

ENFORCEMENT UNDERTAKINGS

LICENSEE

The Dudley Group NHS Foundation Trust
Trust Headquarters,
Russells Hall Hospital,
Dudley,
West Midlands,
DY1 2HQ

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

Given the grounds set out below are linked to the broader management of financial risk across the system, NHS England has also decided to accept undertakings from the Black Country Integrated Care Board (ICB), pursuant to its powers under the National Health Service Act 2006 as amended (NHS Act 2006), and several individual NHS Trusts and Foundation Trusts across the Black Country system.

These provider specific undertakings are intended to support the delivery of system undertakings.

GROUND

1. Licence

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

BREACHES

2. Financial governance

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 effectively implement systems and/or processes (NHS2(5)):

2.1.1.1. to ensure compliance with the Licensee’s duty to operate efficiently, economically and effectively (NHS2(5)(a)).

2.1.2. When making decisions in the exercise of its functions which relate to the provision of health care for the purposes of the NHS, the Licensee shall comply with its duty relating to the triple aim (WS2), including:

2.1.2.1. more sustainable and efficient use of resources by NHS bodies
(WS2(4)(c))

2.2. In particular:

2.2.1. In May 2023, the ICB submitted a 2023/24 ICS financial plan with a deficit of £68.801m, which it deemed to be achievable. This deficit is a significant forecast overspend when compared to other systems across the Midlands and nationally.

In December 2023 as part of the H2 planning process, the ICB submitted a revised ICS deficit position for 2023/24 of £90.01m.

The 2023/24 outturn for performance measurement purposes of the ICS (ICB and Partner Trusts) was a £90.0m deficit. Following the national technical adjustment to fund the plan deficit, the outturn for annual accounts purposes was a £21.2m deficit.

2.2.2. The Licensee delivered a £16.8m deficit in 2023/24, for financial performance purposes, which was an improvement of £2.4m on the H2 plan (£19.2m).

2.2.3. Work to review the underlying financial position of the Black Country system and individual providers was completed in January 2024. As part of this exercise the Licensee reported a £59.6m underlying deficit (in the lowest risk scenario, including the impact of Midland Metropolitan University Hospital (MMUH)).

2.2.4. Although external support has been procured by the ICB and progressed in-year to develop schemes that will deliver recurrent efficiency savings for the system, these are not due to begin implementation until 2024/25.

The Licensee at month 12 had delivered £27m of efficiencies, £0.8m above their plan, but only 51% on a recurrent basis.

This failure to deliver recurrent efficiency savings gives NHS England reasonable grounds to suspect the Licensee has breached its duty to operate efficiently, economically and effectively (NHS2(5)) and to, when making decisions in relation to its functions, have regard to likely effects in relation to the sustainable and efficient use of resources by NHS bodies (WS2(4)(c)).

2.2.5. There has been a significant growth in workforce since 2019/20, with an increase of 16.5% from month 12 2019/20 to month 12 2023/24. The Licensee has delivered the workforce plan in 2023/24, ending month 12 31 WTE (0.5%) below plan. However, the trend level of growth is not financially affordable and has not been subject to sufficient scrutiny by the Licensee ahead of mandated controls being placed on the Licensee by NHS England.

This gives NHS England reasonable grounds to suspect the Licensee has

breached its duty to operate efficiently, economically and effectively (NHS2(5)) and to deliver more sustainable and efficient use of resources by NHS bodies (WS2(4)(c)).

2.3. These failings by the Licensee demonstrate a failure of financial governance arrangements including, in particular, a failure to establish and effectively implement systems or processes to identify and manage material risks to compliance with the Licensee's general duties.

2.4. 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

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. Financial governance

1.1. Recovery Plan

1.1.1. The Licensee will work with its partner NHS Trusts, NHS Foundation Trusts (system Trusts) and ICB to develop a single ICS Recovery Plan that brings together the ICB, provider and additional system wide recovery initiatives. The plan should:

1.1.1.1. Reflect NHS England planning guidance for 2024/25;

1.1.1.2. Demonstrate recurrent financial improvement to the Licensee and ICS underlying deficit, reduce the Licensee and ICS monthly deficit run-rate, preserve cash and minimise the deficit;

1.1.1.3. Provide a high-level milestone plan to address the key financial issues (including actions to deliver efficiency plans) for the ICB and system Trusts to return to a breakeven financial position in accordance with timeframes agreed with NHS England;

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 details of how the ICB and system Trusts will deploy sufficient resources to ensure implementation of the Recovery Plan;
 - 1.1.1.6. Provide a description of systems and processes the system will use to gain assurance on the delivery of the Recovery Plan and with governance arrangements for approval and delivery of the Recovery Plan.
 - 1.1.2. When developing the plan, the Licensee will, working with the ICB and other system Trusts, engage effectively with key stakeholders, including commissioners, and will reflect their views appropriately in the Plan.
 - 1.1.3. The Licensee will, working with the ICB and other system Trusts, ensure the system demonstrates to NHS England a period of successful implementation of the Recovery Plan and assurance of continued focus, capability and capacity to sustainably maintain financial recovery and deliver the Recovery Plan.
 - 1.1.4. The board of the Licensee will, working with the ICB and the boards of the other system Trusts, keep the Recovery Plan under continuous review and will update it as required. Any proposed updates will be subject to the review and approval by NHS England.
- 1.2. Financial Controls
- 1.2.1. The Licensee commits to recurrent delivery of efficiency schemes from quarter 1 to achieve a full year effect in 2024/25 to compensate for any non-recurrent measures required to achieve the 2023/24 plans.
 - 1.2.2. The Licensee will fully engage in national pay and non-pay savings initiatives, in particular around national agreements for medicines and other non-pay purchasing.
 - 1.2.3. The Licensee will monitor agency usage and compliance with usage and rate limits.
 - 1.2.4. Any Licensee revenue consultancy spend above £50,000 and non-clinical agency usage continues to require prior approval from the NHS England regional team based on the agreed regional process.
 - 1.2.5. The Licensee must have robust financial controls and processes and reporting must be in place and overseen through appropriate financial governance procedures and a track record of identifying and addressing financial issues when they arise.
 - 1.2.6. The Licensee must be able to demonstrate internal capabilities around finance resource management (grip and control).

2. Funding conditions and spending approvals

- 2.1. 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.

- 2.2. 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.
- 2.3. The Licensee will comply with any spending approvals processes that are deemed necessary by NHS England.

3. Programme management

- 3.1. The Licensee will, with the ICB and system Trusts, implement sufficient programme management and governance arrangements to enable delivery of these undertakings. Such programme management and governance arrangements must enable the board to:
 - 3.1.1. obtain clear oversight over the process in delivering these undertakings;
 - 3.1.2. obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and
 - 3.1.3. hold individuals to account for the delivery of the undertakings.

4. Meetings and reports

- 4.1. In conjunction with the ICB and system Trusts, the Licensee will provide quarterly reports to NHS England on its progress in complying with the undertakings set out above.
- 4.2. 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.
- 4.3. Upon request, the Licensee (in conjunction with the ICB and system Trusts) 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.
- 4.4. 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.

LICENSEE

Signed



Name: David Nicholson



Diane Wake

Chair / Chief Executive of Licensee, The Dudley Group NHS Foundation Trust

Dated: 11 July 2024

NHS ENGLAND

Signed



Name: Rebecca Farmer

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

Dated: 13 June 2024