

NOTICE OF REQUIREMENT TO APPOINT INTERIM CHAIR AND INTERIM CHIEF EXECUTIVE

LICENSEE:

Medway NHS Foundation Trust ("the Licensee")
Medway Maritime Hospital
Windmill Road
Gillingham
Kent
ME7 5NY

DECISION:

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, Monitor has decided to require the Licensee to appoint an interim chair and an interim chief executive as specified below, pursuant to its powers under section 111(5) of the Health and Social Care Act 2012 ("the Act").

REQUIREMENTS:

The Licensee must appoint–

- (a) Christopher Langley as the interim chair of the Licensee, with effect from 11 February 2014, and on such terms of appointment as approved by Monitor; and
- (b) Nigel Beverley as the interim chief executive of the Licensee, with effect 11 February 2014 and on such terms and conditions as approved by Monitor.

GROUND:

1. Licence

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

2. Power to require appointment of interim chair

Enforcement action to date

- 2.1 Monitor accepted enforcement undertakings from the Licensee under section 106 of the Act on 23 April 2013 and 14 August 2013. Monitor imposed discretionary requirements and an additional licence condition ("the additional condition") on the Licensee under sections 105 and 111 of the Act on 22 November 2013.
- 2.2 Paragraph 1 of the additional condition requires the Licensee to ensure that it has in place sufficient Board, management and clinical leadership capacity and capability, as well as appropriate governance systems and processes, to enable it to address the issues specified in paragraph 2 of the condition and comply with any discretionary requirements and enforcement undertakings in connection with those issues.

Quality Governance

- 2.3 The independent Quality Governance Review commissioned pursuant to paragraph 2 of the enforcement undertakings of August 2013 has identified a number of concerns. In

particular–

- (a) the leadership brought by the Board needs strengthening;
- (b) formal committees in the governance system are not as effective as they need to be;
- (c) there is a lack of clear accountability and reporting lines between the Board and Directorates;
- (d) analysis of information needs to be improved and the Board needs to assure itself of the robustness of information.

The Review also assessed the Licensee's overall score against Monitor's Quality Governance Framework as being 8.0.

Accident and Emergency ("A&E") and quality of care

2.4 Paragraph 1.2 of the discretionary requirements of November 2013 requires the Licensee to take all appropriate action to ensure that it (i) can demonstrate an improved trajectory towards the A&E target in Q3 of 2013/14, (ii) achieves the A&E target in Q4 of 2013/14 and (iii) can achieve the target sustainably from April 2014. While overall performance in Q3 of 2013/14 was an improvement on Q2 and Q1, the target has not been met on a weekly basis since 10 November and has significantly deteriorated in last week of December and first week in January.

2.5 On 31 December 2013 the Care Quality Commission ("CQC") carried out an inspection of the Licensee's Emergency Department. The inspection report identified failures to meet 2 essential standards (cleanliness and infection control; and care and welfare of people who use services), both of which were assessed to have a major impact on users. The CQC assessed that care and treatment in the department could not be considered as safe or caring, and that the overall department was not well-led. The CQC issued 2 draft warning notices to the Licensee on 15 January 2014.

Financial position

2.6 Paragraphs 2.1 and 2.3 of the enforcement undertakings of April 2013 require the Licensee to deliver a Financial Plan which evidences a sustainable recovery to and maintenance of a Financial Risk Rating of at least 3 from Q1 2013/14.

2.7 As of 17 January 2014, the Licensee's financial position, including its full year forecast deficit and year end closing cash shortfall, was such that the Licensee had a year to date Continuity of Service Risk Rating (CoSRR) of 2 and a forecast final year CoSRR of 1. No formal recovery plan is yet in place.

Chair and chief executive

2.8 The chair of the Licensee, Denise Harker, and the chief executive, Mark Devlin, are both resigning from their positions with the Licensee. Permanent replacements have not yet been appointed or selected.

Breach of the additional condition and need for action

2.9 These matters demonstrate that the Licensee does not have in place sufficient and effective Board, management and leadership capacity and capability as required by the additional condition. Monitor is satisfied that the Licensee is breaching that condition.

2.10 Monitor considers that in light of this breach and having regard to the requirements of the Licensee's enforcement undertakings and discretionary requirements ("enforcement requirements"), and the issues identified in the additional condition, there is an urgent need to appoint both an interim chair and an interim chief executive.

2.11 Monitor also considers that the persons appointed as interim chair and interim chief executive must be individuals with the skills and experience necessary to ensure that the Licensee complies with those enforcement requirements, addresses those issues and takes the steps appropriate to secure compliance with the Licensee's licence.

3. Appropriateness of Requirement

In considering the appropriateness of the requirements imposed in this case, Monitor has taken into account its Enforcement Guidance.

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

- (i) THE REQUIREMENTS OF THE ADDITIONAL LICENCE CONDITION;
- (ii) THE REQUIREMENTS OF ANY DISCRETIONARY REQUIREMENT OR ENFORCEMENT UNDERTAKING IMPOSED OR ACCEPTED BY MONITOR;
- (iii) ANY ACTION WHICH MONITOR MAY CONSIDER APPROPRIATE IN RESPONSE TO A FURTHER BREACH OF THE ADDITIONAL LICENCE CONDITION; AND
- (iv) THE REQUIREMENT ON THE LICENSEE TO ENSURE THAT IT IS COMPLIANT WITH THE OTHER 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.

IF THE LICENSEE OR ANY OTHER PERSON FAILS TO COMPLY WITH THIS NOTICE, MONITOR WOULD BE ABLE TO DO ONE OR MORE OF THE THINGS WHICH IT COULD REQUIRE THE LICENSEE TO DO UNDER SECTION 111(5) OF THE ACT. THIS COULD INCLUDE APPOINTING THE INTERIM CHAIR OR INTERIM CHIEF EXECUTIVE, OR REMOVING ONE OR MORE OF THE OTHER DIRECTORS OR MEMBERS OF THE COUNCIL OF GOVERNORS.

MONITOR

Dated  2014

Signed



David Bennett
Chair of the Provider Regulation Executive committee