

## Appendix 1

## Condition 2: General Duty

*The Trust shall exercise its functions effectively, efficiently and economically*

General Duty	Evidence	Key mitigations	Residual concerns
Effective	<ul style="list-style-type: none"> <li>• Failure to implement improvements to rectify breaches of the Health and Social Care Act 2008 (Registration of Regulated Activities) Regulations 2009. In the Hygiene Code Inspection in December 2008, the Healthcare Commission found breaches of following Hygiene Code Duties:               <ul style="list-style-type: none"> <li>○ <i>4a – policies for the environment should ensure liaison between facilities management and infection control teams;</i></li> <li>○ <i>4c - premises for providing healthcare are clean, and in good physical repair and condition;</i></li> <li>○ <i>4f - decontamination of equipment and policies for disinfection and decontamination.</i></li> </ul> </li> </ul> <p>In a follow up HCAI inspection by the Care Quality Commission (CQC) on 8 October 2009, the Trust was found to have breached the following regulations, and a warning notice was subsequently issued requiring rectification of the breaches by 30 November 2009:</p> <ul style="list-style-type: none"> <li>○ <i>2h – decontamination of equipment and policies for disinfection and decontamination;</i></li> <li>○ <i>2e – premises for providing healthcare are clean, and in good physical repair and condition.</i></li> </ul> <p>Both breaches were identified in the A&amp;E department.</p> <p>(Change in regulatory references is a result of the Health and Social Care Act 2008 (Registration of Regulated Activities) Regulations 2009 coming into effect from 1 April 2009)</p>	<ul style="list-style-type: none"> <li>• The Trust is investing £22m in a new A&amp;E department. Improvements in the A&amp;E environment cannot take place over night due to the complex jigsaw of moves required to accommodate the planned improvements (there are 17 phases to improve A&amp;E). To date £5m has been invested.</li> <li>• The Trust has stated that all improvements required of the CQC warning notice have been put in place, and their letter of 24 November 2009 states that the Trust will be fully compliant by 30 November 2009.</li> <li>• The Trust followed up with it's cleaning contractors after breaches of the Hygiene Code in December 2008, and following breaches again in October 2009. The Trust has issued a warning notice to its cleaning contractors following the most recent breach.</li> <li>• The Trust has consistently reduced HCAI such as MRSA and c.difficile, and is below both target trajectories for 2009/10 as at Q2.</li> </ul>	<ul style="list-style-type: none"> <li>• Strength of accountability, governance processes and staff disengagement:               <ul style="list-style-type: none"> <li>○ e.g.at its meeting with Monitor on 20 November 2009, the Trust stated that staff had identified problems regarding the cleanliness of the A&amp;E department ahead of the CQC HCAI inspection visit in October 2009, but that these were not followed up or remedied, and the Board were not notified of areas in the hospital that were not kept clean.</li> </ul> </li> <li>• Ability to deliver sustained improvements to regulations regarding HCAI prevention given persistent breaches in this area to date, and subsequent impact on patient experience and safety.</li> <li>• Compliance with HCAI regulations will not be confirmed until a CQC follow up visit in December 2009.</li> </ul>

