

## ENFORCEMENT UNDERTAKINGS

### TO:

The County Durham and Darlington NHS Foundation Trust (“**the Licensee**”)  
Darlington Memorial Hospital  
Hollyhurst Road  
Darlington  
County Durham  
DL3 6HX

### 1. 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”).

### 2. GROUNDS

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

2.2 Issues and need for action:

2.2.1 NHS England has reasonable grounds to suspect that the Licensee has provided and is providing health care services for the purposes of the health service in England while failing to comply with and apply those principles, systems and standards of good corporate governance which reasonably would be regarded as appropriate for a provider of health care services to the NHS, specifically the following conditions of the Licence: NHS2.2, 2.4, 2.5 (a), (b), (c), (d), (e) and (f) and 2.6.

2.2.2 The Licensee commissioned an independent review further to concerns about its breast surgery service. The draft findings considered in September 2025 bring to attention concerns about the effective functioning of the systems and processes in, and culture and governance of, the organisation including with regard to ensuring appropriate oversight and scrutiny of clinical practices in the breast surgery service.

2.2.3 The draft findings include that individual board members, and the board more generally, did not act in accordance with their respective responsibilities with regard to both the ongoing oversight of the breast surgery service and in response to risks and issues identified. In addition the governance structures, including the board and board’s committees and operational and clinical escalation pathways, were not providing the scrutiny, challenge, or accountability required or expected.

- 2.2.4 The draft findings indicate that insufficient oversight of external contractual arrangements enabled outdated clinical practices to persist, and financial governance failures contributed to the continuation of high-cost contracts without assurance of clinical appropriateness, sustainability or alignment with strategic priorities.
- 2.2.5 The draft findings indicate poor management of potential conflicts of interest relating to a consultant clinical lead in breast surgery service and outsourced activities which might have compromised the Licensee's capacity to ensure high standards of care via contracting mechanisms.
- 2.2.6 The draft findings provide evidence that the Licensee's Board was not functioning effectively in ensuring the necessary systems and processes were in place across the organisation to identify, monitor and mitigate risks including in relation to the services in scope of the independent review.
- 2.2.7 The in-year assessment is that the Licensee will not deliver its 2025/26 financial plan. NHS England is concerned this indicates a deterioration of effective financial decision-making and control, and that further action is required by the Licensee to address the financial position.
- 2.2.8 Need for action:
- 2.2.8.1 NHS England believes that the action which the Trust has undertaken to take pursuant to the undertakings recorded here is action required to secure that the breaches in question do not continue or recur.

### **3. APPROPRIATENESS OF UNDERTAKINGS**

- 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:

##### **1. Quality and governance**

- 1.1 The Licensee will take all reasonable steps to promptly and diligently address the concerns in the independent review including carrying out actions in accordance with timescales to be agreed with NHS England.

- 1.2 The Licensee will promptly take all reasonable steps to ensure it is applying those principles, systems and standards of good corporate governance which reasonably would be regarded as appropriate for a provider of health care services to the NHS.
- 1.3 The Licensee will, within a timeframe to be agreed with NHS England, submit to NHS England a recovery plan ("the Recovery Plan") setting out the steps it will take to achieve the objectives outlined in paragraphs 1.1 and 1.2 above including how it will address issues and recommendations emerging from the independent review and from NHS England's concerns around effective Board leadership capacity and capability and the effective functioning of the Council of Governors; and any risks and mitigations to achieving the Recovery Plan. The Recovery Plan must specify timescales for completion of identified actions.
- 1.4 The Licensee will, at the request of NHS England - or otherwise on a periodic basis - review and assess the Recovery Plan. Where necessary or appropriate, or as requested by NHS England, the Licensee shall revise the Recovery Plan to ensure it remains deliverable and sufficient to address the objectives in paragraphs 1.1 and 1.2. The Licensee will submit any proposed amendments to the Recovery Plan to NHS England in a timely manner and will implement such amendments as NHS England approve.
- 1.5 The Licensee will deliver the Recovery Plan in accordance with the timescales specified in the Recovery Plan.
- 1.6 The Licensee will provide, at a date to be agreed with NHS England, a report demonstrating how the board is assured that the objectives in paragraphs 1.1 and 1.2 has been met.
- 1.7 The Licensee will ensure that the delivery of the Recovery Plan, and other measures to improve quality and governance do not compromise its overall financial position. The Licensee will keep the financial cost of its quality improvements under close review and will notify NHS England as soon as practicable of any matters which are identified as potentially having a material impact on the Licensee's overall financial position.
- 1.8 The Licensee will co-operate and work with an improvement director approved by NHS England including in their actions to co-ordinate and support a review of board governance and clinical governance, risk and effectiveness. The Licensee will similarly co-operate with NHS England colleagues supporting the improvement director.

## **2. Financial recovery**

- 2.1 The Licensee will promptly take all reasonable steps to ensure it is applying systems and/or processes to ensure compliance with its duty to operate efficiently, economically and effectively.
- 2.2 The Licensee will, within a timeframe to be agreed with NHS England, submit to NHS England a financial recovery plan ("the Financial Recovery Plan") setting out the steps

it will take to achieve the objectives outlined in paragraph 2.1 above. The Financial Recovery Plan will include how the Licensee will optimise financial delivery during 2025/26 alongside putting in place financial sustainability plans that align with other recovery actions being taken including those in response to the current quality and governance issues faced. The Financial Recovery Plan must specify timescales for completion of identified actions.

- 2.3 The Licensee will commission a diagnostic across quality and finance to support the development of short and medium term actions, and the development of a clinical strategy to improve clinical and financial sustainability.
- 2.4 The Licensee will, at the request of NHS England - or otherwise on a periodic basis - review and assess the Financial Recovery Plan. Where necessary or appropriate, or as requested by NHS England, the Licensee shall revise the Financial Recovery Plan to ensure it remains deliverable and sufficient to address the objectives in paragraph 2.1 above. The Licensee will submit any proposed amendments to the Financial Recovery Plan to NHS England in a timely manner and will implement such amendments as NHS England approve.

### **3. Delivery of undertakings**

- 3.1 The Licensee will implement sufficient governance arrangements to enable delivery of these undertakings. Such 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 The Licensee will attend meetings or, if NHS England stipulates, conference or on-line calls, at such times and places, and with such attendees, as may be required by NHS England.
- 4.2 The Licensee will provide such reports or other information in relation to the matters covered by these undertakings as NHS England may require. This shall include the final version of the report of the independent review, and any information which NHS England considers appropriate to further understand the report and/or the Licensee's response to it.

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 (Chair or Chief Executive of Licensee)**

**Dated: 14<sup>th</sup> November 2025**

#### **NHS ENGLAND**



**Signed: Fiona Edwards, Chair of the Regional Support Group (North East & Yorkshire)**

**Dated: 24<sup>th</sup> November 2025**