

ENFORCEMENT UNDERTAKINGS – AMENDED VERSION DATED 20102023

LICENSEE:

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

BACKGROUND

Monitor and NHS Improvement have now merged with NHS England. Any references to Monitor or NHS Improvement (pre-merger) should be taken to mean NHS England.

NHS Improvement accepted undertakings under section 106 of the Health and Social Care Act 2012 (“the Act”) from the Licensee in December 2021, having had reasonable grounds to suspect that the Licensee had provided and was providing health care services for the purposes of the NHS in breach of the conditions of its licence set out in those undertakings.

The Licensee has been working to comply with components of the enforcement undertakings and after completing a review of evidence provided, NHS England is satisfied that many have been met and therefore compliance certificates will be issued for those. These largely relate to:

Quality of Care (Paragraph 3): addressing concerns raised in CQC reports, creation of Quality Improvement Plan aligned to Clinical Strategy which addressed clinical assessment and evaluation of risk and governance re: quality impact of CIPs, establishing plans to address improving patient experience.

Operational Performance (Paragraph 4): addressing recovery of constitutional operational performance standards in line with trajectory expectations submitted in Annual Operational Plan (and Recovery Support Programme exit criteria).

Strategic Workforce Planning (Paragraph 5): development of an updated Workforce Strategy aligned with clinical and workforce strategies addressing recruitment and retention, productivity, approaches to job planning and clinical safety; alignment of strategy to local and wider system partners’ workforce transformation plans.

Corporate and Clinical Governance (Paragraph 7): establishing appropriate and integrated corporate and clinical governance structures, consolidation of findings of various reports into Licensee governance into a comprehensive Governance Plan, monitoring the capacity, capability and effectiveness of the Board and clinical leadership on an ongoing basis and flagging any risks to sustainability and stability.

The Licensee has a strengthened executive team and unitary board functioning well with clear roles and responsibilities and a board development programme in place. Clarity of Trust priorities is provided by the implementation of the Patient First Improvement Programme which lists 6 strategic initiatives aligned with the system direction.

A comprehensive governance review was undertaken with assistance from the embedded Improvement Director which produced a number of actions to be taken and outcomes to be

achieved such as revising quality governance structure and improving the Serious Incidents (SI) process. The board could evidence ownership of this review and the actions taken which were signed off as completed. The Licensee can also demonstrate the board is sighted on key risks and actions taken and there are mechanisms in place for external and internal assurance. An independent risk maturity audit was carried out by KPMG to test the Licensee's assumptions.

The Licensee has made successful changes to their management of SIs removing their incident backlog in Datix and putting in place a learning framework. They developed an IPC plan which has helped to drive down their HCAs and a robust safeguarding plan both of which include a continuous cycle of review, assessment and implementation of best practice and learning.

The CQC have not undertaken a comprehensive inspection of the Licensee since July 2021, however their inspection of UEC services and some parts of medical care services in February 2022 saw the rating change from 'Inadequate' to 'Good' recognising significant improvements made including in leadership and culture. Their inspection of Maternity services in December 2022 showed the Licensee maintaining a 'Good' rating.

The Trust has shown an improved grip on operational performance and a reduction in elective care 52ww and P2 patients, however their cancer performance although strong in Summer 2022 has been set back primarily due to DM01 pressures in endoscopy which has led to the Trust being placed in Tier 2 for their 62d performance. They have an expansion business case being taken through the Trust Board to tackle the problem and have been scoping alternatives to reduce their backlog.

In the workforce space, international nursing and Clinical Support Worker recruitment has met trajectories, and the Licensee has worked hard to reduce vacancies and to tackle staff sickness rates, so they are no longer an outlier across their locality. They have plan in place for staff engagement and have been using regular surveys for feedback.

As the Licensee did not deliver its financial plan in 2022/23, continues to have a significant underlying recurrent deficit and has submitted a deficit plan of £15m in 2023/24 with a high level of risk, NHS England needs to vary the existing undertakings in respect of financial governance and recovery to reflect the current position.

DECISION

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, NHS England 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"). In this document, "NHS Improvement" means Monitor.

GROUND

1. Licence

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

BREACHES

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 (5)(a), b(d) and (f).

2.2. In particular:

Financial Sustainability

2.2.1. The Licensee has incurred significant operating deficits in every financial year since 2009/2010 aside from during the COVID-19 pandemic period, where excess costs incurred were covered through additional national 'top-up' funding;

2.2.2. The Licensee failed to achieve its 2022/2023 breakeven plan, reporting a £6.0m deficit. The yearend deficit included £9.0m of non-recurrent system funding;

2.2.3. The Licensee has submitted a deficit plan for 2023/2024 of £15.0m: this equates to the 2022/2023 outturn position with system non-recurrent funding excluded, however not in line with national breakeven expectations;

2.2.4. The 2023/24 plan is high risk with an efficiency target of £27m, which is significantly greater than the £7.0m of savings achieved in 2022/23 and in levels achieved in previous years;

2.2.5. The Licensee has reported an underlying deficit position at the end of 2022/23 of £40.2m. Whilst the Licensee has developed a financial recovery plan, there is not sufficient evidence that the drivers of the deficit are being addressed or that the Licensee's underlying position is improving at this time;

2.2.6. The Licensee entered the Recovery Support Programme (RSP) in July 2021 by virtue of being placed in segment 4 of the NHS Oversight Framework and are 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

LICENSEE:

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

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 Management
 - 1.1. The Licensee will take all reasonable actions to reduce the current deficit and achieve financial sustainability.
 - 1.2. In meeting the requirements of paragraph 1.1., the Licensee will:
 - 1.2.1. By a date to be agreed with NHS England, develop and submit to NHS England a Financial Recovery Plan (“FRP”) setting out realistic actions over an appropriate timescale, to stabilise and improve the Licensee’s financial position;
 - 1.2.2. Ensure that the FRP is refreshed and maintained to adhere to the latest available NHS planning guidance;
 - 1.2.3. Ensure that the plan addresses the underlying drivers of the deficit and improves the underlying recurrent financial position;
 - 1.2.4. In developing 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;
 - 1.2.5. 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 2023/24 Financial Plan as agreed with the Kent and Medway Integrated Care Board (ICB) as part of an overall ICS plan for 2023/24.
 - 1.3. The Licensee will ensure that robust financial controls, processes (including financial reporting and forecasting), and governance is in place to ensure effective use of resources and best value for money.
 - 1.5. The Licensee will cooperate and actively participate in any Kent and Medway ICB financial sustainability and efficiency programmes.
2. General

- 2.1. The Licensee will evidence all reasonable steps have been taken to meet the Recovery Support Programme (RSP) Exit 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.
- 2.2. The Licensee will review progress against meeting the RSP Exit Criteria and these undertakings, updating NHS England regularly at Oversight Meetings and inputting into reports when requested.
- 2.3. 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.

These variations are agreed pursuant to paragraph 11 of Schedule 11 to the Health and Social Care Act 2012 (variation of terms).

All other terms of the original Enforcement Undertakings accepted from the Licensee by NHS Improvement on 8 December 2021 remain unchanged.

Signed on behalf of Licensee

Name: JAYNE BLACK

Position: CEO

Signature: 

Signed on behalf of NHS England

Name: Anne Eden

Position: Regional Director NHS South East

Signature: 