

UNDERTAKINGS

NHS TRUST:

East Sussex Healthcare NHS Trust (“the Trust”)
Eastbourne DGH
Kings Drive
Eastbourne
East Sussex
BN21 2UD

DECISION:

On the basis of the grounds set out below and pursuant to the powers exercisable by NHS Improvement under or by virtue of the National Health Service Act 2006 and the TDA Directions, NHS Improvement has decided to accept undertakings from the Trust.

DEFINITIONS:

In this document:

“the conditions of the Licence” means the conditions of the licence issued by Monitor under Chapter 3 of Part 3 of the Health and Social Care Act 2012 in respect of which NHS Improvement has deemed it appropriate for NHS trusts to comply with equivalent conditions, pursuant to paragraph 6(c) of the TDA Directions;

“NHS Improvement” means the National Health Service Trust Development Authority;

“TDA Directions” means the National Health Service Trust Development Authority Directions and Revocations and the Revocation of the Imperial College Healthcare National Health Service Trust Directions 2016.

GROUNDINGS:

1. The Trust

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

2. Issues and need for action

NHS Improvement has reasonable grounds to suspect that the Trust has provided and is providing health services for the purposes of the health service in England while failing to comply with the following conditions of the Licence: FT4(5)(a),(b),(d) and (f).

2.1. In particular:

Financial Issues

- 2.2.1. The Trust agreed a control total deficit for 17/18 of £(36.4)m, excluding sustainability and transformation funding (STF), but reported a significant negative variance against this control total plan. The Trust reported a deficit of £(58.5)m, excluding STF, an adverse variance of £22.1m;
- 2.2.2. The Trust rejected the 18/19 control total deficit of £(21)m, excluding STF, and submitted a plan showing a significant deficit of £(44.9)m;
- 2.2.3. During both 16/17 and 17/18 the Trust changed the full year outturn forecast on several occasions, demonstrating a lack of appropriate governance, forecasting rigour and basic grip and control; and
- 2.2.4. The Trust has been subject to Special Measures (for financial reasons) since October 2016 and, despite significant improvements in quality and operational performance, has not delivered these improvements in a financially sustainable way.

2.3 These failings by the Trust demonstrate a failure of governance arrangements including, in particular, failure to establish and effectively implement systems or processes:

- (a) to ensure compliance with the Trust's duty to operate efficiently, economically and effectively;
- (b) for timely and effective scrutiny and oversight by the Board of the Trust's operations;
- (c) for effective financial decision making, management and control, including but not restricted to appropriate systems and/or processes to ensure the Trust's ability to operate as a going concern; and
- (d) to identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of the Licence.

2.4 Need for action:

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

Special Measures (for financial reasons)

1. Financial recovery plan

- 1.1. The Trust will take all reasonable steps to return to financial sustainability.
- 1.2. In meeting the requirements of paragraph 1.1 the Trust will, in particular develop a financial recovery plan (FRP), quality-assured and approved by its Board.
- 1.3. A final board-approved FRP including an implementation plan should be submitted to NHSI by 9 November 2018. The final FRP with implementation plan should include detailed and specific timescales, deliverables, milestones and resources covering the first 3 years of the plan to demonstrate a clear path to delivery.
- 1.4. The scope and detailed content of the FRP will be agreed with NHS Improvement and specifically the NHSI/NHSE System Improvement Director. It will include, but is not limited to:
 - 1.4.1. actions to address the key financial issues, with a milestone plan for the Trust to deliver the FRP;
 - 1.4.2. a monthly profile of underlying and planned financials for years 1 to 3 and including the monthly phasing of the CIPs and quarterly for years 4 and 5;
 - 1.4.3. clear evidence-based explanation of the trust deficit drivers;
 - 1.4.4. modelling and assumption around activity, demand and capacity;
 - 1.4.5. benchmarking against model hospital, GIRFT and other resources;
 - 1.4.6. a review of clinical services and configuration, specifically focussing on multi-site opportunities;
 - 1.4.7. service reconfiguration proposals and time scales for delivery;
 - 1.4.8. back office and corporate efficiency;
 - 1.4.9. a comprehensive and holistic review of trust workforce (evidence-based benchmarking) to enable delivery of high quality care with efficient use of resources;