## Condition 2: General Duty

General Duty	Evidence	Key mitigations	Residual concerns
Effective	<ul style="list-style-type: none"> <li>• Persistently high Hospital Standardised Mortality Rates (HSMR):               <ul style="list-style-type: none"> <li>○ 2005/06 - 119</li> <li>○ 2006/07 - 126</li> <li>○ 2007/08 - 132</li> <li>○ 2008/09 -131.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• HSMRs published for 2008/09 have been 'rebased'. Data provided by the Trust at its meeting with Monitor on 20 November 2009 shows improvements in mortality during 2008/09 using a like for like data set. However, HSMR would still have been above 100 for 2008/09 using the previous measures as at March 2009, the <u>12 month rolling HSMR</u> was approximately 117.</li> <li>• HSMR data provided by the Trust at its meeting with Monitor in 20 November 2009 shows a downward trend for 2009/10 to August 2009 (latest data available).</li> <li>• At its meeting with Monitor on 20 November 2009, the Trust confirmed actual numbers of deaths in the hospital are reducing.</li> <li>• The Trust has reported improvements in mortality rates for stoke, fractured neck of femur and CPOD</li> <li>• Trust has stated that a lack of end of life care provided by community services impacts adversely on their ability to reduce HSMR.</li> <li>• Prior to November 2008, the Trust used CHKS to track mortality. This system showed the Trust's mortality to be significantly lower than Dr Foster HSMR, and the Board took assurance from this independent data.</li> <li>• Actions to improve mortality have focussed on both improvements to data (coding) and the patient pathway.</li> <li>• The Trust stated at its meeting with Monitor on 20 November that clinicians are actively engaged in the process of improving mortality.</li> <li>• Action plan to reduce mortality was signed off by key stakeholders in October 2008 including the CQC, NHS South West Essex (PCT) and NHS East of England (SHA).</li> <li>• The Trust has commissioned several independent reviews of its mortality plans (including experts from PwC and the NHS Institute). Monitor has met with these experts and considered their feedback which has been supportive of the actions included in the Trust's plan, but critical of the pace of implementation.</li> <li>• Trust letter of 24 November 2009 sites an HSMR for the period April to August 2009 of 105.8. However this data is not as reliable an indicator as data which covers a 12 months/3 year period as published by Dr Foster.</li> </ul>	<ul style="list-style-type: none"> <li>• Ability to deliver sustained improvements in HSMR given lack of progress to date gives rise to concerns regarding leadership, capability, focus and pace of change.</li> <li>• Concerns regarding underlying patient safety issues given high rates of mortality.</li> <li>• The Trust has not undertaken any benchmarking against other hospitals with the same percentage of community deaths in the hospital. As such we remain concerned that the Trust Board may take false assurance in the explanation for high rates of mortality.</li> </ul>

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General Duty	Evidence	Key mitigations	Residual concerns
Effective	<ul style="list-style-type: none"> <li>The PCT have issued 4 performance notices and 1 warning notice in 2009/10 to date. This raises concerns regarding the Trust's ability to effectively address performance concerns ahead of the PCT using contractual processes to address performance issues.</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>	<ul style="list-style-type: none"> <li>Timely and effective rectification of performance issues is not happening at the Trust.</li> </ul>
Efficient	<ul style="list-style-type: none"> <li>No concerns regarding financial performance as the Trust has an FRR of 4 at Q2 2009/10</li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>
Economic	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>	<ul style="list-style-type: none"> <li>n/a</li> </ul>

## Condition 5: Governance

Area of governance concern	Evidence	Key mitigations	Residual concerns
Accountability	<ul style="list-style-type: none"> <li>• Failure to hold to account the operational management of the A&amp;E department following cleanliness issues identified by the CQC HCAI inspection in October 2009.</li> <li>• The inadequacy of Board reporting on quality of services (see assurance point below) has impacted on the ability of the Board to hold to account clinical and operational leads.</li> </ul>	<ul style="list-style-type: none"> <li>• At its meeting with Monitor on 20 November, the Trust Board stated that individuals are actively held to account through the Trust's performance management process.</li> <li>• In its letter to Monitor of 24 November, the Trust has stated that over the past 6 months the 22 members of staff (19 clinical staff) have been formally disciplined.</li> </ul>	<ul style="list-style-type: none"> <li>• No evidence of individuals being held to account for failures to improve quality of services e.g. At the meeting with monitor on 20 November, when asked who was responsible for the HCAI inspection breaches, the Board was unable to respond clearly, and when pushed, for an answer the A&amp;E matron was named. No details were provided on what actions the Trust had taken in respect of this individual.</li> <li>• At its meeting with Monitor on 20 November, the Trust acknowledged that there had been instances of failures to hold individuals to account and that this required improvement.</li> </ul>
Assurance	<ul style="list-style-type: none"> <li>• Board reporting on quality of services is acknowledged by the Board as requiring improvement (meeting with Monitor on 20 November 2009 and letter to Monitor 17 November), in particular:               <ul style="list-style-type: none"> <li>◦ lack of exception reporting to the Board was noted by those in attendance at the meeting with Monitor;</li> <li>◦ failure of action plans to deliver sustained solutions to quality of service issues (HSMR, A&amp;E, nursing for patients with learning disabilities).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• At its meeting with Monitor on 20 November, the Trust Board acknowledged the need to apply robust reporting arrangements to quality of services.</li> </ul>	<ul style="list-style-type: none"> <li>• Monitor first raised concerns regarding quality of service reporting to the Board in July 2009, whilst there is acceptable of a need to improve, there is a lack of evidence of any action or pace to address these required improvements.</li> </ul>

