Ref RB 2023-03-14 RB-LS

NHS England
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North West Region
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James Sumner, Chief Executive Officer
Liverpool University Hospitals NHS
Foundation Trust
Trust Headquarters
Royal Liverpool University Hospital
Prescot Street
Liverpool
L7 8XP

14 March 2023

Dear James

Re: Liverpool University Hospitals NHS Foundation Trust: Final Enforcement Undertakings

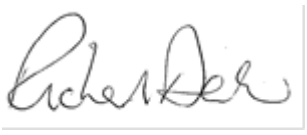
Thank you for your letter of 22 December 2022, confirming that the Trust has no further queries in relation to the wording set out in the Draft Enforcement Undertakings.

I enclose the Final Enforcement Undertakings (Appendix A) which have been signed by the Trust and NHS England.

The signed Draft Enforcement Undertakings, can be found in Appendix B.

We look forward in continuing to work with the Trust, in its commitment to deliver the improvements necessary to benefit the communities which we serve. Please do not hesitate to contact me or a member of my team, should you wish to discuss the content of this letter or any related issues in more detail.

Yours sincerely,



Richard Barker CBE
Regional Director (North West)

Encs

ENFORCEMENT UNDERTAKINGS

LICENSEE:

Liverpool University Hospitals NHS Foundation Trust (“the Licensee”)
Trust Headquarters
Royal Liverpool University Hospital
Prescot Street
Liverpool
L7 8XP

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’’).

BACKGROUND

The Licensee’s financial plan for 2022/23 is a £30m deficit, which includes a CIP plan of £75m, of which £43m is non-recurrent. The £30m deficit plan takes into account the cost associated with the move into the new hospital. The Trust has identified a significant underlying deficit of £73m that will require addressing once the system returns to normal funding arrangement.

The Licensee has been subject to a series of escalating quality concerns relating to nursing staffing levels, standards of care across emergency medicine, flow, discharge arrangements, Infection Prevention and Control (IPC) compliance, systems and processes relating to safe & reliable care, and culture.

The Care Quality Commission (CQC) carried out an unannounced inspection of Urgent and Emergency Care Services, Surgery and Medical Care Services and a well-led inspection between 29 June 2021 and 26 July 2021. CQC guidance on how ratings are determined states that when a Trust acquires another Trust in order to improve the quality and safety of care, the CQC do not aggregate ratings from the previously separate Trust at Trust level for up to two years. The ratings for the Licensee for the current CQC report are therefore based only on the ratings for University Hospital Aintree NHS Foundation Trust. The Well Led Rating is at Trust level. At the Royal Liverpool University Hospital only those services where the CQC were aware of current risks were inspected.

On the 19 August 2021 the CQC issued an Urgent Notice of Decision to impose conditions on the registration of Liverpool University Hospitals NHS Foundation Trust, in respect of regulated activities, particularly Urgent and Emergency Care.

A single Item Quality Surveillance Group (SIQSG) met on 21 September 2021. A recommendation from the SIQSG was the need for the development of a single Trust wide improvement plan with oversight and support for this co-ordinated through a System Improvement Board (SIB).

The Trust has built up a large waiting list, and associated with this, significant numbers of patients waiting over 52 weeks and over 104 weeks, which has been exacerbated by COVID-19.

NHS England is therefore now taking further regulatory action in the form of undertakings to reflect the current position.

GROUNDS

1. Licence

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

2. Breaches

NHS England 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)(a) to (c), FT4(5)(a) to (c), FT4(5)(e) to (f), FT4(6)(a) to (d) and (f), FT4(7) and CoS3.

3. Financial Sustainability

3.1 The Trust reported a break-even position in 2019/20, which included £44.8m of non-recurrent Provider Sustainability Fund.

3.2 The Trust's financial position for 2020/21 was a surplus of £1.4m. However, the finances have been distorted due to additional system financial support provided by the Government during the COVID-19 pandemic.

3.3 The Trust's financial position for 2021/22 is a deficit of £7.4m, although this includes accelerated depreciation, which did not score to the control total. Also, finances have been distorted due to additional system top-up funds made available to Trusts via ICB allocations during the financial year.

3.4 The 2022/23 financial plan is reporting a deficit of £30m, with £75m CIP, of which £43m is non-recurrent, and an underlying deficit of £73m

3.5 The matters set out above demonstrate a failure of governance and financial management by the Licensee, including, in particular:

3.5.1 a failure by the Licensee to adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as:

(a) suitable for a provider of the Commissioner Requested Services provided by the Licensee, and

(b) providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern.

3.5.2 a 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; and

(b) 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)

4. Quality

4.1 The Licensee:

4.1.1 Has been subject to a series of escalating quality concerns relating to nurse staffing levels, standards of care across emergency medicine, flow, discharge arrangements, IPC compliance, systems and processes relating to safe & reliable care and culture. Specifically for quality, the delivery of safe and reliable care in relation to a number of quality indicators: Safe staffing; Sepsis; Malnutrition Universal Screening Tool (MUST); increasing Never Events; risk management; patient experience, poor documentation and patient record keeping including Fluid Balance Chart recording and Safeguarding (Deprivation of Liberty Safeguards 'DOLS').

