

ENFORCEMENT UNDERTAKINGS

LICENSEE

*Kettering General Hospital NHS Foundation Trust
Rothwell Rd
Kettering
NN16 8UZ*

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”).

DEFINITIONS

In this document:

“the conditions of the Licence” means the conditions of the licence held by providers of NHS services under Chapter 3 of Part 3 of the Health and Social Care Act 2012 which NHS England, acting in exercise of its functions under section 27A of the NHS Act 2006, expects NHS trusts to comply with;

“NHS Improvement” means the National Health Service Trust Development Authority, which was abolished and its functions transferred to NHS England on 1 July 2022 by the Health and Care Act 2022

BACKGROUND

NHS Improvement accepted enforcement undertakings from the Licensee in January 2020 in relation:

- Operational Performance (Urgent and Emergency Care – 4 Hour Access Standard);
- Financial Performance
- Quality Improvement

In July 2020 a compliance certificate was issued in relation to the following undertakings:

- Operational Performance (Urgent and Emergency Care – 4 Hour Access Standard);
- Quality Improvement

Although the Licensee had made progress against the remaining parts of the January 2020 undertakings, NHS England continues to have concerns about the Licensee’s ongoing financial performance.

NHS England is now taking regulatory action in the form of these updated undertakings which replace and supersede the remaining undertakings (2, 3 and 5) accepted in January 2020.

The Trust reported a financial deficit in the 2022/23 financial year (adverse to plan), and at month 3 of 2023/24 continues to report an adverse financial position. This position is supported by additional ICB income and as a result there remain concerns about the Trusts route to financial sustainability. The ICB and Trust are yet to complete the planning exercise as part of the Medium-Term Financial Plan to determine the longer term financial strategy and any ongoing requirement for additional funding.

GROUNDS

1. Licence

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

ISSUES AND NEED FOR ACTION

2. Financial Performance

2.1. In June 2023 the Licensee continues to report an adverse financial position, this position is supported by additional ICB income. Therefore, 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 the following conditions of the Licence.

2013 Licence	2023 Licence (applicable from 31 March 2023)	Summary of condition
FT4 (5)(a)	NHS2(5)(a)	Processes in place to ensure: (a) operate efficiency, economically and effectively;
FT4 (5)(b)	NHS2(5)(b)	Processes in place to ensure: (b) effective oversight by the Board;
FT4 (5)(d)	NHS2 (5)(d)	Processes in place to ensure: (d) effective financial decision-making

2.2. In particular:

Whilst progress has been made, there are ongoing concerns and outstanding actions that are required to be resolved. The Licensee remains in a deficit position (adverse to plan) for the financial year 2023/24. Therefore, ongoing monitoring is required to ensure the position does not deteriorate further. There must be specific focus on:

- (a) delivering a compliant, breakeven 2023/24 financial position (in line with the submitted breakeven financial plan),
- (b) delivering planned productivity improvements and efficiency savings,
- (c) minimising revenue cash support requirements,
- (d) ensuring a long-term plan is in place by the end of Q2 demonstrating how recurrent financial sustainability will be delivered, and

(e) complying with requests regarding spending approvals

- 2.3 The financial performance for 2022/23 and 2023/23 year to date 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;
 - (b) for timely and effective scrutiny and oversight by the Board of the Licensee's operations.
 - (c) for effective decision making, management and control (including but not restricted to appropriate systems and/or processes to ensure the Licensee's ability to continue as a going concern.

2.4 Need for action:

NHS England believes that the action which the Licensee 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.

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

NHS England has agreed to accept and the Licensee has agreed to give the following undertakings, pursuant to section 106 of the Act:

3. Financial Performance

- 3.1. The Licensee will have an agreed financial recovery plan in place, supported by a clear evidence base, that has been signed off by the board and agreed with the ICB and NHSE.
- 3.2. The plan should be supported by a standard management information suite to report developing progress against the plan with a clear and balanced risk assessment and reporting.
- 3.3. Commit to recurrent delivery of efficiency schemes from quarter 3 to achieve a full year effect in 2024/25 to compensate for any non-recurrent measures required to achieve 23/24 plans.
- 3.4. Fully engage in national pay and non-pay savings initiatives, in particular around national agreements for medicines and other non-pay purchasing.
- 3.5. Monitoring of agency usage and compliance with usage and rate limits.

- 3.6. Any revenue consultancy spend above £50,000 and non-clinical agency usage continue to require prior approval from the NHS England regional team based on agreed regional process.
 - 3.7. Robust financial controls and processes and reporting must be in place and overseen through appropriate financial governance procedures and a track record of identifying and addressing financial issues when they arise.
 - 3.8. The Licensee should be able to demonstrate internal capabilities around financial resource management (grip and control).
 - 3.9. The Licensee must ensure that there is a shared understanding of risks to the financial plan and have mitigations in place. The Trust should agree and maintain a register of financial risks and mitigations and tracks actions to manage residual risk.
 - 3.10. The Licensee should be able to evidence behaviours supportive of system working.
 - 3.11. The Licensee should have resources to support transformation and improvement and engage with the ICB and NHSE to provide additional support where required. As part of this, Licensee and system should agree the post-exit support package and ensure the regional team are satisfied that an appropriate level of support is in place.
 - 3.12. The Licensee agrees to involve the ICB and NHS England Midlands Region to observe and feedback on the governance and oversight mechanisms associated with delivery of the recovery plan.
 - 3.13. The Licensee agrees to work with the ICB and NHS England Midlands Region to develop a mechanism by which regular reviews of progress against delivery of the recovery plan can be made and where conversations about whether sufficient resources and support are available can take place – including whether regional or national support is required.
4. The Licensee will take all reasonable steps to recover the financial performance to meet national standards in relation to the governance and processes in strategic oversight.
 - 4.1. The Licensee will ensure that there are robust improvement plans in place to meet the requirements of paragraph 3, which has been agreed with the ICB and NHS England
 - 4.2. The financial recovery plan will, in particular:
 - 4.2.1. include the actions required to meet the requirements of paragraph 3, with appropriate timescales, key performance indicators and resourcing.

- 4.2.2. describe the key risks to meeting the requirements of paragraph 3 and mitigating actions being taken.
- 4.2.3. be based on realistic assumptions.
- 4.2.4. reflect collaborative working with key system partners and other stakeholders.
- 4.2.5. set out the key performance indicators which the Licensee will use to measure progress.

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 the concerns which these undertakings seek to address.

5. Programme management

- 5.1. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.
- 5.2. Such programme management and governance arrangements must enable the board to:
 - 5.2.1. obtain clear oversight over the process in delivering these undertakings;
 - 5.2.2. obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and
 - 5.2.3. hold individuals to account for the delivery of the undertakings.

6. Meetings and reports

- 6.1. The Licensee will attend meetings or, if NHS England stipulates, conference calls, at such times and places, and with such attendees, as may be required by NHS England.
- 6.2. The Licensee will provide such reports in relation to the matters covered by these undertakings as NHS England may require.

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.

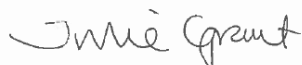
LICENSEE



Signed (Chair or Chief Executive of Licensee)

Dated: 13/10/23

NHS ENGLAND



Julie Grant
(Director of Strategic Transformation (Midlands), member of the Midlands Regional Support Group)

Date: 28/07/23