

ENFORCEMENT UNDERTAKINGS

LICENSEE:

Royal Berkshire NHS Foundation Trust ("the Licensee")
Royal Berkshire Hospital
London Road
Reading
RG1 5AN

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

Governance breaches

- 2.1. Monitor has reasonable grounds to suspect 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), FT4(5)(a) to (c), (e) and (f), FT4(6)(a) to (d) and (f) and FT4(7).
- 2.2. In particular:
 - 2.2.1. As a result of concerns regarding data quality the Licensee had to make a request to suspend its reporting to Monitor of its performance against the 18 week referral to treatment ("RTT") targets in August 2014. Diagnosis of this issue by an external consultancy company highlighted a lack of ownership, accountability, competency and resource. The Licensee then failed to deliver the required improvements to its RTT data in the timescales agreed with Monitor resulting in a request for a further extension to the suspension. The Licence is also currently reviewing whether data quality concerns exist in other areas.
 - 2.2.2. The Quality Governance Review of July 2014 conducted by Deloitte (the "July Review") found that the Licensee has a Quality Governance Framework score of 8, which was significantly worse than the previous external review score of 6. The July Review highlighted serious concerns including in relation to the adequacy of responsibility and accountability within the executive team, the

effectiveness of care group structures and the efficiency of the risk management system. Many of the concerns in the July Review had been identified in the Board Governance Review six months earlier, but remained despite the Licensee reporting that it has completed the remedial actions identified following that earlier Board Governance Review.

2.2.3. The Care Quality Commission's Quality Report of 24 June 2014 ("the CQC report") gave the Licensee an overall rating of "Requires improvement". The Report identified a number of areas of poor practice in the Licensee's hospital where the Licensee needed to make improvements.

2.2.4. These matters 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 to–

- (a) ensure compliance with Licensee's duty to operate efficiently, economically and effectively and with health care standards binding on the Licensee;
- (b) obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making; and
- (c) ensure the matters specified in licence condition FT4(6).

2.3. Need for action

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

Financial breaches

2.4. Monitor has reasonable grounds to suspect 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: CoS 3(1) and FT4(5)(d).

2.5. In particular:

2.5.1. Although the Trust is forecasting a return to a CoSRR 3 in Q4 2014/15, there is significant risk in relation to delivery of Cost Improvement Plans and other one-off costs (such as redundancy costs and RTT improvement costs) that are not incorporated into the forecast. Monitor's view is that the Licensee is likely to have larger deficit than planned for 2014/15.

2.5.2. This demonstrates a failure of financial governance arrangements and financial management; in particular a failure to:

- (a) effectively implement systems or processes for effective financial management and control; and
- (b) adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as being suitable for a provider of the Commissioner Requested Services provided by the Licensee, and

providing reasonable safeguards against the risk of the licensee being unable to carry on as a going concern.

2.6. Need for action

Monitor believes that the action which the Licensee has undertaken to take pursuant to the undertakings below 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.

UNDERTAKINGS

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

1. Quality Governance and Board Governance

- 1.1. The Licensee will prepare a prioritised action plan which sets out how it will address the findings from the Deloitte Quality Governance review of 4 July 2014 and the Deloitte Board Evaluation of 10 January 2014. This action plan will include:
 - (a) a revised management structure;
 - (b) improvements to the accountability, governance of quality and operational performance management throughout the organisation;
 - (c) introduction of a comprehensive risk management framework;
 - (d) improvements to the 'ward to board' accountability; and
 - (e) a step change in the Board development programme which will further develop the capabilities and effectiveness of board members, and address the issues highlighted in that review and evaluation.
- 1.2. The Licensee will provide Monitor with the action plan by 31 January 2015 or such other date as may be agreed with Monitor. The Licensee will identify, with the agreement of Monitor, the high priority actions and will complete those actions by 31 March 2014 or such other dates as may be agreed with Monitor.
- 1.3. The Licensee will provide, at a date to be agreed with Monitor, a report demonstrating how the Board is assured that each of the actions within the action plan required in paragraph 1.2 has achieved the associated outcomes. The scope of the report is to be agreed with Monitor.

1.4. The Licensee will commission a further external review of the Trust's quality and Board governance within 9 months of the receipt by Monitor of the plan set out in paragraph 1.1.

2. Operational Plan development

2.1. The Licensee will prepare an operational plan for the financial year 2015/16 and, if agreed with Monitor, the following year (2017/18), which will set out how the Licensee will manage its operations and continue to deliver high quality services for the population it serves during that period. The plan will in particular address any issues which Monitor notifies to the Trust as key issues for the plan, and provide the plan to Monitor by a date to be agreed with Monitor.

2.2. The Licensee will ensure that it has in place sufficient Executive Director and non-executive director capacity and capability to prepare its operational plan.

2.3. When developing the operational plan, the Licensee will share its proposals, and engage effectively, with West Berkshire CCG, the NHS England Thames Valley Area Team, and any other key stakeholders.

2.4. The Licensee will prepare an outline project plan which will set out the key milestones, stakeholder engagement principles and the principal work streams which will be required to enable the Licensee to prepare the operational plan by the date agreed by Monitor.

3. 18 week referral to treatment (RTT) performance targets and data quality

3.1. The Licensee will implement the detailed plans and trajectories designed to enable the Licensee to return to reporting against the RTT targets, within timescales agreed by Monitor in its letter dated 28 November 2014.

3.2. The Licensee will report, at intervals to be agreed by Monitor, its progress against those plans and trajectories. The Licensee will take all actions necessary to ensure that the trajectories are adhered to and that it returns to full and accurate reporting within the timescales agreed with Monitor.