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Area of governance concern	Evidence	Key mitigations	Residual concerns
Board challenge	<ul style="list-style-type: none"> <li>The inadequacy of Board reporting on quality of services (see assurance point above) impacts on the ability of the Board to offer adequate challenge to clinical leads.</li> </ul>	<ul style="list-style-type: none"> <li>At its meeting with Monitor on 20 November, the Trust Board stated that there was strong Board challenge, but that this was not necessarily represented in minutes of Board meetings.</li> <li>Independent review of the Trust Board by the NHS Institute in 2009 reported on the strength of the Board.</li> </ul>	<ul style="list-style-type: none"> <li>Concerns regarding the ability of the Board to challenge on clinical quality matters, given lack of minuted evidence to support this and limited NED clinical expertise.</li> </ul>
	<ul style="list-style-type: none"> <li>There are no NEDs with a clinical background which may impact on their ability to effectively challenge on clinical issues presented to the Board.</li> </ul>		
Leadership	<ul style="list-style-type: none"> <li>Trust Board acknowledged in their letter to Monitor of 17 November and in their meeting with Monitor on 20 November that the A&amp;E department lacked management and clinical leadership.</li> </ul>	<ul style="list-style-type: none"> <li>The Trust has added additional senior staff resource to the A&amp;E department and has implemented interim operational management arrangements following the resignation of the directorate clinical general manager.</li> </ul>	<ul style="list-style-type: none"> <li>Continuing concerns regarding leadership in the A&amp;E department as evidenced by recent performance issues such as the SUI reported to Monitor on 30 September 2009 regarding high number of patients breaching the A&amp;E target in October 2009.</li> </ul>
	<ul style="list-style-type: none"> <li>Failures of clinical leaders to drive improvements in quality of services, e.g.                             <ul style="list-style-type: none"> <li>Persistently high Hospital Standardised Mortality Rates (HSMR);</li> <li>Continued concerns into care for patients with learning disabilities</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>At its meeting with Monitor on 20 November, the Trust stated that clinicians are actively engaged in improving quality of services.</li> <li>An associate medical director has recently been appointed to provide additional support and capacity for Board clinical leadership.</li> </ul>	<ul style="list-style-type: none"> <li>Continuing concerns regarding the timeliness of mitigations and capability of clinical leadership to drive improvements given lack of evidence that known quality of service issues have been rectified e.g. concerns regarding mortality and care for patients with learning disabilities remain ongoing.</li> </ul>
	<ul style="list-style-type: none"> <li>Third party exception reports regarding the strength of Board leadership:                             <ul style="list-style-type: none"> <li>CQC letter of 6 November 2009</li> <li>NHS South West Essex letter of 12 October 2009</li> <li>Meeting between Monitor, the CQC, NHS South West Essex and NHS East of England on 20 October 2009</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>The Trust queries the lack of evidence to back up the leadership concerns of third parties and inconsistencies in their communications with the Trust.</li> <li>Flow of information to and from Board to ward was presented at the meeting at Monitor on 20 November.</li> </ul>	<ul style="list-style-type: none"> <li>Concerns regarding key stakeholder's confidence in the Trust Board to deliver quality of service improvements required.</li> </ul>

## Condition 5: Governance

Area of governance concern	Evidence	Key mitigations	Residual concerns
Risk identification	<ul style="list-style-type: none"> <li>• The inadequacy of Board reporting on quality of services (see assurance point above) has impacted on the ability of the Board to identify and manage risk e.g.:               <ul style="list-style-type: none"> <li>○ Failure to identify risk to breaching regulations regarding HCAI inspection;</li> <li>○ PCT issuing contractual notices to highlight performance issues rather than the FT identifying and rectifying performance problems;</li> <li>○ Breach of 2 core standards in 2008/09 identified by the CQC in their Annual Health Check (AHC), but not identified by the Trust in their declarations to the CQC or Monitor.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• See mitigation for 'Assurance' governance concerns above.</li> <li>• Trust has queried the CQC approach to the AHC as they are concerned that the CQC base their assessment on a narrow sample of evidence whereas the Trust base their risk assessment and identification on a organisational wide system.</li> </ul>	<ul style="list-style-type: none"> <li>• Trust processes have failed to identify organisational risks, and there is no evidence that processes have been strengthened to ensure that this will not happen again.</li> </ul>
Risk management	<ul style="list-style-type: none"> <li>• Board acceptance of risks to quality of services provided in A&amp;E arising from environmental, leadership and staffing challenges in the department, without provision of adequate mitigations to counteract known risks.</li> <li>• At its meeting with Monitor on 20 November, the Trust Board acknowledged that there was a lack of adequate escalation of exception reporting at Board level, which may result in the Board carrying unknown risks e.g. Breaches of regulations on HCAI prevention measures.</li> </ul>	<ul style="list-style-type: none"> <li>• At its meeting with Monitor on 20 November, the Trust explained that the Board and its sub-committees considered service risk as a very serious matter, which is thoroughly debated (e.g. Risks to Women's and children's services)</li> </ul>	<ul style="list-style-type: none"> <li>• Concerns regarding the Trust Board's understanding of risk exposure given Board reporting concerns. Whilst risks may be debated at Board level, lack of evidence of impetus and action to mitigate the risks remains a concern as does the information on which decisions are taken. e.g. Children's services were identified as a poor in the original 2005/06 Healthcare Commission Children's Services review and again in their 2008/09 follow up review, and Children's service was again picked up as a risk by the CQC following their unannounced visit to the Trust in May 09.</li> </ul>

