

ENFORCEMENT UNDERTAKINGS LICENSEE:

East Kent Hospitals University Foundation Trust
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BACKGROUND

NHS England accepted undertakings under section 106 of the Health and Social Care Act 2012 (“the Act”) from East Kent Hospitals University Foundation Trust (“the Licensee” / “the Trust”) on 13 February 2019. Following which, specific quality and governance concerns in respect of the Licensee’s Maternity services came to light and a variation to the Undertakings was agreed on 29 July 2021. Due to the passage of time, and intervening events, some of those undertakings are deemed to be no longer relevant or appropriate.

DECISION

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, NHS England has decided to accept additional undertakings from the Licensee and to agree amendments to the existing undertakings for the reasons set out below. These undertakings will supersede the undertakings agreed on 13 February 2019 (as amended on 29 July 2021) which will cease to have effect from the date of these undertakings.

GROUND

1. Licence

1.1 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 health care services for the purposes of the NHS in breach of the following conditions of its licence: NHS2(2); NHS2(4)(a)(b)(c); NHS2(5)(a)(b)(c)(d); NHS2(7).

2.2 In particular:

Leadership, Culture and Governance

2.2.1 On 27 June 2023 the Care Quality Commission (“CQC”) served the Trust with a Warning Notice under Section 29 A of the Health and Social Care Act 2008 (“Section 29A Warning Notice”), in relation to the quality of healthcare being delivered at William Harvey Hospital, and Queen Elizabeth the Queen Mother Hospital. The Section 29A Warning Notice required the Trust to make a significant improvement to the quality of the healthcare concerned.

2.2.2 An inspection of urgent and emergency care, medicine and children and young people services was carried out commencing 17 May 2023. During the inspection and having considered the subsequent provision of evidence, the CQC found that, in summary:

1. The Emergency Department (“ED”) service did not have enough medical staff with the right qualifications, skills, training and experience to keep patients safe from avoidable harm and to provide the right care and treatment.
2. The ED service did not have enough nursing staff and support staff with the right qualifications, skills, training and experience to keep patients safe from avoidable harm and to provide the right care and treatment.
3. The ED service did not have an effective handover process of patients who had been in ED for more than 24 hours which led to a delay in treatment and lack of continuity of care in some cases.
4. The Medical service did not ensure staff completed the required training at William Harvey Hospital and Queen Elizabeth the Queen Mother, as outlined in the core Skills Training Framework for NHS Trusts in England.
5. Systems and processes to mitigate risk including fire safety, infection prevention and control and patients’ privacy and dignity, and relating to the environment, premises and equipment, were ineffective.
6. Systems and processes to monitor cleanliness of the environment and equipment were insufficient to reduce infection prevention and control risk and staff did not always wash their hands.
7. Staff in children and young people’s services (CYP) were not up to date with training, learning and development to enable them to fulfil the competency requirements of their role.

2.2.3 The CQC undertook an unannounced inspection of the urgent and emergency care, medical care (including older people’s services) and children and young

people services provided by the Trust between 17 to 19 May 2023. The well led key question was inspected between 4 and 5 July for the Trust overall. The Trust was rated as 'Requires Improvement' because, in summary:

1. Leaders understood the priorities and issues the Trust had but did not always take appropriate action to resolve them. Some executives were visible and approachable in the service, but most staff reported a disconnect between the Board and the floor.
2. The executive team had reviewed the vision, values and strategy. This was in its infancy and needed time to be developed fully. There were plans to ensure a structured planning process in collaboration with people who use the service, staff and external partners.
3. There were systems and processes for managing risk; however, they were not always effective. Leaders and teams used systems to manage performance, but at times this was not effective. While known risks were identified and high-level risks escalated with identified actions to reduce their impact, there was variability and a lack of pace in the Trust's response to mitigate and manage these in some core services.
4. Not all staff felt respected, supported and valued. Not all staff felt the service had an open culture where they could raise concerns without fear.
5. Governance arrangements lacked clarity and were not always effective at all levels. The governance reporting needed streamlining and strengthening to be more effective.
6. There was a process to deal with reported incidents. During our core service inspections, we found staff knew what incidents to report and how to report them. However, near misses, including those with potential for harm were not always reported.
7. The Trust did not always deal with complaints within expected timeframes.

