

## ANNEX B

### UNDERTAKINGS

#### NHS TRUST

Sandwell and West Birmingham NHS Trust  
Trust Headquarters,  
Sandwell Hospital,  
West Bromwich,  
B71 4HJ

#### 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 Trust 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 30 June 2022 from the Trust in relation to Quality Improvement and Governance. The undertakings below are in addition to the existing undertakings.

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 other 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. The Trust

The Trust is an NHS trust all or most of whose hospitals, facilities and establishments are situated in England.

#### ISSUES AND NEED FOR ACTION

##### 2. Financial governance

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 the following conditions of the Licence:

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

2.1.1.1. to ensure compliance with the Trust'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 Trust 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 Trust as an individual organisation within the system submitted a deficit plan for 2023/24 of £18.823m.

The Trust delivered a £22.5m deficit in 2023/24, for financial performance purposes, which was £3.7m adverse to plan.

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 Trust reported a £66.1m underlying deficit (in the lowest risk scenario, including the impact of Midland Metropolitan University Hospital (MMUH)).

2.2.4. The failure to deliver the Trust's 2023/24 financial plan submitted in May 2023 gives NHS England reasonable grounds to suspect the Trust has failed to comply with its statutory duties regarding efficiency and sustainability. The plan was designed and submitted by the Trust, implicitly indicating that it was deliverable. In particular, this is a potential failure by the Trust to comply with its duty to operate efficiently, economically and effectively (NHS2(5)(a)).

2.2.5. 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 Trust delivered £46.2m of efficiencies in 2023/24, in line with its plan but only 39.3% on a recurrent basis.

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

- 2.2.6. Further, there has been a significant growth in workforce over the last three years, with an increase of 15% from month 12 2019/20 to month 12 2023/24. The actual WTE in post at the Trust was 244 WTE (3%) above plan by month 12 2023/24. This level of growth is not financially affordable and has not been subject to sufficient scrutiny by the Trust to intervene ahead of mandated controls being placed on the Trust by NHS England.

This gives NHS England reasonable grounds to suspect the Trust has breached its duty to operate efficiently, economically and effectively (NHS2(5)) and its duty to, when making decisions regarding the exercise of its functions, take into account the likely effect on sustainability and efficiency in relation to the use of resources by NHS bodies (WS2(4)(c)).

- 2.3. These failings by the Trust 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 Trust's general duties.

- 2.4. Need for action:

NHS England believes that the action which the Trust has undertaken to take pursuant to these undertakings, is action required to secure that the failures to comply with the relevant requirements of the conditions of the Licence do not continue or recur.

## UNDERTAKINGS

NHS England has agreed to accept, and the Trust has agreed to give the following undertakings.

### 1. Financial governance

#### 1.1. Recovery Plan

- 1.1.1. The Trust 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 Trust and ICS underlying deficit, reduce the Trust 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 Trust 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 Trust 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 Trust 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 Trust 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 Trust 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 Trust will monitor agency usage and compliance with usage and rate limits.
  - 1.2.4. Any Trust 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 Trust 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 Trust 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 Trust under Schedule 5 to the National Health Service Act 2006, the Trust will comply with any terms and conditions which attach to the financing.
- 2.2. The Trust will comply with any reporting requests made by NHS England in relation to any financing to be provided to the Trust by the Secretary of State for Health pursuant to schedule 5 to the NHS Act 2006.
- 2.3. The Trust will comply with any spending approvals processes that are deemed necessary by NHS England.

## 3. Programme management

- 3.1. The Trust will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.
- 3.2. Such programme management and governance arrangements must enable the board to:
  - 3.2.1. obtain clear oversight over the process in delivering these undertakings;
  - 3.2.2. obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and
  - 3.2.3. hold individuals to account for the delivery of the undertakings.

## 4. Meetings and reports

- 4.1. The Trust will provide quarterly reports to NHS England on its progress in complying with the undertakings set out above.
- 4.2. 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. 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 Trust 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 Trust 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 Trust to ensure that it is compliant with all the conditions of its licence.

Any failure to comply with the above undertakings will render the Trust 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 Trust has given inaccurate, misleading or incomplete information in relation to the undertakings: (i) NHS England may treat the Trust as having failed to comply with the undertakings; and (ii) if NHS England decides so to treat the Trust, NHS England must by notice revoke any compliance certificate given to the Trust in respect of compliance with the relevant undertakings.

## **THE TRUST**

Signed

A blue ink signature of Richard Beeken, written in a cursive style.

Name: Richard Beeken

**Chair / Chief Executive of Sandwell and West Birmingham NHS Trust**

Dated: 19/07/2024

## **NHS ENGLAND**

Signed

A black ink signature of Rebecca Farmer, written in a cursive style.

Name: Rebecca Farmer

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

Dated: 13 June 2024