

LICENSEE:

The Robert Jones and Agnes Hunt Orthopaedic Hospital NHS Foundation Trust (the Licensee)
Gobowen
Oswestry
Shropshire
SY10 7AG

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).

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. 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 conditions of its licence: FT4(5)(a), (b), (c), (e), (f); FT4(6) and FT4(7);

- 2.2. In particular:

- 2.2.1. A review by Deloitte LLP of the Licensee's RTT reporting processes dated July 2015 (the **First Review**) found that the Licensee misreported RTT performance from December 2013 to January 2015 due to inappropriate exclusions;
- 2.2.2. The Licensee has failed to meet the referral to treatment – patients on an incomplete pathway target (the **RTT target**) in each quarter from and including Q4 2013/14 to date;
- 2.2.3. The Licensee is currently preparing a recovery plan to address the issues identified in relation to RTT performance and pending a full validation of its waiting lists is unable to confirm that all of the issues regarding the recording and management of patients have been identified;
- 2.2.4. The findings of the review by Deloitte LLP into whistleblowing allegations in connection with RTT issues dated October 2015 (the **Second Review**) (which is available in the Licensee's published Board papers: <http://www.rjah.nhs.uk/RJAHNHS/files/9f/9f906844-68a4-4055-9987-956489fdd800.pdf>) highlighted governance concerns.

- 2.3. The matters set out above demonstrate shortcomings in the Licensee's corporate governance arrangements, including but not limited to a failure to establish and effectively implement systems and/or 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;
- 2.3.4. to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making; and
- 2.3.5. to identify and manage (including through forward plans), material risks to compliance with the Conditions of its Licence.

3. Need for action

- 3.1. 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.

4. Appropriateness of Undertakings

- 4.1. 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. 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 1.6 below.
- 1.2. The Licensee will, by 29 February 2015 undertake a full validation of its active RTT waiting list to provide assurance that it is complete and accurate.
- 1.3. The Licensee will develop an RTT Target action plan (the **RTT Recovery Plan**) by 29 February 2016. The RTT Recovery Plan will include:
 - 1.3.1 actions for the development of appropriate policies and procedures for the management of patient waiting lists which comply with the locally agreed access policies of the Licensee's commissioners;
 - 1.3.2 actions to address the findings and recommendations in the First Review;
 - 1.3.3 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;
 - 1.3.4 actions to ensure appropriate sub specialty level demand and capacity planning and that this capacity is made available to enable the Trust to meet the RTT target;
 - 1.3.5 a recovery trajectory to return to compliance with the RTT Target;

1.3.6 actions to address any findings from 1.2 above including but not limited to developing a strategy to address any long-waiters and overdue follow ups identified at an appropriate pace; and

1.3.7 milestones for the completion of 1.3.1 to 1.3.6 above.

1.4. Prior to submission to Monitor, the RTT Recovery Plan will be agreed with the NHS Interim Management and Support ("IMAS") team and reflect the recommendations arising from the IMAS visit to the Trust on 15 and 16 December, unless otherwise agreed with Monitor.

1.5. The Licensee will implement the RTT Recovery Plan in accordance with the timescales outlined in that plan, unless otherwise agreed with Monitor or, if Monitor specifies, demonstrate that it can implement the RTT Recovery Plan in accordance with the timescales in that plan. It will, if required by Monitor, obtain external assurance from a source and according to a scope and timing to be agreed with Monitor, that the RTT Recovery Plan has been implemented or, if applicable, that it can deliver the RTT Recovery Plan.

1.6. The Licensee will keep the RTT Recovery Plan under review including but not limited to demand and capacity planning on a quarterly basis. Should the Licensee need to update the RTT Recovery Plan to reflect material matters arising, the Licensee will agree this in advance with Monitor and resubmit the RTT Recovery Plan if required by Monitor.

2. Governance

2.1. The Licensee will, by a date to be agreed with Monitor, develop a plan (the **Governance Action Plan**) to address the concerns identified in the Second Review. The Licensee will, if required by Monitor and by a date to be agreed with Monitor, revise the Governance Action Plan in response to any comments made on it by Monitor.

2.2. The Licensee will keep the Governance Action Plan under review. Should the Licensee need to update the Governance Action Plan to reflect material matters arising, the Licensee will agree this in advance with Monitor and resubmit the Governance Action Plan if required by Monitor.

2.3. The Licensee will implement the Governance Action Plan in accordance with the timescales outlined in that plan, unless otherwise agreed with Monitor or, if Monitor specifies, demonstrate that it can implement, the Governance Action Plan in accordance with the timescales in that plan. It will, if required by Monitor, obtain external assurance from a source and according to a scope and timing to be agreed with Monitor, that the Governance Action Plan has been implemented or, if applicable, that it can deliver the Governance Action Plan.

3. Improvement Director

3.1 The Licensee will co-operate with the Improvement Director to be appointed by Monitor to oversee and support the Licensee in its delivery of the actions in undertakings 1 and 2, including taking all reasonable steps to promptly provide the Improvement Director with the information required to carry out their role.

4. General

- 4.1. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of:
 - 4.1.1. The RTT Recovery Plan; and
 - 4.1.2. The Governance Action 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 the plans;
 - 4.2.2. Obtain an understanding of any risks to the successful achievement of the plans and ensure appropriate mitigation of any such risks; and
 - 4.2.3. Hold individuals to account for the delivery of the relevant plans.

5. Reporting

- 5.1. The Licensee will provide regular reports to Monitor on its progress in meeting the undertakings set out above and will attend meetings or, if Monitor stipulates, conference calls, to discuss its progress in meeting those 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 UNDERTAKING 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)

Frank Collins, Chairman

Dated 26 January 2016

MONITOR



Signed (Chair of the Provider Regulation Executive)

Dated 27 January 2016

