

## **NOTICE OF ADDITIONAL LICENCE CONDITION**

### **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 additional licence condition specified below on the Licensee pursuant to its powers under section 111 of the Health and Social Care Act 2012 ("the Act").

### **THE LICENCE IS AMENDED AS FOLLOWS:**

After Condition FT4, insert:

#### **"Additional Licence Condition 1 – Additional governance requirements:**

1. The Licensee must ensure that it has in place sufficient and effective Board, management and clinical leadership capacity and capability, as well as appropriate governance systems and processes, to enable it to—
  - a. address the issues specified in paragraph 2 effectively; and
  - b. comply with any discretionary requirement imposed or enforcement undertaking accepted under the 2012 Act in connection with those issues.
2. The issues referred to in paragraph 1 are –
  - a. the failure to take the action necessary to ensure compliance with the A&E target on a sustainable basis;
  - b. the failures in relation to the quality of care provided by the Licensee, including but not limited to those identified by the Keogh Review and by the Care Quality Commission; and
  - c. any other issues relating to governance or operations that have caused or contributed to, or are causing or contributing to, or will cause or contribute to, the breaches, or the risk of breach, of the conditions of the Licensee's licence.
3. For the purposes of paragraph 1, an issue is addressed effectively only if it is addressed within a reasonable timescale, including any applicable timescale proposed in any independent review of quality governance arrangements, any discretionary requirement or any enforcement undertaking, or reasonably specified by Monitor."

## **ANTICIPATED EFFECT OF THE ADDITIONAL CONDITION:**

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

## **INCIDENTAL OR CONSEQUENTIAL MODIFICATIONS REQUIRED AS A RESULT OF THE IMPOSITION OF THE ADDITIONAL CONDITION:**

No incidental or consequential modifications are required to the Licensee's licence.

## **GROUND(S)**

### **1. Licence**

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

### **2. Power to impose additional licence condition(s)**

2.1. Monitor is satisfied that the governance of the Licensee is such that the Licensee will fail to comply with the one or more of the following conditions of the Licensee's licence: FT4(5)(a) to (c), and (f), FT4(6) and FT4(7).

#### **2.2. Need for action**

Following breaches by the Licensee of the 4 hour Accident and Emergency waiting times target ("A&E target"), Monitor accepted an enforcement undertaking from the Licensee on 23rd April 2013 ("the April undertaking"). 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.

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, in addition to the previous concerns relating to A&E, and a further enforcement undertaking was accepted on 14th August 2013. The Licensee undertook, among other things to implement its Keogh Review action plan.

The Licensee has failed to implement all the actions, and take all the steps, in relation to A&E target and the Urgent Care Plan, as required by the April undertaking. In particular, the Licensee has breached the A&E target in Quarter 1 and Quarter 2 of 2013/14 and failed to complete all the actions in the Urgent Care Plan by 24 October 2013.

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. 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.

In the light of these matters, and the other available evidence, Monitor is satisfied that the Board is failing to secure compliance with the Licensee's licence conditions and failing properly to take steps to reduce the risk of breaches of those conditions. In those circumstances, Monitor is satisfied that the governance of the Licensee is such that the Licensee is failing and will fail to comply with the conditions of its licence.

Monitor considers that the imposition of the condition specified above is appropriate for reducing the risk of non-compliance identified above.

### 3. Appropriateness of Imposition of Additional Licence Condition

In considering the appropriateness of imposing this additional licence condition, Monitor has taken into account the matters set out in its Enforcement Guidance.

**THE REQUIREMENTS OF THE ADDITIONAL LICENCE CONDITION ARE WITHOUT PREJUDICE TO (i) ANY DISCRETIONARY REQUIREMENTS IMPOSED UNDER SECTION 105 OF THE ACT, (ii) THE REQUIREMENTS OF ANY ENFORCEMENT UNDERTAKING GIVEN BY THE LICENSEE AND (ii) 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.**

**ANY FAILURE TO COMPLY WITH THE ADDITIONAL LICENCE CONDITION WOULD RENDER THE LICENSEE LIABLE TO FURTHER FORMAL ACTION BY MONITOR. THIS COULD INCLUDE REQUIRING THE LICENSEE TO REMOVE ONE OR MORE OF THE DIRECTORS OR MEMBERS OF THE COUNCIL OF GOVERNORS AND APPOINT INTERIM DIRECTORS OR MEMBERS, SUSPEND ONE OR MORE DIRECTORS OR MEMBERS OF THE COUNCIL OF GOVERNORS FOR A SPECIFIED PERIOD AND/OR DISQUALIFY ONE OR MORE DIRECTORS OR MEMBERS OF THE COUNCIL OF GOVERNORS FOR A SPECIFIED PERIOD. THIS COULD INCLUDE ALSO OR INSTEAD ACTION UNDER SECTIONS 105 OR 106 OF THE ACT TO IMPOSE DISCRETIONARY REQUIREMENTS OR ACCEPT UNDERTAKINGS. MONITOR WOULD ALSO BE ABLE TO TAKE ACTION UNDER SECTION 89 TO REVOKE THE LICENSEE'S LICENCE.**

**MONITOR**

Dated 22 November 2013

Signed

A handwritten signature in black ink, appearing to be 'Dus' followed by a stylized flourish.

Chair of the Provider Regulation Executive  
Monitor