

## **LICENSEE:**

Southend University Hospital NHS Foundation Trust ("the Licensee")  
Southend Hospital  
Prittlewell Chase  
Westcliffe-on-Sea  
SS0 0RY

## **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.

## **BREACHES**

### 2. Financial Breaches

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: CoS3(1)(a); CoS3(1)(b); FT4(5)(a); FT4(5)(f); FT4(5)(g).

2.2. In particular:

- 2.2.1. the Licensee reported a £19.5m forecast deficit in 2015/16 against a planned deficit of £7.0m and has signalled the need for distressed financing from the Department of Health in March 2016 and in 2016/17;
- 2.2.2. the Licensee reported a Financial Sustainability Risk Rating ("FSRR") of 1 at Q3 2015/16 (£4.8m adverse variance to the year-to-date plan) and is forecasting a planned FSRR1 2015/16;
- 2.2.3. the Licensee does not yet have a credible financial recovery plan to provide Monitor with assurance that it can return to FSRR3 and a breakeven position; and
- 2.2.4. there are concerns, shared by stakeholders, about the Licensee's short and long term financial sustainability.

### 2.3. Need for action

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

## 3. Pricing Breaches

3.1. 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: *P1(3)*.

3.2. In particular the licensee did not use the cost allocation methodology and procedures relating to other information set out in the Approved Guidance. The Licensee used national averages and estimates that did not reflect the actual costs of delivering care.

### 3.3. Need for action

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

## 4. Appropriateness of Undertaking

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**

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

### 1. Short Term Financial Recovery

1.1. By a date specified by Monitor, the Licensee will develop and submit a financial recovery plan ("FRP") for 2016/17 and to a level of ambition to be agreed with Monitor.

1.2. The FRP will include:

1.2.1. details of development and implementation of its recurrent cost improvement plans;

1.2.2. actions to ensure effective contract negotiation with commissioners;

1.2.3. effective roll-out of demand and capacity plans; and

1.2.4. any other issues identified by Monitor as key to the delivery of the FRP.

1.3. The Licensee will demonstrate that it is able to deliver the FRP. The Licensee will keep the delivery of the FRP under review and will amend the FRP to take

account of any significant matters identified and agreed with Monitor. References to the FRP in these undertakings will mean the FRP as so amended.

- 1.4. The Licensee will take all reasonable steps to ensure it has sufficient resource in place to:
  - 1.4.1. support the development of a credible FRP;
  - 1.4.2. provide the challenge and oversight required to drive short term improvements in financial management and finance team capacity; and
  - 1.4.3. provide assurance to Monitor and the Licensee's Board that these improvements are being delivered successfully and at pace.
- 1.5. In developing and implementing its FRP, the Licensee will ensure that it fully and effectively participates in and cooperates with any financial improvement initiative specified by Monitor.

## 2. Long Term Financial Recovery

- 2.1. By a date specified by Monitor, the Licensee will develop and submit a credible long term financial plan ("LTFP"), to a level of ambition to be agreed with Monitor, which is aligned to the strategic aims of the Essex Success Regime and which facilitates the provision of services on a sustainable basis.
- 2.2. The LTFP will include the actions the Licensee will take to identify and address the drivers of the deficit.
- 2.3. When developing the LTFP, the Licensee will share its proposals and engage effectively with key stakeholders, including commissioners and local health economy stakeholders through the Essex Success Regime and it will reflect their views appropriately in the LTFP.
- 2.4. The Licensee will demonstrate that it is able to deliver the LTFP. The Licensee will keep the delivery of the LTFP under review and will amend the LTFP to take account of any significant matters identified and agreed with Monitor. References to the LTFP in these undertakings will mean the LTFP as so amended.

## 3. External Support and Capacity

- 3.1. The Licensee will ensure that it has sufficient capability and/or capacity to develop and deliver the FRP and the LTFP.
- 3.2. When requested by Monitor, the Licensee will commission external support and/or assurance to assist in the development and delivery of both the short term FRP and LTFP. The scope of the external support will be determined by Monitor and may include work to establish and address the drivers of the Licensee's deficit.

#### 4. Department of Health Financing and Spending Approvals

- 4.1. Where interim support financing or planned term support financing is provided by the Secretary of State for Health to the Licensee pursuant to section 40 of the NHS Act 2006, the Licensee will comply with any terms and conditions which attach to the financing.
- 4.2. The Licensee will comply with any reporting requests made by Monitor in relation to any financing provided or to be provided to the Licensee by the Secretary of State for Health pursuant to section 40 of the NHS Act 2006.
- 4.3. The Licensee will comply with any spending approvals processes that are deemed necessary by Monitor.

#### 5. Pricing

- 5.1. By a date specified by Monitor, the Licensee will develop and submit a credible costing action plan, to be approved by Monitor, that addresses the issues raised by the CHKS report dated 28 July 2015 and sets out the steps it proposes to take to ensure future compliance with condition P1 of its licence.
- 5.2. The action plan will include milestones to be agreed with Monitor.

#### 6. Programme Management

- 6.1. The Licensee will implement comprehensive and effective programme management and governance arrangements to enable the delivery of all plans referred to in these undertakings. Such arrangements will enable the Licensee's Board to:
  - obtain clear oversight over the progress in delivering the plans;
  - obtain an understanding of any risks to the successful achievement of the plans; and
  - hold individuals to account for delivery of its actions.

#### 7. Meetings

- 7.1. The Licensee will attend meetings (or, if Monitor stipulates, conference calls) with Monitor during the currency of the undertakings to discuss its progress in meeting the 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 ABOVE ARE WITHOUT PREJUDICE TO THE REQUIREMENT ON THE LICENSEE TO ENSURE THAT IT IS COMPLIANT WITH ALL THE CONDITIONS OF ITS LICENCE, INCLUDING ANY ADDITIONAL LICENCE CONDITION IMPOSED UNDER SECTION 111 OF THE ACT AND THOSE CONDITIONS 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 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 (Chair of Licensee)

Dated: 22 March 2016

MONITOR



Signed (Chair of relevant decision-making committee)

Dated: 22 March 2016