

ENFORCEMENT UNDERTAKINGS

LICENSEE:

South East Coast Ambulance Service NHS Foundation Trust
The Horseshoe
Bolters Lane
Banstead
SM7 2AS

DECISION

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, NHS Improvement has decided to accept from the Licensee the enforcement undertakings specified below, pursuant to the powers exercisable by Monitor under section 106 of the Health and Social Care Act 2012 (“the Act”). In this notice “NHS Improvement” means Monitor.

GROUNDINGS

1. Licence

The Licensee is the holder of a licence granted under section 87 of the Act.

2. Breaches

2.1. NHS Improvement 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(4)(a) - (c); FT4(5)(a)-(c) and (e)-(f); and FT4(6)(a)-(f).

2.2. In particular:

2.2.1. In May 2016 the Care Quality Commission (“CQC”) undertook a comprehensive inspection of the Licensee. The inspection resulted in the issuing of a warning notice on [10th June 2016] (“the warning notice”). The warning notice identified immediate concerns with the processes in place at the Licensee to ensure the service provided were consistently safe, effective and responsive to patient’s needs. The CQC published its final inspection reports on 29th September 2016 (“the CQC report”), which included the following findings:

- (a) the Licensee was not meeting the national performance targets for response times and was benchmarked as the worst performing trust nationally for answering 999 calls within 5 seconds;
- (b) policies and procedures had not been updated in a timely manner or line with national guidelines;
- (c) there was no tracking system for appraisals leading to inconsistencies in approach and there was no competency framework in place against which to assess staff;

- (d) there was a lack of Mental Capacity Act training leading to a variable understanding within the Licensee;
- (e) the processes for complaint response failed to meet expected targets, complaints did not fully acknowledge organisational responsibility and there was little evidence of learning from complaints across the whole of the Licensee;
- (f) organisational planning had not facilitated equal distribution of resources across the geographical area served;
- (g) a 'tethering' system resulted in some patients waiting longer than necessary for emergency attendances;
- (h) handover delays at emergency departments often significantly exceeded the 15 minute target and led to a major loss of produce ambulance capacity;
- (i) roles and accountability within the executive team lacked clarity, particularly regarding the respective roles of the three clinical directors;
- (j) the board had numerous interim post holders and the CQC saw evidence of inter-executive grievances;
- (k) although there was a comprehensive clinical strategy, there was no form of measurement to monitor the attainment of the strategy pledges by the board;
- (l) risk management was not structured in a way that allowed active identification and escalation to the board and risks managed at board level did not have robust and monitored actions plans; and
- (m) staff reported a culture of bullying and harassment.

2.2.2. These failures by the Licensee demonstrate a failure of governance arrangements, in particular but not limited to a failure by the Licensee to:

- (a) establish and implement:
 - (i) effective board and committee structures;
 - (ii) clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees; and
 - (iii) clear reporting lines and accountabilities throughout its organisation.
- (b) establish and implement systems and/or processes:
 - (i) to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
 - (ii) for timely and effective scrutiny and oversight by the Board of the Licensee's operations;
 - (iii) to ensure compliance with health care standards binding on the Licensee;
 - (iv) to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making;
 - (v) to identify and manage material risks to compliance with the conditions of its licence; and
 - (vi) to address matters relating to quality of care specified in FT4(6)(a) to (f).

2.3. Need for action

NHS Improvement believes that the action which the Licensee has undertaken to take pursuant to the undertaking recorded here 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, NHS Improvement has taken into account the matters set out in its Enforcement Guidance.