4.1.2 Was inspected by the CQC between 29 June and 26 July 2021. The unannounced inspection took place because of continuing concerns about the quality and safety of some services. The inspection included Urgent and Emergency Services, Surgery, and Medical Care at University Hospital Aintree and Royal Liverpool University Hospital. The Licensee was inspected overall in respect of the well led question. The Licensee was rated Requires Improvement Overall, with 'Requires Improvement' for Safe, Effective and Responsive and 'Good' for Caring. Well Led was rated as 'Inadequate'. The CQC's findings included the following:

(a) Mandatory training compliance was low for medical staff in urgent and emergency services.
(b) Patients in emergency departments did not always receive appropriate care and treatment in a timely way, exposing them to the risk of harm.
(c) There were not always sufficient medical and nursing staff with the right qualifications, skills, training and experience to keep patients safe in emergency departments and medical wards.
(d) Staff did not always have the correct level of training on how to recognise and report abuse and not all staff at the Trust had completed safeguarding children level three training.
(e) Staff did not always adhere to Trust and national infection prevention and control guidance in urgent and emergency and medical care services at Royal Liverpool hospital.
(f) The service did not always use systems and processes to safely prescribe, administer, record and store medicines in line with requirements.
(g) Staff did not always recognise and report incidents and near misses in the Emergency Department at Royal Liverpool Hospital, and medical care and surgery at Aintree Hospital. Services did not always manage patient safety incidents well and did not always share lessons learned with the whole team.
(h) Staff did not always provide care and treatment based on national guidance and evidence-based practice and in urgent and emergency departments and medical care fluid documentation was not always accurate and complete.

(i) Staff did not always assess and monitor patients regularly to see if they were in pain and give pain relief in a timely way.
(j) Services did not always make sure staff were competent for their roles.
(k) Key services in medical care were not available seven days a week.
(l) The Trust did not always maintain patients' privacy and dignity, specifically when needing to be cared for in a corridor in the Urgent and Emergency Department.
(m) The Trust did not always manage the access and flow of patients, in the Urgent and Emergency Care Department and in medical care services, with patients spending long periods waiting for an in-patient bed.
(n) Surgery services performed worse than the national average for the percentage of cancer patients treated within 62 days. The average length of patient stay was worse than the national average.
(o) Provision for patients who had a diagnosis of dementia was not well developed and there was variation in appropriate care to meet individual needs for these patients.
(p) Although the Trust had an overall vision and strategies, the Trust Strategy was due to launch and was not yet embedded. Not all services had their own vision and strategy.
(q) Staff were supported by local leadership, but some did not always feel respected, supported and valued. Senior managers were not always visible in services.
(r) Trust governance processes were not robust or always effective. Risks were not always identified correctly with appropriate mitigations put in place.

4.2 The matters set out above demonstrate a failure of governance arrangements including, in particular a failure to establish and implement:

4.2.1 effective board and committee structures, as specified in FT4(4)(a)

4.2.2 clear responsibilities for the Board, committees reporting to the Board and staff reporting to the Board and those committees, as specified in FT4(4)(b)

4.2.3 clear reporting lines and accountabilities throughout the organisation, as specified in FT4(4)(c)

4.2.4 systems and/or processes:

(a) to ensure compliance with the Licensee's duty to operate efficiently, economically, and effectively, as specified in FT4(5)(a);
(b) for timely and effective scrutiny and oversight by the Board, as specified in FT4(5)(b);
(c) to ensure compliance with healthcare standards specified by the CQC, as specified in FT4(5)(c);
(d) to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making, as specified in FT4(5)(e);
(e) to identify and manage material risks to compliance with licence conditions, as specified in FT4(5)(f);
(f) to ensure the matters relating to quality of care specified in FT4(6)(a)- (d) and (f).

4.2.5 systems to ensure it has in place personnel as required by FT4(7).

5. 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.

6. Appropriateness of Undertakings

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 of care

1.1. The Licensee will take all reasonable steps to rectify the concerns which are set out in the CQC report dated 27 October 2021, in such timescales to be agreed with NHS England (except where otherwise specified), such that the Licensee will:

1.1.1 Within the timeframe required by the CQC, finalise, and submit to the CQC and to the System Improvement Board, a Quality Improvement Plan detailing actions which it will take to address concerns raised by CQC in its inspection report.

1.1.2 Specifically, and in line with the actions required in the CQC recommendations, ensure the Quality Improvement Plan includes actions that will ensure robust governance processes in relation to timely identification and management of risk including processes for shared learning.

1.1.3 Will deliver the Quality Improvement Plan within timelines as agreed with the System Improvement Board. The Licensee will agree any amendments to the plan with the System Improvement Board.

1.1.4 Will provide Board assurance through the System Improvement Board that the delivery of the Quality Improvement Plan is meeting the agreed trajectory for delivery or amendments to timelines or deliverables have been agreed by the System Improvement Board.

