

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 would be as set out below under the heading(s) 'Need for Action' in the section below headed 'Grounds'.

GROUND

1. Licence

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

2. Power to impose discretionary requirements

A&E breaches

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(5)(a) and (c).

2.2. In particular:

2.2.1. The Licensee breached its Accident and Emergency 4 hour waiting times target ("A&E target") in three consecutive quarters from Q3 of 2011/12 to Q1 of 2012/13 and again in Q4 of 2012/13.

2.2.2. Monitor accepted an enforcement undertaking from the Licensee on 23rd April 2013. The Licensee undertook, among other things, to produce an urgent care plan ("the Urgent Care Plan"), to deliver that plan within 6 months from the date of the

undertaking, to take all appropriate action to ensure it has capacity to be compliant the A&E target and to take such additional steps as are necessary to ensure that it is able to meet the A&E target on a sustainable basis.

2.2.3. The Licensee has breached the A&E target in Q1 and Q2 of 2013/14 and its performance for October 2013 remains below the 95% target level.

2.2.4. The Licensee has failed to deliver all the Urgent Care Plan actions by 24th October 2013.

2.2.5. These breaches by the Licensee demonstrate a failure of governance arrangements in particular, but not limited to, a failure by the Licensee to 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) to ensure compliance with health care standards binding on the Licensee including but not restricted to standards specified by the Secretary of State, the Care Quality Commission, the NHS Commissioning Board and statutory regulators of health care professions.

2.3. Need for action

The Licensee has failed to comply with its enforcement undertakings in relation to the A&E target and the breaches identified above have continued.

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

Quality governance breaches

2.4. 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(5)(a) to (c), and (f), FT4(6) and FT4(7).

2.5. In particular:

2.5.1. The Keogh Review published on 16th July 2013 identified a number of outstanding concerns in relation to the care and quality of treatment provided by the Licensee. An enforcement undertaking was accepted on 14th August 2013 ("the August undertaking") in which the Licensee undertook, among other things, to implement its Keogh Review action plan ("the Keogh Review plan").

2.5.2. On 7th October 2013, following an inspection of maternity services at the Medway Maritime Hospital, the Care Quality Commission issued 3 warning notices raising serious quality concerns in relation to those services, which have been upheld following representations from the Licensee.

2.5.3. The notices identify failures in relation to sufficient numbers of qualified staff, the training, support and supervision of staff, and the assessment and monitoring of quality and obtaining feedback from patients.

2.5.4. These matters demonstrate a failure of governance arrangements in particular, but not limited to, a failure by the Licensee to establish and effectively implement systems and/or processes—

- (i) for timely and effective scrutiny and oversight by the Board of the Licensee's operations;
- (ii) to identify and manage material risks to compliance with the conditions of its licence;
- (iii) to ensure compliance with health care standards binding on the Licensee including but not restricted to standards specified by the Secretary of State, the Care Quality Commission, the NHS Commissioning Board and statutory regulators of health care professions; and
- (iv) to ensure the matters relating to quality of care specified in licence condition FT4(6); and
- (v) to ensure the existence and effective operation of systems to ensure that it has in place personnel who are sufficient in number and appropriately qualified to ensure compliance with the conditions of the Licence.

2.6. 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 requirements pursuant to section 105 of the Act:

1. A&E target breaches

1.1 The Licensee must deliver all actions in the second version of the Urgent Care Plan, dated October 2013, by 31st December 2013. The Trust must obtain and provide to Monitor, by a date agreed with Monitor, an independent assessment of the Trust's delivery of the plan, to provide external assurance that all actions have been delivered.

1.2 The Licensee must take all appropriate action to ensure that it—

- 1.2.1 can demonstrate an improved trajectory towards the A&E target in Q3 of 2013/14;
- 1.2.2 achieves the A&E target in Q4 of 2013/14; and
- 1.2.3 can achieve the target sustainably from April 2014.

