

ANNEX 1 ENFORCEMENT UNDERTAKINGS

NHS TRUST:

University Hospitals of Leicester NHS Trust Headquarters
Level 3,
Balmoral Building
Leicester Royal Infirmary,
Infirmary Square
LE1 5WW

DECISION:

On the basis of the grounds set out below and pursuant to the powers exercisable by NHS Improvement under or by virtue of the National Health Service Act 2006 and the TDA Directions, NHS Improvement has decided to accept undertakings from the Trust.

DEFINITIONS:

In this document:

“the conditions of the Licence” means the conditions of the licence issued by Monitor under Chapter 3 of Part 3 of the Health and Social Care Act 2012 in respect of which NHS Improvement has deemed it appropriate for NHS trusts to comply with equivalent conditions, pursuant to paragraph 6(c) of the TDA Directions;

“NHS Improvement” means the National Health Service Trust Development Authority;

“TDA Directions” means the National Health Service Trust Development Authority Directions and Revocations and the Revocation of the Imperial College Healthcare National Health Service Trust Directions 2016.

BACKGROUND

On **30 November 2020** NHS Improvement issued a compliance certificate in relation to paragraph 3.1 3.6 of the undertakings accepted from the Trust in January 2020. Although the Trust has made some progress regarding quality of care since the undertakings were agreed in January 2020 the Trust was placed into Special Measures for Finance on **14 July 2020** due to continuing financial challenges. The Trust were notified in writing on **13 August 2020**.

Special Measures for Finance is a package of measures applied to particular NHS bodies as part of a reset of expectations of financial discipline and performance in

the NHS. Special Measures for Finance is designed to help NHS bodies facing the biggest financial challenges.

NHS Improvement is now taking further regulatory action in the form of accepting these undertakings due to continuing concerns relating to governance, operational performance and financial issues. They replace and supersede the January 2020 undertakings in relation to those undertakings where a certificate of compliance has not been issued, which cease to have effect from the date of these undertakings. This ensures that the undertakings which NHS Improvement has accepted and remain outstanding are set out in a single document and, where relevant, have been varied and updated.

GROUNDINGS:

1. The Trust

1.1. The Trust is an NHS trust whose facilities and establishments are situated in England.

BREACHES:

2. Issues and need for action

NHS Improvement has reasonable grounds to suspect that the Trust has provided and is providing health services for the purposes of the health service in England while failing to comply with the following conditions of the Licence: FT4(5)(a) to (h), and FT4(6)(a) to (f).

In particular:

Operational Performance

2.1 The Trust continues to fail to deliver the 4 Hour Access Standard despite targeted support and the benefit of a purpose built, state of the art Urgent Care facility.

2.2 The on-going poor performance regularly places UHL and the LLR System in the bottom 15 nationally for "All Type" 4 Hour Access Standard performance. Performance remains on average at 84.71%. The Trust has not delivered its 19/20 plan in Q1. And has not delivered against its 19/20 plan for Months 1-5.

Financial position

2.3 In 2017/18 the Trust reported a deficit of £36.7m and did not meet its control total deficit.

2.4 In 2018/19 the Trust reported a deficit of £54.8m and did not meet its plan or control total deficit.

2.5 The Trust entered 2019/20 with an agreed deficit plan of £48.7m excluding PSF. Monthly financial reporting continued to report a forecast outturn (FOT) in line with plan until month 9 when a £75.8m (excluding PSF) year to date deficit was reported. The Trust reported a year end deficit of £128.8m (excluding PSF), £80.1m worse than plan. This is still subject to final sign off by External Audit.

2.6 The underlying position as at 1 April 2020 has been calculated as a £119.4m deficit.

Need for action:

2.7 NHS Improvement believes that the action which the Trust 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 licence do not continue or recur.

Appropriateness of Undertakings

2.8 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.

3. Undertakings

NHS Improvement has agreed to accept, and the Trust has agreed to give the following undertakings:

Operational performance (Urgent and Emergency Care)

3.1. The Trust will take all reasonable steps in order to meet its projected operational performance and will take all reasonable steps to deliver an improvement in its compliance with the 4-hour A&E standard, in line with the agreed Trust recovery plan previously submitted to NHS Improvement. It is important to note that the COVID-19 pandemic adds complexity to achieving sustainable improvement in performance.

3.2. Via regular Escalation Meetings, the Trust will keep NHS Improvement updated about its Urgent and Emergency Care improvement plans and those of the wider system aimed at achieving compliance with the standard on a sustainable basis.

3.3. The Trust will continue to work with the Emergency Care Improvement Team and any other external support offerings as recommended by NHS

Improvement, to provide assistance in making recommendations for improvements and incorporate these into the Urgent and Emergency Care action plan to be submitted to NHS Improvement by the date and time agreed by NHS Improvement.

- 3.4. The Trust will ensure that the plans are co-produced with and endorsed by the Urgent and Emergency Care Cell as part of the STP System Leadership Team.
- 3.5. The Trust will keep the Urgent and Emergency Care plan and its delivery under review and provide appropriate assurance to its Board regarding progress towards meeting the requirements in paragraph 3.1, taking into account delivery against the LLR Health and Social Care Economy Winter Plan 2020/21.
- 3.6. The Trust will ensure there is appropriate, regular use and review of Emergency Department safety and quality metrics and appropriate, regular oversight of these metrics by the Trust Board

4. Financial Performance

4.1 While noting that the COVID-19 pandemic adds complexity to achieving sustainable improvement in performance, the Trust will ensure that robust financial recovery plans and governance arrangements are in place in 2020-21 to:

4.1.1 deliver its financial recovery plan, 2020-21 and planned CIP's, as set out in its financial plan to be agreed between the Trust and NHS Improvement;

4.1.2 minimise the revenue cash support requirement; and

4.1.3 recurrently reduce its I & E deficit run rate.

