

FINAL NOTICE: DISCRETIONARY REQUIREMENTS

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, 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. Financial Planning Breaches

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: CoS3(1)); FT4(5)(a); FT4(5)(d).

2.1.2. In particular:

2.1.2.1. the Licensee had a Financial Risk Rating of 1 from Q1 of 2012/13;

2.1.2.2. the Licensee has forecast a significant underlying deficit for 2013/14;
and

2.1.2.3. 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.

2.1.3. 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. Governance breaches

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: FT4(4)(a); FT4(4)(b); FT4(4)(c); FT4(5)(a); FT4(5)(b); FT4(5)(c); FT4(5)(d); FT4(5)(f); FT4(5)(g); FT4(7).

2.2.2. In particular:

2.2.2.1. the Licensee's governance was considered to be inadequate by the KPMG financial governance report and the PwC quality governance and board governance report, both of November 2012; and

2.2.2.2. these breaches by the Licensee demonstrate a failure of governance arrangements.

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.

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. Financial planning

1.1 The Licensee must produce and submit to Monitor by 31 May 2013 a five-year financial turnaround plan ("**the Financial Plan**") which is deliverable and which reduces the Licensee's underlying deficit and cash requirements year on year on a recurrent basis. The

Financial Plan should include all necessary milestones and metrics including, at a minimum, the following:

- 1.1.1 a demonstration of how the Licensee can achieve an underlying surplus, excluding the impact of the PFI;
- 1.1.2 detailed I&E, balance sheet and cash flow for 5 years from 2013/14 presented monthly for 2013/14, annually for other years and quarterly in respect of the cash position for 2014/15;
- 1.1.3 CIP Programme:
 - 1.1.3.1 detailed CIP plans for 2013/14 including results of quality impact assessment, approved by the Licensee's clinical leads; and
 - 1.1.3.2 outline CIP plans for 2014/15 and 2015/16;
 - 1.1.3.3 assessment of a reasonable level of CIP achievement in 2016/17 and 2017/18;
- 1.1.4 sensitivity analysis for key variables, including impact on key metrics including EBITDA, net deficit and cash;
- 1.1.5 as a minimum, the following key metrics for subsequent reporting:
 - 1.1.5.1 revenue;
 - 1.1.5.2 EBITDA;
 - 1.1.5.3 net surplus/deficit;
 - 1.1.5.4 underlying surplus/deficit;
 - 1.1.5.5 underlying surplus/deficit excluding the impact of the PFI;
 - 1.1.5.6 CIPs and recurrent CIPs;
 - 1.1.5.7 cash and cash equivalents; and
 - 1.1.5.8 quantification of the impact of PFI on EBITDA.
- 1.2 The Licensee will provide to Monitor by 31 May 2013 the assurances relied on by the Board in respect of the Financial Plan being able to meet the standards set out in paragraph 1.1 above.

- 1.3 The Licensee must provide an update to the Financial Plan, demonstrating that the Financial Plan is, so far as this is or should be within the Licensee's control, consistent with all relevant elements of all relevant plans and recommendations by the Licensee's Commissioners and the Mid-Nottinghamshire Transformation Board in relation to the local health economy, not later than one month following the publication of those plans and recommendations or by 31 October 2013, whichever is latest.
- 1.4 The Licensee shall obtain external assurance about the effectiveness of the Financial Plan as updated to meet the standards set out in 1.1 and 1.3 above which shall include assurance in relation to the following, from a source to be agreed with Monitor, with final reports to be submitted to Monitor on the same date that the Licensee submits the updated Financial Plan under paragraph 1.3 above:
 - 1.4.1 deliverability and appropriateness of planning;
 - 1.4.2 appropriateness of assumptions;
 - 1.4.3 reasonability of sensitivity analysis including whether any key variables have not been sensitised; and
 - 1.4.4 deliverability, appropriateness of planning, reporting and tracking of the CIP programme.
- 1.5 The Licensee must deliver the Financial Plan.
- 1.6 The Licensee must report to Monitor on delivery of the Financial Plan as required and as a minimum by providing the following on a monthly basis:
 - 1.6.1 full I&E, balance sheet and cash flow statements;
 - 1.6.2 key metrics defined above in paragraph 1.1.5;
 - 1.6.3 updated forecast annual position for the key metrics; and
 - 1.6.4 rolling cash flow forecast covering at least 6 months showing cash flows on a weekly basis.
- 1.7 Without prejudice to the other requirements set out in this notice, the Licensee must implement any other actions necessary to reduce its underlying deficit and cash requirements year on year on a recurrent basis.

2. Board effectiveness and governance

- 2.1. The Licensee must deliver the board and quality governance action plan and the financial governance action plan submitted to Monitor on 28 January 2013 ("**the Governance**

Plans”) in accordance with the timeframes set out in the Governance Plans, completing all actions by 30 September 2013 and achieve a sustained recovery to the minimum standard of quality governance required of an FT (a score of less than 4 against Monitor’s Quality Governance Framework).

2.2. The Licensee must report to Monitor, by exception, any deviation from the actions and associated timeframes for completion of the Governance Plans on at least a monthly basis.

2.3. The Licensee must obtain external assurance from a source to be agreed with Monitor on the following matters:

2.3.1. delivery of the Governance Plans; and

2.3.2. that the Licensee has reached the minimum standard of quality governance required of an FT (a score of less than 4 against Monitor’s Quality Governance Framework).

3. Programme management

3.1. The Licensee must implement comprehensive and effective programme management and governance arrangements to enable delivery of all plans referred to in this notice. Such arrangements must enable the Board to:

3.1.1. obtain a clear oversight over the progress in delivering the plans;

3.1.2. obtain a clear understanding of any risks to the successful achievement of the plans; and

3.1.3. hold individuals to account for delivery of its actions.

4. Meetings

4.1. 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.

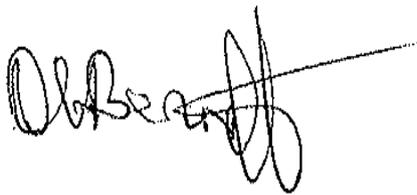
THE REQUIREMENTS IN THIS NOTICE ARE WITHOUT PREJUDICE TO THE REQUIREMENT ON THE LICENSEE TO ENSURE THAT IT IS COMPLIANT WITH ALL THE CONDITIONS OF ITS LICENCE INCLUDING THOSE RELATING TO:

- **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.

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