

DRAFT ENFORCEMENT UNDERTAKINGS

LICENSEE:

Lancashire Teaching Hospitals NHS Foundation Trust (“the Licensee”)
Royal Preston Hospital
Sharoe Green Lane
Fulwood
Preston
PR2 9HT

DECISION

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, NHS Improvement 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.

BACKGROUND

Enforcement undertakings were issued to Lancashire Teaching Hospitals NHS Foundation Trust under section 106 in June 2015 having had reasonable grounds to suspect that the Licensee was providing healthcare services for the purposes of the NHS in breach of the conditions of its license. In May 2018, further regulatory action was taken in the form of new enforcement undertakings. Since this point the trust has reported annual deficits of £50.4m (2018/19) and £58.4m in 2019/20 (excluding Provider Sustainability Fund (PSF)). In addition, as a consequence of these deficits, the trust has previously been reliant on revenue support from Department of Health and Social Care.

The financial position for 2020/21 was a surplus of £2.1m, however, the finances have been distorted due to additional £72.3m of financial support provided by the government during the COVID-19 pandemic. The Trust still has a significant underlying deficit that will require addressing once the system returns to normal funding arrangement. NHS Improvement is therefore now taking further regulatory action in the form of the revised financial undertakings to reflect the current position. The undertakings in this letter replace the previous undertakings due to the passage of time.

GROUNDS

1. Licence

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

BREACHES

2. Financial Sustainability and financial governance

2.1 NHS Improvement has reasonable grounds to suspect 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: FT4(5)(a) and (d) and CoS3.

2.2 In particular, the Licensee:

- 2.2.1 has reported annual deficits of £50.4m (2018/19) and £58.4m in 2019/20
- 2.2.2 set a draft deficit plan in 2020/21 pre COVID of £68.5m
- 2.2.3 has a significant underlying deficit of X (to be confirmed with the Licensee)

2.3 The matters set out above demonstrate a failure of governance and financial management by the Licensee, including, in particular:

- 2.3.1 a failure by the Licensee to adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as:
 - (a) suitable for a provider of the Commissioner Requested Services provided by the Licensee, and
 - (b) providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern.

- 2.3.2 a failure to establish and effectively implement systems and/or processes:
 - (a) to ensure compliance with the Licensee's duty to operate efficiently, economically, and effectively; and
 - (b) 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)

3. Need for Action

NHS Improvement believes that the action which the Licensee has undertaken to take pursuant to the undertakings recorded here 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 Improvement has taken into account the matters set out in its Enforcement Guidance.

UNDERTAKINGS

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

1. Financial planning

- 1.1 The Licensee will deliver the Licensee's 2021/22 H2 Financial Plan once it has been agreed with the Lancashire and South Cumbria ICS, as part of an overall ICS balanced plan for 2021/22 H2.
- 1.2 The Licensee will deliver the Licensee's 2022/23 Financial Plan once it has been agreed with the Lancashire and South Cumbria ICS, as part of an overall ICS balanced plan for 2022/23.
- 1.3 The Licensee will ensure its underlying financial position improves during 2021/2022, as measured in the H2 2021/22 financial plan compared to 2022/23 opening financial plan.
- 1.4 The Licensee will ensure that robust financial controls, process, and governance is in place to ensure accurate financial reporting and to secure value for money.
- 1.5 The Licensee will cooperate and actively participate in the Lancashire and South Cumbria ICS financial sustainability and efficiency programmes, including by utilising national tools to identify unwarranted variation and productivity opportunities.
- 1.6 The Licensee will implement sufficient programme management and governance arrangements to enable delivery of the actions in the Financial Plan.

2. Funding conditions and spending approvals

- 2.1 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.
- 2.2 The Licensee will comply with any reporting requests made by NHS Improvement 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.
- 2.3 The Licensee will comply with any spending approvals processes that are deemed necessary by NHS Improvement.

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 Improvement. 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 Improvement is satisfied that the Licensee has given inaccurate, misleading or incomplete information in relation to the undertakings: (i) NHS Improvement may treat the Licensee as having failed to comply with the undertakings; and (ii) if NHS Improvement decides so to treat the Licensee, NHS Improvement 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, appearing to be 'K. P. H. D.', written on a light-colored background.

Signed (Chair or Chief Executive of Licensee)

Dated: 07/12/21

NHS IMPROVEMENT

A handwritten signature in black ink, appearing to be 'A. P. H. D.', written on a light-colored background.

Signed (North West Regional Director)

Dated: 13/12/2021