

NOTICE OF IMPOSITION OF ADDITIONAL LICENCE CONDITION PURSUANT TO SECTION 111 OF THE HEALTH & SOCIAL CARE ACT 2012

TO:

The Queen Victoria Hospital NHS Foundation Trust (“**the Licensee**”)
Holtye Road
East Grinstead
West Sussex
RH19 3DZ

PROPOSAL:

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, NHS Improvement has imposed the additional licence conditions specified below on the Licensee pursuant to its powers under section 111 of the Health and Social Care Act 2012 (“the Act”).

In this notice, “NHS Improvement” means Monitor.

THE LICENCE WOULD BE AMENDED AS FOLLOWS:

After Condition FT4 (NHS Foundation Trust governance arrangements), insert:

“Additional licence conditions 1 and 2 – Additional governance arrangements

- 1) The Licensee must ensure that it has in place sufficient and effective board leadership capacity and capability, in particular a suitably experienced and effective chair, as well as an effectively functioning Council of Governors, to enable it to address:
 - a. the issues faced by the Licensee in relation to its financial position and long term sustainability; and
 - b. any other issues relating to governance or operations that have caused or contributed to, or are causing or contributing to, or will cause or contribute to, the breach of the conditions of the Licensee’s licence.

- 2) The Licensee’s Council of Governors must ensure it implements arrangements to work effectively with the Licensee’s Board, in particular with a view to securing long term sustainability of the Licensee’s services and ensuring that they:
 - a. at all times comply with applicable requirements of the Licensee’s constitution;

- b. operate in accordance with their respective statutory roles and responsibilities; and
- c. have regard to relevant guidance issued by NHS Improvement in relation to governance of NHS foundation trusts.”

ANTICIPATED EFFECT OF THE ADDITIONAL CONDITION:

NHS Improvement anticipates that the effect of imposing the additional condition(s) will be as set out in paragraph 2.29 below in the section headed ‘Grounds’.

INCIDENTAL OR CONSEQUENTIAL MODIFICATIONS REQUIRED AS A RESULT OF THE IMPOSITION OF THE ADDITIONAL CONDITION(S):

No incidental or consequential modifications are required to the Licensee’s licence.

GROUND

1. Licence

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

2. Power to impose additional licence conditions

2.1. NHS Improvement is satisfied that the governance of the Licensee is such that the Licensee will fail to comply with one or more of the conditions of its Licence, in particular conditions, CoS3, FT4.3 and FT4.5(a), (d), (f) and (g) and FT4.6(a).

2.2. Need for action:

2.2.1. The Licensee is a very small NHS provider and its Board has identified it is unsustainable in its current form; in particular, the Licensee will continue to incur material financial deficits each year. In response to this, the Licensee has developed a case for change, with University Hospital Sussex NHS Foundation Trust as a strategic partner and candidate for merger.

2.2.2. On 19 July 2021 the Licensee’s Council of Governors (“the Council”) passed a motion demanding that the Board and executive of the Licensee pause all further work on the proposals until certain steps had been taken, which would substantially delay work on a long term plan for a sustainable future for the Licensee’s services.

2.2.3. When the Board indicated that it would refuse to comply with the motion, on reasonable grounds, some Governors indicated that they would ask the Council to consider a vote of no confidence in the chief executive of the Licensee, despite the Council having no function in legislation or guidance in relation to

the dismissal of executive directors. In addition, in a written communication on 9 September, some Governors alleged, without reasonable basis in the view of NHS Improvement, that there was a serious failure of the financial function at the Licensee and that the non-executive directors of the Licensee had failed to comply with the Licensee's constitution, the ethics of foundation trust governance and applicable laws.

2.2.4. The Council and Board appear no longer to have a fully effective working relationship, in particular in connection with the issue of the Licensee's long term future.

2.2.5. Further actions by the Council to prevent or hinder the Licensee taking reasonable steps to develop a sustainable long term plan may destabilise the Trust's management, governance and services.

2.2.6. In light of these matters and other available and relevant evidence, NHS Improvement is satisfied that the Council is failing to secure compliance with the Licensee's licence conditions and/or failing properly to take steps to reduce the risk of non-compliance.

2.2.7. In addition, the Licensee's Chair reached the end of her term on 30 September 2021. At the date of this notice, no replacement, either interim or permanent, has been appointed.

2.2.8. In light of the above, NHS Improvement is satisfied that the governance of the Licensee is such that the Licensee is failing or will fail to comply with the conditions of its licence.

2.2.9. NHS Improvement considers that the imposition of the conditions specified above is appropriate for reducing the risk of non-compliance identified above.

3. Appropriateness of additional licence condition

In considering the appropriateness of imposing the additional conditions proposed in this case, NHS Improvement has taken into account its Enforcement Guidance.

The requirements of the additional licence conditions are without prejudice to:

(a) the requirements of any enforcement undertaking given by the Licensee; and

(b) the requirement on the Licensee to ensure that it is compliant with all the conditions of its licence including those relating to:

- compliance with the health care standards binding on the Licensee;*
- effective financial decision-making, management and control;*
- compliance with all requirements concerning quality of care.*

Any failure to comply with either or both of the additional licence conditions would render the Licensee liable to further formal action by NHS Improvement.

NHS IMPROVEMENT

Dated: Wednesday 20th October 2021

Signed:

A handwritten signature in blue ink that reads "Anne Eden". The signature is written in a cursive style with a horizontal line underneath the name.

Anne Eden

Regional Director, South East, and

Chair of the South East Regional Support Group

NHS England and NHS Improvement