

# Report to the Meeting of the

**BOD 12/2016**

(Agenda item: 15)

# Oxford Health NHS Foundation Trust

# Board of Directors

**27th January 2016**

**Monitor Quarter 3 Self-Certification**

**For: Approval**

**Executive Summary**

Under the Risk Assessment Framework 2015/16, the Trust is required to provide in-year reports on a quarterly basis. These submissions include quarterly financials, year to date financials and self-certification that all targets have been met. Exception / update reports should be provided where necessary.

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

The Board in its May 2015 Annual Plan highlighted performance risks only in respect of: C. Diff due to lapses in care.

The Board will need to reflect on future risks to test (and learn) appropriate declarations have been made in the Annual Plan (AP) submission especially given the Care Programme Approach (**CPA**) breach in Q1 which was not highlighted as a risk area in the Trust’s AP submission.

**Recommendation**

The Board of Directors is invited to review the enclosures within the Board papers, specifically Quality and Finance papers and supporting performance data and **APPROVE** the self-certification to Monitor which must include the Board’s prospective view of achievements into the future.

The Finance Report and commentary will be presented separately by the Director of Finance and also requires Board approval.

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**Lead Executive Director: Kerry Rogers, Director of Corporate Affairs/ Company Secretary**

# 1. Self-Certification

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|  | **Self asst** | **Breach (actual/potential)** | **Commentary** |
| **15/16****Q1** | Red | CPA follow-up within 7 days of discharge (actual breach) | 1st Quarter breach. Performance of 94.5% achieved against a target of 95%. |
| **Q2** |  | CPA formal review within 12 months (suspected potential breach but target confirmed as not having been breached) | Required confirmation via manual validation and reporting that Q2 average performance had met the target of 95%. |
| **Q3** | Green | No target breaches | n/a |

The Board in its May 2015 Annual Plan highlighted performance risks in respect of:

• C. Diff due to lapses in care

The Board will need to reflect on future risks to test (and learn) appropriate declarations have been made in the Annual Plan submission especially given the CPA breach in Q1 which was not highlighted as a risk area in the Trust’s submission. As set out in the Risk Assessment Framework, failure to meet the same target in three consecutive quarters will trigger a governance concern potentially leading to investigation and enforcement action. The overall CPA target is made up of two thresholds: (i) 7 day discharge; and (ii) formal review within 12 months. Failure against either threshold represents a failure against the overall target.[[1]](#footnote-1)

This report which supports the enclosed Board self-certifications is to ensure all Board members are clear on 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*.[[2]](#footnote-2)

Finance (financial sustainability risk rating), 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 each quarter.

The Declarations the Board is required to make on a quarterly basis requires that two appropriate responsible officers make separate declarations, and included below are the proposed declarations for Q3 **each of which must be approved by the Board**:

* for finance, that the Board anticipates that the Trust will continue to maintain a financial sustainability risk rating of at least 3 over the next 12 months – **NOT CONFIRMED**;
* for finance, that the Board anticipates that the Trust’s capital expenditure for the remainder of the financial year will not materially differ from the amended forecast in this financial return – **CONFIRMED**;
* for governance, that the Board is satisfied that plans in place are sufficient to ensure: ongoing compliance with all existing targets (after application of thresholds) as set out in Appendix A of the RAF; and a commitment to comply with all known targets going forwards – **CONFIRMED**;
* the Board confirms that there are no matters arising in Q3 requiring an exception report to Monitor, as per RAF table 3, which have not already been reported – **CONFIRMED**; and
* the number of consolidated subsidiaries included in the finances of the return (excluding the results of NHS charitable funds) – **NONE**.

If the Trust has recorded failures to achieve any of the healthcare targets or indicators the Board is 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 Director of Finance will present to the meeting and which should be discussed in further depth at the Finance and Investment Committee as necessary.***

*To emphasise the importance of the Board’s self-certification process the Director of Corporate Affairs 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 the 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.***

More detailed information with regard to Monitor’s approach, monitoring and intervention is included in Appendix 3 and it is imperative that Board members are clear regarding their obligations as outlined within the Risk Assessment Framework.

# 2. Well Led Framework

As the Board should already be aware, since 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 Director of Corporate Affairs is supporting the Trust Chair with the Board’s development programme through which an external review will be scheduled to satisfy requirements. The Board is responsible for ensuring that governance arrangements remain fit for purpose, as set out in the Risk Assessment Framework.

The Trust is not required to submit quarterly declarations with regard to quality governance/well led framework, however given its prominence as part of the annual Board certification process frequent assessments should be submitted to Board. The Director of Corporate Affairs will work with colleagues in the Executive Team to update the Trust’s previously self-assessed QGF score which is required to be less than 4 to meet Monitor’s criteria for FTs. Therefore a separate report will be provided to a future board/development session detailing the evidence to support the current score and actions required and the 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 Board needs to be assured also with regard to Learning Disabilities** as part of the Governance Declaration where the Board is 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 (see Appendix 1) which are based on the recommendations set out in Healthcare for All (DH2008). The Board is 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.

