

ENFORCEMENT UNDERTAKINGS

NHS TRUST:

Nottingham University Hospitals NHS Trust (the Trust)
Trust HQ
City Hospital Campus
Hucknall Road
Nottingham
NG5 1PB

1. 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”).

2. DEFINITIONS

In this document:

“the conditions of the Licence” means the conditions of the licence held by providers of NHS services under Chapter 3 of Part 3 of the Health and Social Care Act 2012.

From 1 April 2023 NHS trusts have been required to hold and comply with such a licence. Prior to 1 April 2023 NHS England, acting in exercise of its functions under section 27A of the NHS Act 2006, expected NHS trusts to comply with such conditions.

“NHS Improvement” means the National Health Service Trust Development Authority, which was abolished and its functions transferred to NHS England on 1 July 2022 by the Health and Care Act 2022.

3. BACKGROUND

3.1. NHS England accepted enforcement undertakings from the Licensee in April 2022 in relation to:

- Quality of Care – Maternity
- Leadership, Governance and Culture

3.2. In December 2023, a compliance certificate was agreed for these undertakings.

3.3. NHS England has concerns about the deteriorating financial position of the Licensee and is taking regulatory action in the form of new undertakings which replace and supersede the undertakings accepted in April 2022.

4. GROUNDS

4.1. The Licence

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

4.2. Issues and need for action

4.2.1. NHS England has reasonable grounds to suspect that the Trust has provided and is providing health care services for the purposes of the health service in England while failing to comply with and apply those principles, systems and standards of good corporate governance which reasonably would be regarded as appropriate for a provider of health care services to the NHS, specifically the following conditions of the Licence: NHS2(5)(a), NHS2(5)(d), NHS2(5)(f) and NHS2(5)(g).

4.2.2. In particular;

Finance

4.2.2.1. The Licensee planned to deliver a breakeven financial outturn in 2022/23 but delivered a deficit outturn of £10.1m for the financial year. In 2023/24 the Licensee planned to deliver a breakeven financial outturn and is reporting a significant year-to-date deficit.

4.2.2.2. The Licensee has a general statutory duty to act effectively, efficiently and economically. The Licensee has demonstrated declining implied productivity and material under-delivery of recurrent efficiency plans in 2023/24.

4.2.2.3. The Licensee has reported significant growth in workforce over the last three years which is not financially affordable and is a significant contributor to the deficit position.

4.2.2.4. The Licensee commissioned an external review of financial controls which identified control weaknesses and variable maturity of financial control measures across the organisation.

4.2.3. Need for action:

- 4.2.3.1. NHS England believes that the action which the Trust has undertaken to take pursuant to the undertakings recorded here is action required to secure that the breaches in question do not continue or recur.

5. Appropriateness of Undertaking

- 5.1. 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 Trust has agreed to give the following undertakings.

1. Financial Performance

1.1. Recovery Plan

- 1.1.1. By a date to be agreed with NHS England, the Licensee will develop a financial recovery plan (“the Recovery Plan”) which addresses all recommendations from the recent external financial review and addresses the current level of deficit being reported by the Trust. In particular, the Recovery Plan should:
 - 1.1.1.1. Reflect NHS England planning guidance including for 2023/24 and 2024/25
 - 1.1.1.2. Demonstrate recurrent financial improvement to the Trust's underlying deficit, reduce the Licensee's monthly deficit run-rate, preserve cash and minimise the deficit;
 - 1.1.1.3. Provide a high-level milestone plan for the Licensee to return to a breakeven financial position;
 - 1.1.1.4. Establish immediate financial and operational grip and control actions, followed by transformational initiatives and options such as financially sustainable clinical services, clinical support services and corporate services;
 - 1.1.1.5. Include actions to address the key financial issues, including actions to reduce pay costs and minimise agency spend, ensuring improved price cap and framework compliance;
 - 1.1.1.6. Include details of how the Licensee will deploy sufficient resources to ensure implementation of the Recovery Plan;
 - 1.1.1.7. Reflect Recovery Plans which have been developed with, and agreed with, divisional leads at the Licensee;

- 1.1.2. When developing the Recovery Plan, the Licensee will engage effectively with key stakeholders, including commissioners, and will reflect their views appropriately in the Plan

1.2. Funding Conditions and Spending Approvals

- 1.2.1. Where interim support financing or planned term support financing is provided by the Secretary of State for Health to the Licensee under Schedule 5 to the National Health Service Act 2006, the Licensee will comply with any terms and conditions which attach to the financing.
- 1.2.2. The Licensee will comply with any spending approvals processes that are deemed necessary by NHS England.

2. Programme Management

- 2.1. The Trust will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.
- 2.2. Such programme management and governance arrangements must enable the Board to:
 - 2.2.1. obtain clear oversight over the process in delivering these undertakings;
 - 2.2.2. obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation;
 - 2.2.3. hold individuals to account for the delivery of the undertakings; and
 - 2.2.4. ensure that appropriate quality impact assessments are undertaken and monitored

3. Meetings and Reports

- 3.1. The Trust will establish an appropriate Financial Recovery Board and NHS England's regional finance team has an open invite to attend;
- 3.2. The Trust 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;
- 3.3. The Trust will provide such reports in relation to the matters covered by these undertakings as NHS England may require; and
- 3.4. The Trust will report to NHS England on the delivery of its financial recovery plan on a monthly basis and more frequently if required.

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.

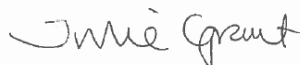
THE LICENSEE

A handwritten signature in black ink, appearing to read 'Anthony May'.

Anthony May OBE DL
Chief Executive

Dated: 4 April 2024

NHS ENGLAND

A handwritten signature in black ink, appearing to read 'Julie Grant'.

Julie Grant
Director of System Coordination and Oversight

Dated: 4 April 2024