

ENFORCEMENT UNDERTAKINGS

LICENSEE:

University Hospitals Birmingham NHS Foundation Trust ("the Licensee")
Trust Headquarters,
Queen Elizabeth Hospital Birmingham,
Mindelsohn Way,
Edgbaston,
Birmingham,
West Midlands,
B15 2GW

DECISION:

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, NHS England 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 ("the Act").

GROUND(S):

1. Licence

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

2. Breaches of the Licence

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: NHS2(4)(a) to NHS2(4)(c), NHS2(5)(a), NHS2(5)(c), NHS2(5)(e) and NHS2(5)(f), NHS2(6)(a) to NHS2(6)(f), NHS2(7) and WS2(4)(c).

In particular:

Operational performance – breach of Licence conditions NHS2(4)(a) to NHS2(4)(c), NHS2(5)(a), NHS2(5)(c), NHS2(5)(e) and NHS2(5)(f) and NHS2(7)

2.2 Urgent and Emergency Care – the Licensee continues to experience challenges in relation to delivery of Urgent and Emergency Care performance; including delays to ambulance handover and poor flow within the UEC pathway and when discharging patients.

Finance – breach of Licence conditions NHS2(5)(a) and WS2(4)(c)

2.3 The Licensee has breached financial planning requirements by failing to adhere to its deficit plan for 2024/25. At year end, the trust reported £30.7m which was £14.7m adverse to its £16.5m deficit plan.

2.4 The Licensee has failed to demonstrate effective control over expenditure, as costs continued to rise month-on-month without alignment between finance and workforce planning. Although measures were identified to manage pay and non-pay costs, limited evidence of implementation exists, as expenditure remained consistently over budget.

- 2.5 The Licensee's lack of financial control has resulted in significant adverse variances against the 2024/25 plan, with pay costs £101.5m over budget and non-pay costs £47.7m over budget. The Licensee has recorded the highest adverse pay variance to plan nationally, raising concerns over financial management.
- 2.6 The Licensee has breached financial governance requirements, as concerns raised by the External Auditor have not been sufficiently addressed. The audit of accounts for 2023/24 was delayed until October 2024, demonstrating deficiencies in financial oversight. The ISA 260 report, prepared by Deloitte and presented to the Audit Committee for the 2024 audit, identified multiple breaches, including control deficiencies, under-resourced finance functions, and a lack of transparency in key financial judgments and counterparty positions. Additionally, the inaccuracy of Provider Finance Returns (PFRs) was flagged as a critical issue, further highlighting weaknesses in financial management. Many of the internal control and risk management failures identified had been noted in previous periods, yet the Licensee has failed to take appropriate corrective action.
- 2.7 The Licensee has repeatedly missed national financial reporting deadlines, disrupting NHS-wide reporting timetables. The submission of the 2024/25 accounts was delayed over a month, citing insufficient supporting working papers for financial entries. This raises serious concerns over financial control, capacity, and capability within the finance team.

Quality – breach of Licence conditions NHS2(4)(a), NHS2(5)(a) and NHS2(5)(c) and NHS2(6)(a) to NHS2(6)(f).

Maternity Services

- 2.8 The recent draft CQC inspection report from the inspection at the Birmingham Heartlands site in April 2025, rated the Licensee at that site as Requires Improvement overall, with the safe domain being assessed as Inadequate.
- 2.9 The Licensee entered the national Maternity Safety Support Programme in 2023 and in light of the recent CQC inspections, the Licensee will remain in the Programme as it continues with the improvement phase.

3. Failings and need for action

3.1 These failings by the Licensee demonstrate a failure of governance arrangements including failure to establish and effectively implement systems or processes:

- 3.1.1 to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
- 3.1.2 to ensure compliance with healthcare standards binding on the Licensee;
- 3.1.3 to identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of its Licence.

3.2 Need for action:

NHS England believes that the action which the Licensee 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.

