

NOTICE OF IMPOSITION OF ADDITIONAL LICENCE CONDITION

LICENSEE:

Southern Health NHS Foundation Trust
Trust Headquarters, Sterne 7
Tatchbury Mount
Calmore
Southampton
SO40 2RZ

DECISION

On the basis of the grounds set out below and having had regard to its Enforcement Guidance, Monitor has imposed 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; and
 - b) comply with any enforcement undertakings accepted, or discretionary requirements imposed, by Monitor in relation to these issues.
- 2) The issues referred to in paragraph 1 are:
 - a) the failures in governance of the Licensee that have led to the enforcement undertakings agreed with Monitor on 17 April 2014 and 11 January 2016, and the warning notice issued by the CQC on 16 March 2016; and
 - b) 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 breach of the conditions of the Licensee's licence.

ANTICIPATED EFFECT OF THE ADDITIONAL CONDITION:

Monitor anticipates that the effect of imposing the additional condition will 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 one or more of the following conditions of the Licensee's licence: FT4(5)(a) – (c) and (e) - (f); FT4(6)(a) - (f).

2.2. Need for action

2.2.1 Monitor accepted enforcement undertakings from the Licensee in April 2014 further to breaches of the governance conditions of the Licensee's licence. A compliance certificate was issued in respect of one of those undertakings in June 2015 but the remaining undertakings are yet to be delivered in full. Monitor accepted further enforcement undertakings from the Licensee in January 2016 further to governance failings identified by an independent report published by NHS England (the "Mazars Report"). The Mazars Report identified failings with the quality of the Licensee's serious incident reporting processes, its standards of investigation and its approach to learning from deaths.

2.2.2 In January 2016, in response to the findings of the Mazars Report and to check on improvements required in some of the Licensee's services, the CQC undertook a focused inspection of the Licensee. This inspection resulted in the issuing of a warning notice on 16 March 2016. The warning notice identified longstanding risks to patients that had not been addressed, including that:

- (a) The Licensee had failed to mitigate against significant risks posed by some of the physical environments from which it delivered mental health and learning disability services. Some of these risks had been brought to the Licensee's attention on multiple occasions in recent years but had not been dealt with effectively.

- (b) The Licensee did not operate effective governance arrangements to ensure robust investigation of incidents, including deaths and it did not adequately ensure that it learned from incidents to reduce future risks to patients. This had been identified on several occasions by the Licensee and third parties but had not been adequately addressed.
- (c) The Licensee did not effectively respond to concerns about patient safety raised by staff, or effectively respond to concerns raised by the Licensee's staff about their ability to carry out their roles effectively.

2.2.3 In the light of all these matters and other available and relevant 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 non-compliance. 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.

2.2.4 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 THIS NOTICE ARE WITHOUT PREJUDICE TO (i) 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 THIS ADDITIONAL LICENCE CONDITION WILL 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 IS ALSO ABLE TO TAKE ACTION UNDER SECTION 89 TO

REVOKE THE LICENSEE'S LICENCE.

MONITOR

Dated:

14/4/16

Signed:

Cdri Mentes

Chair of Provider Regulation Executive