

LICENSEE:

St George's University Hospital NHS Foundation Trust ("the Licensee")
Blackshaw Road
Tooting
London
SW17 0QT

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. Background

Following the authorisation of the Licensee on 1 February 2015, material financial and operational issues have affected the Licensee's ability to fully deliver its plans and to operate on a sustainable basis in the future.

BREACHES:

3. Breaches

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: CoS3(1), FT4(5)(a),(d), and (f) and FT4(7) and in particular:

- 3.1. The Licensee's 2014/15 financial position rapidly deteriorated during Q4, resulting in an unplanned deficit of £16.8m and a deficit forecast of £46.2m in 2015/16.
- 3.2. The Licensee plans to request funding from the Department of Health of approximately £52.2m.
 - 3.2.1. At Q4 2014/15 the Licensee was unable to confirm compliance with the following governance declarations:

3.2.1.1. The board anticipates that the trust will continue to maintain a CoSRR of at least 3 over the next 12 months.

3.2.1.2. The board is satisfied that plans in place are sufficient to ensure ongoing compliance with all existing targets (after the application of thresholds) as set out in Appendix A of the Risk Assessment Framework; and a commitment to comply with all known targets going forwards (giving Monitor cause for concern about potential breaches of one or more of these targets in future which would require addressing as appropriate).

3.2.2. The Licensee does not as yet have a credible recovery plan to provide Monitor with assurance that it can return to a CoSRR3 or financial surplus or that it is financially sustainable and has not been able to articulate fully so far the key drivers and underlying reasons for the rapid deterioration in its financial position, albeit that it has recently commissioned external support to assist it in this.

3.3. These breaches by the Licensee demonstrate shortcomings in the corporate governance arrangements and financial management standards, in particular but not limited to, a failure by the Licensee to establish and effectively implement systems and/or processes:

3.3.1. that would be suitable for a provider of the Commissioner Requested Services provided by the Licensee;

3.3.2. to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;

3.3.3. for effective financial decision-making, management and control (including but not restricted to appropriate systems and/or processes to ensure the Licensee's ability to continue as a going concern);

3.3.4. to identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of its Licence; and

3.3.5. to ensure personnel within the Licensee's organisation who are sufficient in number and appropriately qualified to ensure compliance with the conditions of its licence.

3.4. Need for action:

Monitor believes that the action which the Licensee has undertaken to take pursuant to these undertakings is action required to secure that the breaches in question do 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:

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

1. Sustainability

- 1.1. The Licensee will take all reasonable steps to deliver its services on a clinically, operationally and financially sustainable basis, including but not limited to the actions in paragraphs 1.2 to 1.13 below. As part of this, the Licensee will take all reasonable steps to improve its financial position and minimise its external funding requirement. Monitor may specify an extent or benchmark that the Licensee will meet in relation to this if Monitor considers appropriate.
- 1.2. The Licensee will develop and either deliver or, if Monitor so specifies, demonstrate to Monitor that it can deliver:
 - 1.2.1. A Short Term Recovery Plan comprising:
 - 1.2.1.1. a recovery plan for 2015/16 to be submitted to Monitor by 30 September 2015 or such other date as may be agreed with Monitor; and
 - 1.2.1.2. recovery plan for the two years 2015/16 and 2016/17 (the 2015/16 element consisting of the plan described in 1.2.1.1) to be submitted to Monitor by 30 November 2015 or such other date as may be agreed with Monitor; and
 - 1.2.2. A strategy and a plan for its longer term sustainability (together termed the 'Strategic Plan') to be submitted to Monitor by 31 January 2016 or such other dates as may be agreed with Monitor.
 - 1.2.3. Separate action plans to respond to issues and recommendations raised:
 - 1.2.3.1. within the commissioned forensic review in a manner and within a timeframe to be agreed with Monitor (the 'Forensic Review Action Plan') to be submitted to Monitor by 31 August 2015 or such other date as may be agreed with Monitor; and
 - 1.2.3.2. by any other externally commissioned input, to the extent that such issues and recommendations are not covered by the other plans to be developed under this undertaking, in a manner and within a timeframe to be agreed with Monitor.
- 1.3. In relation to both the Short Term Recovery Plan and the Strategic Plan, the Licensee will consult with its commissioners and will ensure that the plans reflect appropriately the views of its commissioners.
- 1.4. The Licensee will modify the plans if needed following input from Monitor after it has received and considered the plans, such input from Monitor to be provided before and/or after the commissioning and receipt of the assurance specified in paragraph 1.6.