3.3. The Licensee will, by a date to be agreed with Monitor, prepare demand and capacity models to clinical speciality level. The demand and capacity models prepared will provide trajectories which either maintain the speciality performance against the range of RTT performance standards or bring the Licensee into compliance within timescales to be agreed with Monitor. The demand and capacity models and trajectories will be prepared to a standard and level of detail acceptable by the Department of Health Intensive Support Team (DHIST).

3.4. The Licensee will, by a date to be agreed with Monitor, introduce revised operational, accountability and governance structures to enable the Licensee to manage the

performance against the RTT targets and the data which is used to report against these targets.

- 3.5. The Licensee will, by a date to be agreed with Monitor, commission an external review of data quality (the "data quality review"). The data quality review will focus on recording, reporting and auditing of waiting time data for key national access targets including, but not limited to, the 18 weeks referral to treatment targets, the A&E 4 hour target and the cancer access targets.
- 3.6. The data quality review will be commissioned from an external adviser, and according to a scope and timeframe, to be agreed with Monitor.
- 3.7. The Licensee will take all actions necessary to ensure that the recommendations and associated actions of the data quality review are implemented, in accordance with the timescales specified in the data quality review, unless otherwise agreed with Monitor.
- 3.8. The Licensee will provide to Monitor, should Monitor so request, external assurance, from a source and according to a scope to be agreed with Monitor, that it has implemented the recommendations and associated actions of the data quality review.
- 3.9. The Licensee will report to Monitor on implementation of the recommendations and associated actions of the data quality review on a monthly basis or at such other times as Monitor may reasonably require.

4. Financial performance

- 4.1. The Licensee will implement the 2014/15 financial plan submitted to Monitor on 4 April 2014 ("the financial plan") in accordance with the timescales specified in that plan, unless otherwise agreed with Monitor. If the Licensee identifies that it is not able to deliver the financial plan, it will inform Monitor within 5 working days and provide the quantum of the variance, together with a reconciliation to plan and actions to return to plan. If the Licensee so informs Monitor, it will, if requested by Monitor, submit a revised plan to address Monitor's concerns.
- 4.2. The Licensee will prepare revised 2015/16 and 2016/17 financial plans which incorporate the recommendations from the PwC Operating Plan review – financial stability report by such time as requested by Monitor and which will align with its operational plan set out in paragraph 2.
- 4.3. The Licensee will take all reasonable steps with a view to ensuring that it returns to a sustainable CoSRR 3 within a timescale to be agreed by Monitor.

5. CQC report

- 5.1. The Licensee will take all actions necessary to rectify the concerns which are identified in the CQC report, including carrying out the 'must do' actions set out in the CQC report, such that, upon re-inspection by CQC (or such other date as CQC may determine), the Licensee:
 - (a) has addressed the 'must do' actions to the CQC's satisfaction; and
 - (b) has improved against the requires improvement ratings for the overall safe, responsive and well led domains when compared to the CQC report.
 - 5.2. The Licensee will implement the action plan ("quality recovery plan") which addresses the concerns identified by the CQC, which was prepared by the Trust on 18 July 2014 and will meet the key milestones.
 - 5.3. The Licensee's Board will periodically assess the quality recovery plan to ensure that it remains deliverable and sufficient for the Licensee to comply with paragraph 5.1 above, and will make any necessary amendments. The Licensee will report to Monitor on a monthly basis on its assessment of the deliverability and sufficiency of the quality recovery plan and any alterations required. The Licensee will provide Monitor with the assurance relied on by the Board in making this assessment upon request.
 - 5.4. The Licensee will, if requested by Monitor and on such date as may be specified by Monitor, provide a report demonstrating how the Board is assured that the requirements of paragraph 5.1 above have been met. The scope of the report would be agreed with Monitor.
6. Programme management and meetings
- 6.1. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.
 - 6.2. Such programme management and governance arrangements will enable the Board to:
 - (a) obtain clear oversight over the progress in delivering the undertakings;
 - (b) obtain an understanding of any risks to the successful achievement of the undertakings and ensure appropriate mitigation of any such risks; and
 - (c) hold individuals to account for delivery of the undertakings.
 - 6.3. The Licensee shall attend meetings (or if Monitor stipulates conference calls) with Monitor during the currency of these undertakings to discuss its progress in meeting these undertakings. These meetings shall take place once a month unless Monitor otherwise stipulates, at a time and place to be specified by Monitor and with attendees specified by Monitor.

THE UNDERTAKINGS SET OUT HERE ARE WITHOUT PREJUDICE TO THE REQUIREMENT ON THE LICENSEE TO COMPLY WITH THE CONDITIONS OF ITS LICENCE.

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 BREACHES IN RESPECT OF WHICH THE UNDERTAKING WAS GIVEN AND/OR REVOCATION OF THE LICENCE UNDER SECTION 89 OF THE ACT.

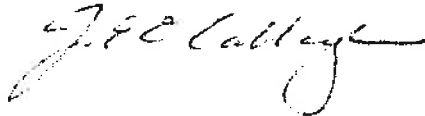
WHERE MONITOR IS SATISFIED THAT THE LICENSEE HAS GIVEN INACCURATE, MISLEADING OR INCOMPLETE INFORMATION IN RELATION TO THE UNDERTAKING: (i) MONITOR MAY TREAT THE LICENSEE AS HAVING FAILED TO COMPLY WITH THE UNDERTAKING; AND (ii) IF MONITOR DECIDES SO TO TREAT THE LICENSEE, MONITOR MUST BY NOTICE REVOKE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

LICENSEE

Dated

12.12.2014

Signed



Signed on Behalf of the Licensee

MONITOR

Dated

12.12.2014

Signed



David Bennett, Chair of Provider Regulation Executive committee

