



ENFORCEMENT UNDERTAKINGS

LICENSEE:

East Kent Hospitals University NHS Foundation Trust
Kent and Canterbury Hospital
Ethelbert Road
Canterbury
Kent
CT1 3NG

DECISION

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, NHS Improvement 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”). In this document, “NHS Improvement” means Monitor.

On 13 December 2018 NHS Improvement issued compliance certificates in relation to the following:

In respect of the undertakings accepted on 3 September 2014 (“the 2014 undertakings”):

Paragraphs 1.1 ; 1.2 ; 1.3 ; 1.4 ; 1.5 ; 1.6 ; 3.1 ; 3.2 ; 3.3 ; 3.4 ; 3.5 ; 4.1 ; 4.2 ; and 4.3 ;

In respect of the undertakings accepted on 25 August 2015 and as amended on 25 August 2015 (“the 2015 undertakings”)

Paragraphs 1.3 ; 1.5 ; 1.7 ; 1.8 ; 1.9 ; 1.10 ; 1.11 ; 1.12 ; 2.2 ; 2.3 ; 3.1 ; 3.2 ; 3.3 ; 3.4 ; 3A3 ; 3A5 ; 3A7 ; and 3A8 ;

In respect of the undertakings accepted on 2 June 2017 (“the 2017 undertakings”)

Paragraphs 3.1 ; 3.2 ; 4.1 ; 4.2 ; 5.1 ; 5.2 ; and 5.3

Whilst compliance certificates have been issued in relation to the above, the Licensee remains in Financial Special Measures (“FSM”), which it first entered in March 2017. The Licensee continues to be challenged financially.

Further, whilst improvements have been made in quality of services since the 2014 undertakings were agreed, the underlying issues in relation to operational performance, finance and governance largely remain. The Licensee has routinely failed to meet operational performance constitutional standards.

NHS Improvement is now taking further regulatory action in the form of accepting these undertakings.

The undertakings in this document relate to quality, governance, operational performance, A&E performance and finance but also replace and supersede the 2014, 2015 and 2017 undertakings in relation to those undertakings where a certificate of compliance has not been issued. This ensures that the undertakings with NHS Improvement has accepted and remain outstanding are set out in a single document and, where relevant, have been varied and / or updated.

GROUNDINGS

1. Licence

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

BREACHES

2. Breaches

2.1. NHS Improvement 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(4)(c); FT4(5)(a) to (f); FT4(6)(c) to (f); FT4(7); and CoS3(1).

2.2. In particular:

Governance, Operational Performance and A&E Performance

2.2.1. The Care Quality Commission (“the CQC”) inspected three of the Licensee’s hospitals 16 to 17 May 2018 and carried out a well-led inspection on 12 and 13 June 2018. The CQC rated the Licensee overall as “requires improvement” in its final report published on 5 September 2018 (“the CQC report”). The CQC report identified several issues, including five breaches of legal requirements. Some of those issues are set out below:

- a. Training compliance in all core services inspected had not met targets for staff compliance in safeguarding children level three and safeguarding adult’s level two;
- b. There were inconsistent practices amongst staff in taking observations, potentially putting patients at risk;
- c. Outdated and unsuitable equipment was being used, with insufficient incident reporting;
- d. Staffing levels in some departments were insufficient resulting in inadequate cover, skill gaps, inefficient allocation of staff and variability in levels of care;
- e. The staff survey highlighted issues of concern, regarding the culture of the organisation and processes to support staff;

- f. Scheduled audits were not always performed. Audit outcomes were not always learned from in order to effect meaningful change;
- g. There was a lack of an overall clinical strategy to effect change;
- h. There were insufficiently embedded systems and processes to support the leadership to be able to drive improvement;
- i. There was a lack of effective structures, processes and systems of accountability to support the leadership's delivery of the strategy and high quality, sustainable services;
- j. There was no system or process to ensure mistakes were learned from, that learning was shared or that change was implemented in response;
- k. Proactive risk identification and management was limited. Processes were not always adhered to and risk management was mostly reactive. High-level risks were not always escalated to the Board;
- l. Clinical leads did not always have adequate support.

