

**STRICTLY CONFIDENTIAL**  
**ENFORCEMENT UNDERTAKINGS**

5 January 2021

**LICENSEE:**

Cornwall Partnership NHS Foundation Trust  
Carew House  
Beacon Technology Park  
Dunmere Road  
Bodmin PL31 2QN

**DECISION**

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, NHS Improvement 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”). In this document, “NHS Improvement” means Monitor.

**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 Improvement has reasonable grounds to suspect that the Licensee has provided and is providing healthcare services for the purposes of the NHS in breach of the following conditions of its licence: FT4.4(a) and 4.5(a), (d) and (e).

2.2. In particular:

2.2.1. In July 2020, NHS Improvement received information in writing indicating serious concerns about the conduct of some of its directors and about the governance of the Licensee.

2.2.2. NHS Improvement commissioned an independent investigation into the allegations which reported in October 2020 (“the Independent Report”), whose findings included:

- (a) Staff of the Licensee consider that they have been subject to bullying behaviour by ██████████ of the Licensee which if substantiated could result in formal disciplinary sanctions. At the time that the Independent Report was produced, there was no evidence that complaints had resulted in any intervention, investigation or corrective action, although concerns were raised by the Internal Auditor. The Independent Report stated that there were reasonable and proportionate grounds to pursue a formal disciplinary investigation into the alleged behaviour.
- (b) In relation to the handling of various issues concerning payments to directors of the Licensee the Independent Report suggests that:
  - i. there has been substantial weakness in the conduct of business of the Licensee's Remuneration Committee over the past few years;
  - ii. there is a need for a much-improved level of exposure and transparency of matters concerning executive pay to the Remuneration Committee; and
  - iii. certain payments to executives appear to be ultra vires and/or not in compliance with policy.
- (c) There is scope for improvement in the way that new initiatives are introduced to the Board and that at early stages there could be better exposure of the potential financial risk and exploration of 'system fit'.
- (d) The Independent Report identifies concerns regarding the handling of the process following suspension of a senior executive, including a failure to inform the Licensee's auditors, and therefore the level of competency in the leadership of the Board.
- (e) The Independent Report identifies a need for further development and strengthening of the Board's understanding of its governance responsibilities and the way in which it should access appropriate specialist advice in the conduct of its duties.

### 2.2.3. The Independent Report recommendations included:

- (a) In respect of the allegations against ██████████, that if a formal disciplinary course or other form of corrective intervention is pursued, it is supported by external resources and regulatory oversight and involvement.
- (b) Various recommendations in relation to improving the governance of the Remuneration Committee, including ensuring it has received proper advice, and had full sight of relevant guidance.
- (c) Various matters concerning payments to senior executives identified in the report should be presented to the Committee for consideration

retrospectively; in one case consideration should be given to recovery of overpayments.

- (d) The Board should address governance weaknesses identified and reflect on how they assure that as a unitary Board they truly exhibit openness and transparency of decision making and sharing of knowledge. as well as receptiveness to external and internal challenge.

2.3. The failings by the Licensee identified in the Independent Report demonstrate a failure to establish and effectively implement:

- (a) clear responsibilities for committees reporting to the Board, and;
- (b) systems and/or processes:
  - i. to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
  - ii. for effective financial decision-making, management and control (including but not restricted to appropriate systems and/or processes to ensure the Licensee's ability to continue as a going concern), and;
  - iii. to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making.

2.4. Need for action

NHS Improvement 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 Undertaking

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

## **UNDERTAKINGS**

NHS Improvement 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. The Licensee will commission an independent review of board competency, openness and transparency. The review will:
  - 1.1. include reflection on the progress the Licensee has made regarding the findings of the CQC 'well led' report of 2019 regarding some non-compliance

with internal controls and of its grip and understanding as a unitary Board of the financial pressures facing the Trust and system; and

- 1.2. specifically consider but not be limited to the business case approval process to ensure that roles and responsibilities across the board are appropriately considered in the process.
2. The content, conduct and timing of the reviews will be agreed with NHS Improvement
3. The Licensee will implement the recommendations of the reviews, unless otherwise agreed with NHS Improvement, by such dates as agreed with NHS Improvement.
4. The Licensee will commission an independent review of business decisions taken by its Remuneration Committee, specifically to consider compliance with internal controls and ensure all payments to VSMs justified and are aligned to contractual terms and conditions as well as appropriate national guidance. This should include retrospective review by the remuneration committee and appropriate authorisation or recovery action where this has not been appropriately agreed.
5. The Licensee will commission an urgent and independent review of the management of the Trust's declaration of interests register to ensure that all potential conflicts of NEDs and Senior Staff declarations are appropriately recorded and reviewed, with a clear approval process. This review will specifically consider decisions referenced in the Independent Review in order to determine whether those decisions were or were not appropriate. The Licensee will correct any discrepancies identified as a result of this process.
6. The Licensee will develop and implement a governance improvement plan which will be monitored and include an appropriate appraisal process and the agreement of an associated personalised development plan for each board member in accordance with recognised best practice.
7. The Licensee will act on the recommendations of the Independent Report in relation to individual conduct and behaviour issues, in line with appropriate Trust and/or regulatory processes
8. The Licensee will commission an independent organisational cultural review and act on its recommendations. This will help to inform any required changes to policies such as Dignity at Work and Freedom to Speak Up
9. The Licensee will appoint an Independent Director, who is not an employee or current director of the Licensee and is unconnected with the local system, to oversee the delivery of the actions required by these undertakings and to agree

with the Licensee and NHS Improvement any additional resources required to enable compliance with the undertakings. This appointment will be agreed with NHS Improvement and made within a timescale agreed by NHS Improvement.

10. The Licensee will appoint an advisor to the non-executive directors of the Licensee, to support and guide them through the process of complying with undertakings and ensure they understand fully and clearly the role of a non-executive directors.
11. The terms of reference for commissioning of each of reviews above will be agreed with and overseen by NHS Improvement.
12. The reviews, and the development of the governance plan, will be undertaken in a timely matter and within a timeframe agreed with NHS Improvement.
13. The Licensee will implement the recommendations of each of the reviews above and provide evidence of such to NHS Improvement within a reasonable timeframe as agreed with NHS Improvement.

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, including any additional licence condition imposed under section 111 of the Act and those conditions relating to:

- compliance with the health care standards binding on the Licensee; and
- compliance with all requirements concerning quality of care.

Any failure to comply with the above undertakings will render the Licensee liable to further formal action by NHS Improvement. 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 Improvement is satisfied that the Licensee has given inaccurate, misleading or incomplete information in relation to the undertakings: (i) NHS Improvement may treat the Licensee as having failed to comply with the undertakings; and (ii) if NHS Improvement decides so to treat the Licensee, NHS Improvement must by notice revoke any compliance certificate given to the Licensee in respect of compliance with the relevant undertakings.

**LICENSEE**

**Signed**

A handwritten signature in black ink that reads "M Schwarz". The letters are cursive and fluid.

***Acting Chair on behalf of the Board of Directors of Cornwall Partnership NHS Foundation Trust***

**Dated:** 5 January 2021

**NHS IMPROVEMENT**

**Signed**

A handwritten signature in black ink, consisting of a large, stylized initial 'A' or 'M' followed by a long, sweeping horizontal stroke.

**Director of Strategy and Transformation and member of the Regional Support Group (South West)**

**Dated:** 11<sup>th</sup> January 2021