

ENFORCEMENT UNDERTAKINGS

LICENSEE:

The Rotherham NHS Foundation Trust ("the Licensee")
Rotherham General Hospital
Moorgate Road
Oakwood
Rotherham
South Yorkshire
S60 2UD

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. Financial planning breaches

2.1.1. 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); FT4(5)(b); FT4(5)(d); FT4(5)(e); FT4(5)(f); FT4(5)(g); and CoS3(1).

2.1.2. In particular:

2.1.2.1. the Licensee had a Financial Risk Rating of 2 from Q1 2012/13 to Q3 2012/13;

2.1.2.2. the Licensee has an underlying deficit of c.£13 million in 2012/13; and

2.1.2.3. the Licensee has failed to deliver a sustained financial turnaround in line with its 2011 recovery plan

2.1.2.4. these breaches by the Licensee demonstrate a failure of 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 ensure compliance with the Licensee's duty to operate efficiently, economically and effectively.

2.1.3. Need for action

Monitor believes that the 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. Governance breaches

2.2.1. 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(2); FT4(3); FT4(4)(a); FT4(4)(b); FT4(4)(c); FT4(5)(a); FT4(5)(b); FT4(5)(c); FT4(5)(d); FT4(5)(e); FT4(5)(f); and FT4(5)(g).

2.2.2. In particular:

2.2.2.1. There are weaknesses in the Licensee's governance arrangements, as by the Licensee's Turnaround Director in January 2013, including a lack of effective committee structures, issues with lines of reporting and accountability, weaknesses in systems and processes, which the Board relies on in order to govern financial, operational and quality performance.

2.2.2.2. These breaches by the Licensee demonstrate a failure of governance arrangements.

2.2.3. Need for action

Monitor believes that the 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.

2.3. Breaches relating to Electronic Patients Records ("EPR")

2.3.1. 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)(c); FT4(5)(d); FT4(5)(e); FT4(5)(f); FT4(5)(g); FT4(6)(c); FT4(6)(d); and FT4(6)(f).

2.3.2. In particular:

2.3.2.1. There are concerns that the Licensee Board failed to implement an EPR system effectively, failed to effectively plan and deliver a large scale project and failed to effectively engage clinicians in using EPR.

2.3.2.2. There are concerns that the Licensee Board does not have full visibility of the remaining issues with EPR, does not know when they will be resolved or the cost of fixing these outstanding issues.

2.3.2.3. The Trust has not managed EPR implementation in an effective way and it is unclear whether the Trust has sufficient visibility over operational performance and quality issues, including incidents of patient harm.

2.3.2.4. These breaches by the Licensee demonstrate a failure of governance arrangements.

2.3.3. Need for action

Monitor believes that the 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.

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 at 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. Recovery Plan and Strategic Plan

1.1. Following the submission to Monitor of the Licensee's three year financial plan to return the Trust to at least FRR 2 in the first two years of the Recovery Plan and at least FRR 3 in the third year of the Recovery Plan ("the Recovery Plan") on 18 March 2013 the Licensee will obtain and submit to Monitor external assurance as to the effectiveness of the Recovery Plan from a source to be agreed with Monitor and according to a scope to be agreed with Monitor. Such external assurance will as a minimum:

1.1.1. Assess whether year one of the Recovery Plan is sufficiently detailed and comprehensive and that it contains specific and measureable actions that can be realistically delivered in the timescales set out in the Recovery Plan; and

1.1.2. Assess whether the CIPs supporting the Recovery Plan have been signed off by the Executive Medical Director and have been risk assessed to ensure that they do not adversely impact on the ability of the Licensee to comply with the conditions in its Licence.

1.2. The Licensee will provide to Monitor a copy of the draft and finalised reports in respect of the above external assurance within a week of receiving them and the final report will in any case be provided to Monitor no later than 31 May 2013.

1.3. The Licensee will by 30 June 2013 develop a plan to address any issues, findings, recommendations and associated actions in the above external review, such plan to be approved by the board of directors of the Licensee and provided to Monitor by 30 June 2013.

1.4. The Licensee will implement all of the actions in:

1.4.1 The Recovery Plan; and

1.4.2 The above plan in relation to the external review

in accordance with timescales specified in the Recovery Plan or plan in relation to the external review, as applicable.

1.5. The Licensee will by 30 September 2013 develop and submit to Monitor a three year strategic plan (the "Strategic Plan").

1.6. The Licensee will engage with and take into account the views of all relevant stakeholders including its commissioners in developing the Strategic Plan.

1.7. The Strategic Plan will, as a minimum:

1.7.1. Include clear milestones;

1.7.2. Return the Licensee to a position where it is:

1.7.2.1. forecasting delivery of a surplus for the three years starting with and including 2014/15;

1.7.2.2. is able to generate net positive cash flows from 1 April 2014; and

1.7.2.3. is able to pay its debts as they fall due without requesting funding from the Department of Health throughout the three year period covered by the Recovery Plan; and

1.7.3. ensure maintenance of compliance with the health care standards binding on the Licensee including but not restricted to standards specified by the Secretary of State, the CQC, the NHS Commissioning Board and statutory regulators of healthcare professionals.

1.7.4. Provide detailed CIP plans which are robust and supported by detailed delivery plans for the second and third years of the Recovery Plan.

1.8. The Licensee will by 30 October 2013 obtain and submit to Monitor external assurance as to the effectiveness of the Strategic Plan and in particular on the points specified in paragraph 1.7 above from a source to be agreed with Monitor and according to a scope to be agreed with Monitor.

