

FINAL NOTICE: DISCRETIONARY REQUIREMENTS

LICENSEE:

Colchester Hospital University NHS Foundation Trust ('the Licensee')
Trust Headquarters
Turner Road
Colchester
Essex
CO4 5JL

DECISION

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, Monitor has imposed the discretionary requirements specified below upon the Licensee pursuant to its powers under section 105 of the Health and Social Care Act 2012 ("the Act").

ANTICIPATED EFFECT OF DECISION

Monitor anticipates that the effect of imposing the discretionary requirement(s) will be as set out below under the heading(s) 'Need for Action' in the section below headed 'Grounds'.

GROUND(S)

1. Licence

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

2. Power to impose discretionary requirements

2.1. Governance breaches relating to cancer services

2.1.1. Monitor is satisfied 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(5)(c) and (f); FT4(6)(c), (d), (e) and (f); FT4(7).

2.1.2. In particular:

2.1.2.1. An inspection of cancer services by the CQC in August and September 2013 resulted in the CQC finding concerns with the Trust's compliance with Outcomes 4 (care and welfare of people who use services, Outcome 16 (assessing and monitoring the quality of service provision) and Outcome 21 (records). The CQC highlighted a major impact to patients across all three areas.

2.1.2.2. These breaches by the Licensee demonstrate a failure of governance arrangements in particular but not limited to a failure by the Licensee to ensure appropriate systems and standards of governance, adequate oversight by the Board and establishment and implementation of associated governance systems and processes including those relating to quality and to ensure appropriate and sufficient capacity.

2.1.3. Need for action

Monitor considers that the imposition of the compliance requirements set out below will secure that the breaches in question do not continue or recur.

2.2 Governance breaches relating to Board effectiveness and governance

2.2.1 Monitor is satisfied 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(5)(b),(c),(e) and (f); FT4(6)(a)-(f); FT4(7).

2.2.2 In particular:

2.2.2.1 An inspection of cancer services by the CQC in August and September 2013 resulted in the CQC finding concerns with the Trust's compliance with Outcomes 4 (care and welfare of people who use services, Outcome 16 (assessing and monitoring the quality of service provision) and Outcome 21 (records). The CQC highlighted a major impact to patients across all three areas.

2.2.2.2 These breaches by the Licensee demonstrate a failure of governance arrangements in particular but not limited to a failure by the Licensee to ensure appropriate systems and standards of governance, adequate oversight by the Board and establishment and implementation of associated governance systems and processes including those relating to quality and to ensure appropriate and sufficient capacity.

2.2.3 Need for action

Monitor considers that the imposition of the compliance requirements set out below will secure that the breaches in question do not continue or recur.

3. Appropriateness of Discretionary Requirements

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

DISCRETIONARY REQUIREMENTS

Monitor has decided to impose the following compliance requirement(s) pursuant to section 105 of the Act:

1. Governance breaches relating to cancer services

- 1.1. By 30 November 2013, the Licensee shall develop a cancer services action plan (the Plan) to address the concerns identified by the CQC in their inspection report published on 5 November 2013 and recommendations that arise from the Department of Health's Cancer Intensive Support Team's review of the cancer pathway. By a date to be agreed with Monitor, the Plan must have been assessed by members of the 'Incident Management Team' (i.e. Monitor, CQC, NHS England, North East Essex Clinical Commissioning Group) as being appropriate to address all concerns associated with the cancer pathway.
- 1.2. The Licensee shall implement the Plan in accordance with timescales set out in the Plan.
- 1.3. The Licensee shall obtain external assurance on the implementation of the Plan by commissioning a follow up review from a source to be agreed with Monitor and according to a scope to be agreed with Monitor. This follow up review is to report its findings to the Trust's Board and Monitor by a date to be agreed with Monitor.
- 1.4. The Licensee shall cooperate with a partner organisation/s nominated by Monitor to provide the Trust with support and expertise in delivering improvements to the cancer pathway for such period of time as Monitor may direct.
- 1.5. From 13 December 2013, the Licensee shall compile and publish reports of its progress against delivering the agreed actions using a format prescribed by Monitor. This report must be compiled monthly until the actions are delivered or for such shorter period of time as Monitor may direct and must be signed off by the Improvement Director appointed by Monitor.
- 1.6. By a date to be agreed with Monitor, the Licensee shall appoint an appropriately qualified person to lead the transformation of the cancer pathway.
- 1.7. The Licensee shall take steps to strengthen support for the Medical and Nursing Directors by ensuring that there is sufficient deputy support to cover the portfolio responsibilities of the Medical and Nursing Directors. This must also include a review of portfolios, to be completed by a date to be agreed by Monitor, to ensure that the Medical and Nursing Directors are focussed on responsibilities most appropriate to their roles.