2.2.4 A Good Governance Review (by Good Governance Improvement, GGI) took place in Autumn 2023. It was recognised by GGI that the review took place when progress was being made. These were encouraging early steps, and enabled the Board to start to agree what would improve the effectiveness of the Board and its committees. It was recognised that the people of East Kent deserve their local acute Trust to be under the stewardship of a high-performing Board that has adopted good governance best practice, because the service and performance issues are so significant at the Trust that it is only by having a high performing Board that the Trust will be able to address these issues. Recommendations were made in the following areas:

1. Strengthening the Board Assurance Framework.
2. Assurance groups and broader assurance structure
3. Board and committees organisation and management
4. Board development

2.2.5 The Trust will commission a follow up review with GGI in Q3 2024/25.

2.2.6 The Trust Chair stood down in December 2023 after a period of absence with vice Chair acting as an interim. External Board advisory support is in place.

Interviews for the Chair are scheduled for autumn 2024 following an extended search period.

- 2.2.7 The interim Chief Finance Officer started on 6 November 2023 on a 1 year secondment. An offer has been made and confirmation of a substantive appointment is expected.
- 2.2.8 Since the CEO came into post the Trust has had three Chief Finance officers, three Chief Medical Officers, three Chief Nurses and two Directors of Strategy and Partnerships.
- 2.2.9 The lack of consistency of executive leadership due to turnover means organisational memory is poor and pace of improvement is slow.

Operational Performance: Unplanned Emergency Care and Planned Care

- 2.2.10 The NHS Kent and Medway Integrated Care Board (“ICB”) is in National Tiering Programme (Tier 1) for Urgent and Emergency Care, with a focus on the Trust. The Trust is in Tier 1 for Elective and Cancer care.
- 2.2.11 Progress has been made in Q1 of 2024/25 with an improved operational focus, however the Trust did not clear the 78 week waits by the end of June 2024 and will not meet the trajectory required for July and August 2024.
- 2.2.12 The 104 week waits are now down to one patient outstanding.
- 2.2.13 The Trust plans to clear the 65 week waits by March 2025.
- 2.2.14 There is significant mutual aid in place through both the system and Maidstone and Tunbridge Wells NHS Trust and some support from Medway NHS Foundation Trust for Urology patients.

Financial Recovery

- 2.2.15 The Trust remains a national outlier financially with a deficit at month 12 2023/24 of £117.4m, £45.5m adverse to plan. There is a planned 2024/25 year-end deficit of £85.8m (subject to alignment with system control total). This includes a stretching efficiency plan of at least £49m (4.4% of Operating Expenditure), which is significantly above historic levels of efficiency which have been delivered.
- 2.2.16 The current, interim Chief Finance Officer secondment ends in November 2024, so targeted recruitment is underway.
- 2.2.17 There is a risk to delivery of financial plan and sustainability of financial improvement with the departure of the Chief Finance Officer. Internal capacity & capability and financial governance & processes are to be strengthened to manage this risk.

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 Apply 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.

2.3.2 Have in place effective Board and committee structures.

2.3.3 Have clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees.

2.3.4 Establish and implement clear reporting lines and accountabilities throughout its organisation.

2.3.5 Establish and effectively implement systems and/or processes to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively; to ensure compliance with health care standards specified by the Secretary of State, the CQC, NHS England and statutory regulators of health care professions.

2.3.6 Establish 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).

3. Need for action

3.1 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.

4. Appropriateness of Undertakings

4.1 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 Licensee has agreed to give the following undertakings, pursuant to section 106 of the Act. These undertakings supersede any of the original undertakings that remain in place.

1. Leadership, Culture and Governance

1.1 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. In particular:

1.1.1 The Licensee will take all reasonable steps to address the concerns which are identified in the 2023 CQC report and the Section 29A Warning Notice, including carrying out the actions set out in those documents in accordance with such timescales determined by the CQC.

1.1.2 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.

1.1.3 The Licensee will provide evidence of effective Trust leadership and governance structures and ensure that processes are in place to deliver and sustain essential improvements in the quality of services ensuring sustainability and a continuous quality improvement focus in the Trust.

1.2 The Licensee will ensure that the undertakings in this document will be delivered whilst maintaining or improving the quality of services.

1.3 The Licensee will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.

1.4 Such programme management and governance arrangements must enable the board to:

1.4.1 obtain clear oversight over the process in delivering these undertakings;

1.4.2 obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and

1.4.3 hold individuals to account for the delivery of the undertakings.

1.5 The Licensee will ensure that there is a stable Executive team with clear and robust organisation wide governance in place, supported by a board development programme that has been agreed with NHS England.

1.6 The Licensee will demonstrate improvement in the culture of the organisation, in particular the safeguarding and the safety culture, and effective engagement with the workforce.

1.7 The Licensee will develop an organisation strategy for clinical pathways with effective stakeholder engagement and plan for this strategy to have been effectively established by March 2025.

