

s.106 Enforcement Undertakings

LICENSEE:

Kettering General Hospital NHS Foundation Trust (the Licensee)
Rothwell Road
Kettering
Northants NN16 8UZ

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).

Any reference to "NHS Improvement" in these undertakings is to be taken as a reference to Monitor.

1. GROUNDS

Licence

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

2. BREACHES

RTT and Governance breaches

2.1. NHS Improvement has reasonable grounds to suspect that the Licensee has provided and is providing health care services for the purposes of the NHS in breach of the following conditions of its licence: FT4(2); FT4(5)(a), (b), (c), (e), (f); FT4(6)(c); and FT4(7).

2.2. In particular:

2.2.1. The Licensee has failed to meet the referral to treatment (the RTT) target in aggregate for admitted and non-admitted patients, and in aggregate for patients on an incomplete pathway for each quarter from and including Q3 2014/15 to date;

2.2.2. The Licensee stopped national RTT reporting of incomplete pathways in December 2015 as a result of concerns regarding data quality;

2.2.3. External reviews have given rise to concerns over RTT data governance, reporting and data quality, and identified that the Licensee had failed to initially recognise the scale and nature of the risks presented by the weaknesses in its overall data quality and elective care management arrangements;

2.2.4. The Licensee failed to put into place sufficient resources to support the management of RTT across the organisation including within both informatics and operations but has recently worked to address this.

2.3. Whilst progress has subsequently been made in addressing these RTT and governance issues, the matters set out above demonstrate a failure of governance

arrangements, including but not limited to, a failure by the Licensee to establish systems and standards of good corporate governance which reasonably would be regarded as appropriate for a supplier of health care services to the NHS and a failure by the Licensee to establish and effectively implement or operate system and processes:

2.3.1. to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;

2.3.2. for timely and effective scrutiny and oversight by the Board of the Licensee's operations;

2.3.3. to ensure compliance with the health care standards binding on the Licensee including, but not restricted to, standards specified by the Secretary of State, the Care Quality Commission, the NHS England and statutory regulators of health care professionals;

2.3.4. to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making;

2.3.5. to identify and manage (including through forward plans) material risks to compliance with the Conditions of its Licence;

2.3.6. to ensure the collection of accurate, comprehensive, timely and up to date information on quality of care; and

2.3.7. to ensure that it has in place personnel on the Board, reporting to the Board and within the rest of the Licensee's organisation who are sufficient in number and appropriately qualified to ensure compliance with the Conditions of its Licence.

3. Need for action

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

4. Appropriateness of Undertakings

4.1. 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, pursuant to section 106 of the Act:

1. RTT Target breaches

- 1.1. The Licensee will take all reasonable steps to deliver the RTT target on a sustainable basis including, but not limited to, the actions in paragraphs 1.2 to 1.8 below.
- 1.2. The Licensee will take all reasonable steps to deliver its RTT target improvement plan (the RTT Recovery Plan). The RTT Recovery Plan will include and support achievement of:
 - 1.2.1. The Licensee's return to national RTT reporting of incomplete pathways in December 2016 (reporting on November 2016 data);
 - 1.2.2. The actions to ensure there are effective operational procedures and governance structures to enable the Licensee to manage its performance against the RTT target and to ensure that the data which is used to report against the RTT target is accurate and complete;
 - 1.2.3. A recovery trajectory to return to compliance with the RTT target, such trajectory may only be amended with the prior agreement of NHS Improvement;
 - 1.2.4. A trajectory for the completion of harm reviews as required to accommodate the outcome of the ongoing data validation work, such trajectory may only be amended with the prior agreement of NHS Improvement;
 - 1.2.5. All recommendations from the NHS Intensive Management and Support, Cymbio and CPA external reviews;
 - 1.2.6. All obligations of Cymbio under the current contract for services; and
 - 1.2.7. Milestones for the completion of 1.2.1 to 1.2.6 above.
- 1.3. The Licensee will implement and deliver the RTT Recovery Plan in accordance with the timescales outlined in that plan, such timescales may only be amended with the prior agreement of NHS Improvement.
- 1.4. The Licensee will provide assistance to NHS Improvement to enable it to carry out a mid-point review on the progress of the delivery of the RTT Recovery Plan and will address any findings and recommendations from the review.
- 1.5. The Licensee will keep the RTT Recovery Plan under review and will amend it from time to time so as to address any issues identified by NHS Improvement or the Licensee. Should the Licensee need to update the RTT Recovery Plan to reflect any matters which are identified which may materially affect the Licensee's ability to meet the requirements of paragraph 1.1, the Licensee will agree this in advance with NHS Improvement and re-submit the RTT Recovery Plan within a timeframe to be agreed with NHS Improvement.

