



Independent Regulator
of NHS Foundation Trusts

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26 November 2009

Michael Large OBE
Chairman
Basildon and Thurrock University Hospitals NHS Foundation Trust
Nethermayne
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By email

Dear Michael

Basildon and Thurrock University Hospitals NHS Foundation Trust ('The Trust')
National Health Service Act 2006: section 52: failing NHS foundation trusts

I am writing to inform you of the decision of Monitor's Board made at its meeting yesterday.

Summary of Monitor's Board decision

Monitor's Board decided that the Trust is in significant breach of three terms of its Authorisation, namely, the general duty under condition 2 (to exercise its functions effectively, efficiently and economically), its governance duty under condition 5 and its healthcare targets and other standards duty under condition 6.

In consequence, Monitor's Board agreed that it should use its formal powers under section 52 of the National Health Service Act 2006 (the Act) to require the Trust to:

- appoint external advisers, agreed with Monitor, to establish and oversee a programme office to manage and report on the delivery of quality of service improvement action plans;

- agree with Monitor the objective performance metrics against which the Trust's performance will be measured over the period of 6 months from today; and
- take steps to strengthen senior clinical capacity, in particular, to assist the programme office in the delivery of the Trust's action plans and to provide additional support to the Medical Director and Director of Nursing.

The section 52 Notice is enclosed, together with its short Annex. I shall be grateful if you will ensure that this documentation is immediately shared with your Board of Directors and Council of Governors.

The Trust should be aware that Monitor is obliged by law to make public the fact of this statutory intervention, and the requisite notice under section 52 of the Act, together with this letter, will be on Monitor's website today.

The Board's conclusion was reached after consideration of all relevant and available evidence including, in particular:

- the concerns described in our meeting with the Trust on 30 October 2009 and in our letter to the Trust dated 6 November 2009; this communication followed the Statutory Warning Notice issued by the Care Quality Commission (CQC) on 20 October 2009;
- information provided by the Trust in its letter of 17 November 2009 and at the formal escalation meeting on 20 November 2009 with Monitor;
- our letter of 23 November 2009 and the Trust's response of 24 November 2009.

Further, in considering its decision, Monitor's Board took into account the extent of progress made by the Trust and the actions it has taken to endeavour to rectify some of the serious quality of care concerns. In particular, Monitor's Board noted the following:

- the Trust's plan to improve Hospital Standard Mortality Ratios (HSMR) which was agreed by the PCT, CQC and the SHA in October 2009;
- appointment of PwC as advisers to provide independent review;
- appointment of an associate Medical Director to increase the capacity of clinical leadership and to lead the Trust's improvement plan associated with HSMR; and
- improvement in rates of MRSA and CDifficile.

However, notwithstanding the progress made in recent months, the Board considered that the Trust is in significant breach of its Authorisation as outlined above.

Details of Monitor's Board decision

Condition 6(1) and (2) of the terms of Authorisation

Monitor's Board considered the evidence relevant to condition 6(1) and (2) of the Authorisation. In accordance with the summary tables at Appendix 1 to this

letter, the Board noted the specific areas of performance concern relating to both historic and ongoing failures to deliver healthcare and other standards as follows:

- **patient safety:** including the Trust's persistently high HSMRs (2005/06 119; 2006/07 126; 2007/08 132; 2008/09 131); breach of regulation and
- CQC's Warning Notice in respect of decontamination of equipment and policies for disinfection and decontamination; risk to registration by the CQC; and deterioration in the CQC's Annual Health Check (AHC) quality of service rating
- **patient experience:** breach of regulation and CQC's Warning Notice in relation to premises cleanliness and repair; persistently poor results in the HCC Children's Service Review (2005/06) and follow up review (2008/09);
- **core standards:** historic and ongoing core standards breaches; and
- **healthcare targets:** breach of the 2 week cancer target in Q2 2009/10.

Monitor's Board took account of the key mitigations and progress made by the Trust, for example, in relation to efforts to improve the Trust's HSMRs. However, the Board decided that the Trust's failure to deliver against a range of healthcare targets and other patient safety related measures as set out above was reflective of the Trust's inability to properly identify risks and implement necessary changes, or take effective action in a proactive and timely way to rectify performance issues in a sustainable manner and avert future breach.

The Board therefore agreed with the residual concerns of the executive as set out in Appendix 1 and concluded that the Trust was in significant breach of condition 6(1) and (2) of its Authorisation.

Condition 5 of the terms of Authorisation

Arising from and related to the significant breach of condition 6(1) and (2), the Board considered whether there was a breach of condition 5 (governance). The Board noted the specific areas of concern raised by the executive per Appendix 1, namely:

- accountability, assurance, board challenge, leadership, identification of risk, risk management and timely implementation of actions to deliver sustainable quality of service improvements.

The Board noted the Trust's failure to effectively implement action plans to rectify quality of service measures. In particular the Board noted the Trust's persistently high HSMR and sustained breaches of regulations concerning HCAI prevention,

together with concerns regarding quality of care issues. These matters had triggered a more detailed review by Monitor of wider governance issues at the Trust, and consideration of whether the Trust has in place arrangements to provide representative and comprehensive governance.

The Board acknowledged progress made by the Trust but decided that, in itself, this did not provide sufficient evidence that the Trust Board has the capacity, competence or capability on an ongoing basis, or has taken steps to secure that it has such capacity, competence and capability to:

- identify risks to its Authorisation, and in particular to patient safety; and
- design and oversee effective action plans to properly address the risks on a sustainable basis.

The Board accordingly agreed with the residual concerns of the executive as set out in Appendix 1 and agreed that the Trust is in significant breach of condition 5 of its Authorisation.

Condition 2 of the terms of Authorisation

Monitor's Board considered whether the Trust had discharged its general duty to exercise its functions effectively, efficiently and economically and again referred to the tables at Appendix 1.

The Board had no concerns regarding the Trust's current financial performance with a Financial Risk Rating of 4 at Q2 2009/10. The Board also noted some recent improvements against some but by no means all of the indicators which first gave rise to Monitor's concerns.

However, the Board noted in light of the significant breaches of conditions 5 and 6 that the failure by the Trust to implement action plans, for example, to satisfactorily address the persistently high HSMR on a sustained basis, or to rectify the quality of service measures as formally identified by the CQC, was clearly indicative of a failure by the Trust to discharge its statutory functions in an effective manner.

Therefore, the Board determined that the Trust was in significant breach of condition 2 of its Authorisation.

Statutory intervention

Having determined the Trust to be in significant breach of three terms of its Authorisation, the Board then considered whether to use its formal powers of intervention under section 52 of the Act.

The Board acknowledged that such intervention must be likely to result in a timely and sustained recovery in the Trust's position and safeguard prompt

access to quality care by the Trust's patients. Taking account of the Trust's performance to date, the Board determined that currently, it was both reasonable and proportionate for it to formally require the Trust to undertake the specific actions set out in the attached Notice. However, failure by the Trust to deliver sustained and sound recovery would be likely to cause Monitor's Board to reconsider the Trust's position and the appropriateness of further use of its formal intervention powers.

Next Steps

Monitor's Compliance Director, Merav Dover, will be in urgent touch with you to determine the matters specified in the section 52 Notice enclosed. Further, as the Trust is in significant breach of its terms of Authorisation, the Trust is required to report on progress and to meet Monitor on a monthly basis. Any questions should be directed to Merav.

Yours sincerely

A handwritten signature in black ink, appearing to read 'William Moyes', written over a horizontal line.

William Moyes
Chairman

CC: Board of Governors