## Condition 5: Governance

Area of governance concern	Evidence	Key mitigations	Residual concerns
Timely implementation of actions to deliver sustainable quality of service improvements	<ul style="list-style-type: none"> <li>Failure to implement actions to reduce HSMR in a timely manner as evidenced by persistently high Hospital Standardised Mortality Rates (HSMR):               <ul style="list-style-type: none"> <li>2005/06 - 119</li> <li>2006/07 - 126</li> <li>2007/08 - 132</li> <li>2008/09 -131</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>See mitigations under condition 2: General Duty</li> </ul>	<ul style="list-style-type: none"> <li>There is a lack of evidence that the Trust has implemented timely actions to deliver sustainable quality of service improvements. e.g. Mortality remains high (but on a downward trend) and the CQC enquiry into the quality of care provided to patients with learning disabilities remains open (the Trust is awaiting a response from the CQC following information submitted on 19 August 2009).</li> </ul>
	<ul style="list-style-type: none"> <li>Failure to implement actions to improve the quality of nursing care delivered to patients with learning disabilities in a timely manner as evidenced by papers submitted to the coroners court which showed delayed follow up on actions relating to the death of a patient at the Trust in 2006.</li> </ul>	<ul style="list-style-type: none"> <li>The Trust has stated that information provided to the coroner's court did not provide an accurate representation of actions undertaken in respect of learnings following the patient's death. The Trust states that many of the actions were taken in a timely manner.</li> </ul>	
	<ul style="list-style-type: none"> <li>Failure to implement actions to improve the hospital environment (e.g. in A&amp;E) in a timely manner as evidenced by breaches of the HCC Hygiene Code inspection in December 2008 and follow up CQC HCAI inspection in October 2009.</li> </ul>	<ul style="list-style-type: none"> <li>See mitigations under condition 2: General Duty</li> </ul>	

## Condition 6: Healthcare and other standards

Area of performance concern	Evidence	Key mitigations	Residual concerns
Patient safety	<ul style="list-style-type: none"> <li>Persistently high Hospital Standardised Mortality Rates (HSMR):                             <ul style="list-style-type: none"> <li>o 2005/06 - 119</li> <li>o 2006/07 - 126</li> <li>o 2007/08 - 132</li> <li>o 2008/09 -131.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>See mitigations under condition 2: General Duty</li> </ul>	<ul style="list-style-type: none"> <li>Whilst data suggests HSMR is declining and actual number of deaths are reducing, rates remain significantly higher than average, and have remained high for a prolonged period which gives rise to concerns about leadership and organisational effectiveness, capacity and capability.</li> </ul>
	<ul style="list-style-type: none"> <li>Breach of regulation and subsequent warning notice issued by the CQC in respect of decontamination of equipment and policies for disinfection and decontamination.</li> </ul>	<ul style="list-style-type: none"> <li>See mitigations under condition 2: General Duty</li> </ul>	<ul style="list-style-type: none"> <li>There is no independent evidence that required improvements have been made as the CQC follow up visit will not occur until December 2009. Further, there are concerns about organisational ability to sustain improvements on an ongoing basis given performance to date.</li> </ul>
	<ul style="list-style-type: none"> <li>Risk to CQC registration from 1 April 2010 as stated by the CQC in their meeting with Monitor, NHS South West Essex and NHS East of England on 20 October 2009, and subsequent meeting with the Trust on 30 October and letter to the Trust of X November.</li> </ul>	<ul style="list-style-type: none"> <li>The Trust is planning to work closely with local CQC contacts to understand the registration process for 2010/11.</li> </ul>	<ul style="list-style-type: none"> <li>The Trust does not appear to have a robust plan to ensure that the Trust will be registered without conditions from April 2010. As such, there is a risk that the Trust may not be registered, or be registered with restricted conditions, from 1 April 2010 which may impact on its ability to continue to provide mandatory services.</li> </ul>