- 1.5. The key parameters and detailed scope of the plans will be agreed with Monitor and will be updated by the Licensee as needed upon any subsequent review by Monitor.
- 1.6. The Licensee will obtain assurance that the Short Term Recovery Plan and Strategic Plan and their delivery will enable the Licensee to comply with paragraph 1.1 and that the Forensic Review Action Plan and its delivery will enable the Licensee to address the issues and recommendations identified by the forensic review, if requested to do so by Monitor. The source, scope, timing and provision of any such assurances will be agreed with Monitor.
- 1.7. The Licensee will demonstrate that it is able to deliver the plans described above, including demonstrating that it has sufficient executive capacity to enable delivery.
- 1.8. The Licensee will keep the plans described above and their delivery under review. Where matters are identified which materially affect the Licensee's ability to deliver those plans and to meet the requirements of paragraph 1.1, whether identified by the Licensee or another party, the Licensee will notify Monitor as soon as practicable and update and resubmit the relevant plan(s) within a timeframe to be agreed with Monitor.
- 1.9. The Licensee will develop and agree with Monitor Key Performance Indicators (KPIs) to assess the impact of the plans described above.
- 1.10. The Licensee will consult with Monitor in relation to:
 - 1.10.1. the development of the plans; and
 - 1.10.2. local health economy wide discussions related to the Short Term Recovery Plan and Strategic Plan.
- 1.11. The Licensee will consult and agree with Monitor:
 - 1.11.1. the appointment and scope of any key advisors in relation to the plans described above; and
 - 1.11.2. executive capacity to support the delivery of the plans described above, including key executive appointments.
- 1.12. The references to the plans are to the plans as submitted under the terms of paragraph 1.2 or to any subsequent revised versions as agreed with Monitor as appropriate.
- 1.13. The Licensee will put in place promptly all reasonable measures to reduce the current deficit run rate and its associated cash impact without impacting on patient care. It will be expected to demonstrate the financial impact of these measures within the current financial year.

2. Distressed funding

- 2.1. Where interim support financing or planned term support financing is provided by the Secretary of State for Health to the Licensee pursuant to section 40 of the NHS Act 2006, the Licensee will comply with any terms and conditions which attach to the financing.
- 2.2. The Licensee will comply with any reporting requests made by Monitor in relation to any financing to be provided by the Licensee by the Secretary of State for Health pursuant to section 40 of the NHS Act 2006.

3. Spending Approvals

The Licensee will comply with any spending approvals processes that are deemed necessary by Monitor.

4. Reporting

- 4.1. The Licensee will:
 - 4.1.1. Report to Monitor as required on its progress in meeting the undertakings set out above, including reporting against the KPIs agreed pursuant to paragraph 1.9; and
 - 4.1.2. Provide a monthly information pack as agreed between the Licensee and Monitor and other material information required by Monitor as appropriate including submission of Annual Plan Review documentation in line with published guidance (reflecting the latest state of the Short Term Recovery Plan at the time of submission).

5. General

- 5.1. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of the plans and to meet all other commitments in these undertakings.
- 5.2. Such programme management and governance arrangements will enable the Board to:
 - 5.2.1. Obtain a clear oversight over the progress in delivery of the plans and in meeting all other commitments in these undertakings;
 - 5.2.2. Obtain an understanding of any risks to the successful achievement of the plans and to meeting all other commitments in these undertakings and ensure appropriate mitigation of any such risks; and
 - 5.2.3. Hold individuals to account for the delivery of the relevant plans and for meeting all other commitments in these undertakings.

6. Access

- 6.1. The Licensee will provide to Monitor direct access to its advisors, Turnaround Director and the Licensee's board members as needed in relation to the matters covered by these undertakings.

7. Meetings

- 7.1 The Licensee will attend meetings or, if Monitor stipulates, conference calls, as required, to discuss its progress in meeting the undertakings set out above. These meeting shall take place once a month, unless Monitor stipulates otherwise, at a time and place to be specified by Monitor and with attendees specified by Monitor.

THE UNDERTAKINGS SET OUT ABOVE ARE WITHOUT PREJUDICE TO THE REQUIREMENT ON THE LICENSEE TO ENSURE THAT IT IS COMPLIANT WITH ALL THE CONDITIONS OF ITS LICENCE, INCLUDING ANY ADDITIONAL LICENCE CONDITION IMPOSED UNDER SECTION 111 OF THE ACT AND THOSE CONDITIONS RELATING TO:

- 1. COMPLIANCE WITH THE HEALTH CARE STANDARDS BINDING ON THE LICENSEE; AND**
- 2. 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 WERE GIVEN AND/OR REVOCATION OF THE LICENCE PURSUANT TO SECTION 89 OF THE ACT.

WHERE MONITOR IS SATISFIED THAT THE LICENSEE HAS GIVEN INACCURATE, MISLEADING OR INCOMPLETE INFORMATION IN RELATION TO AN 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.

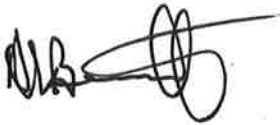
LICENSEE



Signed (Chair or Chief Executive of Licensee)

Dated 28. VII .15

MONITOR



Signed (Chair of the Provider Regulation Executive)

Dated 22.7.15