

Enforcement notice with s.106 undertakings

(RSG approval 2022/08/18)

ENFORCEMENT UNDERTAKINGS

LICENSEE

South East Coast Ambulance Service NHS Foundation Trust
Nexus House
4 Gatwick Road
Crawley, Sussex
RH10 9BG

DECISION

NHS England, on the basis of the grounds set out below, and having regard to its Enforcement Guidance, 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. NHS England 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), FT4(5)(b) and (c), FT4(6) and FT4(7).

2.2. In particular:

2.2.1. On 22 February 2022 the Care Quality Commission (CQC) undertook a comprehensive inspection of the Licensee. The inspection resulted in a section 29A Warning Notice being issued to the Licensee on 12 May 2022 notifying the Trust that it has formed the view that the quality of health care provided for the regulated activities of treatment of disease, disorder or injury; transport services, triage and medical advice provided remotely; diagnostic and screening procedures require significant improvement. Reasons given were:

- 2.2.1.1. there was a disconnect between the board and the wider organisation and the board was not working effectively together to achieve its full potential
- 2.2.1.2. the quality of information and assurance was not effective and there was a lack of professional curiosity and challenge

- 2.2.1.3. corporate and clinical governance were not working together to provide effective oversight of risks and issues to drive improvements
- 2.2.1.4. there was a culture of bullying across the organisation. There was a failure to act swiftly to address staff concerns. There was a dismissive culture where staff raising serious concerns did not have their concerns acted upon.

- 2.2.2. The CQC inspection identified significant concerns regarding the effectiveness and functioning of the Trust Board, which has led the CQC to rate the Trust's Well-led domain as 'Inadequate'.

- 2.2.3. The most recent staff survey results corroborated the concerns raised by the CQC.

- 2.3. These breaches by the Licensee demonstrate a failure of governance arrangements including, in particular, failure to:
 - 2.3.1. establish and implement
 - (a) effective board and committee structures;
 - (b) clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees; and
 - (c) clear reporting lines and accountabilities throughout the organisation
 - 2.3.2. establish and effectively implement systems or processes:
 - (a) for timely and effective scrutiny and oversight by the Board of the Licensee's operations;
 - (b) to ensure compliance with healthcare standards binding on the Licensee; and
 - (c) to address matters relating to quality of care specified in FT4(6)
 - 2.3.3. ensure the existence and effective operation of systems to ensure that it has in place personnel on the Board, reporting to the Board and within the rest of the Licensee's organisation who are sufficient in number and appropriately qualified to ensure compliance with the conditions of its licence.

2.4. Need for action

NHS England 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

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

UNDERTAKINGS

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

1. Quality

- 1.1. The Licensee will develop and agree a comprehensive improvement plan with Board level accountabilities, incorporating (as appropriate) feedback from the Improvement Director, NHS England and any external reviews commissioned as part of Board development and improvement work.
- 1.2. The plan will:
 - 1.2.1. set out the Licensee's priorities and actions in relation to the areas for improvement as identified by the CQC in its report dated 22 June 2022 and feedback from the 2021/22 Staff Survey
 - 1.2.2. address (as a minimum) all CQC's May 2022 Warning Notices and Must do actions
 - 1.2.3. develop a plan for achieving financial sustainability over the next 3-5 years, working in collaboration with partners across the ICBs.
 - 1.2.4. set out a clear approach and plan for engaging and supporting staff in the improvement plan
 - 1.2.5. ensure transparent internal processes and reporting is available to provide staff with the confidence to raise concerns without fear of detriment and feeling supported in doing so
 - 1.2.6. respond effectively to staff feedback including Staff Survey findings, grievances, complaints and whistleblowing concerns
 - 1.2.7. ensure effective mechanisms for all staff to provide feedback and respond effectively to this feedback, including staff survey, complaints, and whistleblowing concerns
 - 1.2.8. deliver against the approved workforce plans for the FY 22/23, and demonstrable sustainable workforce plans will be in place for beyond 22/23, inclusive of realistic recruitment, retention and abstraction plans.
 - 1.2.9. include ongoing triangulation of the impact of improvement actions with wider quality metrics including patient and staff feedback incidents and complaints.
- 1.3. The Licensee will demonstrate ongoing delivery of the comprehensive improvement plan through an open and transparent reporting framework.

2. Governance

- 2.1. The Licensee will:
 - 2.1.1. ensure there is sufficient capacity and capability to lead and oversee the successful delivery of the comprehensive improvement plan
 - 2.1.2. establish effective risk management arrangements including a comprehensive, up to date Board Assurance Framework with Board level oversight and accountabilities and clear escalation routes for risks and concerns from frontline services to the Board
 - 2.1.3. ensure effective Board oversight and accountability for incidents, clinical harm, complaints and patient feedback
 - 2.1.4. ensure it has effective Board-level governance arrangements to oversee all aspects of the comprehensive improvement plan, inclusive of organisational and quality improvement priorities, and sustainability plans
 - 2.1.5. co-commission a Well-Led Review with the scope and timing to be agreed with NHS England and Surrey Heartlands ICS, and take action as appropriate to address the recommendations of this review
 - 2.1.6. review, alongside the Improvement Director, the scope of the existing Trust-wide Cultural change programme within the comprehensive improvement plan, ensuring the plans are realistic and timebound and inclusive of any

additional support that can be offered (for example, the NHSE Cultural Transformation Programme)

- 2.1.7. share its comprehensive improvement plan, inclusive of financial sustainability and workforce plans with Surrey Heartlands, Sussex, Kent & Medway and Frimley ICSs and with NHS England.

3. Improvement Director

- 3.1. The Licensee will co-operate and work with any Improvement Director who may be appointed by NHS England to oversee and provide independent assurance to NHS England on the Licensee's delivery of the recovery plan and improvement of quality of care the Licensee provides.

4. Programme management

- 4.1. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.
- 4.2. Such programme management and governance arrangements must enable the board to:
 - 4.2.1. obtain clear oversight over the process in delivering these undertakings;
 - 4.2.2. obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and
 - 4.2.3. hold individuals to account for the delivery of the undertakings.

5. Meetings and reports

- 5.1. The Licensee will attend meetings or, if NHS England stipulates, conference calls, at such times and places, and with such attendees, as may be required by NHS England.
- 5.2. The Licensee will provide such reports in relation to the matters covered by these undertakings as NHS England may require.

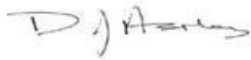
The undertakings set out above are without prejudice to the requirement on the Licensee to ensure that it is compliant with all the conditions of its licence, including any additional licence condition imposed under section 111 of the Act and those conditions relating to:

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

LICENSEE



Signed:

David Astley, Chair of Licensee

Dated: 05.09.2022

NHS ENGLAND



Signed: David Radbourne, Member of the South East Regional Support Group

Dated:08.09.2022