UNDERTAKINGS

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

1. Governance

- 1.1 The Licensee will, in a timely manner, take all reasonable steps to meet the applicable quality standards overseen by the CQC. This includes taking the actions outlined in paragraphs 1.2 to 1.6 below.
- 1.2 The Licensee will take immediate steps to address the patient safety concerns identified in the warning notice to the satisfaction of the CQC, and any further action necessary to ensure the warning notice is lifted as soon as reasonably practicable.
- 1.3 The Licensee will, within a timeframe to be agreed with NHS Improvement, submit to NHS Improvement a recovery plan (“recovery plan”) setting out the steps it will take to achieve the objective outlined in paragraph 1.1 above, including how it will address the issues and recommendations outlined in the CQC Report; and any risks and mitigations to its achievement.
- 1.4 The Licensee will periodically assess and, where necessary, revise its recovery plan to ensure it remains deliverable and sufficient to address the objective outlined in paragraph 1.1. Any amendments will be agreed with NHS Improvement in a timely manner.
- 1.5 The Licensee will deliver, or demonstrate that it can deliver, the recovery plan in accordance with the timescales outlined in the plan.
- 1.6 The Licensee will provide, at a date to be agreed with NHS Improvement, a report demonstrating how the board is assured that the objective in paragraph 1.1 has been met.
- 1.7 The Licensee will ensure that the delivery of the recovery plan and other measures to improve quality and operational performance do not compromise its overall financial position. The Licensee will keep the financial cost of its quality improvements under close review and will notify NHS Improvement as soon as practicable of any matters which are identified as potentially having a material impact the Licensee’s overall financial position.”

2. Improvement Director

- 2.1 The Licensee will co-operate and work with any Improvement Director(s) who may be appointed by NHS Improvement to oversee and provide independent assurance to NHS Improvement on the Licensee’s delivery of the recovery plan and improvement of quality of care the Licensee provides.

3. Buddy Trust and other partner organisations

- 3.1 The Licensee will co-operate and work with any partner organisations (this may include one or more “Buddy Trusts”) who may be appointed by NHS Improvement to:
 - 3.1.1 support and provide expertise to the Licensee; and

- 3.1.2 assist the Licensee with the delivery of the recovery plan and the improvement of the quality of care the Licensee provides.
- 3.2 The Licensee will work with any such partner organisation on such terms as may be specified by NHS Improvement.
4. General
- 4.1 The Licensee will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.
- 4.2 Such programme management and governance arrangements must enable the Board to:
- 4.2.1 obtain clear oversight over the progress in delivering the undertakings;
 - 4.2.2 obtain an understanding of the any risks to the successful achievement of the undertakings and ensure appropriate mitigation of any such risks; and
 - 4.2.3 hold individuals to account for the delivery of the undertakings.
- 4.3 The Licensee will provide regular reports to NHS Improvement on its progress in meeting the undertakings set out above and will attend meetings, or, if NHS Improvement stipulates, conference calls, as required, to discuss its progress in meeting those undertakings. These meetings will take place once a month unless NHS Improvement otherwise stipulates, at a time and place to be specified by NHS Improvement and with attendees specified by NHS Improvement.
- 4.4 The Licensee will provide NHS Improvement with the assurance relied on by its Board in relation to its progress in delivering these undertakings, upon request.
- 4.5 The Licensee will comply with any additional relevant reporting or information requests made by NHS Improvement.

THE UNDERTAKINGS SET OUT HERE ARE WITHOUT PREJUDICE TO THE UNDERTAKINGS DATED 22 OCTOBER 2015 AND THE REQUIREMENT ON THE LICENSEE TO ENSURE THAT IT IS COMPLIANT WITH ALL THE CONDITIONS OF ITS LICENCE, INCLUDING THE ADDITIONAL LICENCE CONDITION IMPOSED UNDER SECTION 111 OF THE ACT ON 23 OCTOBER 2015 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 NHS IMPROVEMENT. 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 NHS IMPORVEMENT IS SATISFIED THAT THE LICENSEE HAS GIVEN INACCURATE, MISLEADING OR INCOMPLETE INFORMATION IN RELATION TO AN UNDERTAKING: (i) NHS IMPROVEMENT MAY TREAT THE LICENSEE AS HAVING FAILED TO COMPLY WITH THE UNDERTAKING; AND (ii) IF NHS IMPROVEMENT DECIDES SO TO TREAT THE LICENSEE, NHS IMPROVEMENT MUST BY NOTICE REVOKE ANY COMPLIANCE CERTIFICATE GIVEN TO THE LICENSEE IN RESPECT OF COMPLIANCE WITH THE RELEVANT UNDERTAKING.

LICENSEE

Dated 24 November 2016

A handwritten signature in black ink, appearing to be 'M. J. ...', written on a light background.

Signed (Chair)

NHS IMPROVEMENT

Dated

Signed (Chair of Provider Regulation Committee)