

LICENSEE:

Sherwood Forest Hospitals NHS Foundation Trust ("the Licensee")
King's Mill Hospital
Mansfield Road
Sutton in Ashfield
Nottinghamshire
NG17 4JL

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").

1. GROUNDS

Licence

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

2. BREACHES

Financial 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: CoS3(1), FT4(5)(a), FT4(5)(d), FT4(5)(g).
- 2.2. In particular:
 - 2.2.1. The Licensee has failed to produce a realistic and sustainable long term financial plan which raises concerns about its financial governance;
 - 2.2.2. The Licensee's forecast 2014/15 deficit deteriorated against its 2014/15 financial plan by £4.5m in December 2014, and a further £1.7m in January 2015. The Licensee now has a forecast 2014/15 deficit of £32.7m. This unforeseen deterioration in the Licensee's financial position raises further concerns about the Licensee's financial governance; and
 - 2.2.3. Based on the information provided by the Licensee to Monitor during February 2015, including draft 2015/16 financial plans submitted on 27 February 2015, Monitor is concerned that the 2015/16 position will significantly worsen from the forecast 2014/15 deficit. This raises further concerns about the Licensee's financial governance.
- 2.3. The matters set out above demonstrate shortcomings in the Licensee's corporate governance arrangements and financial management standards, including a failure by the Licensee to establish and effectively implement systems and/or processes to:
 - 2.3.1. ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;

- 2.3.2. implement 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);
- 2.3.3. identify and manage (including through forward plans), material risks to compliance with the Conditions of its Licence.

Target Breaches

- 2.4. 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)(c) and (f);
- 2.5. In particular:
 - 2.5.1. The Licensee has failed to meet the referral to treatment non admitted target ("RTT non admitted target") in each quarter since Q3 2013/14 and has failed to meet the accident and emergency 4 hour wait target ("A&E target") in each quarter since Q4 2013/14;
- 2.6. The failure to achieve the RTT non admitted target and the A&E target demonstrates a failure of governance arrangements to establish and effectively implement systems or processes to ensure compliance with the health care standards binding on the Licensee, and a failure to identify and manage material risks to compliance with the conditions of its Licence.

Governance Breaches

- 2.7. 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(4); FT4(5)(a); FT4(5)(b)-(d);(f) & (g); FT4(6); FT4(7).
- 2.8. In particular:
 - 2.8.1. Following an inspection in April and May 2014 the CQC recommended that the Licensee remain in special measures. Monitor is concerned that insufficient progress has been made by the Licensee to exit special measures on a timely basis;
 - 2.8.2. The Licensee has failed to comply with its s.105 discretionary requirements, in particular, to fully deliver its Governance plans by 31 October 2013, and to submit a five year financial turnaround plan which is deliverable and reduces the Licensee's underlying deficit and cash requirements year on year on a recurrent basis;
 - 2.8.3. An external review (finalised in February 2015) of the Licensee's financial plan highlighted deficiencies in the Licensee's planning process. In particular, there are concerns about the Licensee's ability to operationalise the financial plan;

- 2.8.4. The Licensee's financial deterioration in 2014/15 and expected further financial deterioration in 2015/16 raises concerns about the Licensee's financial governance;
 - 2.8.5. An external review (finalised in December 2014) of the Licensee against Monitor's Well Led Framework for governance reviews highlighted a number of governance concerns; and
 - 2.8.6. The Licensee has failed to meet the RTT non admitted target in each quarter since Q3 2013/14 and has failed to meet the A&E target in each quarter since Q4 2013/14.
- 2.9. The matters set out above demonstrate shortcomings in the Licensee's corporate governance arrangements, including a failure to:
- 2.9.1. ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
 - 2.9.2. implement effective financial decision-making, management and control;
 - 2.9.3. obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making; and
 - 2.9.4. identify and manage (including through forward plans), material risks to compliance with the Conditions of its Licence.
3. Need for action
- 3.1. 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
- 4.1. 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. Financial Sustainability & Financial Governance

- 1.1. The Licensee will take all reasonable steps to deliver its services on a financially sustainable basis, including but not limited to the actions in paragraphs 1.2 to 1.9 below. As part of this, the Licensee will take all reasonable steps to improve its financial position and minimise its external funding requirement.

