

## ENFORCEMENT UNDERTAKINGS

### LICENSEE

Black Country Healthcare NHS Foundation Trust  
Civic Centre,  
St Peter's Square,  
Wolverhampton,  
WV1 1SH

### 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

Enforcement undertakings were signed on 5 September 2024 from the Licensee in relation to financial governance. The undertakings below are in addition to the existing undertakings.

### GROUND

#### 1. Licence

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

#### 2. Breaches of the License

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:

2.1.1. The Licensee shall establish and implement (NHS2(4)):

2.1.1.1. clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees (b), and;

2.1.1.2. clear reporting lines and accountabilities throughout its organisation (c)

2.1.2. The Licensee shall establish and effectively implement systems and/or processes (NHS2(5)):

2.1.2.1. to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively (a);

2.1.2.2. for timely and effective scrutiny and oversight by the Board of the Licensee's operations (b);

- 2.1.2.3. to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making (e);
- 2.1.2.4. to identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of its Licence (f), and;
- 2.1.2.5. to generate and monitor delivery of business plans (including any changes to such plans) and to receive internal and where appropriate external assurance on such plans and their delivery (g).

## 2.2. Issues:

- 2.2.1. In July 2024, NHS England conducted an investigatory visit with Black Country Integrated Care Board to the Licensee due to concerns that were raised during 2023 and continue to be raised internally and externally in 2024 and the progress that has been made in addressing these.

- 2.2.2. The investigation found concerns in relation to:

Leadership, Governance and Board Oversight - breach of licence conditions NHS2(4)(b) and (c) and NHS2(5)(a), (b), (e), (f) and (g)

- 2.2.2.1. There is a lack of clarity on the organisation's vision and challenges with visibility of the Board, with some staff groups and individuals not able to state who key executives are.
- 2.2.2.2. There is a need for leadership development at all levels of the organisation, alongside prioritisation and protection of continued professional development at board level. The role of clinical leaders is not clear and needs to be strengthened with key responsibilities.
- 2.2.2.3. A Board Development programme is needed to address constructive conflict resolution in the board and enable relationships to be reset and rebuilt on trust and respect.
- 2.2.2.4. There is a need to reset engagement with the medical workforce. Key groups' voices could be harnessed better to strengthen governance – this includes the Council of Governors and experts by experience. Roles and responsibilities of Executives and Non-Executive Directors should be reassessed in line with this.
- 2.2.2.5. There is a need to strengthen the monitoring and evaluation of key strategies during implementation to ensure they are delivering the impact expected.
- 2.2.2.6. The communication and cascade of messages is not effective or consistent across the organisation. A review of engagement risk, mitigation and risk appetite is required.

Culture and Organisational Development - breach of licence conditions NHS2(5)(a), (b) and (e)

- 2.2.2.7. 2023 NHS Staff Survey results reflect that the Licensee is performing

worse-than-average in all nine People Promise elements and themes,

with particular challenges in the 'we are compassionate and inclusive', 'we are recognised and rewarded' and 'we are a team' elements. Scores have decreased since the 2022 results in seven of the nine elements.

- 2.2.2.8. During 2023 and 2024 NHS England's national and regional FTSU teams have received regular concerns raised through the protected disclosure routes (anonymous and confidential).
- 2.2.2.9. There is an apparent disconnect from the board to frontline staff, with the work to improve the culture not filtering through the organisation or progressing in a meaningful way. The trust's work to improve the culture needs to translate into an improved experience for staff.
- 2.2.2.10. There is a need to restore confidence in raising concerns through traditional line management and divisional arrangements, with support for managers to hear concerns and ensure appropriate actions taken. There is a need to develop a culture where speaking up and feedback is actively encouraged, and listened to in all levels of the organisation.
- 2.2.2.11. Improvements are required to Freedom to Speak Up (FTSU) processes to ensure a timely response to individuals raising concerns and that the outcomes, themes and lessons learned are communicated across localities, divisions, the board and the trust as a whole. There is an opportunity to strengthen the triangulation of FTSU concerns with other intelligence, such as serious incidents and feedback provided to staff-side leads and other 'casework' undertaken in the organisation.
- 2.2.2.12. There remains a fear of raising concerns amongst some staff, showing further improvements are required to develop trust, psychological safety and confidence in the Freedom to Speak Up process. This can also be demonstrated by staff members raising concerns directly with NHS England.

- 2.2.3. The Investigation findings have been used as first-party evidence of actual or potential breaches and require remedial actions to address.

