

ENFORCEMENT UNDERTAKINGS

LICENSEE:

Derby Hospitals NHS Foundation Trust ("the Licensee")
Uttoxeter Road
Derby
DE22 3NE

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.

2. Breaches

2.1. Target breaches

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: FT4(5)(a) and (c).

2.1.2 In particular:

2.1.2.1 The Licensee breached its Referral to Treatment Time ("RTT") admitted target in Q1, Q3 and Q4 of 2013/14 and Q1 of 2014/15.

2.1.2.2 The Licensee breached the 62-day cancer (GP referrals) target in Q1, Q2, Q3 and Q4 of 2013/14. The Trust breached the 2-week wait (all cancers) target in both Q3 and Q4 of 2013/14. The Trust has also breached three further cancer targets in Q4 of 2013/14 (2 week wait - breast symptoms, 62 day wait – screening services and 31 day wait - surgery).

2.1.2.3 These breaches by the Licensee demonstrate a failure of governance arrangements, in particular a failure by the Licensee to establish and effectively implement systems and/or processes (i) to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively and (ii) to ensure compliance with healthcare standards binding on the Licensee including but not restricted to standards specified by the Secretary of State, the Care Quality Commission, the NHS commissioning Board and statutory regulators of healthcare professions.

2.1.3 Need for action

Monitor believes that action which the Licensee has undertaken to take pursuant to the undertaking recorded here will secure that the breach in question does not continue or recur.

2.2. Financial breaches

2.2.1. 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: FT4(5)(a) and (d); and CoS3(1).

2.2.2. In particular:

2.2.2.1. The Licensee recorded a deficit of £8.77million for 2013/14 and is currently forecasting a significant deficit until at least the year ending 2015/16. It has not developed a plan to return to a recurrent, underlying breakeven financial position.

2.2.2.2. The Licensee's Board attributes the main reason for its financial situation to net additional costs associated with an increase in urgent care activity in the local health economy.

2.2.2.3. The Licensee's own cash reserves have been exhausted and so the Licensee expects to request significant cash support to fund its forecast deficit position.

2.2.2.4. The above issues demonstrate a failure of governance arrangements and financial management standards, in particular but not limited to a failure by the Licensee to (a) establish and effectively implement systems and/or processes to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively, and (b) to adopt and apply systems and standard of corporate governance and of financial management which would reasonably be regarded as providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern.

2.2.3. 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

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

1. Financial recovery plan

- 1.1 By 30 November 2014, or at a later date to be agreed with Monitor, the Licensee will submit a draft version of a financial recovery plan to Monitor which demonstrates how and over what period the Licensee will return to at least a recurrent, underlying breakeven financial position.
- 1.2 Following submission of the draft, the Licensee will commission an external assurance review of the draft plan from a source and according to a scope and timing to be agreed with Monitor. The Licensee will provide copies of the reviewer's draft and finalised reports to Monitor within a week of receiving them.
- 1.3 The Licensee will amend and finalise the plan so as to address any significant issues or deficiencies identified by the external assurance review and any comments made by Monitor.
- 1.4 By 31 January 2015, or at a later date to be agreed with Monitor, the Licensee will submit to Monitor the final version of the financial recovery plan which demonstrates how and over what period the Licensee will return to at least a recurrent, underlying breakeven financial position.
- 1.5 The final plan will be accompanied by a report from the Licensee's Board, the scope of which should be agreed with Monitor, which provides assurance on the deliverability and sufficiency of the plan.
- 1.6 The Licensee will deliver the financial recovery plan.
- 1.7 From a date to be agreed with Monitor, the Licensee's Board will conduct a regular assessment of the financial recovery plan to ascertain whether it remains deliverable and sufficient to enable the Licensee to achieve the objective of the plan as set out in paragraph 1.4.
- 1.8 The Licensee's Board will report to Monitor:
 - 1.8.1 its progress in delivering the plan; and
 - 1.8.2 its assessment of the deliverability and sufficiency of the plan and any significant alterations required to it. The Licensee will provide Monitor with the assurance relied on by the Board in making this assessment, upon request.

2. RTT improvement plan

- 2.1 By 12 September 2014, the Licensee will submit to Monitor, an RTT improvement plan to return to compliance with all RTT targets.
- 2.2 The RTT improvement plan will include objective "SMART" milestones and metrics for each action over which the Licensee has control, in order to allow the Licensee to track progress against each action.

- 2.3 Prior to submission to Monitor, the RTT improvement plan will be agreed with the Licensee's commissioners and with NHS Interim Management and Support (IMAS).
- 2.4 From 12 September 2014, the Licensee will deliver the actions in the RTT improvement plan and take such other reasonable steps as are necessary to ensure that it is able to meet all RTT targets on a sustainable basis.
- 2.5 From September 2014, the Licensee will provide a monthly report on its performance against the actions in the plan. The form, content and timing of the reports are to be agreed with Monitor.
- 2.6 The Licensee will provide, at a date agreed with Monitor, a report demonstrating how the Board is assured that the requirements of paragraphs 2.1 to 2.4 above have been met. The scope of the report will be agreed with Monitor.

3. Cancer improvement plan

- 3.1 By 12 September 2014, the Licensee will submit to Monitor, a cancer improvement plan to return to compliance with all cancer targets.
- 3.2 The cancer improvement plan will include objective "SMART" milestones and metrics for each action over which the Licensee has control in order to allow the Licensee to track progress against each action.
- 3.3 Prior to submission to Monitor the cancer improvement plan will be agreed with the Licensee's commissioners and with IMAS.
- 3.4 From 12 September 2014, the Licensee will deliver the cancer improvement plan and take such other reasonable steps as are necessary to ensure that it is able to meet all cancer targets on a sustainable basis.
- 3.5 From September 2014, the Licensee will provide a monthly report on its performance against the actions in the plan. The form, content and timing of the reports are to be agreed with Monitor.
- 3.6 The Licensee will provide, at a date agreed with Monitor, a report demonstrating how the Board is assured that the requirements of paragraphs 3.1 to 3.4 above have been met. The scope of the report will be agreed with Monitor.

4. General

- 4.1 The Licensee will implement sufficient programme management and governance arrangements to enable delivery of its financial recovery plan, its RTT improvement plan and its cancer improvement plan ("the plans").
- 4.2 Such programme management and governance arrangements will enable the Board to:
 - 4.1.1. obtain a clear oversight over the progress in delivering the plans;
 - 4.1.2. obtain an understanding of any risks to the successful achievement of the plans and ensure appropriate mitigation of any such risks; and

4.1.3. hold individuals to account for the delivery of the relevant plans.

4.2. The Licensee will attend meetings or, if Monitor stipulates, conference calls, during the currency of the undertakings detailed above 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 with Monitor and with attendees specified by Monitor.

THE UNDERTAKINGS 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)

Date: 29th November 2014.

MONITOR



Signed (Chair of relevant decision-making body)

Date: 4 September 2014