- 1.2. The Licensee will develop and deliver a recovery plan for the 2015/16 financial year (the "Short Term Recovery Plan") to be submitted to Monitor by 31 July 2015 or such later date as may be agreed with Monitor.
- 1.3. The Licensee will develop and demonstrate it can deliver a realistic and robust long term financial recovery plan to address the 5 years following the period covered by the Short Term Recovery Plan, or such other period as Monitor may agree (the "Long Term Recovery Plan"). The Licensee will submit the Long Term Recovery Plan to Monitor by 31 October 2015 or such later date as may be agreed with Monitor.
- 1.4. This Licensee will develop and deliver a plan to ensure that appropriate financial governance arrangements, including sufficient cost controls, are in place (the "Financial Governance Action Plan"). The Financial Governance Action Plan will be submitted to Monitor by 31 May 2015 or such later date as may be agreed with Monitor.
- 1.5. The Financial Governance Action Plan will include "SMART" milestones and metrics for each action in order to allow the Licensee to track progress against each action.
- 1.6. Following submission of the Short Term Recovery Plan, Long Term Recovery Plan and Financial Governance Action Plan, if requested by Monitor, the Licensee will commission an external assurance review of the Short Term Recovery Plan, the Long Term Recovery Plan and/or the Financial Governance Action Plan from a source and according to a scope and timing to be agreed with Monitor. If an external assurance review is commissioned the Licensee will provide copies of the draft and final reports to Monitor, if Monitor so requests.
- 1.7. The Licensee will keep the Short Term Recovery Plan, Long Term Recovery Plan and Financial Governance Action Plan under review. Where matters are identified which materially affect the Licensee's ability to meet the requirements of paragraph 1.1, whether identified by the Licensee, Monitor or another party, the Licensee will notify Monitor (if Monitor is not aware of the matter) as soon as practicable and update and resubmit the relevant plan within a timeframe to be agreed with Monitor.
- 1.8. The Licensee will continue to employ a financial turnaround director and will ensure the financial turnaround director is provided with access to such resources and support as the financial turnaround director considers necessary and reasonable for the fulfilment of their role, until such time as the Licensee can demonstrate to Monitor that:
 - 1.8.1. it has the capacity and capability to develop and deliver a credible Short Term Recovery Plan, Long Term Recovery Plan and Financial Governance Action Plan; and
 - 1.8.2. appropriate standards of financial governance (including sufficient cost controls) are in place; or
 - 1.8.3. Monitor agrees that a financial turnaround director is no longer required.
- 1.9. If required by Monitor the Licensee will commission a review to assess whether the requirements of 1.8.1 and 1.8.2 have been met from a source and according to a scope and timing to be agreed with Monitor. If a review is commissioned, the Licensee will provide copies of the reviewer's draft and final reports to Monitor within a week of receiving them.

2. Special Measures

- 2.1. The Licensee will take all reasonable steps to ensure that it meets the requirements to exit special measures following the next CQC inspection, including but not limited to the actions in paragraphs 2.2 to 2.4 below.
- 2.2. The Licensee will deliver the "SMART Action Plan" (submitted to Monitor on 26 March 2015) which addresses the issues preventing the Trust from exiting special measures. The Licensee will provide Monitor with fortnightly reporting on its progress in delivering the SMART Action Plan unless otherwise agreed with Monitor. The fortnightly reporting submission to Monitor will be signed off by the executive director lead for each section of the SMART Action Plan unless agreed by Monitor.
- 2.3. The Licensee will keep the SMART Action Plan under review. Where matters are identified which materially affect the Licensee's ability to meet the requirements of paragraph 2.1, whether identified by the Licensee, Monitor or another party, the Licensee will notify Monitor (if Monitor is not aware of the matter) as soon as practicable and update and resubmit the SMART Action Plan in conjunction with Monitor's Improvement Director appointed to the Licensee ("Improvement Director") within a timeframe to be agreed with Monitor.
- 2.4. The Licensee will ensure the Improvement Director is provided with access to such resources and support as the Improvement Director considers necessary and reasonable for the fulfilment of their role.

