

FINAL NOTICE OF DISCRETIONARY REQUIREMENTS

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, taking into account representations by the Licensee and having regard to its Enforcement Guidance, Monitor has decided to impose 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 requirements 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. 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: Additional Licence Condition 1 imposed under section 111 of the Act on 22 November 2013 ("the additional condition"), and standard conditions FT4.5(a) and (d) and CoS3.1.

Enforcement action to date

2.2. Monitor accepted enforcement undertakings from the Licensee under section 106 of the Act on 23 April 2013 and 14 August 2013, in relation to licence breaches including breaches relating to financial planning. Monitor imposed discretionary requirements and the additional condition on the Licensee under sections 105 and 111 of the Act on 22 November 2013.

2.3. 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

- 2.4. 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 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

- 2.5. 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.
- 2.6. 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 proposes to issue 2 warning notices in relation to these failures.

Financial position

- 2.7. 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. The requirement was intended to secure that the financial planning breaches of the Licensee's licence conditions did not continue or recur.
- 2.8. 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.

Management capacity

2.9. The Licensee has had an acting Chief Operating Officer in place since October 2013 and has yet to appoint a permanent replacement.

Need for action

2.10. 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.

2.11. These matters also demonstrate a failure of governance arrangements, in particular a failure to –

(a) establish and effectively implement systems and/or processes (i) to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively, and (ii) for effective financial decision-making, management and control;

(b) adopt and apply systems and standards of corporate governance and financial management which reasonably would be regarded as (i) 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.

Monitor is satisfied that the Licensee is breaching licence conditions FT4.5(a) and (d) and CoS3.

2.12. Monitor considers that the imposition of compliance requirements set out below, in combination with requirements imposed under section 111(5) of the Act, 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 requirements pursuant to section 105 of the Act:

1. Chief Operating Officer

1.1 The Licensee must appoint a Chief Operating Officer as soon as practicable.

1.2 The Licensee must appoint an individual appointed with have the skills and experience necessary to ensure that the Licensee–

(a) complies with the requirements of the Licensee's enforcement undertakings and discretionary requirements; and

(b) takes the steps appropriate to secure compliance with the Licensee's licence.

2. Long term planning

- 2.1 The Licensee must submit to Monitor, by 4 April 2014, a 2 year operational plan, including detailed financial projections based on a robust analysis of the Licensee's financial position and a detailed assessment of the impact of the Transforming Medway clinical transformation programme.
- 2.2 The Licensee must commission a diagnostic assessment of the 5 year strategic outlook for the services it provides, setting out the clinical and financial implications of this assessment. The approach to, and timing of, this assessment must be agreed with Monitor.
- 2.3 The Licensee must submit to Monitor, by 30 June 2014, a 5 year strategic plan incorporating the findings of, and the Licensee's response to, the diagnostic assessment.
- 2.4 The Licensee must provide Monitor with such assurance as Monitor may require of the robustness of the plans specified in paragraphs 2.2 and 2.3.

3. Meetings

- 3.1. 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:

- (i) THE REQUIREMENTS OF THE ADDITIONAL LICENCE CONDITION;**
- (ii) THE REQUIREMENTS OF ANY OTHER 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 CONDITIONS OF THE LICENCEE'S LICENCE; 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.**

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 IN THIS NOTICE 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 OF, AND SCHEDULE 11 TO, THE ACT AND/OR REVOCATION OF THE LICENCE UNDER SECTION 89 OF THE ACT.

THE LICENSEE MAY APPEAL THE DECISION TO IMPOSE THE REQUIREMENTS IN THIS NOTICE 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

Dated

7th February

2014

Signed



David Bennett
Chair of the Provider Regulation Executive committee