

Annex 1
FINAL ENFORCEMENT UNDERTAKINGS

LICENSEE:

Royal Surrey County Hospitals NHS Foundation Trust ("the Licensee")
Royal Surrey County Hospital
Trust Headquarters
Egerton Road
Guildford
Surrey
GU2 7XX

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. 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(5)(a) to (g); FT4(6); and CoS3(1) and (2)(c).

2.2. In particular:

2.2.1. The Licensee forecast a year end deficit for 2015/16 of £0.5m and a Financial Sustainability Risk Rating (FSRR) of 3, but delivered a deficit of £10.2m and an FSRR of 1. As a result, the Licensee has required £5.2m of unplanned distressed finance from the Department of Health.

2.2.2. The Licensee's draft annual plan for 2016/17 and initial forecasts contained unrealistic assumptions, which required a revised plan and a revised forecast deficit of £17m.

2.2.3. The Licensee has failed to achieve the A&E 4 hour waiting time standard each month, except one, since August 2015, and the actions by the Licensee to improve performance have not been effective.

2.2.4. The Licensee has failed to achieve:

- (a) the 62 day cancer standard in each month from July 2015 to March 2015; and
- (b) the 2 week cancer standard from May 2015 to December 2015.

2.2.5. The findings of Monitor's investigation into the Licensee indicate that:

- (a) In relation to financial management:
 - (i) there are material weaknesses in the Licensee's financial information;
 - (ii) key financial planning assumptions were not robust; and
 - (iii) effective financial management controls were not in place.
- (b) As a result of the weaknesses in financial management, the Trust was unable to produce robust annual plans or accurately forecast risks to deliver.
- (c) In relation to operational management, the Licensee:
 - (i) does not have sufficient operational management information and analysis, and does not routinely consider key metrics,
 - (ii) has not acted promptly enough to address deteriorating operational performance, and
 - (iii) does not have adequate operational leadership and capacity at executive level.
- (d) In relation to board governance and leadership:
 - (i) key operational and financial information was not subject to appropriate challenge by the Licensee's Board; and
 - (ii) the Board failed to take effective action to mitigate financial risks and control weaknesses in 2015/16.

2.2.6. These failures by the Licensee demonstrate a failure of financial governance arrangements, in particular but not limited to a failure by the Licensee to:

- (a) apply those principles, systems and standards of good corporate governance and of financial management which reasonably would be regarded:
 - i. as appropriate for a supplier of health care services to the NHS and a provider of the Licensee's Commissioner Requested Services, and
 - ii. providing reasonable safeguards against the risk of the Licensee being able to carry on as a going concern; and
- (b) establish and effectively implement systems and/or processes:
 - (i) to ensure compliance with the Licensee's duty to operate effectively, economically and effectively;
 - (ii) for timely and effective scrutiny and oversight by the Board of the Licensee's operations;
 - (iii) for effective financial decision-making, management and control;

- (iv) to obtain and disseminate accurate, comprehensive, timely and up to date information for Board decision-making;
- (v) to identify and manage material risks to compliance with the conditions of its licence; and
- (vi) to generate and monitor delivery of business plans.

2.3. Need for action

Monitor believes that the action which the Licensee has undertaken to take pursuant to the undertaking recorded here is action to secure that the breaches in question do not continue or recur.

3. 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. Financial recovery

- 1.1 The Licensee will agree the role of the Licensee's turnaround director with Monitor, which will include responsibility to:
 - (a) undertake a drivers of the deficit review and a baseline review,
 - (b) lead and be held accountable for the development of a credible short term Financial Recovery Plan (FRP) for the financial year 2016/17; and
 - (b) provide assurance to Monitor and the Licensee's Board that improvements in the Licensees financial position are being delivered successfully and at pace.
- 1.2 The Licensee will ensure it has appropriate support in place, to be agreed with Monitor, to assist the turnaround director in delivering their role. This is to include a robust Project Management Office comprising individuals with sufficient financial experience
- 1.3 The Licensee will develop the FRP and submit it by a date specified by Monitor. The key parameters and detailed scope of the FRP will be agreed with Monitor, and will be updated by the Licensee as needed upon any subsequent review by Monitor, but will include as a minimum:
 - (a) actions the Licensee will take to address the drivers of the deficit;
 - (b) details of development and implementation of its recurrent cost improvement plans;
 - (c) a clear link between the CIPs programme, the run rate and the I&E bottom line;

- (d) actions to ensure development and utilisation of its service line reporting;
- (e) actions and a trajectory to reduce agency usage (WTE, volume and price);
- (f) effective roll-out of demand and capacity plans;
- (g) any other issues identified by Monitor as key to the delivery of the FRP; and timeframes for implementing each of the above areas in a) to g), as agreed with Monitor.

- 1.4 The Licensee will develop and agree with Monitor Key Performance Indicators (KPIs) to assess the impact of the FRP described above on the final 2016/17 forecast plan as submitted on 18 April 2016.
- 1.5 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.
- 1.6 When developing the FRP, the Licensee will share its proposals and engage effectively with key stakeholders, including commissioners and local health economy stakeholders, and it will reflect their comments appropriately in the FRP.
- 1.7 The Licensee will demonstrate that it is able to deliver the FRP. The Licensee will keep the delivery of the FRP under review and will amend the FRP to take account of any significant matters identified and agreed with Monitor. References to the FRP in these undertakings (other than paragraph 1.3, first sentence, and paragraph 1.6) are references to the FRP as so amended.

2. Long term financial plan

- 2.1 By a date to be specified by Monitor the Licensee will develop and submit a credible plan which details how it will achieve long term financial sustainability (the "Long Term Plan").
- 2.2 Within the Long Term Plan, the Licensee will provide timeframes for implementing each action listed in the Long Term Plan, to be agreed by Monitor.
- 2.3 When developing the Long Term Plan, the Licensee will share its proposals and engage effectively with key stakeholders, including commissioners and local health economy stakeholders, and it will reflect their views appropriately in the Long Term Plan.
- 2.4 The Licensee will ensure that the Long Term Plan aligns to its local Sustainability and Transformation Plan.
- 2.5 The Licensee will demonstrate that it is able to deliver the Long Term Plan. The Licensee will keep the delivery of the Long Term Plan under review and will amend the Long Term Plan to take account of any significant matters identified and agreed with Monitor. References to the Long Term Plan in these undertakings (other than paragraphs 2.1 and 2.3) are references to the Long Term Plan as so amended.

3. Governance

- 3.1 The Licensee will commission, or co-operate with Monitor in the commissioning of, a review to identify the improvements required in the Licensee's governance ("the Governance Review"). The scope of the review, and its source, are to be agreed with Monitor, and undertaken and delivered within a timeframe to be agreed with Monitor. The scope of the Governance Review will include, but not be limited to, a review of the following, including the impact of any intended changes to be made:
- (a) executive and non-executive portfolios;
 - (b) committee structures;
 - (c) accountability and performance management arrangements;
 - (d) performance reporting;
 - (e) capacity and capability of the finance team; and
 - (f) financial arrangements including working capital management and budgetary planning.
- 3.2 The Licensee will develop a plan (the "Governance Plan"), in accordance with timescales to be agreed by Monitor, to address the recommendations from the Governance Review.
- 3.3 The Licensee will periodically assess the Governance Plan to ensure that it remains deliverable and sufficient to address the issues raised in the Governance Review, and any other reviews relevant to the Licensee's governance, and make any necessary amendments as agreed with Monitor. The Licensee will report to Monitor on a monthly basis on its assessment of the deliverability and sufficiency of the Governance Plan and any alterations required. The Licensee will provide Monitor with the assurance relied on by the Board in making this assessment upon request. References to the Governance Plan in this and the following paragraphs are references to the Governance Plan as so amended.
- 3.4 The Licensee will implement, or demonstrate that it can implement, the Governance Plan, in accordance with timescales to be agreed with Monitor.
- 3.5 If required by Monitor, the Licensee will commission an external review of the Licensee's delivery of the Governance Plan, from a source and according to a scope and timing to be agreed with Monitor. The Licensee will implement any recommendations of the external review in accordance with timescales agreed with Monitor.

4. Improvements in Operational Performance

- 4.1 The Licensee will obtain external assurance on its emergency care action plan (the "EC Action Plan"), to include Key Performance Indicators (KPIs), from ECIST, or another third party to be agreed by Monitor. The Licensee will incorporate any comments from the third party into a revised EC Action Plan. The Licensee will develop and agree with Monitor an improvement trajectory for A&E 4 hour waiting time

performance for 2016/17 which will be clearly linked to delivery of its KPIs within its EC Action Plan.

- 4.2 The Licensee will consolidate its existing action plans to improve performance against the Cancer 62-day standard into one overarching action plan (the "Cancer Action Plan") and obtain external assurance on this plan from IST, or another third party to be agreed by Monitor. The Licensee will incorporate any comments from the third party into a revised Cancer Action Plan.
- 4.3 The Licensee will ensure it has appropriate operational and clinical leadership in place, to be agreed with Monitor, to ensure delivery of its EC Action Plan and Cancer Action Plan.
- 4.4 The Licensee will engage effectively with key stakeholders, including commissioners, to ensure delivery of its EC Action Plan and Cancer Action Plan.

5. Distressed Financing and Sustainability and Transformation Fund

5.1 Where-

- 5.1.1 interim support financing or planned term support financing is provided by the Secretary of State to the Licensee pursuant to section 40 of the NHS Act 2006, or
- 5.1.2 the Licensee receives payments under the Sustainability and Transformation Fund,

the Licensee will comply with any terms and conditions which attach to the financing or payments.

- 5.2 The Licensee will comply with any reporting requests made by Monitor in relation to any financing to be provided to the Licensee by the Secretary of State pursuant to section 40 or 42 of the NHS Act 2006 or payments made under the Sustainability and Transformation Fund.
- 5.3 The Licensee will comply with any spending approvals that are deemed necessary by Monitor.

6. General

- 6.1 The Licensee will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.
- 6.2 Such programme management and governance arrangements must enable the Board to:
 - 6.2.1 obtain clear oversight over the progress in delivering the undertakings;
 - 6.2.2 obtain an understanding of the any risks to the successful achievement of the undertakings and ensure appropriate mitigation of any such risks; and
 - 6.2.3 hold individuals to account for the delivery of the undertakings.

- 6.3 The Licensee will provide regular reports to Monitor on its progress in meeting the undertakings set out above, in a format to be agreed between the Licensee and Monitor, including reporting against the KPIs agreed pursuant to paragraph 1.4.
- 6.4 The Licensee will attend meetings, or, if Monitor stipulates, conference calls, as required, to discuss its progress in meeting those undertakings. These meetings will 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.
- 6.5 The Licensee will provide Monitor with the assurance relied on by its Board in relation to its progress in delivering these undertakings, upon request.
- 6.6 The Licensee will provide to Monitor direct access to its advisors, the Licensee's board members, and any other members of the Licensee's staff considered necessary by Monitor, as needed in relation to the matters covered by these undertakings.
- 6.7 The Licensee will comply with any additional relevant reporting or information requests made 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 ANY ADDITIONAL LICENCE CONDITION IMPOSED UNDER SECTION 111 OF THE ACT AND THOSE CONDITIONS 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 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

Dated:

S. DENNING 4 July 2016

Signed: (On behalf of the Licensee)

MONITOR

Dated:

12 July 2016

Signed:

Ben Dyson

Ben Dyson

Chair of Provider Regulation Executive