

FINAL NOTICE: DISCRETIONARY REQUIREMENTS

LICENSEE:

Bolton NHS Foundation Trust ('the Licensee')
Royal Bolton Hospital
Minerva Road
Farnworth
Bolton
BL4 0JR

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. Target 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: FT4(5)(a); FT4(5)(b); FT4(5)(c); FT4(5)(e).

2.1.2. In particular:

2.1.2.1. The Licensee breached its RTT admitted target for 4 successive quarters from Q1-Q4 2011/12;

2.1.2.2. The Licensee breached its RTT admitted and non-admitted target in Q4 2012/13.

2.1.2.3. 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 breaches in question do not continue or recur.

2.2. Financial Planning 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(5)(a); FT4(5)(b); FT4(5)(d); FT4(5)(e); FT4(5)(f); CoS3(1)(a); CoS3(1)(b); CoS3(2)(c).

2.2.2. In particular:

2.2.2.1. The Licensee had a Financial Risk Rating of 1 from Q1-Q3 2012/13;

2.2.2.2. The Licensee's Financial Risk Rating suffered a significant deterioration from 3 in Q3 2011/12 to 1 in Q1 2012/13;

2.2.2.3. The Licensee was the subject of a PwC report on its financial governance and reporting, which was issued to the Licensee in August 2012, and which evidenced weaknesses in the Licensee's financial governance and reporting;

2.2.2.4. 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 breaches

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)(a); FT4(4)(a); FT4(4)(b); FT4(4)(c); FT4(7).

2.3.2. In particular:

2.3.2.1. The KPMG review of Board effectiveness and risk management evidences weaknesses in Board governance.

2.3.2.2. These breaches by the Licensee demonstrate a failure of governance arrangements.

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. Target breaches

1.1 The Licensee must by 30 April 2013 work with the Department of Health's Elective Care Intensive Support Team to develop a Referral-to-Treatment (RTT) action plan ('the RTT Plan') to:

1.1.1 address RTT backlog levels;

1.1.2 improve the quality of information reporting to the Addressee Board and relevant sub-committees to a standard that satisfies the Department of Health Elective Care Intensive Support Team that information reporting is and will continue to be sufficient to identify forward risks to the Trust being able to achieve RTT targets in the future; and

1.1.3 enable the Trust to meet RTT targets sustainably as demonstrated by three successive quarters of compliance with the RTT targets.

1.2 The Licensee is to develop and deliver by 31 July 2013 a monthly RTT Sustainability Reporting tool:

1.2.1 to drive decision-making;

1.2.2 to take appropriate actions in relation to RTT demand and capacity; and

1.2.3 to demonstrate in the future whether quarterly RTT targets are being met.

1.3 The Addressee shall submit information to Monitor each month regarding the Addressee's compliance with all RTT performance targets by speciality and aggregate.

1.4 The Licensee will implement any other actions necessary to enable:

1.4.1 delivery of the RTT Plan, as specified in (1.1) above, by 31 July 2013; and

1.4.2 the development and delivery of a monthly RTT Sustainability Reporting tool, as specified in (1.2) above, by 31 July 2013.

2. Financial planning

2.1 The Licensee will implement the recommendations of the PwC financial governance and reporting review by 30 June 2013.

2.2 By 31 July 2013 the Licensee will obtain external assurance that it has implemented the recommendations of the PwC financial governance and reporting review from a source and according to a scope to be agreed with Monitor.

2.3 The Licensee is by 31 May 2013 to develop and submit to Monitor a realistic and deliverable three-year plan which:

2.3.1 incorporates the turnaround plan as submitted to Monitor on 4 April 2013 once approved by Monitor;

2.3.2 outlines the Licensee's recovery to a sustainable position as defined by:

2.3.2.1 the forecasting of the delivery of a surplus for the third year of the three-year plan;

2.3.2.2 the capacity to generate net positive cash flows;

2.3.2.3 the capacity to pay its debts as they fall due without financial support from DH by the third year of the three-year plan;

- 2.3.2.4 the maintenance of acceptable levels of clinical performance (as defined by the CQC and commissioners); and
 - 2.3.2.5 the necessary organisational structure, operating model, governance, risk management and operational processes being in place to deliver its immediate corporate objectives and longer term strategy.
- 2.4 The Licensee will implement sufficient programme management and governance arrangements to enable the delivery of the financial plan.
- 2.5 The Licensee will deliver the turnaround plan and three-year financial plan.
- 2.6 The Licensee will report on the turnaround plan as required by Monitor and will provide as a minimum the following financial information to Monitor on a monthly basis until otherwise notified by Monitor:
 - 2.6.1 Financial Risk Rating;
 - 2.6.2 EBITDA;
 - 2.6.3 Surplus / (deficit);
 - 2.6.4 Underlying surplus / (deficit);
 - 2.6.5 Overall and recurrent CIPs;
 - 2.6.6 Forecast outturn; and
 - 2.6.7 Cash and liquidity days.
- 2.7 The Licensee is to prepare and submit to Monitor for review 13-week cash flow forecasts underpinned by assumptions agreed with Monitor, which will support quarterly temporary PDC funding requests to DH, until otherwise agreed with Monitor. These cash flow forecasts are to be submitted to Monitor a minimum of 2 weeks before the first date of the quarter to which the funding relates.
- 2.8 Following conclusion of the review by Deloitte into strategic service reconfiguration options for the Licensee, the Licensee is to provide to Monitor by 31 July 2013:
 - 2.8.1 the preliminary outcome of the Licensee's review of options for future service reconfiguration; and
 - 2.8.2 a clear timetable to engage with local health economy stakeholders and to take strategic decisions in regard to reconfiguration options.

3. Board effectiveness and governance

- 3.1 The Licensee shall develop a revised action plan that meets with Monitor's agreement to implement in full all recommendations in KPMG's review of Board Governance by 30 June 2013.
- 3.2 The Licensee shall implement sufficient programme management and governance arrangements to enable the full implementation of the recommendations arising from KPMG's review of Board Governance.
- 3.3 The Licensee will obtain external assurance that it has implemented the recommendations of the KPMG Board Governance review by 31 July 2013.
- 3.4 The Licensee will provide copies of the appointed reviewer's draft and finalised reports to Monitor within a week of receiving them.

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:

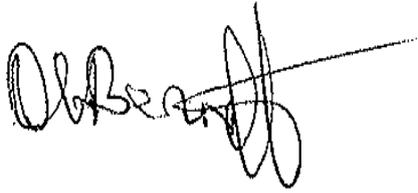
- **COMPLIANCE WITH THE HEALTH CARE STANDARDS BINDING ON THE LICENSEE; AND**
- **COMPLIANCE WITH ALL REQUIREMENTS CONCERNING QUALITY OF CARE.**

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.

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