2. Quality governance breaches

- 2.1 The Licensee must implement all actions necessary to address all issues identified by CQC as part of its enforcement regime, to the timescale agreed by CQC.
- 2.2 The Licensee must prepare a comprehensive, coherent and sustainable clinical transformation strategy (“the strategy”) and an action plan to deliver that strategy (“the action plan”), and submit both to Monitor by 10th January 2014. The Licensee must submit an interim report on progress in preparing the strategy and plan by 18th December 2013.
- 2.3 The action plan must–
 - 2.3.1 provide that its actions are to be delivered in a phased manner commencing on 10th January 2014 and to be completed within a reasonable timescale to be agreed with Monitor;
 - 2.3.2 set out how the Board will ensure the delivery of high quality services for the population it serves, on a sustainable basis;
 - 2.3.3 include–
 - 2.3.3.1 the current range of individual service quality focused plans, including but not limited to the Urgent Care plan, the Keogh Review plan and the CQC maternity action plan;
 - 2.3.3.2 action to strengthen quality governance, including the actions required to implement effectively any recommendations and associated actions in the Quality Governance Review conducted by KPMG pursuant to the August undertaking;
 - 2.3.3.3 action to strengthen information and data quality;
 - 2.3.3.4 workforce planning and staff development strategies; and
 - 2.3.3.5 a timetable for the preparation of detailed clinical, operation and financial projections designed to ensure that the Licensee’s actions and plans relating to the quality of services are sustainable, with a view to submission of those projections with the Licensee’s annual forward plan on 4th April 2014.
- 2.4 The Licensee must implement the action plan fully and effectively by such date as may be agreed with Monitor.
- 2.5 When developing the action plan, the Licensee must share its proposals, and engage effectively, with Swale CCG, Medway CCG, the NHS England Kent and Medway Area Team, and any other key stakeholders.
- 2.6 The Licensee must prepare an outline project plan and submit it to Monitor by 4th December. This plan must set out the key milestones, resource requirements, stakeholder engagement

principles and the principal work streams which will be required to enable the Licensee to produce the action plan by 10th January 2014.

- 2.7 The Licensee must prepare a Project Management Office ("PMO") plan and submit it to Monitor by 18th December 2013. The plan must set out, as a minimum, the PMO's terms of reference, a single trust wide project management methodology and the resources and skills required for the PMO.
- 2.8 The Licensee must identify any shortfalls in the internal capacity and capabilities necessary to resource the action plan and the PMO, by 18th December 2013. Where the Licensee has identified there is a shortfall the Licensee must address this to the satisfaction of Monitor.
- 2.9 The Licensee's revised PMO arrangements must be operational and the core delivery team required to deliver the action plan must be ready to commence work, by 10th January 2014.
- 2.10 The Licensee must obtain assurance on the strategy and the action plan, after submission to Monitor, by commissioning a review. The person who is to conduct the review and the form of the review must be agreed with Monitor. The assurance review report must be provided to Monitor and the Licensee by a date agreed with Monitor.
- 2.11 The Licensee must keep the plan under review and, after engagement with key stakeholders and Monitor, amend the plan as appropriate, in particular where necessary to implement any recommendation of the assurance review report.
- 2.12 The Licensee must produce a comprehensive suite of leading Key Performance Indicators (KPIs) relating to the action plan, to be approved by the Board by 31st January 2014.
- 2.13 The Licensee must have in place a transitional assurance, accountability and performance management framework by 10th January 2014, to ensure there is robust project oversight whilst the quality governance actions set out above are completed.

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 ANY ENFORCEMENT UNDERTAKING GIVEN BY THE LICENSEE RELATING TO MATTERS NOT COVERED BY THIS NOTICE, (ii) THE REQUIREMENT TO COMPLY WITH ANY ADDITIONAL LICENCE CONDITION IMPOSED UNDER SECTION 111 OF THE ACT; AND (iii) 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 THE ABOVE REQUIREMENTS 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 THIS DECISION 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 22 November 2013

Signed



Chair of the Provider Regulation Executive
Monitor