

## **FINAL NOTICE: DISCRETIONARY REQUIREMENTS**

### **LICENSEE:**

Kettering General Hospital NHS Foundation Trust ("the Licensee")  
Rothwell Road  
Kettering  
Northants  
NN16 8UZ

### **DECISION**

On the basis of the grounds set out below, having taken into account representations by the Licensee and having regard to its Enforcement Guidance, Monitor has decided to impose the discretionary requirements specified below upon the Licensee pursuant to its powers under section 105 of the Health and Social Care Act 2012 ("the Act").

### **ANTICIPATED EFFECT OF DECISION**

Monitor anticipates that the effect of imposing the discretionary requirement(s) will be as set out below under the heading(s) 'Need for Action' in the section below headed 'Grounds'.

### **GROUND S**

#### 1. Licence

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

#### 2. Power to impose discretionary requirements

##### 2.1. A&E Target

2.1.1. Monitor is satisfied 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)(a); FT4(5)(b); FT4(5)(c); FT4(5)(e); FT4(5)(f); FT4(5)(g).

2.1.2. In particular:

2.1.2.1. The Licensee was in breach of its four hour maximum waiting time target for Accident & Emergency ("the A&E target") in Q4 of 2010/11, Q1, Q2, Q3 and Q4 of 2011/12 and Q1, Q3 and Q4 of 2012/13.

2.1.2.2. these breaches by the Licensee demonstrate a failure of governance arrangements in particular, but not limited to, a failure by the Licensee to establish and effectively implement systems and/or processes (i) to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively and (ii) to

ensure compliance with health care standards binding on the Licensee including but not restricted to standards specified by the Secretary of State, the Care Quality Commission, the NHS Commissioning Board and statutory regulators of health care professions.

#### 2.1.3. Need for action

Monitor considers that the imposition of the compliance requirements set out below will secure that the breach in question does not continue or recur.

### 2.2. Financial

2.2.1. Monitor is satisfied 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) and FT4(5)(a).

2.2.2. In particular:

2.2.2.1. The Licensee had a Financial Risk Rating (“FRR”) of 1 in Q1 and Q3 of 2012/13 and a FRR of 2 in Q2 2012/13.

2.2.2.2. these breaches by the Licensee demonstrate a failure of 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 to ensure compliance with the Licensee’s duty to operate efficiently, economically and effectively.

#### 2.2.3. Need for action

Monitor considers that the imposition of the compliance requirements set out below will secure that the breach in question does not continue or recur.

### 2.3. Governance

2.3.1. Monitor is satisfied 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(2); FT4(3); FT4(4); FT4(5); FT4(6); FT4(7).

2.3.2. In particular:

2.3.2.1. The Licensee has repeatedly failed to identify and appropriately managed risks to financial performance and compliance with the A&E target.

2.3.2.2. The Licensee has been ineffective in addressing the A&E service performance issues on a sustainable basis, in that it has

repeatedly assured itself over the suitability of action plans to improve A&E performance that have in fact failed to deliver an improvement in performance.

2.3.2.3. The Licensee forecast a significant deterioration in its financial performance to a FRR of 1 in Q1 of 2012/13 and did not develop an action plan to mitigate the anticipated performance decline.

2.3.2.4. These breaches by the Licensee demonstrate a failure of governance arrangements, in particular, but not limited to a failure by the Licensee to establish and effectively implement systems and/or processes to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively.

### 2.3.3. Need for action

Monitor considers that the imposition of the compliance requirements set out below will secure that the breach in question does not continue or recur.

## 3. Appropriateness of Discretionary Requirements

In considering the appropriateness of imposing discretionary requirements in this case, Monitor has taken into account the matters set out in its Enforcement Guidance.

### **DISCRETIONARY REQUIREMENTS**

Monitor has decided to impose the following compliance requirement(s) pursuant to section 105 of the Act:

#### 1. Urgent Care Plan

- 1.1. The Addressee must continue to deliver the urgent care action plan ("the Urgent Care Plan") that was submitted to Monitor in February 2013 which includes actions sufficient to address all of the recommendations made by the Department of Health's Intensive Support Team ("IST") in its report dated August 2012 and return to compliance with the 4 hour maximum waiting time A&E target ("the A&E target") from 1 July 2013/14.
- 1.2. The Addressee must ensure that it submits a detailed trajectory to Monitor demonstrating how the Addressee will return to compliance against the A&E target by 30 April 2013.
- 1.3. The Addressee must implement sufficient programme management and governance arrangements to enable the effective delivery of the Urgent Care Plan. Such arrangements must enable the board of directors of the Addressee ("the Board") to:
  - a. obtain a clear oversight over the Addressee's progress in implementing the Urgent Care Plan;
  - b. obtain an understanding of any risks to the successful achievement of the Urgent Care Plan; and

- c. hold individuals to account for delivery of its actions.
- 1.4. The Addressee must obtain external assurance from the IST once the Addressee considers it has delivered the Urgent Care Plan.
- 1.5. The Addressee must take such additional steps as are necessary to ensure that it is able to meet the 4 hour A&E target on a sustainable basis from Q2 2013/14 (defined as a minimum of three consecutive quarters compliance).
- 1.6. The Trust is required to report its performance against the A&E target to Monitor on a weekly basis until such time as the sustainable achievement of the target has been met.

