

## **ENFORCEMENT UNDERTAKINGS**

### **LICENSEE:**

Calderdale and Huddersfield NHS Foundation Trust ("the Licensee")  
Trust Headquarters  
Acre Street  
Linley  
Huddersfield  
West Yorkshire  
HD3 3EA

## **DECISION**

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, Monitor has decided to accept from the Licensee the enforcement undertakings specified below pursuant to its powers under section 106 of the Act.

## **GROUND**

### **1. Licence**

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

### **2. Breaches of the Licence**

#### **2.1. Financial and Board Governance**

2.1.1. Monitor 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: CoS3(1); FT4(2); FT4(4); FT4(5)(a),(b),(d) and (f).

2.1.2. In particular:

2.1.2.1. The Licensee reported an unplanned continuity of service risk rating ("CoSRR") 2 and an unplanned deficit of £2.2m at Q2 2014/2015. It has also forecast a continuing CoSRR 2 and a deficit of £4.3m to the financial year end 2014/2015. This forecast was against a planned CoSRR 3 and a planned surplus of £3m. The Licensee has forecast to deliver, in 2015/2016, a CoSRR1 and a deficit of £19m.

2.1.2.2. The Licensee does not have a credible or robust plan to return to a CoSRR3 or to surplus.

2.1.2.3. The findings of an independently commissioned review of the Licensee's financial performance by PwC dated 2 December

2014 (the "Financial Performance Review") identified shortcomings in the development of the 2014/2015 CIP programme and in the Licensee's monitoring of its delivery of the programme, including a lack of effective central programme management office (PMO) governance.

- 2.1.2.4. The Cost Improvement Plan ("CIP") programme for 2014/2015 was late in being fully developed and schemes were accepted into the programme without sufficiently detailed financial assumptions.
- 2.1.2.5. The Efficiency Programme Board ("EPB") was not attended by all executives and had limited visibility of progress of the 2014/2015 CIP programme. The Licensee now forecasts to deliver, in 2014/2015, CIP of £9.86m against an original target for the year of £19.5m.
- 2.1.2.6. The Licensee has failed to achieve adequate scrutiny and challenge at EPB and Finance & Performance Committee meetings.
- 2.1.2.7. These breaches by the Licensee demonstrate a failure in the application of systems and standards of financial management and corporate governance, including but not limited to a failure to:
  - a) adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern;
  - b) establish and implement effective board and commission structures, and clear responsibilities, reporting lines and accountability;
  - c) establish and effectively implement systems and/or processes for (i) timely and effective scrutiny and oversight by the Board of the Licensee's operations and (ii) effective financial decision-making, management and control.

### 2.1.3. Need for action

Monitor 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, Monitor has taken into account the matters set out in its Enforcement Guidance.

## **UNDERTAKINGS**

Monitor has agreed to accept and the Licensee has agreed to give the following undertakings, pursuant to section 106 of the Act:

### 1. Financial

- 1.1. The Licensee will develop and submit to Monitor, by a date to be agreed with Monitor, a strategic sustainability and financial turnaround plan that addresses the short-term financial stability and long-term financial sustainability risks ("Strategic Turnaround Plan") covering a period of time to be agreed with Monitor.
- 1.2. The Licensee will commission external support to assist it in developing the plan. The provider and scope of this support will be agreed with Monitor prior to it being commissioned.
- 1.3. The Strategic and Turnaround Plan will, in particular:
  - 1.3.1. enable the Licensee to deliver a CIP programme for 2015/2016 which is consistent with efficiency requirements set out in "The Forward View Into Action: Planning for 2015/16";
  - 1.3.2. enable the Licensee to adequately and sustainably improve its underlying surplus/deficit and CoSRR by the end of the financial year 2015/2016 and to improve its financial position in each subsequent year of the period covered by the plan;
  - 1.3.3. ensure that quality and safety standards are maintained whilst including all reasonable actions to maximise efficiency and productivity at the Licensee;
  - 1.3.4. take appropriate account of commissioner intentions and service reconfiguration proposals;
  - 1.3.5. identify all foreseeable necessary capital requirements for the duration of the plan;
  - 1.3.6. contain all necessary metrics presented on a monthly basis for such period of time to be agreed with Monitor, including as a minimum, unless otherwise agreed with Monitor, the following metrics:
    - 1.3.6.1. CoSRR;
    - 1.3.6.2. Income and Expenditure position;

- 1.3.6.3. EBITDA;
  - 1.3.6.4. Surplus / (Deficit);
  - 1.3.6.5. Underlying Surplus / (Deficit);
  - 1.3.6.6. In year and recurrent CIP; and
  - 1.3.6.7. Cash (including external funding requirements).
- 1.3.7. ensure the Licensee's clinical and financial stability is maintained from the end of the financial year 2016/2017;
- 1.3.8. ensure the Licensee's financial position is such that it does not require external financial assistance from the Secretary of State after the end of the financial year 2016/17;
- 1.3.9. ensure appropriate stakeholder engagement; and
- 1.3.10. include an implementation plan covering a period of time to be agreed with Monitor.
- 1.4. The Licensee will –
- 1.4.1. provide to Monitor, should it so request, assurance on the effectiveness of the Strategic Turnaround Plan or any part of it, in such form and at such time as may be specified in the request; and
  - 1.4.2. amend the Strategic and Turnaround Plan to rectify any significant deficiencies identified in the assurance.
- 1.5. The Licensee will implement effectively all of the actions in the Strategic Turnaround Plan in accordance with timescales specified in the Strategic Turnaround Plan unless otherwise agreed with or specified by Monitor.
- 1.6. The Licensee will report to Monitor on the implementation of the Strategic Turnaround Plan, including delivery of cost saving actions, as required and in particular monthly, unless Monitor stipulates otherwise.
- 1.7. The Licensee will, by a date to be agreed with Monitor, appoint a Turnaround Director, subject to having obtained the prior agreement of Monitor as to the identity of the Turnaround Director, to support the Licensee in its delivery of the actions in paragraphs 1.1 to 1.4.
- 1.8. The Licensee will implement all of the actions in its plan developed in response to the Financial Performance Review ("the Financial Performance Review Action Plan") within the timescales set out in the Financial Performance Review, unless otherwise agreed with Monitor.
- 1.9. The Licensee will, by a date to be agreed with Monitor and from a source to be agreed with Monitor, obtain external assurance on the implementation of the Financial Performance Review Action Plan and that external assurance will