3. Target breaches

- 3.1. The Licensee will take all reasonable steps to deliver the A&E target and RTT non admitted target on a sustainable basis, including but not limited to the actions in paragraphs 3.2 to 3.7 below.
- 3.2. The Licensee will develop an A&E target action plan and an RTT non admitted target action plan ("the Target Action Plans") to be submitted to Monitor by 8 May 2015 or a later date to be agreed with Monitor.
- 3.3. Prior to submission to Monitor, the Target Action Plans will be agreed with the Licensee's commissioners and NHS Interim Management and Support ("IMAS") unless otherwise agreed with Monitor.
- 3.4. The Target Action Plans will include such metrics and Key Performance Indicators (KPIs) as are necessary to monitor implementation of the plans.
- 3.5. The Licensee will provide a monthly report on its progress against the actions and performance against the KPIs in the Target Action Plans. The form, content and timing of the report are to be agreed with Monitor.
- 3.6. The Licensee will implement the Target Action Plans and will, if required by Monitor, obtain external assurance from a source and according to a scope and timing to be agreed with Monitor, that the target action plans have been implemented in full.
- 3.7. The Licensee will keep the Target Action Plans under review. Where matters are identified which materially affect the Licensee's ability to meet the requirements of paragraph 3.1, whether identified by the Licensee, Monitor or another party, the

Licensee will notify Monitor (if Monitor is not aware of the matter) as soon as practicable and update and resubmit the Target Action Plans.

4. Governance

- 4.1. The Licensee will take all reasonable steps to ensure that breaches of the Licence due to governance concerns are addressed sustainably, including but not limited to the actions in paragraphs 4.2 to 4.6 below.
- 4.2. The Licensee will develop a plan to address the concerns identified in the 'Well Led' review which concluded in December 2014 ("the Governance Action Plan"). The Governance Action Plan is to be submitted to Monitor by 29 May 2015 or a later date to be agreed with Monitor.
- 4.3. The Governance Action Plan will include "SMART" milestones and metrics for each action in order to allow the Licensee to track progress against each action.
- 4.4. The Licensee will implement the Governance Action Plan.
- 4.5. The Licensee will keep the Governance Action Plan under review. Where matters are identified which materially affect the Licensee's ability to meet the requirements of paragraph 4.1, whether identified by the Licensee, Monitor or another party, the Licensee will notify Monitor (if Monitor is not aware of the matter) as soon as practicable and update and resubmit the Governance Action Plan within a timeframe to be agreed with Monitor.
- 4.6. On completion of the Governance Action Plan, if required by Monitor the Licensee will commission a comprehensive review of governance from a source and according to a scope and timing to be agreed with Monitor. If a review is commissioned, the Licensee will provide copies of the reviewer's draft and final reports to Monitor within a week of receiving them.

5. Distressed funding

- 5.1. Where 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.
- 5.2. The Licensee will comply with any reporting requests made by Monitor in relation to any financing provided or to be provided to the Licensee by the Secretary of State for Health pursuant to section 40 of the NHS Act 2006.

6. General

- 6.1. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of:
 - 6.1.1. The Short Term Recovery Plan;
 - 6.1.2. The Long Term Recovery Plan;
 - 6.1.3. The Financial Governance Action Plan;

- 6.1.4. The SMART Action Plan;
 - 6.1.5. The Target Action Plans; and
 - 6.1.6. The Governance Action Plan.
- 6.2. Such programme management and governance arrangements will enable to the Board to:
- 6.2.1. Obtain a clear oversight over the progress in delivery the plans;
 - 6.2.2. Obtain an understanding of any risks to the successful achievement of the plans and ensure appropriate mitigation of any such risks; and
 - 6.2.3. Hold individuals to account for the delivery of the relevant plans.

7. Reporting

- 7.1. The Licensee will provide regular reports to Monitor on its progress in meeting the undertakings set out above and will attend meetings or, if Monitor stipulates, conference calls, 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 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:

- **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 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 of Licensee)

Dated

Scaly au
21 April 2015

MONITOR

Signed

A handwritten signature in black ink, appearing to be 'MB' followed by a stylized flourish.

Dated

24 April 2015