

## **NOTICE OF REQUIREMENT TO APPOINT AN INTERIM CHAIR**

### **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 regard to its Enforcement Guidance, NHS Improvement requires the Licensee to appoint an interim chair as specified below, pursuant to its powers under section 111(5) of the Health and Social Care Act 2012 ("the Act"). In this notice, "NHS Improvement" means Monitor.

### **REQUIREMENT:**

The Licensee must appoint the person specified by NHS Improvement as the interim chair of the Licensee, with effect from a date to be agreed by NHS Improvement and on such terms and conditions as NHS Improvement may approve.

### **GROUND:**

#### **1. Licence**

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

#### **2. Power to require appointment of interim chair**

#### *Summary of enforcement action to date*

- 2.1. NHS Improvement accepted enforcement undertakings from the Licensee under section 106 of the Act on 17 April 2014, 11 January 2016 and 29 June 2016. NHS Improvement imposed an additional licence condition ("the additional condition") on the Licensee under section 111 of the Act on 14 April 2016 and required the Licensee to appoint a person specified by NHS Improvement as interim chair of the Licensee on 4 May 2016.
- 2.2. Paragraph 1 of the additional condition requires the Licensee to 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-
  - 2.2.1. address the issues specified in paragraph 2; and
  - 2.2.2. comply with any enforcement undertakings accepted, or discretionary requirements imposed, by NHS Improvement in relation to these issues.
- 2.3. The issues referred to in paragraph 1 are:
  - 2.3.1. the failures in governance of the Licensee that have led to the enforcement undertakings agreed with NHS Improvement on 17 April 2014 and 11 January 2016,

- and the warning notice issued by the CQC on 16 March 2016; and
- 2.3.2.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.

#### *June 2014 undertakings*

- 2.4. In June 2015, a compliance certificate was issued in respect of one of the undertaking accepted by NHS Improvement in June 2014 but the remaining undertakings are yet to be delivered in full.

#### *January 2016 undertakings*

- 2.5. NHS Improvement accepted 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. The Licensee is in the process of delivering these undertakings but they are yet to be delivered in full.

#### *June 2016 undertakings*

- 2.6. 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 and the publication of a report on 29 April 2016 outlining governance failings, including identifying longstanding risks to patients that had not been addressed. NHS Improvement accepted undertakings from the Licensee on 30 June 2016 to address the failings identified by the CQC. The Licensee is in the process of delivering these undertakings but they are yet to be delivered in full.

#### *Chair*

- 2.7. Further to the findings of the CQC inspection in January 2016 and the resignation of the chair of the Licensee, on 4 May 2016 NHS Improvement required the Licensee to appoint a person specified by NHS Improvement as interim chair of the Licensee, with effect from a date to be agreed by NHS Improvement and on such terms and conditions as NHS Improvement may approve. The Licensee appointed Tim Smart as interim chair of the Licensee on 4 May 2016 in pursuance of this requirement.
- 2.8. The interim chair of the Licensee, Tim Smart, resigned from his position with the Licensee on 19 September 2016. A permanent replacement has not yet been identified.

#### *Breach of the additional condition and need for action*

- 2.9. These matters demonstrate that the Licensee does not have in place sufficient and effective board, management and clinical leadership capacity and capability, as well as appropriate governance systems and processes as required by additional licence condition.
- 2.10. NHS Improvement is therefore satisfied that the Licensee is breaching the additional licence condition.
- 2.11. NHS Improvement considers that in light of this breach and having regard to the requirements of the Licensee's enforcement undertakings ("enforcement requirements"), and the issues identified in the additional condition, there is an urgent

need to appoint an interim chair.

2.12. NHS Improvement also considers that the person appointed as interim chair must be an individual with the skills and experience necessary to ensure that the Licensee complies with those enforcement requirements, addresses those issues and takes the steps appropriate to secure compliance with the Licensee's licence.

### 3. Appropriateness of Requirement

In considering the appropriateness of the requirements imposed in this case, NHS Improvement has taken into account its Enforcement Guidance.

#### **THE REQUIREMENTS SET OUT IN THIS NOTICE ARE WITHOUT PREJUDICE TO:**

- (i) THE REQUIREMENTS OF THE ADDITIONAL LICENCE CONDITION;**
- (ii) THE REQUIREMENTS OF ANY ENFORCEMENT UNDERTAKING ACCEPTED BY NHS IMPROVEMENT;**
- (iii) ANY ACTION WHICH NHS IMPROVEMENT MAY CONSIDER APPROPRIATE IN RESPONSE TO A FURTHER BREACH OF THE ADDITIONAL LICENCE CONDITION; AND**
- (iv) THE REQUIREMENT ON THE LICENSEE TO ENSURE THAT IT IS COMPLIANT WITH THE OTHER CONDITIONS OF ITS LICENCE INCLUDING THOSE RELATING TO QUALITY OF CARE.**

**IF THE LICENSEE OR ANY OTHER PERSON FAILS TO COMPLY WITH THIS NOTICE, NHS IMPROVEMENT WOULD BE ABLE TO DO ONE OR MORE OF THE THINGS WHICH IT COULD REQUIRE THE LICENSEE TO DO UNDER SECTION 111(5) OF THE ACT. THIS COULD INCLUDE APPOINTING THE INTERIM CHAIR OR INTERIM CHIEF EXECUTIVE, OR REMOVING ONE OR MORE OF THE OTHER DIRECTORS OR MEMBERS OF THE COUNCIL OF GOVERNORS.**

#### **NHS IMPROVEMENT**

Dated 28 October 2016

Signed



Ben Dyson  
Chair of Provider Regulation Committee