### 2.3. 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

- 3.1. 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:

### 4. Improvement Plan

- 4.1. The Licensee will ensure that there is a robust improvement plan (“the Trust improvement plan”) in place to meet the requirements and address the issues identified through the Investigatory visit and specified in paragraph 2 (Breaches), which have been agreed with NHS England.
- 4.2. The Trust improvement plan will be agreed with NHS England.
- 4.3. The Trust improvement plan will, in particular:
  - 4.3.1. Include the actions required to meet the requirements of paragraph 2, along with findings from other external reviews, with appropriate timescales, key performance indicators and resourcing;
  - 4.3.2. Describe the key risks to meeting the requirements of paragraph 2 and mitigating actions being taken;
  - 4.3.3. Be based on realistic assumptions;
  - 4.3.4. Reflect collaborative working with key system partners and other stakeholders;
  - 4.3.5. Set out the key performance indicators which the Licensee will use to measure progress against each action, and expected impact / outcomes on overall Licensee performance.
- 4.4. The Trust Improvement Plan will be submitted to NHS England by 20 December 2024, or such date as agreed by NHS England.
- 4.5. The Licensee will incorporate any reasonable comments or amendments regarding the Trust Improvement Plan made by NHS England, or a third party if such assurance is requested by NHS England, and will send a revised plan by a date agreed with NHS England.
- 4.6. The Licensee will implement all the actions within its control in the Trust Improvement plan within the timescales set out in the plan, unless otherwise agreed by NHS England.
- 4.7. The Licensee will report to NHS England on the implementation of the Trust Improvement plan each month, in a form to be directed by NHS England.

### 5. Governance and Board Oversight

- 5.1. The Licensee will ensure that it has in place:
  - 5.1.1. sufficient and effective Board, management and clinical leadership capacity and capability; and

- 5.1.2. appropriate governance systems and processes, to enable it to address the issues specified in paragraph 2.
  - 5.2. The Licensee will share with NHS England its plans to ensure the capacity above, by 20 December 2024, or such date as agreed by NHS England.
  - 5.3. The Licensee will clarify the roles and responsibilities of its Executives, NonExecutive Directors and the Council of Governors, and submit an update of its revised governance and Board oversight arrangements to NHS England by 20 December 2024, or such date as agreed by NHS England.
  - 5.4. The Licensee will develop and submit its Board development programme to NHS England by 20 December 2024, or such date as agreed by NHS England, including key milestones and how it will address the review recommendations. The Licensee will modify the Board development programme if instructed by NHS England.
  - 5.5. The Licensee will commission and deliver the Board development programme by a date to be agreed with NHS England and will meet the key milestones.
  - 5.6. The Licensee will ensure that the actions and milestones resulting from the development programme are incorporated into the Trust Improvement Plan.
6. Culture and Organisational Development
- 6.1. The Licensee will develop and submit a scope for an external review into its Freedom to Speak Up processes to NHS England by 20 December 2024, or such date as agreed by NHS England, including key milestones and how it will address the review recommendations. The Licensee will modify the scope if instructed by NHS England.
  - 6.2. The Licensee will fully engage with a focused external review into its Freedom to Speak Up processes.
  - 6.3. The Licensee will share the scope of its external Cultural review by 20 December 2024, or such date as agreed by NHS England, including key milestones and how it will address the review recommendations. The Licensee will modify the scope if instructed by NHS England. The Licensee will fully engage in the review.
  - 6.4. The Licensee will ensure that it creates a positive culture where people feel that they can speak up, that their concerns and voice will be heard and lead to learning and improvement. This will be by ensuring that there are effective processes to receive systemic staff feedback and that there is a review mechanism in place which ensures that concerns are identified and responded to appropriately.
  - 6.5. The Licensee will develop and submit an Organisational Development programme to NHS England by 20 December 2024, or such a date as agreed by NHS England, including key milestones and how it will address the Investigation findings. The Licensee will modify the Organisational Development programme if instructed by NHS England.

- 6.6. The Licensee will commission and deliver the Organisational Development programme by a date to be agreed with NHS England and will meet the key milestones.
- 6.7. The Licensee will revise the Trust Improvement plan, ensuring that the actions and milestones resulting from these reviews and development programmes are incorporated and will submit the revised plan by a date agreed with NHS England.
7. 'Buddy' organisation
  - 7.1. The Licensee will co-operate and work with a 'Buddy' organisation to support the implementation of the Trust Improvement Plan. The Licensee will share the scope of this arrangement with NHS England by 20 December 2024, or such a date as agreed by NHS England.
8. Programme management
  - 8.1. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.
  - 8.2. Such programme management and governance arrangements must enable the board to:
    - 8.2.1. obtain clear oversight over the process in delivering these undertakings;
    - 8.2.2. obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and
    - 8.2.3. hold individuals to account for the delivery of the undertakings.
9. Meetings and reports
  - 9.1. The Licensee will provide monthly reports to NHS England on its progress in complying with the undertakings set out above.
  - 9.2. 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. 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.
  - 9.3. Upon request, the Licensee will provide NHS England with the evidence, reports or other information relied on by its Board in relation to assessing its progress in delivering these undertakings.
  - 9.4. 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.

Signed



Name: Marsha Foster

**Chair / Chief Executive of Licensee, Black Country Healthcare NHS Foundation Trust**

Dated: 30.01.2025

NHS England

Signed



Name: Rebecca Farmer

**Director of System Co-ordination and Oversight (West Midlands) and member of the Regional Support Group (Midlands)**

Dated: 30/01/2025

LICENSEE



P. Gayle