1.1.5 Will include as part of the Quality Improvement Plan existing quality concerns identified prior to the CQC inspection (if not included as part of the CQC must and should do requirements), specifically Sepsis; Malnutrition Universal Screening Tool (MUST); increasing Never Events; patient experience, poor documentation and patient record keeping including Fluid Balance Chart recording and Safeguarding (DOLS).

1.2 As set out in the CQC well led element of the report, the Licensee shall establish and implement:

1.2.1 Effective board and committee structures

1.2.2 Clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees

1.2.3 Clear reporting lines and accountabilities throughout its organisation; and

1.2.4 Supporting plans that will enable effective implementation of the priorities set out within the Trust's Strategy.

1.3 The Licensee will implement all the recommendations from the NHS England and NHS Improvement Governance Review.

2. Performance

2.1 The Licensee will take all reasonable steps within its control to:

2.1.1 Reduce and ultimately eliminate 104+ week waits for elective treatment, and to minimise waits in excess of 52 weeks. It is noted that the Licensee has committed to eliminate waits of over 104 weeks as a priority and maintain this position through 2022/23.

2.1.2 Rapidly reduce and eliminate 104+ day waits for cancer treatment and minimise 62+ day waits. In support of this, an improvement trajectory should be set and agreed with the System Improvement Board.

2.1.3 In line with any actions agreed as part of the Quality Improvement Plan in relation to management of access and flow of patients and long waits for inpatient beds, the Licensee should set and agree trajectories with the System Improvement Board to include suitable metrics for flow including decision to admit delays and total time in department.

3. Financial planning

3.1 Trust will deliver its 2022/23 Financial Plan, including any agreed stretch, as agreed with the Cheshire and Merseyside ICB, as part of an overall ICS balanced plan for 2022/23.

3.2 The Trust will ensure that robust financial controls, process, and governance is in place to ensure accurate financial reporting and to secure value for money.

3.3 The Trust will cooperate and actively participate in the review of financial governance, commissioned from MIAA by Cheshire & Merseyside ICB.

3.4 The Trust will cooperate and actively participate in the Cheshire and Merseyside ICB financial sustainability and efficiency programmes, including utilising national tools to identify unwarranted variation and productivity opportunities

3.5 The Trust will work with Cheshire & Merseyside ICB to identify its underlying recurrent financial position and act on recommendations stemming from any external reviews commissioned.

4. Funding conditions 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 NHS England 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.

4.3 The Licensee will comply with any spending approvals processes that are deemed necessary by NHS England.

5. General

5.1 The Licensee will:

5.1.1 Evidence all reasonable steps have been taken to meet the Recovery Support Programme Exit Criteria as set out and agreed by the System Improvement Board, in accordance with the timescales agreed by the System Improvement Board.

5.1.2 Carry out a review of progress against the Recovery Support Programme Exit Criteria and report to the System Improvement Board, in accordance with the timescales agreed by the System Improvement Board.

5.2 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, health sector stakeholders and any external agencies or individuals appointed to work with or support the Licensee to address regulatory concerns.

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:

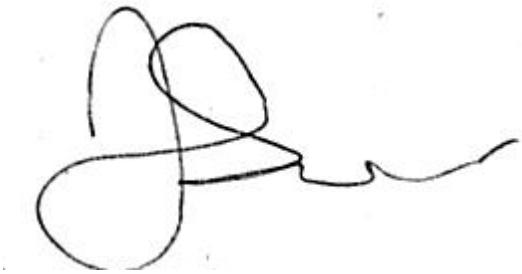
- compliance with the health care standards binding on the Licensee; and

- 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 (Chair or Chief Executive of

Licensee) Dated: 13 March 2023

NHS ENGLAND

Signed (North West Regional

Director) Dated: 13 March 2023

DRAFT ENFORCEMENT UNDERTAKINGS

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(b) for timely and effective scrutiny and oversight by the Board, as specified in FT4(5)(b);
(c) to ensure compliance with healthcare standards specified by the CQC, as specified in FT4(5)(c);
(d) to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making, as specified in FT4(5)(e);
(e) to identify and manage material risks to compliance with licence conditions, as specified in FT4(5)(f);
(f) to ensure the matters relating to quality of care specified in FT4(6)(a)- (d) and (f).

4.2.5 systems to ensure it has in place personnel as required by FT4(7).

5. 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.

6. Appropriateness of Undertakings

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 of care

1.1. The Licensee will take all reasonable steps to rectify the concerns which are set out in the CQC report dated 27th October 2021, in such timescales to be agreed with NHS England (except where otherwise specified), such that the Licensee will:

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2.1.2 Rapidly reduce and eliminate 104+ day waits for cancer treatment and minimise 62+ day waits. In support of this an improvement trajectory should be set and agreed with the System Improvement Board.

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5. General

5.1 The Licensee will:

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5.1.2 Carry out a review of progress against the Recovery Support Programme Exit Criteria and report to the System Improvement Board, in accordance with the timescales agreed by the System Improvement Board.

5.2 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, health sector stakeholders and any external agencies or individuals appointed to work with or support the Licensee to address regulatory concerns.

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 (Chair or Chief Executive of Licensee)

Dated:

NHS ENGLAND

Signed (North West Regional Director)

Dated: