

ENFORCEMENT UNDERTAKINGS

LICENSEE:

Warrington and Halton Hospitals NHS Foundation Trust ("the Licensee")
Warrington Hospital
Lovely Lane
Warrington
WA5 1QG

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.

Breaches

2. Financial and Governance 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: CoS3(1), CoS3(2)(c), FT4(5)(a), (b), (d), (e) and (f).

2.2. In particular:

2.2.1. The Licensee delivered a deficit of £5.9 million (pre impairments and transfers) at the end of 2014/15 in line with a reforecast plan submitted to Monitor on 19 December 2014. This reforecast plan included a reduction in the Licensee's combined Cost Improvement Plan (CIP) and Revenue Generation target from £11.9 million to £8.1 million, which included an underlying reduction in the CIP element from £11.1 million to £5.4 million.

2.2.2. A KPMG report, independently commissioned by the Licensee, to review the Licensee's financial performance, dated 9 June 2015, identified, amongst others, historic and current shortcomings in the Licensee's delivery of its CIP programme, including a lack of detailed planning, and a lack of effective central programme management office governance, which is contributing to the Licensee's overall deficit.

2.2.3. The Licensee forecasts that it will end 2015/16 with a deficit of £15.0 million and an underlying Continuity of Services Rating (CoSR) of 1 (once the impact of the accounting treatment applied to the external funding support included within the Licensee's 2015/16 financial plan is removed from the CoSR calculation).

2.2.4. The Licensee does not yet have a recovery plan to return to a CoSR3 or greater, and a risk remains around whether the Licensee has now embedded the required internal capacity to develop and deliver a recovery plan.

2.3. These matters demonstrate failings in corporate governance and financial management, in particular but not limited to a failure by the Licensee:

2.3.1 to adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern; and

2.3.2 to establish and effectively implement systems and/or processes:

2.3.2.1 to ensure compliance with the Licensee's duty to operate efficiently, economically, and effectively;

2.3.2.2 for effective financial decision-making, management, and control (including but not restricted to appropriate systems and/or processes to ensure the Licensee's ability to continue as a going concern); and

2.3.2.3 to identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the conditions of its Licence.

2.4. Need for action

Monitor believes that the action which the Licensee has undertaken to take pursuant to the undertakings recorded here will 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

1. Sustainability

- 1.1 The Licensee will take all reasonable steps to deliver its services on a clinically, operationally and financially sustainable basis, including, but not limited to, the actions below.

2. Turnaround Plan

- 2.1 The Licensee will develop, agree with Monitor and either deliver or, if Monitor so specifies, demonstrate to Monitor that it can deliver a short-term turnaround plan covering the period to 31 March 2017 ("the Turnaround Plan") comprising:

2.1.1 An action plan for 2015/16, including:

2.1.1.1 all reasonable actions necessary to mitigate the downside risks and to realise the upsides in the 2015/16 Operational Plan submitted to Monitor on 14 May 2015; and

2.1.1.2 any additional financial mitigations that can be implemented to improve its in-year financial position beyond the position submitted in the 2015/16 Operational Plan. Monitor may specify an extent or benchmark that the Licensee will meet in relation to this if Monitor considers appropriate; and

2.1.2 A plan for 2016/17 with all actions that are reasonably possible to minimise the deficit and in addition to seek to move to a break-even position. The Licensee will notify Monitor of its proposed actions against this commitment by 30 November 2015, or such other date as may be agreed with Monitor.

- 2.2 The Licensee will notify Monitor of its proposed actions and mitigations against the commitments in paragraphs 2.1.1.1 and 2.1.1.2 by 7 September 2015, or such other date as may be agreed with Monitor. Monitor may also request that the Licensee submits a revised 2015/16 Operational Plan if Monitor considers it appropriate in light of those actions and mitigations.

3. Longer term Strategic Plan

- 3.1 The Licensee will develop, agree with Monitor and either deliver or, if Monitor so specifies, demonstrate to Monitor that it can deliver a longer term strategy and implementation plan based on a robust sustainability assessment (together termed "the Strategic Plan") to be submitted to Monitor by 31 January 2016 or

such other date as may be agreed with Monitor. The purpose of the Strategic Plan will be to determine an appropriate strategy to move to at least a break-even position, whilst remaining clinically and operationally sustainable over that longer term, and the steps and actions required to implement that strategy.

4. Other commitments relating to the Turnaround Plan and Strategic Plan

- 4.1** If requested by Monitor, the Licensee will obtain assurance that the Turnaround Plan and the Strategic Plan and their delivery will enable it to comply with paragraph 1.1. The source, scope and timing of that assurance will be agreed with Monitor, and the assurance will be provided to Monitor if Monitor so requests.
- 4.2** The Licensee will modify the plans detailed in paragraphs 2.1 and 3.1 if needed following input from Monitor after it has received and considered the plans, such input from Monitor to be provided before and/or after the commissioning and receipt of the assurance specified in paragraph 4.1.
- 4.3** In relation to the Turnaround Plan and the Strategic Plan, the Licensee will consult with its commissioners and will ensure that the plans reflect appropriately the views of its commissioners.
- 4.4** The Licensee will provide to Monitor any and all reports commissioned from advisors in relation to the Turnaround Plan and Strategic Plan.
- 4.5** The Licensee will conduct reviews of its capacity and capability to enable delivery of each element of the Turnaround Plan, and the Strategic Plan. These reviews will consider capacity and capability at the appropriate levels of the Licensee, as agreed with Monitor. The Licensee will provide Monitor with reports of its findings from those reviews in line with the deadlines mentioned in paragraphs 2.1, 2.2 and 3.1. Following discussions with Monitor regarding the reports, the Licensee will make any changes required to its capacity or capability to enable delivery of each element of the Turnaround Plan and the Strategic Plan.
- 4.6** The Licensee will implement sufficient programme management and governance arrangements to enable delivery of the Turnaround Plan and the Strategic Plan. Such programme management and governance arrangements will enable the board to:
 - 4.6.1** obtain a clear oversight over the progress in delivery of the Turnaround Plan and the Strategic Plan;

- 4.6.2 obtain an understanding of any risks to the successful achievement of the Turnaround Plan and the Strategic Plan and ensure appropriate mitigation of any such risks; and
- 4.6.3 hold individuals to account for the delivery of the Turnaround Plan and the Strategic Plan.
- 4.7 The Licensee will keep the Turnaround Plan and the Strategic Plan and their delivery under review. Where matters are identified which materially affect the Licensee's ability to deliver the Turnaround Plan and/or the Strategic Plan, whether identified by the Licensee or another party, the Licensee will notify Monitor as soon as practicable and update and resubmit the Turnaround Plan and/or the Strategic Plan (as appropriate) within a timeframe to be agreed with Monitor.
- 4.8 The Licensee will develop and agree with Monitor Key Performance Indicators ("KPIs") to assess performance against the Turnaround Plan and the Strategic Plan. Monitor may specify an extent or benchmark that the Licensee will meet in relation to those KPIs if Monitor considers appropriate.

5. Distressed Funding

- 5.1 Where interim support financing or planned term support financing is provided by the Secretary of State for Health to the Licensee pursuant to section 40 of the NHS Act 2006, the Licensee will comply with any terms and conditions which attach to the financing.
- 5.2 The Licensee will comply with any reporting requests made by Monitor in relation to any financing provided or to be provided to the Licensee by the Secretary of State for Health pursuant to section 40 of the NHS Act 2006.

6. Spending Approvals

- 6.1 The Licensee will comply with any spending approvals processes that are deemed necessary by Monitor.

7. Reporting

- 7.1 The Licensee will provide regular reports to Monitor on its progress in meeting the undertakings set out above, including reporting against the KPIs agreed pursuant to paragraph 4.8 and will attend meetings, or, if Monitor stipulates, conference calls, as required, 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 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 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

Dated 10th August 2015.



Signed (Chair or Chief Executive of Licensee)

MELANY L. PICKUP
Name of Signatory

MONITOR

Dated 12th August 2015.



Signed (Chair of the Provider Regulation Executive)

DAVID BENNETT
Name of Signatory