

## ENFORCEMENT UNDERTAKINGS

### LICENSEE:

Southend University Hospital NHS Foundation Trust  
Southend Hospital  
Prittlewell Chase  
Westcliffe-on-Sea  
SS0 0RY

### DECISION

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, Monitor has decided to accept from the Licensee the enforcement undertakings specified below pursuant to its powers under section 106 of the Health and Social Care Act 2012 ("the Act").

### GROUND

#### 1. Licence

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

#### 2. Breaches

##### 2.1. Target Breaches

2.1.1. Monitor has reasonable grounds to suspect 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); FT4(5)(c).

2.1.2. In particular:

2.1.2.1. The Licensee breached the Accident and Emergency target in Q1 and Q3 of 2012/13, having not declared a risk of breach at APR;

2.1.2.2. The Licensee reports that compliance with the Accident and Emergency target is at risk in Q4 of 2012/13 due to the need for fundamental improvements and prolonged winter pressures;

2.1.2.3. This breach and potential breach 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.

2.1.3. Need for action

Monitor believes that the action which the Licensee has undertaken to take pursuant to the undertaking recorded here will secure that the breach in question does not continue or recur.

3. Governance breaches

3.1. Monitor has reasonable grounds to suspect 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(6).

3.2. In particular:

3.2.1. The Licensee's governance is not sufficiently advanced to allow it to self-govern at this stage, as evidenced by a broad range of deficiencies highlighted in an independent review of governance in December 2012, including:

- 3.2.1.1 on-going change in the composition of the Board;
- 3.2.1.2 the effectiveness of Board challenge and holding to account;
- 3.2.1.3 performance reporting;
- 3.2.1.4 the communication and development of strategy, including supporting strategies;
- 3.2.1.5 Board visibility amongst staff and external stakeholders;
- 3.2.1.6 the need to continue developing and implementing risk management systems; and
- 3.2.1.7 the need to continue refining the CIP system, including ensuring the timely and robust completion of quality impact assessments.

3.2.2. The Licensee has a history of a breadth of target breaches which, whilst resolved when they occur, indicate that the actions taken by the Licensee are reactive to the failure of these targets. The issues that have been identified as a result of the target breaches could have been mitigated at an earlier stage if they had been highlighted to the Board through appropriate governance systems and processes.

3.2.3. The Licensee was not fully compliant against any of the 10 areas in Monitor's Quality Governance Framework, as identified in an independent review of quality governance in October 2012.

3.2.4. The Licensee's non-compliance, as detailed at 3.2.3 above, indicates that there is a risk that quality issues arise and are not appropriately dealt with by the Licensee, resulting in poor patient care.

3.2.5. These breaches by the Licensee demonstrate a failure of governance arrangements.

3.3. Need for action

Monitor believes that the action which the Licensee has undertaken to take pursuant to the undertaking recorded here will secure that the breach in question does not continue or recur.

#### 4. Appropriateness of Undertakings

In considering the appropriateness of accepting in this case the undertakings set out below, Monitor has taken into account the matters set out in its Enforcement Guidance.

### **UNDERTAKINGS**

The Licensee has agreed to give and Monitor has agreed to accept the following undertakings, pursuant to section 106 of the Act:

#### 1. Target breaches

- 1.1. The Licensee will implement all the necessary improvements and engage with external bodies, including the Emergency Care Intensive Support Team, such that it achieves the 4-hour Accident and Emergency waiting time target on a sustainable basis, defined as compliance with the target for 3 successive quarters, commencing in Q2 of 2013/14.
- 1.2. The Licensee will provide Monitor with written quarterly compliance reports and supporting data such that Monitor is able to assess whether the Licensee has achieved the target over the 3 successive quarters commencing in Q2 of 2013/14.

#### 2. Board effectiveness and governance

- 2.1. The Licensee will develop a governance plan to fully resolve to Monitor's satisfaction the key deficiencies in its governance, as identified in an independent review in December 2012.

The Licensee will implement sufficient programme management and governance arrangements to enable the implementation and delivery of the governance plan.

The Licensee will implement the governance plan by 30 September 2013.

The Licensee will obtain external assurance on the implementation of the governance plan by 31 October 2013 from a source and according to a scope to be agreed with Monitor.

The Licensee will provide copies of the external reviewer's draft and finalised reports on the implementation and delivery of its governance plan to Monitor within a week of receiving them.

The Licensee will develop a quality governance plan to ensure that it achieves the minimum standard of quality governance, as measured against the 10 areas detailed in Monitor's Quality Governance Framework.

The Licensee will implement sufficient programme management and governance arrangements to enable the implementation and delivery of the quality governance plan.

- 2.2 The Licensee will implement the quality governance plan by 30 September 2013.

- 2.3 The Licensee will obtain external assurance on the implementation of the quality governance plan by 31 October 2013 from a source and according to a scope to be agreed with Monitor.

The Licensee will provide copies of the external reviewer's draft and finalised reports on the implementation and delivery of its quality governance plan to Monitor within a week of receiving them.

### 3. Meetings

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

**THE UNDERTAKINGS SET OUT HERE 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.**

**ANY FAILURE TO COMPLY WITH THE ABOVE UNDERTAKINGS WILL RENDER THE LICENSEE LIABLE TO FURTHER FORMAL ACTION BY MONITOR. THIS COULD INCLUDE THE IMPOSITION OF DISCRETIONARY REQUIREMENTS UNDER SECTION 105 OF THE ACT IN RESPECT OF THE BREACH IN RESPECT OF WHICH THE UNDERTAKING WAS GIVEN AND/OR REVOCATION OF THE LICENCE UNDER SECTION 89 OF THE ACT.**

**WHERE MONITOR IS SATISFIED THAT THE LICENSEE HAS GIVEN INACCURATE, MISLEADING OR INCOMPLETE INFORMATION IN RELATION TO THE UNDERTAKING: (i) MONITOR MAY TREAT THE LICENSEE AS HAVING FAILED TO COMPLY WITH THE UNDERTAKING; AND (ii) IF MONITOR DECIDES SO TO TREAT THE LICENSEE, MONITOR MUST BY NOTICE REVOKE ANY COMPLIANCE CERTIFICATE GIVEN TO THE LICENSEE IN RESPECT OF COMPLIANCE WITH THE RELEVANT UNDERTAKING.**

LICENSEE

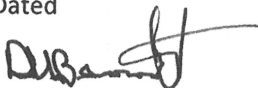


Dated: 22<sup>nd</sup> April 2013

Signed: Alan Tobias OBE, Chairman (Chair of Licensee)

MONITOR 23 April 2013

Dated



Signed (Chair of relevant decision-making committee)