletin in***

which Monitor stated that in order to operate a compliance regime combining the principles of self-regulation and limited information requirements, it must be able to rely on the accurate assessment of risk by NHS foundation trust boards via the self-certification process. Monitor takes the self-certification process very seriously, and would follow up with trusts where self-certification discrepancies were considered to be indicative of a wider governance concern. For Board's reference, included at Appendix 2 is a summary of recommendations which have arisen from previous independent self-certification reviews which the Board is invited to continually consider in the context of its own self certifications going forward.

The detailed information previously provided to Board with regard to Monitor's approach, monitoring and intervention has been moved to Appendix 3 and it is imperative Board members are clear regarding obligations within the Risk Assessment Framework.

2. Well led Framework

As reported to Board by the Director of Corporate Services, in June 2015, the Quality Governance Framework (QGF) has been incorporated into the Well Led Framework which requires Foundation Trusts to undertake an external and independent review of their governance every three years. The Trust undertook a governance review in December 2014 with Foresight Partnership and a Board Governance action plan developed and is being implemented. The Board is responsible for ensuring that governance arrangements remain fit for purpose, as set out in the 'Risk Assessment Framework'.

The Trust is no longer required to submit quarterly declarations, however given its prominence as part of the annual Board certification process frequent assessments are submitted to Board. The Board requested at its June 2015 meeting an update against the Trust's previously self-assessed QGF score of 3.5. Therefore a separate report will be provided to the September board detailing the evidence to support the current score (which are now risk rated) and actions required and trajectory to achieve a risk rating of green (Meets or exceeds expectations) against each of the 10 questions posed in the Risk Assessment Framework.

3. Other targets and Annual Plan declarations

The Executive Director of Nursing will present an update on Learning Disabilities as part of the Quarterly Quality Report which is part of the Governance Declaration where Board are certifying against compliance with requirements regarding access to healthcare for people with a learning disability. The Trust **has to be achieving all 6 criteria** for meeting the needs of people with a learning disability, as detailed in the report, which are based on the recommendations set out in Healthcare for All (DH2008). Board are reminded of **the importance of evidencing compliance in this area** given the tight focus adopted by the CQC nationally where their previous reviews of learning disability services across the country found that almost half were not meeting government standards with many failings being a direct result of care that was not centered on the individual or tailored to their needs. (See Appendix 1).

The Medical Director will report on the Trust's status with regard to **medical revalidation**, which is another key element of the Board's annual plan declaration to Monitor.

All other performance indicators which form part of the Governance Declaration are subject to monthly reporting to Board. The Quality and Safety quarterly report and QIP will refer to **matters relevant to the CQC Declaration, and the last CQC Intelligent Monitoring report** which depicts the CQC view of the Trust at its last publication was reviewed by the Quality Committee with a view to driving the meeting's focus prospectively. **Declaration 'not confirmed' has been presented as signed within the Board pack pending**

deliberations due retrospectively to cancer 62 day (GP) and RTT breaches and the ongoing recovery programme regarding our Discretionary Requirements and CQC inspection/action plan.

5. License Conditions

In April 2015 the Trust received from Monitor a 'Certificate of Compliance' confirming that in respect of all of the Trusts Enforcement Undertakings accepted by Monitor on 6 August 2013, the Trust was fully compliant. The Trust also received a notice of withdrawal – Discretionary Requirements, which concluded that the existing Discretionary Requirement and Amended Discretionary Requirements should be withdrawn.

The Trusts also received, in April 2015, enforcement undertakings under section 106 of the Health and Social Care Act 2012, with regard to Financial Breaches, Target Breaches and Governance Breaches. Monitor has accepted the Trusts undertakings with regard to these breaches.

In April 2015 the Trust received a license condition under section 111 of the Health and Social Care Act 2012, with regard to additional governance requirements.