2. Governance Breaches with regards to Board effectiveness and governance

- 2.1. By 30 November 2013, the Licensee shall commission an external review to investigate the CQC's concerns identified in their inspection report published on 5 November 2013 about

the actions taken by senior staff in response to whistleblowing concerns raised about the cancer pathway. The Trust must take appropriate action where staff have not acted appropriately or in accordance with policies and procedures in accordance with timescales to be agreed with Monitor.

- 2.2. The Licensee shall undertake a full review, with independent oversight, of the actions of staff within the cancer unit, to determine whether staff have acted inappropriately and whether disciplinary action is warranted in accordance with timescales agreed with Monitor and the Police. The scope of the review will consider the issues raised by the CQC in their inspection report published on 5 November 2013.
- 2.3. The Licensee shall commission an independent review and assessment of risk management arrangements at the Trust. The terms of reference for the review must be agreed with Monitor by 30 November 2013, and a final report provided to Monitor as a joint recipient of the report by 28 February 2014.
- 2.4. The Licensee shall obtain external assurance on the progress made in implementing actions and improving risk management arrangements at the Trust by 30 April 2014.

3. Programme management and governance arrangements

- 3.1. The Licensee shall cooperate with an Improvement Director appointed by Monitor to oversee the Trust's delivery of the Discretionary Requirements set out in this notice.
- 3.2. The Licensee must implement programme management and governance arrangements to enable the delivery of all plans referred to in this notice. Such arrangements must enable the Board to:
 - 3.2.1. obtain a clear oversight over the progress in delivering the plans;
 - 3.2.2. obtain an understanding of any risks to the successful achievement of the plans;
and
 - 3.2.3. hold individuals to account for delivery of its actions.

4. Reporting

- 4.1. The Licensee must report to Monitor on a monthly basis or otherwise as required by Monitor in respect of the delivery of plans referred to in this notice.
- 4.2. The Licensee must report by exception, in respect of any deviation from the actions and associated timeframes for delivery of the plans referred to in this notice on a monthly basis.

5. Meetings

5.1. The Licensee shall attend meetings (or if Monitor stipulates conference calls) with Monitor during the currency of any of the compliance requirements detailed in this notice to discuss its progress in meeting these compliance requirements. These meetings shall take place once a month unless Monitor otherwise stipulates at a time and place to be specified by Monitor and with the attendees specified by Monitor.

THE REQUIREMENTS IN THIS NOTICE ARE WITHOUT PREJUDICE TO THE REQUIREMENT ON THE LICENSEE TO ENSURE THAT IT IS COMPLIANT WITH ALL THE CONDITIONS OF ITS LICENCE INCLUDING THOSE RELATING TO:

- **COMPLIANCE WITH THE HEALTH CARE STANDARDS BINDING ON THE LICENSEE; AND**
- **COMPLIANCE WITH ALL REQUIREMENTS CONCERNING QUALITY OF CARE.**

MONITOR MAY, WHERE IT CONSIDERS APPROPRIATE, ACCEPT UNDERTAKINGS UNDER SECTION 106 OF THE ACT IN LIEU OF OR AS WELL AS IMPOSING DISCRETIONARY REQUIREMENTS UNDER SECTION 105. DETAILS OF THE BASIS FOR ACCEPTING UNDERTAKINGS AND THE CONSEQUENCE OF ACCEPTING UNDERTAKINGS ARE SET OUT IN SECTION 106.

ANY FAILURE TO COMPLY WITH REQUIREMENTS UNDER SECTION 105 OF THE ACT WILL RENDER THE LICENSEE LIABLE TO FURTHER FORMAL ACTION BY MONITOR. THIS COULD INCLUDE THE IMPOSITION OF A NON-COMPLIANCE PENALTY PURSUANT TO SECTION 105 AND SCHEDULE 11 OF THE ACT AND/OR REVOCATION OF THE LICENCE UNDER SECTION 89 OF THE ACT

THE LICENSEE MAY APPEAL A DECISION UNDER SECTION 105 OF THE ACT TO THE FIRST-TIER TRIBUNAL ON THE GROUNDS THAT A) THE DECISION IS BASED ON AN ERROR OF FACT; B) THE DECISION IS WRONG IN LAW; C) THE NATURE OF ANY COMPLIANCE REQUIREMENT IS UNREASONABLE OR D) THAT THE DECISION IS UNREASONABLE FOR ANY OTHER REASON.

MONITOR



Signed (Chair of relevant decision-making committee)

Dated: 19/11/2013