



Independent Regulator
of NHS Foundation Trusts

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29 October 2009

Derek Smith
Interim Chief Executive
Dorset County Hospital NHS Foundation Trust
Dorset Count Hospital
Williams Avenue
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By email

Dear Derek

Dorset County Hospital NHS Foundation Trust: significant breach of terms of Authorisation and notice of intervention

I am writing to inform you of the decision of Monitor's Board made at its meeting on 28 October 2009. On this date, Monitor's Board concluded that:

1. Dorset County Hospital NHS Foundation Trust (the Trust) is in significant breach of a term of its Authorisation due to the Trust's failure to comply with its general duty under Condition 2 of that Authorisation to exercise its functions effectively, efficiently and economically; and
2. Monitor should use its formal powers under section 52 of the National Health Service Act 2006 (the Act) to appoint Jeffrey Ellwood as Interim Chairman, and in addition to require the Members' Council to immediately commence its formal recruitment process to appoint a Chairman.

The Trust will as a consequence also be red rated for governance risk at Q2 2009/10.

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

- information provided by the Trust at formal escalation meetings on 2 and 21 October 2009 with Monitor;
- the concerns described in our letter to the Trust dated 8 October 2009;
- as at Month 5 of 2009/10, the Trust's very serious ongoing financial position with a financial risk rating of 1 resulting from a deterioration in financial

performance and operational efficiency, and the Trust's forecasts that this rating will remain throughout the current financial year;

- the Trust's Board minutes for the previous 12 months, which reflect shortfalls in governance and leadership; and
- Robin SeQueira's decision to resign, thereby leaving the Trust without a Chair.

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 financial and operational concerns, including its progress against the actions described in our letter dated 8 October 2009. In particular, Monitor's Board noted the following;

- the Trust's appointment of Ernst and Young as advisers and recent changes in the Trust Board and the executive team, which include the appointment of an interim Chief Executive, interim Finance Director and interim Director of Human Resources. It is also understood that the Trust is considering what further skills may be required on the Board and within the senior team;
- the work undertaken to date on the Trust's stabilisation plan for 2009/10;
- the commencement of the design of a strategic plan to deliver longer term sustainability and financial stability; and
- a planned review of governance and performance management arrangements.

However, notwithstanding the progress made in recent months, the Board considered that the Trust was in significant breach of a term of its Authorisation. In particular, the Board was not satisfied that the Trust had undertaken all appropriate measures that could reasonably have been expected, in a timely manner, to:

- first, identify and then address the severe decline in financial performance over the last 12 months; and
- put in place the skills, structure and capacity to address the significant issues faced over the past 12 months, and in the development of plans for future years.

Having found the Trust to be in significant breach of a term of its Authorisation, the Board then considered whether to use its formal powers under section 52 of the Act. Relevant to this decision was the need to ensure the Trust has in place the necessary leadership and operational skills to design and then successfully deliver against recovery plans.

In this regard, the Board took account of the recent decision of Robin SeQueira to stand down as Chair of the Trust in deciding to use its section 52 powers to appoint Jeffrey Ellwood as Interim Chair of the Trust and also to require the Trust's Members' Council to immediately commence its formal recruitment process to appoint a Chairman. Notice of this decision, together with a short annex, is enclosed. I shall be grateful if you will ensure that this letter and notice are immediately shared with your Board of Directors and Members' Council.

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

The governors will know that, by law, they have the power to appoint or remove the Chairman and that within the Trust's constitution, the process of appointment of the Trust's executive team is defined. These powers and those of Monitor to intervene at its discretion where there is a significant breach of the Trust's authorisation do not, however, conflict. Where justified by the evidence and the circumstances, Monitor will move very swiftly to use its regulatory powers to arrest failure, protect patient care and ensure the Trust returns to a stable and well governed position from which it may properly discharge its range of healthcare duties.

Monitor may only use its formal powers in the circumstances outlined above and any appointments made in consequence are interim only. Having regard to the challenges faced by the Trust, it was the decision of Monitor's Board that the interim appointment of Mr Ellwood continues until such time as a Chairman is appointed by the Members' Council and has then taken up their position.

Finally, I consider it important to state that, currently Monitor has no reason for concerns as to the quality of the clinical care provided by the Trust to its patients. The formal intervention relates to matters of strategic and operational leadership capacity and in response to serious financial challenges. The aim of this formal intervention is to assist the Trust in acquiring the leadership skills it will need in order to successfully deliver against recovery plans.

Next steps

With the Trust currently in significant breach of its terms of Authorisation, the Trust must ensure that it presents a fully considered stabilisation plan at the next meeting with Monitor on a date to be agreed in the early part of December. Once this plan is agreed, any material failure to deliver the key actions or to design and then present an effective plan to recover the Trust's position on a sustainable basis, and also to put in place the necessary skills and resources, is likely to cause Monitor to be minded to once again use its formal powers of intervention.

The requirement for the Trust to report progress against its plans to Monitor on a monthly basis will continue. In addition, the Trust will be required to provide Monitor with cashflow updates and forecasts on a weekly basis and attend monthly progress meetings.

Yours sincerely

A handwritten signature in black ink, appearing to read 'William Moyes', with a horizontal line underneath it.

William Moyes
Chairman

cc: Trust Board of Directors
Trust Members' Council