4. Action required by Board of Directors

In recognising the need to understand the regulatory obligations detailed within this covering paper and Appendix 3, the Board of Directors is invited to review the enclosures within the Board pack, specifically Quality and Continuity of Services/Finance papers and Declaration, Governance Declaration, and Exception Report and supporting performance data and **APPROVE** the self-certification to Monitor which includes the Board's **prospective view** of achievements into the future. The Finance Report and commentary will be presented by the Chief Finance Officer and requires Board **approval**.

In approving declarations, the Board is required to have regard to the information provided to Directors over the previous quarter period, through particularly any board assurance reports, and BAF reports, through its knowledge of the Annual Plan, of the work of Audit and Board committees and activities through accelerated assurance programme, IAT, (including the CQC assessments incorporated in the Director of Nursing and Medical Director's quarterly Board report), the consequence of any third party visits or interventions (including Monitor and CQC), and through scrutiny of monthly financial and non-financial performance data, and quality and standards data, recognising also the historical and prospective work of Internal Audit and external reviews.

Board members are invited to consider internal audit reports regarding robustness of data quality and any other evidence which may provide both positive and negative assurance with regard to the data validation process,

Board members are invited to ensure they are comfortable with the statements made within the Exception Report being suitable in content and context for onward submission to Monitor by the Director of Corporate Services **who would wish particularly to draw to the Board's attention the importance of debating Declarations prospectively alongside the need for robust debate regarding the effectiveness and pace of recovery actions regarding off plan performance.**

APPENDIX 1

Supporting information to members to assist with quarterly self-certification

Continuity of Services (Financial) Risk Ratings

Indicators of forward financial risk

Each quarter Monitor requires trusts to submit a limited set of indicators of forward financial risk to highlight the potential for any future material financial breaches of the Authorisation. Where trusts inform Monitor that one or more of these indicators are present at a trust, Monitor will consider whether a meeting with the trust to discuss them is appropriate. Following this meeting, Monitor may request the preparation of plans or the provision of other assurances as to an NHS foundation trust's capacity to mitigate any potential risk. These indicators do not of themselves affect Monitor's risk ratings or trigger formal escalation

In order to certify on financial performance, Monitor would expect boards to:

- have a full understanding of the current and future financial position, and how it relates to the external environment in which the trust operates and the strategy of the trust;
- maintain systems to monitor and regularly report on financial performance to the board and be confident of the basis of preparation and accuracy of the financial performance information being reported;
- review and challenge financial performance on an on-going basis;
- use forecasting and extrapolation of current and historical trends to help predict future financial performance;
- have a full understanding of the basis on which the certification is given.

Where there is evidence that a board may not be meeting Monitor's financial risk requirements, Monitor is likely to explore the basis for a board's certification.

Governance (service performance)

- have a full understanding of the basis on which healthcare targets are measured

Risk Assurance Framework;

- be confident that they are receiving accurate information as to current and expected levels of performance against each of the healthcare targets and any performance risks;
- use forecasting and extrapolation of historic trends to help predict future performance;
- satisfy themselves that systems are in place to ensure risk to delivery has been properly assessed;
- maintain systems to monitor and regularly report on performance

Governance (Learning disabilities)

NHS foundation trust boards are required to certify that their trusts meet requirements below at the annual plan stage and in each quarter. Failure to do so will result in the application of the service performance score for this indicator.

- a) Does the NHS foundation trust have a mechanism in place to identify and flag patients with learning disabilities and protocols that ensure that pathways of care are reasonably adjusted to meet the health needs of these patients?
- b) Does the NHS foundation trust provide readily available and comprehensible information to patients with learning disabilities about the following criteria:

- treatment options;
 - complaints procedures; and
 - appointments?
- c) Does the NHS foundation trust have protocols in place to provide suitable support for family carers who support patients with learning disabilities?
- d) Does the NHS foundation trust have protocols in place to routinely include training on providing healthcare to patients with learning disabilities for all staff?
- e) Does the NHS foundation trust have protocols in place to encourage representation of people with learning disabilities and their family carers?
- f) Does the NHS foundation trust have protocols in place to regularly audit its practices for patients with learning disabilities and to demonstrate the findings in routine public reports?