4.1 The Trust will ensure that a full assessment is completed on the impact of any efficiency schemes on quality and the Trust's underlying financial position.

4.2 The Trust will work constructively with Leicester, Leicestershire and Rutland STP partners to develop a longer-term plan in line with guidance issued by NHS England and NHS Improvement in June 2019 and NHS Improvement in June 2019. This long-term plan will demonstrate recurrent financial improvement as measured by I & E run-rate and planned financial outturn as agreed with NHS England and Improvement.

4.3 The Trust will develop a long-term financial model (LTFM) that aligns with the Leicester, Leicestershire, and Rutland STP's agreed long-term plan, the Trust's strategic direction and the STP's strategic and financial context. The Trust will agree the LTFM with its Board, system leads and partners and

share it with NHS England and NHS Improvement at a date agreed by the FID.

4.4 The Trust will take all reasonable steps to ensure that appropriate governance arrangements are in place to deliver its LTFM which will deliver an ambitious but realistic financial recovery and improvement in the underlying I & E run rate and its system's long-term plan.

4.5 The scope and detailed content of the LTFM will be as agreed with NHS Improvement and the FID but will include:

4.5.1 a robust recovery plan, quality-assured and agreed by the Trust's Board that will deliver an ambitious but realistic financial recovery and achieve an improvement in the I&E run rate during 2021/22, as set out in its financial plan to be agreed between the Trust and NHS Improvement

4.5.2 details of extra controls and other measures the Trust has already put in place since being put into Special Measures for Finance to immediately strengthen financial control. These may relate, for example, to staff pay costs, procurement, cash, delegated financial limits and programme management offices (PMOs.)

4.5.3 The Trust will take all reasonable steps to ensure that appropriate governance arrangements are in place to deliver its LTFM.

5. Funding conditions and spending approvals

5.1 Where interim support financing or planned term support financing is provided by the Secretary of State for Health to the Trust under Schedule 5 to the National Health Service Act 2006, the Trust will comply with any terms and conditions which attach to the financing.

5.2 Where the Trust receives payments from the Sustainability and Transformation Fund, the Trust will comply with any terms or conditions which attach to the payments.

5.3 The Trust will comply with any spending approvals processes that are deemed necessary by NHS Improvement.

6. Governance

6.1 The Trust will immediately and by a date to be agreed with NHS Improvement establish a Board Development Programme which will focus on improvement of the performance of the Trust's Board in the corporate governance domain. This will be monitored via the regular oversight meetings

and via the Trust's own Board.

6.2 The Trust will co-operate and work constructively with a "buddy" NHS Trust/Foundation Trust, to be appointed by NHS Improvement, which will assist the Trust in the area of corporate governance improvement and advise in the financial management and recovery domains

6.3 The Trust will co-operate and work with a Financial Improvement Director appointed by NHS Improvement to oversee and provide independent assurance to NHS Improvement on the Trust's actions to deliver its financial recovery.

6.4 The Trust will provide the Financial Improvement Director and their team with full access to the Trust's key personnel, meetings, resources and information during the Special Measures for Finance period.

6.5 The Trust will commission a review into the operation of the Finance Department at the Trust, having agreed the scope of this review with NHS Improvement.

7. Development and delivery of plans

7.1 The Trust will ensure that the LTFM is developed and delivered in a robust and coherent manner which enables to Trust meet the requirements of the undertakings.

7.2 In meeting the requirements of the undertakings, the Trust will ensure that the Plans:

7.2.1 Form a single, coherent and comprehensive approach, as part of the wider STP plan, to addressing the challenges facing the Trust, together with the Trust's other key plans, including but not limited to the latest version of the Sustainability and Transformation Plan.

7.2.2 Describe how the Trust will assess progress, including the measures to be used; and

7.2.3 Are submitted by the deadlines agreed by NHS Improvement, for discussion and agreement with NHS Improvement and with full support from the system.

8. Programme Management

The Trust will implement sufficient Programme management and governance arrangements to enable delivery of these undertakings.

8.1 Such Programme management and governance arrangements must enable the Board to:

8.1.1 obtain clear oversight over the process in delivering these undertakings; and

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

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

9. Access

9.1 The Trust will provide to NHS Improvement direct access to its advisors, Programme leads and the Trust Board members as needed in relation to the matters covered by these undertakings.

10. Meetings and reports

The Trust will:

11.1 attend meetings or, if NHS Improvement stipulates, conference calls, at such times and places, and with such attendees, as may be required by NHS Improvement; and

11.2 Introduction of a formal, minuted, monthly oversight meeting chaired by the Regional Director which will review progress against recovery plans in finance, operational performance and governance. To ensure suitable system focus in these meetings, the STP Lead would be a formal member of the monthly Oversight Meeting as part of the NHSEI Regional Director's team of advisors.

11.3 The Trust will comply with any additional reporting or information requests made by NHS Improvement.

Any failure to comply with the above undertakings may result in the NHS Improvement taking further formal action. This could include giving directions to the Trust under section 8 of the National Health Service Act 2006 and paragraph 6 of the TDA Directions.

THE TRUST

A handwritten signature in black ink, appearing to be 'RB', written on a light blue background.

Signed Rebecca Brown, Acting Chief Executive, UHL
Dated 01 December 2020

NHS IMPROVEMENT

A handwritten signature in black ink, appearing to be 'FS', written on a light blue background.

Signed Frances Shattock (Member of the Regional Support Group - Midlands)
Dated 3 December 2020