## Condition 6: Healthcare and other standards

Area of performance concern	Evidence	Key mitigations	Residual concerns
Patient safety	<ul style="list-style-type: none"> <li>Deterioration in CQC Annual Health Check (AHC) quality of service (QoS) rating from 'excellent' in 2007/08 to 'good' in 2008/09.</li> </ul>	<ul style="list-style-type: none"> <li>Deterioration in rating reflects breach of 2 core standards, breach of 13 weeks revascularisation waiting time national target and 3 indicators of national priorities (stroke care, 18 weeks and heart disease)</li> </ul>	<ul style="list-style-type: none"> <li>Trust Board may take assurance from AHC QoS rating of 'Good' which does not take into account other quality of service concerns as described (HSMR, A&amp;E, quality of nursing care etc)</li> </ul>
Patient experience	<ul style="list-style-type: none"> <li>Breach of regulation and subsequent warning notice issued by the CQC in respect regulations requiring the Trust to ensure that premises for providing healthcare are clean, and in good physical repair and condition.</li> </ul>	<ul style="list-style-type: none"> <li>See mitigations under condition 2: General Duty</li> </ul>	<ul style="list-style-type: none"> <li>There is no independent evidence that required improvements have been made as the CQC follow up visit will not occur until December 2009.</li> <li>Capital plans to improve the A&amp;E department are not planned to be finished until 2011/12, as such patients will continue to be treated in a sub-optimal environment for the foreseeable future. Given the Trust's history of capex slippage (see below), there are concerns about whether the A&amp;E improvements will be delivered as planned. Capital investment 2007/08: planned investment £47.4m, actual investment £29.2m (38%) 2008/09: planned investment £25.9m, actual investment £13.1m (49%) Q2 2009/10 - planned investment £13.6m, actual investment £7.9m (42%)</li> </ul>
	<ul style="list-style-type: none"> <li>Persistently poor results in the HCC Children's Services review (2005/06) and follow up review (2008/09). In the follow up review the Trust was rated as 'consistently low performing' in 10 categories, 'deteriorated' in 3 categories, 'improved in 1 category' and 'consistently high performing' in 5 categories.</li> </ul>	<ul style="list-style-type: none"> <li>Action plan developed</li> </ul>	<ul style="list-style-type: none"> <li>Lack of focus and progress to address poor performance over a sustained period.</li> </ul>

## Condition 6: Healthcare and other standards

Area of performance concern	Evidence	Key mitigations	Residual concerns
Historic and ongoing core standards breaches	<ul style="list-style-type: none"> <li>• Breach of 2 core standards in 2008/09 identified by the CQC in their Annual Health Check, but not identified by the Trust in their declarations to the CQC and to Monitor:               <ul style="list-style-type: none"> <li>○ C7 – Governance of healthcare organisations</li> <li>○ C21 – Clean environment</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• See mitigation for 'Risk identification' governance concerns under condition 5: Governance.</li> </ul>	<ul style="list-style-type: none"> <li>• The Trust failed to identify a risk to breaching these targets in 2008/09, and the Trust response to the CQC findings has to date focussed on challenging CQC process rather than internal processes.</li> <li>• Patient safety may be compromised as a result of breaches of core standards.</li> </ul>
Targets	<ul style="list-style-type: none"> <li>• Breach of 2 week cancer waiting time target for all GP referrals for urgent suspect cancers in Q2 2009/10. (Performance was 92.3% against a target of 93%).</li> </ul>	<ul style="list-style-type: none"> <li>• All patients were offered appointments within 2 weeks however, the target was narrowly missed due to patients exercising their choice not to be seen during the August &amp; September holiday period.</li> </ul>	<ul style="list-style-type: none"> <li>• None as the Trust states performance in Q3 is in accordance with the target.</li> </ul>