1.9. The Licensee will implement all of the actions in the Strategic Plan and above external review in accordance with timescales specified in the Strategic Plan and above external review as applicable.

1.10. The Licensee will:

1.10.1. report to Monitor on the delivery of the Recovery Plan and Strategic Plan as required and in particular five working days before each monthly progress review meetings unless Monitor stipulates otherwise;

1.10.2. Submit 13 week and 26 week cash flow forecasts to Monitor on a weekly basis; and

1.10.3. The Licensee will report on a monthly basis progress in developing the Strategic Plan as detailed above.

1.11. The Licensee will take such additional steps as are necessary to ensure that it is able to return to FRR of at least 2 in the first two years of the Recovery Plan and at least FRR 3 in the third year of the Recovery Plan.

2. Governance Plan

2.1. The Licensee will implement all of the recommendations and any associated actions contained in the governance plan submitted to Monitor in March 2013 (the "Governance Plan") to revise the Licensee's Board governance structures and processes and address the issues with Board management and capability.

2.2. The Licensee will by 30 June 2013 obtain and submit to Monitor external assurance as to the implementation of the Governance Plan from a source to be agreed with Monitor and according to a scope to be agreed with Monitor. The draft and final external assurance reviews will be submitted to Monitor within a week following receipt in each case.

2.3. The Licensee will develop an action plan to address any issues, findings, recommendations and associated actions highlighted in the above external review such plan to be approved by the board of directors of the Licensee and provided to Monitor by 31 July 2013.

2.4. The Licensee will implement all of the actions in the Governance Plan and above plan regarding the external assurance in accordance with timescales specified in the Governance Plan or plan relating to external assurance as applicable.

2.5. The Licensee will by 30 April 2013 obtain:

2.5.1 additional independent Board development support; and

2.5.2 peer support for the Chair

in each case from a source to be agreed with Monitor and according to a scope to be agreed with Monitor.

- 2.6. The report in relation to the above independent Board development support will be produced and submitted to Monitor by 31 May 2013 and all recommendations and associated actions must be implemented within three months of the date of the report.
- 2.7. The Licensee will report to Monitor on the delivery of the Governance Plan and the matters specified in paragraph 2.5 above as required and in particular five working days before each monthly Progress review meetings unless Monitor stipulates otherwise.

3. EPR Plan

- 3.1. The Licensee will ensure that the problems with the Electronic Patient Records (EPR) system are rectified on a sustainable basis.
- 3.2. The Licensee will make all reasonable efforts to maintain the EPR Expert Development Lead, or an equivalently skilled person in post to assist the Licensee in ensuring that the problems with the Electronic Patient Records (EPR) system are rectified on a sustainable basis.
- 3.3. The Licensee will by 30 April 2013 carry out and submit to Monitor a diagnostic review of the EPR system which comprehensively addresses all of the problems with the EPR system.
- 3.4. The Licensee will by 15 June 2013 develop and submit to Monitor a plan ("the EPR Plan") to ensure that the problems with the EPR system are rectified on a sustainable basis and which addresses fully all of the issues, findings, recommendations and associated actions in the above diagnostic review.
- 3.5. The EPR Plan will include, as a minimum:
 - 3.5.1. Milestones, to be agreed with Monitor, to track delivery of the Licensee's progress in resolving the issues regarding the EPR system as identified in the diagnostic review;
 - 3.5.2. A change programme which includes as a minimum staff training and actions to ensure that the training is embedded such that all of the Licensee's staff can operate the EPR system as appropriate; and
 - 3.5.3. Actions to rectify the underlying issues with the EPR system such that it functions according to its specification and that there is a plan to effectively ensure its usage across the Licensee's organisation as appropriate.
- 3.6. The EPR Plan will be reviewed and approved by the Licensee's Board of directors by 31 May 2013 as being sufficient to deliver the outcome specified above, including an explanation as to the basis for the Board's assurance.

- 3.7. The Licensee will implement all of the actions in the EPR Plan in accordance with timescales specified in the EPR Plan.
- 3.8. The Licensee will report to Monitor on the delivery of the EPR Plan as required and in particular five working days before each monthly progress review meeting unless Monitor stipulates otherwise.
- 3.9. The Licensee will take such additional steps as are necessary to ensure that the problems with the Electronic Patient Records (EPR) system are rectified on a sustainable basis.

4. General

- 4.1. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of the Recovery Plan, the Strategic Plan, the Governance Plan, the EPR Plan and all other actions required above.
- 4.2. The Licensee shall attend meetings (or if Monitor stipulates conference calls) with Monitor during the currency of the undertakings detailed in this notice 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 HERE ARE WITHOUT PREJUDICE TO THE REQUIREMENT ON THE LICENSEE TO ENSURE THAT IT IS COMPLIANT WITH ALL THE CONDITIONS OF ITS LICENCE INCLUDING THOSE 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 WAS GIVEN AND/OR REVOCATION OF THE LICENCE UNDER SECTION 89 OF THE ACT.

WHERE MONITOR IS SATISFIED THAT THE LICENSEE HAS GIVEN INACCURATE, MISLEADING OR INCOMPLETE INFORMATION IN RELATION TO THE 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

Dated

Signed (Chair of Licensee)



[Name of Signatory]

PETER JOHN LEE

MONITOR 23 April 2013

Dated



Signed (Chair of relevant decision-making committee)