

## ENFORCEMENT UNDERTAKINGS

### LICENSEE:

South Tees Hospitals NHS Foundation Trust ("the Licensee")  
The Murray Building  
The James Cook University Hospital  
Marton Road  
Middlesbrough  
TS4 3BW

### 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

##### Target 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), (c), (e) and (f); and FT4(6)(b).

2.2. In particular:

2.2.1. the Licensee has breached its C. difficile annual objective for 2013/14;

2.2.2 this breach demonstrates a failure of governance arrangements to establish and effectively implement systems or processes, in particular:

- (a) to ensure compliance with health care standards binding on the Licensee;
- (b) to identify and manage material risks to compliance with its licence conditions; and
- (c) to ensure that the Board's planning and decision-making processes take timely and appropriate account of quality of care considerations.

## Need for action

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

## Financial Breaches

- 2.4. 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), (d) and (f); CoS3(1) and (2)(a) and (c).

- 2.5. In particular:

### 2.5.1 the Licensee:

- (a) had an unplanned Continuity of Services Risk Rating (CoSRR) of 2 in Q3 and Q4 2013/14, as a result of a deterioration in its financial position the causes of which included a failure to deliver CIP in line with plan and increasing capacity to meet demand and address the 18 week RTT backlog;
- (b) is unable to demonstrate that it has financial plans in place to recover to a CoSRR of at least 3;
- (c) prepared a two year operational plan forecasting deficits of £34.9m in 2014/15 and £52.3m in 2015/16 with a Continuity of Services Risk Rating (CoSRR) of 1 forecast for every quarter in both financial years;
- (d) has failed to demonstrate that it has adequate plans to address its forecasted underlying deficit for 2014/15 and 2015/16; and
- (e) failed to demonstrate that it can remain solvent beyond December 2014, without interim revenue support from the Department of Health (the Trust forecasts needing £82.9m revenue support to remain solvent until March 2016);

- 2.5.2 these failures demonstrate a failure of financial governance arrangements and financial management to:

- (a) establish and effectively implement systems 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;
  - (iii) for effective financial decision-making, management and control; and
  - (iv) to identify and manage material risks to compliance with the conditions of the licence;
- (b) adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as:
  - (i) being suitable for a provider of the Commissioner Requested

Services provided by the Licensee; and

(ii) providing reasonable safeguards against the risk of the licensee being unable to carry on as a going concern;

- (c) have regard to such guidance as Monitor may issue from time to time; and
- (d) have regard to the desirability of the licensee's risk rating being not less than the level regarded by Monitor as acceptable under the risk its risk rating methodology.

Need for action

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

### Board Governance Breaches

2.7 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)(a); FT4(4); FT4(5); and FT4(7).

2.8 In particular:

2.8.1 the Licensee:

- (a) failed to establish sufficiently detailed and effective plans to address the RTT backlog on an aggregate level to deliver sustainable recovery in line with its original timetable (September 2013);
- (b) in seeking to address difficulties in delivering urgent care in 2012/13, adopted measures that caused it to breach its RTT admitted target of treating 90% of patients within 18 weeks of referral;
- (c) in attempting to recover both urgent care and admitted target performance, over spent against its 2013/14 financial plan;
- (d) failed to ensure that the action plan developed in response to a spike in cases in May 2013 was sufficient to reduce the incidence of C. difficile in 2013/14 to a level where it could achieve its full year objective;
- (e) failed to mitigate the financial risks identified in its 2013/14 annual plan which resulted in a significant unplanned deterioration in financial performance in Q3 and Q4 2013/14;
- (f) failed to make adequate arrangements to provide temporary cover for the absence of its Finance Director and other senior Finance Department staff in 2013/2014;
- (g) failed to obtain timely external support to assist it in addressing its financial difficulties in 2013/14 and 2014/15 planning;

- (h) prepared a two year operational plan forecasting deficits of £34.9m in 2014/15 and £52.3m in 2015/16, with a CoSRR of 1 forecast for every quarter in both financial years; and
- (i) failed to demonstrate that it can remain solvent beyond December 2014 without interim revenue support from the Department of Health (the Licensee forecasts needing £82.9m revenue support to remain solvent until March 2015);

2.8.2 these failures demonstrate a failure of board governance arrangements to:

