

ENFORCEMENT UNDERTAKINGS

LICENSEE:

Liverpool Women's NHS Foundation Trust
Crown Street
Liverpool
Merseyside
L8 7SS

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 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.

BREACHES

2. Breaches

- 2.1. Monitor 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 condition of its licence: CoS3(1)(b).
- 2.2. In particular:
 - 2.2.1. the Licensee has had a financial sustainability risk rating (FSRR) of 2 since the rating was introduced from Q2 2015/16;
 - 2.2.2. the Licensee delivered a year-to-date deficit of £6.3m up to Q3 2015/16 and has forecast a full year deficit of £7.3m in 2015/16;
 - 2.2.3. the Licensee has so far failed to deliver a plan to return to a financially sustainable position that has been fully agreed with key stakeholders including local and specialist commissioners; and
 - 2.2.4. the Licensee has been in receipt of, and continues to require, distressed funding from the Department of Health.
- 2.3. These breaches by the Licensee demonstrate a failure of corporate governance arrangements and financial management standards, in particular but not limited to a failure by the Licensee to provide reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern.

2.4. Need for action:

Monitor 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.

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 sustainability

- 1.1. The Licensee will take all reasonable steps to deliver its services on a financially sustainable basis, including, but not limited to, the actions below.
- 1.2. The Licensee will cooperate and work closely with its local and specialist commissioners and other stakeholders to agree a strategic plan ("the Strategic Plan") that returns the Licensee to a financially sustainable position, by a date to be agreed with Monitor.
- 1.3. The Licensee will participate in monthly teleconferences or meetings with Monitor, commissioners and other key stakeholders as deemed necessary by Monitor to develop, agree and implement the Strategic Plan.
- 1.4. The Licensee shall submit the agreed and fully costed Strategic Plan to Monitor as soon as reasonably practicable and by a date to be agreed by Monitor.
- 1.5. The Licensee will keep the development of the Strategic Plan under review. Where matters are identified which materially affect the Licensee's ability to meet the requirements of paragraph 1.1, whether identified by the Licensee or another party, the Licensee will notify Monitor as soon as practicable.
- 1.6. The Strategic Plan will, in particular:
 - 1.6.1. Enable the trust to return to a financially sustainable position within a period of time to be agreed with Monitor and local commissioners;
 - 1.6.2. Enable the trust to achieve a FSRR of at least 3 (or equivalent) on an ongoing basis;
 - 1.6.3. Take appropriate account of the commissioning intentions of the Licensee's commissioners; and

1.6.4. Identify all capital and revenue costs associated with delivery of the Strategic Plan and sources of such funding.

1.7. Until such a time that the Licensee can return to a financially sustainable position, the Licensee will take all reasonable steps to minimise its deficit and distressed funding requirements.

2. Distressed funding

2.1. Where interim support financing or planned term support financing is provided by the Secretary of State for Health to the Licensee pursuant to section 40 of the NHS Act 2006, the Licensee will comply with any terms and conditions which attach to the financing.

2.2. The Licensee will comply with any reporting requests made by Monitor in relation to any financing to be provided to the Licensee by the Secretary of State pursuant to section 40 of the NHS Act 2006.

3. Spending approvals

3.1. The Licensee will comply with any spending approval processes that are deemed necessary by Monitor.

4. Programme management

4.1. The Licensee will implement sufficient programme management and governance arrangements to enable compliance with these undertakings.

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

4.2.1. Obtain a clear oversight over the progress in complying with the undertakings;

4.2.2. Obtain an understanding of any risks to compliance with the undertakings and ensure appropriate mitigation of such risks; and

4.2.3. Hold individuals to account for failures to comply with the undertakings.

5. Meetings

5.1. In addition to the monthly meetings or teleconferences referred to at 1.3. the Licensee will attend meetings or conference calls with Monitor to discuss its overall progress in meeting the undertakings set out above. These meetings shall take place every two months, unless Monitor stipulates otherwise, at a time and place to be specified by Monitor and with attendees specified by Monitor.

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:

1. COMPLIANCE WITH THE HEALTH CARE STANDARDS BINDING ON THE LICENSEE; AND
2. 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 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 AN UNDERTAKING: (i) MONITOR MAY TREAT THE LICENSEE AS HAVING FAILED TO COMPLY WITH THE UNDERTAKING 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 UNDERTAKING
LICENSEE



Signed (Chair or Chief Executive of Licensee)

Dated 7 April 2016.

MONITOR



Signed (Chair of Provider Regulation Executive)

Dated 8 April 2016