assess whether the Licensee's actions have been effective in addressing the issues set out in the Financial Performance Review.

## 2. Board Effectiveness and Governance

- 2.1. The Licensee will obtain and submit to Monitor, by a date to be agreed with Monitor, an external review of Board governance ("Well Led Governance Review") from a source to be agreed with Monitor and according to a scope to be agreed with Monitor.
- 2.2. The Well Led Governance Review will include, as a minimum, a review of:
  - 2.2.1. the Board's leadership capacity and capability, in particular with reference to the Licensee's financial governance and financial sustainability;
  - 2.2.2. the effectiveness of the Board and its committee structures;
  - 2.2.3. the extent to which the responsibilities of the Board, of committees reporting to the Board and of staff reporting to the Board and to those committees, are clear;
  - 2.2.4. the extent to which reporting lines and accountabilities throughout the Licensee are clear;
  - 2.2.5. the timeliness and effectiveness of scrutiny and oversight by the Board of the Licensee's operations; and
  - 2.2.6. the effectiveness of financial decision-making, management and control, taking account of any relevant provisions of the Strategic Turnaround Plan in the event that the plan has been submitted to Monitor, in accordance with paragraph 1.1, before the review is finalised. .
- 2.3. The Licensee will provide to Monitor, should it so request, assurance on the effectiveness of the Well Led Governance Review or any part of it, in such form and at such time as may be specified in the request.
- 2.4. The Licensee will implement all of the recommendations and actions in the Well Led Governance Review within the timescales set out in the Well Led Governance Review, unless otherwise agreed with or specified by Monitor.
- 2.5. The Licensee will provide to Monitor, should it so request, an external review of the implementation of the recommendations and actions in the Well Led Governance Review from a source and by a date to be agreed with Monitor.
- 2.6. If Monitor requests the licensee to provide an external review under paragraph 2.5, the Licensee will implement all of the findings, recommendations and actions in the external review within the timescales set out in the external review.

2.7. The Licensee will report to Monitor on the implementation of the recommendations and actions in the Well Led Governance Review as required and in particular monthly, unless Monitor stipulates otherwise.

3. General

3.1. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of the Strategic Turnaround Plan and the recommendations and actions in the Well Led Governance Review.

3.2. Such programme management and governance arrangements will enable the Board to:

3.2.1. obtain a clear oversight over the progress in delivering the plan, recommendations and actions;

3.2.2. obtain an understanding of any risks to the successful achievement of the plan, recommendations and actions and ensure appropriate mitigation of any such risks; and

3.2.3. hold individuals to account for the delivery of the plan, recommendations and actions.

3.3. The Licensee shall attend meetings or, if Monitor stipulates, conference calls, during the currency of the undertakings detailed in this notice to discuss its progress in meeting those undertakings. These meetings shall take place once a month, unless Monitor stipulates otherwise, at a time and place to be specified by Monitor and with attendees specified by Monitor.

**THE REQUIREMENTS IN THIS NOTICE ARE WITHOUT PREJUDICE TO THE REQUIREMENT ON THE LICENSEE TO COMPLY WITH THE CONDITIONS IN ITS LICENCE.**

**ANY FAILURE TO COMPLY WITH THE ABOVE UNDERTAKINGS WILL RENDER THE LICENSEE LIABLE TO FURTHER FORMAL ACTION BY MONITOR. 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 MONITOR IS SATISFIED THAT THE LICENSEE HAS GIVEN INACCURATE, MISLEADING OR INCOMPLETE INFORMATION IN RELATION TO THE UNDERTAKINGS: (i) MONITOR MAY TREAT THE LICENSEE AS HAVING FAILED TO COMPLY WITH THE UNDERTAKINGS; AND (ii) IF MONITOR DECIDES SO TO TREAT THE LICENSEE, MONITOR MUST BY NOTICE REVOKE ANY COMPLIANCE CERTIFICATE GIVEN TO THE LICENSEE IN RESPECT OF COMPLIANCE WITH THE RELEVANT UNDERTAKINGS.**

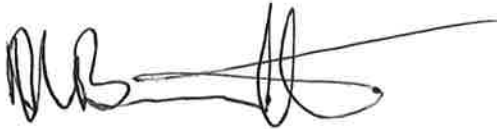
**LICENSEE**



**Signed (Chair of Licensee)**

**Dated:** 28 January 2015

**MONITOR**



**Signed (Chair of Provider Regulation Executive committee)**

**Dated:** 29/01/2015