

## **ENFORCEMENT UNDERTAKINGS**

### **LICENSEE**

King's College NHS Foundation Trust ("the Licensee")  
Denmark Hill  
London  
SE5 9RS

### **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").

### **BACKGROUND**

NHS Improvement accepted undertakings from the Licensee on 21 September 2018 ("the previous undertakings").

A number of those previous undertakings were complied with, for which NHS England has decided to issue compliance certificates, and the following paragraphs of the previous undertakings are hereby superseded from the date of these undertakings:

- Paragraphs 1; 2; 4; 5; 6; and 10 of the previous undertakings.

The undertakings below are without prejudice to:

- Any existing mandated support that remains in place in relation to the Trust, including through NHS England's Recovery Support Programme.
- An additional licence condition previously imposed under section 111 of the Act.

In this document, "NHS Improvement" means Monitor, which was abolished and its functions transferred to NHS England on 1 July 2022 by the Health and Care Act 2022.

### **GROUND**

#### **1. Licence**

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

### **BREACHES**

#### **2. Governance, including financial governance**

- 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:

- 2.1.1. The Licensee shall establish and implement (NHS2(4)):

- 2.1.1.1. effective board and committee structures (NHS2(4)(a));

- 2.1.1.2. clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees (NHS2(4)(b)); and

- 2.1.1.3. clear reporting lines and accountabilities throughout its organisation (NHS2(4)(c)).
    - 2.1.2. The Licensee shall establish and effectively implement systems and/or processes (NHS2(5)):
      - 2.1.2.1. to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively (NHS2(5)(a));
      - 2.1.2.2. for timely and effective scrutiny and oversight by the Board of the Licensee's operations (NHS2(5)(b));
      - 2.1.2.3. for effective financial 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); (NHS2(5)(d));
      - 2.1.2.4. to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making (NHS2(5)(e));
      - 2.1.2.5. to identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of its Licence (NHS2(5)(f));
    - 2.1.3. When making decisions in the exercise of its functions which relate to the provision of health care for the purposes of the NHS, the Licensee shall comply with its duty relating to the triple aim, as set out under section 63A of the National Health Service Act 2006, and have regard to the triple aim as described in the licence which refers to the aim of achieving more sustainable and efficient use of resources by NHS bodies (WS2(2), (3) and (4)(c)).
    - 2.1.4. The Licensee shall at all times adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as suitable for a provider of the Commissioner Requested Services and for providing reasonable safeguards against the Licensee being unable to carry on as a going concern (CoS3(1) and (b)).
- 2.2. In particular:
  - 2.2.1. The Licensee's financial plan for 2023/24 was a £17.5m deficit, within an agreed overall breakeven plan for South East London Integrated Care System. In 2023/24 the Licensee delivered an outturn deficit of £78.7m (4.4% of turnover), £61.3m off plan. In 2023/24 the Licensee delivered £43.2m of efficiencies (2.3% of expenditure), £28.8m behind their plan.
  - 2.2.2. The Licensee's financial plan for 2024/25 has a £141.8m deficit (£160.4m 2019/20 underlying deficit) (8.4% of turnover), with a planned efficiency programme of 2.8% of expenditure.
  - 2.2.3. These matters are a potential breach of the Licensee's duty to operate efficiently, economically and effectively (NHS2(5)) and indicate a failure to have regard to the aim of achieving more sustainable and efficient use of resources by NHS bodies, as part of the triple aim (WS2(2),(3),(4)(c)).
  - 2.2.4. An initial financial governance review, undertaken by NHS England in February – March 2024, identified insufficient focus by the Licensee on the management and mitigation of financial risk, while issues and risks may not have been escalated in a sufficiently timely way to allow full unitary board ownership; the implementation of

Epic gave uncertainty to financial forecasts after M6 2023/24; and there was minimal evidence that action plans had been implemented following the HFMA financial sustainability self-assessment to provide assurance that financial risk was being mitigated. These findings were supported by an Independent Audit Financial Governance Review, which reported in June 2024, which particularly identified concerns over the reporting to Board committees and workforce controls.

2.2.5. These failings by the Licensee demonstrate a failure of governance arrangements including, in particular, a failure to establish and effectively implement systems or processes to identify and manage material risks to compliance with the Licensee's general duties.

### 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 Undertakings

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. Corporate Strategy

1.1. The Licensee will develop a refreshed corporate strategy that supports a sustainable financial position, owned by the whole organisation and underpinned by clinical, operational, finance, workforce and estates strategies. The corporate strategy should:

1.1.1. Reflect NHS England's planning guidance;

1.1.2. Demonstrate that the Licensee has core plans in place to deliver its underpinning strategies (e.g. operational, clinical, finance and workforce plans) with clear lines of accountability, annual delivery plans, and measurable objectives.

1.1.3. Provide a description of systems and processes the Licensee will use to gain assurance on the delivery of the corporate strategy and with governance arrangements for approval and delivery of the corporate strategy.

### 2. Leadership and Governance

#### 2.1. Board Development Programme

2.1.1. Within a timeframe to be agreed with NHS England the Licensee will have an updated and effective Board Development Programme in place.