## 2. Financial Plan

- 2.1. The Addressee must by 30 April 2013 develop and submit to Monitor a financial plan ("the Financial Plan") the steps in which would be sufficient, if adhered to, to ensure that the Addressee achieves a Financial Risk Rating ("FRR") of at least 3 (or equivalent) by Q4 2013/14.
  - 2.1.1. The Financial Plan must include the following key metrics for subsequent reporting:
    - a. Revenue;
    - b. EBITDA
    - c. net surplus/deficit
    - d. underlying surplus/deficit
    - e. CIPs,
    - f. recurrent CIPs;
    - g. cash.
  - 2.1.2. In developing the Financial Plan, the Addressee must ensure that the forecasts within the Financial Plan are based on assumptions that have been reviewed, challenged and validated by the Addressee's management and Board. The Addressee must ensure that the Financial Plan addresses the reduction of the deficit and delivery of sufficient levels of liquidity to enable the Trust to achieve and maintain an FRR 3 (or equivalent) by Q4 2013/14.
- 2.2. The Addressee must obtain external assurance over the contents of the Financial Plan from a source and in accordance with a scope to be agreed with Monitor.
- 2.3. The Addressee must implement sufficient programme management and governance arrangements to enable the delivery of the Financial Plan and the Addressee's cost improvement plan (CIP). Such arrangements must enable the Board to:
  - a) Obtain a clear oversight over the progress in delivering the Financial Plan and CIPs.
  - b) Obtain an understanding of any risks to the successful achievement of the CIPs; and
  - c) Hold individuals to account for delivery of its actions.
- 2.4. The Addressee must deliver the Financial Plan.

- 2.5. The Addressee must report to Monitor monthly, providing evidence of delivery in accordance with the following areas of financial performance:
- a) Full income & expenditure, balance sheet and cash flow statements.
  - b) Key metrics set out in 2.1.1 above.
  - c) Updated forecast annual position for the key metrics.
  - d) Rolling cash flow forecast covering at least 6 months showing cash flows on a weekly basis.
- 2.6. The Addressee must take such additional steps as are necessary to ensure that it is able to achieve a FRR of 3 (or equivalent) by Q4 2013/14.

### 3. Strategic Plan

- 3.1. The Addressee must by 30 September 2013 develop and submit to Monitor a realistic and deliverable strategic plan ("the Strategic Plan") to secure its clinical and financial viability over the 3 year period concluding with the financial year 2015/16. The Addressee must engage with and take into account the views of all relevant stakeholders including its commissioners, in developing the Strategic Plan.

### 4. Board Governance Plan

- 4.1. The Addressee must by 30 April 2013 develop an action plan (the "Board Governance Plan") that, if it is implemented, will address the recommendations in the Deloitte Board Governance Review report by 30 July 2013. The Board Governance Plan must be signed off by the Board and submitted to Monitor by 30 April 2013.
- 4.2. The Addressee must implement the Board Governance Plan by a date to be agreed with Monitor.
- 4.3. The Addressee must by 30 July 2013 obtain external assurance that all actions from the Board Governance Plan have been satisfactorily implemented and that the recommendations in the Deloitte Board Governance Review report have been addressed. The Addressee must also share a written copy of the report from the external assurance review with Monitor within one week of receipt

### 5. Meetings

- 5.1. The Licensee shall attend meetings (or if Monitor stipulates conference calls) with Monitor during the currency of any of the compliance requirements detailed in this notice to discuss its progress in meeting these compliance requirements. These meetings shall take place once a month unless Monitor otherwise stipulates at a time and place to be specified by Monitor and with the attendees specified by Monitor.

**THE REQUIREMENTS IN THIS NOTICE ARE WITHOUT PREJUDICE TO THE REQUIREMENT ON THE LICENSEE TO ENSURE THAT IT IS COMPLIANT WITH ALL THE CONDITIONS OF ITS LICENCE INCLUDING THOSE RELATING TO:**

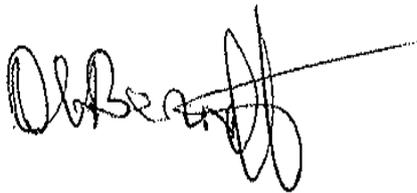
- **COMPLIANCE WITH THE HEALTH CARE STANDARDS BINDING ON THE LICENSEE; AND**
- **COMPLIANCE WITH ALL REQUIREMENTS CONCERNING QUALITY OF CARE.**

**ANY FAILURE TO COMPLY WITH REQUIREMENTS UNDER SECTION 105 OF THE ACT WILL RENDER THE LICENSEE LIABLE TO FURTHER FORMAL ACTION BY MONITOR. THIS COULD INCLUDE THE IMPOSITION OF A NON-COMPLIANCE PENALTY PURSUANT TO SECTION 105 AND SCHEDULE 11 OF THE ACT AND/OR REVOCATION OF THE LICENCE UNDER SECTION 89 OF THE ACT**

**THE LICENSEE MAY APPEAL A DECISION UNDER SECTION 105 OF THE ACT TO THE FIRST-TIER TRIBUNAL ON THE GROUNDS THAT A) THE DECISION IS BASED ON AN ERROR OF FACT; B) THE DECISION IS WRONG IN LAW; C) THE NATURE OF ANY COMPLIANCE REQUIREMENT IS UNREASONABLE OR D) THAT THE DECISION IS UNREASONABLE FOR ANY OTHER REASON.**

MONITOR

Dated 24 April 2013

A handwritten signature in black ink, appearing to read 'David Bennett', with a long horizontal stroke extending to the right.

Signed David Bennett  
Chair of relevant decision-making committee