

**[DRAFT] ENFORCEMENT UNDERTAKINGS v21 Apr 22  
LICENSEE**

The Robert Jones and Agnes Hunt Orthopaedic Hospital NHS Foundation Trust (“the Licensee”)  
Tympath Lane  
Gobowen, Owestry  
Shropshire  
SY10 7AG

**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.

**GROUND**

1. Licence

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

**BREACHES**

2. Quality of Care

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) (a), (b), (c) ; FT4(5) (a), (b), (c), (e), (f), (g), FT4(6) (a), (b), (c), (d), (f) and FT4(7).

2.2. In particular:

2.2.1. In July 2021, NHS Improvement was informed by the Trust of an outbreak of Methicillin-resistant Staphylococcus aureus (MRSA) on Gladstone and Wrekin wards. NHS Improvement visited the Trust on 02 August 2021 and identified a significant number of issues relating to poor hygiene and cleanliness and immediate informal actions were agreed between the Trust and NHS Improvement.



2.2.2. Since the above initial visit, there have been a number of follow-up visits by NHS Improvement. The most recent NHS Improvement visit took place on 11 February 2022 and ongoing IPC issues were highlighted, as well as governance concerns relating to the Trust's ability to meet the requirements outlined in the Code of Practice on the prevention and control of infections and related guidance (Hygiene Code).

2.2.3. This most recent visit showed that there been a lack of progress against the previously agreed informal actions and no evidence that the areas for improvement identified have been extrapolated across the Trust to reduce the risk of possible harm to other areas. Key areas of concern were identified as:

- (a) Action plans which had been signed off as completed when actions were not complete
- (b) Audit actions which had not been completed
- (c) Issues with estates that contribute to poor IPC which have not been addressed
- (d) Incomplete cleaning records and items marked as clean which were not clean with evidence of poor training
- (e) Lack of appropriate equipment to support good hygiene practice and poor mattress cleaning and storage
- (f) A number of staff members were not bare below the elbows

2.2.4. There has been an increase in surgical site infections since Quarter 2 2021/22 and the UKHSA surgical site infection (SSI) surveillance for July to September 2021 found that the Trust is also an outlier for surgical site infection for knee, hip and spinal surgery. In addition, there have been multiple observations of Doctors who did not adhere to the NHS "bare below the elbows" guidance.

2.2.5. The findings outlined above suggest that there could be a lack of adherence to IPC processes and controls which has not been addressed by senior managers or clinicians. This indicates that there could be wider cultural and leadership issues at the Trust.

2.3. These failings by the Trust demonstrate a failure of governance arrangements including, in particular:

2.3.1. failure to 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 its organisation;

2.3.2. failure to establish and effectively implement systems and/or processes:

- (a) to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
- (b) for timely and effective scrutiny and oversight by the Board of the Licensee's operations;

- (c) to ensure compliance with health care standards binding on the Licensee;
- (d) to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making;
- (e) to identify and manage material risks to compliance with the Conditions of its Licence; and
- (f) to generate and monitor delivery of business plans and to receive internal and where appropriate external assurance on such plans and their delivery;

2.3.3. to ensure the matters relating to quality of care specified in condition FT4(6) are complied with; and

2.3.4. to 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 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

In considering the appropriateness of accepting, in this case, the undertakings set out below, NHS Improvement 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. Quality of Care

- 1.1. The Trust will take all reasonable steps to address the concerns as identified in the visit report sent as part of a letter from NHS Improvement to the Chief Nurse on 17 February 2022, including carrying out the actions set out in the report in accordance with such timescales to be determined by NHS Improvement.
- 1.2. By dates to be agreed with NHS Improvement, the Trust will update its IPC improvement plan ("the Plan") to ensure that it reflects all of the latest improvement actions identified by NHS Improvement, including demonstrating that it has sufficient capacity at both executive and other levels of management to implement the Plan.

- 1.3. If required by NHS Improvement, the Trust will obtain external support from sources according to a scope and timescale to be agreed with NHS Improvement, on the matters in paragraph 1.2.
- 1.4. The Trust will, by such date as specified by NHS Improvement, agree on milestones and a timetable for delivering the Plan with NHS Improvement and will submit a monthly Board-approved progress report against delivery until such date as specified by NHS Improvement
- 1.5. The Trust will, as part of its Plan, review and develop robust governance processes for oversight and assurance of IPC within the Trust.
- 1.6. The Trust will work with system partners to review and strengthen its governance with regards to IPC in such timescales as agreed with NHS Improvement.
- 1.7. If required by NHS Improvement, the Trust will commission an external review to provide assurance that the Plan has been appropriately implemented. The scope, source and timing of any external review will be agreed with NHS Improvement.
- 1.8. The Trust will arrange with NHS Improvement, and with system partners, a series of clinical visits to review and assess progress against the implementation of the Plan. The scope and the review team will be agreed with NHS Improvement.
- 1.9. If required by NHS Improvement, the Trust will commission an external review to provide assurance that the Trust integrated governance structures are effective and that processes are in place to provide oversight of risks and issues in relation to IPC and clinical quality.
- 1.10. In line with the System Improvement Board Terms of Reference and the requirements of the System Oversight Framework segmentation, the Licensee will cooperate fully with NHS England and NHS Improvement, health sector stakeholders and any external agencies or individuals appointed to work with or support the Licensee to address regulatory concerns.

## 2. Improvement Director

- 2.1. The Trust will co-operate and work with an Improvement Director to oversee and provide independent assurance to NHS Improvement on the Trust's delivery of the Plan to improve the quality of care the Trust provides.

## 3. Programme management

- 3.1. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.
- 3.2. Such programme management and governance arrangements must enable the Board to:

- 3.2.1. obtain clear oversight over the process in delivering these undertakings;
- 3.2.2. obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and
- 3.2.3. hold individuals to account for the delivery of the undertakings.

#### 4. Meetings and reports

4.1. The Licensee will attend meetings or, if NHS Improvement stipulates, conference calls, at such times and places, and with such attendees, as may be required by NHS Improvement.

4.2. The Licensee will provide such reports in relation to the matters covered by these undertakings as NHS Improvement 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 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: 23<sup>rd</sup> May 2022**

#### **NHS IMPROVEMENT**



**Signed [Chair OR Member] of the Regional Provider Support Group (NHS Midlands)**

*(Note: undertakings can be accepted/signed by a DoST where the RSG pass a resolution enabling the individual member to act for the Group pursuant to the RSG terms of reference)*

**Dated: 20<sup>th</sup> May 2022**