

Enforcement Undertakings

LICENSEE:

Sirona Care and Health CIC

Second Floor
Council Offices
Badminton Road
Yate
BS37 5AF

DECISION

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, NHS England has decided to accept from the Licensee the enforcement undertakings specified below pursuant to its powers under section 106 of the Health and Social Care Act 2012 ("the Act").

GROUND

1. Licence

The Licensee is the holder of a licence granted under section 87 of the Act.

2. Breaches of licence conditions

2.1. NHS England has reasonable grounds to suspect that the Licensee has provided healthcare services for the purposes of the NHS in breach of the following condition of its licence: CoS3(1)(a).

2.2. In particular:

2.2.1. On 10 May 2024 the Chair and Chief Executive temporarily stepped aside (and later resigned) from the organisation and were replaced on an interim basis by former directors of the Licensee.

2.2.2. In the months prior to and following the stepping aside of the Chair and Chief Executive the Licensee experienced turnover in several Board posts. This led to a loss of organisational memory and delays in addressing known shortcomings in governance arrangements. Further to this the new Board has yet to demonstrate that it is performing as a fully matured unitary Board.

2.2.3. Through its work NHS England has identified several areas where governance arrangements were not of a standard expected for a Hard to Replace Provider of NHS Services.

- a) There was insufficient assurance at Board level over operational and strategic risks
- b) There were several long outstanding internal audit recommendations including those related to risk management
- c) There were shortcomings in the way that conflicts of interests are understood, managed and recorded
- d) The Licensee has not been able to adequately demonstrate that there is a fully embedded culture of raising concerns or speaking up at all staff levels
- e) There was insufficient rigour around documenting of key decisions taken by the Board and its sub-committees or the Members group, and governance arrangements sometimes deviated from those set out in the Articles of Association or Governance Framework
- f) Members were not adequately supported to fulfil their responsibilities monitoring the performance of the CIC and its Directors.
- g) Throughout the period of investigation, the governance team has been reliant on interim staff at most grades and has lacked the capacity to address issues as they arose

2.2.4. An externally commissioned governance review conducted in parallel with our investigation has highlighted further areas requiring attention and made a number of recommendations to be implemented by the licensee.

2.3. Need for action:

NHS England believes that the action which the Licensee has undertaken to take pursuant to these undertakings, is action to secure that the breaches in question do not continue or recur.

3. Appropriateness of Undertakings

In considering the appropriateness of accepting in this case the undertakings set out below, NHS England has taken into account the matters set out in its Enforcement Guidance.

UNDERTAKINGS

NHS England has agreed to accept, and the Licensee has agreed to give the following undertakings in relation to Board culture, leadership and governance, pursuant to section 106 of the Act:

1. Board Culture and Development

- 1.1. The Licensee will take all reasonable steps to appoint a substantive Chief Executive Officer and involve system stakeholders in this process. It will keep NHS England informed of progress throughout the process by providing fortnightly written updates.
- 1.2. Once appointed the Chief Executive Officer will:

- 1.2.1. receive a full and tailored induction programme with input from system partners
 - 1.2.2. have learning and development needs assessed and receive any relevant training within the first six months
- 1.3. The Licensee will commission an independent review of Board competency, openness and transparency. The review will:
 - 1.3.1. Focus on understanding of the Unitary Board and have regard to the “the Insightful Board” publication
 - 1.3.2. Consider the development needs of all executive and non-executive directors and their direct reports, and consider succession planning
 - 1.3.3. Consider any relevant recommendations made by the CQC in any inspection reports published during the period of the undertakings
- 1.4. The Licensee will commission an independent organisational cultural review. This will help to inform any required changes to policies such as Freedom to Speak Up.
- 1.5. The terms of reference, content, conduct and timing of the reviews will be agreed with and overseen by NHS England.
- 1.6. The Licensee will implement agreed actions arising from the recommendations of the reviews, by such dates as agreed with NHS England.