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. Operational Performance - Urgent and Emergency Care

- 1.1 The Licensee will take appropriate steps to recover the operational performance and to achieve sustainable compliance with the Urgent and Emergency Care standards (including improved ambulance handover delays) as set out in agreed 2025/26 Operating Plan improvement trajectories.
 - 1.1.1 The Licensee will, by 05 September 2025, ensure that there is a robust Urgent and Emergency Care improvement plan (the UEC plan) in place to meet the requirements of 1.1. This plan should align to the wider Birmingham and Solihull system improvement plan.
- 1.2 The UEC improvement plan will, in particular:
 - 1.2.1 Include the actions required to meet the requirements of paragraph 1.1 covering capacity and flow in the Emergency Department and wider organisation. It will also include actions to:
 - monitor the impact on quality and mitigate potential harm;
 - improve acute patient flow and discharge;
 - reduce the ED crowding score;
 - reduce the utilisation of temporary escalation spaces.
 - 1.2.2 Include associated trajectories in line with the ambitions ascribed in the NHS Priorities and Operational Planning Guidance (2025/26) (and working towards delivering the ambitions included in the 2025/26 UEC recovery plan) , as agreed with NHS England and which is in alignment with the agreed Birmingham and Solihull system trajectory, for how the Licensee will meet national expectations in relation to the UEC targets on a sustainable basis;
 - 1.2.3 Describe the key risks to meeting the requirements of paragraphs 1.1-1.3 and mitigating actions being taken;
 - 1.2.4 Reflect collaborative working with key system partners and other stakeholders;
 - 1.2.5 Set out the key performance indicators which the Licensee will use to measure progress against each action, and expected impact on overall UEC performance
- 1.3 Following submission of the UEC plan to NHS England. The Licensee will incorporate any comments or amendments regarding the UEC plan made by NHS England, or a third party if such assurance is requested by NHS England, and will send a revised UEC plan by a date agreed with NHS England.
- 1.4 The Licensee will implement all the actions within its control in the UEC plan within the timescales set out in the UEC plan, unless otherwise agreed by NHS England.
- 1.5 The Licensee will report to NHS England on the implementation of the UEC plan each month, or at an alternative frequency determined by NHS England and notified to the Licensee, in a form to be specified by NHS England.

- 1.6 The Licensee will keep the UEC plan and its delivery under review and provide appropriate assurance to its Board regarding progress towards meeting the UEC Plan, such assurance to be provided to NHS England through the established monthly oversight meetings.
- 1.7 The Licensee will notify NHS England as soon as practicable when it becomes aware of matters which materially affect the Licensee's ability to deliver the UEC Plan, and the Licensee shall promptly update the UEC Plan to address those matters. The Licensee shall submit any updated UEC Plan within five working days to NHS England.
- 1.8 The Licensee will ensure that the delivery of all undertakings in relation to operational performance and other measures to improve operational performance do not compromise its overall financial position. The Licensee will keep the financial cost of its improvements under close review and will notify NHS England as soon as practicable of any matters which are identified as potentially having a material impact on the Licensee's overall financial position.

2. Finance

Financial Governance

- 2.1 The Licensee will demonstrate a comprehensive governance framework that ensures effective oversight, accountability, and executive ownership of financial performance at hospital site and Trust level. Submit evidence to NHS England by 30 September 2025 including:
 - 2.1.1 Documented finance governance structures at hospital site and Trust, including monthly reporting protocols that confirm effective oversight. This should encompass the process for the Chief Financial Officer to sign off national financial returns, such as the PFRs.

Financial Control

- 2.2 The Licensee will enhance internal financial expenditure controls by developing protocols for triggering the "emergency handbrake." The Licensee will submit financial control policies, monthly monitoring reports, and details of actions taken, to NHS England starting 05 September 2025 to deliver 2025/26 plans. This must include:
 - 2.2.1 Policies governing the approval of pay and non-pay expenditure at sites, along with details of how the Licensee conducts monthly oversight of these expenditures to delivery of the 2025/26 financial plan.
 - 2.2.2 Details of oversight of agency and bank staff usage, including the measures to ensure compliance with the national reduction targets outlined in the 2025/26 planning guidance and to improve alignment between workforce and finance plans to support more effective cost control and delivery of the 2025/26 plans.
 - 2.2.3 Provide details of the monthly expenditure review process at the hospital sites to identify and address any adverse financial performance.
- 2.3 The Licensee will establish clear reporting, monitoring, and escalation processes for the efficiency programme outlined in the 2025/26 plans. The Licensee will submit evidence including the efficiency plans and monthly progress reports to NHS England by 05 September 2025 for governance framework and monthly reporting starting 05 September 2025. This must encompass:
 - 2.3.1 Governance framework for the delivery of efficiency initiatives, including a Project Management Office (PMO).
 - 2.3.2 An efficiency scheme tracker that identifies the Senior Responsible Officer overseeing delivery, details of each efficiency initiative, expected delivery

timeframes, current status, and information on cash releasing actions being implemented if performance is averse to plan.

