

REPLACEMENT ENFORCEMENT UNDERTAKINGS

LICENSEE:

Medway NHS Foundation Trust
Medway Maritime Hospital
Windmill Road
Gillingham
Kent
ME7 5NY

BACKGROUND

NHS England accepted undertakings under section 106 of the Health and Social Care Act 2012 (“the Act”) from Medway NHS Foundation Trust (“the Licensee” / “the Trust”) on 08 December 2021 which were varied on 10 October 2023. Due to the passage of time, and intervening events, some of those undertakings are deemed to be outdated.

These Enforcement Undertakings replace and supersede the variations from October 2023.

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 replace existing undertakings for the reasons set out below. These undertakings will supersede the undertakings agreed on 08 December 2021 and varied on 10 October 2023 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 healthcare 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)(d)(e)(f); NHS2(7).

2.2. In particular:

Leadership, Culture and Governance

2.2.1. An interim Chief Executive (joint with neighbouring Dartford and Gravesham NHS Trust) took up post in April 2025 for an initial period of six months. There are emerging concerns with leadership, governance and capability to deliver the financial plan and operational performance. An independent leadership review is being commissioned to consider organisational leadership options;

2.2.2. The Licensee's substantive Finance Director retired at the end of December 2024 and an interim replacement is now in post. A finance governance review was undertaken in December 2024, with the formal report shared in January 2025. Further review work was recently undertaken by the NHS England Recovery Support Programme in February and March 2025. Many of the concerns and recommendations were similar to those made in previous reviews;

Financial Sustainability

2.2.3. The Licensee failed to deliver its £2.4m deficit plan in 2024/25; the year end deficit was £22.4m, £20.0m adverse to plan;

2.2.4. In M9 2024/25 the Licensee reported a deterioration in their forecast deficit position of c£23m over their agreed deficit plan and the Licensee formally revised its forecast outturn position at M10 to reflect a £20.6m variance to plan. This position had not been shared with the Trust Board, with Kent & Medway Integrated Care Board or NHS England in advance and was unexpected;

2.2.5. The Licensee has submitted a £4.9m deficit plan for 2025/26. The plan is predicated on the delivery of a £45.4m efficiency programme (equating to 7.9% of operating expenses) which is significantly greater than savings achieved in previous years;

2.2.6. There is a lack of confidence in the Licensee's capability to deliver their 2025/26 financial plan given the limited identification of cost improvement programme schemes and limited evidence of collective Board oversight and a robust financial controls environment;

2.2.7. For 2025/26 the Licensee reports an underlying deficit position of £57m. Whilst the Licensee has developed a medium-term financial recovery plan, there is not sufficient evidence that the drivers of the deficit are being addressed or that the Licensee's underlying position will sufficiently improve;

2.2.8. The Licensee entered the Recovery Support Programme (RSP) in July 2021 by virtue of being placed in segment 4 of the NHS Oversight Framework. The exit date was extended for the third time in March 2025 due to the lack of oversight and collective responsibility for financial delivery by the Licensee's Board and evident lack of financial governance. The Licensee is unable to be approved for exit until they can demonstrate achievement of a financially balanced plan that does not compromise on quality and value for money.

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.

4. 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

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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. Leadership, Well-Led 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 ensure that robust quality governance systems and processes are in place to maintain the required standards to meet the conditions of their CQC registration.

1.1.2 The Licensee will provide evidence by Q1 2026/27 of effective Trust leadership and governance structures and ensure that processes and robust controls are in place to deliver and sustain essential improvements in financial delivery and 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 ensure that there is a stable Executive team with clear and robust organisation wide governance in place, supported by a Board development programme to be in place by the end of Q1 2026/27 that has been agreed with NHS England.

1.4 The Licensee will ensure cross-professional Board ownership for the delivery of the 2025/26 and beyond. This is to be balanced across all aspects of hospital management – quality, workforce, performance, activity and finance.

2. Financial Management

- 2.1 The Licensee will take all reasonable actions to reduce the current deficit and achieve financial sustainability.
- 2.2 In meeting the requirements of paragraph 1.1., the Licensee will:
 - 2.2.1. By a date to be agreed with NHS England, refresh and submit to NHS England a Financial Recovery Plan (“FRP”) that adheres to the latest available NHS planning guidance and sets out realistic actions over an appropriate timescale, to stabilise and improve the Licensee’s financial position;
 - 2.2.2. Ensure that the FRP is agreed by the Licensee’s Trust Board, Kent & Medway Integrated Care Board (ICB) and NHS England and maintained to adhere to the latest available NHS planning guidance;
 - 2.2.3. Ensure that the plan addresses the underlying drivers of the deficit and improves the underlying recurrent financial position;
 - 2.2.4. In refreshing 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;
 - 2.2.5. The Licensee will deliver the FRP in accordance with the timescale outlined in that plan, or such dates to be agreed with NHS England. As a milestone towards delivering the FRP, the Licensee will meet its 2025/26 Financial Plan as agreed with the Kent and Medway Integrated Care Board (ICB) as part of an overall ICS plan for 2025/26.
- 2.3. The Licensee will ensure that robust financial controls, processes (including financial reporting and forecasting), and governance, including Board accountability, is in place to ensure effective use of resources and best value for money.
- 2.4. The Licensee will cooperate and actively participate in any Kent and Medway ICB financial sustainability and efficiency programmes.

3. Programme Management

- 3.1 The Licensee 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. General

- 4.1 The Licensee will evidence all reasonable steps have been taken to meet the Recovery Support Programme (RSP) Transition Criteria as set out and agreed by the South East Regional Support Group (RSG) and National Quality and Performance Committee (QPC) in partnership with the Licensee.
- 4.2 The Licensee will review progress against meeting the RSP Transition Criteria and these undertakings, updating NHS England regularly at Oversight Meetings and inputting into reports when requested.
- 4.3 In line with the requirements of the NHS Oversight Framework segmentation, the Licensee will cooperate fully with NHS England, health sector stakeholders and any external agencies or individuals appointed to work with or support the Licensee to address regulatory concerns.

5. Reporting

- 5.1 In line with the above and in any event, 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.

Signed on behalf of Licensee

Name: Jonathan Wade
Position: Chief Executive

Signature: 

Signed on behalf of NHS England

Name: Anne Eden
Position: Regional Director, SE Region NHS England

Signature: 