2. Corporate Governance

- 2.1. By a date agreed with NHS England, the Licensee will develop a governance improvement plan that incorporates the recommendations of NHS England, the externally commissioned review and other relevant regulators such as CQC.
- 2.2. The Licensee will agree the content of the plan and milestones with NHS England.
- 2.3. The Licensee will report on progress against the plan to NHS England in an agreed format and at intervals agreed to NHS England.
- 2.4. The Licensee will keep the governance improvement plan under review and agree any necessary amendments with NHS England where required.
- 2.5. The Licensee will agree resourcing of its governance function with NHS England by a date to be agreed and will use reasonable efforts to recruit and maintain that level of resource.

3. Role of the Members and the Articles of Association

- 3.1. By a date agreed with NHS England the Licensee will review the role of the membership group with respect to decision making and oversight of the Board and its effectiveness. This review will consider:
 - 3.1.1. Membership structures or arrangements at other comparable organisations
 - 3.1.2. The responsibility of the Members as set out in the articles of association
 - 3.1.3. The roles of membership sub committees
 - 3.1.4. The training and support needs of Members
- 3.2. Following the review, the Licensee will confirm or define the ongoing membership model and how it integrates into the governance structure. The Licensee will use reasonable efforts to recruit to and maintain its membership.

3.3. By a date agreed with NHS England the Licensee will review and update its Articles of Association in line with best practice and the needs of the organisation.

4. Programme Management

4.1. The Licensee will implement appropriate programme management and governance arrangements to facilitate the delivery of these undertakings. Such arrangements must enable the Board of the Licensee to:

4.1.1. Obtain clear oversight of the progress of delivery of these programmes of work;

4.1.2. Obtain an understanding of risks to the successful delivery of these programmes of work and ensure appropriate mitigation; and

4.1.3. Hold individuals to account for delivery of these programmes of work.

4.2. The Licensee will ensure that its arrangements have appropriate clinical, operational and financial resource.

5. Independent Director

5.1. The Licensee will appoint an Independent Improvement Director, who is not an employee or current director of the Licensee and is unconnected with the local system, to oversee the programme management and delivery of the actions required by these undertakings and to agree with the Licensee and NHS England any additional resources required to enable compliance with the undertakings. This appointment will be agreed with NHS England and made within a timescale agreed by NHS England.

5.2. The Licensee will develop a “workplan” with the Independent Improvement Director that sets out the actions to be implemented by Sirona and timescales to deliver the signed enforcement undertakings. The “workplan” will:

5.2.1. include exit criteria for the Independent Improvement Director; and

5.2.2. be agreed by NHS England.

6. Meeting arrangements

6.1. The Licensee will continue to attend meetings with NHS England during the currency of the undertakings to discuss its progress in meeting the undertakings. These meetings shall take place once a month unless NHS England otherwise stipulates, at a time and place to be specified by NHS England and with attendees specified by NHS England.

The undertakings set out above are without prejudice to the requirement on the Licensee to ensure that it is compliant with all the conditions of its licence.

Any failure to comply with the above undertakings will render the Licensee liable to further formal action by NHS England. This could include the imposition of discretionary requirements under section 105 of the act in respect of the breach in respect of which the undertakings were given and/or revocation of the licence pursuant to section 89 of the act.

Where NHS England is satisfied that the Licensee has given inaccurate, misleading or incomplete information in relation to the undertakings: (i) NHS England may treat the Licensee

as having failed to comply with the undertakings; and (ii) if NHS England decides so to treat the Licensee, NHS England must by notice revoke any compliance certificate given to the Licensee in respect of compliance with the relevant undertakings.

LICENSEE

Signed (Chair of Licensee) Barbara Brown

A handwritten signature in black ink, appearing to read 'Barbara Brown', written in a cursive style.

20 May 2025

NHS England

Signed (Chair of Regional Support Group (South West)) Sue Doheny

A handwritten signature in black ink, appearing to read 'Sue Doheny', written in a cursive style.

Dated: 20 May 2025