- 2.2.2. The Licensee has breached its A&E 4 hour waiting time target for each of the last three years.
- 2.2.3. The Licensee has failed to meet the monthly referral to treatment (RTT) target for the last three years. RTT target for the last three years. RTT target for the last three years.
- 2.2.4. The Licensee does not have a detailed improvement plan in relation to RTT to return to compliance. As a result, the Licensee's Board is not yet sighted on milestones for delivery or actions or the level of RTT performance deliverable over the next 12 months.
- 2.2.5. The Licensee's Board has not demonstrated sufficient challenge to the absence of an RTT recovery implementation plan and has not, in relation to RTT, had oversight of the milestones for delivery of actions or the Licensee's recovery.
- 2.2.6. NHS Improvement considers the Licensee's current governance arrangements do not provide sufficient dedicated senior clinical and operational time focused on RTT recovery, recognising the scale of productivity and performance improvement the Licensee is seeking to achieve.
- 2.2.7. The Licensee has not achieved the A&E national standard for the last three years and does not have a plan to return to compliance. There are high numbers of vacancies of nursing and medical staff, which are

impacting on patient flow and contributing to the Licensee's failure to achieve the A&E national standard. The Licensee does not have a comprehensive workforce strategy in place.

2.2.8. The Licensee has not achieved the 62 day wait cancer standard for each of the last three years.

Financial Management

2.2.9. The Licensee's finances showed a material deterioration against the financial plan for 2017/2018 to a full year deficit (excluding sustainability transformation funding) ("STF") of £31,929,000 as against the planned full year deficit (excluding STF) of £18,982,000.

2.2.10. The Licensee has planned a deficit of £29,830,000 for 2018/2019 (excluding STF). The Licensee's finances have shown a material deterioration against the financial plan for 2018/2019 where the Licensee at Month 5 is £341,000 adverse against the planned year-to-date deficit of £14,964,000.

2.2.11. The Licensee has rejected its 2018/19 control total surplus of £6.5m and is planning for a deficit of £30m.

2.2.12. The Licensee is forecasting a need for cash support from the Department of Health and does not yet have a financial plan to return to a sustainable financial position.

2.2.13. On 9 March 2017, NHS Improvement gave notice that it intended to place the Licensee in Financial Special Measures ("FSM") from 6 March 2017. FSM is a package of measures applied to particular NHS bodies as part of a reset of expectations of financial discipline and performance in the NHS. FSM is designed to help NHS bodies facing the biggest financial challenges.

2.2.14. The Trust does not have a comprehensive workforce strategy in place. Workforce constraints are impacting on operational performance and finance.

2.3. 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:

2.3.1. establish and effectively implement systems and/or processes to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;

2.3.2. establish and effectively implement systems for timely and effective scrutiny and oversight by the Board;

2.3.3. ensure compliance with healthcare standards specified by the CQC;

- 2.3.4. obtain and disseminate accurate, comprehensive, timely and up-to-date information for Board and Committee decision-making;
- 2.3.5. identify and manage material risks to compliance with licence conditions;
- 2.3.6. ensure matters relating to quality of care specified in FT4(6)(c) to (f) are complied with;
- 2.3.7. ensure that matters relating to personnel within the organisation specified in FT4(7) are complied with;
- 2.3.8. establish and effectively implement systems and/or processes for effective financial decision-making, management and control (including but not restricted to appropriate systems and/or processes to ensure the Licensee's ability to continue as a going concern);
- 2.3.9. generate and monitor delivery of business plans (including any changes to such plans) and to receive internal and where appropriate external assurance on plans and their delivery; and
- 2.3.10. adopt and apply systems and standards of corporate governance and of financial management which would be regarded as being suitable for a provider of Commissioner Requested Services provided by the Licensee, and providing reasonable safeguards against the Licensee being unable to carry on as a going concern.