- (a) apply principles, systems and standards of good corporate governance which would reasonably be regarded as appropriate for a supplier of health care services to the NHS;
- (b) have regard to such guidance on good corporate governance as issued by Monitor;
- (c) establish and implement effective board and committee structures;
- (d) establish clear reporting lines and accountabilities throughout the organisation;
- (e) establish and effectively implement systems and processes required by licence conditions FT4(5) and (6)(a) and (b); and
- (f) ensure the existence and effective operation of systems to ensure that it has in place proper personnel on the Board, reporting to the Board and within the rest of the Licensee's organisation who are sufficient in number and appropriately qualified to ensure compliance with the Licensee's licence conditions.

#### Need for Action

2.9 Monitor believes that the action which the Licensee has undertaken to take pursuant to these undertakings 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**

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

##### 1. C. difficile

1.1. The Licensee will develop a C. difficile action plan by a date to be agreed with Monitor. The purpose of the action plan is to assist the Licensee in returning to compliance with its C. difficile trajectory on a sustainable basis. The Licensee will

obtain external assurance, with an advisor to be agreed with Monitor, on the plan and action recommendations raised.

- 1.2. The action plan must include such metrics and Key Performance Indicators (KPIs) as are necessary to monitor implementation of the plan.
- 1.3. The Licensee will implement the C. difficile action plan and will, by a date to be agreed with Monitor, obtain assurance from an external adviser, the identity of whom is to be agreed with Monitor, that the action plan has been implemented in full. The scope of that external review will be agreed with Monitor.
- 1.4. The Licensee will report to Monitor on implementation of the C. difficile action plan on a monthly basis or at such other times as Monitor may reasonably require.

## 2. Financial Sustainability

- 2.1. The Licensee will, by a date to be agreed with Monitor, develop and submit to Monitor a financial recovery plan that returns the Trust to a sustainable COSRR 3 position within 3 years while maintaining acceptable levels of clinical performance and clinical standards in line with the terms of its license. This plan should include an analysis of the causes of the deterioration in financial performance in 2013/14 and steps to be taken to address this deterioration.
- 2.2. The Licensee will implement the actions and deliver the corresponding financial outcomes in the financial recovery plan within the timescales set out in it, unless otherwise agreed with Monitor.
- 2.3. The Licensee will, by a date to be agreed with Monitor and on terms to be agreed with Monitor, appoint a suitable Transformation Director to support the Licensee in its delivery of the actions in 2.1 and 2.2 above.
- 2.4. The Licensee will report to Monitor on the implementation of the financial recovery plan on a monthly basis or at such other times as Monitor may reasonably require.

## 3. Board Governance

- 3.1. The Licensee will, by a date to be agreed with Monitor, commission a board governance and leadership review from an external adviser, the identity of whom is to be agreed with Monitor. That review will focus on board leadership, effectiveness, capacity and capability. The review will (amongst other things) identify the governance failings that have led to the financial and operational failures. The scope of the review will be agreed with Monitor.
- 3.2. The board governance and leadership review must be completed by a date to be agreed with Monitor.
- 3.3. The Licensee will develop a board governance and leadership action plan to implement all of the recommendations. That plan is to be finalised and agreed with the external adviser and with Monitor within one month of completion of the board governance and leadership review.
- 3.4. The Licensee will implement all of the recommendations and associated actions in the board governance and leadership review, in accordance with such timescales specified in the review, unless otherwise agreed with Monitor.
- 3.5. By a date to be agreed with Monitor the licensee will obtain external assurance, from a source and of a scope to be agreed with Monitor, that it has implemented the recommendations of the board governance and leadership action plan.

3.6. The Licensee will report to Monitor on implementation of the board governance and leadership action plan on a monthly basis or at such other times as Monitor may reasonably require.

#### 4. General

The Licensee will attend meetings or, if Monitor stipulates, conference calls, 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 stipulates otherwise, 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 ANY 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 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**



Professor Tricia Hart  
**Signed (Chief Executive)**

**Dated: 02.07.2014**

MONITOR

A handwritten signature in black ink, appearing to be 'D. Smith' or similar, written in a cursive style.

Signed (Chair of the Provider Regulation Executive)

Dated: 2<sup>nd</sup> July, 2014