

## **NOTICE OF IMPOSITION OF ADDITIONAL LICENCE CONDITION**

### **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, taking into account representations by the Licensee and having regard to its Enforcement Guidance, Monitor has decided to impose the additional licence condition specified below pursuant to its powers under section 111 of the Health and Social Care Act 2012 ("the Act").

### **THE LICENCE IS AMENDED AS FOLLOWS:**

After Condition FT4, insert:

#### **"Additional Licence Condition 1 – Further governance requirements**

1. The Licensee must ensure that it has in place sufficient and effective Board, management and clinical leadership capacity and capability, as well as appropriate governance systems and/or processes, to enable it to–
  - a. address the issues specified in paragraph 2 effectively; and
  - b. comply with any enforcement undertakings accepted by Monitor under section 106 of the 2012 Act in connection with those issues.
2. The issues referred to in paragraph 1 are issues relating to the Trust's governance or operations, including any issues identified in any external review of its governance or financial governance, which have caused or contributed to, or are causing or contributing to, or which may cause or contribute to breaches, or the risk of breach, of the conditions of the licence.
3. For the purposes of paragraph 1, an issue is addressed effectively only if it is addressed by the time required by any enforcement undertaking, including any time specified by any person appointed to conduct a Board governance and leadership review."

### **ANTICIPATED EFFECT OF THE ADDITIONAL CONDITION:**

Monitor anticipates that the effect of imposing the additional condition would be as set out at paragraph 3.6 (need for action) below.

**INCIDENTAL OR CONSEQUENTIAL MODIFICATIONS REQUIRED AS A RESULT OF THE IMPOSITION OF THE ADDITIONAL CONDITION:**

No incidental or consequential modifications are required to the Licensee's licence.

**GROUNDS**

1. Licence

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

2. Power to impose additional licence conditions

Monitor is satisfied that the governance of the Licensee is such that the Licensee will fail to comply with the one or more of the following conditions of the Licensee's licence: FT4(2); FT4(3)(a); FT4(4); FT4(5)(a) and (c) to (f); FT4(6)(a) and (b); FT4(7); CoS3(1) and (2)(a) and (c).

3. Need for action

3.1 The Licensee incurred 57 cases of C. difficile in 2013/14. This was a breach of the Licensee's annual objective (39 cases) and higher than the total number of cases incurred in 2012/13. Despite obtaining two external reviews in December 2013, there was no reduction in run rate in Q4 2013/14 sufficient for the Trust to achieve its full year objective.

3.2 The Licensee 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. During this period the Trust's financial performance deteriorated as outlined in paragraph 3.3 below.

3.3 The Licensee had an unplanned Continuity of Services Risk Rating ("CoSRR") of 2 in Q3 and Q4 2013/14. The Trust's Board has not put in place in a timely manner, a sufficiently realistic or robust financial plan to recover to CoSRR 3 in 2014/15.

3.4 The Licensee has a Cost Improvement Plan ("CIP") forecast of 2.2% of operating expenditure in 2014/15 and 2.1% in 2015/16. APR planning guidance suggests that the efficiency challenge is 4% for 2014/15 and 4.5% in 2015/16.

3.5 In the light of these matters, and the other available evidence, Monitor is satisfied that the Board is failing to secure compliance with the Licensee's licence conditions and failing properly to take steps to reduce the risk of breaches of those conditions. In these circumstances, Monitor is satisfied that the governance of the Licensee is such that the Licensee is failing and will fail to comply with the conditions of its licence.

3.6 Monitor considers that the imposition of the condition specified above is appropriate for the purpose of reducing the risk of non-compliance by the Licensee with the conditions of its licence.

4. Appropriateness of Imposition of Additional Licence Condition

In considering the appropriateness of imposing the additional condition in this case, Monitor has taken into account the matters set out in its Enforcement Guidance.

**THE REQUIREMENTS SET OUT IN THIS NOTICE ARE WITHOUT PREJUDICE TO:**

- (i) **THE REQUIREMENT ON THE LICENSEE TO ENSURE THAT IT IS COMPLIANT WITH ALL THE OTHER CONDITIONS OF ITS LICENCE,**
- (ii) **ANY DISCRETIONARY REQUIREMENTS IMPOSED ON THE LICENSEE UNDER SECTION 105 OF THE ACT,**
- (iii) **ANY ENFORCEMENT UNDERTAKINGS ACCEPTED BY MONITOR FROM THE LICENSEE UNDER SECTION 106 OF THE ACT, AND**
- (iv) **REVOCAION OF THE LICENSEE'S LICENCE UNDER SECTION 89 OF THE ACT.**

**ANY FAILURE TO COMPLY WITH THE PROPOSED ADDITIONAL LICENCE CONDITION WOULD RENDER THE LICENSEE LIABLE TO FURTHER ENFORCEMENT ACTION BY MONITOR. THIS COULD INCLUDE REQUIRING THE LICENSEE TO:**

- (i) **REMOVE ONE OR MORE OF THE DIRECTORS OR MEMBERS OF THE COUNCIL OF GOVERNORS AND APPOINT INTERIM DIRECTORS OR MEMBERS OF THE COUNCIL;**
- (ii) **SUSPEND ONE OR MORE DIRECTORS OR MEMBERS OF THE COUNCIL OF GOVERNORS FROM OFFICE FOR A SPECIFIED PERIOD;**
- (iii) **DISQUALIFY ONE OR MORE DIRECTORS OR MEMBERS OF THE COUNCIL OF GOVERNORS FROM HOLDING OFFICE FOR A SPECIFIED PERIOD.**

**MONITOR**

Dated *2<sup>nd</sup> July* 2014

Signed



David Bennett  
Chair of the Provider Regulation Executive