Need for action

- 2.4. NHS Improvement 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 Undertaking

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

UNDERTAKINGS

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

1. Planned care
 - 1.1. The Licensee will take all reasonable steps to halve the number of patients (as a minimum) waiting more than 52 weeks for an elective procedure and to maintain or reduce the current backlog.
 - 1.2. The Licensee will have a process to identify patients at risk of clinical harm, including patients experiencing delays starting treatment for elective and non-elective care, in particular 52 week wait patients. This will be clinically led with a methodology for determining harm. The Licensee will develop and implement a governance process linked to the Licensee's risk register in accordance with best practice guidelines.
 - 1.3. The Licensee will develop a plan to return to compliance with the RTT standard and take all reasonable steps to deliver the plan ("RTT plan").
2. Emergency care
 - 2.2. The Licensee will take all reasonable steps to deliver the A&E 4-hour performance standard and provide high quality safe care for patients.
 - 2.3. In meeting the requirements of paragraph 2.2 the Licensee will, in particular, continue to develop its comprehensive A&E recovery plan and trajectory, as agreed by the Licensee Board and by NHS Improvement (the "A&E plan"), to return to compliance with the 4-hour performance standard and demonstrate that it can deliver that plan.
3. Cancer 62-day standard
 - 3.1. The Licensee will develop a plan to return to compliance with the 62-day cancer standard from January 2019 and remain compliant ("Cancer Plan").
 - 3.2. The Licensee will take all reasonable steps to deliver the plan.
4. Financial sustainability
 - 4.1. The Licensee will take all reasonable steps to achieve a position of financial sustainability.
 - 4.2. In meeting the requirements of paragraph 8.1 the Licensee will in particular:

- 4.2.1. develop and submit a financial recovery plan and trajectory, to be agreed by the Licensee Board and by NHS Improvement (the “FRP”) and demonstrate that it can deliver that plan;
 - 4.2.2. undertake a system diagnostic of the underlying drivers of the deficit with its commissioners, to a scope and timescale to be agreed with NHS Improvement and incorporate the findings into the FRP;
 - 4.3. The FRP will cover a sufficient timeframe (3+2 years) to return the Licensee to a surplus position.
 - 4.4. When developing the FRP, the Licensee will engage effectively with key stakeholders, including commissioners, and will reflect their views appropriately in the FRP and ensure that it is consistent with commissioner plans to achieve whole-system recovery. The Licensee will share the FRP with commissioners, towards achieving the aim of having a common and agreed view on activity and demand assumptions.
 - 4.5. The FRP is subject to review and approval by NHS Improvement.
5. Distressed funding
 - 5.1. 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.
 - 5.2. The Licensee will comply with any reporting requests made by NHS Improvement in relation to any financing to be provided to the Licensee by the Secretary of State for Health pursuant to section 40 of the NHS Act 2006.
 - 5.3. Where the Licensee receives payments from the Sustainability and Transformation Fund, the Licensee will comply with any terms or conditions which attach to the payments.
 - 5.4. The Licensee will comply with any spending approvals processes that are deemed necessary by NHS Improvement.
6. Strategic workforce planning
 - 6.1. The Licensee will develop a comprehensive workforce strategy (“the Workforce Plan”) linked to its objectives and taking into account clinical and quality strategies to include, but not limited to, medical, nursing, AHP and non-clinical workforce recruitment and retention strategies, workforce productivity, approaches to job planning and clinical safety. The Workforce

Plan will include an implementation plan and will be agreed by the Board, which will have oversight of delivery.

7. Quality Improvement plan

- 7.1. The Licensee will take all reasonable steps to address the concerns which are identified in the 2018 CQC report, including carrying out the actions set out in the CQC report in accordance with such timescales as determined by the CQC.
- 7.2. The Licensee will take all reasonable steps to ensure that robust quality governance systems and processes are in place to maintain the required standards to meet the conditions of their CQC registration.
- 7.3. The Licensee will provide NHS Improvement with monthly updates on the delivery of required actions set out in the CQC report.

