

ENFORCEMENT UNDERTAKINGS

LICENSEE:

Heart of England NHS Foundation Trust ("the Licensee")
Birmingham Heartlands Hospital
Bordesley Green East
Birmingham
B9 5SS

BACKGROUND: PREVIOUS AND CURRENT REGULATORY ACTION

Monitor accepted enforcement undertakings under section 106 of the Act from the Licensee on 20 December 2013 in relation to the Licensee's governance arrangements for urgent care (the "existing undertakings"). The existing undertakings were entered into following repeated breaches by the Licensee of its 4-hour Accident and Emergency ("A&E") waiting time target. The undertakings below relate to breaches of additional access and outcome performance indicators as well as broader governance issues and are without prejudice to the existing undertakings.

DECISION

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, Monitor has decided to accept from the Licensee the enforcement undertakings specified below pursuant to its powers under section 106 of the Health and Social Care Act 2012 ("the Act").

GROUND

1. Licence

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

2. Breaches

2.1. Target breaches

2.1.1 Monitor has reasonable grounds to suspect that the Licensee has provided and is providing healthcare services for the purposes of the NHS in breach of the following conditions of its licence: FT4(5)(a) and (c).

2.1.2 In particular:

2.1.2.1 The Licensee has breached at least four separate access and outcome performance indicators (including the 4-hour A&E waiting time target) in both Q4 of 2013/14 and Q1 of 2014/15.

2.1.2.2 The Licensee breached its Referral to Treatment ("RTT") (admitted) target in Q4 of 2013/14 and in Q1 of 2014/15.

An NHS Interim Management and Support ("IMAS") report issued in April 2014 also contained over 80 recommendations for improvement in RTT processes and the Trust has been unable to report RTT data since July 2014 due to significant issues in implementing its new elective patient administration system.

2.1.2.3 The Licensee breached its 2-week wait (all cancers) target and its 2-week wait (breast) target in Q4 of 2013/14 and Q1 of 2014/15. The Trust also breached the 62 day wait target in Q1 of 2014/15.

2.1.2.4 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 (i) to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively and (ii) to ensure compliance with healthcare 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 healthcare professions.

2.1.3 Need for action

Monitor believes that action which the Licensee has undertaken to take pursuant to the undertaking recorded here will secure that the breach in question does not continue or recur.

2.2. Governance (including quality governance)

2.2.1. Monitor has reasonable grounds to suspect that the Licensee has provided and is providing healthcare services for the purposes of the NHS in breach of the following conditions of its licence: FT4 (5)(a), FT4 (5)(c), FT4 (6)(c), FT4 (6)(d), FT4 (6)(e), FT4 (6)(f).

2.2.2. In particular:

2.2.2.1. The Licensee was subject to an inspection by the Care Quality Commission ("CQC") in November 2013. The findings, published in January 2014 were that the Licensee 'Requires Improvement' in 4 out of 5 of the CQC measures (acute services are safe, caring, responsive and well-led). The Trust formulated an action plan to address the issues raised by the CQC and has begun to implement that plan in line with the required timescales.

2.2.2.2. The Licensee reported higher than expected mortality rates as measured by Hospital Standardised Mortality Ratios ("HSMR") in 2013.

2.2.2.3. In December 2013 the Licensee published the findings of Sir Ian Kennedy's external review of breast cancer services at the Solihull site. The report found a number of governance failings at the Licensee during the period that had been subject to investigation (1998-2012). The Trust formulated an action plan to address the issues raised by the report and has begun to implement that plan in line with the required timescales however, there are still a number of actions to be carried out before the plan is fully implemented.

2.2.3. Need for action

Monitor believes that the action which the Licensee has undertaken to take pursuant to these undertakings is action to secure that the breaches in question do not continue or recur.

3. Appropriateness of Undertakings

In considering the appropriateness of accepting in this case the undertakings set out below, Monitor has taken into account the matters set out in its Enforcement Guidance.

