

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, 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").

BACKGROUND

The following operating standards apply to calls received from the public by ambulance trusts:

- a) Red 1 (R1): This applies to presenting conditions which may be immediately life threatening. They should receive an emergency response within 8 minutes irrespective of location in 75% of cases presenting (3 out of 4 people). 95% should be reached within 19 minutes. This target is set nationally.
- b) Red 2 (R2): This applies to presenting conditions which may be life threatening but less time critical. They should receive an emergency response within 8 minutes irrespective of location in 75% of cases presenting (3 out of 4 people). 95% to be reached within 19 minutes. This target is set nationally.
- c) Green 2(G2): This applies to less serious incidents that still require a response. Response times are set locally by commissioners at 30 minutes.
- d) Green 4(G4): This applies to less serious incidents that still require a response. Responses are set locally by commissioners at 60 minutes.

GROUNDS

1. Licence

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

2. 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(2); FT4(4)(a) - (c); FT4(5)(b)-(c) and (e)-(f); and FT4(6)(b) and (d).

2.2. In particular:

2.2.1. The Licensee carried out a project to change standard operating procedures for calls made to 111 which were classified as R2 and G2 ("the Project"). The Project involved R2 and G2 calls to NHS 111 being sent to a queue to await a clinician to undertake a second assessment to check that an appropriate response time had been assigned. The Licensee set a time limit of 10 minutes to re-triage the R2 calls and 20

minutes to re-triage the G2 calls. The Licensee has accepted the following in relation to the Project:

- (a) the Licensee implemented a project that did not comply with nationally agreed operating standards;
- (b) key staff were not consulted during the design and implementation of the Project;
- (c) there are no minutes kept of any of the meetings of the Operational Strategic Delivery Group, the group from which the Project emerged;
- (d) Executives from the Licensee's Board were participants and key decision makers on the Operational Strategic Delivery Group ("OSDG") but the Group had no reporting lines into any of the recognised governance committees;
- (e) no risk assessments were carried out for the Project and it was never entered onto the Licensee's risk register before it went live despite the risks as the Project was a clear departure from national operating standards;
- (f) there was a lack of formal documentation about the project, including an absence of minutes of any of the meetings for the OSDG and no attendance records;
- (g) the review of clinical incidents had insufficient clinical input and key people within the departments were unaware of the Project;
- (h) neither the Licensee's Board nor the committees reporting to it had formal reports about the Project prior to it commencing; and
- (i) although the Licensee carried out its own internal investigation in relation to the Project, there were omissions in the investigation, for example, it did not fully consider how the events took place and how decisions were made (including who made them).

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

- (a) apply those principles, systems and standards of good corporate governance which reasonably would be regarded as appropriate for a supplier of health care services to the NHS.
- (b) 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.
- (c) establish and implement systems and/or processes:
 - (i) for timely and effective scrutiny and oversight by the Board of the Licensee's operations;
 - (ii) to ensure compliance with health care standards binding on the Licensee;

- (iii) to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making;
- (iv) to identify and manage material risks to compliance with the conditions of its licence; and
- (v) to address matters relating to quality of care specified in FT4(6)(b) and (d).

2.3. Need for action

Monitor 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, 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. Governance

- 1.1 The Licensee will by 16 November 2015 review and where necessary, revise the Red Three Remedial Action Plan ("the Plan") submitted to Monitor on 14 September 2015 to ensure it incorporates all actions and recommendations arising from relevant third party investigations and reports and internal reports. The Licensee shall agree with Monitor which investigations and reports are relevant for the purposes of this undertaking. The Licensee will implement, or demonstrate to Monitor that it can implement, the Plan in accordance with the timescales outlined in that Plan or such dates to be agreed with Monitor.
- 1.2 The Licensee will periodically assess the Plan to ensure that it remains deliverable and sufficient to address the issues raised in relevant third party investigations and reports and make any necessary amendments as agreed with Monitor.
- 1.3 The Licensee will commission, or cooperate with Monitor or a third party appointed by Monitor to commission, a forensic review (the "Forensic Review") to establish the circumstances surrounding, and decision making relating to, the Project, including board governance and accountabilities. The Forensic Review will be according to a scope and timeframe, and from a source, to be agreed with Monitor. The Licensee will implement or demonstrate that it can implement, any recommendations arising from the Forensic Review, in accordance with timescales to be agreed with Monitor.
- 1.4 The Licensee will commission, or cooperate with Monitor or a third party appointed by Monitor to commission, a review ("the Governance Review") of corporate and clinical governance, such review to be according to a scope and timeframe, and from a source,

to be agreed with Monitor. The Licensee will implement or demonstrate that it can implement, any recommendations arising from the Governance Review, in accordance with timescales to be agreed with Monitor.

- 1.5 The Licensee will undertake a review of the impact of the Project on patients (“the Impact Review”), such review to be overseen by an independent expert to be agreed with Monitor and to a timeframe to be agreed with Monitor. The scope of the Impact Review will be agreed with the independent expert. The Licensee will implement or demonstrate that it can implement, any recommendations arising from the Impact Review, in accordance with timescales to be agreed with Monitor.
- 1.6 If required by Monitor, the Licensee will commission an external review of the Licensee's delivery of the Plan and/or delivery of the recommendations arising from the Forensic Review and/or the Governance Review and/or the Impact Review, from a source and according to a scope and timing to be agreed with Monitor. The Licensee will implement any recommendations of the external review in accordance with timescales agreed with Monitor.
- 1.7 The Licensee will cooperate with Monitor, health sector stakeholders and any other external agencies or individuals appointed by Monitor or the Licensee to work with or support the Licensee to address breaches of its licence.

2 General

- 2.1 The Licensee will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.
- 2.2 Such programme management and governance arrangements must enable the Board to:
 - 2.2.1 obtain clear oversight over the progress in delivering the undertakings;
 - 2.2.2 obtain an understanding of the any risks to the successful achievement of the undertakings and ensure appropriate mitigation of any such risks; and
 - 2.2.3 hold individuals to account for the delivery of the undertakings.
- 2.3 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, as required, to discuss its progress in meeting those undertakings. These meetings will 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.
- 2.4 The Licensee will provide Monitor with the assurance relied on by its Board in relation to its progress in delivering these undertakings, upon request.
- 2.5 The Licensee will comply with any additional relevant reporting or information requests made 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 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 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 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

Date *22/10/15*


Signed (On behalf of the Licensee)

MONITOR

Dated



Signed (Chair of Provider Regulation Executive)