- 2.3.3 The process by which NHS England's identified productivity opportunities for the Licensee are incorporated and implemented within the 2025/26 plans.

Financial Sustainability

- 2.4 The Licensee will develop a medium-term financial plan which demonstrates in year income and expenditure (I&E) balance for the Licensee in each year of the plan. This must be adopted formally by the Licensee's Board and approved by Birmingham and Solihull ICB. The plan must be submitted to NHS England as per the national medium term financial plan timetable and must address:
 - 2.4.1 The achievement and maintenance a sustainable, underlying recurrent financial balance from 1 October 2026 onwards, ensuring that ongoing income is sufficient to cover ongoing expenditure without reliance on one-off measures or temporary funding.
 - 2.4.2 Delivery, on a recurrent basis, of at least 75% of the productivity savings identified by NHS England alongside published allocations in January 2025.
 - 2.4.3 Implementation of recurrent cost-saving measures, including initiatives related to staffing, overtime, non-pay expenditure, and system-wide transformational schemes.
 - 2.4.4 Development of a supporting
 - 2.4.4.1 workforce plan aimed at reducing substantive workforce costs to a financially sustainable level within allocations by 2026/27.
 - 2.4.4.2 operational plan aligned to national targets and priorities.
- 2.5 The Licensee will provide assurance on financial governance by regularly monitoring progress against the medium-term financial plan every six months. This is to ensure delivery remains on track. Evidence must be shared with NHS England starting April 2026 in the form of:
 - 2.5.1 Records or minutes from governance meetings.
 - 2.5.2 Documented issues and corresponding action plans to ensure delivery aligns with the medium-term financial plan.

3. Quality

- 3.1 The Licensee will ensure all actions in the maternity improvement plan, which was submitted to NHS England in October 2023, are implemented sufficiently to meet the agreed exit criteria, and move into a sustainability phase.
- 3.2 The Licensee will submit monthly update reports evidencing progress against the improvement actions, along with associated metrics for monitoring purposes. Reports will be submitted to the Regional Chief Nurse and Regional Chief Midwife, prior to the Maternity and Neonatal Improvement and Assurance Committee each month.

4. Improvement Director

- 4.1 If it is determined by NHS England that an Improvement Director is required, the Licensee will co-operate and work with any Improvement Director who will oversee and provide independent assurance to NHS England on the Licensee's delivery against the Improvement Plans progress.

5. Programme Management

- 5.1 The Licensee will implement sufficient capacity, capability, programme management and governance arrangements to enable delivery of these undertakings.

- 5.2 Such programme management and governance arrangements must enable the Licensee's 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. Access

- 6.1 The Licensee will provide to NHS England direct access to its advisors, programme leads and the Licensee's board members as needed in relation to the matters covered by these undertakings.

7. Meetings and Reports

- 7.1 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.
- 7.2 The Licensee will promptly provide such reports in relation to the matters covered by these undertakings as NHS England may require.
- 7.3 In relation to the finance undertakings, the Licensee will provide quarterly reports to NHS England on its progress in complying with the undertakings set out in paragraph 2 by no later than the last Thursday of each calendar month and shall attend monthly meetings with NHS England on a mutually agreed date each month.
- 7.4 The Licensee will co-operate fully with all other regulatory reporting requirements ensuring that returns are submitted by required deadlines and have been through robust data quality / validation processes prior to submission.

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.

THE LICENSEE

Signed



Chief Executive of Licensee

Dated

3rd September 2025

NHS ENGLAND

Signed



Rebecca Farmer

**Director of System Co-ordination and Oversight (West Midlands) and member of the
Regional Support Group (Midlands)**

Dated

4th September 2025