- 1.4.10. details of extra controls and other measures the Trust has already put in place since being put into Special Measures (for financial reasons) to immediately strengthen financial control, which may relate, for example, to staff pay costs, procurement, cash, delegated financial limits and programme management offices;
 - 1.4.11. details of how the Trust will deploy sufficient resources to ensure implementation of the FRP;
 - 1.4.12. a description of systems and processes the Board will use to gain assurance on the delivery of the CIPs and the wider FRP; and
 - 1.4.13. details of the Trust governance arrangements for approval and delivery of the FRP.
- 1.5. The FRP will cover a sufficient timeframe (3+2 years) to return the Trust to a surplus position.
- 1.6. When developing the plan, the Trust will engage effectively with key stakeholders, including commissioners, and will reflect their views appropriately in the FRP and ensure that the Trust plan is consistent with commissioner plans to achieve whole-system recovery. It is expected that the plan will be shared in full with commissioners with a common and agreed view on activity and demand assumptions.
- 1.7. The FRP is subject to review and approval by NHS Improvement.

2. Financial recovery plan implementation & delivery

- 2.1. The Trust will implement the financial recovery plan.
- 2.2. In meeting the requirements of paragraph 2.1, the Trust will, in particular:
- 2.2.1. demonstrate to NHS Improvement a period of successful implementation of the FRP and assurance of continued focus, capability and capacity to sustainably maintain financial recovery and deliver the FRP; and
 - 2.2.2. keep the FRP under continuous review and update it as required. Any proposed updates will be subject to review and approval by NHS Improvement via the System Improvement Director.

3. System Improvement Director and NHSI team

3.1 The Trust will co-operate and work with a System Improvement Director who will oversee and provide independent assurance to NHS Improvement and NHS England on the Trust's actions to deliver its financial recovery, including the FRP.

3.2 The Trust will provide the System Improvement Director and the NHS Improvement team with full access to the Trust's key personnel, meetings, resources, Board members, advisers and information, as well as any other members of its staff considered necessary by NHS Improvement, while the Trust is in Special Measures (for financial reasons).

4. Financial Control

4.1. The Trust will comply with any arrangements specified by NHS Improvement for the approval of the Trust's decisions on expenditure.

5. Reporting

5.1. The Trust will meet the NHS Improvement Executive Sponsor and other representatives of NHS Improvement, including the System Improvement Director, for periodic 'Comprehensive Progress Review Meetings' as and when specified by NHS Improvement. These sessions will combine 'Special Measures Progress Review Check' sessions with the wider 'System Progress Review Meetings'. The Trust will complete all requirements coming out of the 'Integrated Progress and Assurance System meetings' within timescales agreed with NHS Improvement.

5.2. The Trust will attend other meetings or, if NHS Improvement stipulates, conference calls, during the period of Special Measures (for financial reasons) to discuss its progress in meeting the undertakings set out above. These meetings will, unless NHS Improvement stipulates otherwise, take place at times and places to be specified by NHS Improvement and with attendees specified by NHS Improvement.

5.3. The Trust will comply with any additional reporting or information requests made by NHS Improvement.

6. Governance

6.1. The Trust 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.

6.2. In meeting the requirements of paragraph 6.1, the Trust will, in particular:

- 6.2.1 Ensure that the undertakings will be delivered whilst maintaining or improving the quality of services and operational performance; and
- 6.2.2 action the recommendations from the Deloitte review of governance within the timescales agreed with NHS Improvement.

Any failure to comply with the above undertakings may result in NHS Improvement taking further regulatory action. This could include giving formal directions to the trust under section 8 of the National Health Service Act 2006 and paragraph 6 of the TDA Directions.

THE TRUST

Signed



David Clayton-Smith
Chairman
East Sussex Healthcare NHS Trust

Dated 5 October 2018

NHS IMPROVEMENT

Signed



Anne Eden, Executive Regional Director, South East NHSI and NHSE, acting on behalf of the Regional Provider Support Group

Dated 9 October 2018