

LICENSEE:

King's College Hospital NHS Foundation Trust ("the Licensee")
Denmark Hill
London
SE5 9RS

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 acquisition of the Princess Royal University Hospital on 1 October 2013, material financial, quality 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

- 3.1. 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)(a),(b) and FT4(5)(a),(d), and (f), in particular the significant deterioration in the Licensee's financial performance during 2014/15 from its financial APR plan. The Licensee has forecast to close 2014/15 with a deficit of £44.0 million.
- 3.2. 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:
 - 3.2.1. to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
 - 3.2.2. 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); and

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

3.3. 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 1.11 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 April 2015 or such later date as may be agreed with Monitor; and
 - 1.2.1.2. A recovery plan for the two years 2015/16 and 2016/17 to be submitted to Monitor by 31 May 2015 or such later date as may be agreed with Monitor; and
 - 1.2.2. A strategy and plan for its longer term sustainability (the "Strategic Plan") to be submitted to Monitor by 30 October 2015 or such later date as may be agreed with Monitor.
 - 1.2.3. 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 1.4.

- 1.3. The key parameters and detailed scope of the Short Term Recovery Plan and Strategic Plan will be agreed with Monitor, recognising that the delivery of the Strategic Plan will require actions by both the Licensee and by others in the local health economy.
- 1.4. The Licensee will obtain assurance that the Short Term Recovery Plan and Strategic Plan and their delivery will enable it to comply with section 1.1. The source, scope and timing of that assurance will be agreed with Monitor, and the assurance will be provided to Monitor if Monitor so requests.
- 1.5. The Licensee will provide to Monitor direct access to its operational and financial advisors and the Licensee's board members including the Turnaround and Transformation Director as needed in relation to the Short Term Recovery Plan and Strategic Plan.
- 1.6. The Licensee will demonstrate that it is able to deliver the Short Term Recovery Plan and the Strategic Plan, including demonstrating that it has sufficient executive capacity.
- 1.7. The Licensee will keep the Short Term Recovery Plan and Strategic Plan and their delivery 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 or another party, the Licensee will notify Monitor as soon as practicable and update and resubmit the Short Term Recovery Plan and Strategic Plan within a timeframe to be agreed with Monitor.
- 1.8. The Licensee will develop and agree with Monitor Key Performance Indicators ("KPIs") to assess the impact of the Short Term Recovery Plan and Strategic Plan.
- 1.9. The Licensee will consult with Monitor in relation to:
 - 1.9.1. The development of the plans; and
 - 1.9.2. Local health economy wide discussions related to the Short Term Recovery Plan and Strategic Plan.
- 1.10. The Licensee will consult and agree with Monitor:
 - 1.10.1. The appointment and scope of any key operational and financial advisors in relation to the Short Term Recovery Plan and Strategic Plan; and
 - 1.10.2. Executive capacity to support the delivery of the Short Term Recovery Plan and the Strategic Plan, including key executive appointments.
- 1.11. The references to Short Term Recovery Plan and Strategic Plan are to the plans as submitted under the terms of paragraph 1.3 or to any subsequent revised versions as agreed with Monitor as appropriate.

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 to the Licensee by the Secretary of State pursuant to section 40 or 42 of the NHS Act 2006.

3. Reporting

3.1. The Licensee will:

- 3.1.1. Report to Monitor as required on its progress in meeting the undertakings set out above, including reporting against the KPI's agreed pursuant to paragraph 1.8;
- 3.1.2. Attend meetings or, if Monitor stipulates, conference calls, as required, to discuss its progress in meeting the undertakings set out above and in particular the development of the Short Term Recovery Plan and Strategic Plan, and to provide assurance to Monitor on the robustness and delivery of these plans; and
- 3.1.3. 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 (recognising the latest state of the Short Term Recovery Plan at the time of submission).

4. General

- 4.1. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of the Short Term Recovery Plan and the Strategic Plan.
- 4.2. Such programme management and governance arrangements will enable the Board to:
 - 4.2.1. Obtain a clear oversight over the progress in delivery of the plans;
 - 4.2.2. Obtain an understanding of any risks to the successful achievement of the plans and ensure appropriate mitigation of any such risks; and
 - 4.2.3. Hold individuals to account for the delivery of the relevant plans.

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

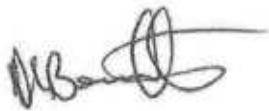


Prof. Sir George Alberti

Signed (Chair or Chief Executive of Licensee)

Dated: 31 March 2015

MONITOR



Signed (Chair of the Provider Regulation Executive)

Dated 1.4.15