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Appendix 2

Summary of Monitors recommendations from previous independent self-certification reviews of foundation trusts

The Board's Role

- Introduce an additional level of executive challenge within the overall self-certification process. For example, peer review sessions;
- Provide for an initial NED challenge to the level of assurance obtained before consideration by the trust Board;
- Ensure that executive directors and NEDs properly assume responsibility for self-certification declarations;
and
- Ensure that sufficient time and focus is given at trust Board meetings to challenge self-certification recommendations.

Board reports

- Clear ownership, process and timetable (including data 'freeze' dates) for recording, validating and reporting of data are required to ensure that all performance reports are based on the same information;
- Ensure that Board minutes provide sufficient detail of key discussion held by the Board;
- Trust performance reports should contain sufficient detail to enable NEDs to scrutinise and challenge self-certification proposals;
- Draft self-certification declarations should be prepared well in advance of submission deadlines to allow time for proper scrutiny and challenge;
- Board assurance documents, discussions of risk and the self-certification process should be aligned;
- Ensure that trust's risk register is updated and reported to the Board on a regular basis
- Board minutes to clearly document the decision making process of self-certifications and
- Self-certification to Monitor to be added as a standard Board meeting agenda item

Board sub-committees

- Ensure that the Audit Committee and Information Governance Committee review their operations to ensure they provide appropriate levels of assurance to the management and the Board;
- Audit Committee operations need to embrace the full remit of the NHS Audit Committee Framework; and
- The Audit Committee should review the accuracy of self-certification declarations made to Monitor

Directorate responsibility

- Ensure that directorates engage effectively with the trust's governance agenda; and
- Ensure clear ownership of reporting performance to the Board by executive and directorate management.

Risk reporting

- Risk reporting processes at clinical business unit level need to ensure that the trust's risk register is complete; and
- The Trust Assurance Framework should map the risks of the trust not achieving its strategic objectives to the controls in place to mitigate these risks and the assurances over the effectiveness of the controls.

Internal audit

- A rolling programme of internal audit work should be used to support the self-certification process;
- The Audit Committee should commission internal audit to assess whether the trust's risk mitigation actions have been successful at reducing risk; and
- Internal audit assurance should be reflect in board reports

Training

- Implement development sessions for the trust Board to enable them to better challenge self-certification recommendations.

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APPENDIX 3

1. Approach to in-year monitoring

Monitor's programme of in-year monitoring is designed to measure and assess actual performance against the Annual Plan. The frequency and depth of in-year monitoring is determined by our risk rating, although for most NHS foundation trusts in-year monitoring will take the form of a quarterly submission and other exception and ad hoc reports. Based on in-year submissions, Monitor will assign and publish a quarterly risk rating in two areas – continuity of services and governance.

Currently, the Trust remains on monthly monitoring with Monitor due to its Discretionary Requirements and the associated conditions attached to its Licence

2. Approach to intervention

It is the responsibility of the Board to remedy any potential compliance failures in the first instance. Wherever it is appropriate, Monitor may work with an NHS foundation trust in resolving issues before considering intervention. This could involve regular reviews of progress or proposing the involvement of other parties, such as other NHS foundation trusts that have successfully dealt with such an issue, or an appropriate professional adviser.

Where a developmental approach is not appropriate, for example for significant financial or clinical failures, or where such an approach is failing, Monitor will generally consider intervening. In determining whether or not to intervene, Monitor must decide whether failure to comply with the Licence is or is not 'significant' (under the provisions of section 52 of the Act). In making its judgement of 'significance', Monitor will make a case-by-case determination, examining the circumstances to decide what action, if any, is appropriate. Monitor will aim to ensure that its responses are proportionate.

