

ENFORCEMENT UNDERTAKINGS

LICENSEE:

Norfolk and Norwich University Hospitals NHS Foundation Licensee ("the Licensee")
Colney Lane
Norwich
NR4 7UY

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. Financial Governance Breaches

- 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); FT4(5)(d); FT4(5)(e); FT4(5)(f); FT4(5)(g); FT4(7); CoS3(1)(a) and CoS3(1)(b).
- 2.2. In particular:
 - 2.2.1. the Licensee is forecasting a £14.2m reported deficit in 2015/16. Monitor estimates that the underlying deficit in 2015/2016 is higher than the reported deficit. Significant risks have been identified in relation to the delivery of the 2015/16 financial plan;
 - 2.2.2. the Licensee has advised that its 2016/17 forecast financial position will be significantly worse than its 2015/16 financial position;
 - 2.2.3. the Licensee has not had sufficient focus on its financial performance and financial challenge;
 - 2.2.4. the Licensee lacks sufficient capacity in its financial functions to enable it to successfully develop a robust financial recovery plan.
- 2.3. These breaches by the Licensee demonstrate a failure of financial governance arrangements and financial management standards in particular, but not limited to, a failure by the Licensee to establish and effectively implement systems and/or

processes to identify and manage, including to manage through forward plans, material risks to compliance with the Conditions of its Licence.

2.4. Need for action

Monitor believes that the action, which the Licensee has undertaken to take pursuant to these undertakings, will secure that the breaches in question do not continue or recur.

3. Appropriateness of Undertaking

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. Short Term Financial Recovery

1.1 The Licensee will take all reasonable steps to appoint a financial turnaround director and will consult Monitor prior to agreeing the appointment and the terms and conditions.

1.2 The Licensee will ensure that the financial turnaround director carries out the following scope of work:

1.2.1 support the development of a credible short term Financial Recovery Plan (FRP);

1.2.2 provide the challenge and oversight required to drive short term improvements in financial management and financial team capacity;

1.2.3 support the Licensee to develop and deliver a 2016/17 Cost Improvement Programme; and

1.2.4 provide assurance to Monitor and the Licensee's Board that improvements are being delivered successfully and at pace.

1.3 By a date specified by Monitor the Licensee will develop and submit an FRP for the financial year 2016/17 to a level of ambition to be agreed with Monitor. The FRP will include:

1.3.1 actions the Licensee will take to identify and address the drivers of the deficit; and

1.3.2 details of development and implementation of its recurrent cost improvement plans;

1.3.3 development and utilisation of its service line reporting;

1.3.4 actions to ensure effective contract negotiation with commissioners;

1.3.5 effective roll-out of demand and capacity plans; and

1.3.6 any other issues identified by Monitor as key to the delivery of the FRP.

- 1.4 When developing the FRP, the Licensee will share its proposals and engage effectively with key stakeholders, including commissioners and local health economy stakeholders, and it will reflect their reviews appropriately in the FRP.
- 1.5 The Licensee will demonstrate that it is able to deliver the FRP. The Licensee will keep the delivery of the FRP under review and will amend the FRP to take account of any significant matters identified and agreed with Monitor. References to the FRP in these undertakings will mean the FRP as so amended.

2. Long Term Financial Recovery

- 2.1 By a date specified by Monitor the Licensee will submit a credible long term financial model (LTFM), to a level of ambition to be agreed with Monitor, which is aligned to the Licensee's strategic development and which facilitates the provision of services on a sustainable basis.
- 2.2 When developing the LTFM, the Licensee will share its proposals and engage effectively with key stakeholders, including commissioners and local health economy stakeholders, as part of the 'Sustainability and Transformation Plans' and it will reflect their views appropriately in the LTFM.
- 2.3 The Licensee will demonstrate that it is able to deliver the LTFM. The Licensee will keep the delivery of the LTFM under review and will amend the LTFM to take account of any significant matters identified and agreed with Monitor. References to the LTFM in these undertakings will mean the LTFM as so amended.

3. External Support and Capacity

- 3.1 The Licensee will ensure that it has sufficient capability and capacity to develop and deliver the FRP and the LTFM.
- 3.2 When requested by Monitor, the Licensee will commission external support and/or assurance to assist in the development and delivery of both the short term FRP and LTFM.
- 3.3 When requested by Monitor, the Licensee will commission external support to undertake a review of financial governance according to a scope to be agreed with Monitor including but not limited to:
- capacity and capability of the finance team;
 - accountability and performance management arrangements; and
 - financial arrangements including working capital management and budgetary planning.

4. Department of Health Financing and Spending Approvals

- 4.1 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.

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

4.3 The Licensee will comply with any spending approvals processes that are deemed necessary by Monitor.

5. Programme Management

5.1 The Licensee will implement comprehensive and effective programme management and governance arrangements to enable the delivery of all plans referred to in these undertakings. Such arrangements will enable the Licensee's Board to:

- obtain clear oversight over the progress in delivering the plans;
- obtain an understanding of any risks to the successful achievement of the plans; and
- hold individuals to account for delivery of its actions.

6. Reporting

6.1 The Licensee will submit progress reports to Monitor against all of the plans referred to in these undertakings on a monthly basis (or otherwise as required) and by exception until such date as agreed with Monitor. The progress reports will identify any deviation from the actions and associated timeframes for delivery of the plans.

7. Meetings

7.1 The Licensee will continue to attend meetings (or if Monitor stipulates conference calls) with Monitor during the currency of the undertakings to discuss its progress in meeting the undertakings. These meetings shall take place once a month unless Monitor otherwise stipulates, 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:

- **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 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: 4 April 2016

MONITOR



Signed (Chair of relevant decision-making committee)

Dated: 5th April 2016

