

Appendix A

ENFORCEMENT UNDERTAKINGS

LICENSEE:

Countess of Chester NHS Foundation Trust (“the Licensee”)
The Countess Of Chester Health Park
Liverpool Road
Chester
Cheshire
CH2 1UL

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”). The undertakings in this document supersede undertakings previously agreed on 19 July 2022, which will now cease to have effect.

BACKGROUND

In July 2022, NHS England accepted enforcement undertakings from the Licensee under section 106 of the Health and Social Care Act 2012, having had reasonable grounds to suspect that the Licensee was providing healthcare services for the purposes of the NHS in breach of the conditions of its licence in relation to financial sustainability, performance and quality.

Since this point, the Licensee has reported an annual deficit of £30.1m for 2023/24 and has a planned deficit of £23.6m for 2024/25. The Licensee has a significant underlying deficit of concern. NHS England has therefore considered and is now accepting replacement financial enforcement undertakings to reflect the Licensee’s current financial position.

With regards to the undertakings relating to performance, NHS England considers that the Licensee’s performance is broadly in line with peer organisations. The Licensee is no longer a significant outlier within the Cheshire and Merseyside Integrated Care System or when compared to peers nationally. The section 29A Warning Notice previously issued by CQC in April 2021 has also been lifted. NHS England intends to discontinue the July 2022 performance undertakings, but will continue to use established oversight mechanisms to monitor the Licensee’s performance. NHS England expects no deterioration in cancer and elective performance and reserves the right to seek enforcement undertakings from the Licensee in relation to its performance in the future, if it has reasonable grounds to suspect that the Licensee has breached its licence.

NHS England intends to issue a compliance certificate in relation to the enforcement undertakings which related to quality in the July 2022 undertakings, due to the actions required by the undertakings having been satisfactorily completed.

The July 2022 undertakings made provision for the Licensee’s progress to be overseen by the System Improvement Board (‘SIB’) established by NHS England, alongside implementation of an Integrated Improvement Plan. In July 2024, following consideration of the Licensee’s

progress against previously agreed milestones, NHS England's Regional Support Group ('RSG') decided to stand down the SIB and it agreed that the Cheshire and Merseyside Integrated Care Board ('the ICB') would lead on overseeing the Licensee's progress through a System Oversight Group ('SOG') with NHS England in attendance. Accordingly, NHS England has discontinued paragraph 5 of the July 2022 undertakings which concerned the role of the SIB; the undertakings below reflect to role of the SOG in supporting NHS England to monitor ongoing progress and compliance.

FOUNDATIONS

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:

2023 Licence	Summary of Licence condition
NHS2(5)(a)	The Licensee shall establish and effectively implement systems and/or processes to ensure compliance with the Licensee's duty to operate efficiently, effectively and economically.
NHS2(5)(d)	The Licensee shall establish and effectively implement systems and/or processes for effective financial decision-making, management and control (including to ensure the Licensee's ability to continue as a going concern).
CoS3(1)(a) and (b)	The Licensee shall at all times adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as suitable for a provider of the Commissioner Requested Services and for providing reasonable safeguards against the Licensee being unable to carry on as a going concern

3. Financial Sustainability and Governance

3.1 In particular, the Licensee:

- 3.1.1 has reported an annual deficit of £30.1m for 2023/24.
- 3.1.2 set a deficit plan for 2024/25 of £23.6m.
- 3.1.3 has a significant underlying deficit of concern.

3.2 The matters set out above demonstrate a failure of financial governance arrangements and financial management by the Licensee, including, in particular:

3.2.1 a failure by the Licensee to adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as:

- (a) suitable for a provider of the Commissioner Requested Services provided by the Licensee, and
- (b) providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern.

3.2.2 a failure to establish and effectively implement systems and/or processes:

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

4. Need for Action

4.1 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.

5. Appropriateness of Undertakings

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 Licensee has agreed to give the following undertakings, pursuant to section 106 of the Act.

1. Financial planning

1.1 The Licensee will take all reasonable steps to deliver the Licensee's 2024/25 Financial Plan, submitted to NHS England on 12 June 2024, and any updated Financial Plan agreed with NHS England pursuant to 1.2 below.

1.2 The Licensee will ensure that any revisions or new versions of the Financial Plan referred to at 1.1 above are agreed with NHS England.

1.3 The Licensee will ensure its underlying financial position improves during 2024/25 on a trajectory to be agreed by NHS England in consultation with the ICB.

1.4 The Licensee will ensure that robust and effective financial controls, processes, and governance are in place, to ensure accurate and timely financial reporting and to secure value for money.

2 Distressed Funding

- 2.1 Where interim support financing or planned term support financing is provided by the Secretary of State for Health and Social Care 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 financial assistance provided or to be provided to the Licensee by the Secretary of State for Health and Social Care pursuant to section 40 of the NHS Act 2006.
- 2.3 The Licensee will comply with any spending approvals processes that are deemed appropriate by NHS England.

3 Reporting

- 3.1 The Licensee will co-operate fully (including attending and providing such updates, reports and information as requested) with the ICB's SOG in order that the SOG can meet its terms of reference and assist NHS England in ensuring compliance with these undertakings.
- 3.2 The Licensee will provide regular reports to NHS England on its progress in meeting 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. ICB led SOG meetings will take place once a month unless NHS England otherwise stipulates, with attendees agreed by NHS England.
- 3.3 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, upon request.
- 3.4 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 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.

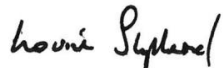
LICENSEE



Signed (Chair or Chief Executive of Licensee)

Dated: Thursday 30th January 2025

NHS ENGLAND



Signed

Louise Shepherd

(North West Regional Director)

Dated: 31.01.25

Appendix B

COMPLIANCE CERTIFICATE

LICENSEE:

Countess of Chester NHS Foundation Trust ("the Licensee")
The Countess Of Chester Health Park
Liverpool Road
Chester
Cheshire
CH2 1UL

BACKGROUND

NHS England accepted enforcement undertakings under section 106 of the Health and Social Care Act 2012 from the Licensee on 19 July 2022 ("the Undertakings").

UNDERTAKINGS TO BE DISCONTINUED (COMPLIANT)

NHS England hereby certifies that it is satisfied that the Licensee has complied with:

- All of paragraph 1 (Quality of Care) of the section titled "Undertakings" in the Licensee's Enforcement Undertakings accepted by NHS England on 19 July 2022.

NHS ENGLAND



Signed (North West Regional Director)

Dated: **31.01.25**