ENFORCEMENT UNDERTAKINGS

Monitor has agreed to accept and the Licensee has agreed to give the following undertakings, pursuant to section 106 of the Act:

1. RTT improvement plan (admitted patients)

- 1.1. The Licensee will review, and make any necessary amendments to, the RTT improvement plan submitted to Monitor on 30 September ("the initial RTT improvement plan") to ensure that it:
 - 1.1.1 includes any validation required to patient pathways;
 - 1.1.2 includes details of the planned monthly backlog reduction trajectory by specialty; and
 - 1.1.3 addresses any concerns of the Licensee's commissioners and IMAS.
- 1.2 The Licensee will submit to Monitor a revised version of the initial RTT improvement plan incorporating any amendments required under paragraph 1.1 above ("the revised RTT improvement plan"), within a timescale to be agreed with Monitor.
- 1.3 The Licensee will implement the revised RTT improvement plan and take such other reasonable steps as are necessary to ensure that it is able to meet all RTT targets on a sustainable basis.
- 1.4 From October 2014, or subsequent date to be agreed with Monitor, the Licensee will provide Monitor with monthly data on performance against the RTT targets and on the size of the admitted patient backlog by specialty until such time as Monitor agrees that this is no longer required.
- 1.5 At a date to be agreed with Monitor, the Licensee will provide a report demonstrating how the Licensee's Board is assured that the requirements of paragraphs 1.3 above have been met; the scope of such a report to be agreed with Monitor.

2. Cancer improvement plan

- 2.1 The Licensee will implement the cancer improvement plan submitted to Monitor on 30 September 2014 ("the cancer improvement plan") and take such other reasonable steps as are necessary to ensure that it is able to meet all cancer targets on a sustainable basis.
- 2.2 From October 2014, or subsequent date to be agreed with Monitor, the Licensee will provide Monitor with monthly data on performance against cancer targets until such time as Monitor agrees that this is no longer required.

2.3 At a date to be agreed with Monitor, the Licensee will provide Monitor with a report demonstrating how the Licensee's Board is assured that the requirements of paragraph 2.1 above have been met; the scope of such a report to be agreed with Monitor.

3. Governance (including quality governance)

3.1 Governance review

3.1.1 The Licensee will provide Monitor with a copy of the draft report for the independent review of governance (to include quality governance) arrangements ("the governance review").

3.1.2 The Trust will provide Monitor with a copy of the final report for the governance review within 5 days of receipt and at the latest, by 31 October 2014, or such date to be agreed with Monitor.

3.1.3 The Licensee will, unless otherwise agreed by Monitor, develop and implement a plan ("the governance plan") to address all of the recommended actions arising from the governance review, in accordance with timescales to be agreed with Monitor.

3.1.4 The Licensee will report periodically to Monitor on its progress in implementing the governance plan in accordance with reporting dates to be agreed with Monitor.

3.1.5 The Licensee will by a date to be agreed with Monitor, obtain written external assurance from a source and according to a scope to be agreed in advance by Monitor, that the governance plan has been implemented as planned.

3.2 Quality improvement review

3.2.1 The Licensee will provide Monitor with copies of any letters or reports associated with the quality improvement review commissioned by the Licensee in September 2014 ("the quality improvement review"), within 5 days of receipt.

3.2.2 The Licensee will, unless otherwise agreed by Monitor, develop and implement a quality improvement plan ("the quality improvement plan") to address all of the recommended actions arising from the quality improvement review, in accordance with timescales to be agreed with Monitor.

3.2.3 The Licensee will, unless otherwise agreed by Monitor, report periodically to Monitor on its progress in implementing the quality improvement plan in accordance with reporting dates to be agreed with Monitor.

3.3 Mortality review

- 3.3.1 The Licensee will provide Monitor with copies of the draft report and final report for the external review of mortality ("the mortality review") commissioned by the Licensee in September 2014, within 5 days of receipt and at the latest by 31 December 2014, or such date to be agreed with Monitor.
- 3.3.2 The Licensee will develop and implement a mortality action plan ("the mortality plan") to address all of the recommended actions arising from the mortality review, in accordance with timescales to be agreed with Monitor.
- 3.3.3 The Licensee will report periodically to Monitor on its progress in implementing the mortality plan in accordance with reporting dates to be agreed with Monitor.
- 3.3.4 The Licensee will by a date to be agreed with Monitor, obtain written external assurance from a source and according to a scope to be agreed in advance by Monitor, that the mortality plan has been implemented as planned.