Circumstances will arise where an NHS foundation trust has failed to comply with its Licence but the failure is not judged to pass the statutory test of 'significance'. Monitor may draw such circumstances to the attention of the Board to seek confirmation that remedial action is in hand. Monitor may decide to *make public* failures to comply with the Licence whether or not they are significant in statutory terms. There is a legal obligation on Monitor to publicise formal interventions made under section 52 of the Act.

3. Approach to intensity of monitoring

The intensity of monitoring will be guided by risk assessments. This includes both a forward-looking orientation and an assessment of historic performance. For those NHS foundation trusts where the board struggles to manage risks of non-compliance with their Licence, monitoring will be more intense, and usually monthly (***as in our case***).

4. What NHS foundation trusts are required to provide

NHS foundation trusts are required to provide to Monitor in-year submissions covering financial and non financial performance in the most recent quarter and year to date against annual plan. Monitor will review actual quarterly performance against the annual plan. In cases where there is any **material variance between the in-year financial submissions and the relevant quarter of the annual plan**, NHS foundation trusts are required to provide a financial commentary explaining the reasons for the variance and the actions which they propose to take to address it. As part of the in-year submission, NHS foundation trusts must also provide:

- Self certification that the Trust will continue to maintain a continuity of services risk rating of at least 3 over the next 12 months

- self-certification that all targets have been met (after the application of thresholds) over the period and plans in place are sufficient to ensure that all known targets, including those which will come into force, will also be met;
- self certification that it is satisfied that, to the best of its knowledge and using its own processes (supported by CQC information and including any further metrics it chooses to adopt), it has and will keep in place, effective arrangements for the purpose of monitoring and continually improving the quality of healthcare provided to its patients
- a report on the results of any elections including turnout rates; and
- a report on any changes in the board or board of governors – *which involves completion of an on line form and Exec turnover is now declared, with Monitor clearly deeming high turnover as a sign of governance issues.*

NHS foundation trusts are required to report in-year, quarterly in the first instance, by 31 July (Q1), 31 October (Q2), 31 January (Q3), and 30 April (Q4) respectively.

The Risk Assessment Framework also has additional measures to enable Monitor to continue to judge whether NHS foundation trusts are well-run, through strengthening the existing range of measures to assess good governance by taking extra material such as staff and patient satisfaction surveys into account. The detail of this was reported to Board in the RAF report in October 2013.

5. What Monitor will do with the information

Monitor will evaluate the in-year returns submitted by each NHS foundation trust to verify that the NHS foundation trust is achieving plan and continuing to comply with its Licence.

6. Exception reporting

NHS foundation trusts need to report to Monitor in-year any material, actual or prospective changes which may affect their ability to comply with any aspect of their Licence, and which have not been previously notified to Monitor. Examples are given below:

7. Examples of exception reporting:

7.1 Continuity of Services (Finance)

- Unplanned significant reductions in income or significant increases in costs
- Requirements for additional working capital facilities beyond those incorporated in the prudential borrowing limit ("PBL")
- Failure to comply with the *NHS Foundation Trust Annual Reporting Manual (formerly the Financial Reporting Manual (FT FReM))*
- Discussions with external auditors which may lead to a qualified audit report
- Major investments that could affect financial risk rating

7.2 Governance (incl. Mandatory services)

- Events suggesting material issues with governance processes and structures e.g.:
 - Removal of director(s) for abuse of office
 - Failure or likely failure to meet national core standards or targets over the quarter
 - Failure or likely failure to comply with the Hygiene Code
 - Significant non-contractual dispute with an NHS body that lacks powers to enforce cooperation
- Adverse report from internal auditors
- Significant third party investigations that suggest material issues with governance e.g., fraud, CQC reports of "significant failings"
- Proposals to vary mandatory service provision or dispose of assets
 - Including cessation or suspension of mandatory service(s)
 - Via variation of Authorisation/Licence or asset protection processes
- Loss of accreditation of a mandatory service (CRS)

