

## **FINAL NOTICE: DISCRETIONARY REQUIREMENTS**

### **LICENSEE:**

University Hospitals of Morecambe Bay NHS Foundation Trust (“the Licensee”)  
Trust Headquarters  
Westmorland General Hospital  
Burton Road  
Kendal  
Cumbria  
LA9 7RG

### **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. Corporate governance and financial management 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)(a); FT4(5)(a); FT4(5)(d).

2.1.2. In particular:

2.1.2.1. the Licensee’s Recovery Plan (October 2012) identified the need to deliver large-scale strategic service reconfiguration from April 2014, to ensure its financial sustainability. This reconfiguration is also required to secure the clinical sustainability of several key services; and

2.1.2.2. 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.

2.1.3. 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 relating to maternity services

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(2); FT4(4)(c); FT4(5)(a); FT4(5)(b); FT4(5)(c); FT4(5)(f); FT4(6)(c); FT4(6)(d); FT4(6)(f).

2.2.2. In particular:

2.2.2.1. a number of serious governance failings were identified by the external review of the Licensee's maternity services by Central Manchester University Hospitals NHS Foundation Trust ("CMUH") in December 2011 ("CMHU's Initial Maternity Review");

2.2.2.2. the follow-up review by CMUH in October 2012 ("CMUH's Follow-up Maternity Review") found that there was insufficient evidence that the Licensee had effectively and fully implemented the recommendations in CMUH's Initial Maternity Review; and

2.2.2.3. 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. Corporate governance and financial management breaches

- 1.1. The Licensee must by 31 January 2014 develop and submit to Monitor a strategic plan (“the Strategic Plan”) to address the long term risks to providing services which are clinically safe in line with applicable healthcare standards binding on the Licensee as well as financially sustainable. In doing so, the Licensee must ensure that:
  - 1.1.1. they make all reasonable efforts to engage and co-operate with their commissioners including but not restricted to engagement and cooperation on all necessary public consultations;
  - 1.1.2. the Strategic Plan considers and, where appropriate, incorporates the views of the Licensee’s commissioners;
  - 1.1.3. the Strategic Plan is subject to a clinically-led quality impact assessment to ensure that it does not prevent the Licensee from meeting applicable healthcare standards binding on the Licensee;
  - 1.1.4. the Strategic Plan enables the Trust to deliver safe and acceptable levels of clinical performance (as determined by the healthcare standards binding on the Licensee including but not restricted to the standards specified by the Secretary of State, the Care Quality Commission, the NHS Commissioning Board and statutory regulators of health care professionals);
  - 1.1.5. the Strategic Plan must deliver the level of savings required to secure the long term financial sustainability of the Trust in order that it can:
    - 1.1.5.1. deliver a net surplus for the five years commencing 2015/16;
    - 1.1.5.2. generate net positive cash flows for the five years commencing 2015/16; and
    - 1.1.5.3. pay its debts as they fall due without requiring Department of Health funding for the five years commencing 2014/15;
  - 1.1.6. the Strategic Plan delivers the necessary organisation structure, operating model, governance, risk management and operational processes to deliver the Trust’s immediate corporate objectives and longer term strategy to achieve the outcomes set out in 1.1;

- 1.1.7. in developing the Strategic Plan, the Trust engages with relevant stakeholders;
    - 1.1.8. if, and to the extent necessary, the Strategic Plan is subject to public consultation as promptly as is feasible and appropriate; and
    - 1.1.9. the Strategic Plan defines key milestones for its delivery.
  - 1.2. The Licensee must get external assurance on the effectiveness of the Strategic Plan to achieve the outcomes set out in paragraph 1.1 above at a point in time to be agreed with Monitor from a source to be agreed with Monitor and according to a scope to be agreed with Monitor.
  - 1.3. The Licensee must deliver the Strategic Plan in accordance with the key milestones.
  - 1.4. The Licensee must provide updates to Monitor on the delivery of key milestones on a monthly basis from 28 February 2014 onwards until such time as the plan has been delivered in full.
2. Governance breaches relating to maternity services
- 2.1. The Licensee must develop and submit to Monitor an action plan by 26 April 2013 (“the Maternity Action Plan”) to sustainably address all findings and recommendations identified within CMUH’s Follow-up Maternity Review. The Maternity Action Plan should also address any residual risks identified in CMUH’s Initial Maternity Review and any maternity risks reflected in the Trust’s risk registers relating to the Women’s and Children’s Division.
  - 2.2. The Licensee must gain external assurance on the effectiveness of the Maternity Action Plan to achieve the requirements set out in paragraph 2.1 above. The scope and provider of external assurance on the Maternity Action Plan should be agreed with Monitor by 9 May 2013 and a copy of the externally assured Maternity Action Plan should be submitted to Monitor by 31 May 2013 together with details of the key milestones for delivering the Maternity Action Plan.
  - 2.3. The Licensee must deliver the Maternity Action Plan in accordance with the key milestones.
  - 2.4. The Licensee must provide updates to Monitor on the delivery of key milestones on a monthly basis from 30 June 2013 onwards until such time as the Maternity Action Plan has been delivered in full.
  - 2.5. The Licensee must get external assurance on the effectiveness of the Maternity Action Plan to achieve the outcomes set out in paragraph 2.1 above at a point in time to be agreed with Monitor, from a source to be agreed with Monitor and according to a scope to be agreed with Monitor.

2.6. Without prejudice to the other requirements set out in this notice, the Licensee must implement any other actions necessary to sustainably address all findings and recommendations in the CMUH Follow-up Maternity Review and any residual risks identified in CMUH's Initial Maternity Review and any maternity risks reflected in the Trust's risk registers relating to the Women's and Children's Division.

### 3. Programme management and governance arrangements

3.1. The Licensee must implement programme management and governance arrangements to enable the 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 an 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. Reporting

4.1. The Licensee must report to Monitor as required and at least by exception, in respect of any deviation from the actions and associated timeframes for delivery of the Plans referred to in this notice on a monthly basis.

### 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:**

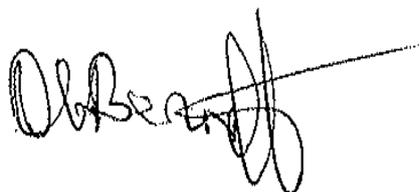
- **COMPLIANCE WITH THE HEALTH CARE STANDARDS BINDING ON THE LICENSEE; AND**
- **COMPLIANCE WITH ALL REQUIREMENTS CONCERNING QUALITY OF CARE.**

**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