3.4 Kennedy review

- 3.4.1 The Licensee will, unless otherwise agreed by Monitor, continue to implement its action plan to address all of the recommended actions arising from the Kennedy review ("the Kennedy plan"), in accordance with timescales to be agreed with Monitor.
- 3.4.2 The Licensee will report periodically to Monitor on its progress in implementing the Kennedy plan in accordance with reporting dates to be agreed with Monitor.
- 3.4.3 The Licensee will by a date to be agreed with Monitor, obtain external assurance from a source and according to a scope to be agreed in advance by Monitor, that the Kennedy plan has been implemented as planned.

3.5 CQC plan

- 3.5.1 The Licensee will continue to implement its plan to address the issues raised by the CQC further to its inspection in November 2013 ("the CQC plan").
- 3.5.2 The Licensee will report periodically to Monitor on its progress in implementing the CQC plan in accordance with reporting dates to be agreed with Monitor.

3.5.3 The Licensee will by 31 January 2015, or such date to be agreed with Monitor, obtain written external assurance from a source and according to a scope to be agreed in advance with Monitor, that the CQC plan has been implemented as planned.

4. General

4.1 The Licensee will implement sufficient programme management and governance arrangements to enable delivery of the following plans:

- 4.1.1 the revised RTT plan;
- 4.1.2 the cancer improvement plan;
- 4.1.3 the governance plan;
- 4.1.4 the quality improvement plan;
- 4.1.5 the mortality plan;
- 4.1.6 the Kennedy plan; and
- 4.1.7 the CQC plan.

4.2 Such programme management and governance arrangements will enable the Board to:

- 4.2.1 obtain a clear oversight over the progress in delivering the plans;
- 4.2.2 obtain an understanding of any risks to the successful achievement of the plans and ensure appropriate mitigation of any such risks; and
- 4.2.3 hold individuals to account for the delivery of the relevant plans.

4.3 In addition, the Licensee will attend the following meetings until a time agreed with Monitor:

- 4.3.1 Chief Executive officer will attend the monthly Accountable Officer meetings with the CCGs;
- 4.3.2 a member of the Executive Team will attend the Quality Surveillance Group meetings; and
- 4.3.3 the Chief Executive or the Deputy Chief Executive will attend the System Resilience Group meetings.

4.4 The Licensee will attend meetings or, if Monitor stipulates, conference calls, during the currency of the undertakings detailed above to discuss its progress in meeting those undertakings. These meetings shall take place once a month, unless Monitor stipulates otherwise, at a time and place to be specified with Monitor and with attendees specified by Monitor.

THE REQUIREMENTS IN THIS NOTICE ARE WITHOUT PREJUDICE TO:

- **THE REQUIREMENT ON THE LICENSEE TO COMPLY WITH THE CONDITIONS IN ITS LICENCE; AND**
- **THE UNDERTAKINGS DATED 20 DECEMBER 2013, INCLUDING ANY VARIATIONS TO THOSE UNDERTAKINGS.**

ANY FAILURE TO COMPLY WITH THE ABOVE UNDERTAKINGS WILL RENDER THE LICENSEE LIABLE TO FURTHER FORMAL ACTION BY MONITOR. THIS COULD INCLUDE THE IMPOSITION OF DISCRETIONARY REQUIREMENTS UNDER SECTION 105 OF THE ACT IN RESPECT OF THE BREACH IN RESPECT OF WHICH THE UNDERTAKINGS WERE GIVEN AND/OR REVOCATION OF THE LICENCE PURSUANT TO SECTION 89 OF THE ACT.

WHERE MONITOR IS SATISFIED THAT THE LICENSEE HAS GIVEN INACCURATE, MISLEADING OR INCOMPLETE INFORMATION IN RELATION TO THE UNDERTAKINGS: (i) MONITOR MAY TREAT THE LICENSEE AS HAVING FAILED TO COMPLY WITH THE UNDERTAKINGS; AND (ii) IF MONITOR DECIDES SO TO TREAT THE LICENSEE, MONITOR MUST BY NOTICE REVOKE ANY COMPLIANCE CERTIFICATE GIVEN TO THE LICENSEE IN RESPECT OF COMPLIANCE WITH THE RELEVANT UNDERTAKINGS.

LICENSEE

Signed



Date: 17/OCT/2014

MONITOR

Signed



Date: 21/10/2014