- 1.6. The Licensee will obtain external assurance, from a source and according to a scope and timing to be agreed with NHS Improvement, once the Licensee has confirmed that it has implemented the RTT Recovery Plan (including any subsequent updates) to evidence that the RTT Recovery Plan has been delivered (the **First Post-Implementation Review**).
- 1.7. The Licensee will implement any recommendations arising from the First Post-Implementation Review by such dates as specified by NHS Improvement and will provide NHS Improvement with such information as it may request to confirm that the recommendations have been implemented.
- 1.8. The Licensee will complete a second post implementation review on Cymbio's support and share the findings and recommendations from this review with NHS Improvement for future improvement opportunities/learnings for other trusts.

2. Governance

- 2.1. The Licensee will undertake a peer review, with support from an external source as specified by NHS Improvement, of the Licensee's governance arrangements which may include, but is not limited to, corporate risk management and assurance; the ways in which the views of the Board are challenged; and the way in which the Board challenges this information and assures itself. The scope and timing of the review will be agreed with NHS Improvement.
- 2.2. The Board of the Licensee will undertake an exercise, with the facilitation of an external source as agreed with NHS Improvement, reflecting on the issues affecting its governance arrangements over the past two years and the lessons it has learnt, and will consider how changes have been made to its governance arrangements as a result.
- 2.3. The Licensee will co-operate and work with partner organisation/s who may be identified by NHS Improvement to support and provide expertise to the Licensee and to assist the Licensee with the improvement of its risk management arrangements. The scope and timing of this work will be agreed with NHS Improvement.

3. Data Quality

- 3.1. The Licensee will, by a date to be agreed with NHS Improvement, develop and implement a data and information strategy (the **Data Strategy**). The Data Strategy will focus on auditing and reviewing the waiting time data for key national access targets including, but not limited to, the RTT target to ensure and support the accuracy of this data.
- 3.2. The Licensee will submit reports of the audits and reviews carried out under the Data Strategy to NHS Improvement in accordance with the milestones and timeframes set out in the Data Strategy, or within those timeframes as specified by NHS Improvement.

3.3. The Licensee will implement any recommendations identified from the audits and reviews carried out under the Data Strategy within such timescales as specified by NHS Improvement.

3.4. The Licensee will provide to NHS Improvement, should NHS Improvement so request, external assurance, from a source and according to a scope to be agreed with NHS Improvement, that it has implemented the recommendations and actions of the Data Strategy.

4. General

4.1. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of the RTT Recovery Plan.

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

4.2.1. Obtain a clear oversight over the progress in delivery of the RTT Recovery Plan;

4.2.2. Obtain an understanding of any risks to the successful achievement of the plan and ensure appropriate mitigation of any such risks; and

4.2.3. Hold individuals to account for its delivery.

5. Reporting

5.1. The Licensee will provide regular reports to NHS Improvement on its progress in meeting the undertakings set out above, and in particular parts 1.2.1, 1.2.3, 1.2.4, 1.2.5 and 1.2.6, and will attend meetings or, if NHS Improvement stipulates, conference calls, to discuss its progress in meeting those undertakings. These meetings shall take place once a month unless NHS Improvement otherwise stipulates, at a time and place to be specified by NHS Improvement and with attendees specified by NHS Improvement.

5.2. In addition, the Licensee will continue to attend the meetings of the RTT assurance forum chaired jointly by NHS England and NHS Improvement and will provide the agreed progress reports to those meetings using the dashboards agreed with NHS England and 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.

Signed on behalf of the Licensee

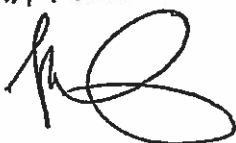
Signed on behalf of NHS Improvement

Name: *Graham Foster*

Name: *Dale Bywater*

Position: *CHAIRMAN*

Position: *ERMD*

Signature: 

Signature: *D Bywater*

Date: *16 SEPT 2016*

Date: *19 sept 2016*