

NOTICE OF ADDITIONAL LICENCE CONDITION

LICENSEE:

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

PROPOSAL

On the basis of the grounds set out below and having regard to its Enforcement Guidance, Monitor has decided to impose the additional licence condition specified below on the Licensee pursuant to its powers under section 111 of the Health and Social Care Act 2012 ("the Act").

THE LICENCE IS AMENDED AS FOLLOWS:

After Condition FT4, insert:

"Additional Licence Condition 1 – Additional governance requirements:

1. The Licensee must ensure that it has in place:
 - a. sufficient and effective board, management and clinical leadership capacity and capability; and
 - b. appropriate governance systems and processes, to enable it to address the issues specified in paragraph 2 effectively and to comply with any enforcement undertaking accepted or discretionary requirement imposed under the 2012 Act in connection with those issues.
2. The issues referred to in paragraph 1 are the issues relating to governance or operations that have caused or contributed to, or are causing or contributing to, or will cause or contribute to, the breach, or the risk of breach, of the conditions of the Licensee's licence.

ANTICIPATED EFFECT OF THE ADDITIONAL CONDITION:

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

INCIDENTAL OR CONSEQUENTIAL MODIFICATIONS REQUIRED AS A RESULT OF THE IMPOSITION OF THE ADDITIONAL CONDITION:

No incidental or consequential modifications are required to the Licensee's licence.

GROUND

1. Licence

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

2. Power to impose additional licence condition(s)

2.1 Monitor is satisfied that the governance of the Licensee is such that the Licensee will fail to comply with the one or more of the following conditions of the Licensee's licence: FT4(5)(a), (c) and (f); and FT4(6)(c) to (f).

2.2 Need for action

2.2.1 Following breaches by the Licensee of its 4 hour Accident and Emergency waiting time target ("A&E target"), Monitor accepted enforcement undertakings from the Licensee on 20 December 2013. The Licensee undertook, amongst other things, to implement the transformation plan within the timeframes specified in the transformation plan, and to return to sustainable compliance with the A&E target for at least three consecutive quarters from (and including) Q4 2013/14.

2.2.2 The Licensee has failed to meet the A&E target for seven consecutive quarters, including Q1 2014/15.

2.2.3 The Licensee has breached the following targets in recent months:

2.2.3.1 the Referral to Treatment ("RTT") (admitted) target in Q4 of 2013/14 and in Q1 of 2014/15;

2.2.3.2 the 2 week waiting (all cancers) target and the 2 week waiting (breast cancer) target in Q4 of 2013/14 and Q1 of 2014/15; and

2.2.3.3 the 62 day cancer waiting time target in Q1 of 2014/15.

2.2.4 An NHS Interim Management and Support report issued in April 2014 contained over 80 recommendations for improvement in RTT processes.

2.2.5 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. The Trust formulated an action plan to address the issues raised by CQC 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.

2.2.6 The Licensee reported higher than expected mortality rates as measured by Hospital Standardised Mortality Ratios in 2013.

2.2.7 Sir Ian Kennedy carried out an external review of breast cancer services at the Licensee's Solihull site and found a number of governance failings 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.

2.2.8 In the light of these matters, and the other available evidence, Monitor is satisfied that the Board is failing to secure compliance with the Licensee's licence conditions and failing properly to take steps to reduce the risk of breaches of those conditions. In those circumstances, Monitor is satisfied that the governance of the Licensee is such that the Licensee is failing and will fail to comply with the conditions of its licence.

2.2.9 Monitor considers that the imposition of the condition specified above is appropriate for reducing the risk of non-compliance identified above.

3. Appropriateness of Imposition of Additional Licence Condition

In considering the appropriateness of imposing this additional licence condition, Monitor has taken into account the matters set out in its Enforcement Guidance.

THE REQUIREMENTS OF THE ADDITIONAL LICENCE CONDITION ARE WITHOUT PREJUDICE TO (i) ANY ENFORCEMENT UNDERTAKING GIVEN BY THE LICENSEE AND (ii) 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 THE ADDITIONAL LICENCE CONDITION WOULD RENDER THE LICENSEE LIABLE TO FURTHER FORMAL ACTION BY MONITOR. THIS COULD INCLUDE REQUIRING THE LICENSEE TO REMOVE ONE OR MORE OF THE DIRECTORS OR MEMBERS OF THE COUNCIL OF GOVERNORS AND APPOINT INTERIM DIRECTORS OR MEMBERS, SUSPEND ONE OR MORE DIRECTORS OR MEMBERS OF THE COUNCIL OF GOVERNORS FOR A SPECIFIED PERIOD AND/OR DISQUALIFY ONE OR MORE DIRECTORS OR MEMBERS OF THE COUNCIL OF GOVERNORS FOR A SPECIFIED PERIOD. THIS COULD INCLUDE ALSO OR INSTEAD ACTION UNDER SECTIONS 105 OR 106 OF THE ACT TO IMPOSE DISCRETIONARY REQUIREMENTS OR ACCEPT UNDERTAKINGS. MONITOR WOULD ALSO BE ABLE TO TAKE ACTION UNDER SECTION 89 TO REVOKE THE LICENSEE'S LICENCE.

MONITOR

Dated 21 October 2014

Signed

A handwritten signature in black ink, appearing to be 'J. B. Smith', written over a horizontal line.