

ENFORCEMENT UNDERTAKINGS LICENSEE:

Portsmouth Hospitals NHS Trust (“the Licensee”)
Southwick Hill Road
Portsmouth
Cosham
PO6 3LY

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”).

GROUND

1. Licence

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

2. Breaches

NHS England has grounds 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:

2.1. 2.1 NHS2(5)(a), (d) and (h). In particular, having regard to the matters set out in section 3 below.

3. Financial governance issues

3.1. The Hampshire & Isle of Wight system collectively has demonstrated declining productivity and material under-delivery of efficiency plans in 2022/23 despite interventions and financial recovery initiatives by the Hampshire and Isle of Wight Integrated Care Board (the ICB) and providers aimed at addressing this. The system has made relatively limited progress in implementing new integrated models of care to reduce unnecessary acute admissions, and to reduce the associated financial cost of this. There has been a significant growth in workforce over the last three years but this is not financially affordable and has not led to a corresponding improvement in productivity as measured by low and deteriorating cost weighted activity growth. There has been progress with elective recovery but at an unaffordable cost, including significant expenditure with Independent Sector providers and limited collaboration between all NHS providers.

3.2. In April 2023, the ICB planned a total system deficit for 2023/24 of £118 million, making it a material outlier with most other ICBs. The Licensee’s own planned deficit of £31.2m (-4% of income) formed part of this overall system deficit. The Licensee delivered a deficit of £9.1m in 2022/23.

3.3. In addition, since 1 July 2022, each integrated care board (including the ICB) and its ‘partner Trusts’ (including, in this case, the Licensee) have been subject to a duty to seek to achieve joint financial objectives set by NHS England section 22L of the National Health Service Act 2006 as amended (NHS Act 2006)). Further, each integrated care board and its partner Trusts have a duty to act with a view to ensuring that their combined resource

use does not exceed the capital and revenue resource use limits set by NHS England (section 223M of the NHS Act 2006). The Licensee also has a general statutory duty to act effectively, efficiently and economically.

4. Need for Action

4.1. These failings by the Licensee, and also the wider system, demonstrate a failure of governance arrangements including, in particular, failure to establish and effectively implement systems or processes:

- a) To ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
- d) For effective financial decision-making, management and control; and

h) to ensure compliance with all applicable legal requirements.

4.2. These failings also indicate a lack of co-ordination by all partners, including the Licensee, to address the financial issues within the system.

4.3. NHS England believes that the action, which the Licensee, ICB and its other partner NHS trusts and NHS foundation trusts (system providers) have undertaken to take pursuant to these undertakings and other undertakings given by those other bodies, is action to secure that the breaches in question do not continue or recur.

4.4. In addition to the above, the Licensee also has an existing set of undertakings in place dated May 2022. The existing undertakings relate to issues not covered in these proposed undertakings (i.e., 4-hour performance). The two sets of undertakings will remain technically separate, although they will be considered in tandem.

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:

6. Financial Governance

7.1 Recovery Plan

7.1.1 To develop a single system Recovery Plan that brings together the ICB, Trusts and additional system wide recovery initiatives. It is likely to include, but is not limited to:

- 7.1.1.1 Actions to address the key financial issues with a high-level milestone plan for the system to return the system to a breakeven financial position.
- 7.1.1.2 Details of how the system will deploy sufficient resources to ensure implementation of the Recovery Plan.
- 7.1.1.3 A description of systems and processes the system will use to gain assurance on the delivery of the Recovery Plan with governance arrangements for approval and delivery of the Recovery Plan.
- 7.1.1.4 Establishing immediately necessary 'grip and control' actions, followed by transformational initiatives and options such as financially sustainable

clinical services, clinical support services and corporate services.
Timescales to be agreed with NHS England.

7.1.2 When developing the plan, the Licensee will, working with the ICB and other system providers, engage effectively with key stakeholders, including commissioners, and will reflect their views appropriately in the Plan.

7.1.3 The Licensee will, working with the ICB and other system providers, ensure the system demonstrates to NHS England a period of successful implementation of the Recovery Plan and assurance of continued focus, capability and capacity to sustainably maintain financial recovery and deliver the Recovery Plan.

7.1.4 The board of the Licensee will, working with the ICB and the boards of the other system providers, keep the Recovery Plan under continuous review and will update it as required. Any proposed updates will be subject to the review and approval by NHS England.

7.2 System Improvement Director and NHS England team

7.2.1 The Licensee will, along with the ICB and other system providers, co-operate and work with the relevant System Improvement Director, as and when appointed by NHS England to oversee and provide independent assurance to NHS England on the Licensee's actions to deliver its financial recovery, including the Recovery Plan. The Licensee will similarly cooperate with the NHS England team.

7.2.2 The Licensee will provide the System Improvement Director and the NHS England team supporting them with full access to the Licensee's key personnel, meetings, resources, Board members, advisers and information, as well as any other members of its staff considered necessary by NHS England.

8 Reporting

8.1 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.

8.2 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.

8.3 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:

8.3.1 compliance with the health care standards binding on the Licensee; and


8.3.2 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 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

A handwritten signature in black ink that reads "Penny Lunt".

Signed (Chief Executive of Licensee)

Dated: 6 September 2023

NHS ENGLAND

A handwritten signature in blue ink that reads "Anne Egan".

Signed (SE Regional Director)

Dated: 7 September 2023