1.8 Integrated Improvement Plan:

1.8.1 The Licensee will ensure that its existing Integrated Improvement Plan is embedded at all levels within the organisation, in a robust and coherent manner.

1.8.2 The Licensee will, co-operate and work with the relevant Improvement Director, as and when appointed by NHS England to oversee and provide independent assurance to NHS England on the Licensee's actions to deliver its recovery, including its Integrated Improvement Plan. The Licensee will similarly cooperate with the NHS England team.

1.8.3 The Licensee will provide the Improvement Director and the NHS England team supporting them with full access to the Licensee's key personnel, meetings, resources, Board members, advisers and information, as well as any other members of its staff considered necessary by NHS England.

1.8.4 The Licensee will ensure that it consults with NHS England about any changes to its existing Integrated Improvement Plan.

2. Unplanned Emergency Care

2.1 The Licensee will continue to develop and implement its comprehensive UEC recovery plan and trajectory, as agreed by the Licensee Board, and provided to NHS England periodically, at intervals to be agreed with NHS England.

2.2 The Licensee will deliver consistent improvement in performance to deliver UEC type 1 to 50%, with additional challenge to greater than 60%, or such other appropriate target determined by NHS England.

2.3 The Licensee will deliver consistent improvement in performance to reduce 12 hour from arrival in ED to below 8%, or such other appropriate target determined by NHS England.

2.4 The Licensee will demonstrate quality, safety and operational improvements across the whole UEC pathway reducing the proportion of patients occupying beds with fourteen plus days length of stay. Substantive progress will be demonstrated by March 2025, or such other date determined by NHS England.

3. Planned Care

3.1 The Licensee will deliver zero 104 week waits by July 2024 unless by exception and zero 78 week waits by August 2024, with a consistent reduction in overall Patient Tracking List and 65 week waits in order to deliver zero by March 2025, or such other appropriate dates or targets determined by NHS England.

3.2 The Licensee will develop a plan to deliver the Cancer Faster Diagnosis Standard (FDS) of c77% and 62 day combined performance c70% with a consistent reduction in 62 day backlog by March 2025 or such other date determined by NHS England.

3.3 The Licensee will demonstrate a consistent trajectory towards Diagnostic Waiting Times and Activity (DM01) compliance of 5% by March 2025 and the endoscopy delivery plan will have been agreed and delivered.

4. Financial Recovery

4.1 The Licensee will take all reasonable steps to achieve a position of financial sustainability.

4.2 In meeting the requirements of paragraph 4.1., the Licensee will:

4.2.1 Develop, submit and deliver a medium term Financial Recovery Plan ("FRP") which sets out realistic actions over an appropriate timescale, to stabilise and improve the Licensee's financial position. The FRP shall be agreed with NHS England.

- 4.2.2 Ensure that the FRP is refreshed and maintained to adhere to the latest available NHS planning guidance (as revised from time-to-time) and always ensuring robust financial oversight and governance;
 - 4.2.3 Ensure that the FRP identifies and addresses the underlying drivers of the deficit and improves the Licensee's underlying recurrent financial position;
 - 4.2.4 In developing and implementing the FRP, the Licensee should engage effectively with key stakeholders including Kent and Medway Integrated Care System (ICS) and Integrated Care Board (ICB) and ensure the FRP is aligned with wider system financial planning and key strategies;
 - 4.2.5 The Licensee will deliver the FRP in accordance with the timescale agreed with NHS England. As a milestone towards delivering the FRP, the Licensee will meet its 2024/25 Financial Plan as agreed with NHS England and the Kent and Medway Integrated Care Board (ICB) as part of an overall ICS plan for 2024/25.
- 4.3 The Licensee will ensure that robust financial controls, processes (including financial reporting and forecasting), and governance is in place to ensure effective use of resources and best value for money.
- 4.4 The Licensee will cooperate and actively participate in any Kent and Medway ICB financial sustainability and efficiency programmes.

5. Reporting

- 5.1 The Licensee will provide regular reports to NHS England on its progress in complying with the undertakings set out above and will attend meetings, or, if NHS England stipulates, conference calls, as required, to discuss its progress in meeting those undertakings. These meetings will take place once a month unless NHS England otherwise stipulates, at a time and place to be specified by NHS England and with attendees specified by NHS England.
- 5.2 Upon request, the Licensee will provide NHS England with the evidence, reports or other information relied on by its Board in relation in assessing its progress in delivering these undertakings.
- 5.3 The Licensee will comply with any additional reporting or information requests made by NHS England.

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  Tracey Fletcher, Chief Executive

[Chair or Chief Executive] of Licensee

Dated: 24th September 2024

NHS England

Signed 

Dated: 26th September 2024