8. Development and delivery of the integrated recovery plan

- 8.1. The Licensee will ensure that the RTT plan, A&E plan, Cancer plan, FRP, Workforce plan and Quality Recovery plan (together, the "Plans") are integrated and developed and delivered in a robust and coherent manner.
- 8.2. In meeting the requirements of paragraph 8.1 the Licensee will, ensure that the Plans:
 - 8.2.1. Include the actions required to deliver improvements with appropriate timescales, resourcing and clear accountabilities to clinical and non-clinical action owners;
 - 8.2.2. Describe the key risks to delivering the Plans and mitigating actions being taken;
 - 8.2.3. Include appropriate quality impact assessments and details of how quality impact will be monitored;
 - 8.2.4. Describe how the Licensee will assess progress against quality impact assessments, including the quality assurance measures to be used; and
 - 8.2.5. Are submitted by a date to be agreed by NHS Improvement, for discussion and agreement with NHS Improvement.
- 8.3. The Licensee will keep the Plans and their delivery under review and provide appropriate assurance to its Board regarding progress towards delivering the Plans and such assurance to be provided to NHS

Improvement on request. Where matters are identified which materially affect the Licensee's ability to deliver the Plans whether identified by the Licensee or another party, the Licensee will notify NHS Improvement as soon as practicable and update and resubmit the affected plan(s) within a timeframe to be agreed with NHS Improvement.

- 8.4. The Licensee will demonstrate to NHS Improvement a period of successful implementation of the IRP and assurance of continued focus, capability and capacity to sustainably maintain financial recovery and deliver the plan.

9. Governance and Programme management

- 9.1. The Licensee will take all reasonable steps to put in place principles, systems and standards of governance which would reasonably be regarded as appropriate for a supplier of healthcare services to the NHS.
- 9.2. In meeting the requirements of the paragraph of 9.1, the Licensee will, in particular:
 - 9.2.1. Ensure that the undertakings will be delivered whilst maintaining or improving the quality of services
- 9.3. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.
- 9.4. Such programme management and governance arrangements must enable the board to:
 - 9.4.1. obtain clear oversight over the process in delivering these undertakings;
 - 9.4.2. obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and
 - 9.4.3. hold individuals to account for the delivery of the undertakings.

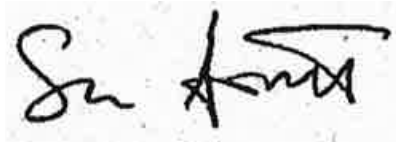
The undertakings set out above are without prejudice to the requirement on the Licensee to ensure that it is compliant with all the conditions of its licence, including any additional licence condition imposed under section 111 of the Act and those conditions relating to:

- 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 NHS Improvement. 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 NHS Improvement is satisfied that the Licensee has given inaccurate, misleading or incomplete information in relation to the undertakings: (i) NHS Improvement may treat the Licensee as having failed to comply with the undertakings; and (ii) if NHS Improvement decides so to treat the Licensee, NHS Improvement must by notice revoke any compliance certificate given to the Licensee in respect of compliance with the relevant undertakings.

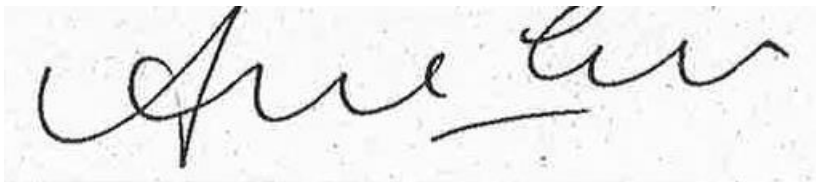
LICENSEE



Signed

[Chair or Chief Executive] of Licensee
Dated: 07/02/19

NHS IMPROVEMENT



Signed

Dated: 13/02/19