- Impact of introduction of new services where these give rise to material increases in cost

Other risks

- Enforcement notices from other bodies implying potential or actual significant breach of any other requirement in the Licence, e.g.:
 - Health and Safety Executive or Fire Authority notices

Exception reports on failure or likely failure to meet a target, national essential standard or comply with the Hygiene Code should be submitted if a target, national essential standard or the Hygiene Code has not been or will not be met or complied with. ***The proposed Governance exception report for the Trust is included with the papers to Board***

8. Revised Compliance Framework – Risk Assurance Framework

A report was provided to Board in October 2013 outlining regulatory changes and Board was invited to consider its future information requirements and required levels of assurance in order to satisfy the changes which took effect from 1st October since the publication of the 13/14 Risk Assurance Framework. From 1st October 2013 the RAF replaces the Compliance Framework as Monitor's approach to overseeing FTs. A key part of this new framework is the new risk rating methodology, as set out in the RAF.

is important that Board members familiarise themselves with Monitor's approach to regulation and that every member challenges the Board's ability to sign the Corporate Governance Statement which it is typically required to do when submitting the Annual Plan each March.

The *Risk Assessment Framework* describes the proposed approach to assessing risk in two areas of the licence:

- the **continuity of services licence condition 3**, which requires **all NHS providers** to ensure they remain a going concern; and
- the **NHS foundation trust licence condition 4**, which lays out Monitor's definition of good governance and **only applies to NHS foundation trusts**

9. Risk Ratings

Under the RAF, the governance rating highlights any concerns they have with the way the Trust is being run and what regulatory action they are taking. The continuity of services risk rating will represent Monitor's view of the level of financial risk a provider is running and what Monitor is doing about it.

9.1 The governance rating

Monitor will primarily use a governance rating, incorporating information across a number of areas. They generate this rating by considering the following information regarding the Trust and whether it is indicative of a potential breach of the governance condition:

1. Performance against selected national access and outcomes standards (**eg if we fail to meet 4 or more of these at any given time or fail the same target for 3 consecutive quarters then governance concern triggered and potential enforcement.**) (prev cdiff, RTT, A&E)
2. **CQC judgments** on the quality of care provided (**eg prev Warning Notice, latest inspection rating**)
3. Relevant information from third parties (*eg Keogh, LETB, HEEM, service reviews, mortality*)
4. A selection of information chosen to reflect quality governance
5. The degree of risk to continuity of services and other aspects of risk relating to financial governance

9.2 Assigning ratings

The governance rating assigned reflects Monitor's view of our governance

- they will assign a **green rating** if no governance concern is evident
- where they identify potential material causes for concern in one or more of the 5 categories, they will replace a green rating with a description of the issues and the formal/informal steps Monitor are taking to address it
- they will assign a **red rating** if they take regulatory action

9.3 Levels of risk to continuity of service

The conditions concerning affordability of debt in Monitor's *Prudential Borrowing Code* are designed to enable NHS foundation trusts to operate with an appropriate degree of financial independence without compromising their provision of NHS services. Monitor has incorporated Capital Servicing Capacity, which forms part of the *Prudential Borrowing Code*, in our continuity of services risk rating for all providers of Commissioner Requested Services.

Monitor introduces four levels of risk to the continuity of services:

Continuity of Service Risk	Description	Monitoring frequency	Regulatory activity
4	No evident concerns	Quarterly	None
3	Emerging or minor concern potentially requiring scrutiny	Potential monthly	Consideration for potential investigation <i>if</i> liquidity or capital service capacity component is rated 1
2*	Level of risk is material but stable	Potential monthly	None
2	Material risk	Monthly or greater	Consideration for potential investigation (ultimately Enforcement Action)
1	Significant risk	Monthly or greater	Potential investigation and appointment of contingency planning team