#### 2.2. Performance and Accountability Framework

2.2.1. The Licensee will develop and embed a performance and accountability framework, with site and care groups demonstrating an effective integrated performance approach that balances financial and operational recovery with sustained quality of care.

### 3. Financial Governance

#### 3.1. Financial Governance and Controls

- 3.1.1. The Licensee shall ensure that any revenue consultancy spend above £50,000 and any non-clinical agency usage shall receive prior-approval from the NHS England regional team in accordance with a regional process determined by NHS England.
- 3.1.2. The Licensee shall ensure that robust financial controls and processes and reporting are in place and overseen through appropriate financial governance procedures, enabling and establishing a track record of identifying and addressing financial issues when they arise.

#### 3.2. Financial Strategy

- 3.2.1. The Licensee will develop a financial strategy which demonstrates an improvement trajectory for financial position and implied productivity, and shows effective engagement with key stakeholders. The plan should:
  - 3.2.1.1. Be agreed with NHS England;
  - 3.2.1.2. Reflect NHS England's planning guidance;
  - 3.2.1.3. Demonstrate recurrent financial improvement to the Licensee's underlying deficit;
  - 3.2.1.4. Establish transformational initiatives and options such as financially sustainable clinical services, clinical support services and corporate services;
  - 3.2.1.5. Include details of how the Licensee will deploy sufficient resources to ensure implementation of the financial strategy;
  - 3.2.1.6. Provide a description of systems and processes the Licensee will use to gain assurance on the delivery of the financial strategy and with governance arrangements for approval and delivery of the financial strategy.
- 3.2.2. The Licensee will ensure it demonstrates to NHS England a sufficient period of successful implementation of the Financial Strategy and provide assurance of continued focus, capability and capacity to sustainably maintain financial recovery and deliver the Financial Strategy.
- 3.2.3. The board of the Licensee will keep the Financial Strategy under continuous review and will update it as required. Any proposed updates will be subject to the review and approval by NHS England.

### 4. Funding conditions and spending approvals

- 4.1. Where interim support financing or planned term support financing is provided by the Secretary of State for Health to the Licensee pursuant to section 40 of the NHS Act 2006, the Licensee will comply with any terms and conditions which attach to the financing.
- 4.2. The Licensee will comply with any reporting requests made by NHS England in relation to any financing to be provided to the Licensee by the Secretary of State for Health pursuant to section 40 of the NHS Act 2006.

4.3. The Licensee will comply with any spending approvals processes that are deemed necessary by NHS England.

## 5. Comprehensive Improvement Programme

5.1. Within a timeframe to be agreed with NHS England, the Licensee will create a comprehensive improvement programme to support organisation-wide sustained transformation through the delivery of financially sustainable clinical services, clinical support services and corporate services.

5.2. The Comprehensive Improvement Programme will address the key financial issues (including actions to deliver efficiency plans) for the Licensee to return to a breakeven financial position in accordance with timeframes agreed with NHS England will be supported and overseen by the following:

### 5.3. Workforce Strategy

5.3.1. In a timeframe to be agreed with NHS England the Licensee will develop a clear workforce strategy that supports the delivery of its refreshed corporate strategy. The Workforce Strategy should:

5.3.1.1. Provide a high-level milestone plan to address the key workforce issues for the Licensee to ensure it has a sustainable workforce position aligned to its corporate strategy;

5.3.1.2. Establish immediate grip and control actions, followed by transformational initiatives including core service reviews;

5.3.1.3. Include details of how the Licensee will deploy sufficient resources to ensure implementation of the workforce strategy;

5.3.1.4. Describe the governance arrangements that shall be in place to oversee implementation of the strategy.

## 6. Programme management

6.1. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of these undertakings. Such programme management and governance arrangements must enable the board to:

6.1.1. obtain clear oversight over the process in delivering these undertakings;

6.1.2. obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and

6.1.3. hold individuals to account for the delivery of the undertakings.

## 7. Meetings and reports

7.1. The Licensee will provide regular reports to NHS England on its progress in complying with the undertakings set out above.

7.2. 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. These meetings will take place quarterly unless NHS England otherwise stipulates, at a time and place to be specified by NHS England and with attendees specified by NHS England.

7.3. Upon request, the Licensee will provide NHS England with the evidence, reports or other information relied on by its Board in relation to assessing its progress in delivering these undertakings.

7.4. 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:

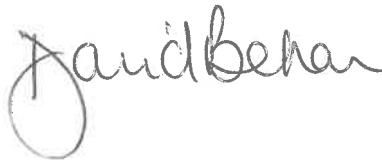
- compliance with the health care standards binding on the Licensee; and
- compliance with all requirements concerning quality of care.

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**

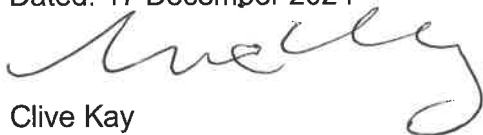
Signed



Sir David Behan

**Chair of Licensee, King's College Hospital NHS Foundation Trust**

Dated: 17 December 2024



Clive Kay

**Chief Executive of Licensee, King's College Hospital NHS Foundation Trust**

Dated: 17 December 2024

**NHS ENGLAND**

Signed



Helen Pettersen

**Regional Chief Operations Officer (London) and Chair of the Regional Support Group (London)**

Dated: 10 December 2024