The Board will need to consider its ongoing information needs concerning the Trust’s status with regard to **medical revalidation**, which is another key element of the Board’s annual plan declaration to Monitor although not a specific quarterly declaration.

All other performance indicators which form part of the Governance Declaration are subject to monthly reporting to Board. Quality and Safety quarterly reports need to be considered in light of **matters relevant to the CQC Declaration**. **Declaration ‘confirmed’ has been proposed pending deliberations regarding achievement of standards and targets; to include deliberations in connection with the ongoing financial recovery programme as outlined in Monitor’s communication of November 2015 which clarified that should the Trust fail to demonstrate sufficient progress against the informal actions in line with the associated timescales that Monitor would consider taking further regulatory action.**

# 4. License Conditions

There are currently no conditions on the Trust’s Licence.

# 5. Action required by the Board of Directors

In recognising the need to understand the regulatory obligations detailed within this report and Appendix 3, the Board of Directors is invited to review the enclosures within the Board papers, specifically Quality and Finance papers and supporting performance data and **APPROVE** the self-certification to Monitor which must include the Board’s **prospective view** of achievements into the future. The Finance Report and commentary will be presented separately by the Director of Finance and also 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 the Board Assurance Framework; through its knowledge of the Annual Plan; of the work of Audit and Board committees and activities reported through quality reports of the Director of Nursing and Medical Director; 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 any 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 because equally important as part of the self-certification process is the Board’s assurances with regard to the quality and validity of the data upon which it relies.

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| **APPENDIX 1** |
| **Supporting information to members to assist with quarterly self-certification****Assessing financial sustainability risk: continuity of services (CoS) and financial efficiency** **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 the CoS licence conditions or the NHS foundation trust governance condition (Condition FT4). 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 riskratings 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; and
* 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)**In order to certify on governance/service performance, Monitor would expect boards to:* have a full understanding of the basis on which healthcare targets are measured;
* 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; and
* 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.1. 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?
2. 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?
1. Does the NHS foundation trust have protocols in place to provide suitable support for family carers who support patients with learning disabilities?
2. Does the NHS foundation trust have protocols in place to routinely include training on providing healthcare to patients with learning disabilities for all staff?
3. Does the NHS foundation trust have protocols in place to encourage representation of people with learning disabilities and their family carers?

 1. 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 Monitor’s 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
* 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
* 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
* 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
* 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
* 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
* 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

**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 – financial sustainability and governance.

**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 NHS Act 2006 (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***.***

**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 financial sustainability 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;
* areport on the results of any elections including turnout rates; and

**•** a report on any changes in the board or board of governors – *which involves identification of Executive turnover, with Monitor deeming high turnover as a potential sign of governance issues.*

NHS foundation trusts are required to report in-year, quarterly in the first instance, by 31 July (Q1), 30 October (Q2), 29 January (Q3), and 29 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.***

**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**

* 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) CRS 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 CRS (mandatory service)
* 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.

**8. Revised Compliance Framework – Risk Assurance Framework (RAF)**

This framework is the new risk rating methodology, as set out in the RAF and it 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 **Financial sustainability 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 Financial sustainability risk rating 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 is triggered and potential enforcement.)
2. CQC judgments on the quality of care provided
3. Relevant information from third parties *(eg LETB, HEEM, service reviews, CPA )*
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 financial sustainability**

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.

The **financial sustainability risk rating** is Monitor’s view of the level of financial risk a foundation trust faces to the ongoing delivery of key NHS services and its overall financial efficiency. The rating ranges from 1, the most serious risk, to 4, the lowest risk. A rating indicating serious risk does not necessarily represent a breach of the provider licence. Rather, it reflects the degree of financial concern they have about a provider and consequently the frequency with which we will monitor it.

**Revisions to the risk assessment framework in August 2015**

In June 2015 Monitor consulted on a number of proposed changes to the risk assessment framework to reflect the challenging financial context in which foundation trusts are operating and to strengthen their regulatory regime to support improvements in financial efficiency across the sector. The changes include:

* monitoring in-year financial performance and the accuracy of planning
* combining these two measures with the previously used continuity of services risk rating to produce a new four-level financial sustainability risk rating
* introducing a value for money governance trigger.

Monitor also reviewed the appropriate reporting requirements and as a result from August 2015 NHS foundation trusts will be required to submit financial information monthly as well as quarterly.

1. Risk Assessment Framework, Appendix A, Note I. [↑](#footnote-ref-1)
2. Third parties include other regulators, auditors, medical Royal Colleges, training establishments and coroners especially where their reports could reasonably be regarded as raising potential concerns over current or potential compliance with NHS foundation trust licence conditions. [↑](#footnote-ref-2)